

## **WORKGROUP ON JUDICIAL SELECTIONS**

### **RECOMMENDATIONS FOR REFORM - JUDICIAL NOMINATING COMMISSIONS**

**Introduction:** Thirty (30) States and the District of Columbia use Judicial Nominating Commissions (JNCs) in choosing Supreme Court justices, as noted in the article by the Institute for the Advancement of the American Legal System (IAALS) titled *Judicial Nominating Commissions and the Selection of Supreme Court Justices*. Many states, like Maryland, also use JNCs in the trial courts selection process.

The general theory supporting commission-based gubernatorial appointment systems is that this system is effective in identifying highly qualified, impartial, and trustworthy judges – perhaps more effective than contested judicial elections or pure gubernatorial appointment. In 1970, Governor Mandel established the first Judicial Nominating Commission in Maryland. Al Brault, an attorney with over 40 years of litigation experience in Maryland, spoke about his participation in the conference that developed the first JNCs in MD. The conference was called by Governor Mandel and took place over the course of two days. Maryland judges and attorneys participated, as well as judges from across the country and other subject matter experts. Each Governor since that time has issued Executive Orders establishing JNCs.

### **COMPOSITION AND PROCEDURES OF THE COMMISSIONS**

#### **A. AUTHORITY FOR CREATION:**

Executive Orders are used to authorize Appellate Court Commissions in Maryland and 4 other jurisdictions (DE., GA., NH. and TN). In 25 states, JNCs are authorized by the Constitution. One jurisdiction authorizes JNCs by statute (WV). Maryland currently uses JNCs for Appellate and Trial court vacancies.

**Recommendation:** Judicial Nominating Commissions for Appellate and Trial Courts shall continue to be created by Executive Order of the Governor.

#### **B. COMPOSITION:**

##### **Current Composition:**

1. **Appellate Courts Commission:** 17 members. 12 appointed by the Governor and 5 members of the MSBA appointed by the Governor from a list of 10 persons submitted by the MSBA. Chair is designated by the Governor. In the event of a vacancy on the Commission, the Governor will appoint a successor.

2. Trial Courts Commission: There are a total of 16 Commission Districts. Each District has a *13-member* Nominating Commission. Nine members appointed by the Governor. Four members of the Bar Association for the counties for which the Trial Courts Nominating Commission is responsible – appointed by the Governor from a list of seven (7) persons submitted collectively by Presidents of those associations. Chair designated by the Governor. In the event of a vacancy on the Commission, the Governor will appoint a successor.

**Recommendation – Appellate Court:** The Appellate Court Commission shall continue to have *17 members*. Twelve (12) shall be appointed by the Governor. Five (5) Maryland State Bar Association (MSBA) members shall be appointed by the Governor from a list of 10 persons selected as described forth below. The Chair shall be designated by the Governor. In the event of a vacancy on the Commission, the Governor will appoint a successor.

- a. Governor’s Appointments: In making the appointments, the Governor shall consider the racial, ethnic, gender, and geographic diversity of Maryland, specialty bar association membership, and diversity in practice areas of the law.
- b. MSBA Appointments: The Board of Governors Executive Committee shall serve as the selection committee, along with representatives of the Specialty Bars that participate in the appellate judicial selections process. The MSBA shall publish notice of openings on the Appellate Court Nominating Commission and receive applications. After the selection committee reviews the applications and interviews candidates, ten (10) names shall be submitted to the Governor who shall appoint five (5) MSBA members from the list to the Nominating Commission. In making the appointments, the MSBA selection committee shall consider the racial, ethnic, gender, and geographic diversity of Maryland, specialty bar association membership, and diversity in practice areas of the law. A majority vote of the selection committee would then select the members to submit to the Governor for inclusion on the nominating commission.

**Recommendation – Trial Court:** The sixteen (16) Trial Courts Nominating Commissions shall continue to have *13 members*. Nine (9) members appointed by the Governor and four (4) shall be appointed by the Governor from a list of seven (7) selected by the county bar association in each Commission District as set forth below. In the event of a vacancy on a Commission, the Governor will appoint a successor.

