

SUPREME COURT OF ARIZONA

In the Matter of ) Arizona Supreme Court  
 ) No. R-20-0035  
RULE 28, IRC NOMINATION )  
PROCEDURES ) **FILED: 8/26/2020**  
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**ORDER AMENDING RULES 128-134 OF  
THE ARIZONA RULES OF THE SUPREME COURT  
ON A PERMANENT BASIS**

On April 2, 2020, the Commission on Appellate Court Appointments filed a petition proposing to amend, on an emergency basis, Rules 128 through 134 of the Arizona Rules of the Supreme Court. On April 3, 2020, this Court entered an order: (a) adopting the proposed amendments, as modified, on an emergency basis in accordance with the attachment to this order; and (b) opening the petition for public comment about whether the amendments should be adopted permanently. Having considered the petition, public comments, and a reply to those comments,

**IT IS ORDERED** that the amendments to Rules 128 through 134 of the Arizona Rules of the Supreme Court that were adopted on an emergency basis on April 3, 2020, are adopted permanently, as modified in accordance with Attachment A to this order, effective immediately. Attachment B to this order shows the

changes the Court made to the rules that were adopted on an emergency basis.

DATED this 26th day of August, 2020.

\_\_\_\_\_/s/\_\_\_\_\_  
ROBERT BRUTINEL  
Chief Justice

TO:

Rule 28 Distribution  
Hon Robert Brutinel  
David Jeremy Bodney  
Ian O. Bucon  
Pinny Sheoran  
Betty Bengtson  
Carol Maas  
Richard Stafford  
Dee Maitland  
Kendra Alvarez  
Ronnie Maestas-Condos  
James E. Barton II  
Joan Knipe  
Sarah Congdon

## ATTACHMENT A<sup>1</sup>

### ARIZONA RULES OF THE SUPREME COURT

#### XIII. PROCEDURES FOR NOMINATIONS

##### FOR THE INDEPENDENT REDISTRICTING COMMISSION

###### Rule 126 through Rule 127 [No changes]

###### **Rule ~~128.~~ Commission Secretary**

~~The Chair shall appoint a member of the Commission as Secretary subject to the approval of the Commission. It shall be the duty of the Secretary to sign the record of the action taken at each meeting upon approval by the Commission. Either the Chair or the Secretary at the direction of the Chair shall sign all correspondence for the Commission. In the Secretary's absence the Chair shall choose a member to be Acting Secretary.~~

###### **Rule ~~129~~128. Commissioner Impartiality**

(a) A Commissioner shall consider each applicant for the Independent Redistricting Commission in an impartial, objective manner.

(b) A Commissioner shall disclose to the Commission any relationship with an applicant (business, financial, personal, fiduciary, or attorney-client) or any other possible cause for conflict of interest, bias or prejudice.

(c) A Commissioner is disqualified from voting or otherwise participating in the nominating process so long as a member of the Commissioner's ~~immediate~~ family (~~spouse, child, parent, sibling, in-law, aunt, uncle, nephew, niece, grandparent, grandchild, first cousin or step relative in any of these relationships~~) (spouse, child, parent, sibling, in-law, aunt, uncle, nephew, niece, grandparent, grandchild, first cousin, or step-relative in any of these relationships) is an applicant under consideration for nomination. A Commissioner is disqualified from voting on ~~an application by a spouse of the Commissioner's child; a Commissioner's in law, aunt, uncle, niece, nephew, grandparent, grandchild or first cousin; or by an applicant who currently works in the same company, firm or organization as the Commissioner. A Commissioner is also disqualified from voting on any application that would present a conflict of interest. At the commencement of any Commission meeting where applicants are to be considered, the Chair shall inquire as to any basis for disqualification or disclosure pursuant to this rule.~~ A Commissioner shall disqualify himself or herself in any proceeding in which the Commissioner's impartiality about an applicant might reasonably be questioned. If a

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<sup>1</sup> Additions to the text of the rule are shown by underscoring and deletions are shown by ~~strike-through~~.

Commissioner's impartiality is called into question by any Commissioner, the Chair will call for a vote on the matter. Upon a majority vote, the Commissioner will be disqualified from voting on the applicant.

