

JUDICIAL NOMINATING COMMISSION

UNIFORM RULES OF PROCEDURE FOR THE JUDICIAL NOMINATING COMMISSION

Summary of Proposed Action

The Judicial Nominating Commission proposes two substantive changes to its Uniform Rules of Procedure. In Section III, the order of the interview process will be changed so that the public comments will precede the public interview of the judicial candidates. In Section V, the voting procedure for the selection of nominees will be amended.

The proposed changes are redlined and further explained in the attached revised regulation.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS JUDICIAL NOMINATING COMMISSION

PUBLIC NOTICE OF RULEMAKING

The Judicial Nominating Commission (“Commission”), proposes the filing of its Amended Uniform Rules of Procedure (hereinafter “Rules”) under the authority afforded by R.I. Gen. Laws § 8-16.1-2(e), as amended, affording the Commission the power to adopt rules and procedures to aid in its election of nominees for judicial office, and under Chapter 35 of Title 42 of the General Laws of Rhode Island, as amended.

Copies of the amendments to the Rules will be available for public inspection from October 27 through December 5, 2014 on the RI Secretary of State’s website: <http://www.sos.ri.gov/ProposedRules/>, on the Judicial Nominating Commission website: <http://www.jnc.ri.gov/>, under “Proposed Amendments to Rules and Regulations” by email request to Eneida Bennett at ebennett@hinckleyallen.com or (401) 457-5188, or in person by contacting Sheila Metts at (401) 222-6601 at the Department of Administration (DOA), Central Business Office, Fourth Floor, One Capitol Hill, Providence, RI 02908 between the hours of 9:00 a.m. and 3:30 p.m., Monday through Friday. You will need to call to make an appointment in ordered to pick up a copy at the DOA location.

In the development of the proposed Amendments, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small businesses or any city or town, as defined in Chapter 42-35 of the General Laws, which may result from the proposed Amendments. Based on available information, no significant economic impact was identified nor are there any alternative approaches, duplications or overlaps with other state regulations.

Written comments regarding the proposed Amendments are preferred but not required. Written comments will be accepted up to and including **Friday, December 5, 2014 at 4:00 p.m.** Please submit all written comments to Chairperson Louise Durfee, attention Eneida Bennett, Hinckley Allen, 50 Kennedy Plaza, Suite 1500, Providence, Rhode Island 02903, ediaz@hinckleyallen.com.

In accordance with R.I. Gen. Laws § 42-35-3, an oral hearing on these proposed Amended Rules will be held on **Monday, December 8, 2014** at 5:00 p.m. at the Offices of the Department of Administration, Conference Room A, One Capitol Hill, Providence, Rhode Island.

The aforementioned location of the public hearing is handicapped accessible. Should communication assistance (readers/ interpreters/captioners) be needed or any other accommodation to ensure equal participation, please call Eneida Bennett, at 401-457-5188 at least three (3) business days prior to the meeting, so arrangements can be made, at no cost to the individual requesting said assistance.

Date Posted:

UNIFORM RULES OF PROCEDURE FOR THE JUDICIAL NOMINATING COMMISSION

Members of the Judicial Nominating Commission:

~~Girard R. Visconti, Chairperson~~

Louise Durfee, Chairperson

~~David Kerins~~

Robert Silva

~~Jonathan Farnum~~

Richard M. McAuliffe, Jr.

~~William Rampone~~

E. Colby Cameron

~~Charles Sokoloff~~

Norman L. Landroche, Jr.

~~Solomon Solomon~~

Cheryl S. Haynes

~~C. June Tow~~

Lorraine N. Lalli

~~Kevin Turner~~

Vince Watchorn

~~Bruce Wolpert~~

Scott Rabideau

Adopted: January 19, 1995

Revised: October ~~29~~6, 2001

2014

Adopted:

REASON: The amendment reflects the names of the current members of the Commission

UNIFORM RULES OF PROCEDURE FOR THE JUDICIAL NOMINATING COMMISSION

SECTION I. INITIAL PROCEDURE; INVESTIGATIVE SOURCES; NOTICE

Whenever a notice of vacancy is issued by the governor for the filling of a judicial office within the jurisdiction of the Judicial Nominating Commission (the "Commission"), said Commission shall actively seek out and encourage applications from qualified individuals who will reflect the diversity of the community they will serve and shall receive and review the approved background statements submitted by those who voluntarily request consideration and those whose names are submitted to the Commission from any other source who otherwise consent in writing to such consideration. The Commission shall require completion of a questionnaire which shall include a waiver of confidentiality of all materials necessary to adequately investigate each applicant, including but not limited to, disciplinary records of the Rhode Island Supreme Court Disciplinary Board, records of the Rhode Island Ethics Commission, and records maintained by the Rhode Island State Police and/or any law enforcement agency.

