

SUPREME COURT OF ARIZONA

In re the Matter of) Arizona Supreme Court
) No. R-16-0043
UNIFORM RULES OF PROCEDURE FOR)
COMMISSIONS ON APPELLATE AND)
TRIAL COURT APPOINTMENTS)
) **FILED 04/27/2017**
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ORDER

AMENDING IN FINAL FORM UNIFORM RULES OF PROCEDURE FOR COMMISSIONS ON APPELLATE AND TRIAL COURT APPOINTMENTS

The above rules were amended on an expedited basis effective December 14, 2016, subject to modification following a comment period ending February 17, 2017. No comments having been received, upon consideration,

IT IS ORDERED adopting in final form the rule change as set forth in the attachment. The rules shall apply to any application submitted after the date of this Order, except that applications submitted within the preceding year need not be resubmitted but will be provided to the relevant Commission pursuant to Rule 6 of the Uniform Rules of Procedure for Commissions on Appellate and Trial Court Appointments. The application forms have been revised and are posted on the Court's website.

DATED this 27th day of April, 2017.

/s/
SCOTT BALES
Chief Justice

TO:
Rule 28 Distribution
Hon. Ann A. Scott Timmer

ATTACHMENT

**UNIFORM RULES OF PROCEDURE FOR COMMISSIONS ON
APPELLATE AND TRIAL COURT APPOINTMENTS**

RULE 1. PURPOSE

Article VI, Section 36 of the Arizona Constitution provides that when making recommendations for judicial office, the Commission on Appellate Court Appointments “shall consider the diversity of the state’s population, however, the primary consideration shall be merit.” Similarly, Article VI, Section 41 of the Arizona Constitution provides that the Commissions on Trial Court Appointments “shall consider the diversity of the county’s population and the geographical distribution of the residences of the judges throughout the county, however, the primary consideration shall be merit.” The goal, therefore, of the judicial nomination process is to select judges who have outstanding professional competence and reputation and who are also sensitive to the needs of and held in high esteem by the communities they serve and who reflect, to the extent possible, the ethnic, racial and gender diversity of those communities. Competence and diversity among our judges will enhance fairness and public confidence in judicial proceedings.

RULE 2. COMMISSION CHAIR

The Chief Justice of Arizona, or such other Justice of the Supreme Court as shall be appointed by the Supreme Court to serve in place of the Chief Justice, shall be chair of each Commission. The Chair shall preside at all meetings of each Commission.

RULE 3. COMMISSIONER IMPARTIALITY

- a.** A Commissioner shall consider each applicant for a judicial office 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).
- c.** A Commissioner is disqualified from voting or otherwise participating in the nominating process so long as a member of the Commissioner’s family (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 applicant who currently

works in the same company, firm or organization as the Commissioner. 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 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.

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

e. A Commissioner shall not communicate verbally or in writing with an applicant about the application or the nomination process from the time the application is submitted until the individual's application is no longer under consideration. Commissioners may communicate with individuals whose applications rolled over from a previous vacancy from the date the application was released from consideration in the previous vacancy until the date the new application period closes.

RULE 4. COMMISSION MEETINGS

a. Meetings of a Commission may be called by the Chair or a majority of Commissioners by written notice to the entire Commission specifying the time and place of meeting. Such notice shall be posted on the Commission's website at least seven (7) calendar days before the meeting date, except that an emergency meeting may be held on shorter notice if the Chair or a majority of Commissioners conclude 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 Commissioner shall constitute a waiver of such notice unless the Commissioners, 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.

b. All Commissioners are strongly encouraged to attend every meeting in person. The Constitutional deadline for submitting nominations to the Governor requires that meetings be held as scheduled. In extenuating circumstances, the Chair may permit a Commissioner to attend and vote in an administrative meeting or in a screening meeting via telephone, video conferencing, or similar means. With the exception described in this subsection, a Commissioner shall not participate in applicant interviews or vote on nominations through electronic means. If the Commission would otherwise be unable to obtain a quorum for scheduled interviews, thereby risking the Commission's ability to meet the 60-day Constitutional deadline for submitting nominations to the Governor, the Chair may allow a Commissioner to participate in applicant interviews and vote on nominations through electronic means. A member who attends electronically accepts the

risk that technical problems could disrupt participation.

c. The Chair shall issue a call for a meeting promptly upon learning of the existence or anticipated existence of a vacancy in a judicial office within the jurisdiction of the Commission.

d. 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. The notice shall state the date, time and specific location of the meeting. Each Commission shall provide notice as reasonable and practicable.

e. The Chief Justice shall call a meeting of all Commissioners at least once every two years for the following purposes:

1. Educating Commissioners about procedures and purposes as stated in Rule 1 and discussing an individual Commissioner's role in accomplishing those purposes.

2. Reviewing Commission actions during the preceding years. This review shall include a presentation of statistical information about applications, nominations and appointments relative to the Constitutional goal of diversity and such other matters as the Commission deems appropriate. Such statistics shall be compiled from information obtained in the applications.