- a. Governor’s Appointments: In making the appointments, the Governor shall consider the racial, ethnic, and gender diversity of Maryland, specialty bar association membership, and diversity in practice areas of the law.
- b. County Bar Appointments: Each County Bar Association Executive Board, along with representatives of the Specialty Bars that participate in the county judicial selection process shall serve as the selection committee. The County Bar shall

publish notice of openings on the Trial Courts Nominating Commission and receive applications. After the selection committee reviews the applications and interviews candidates, seven (7) names shall be submitted to the Governor who shall appoint four (4) individuals from the list to the Nominating Commission. In making the appointments, the county bar selection committee shall consider the racial, ethnic, and gender diversity of Maryland, specialty bar association membership, and diversity in practice areas of the law. A majority vote of the selection committee would then select the members to submit to the Governor for inclusion on the nominating commission.

**C. QUALIFICATIONS/REQUIREMENTS FOR COMMISSIONERS:**

**Recommendation:** Continue the current qualifications and requirements for Commissioners set forth in the current (and past) Executive Orders. Specifically:

1. No more than one lawyer from the same firm or legal office may serve on a Nominating Commission at the same time.
2. No person may serve on the Appellate Nominating Commission while simultaneously servicing on a Trial Courts Nominating Commission and vice versa.
3. No person may serve on a Nominating Commission who:
  - a. Holds an elected office in local, State, or federal government;
  - b. Is an employee of the Office of the Governor;
  - c. Hears cases as an active or senior member of the State or federal judiciary *or of a State or federal commission or agency*; or
  - d. Holds an office in a political party.
4. In submitting persons for appointment, the MSBA and the county bar selection committees shall give “appropriate consideration to the racial, ethnic, gender and geographical (for the Appellate Commission) diversity of MD.
5. For the Trial Courts Nominating Commissions, the County Bar Association Selection Committees shall consult with the presidents of other bar organizations that may operate in the Commission District.
6. An Appellate Courts Commissioner shall not be appointed to an Appellate Court during the term for which the member was appointed, and a Trial Courts Commissioner shall not be appointed to a Trial Court during the term for which the member was appointed.

**Recommendation:** Under the current Executive Order, there are no general requirements regarding a commissioner’s knowledge and background. The following qualifications/requirements should be considered in the appointment process to ensure that citizens are provided with the highest quality of judges:

1. Consideration of the specific needs of each Commission District. Trial Courts handle family, civil, criminal, and juvenile. Additionally, there may be specialized courts for drug and alcohol abuse, mental health, and technology.
2. Commissions “shall fairly and appropriately reflect the minority and female population of the area from which they are appointed.”
3. Commissioners shall have demonstrated knowledge of the judicial system and experience in the needs and operation of the Appellate and Trial courts. Commissioners who are members of the bar shall have at least 5 years of relevant experience and shall be members of the Maryland bar in good standing. Commissioners who are not members of the Maryland bar shall be familiar with the attributes that best qualify a person for appointment as a judicial officer.
4. Trial Court Commissioners should be residents of the Commission District that they serve.
5. Disqualification of Members: Persons shall be disqualified from nomination to judicial office or from appointment to the Commissions as follows:
  - a. Ineligibility: Any Commissioner and the Commissioner’s immediate family, including persons related to the Commissioner’s immediate family by marriage, are disqualified from applying for or being nominated by the Governor to any judicial office for a period of one year after the last date of the Commissioner’s service on the Commission.
  - b. Relation to Elected Officials: Any person who holds elected county, state or federal office and their immediate family members or persons related to their immediate family members by marriage shall be disqualified from appointment to the Commission.
  - c. Inability to Attend Meetings: Any person unable to regularly attend meetings of the Commission, unless arrangements have been made to participate by teleconference or other technological means as the Chair may allow, shall be ineligible for appointment or shall be removed from the Commission in the sole discretion of the Governor’s Chief Legal Counsel. “Regularly attend” shall mean if the Commission meets on two or more occasions during any calendar year, the member attends at least half of the meetings in which that member is not otherwise disqualified from participating.
  - d. Violation of Code of Conduct: Violation of the Code of Conduct applicable to Commissioners shall be deemed to constitute resignation by the Commissioner, as the Governor’s Chief Legal Counsel may determine in the Governor’s Chief Legal Counsel’s discretion.

