



The State of Maryland

Executive Department

EXECUTIVE ORDER

01.01.2023.04

(Rescinds Executive Order 01.01.2019.05)

Judicial Nominating Commissions

- WHEREAS, Under Article IV of the Maryland Constitution, the Governor is charged with appointing qualified persons to the appellate and trial courts of the State;
- WHEREAS, The appointment of highly qualified persons with a demonstrated commitment to the impartial administration of justice to the judiciary 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 increases public trust and confidence in the judiciary;
- WHEREAS, The process from which judicial appointments are made by the Governor must be respected, free from political influence, and beyond reproach;
- WHEREAS, Since 1970, the Governor has by Executive Order established Judicial Nominating Commissions for the purpose of recommending persons for appointment to the appellate and trial courts of the State, 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 will be best served by the continued existence of nonpartisan and unbiased Judicial Nominating Commissions composed of outstanding citizens of diverse backgrounds and experience from across the State;
- NOW, THEREFORE, I, WES MOORE, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, HEREBY

RESCIND EXECUTIVE ORDER 01.01.2019.05 AND PROCLAIM
THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE
IMMEDIATELY:

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

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

(2) “County” means a county of the State or Baltimore City.

(3) “Immediate family” includes a spouse, child, sibling, parent, grandparent, grandchild, stepparent, stepchild, step-sibling, or any adopted relative.

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

B. Appellate Courts Judicial Nominating Commission.

(1) Creation and Composition.

a. The Appellate Courts Judicial Nominating Commission is hereby established as part of the Executive Department. It consists of seventeen persons chosen as follows:

i. Twelve persons appointed by the Governor; and

ii. Five members of the Maryland State Bar Association appointed by the Governor from 10 such persons submitted by the Association president by a date established by the Governor’s Office of Legal Counsel.

b. No more than one lawyer from the same firm or legal office may serve on the Appellate Courts Judicial Nominating Commission at the same time.

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

- d. No person may serve on the Appellate Courts Judicial Nominating Commission who:
 - i. Holds an elected office in local, State, or federal government;
 - ii. Is an employee of the Office of the Governor;
 - iii. Hears cases as an active or senior member of the State or federal judiciary or of a State or federal commission or agency; or
 - iv. Holds an office in a political party.
- e. In making appointments, the Governor shall consider the racial, ethnic, gender, and geographic diversity of Maryland.
- f. In submitting persons for appointment, the president of the Maryland State Bar Association shall consider the racial, ethnic, gender, and geographic diversity of Maryland.
- g. If the president of the Maryland State Bar Association submits fewer than 10 persons for appointment the Association's appointments shall be decreased by the number not submitted and the Governor shall make the appointments.
- h. If a vacancy occurs on the Appellate Courts Judicial Nominating Commission by reason of death, resignation, removal, or disqualification, a successor will be appointed by the Governor.

(2) The Chair of the Appellate Courts Judicial Nominating Commission will be designated by the Governor.

(3) Terms.

- a. The terms of the members of the Appellate Courts Judicial Nominating Commission shall extend to the date of the qualification of the Governor at the next quadrennial election.
- b. At the end of a term, a member continues to serve until a successor is appointed and qualifies.

- c. If the Appellate Courts Judicial Nominating Commission meets on two or more occasions during any calendar year, and if, during that year, a member fails to attend at least half of the meetings in which that member is not otherwise disqualified from participating, the member may be removed by the Governor.

(4) An Appellate Courts Judicial Nominating Commission member shall not be appointed to an Appellate Court during the term for which the member was appointed.

C. Trial Courts Judicial Nominating Commissions.

(1) Creation and Composition.

- a. A Trial Courts Judicial Nominating Commission is hereby established as part of the Executive Department for each of the Commission Districts set forth below:
 - i. Commission District 1 – Somerset, Wicomico, and Worcester Counties;
 - ii. Commission District 2 – Cecil, Kent, and Queen Anne’s Counties;
 - iii. Commission District 3 – Baltimore County;
 - iv. Commission District 4 – Harford County;
 - v. Commission District 5 – Allegany and Garrett Counties;
 - vi. Commission District 6 – Washington County;
 - vii. Commission District 7 – Anne Arundel County;
 - viii. Commission District 8 – Carroll County;
 - ix. Commission District 9 – Howard County;
 - x. Commission District 10 – Frederick County;
 - xi. Commission District 11 – Montgomery County;

- xii. Commission District 12 – Calvert and St. Mary’s Counties;
 - xiii. Commission District 13 – Prince George’s County;
 - xiv. Commission District 14 – Baltimore City;
 - xv. Commission District 15 – Charles County; and
 - xvi. Commission District 16 – Caroline, Dorchester, and Talbot Counties.
- b. Each Trial Courts Judicial Nominating Commission shall consist of thirteen persons chosen as follows:
- i. Nine persons appointed by the Governor; and
 - ii. Four members of the Bar Associations for the counties for which the Trial Courts Nominating Commission is responsible, appointed by the Governor from seven such persons submitted collectively by the presidents of those Associations by a date established by the Governor’s Office of Legal Counsel.
- c. No more than one lawyer from the same firm or legal office may serve on the same Trial Court Judicial Nominating Commission at the same time. The Governor’s Office of Legal Counsel may, in its sole discretion, waive this restriction.
- d. No person may serve on a Trial Courts Judicial Nominating Commission while simultaneously serving on the Appellate Courts Judicial Nominating Commission or another Trial Courts Judicial Nominating Commission.
- e. No person may serve on a Trial Courts Judicial Nominating Commission who:
- i. Holds an elected office in local, State, or federal government;