3. Educating Commissioners about means for improving the judicial nominating process.

f. A quorum for a Commission meeting shall be a majority of the Commissioners in office and eligible to participate at the time of the meeting. The Commission may act on any matter by majority vote of the Commissioners in attendance.

RULE 5. RECRUITMENT OF APPLICANTS

a. Commissioners shall actively seek out and encourage applications from qualified individuals who will reflect the diversity of the community they will serve. It is incumbent upon Commissioners to seek out well-qualified persons who may not otherwise apply.

b. A Commissioner shall under no circumstances commit in advance to vote for any applicant.

c. Each Commission shall widely publicize vacancies by issuing press releases,

posting notices online, and/or emailing vacancy notices to interested parties and groups. When feasible, such notices shall be given thirty (30) days or more before the deadline for applications. The notice of vacancy shall state that a Commission may, at its discretion, use the applications filed for the vacancy that is the subject of the announcement to nominate candidates for any additional vacancy or vacancies known to the Commission before the screening for the announced vacancy is held.

RULE 6. APPLICATION

a. Every applicant shall complete and file with the Administrative Office of the Supreme Court a signed original “Application for Nomination to Judicial Office” and a .pdf version of the application, in the manner instructed in the public announcement for each judicial vacancy. The application shall be on a form approved by the Supreme Court. The signed original paper application governs should discrepancies exist with the .pdf version.

b. The original application and the .pdf version filed by an applicant not appointed by the Governor shall be retained for one year after the application deadline date stated on the first page of the application. All documents received with respect to the person’s application shall also be retained for one year. At an applicant’s request, the original application, the .pdf version, and any supplemental material submitted by the applicant will be returned to the applicant during the one year period. Otherwise all documents and the .pdf shall be retained and provided to the Commission that originally considered the application if a new vacancy arises during the one year period. The applicant can withdraw his or her application for any or all vacancies occurring during that period by notifying the Commission in writing of the withdrawal. At the expiration of the one year period, any applications, .pdf files and supplemental materials retained by the Commission shall be destroyed and deleted.

c. Applications, .pdf files, and documents on file for each judicial vacancy shall be provided to the members of the appropriate Commission at least seven (7) calendar days before the first Commission meeting concerning each vacancy.

d. Except as provided hereafter, information provided to the Commission by the applicant or by a third party shall be available to the public. The following information shall be confidential throughout the nomination process.

1. All information in response to questions contained in Section II of the application form;
2. 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;

3. all individual Commissioner's notes that are generated for personal use; and
4. any information obtained by or submitted to the Commission that is confidential by law.

RULE 7. SCREENING OF APPLICATIONS AND SELECTION OF APPLICANTS FOR INTERVIEWS

a. **Public Notice and Comment:** Names of applicants and the date, place and time of the Commission meeting to screen applications shall be widely disseminated to the public. Comments about applicants should be made, if feasible, at least three (3) working days before the screening meeting as follows: (1) in writing to the Judicial Nominating Commission for distribution by staff to the Commission, or (2) verbally or by written or electronic means to the Commissioners.

b. **Investigation of Applicants:** As soon as Commissioners receive applications and documents on file, they may begin investigating the background and qualifications of applicants. Using the application as a starting point, Commissioners may contact as many of the individuals and institutions knowledgeable about the applicant as deemed beneficial. Commissioners shall encourage sources to allow their names to be disclosed to the commission, the applicant and the public but may accept comments about an applicant from a source that requests confidentiality as to the other Commissioners, the applicant, and/or the public, if the Commissioner believes it is in the public's best interest to accept such comments.

When a source provides a negative opinion about an applicant's character, fitness, or competency, the commissioner shall ask the source to provide a detailed factual basis for that opinion. The Commissioner shall also ask for the names and contact information of others who might have knowledge about the opinion. The Commissioner shall contact any individuals identified to ask about the applicant's character, fitness or competency.

c. **Screening Meeting**

1. **General:** The Commission shall meet to decide which applicants to interview. Each Commissioner shall disclose comments and other information relied upon to evaluate each applicant. If confidentiality has been promised to a source, commissioners should consider whether less weight should be given to that source's information. The Commission may hold an executive session upon a majority vote of Commissioners in attendance to promote open and frank discussion of applicant qualifications. The substance of deliberations in executive session shall not be disclosed.

2. **Public Comment:** Members of the public are invited to briefly comment orally at the screening meeting. The Chair shall allocate equal time at the screening meeting for relevant comment on each applicant. The Chair may terminate comments which exceed the time allocated or which are irrelevant to the qualifications of applicants. The Chair may also limit duplicative comments regarding an applicant. Applicants are encouraged to invite no more than two (2) speakers to comment on their behalf. Applicants are asked to limit solicited reference letters to a maximum of twelve (12) from a diverse group of people who are well-acquainted with the applicant.

3. **Opinion Comments:** Negative opinions that are not supported with a factual basis, or a second source shall not be disclosed at the Commission meeting. If disclosed, the supporting information must also be disclosed.