**D. TERM OF APPOINTMENT:**

**Recommendation:** Continue the provision of the existing Executive Order. Commissioners shall serve a four-year term during the period the Executive Order is operative, except as provided above regarding vacancies during the term.

**E. ACCOMMODATIONS FOR JUDICIAL APPLICANTS WITH DISABILITIES:**

**Recommendation:** No requirement in the existing Executive Order. However, accommodations for commission applicants and judicial applicants with disabilities must be provided with easy access and at no cost to the applicant.

**F. PROCEDURES TO FILL JUDICIAL VACANCIES:**

**Recommendation:** Continue the provisions in the existing Executive Order, except as modified herein. Modifications are noted in underlined italics.

1. For each vacancy, the Governor shall:
  - a. Reappoint the incumbent judge;
  - b. Appoint an applicant who was recommended for a prior vacancy in the same position, if the appointment for the prior vacancy was made within two years of the occurrence of the current vacancy; or
  - c. Accept applications from new candidates for the vacancy.
2. Commission Responsibilities and Procedures.
  - a. If applications are accepted for new candidates for the vacancy, a Commission shall:
    - i. Advertise the vacancy;
    - ii. Encourage qualified candidates from a diversity of backgrounds to apply for judicial appointment;
    - iii. Encourage qualified candidates that are diverse by race, ethnicity, and gender to apply for judicial appointment;
    - iv. Notify the Maryland State Bar Association and other appropriate county and specialty bar associations of the vacancy and request recommendations from them;
    - v. Seek recommendations from interested citizens and from its own members; and
    - vi. Set a closing date for submission of applications.
  - b. If there are fewer than three applicants for a vacancy, the vacancy shall be automatically re-advertised to new candidates. If after re-advertisement, there

remain fewer than three applicants, then a Commission may proceed with evaluating the applicants.

- c. A 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.
  - d. A one page biography for each applicant shall be posted to the Commission website with the list of applicants that shall be provided by the applicant as part of the application.
  - e. A Commission shall review all applications submitted and evaluate each applicant. In the course of its evaluation, the Commission may:
    - i. Seek information beyond that contained in the materials submitted by the applicant.
    - ii. Obtain pertinent information from the Attorney Grievance Commission, judges, courts, personal references given by the applicant, criminal justice agencies, knowledgeable persons known to Commission members; county bar associations; specialty bar associations; or other sources; and
    - iii. Request criminal history record information from a criminal justice agency, including the Central Repository, for the purpose of evaluating an applicant.
3. A Commission shall interview each applicant:
- a. In person, or
  - b. Via video teleconference, if:
    - i. Extraordinary circumstances prevent the applicant from appearing in person; and
    - ii. The Governor gives prior approval.
4. 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 Nominating Commission shall give the same consideration to eligible applicants regardless of whether an applicant's legal practice is located outside of the county in which the applicant resides.
6. A Commission member is disqualified from participating in the consideration, evaluation, or recommending of applicants for a vacancy in which the applicant is:
- a. In the member's immediate family; or
  - b. A lawyer in the same firm or legal office as the member.

7. A voting session of a Commission shall be attended by at least three-fifths of the members who are qualified to participate.
8. No applicant may be recommended to the Governor for appointment unless by vote of a majority of the members present and qualified to participate 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.
9. If a Commission determines that fewer than three applicants are legally and professionally qualified, the Commission shall notify the Governor, who shall direct the Commission:
  - a. To re-advertise the vacancy to new candidates, or
  - b. To submit the names of the qualified applicants.
10. If a Commission determines that at least three applicants are legally and professionally qualified, it shall report in writing to the Governor the names of at least three applicants recommended by the Commission as the most fully professionally qualified to fill the vacancy. The names of these recommended applicants shall be listed in alphabetical order. The Commission shall release this list to the public concurrently with submission of its report to the Governor.
11. Upon request of the Governor, a Commission shall reconvene for further deliberations, or re-advertise a vacancy to new applicants.
12. A Commission shall not disclose to the public the names of candidates who have submitted applications to fill a vacancy until after the closing date for submission of applications.
13. Materials submitted by an applicant or obtained from other sources in connection with the evaluation of the applicant, are confidential and may not be released to the public except as otherwise provided in any adopted Rules of Procedure.
14. Each Commission member shall maintain confidentiality of the Commission's evaluation of candidates, including interviews, deliberations, and voting, and, except as provided herein or in any adopted Rules of Procedure.
15. Procedures used for Judicial Nominating Commissions decisions for nomination of candidates shall require transparency as set forth herein. (This is from the letter from the J. Franklyn Bourne Bar Association.)
16. There shall be no monetary cost or Bar membership required for a candidate to be interviewed by a local bar association or specialty bar association. (This is from the letter from the J. Franklyn Bourne Bar Association.)

