

IC 33-27-3

Chapter 3. Duties of the Commission; Appointments to Judicial Office

IC 33-27-3-1

Duties

Sec. 1. (a) When a vacancy occurs in the supreme court, the court of appeals, or the tax court, the clerk of the court shall promptly notify the chairman of the commission of the vacancy.

(b) The chairman shall call a meeting of the commission not later than twenty (20) days after receiving the notice.

(c) The commission shall submit the nominations of three (3) candidates for the vacancy and certify them to the governor as promptly as possible, but not later than seventy (70) days after the time the vacancy occurs.

(d) When it is known that a vacancy will occur at a definite future date, but the vacancy has not yet occurred, the clerk shall notify the commission immediately of the future vacancy, and the commission may, not later than sixty (60) days after receiving the notice of the vacancy, make nominations and submit to the governor the names of three (3) persons nominated for the future vacancy.

As added by P.L.98-2004, SEC.6.

IC 33-27-3-2

Evaluating judicial candidates; investigations; public disclosure of names and information; public records

Sec. 2. (a) The judicial nominating commission shall submit to the governor, from those names the commission considers for a vacancy, the names of only the three (3) most highly qualified candidates. In determining which candidates are most highly qualified each commission member shall evaluate each candidate, in writing, on the following considerations:

(1) Legal education, including law schools attended and education after law school, and any academic honors and awards achieved.

(2) Legal writings, including legislative draftings, legal briefs, and contributions to legal journals and publications.

(3) Reputation in the practice of law, as evaluated by attorneys and judges with whom the candidate has had professional contact, and the type of legal practice, including experience and reputation as a trial lawyer or trial judge.

(4) Physical condition, including general health, stamina, vigor, and age.

(5) Financial interests, including any interest that might conflict with the performance of judicial responsibilities.

(6) Activities in public service, including writings and speeches concerning public affairs and contemporary problems, and efforts and achievements in improving the administration of justice.

(7) Any other pertinent information that the commission feels is

important in selecting the most highly qualified individuals for judicial office.

(b) The commission may not make an investigation to determine these considerations until the individual states in writing that the individual desires to hold a judicial office that has been or will be created by a vacancy and that the individual consents to the public disclosure of information under subsections (d) and (g).

(c) The commission shall inquire into the personal and legal backgrounds of each candidate by investigations made independent from the statements on an application of the candidate or in an interview with the candidate. In completing these investigations, the commission may use information or assistance provided by:

- (1) a law enforcement agency;
- (2) any organization of lawyers, judges, or individual practitioners; or
- (3) any other person or association.

(d) The commission shall publicly disclose the names of all candidates who have filed for judicial appointment after the commission has received the consent required by subsection (b) but before the commission has begun to evaluate any of the candidates. If the commission's screening of the candidates for judicial appointment occurs in an executive session conducted under IC 5-14-1.5-6.1(b)(10), the screening may not reduce the number of candidates for further consideration to fewer than ten (10) individuals unless there are fewer than ten (10) individuals from which to choose before the screening. When the commission's screening has reduced the number of candidates for further consideration to not less than ten (10) or it has less than ten (10) eligible candidates otherwise from which to choose, the commission shall:

- (1) publicly disclose the names of the individuals and their applications before taking any further action; and
- (2) give notice of any further action in the same manner that notice is given under IC 5-14-1.5.

(e) Information described in subsection (d)(1) is identifying information for the purposes of IC 5-14-1.5-6.1(b)(10).

(f) The commission shall submit with the list of three (3) nominees to the governor its written evaluation of each nominee, based on the considerations set forth in subsection (a). The list of names submitted to the governor and the written evaluation of each nominee shall be publicly disclosed by the commission.

(g) Notwithstanding IC 5-14-3-4, all public records (as defined in IC 5-14-3-2) of the judicial nominating commission are subject to IC 5-14-3-3, including records described in IC 5-14-3-4(b)(12). However, the following records are excepted from public inspection and copying at the discretion of the judicial nominating commission:

- (1) Personnel files of commission employees and files of applicants for employment with the commission to the extent permitted under IC 5-14-3-4(b)(8).
- (2) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1,

unless the records are prepared for use in the consideration of a candidate for judicial appointment.

