

# STATE OF DELAWARE



## EXECUTIVE DEPARTMENT DOVER

### EXECUTIVE ORDER NUMBER THREE

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES  
RE: JUDICIAL NOMINATING COMMISSION

WHEREAS, under Article IV of the Delaware Constitution and Title 10 of the Delaware Code, the Governor appoints, by and with the consent of a majority of all the members elected to the State Senate, the Chief Justice and Associate Justices of the Supreme Court of Delaware, the Chancellor and Vice Chancellors of the Court of Chancery, the President Judge and Associate Judges of the Superior Court, the Chief Judge and Associate Judges of the Family Court, the Chief Judge and other Judges of the Court of Common Pleas, the Chief Judge and Associate Judges of the Municipal Court for the City of Wilmington, and the Chief Magistrate of the Justice of the Peace Courts (collectively "judges"); and

WHEREAS, the State of Delaware has received national recognition for the quality and impartiality of its judiciary; and

WHEREAS, this recognition results from the State's long-standing commitment to a bipartisan judiciary composed of judges of high integrity, independence and excellent legal abilities; and

WHEREAS, for the past sixteen years Governors of the State of Delaware have been assisted in their search for highly qualified judicial nominees by a Judicial Nominating Commission composed of distinguished attorneys and laypersons; and

WHEREAS, the Judicial Nominating Commission has recruited outstanding judicial candidates for Governors through the use of a merit selection process; and

WHEREAS, our judiciary's excellence is best maintained through the continuance of a Judicial Nominating Commission comprised of attorneys and laypersons, whose mandate is to find highly qualified candidates for judgeships to which the Governor is empowered to make appointments.

NOW, THEREFORE, I, THOMAS R. CARPER, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order that:

1. The Judicial Nominating Commission is hereby continued to assist the Governor regarding all appointments of judges of the Supreme Court, the Court of Chancery, the Superior Court, the Family Court, the Court of Common Pleas, and the Municipal Court of the City of Wilmington, all appointments of the chief or president judge of each of these courts, as well as the appointment of the Chief Magistrate of the Justice of the Peace Courts.

2. The Commission shall consist of nine members. Eight members shall be appointed by the Governor pursuant to this Executive Order. The ninth member shall

be appointed by the Executive Committee of the Delaware Bar Association. The Bar Association appointee serving at this time shall continue to serve until the expiration of his term pursuant to the provisions of Governor Castle's Executive Order Number 1. Subsequent Bar Association appointees shall serve one-year terms, and shall be eligible for reappointment. Four of the Governor's appointees shall be members of the Bar of the Supreme Court of Delaware. The remaining four gubernatorial appointees shall be persons who are not members of the bar in any state. The members of the Commission appointed by the Governor shall reflect the broad diversity of the citizenry of Delaware.

3. Except as otherwise provided in this Executive Order, all members of the Commission shall serve three year terms and may be reappointed. In making his initial eight appointments under this Executive Order, the Governor shall designate two appointees to serve full three-year terms, three appointees to serve two-year terms, and three appointees to serve one-year terms. Any subsequent appointment upon the expiration of any term shall be for three years. In the event a member for any reason does not complete her term, her replacement shall be appointed for the balance of the uncompleted term.

4. No member of the Commission shall hold elective constitutional office during the member's term on the Commission. No more than five members of the Commission shall be registered members of the same political party at the time of

their appointment. Members of the Commission shall receive no compensation but shall be reimbursed for customary and usual expenses directly incurred in the performance of their duties.

5. The Governor shall designate one member of the Commission to act as Chairperson. The Commission shall adopt and make public procedures and standards for the conduct of its affairs. Unless and until new procedures and standards are adopted by the Commission constituted by this Order, the existing procedures and standards of the Judicial Nominating Commission constituted by Governor Castle's Executive Order 1 shall govern. To the extent these existing standards and procedures are inconsistent with the provisions of this Executive Order, the provisions of this Executive Order prevail. Except as otherwise provided in this Executive Order, the Commission shall act by majority vote.

6. All records and deliberations with respect to persons under consideration as nominees or prospective nominees shall be held in confidence by the Commission and shall be disclosed only at the direction of the Governor and only to the Governor or his designee. The Judicial Nominating Commission is established by the Governor solely to assist him in the exercise of his discretion regarding judicial appointments, and the creation of the Commission and its adoption of rules, procedures and standards in no way waives any privilege attaching to the source and substance of any advice or information provided to the Governor in this regard, nor waives any

privilege attaching to the records, investigations and deliberations of the Commission regarding the performance of its duties under this Executive Order.

