

NEVADA COMMISSION ON JUDICIAL SELECTION

RULES

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Introduction

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

Rule 1. Commission Officers; Temporary Members

A. Chair: The Chief Justice, or a designated Justice, shall be chair.

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

C. Secretary: The State Court Administrator 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 designee from the Administrative Office of the Courts to act in his or her stead.

D. Temporary Members: For the selection to replace a district court judicial position, the temporary Commission pursuant to the Nevada Constitution, Article 6 § 20, will be deemed called to order upon the appointment of the first temporary member by an 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 commissioners and the composition of the Commission is paramount. Any factors that might erode such public confidence, or might reasonably be perceived to do so, shall be avoided.

A. Disclosure:

- i. 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.
- ii. Disclosures shall be included within the minutes, or otherwise be made a written part of the proceedings of the Commission.

B. Disqualification:

- i. A relationship by blood, or a close personal relationship, or a business relationship where the commissioner has a substantial and direct pecuniary interest associated with the applicant, whether positive or negative, is presumed to be disqualifying.
- ii. The disqualification may be made by the commissioner individually or based upon a majority vote of the Commission.
- iii. By majority, commissioners may disqualify a commissioner whose relationship may unduly influence any commissioner's decision as to an applicant. A disqualified commissioner shall not participate in the nomination process for the affected

vacancy and shall make no effort to influence any vote.

- iv. So long as a quorum is present, the Commission may proceed without the disqualified commissioner.
- v. The Commission must recess prior to the commencement of interviews when disqualification renders no quorum. The Commission shall reconvene after the appointing authority(s) appoint appropriate replacements.

C. Impartiality: A commissioner shall consider each applicant in an impartial and objective manner; and shall not discriminate based on race, religion, gender, ethnicity, age (except for the minimum age requirement), disability, national origin, or political affiliation.

D. Undue Influence:

- i. No active commissioner shall be eligible for appointment to a state judicial office.
- ii. A commissioner shall not attempt to influence the decision of another commissioner by presenting facts or opinions not relevant to the judicial qualifications of any applicant.
- iii. 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 any applicant and will promptly report any such attempt to the chair.

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:

- i. Notice of application, including any deadlines shall be widely disseminated through:
 - a. Press release to print and online media sources in Nevada
 - b. Press release to the State Bar of Nevada and any local Bar within the jurisdiction of the vacancy
 - c. E-mail to every active member of the State Bar of Nevada
 - d. Publication on the Supreme Court's website and its social media channels as applicable
- ii. All requests for application information and materials are to be submitted to Commission staff.
- iii. All applicants are required to file a complete application only on the form provided by the Commission and by the deadline indicated on the application.
- iv. The application shall specify what information will be recognized as a matter of public record, and what information will remain confidential.
- v. Request for Reference forms and public letters of reference are due one week prior to the interview date. Reference forms and letters will not be accepted after that date,

absent extraordinary circumstances, which on a case-by-case basis shall be reviewed by the Commission.

- vi. 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 the applicant's current employer and position of employment.

C. Confidential Records: As part of the application process, applicants are asked to waive confidentiality and 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 all arrests or charges of wrongdoing, even those 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 even where such default has been cured by payment in full
- h. employment termination records
- i. failure to file federal, state or local tax returns even those which have been adjudicated or subsequently paid and so stipulated with the taxing authority
- j. health issues

D. Destruction of Records:

- i. Upon completion of the deliberation and voting process, all applications and related materials used by Commissioners will be destroyed except for personal notes created by Commissioners, which shall be kept confidential, and those applications and related materials to be forwarded to the Governor for consideration in the appointment process.
- ii. Upon appointment by the Governor, all materials related to the candidates will be destroyed except for Commissioners' personal notes and the personal information page of the appointee; which shall be provided to the AOC's Human Resources Department.

- iii. All public portions of the applications posted to the Supreme Court website will be maintained online for three years.

E. Executive Session:

- i. Although the Commission is exempt from the Nevada Open Meeting Law under NRS 241.016, there is a presumption that the Commission will conduct meetings, interviews, and voting in public session, except where it is deemed necessary or appropriate as requested by the chair/ or commissioner.
- ii. Discretionary executive sessions may take place only to discuss applicants' individual or relative qualifications, or for conducting a portion of an interview.
- iii. Mandatory executive session, when requested by the Commission shall occur prior to the commencement of voting and upon procedures set forth by the chair.
- iv. Only commissioners and others necessary to conduct the session shall be present.
- v. 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.
- vi. 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.

F. 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 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 nomination process.

G. Appointment; Media Inquiries:

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

- H. Whenever a judicial vacancy arises and it is determined that a successful applicant would have less than (X six months) to serve in office as a judge the Commission shall meet and decide by majority vote whether to forego the selection process for that judicial seat.
- iii. The chair shall be the Commission's primary spokesperson for any media inquiries and press releases.
- iv. Any request by the media to film or photograph a portion of a commission meeting must be made at least 24 hours prior to the commencement of the meeting. The chair retains discretion to permit filming or photography.

Rule 4. Meetings

A. Purpose: The Commission holds meetings for ministerial decisions or to further the process of nominating judicial candidates to the Governor.

B. Notice:

- i. Public Notice: Public notice, through the online calendar for the Supreme Court of Nevada, will be posted at least three working days in advance of any Commission meeting.
- ii. Commission Notice: Notice of meetings shall be provided to Commissioners as soon as is practical. Notice shall include information on the purpose of the meeting, the time, and the venue of the meeting.