## **G. CODE OF CONDUCT:**

The previous Executive Orders have not included a Code of Conduct for Commissioners. The Massachusetts Executive Order includes such a code. The Institute for the Advancement of the American Legal System (IAALS) developed a Model Code of Conduct for Judicial Nominating Commissions.

**Recommendation:** An Executive Order establishing Judicial Nominating Commissions should include a Code of Conduct. All Commissioners would be required to agree to and abide by the Code. At a minimum, the Code of Conduct should include the following, which adopts the Model Code developed by the IAALS.

### **1. Commissioners Responsibilities:**

- a. Members of judicial nominating commissions hold positions of public trust. Commission members shall conduct themselves in a manner that reflects positively upon the judicial selection process and shall avoid partisanship or partiality in the consideration of applicants. Commission members shall not be influenced other than by facts or opinions relevant to the judicial qualifications of applicants. No commission member or immediate family member of a commission member shall accept a gift or anything of value from or on behalf of any applicant. Commission members shall display courtesy and respect to all applicants and those commenting on applicants, as well as to other commission members.
- b. Commission members shall attend all regular commission meetings unless excused by the chair for good cause. Commission members shall complete all necessary preparation for each meeting.
- c. Newly appointed commission members shall complete a training program or orientation session that addresses commissioners' responsibilities and reviews the commission's rules of procedure, *and implicit bias*.

### **2. Commissioner Impartiality and Conflicts of Interest:**

- a. At any commission meeting where the qualifications of judicial applicants will be considered, commission members shall disclose to the commission any relationship with an applicant (business, personal, attorney-client). Commission members shall also disclose any other possible cause for conflict of interest, bias, or prejudice. A commission member shall recuse himself or herself if his or her ability to consider an applicant impartially and objectively might reasonably be questioned.
- b. Commission members are not eligible to apply for a judicial vacancy for which the commission screens and nominates applicants during their term on the commission and for at least one year thereafter.



- c. Except for judge members (if any), no commission member shall hold any elected public office for which s/he receives compensation during his or her period of service. No commission member shall hold an official position in a political party or political campaign. No commission member shall make a campaign contribution on behalf of a judicial candidate.
- d. Commission members shall consider each applicant in an impartial and objective manner. In considering each applicant, a commission member shall not discriminate on any basis prohibited by law.

3. Confidentiality:

- a. Neither commission members nor commission staff shall discuss or disclose, except among themselves, any matters or materials classified as confidential under this Code of Conduct, or any Rules of Procedure adopted by the commission. This mandate of confidentiality survives a commissioner's terms of office and must be observed in perpetuity.

4. Commissioner Communications:

- a. Where commission members are charged with actively seeking out and encouraging qualified individuals to apply for judgeships, a commission member shall not commit in advance to vote for any applicant and shall make clear that no commitment or support for nomination is implied. A commission member shall disclose to the commission that s/he has encouraged an applicant to apply when that applicant is first considered by the commission.
- b. Commission staff, the chair, or the chair's designee shall conduct all communications with an applicant about the application or the process. Except as required to conduct due diligence, individual commission members shall avoid substantive communications with applicants from the time the application is submitted until completion of the final vote on the nomination.
- c. Each commission member shall disclose information regarding the qualifications of any applicant so long as the commission member believes it is reliable and relevant to the consideration of the applicant. Such information conveyed in written communications with the commission member shall be forwarded to all other commission members; oral communications regarding such matters shall be shared orally with other members.
- d. After certification of a list of nominees to the governor, no commission member shall contact the governor or any member of the governor's office or staff for the purpose of further influencing the governor's decision. However, if contacted by the governor or a member of the governor's office or staff, commission members

may discuss their own views about the qualifications of applicants as well as publicly available information.

