

MITT ROMNEY GOVERNOR

KERRY HEALEY
DEPUTY GOVERNOR

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE DEPARTMENT
STATE HOUSE, BOSTON 02133
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By His Excellency

MITT ROMNEY
Governor

EXECUTIVE ORDER 445 (No. 03-3)

**ORDER RECONSTITUTING THE JUDICIAL NOMINATING COMMISSION AND
ESTABLISHING A CODE OF CONDUCT FOR COMMISSION MEMBERS AND
NOMINEES TO JUDICIAL OFFICE**

Superseding Executive Order 420 (and amendments thereto)

WHEREAS, the Constitution of the Commonwealth of Massachusetts, Part One, Article XXIX, guarantees every citizen the right to judges as "free, impartial and independent as the lot of humanity will admit;" and

WHEREAS, under the Constitution and laws the Governor is charged with the responsibility for nominating and appointing, with the advice and consent of the Executive Council, all judicial officers; and

WHEREAS, the quality of our system of administering justice is determined largely by the quality of the judicial officers appointed to serve within our judicial system; and

WHEREAS, public trust and confidence in the judiciary begins with the process by which judges are appointed to the bench; and

WHEREAS, the pre-eminent consideration for the selection of judicial officers ought to be merit, including men and women who by intellect, work ethic, judgment, temperament, experience, competence and integrity demonstrate the capacity and commitment to sensibly, intelligibly, promptly, impartially and independently interpret the laws and administer justice; and

WHEREAS, judicial candidates should be drawn from a cross-section of our community, representing not only geographically diverse parts of the Commonwealth, but reflecting as well a diversity of our citizens; and

WHEREAS, the highest quality of judicial officer appointments can best be assured by the use of a non-partisan, non-political Judicial Nominating Commission composed of outstanding citizens in aid to the discretion reposed in the Governor, drawn from all quarters of the Commonwealth and a cross-section of its diverse population;

NOW, THEREFORE, I, Mitt Romney, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution as Supreme Executive Magistrate, Part 2, c. 2, § I, Art. I, do hereby revoke Executive Order 420 and amendments thereto. and order as follows:

1.0 Commission and Scope: A Judicial Nominating Commission ("Commission") is hereby established to identify and invite application by persons qualified for judicial office and to advise the Governor with respect to appointments of judges in the Appeals Court and Trial Court departments and clerk-magistrates and Recorder of the Land Court.

1.1 Membership: The Commission shall consist of twenty-one persons, including the Chairperson, appointed by the Governor and serving at his pleasure ("commissioners"). To the extent practicable, the commissioners shall reflect diversity of race, gender, ethnicity, geography and, among commissioners who also are members of the bar, various practice areas and size of practice.

1.2 Officers: The officers of the Commission shall consist of the Chairperson, appointed by the Governor, and a Vice Chairperson designated by the Chairperson from among the commissioners appointed by the Governor. The Chairperson shall preside at all meetings of the Commission, except that the Vice Chairperson shall preside in the absence of the Chair and a commissioner designated by the Chair shall preside in the absence of both the Chair and Vice Chair. The Executive Director or, subject to the direction of the Executive Director, Deputy Executive Director shall serve as the Clerk to the Commission during meetings and assist the Chairperson as she may request during such meetings.¹

1.3 Qualification of Members: Commissioners shall have demonstrable knowledge of the judicial system and experience in the needs and operation of the Massachusetts courts. Commissioners who are members of the bar shall have at least ten years of experience relevant to the courts as former judges, former magistrates, trial counsel, government counselor corporate counsel and shall be members of the Massachusetts bar in good standing. Commissioners who are not members of the Massachusetts bar shall have regularly observed or worked with the Massachusetts courts and be familiar with the attributes that best qualify a person for appointment as a judicial officer.

1.4 DisQualification of Members: Persons shall be disqualified from nomination to judicial office or from appointment to the Commission as follows:

1.4.1 Ineligibility for Judicial Appointment: Any commissioner and the commissioner's immediate family, including persons related to the commissioner's immediate family by marriage, are disqualified from nomination by the Governor to any judicial office for three years after the last date of the commissioner's service on the Commission.

