



STATE OF TENNESSEE
EXECUTIVE ORDER
BY THE GOVERNOR

No. 34

**AN ORDER ESTABLISHING THE GOVERNOR'S COMMISSION FOR JUDICIAL
APPOINTMENTS FOR PURPOSES OF FILLING VACANCIES IN THE TRIAL AND
APPELLATE COURTS IN TENNESSEE**

WHEREAS, for over forty years, Governors of the State of Tennessee have been assisted in their search for highly qualified judicial nominees by a commission composed of distinguished attorneys and laypersons; and

WHEREAS, most recently, the Judicial Nominating Commission ("JNC") served in that capacity; and

WHEREAS, the JNC was created by the Legislature pursuant to its authority under Article VI, Section 3 and Article VII, Section 4 of the Tennessee Constitution; and

WHEREAS, the JNC was terminated on June 30, 2012, and wound up its affairs pursuant to Tennessee's "sunset" laws on June 30, 2013; and

WHEREAS, in order to sustain the third and equal branch of government and its continued operations, it is essential to continue to fill judicial vacancies with men and women of the highest caliber, who by temperament, ability and integrity will freely, impartially and independently interpret the laws and administer justice; and

WHEREAS, Attorney General Opinion No. 13-76, issued on October 9, 2013, confirms the Governor's authority to continue to make judicial appointments under Tennessee Code Annotated Section 17-4-113 after the termination and wind-down of the JNC.

NOW THEREFORE, I, Bill Haslam, Governor of the State of Tennessee, by virtue of the power and authority vested in me by the Tennessee Constitution and other applicable law, do hereby order and direct that:

1. The Commission. The Governor's Commission for Judicial Appointments (the "Commission") is hereby established for the purpose of filling vacancies in Tennessee trial and appellate courts.
2. Membership of the Commission.
 - a. The Commission shall consist of seventeen members.
 - b. Eleven members of the Commission shall be the incumbent members of the former JNC serving unexpired terms as of June 30, 2013. Those eleven members were appointed in the following manner:
 - i. Five (5) members were appointed by the Speaker of the House of Representatives with the following geographic designations:
 1. Two (2) members were appointed from the western division of the State;
 2. One (1) member was appointed from the middle division of the State;
 3. One (1) member was appointed from the eastern division of the State; and
 4. One (1) at-large member was appointed.
 - ii. Five (5) members were appointed by the Speaker of the Senate with the following geographic designations:
 1. One (1) member was appointed from the western division of the State;
 2. Two (2) members were appointed from the middle division of the State; and
 3. Two (2) members were appointed from the eastern division of the State.
 - iii. One (1) non-attorney member was appointed at-large by joint action of the Speaker of the Senate and the Speaker of the House of Representatives.
 - iv. If one of the eleven members of this Section 2(b) ceases to serve for any reason, then the Governor shall appoint a successor designated by the Speaker who made the original appointment. The successor shall be a resident of the same grand division as the original appointee. The vacancy shall be filled for the remainder of the unexpired term.

- c. The Governor shall appoint the remaining six (6) members in consultation with the Speaker of the House of Representatives and the Speaker of the Senate.
 - i. The members shall be appointed with the following geographic designations:
 - 1. One (1) member shall be appointed from the western division of the State;
 - 2. One (1) member shall be appointed from the middle division of the State;
 - 3. Two (2) members shall be appointed from the eastern division of the State; and
 - 4. Two (2) members shall be appointed at-large.
 - ii. The six (6) newly appointed members shall be attorneys.
 - iii. If a member appointed by the Governor ceases to serve for any reason, then the successor shall be appointed by the Governor in consultation with the Speakers.
- d. At all times, no more than three (3) of the members of the Commission appointed at-large may be residents of the same grand division.
- e. At least ten (10) of the members of the Commission shall be attorneys.
- f. Members shall serve a term that commences on the date of this Executive Order, or on the date of appointment in the case of the new members, and terminates on November 5, 2014, or on such later date as the Governor may set by amendment to this Executive Order.
- g. Appointments to the Commission shall be made with a conscious intention of selecting a body that reflects diversity with respect to race, ethnicity, gender, and representation of rural areas as well as urban centers.
- h. Each member of the Commission shall be at least thirty (30) years of age, and shall have been a citizen of this State for at least two (2) years immediately prior to appointment. Any member appointed from one (1) of the State's grand divisions shall have been a resident of that grand division for at least one (1) year immediately prior to appointment.
- i. Each attorney member shall be duly licensed to practice by, and in good standing with, the Supreme Court of Tennessee.
- j. Members of the Commission shall not receive any compensation for their services, but shall be reimbursed for their official travel expenses pursuant to policies and guidelines promulgated by the Department of Finance and Administration.

