



Why a lack of lawyers means a continuation of non-attorney judges in state courts

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By [Bill Raftery](#)

When most people think of judges, they often assume that they are attorneys. To this day in a majority of states, being a lawyer is not a pre-requisite for a judgeship. The reasons for this go back into U.S. history, [but in essence, can be laid at the feet of King Edward III in England in 1361](#) who created the position of “justice of the peace.” Whereas every other European nation going back to the Romans made use of trained legal professionals for a judgeship, only England used “lay” judges. England’s colonies, later U.S. states, kept this practice. Up until just recently, a majority of states allowed non-attorney judges and it is still common in a large percentage of states.

The arguments in favor of non-attorney judges in state courts vary but early on relied on a critical question of numbers: there simply were not enough lawyers to sit as judges. Justices of the peace therefore could be used for smaller civil cases and minor criminal offenses, leaving higher courts to deal with other matters. At a time when such judges often rode circuit and therefore might not be in an area for months at a time, such courts provided the only means for any kind of judicial proceeding in the intervening months.

That said, over time as cases became more complex, more states began to shift away from such individuals and amend their state constitutions or laws to require judges to be attorneys. Nevertheless, at least 27 states continue to allow for non-attorney judges with several states (Connecticut Probate Court and Indiana City and Town Courts) allowing currently sitting non-attorney judges to be re-elected but requiring their successors to be lawyers. A reason often cited in the last several years is a lack of attorneys in more rural areas of the state such as [Colorado](#), [New York](#), and [Washington](#).

Is your state considering ending the practice of non-attorney judges? Share your experiences with us at Knowledge@ncsc.org or call 800-616-6164. Follow the National Center for State Courts on [Facebook](#), [Twitter](#), [LinkedIn](#) and [Vimeo](#).

State	Courts Allow Non-Attorney Judges	Notes
Alabama	Probate (most counties)	Select judges in Jefferson and Montgomery Counties must be attorneys
Arizona	Justice of the Peace, Municipal	Some municipalities may require judge be attorney
Colorado	County (most counties), Municipal	Some counties may require judge be attorney
Delaware	Justice of the Peace, Alderman's (most cities)	
Georgia	Magistrate, County Recorder's, Probate (counties below 96,000), Municipal (judges starting service prior to 2011)	2011 law requires all Municipal Court judges be attorneys. Non-attorney Municipal Judges in office as of June 2011 may remain and be re-elected.
Kansas	Municipal	Must be attorney in cities of the first class.
Louisiana	Justice of the Peace, Mayors	
Maryland	Orphans' (most counties)	Must be attorney in City of Baltimore, Baltimore County, and Prince George's County.
Massachusetts	All courts	
Mississippi	Municipal (cities below 10,000)	
Missouri	Municipal (cities below 7,500)	
Montana	Justice of the Peace, City	
Nevada	Justice of the Peace (depending on population of county & township served), Municipal	Justice of the Peace judges elected/appointed before October 1, 2005 may remain and be re-elected.
New Mexico	Magistrate, Municipal, Probate	
New York	Town & Village	
North Dakota	Municipal (in cities less than 5,000)	
Ohio	Mayors	
Oregon	County, Justice, Municipal	
Pennsylvania	Magisterial District	
South Carolina	Magistrate, Probate, Municipal	
South Dakota	Magistrate	
Tennessee	Municipal	Some municipalities may require judge be attorney
Texas	Justice of the Peace, Municipal, Probate (judges starting service prior to 2011)	If municipal court is a court of record, must be an attorney.

Utah	Justice	Judges of Cities in the First Class must have a law degree.
West Virginia	Magistrate, Municipal	
Wisconsin	Municipal	
Wyoming	Municipal	

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