

THE STATE OF NEW MEXICO

**RULES
GOVERNING
JUDICIAL
NOMINATING
COMMISSIONS**

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. 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.
- B. 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.
- C. The chair shall schedule the meetings of the commission and provide the media with notice of the date, time and place of the meetings.
- D. 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.
- E. 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.
- F. The chair shall prepare a proposed agenda and shall send the agenda and the applications to the commission members prior to the meeting.
- G. The chair shall determine the order of interviews.
- H. 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.

- I. 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.
- J. 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.
- K. The chair shall preside over meetings of the commission.
- L. The chair shall file the oaths of office executed by the commissioners with the Secretary of State.

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.

SECTION 4. Active Solicitation.

- A. 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.
- B. 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.
- C. Commission member shall make every effort to identify qualified applicants and place telephone calls to encourage them to apply.
- D. When actively seeking qualified 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:

- * physical and mental ability to perform the tasks required
- * impartiality
- * industry
- * integrity
- * professional skills
- * community involvement
- * social awareness
- * collegiality
- * writing ability
- * decisiveness
- * judicial temperament
- * speaking ability

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.

SECTION 12. Forms.

- A. Oath/Affirmation of Office
- B. Open Meetings Act Resolution
- C. Applicant Questionnaire

NOMINATING COMMISSIONS

Constitution of New Mexico, NMS, 4 1978, Article VI, Section 35

[Appellate judges nominating commission.]

"There is created the "appellate judges nominating commission", consisting of.- the chief justice of the supreme court or the chief justice's designee from the supreme court; two judges of the court of appeals appointed by the chief judge of the court of appeals; the governor, the speaker of the house of representatives, and the president pro tempore of the senate shall each appoint two persons, one of whom shall be an attorney licensed to practice law in this state and the other who shall be a citizen who is not licensed to practice law in any state; the dean of the university of New Mexico school of law, who shall serve as chairman of the commission and shall vote only in the event of a tie vote; four members of the state bar of New Mexico, representing civil and criminal prosecution and defense, appointed by the president of the state bar and the judges on this committee. The appointments shall be made in such manner that each of the two largest major political parties, as defined by the Election Code, shall be equally represented on the commission. If necessary, the president of the state bar and the judges on this committee shall make the minimum number of additional appointments of members of the state bar as is necessary to make each of the two largest major political parties be equally represented on the commission. These additional members of the state bar shall be appointed such that the diverse interests of the state bar are represented. The dean of the University of New Mexico School of Law shall be the final arbiter of whether such diverse interests are represented. Members of the commission shall be appointed for terms as may be provided by law. If a position of the commission becomes vacant for any reason, the successor shall be selected by the original appointing authority in the same manner as the original appointment was made and shall serve for the remainder of the term vacated.

"The commission shall actively solicit, accept and evaluate applications from' qualified lawyers for the position of justice of the supreme court or judge of the court of appeals and may require an applicant to submit any information it deems relevant to the consideration of his application.

"Upon the occurrence of an actual vacancy in the office of justice of the supreme court or judge of the court of appeals, the commission shall meet within thirty days and within that period submit to the governor the names of persons qualified for the judicial office and recommended for appointment to that office by a majority of the commission.

"Immediately after receiving the commission nominations, the governor may make one request of the commission for submission of additional names, and the commission shall promptly submit such additional names if a majority of the commission finds that additional persons would be qualified and recommends those persons for appointment to the judicial office. The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in the office of justice of the supreme court or judge of the court of appeals within thirty days after receiving final nominations from the commission by appointing one of the persons nominated by the commission for appointment to that office. If the governor fails to make the appointment within that period or from those nominations, the appointment shall be made from those nominations by the chief justice or the acting chief justice of the supreme court. Any person appointed shall serve until

the next general election. That person's successor shall be chosen at such election and shall hold the office until the expiration of the original term. (As added November 8, 1988.)"

Constitution of New Mexico, NMSA 1978, Article VI, Section 36 [District court judges nominating committee.]

"There is created the "district court judges nominating committee" for each judicial district. Each and every provision of Section 35 of Article 6 of this constitution shall apply to the "district judges nominating committee" except that: the chief judge of the district court of that judicial district or the chief judge's designee from that district court shall sit on the committee; there shall be only one appointment from the court of appeals; and the citizen members and state bar members shall be persons who reside in that judicial district. (As added November 8, 1988.)"

Constitution of New Mexico, NMSA 1978, Article VI, Section 37 [Metropolitan court judges nominating committee.]

"There is created the "metropolitan court judges nominating committee" for each metropolitan court. Each and every provision of Section 35 of Article 6 of this constitution shall apply to the metropolitan court judicial nominating committee except that: no judge- of the court of appeals shall sit on the committee; the chief judge of the district court of the judicial district in which the metropolitan court is located or the chief judge's designee from that district court shall sit on the committee; the chief judge of that metropolitan court or the chief judge's designee from that metropolitan court shall sit on the committee only in the case of a vacancy. in a metropolitan court; and the citizen members and state bar members shall be persons who reside in the judicial district in which that metropolitan court is located. (As added November 8, 1988.)"

Please refer to the NM Constitution for the full text of these sections and all annotations.

JUDICIAL QUALIFICATIONS

Constitution of New Mexico, NMSA 1978, Article VI, Section 8. [Supreme court; qualifications of justices.]

"No person shall be qualified to hold the office of justice of the supreme court unless that person is at least thirty-five years old and has been in the actual practice of law for at least ten years preceding that person's assumption of **office** and has resided in this state for at least three years immediately preceding that person's assumption of office. The actual practice of law shall include a lawyer's service upon the bench of any court of this state. The increased qualifications provided by this 1988 amendment shall not apply to justices and judges serving at the time this amendment passes or elected at the general election in 1988. (As amended November 8, 1988.)"

Constitution of New Mexico, NMSA 1978, Article VI, Section 14.

[District court; qualifications and residence requirement of judges.]

"The qualifications of the district judges shall be the same as those of justices of the supreme court except that district judges shall have been in the actual practice of law for at least six years preceding assumption of **office**. Each district judge shall reside in the district for which the judge was elected or appointed. The increased qualifications provided by this 1988 amendment shall not apply to district judges serving at the time this amendment passes or elected at the general election in 1988. (As amended November 8, 1988.)"

Constitution of New Mexico, NMSA 1978, Article VI, Section 28.

[Court of appeals; number, qualifications, compensation; quorum; majority concurring in judgment; power of chief justice to select acting justices.]

"The court of appeals shall consist of not less than seven judges who shall be chosen as provided in this constitution, whose qualifications shall be the same as those of justices of the supreme court and whose compensation shall be as provided by law. The increased qualifications provided by this 1988 amendment shall not apply to court of appeals judges serving at the time this amendment passes or elected at the general election **in** 1988.

Constitution of New Mexico, IVMSA 1978, Chapter 34, Section 8A-4b. Metropolitan court; judges. (1993)

"No person shall be eligible for election or appointment to the office of metropolitan judge unless he is a member of the bar of and has practiced in this state for a period of three years. .

Please refer to the NM Constitution for the full text of these sections and all annotations.