



**House  
Legislative  
Analysis  
Section**

Washington Square Building Suite 1025  
Lansing, Michigan 48909  
Phone 517/373-6466

MAR 18 1987

Mich. State Law Library  
JUDICIAL ASSISTANTS

**House Bill 4018 with committee amendments  
First Analysis (2-5-87)**

Sponsor: Rep. Virgil Smith  
Committee: Judiciary

**THE APPARENT PROBLEM:**

The Revised Judicature Act provides for the appointment and compensation of a judicial assistant in each court of record other than the supreme court that has ten or more judges. (In effect, the position is limited to the circuit courts of Wayne and Oakland counties, the 36th District Court, and the Detroit Recorder's Court. Although the court of appeals is a court of record with more than ten judges, the statute does not provide for compensation for a judicial assistant working for that court.)

A judicial assistant acts as the court's attorney: he or she is charged with conferring with the judges on pending matters of procedure and substantive law; conducting research and analyzing briefs; monitoring and drafting legislation; acting as official legal advisor to all departments of the court; representing the court, judges, and court officers in court matters arising out of their official duties in situations where the prosecutor or attorney general has conflicting interest or is otherwise disqualified; and, acting as amicus curiae in appellate matters of interest to the court.

Judicial assistants are appointed by the judges of the court, and are issued a certificate of appointment by the governor. The term of office is "coextensive with the term of the recommending judges, subject to reappointments for like terms." Removal during any given term is by the governor upon recommendation by the judges of the court.

There are several problems with the law. In the first place, it is inconsistent with court rules, other provisions of law, and custom that place authority for hiring and firing court personnel with the chief judge. By involving the entire bench and the governor, the law in addition makes for a cumbersome and inefficient selection process. Some of the provisions are archaic: providing for terms coextensive with the judges is an anachronism that predates the 1963 constitution's change to staggered terms for judges. (The seeming ability of the court of appeals to hire a judicial assistant likewise is anachronistic: the eligibility criterion was established before that court was created by the 1963 constitution.) Finally, the act declares a judicial assistant to be a public officer and requires him or her to take an oath of office, but the nature of the position is contrary to conventional ideas of what constitutes a public officer: a judicial assistant does not have independent authority; rather, he or she acts as private counsel to the court. Many believe that the Revised Judicature Act should be amended to grant a court's chief judge authority over the judicial assistant, and to clarify whether a judicial assistant is a public officer.

**THE CONTENT OF THE BILL:**

Under the bill, instead of being selected by the judges of a court and issued a certificate of appointment by the governor, a judicial assistant would be hired by the chief judge. Instead of serving a term subject to removal by the governor upon recommendation from the judges, the judicial assistant would serve at the pleasure of the chief judge. The act would no longer state that an assistant is a public officer or provide for an oath of office (MCL 600.1481).

**FISCAL IMPLICATIONS:**

The bill has no fiscal implications for the state.

**ARGUMENTS:**

**For:**

Because the chief judge is the person responsible for a court's administration, the chief judge also needs to be able to manage court personnel. Court rules recognize this by granting a chief judge authority over court personnel other than a judge's personal secretary and clerk. To have the entire bench of a court and the governor involved in hiring and firing a judicial assistant, as the law now requires, is both inefficient and inconsistent with usual court personnel practice. The bill would remedy this situation by giving chief judges authority to hire and fire judicial assistants. The bill would further update and clarify the law by eliminating provisions that make judicial assistants, who basically are private counsel to their courts, public officers.

**Response:**

The bill would not clarify the provision that appears to provide for a judicial assistant for the court of appeals as well as for the largest trial courts. A court of record, other than the supreme court, that has ten judges may hire a judicial assistant. Although this description fits the court of appeals, it predates the creation of that court. The court of appeals does not have a judicial assistant as such and the act does not provide for compensation for one. Ideally, the description should not encompass the court of appeals.

**Against:**

If a judicial assistant is to serve as counsel for a court as a whole, there may be merit in having his or her selection made by the court as a whole.

**POSITIONS:**

The Michigan Judges Association does not oppose the bill (2-4-87).

H.B. 4018 (2-5-87)