- e. Commission members are permitted and encouraged to communicate with the public regarding the commission's role in the judicial selection process, in accordance with this Code and any Rules of Procedure adopted by the commission.
- f. The commission chair may designate one or more commission and/or staff members to communicate the commission's decision as to the list of nominees to unsuccessful applicants. In any communication with an unsuccessful applicant, whether initiated by the applicant or the commission member, a commission member shall not make any representation regarding an applicant's future chances of selection, an individual commissioner's intentions regarding a future application, or any other topics held confidential by this Code, or by any Rules of Procedure adopted by the Commission.
- g. Copies of all letters, emails, or memos received by a Judicial Nominating Commission shall be forwarded to the judicial candidates. The author's name can be redacted if the Judicial Nominating Commission finds it necessary or prudent. (This is from the letter sent to the Workgroup by the J. Franklyn Bourne Bar Association.)

## **H. RULES OF PROCEDURE FOR COMMISSIONS ON APPELLATE & TRIAL COURT APPOINTMENTS:**

**Recommendation:** Uniform rules of procedure should be adopted for Judicial Nominating Commissions. Based on the information provided to the Workgroup, it appears that the judicial selections committees of the MSBA, county, and specialty bar associations have rules and procedures. Though each individual Commission operates under general rules that comply with the Executive Order, the Workgroup recommends that Judicial Nominating Commissions adopt uniform rules like the Uniform Rules of Procedure adopted by Arizona which are set forth below with modifications based on the Workgroup's discussions.

The Workgroup discussed at length the need for more transparency and consistency in the operation of the Commissions. Specifically, the following recommendations were made during Workgroup meetings:

1. The process should be open to the public, except for the Commissions deliberations and voting on each applicant. The interviews should be open to the public but, the Commission would have the discretion to go into Executive Session for sensitive matters.
2. The biograph/resume of the applicant, without personal and sensitive information, should be available to the public on the Commission webpage.
3. Recruitment of candidates should be included as a responsibility of Commissioners, which is noted in the above Code of Conduct and the past and current Executive Orders.

4. The IAASL article on JNCs notes that the extent to which JNC meetings are open to the public varies. In Maryland, the names of those who apply for judicial vacancies are public but, not the application or a bio/resume. Per IAASL, interviews *may* be open to the public in 15 states and in 6 states commissions conduct at least some deliberations in open session.
5. The commissions need to investigate and have a strong sense of the experience, quality, and character of each judicial candidate. The process should include the following: each applicant should be vetted by at least one member of the commission. The applicant's references should be contacted, as well as others in the legal community who are familiar with the candidate. The commissioner(s) vetting the applicant should also meet with the applicant. If a person *is not nominated* ~~does not make the commission list~~ and *wishes to,* ~~they~~ request a meeting, then *one or more* ~~three~~ members of the commission should meet with them to provide constructive comments/suggestions/ thoughts.
6. Here are other comments received from a few members of the Workgroup regarding the screening process.
  - a. Without any assurance of success, each member of the commission should encourage qualified candidates to seek judgeships.
  - b. Commission members should consider experience, intellect, demeanor, temperament, work ethic, professional involvement, and character for candidate.
  - c. No negative information should be considered by the commission without the candidate being advised of the information and source of the information and provide an opportunity to address.

*NOTE: All of the above are included in the Arizona Uniform Rules of Procedure for Commissions on Appellate and Trial Court Appointments.*

**Proposed Rules of Procedure:** The Workgroup specifically recommends the adoption of Uniform Rules of Procedure. Below are draft Rules of Procedure that are based on the Uniform Rules adopted by Arizona. The draft rules below were modified to be consistent with the Maryland process:

**A. Recruitment of Applicants:**

1. 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.

