

JUDICIAL NOMINATING COMMISSION

AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Christine R. Fox-Finlinson

AN ACT RELATING TO THE ELECTION CODE; SPECIFYING PROCEDURES FOR SELECTING JUDICIAL NOMINEES TO BE CERTIFIED TO THE GOVERNOR; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

h 20A-12-102, as last amended by Chapter 249, Laws of Utah 1997

20A-12-103, as last amended by Chapter 249, Laws of Utah 1997 h

20A-12-104 (Effective 07/01/98), as last amended by Chapter 249, Laws of Utah 1997

Be it enacted by the Legislature of the state of Utah:

h Section 1. Section 20A-12-102 (Effective 07/01/98) is amended to read:

20A-12-102 (Effective 07/01/98). Appellate Court Nominating Commission.

(1) (a) There is created an Appellate Court Nominating Commission.

(b) The Appellate Court Nominating Commission shall nominate justices of the Supreme Court and judges of the Court of Appeals.

(2) (a) The Appellate Court Nominating Commission shall consist of seven commissioners, each appointed by the governor to serve a single four-year term.

(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.

(c) Each commissioner shall:

(i) be a United States citizen and a resident of Utah; and h

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- 12m ^h (ii) serve until the commissioner's successor is appointed.
- 12n (d) The governor may not appoint:
- 12o (i) a commissioner to serve successive terms;
- 12p (ii) a member of the Legislature to serve as a member of the Appellate Court Nominating
- 12q Commission; or
- 12r (iii) more than four commissioners from the same political party to the Appellate Court
- 12s Nominating Commission.
- 12t (e) (i) The Utah State Bar shall submit to the governor a list of six nominees to serve as
- 12u Appellate Court Nominating Commissioners.
- 12v (ii) The governor shall appoint two commissioners from the list of nominees provided by the
- 12w Utah State Bar.
- 12x (iii) The governor may reject the list submitted by the Utah State Bar and request a new list of
- 12y nominees.
- 12z (f) The governor may not appoint more than four persons who are members of the Utah State
- 12aa Bar to the Appellate Court Nominating Commission.
- 12ab (g) (i) The chief justice of the Supreme Court is an ex officio, nonvoting member of the Appellate
- 12ac Court Nominating Commission, WHO MAY NOT BE COUNTED FOR THE PURPOSE OF DETERMINING A
- 12ad QUORUM.
- 12ae (ii) If the chief justice cannot serve on the commission, he shall appoint another justice of the
- 12af Supreme Court to serve in his absence.
- 12ag (h) The governor shall appoint the chair of the Appellate Court Nominating Commission from
- 12ah among the membership.
- 12ai (3) (a) Except for the chief justice of the Supreme Court, each commissioner is a voting member
- 12aj of the Appellate Court Nominating Commission.
- 12ak (b) [~~Four~~] FIVE commissioners are a quorum.
- 12al (c) The state court administrator shall serve as secretary to the Appellate Court Nominating
- 12am Commission.
- 12an (d) The chief justice of the Supreme Court shall:
- 12ao (i) ensure that the commission follows the rules promulgated by the Judicial Council; and
- 12ap (ii) resolve any questions regarding those rules. ^h

12aq **ĥ (e) A member of the commission who is also a member of the Utah State Bar may recuse himself**
12ar **if there is a conflict of interest that makes the member unable to serve.**

12as **(4) If an appellate court nominating commissioner is disqualified or is otherwise unable to serve,**
12at **the governor shall appoint a new commissioner of the same political party as the unavailable**
12au **commissioner.**

12av **(5) (a) The governor shall fill any vacancy in the office of Appellate Court Nominating**
12aw **Commission.**

12ax **(b) If the vacancy occurs among commission members who are also members of the Utah State**
12ay **Bar, the governor shall replace that commissioner with a person from a list of nominees submitted by**
12az **the Utah State Bar as provided in Subsection (2).**

12ba **(c) The governor shall ensure that each person who is appointed to fill any vacancy in the**
12bb **Appellate Court Nominating Commission other than a vacancy caused by expiration of term is a member**
12bc **of the same political party as the commissioner whom he replaces.**

12bd **(d) When a vacancy occurs in the membership for any reason, the replacement shall be**
12be **appointed for the unexpired term and may not be reappointed.**