~~(e)~~(d) A Commissioner shall not be influenced other than by facts or opinion which are relevant to the qualifications of the applicants. A Commissioner shall promptly report to the Chair any attempt to influence a Commissioner other than by facts or opinions.

~~(d)~~(e) A Commissioner shall not communicate verbally or in writing with an applicant from the time the application is submitted until nominations are submitted to the appointing official(s), about the application, the contents of the application, the Independent Redistricting Commission, the Commission, the nomination process, or any other matters related to the application.

### **Rule ~~130~~129. Commission Meetings**

(a) Meetings of the Commission may be called by the Chair or a majority of the ~~members~~ Commissioners by written notice to the ~~other members~~ entire Commission specifying the time and place of meeting. Such notice shall be ~~mailed or delivered~~ posted on the Commission's website at least seven (7) calendar days before the ~~time specified~~ meeting date, except that an emergency meeting may be held on shorter notice if the Chair or a majority of the Commissioners conclude that it is essential to hold an emergency meeting. The right to notice of a meeting may be waived by any Commissioner either before or after the meeting takes place. Attendance at a meeting by any ~~member~~ Commissioner shall constitute a waiver of such notice unless the ~~member~~ Commissioner, at or promptly after the beginning of such meeting, objects to the holding of the meeting on the ground of lack of, or insufficiency of, notice. The Commission may meet by electronic media.

(b) The Chair shall issue a call for a meeting promptly upon learning of the existence or anticipated existence of a vacancy on the Independent Redistricting Commission.

(c) Notice of all Commission meetings other than emergency meetings shall be posted to the Commission's website at least seven (7) calendar days before the meeting ~~in the office of the Clerk of the Supreme Court~~. A The notice of a ~~Commission meeting~~ shall state the date, time, and specific location of the meeting.

(d) A quorum for a Commission meeting shall be a majority ~~plus one~~ of the Commissioners in office and eligible to participate at the time of the meeting. A Commission may act on any matter other than the decision to hold a meeting in executive session by majority vote of the Commissioners voting on the matter.

(e) Members of the public may comment orally at any Commission meeting at which applicants are to be considered. The Chair shall allocate equal time for relevant comment on each applicant under consideration. The Chair may terminate comments

that which exceed the time allocated or which are irrelevant to the qualifications of applicants. The Chair may also limit duplicative comments regarding an applicant.

(f) The Commission ~~shall~~ may hold an executive session upon a ~~two-thirds~~ majority vote of the Commissioners in attendance ~~in order~~ to promote open and frank discussion of applicant qualifications or to conduct a portion of an interview. ~~To encourage frank discussion,~~ The substance of deliberations in executive session shall not be disclosed by a Commissioner.

### **Rule ~~131~~130. Recruitment of Applicants**

(a) The Commission shall ~~provide public notice~~ widely publicize that a vacancy exists on the Independent Redistricting Commission and that applications are being accepted. When feasible, such notice shall be given thirty (30) days or more before the deadline for applications.

(b) A Commissioner shall ~~not~~ under no circumstances commit in advance to vote for any applicant.

(c) A Commissioner may provide general information about the nominating process to a potential applicant until such time as the application is filed. Commissioners shall not actively recruit applicants.

### **Rule ~~132~~131. Application**

(a) Every applicant must complete and file with the Administrative Office of the Supreme Court an “Application for Independent Redistricting Commission” as specified in the public announcement of each vacancy. The application shall be on a form approved by the Commission.

(b) If the Commission determines that it has not received applications from enough qualified applicants to provide a pool of nominees that complies with constitutional requirements for the composition of the pool, the Commission shall provide public notice soliciting additional applications to allow the Commission to compile a pool of nominees that meets constitutional requirements.

(c) All applications and documents received with respect to the person’s application shall be retained at the Administrative Office of the Supreme Court until a new Independent Redistricting Commission is appointed.

~~(e)~~(d) The contents of all applications that relate to the applicant are public information and shall be made available to the public on the Commission’s website. ~~The names and contact information of persons listed as references shall be kept confidential to protect the privacy of third parties, and the confidential third party information contained in the application shall not be made available to the public.~~ To protect the privacy of third parties, the names and contact information of persons listed as references and the names of applicants’ family members and their employers shall be kept confidential. In addition,

the applicant's contact information (residential street address, phone number, and email address) shall be kept confidential.