1.4.2 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 or persons related to their immediate family members by marriage, as well as current or former business or law partners of current such elected officials, shall be disqualified from appointment to the Commission.

1.4.3 Registered Lobbyists: Any person registered as a state or federal lobbyist or executive agent, or any person employed by registered lobbyists or executive agents, shall be disqualified from appointment to the Commission.

¹ References in this Executive Order to the female gender shall include the male gender and references to the male gender shall include the female gender.

1.4.4 Inability to Attend Meetings: Any person unable regularly to attend meetings of the Commission, including interviews of applicants for judicial office unless arrangements have been made to view such interviews by recorded video or participate by teleconference as the Chairperson 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.

1.4.5 Violation of Code of Conduct: Violation of the Code of Conduct applicable to commissioners shall constitute resignation by the commissioner, as the Governor's Chief Legal Counsel may determine in her sole discretion. In any event, all commissioners serve at the pleasure of the Governor and may be removed without cause.

1.5 Code of Conduct for Commissioners: All persons serving as commissioners agree to abide by the following code of conduct during their service on the Commission:

1.5.1 No Political Contributions: No commissioner shall make or solicit other persons to make political contributions on behalf of any candidate for county, state or federal elected office.

1.5.2 Impartiality: No commissioner shall conduct herself in a manner that reflects discredit upon the judicial selection process or discloses partisanship or partiality in the consideration of applicants. A commission member shall disclose to the Commission all current or past personal and business relationships with a prospective applicant. In addition to disclosure, a commissioner shall recuse herself, refrain from voting and absent herself from the room during discussions concerning (a) any applicant who is the current business or law partner of the commissioner and (b) any such applicants whom the commissioner believes she is incapable of considering impartially.

1.5.3 Advocacy: After the Commission certifies the names of qualified applicants to the Governor, no commissioner shall attempt, directly or indirectly, to further influence the decision of the Governor, the Governor's Chief Legal Counselor any member of the Executive Council except in response to

communications initiated by any of them. No attempt shall be made to rank such applicants or to comment publicly or to disclose any preference of the commission concerning applicants. Commissioners shall avoid giving preferential assistance to any applicant to the exclusion of any other applicant.

1.5.4 Confidentiality: Except as otherwise may be necessary for purposes of conducting due diligence of an applicant's qualifications and during Commission meetings, each commissioner shall keep confidential all information concerning any applicant, except that information which may reflect unfavorably on an applicant's suitability for judicial office shall be disclosed to the Chairperson. The Chairperson shall disclose any such information to the commission and to investigators employed on behalf of the commission for purposes of due diligence. No discussions, motions, opinions, votes or facts revealed during meetings of the Commission may be directly or indirectly disclosed by any commissioner to any person other than another commissioner in accordance with this Code of Conduct. Except as may be required to conduct due diligence, all substantive communications with applicants outside of meetings and interviews shall be conducted by the Chairperson or her designee.

1.5.5 Ex Parte Communications: Except as may be required during the conduct of due diligence investigations, and excluding communications with the Chairperson, all communications between commissioners concerning applicants shall occur in the course of Commission meetings and not otherwise.

1.5.6 Commission Letterhead: All written communications by the Commission or any commissioner with any applicant or with any person or entity concerning an applicant shall be limited to Commission stationery. No law firm or law practice letterhead stationery shall be used in connection with any such communication.

1.5.7 Conflict of Interest: All commissioners shall avoid self-promotion in the course of their service and shall not seek any advantage

in threatened or pending litigation or in professional or personal relationships related to their service or membership on the Commission. It is inappropriate for any commissioner to distribute business cards or firm letterhead or advertising that make reference to Commission membership. It is appropriate for a commissioner to include the fact of appointment on her resume. No commissioner or her immediate family may accept a gift or anything of value from any applicant, or the immediate family members of any applicant, unless the commissioner had a bona fide friendship with the applicant and recused herself from participation in consideration of the applicant.

1.5.8 Civility: All commissioners shall display courtesy and respect to all applicants as well as to other commissioners. Questioning of applicants that resembles techniques appropriate for cross-examination of a hostile witness is inappropriate for interview of applicants.

