

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 THAT THIS BILL WILL TAKE EFFECT ONLY IF S.J.R. 3, RESOLUTION AMENDING JUDICIAL NOMINATING PROCESS ALSO PASSES.

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

AMENDS:

20A-12-102 (Effective 07/01/98), as last amended by Chapter 249, Laws of Utah 1997

20A-12-103 (Effective 07/01/98), as last amended by Chapter 249, Laws of Utah 1997

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:

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

(ii) serve until the commissioner's successor is appointed.

(d) The governor may not appoint:

- (i) a commissioner to serve successive terms;
 - (ii) a member of the Legislature to serve as a member of the Appellate Court Nominating Commission; or
 - (iii) more than four commissioners from the same political party to the Appellate Court Nominating Commission.
- (e) (i) The Utah State Bar shall submit to the governor a list of six nominees to serve as Appellate Court Nominating Commissioners.
- (ii) The governor shall appoint two commissioners from the list of nominees provided by the Utah State Bar.
- (iii) The governor may reject the list submitted by the Utah State Bar and request a new list of nominees.
- (f) The governor may not appoint more than four persons who are members of the Utah State Bar to the Appellate Court Nominating Commission.
- (g) (i) The chief justice of the Supreme Court is an ex officio, nonvoting member of the Appellate Court Nominating Commission, who may not be counted for the purpose of determining a quorum.
- (ii) If the chief justice cannot serve on the commission, he shall appoint another justice of the Supreme Court to serve in his absence.
- (h) The governor shall appoint the chair of the Appellate Court Nominating Commission from among the membership.
- (3) (a) Except for the chief justice of the Supreme Court, each commissioner is a voting member of the Appellate Court Nominating Commission.
- (b) [~~Four~~] Five commissioners are a quorum.
- (c) The state court administrator shall serve as secretary to the Appellate Court Nominating Commission.
- (d) The chief justice of the Supreme Court shall:
- (i) ensure that the commission follows the rules promulgated by the Judicial Council; and
 - (ii) resolve any questions regarding those rules.

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

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

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

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

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

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

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

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

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

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

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

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

(1) (a) There is created a trial court nominating commission for each geographical division of the trial courts of record.

(b) The trial court nominating commission shall nominate judges of the district court and the juvenile court within its geographical division.

(2) (a) The trial 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, a resident of Utah, and a resident of the geographic division to be served by the commission to which he is appointed; and

(ii) serve until the commissioner's successor is appointed.

(d) The governor may not appoint:

(i) a commissioner to serve successive terms;

(ii) a member of the Legislature to serve as a member of a trial court nominating commission; or

(iii) more than four commissioners from the same political party to a trial court nominating commission.

(e) (i) The governor shall appoint two commissioners from a list of nominees provided by the Utah State Bar.

(ii) The Utah State Bar shall submit:

(A) six nominees from Districts 2, 3, and 4; and

(B) four nominees from Districts 1, 5, 6, 7, and 8.

(iii) The governor may reject any list and request a new list of nominees.

(f) The governor may not appoint more than four persons who are members of the Utah State Bar to a trial court nominating commission.

(g) (i) The chief justice of the Supreme Court is an ex officio, nonvoting member of each

trial court nominating commission, who may not be counted for the purpose of determining a quorum.

(ii) If the chief justice cannot serve on the commission, he shall appoint another justice of the Supreme Court to serve in his absence.

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

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

(b) [~~Four~~] Five commissioners are a quorum.

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

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

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

(ii) resolve any questions regarding those rules.

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

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

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

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

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

(d) When a vacancy occurs in the membership for any reason, the replacement shall be

appointed for the unexpired term under this Subsection (5) and may not be reappointed.

