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Question 1: Can the Governor appoint justices when Oklahoma Intercollegiate Legislature is in recess?

Answer: No.

Reasoning: Article 5 section 5 subsection 1 states “The Governor shall appoint, with the advice and consent of the Senate, members of the Supreme Court when vacancies shall arise. No person shall serve as a member of the Supreme Court who shall not have been a member of the organization for at least the duration of one (1) conference.”

Article 5 section 6 states, “The Governor shall have the power to fill all vacancies in all executive offices requiring the confirmation of the Senate, that may occur during the recess of the Senate, by the issue of commissions. Upon the issuance of such a commission, all rights and duties of the position shall devolve to the person so named upon it. Such commissions shall expire upon the convening of the Senate or of the convening of a committee comprised of the President Pro-Tempore, Deputy President Pro Tempore, Senate Floor Leader, and two (2) Senators elected by the Senate body. This committee shall hereafter be known as the Senate Committee on Inter-Session Appointments. All decisions in favor of such commissions must be heard before the Judiciary Committee and approved by the body as a whole upon the convening of the Senate in regular session. A nominee declined by the Senate Body in the previous session or the Senate Committee on Inter-Session Appointments shall not be eligible for appointment to the same position in that inter-session period. A quorum of the committee shall be present before any business can be done.”

These two pieces of the Constitution are seemingly at odds, but they are not. Article 5 section 5 subsection 1 is clarifying that the Governor can appointment justices and who is qualified to be a justice. Article 5 section 6 says that vacancies in executive offices can be made through recess appointments. I interpret executive offices as positions in the Executive Branch as in the BoD and Steering committee. The only member of the Court this applies to is the Chief Justice. That interpretation is consistent with how the phrase is used throughout the Constitution and the Statutes.

Question 2: Can the Supreme Court convene if a quorum of the Court is not met?

Answer: No.

Reasoning: Article 6 section 2 of the Constitution states “....A majority shall constitute a quorum to do business. All business before the Court may be disposed of by a majority of those present.”

This clearly means that quorum has to be met to do anything. However, it does not define what majority is. It could mean majority of those on the Court or a majority of nine. My interpretation is that a majority is of nine. That means a quorum is six. As a result, if six members are not on the Court, then business cannot be conducted.

Question 3: Can the three judicial nominees sit to hear a possible case, if one should arise, concerning any opinion regarding the above stated issues?

Answer: yes

Reasoning: There is no statute addressing this issue. Since there is no statute saying they can or cannot, my official answer has to be that they can, but my advice is that they should not. It is unethical for them to weigh in on an issue that affects them so directly. My advice, however, is simply a guideline and does not have the binding force of an official opinion.

Question 4: Is a special session of the Senate the only way currently allowed for the Governor to appoint Supreme Court Justices?

Answer: Regarding recess appointments- yes

Reasoning: Since my answer to question 1 is that no recess appointments can be made for justices, the only time they can be made is while in session. That could be during either a regular session or a special session, if a special session is called for. At this current moment, with the current issue one of two things can happen: (1) The Governor can call a special session. (2) Wait until regular session, and since quorum will not be met, the Court cannot prepare for session or conduct any business.