- ii. Is an employee of the Office of the Governor;
 - iii. Hears cases as an active or senior member of the State or federal judiciary or of a State or federal commission or agency; or
 - iv. Holds an office in a political party.
- f. In making appointments, the Governor shall consider the racial, ethnic, and gender diversity of the Commission District.
 - g. In submitting persons for appointment, the presidents of the Bar Associations shall consider the racial, ethnic, and gender diversity of the Commission District.
 - h. In selecting persons to submit for appointment, the presidents of the Bar Associations shall consult with the presidents of other bar organizations that may operate in the Commission District.
 - i. If the presidents of the Bar Associations submit fewer than seven persons for appointment to a Trial Courts Judicial Nominating Commission, the Associations' appointments shall be decreased by the number not submitted and the Governor shall make the appointments.

(2) The Chair of each Trial Courts Judicial Nominating Commission will be designated by the Governor.

(3) Terms.

- a. The terms of the members of each Trial Courts Judicial Nominating Commission shall extend to the date of the qualification of the Governor at the next quadrennial election.
- b. At the end of a term, a member continues to serve until a successor is appointed and qualifies.
- c. If a Trial Courts Judicial Nominating Commission meets on two or more occasions during any calendar year, and if, during that year, a member fails to attend at least half of the meetings in which that member is not

otherwise disqualified from participating, the member may be removed by the Governor.

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

(5) A Trial Courts Judicial Nominating Commission member shall not be appointed to a Trial Court during the term for which the member was appointed.

D. Code of Conduct

(1) Appellate and Trial Courts Judicial Nominating Commission members shall agree to abide by the Code of Conduct during their term of service.

(2) The Code of Conduct shall be established by the Governor's Office of Legal Counsel and shall at a minimum include provisions relating to: impartiality, confidentiality, *ex parte* communications, conflicts of interest, and prohibited discriminatory practices.

E. The chair of each Commission may request the technical assistance of the Administrative Office of the Courts in providing:

(1) Training to Commission members;

(2) Notification of when a vacancy occurs or is about to occur;

(3) Standardized interview practices and questions;

(4) Recommendations as to standardized application requirements and forms; and

(5) Any other assistance the chair deems appropriate, including the provision of reasonable accommodations to Commission members or judicial applicants.

F. For each judicial vacancy, the Governor shall:

(1) Reappoint the incumbent judge;

- (2) 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
- (3) Accept applications from new candidates for the vacancy.

G. Commission Responsibilities and Procedures.

- (1) If applications are accepted from new candidates for the vacancy, a Commission shall:
 - a. Advertise the vacancy using print and electronic media, in coordination and consultation with the Administrative Office of the Courts.
 - b. Encourage qualified candidates from diverse backgrounds including, but not limited to, race, ethnicity, gender, religion, sexual orientation, gender identity, gender expression, disability, or economic status to apply for judicial appointments;
 - c. Encourage qualified candidates from diverse practice areas to apply for judicial appointments;
 - d. Notify the Maryland State Bar Association and other appropriate county and specialty bar associations of the vacancy and request that they advertise the vacancy to their membership;
 - e. Seek recommendations from interested citizens and from its own members; and
 - f. Set a closing date for submission of applications.
- (2) 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, the Governor shall determine whether to re-advertise or may direct the Commission to proceed with evaluating the applicants.
- (3) A Commission shall review all applications submitted and evaluate each applicant. In the course of its evaluation, the Commission may:

- a. Seek information beyond that contained in the materials submitted by an applicant;
 - b. 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 or specialty bar associations, and other sources; and
 - c. Request criminal history record information from a criminal justice agency, including the Central Repository, for the purpose of evaluating an applicant.
- (4) 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.
- (5) 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.
- (6) 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 and impartial judiciary.
- (7) 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 regardless of whether an applicant's legal practice is located outside of the county in which the applicant resides.
- (8) A Commission member is disqualified from participating in the consideration, evaluation, or recommending of applicants for a vacancy in which an applicant is:

- a. In the member's immediate family;
 - b. A current business or law partner;
 - c. A lawyer in the same firm or legal office as the member, unless the Commission by a majority vote of the remaining Commission members determines that the member is capable of impartially considering the applicant; or
 - d. Otherwise known to the member and the member believes they are incapable of impartially considering the applicant.
- (9) A voting session of a Commission shall be attended by at least three-fifths of the members who are qualified to participate.
- (10) No applicant may be recommended to the Governor for appointment unless by vote of a majority of 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.
- (11) 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.
- (12) 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.

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

H. Confidentiality.

(1) 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.

(2) Materials submitted by an applicant, or obtained 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 G (12), shall not disclose the Commission's evaluation of candidates to the public.

I. Reasonable accommodations shall be made for qualified Commission members or judicial applicants with a disability unless the accommodation would impose an undue hardship. Examples of a reasonable accommodation include, but are not limited to: providing, adjusting, or modifying written materials, equipment or devices; and making a readily accessible facility available for interviews.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 7th day of March, 2023.



Wes Moore
Governor

ATTEST:

Susan C. Lee
Secretary of State