

JUDICIAL NOMINATING PROCESS AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Merrill F. Nelson

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill amends provisions related to the judicial nominating process.

Highlighted Provisions:

This bill:

▶ repeals the authority of the Commission on Criminal and Juvenile Justice to make rules related to evaluation criteria for the selection of judicial nominees; ~~and~~

▶ **addresses evaluation criteria for the selection of judicial nominees; and**

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-10-103, as last amended by Laws of Utah 2016, Third Special Session, Chapter 7

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

Section 1. Section **78A-10-103** is amended to read:

78A-10-103. Procedures governing meetings of judicial nominating commissions.

(1) The Commission on Criminal and Juvenile Justice shall:

(a) in consultation with the Judicial Council, enact rules establishing procedures

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28 governing the meetings of the judicial nominating commissions in accordance with Title 63G,
 29 Chapter 3, Utah Administrative Rulemaking Act; and

30 (b) ensure that those procedures include:

31 (i) a minimum recruitment period of at least 30 days but not more than 90 days, unless
 32 fewer than nine applications are received for a judicial vacancy, in which case the recruitment
 33 period may be extended up to 30 days;

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

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

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

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

41 [~~(vi)~~ evaluation criteria for the selection of judicial nominees;]

42 [~~(vii)~~] (vi) procedures for taking summary minutes at nominating commission
 43 meetings;

44 [~~(viii)~~] (vii) procedures for simultaneously forwarding the names of nominees to the
 45 governor, the president of the Senate, and the Office of Legislative Research and General
 46 Counsel;

47 [~~(ix)~~] (viii) standards governing a nominating commissioner's disqualification and
 48 inability to serve; and

49 [~~(x)~~] (ix) procedures that require the Administrative Office of the Courts to
 50 immediately inform the governor when a judge is removed, resigns, or retires.

51 (2) ~~Ŝ~~→ **(a)** ←~~Ŝ~~ In determining which of the applicants are the most qualified, the
 51a nominating
 52 commissions shall determine by a majority vote of the commissioners present which of the
 53 applicants best possess the ~~Ĥ~~→ **ability, temperament, training, and experience** **legal knowledge**
 53a **and ability, judicial temperament, training, professional experience, integrity, impartiality,**
 53b **work ethic, financial responsibility, public service, and ability to perform the work of a**
 53c **judge,** ←~~Ĥ~~ that qualifies them
 54 for the office.

54a ~~Ŝ~~→ **(b) For diversity on the bench, when deciding among applicants whose qualifications**
 54b **appear in all other respects to be equal, it is relevant to consider the background and**
 54c **experience of the applicants in relation to the current composition of the bench for which**⊗

54d **the appointment is being made.** ←§

55 (3) (a) Except as provided under Subsection (3)(b):

56 (i) the appellate court nominating commission shall certify to the governor a list of the
57 seven most qualified applicants per vacancy; and

58 (ii) trial court nominating commissions shall certify to the governor a list of the five

59 most qualified applicants per vacancy.

60 (b) If a nominating commission is considering applicants for more than one judicial
61 vacancy existing at the same time and for the same court, the nominating commission shall
62 include one additional applicant for each additional vacancy in the court in the list of applicants
63 the commission certifies to the governor.

64 (4) Nominating commissions shall ensure that the list of applicants submitted to the
65 governor:

66 (a) meet the qualifications required by law to fill the office; and

67 (b) are willing to serve.

68 (5) In determining which of the applicants are the most qualified, nominating
69 commissions may not decline to submit a candidate's name to the governor merely because:

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

72 (b) a previous nominating commission had declined to submit that candidate's name to
73 the governor; or

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

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

79 (7) Judicial nominating commissions are exempt from the requirements of Title 52,
80 Chapter 4, Open and Public Meetings Act.