**Rule ~~133~~132. Screening of Applications and Selection of Nominees**

(a) **Public Notice and Comment.** Names of applicants and the date, place, and time of the Commission meeting to review applications shall be widely disseminated to the public. Comments about applicants must be made in writing or orally at the meeting to review applications. Written comments must be submitted to the address indicated in the public notice of the meeting and, if feasible, should be submitted at least three (3) working days before the meeting. Comments shall include the name, address, and telephone number of the person submitting the comment. Written comments should not be sent directly to individual Commissioners.

(b) **Confidentiality.** Except as provided in these rules, information provided to the Commission by a third party shall be available to the public. On request, for good cause, the Commission may keep confidential the name of a person who submits a comment. In response to a public record request that is received after the Commission is no longer in session, good cause shall be determined by the Chair if not previously determined by the Commission. Unless otherwise provided by these rules or disclosed by the Commission, documents created by Commissioners or staff during the performance of duties provided by these rules are confidential until the nomination process is completed.

(c**b**) **Investigation of Applicants.** As soon as Commissioners receive applications, they may investigate the background and qualifications of applicants. Using the application as a starting point, Commissioners may contact individuals and institutions knowledgeable about the applicant.

(d**e**) **Selection of Nominees.**

(1) *General:* The Commission shall meet for the purpose of deciding which applicants are to be nominated.

(2) *Consideration of Applicants:* The qualifications of each applicant shall be discussed and evaluated. Whether in public or in executive session, the Chair shall read the names of the applicants in alphabetical order and open the meeting to a discussion of that particular applicant's qualifications. After this procedure has been followed for each applicant, the Chair shall open the meeting to a general discussion of the relative qualifications of all the applicants. Each Commissioner shall disclose comments and other information concerning each applicant relied upon by that Commissioner in evaluating that applicant. If confidentiality has been promised to a source, Commission members shall consider whether less weight should be given to the information.

(3) *Discretion to Interview Applicants:* The Commission may interview any or all of the applicants in order to compile a list of nominees to be forwarded to the appointing official(s). At its meeting to review applications, the Commission shall determine whether any of the applicants will be interviewed. In public session, the Chair shall

invite Commissioners to nominate applicants to be placed on a tentative list of those to be interviewed. Such a nomination requires the concurrence of one additional Commissioner. The name of each applicant who receives a vote of the majority of Commissioners ~~present and~~ voting shall be placed on a tentative list ~~of applicants to be interviewed~~. Following this procedure, the tentative list of interviewees may be added to or subtracted from by a public vote until a final list of applicants to be interviewed is determined. If there are no nominations to interview applicants, the Commission shall proceed with selecting nominees pursuant to Paragraph (c)(5) of these procedures.

(4) *Conduct of Interviews.* Selected applicants may be publicly interviewed by the Commission. If interviews are conducted, public notice shall be made in the same manner as described in Paragraph (a), and the public may comment on applicants before the interviews in the same manner as described in Paragraph (a). The Commission shall schedule sufficient time before each interview to discuss the results of Commissioners' investigations and to determine whether any matters that were disclosed in the course of the investigation should be discussed with the applicant at the interview. A Commissioner may question an applicant about comments made about the applicant for which confidentiality has been requested so long as the source of comment is not identified. Upon motion and a ~~two-thirds~~ majority vote of the Commission, a portion of the interview may occur in executive session, ~~in which case unless, after given a choice,~~ the applicant interviewee shall have the right to disclose in public session the content of the executive session elects to remain in public session. No material and adverse information about an applicant that is known to a Commissioner prior to the interview may be disclosed to the Commission after the interview occurs.

(5) *Selection of Nominees for Submission to Appointing Official(s):* All voting by the Commission on the nominees to be forwarded to the appointing official(s) shall be in public session. ~~In public session, t~~The Chair shall invite Commissioners to nominate applicants to a tentative list for referral to the appointing official(s). Such a nomination requires the concurrence of one additional Commissioner. Each applicant who receives an affirmative vote of the majority of Commissioners ~~present and~~ voting shall be tentatively listed for referral to the appointing official(s). ~~Such list is only tentative and names may be added to or subtracted from it at any time by further vote of the Commission. The Commission may meet in executive session to further discuss the applicants under consideration. The above process may be repeated~~ Following this procedure, with or without an executive session or sessions, the tentative list of nominees may be added to or subtracted from by public vote until a pool of nominees that satisfies constitutional requirements is finalized by public vote of the majority of the Commission members ~~present and~~ voting for referral to the appointing official(s).

