

STATE OF DELAWARE



EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER FORTY-SIX

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES
RE: 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, some amendments and modifications of Executive Order Number Four are appropriate.

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, shall be and the same is hereby amended as follows:

1. Amend Section 2 by inserting the words "President of the" immediately preceding the words "Delaware State Bar Association."

2. Further amend Section 2 by inserting a period immediately following the words "Delaware State Bar Association" and by deleting the remainder of that sentence.

3. Amend Section 5 by deleting the said Section in its entirety and substituting in lieu thereof a new Section 5 to read as follows:

'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 forty-five (45) days 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 (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."

4. Amend Section 7 by inserting after the first sentence of said section the following:

"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."

5. Further amend Section 7 by striking the words "and for a period of two years thereafter" and by inserting a period following the phrase "so long as he or she is a member."

