

EXECUTIVE ORDER
01.01.2008.04

Judicial Nominating Commissions
(Rescinds Executive Orders 01.01.2007.08 and 01.01.2007.11)

- WHEREAS, The appointment of highly qualified persons to the appellate and trial courts of the State of Maryland is of paramount importance to the people of the State;
- WHEREAS, The appointment of persons to the judiciary from a diversity of backgrounds enhances the quality of justice dispensed by the State's courts and encourages respect for the law and the courts;
- WHEREAS, By Executive Order 01.01.1974.23, the Governor of the State of Maryland established Judicial Nominating Commissions for the purpose of recommending to the Governor the names of persons for appointment to the appellate and trial courts of Maryland, and provided for the composition and general functions and procedures of the Judicial Nominating Commissions; and
- WHEREAS, The interests of the people and the State of Maryland will be best served by the continued existence of Judicial Nominating Commissions.
- NOW, THEREFORE, I, MARTIN O'MALLEY, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, HEREBY RESCIND EXECUTIVE ORDERS 01.01.2007.08 AND 01.01.2007.11, AND PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:

A. Definitions. In this Executive Order, the following words have the meanings indicated:

(1) “Appellate Court” means the Court of Appeals of Maryland or the Court of Special Appeals of Maryland.

(2) “Trial Court” means the District Court of Maryland or the Circuit Court for a county or Baltimore City.

B. Appellate Courts Judicial Nominating Commission.

(1) Creation and Composition. The Appellate Courts Judicial Nominating Commission is hereby established as part of the Executive Department. It consists of seventeen persons chosen as follows:

(a) Twelve persons appointed by the Governor;
and

(b) Five persons submitted for appointment by the President of the Maryland State Bar Association. However, if the President of the Maryland State Bar Association does not submit five persons for appointment within 60 days of the date of this Executive Order, or submits fewer than five persons, additional members will be appointed by the Governor.

(c) No more than one lawyer from the same firm or legal office may serve on the Commission at the same time.

(d) No person may serve on the Appellate Courts Judicial Nominating Commission while simultaneously serving on a Trial Courts Nominating Commission.

(e) No person may serve on the Appellate Courts Judicial Nominating Commission who holds an elected office in local, State, or federal government; who hears cases as an active or senior member of the State or federal judiciary; or who holds an office in a political party.

(2) Chair. The Chair of the Commission will be designated by the Governor.

(3) Terms. The terms of the members of the Commission shall extend to the date of the qualification of the Governor at the next quadrennial election, and until their successors are duly chosen. However, if the Commission meets on two or more occasions during any calendar year, and if, during that year, a Commission member fails to attend at least half of the meetings in which that member is not otherwise disqualified from participating, the term of the member shall automatically be terminated.

(4) Vacancies. If a vacancy occurs on the Commission by reason of the death, resignation, removal, or disqualification of a member, a successor will be appointed by the Governor.

(5) Ineligibility for Judicial Appointment. A person who serves on the Commission will not be appointed to an Appellate Court during the term for which the person was appointed to the Commission.

C. Trial Courts Judicial Nominating Commissions.

(1) Creation. A Trial Courts Judicial Nominating Commission is hereby established as part of the Executive Department for each of the Commission Districts set forth below:

(a) Commission District 1 – Somerset, Wicomico, and Worcester Counties;

(b) Commission District 2 – Cecil, Kent, and Queen Anne’s Counties;

(c) Commission District 3 – Baltimore County;

(d) Commission District 4 – Harford County;

(e) Commission District 5 – Allegany and Garrett Counties;

(f) Commission District 6 – Washington County;

(g) Commission District 7 – Anne Arundel County;

(h) Commission District 8 – Carroll County;

- (i) Commission District 9 – Howard County;
 - (j) Commission District 10 – Frederick County;
 - (k) Commission District 11 – Montgomery County;
 - (l) Commission District 12 – Calvert and St. Mary’s Counties;
 - (m) Commission District 13 – Prince George’s County;
 - (n) Commission District 14 – Baltimore City;
 - (o) Commission District 15 – Charles County;
- and
- (p) Commission District 16 – Caroline, Dorchester, and Talbot Counties.

