NEVADA COMMISSION ON JUDICIAL SELECTION RULES

(Revised 01/05/17)

Introduction

The Nevada Commission on Judicial Selection is a judicial body created pursuant to Article 6, Section 20 of the Nevada State Constitution, and also governed by NRS Chapter 1.380 through 1.410, as amended.

Rule 1. Commission Officers and Temporary Members

A. The Chief Justice, or a designated Justice, shall be chairperson.

B. The Commission shall elect a vice-chairperson from among its members. Elections will be held at the first meeting of each year, and the vice-chairperson will hold office until the first meeting after the expiration of the calendar year in which such officers are elected.

C. The State Court Administrator (Director of the Administrative Office of the Courts (AOC)) shall serve as secretary to the Commission. The secretary shall convene meetings of the Commission and prepare and keep the minutes of all meetings. In the event the secretary must be absent, the secretary shall choose a deputy director from the AOC to act in his or her stead.

D. For the selection to replace a district court judicial position, the temporary Commission pursuant to the Nevada Constitution, Article 6, Section 20, will be deemed called to order upon the appointment of the first temporary member by the appointing authority. The temporary members' terms will run from the date of appointment to completion of that judicial selection.

Rule 2. Ethics and Responsibilities

Judicial Selection Commissioners hold positions of public trust. Public confidence in Commission members and the composition of the Commission itself is paramount. Any factors that might erode such public confidence, or might reasonably be perceived to do so, shall be avoided. Consequently,

A. A commissioner shall disclose to other commissioners all personal and business relationships with an applicant for judicial vacancy that may directly or indirectly influence the commissioner's decisions. Such reports shall be included within the minutes, or otherwise be made a written part of the proceedings of the Commission. If the commissioners by majority vote of the Commission determine that such a relationship may unduly influence any commissioner's decision as to an applicant, the disclosing commissioner shall not participate in the selection process

for the affected vacancy and shall make no effort to influence any vote. In such case, the Commission should proceed without the disqualified member, so long as a quorum is present. If a majority of Commission members appointed by the State Bar of Nevada or the Governor, respectively, are disqualified, the Commission must recess prior to the commencement of interviews and the appointing body or bodies must appoint replacement Commission members who do not have such conflicts.

B. A personal relationship by blood, marriage or family within the third degree of consanguinity or a business relationship where the commissioner has a substantial and direct pecuniary interest associated with the applicant will be presumed to be disqualifying.

C. A commissioner shall consider each applicant in an impartial and objective manner. A commissioner shall not consider the race, religion, gender, ethnicity, age (except for minimum age), disability, national origin, or political affiliation of an applicant together with any other categories as specified in NRS 613.330. Said provisions are further subject to the limitations set forth in NRS 613.350.

D. No member of this Commission shall be eligible for appointment to a state judicial office as long as he or she is a Commission member.

E. A commissioner shall not attempt to influence the decision of another commissioner by presenting facts or opinions not relevant to the judicial qualifications of the applicant. A commissioner shall not allow any person or organization to influence him or her with facts or opinions that are not relevant to the judicial qualifications of the applicant and will promptly report any such attempt to the chairperson.

Rule 3. Nominating Process; Confidentiality; Matters of Public Record

A. Nominating Process

Throughout the nominating process, commissioners enhance the public trust in the process by informing the public and applicants of Commission procedures and activities, being and appearing to be impartial, and promoting a transparent nominating process.

B. Application Process

1. All applicants are required to file a complete application form provided by the Commission on Judicial Selection by the deadline indicated on the application. Applicants must provide personal information necessary to complete the application and produce copies of certain documents and information pertaining thereto. Once filed, the application will be a public record, except those portions thereof deemed confidential under Rule 3B (2).

The application form shall specify what information will be recognized as a matter of public record, and what information will remain confidential for purposes of the nominating/application process. A copy of the application form shall be made available to the public.

2. Confidential Records. As part of the application process, applicants are asked to submit to the Commission information that is ordinarily sensitive and confidential, and that may prove to be of little or no relevance to a candidate's qualifications.

The Commission attempts to strike a balance between information that would always be relevant in determining qualifications of candidates and that is sensitive and ordinarily confidential information which may not be relevant, so as not to discourage qualified applicants from applying and to encourage candor of persons who wish to communicate privately with the Commission regarding an applicant's qualifications. Thus, portions of the application and investigation by the Commission shall be confidential and shall not be released to the public.

