

# RULES OF THE JUDICIAL NOMINATION COMMISSION

## Revised and Adopted September 30, 2020

### **Rule 1            Organization -- Duties – Quorum**

- 1.1     The Judicial Nomination Commission (Commission) shall elect from its members a Chair to preside over meetings and exercise all powers consistent with these Rules and necessary to the efficient operation of the Commission.
  
- 1.2     The Commission shall elect from its members a Secretary to:
  - a.        Keep a record of all proceedings of the Commission and, with assistance as needed from the Office of Court Administrator (OCA), perform the following tasks:
    - i.        issue all notices of vacancies to the media as required by Rule 2;
    - ii.       set the time and place for meetings in consultation with the Chair;
    - iii.      issue all notices to applicants; and
    - iv.      serve as the Commission’s authorized correspondent with applicants, and as directed by the Chair, correspond with the public and the media.
  - b.        Assist the Commission Chair;
  - c.        Act as corresponding secretary with the Chief Justice of the Supreme Court and the Governor; and
  - d.        Serve as Acting Chair in the Chair’s absence.
  
- 1.3     Four members constitute a quorum for the transaction of business.
  
- 1.4     The OCA shall provide administrative support to the Commission including:
  - a.        Maintaining a Commission webpage within the Montana Judicial Branch website for electronically posting documents related to the recruitment of applicants, solicitation of public comment regarding applicants, and selection of nominees;
  - b.        Distributing news releases regarding Commission activities; and
  - c.        Providing information to and responding to inquiries from applicants and the general public.

### **Rule 2            Notice of Vacancy**

- 2.1     Within ten (10) days of the date of receipt by the Commission of the notice from the Chief Justice of the Supreme Court that a vacancy has occurred or an effective date of judicial resignation has been announced, the OCA shall notify media outlets with general statewide circulation and other appropriate sources that a vacancy has been announced.
  
- 2.2     The notice must briefly describe the vacancy, the qualifications required of applicants for nomination, and the procedure by which eligible persons may apply to fill the vacancy.

### **Rule 3            Applications for Vacancy**

- 3.1    The OCA shall post to the Commission's webpage the application required by the Commission for all vacancies.
- 3.2    Eligible persons may apply for the vacant judicial position by completing and submitting to the OCA an original signed paper application and an electronic copy of the original application by the deadline date and time contained in the application. The deadline date must be within forty (40) days of the Commission's receipt of the notice provided by the Chief Justice.
- 3.3    An application will be accepted if the original application is postmarked or otherwise dated by the delivery service on or before the deadline date and the electronic copy has a sent date and time that is on or before the deadline date and time.
- 3.4    The OCA shall post applications timely received to the Commission's webpage. This posting constitutes the Commission's only publication of the content of applications. Before posting an application, the OCA shall redact the applicant's date of birth, home address, and home telephone number.

### **Rule 4            Public Disclosure – Privacy -- Exception**

- 4.1    All meetings and proceedings of the Commission must be open to the public except when, by a majority vote of the Commission, it is determined that the demands of individual privacy clearly exceed the merits of public disclosure.
- 4.2    All documents received by the Commission are open to the public except when, by a majority vote of the Commission, it is determined that the demands of individual privacy clearly exceed the merits of public disclosure. Documents open to the public may be viewed by interested parties during normal business hours at the OCA.
- 4.3    An applicant who believes, as to information requested by the application or provided to the Commission, that the demands of individual privacy clearly exceed the merits of public disclosure, must assert such right to privacy either in the application itself or in a separate written communication, attach the specific information in a separate sealed envelope, and refer the Commission to the attached sealed envelope. The Commission then must make its own determination, balancing the asserted privacy right against the merits of public disclosure. The Commission must notify the applicant of any decision to publicly disclose such information five (5) days prior to any disclosure.

### **Rule 5            Investigation -- Public Comment – Review**

- 5.1    The individual members of the Commission are authorized to gather information and investigate the qualifications of all applicants.
- 5.2    Members of the public may provide their comments concerning any applicant or application, and a specific period of public comment will be identified and noticed. The public comments must be posted to the Commission's webpage except as provided in Rules 4.3 and 5.5.

- 5.3 Written public comment constitutes documentation relating to the proceedings of the Commission and must be open to the public except where the demands of individual privacy clearly exceed the merits of public disclosure. The procedure to be followed by any member of the public seeking to assert individual privacy rights with respect to his or her written comments regarding an applicant is the same as that set forth in Rule 4.3.
- 5.4 The OCA shall compile a complete file of public comments received and create an index of such comments.
- 5.5 The OCA shall provide to all Commissioners, but may not post, the following types of public comment to the Commission's webpage:
- a. Public comment in which the Commission has determined that the demands of individual privacy clearly exceed the merits of public disclosure;
  - b. Anonymous electronic mail messages, letters, or facsimiles;
  - c. Public comment containing vulgar or obscene language as determined by the Chair;
  - d. Public comment in which it appears the author is a minor;
  - e. Court or other documents which are submitted with or as public comment and contain unredacted third-party personally identifying information, names or information about a minor, or are confidential as provided by law;
  - f. Electronic mail messages or facsimiles received more than 30 minutes after the submittal deadline; and
  - g. Written comments received by surface mail if postmarked after the submittal deadline.

#### **Rule 6 Opportunity for Interview of Applicants**

- 6.1 The Commission reserves the right to dispense with some or all of the applicant interviews based upon a review of the applications and public comment.
- 6.2 The OCA shall notify each applicant to be interviewed at least 10 days prior to an interview and advise the applicant of the time and place. Interviews are public and must take place in the judicial district where the vacancy occurs.

#### **Rule 7 Selection of Nominees – Format of Reports**

- 7.1 Following interviews or a determination to dispense with interviews as specified in Rule 6, the Commission shall meet to discuss the nominees and qualifications, and with the concurrence of at least four (4) members of the Commission, compile a list of not less than three and not more than five nominees for submission to the Governor or Chief Justice.
- 7.2 The Commission shall list the nominees in alphabetical order, certify the nominees' qualifications, and provide the written report required by Section 3-1-1010, MCA.
- 7.3 The OCA shall submit the Commission's list of nominees and report to the Governor or Chief Justice, together with the originals of each nominee's application and copies of all letters and written comments received concerning each nominee. Where the Commission has determined

that the demands of individual privacy clearly exceed the merits of public disclosure regarding specific public comment, such comment shall be submitted under seal.

- 7.4 The Commission shall submit its list of nominees within ninety (90) days of the Commission's receipt of the notice of vacancy from the Chief Justice.

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