1.6 Commission Member Handbook: The Executive Director shall prepare and periodically revise a handbook for commissioners to inform them of Commission procedures, forms, protocols and to train commissioners in the performance of their duty. The handbook shall be posted on the Commission website for public inspection. In the event of a conflict between the handbook and the terms of this Executive Order; the Executive Order shall govern.

Section 2.0 Qualifications for Judicial Office: The Governor will not nominate any person for judicial office who does not meet the following minimum qualifications. Any application that fails to conform to these minimum qualifications may be rejected by the administrative staff of the Commission without further action or review by the Commission.

2.1 Applicants for Justice Positions: All applicants for the position of Justice in any court shall meet the following minimum qualifications for consideration by the Governor:

2.1.1 Massachusetts Bar Membership: All applicants shall be a member of the Massachusetts bar in good standing at the time of the application.

2.1.2 Education: All applicants shall be graduates from an accredited undergraduate college or university as well as a law school accredited by the Commonwealth of Massachusetts or American Bar Association.

2.1.3 Residency: All applicants shall be residents of the Commonwealth of Massachusetts at the time of application.

2.1.4 Experience: All applicants shall have minimum levels of legal experience and training as follows:

2.1.4.1 Appeals Court: 15 years

2.1.4.2 Trial Courts: 10 years.

2.1.5 Citizenship: All applicants shall be citizens of the United States of America.

2.2 Applicants for Magistrate and Recorder Positions: All applicants for the position of Clerk-Magistrate or Land Court Recorder in any court shall meet the following minimum qualifications for consideration by the Governor:

2.2.1 Education: All applicants shall be graduates from an accredited undergraduate college or university or have at least fifteen years of experience in the court applied for or court of comparable jurisdiction.

2.2.2 Residency: All applicants shall be residents of the Commonwealth of Massachusetts at the time of application.

2.2.3 Experience: All applicants shall have minimum levels of training and experience as follows:

2.2.3.1 Members of the Bar: Applicants who are members of the Massachusetts bar shall have been members of the bar for at least three years.

2.2.3.2 Non-Members of the Bar: Applicants who are not members of the bar shall be able to demonstrate at least five years experience in the court applied for or in a court of comparable jurisdiction.

2.2.4 Citizenship: All applicants shall be citizens of the United States of America.

2.3 Code of Conduct for Applicants for Judicial Office: All persons applying for appointment as a judicial officer agree to abide by the following code of conduct while their application is pending:

2.3.1 Telephone and Email Lobbying Prohibited:

Lobbying for appointment to judicial office is inconsistent with the dignity of the office and the function of JNC commissioners. Applicants for judicial office shall not call or email and shall not cause or encourage other persons to call or email any commissioner (including the commissioner's family members or law partners) in support of their application. Applicants who have been invited to an interview with the Commission are permitted to invite persons with actual knowledge of their abilities to write letters to commissioners in support of their application. Commissioners properly may entertain telephone calls that provide material information regarding the fitness of any applicant for judicial office that the caller is reluctant to put in written form out of concern for safety, retaliation, retribution or other legitimate motive. It is appropriate for persons to return telephone calls or emails initiated by a commissioner.

2.3.2 Political Contributions to Executive Prohibited: No person applying for appointment as a judicial officer shall make any political contribution to the Governor, Lieutenant Governor or Executive Council at any time while the application is pending.

2.4 Code of Conduct for Nominees for Judicial Office: After an applicant has been informed that he or she **will be** nominated by the Governor to judicial office, the nominee shall comply with the following code of conduct. Failure materially to comply with the following may result in the nomination being withdrawn prior to receipt of advice and consent by the Council:

2.4.1 Political Contributions Prohibited: After nomination, no nominee shall make any political contribution to any person holding or seeking county, state or federal elected office.

2.4.2 Appearance in Court of Nomination: Except as necessary to seek leave to withdraw from representation, a continuance or to avoid prejudice to a client's interests, or as a judge may otherwise order, no nominee shall appear as counsel in the court or court

division to which he or she has been nominated. In the event of appearance, the nominee shall disclose the pendency of the nomination and give opposing counsel or pro se parties an opportunity to object.

