

# Memorandum Supporting Model Constitutional or Statutory Provision for Supervision of Judges of Political Subdivision Courts

## Introductory Note

A variety of approaches to the supervision of judges of courts of political subdivisions can be found among the several States and Territories of the United States. These range from no supervision at all to specific provisions, either in statute or in the State Constitution. Yet even in those jurisdictions that have specific provisions, there is significant variety in approach.

In the first place, there is the dichotomy in approach between States that have provisions arguably addressing this topic in the State Constitution and States whose Constitutions are silent on the issue; among the latter, the topic has been addressed, if at all, by the State legislature in the form of a statute.

### *Statutory Approaches*

Even when the legislature has addressed the issue of supervision in the absence of a constitutional provision, the statutes are not always a model of clarity. For example, MINN. STAT. ANN. §2.724 provides<sup>1</sup> in pertinent part:

#### Subd. 4. State court supervision.

The chief justice shall exercise general supervisory powers over the courts in the state, with powers including, but not limited to:

- (a) Supervision of the courts' financial affairs, programs of continuing education for judicial and nonjudicial personnel and planning and operations research;
- (b) Serving as chief representative of the court system and as liaison with other governmental agencies for the public; and
- (c) Supervision of the administrative operations of the courts.

The chief justice may designate other justices or judges to assist in the performance of duties.

---

<sup>1</sup> The State Constitution of Minnesota is silent on this topic.

The first clause of Subdivision 4 seems plain enough. It gives general supervisory authority over courts in the state to the Chief Justice. But then the statute seems to undermine – or could be interpreted to undermine – that broad authority with a short list of powers in paragraphs (a) through (c) of Subdivision 4, none of which refers directly to supervision of *judges, courts, or tribunals*. While the words preceding the list say “including, but not limited to,” an *ejusdem generis* approach to statutory construction would contraindicate any legislative intent to grant the Chief Justice supervisory power over all judges in the state.<sup>2</sup>

Other, more succinct statutory formulations may imply, but – like many constitutional approaches discussed below -- do not definitively provide, an answer to the question. *See, e.g.*, R.I. GEN. LAWS § 8-15-2 (“The chief justice of the supreme court shall be the executive head of the judicial system.”); CONN. GEN. STAT. § 51-1b(a) (“The Chief Justice of the Supreme Court shall be the head of the Judicial Department and shall be responsible for its administration.”).

### *State Constitutional Approaches*

The vast majority of States have provisions in their constitutions dealing with the authority of the chief justice individually or of the state high court as a body. These appear in a number of variants, which may stand alone or may be combined in the constitution with other variants. For each of the following typical formulations, some of the variations in language shall be displayed.

---

<sup>2</sup> Another example of this “including without limitation” language actually seems to expand upon a general statement of authority by authorizing some intrusion into what is otherwise the jurisdiction of lower courts, but not specifically addressing actual supervision of their judges. MASS. GEN. LAWS ch.211, § 3 provides,

In addition to the foregoing, the justices of the supreme judicial court shall also have general superintendence of the administration of all courts of inferior jurisdiction, including, without limitation, the prompt hearing and disposition of matters pending therein, and the functions set forth in section 3C [which has been repealed]; and it may issue such writs, summonses and other processes and such orders, directions and rules as may be necessary or desirable for the furtherance of justice, the regular execution of the laws, the improvement of the administration of such courts, and the securing of their proper and efficient administration; provided, however, that general superintendence shall not include the authority to supersede any general or special law unless the supreme judicial court, acting under its original or appellate jurisdiction finds such law to be unconstitutional in any case or controversy. Nothing herein contained shall affect existing law governing the selection of officers of the courts, or limit the existing authority of the officers thereof to appoint administrative personnel.

- *The Judicial Power.* Many state constitutions, following the lead of the U.S. Constitution, simply vest the judicial power of the state in a court of last resort (variously denominated) and such lower courts as may be established by the competent authority<sup>3</sup> (typically the legislature). *See, e.g.*, ME. CONST. art. vi, § 1; WASH. CONST. art. 4, § 1. These provisions do not specifically confer supervisory power over individual lower court judges.
- *Administrative Authority/Administrative Supervision.* A common provision grants to either the chief justice or the court of last resort general “administrative authority” or “administrative supervision” over all courts in the state. *See, e.g.*, ARIZ. CONST., art. 6, § 3 (supreme court shall have administrative supervision for the administration of the courts of the state; chief justice shall be the chief administrative officer for the courts); DEL. CONST., art. iv, § 13 (Chief Justice shall be administrative head of all the courts in the State and shall have general administrative and supervisory powers over all the courts); FLA. CONST., art. v, § 2 (chief justice shall be the chief administrative officer of the judicial system); HAWAII CONST., art. vi, § 6 (chief justice shall be the administrative head of the courts); IOWA CONST., art. v, § 4 (supreme court shall exercise a supervisory and administrative control over all inferior judicial tribunals throughout the state); NEB. CONST., art. v-1 (“general administrative authority over all courts in this state shall be vested in the Supreme Court and shall be exercised by the Chief Justice”); NEV. CONST., art. 6, § 19 (chief justice is the administrative head of the court system); N.Y. CONST., art. vi, § 28 (chief judge of the court of appeals shall be the chief judge of the state and shall appoint a chief administrator who shall, on the chief judge’s behalf, supervise the administration and operation of the unified court system); N.D. CONST., art. vi, § 3 (chief justice shall be the administrative head of the unified judicial system); OKLA. CONST., art. viii, § 6 (general administrative authority over all courts -- other than the Senate acting as a Court of Impeachment and the Court on the Judiciary – including the temporary assignment of any judge to a court other than that for which he was selected is

