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To be considered by the Board on 12/12/2022

AGENCY 90. JUDICIARY
SUB-AGENCY 800. JUDICIAL NOMINATING BOARD
CHAPTER 001. BOARD RULES

CVR 90-800-001 (2022)

90 800 001. Board Rules

RULE 1. Applicability

These rules shall govern the procedure for the Judicial Nominating Board.

RULE 2. Board Chair and Vice Chair

The Board shall elect from among its members a chair and vice chair to serve for a term of two years until the expiration of his or her term on the Board or his or her resignation, whichever occurs first. The Chair, if present, or the Vice Chair in the Chair's absence, shall preside at any meeting of the Board. In their absence, the Board shall elect a member of the Board to act as chair.

RULE 3. Board Secretary

The Board shall elect one of its members to serve as secretary. It shall be the duty of the secretary to prepare and keep the minutes of all meetings. In the secretary's absence, the Board shall elect a member to serve as acting secretary. For meetings subject to the Open Meeting Law, minutes shall be prepared consistent with 1 V.S.A. § 312(b)(1).

RULE 4. Notice of Judicial Vacancy

Upon receipt by the Board of a notice of a vacancy from the Governor, the Chair shall request the Vermont Supreme Court to send the appropriate "Notice of Judicial Vacancy" to all members of the Vermont State Bar by electronic mail.

RULE 5. Board Members Conduct

(a) A Board member shall consider each candidate for a judicial office in an impartial, objective manner. A Board member shall not consider the race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, age, or disability of a candidate.

~~(b)(1) If a Board member knows of has any personal or business relationship that he or she has with a candidate, and the relationship may influence or appear to influence the decision of the Board member as to this candidate conflict of interest or appearance of a conflict of interest as defined in 3 V.S.A. § 1203(a), the Board member shall report this fact to the Chair. The Chair~~

shall report any disclosed relationships to the full Board in writing prior to any candidate interviews or discussion of any candidacies. Consistent with the requirements of 3 V.S.A. § 1203(b), the Board member shall provide the Board with a written statement that the member is choosing to: (1) recuse themselves from consideration of a candidate; or (2) proceed with consideration of the candidate. Upon request from any Board member, the Board shall vote on whether to affirm or overrule the Board member's written statement, subject to the requirements of the Code of Ethics. If a majority of the Board votes that a relationship may unduly influence the Board member's decision as to the candidate. If a Board member is recused, the Board member shall not vote upon the candidate and shall not participate in any deliberations concerning the candidate, including the candidate interview.

(2) If an attorney Board member has an active case with a candidate as opposing counsel, or has a case pending in front of a candidate who is a judge, there shall be a presumption that an appearance of a conflict of interest exists between that Board member and the candidate. The presumption may be rebutted by a majority vote of the Board pursuant to subdivision (b)(1) of this rule.

(3) A Board member who does not attend a candidate's interview shall not vote upon the candidate but may participate in the deliberations.

(c) Board members shall, in any communications with non-Board members, preserve the confidentiality and integrity of the Board and nominating process.

RULE 6. Board Meetings

(a) Meetings of the Board may be called by the Chair or by a majority of the members by written notice to the other members specifying the time and place of meeting. Such notice shall be mailed or sent at least seven days before the time specified, except that a meeting may be held on shorter notice if the notice specifies that such meeting is required. The place and time of such meeting will be specified in the notice. Notice of meeting may be waived by any Board member either before or after the meeting takes place, and attendance at a meeting by any member shall constitute a waiver of notice by such member unless he or she shall, at or promptly after the beginning of the meeting, object to the holding of the meeting on the ground of lack of, or insufficiency of, notice.

(b) Meetings of the Board may be held without notice at any time or place whenever the meeting is one as to which notice is waived by all members or whenever the Board at a previous meeting shall have designated the time and place for such a meeting.

(c) The Chair shall call at least one meeting each year for the principal purpose of reviewing Board operating procedures and briefing new Board members on the rules of procedure of the Board.

(d) A quorum of the Board shall be eight Board members. The Board shall act by majority vote of Board members present.

RULE 7. Recruitment of Candidates

Board members may actively encourage individuals to apply for judicial office. If an individual so encouraged by a Board member applies, the Board member shall report this communication to the Board Chair. The Board member's ability to participate in the candidate's interview, in the discussion of the applicant's candidacy, and in the vote on the applicant's candidacy shall be determined pursuant to Rule 5(b).

RULE 8. Screening of Candidates

As part of the preliminary background investigation, each candidate shall complete any application or questionnaire required by the Board, and agree to any waivers or authorizations required by the Board.

RULE 9. Consideration of Candidates

(a) In addition to speaking to references listed by a candidate, any Board member may make further inquiry so as to determine the general reputation of any candidate. Information obtained through such inquiry shall be disclosed to the Board along with the identity of the individuals making such information available. The information shall be limited to inquiries as to the legal experience, general reputation, qualifications, and other qualities that the Legislature may establish as criteria for the selection of candidates.

(b) All communications among Board members, a Board member and a candidate, or a Board member and any other person or organization with respect to an applicant's candidacy shall be kept confidential and discussed only among Board members.