- k. No member of the Commission shall be a salaried office holder of this State or the United States, nor shall any member of the Commission hold any office in any political party or political organization; provided that members of the national guard and members of any armed forces reserve organization, any district attorney general or an employee of a district attorney general, and any district public defender or an employee of a district public defender shall not be considered as salaried office holders. This Section 2(k) shall not apply to the solicitor general or any employee of the attorney general and reporter, any of whom shall be eligible to serve as a member of the Commission.
- l. Any member of the Commission who becomes a salaried office holder of this State or the United States, or who accepts any office in any political party or political organization, vacates the member's office as a member of the Commission.
- m. A chair shall be selected by the Governor.
- n. A member of the Commission who misses more than one (1) meeting of the Commission may be subject to removal by the Governor.

3. Administration of the Commission.

- a. Upon the request of the Governor and with the consent of the Administrative Office of the Courts, the Administrative Office of the Courts shall keep and maintain all records of the Commission as well as furnish the Commission with any other secretarial or clerical services or assistance it may require. The Administrative Office of the Courts will notify all Commission members of the date, time and place of any Commission meetings or hearings.
- b. The Commission is authorized to create procedures and ethics policies for the conduct of its business and discharge of its duties that have not been addressed in this Executive Order.

4. Nomination Procedures.

- a. The Commission shall require every applicant for a judicial vacancy or impending judicial vacancy to submit an application on a form approved by the Governor. The application shall be submitted to the Administrative Office of the Courts for distribution to the Commission members.
- b. If a vacancy occurs during the term of office of a trial court judge by death, resignation or otherwise, or if the Governor is reliably informed that a vacancy is impending, the Governor shall provide written notice of the vacancy or impending vacancy to the Commission. The Commission shall thereafter, at the earliest practicable date, hold a public meeting in the judicial district from which the vacancy is to be filled. If the Governor is reliably informed that a vacancy is impending, including the resignation or retirement of a judge at a future date, the public meeting may be held at any

time prior to the occurrence of the vacancy in the judicial district from which the vacancy is to be filled.

- c. If a vacancy occurs during the term of office of a judge of the Court of Appeals or Court of Criminal Appeals, or if the Governor is reliably informed that a vacancy is impending, the Governor shall provide written notice of the vacancy or impending vacancy to the Commission. An impending vacancy occurs if an incumbent judge fails to file a written declaration of candidacy required by Tennessee Code Annotated Section 17-4-114 or Section 17-4-115, or if the Governor is reliably informed that a vacancy is impending for another reason, including resignation or retirement at a future date. After the Commission receives notice from the Governor, it shall, at the earliest practicable date, hold a public meeting in the grand division from which the vacancy is to be filled. If the vacancy is impending, the public meeting may be held at any time prior to the occurrence of the vacancy.
- d. If a vacancy occurs during the term of office of a judge of the Supreme Court, or if the Governor is reliably informed that a vacancy is impending, the Governor shall provide written notice of the vacancy or impending vacancy to the Commission. An impending vacancy occurs if an incumbent judge fails to file a written declaration of candidacy required by Tennessee Code Annotated Section 17-4-114 or Section 17-4-115, or if the Governor is reliably informed that a vacancy is impending for another reason, including resignation or retirement at a future date. After the Commission receives notice from the Governor, it shall, at the earliest practicable date, hold a public meeting in Nashville. If the vacancy is impending, the public meeting may be held in Nashville at any time prior to the occurrence of the vacancy.
- e. Notice of the time, place and purpose of the meeting shall be given to newspapers, posted on the Administrative Office of the Courts' website, and given by such other means and media as the Commission deems proper.
- f. Any citizen, attorney or non-attorney, shall be entitled to attend the meeting and express orally or in writing the citizen's approval of, or objections to, any suggested nominee for the judicial vacancy. Any licensed attorney may appear and make a statement, or deliver a written statement, in support of the attorney's own nomination.
- g. After one (1) public hearing, the Commission may hold such additional interviews with the candidates as it deems necessary. The Commission shall make independent investigation and inquiry to determine the qualifications of possible nominees for the judicial vacancy and shall endeavor to encourage qualified attorneys to accept nomination and agree to serve if appointed to the judicial vacancy. All hearings and interviews of the Commission shall be conducted publicly and shall comply with Title 8, Chapter 44, Part 1 of the Tennessee Code Annotated.