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

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

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

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

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

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

Section 3. Section **20A-12-104 (Effective 07/01/98)** is amended to read:

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

(1) The Judicial Council shall:

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

(b) ensure that those procedures include:

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

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

- (iii) standards governing the release of applicant names before nomination;
 - (iv) standards for destroying the records of the names of applicants, applications, and related documents upon completion of the nominating process;
 - (v) an opportunity for public comment concerning the nominating process, qualifications for judicial office, and individual applicants;
 - (vi) evaluation criteria for the selection of judicial nominees;
 - (vii) procedures for taking summary minutes at nominating commission meetings;
 - (viii) procedures for simultaneously forwarding the names of nominees to the governor, the president of the Senate, and the Office of Legislative Research and General Counsel; and
 - (ix) standards governing a nominating commissioner's disqualification and inability to serve.
- (2) (a) ~~[(i) Except as provided in this Subsection (2)(a)(ii), if a judicial nominating commission receives 15 or more applications to fill a judicial vacancy, the nominating commission shall submit at least five names to the governor]~~ The commission shall interview an applicant if requested by any commissioner.

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

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

- (i) the nominating commission had declined to submit that candidate's name to the governor to fill a previous vacancy;
- (ii) a previous nominating commission had declined to submit that candidate's name to the governor; or
- (iii) that nominating commission or a previous nominating commission had submitted the applicant's name to the governor and the governor selected someone else to fill the vacancy.

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

~~[(i) if all seven members of the nominating commission are present and considering~~

applicants, a vote in favor of the applicant by four commissioners submits the candidate's name to the governor;]

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

~~[(iii) if only five members of the nominating commission are present and considering applicants because two members are unable to attend, have recused themselves, or are otherwise disqualified, a vote in favor of the applicant by three commissioners submits the candidate's name to the governor; and]~~

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

(3) (a) Voting for the selection of nominees may differ from voting during the screening process. Voting for nominees may occur in one more rounds, depending on the outcome of each round. Each commissioner is allotted a number of votes for each round equal to the number of nominees remaining to be selected. For the selection of nominees for a trial court, each commissioner has five votes during the first round, seven votes if the selection process is for an appellate court. If one nominee is selected during the first round, each commissioner has four votes during the next round, six votes if voting is for an appellate court vacancy. If there are multiple vacancies, the number of votes allotted to each commissioner during each round of voting is multiplied by the number of vacancies, and the commission selects nominees as a pool without matching any vote or any candidate to a particular vacancy.

(b) Voting is by confidential ballot.

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

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

(e) Any candidate receiving in any round a number of votes one less than the number of

voting commissioners present is selected as a nominee. If, after any round of voting, except the first round a candidate receives two or fewer votes, the candidate is removed from consideration during subsequent rounds of voting. During the first round of voting a candidate who receives one vote or less shall be removed from consideration during subsequent rounds of voting. The commission should further debate the qualifications of candidates who are neither selected nor removed from consideration before conducting the next round of voting. Voting and discussion continues until the requisite number of nominees have been selected.

(f) The commission can reconsider its action on any candidate upon a majority vote of those present and voting.

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

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

(4) For trial court vacancies, a list of at least five names shall be certified to the governor for his selection. For appellate court vacancies, a list of at least seven names shall be certified to the governor for his selection.

(5) The governor may reject the initial list sent by the commission and request a new list, as provided by the Utah Constitution.

(a) If the governor rejects the first list and requests a second list, the Judicial Nominating Commission having authority over the vacancy shall, within 30 days of the governor's rejection of the first list, certify a second list with a different set of nominees. Except as provided in Subsection (b), the new list shall contain at least five nominees for a trial court and seven nominees for an appellate court.

(b) The Judicial Nominating Commission may submit less than five nominees for a trial court and seven nominees for an appellate court if there are insufficient applicants to submit that many additional names.

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

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

Section 4. Effective date.

This act takes effect January 1, 1999 only if S.J.R. 3, Resolution Amending Judicial Nomination Process, 1998 General Session, passes the Legislature and is approved by the voters.

Informational Note: S.J.R. 3 did not pass the Legislature, therefore this bill does not take effect.