

STATE OF DELAWARE



EXECUTIVE DEPARTMENT DOVER

EXECUTIVE ORDER
NUMBER FOUR

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES

RE: JUDICIAL NOMINATING COMMISSION

WHEREAS, under the Constitution and laws of this state, the Governor is charged with the responsibility of appointing, by and with the consent of a majority of all Members elected to the Senate, the Chief Justice and associate justices of the Delaware Supreme Court, 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 judges of the Court of Common Pleas and the Chief Judge and judges of the Municipal Court of Wilmington (hereinafter collectively referred to as "judges"); and

WHEREAS, the State of Delaware has always guaranteed to its citizens an impartial interpretation of the laws and administration of justice by free, impartial and independent judges; and

WHEREAS, the quality of our system of administering justice is determined largely by the quality of the judges appointed to lengthy tenure; and

WHEREAS, the high quality of judges' appointments can best be assured by the use of a non-partisan judicial nominating commission composed of outstanding laypersons and lawyers in aid of the discretion reposed in the Governor.

NOW, THEREFORE, I, Pierre S. du Pont, IV, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order that:

Section 1. A Judicial Nominating Commission is hereby established to assist the Governor with respect to all appointments of justices and/or judges of the Supreme Court, the Superior Court, the Court of Chancery, the Court of Common Pleas, the Family Court, and the Municipal Court of the City of Wilmington; and the designation of the Chief Justice and the chief or president judge of each of the courts.

Section 2. The Commission shall consist of nine members, and shall act by the concurrence of at least five members. Five of the members shall be members of the Bar of the Delaware Supreme Court, four of whom shall be appointed by the Governor, and one of whom shall be appointed by the Delaware State Bar Association. in such manner as its officers and membership shall elect. The remaining four members shall be appointed by the Governor, and shall be persons who are not members of the Bar of any state. The members of the Commission appointed by the Governor shall reflect the broad range of diversity and geography of citizens of the state.

Section 3. Members of the Commission shall be appointed to serve for three-year terms, but no member may be appointed to more than two successive terms; provided, however, that in the case of the initial members, three shall be appointed for two

years, and three shall be appointed for one year. Succeeding appointments shall be made, and any vacancy on the Commission shall be filled for the duration of the term, in the same manner as the prior appointment. No member of the Commission shall hold elected constitutional office during the member's term. No more than five members 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.

Section 4. The Governor shall appoint the Chairman of the Commission. The Commission shall by majority vote adopt and make public procedures and standards for the conduct of its affairs. All records and deliberations with respect to persons under consideration as nominees or prospective nominees shall be held in confidence by the Commission, but shall be available to the Governor and/or the Governor's designee.

Section 5. All vacancies in the office of justice or judge of a court enumerated above shall be filled in the following manner: When a vacancy occurs or is expected to occur which the Governor intends to fill, the Governor shall so notify the Commission. Such notice shall be given at the earliest practicable time and, with respect to judges or justices whose terms are about to expire, shall be given no less than three months prior to such expiration. The Commission shall, pursuant to the provisions of this Executive Order, submit to the Governor within thirty (30) 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 nominees for such vacancy if, because of the small number of qualified members of the Bar in the county from which such appointee must come, who are willing to accept appointment, or because of the existence of more than one office to be filled, a majority of the entire membership of the Commission concludes that it should be permitted to submit a list containing fewer than the names of three nominees for each office. The Governor may refuse to nominate a person from the list submitted and may require that the Commission submit, within thirty (30) days, a supplementary list of not less than three other qualified persons willing to accept the office, but the Governor shall not call upon the Commission for more than one supplementary list except as provided in the following sentence. If a majority of the members elected to the Senate decline to give their consent to the Governor's appointment, then the Governor may require that the Commission submit within thirty (30) days a supplementary list of not less than three other qualified persons willing to accept the office. The time limits for action by the Commission may be shortened at any time by notice by the Governor to the Commission that, in order to comply with the time limitations expressed in the Constitution of the State of Delaware, he must receive a list within a time period not less than ten days or, in the case of a supplementary list, not less than three days.

Section 6. The Governor will appoint only a person from either the original list or a supplementary list to fill such a vacancy, and shall publicly announce the name of the person he intends to appoint at least ten days prior to the date of such appointment.

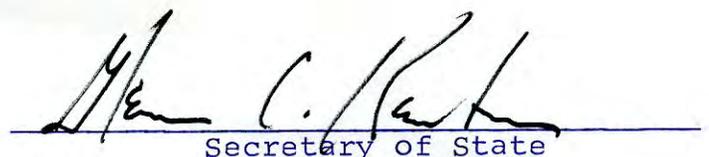
Section 7. In considering persons to submit as nominees to the Governor, the Commission shall seek men and women of the highest quality who, by temperament, ability and integrity, will freely, impartially and independently interpret the laws and administer justice. Sitting judges who are willing to be reappointed shall not be denied recommendation except upon the affirmative vote of at least two-thirds of the members. Persons shall be considered for submission as nominees according to law and without regard to race, religion, sex, or national origin. No member of the Commission shall be considered as a nominee so long as he or she is a member and for a period of two years thereafter.

Section 8. This Executive Order shall continue in effect until amended, superseded or terminated by subsequent Executive Order.

APPROVED this 24th day of February, A. D. 1977.


Governor

ATTEST:


Secretary of State