2.4.3 Conformance with Canons of Judicial Conduct: All nominees shall comply with Canon 1, Canon 2 and Canon 7 of the Canons of Judicial Conduct, contained within the Rules of the Supreme Judicial Court, except as a client's interests may otherwise require within the bounds of the law.

3.0 Notice of Judicial Office Vacancies: The Executive Director of the Commission shall determine all vacancies mandated by retirement required by the state Constitution which will occur during the Governor's term of office ("mandated vacancies") as well as actual vacancies occasioned by the death, retirement, resignation or removal from judicial office that have occurred ("actual vacancies"). The Executive Director shall update the determination of actual vacancies no less frequently than once quarterly.

3.1 Posting of Mandated and Actual Vacancies: The Executive Director shall cause to be posted on the Commission website all mandated and actual vacancies, listed by department and division and identifying the name of the incumbent judicial officer holding or most recently holding said position, together with date of mandated vacancy. This information also shall be made available by the Executive Director to any member of the public or Commission upon request.

3.2 Rolling Consideration of Applications: There shall be no established deadline for application for judicial office. All applications of qualified candidates will be reviewed and considered for appointment both as to actual vacancies as well as to mandated vacancies seasonably in anticipation of retirement by the incumbent judicial officer. Applicants for judicial appointment shall be considered for all mandated and actual vacancies in all Trial Court Departments, unless the applicant has restricted consideration to a particular court department(s) as indicated on the application form. Applicants shall be encouraged to apply for any actual vacancy as well as any mandated vacancy that will occur within four to six months from the date of application.

3.3 Advertisement of Vacancies: The Commission Executive Director, from time to time or as directed by the Chair of the Commission, shall cause to be advertised the pendency of actual and mandated judicial vacancies for consideration by members of the bar and the public. All advertisements shall include the Commission website address as well as a statement to the effect that the Commission encourages applications by qualified persons of diverse gender, race, ethnicity and experience.

4.0 Form of Application: The form of application for a position of Justice shall be similar to that attached as Appendix A, and the form of application for a position of Clerk-Magistrate or Recorder shall be similar to that attached as Appendix B, as may from time to time be amended by subsequent Executive Order.

4.1 Part One of Application: The application form shall be divided into two parts. Part One of the application shall include information reflecting the applicant's name, residential address, age, other personal identifying information, and the names and contact information for all persons serving as references for the applicant. Part One shall include information demonstrating that the applicant meets the minimum qualifications for appointment to judicial office, describe above. Each copy of the application shall be stapled or bound with Part One separately bound or stapled from Part Two.

4.2 Part Two of Application: Part Two of the application shall include information reflecting the applicant's qualifications for judicial office. Except as may necessarily be revealed as a qualification, Part Two shall not contain any personal identifying information regarding the applicant. Applicants who are solo practitioners should identify their practice in Part Two without mention of the applicant's name. Names of references shall not be included in Part Two.

4.3 Coding of Applications: The applicant shall code the front page of Part One and the front page of Part Two of each copy of the application, in the upper right corner, with a code which consists of the last 7 digits of the applicant's social security number (i.e. 9-87-6543). Such coding will permit the Commission Executive Director to index and identify the name of the applicant in Part Two without disclosing the name of the applicant to Commission members.

4.4 Preaddressed Postage Prepaid Envelopes: Each applicant shall be responsible for providing 21 postage-prepaid envelopes, addressed to each Commission member, of sufficient size to permit Part Two of the application to be mailed to the Commissioners. Envelopes should not bear any return address that could identify the applicant. Commissioner addresses are available on the Commission website or by calling the Commission Executive Director. Commission staff will be responsible for mailing Part Two of the application to each Commission member using such envelopes.

4.5 Review of Nominee Application by Governor's

Council: The application of any applicant nominated for judicial office may be reviewed by the Executive Council in the performance of its constitutional duties within the Executive Branch of government while the applicant's nomination is pending. The Governor's Chief Legal Counsel also may request that the application be reviewed by the Joint Bar Committee. Such applications do not constitute public records.