**(ed) Communication After Interview Meetings.** If a Commissioner receives new written information about a nominee after the nominations are referred to the appointing official(s), the Commissioner shall forward the information to the Chair of the Commission and the Chair shall forward the information to the appointing official(s),

with a cover memorandum explaining that the information was not submitted in time for consideration by the Commission and therefore not investigated. If the information is verbal, the Commissioner shall advise the source about his or her right to contact the appointing official(s).

**Rule ~~134~~133. Transmittal to Appointing Official(s)**

The names of the nominees, listed in alphabetical order, shall be delivered to the appointing official(s) as directed by the Chair. The Chair shall ~~thereafter~~ promptly inform the public of the names of the nominees. To facilitate the appointing official's selection, the Commission file concerning each nominee shall be provided when the names are delivered. Notes made by a Commissioner for the Commissioner's individual use, including those that form the basis for the Commissioner's oral report to the Commission, will not be included in the Commission file and may be discarded by the Commissioner after their reference value has been served

## ATTACHMENT B<sup>2</sup>

### (Showing Changes from the Rules Adopted on an Emergency Basis)

#### ARIZONA RULES OF THE SUPREME COURT

#### XIII. PROCEDURES FOR NOMINATIONS

#### FOR THE INDEPENDENT REDISTRICTING COMMISSION

#### Rule 126 through Rule 130 [No changes]

#### Rule 131. Application

(a) Every applicant must complete and file with the Administrative Office of the Supreme Court an “Application for Independent Redistricting Commission” as specified in the public announcement of each vacancy. The application shall be on a form approved by the Commission.

(b) If the Commission determines that it has not received applications from enough qualified applicants to provide a pool of nominees that complies with constitutional requirements for the composition of the pool, the Commission shall provide public notice soliciting additional applications to allow the Commission to compile a pool of nominees that meets constitutional requirements.

(c) All applications and documents received with respect to the person’s application shall be retained at the Administrative Office of the Supreme Court until a new Independent Redistricting Commission is appointed.

(d) The contents of all applications that relate to the applicant are public information and shall be made available to the public on the Commission’s website.—~~All information in response to questions contained in the confidential section of the application form shall not be made available to the public to protect the privacy of third parties.~~ To protect the privacy of third parties, the names and contact information of persons listed as references and the names of applicants’ family members and their employers shall be kept confidential. In addition, the applicant’s contact information (residential street address, phone number, and email address) shall be kept confidential.

~~(e) Except as provided hereafter, information provided to the Commission by a third party shall be available to the public. The following information shall be confidential throughout the nomination process.~~

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<sup>2</sup> Additions to the rules that were adopted on emergency basis are shown by underscoring and deletions from those rules are shown by ~~strike-through~~.

~~(1) Written information provided to the Commission by a third party regarding an applicant, including the third party's identity, which the third party designates in writing as confidential information;~~

~~(2) All individual Commissioner's notes that are generated for personal use;~~

~~(3) All procedural emails sent between commissioners.~~

### **Rule 132. Screening of Applications and Selection of Nominees**

**(a) Public Notice and Comment:** Names of applicants and the date, place, and time of the Commission meeting to review applications shall be widely disseminated to the public. Comments about applicants must be made in writing or orally at the meeting to review applications. Written comments must be submitted to the address indicated in the public notice of the meeting and, if feasible, should be submitted at least three (3) working days before the meeting. Comments shall include the name, address, and telephone number of the person submitting the comment. Written comments should not be sent directly to individual Commissioners. The Commission will not consider anonymous comments

**(b) Confidentiality.** Except as provided in these rules, information provided to the Commission by a third party shall be available to the public. On request, for good cause, the Commission may keep confidential the name of a person who submits a comment. In response to a public record request that is received after the Commission is no longer in session, good cause shall be determined by the Chair if not previously determined by the Commission. Unless otherwise provided by these rules or disclosed by the Commission, documents created by Commissioners or staff during the performance of duties provided by these rules are confidential until the nomination process is completed.

