

RULES OF THE JUDICIAL NOMINATING COMMISSION. (2023)

**JUDICIAL NOMINATING COMMISSION RULES**

**SECTION 1. Rules.**

- A. These Rules shall be known as the "Rules Governing Judicial Nominating Commissions," and are applicable to the appellate judges nominating commission, the district court judges nominating committees and the metropolitan court judges nominating committee established under Article VI of the New Mexico Constitution.
- B. These Rules shall be effective beginning upon adoption by each commission (Appellate, District, Bernalillo County Metropolitan).
- C. By a majority vote of those commissioners present, each judicial nominating commission or committee may adopt additional rules consistent with the Rules Governing Judicial Nominating Commissions, Article VI of the New Mexico Constitution and state law.

**SECTION 2. Role of the Chair.**

- A. The role of the Chair is to oversee procedural functioning of the Nominating Commission process but also to moderate Commission proceedings and meetings so that they are conducted consistent with NMRA 1978, Rules 21-203 and 16-804.
- B. Upon the occurrence of a judicial vacancy or an upcoming judicial vacancy, it is the responsibility of the chair to announce publicly the existence of the vacancy, the application and nomination process and the deadline for applications.

- C. The chair shall provide notice of the vacancy to the persons charged by the constitution with the duty of appointing commissioners and shall coordinate the appointment of commissioners in accordance with the constitutional requirements.
- D. The chair shall schedule the meetings of the commission and provide the media with notice of the date, time and place of the meetings.
- E. The chair shall provide an application packet to applicants and persons nominated by others. For inclusion in the packet, the chair shall prepare a questionnaire requesting information relevant to the evaluation criteria specified in Section 5 of these Rules. Except as specified in the questionnaire, the questionnaire becomes public upon submission.
- F. The chair, after the deadline for applications has passed, shall provide the media with the list of applicants who will be considered for the vacancy and date of interviews.
- G. The chair shall prepare a proposed agenda and shall send the agenda and the applications to the commission members prior to the meeting.
- H. The chair shall determine the order of interviews.
- I. The chair shall send a list of the applicants to the Chief Disciplinary Counsel of the Disciplinary Board and request verification that none of the applicants has been the subject of a formal specification of charges.
- J. The chair shall send a list of those applicants who are serving as judges in the state to the Executive Director of the Judicial Standards Commission and request verification that none of those applicants has been the subject of formal disciplinary charges.
- K. Upon written request by a commissioner, the chair may seek additional information from the applicant or others relevant to the evaluation criteria specified in Section 5 of these Rules.

- L. The chair shall preside over meetings of the commission.
- M. The chair shall file the oaths of office executed by the commissioners with the Secretary of State.
- N. The chair shall ensure that all Commission proceedings are conducted consistent with Rules 21-203(B) and 16-804(G), and when the Chair perceives a violation, the Chair may intervene and encourage corrective action. If conduct inconsistent with Rules 21-203(B) and 16-804(G) persists, despite the Chair's intervention, the Chair shall report that attorney or judicial officer to the appropriate disciplinary authority.

### **SECTION 3. Role of the Commissioners.**

- A. Each commissioner shall take an oath of office prior to the start of a meeting of the commission.
- B. Each commissioner shall disclose to the commission all current or past professional, family, business, and other special relationships with any of the applicants. These relationships shall not disqualify a commissioner from participating unless the commissioner feels that he/she cannot be impartial and cannot comply with his/her oath of office as to any applicant.
- C. Each Commissioner (judge, lawyer, layperson) shall not in the performance of their duties as Commissioners "by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, religion, color, national origin, ethnicity, ancestry, sex, sexual orientation, gender identity, marital status, spousal affiliation, socioeconomic status, political affiliation, age, physical or mental handicap or serious medical condition." Rule 21-203(B); see also Rule 16-804(G). This does not preclude Commissioners from making legitimate reference to the listed factors, or similar factors, when they are relevant to the evaluative criteria in Section 5 and the Constitutional Requirements.

#### **SECTION 4. Active Solicitation.**

Upon the occurrence of a judicial vacancy or upcoming judicial vacancy, it is the responsibility of the chair and the commissioners to actively solicit applicants for the position in the following ways:

- A. The chair shall advertise the vacancy in as many of the following ways as possible, given the amount of time and financial resources available:
  1. Announce vacancy to media within the relevant jurisdiction.
  2. Announce vacancy to state, county and local bar associations, including women, minority and specialty bars (including, for example and when appropriate, organizations representing prosecutors, criminal defense attorneys, government attorneys, trial lawyers, and insurance defense lawyers) by notification to their publications and/or listservs.
  3. Send email announcement to all bar association members within the Judicial District.
  4. Notify the Bar Commissioners who represent lawyers in the Judicial District, asking them to suggest candidates and encouraging them to personally contact qualified attorneys to ask them to apply.
  5. Identify specific sections, divisions, or committees of the State Bar whose membership might have an interest in and qualifications for the new or vacant position, asking the chairs to suggest names, and encouraging them to personally contact qualified attorneys to ask them to apply.
  6. Invite nominations of qualified candidates by third parties. Invite nominated candidates to apply.