(2) Composition. Each Commission shall consist of thirteen persons chosen as follows:

- (a) Nine persons appointed by the Governor;
- and
- (b) Four persons submitted for appointment by the presidents of the Bar Associations in the political subdivisions for which the Commission is responsible. In selecting persons to submit for appointment, the Bar Association presidents shall consult with the presidents of other bar organizations in the Commission District, including, in Baltimore City, the Monumental City Bar Association, in Howard County, the Waring Mitchell Law Society, and, in Prince George’s County, the J. Franklyn Bourne Bar Association. If the presidents of the Bar Associations do not submit persons for appointment to a Commission within 60 days of the date of this Executive Order, or submit fewer than three persons, additional members of the Commission will be appointed by the Governor.
 - (c) No more than one lawyer from the same firm or legal office may serve on the same Commission at the same time.

(d) No person may serve on a Trial Courts Judicial Nominating Commission while simultaneously serving on the Appellate Courts Judicial Nominating Commission or on another Trial Courts Nominating Commission.

(e) No person may serve on a Trial Courts Judicial Nominating Commission who holds an elected office in local, State, or federal government; who hears cases as an active or senior member of the State or federal judiciary; or who holds an office in a political party.

(3) Chair. The Chair of each Commission will be designated by the Governor.

(4) Terms. The terms of the members of each Commission shall extend to the date of the qualification of the Governor at the next quadrennial election, and until their successors are duly chosen. However, if a Commission meets on two or more occasions during any calendar year, and if, during that year, a Commission member fails to attend at least half of the meetings in which that member is not otherwise disqualified from participating, the term of the member shall automatically be terminated.

(5) Vacancies. If a vacancy occurs on a Commission by reason of the death, resignation, removal, or disqualification of a member, a successor will be appointed by the Governor.

(6) Ineligibility for Judicial Appointment. A person who serves on a Trial Courts Judicial Nominating Commission will not be appointed to a Trial Court during the term for which the person was appointed to the Commission.

D. Responsibilities of the Commissions.

(1) For each vacancy on an Appellate Court, the Appellate Courts Judicial Nominating Commission shall recommend to the Governor, from among those persons who apply for appointment to fill the vacancy, the candidates legally and most fully professionally qualified to fill the vacancy, unless the Governor appoints a person to fill the vacancy from any list of candidates submitted to the Governor by the Commission during the preceding two years, or by the Appellate Courts Judicial Nominating Commission established under prior Executive Orders, for a prior vacancy on that Court.

(2) For each vacancy on a Trial Court, the Trial Courts Judicial Nominating Commission for the appropriate Commission District shall recommend to the Governor, from among those persons who apply for appointment to fill the vacancy, the candidates legally and most fully professionally qualified to fill the vacancy, unless the Governor (a) reappoints an incumbent judge to fill the vacancy, or (b) appoints a person to fill the vacancy from any list of candidates submitted to the Governor by the Commission during the preceding two years, or by the appropriate Commission established under prior Executive Orders, for a prior vacancy on that Court.

(3) Each Commission shall encourage qualified candidates, from a diversity of backgrounds, to apply for judicial appointment.

E. Request for Assistance from the Administrative Office of the Courts. The chair of each Commission shall request the assistance of the Administrative Office of the Courts in providing training to Commission members; in notifying the appropriate Commission when a vacancy occurs; and in developing a form or forms for submission by applicants.