4.6 Application Instructions: The Executive Director shall prepare and periodically revise instructions for applicants to assist the application process and for ease of use by applicants.

5.0 Application Process: Applicants shall mail or deliver to the Commission office (Judicial Nominating Council, Room 54, State House, Boston 02133) 24 copies of Part One and Part Two of the application. Commission staff will forward Part Two of the application to each Commissioner and index and file Part One of the application for future reference. Except as otherwise provided in this Executive Order, no Commission staff person shall provide and no Commission member shall request information regarding the identity of persons who have submitted a Part Two application for review.

5.1 Staff Review: The Commission Executive Director is responsible for reviewing all applications for conformance with the qualifications for judicial officers and compliance with this Order. All applications shall be acknowledged in writing and shall include a brief description of the application process. Applications by persons failing to meet minimum qualifications shall be returned to the applicant with an explanatory letter and invitation to reapply after minimum qualifications have been satisfied. Part Two of all applicants meeting the minimum qualifications shall be mailed to each member of the Commission.

5.1 Blind Initial Review: Commissioners shall review Part Two applications to determine who, based on qualifications described in Part Two, will be invited to appear before the Commission for an interview. An applicant must receive at least 7 votes to be invited for an interview. All votes shall proceed as described in Section 6.0, et seq., below. After the Commission has acted on an application, the Commission Executive Director and/or Deputy Executive Director shall disclose a list to each Commission member of the names of applicants accepted for interview and not accepted for interview. Thereafter, on motion of any Commissioner and supported by affirmative vote of at least 16 members of the Commission, applicants not invited for interview

after review of the Part Two application may then be invited for interview.

5.2 Interview: Any Commissioner may ask questions which in the Commissioner's judgment will assist in performing their function. All questions and comments to applicants shall be courteous, fair, respectful and shall not inquire into particular decisions that a judicial officer has made or will likely be required to make as a judicial officer concerning the merits of any actual case. Applicants may be asked questions concerning their management and administrative capabilities and decisions. Applicants may be invited for additional interviews in the discretion of the Commission.

5.2.1 Ad Hoc Subcommittees: Whenever the number of applicants awaiting interview exceeds the ability of the Commission timely to provide recommendations for nomination to judicial office, the Chair in her discretion may designate five or more commissioners to serve as an ad hoc subcommittee to conduct interviews. Any such subcommittees shall be grouped corresponding to a particular Trial Court department in which actual or mandated vacancies exist which are currently under consideration. The subcommittee shall report its majority findings and recommendations to the Commission for consideration and vote. All voting provisions governing the Commission shall govern votes taken in subcommittee.

5.2.2 Referral to Full Commission: On motion of any commissioner and vote of at least seven commissioners, any applicant interviewed by a subcommittee shall be called back for interview by the Commission at any time before the Commission votes for recommendation for nomination.

5.3 Due Diligence: After interview, by vote that shall proceed in accordance with Section 6.0, the Commission shall decide whether to proceed with due diligence inquiries regarding each applicant. An applicant shall receive 9 votes to proceed to the due diligence stage of the process. The Chair of the Commission shall assign two or more Commissioners to undertake due diligence responsibility for a particular applicant for report at the next scheduled meeting or such further meeting as the Chair may designate. The Commission Executive Director and/or Deputy Executive Director may assist in the due diligence inquiries as may be requested by the Chair. All due diligence research shall utilize a form provided by the Commission Executive Director to assure

uniform inquiry and basis for dissemination of due diligence information to the Commission.

5.4 Deliberations: After completion of the due diligence process and upon consideration of information and evidence regarding applicants obtained during the due diligence or otherwise, Commissioners shall deliberate and discuss the relative strengths and weaknesses of applicants and may consider the particular needs of courts for which actual or mandated vacancies exist in determining relevant strengths and weaknesses of applicants. All information raised in deliberations is strictly confidential and shall not be revealed outside the Commission membership. Using the voting procedure described in 6.0, et seq. below, an applicant shall receive 13 affirmative votes from commissioners to be forwarded to the Governor's Office to be considered for nomination, provided that the Commission shall send no fewer than 3 and no more than 6 names of applicants to the Governor for each vacant judicial office.

