

545-RICR-10-00-1

## TITLE 545 – JUDICIAL NOMINATION COMMISSION

### CHAPTER 10 – GENERAL PROVISIONS

#### SUBCHAPTER 00 – N/A

##### PART 1 – Uniform Rules of Procedures

### 1.1 Initial Procedure: Investigative Sources: Notice

- A. 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.
- B. 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 R.I. Gen. Laws Chapter 8-16.1, (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.
- C. 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.
- D. 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 R.I. Gen. Laws § 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 § 1.5 of this Part.

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

## **1.2 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.

## **1.3 Further Investigation: Personal Interviews**

- A. 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, R.I. Gen. Laws Chapter 42-46; the Open Records Law, R.I. Gen. Laws Chapter 38-2; and R.I. Gen. Laws §§ 42-46-3 and 38-2-3.
- B. 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.

- C. 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.
- D. 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.

#### **1.4 Standards and Qualifications: Criteria**

- A. 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:

- 1. Personal Attributes
  - a. Personal integrity
  - b. Standing in the community
  - c. Moral conduct
  - d. Commitment to equal justice under law
- 2. Competency and Experience
  - a. Intelligence
  - b. Knowledge of the law
  - c. Professional reputation
  - d. Knowledge of and experience in the court involved
  - e. Education
  - f. Publications
  - g. Record of public, community and government service
  - h. General health, mental and physical

3. Judicial Capabilities
  - a. Patience
  - b. Decisiveness
  - c. Impartiality
  - d. Courtesy
  - e. Civility
  - f. Industry and promptness
  - g. Administrative ability
  - h. Possible reaction to judicial power
  - i. Temperament
  - j. Independence
  - k. Ability
  - l. Diligence
  - m. Maturity

## **1.5 Final Selection of Nominees**

- A. By majority vote in public session, the Commission shall select no fewer than three (3) nor 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 shall be conducted pursuant to the provisions of the Open Meetings Act, R.I. Gen. Laws Chapter 42-46 and R.I. Gen. Laws § 42-46-4.
  1. The voting procedure shall be as follows:
    - a. 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.
    - b. 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 and no greater than five candidates receive at least five (5) votes.

- c. If more than five applicants receive a total of five (5) or more votes in the first round, 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.
- d. 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 the 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.
- e. For the second and subsequent rounds of voting, 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.
- f. This voting procedure shall be repeated until a list of nominees is completed for submission to the Governor.
- g. In the event that after the initial vote, fewer than three applicants receive a minimum of 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 above shall apply to all subsequent votes.
- h. 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.

## **1.6 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.

## **1.7 Ethical Responsibilities**

- A. 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.
- B. 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.
- C. The Commission shall not rank nominees or otherwise disclose a preference of the Commission.
- D. Each Commissioner shall read and maintain a working knowledge of these Rules.

## **1.8 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.

## **1.9 Amendments**

- A. These Rules may be amended by majority vote of the Judicial Nominating Commission.
- B. This regulation was adopted at a meeting of the Judicial Nominating Commission held on the 8th day of December, 2014 pursuant to the Administrative Procedures Act (R.I. Gen. Laws § 42-35-1. *et seq.*)