7. Place notice on the Judicial Nominating Commission website, on court websites in the relevant jurisdiction, and on the Governor's website.
8. Send notice of the vacancy to previous applicants from the relevant jurisdiction.
9. Prepare educational materials about the application process and required qualifications and make them widely available.
10. Send letters out to each member of the bar of the relevant jurisdiction asking them to apply.

B. Commission members shall make every effort to identify qualified and diverse applicants and place telephone calls to encourage them to apply.

When actively seeking qualified and diverse applicants, commissioners shall inform the prospective applicant that being approached by a commissioner does not guarantee a nomination. Each applicant, whether actively recruited or independently seeking a nomination, will be subject to the same investigative and interview procedures. It is important for recruited applicants to realize that they will not be given special consideration simply because the commission is inviting their applications.

#### **SECTION 5. Evaluative Criteria.**

The commissioners shall evaluate the applicants on the basis of the constitutional requirements and the following evaluative criteria:

- \* empathy
- \* emotional intelligence

- \* self-awareness
- \* critical and analytic thinking
- \* impartiality
- \* industry
- \* integrity
- \* professional skills
- \* community involvement
- \* social awareness
- \* collegiality
- \* writing ability
- \* decisiveness
- \* judicial temperament
- \* effective communication skills
- \* leadership

## **SECTION 6. Commission Meetings.**

- A. A majority of the commission shall constitute a quorum. Should the chair be absent, the commission will choose a chair from among its members.
- B. Meetings shall be open to the public.
- C. The public shall be notified of the meeting through notice in the media and in accordance with the commission's Open Meetings Act notice resolution.
- D. The chair shall report on actions taken before the meeting on behalf of the commission pursuant to Section 2 of these Rules.

- E. Members of the public shall be allotted time for comments or questions concerning the policies and procedures of the commission and also time for comments concerning individual applicants. Public comment by any individual shall be limited to 5 minutes.

## **SECTION 7. Interviews.**

- A. Interviews shall be conducted in the order determined by the chair, unless the commission determines that a change is warranted by the circumstances.
- B. Unless the commission decides that a different time schedule would be appropriate, applicants shall be scheduled for interviews at intervals of at least 20 minutes and may choose to start with an opening statement of no more than 5 minutes.
- C. Each commissioner shall be given the opportunity to question each applicant.
- D. Each commissioner should ask each applicant about any information which the commissioner has learned or heard regarding the applicant and which the commissioner intends to raise in closed session.
- E. The commission may, for good reason, hear any applicant on a confidential subject in closed session.

## **SECTION 8. Closed Session.**

- A. Following the interviews, the commission may go into closed session to discuss the applicants' qualifications and to evaluate them according to the evaluative criteria specified in Section 5 of these Rules. The discussion during closed session shall be confidential. The extent of confidentiality shall be determined by the commission, but, in any event, shall extend to prohibit

express or implied attribution of comments or opinions to individual commissioners.

- B. As part of the discussion of the applicants, straw votes, non-binding and by secret ballot, shall be taken to determine support for particular applicants.
- C. Before each round of straw votes, the names of the applicants then under consideration shall be raised for discussion by the Commission.
- D. Commissioners shall cast only one vote per applicant but may vote for as many of the applicants as he/she wishes.
- E. When the commission, in closed session, after deliberations and at least two rounds of straw votes, believes that it is ready to vote in public session, the commission shall reconvene in open session for a final vote.

#### **SECTION 9. Formal Vote.**

- A. The commission, using the evaluative criteria set forth in Section 5, shall determine which applicants are both qualified for judicial office and should be recommended to the Governor for appointment.
- B. The formal vote shall take place in public session. The chair may vote only in the event of a tie. A vote of the majority of the commissioners present shall be required to recommend a nominee or nominees to the Governor.
- C. In recognition of the fact that the New Mexico Constitution vests the Governor with the authority to appoint judges and that the commission does not select the judges, the commission should strive to recommend a list of two or more names for each position to the Governor.



## **SECTION 10. Recommendation to the Governor.**

The chair shall send to the Governor, in alphabetical but unranked order, the names of the applicants recommended by the commission. The chair shall notify the media and all applicants of the commission's recommendation to the Governor.

## **SECTION 11. Request for Additional Names.**

If, after receiving the recommendation of the commission, the Governor chooses to request additional names, the chair shall:

- A. Actively solicit further applications for the position;
- B. Schedule a second meeting of the commission;
- C. Provide notice to the applicants, commissioners, media and public of the second meeting;
- D. Supply to the media a list of additional applicants, if any;
- E. Preside over a second meeting of the commission, following the process set out in these Rules under Sections 3 - 9, including notice to the Governor of any additional names recommended by the commission.