12bf **(6) (a) (i) Members who are not government employees shall receive no compensation or**
12bg **benefits for their services, but may receive per diem and expenses incurred in the performance of the**
12bh **member's official duties at the rates established by the Division of Finance under Sections 63A-3-106**
12bi **and 63A-3-107.**

12bj **(ii) Members may decline to receive per diem and expenses for their service.**

12bk **(b) (i) State government officer and employee members who do not receive salary, per diem, or**
12bl **expenses from their agency for their service may receive per diem and expenses incurred in the**
12bm **performance of their official duties from the commission at the rates established by the Division of**
12bn **Finance under Sections 63A-3-106 and 63A-3-107.**

12bo **(ii) State government officer and employee members may decline to receive per diem and**
12bp **expenses for their service.**

12bq **Section 2. Section 20A-12-103 (Effective 07/01/98) is amended to read:**

12br **20A-12-103 (Effective 07/01/98). Trial court nominating commission. ĥ**

- 12bs **h (1) (a) There is created a trial court nominating commission for each geographical division of**
12bt **the**
12bu **trial courts of record.**
- 12bv **(b) The trial court nominating commission shall nominate judges of the district court and**
12bw **the juvenile court within its geographical division.**
- 12bx **(2) (a) The trial court nominating commission shall consist of seven commissioners, each**
12by **appointed by the governor to serve a single four-year term.**
- 12bz **(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of**
12ca **appointment, adjust the length of terms to ensure that the terms of commission members are staggered**
12cb **so that approximately half of the commission is appointed every two years.**
- 12cc **(c) Each commissioner shall:**
- 12cd **(i) be a United States citizen, a resident of Utah, and a resident of the geographic division to be**
12ce **served by the commission to which he is appointed; and**
- 12cf **(ii) serve until the commissioner's successor is appointed.**
- 12cf **(d) The governor may not appoint:**
- 12cg **(i) a commissioner to serve successive terms;**
- 12ch **(ii) a member of the Legislature to serve as a member of a trial court nominating commission; or**
- 12ci **(iii) more than four commissioners from the same political party to a trial court nominating**
12cj **commission.**
- 12ck **(e) (i) The governor shall appoint two commissioners from a list of nominees provided by the**
12cl **Utah State Bar.**
- 12cm **(ii) The Utah State Bar shall submit:**
- 12cn **(A) six nominees from Districts 2, 3, and 4; and**
- 12co **(B) four nominees from Districts 1, 5, 6, 7, and 8.**
- 12cp **(iii) The governor may reject any list and request a new list of nominees.**
- 12cq **(f) The governor may not appoint more than four persons who are members of the Utah State**
12cr **Bar to a trial court nominating commission.**
- 12cs **(g) (i) The chief justice of the Supreme Court is an ex officio, nonvoting member of each trial**
12ct **court nominating commission, WHO MAY NOT BE COUNTED FOR THE PURPOSE OF DETERMINING A**
12cu **QUORUM.**
- 12cv **(ii) If the chief justice cannot serve on the commission, he shall appoint another justice of the**

12cw Supreme Court to serve in his absence. ^h

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12cx ^h (h) The governor shall appoint the chair of each trial court nominating commission from among
12cy its membership.

12cz (3) (a) Except for the chief justice of the Supreme Court, each trial court nominating
12da commissioner is a voting member of the commission.

12db (b) [~~Four~~] FIVE commissioners are a quorum.

12dc (c) The state court administrator shall serve as secretary to each trial court nominating
12dd commission.

12de (d) The chief justice of the Supreme Court shall:

12df (i) ensure that each trial court nominating commission follows the rules promulgated by the
12dg Judicial Council; and

12dh (ii) resolve any questions regarding those rules.

12di (e) A member of a trial court nominating commission who is also a member of the Utah State
12dj Bar may recuse himself if there is a conflict of interest that makes the member unable to serve.

12dk (4) If a commissioner is disqualified or otherwise unable to serve, the governor shall appoint a
12dl new commissioner of the same political party as the unavailable commissioner.

12dm (5) (a) The governor shall fill any vacancy in the office of trial court nominating commissioner.