---

<sup>3</sup> Some of these provisions may make specific mention of certain lower courts. *See, e.g.*, GA CONST., art. 6, § 9, para. 1 (vesting judicial power “exclusively in the following classes of courts: magistrate courts, juvenile courts, state courts, superior courts, Courts of Appeals, and Supreme Court” but expressly excluding municipal courts, county recorder’s courts, and certain civil courts); KAN. CONST. art. 3, § 1 (judicial power “vested exclusively in one court of justice, which shall be divided into one supreme court, district courts, and such other courts as are provided by law”); NEB. CONST. art. v-1 (judicial power vested in a Supreme Court, an appellate court, district courts, county courts, in and for each county, with one or more judges for each county or with one judge for two or more counties, as the Legislature shall provide, and such other courts inferior to the Supreme Court as may be created by law); N.H. CONST. art. 72-a (judicial power vested in the supreme court, a trial court of general jurisdiction known as the superior court, and such lower courts as the legislature may establish).

vested in the Supreme Court and shall be exercised by the Chief Justice); PA. CONST., art. v, § 10 (Supreme Court shall exercise general supervisory and administrative authority over all the courts and justice of the peace); TEX. CONST., art. v, § 31(a) (Supreme Court is responsible for the efficient administration of the judicial branch); VA. CONST., art. vi, § 4 (Chief Justice shall be the administrative head of the judicial system); VT. CONST., ch. ii, § 30 (Supreme Court shall have administrative control of all the courts of the state); W. VA. CONST., art. 8, § 3 (chief justice shall be the administrative head of all the courts). These provisions likewise do not expressly confer supervisory power over lower court judges (except, in the case of Oklahoma, for temporary reassignments and possibly, in the case of Pennsylvania, over justices of the peace<sup>4</sup>).

- *Authority to Promulgate Rules.* Many state constitutions vouchsafe this authority to the court of last resort. *See, e.g.,* ALASKA CONST., art. iv, § 15 (supreme court shall make and promulgate rules governing the administration of all courts); HAWAII CONST., art. vi, § 7 (supreme court shall have the power to promulgate rules and regulations in all civil and criminal cases for all courts); MONT. CONST., art. vii, § 2(3) (supreme court may make rules governing appellate procedure, practice and procedure for all other courts); N.J. CONST., art. 6, § 2 (Supreme Court shall make rules governing the administration of all courts in the State and, subject to the law, the practice and procedure in all such courts); N.D. CONST., art. vi, § 3 (supreme court shall have authority to promulgate rules of procedure, including appellate procedure, to be followed by all the courts of this state); TEX. CONST., art. v, § 31(a) (Supreme Court responsible for the efficient administration of the judicial branch and shall promulgate rules of administration not inconsistent with the laws of the state”); *id.* § 31(b) (Supreme Court shall promulgate rules of civil procedure for all courts not inconsistent with the laws of the state). Rulemaking authority, however, without more, is not express supervisory authority over judges
- *Superintending control.* This is another often invoked phrase. *See, e.g.,* ARK. CONST., amend. 80, § 4 (Supreme Court shall exercise general superintending control over all courts of the state and may temporarily assign judges, with their consent, to courts or divisions other than that for which they were elected or appointed); COLO. CONST., art. vi, § 2 (supreme court shall have a general superintending control over all inferior courts); MO. CONST., art. v, § 4.1 (supreme court shall have general superintending control over all courts and tribunals); N.M. CONST., art. vi, § 3 (supreme court shall have a superintending control over all inferior courts); S.D. CONST., art. v, § 12 (Supreme Court shall

---

<sup>4</sup> Undermining this conclusion for Pennsylvania is that the provision identifies no other judges, only courts, which would be an odd choice of phraseology for a provision that sought to confer supervisory authority over judges in general.

have general superintending powers over all courts and may makes rules of practice and procedure and rules governing the administration of all courts). This phraseology is no less ambiguous than the others. Superintend(ing) is defined as: “to have or exercise the charge and oversight of: oversee with the power of direction : supervise . . . : to exercise supervision : have charge or oversight.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2294 (2002). “General oversight” or the “exercise of supervision” is indistinguishable from the preceding formulations and insufficiently specific.<sup>5</sup>

### **Model Provision**

Creating a more precise formulation is useful in order to subject all lower court judges -- including judges of political subdivision courts (*e.g.*, municipal courts, country courts) or other courts of limited jurisdiction, as well as part-time judges, retired judges, and lay judges -- unambiguously to the authority of the state’s court of last resort. We use that very term -- “court of last resort” – as a place setter for the actual name of the high court in any state wishing to make use of these provisions.

Recognizing that amending a constitution is a considerably more difficult process than a legislative enactment, we have drafted model language suitable for either option. Note that the Model Provision has been drafted so that it can supplement existing constitutional language of the sort reviewed above.

1           Every person exercising a judicial function, full-time or part-time, in this  
2           State on any court or tribunal (including without limitation general  
3           jurisdiction courts, limited jurisdiction courts, municipal courts, county  
4           courts, traffic courts) shall be subject to the supervisory and  
5           administrative (including rulemaking) authority of the [court of last  
6           resort] and may be subject to discipline as provided by law, including  
7           suspension or removal from office, for willful misconduct in office,

---

<sup>5</sup> One state uses the formulation “general superintendence” in statute, rather than in its Constitution, and the context in which that formulation appears negates any suggestion of supervisory authority over individual judges. See MASS. GEN. LAWS ch.211, § 3, quoted *supra* n.2.

- 8 willful failure to follow the laws of this State or the United States, or
- 9 willful and persistent failure to perform his or her duties.