Confidential information may include:

a. personal information
b. investigation materials
c. letters of reference
d. communications from the public who ask that such information be kept confidential (contents of which may be disclosed to the applicant)
e. details of arrests or charges of wrongdoing which do not result in conviction, or adverse judgment
f. lawyer, judicial or law school grievances that do not result in discipline
g. loan default details if default has been cured by payment in full
h. employment termination records
i. failure to file federal, state or local tax returns which have been cured by payment in full
j. health issues

3. Destruction of Records. Upon completion of the deliberation and voting process, all applications and related materials used by Commissioners will be destroyed with the exception of those applications and related materials to be forwarded to the Governor for consideration in the appointment process. All public portions of the applications posted to the Supreme Court website will be maintained only online for 3 years.

Upon final selection of the appointee by the Governor, all materials related to the candidates will be destroyed with the exception of the personal information page of the appointee. Said personal information page will be provided to the Administrative Office of the Courts, Human Resources Unit to be maintained in the confidential section of the personnel file of the appointee.

C. Commission Deliberations and Voting

Except as otherwise provided herein, the Commission shall conduct interviews, deliberate and vote in accordance with the provisions of Rule 9.C. in open session.

D. Executive Session

1. There is a presumption that the Commission will conduct its interviews, deliberations, and voting in public session, except where it is deemed necessary or appropriate to enter into an executive session because of the sensitive nature of matters or information to be discussed. Executive sessions may take place only to discuss applicants' individual or relative qualifications, or for conducting a portion of an interview. An executive session shall occur upon procedures set forth by the chairperson.

2. While in executive session, only those Commission members and others necessary to conduct the session shall be present. No individual shall have the authority to disclose the discussions conducted in executive session unless the Commission votes to authorize such disclosure, except that the applicant may disclose in public session any matters discussed with the applicant in executive session.

3. Each commissioner shall disclose the content of information disclosed to the commissioner by external sources regarding the qualifications of any applicant so long as the commissioner who received the information believes it is reliable and relevant to the consideration of the applicant. In such cases, the commissioner may protect the identity of the source if requested by the source or the circumstances otherwise warrant such protection.

4. Commissioners or Commission staff shall not discuss or disclose except among themselves, any confidential information as defined by these Rules, the qualifications or confidential information regarding any applicant, any commissioner's opinions about applicants, the outcome of any balloting, the ranking of applicants, the nature of any individual votes, any applicant's chances of being selected, or any other information or opinions that would impair or discredit the impartiality or integrity of the selection process.

E. Confidentiality

Commissioners or Commission staff shall not discuss or disclose, except among themselves, any information contained within the confidential portions of the application, the details of discussions undertaken during executive session or any matters or materials classified as confidential by these Rules.

F. Appointment; Media Inquiries

1. No commissioner shall communicate with any appointing authority any information not otherwise available to the public or authorized in these rules.

2. After an appointment is made by the appointing authority, a commissioner may communicate with unsuccessful applicants. In doing so, however, the commissioner must not make any representation regarding an applicant's future chances of selection, an individual commissioner's intentions regarding a future application, or any other topics held confidential by this Rule.

3. The chairperson shall be the Commission's primary spokesperson with regard to any media inquiries regarding a particular vacancy or applicant or any press releases to the media generally.

Rule 4. Meetings

A. Each meeting held for the purpose of the selection of candidates for a judicial vacancy will be commenced with a public session, regarding which public notice will be posted at least three (3) working days in advance of the meeting. At each public session, the Commission may elect officers, and shall discuss potential conflicts of interest or ethics issues, verify that the Commission is properly constituted, introduce and educate new members regarding the policies and procedures of the selection process, discuss criteria for the merit selection of candidates, take comments from those members of the public in attendance, address amendments to these Rules or the application forms and address any problems members foresee in the selection process.

B. Meetings of the Commission may be called by the chairperson or a majority of the permanent members by reasonable written notice and personal telephone call to the other members, specifying the time and place of the meeting. Such notice should be made at least seven (7) days before the time specified, except that a meeting may be held on shorter notice, if the notice specifies that the meeting will be an emergency meeting.

C. Meetings may be in person, by video conference or by conference call. Notice of meetings may be waived by any commissioner either before or after a meeting is held, and attendance by any commissioner shall constitute a waiver of notice unless the commissioner objects at or before the opening of the meeting to the absence or insufficiency of notice. The secretary will certify at the beginning of each meeting that a quorum is present and that the Commission is in compliance with constitutional requirements.