C. Meetings

- i. Ministerial Meetings: Ministerial meetings of the Commission may be called by the chair or a majority of the permanent members. by reasonable written notice to the other members, specifying the time and venue of the meeting. The purpose of ministerial meetings is to discuss procedure or processes of the Commission, especially in instances of first impression.
- ii. Nomination Meetings: Nomination meetings of the Commission may be called by the chair for the purpose of conducting the judicial nomination process. Nominating meetings shall be commenced with a public session. At each public meeting, the Commission:
- a. Shall:
- Verify that the Commission is properly constituted; and
 - Offer public comment in a manner prescribed by the chair.
- b. May:
- Introduce and educate new members regarding the policies and procedures of the selection process;
 - Discuss criteria for the merit selection of candidates;
 - Discuss potential conflicts of interest or ethics issues;
 - Recommend and by Commission vote, elect the Vice-Chair;

- Address any problems members foresee in the selection process; or
- Address amendments to these Rules or the application form.

D. Venue: Meetings may be in person, by videoconference, or a combination of the two.

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

F. Quorum: Pursuant to NEV. CONST. Article 6, §20, a quorum for the permanent Commission is five commissioners. A quorum for the temporary Commission is six commissioners.

Rule 5. Multiple Vacancy Process

The Commission may consider more than one vacancy in the same judicial district in a single selection process. The Commission must consider the benefits of combining multiple vacancies into one nomination process as compared to the influence it may exert over the Governor's Constitutional authority to select the best candidate for each vacancy.

A. The Commission is encouraged to convene a ministerial meeting to establish procedures for a multiple vacancy process. In general, the Commission may:

- Conduct one interview for an applicant applying for more than one vacancy;
- Consider an applicant independently for each vacancy for which they applied; and
- Select an applicant as a nominee for more than one vacancy, so long as three names are submitted for each vacancy.

B. In addition to the general procedures, the Commission may consider:

- The relationship of the vacancies to one another;
- The impact the vacancy process will have on the ability of the Governor to choose from qualified candidates;
- Whether the applicants must choose one vacancy, to apply for one type of docket, or to allow for a general application for all vacancies;
- The method of voting for each vacancy; and
- Additional factors specific to the jurisdiction.

C. Once the application and voting process are determined by the Commission:

- The vacancy announcement and application instructions must identify all vacancies and indicate the approved application process.
- Applicants must indicate the choice of vacancy(ies) sought on the application.
- Once an applicant makes a choice of vacancy(ies) on the application, no change may be made except to withdraw from the nomination process unless the Commission otherwise determines due to an additional judicial vacancy in that District during the process.

Rule 6. Recruitment

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 these Rules. The Commission shall seek applicants from the broadest possible sources and shall treat alike all names received from all sources.

Rule 7. Preliminary Screening of Applicants

A. The Commission shall screen applicants to recruit and retain a sufficient number of applicants so as to be reasonably certain that the best-qualified applicants are among the total applicant pool. After the application deadline, the Commission shall consider the information available to the Commission at the time, the number of applicants, the number of vacancies to be filled, and the overall quality of the applicant pool. The Commission may meet to:

- i. Extend the application deadline to recruit more qualified applicants; and
- ii. By a two-thirds vote of the Commission, disqualify all applicants without prejudice and begin the application and nomination process anew.

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

- i. Eliminate from consideration those persons, if any, whom at least five permanent commissioners considering an applicant for Supreme Court or Court of Appeals, or at least six commissioners considering an applicant for 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;
- ii. Plan for the screening and investigation of the remaining applicants; and
- iii. 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 pool of legally qualified applicants must consist of at least three.

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:

- i. 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;
- ii. County or local organizations regarding prior judicial evaluation polls;
- iii. State and federal law enforcement officials as to criminal records and the FBI as to criminal records based upon fingerprints.
- iv. Information from persons listed in the application and other peers, judges, and adversaries as may be identified.

C. The chair may appoint a sub-committee consisting of at least one lawyer and one lay person to conduct additional investigations.

Rule 9. Interviews and Selection of Nominees

A. Interview Guidelines: 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. More specifically, questions asked by commissioners must be race and gender neutral and relevant to state judicial position being filled.

B. Subcommittee Reports: Before proceeding to vote on the applicants, if a member or a subcommittee has been charged with inquiring into applicants' backgrounds the chair shall read the names of the applicants in alphabetical order and that member or subcommittee will report on each applicant's investigation.

C. Executive Session: Commissioners shall discuss each applicant in an executive session as required by Rule 3.E. After each applicant has been discussed to the satisfaction of the Commission, the chair may open the meeting for a general discussion of the relative qualifications of all applicants.

D. Voting Requirement: 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.

E. Voting Procedure: 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.

- i. Each commissioner must cast three votes in favor of three applicants deemed qualified to serve in the vacancy being considered.
- ii. Voting shall proceed in a series of rounds with the applicants meeting a minimum number of votes to be on the ballot in the next round.
- iii. After the first round of balloting the following applies:

- a) Where three applicants receive a majority of the votes cast by the Commission, voting ceases and the three applicants are the Commission's nominees;
 - b) Where more than three applicants receive a majority of the votes cast by the Commission, voting continues, and those applicants proceed to the next round;
 - c) Where less than three applicants receive a majority of the votes cast by the Commission, voting continues and applicants within the top four ranking proceed to the next round. Applicants will be ranked according to the number of votes received. Applicants with an equal number of votes are placed in the same rank.
- iv. On the second and consecutive rounds of balloting, an applicant must receive a majority of votes of the Commission to remain on the ballot. 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 cast by the Commission, voting ceases and the three applicants receiving the most votes are the Commission's nominees;
 - 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.
- v. Impasse: 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. The Commission may proceed as follows where three or fewer qualified applicants apply for a vacancy:

- i. Refer all the names to the Governor for consideration without taking a vote on the merits of the applicants;
- ii. Amend the original nomination process timeline to solicit additional applicants so as to have three or more applicants; or
- iii. 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 chair 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 permanent members.