4. **Anonymous Comments:** Information from an anonymous source shall not be considered by any Commissioner or shared with any other Commissioner or the Commission at any point in the screening process.

5. **Selection of Applicants for Interviews:** 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 with or without an additional executive session or sessions, the tentative list of interviewees may be added to or subtracted from by public vote until a final list of applicants to be interviewed is determined. The Commission may vary these procedures at its discretion.

RULE 8. INTERVIEWS OF APPLICANTS AND SELECTION OF NOMINEES

a. **Public Notice and Comment:** Names of applicants selected for interview and the date, place and time of the Commission meeting to interview applicants shall be widely disseminated to the public. The public, the judiciary and bar associations shall be invited to provide comments regarding these applicants. Comments about applicants should be made, if feasible, at least three (3) working days before the interview meeting as follows: (1) in writing to the Judicial Nominating Commission for distribution by staff to the Commission, or (2) verbally or by written or electronic means to the Commissioners.

b. **Investigation of Applicants Selected for Interviews:** The Commission shall further evaluate selected applicants by contacting as many individuals, community groups and other sources as deemed reasonable to obtain information about the applicants' life experiences, community activities and backgrounds. Commissioners shall encourage sources

to allow their names to be disclosed to the Commission, the applicant and the public, but may accept comments about an applicant from a source that requests confidentiality as to the other Commissioners, the applicant and/or the public if the Commissioner believes it is in the public's best interest accept such comments.

When a source provides a negative opinion about an applicant's character, fitness or competency, the Commissioner shall ask the source to provide a detailed factual basis for that opinion. The Commissioner shall also ask for the names and contact information of others who might have knowledge about the opinion. The Commissioner shall contact any individual identified to ask about the applicant's character, fitness or competency.

c. **Communication with Applicants:** Nothing in this rule prohibits the Chair of the Commission or staff from contacting an applicant when the Chair determines that such contact is in the best interests of the Commission, the applicant or the public.

d. **Interview Meeting**

1. **General:** Each Commission shall meet for the purpose of interviewing selected applicants in order to compile a list of nominees to be forwarded to the Governor. The Commission shall schedule sufficient time prior to the interview of each applicant to discuss and evaluate each applicant's qualifications and to determine whether any matter should be raised with the applicant during the interviews. Each Commissioner shall disclose comments and other information relied on to evaluate each applicant. If confidentiality has been promised to a source, Commissioners should consider whether less weight should be given to that source's information. The Commission may hold an executive session upon a majority vote of Commissioners in attendance to promote open and frank discussion of applicant qualifications. The substance of deliberations in executive session shall not be disclosed.

2. **Public Comment:** Members of the public are invited to briefly comment orally at the screening meeting. The Chair shall allocate equal time at the screening meeting for relevant comment on each applicant. The Chair may terminate comments which exceed the time allocated or which are irrelevant to the qualifications of applicants. The Chair may also limit duplicative comments regarding an applicant. Applicants are encouraged to invite no more than two (2) speakers to comment on their behalf.

3. **Opinion comments:** Negative opinions that are not supported with a factual basis or a second source shall not be disclosed at the Commission meeting. If supported and disclosed, the supporting information must also be disclosed.

4. Anonymous comments: Information from an anonymous source shall not be considered by any Commissioner or shared with any other Commissioner or the Commission at any point in the screening process.

5. Conduct of Interviews: Selected applicants shall be publicly interviewed by Commissioners. The Chair shall admonish the public in attendance not to disclose the interview questions or candidate answers until the conclusion of all interviews. 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 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.

6. Deliberations of the Commission: At the conclusion of the interviews, the Chair shall invite further discussion among the Commissioners about applicants. To the extent possible, no material and adverse information about an applicant that a Commissioner knows before the interview may be disclosed to the Commission after the interview occurs. The Commission may hold an executive session upon a majority vote to promote open and frank discussion regarding the qualifications of applicants interviewed. The substance of deliberations in executive session shall not be disclosed.

7. Selection of Nominees for Submission to the Governor: All voting by each Commission on the number of nominees to be forwarded to the Governor and on the applicants nominated shall be in public session. The Chair shall invite Commissioners to nominate applicants interviewed to be placed on a tentative list of those to be nominated to the Governor. 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 the tentative list. 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 final list of nominees is determined. The above process may be repeated until the resulting list of nominees satisfies constitutional requirements and is approved for referral to the Governor by a public vote of the Commission. The Commission may vary these procedures at its discretion.

RULE 9. TRANSMITTAL TO THE GOVERNOR

The names of the nominees, listed in alphabetical order, shall be delivered to the Governor as directed by the Chair. The Chair shall promptly inform the public of the

names of the nominees.

To facilitate the Governor's selection of the appointee, the Commission file concerning each nominee shall be provided to the Governor with the list containing that nominee's name unless the respective Commission directs otherwise. Commission staff shall separately identify the information that is deemed confidential under these rules and ask that this information continue to be kept confidential.