(c) The identity of candidates for appointment shall be kept confidential except in communications to the Governor. This subsection shall not preclude any Board member from making inquiry as to the reputation of any judicial candidate as long as the communication is investigational in nature. In all communications, the Board member should take reasonable care not to indicate his or her personal opinion or the opinion of any other member of the Board. Discussions with nonmembers shall always commence with a request that the conversation and name of any applicants be treated as confidential.

(d) The Board shall submit to the Office of Court Administrator a list of all the candidates. The Office of Court Administrator shall disclose to the Board:

(1) information within records overseen by the Office of the Court Administrator about professional disciplinary action taken or pending concerning any candidate in any jurisdiction; and

(2) results of a Vermont Crime Information Center (VCIC) criminal background check.

RULE 10. Interview

(a)(1) Unless otherwise provided by this rule, all eligible candidates who apply for any a position shall be interviewed.

(2) Except as provided in subdivision (4) of this subsection (a), a candidate who applies for a position shall be deemed well qualified for that position without an interview, and the candidate's name and application, along with updated professional disciplinary and criminal background information, shall be transmitted to the Governor pursuant to Rule 13 if:

(A) the candidate previously interviewed for that position within the last two years; and

(B) the candidate was deemed well qualified by the Board for that position and the candidate's name was transmitted to the Governor in connection with the previous application pursuant to Rule 13.

(3) Except as provided in subdivision (4) of this subsection (a), a candidate who applies for a position shall not be eligible or interviewed for the position if:

(A) the candidate previously interviewed for that position within the last two years; and

(B) the candidate was not deemed well qualified by the Board for that position and the candidate's name was not transmitted to the Governor in connection with the previous application pursuant to Rule 13.

(4) A candidate who has interviewed for a position within the previous two years shall be reinterviewed for that position, and the Board shall reconsider whether the candidate is well qualified for that position, if at least four Board members request to reinterview the candidate.

(5) If a candidate has interviewed more than once for the same position in the last two years, the result of the most recent interview shall control for purposes of subdivisions (2) and (3) of this subsection (a).

(b) As used in this Rule, "a position" means the position of Chief Justice, Associate Justice, Superior Court Judge, Magistrate, Chair of the Public Utility Commission, or member of the Public Utility Commission.

(c) When the application submission period closes, the Chair shall determine if any applicant is ineligible under Rule 11(a) to seek the position. Upon such a determination, the Chair shall notify the Board of this determination and the basis for it. The Board shall vote on the eligibility of an applicant if requested to do so by a member within seven days of the Board's receipt of the applications.

RULE 11. Selection Criteria

(a)(1) To be eligible for appointment as a judge or Justice, a person shall be a Vermont resident and an experienced lawyer who is a judge or has practiced law in Vermont for a minimum of ten years, with at least five years immediately preceding his or her application to the Board. The Board may make exceptions to the five-year requirement for absences from practice for reasons including family, military, academic, or medical leave.

(2) To be eligible for appointment as a magistrate, a person shall be a Vermont resident and an experienced lawyer who has practiced law in Vermont for at least five years immediately preceding his or her application to the Board.

(b) In evaluating candidates, the Board members shall use criteria and standards for nomination including integrity; legal knowledge and ability; judicial temperament; impartiality; communication capability; financial integrity; work ethic; administrative capability; experience, including courtroom experience; diligence; social consciousness; and public service.

(c) For Superior Court, a candidate shall have sufficient trial or other comparable experience that ensures knowledge of the Vermont Rules of Evidence and courtroom procedure. For the Environmental Division of the Superior Court, a candidate shall be experienced in environmental and zoning law. For the Supreme Court, a candidate shall possess superior legal writing skills.

RULE 12. Selection of Nominees

(a) When all relevant background information on each candidate has been compiled and the candidates have been interviewed by the Board, the Board shall, by vote, select well qualified nominees to be sent to the Governor.

(b) Before proceeding to a vote on the candidates, the Chair shall open the meeting to a discussion of each candidate's qualifications for judicial office, including a general discussion of the relative qualifications of all candidates.

(c) Upon completion of the discussion of the candidates' qualifications, the Board shall vote by secret ballot.

(d)(1) The Board shall vote once on each candidate.

(2) Notwithstanding subdivision (1) of this subsection, one re-vote may be conducted for an applicant if a majority of Board members present votes to conduct the re-vote and:

(A) substantial new information emerges after the initial vote but before the conclusion of the nominating process; or

(B) good cause exists for a re-vote.

RULE 13. Transmittal to the Governor

The names of the well qualified nominees, together with their confidential vote totals and questionnaires applications, shall be hand-delivered to the Governor or mailed to his or her personal attention. The names shall be listed in alphabetical order.

RULES 14. Rule Amendment

Proposals to amend these rules shall be made by a majority of the total Board members acting at a regular or special meeting duly warned for that purpose setting forth the proposed amendment, and shall be adopted pursuant to 4 V.S.A. § 601(d) and 3 V.S.A. Chapter 25.