

STATE OF DELAWARE



EXECUTIVE DEPARTMENT DOVER

EXECUTIVE ORDER
NUMBER ONE HUNDRED AND SIX

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES
RE: FURTHER AMENDMENT OF EXECUTIVE ORDER NUMBER FOUR
ESTABLISHING THE JUDICIAL NOMINATING COMMISSION

WHEREAS, Executive Order Number Four was duly signed by the Governor and attested to by the Secretary of State on February 24, 1977; and

WHEREAS, Executive Order Number Four established the Judicial Nominating Commission; and

WHEREAS, Executive Order Number Four was amended by Executive Order Number Forty-Six which was duly signed by the Governor and attested to by the Secretary of State on January 19, 1978; and

WHEREAS, Executive Order Number Four was further amended by Executive Order Number Sixty-Four which was duly signed by the Governor and attested to by the Secretary of State on November 8, 1978; and

WHEREAS, because of these amendments and because of further amendments which are deemed necessary and proper in order to promote the efficiency of both the judicial nominating process and the administrative functioning of the judicial system, it is appropriate and desirable to restate fully the Executive Order establishing the Judicial Nominating Commission.

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 Executive Order Number Four, dated February 24, 1977, as amended by Executive Order Number Forty-Six, dated January 19, 1978, and Executive Order Number Sixty-Four, dated November 8, 1978, shall be and the same is hereby amended and restated as follows:

Section 1. The Judicial Nominating Commission is hereby continued 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 for 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 President of the Delaware State Bar Association. 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 in geography of citizens of this 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 full terms. 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. Members whose terms have expired shall continue to serve until their successors are appointed. 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 sixty (60) days prior to such expiration. The Commission shall, pursuant to the provisions of this Executive Order, submit to the Governor within sixty (60) days a list for such vacancy of not less than three (3) qualified persons willing to accept the office; provided, however, that the Commission may recommend fewer than three (3) 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 of the Commission concludes that it should be permitted to submit a list containing fewer than the names of three (3) 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 (3) other qualified persons willing to accept the office, subject to the same provisions governing the original list. 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 (3) other 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 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 (10) days or, in the case of a supplementary list, not less than three (3) 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. It is further provided, however, that whenever there is a vacancy in the Office of Chief Justice, Chancellor, President Judge of Superior Court, or Chief Judge of any Statutory Court and the list of 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 such vacancy, the Governor may also elect, without further submission to the Judicial Nominating Commission, to appoint the incumbent to the derivative vacancy which will be created by the appointment of such other State Judge.

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. The Commission shall seek the best qualified persons available at the time. If a prospective nominee is not submitted to the Governor by the Commission as a nominee, such determination merely indicates that the Commission has determined not to recommend such prospective nominee for the vacancy existing at that time and does not reflect adversely on such prospective nominee's qualifications and/or opportunity for future consideration. Sitting judges who are willing to be re-appointed 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 Commission member.

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



APPROVED this 24th day of August, A.D. 1981.

R. A. R.
Governor

ATTEST:

Wm. C. Kuntz
Secretary of State