D. All interviews, discussion of qualifications of applicants, and balloting for any nominations shall be held in public session except when necessary to enter into executive session as outlined in Rule 3.D. Only under extraordinary

circumstances shall such sessions be conducted by conference call or other electronic means.

E. At the beginning of each public session members of the public are invited to comment on candidates' qualifications. The chairperson may allocate equal time for relevant comment on each applicant.

F. As defined in the Nevada Constitution, Article 6, Section 20, a quorum for the permanent Commission will be five (5) commissioners. A quorum for the temporary Commission will be six (6) commissioners. Except as provided in Rule 7.B.1, Rule 10.B.3, and Rule 12, the Commission may act on any matter by the vote of a majority of the Commission.

Rule 5. Multiple Vacancy Process

The Commission may consider more than one vacancy in the same judicial district in a single selection process. If the selection process is in a judicial district with one or two departments, the following rules apply:

A. The Commission's vacancy announcement must identify each vacancy and advise that applicants may apply for more than one vacancy.

B. Applicants must indicate on the application in the appropriate location each vacancy sought.

C. The Commission may conduct one interview for an applicant who applies for multiple vacancies.

D. Each applicant shall be considered independently for each vacancy for which they applied.

E. The Commission may select an applicant as a nominee for more than one vacancy, so long as three names are submitted for each vacancy.

If the selection process is in a judicial district with more than two departments, the following rules apply:

A. The Commission's vacancy announcement must identify each vacancy and advise that applicants must identify in the appropriate location on the application which vacancy is sought.

B. If an applicant withdraws from one vacancy, he or she may not apply for another vacancy during the same multiple vacancy process.

C. The Commission may conduct interviews for different vacancies on the same day although efforts will be made to conduct them on separate days depending on the number of applicants for each vacancy.

Rule 6. Recruitment

A. Persons with the highest qualifications will not always seek judicial appointment. Commissioners should actively seek and encourage qualified individuals to apply for judicial office, keeping in mind the ethical and confidentiality requirements of Rules 2 and 3. The Commission shall seek applicants from the broadest possible sources by the use of available media and otherwise, and shall treat alike all names received from all sources.

B. Notice of a judicial vacancy shall be provided to each active member of the State Bar of Nevada by electronic mail and shall be published by a press release to members of the print and electronic media in the state. The notices of judicial vacancy shall specify a deadline for receipt of all application materials. Each requesting applicant shall be provided an identical Application Form, including a personal data questionnaire, and other material, as the Commission shall from time to time determine.

C. Promptly after the deadline for submission of applications for a vacancy, the Commission shall release for publication a list of the names of all applicants, along with each applicant's age, city of residence, and the name of employer and position of employment.

Rule 7. Preliminary Screening of Applicants

A. The objective of the Commission in screening applicants is to retain a sufficient number of applicants so as to be reasonably certain that the best-qualified applicants are among them, given the information available to the Commission at the time, the number of vacancies to be filled and the overall quality of the applicant pool. To meet this objective, the Commission need not interview all applicants who may conceivably be legally qualified.

B. After preliminary background information for each applicant has been compiled and provided to the Commission members, the Commission may meet to:

1. Eliminate from consideration those persons, if any, whom at least five (5) permanent commissioners considering an applicant for Supreme Court or Court of Appeals, or at least six (6) Commission members considering an applicant for the district court, determine to be unqualified for the vacancy, whether or not such person is legally qualified under NRS 2.020, 2A.020 or NRS 3.060;

2. Plan for the screening and investigation of the remaining applicants; and,

3. Seek such further information regarding any applicant as it shall consider appropriate.

C. Where the applicant pool is large, the Commission may form subcommittees, each consisting of both lay and lawyer members, to compile existing and any additional investigation regarding specific applicants, to make recommendations regarding which applicants to interview, or to take the lead in presenting investigation materials on specific applicants or groups of applicants.

D. The application of the provisions of this Rule 7 shall not result in the reduction of the pool of legally qualified applicants to less than three applicants.

Rule 8. Investigations

A. Commissioners shall conduct investigations into the backgrounds and qualifications of applicants, including the legal qualifications for candidacy set forth in NRS Chapters 2.020, 2A.020, or 3.060. The Commission shall design and implement an application form to initiate the gathering of information and shall supplement such information from other sources.