The Commission shall advertise for the filling of judicial vacancies in newspapers circulated throughout the State of Rhode Island, including minority publications, seeking applications for nominations from all persons who meet the eligibility requirements of the Rhode Island Constitution and Chapter 16.1, Title 8, of the Rhode Island General Laws (the "Statute"). Said advertisement shall encourage racial, ethnic, and gender diversity within the judiciary of this State and shall be published for a reasonable amount of time to afford notice to prospective applicants and in consideration of the deadlines imposed by the enabling Statute. It shall be the policy of the Commission to seek and receive recommendations from all interested persons and groups. The Commission shall acknowledge receipt of each application submitted for the filing of judicial vacancies.

Upon receipt of a request for an application for any judicial vacancy, no member of the commission, nor any employee, shall disclose the name of any persons who requested an application for a judicial vacancy and is not granted an interview for such vacancy by the Commission.

Upon receipt by the Commission of a notice of judicial vacancy or prospective vacancy by the Governor, no member of the Commission shall communicate, except as provided herein, with an applicant or prospective applicant, the Governor, a member of the House or Senate referred to in RIGL § 8-16-1-2(1), or a representative of any of the foregoing, concerning any applicant or prospective applicant for a judicial vacancy. All communications by the above persons must be made to the Commission in writing or at a Commission meeting. This prohibition shall be in effect until the Commission submits the names of applicants or prospective applicants to the Governor pursuant to Section V of these Rules.

Substantive communications about an applicant with any person shall be disclosed to the Commission at the next meeting of the Commission, in closed session.

The Commission by majority vote may authorize members of the Commission, or any other person to investigate any matters concerning a potential applicant, which matters are for the benefit of the Commission to consider the applicant for the vacancy. The member, or any other person authorized by the Commission for such investigation, shall report to the Commission of all findings in relation to the investigation.

SECTION II. SCREENING PROCEDURES

The Commission shall meet as soon as practicable following receipt of a notice of vacancy from the Governor and shall commence the recruitment process. The Commission chairperson may appoint one or more subcommittees to review completed questionnaires and background materials as part of the screening process.

SECTION III. FURTHER INVESTIGATION; PERSONAL INTERVIEWS

The Commission and/or any subcommittee appointed under these Rules shall investigate the fitness and qualifications of each applicant utilizing all sources reasonably available within the time permitted by the Statute. In addition, the Commission may invite any applicant to appear before a quorum of the Commission sitting as a whole to respond to questions deemed pertinent to each applicant's fitness and qualifications to hold the judicial office. All applicants and other information received from or concerning applicants and all interviews and proceedings of the Commission, except for deliberations by the Commission, shall be open to the public to the extent required by the Rhode Island Open Meetings Law, Title 42, Chapter 46, of the Rhode Island General Laws; the Open Records Law, Title 38, Chapter 2, of the Rhode Island General Laws; and the Statute.

The Commission shall, in closed session, select by affirmative vote of at least three (3) Commissioners, those applicants whom the Commission will ask to be interviewed. The Commission shall then provide notice to the public of the list of candidates to be interviewed and shall convene a public meeting to afford an opportunity to members of the public to comment on the list of candidates. Public comments shall be considered by the Commission in its review and deliberation as to the qualification of candidates. Thereafter, the Commission shall convene a public meeting for the purpose of interviewing the candidates. Interviews shall be conducted in open session. Those portions of an interview in which confidential information would be discussed may be held in closed session at the discretion of the Commission or at the request of the interviewee.

The Commission shall also require financial disclosure from the applicant to include complete Federal and State income tax returns for the last three (3) years, including all Schedules, and a current financial statement.

Any material omissions or incomplete applications, including without being limited to financial information, shall result in rejection of the applicant at the discretion of the Commission.

~~Following the interview process the Commission, in closed session, shall select those applicants whom the Commission, by at least three (3) affirmative votes, deems most qualified and whose names shall be made public as soon as is practical. Following public notice,~~

~~comments shall be entertained at a public meeting held prior to the Commission's vote to select nominees to fill a judicial position. Public comments shall be considered by the Commission in its review and deliberation as to the qualification of candidates.~~

REASON: The proposed amendment allows for the public comments hearing to precede the public interviews of the judicial candidates.

SECTION IV. STANDARDS AND QUALIFICATIONS; CRITERIA

No nominee shall be recommended to the Governor for appointment unless the Commission finds that the nominee meets all constitutional and statutory requirements and is fit for appointment to the particular judicial office after full and careful consideration which shall include, but not necessarily be limited to the following criteria:

I. PERSONAL ATTRIBUTES

- Personal integrity
- Standing in the community
- Moral conduct
- Commitment to equal justice under law

II. COMPETENCY AND EXPERIENCE

- Intelligence
- Knowledge of the law
- Professional reputation
- Knowledge of and experience in the court involved
- Education
- Publications
- Record of public, community and government service
- General health, mental and physical

III. JUDICIAL CAPABILITIES

- Patience
- Decisiveness
- Impartiality
- Courtesy
- Civility
- Industry and promptness
- Administrative ability
- Possible reaction to judicial power
- Temperament
- Independence
- Ability

- Diligence
- Maturity

SECTION V. FINAL SELECTION OF NOMINEES

By majority vote in public session, the Commission shall select no ~~less-fewer~~ than three (3) nor ~~more-greater~~ than five (5) highly qualified persons to fill each judicial vacancy from the list of those persons interviewed who meet the requirements of the Rhode Island Constitution, the Statute, these Rules, and all other legal requirements for the judicial office. Said vote shall be held in public session, provided however, that the Commission may adjourn in closed session prior to or during said public session to deliberate upon said applicants. Any such closed session ~~to shall~~ be conducted pursuant to the provisions of the Open Meetings ~~Law~~Act, Title 42, Chapter 46, of the Rhode Island General Laws.