F. Commission Procedures.

(1) Upon notification that a vacancy exists or is about to occur in a Court to which a Commission has responsibility to recommend candidates for appointment, the Commission shall seek out qualified applicants from a diversity of backgrounds to fill the vacancy and shall review all applications submitted, unless the Governor (a) reappoints an incumbent judge to fill the vacancy, or (b) appoints a person to fill the vacancy from any list of candidates submitted during the preceding two years by the Commission, or by a predecessor Commission established under prior Executive Orders, for a prior vacancy on that Court. The Commission shall notify the Maryland State Bar Association and other appropriate bar associations of the vacancy and shall request recommendations from them. The Commission may also seek recommendations from interested citizens and from its own members.

(2) The Commission shall evaluate each applicant. In the course of its evaluation, the Commission may seek information beyond that contained in the materials submitted by an applicant. The Commission may obtain pertinent information from knowledgeable persons known to Commission members,

the Attorney Grievance Commission, judges, personal references given by the candidate, criminal justice agencies, or other sources. The Commission shall place notices in at least one newspaper read by members of the general public identifying the applicants and inviting written and signed comments to the Commission regarding the applicants. A criminal justice agency, including the Central Repository, may release the criminal history record information, including conviction and nonconviction data, to a Commission upon request of its chair, for the purpose of evaluating a candidate.

(3) No fewer than ten members shall be present at a voting session of the Appellate Courts Judicial Nominating Commission, and no fewer than nine members shall be present at a voting session of any Trial Courts Judicial Nominating Commission.

(4) A Commission shall interview each applicant for each vacancy for which it is responsible for recommending candidates. The interview shall be in person unless, due to extraordinary circumstances, a candidate is unable to appear in person. In cases of extraordinary circumstances, and upon prior approval of the Governor, an interview may be held via video teleconference. An example of an extraordinary circumstance is unavailability in person due to military service to the country. An example of a circumstance that is not extraordinary is a vacation. In considering a person's application for appointment to fill a vacancy, a Commission shall consider the applicant's integrity, maturity, temperament, diligence, legal knowledge, intellectual ability, professional experience, community service, and any other qualifications that the Commission deems important for judicial service, as well as the importance of having a diverse judiciary.

(5) In evaluating applications to fill a vacancy on a trial court, the Trial Courts Judicial Nominating Commission shall give the same consideration to eligible applicants whose legal practices are located outside the political subdivision in which the court sits as it gives to those whose practices are located within the political subdivision.

(6) No applicant may be recommended to the Governor for appointment unless by vote of a majority of members present at a voting session of the appropriate Commission, as taken by secret ballot. A Commission may conduct more than one round

of balloting during its deliberations, in order to achieve the number of candidates required under this Order.

(7) The Commissions shall submit to the Governor a list of at least three qualified candidates for appointment to fill each vacancy. If there are multiple vacancies on the same court, a Commission shall submit to the Governor a list of at least three qualified persons for each individual vacancy.

(8) If fewer than three candidates apply, then the vacancy shall be automatically readvertised. If, after readvertisement, there remain fewer than three applicants, then the Commission shall send the Governor the list of fewer than three applicants.

(9) The Commission shall report in writing to the Governor the names of the persons found by the Commission to be legally and most fully professionally qualified to fill a vacancy. The names of these persons shall be listed in alphabetical order. The report shall be submitted within 85 days following notification that a vacancy exists or is about to occur. The Commission shall release this list to the public concurrently with submission of its report to the Governor.

(10) Upon request of the Governor, a Commission shall reconvene for further deliberations, or re-advertise a vacancy to new applicants.

G. Confidentiality.

(1) A Commission shall not disclose to the public the names of individuals who have submitted applications to fill a vacancy until after the closing date for submission of applications.

(2) Materials submitted by an applicant, or gathered from other sources in connection with the evaluation of an applicant, are confidential and may not be released to the public.

(3) Each Commission member shall maintain the confidentiality of the Commission's evaluation of candidates, including its interviews, deliberations, and voting, and, except as provided in Section F(9), shall not disclose the Commission's evaluation of candidates to the public.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 13th Day of March, 2008.

Martin O'Malley
Governor

ATTEST:

Dennis Schnepfe
Interim Secretary of State