B. The broadest possible evaluation of each applicant's qualifications should be made, including information from:

1. The Nevada Commission on Judicial Discipline, the Nevada Commission on Ethics, the State Bar of Nevada and any corresponding agencies in other states where applicants are or have been admitted, as to any pending or closed disciplinary proceedings;

2. County or local organizations regarding prior judicial evaluation polls;

3. State and federal law enforcement officials as to criminal records and the Federal Bureau of Investigation as to criminal records based upon fingerprints.

4. Information from persons listed in the application and other peers, judges, and adversaries as may be identified.

C. Should the Commission or the Commission chair determine that additional investigation is needed, the chair may appoint a sub-committee consisting of at least one lawyer and one lay person to conduct such additional investigation.

D. The application form will provide statements, to be executed by the applicants, waiving any confidentiality in any matter or area where the Commission seeks information.

Rule 9. Interviews and Selection of Nominees

A. Commissioners shall become familiar with interview guidelines established in Chapter 7, *The Handbook for Judicial Nominating Commissions, 2d Ed.,* or later, published by the American Judicature Society, to understand better the sensitive nature of the interview process and to avoid questions that may be improper.

B. Before proceeding to vote on the applicants, if a member or a subcommittee has been charged with inquiring into applicants' backgrounds the chairperson shall read the names of the applicants in alphabetical order and that member or subcommittee will report on each applicant's investigation. Thereafter, the Commission members shall discuss each applicant. After each applicant has been discussed to the satisfaction of the Commission, the chairperson may open the meeting for a general discussion of the relative qualifications of all applicants.

C. Upon completion of the discussion of the qualifications of all applicants, the Commission shall vote. Voting shall be conducted by secret ballot. A commissioner must be present to vote and must have attended all interviews conducted for each vacancy for which the commissioner votes.

D. The secretary shall prepare ballots, listing in alphabetical order the names of all applicants remaining under consideration for each vacancy. Each vacancy will be voted separately.

1. Each commissioner must cast three votes in favor of three applicants deemed qualified to serve in the vacancy being considered. Voting shall proceed in a series of rounds with the applicants meeting a minimum number of votes in order to move on to the next round.

2. After the first round of balloting,

a) If only three applicants receive a majority of votes of the Commission, they are selected as the three candidates; if not then:

b) If more than three applicants receive a majority of the votes cast of the Commission, then they proceed to the next round; if not then:

c) Applicants will be ranked according to their number of votes. Applicants with equal number of votes are placed in the same rank. Those applicants that fall within the top four ranks will pass on to the second round of balloting.

3. On the second and consecutive rounds of balloting, an applicant must receive a majority of votes of the Commission to remain on the ballot. If three or more applicants do not receive a majority of votes, the ballots are recast until at least three applicants receive a majority of votes.

a) When three or more applicants receive a majority of the votes, the three applicants receiving the most votes are selected and voting is complete.

b) In the event of a tie, balloting continues for all candidates with a majority of the votes until the tie is broken, or the chair declares an impasse. Upon declaration of an impasse, Rule 9.D.4 shall be applied.

4. In the event of an impasse the Commission may follow whatever voting procedure agreed upon by a majority of the Commission to accomplish the nominating process or, by two-thirds majority vote of the Commission, disqualify all applicants and begin the application and selection process anew.

Rule 10. Delivery of List to Governor

A. Promptly after completing its nomination process, the Commission shall deliver to the Governor of the State of Nevada a list containing three names, in alphabetical order, without ranking.

B. If three or fewer qualified applicants apply for a vacancy, the commissioners may:

1. Refer all the names to the Governor for consideration without taking a vote on the merits of the applicants, or,

2. Postpone interviews and selection process to solicit additional applicants so as to have three or more applicants, or

3. By a two-thirds vote of the Commission, disqualify all applicants and begin the application and selection process anew.

C. The Commission shall also transmit to the Governor all materials in its possession regarding the nominees. The governor shall agree to maintain the confidentiality of the selection process, as promised to all persons either applying for a vacancy or communicating to the Commission regarding applicants, and to return to the secretary the same materials immediately following the announcement of an appointee.

Rule 11. Public Communications

The chairperson shall customarily make official announcements concerning the work of the Commission. All Commission members, however, are permitted and encouraged to communicate with the public regarding the Commission, in accordance with these Rules.

Rule 12. Amendment

These rules are made pursuant to the authority contained in NRS 1.400. The Commission from time to time may amend any provision of these rules of procedure, provided that no amendment shall take effect except upon the affirmative vote of at least five (5) permanent members.

The Rules of the Nevada Commission on Judicial Selection were modified and unanimously adopted on January 5, 2017. They become effective immediately.

Dated: January 5, 2017