12dn (b) If the vacancy occurs among commission members who are also members of the Utah State
12do Bar, the governor shall replace that commissioner with a person from a list of nominees submitted by
12dp the Utah State Bar as provided in Subsection (2).

12dq (c) The governor shall ensure that each person who is appointed to fill any vacancy in the office
12dr of commissioner other than a vacancy caused by expiration of term is a member of the same political
12ds party as the commissioner whom he replaces.

12dt (d) When a vacancy occurs in the membership for any reason, the replacement shall be
12du appointed for the unexpired term under this Subsection (5) and may not be reappointed.

12dv (6) (a) (i) Members who are not government employees shall receive no compensation or
12dw benefits for their services, but may receive per diem and expenses incurred in the performance of the
12dx member's official duties at the rates established by the Division of Finance under Sections 63A-3-106
12dy and 63A-3-107.

12dz (ii) Members may decline to receive per diem and expenses for their service. h

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12ea h (b) (i) State government officer and employee members who do not receive salary, per diem, or
12eb expenses from their agency for their service may receive per diem and expenses incurred in
12ec the performance of their official duties from the commission at the rates established by the Division of
12ed Finance under Sections 63A-3-106 and 63A-3-107.

12ee (ii) State government officer and employee members may decline to receive per diem and
12ef expenses for their service.

12eg (c) (i) Local government members who do not receive salary, per diem, or expenses from the
12eh entity that they represent for their service may receive per diem and expenses incurred in the
12ei performance of their official duties at the rates established by the Division of Finance under Sections
12ej 63A-3-106 and 63A-3-107.

12ek (ii) Local government members may decline to receive per diem and expenses for their service.

h3 Section h [1] 2 h . Section 20A-12-104 (Effective 07/01/98) is amended to read:

14 20A-12-104 (Effective 07/01/98). Procedures governing meetings of judicial
15 nominating commissions.

16 (1) The Judicial Council shall:

17 (a) enact rules establishing procedures governing the meetings of the judicial nominating
18 commissions; and

19 (b) ensure that those procedures include:

20 (i) a minimum recruitment period of 30 days and a procedure to extend that period for an
21 additional 30 days if fewer than nine applications are received for a judicial vacancy;

22 (ii) standards for maintaining the confidentiality of the applications and related documents;

23 (iii) standards governing the release of applicant names before nomination;

24 (iv) standards for destroying the records of the names of applicants, applications, and
25 related documents upon completion of the nominating process;

26 (v) an opportunity for public comment concerning the nominating process, qualifications
27 for judicial office, and individual applicants;

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- 1 (vi) evaluation criteria for the selection of judicial nominees;
- 2 (vii) procedures for taking summary minutes at nominating commission meetings;
- 3 (viii) procedures for simultaneously forwarding the names of nominees to the governor,
- 4 the president of the Senate, and the Office of Legislative Research and General Counsel; and
- 5 (ix) standards governing a nominating commissioner's disqualification and inability to
- 6 serve.

7 ~~h [(2) (a) (i) Except as provided in this Subsection (2)(a)(ii), if a judicial nominating~~
 8 ~~commission receives 15 or more applications to fill a judicial vacancy, the nominating commission~~
 9 ~~shall submit at least five names to the governor.~~

10 ~~—— (ii) Notwithstanding Subsection (2)(a)(i), if five applicants do not receive the required~~
 11 ~~number of votes as specified in Subsection [(2)(c)] (3) from the nominating commission, the~~
 12 ~~commission shall submit only the names of applicants that received the required number of votes,~~
 13 ~~but must submit the names of at least three applicants.]~~

13a (2)(a) THE COMMISSION SHALL INTERVIEW AN APPLICANT IF REQUESTED BY ANY
 13b COMMISSIONER. h

14 (b) In determining whether or not to submit an applicant's name to the governor, a
 15 commission may not decline to consider an applicant merely because:

16 (i) the nominating commission had declined to submit that candidate's name to the
 17 governor to fill a previous vacancy;

18 (ii) a previous nominating commission had declined to submit that candidate's name to the
 19 governor; or

20 (iii) that nominating commission or a previous nominating commission had submitted the
 21 applicant's name to the governor and the governor selected someone else to fill the vacancy.