(3) Investigatory records prepared for the commission under subsection (c) until:

(A) the records are filed or introduced into evidence in connection with the consideration of a candidate;

(B) the records are publicly discussed by the commission in connection with the consideration of a candidate;

(C) a candidate elects to have the records released by the commission; or

(D) the commission elects to release the records that the commission considers appropriate in response to publicly disseminated statements relating to the activities or actions of the commission;

whichever occurs first.

(4) Applications of candidates for judicial appointment who are not among the applicants eligible for further consideration following the commission's screening under subsection (d).

(5) The work product of an attorney (as defined in IC 5-14-3-2) representing the commission.

(h) When an event described by subsection (g)(3) occurs, the investigatory record becomes available for public inspection and copying under IC 5-14-3-3.

(i) As used in this subsection, "attributable communication" refers to a communication containing the sender's name, address, and telephone number. The commission shall provide a copy of all attributable communications concerning a candidate for judicial appointment to each member of the commission. An attributable communication becomes available for public inspection and copying under IC 5-14-3-3 after a copy is provided to each member of the commission. The commission may not consider a communication other than an attributable communication in evaluating a candidate for judicial appointment.

(j) The commission shall release the investigatory records prepared for the commission under subsection (c) to the candidate for judicial appointment described by the records.

As added by P.L.98-2004, SEC.6.

IC 33-27-3-3

Withdrawal or death of nominees; multiple vacancies

Sec. 3. If a nominee dies or requests in writing that the nominee's name be withdrawn, the commission shall nominate another person to replace the nominee from the list of nominees previously provided. Whenever two (2) or more vacancies exist, the commission shall nominate three (3) different persons for each vacancy and submit a list of the persons nominated to the governor.

As added by P.L.98-2004, SEC.6.

IC 33-27-3-4

Failure of governor to appoint; appointment by chief justice;

changes in list

Sec. 4. (a) If the governor fails to make an appointment not later than sixty (60) days after the date the names of the nominees are submitted to the governor, the chief justice shall make the appointment from the nominees.

(b) A change in a list submitted to the governor under section 3 of this chapter requires a resubmission of the altered list to the governor, and the sixty (60) day period in which the governor must make the appointment begins on the date of resubmission.

As added by P.L.98-2004, SEC.6.

IC 33-27-3-5**Effective date of appointment**

Sec. 5. An individual appointed to the supreme court, the court of appeals, or the tax court by the governor shall commence the duties of the individual's office immediately upon the effective date of the appointment. An appointment to a judicial office does not take effect until a vacancy for the office exists.

As added by P.L.98-2004, SEC.6.

IC 33-27-3-6**Meetings**

Sec. 6. (a) The judicial nominating commission shall meet as necessary to discharge the commission's responsibilities under the Constitution of the State of Indiana and the state laws. Meetings of the commission shall be called by the chairman, or if the chairman fails to call a meeting when a meeting is necessary, upon the call of any four (4) members of the commission. When a meeting is called, the chairman shall give each member of the commission at least five (5) days written notice by mail of the time and place of the meeting unless the commission at its previous meeting designated the time and place of the next meeting.

(b) Meetings of the commission must be held at a place in Indiana, as arranged by the chairman of the commission.

(c) The commission shall act only at a meeting and may act only on the concurrence of a majority of the members attending a meeting. The commission may not vote to reduce the number of candidates for further consideration or to submit or not submit the list of nominees under subsection (e) during an executive session. Four (4) members constitute a quorum.

(d) The commission may adopt reasonable and proper rules for the conduct of its proceedings and the discharge of its duties. The rules must comply with this chapter and include procedures by which eligible candidates for a vacancy in the supreme court or court of appeals may submit their names to the commission. The rules are public records, and the meetings of the commission at which the rules are considered for initial adoption or amendment must be publicly announced and open to the public.

(e) Notwithstanding IC 5-14-1.5-2, the commission is a public agency for the purposes of IC 5-14-1.5. The commission may meet

in executive session under IC 5-14-1.5-6.1 for the consideration of a candidate for judicial appointment if:

- (1) notice of the executive session is given in the manner prescribed by IC 5-14-1.5-5;
- (2) all interviews of candidates are conducted at meetings open to the public; and
- (3) copies of all attributable communications (as defined in section 2(i) of this chapter) concerning the candidates have been provided to all commission members and made available for public inspection and copying.

As added by P.L.98-2004, SEC.6.