5.5 Form of Notice to Governor for Nomination: All applicants recommended to the Governor for nomination shall be listed alphabetically by last name with no ranking or indication of preference or vote totals by the Commission, other than to indicate the actual or mandated vacancy, by court or courts, for which the applicant is being suggested.

6.0 Method of Voting: This section shall govern all voting conducted by the Commission with respect to any decision made by an applicant for judicial office. All other voting, such as motions to approve minutes or motions for recess or to adjourn, may be made by any method announced by the Chair of the Commission. The Commission may not waive these provisions regarding applicant-related voting procedure, except the Chair in her discretion may call for voice votes or show of hands on decisions whether to grant an interview or proceed to due diligence.

6.1 Ballot Form: All ballot forms shall be provided to the commissioners by the Commission staff, attached as Appendix C to this Executive Order. Each ballot shall include the name of one commissioner on a preprinted format, with each commissioner provided ballots in sufficient supply for use at the meetings. The ballot shall include at least 10 lines on which each commissioner may list their choices when called upon to vote. Each ballot shall include a signature line and the following certification: "By signing this ballot, I hereby swear under the penalties of perjury that I have complied with the Code of Conduct for JNC Commissioners described in Section 1.5 of Executive Order 03-3. I further certify that the foregoing votes represent my own recommendations as a matter of

conscience and judgment to the best of my ability." The name of the commissioner submitting a ballot shall not be announced or made available for review by other commissioners except the Chair, Governor's Chief Legal Counsel and Commission staff; the name of commissioners on each ballot shall be maintained for internal use only to assure the integrity of the voting process.

6.1.1 Absentee Ballots: Any commissioner who the Chair determines is unable for good cause to be present in person to cast her votes may vote by absentee ballot by giving or faxing or mailing her completed and signed ballot form to the Chair in advance of the vote.

6.1.2 Proxy Votes: Proxy votes are prohibited.

6.2 Voting for Interview: Voting to determine which applicants will be invited for interview consists of listing of the code number (or name of applicant in the event of reconsideration) of all applicants under consideration whom the commissioner wishes to interview. Votes shall be written on the ballot form, signed by the commissioner, and given to the Chair. The Chair will announce the names or code numbers of each applicant listed on the ballot form which shall be recorded by the Executive Director or Deputy Executive Director in attendance at the meeting. The Chair shall not announce the name of the commissioner casting any particular vote. There is no minimum or maximum number of applicants from those pending who can be listed on the ballot form for invitation for interview. Any applicant who receives the votes of 7 commissioners (or 16 in the event of reconsideration) shall be invited for interview before the Commission.

6.3 Voting for Due Diligence: Voting for due diligence shall proceed in the same manner as voting for interview, except that the affirmative vote of 9 votes shall be required for an applicant to proceed to due diligence review.

6.4 Voting for Recommendation for Nomination: Voting for recommendation for nomination shall proceed in the same manner as voting for interview, except:

6.4.1 Number of Votes Required: No applicant shall be recommended to the Governor for nomination without receiving 13 affirmative votes of the Commission. This requirement shall not be waived or reduced in the event fewer than 21 commissioners are in attendance or otherwise participating in the

meeting. Commissioners who have reviewed the qualifications and obtained all relevant information concerning an applicant may vote by absentee ballot given to the Chair and signed by the commissioner at any time before the vote is conducted.

6.4.1.1 Fewer Than Three Finalists: In the event fewer than three applicants are selected for recommendation for nomination, the Commission shall not transmit the names of said applicants to the Governor's Office until supplemented by additional names totaling 3 to 6 applicants recommended for nomination to a particular vacancy.

6.4.1.2 Ordinal Ranking Over Six Finalists: In the event more than six applicants receive 13 votes for a particular vacancy, the Chair shall call for an ordinal vote using the ballot form, in which each commissioner lists the names of each such finalist in order of relative ranked priority, with 1 being the best-qualified applicant and higher numbers being relatively less qualified applicants. The Chair shall then add the ordinal ranking scores received by each applicant and the 6 applicants with the lowest total score shall be recommended for nomination. In the event of a tie for the 6th ranked position, the Commission must decide by further ordinal ranking ballots so that the total number of applicants recommended for nomination does not exceed 6 persons..