- h. Deliberations among the Commission members shall occur immediately after the conclusion of the interviews. The Commission shall adjourn the public hearing and interviews and deliberate in Executive Session. Such deliberations shall not be open to the public and shall not be required to comply with Title 8, Chapter 44, Part 1 of the Tennessee Code Annotated.
- i. At the conclusion of deliberations among the Commission members, the Commission shall reconvene the public hearing for purposes of voting. Commission members shall vote anonymously by written ballots, but the ballots shall be collected, announced and tallied at the meeting by the chair or presiding officer.
- j. As soon as practicable, and no later than sixty days from receipt of written notice from the Governor that a vacancy has occurred or that a vacancy is impending, the Commission shall select three (3) persons whom the Commission deems best and most qualified, and available, to fill the vacancy and shall certify the names of the three (3) persons to the Governor as nominees for the judicial vacancy or impending judicial vacancy. The Commission shall select each nominee by a vote of no less than a majority of all members of the Commission.
- k. All nominees sent by the Commission to the Governor must be attorneys, who are duly licensed to practice law in this State and who are fully qualified under the Constitution and statutes of this State to fill the office for which they are nominated.
- l. The Commission shall provide the Governor with copies of the applications of the three (3) nominees and any other information requested by the Governor.

5. Appointment Process.

- a. Prior to making an appointment, the Governor shall direct the Tennessee Bureau of Investigation or other appropriate agencies to perform appropriate financial and criminal background investigations and inquiries of the prospective appointees, and the Governor shall review and assess the results of the background investigations and inquiries. The results of the financial and criminal background investigations of the nominees shall not be subject to the Tennessee Open Records Act.
- b. The Governor shall fill the trial or appellate court vacancy by appointing one (1) of the three (3) persons nominated by the Commission, or the Governor may require the Commission to submit up to one (1) other panel of three (3) additional nominees. The Commission shall submit the second panel within forty-five days after the Governor requests the panel. Within sixty days following receipt of the second panel of nominees, the Governor shall fill the trial or appellate court vacancy by appointing any one (1) of the six (6) nominees certified by the Commission.

- c. If the judicial district is one (1) of the five (5) smallest judicial districts according to the 2010 federal census or any subsequent federal census, the Commission may send two (2) names to the Governor in any panel submitted.
- d. If the Commission does not furnish a list of three (3) nominees, or two (2) in the case of Section 5(c), to the Governor within sixty days after the Commission receives notice of a vacancy or impending vacancy, then the Governor may fill the vacancy by appointing any person who is duly licensed to practice in this State and who is fully qualified under the Constitution and statutes of this State to fill the office.
- e. All appointments made pursuant to this Executive Order shall be effective on the date the vacancy occurs, or on the date of appointment if the vacancy has already occurred.

IN WITNESS WHEREOF, I have subscribed my signature and caused the Great Seal of the State of Tennessee to be affixed this 16 day of October, 2013.



GOVERNOR

ATTEST:



SECRETARY OF STATE