~~(b)(c)~~ **(c) Investigation of Applicants:** As soon as Commissioners receive applications, they may investigate the background and qualifications of applicants. Using the application as a starting point, Commissioners may contact individuals and institutions knowledgeable about the applicant.

~~(e)~~ **(d) Selection of Nominees:**

(1) *General:* The Commission shall meet for the purpose of deciding which applicants are to be nominated.

(2) *Consideration of Applicants:* The qualifications of each applicant shall be discussed and evaluated. Whether in public or in executive session, the Chair shall read the names of the applicants in alphabetical order and open the meeting to a discussion of that particular applicant's qualifications. After this procedure has been followed for each applicant, the Chair shall open the meeting to a general discussion of the relative qualifications of all the applicants. Each Commissioner shall disclose comments and other information concerning each applicant relied upon by that Commissioner in

evaluating that applicant. If confidentiality has been promised to a source, Commission members shall consider whether less weight should be given to the information.

(3) *Discretion to Interview Applicants:* The Commission may interview any or all of the applicants in order to compile a list of nominees to be forwarded to the appointing official(s). At its meeting to review applications, the Commission shall determine whether any of the applicants will be interviewed. In public session, the Chair shall invite Commissioners to nominate applicants to be placed on a tentative list of those to be interviewed. Such a nomination requires the concurrence of one additional Commissioner. The name of each applicant who receives a vote of the majority of Commissioners voting shall be placed on a tentative list. Following this procedure, the tentative list of interviewees may be added to or subtracted from by a public vote until a final list of applicants to be interviewed is determined. If there are no nominations to interview applicants, the Commission shall proceed with selecting nominees pursuant to Paragraph (c)(5) of these procedures.

(4) *Conduct of Interviews:* Selected applicants may be publicly interviewed by the Commission. If interviews are conducted, public notice shall be made in the same manner as described in Paragraph (a), and the public may comment on applicants before the interviews in the same manner as described in Paragraph (a). The Commission shall schedule sufficient time before each interview to discuss the results of Commissioners' investigations and to determine whether any matters that were disclosed in the course of the investigation should be discussed with the applicant at the interview. A Commissioner may question an applicant about comments made about the applicant for which confidentiality of the source of the comment has been requested so long as the source of the comment is not identified. Upon motion and a majority vote of the Commission, a portion of the interview may occur in executive session unless, after given a choice, the interviewee elects to remain in public session. No material and adverse information about an applicant that is known to a Commissioner prior to the interview may be disclosed to the Commission after the interview occurs.

(5) *Selection of Nominees for Submission to Appointing Official(s):* All voting by the Commission on the nominees to be forwarded to the appointing official(s) shall be in public session. The Chair shall invite Commissioners to nominate applicants to a tentative list for referral to the appointing official(s). Such a nomination requires the concurrence of one additional Commissioner. Each applicant who receives an affirmative vote of the majority of Commissioners voting shall be tentatively listed for referral to the appointing official(s). Following this procedure, with or without an executive session or sessions, the tentative list of nominees may be added to or subtracted from by public vote until a pool of nominees that satisfies constitutional requirements is finalized by public vote of the majority of the Commission members voting for referral to the appointing official(s)

~~(d)~~**(e) Communication After Interview Meetings:** If a Commissioner receives new written information about a nominee after the nominations are referred to the appointing

official(s), the Commissioner shall forward the information to the Chair of the Commission and the Chair shall forward the information to the appointing official(s), with a cover memorandum explaining that the information was not submitted in time for consideration by the Commission and therefore not investigated. If the information is verbal, the Commissioner shall advise the source about his or her right to contact the appointing official(s).

**Rule 133. Transmittal to Appointing Official(s)**

The names of the nominees, listed in alphabetical order, shall be delivered to the appointing official(s) as directed by the Chair. The Chair shall promptly inform the public of the names of the nominees. To facilitate the appointing official's selection, the Commission file concerning each nominee shall be provided when the names are delivered. Notes made by a Commissioner for the Commissioner's individual use, including those that form the basis for the Commissioner's oral report to the Commission, will not be included in the Commission file and may be discarded by the Commissioner after their reference value has been served.