The voting procedure shall be as follows:

1. Each Commissioner shall have up to five (5) affirmative votes and shall only be allowed to cast one vote per applicant. A recusal shall not count as one of the allotted votes.
2. Initially, the Commissioners shall vote on all applicants who have been interviewed. The voting shall be completed after the first round if no fewer than three, four, or and no greater than five candidates receive at least five (5) votes ~~and no others receive at least four (4) votes except as otherwise provided in procedure no. 6.~~
3. If more than five applicants receive a total of five (5) or more votes in the first round, ~~a second round shall be required including only those applicants receiving five (5) or more votes then the five candidates who received the most votes shall constitute the list of nominees to be submitted to the Governor and the voting shall be concluded.~~
4. ~~However, if a list of five candidates with the most votes cannot be ascertained due to a tie vote, then a second round of voting shall be required. Excluded from this second round of voting shall be all candidates who received fewer than five votes cast on the previous vote. Also excluded from this list shall be any applicant who received a number of votes greater than the tied candidates. The names of these applicants who received a number of votes greater than the tied candidates shall be included on the list of nominees to be submitted to the Governor. Each Commissioner shall be allotted a total of five (5) affirmative votes in any second round of voting.~~
5. ~~A second round of voting shall be required if after the first round, there are three, four or five applicants with five (5) or more votes and one or more with four (4) votes except as otherwise provided in procedure no. 6.~~

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6.4. ~~If after the second round of voting, more than five applicants receive five (5) or more votes, then those five applicants with the most votes among such applicants will be the nominees submitted to the Governor.~~
~~In the event of a tie for one or more positions, a run-off vote shall be conducted between or among those tied for the remaining positions. For the second and subsequent rounds of voting, e~~Each Commissioner shall be allotted the same number of votes as there are positions to fill in such run-off vote and the applicant/interviewee(s) with the most votes shall be the remaining nominee(s). A recusal shall not count as one of the allotted votes.

This voting procedure shall be repeated until a list of nominees is completed for submission to the Governor.

7.5. ~~In the event that there are more than ten applicants who are initially voted upon, and after the initial vote, less fewer than five three applicants receive a minimum of four five votes, then the initial vote shall be considered to be a preliminary vote for the purpose of choosing the ten or more (in case of a tie) applicants with the most votes after such preliminary vote. Thereafter, the procedure set forth in procedures 1 through 5 above shall apply to all subsequent votes.~~

The names of the nominees selected by the Commission shall be submitted to the Governor in alphabetical order along with a copy of all investigative information and documents relative to each nominee.

REASON: The proposed amendment modifies the voting process for the selection of 3 to 5 qualified judicial applicants to be submitted to the Governor.

SECTION VI. PUBLICATION OF NAMES OF NOMINEES

The Chairperson of the Commission shall make public the names of all persons recommended to the Governor to fill any judicial vacancy in alphabetical order without indicating any preferences of the Commission.

SECTION VII. ETHICAL RESPONSIBILITIES

Judicial Nominating Commissioners hold positions of public trust. Public confidence in Commission members and the composition of the Commission itself is paramount. Any factors which might erode such public confidence, or be perceived to do so, shall be avoided. No Commissioner shall conduct himself in a manner which reflects discredit upon the judicial selection process. Consideration of the applicants shall be made impartially, discreetly, and objectively.

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 decision. If a substantial conflict of interest is apparent, the Commissioner shall disqualify himself from voting on further consideration of any affected applicant.

The Commission shall not rank nominees or otherwise disclose a preference of the Commission.

Each Commissioner shall read and maintain a working knowledge of these Rules.

SECTION IX. RESPONSIBILITIES OF THE CHAIRPERSON

The Governor shall designate the Chairperson of the Judicial Nominating Commission in accordance with the Statute, who shall serve a four (4) year term. The Chairperson shall be entitled to vote in all matters. Said Chairperson shall cause to be kept a permanent written record of the minutes of all meetings of the Commission and all policies and procedures adopted by the Commission during his or her term. At the conclusion of his or her term, the outgoing Chairperson shall turn over to the newly appointed Chairperson all minutes of the meetings and written records of adopted policies and procedures. The Commission may adopt such additional operating rules, forms and notices as it may from time to time deem necessary.

SECTION X. AMENDMENTS

These Rules may be amended by majority vote of the Judicial Nominating Commission.