6.4.2 Number of Votes Permitted: Each actual or mandated vacancy shall be separately considered by court department or division for voting. The Chair shall announce the voting results after each round of ballots has been cast before moving to the next round of voting for the same court department. Commissioners may list the same applicant on multiple ballots as recommended for multiple different courts of divisions. For each mandated or actual vacancy being voted upon, each commissioner may list from 0 to 6 names of applicants whom he or she recommends to the Governor for nomination to that vacancy.

7.0 Transmission to Governor's Office: The list of persons recommended for nomination for each actual or mandated vacancy shall be transmitted by the Commission Chair to the Governor's Chief Legal Counsel for review, interview or further due diligence as the Chief Legal Counsel may undertake with the assistance of the Commission staff. After review of the applicants

recommended for nomination, the Governor may decline to nominate any applicant and seek further recommendations from the Commission.

7.1 Office of Special Investigations: The Chief Legal Counsel may request the assistance of the State Police Special Investigations Unit to undertake further background and due diligence investigation of any person recommended for nomination and may require the applicant to provide releases or further documentation in support of such investigation.

7.2 Joint Bar Committee: Before making recommendations to the Governor from among the list of applicants recommended by the Commission, the Chief Legal Counsel may seek the recommendations and assistance of the Joint Bar Committee. For each applicant, the Joint Bar Committee shall report to the Governor's Chief Legal Counsel that the applicant is highly qualified, qualified or less qualified for appointment to judicial office. Failure of the Joint Bar Committee to make a recommendation within 21 days from the date of the request by the Chief Legal Counsel shall be deemed to be a "qualified" recommendation unless the Committee seeks leave from the Chief Legal Counsel in advance of that time for additional time for review for good cause.

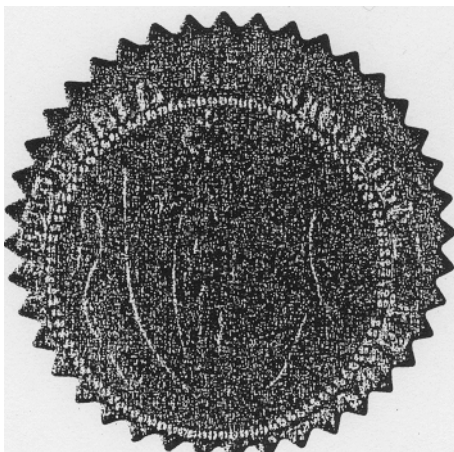
7.3 Pendency of Recommendation: Any applicant recommended by the Commission for nomination may be considered for nomination by the Governor for any judicial office for 18 months after the date of the recommendation, subject to such updated due diligence as the Governor's Chief Legal Counsel may require.

8.0 Publication on Website and Public Distribution: This Executive Order and Appendices shall be posted on the Commission web site and shall be available to the public at no charge.

9.0 Annual Report: The Executive Director shall prepare an annual report for the Commission and the Governor which shall describe the work of the Commission, including the number of applicants, the number of interviews, the number of applicants subject to due diligence inquiries, the number of vacancies filled and the number of persons recommended to the Governor for nomination. The annual report also may include any other information requested by the Chair or Governor's Chief Legal Counsel.

The annual report shall be posted on the Commission website.

10.0 Effect of Order: This Executive Order shall take effect on March 3, 2003 and shall continue in effect until amended, superseded or revoked by subsequent Executive Order.



Given at the Executive Chamber in Boston this 11th day of February in the year of our Lord two thousand and three, and of the Independence of the United States of America two hundred and twenty seven.

A handwritten signature in black ink, appearing to read 'M. Romney', written over a horizontal line.

MITT ROMNEY, GOVERNOR
Commonwealth of Massachusetts

A handwritten signature in black ink, appearing to read 'William Francis Galvin', written over a horizontal line.

SECRETARY OF THE COMMONWEALTH
WILLIAM FRANCIS GALVIN

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS