

June 5, 1995

Memo for the Chair, Committee on Judiciary and Other Elected  
Offices

From: Legal Team

Re: Issues before the Committee with respect to Article IV,  
Judiciary

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This memorandum lists the issues raised by Article IV in order ranked by their apparent complexity or controversial nature, with the least complex and controversial first. The order also suggests issues that may logically flow one to another.

As of June 5, 1995, counsel had received 15 proposals to amend Article IV. Two principal sets of proposals came from the judiciary and the legislature, both of which have proposed comprehensive revisions of Article IV in the form of legislative initiatives. All of the proposals of both the judiciary and the legislature have been introduced as a courtesy by the Chair of the Pre-Convention Committee so that the delegates could have these proposals in front of them and so delegates would not have to duplicate this work.

1. Constitutional status: All but two of the proposals assume that Article IV will be rewritten to give constitutional status to both the Commonwealth Supreme Court and the Commonwealth Superior Court. In 1976, when the first constitution was written, neither of these courts was in existence. In 1985, the Superior Court was in existence, but the Supreme Court was not. The proposals to give the courts constitutional status would state their jurisdiction and provide that the courts can issue rules.

2. Selection and retention of judges: Both the judiciary's proposal and the legislature's proposal provide that judges are appointed by the Governor for a first term, and then are subject to approval in a non-partisan election for succeeding terms.

3. Term of office: Several proposals suggest an initial term of 6 years, plus succeeding terms of 6 or 12 years.

4. Number of judges: The judiciary's proposal provides for a Chief Justice and two associate justices for the Supreme Court, and a Presiding Judge and two associate judges for the Superior Court. The legislature's proposal differs only in that it

provides for three associate judges.

5. Advisory opinions: One proposal suggests that a new way to resolve disputes between the legislative branch and the executive branch would be to provide for advisory opinions by the Court that would be binding on both branches.