2. A Commissioner may not under any circumstances commit in advance to vote for any applicant.
3. Each Commission shall widely publicize vacancies by issuing press releases, posting notices online, and/or emailing vacancy notices to interested persons and groups, including all specialty bar associations. 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 for the same court known to the Commission before the screening for the announced vacancy is held.

**B. Application:**

1. Every applicant shall complete and file with the Administrative Office of the Courts a signed original “Confidential Personal Data Questionnaire” in the manner provided for in the public announcement for each judicial vacancy.
2. The original application filed by an applicant not appointed by the Governor shall be retained for two years 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 two years. At an applicant’s request, the original application and any supplemental material submitted by the applicant will be returned to the applicant during the two-year period. Otherwise, all documents shall be retained and provided to the Commission that originally considered the application if a new vacancy arises during the two-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 two-year period, any applications and supplemental materials retained by the Commission shall be destroyed and deleted.
3. Applications and documents on file for each judicial vacancy shall be provided to members of the appropriate Commission at least seven (7) calendar days before the first Commission meeting concerning each vacancy.
4. 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.
  - a. The Confidential Personal Data Questionnaire.
  - b. 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.
  - c. All individual Commissioner’s notes that are generated for personal use.

- d. Any information obtained or submitted to the Commission that is confidential by law.

**C. Screening and Interviews of Applicants/Selection of Nominees.**

1. Interviews of Applicants and Selection of Nominees.

- a. Public Notice and Comment: Names of applicants and the date, place, and time of the Commission meeting to interview and screen applicants shall be widely disseminated to the public, the MSBA, county bar associations, and specialty bar associations. The public and members of the bar shall be invited to provide comments regarding these applicants. Comments about the applicants should be made, if feasible, at least three (3) working days before the interview meeting as follows: (a) in writing to the Judicial Nominating Commission for distribution by staff to the Commission, or (b) verbally or by written 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 individuals, community groups, and institutions knowledgeable about the applicant as deemed beneficial. In further evaluation of the applicants, Commissioners may contact other sources as deemed reasonable to obtain information about the applicant's 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 the 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.
- c. 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.
- d. Communication with Applicants: Nothing in this Rule prohibits the Chair of the Commission or staff from contacting the applicant if the Chair determines that such contact is in the best interests of the Commission, the applicant, or the public.

e. Interview Meeting.

- i. General: Each Commission shall meet for the purpose of interviewing the 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 interview. Each Commissioner shall disclose comments and other information relied on to evaluate each applicant. If confidentiality has been promised to a source, Commissioners shall consider whether less weight should be given to that source's information. The Commission may hold an executive session upon a majority vote of the Commissions in attendance to promote open and frank discussion of the applicant's qualifications. The substance of deliberations in executive session shall not be disclosed.
- ii. Public Comment: Members of the public, bar associations, including specialty bar associations, are invited to briefly comment orally at the meeting to interview applicants. The Chair shall allocate equal time at the 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 the applicants. The Chair may also limit duplicative comments regarding the 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.
- iii. 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.
- iv. Anonymous Comments: Information from an anonymous source shall not be considered by the Commissioner or shared with any other Commissioner or the Commission at any point in the screening process.
- v. Conduct of Interviews: 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 an applicant for which confidentiality 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.

- vi. Deliberations of the Commission: 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. Whether in public or 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 for judicial office. 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 applicants. 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.
  
- vii. 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 executive 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 vote until a final list of nominees is determined. The Commission may vary these procedures at its discretion.

2. 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.

## **I. ADDITIONAL RECOMMENDATIONS:**

During the Workgroup discussions regarding Judicial Nominating Commissions, the following miscellaneous recommendations were made:

1. Standardized Interview Questions: Although the Workgroup recognized that interviews for each applicant cover some characteristics that are specific to an individual applicant, each Commission should use standardized/form questions for each applicant.
2. Input from MSBA, County and Specialty Bars: The Workgroup recognized the importance of input from all of the bar associations. However, it was noted that reports from bar associations that simply indicate “qualified” without further explanation are not particularly helpful. It is recommended that all bar associations consider providing more detailed explanations for supporting applicants *and consider using consistent rating scales, such as “highly qualified,” “qualified,” “not qualified,” and/or “not qualified at this time.”*