22 ~~[(c) The vote required to submit an applicant's name to the governor is as follows:]~~

23 ~~[(i) if all seven members of the nominating commission are present and considering~~
 24 ~~applicants, a vote in favor of the applicant by four commissioners submits the candidate's name~~
 25 ~~to the governor;]~~

26 ~~[(ii) if only six members of the nominating commission are present and considering~~
 27 ~~applicants because one member is unable to attend, has recused himself or is otherwise~~
 28 ~~disqualified, a vote in favor of the applicant by four commissioners submits the candidate's name~~
 29 ~~to the governor;]~~

30 ~~[(iii) if only five members of the nominating commission are present and considering~~
 31 ~~applicants because two members are unable to attend, have recused themselves, or are otherwise~~

1 disqualified, a vote in favor of the applicant by three commissioners submits the candidate's name
2 to the governor; and]

3 [(iv) if only four members of the nominating commission are present and considering
4 applicants because three members are unable to attend, have recused themselves, or are otherwise
5 disqualified, a vote in favor of the applicant by three commissioners submits the candidate's name
6 to the governor.]

7 (3) (a) Voting for the selection of nominees may differ from voting during the screening
8 process. Voting **h FOR NOMINEES h** may occur in one or **h [two] h** more rounds, depending on the
8a outcome of each round.
9 Each commissioner is allotted a number of votes for each round equal to the number of nominees
10 remaining to be selected. For the selection of nominees for a trial court, each commissioner has
11 five votes during the first round **h , SEVEN VOTES IF THE SELECTION PROCESS IS FOR AN**
11a **APPELLATE COURT h** . If one nominee is selected during the first round, each
12 commissioner has four votes during the next round **h , SIX VOTES IF VOTING IS FOR AN APPELLATE**
12a **COURT VACANCY h** . If there are multiple vacancies, the number
13 of votes allotted to each commissioner during each round of voting is multiplied by the number
14 of vacancies, and the commission selects nominees as a pool without matching any vote or any
15 candidate to a particular vacancy.

16 (b) Voting is by confidential ballot.

17 (c) A commissioner may not cast more than one vote for a single candidate during any
18 single round of voting.

19 (d) A commissioner must cast all allotted votes in each round.

20 (e) Any candidate receiving in any round a number of votes one less than the number of
21 voting commissioners present is selected as a nominee. If, after any round of voting, a candidate
22 receives **h [two or fewer] NO h** votes, the candidate is removed from consideration during subsequent
23 rounds of voting. The commission should further debate the qualifications of candidates who are
24 neither selected nor removed from consideration before conducting the next round of voting.

25 Voting and discussion continues until the requisite number of nominees have been selected.

26 (f) The commission can reconsider its action on any candidate upon a majority vote to do
27 so.

28 (g) If after full deliberation the commission is unable to agree upon the required number
29 of nominees in the above described manner, those candidates not removed from consideration shall
30 be considered to be tied within the meaning of Section 20A-12-105(3), and the commission may
31 certify up to two additional names.

1 (h) The total vote tally, but not the vote of individual commissioners, is recorded in the
2 minutes. After the vote tallies are verified and recorded, the ballots are destroyed.

3 (4) ~~h [Unless the commission determines that there are not five qualified applicants,] FOR TRIAL~~
3a **COURT VACANCIES, h a list of**
4 five names shall be certified to the governor for his selection h [, but in no event shall fewer than three
5 names be certified] h . h **FOR APPELLATE COURT VACANCIES, A LIST OF SEVEN NAMES SHALL BE**
5a **CERTIFIED TO THE GOVERNOR FOR HIS SELECTION. h**

6 (5) The governor may reject the initial list sent by the commission and request a new list,
7 but the timelines for selection remain as provided by the Utah Constitution.

8 [(3)] (6) A judicial nominating commission may not nominate a justice or judge who was
9 not retained by the voters for the office for which the justice or judge was defeated until after the
10 expiration of that term of office.

11 [(4)] (7) Judicial nominating commissions are exempt from the requirements of Title 52,
12 Chapter 4, Open and Public Meetings, and Title 63, Chapter 46a, Utah Administrative Rulemaking
13 Act.

14 Section 2. **Effective date.**

15 This act takes effect on July 1, 1998.

Legislative Review Note
as of 1-27-98 7:00 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel