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SECRETARY OF STATE

STATE OF TENNESSEE
EXECUTIVE ORDER
BY THE GOVERNOR

No. 41

**AN ORDER ESTABLISHING THE GOVERNOR'S COUNCIL FOR
JUDICIAL APPOINTMENTS FOR THE TRIAL AND APPELLATE COURTS OF
TENNESSEE FOLLOWING THE ADOPTION OF THE CONSTITUTIONAL AMENDMENT
TO ARTICLE VI, SECTION 3 ON NOVEMBER 4, 2014**

WHEREAS, on November 4, 2014, the citizens of the State of Tennessee voted to amend Article VI, Section 3 of the Tennessee Constitution relative to the method of judicial selection in Tennessee; and

WHEREAS, with the passage of this amendment, the method of selecting Judges of the Supreme Court or any intermediate appellate court in Tennessee for a full term or to fill a vacancy shall be by and at the discretion of the Governor; and judges so appointed shall be confirmed by the Legislature; and thereafter, they shall be elected in a retention election by the qualified voters of the State; and

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

WHEREAS, most recently, the Governor's Commission for Judicial Appointments served in that capacity; and

WHEREAS, the amendment to Article VI, Section 3 of the Tennessee Constitution approved by the voters on November 4, 2014, provides for gubernatorial appointment, and my preference is to have a council advising me in regard to those appointments; and

WHEREAS, the Legislature in accordance Article VII, Sections 4 and 5 of the Tennessee Constitution authorized the Governor to make appointments of judges to fill vacancies in trial courts.

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 Council. The Governor's Council for Judicial Appointments (the "Council") is hereby established for the purpose of advising me in regard to filling vacancies in Tennessee trial and appellate courts.
2. Membership of the Council.
 - a. The Council shall consist of eleven members.
 - b. The members shall be appointed by the Governor and shall serve at the pleasure of the Governor.
 - c. In making initial appointments to the Council, the Governor shall:
 - i. Appoint four (4) members for a term to expire on November 5, 2015. These members shall be eligible to serve for two (2) additional terms of two (2) years each.
 - ii. Appoint three (3) members for a term to expire on November 5, 2017. These members shall be eligible to serve for one (1) additional term of two (2) years.
 - iii. Appoint four (4) members for a term to expire on November 5, 2018. These members shall not be eligible for reappointment at the conclusion of their term.
 - d. Thereafter, the Governor shall appoint members for a term of two (2) years beginning on the 6th day of November, and such members shall be eligible for one (1) additional term of service.
 - e. The appointments to the Council shall have the following geographic designations:
 - i. Three (3) members shall be appointed from the western division of the State;
 - ii. Three (3) members shall be appointed from the middle division of the State;
 - iii. Three (3) members shall be appointed from the eastern division of the State; and
 - iv. Two (2) members shall be appointed at-large.
 - f. If a member ceases to serve for any reason, then the Governor shall appoint a successor from the departing member's specified geographic area, if any, to fill the unexpired term. The successor shall be eligible for one (1) additional term of service.
 - g. Seven (7) members of the Council shall constitute a quorum.
 - h. At least eight (8) of the members of the Council shall be attorneys.
 - i. The terms of the initial members shall commence on the date of their appointment.
 - j. Appointments to the Council shall take into consideration diversity.
 - k. Each member of the Council shall be at least thirty years of age, shall have been a citizen of this State for at least two (2) years immediately prior to appointment, and shall have been a resident of the grand division, from which that member is appointed in accordance with Section 2(e)(i)-(iii) above, for at least one (1) year immediately prior to appointment.

- l. Each attorney member shall be duly licensed to practice by, and in good standing with, the Supreme Court of Tennessee.
- m. Members of the Council 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.
- n. No member of the Council shall be a salaried office holder of this State or the United States, nor shall any member of the Council 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 subsection (n) 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 Council.
- o. Any member of the Council 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, in each instance failing to comply with subsection (n), vacates the member's office as a member of the Council.
- p. A chair of the Council shall be selected by the Governor and shall serve for a term of one (1) year. The chair may serve for an additional year as chair at the discretion of the Governor.
- q. A member of the Council who misses more than two (2) meetings in a given year of the member's term on the Council may be subject to removal by the Governor.

3. Administration of the Council.

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

4. Nomination Procedures.

- a. The Council 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 Council members.
- b. The Nomination Procedures for the various courts are as follows:
 - i. Trial Court. 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 Council. The Council

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.

- ii. Intermediate Appellate Courts. 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 Council. An impending vacancy occurs if an incumbent judge fails to file a written declaration of candidacy required by statute, 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 Council 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.
 - iii. Supreme Court. 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 Council. An impending vacancy occurs if an incumbent judge fails to file a written declaration of candidacy required by statute, 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 Council 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.
 - iv. Workers' Compensation Appeals Board. Upon request by the Governor, the Council is authorized to conduct a public hearing to fill any vacancy on the Workers' Compensation Appeals Board ("Appeals Board") created by Tennessee Code Annotated §50-6-217. If a vacancy occurs during the term of office of a judge of the Appeals Board, or if the Governor is reliably informed that a vacancy is impending due to a resignation, retirement or for another reason, the Governor may provide written notice of the vacancy or impending vacancy to the Council. After the Council 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.
- c. When a judge informs the Governor that the judge will retire or resign such notice shall be final upon receipt.
 - d. Notice of the time, place and purpose of the meeting shall be posted on the website of the Administrative Office of the Courts, and given by such other means and media as the Council deems proper.

- e. At the discretion of the Council, an opportunity may be extended for public comment during the public hearing in accordance with the procedures established by the Council.
- f. In addition to a public hearing, the Council may hold such additional interviews with the candidates as it deems necessary. The Council 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.
- g. All hearings of the Council shall be conducted publicly and shall comply with Title 8, Chapter 44, Part 1 of the Tennessee Code Annotated, except for the executive session and deliberations in Section 4(h).
- h. Deliberations among the Council members shall occur immediately after the conclusion of the interviews. The Council 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 Council members, the Council shall reconvene the public hearing for purposes of voting. Council members shall vote anonymously by written ballots. 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 Council shall select three (3) persons whom the Council 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 Council shall select each nominee by a vote of no less than a majority of all members of the Council.
- k. All nominees sent by the Council 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 Council 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 Council, or the Governor may require the Council to submit up to one (1) other panel of three (3) additional nominees. The Council 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 Council.

- 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 Council may send two (2) names to the Governor in any panel submitted.
 - d. If the Council 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 Council receives notice of a vacancy or impending vacancy, or within forty-five days after the Governor requests the second panel, 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 trial court and Appeals Board 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. All appellate court appointments made pursuant to this Executive Order shall be effective upon confirmation in accordance with Article VI, Section 3 of the Tennessee Constitution.
6. This Executive Order No. 41 supersedes and rescinds Governor Haslam's Executive Order No. 34, dated October 16, 2013, and Governor Haslam's Executive Order No. 38, dated June 9, 2014.

IN WITNESS WHEREOF, I have subscribed my signature and caused the Great Seal of the State of Tennessee to be affixed this 6th day of November, 2014.


GOVERNOR

ATTEST:


SECRETARY OF STATE