7. All vacancies in any of the judicial offices specified in paragraph 1 of this Executive Order shall be filled in the following manner:

The Governor shall notify the Chairman of the Commission of the occurrence, or expected occurrence, of the vacancy which the Governor intends to fill. Such notice shall be given at the earliest practicable time, and, with respect to judges whose terms are about to expire and who do not hold over in office under Article XV, Section 5 of the Delaware Constitution, such notice shall be given no less than sixty days before such expiration. Following the notice from the Governor, and in accordance with its own rules and procedures, the Commission shall submit to the Governor within sixty days a list for such vacancy of not less than three qualified persons willing to accept the office; provided, however, that the Commission may recommend fewer than three prospective nominees for such vacancy if, because of

the small number of prospective nominees appropriate for recommendation at that time, or because of the existence of more than one office to be filled, a majority of the entire membership concludes that it should be permitted to submit a list containing fewer than three qualified persons for such office. The Governor may refuse to nominate a person from the list submitted and may require the Commission, within thirty days, to submit a supplementary list of not less than three other qualified persons willing to accept the office, subject to the same provisions governing the original list. The Governor shall not call upon the Commission for more than one supplementary list unless a majority of the members elected to the State Senate decline to give their consent to the Governor's nomination from the first supplementary list. If the Senate fails to confirm the Governor's nomination, then the Governor may direct the Commission to submit within thirty days a supplementary list of not less than three qualified persons willing to accept the office, subject to the same provisions governing the original list. The time limits

for action by the Commission may be lengthened or shortened at any time by approval of the Governor.

8. The Governor shall only nominate a person from either the original list or a supplementary list to fill a vacancy in any of the judicial offices enumerated in paragraph 1 of this Executive Order; provided, however, whenever there is a vacancy or prospective vacancy in the office of Chief Justice, Chancellor, President Judge of Superior Court, Chief Judge of Family Court, Chief Judge of the Court of Common Pleas, or Chief Judge of the Municipal Court of the City of Wilmington, and the list of prospective nominees submitted by the Judicial Nominating Commission for such vacancy includes the incumbent, and the Governor elects to appoint a state judge of a constitutional or statutory court other than the incumbent to fill such vacancy, then the Governor also may elect, without further submission to or from the Commission, to appoint the incumbent, or any other person whose name appears on a list submitted by the Commission for such vacancy, to the derivative vacancy which will be created by the appointment of such other state judge.

9. In considering persons to submit to the Governor as prospective nominees, the Commission shall seek men and women of the highest calibre, who by intellect, work ethic, temperament, integrity and ability demonstrate the capacity and commitment to sensibly, intelligibly, promptly, impartially and independently interpret the laws and

administer justice. The Commission shall seek the best qualified persons available at the time for the particular vacancy at issue.

10. If an applicant is not submitted by the Commission to the Governor as a prospective nominee, such action indicates merely that the Commission has determined not to recommend such applicant for the vacancy existing at that time and shall not reflect adversely on such applicant's qualifications and/or opportunity for future consideration for judicial appointment.

11. Sitting judges who are willing to be reappointed shall not be denied recommendation by the Commission except upon the affirmative vote of at least two-thirds of the members. In the event the Commission submits to the Governor a list of prospective nominees for a vacancy and such list does not include an incumbent who sought reappointment, the Governor may require the Commission within thirty days to submit a supplementary list of not less than three additional qualified persons willing to accept appointment to the office, subject to the same provisions governing the original list. In this circumstance, the Governor may nominate a person whose name appears on either the original or the supplementary list.

12. No member of the Commission shall be considered as a prospective nominee so long as he or she is a Commission member.

13. If any member of the Commission is an attorney for, or client, partner, employer, employee or relative of any applicant, then such member shall disclose the relationship to the Commission and shall not participate in the deliberations of the Commission concerning that applicant.

14. Executive Order Number One issued by Governor Castle is hereby rescinded.



APPROVED this <sup>29<sup>th</sup></sup> day of March, 1993.

Thomas R. Carney  
Governor

ATTEST:

William J. Fadden  
Secretary of State