

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE DEPARTMENT

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DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
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By His Excellency

DEVAL L. PATRICK
GOVERNOR

EXECUTIVE ORDER NO. 477

2007 JAN 12 PM 2:05
OFFICE OF THE SECRETARY OF STATE
DIVISION

**ORDER RECONSTITUTING THE JUDICIAL NOMINATING COMMISSION AND
ESTABLISHING A CODE OF CONDUCT FOR
COMMISSION MEMBERS AND NOMINEES TO JUDICIAL OFFICE**

(Revoking and Superseding Executive Order 470)

WHEREAS, the Constitution of the Commonwealth of Massachusetts, Part One, Article XXIX, guarantees every citizen the right to judges as "free, impartial and independent as the lot of humanity will admit;" and

WHEREAS, under the Constitution and laws the Governor is charged with the responsibility for nominating and appointing, with the advice and consent of the Governor's Council, all judicial officers; and

WHEREAS, the quality of our system of administering justice is determined largely by the quality of the judicial officers appointed to serve within our judicial system; and

WHEREAS, public trust and confidence in the judiciary begins with the process by which judges are appointed to the bench; and

WHEREAS, the pre-eminent qualities for service as a judicial officer are intellect, integrity, work ethic, judgment, temperament, experience, competence and the demonstrated capacity and commitment to sensibly, intelligibly, promptly, impartially and independently interpret the laws and administer justice; and

WHEREAS, the Commonwealth should seek and judicial candidates should be drawn from a cross-section of our community, representing not only geographically diverse parts of the Commonwealth, but also the racial, ethnic, and gender diversity of our citizens; and



WHEREAS, the highest caliber of judicial officer appointments can best be assured by the use of a non-partisan, non-political, non-compensated Judicial Nominating Commission composed of outstanding citizens in aid to the discretion reposed in the Governor, drawn from all quarters of the Commonwealth and a cross-section of its diverse population;

NOW, THEREFORE, I, Deval L. Patrick, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution as Supreme Executive Magistrate, Part 2, c. 2, § I, Art. I, do hereby revoke Executive Order 470 and amendments thereto, and order as follows:

Section 1.0 Commission and Scope: A Judicial Nominating Commission ("Commission") is hereby established to identify and invite application by persons qualified for judicial office and to advise the Governor with respect to appointments of judges in the Appeals Court and Trial Court departments and clerk-magistrates and Recorder of the Land Court.

1.1 Membership: The Commission shall consist of twenty-one persons appointed by the Governor ("Commissioners"), of which a quorum shall consist of thirteen. To the extent practicable, the Commissioners shall reflect diversity of race, gender, ethnicity, background, geography and, among Commissioners who also are members of the bar, various practice areas and sizes. All Commissioners shall serve a one-year term at the pleasure of the Governor and may be removed without cause.

1.2 Officers: The Commission shall have three officers among its twenty-one person membership, consisting of a Chairperson and two Vice Chairs. The officers shall be appointed to their positions by the Governor and serve at his pleasure. The Chairperson shall preside at all meetings of the Commission, except that one of the Vice Chairs shall preside in the absence of the Chair and a Commissioner designated by the Chair shall preside in the absence of both the Chair and Vice Chairs. The Executive Director of the Commission ("Executive Director") or, subject to the direction of the Executive Director a staff member of the Commission, shall serve as the Clerk to the Commission during meetings and assist the Chairperson as she may request during such meetings.

1.3 Qualification of Members: Commissioners shall have demonstrable knowledge of the judicial system and experience in the needs and operation of the Massachusetts courts. Commissioners who are members of the bar shall have at least ten years of relevant experience and shall be members of the Massachusetts bar in good standing. Commissioners who are not members of the Massachusetts bar shall be familiar with the attributes that best qualify a person for appointment as a judicial officer.

1.4 Disqualification: Persons shall be disqualified from nomination to judicial office or from appointment to the Commission as follows:

1.4.1 Ineligibility for Judicial Appointment: Any Commissioner and the Commissioner's immediate family, including persons related to the Commissioner's immediate family by marriage, are disqualified from applying for or being nominated by the

Governor to any judicial office for a period of one year after the last date of the Commissioner's service on the Commission.

1.4.2 Relation to Elected Officials: Any person who holds elected county, state or federal office, and their immediate family members or persons related to their immediate family members by marriage, shall be disqualified from appointment to the Commission.

1.4.3 Registered Lobbyists: Any person registered as a state or federal lobbyist or executive agent, or any person employed by registered lobbyists or executive agents, shall be disqualified from appointment to the Commission.

1.4.4 Inability to Attend Meetings: Any person unable regularly to attend meetings of the Commission, including interviews of applicants for judicial office unless arrangements have been made to view such interviews by recorded video or participate by teleconference as the Chairperson may allow, shall be ineligible for appointment or shall be removed from the Commission in the sole discretion of the Governor's Chief Legal Counsel.

1.4.5 Violation of Code of Conduct: Violation of the Code of Conduct applicable to Commissioners shall be deemed to constitute resignation by the Commissioner, as the Governor's Chief Legal Counsel may determine in her sole discretion.

1.5 Code of Conduct for Commissioners: All persons serving as Commissioners agree to abide by the following code of conduct during their service on the Commission:

1.5.1 No Political Contributions: No Commissioner shall make or solicit other persons to make political contributions on behalf of any candidate for county, state or federal elected office.

1.5.2 Impartiality: No Commissioner shall conduct herself in a manner that reflects discredit upon the judicial selection process or discloses partisanship or partiality in the consideration of applicants. A Commissioner shall disclose to the Commission all current or past personal and business relationships with a prospective applicant. In addition to disclosure, a Commissioner shall recuse herself, refrain from voting, and absent herself from the room during discussions concerning (a) any applicant who is the current business or law partner of the Commissioner and (b) any such applicants whom the Commissioner believes she is incapable of considering impartially.

1.5.3 Advocacy: After the Commission certifies the names of qualified applicants to the Governor, no Commissioner shall attempt, directly or indirectly, to further influence the decision of the Governor, the Governor's Chief Legal Counsel, or any member of the Governor's Council except in response to communications initiated by any of them. No attempt shall be made to comment publicly or to disclose any preference of the Commission concerning applicants. Commissioners shall avoid giving preferential assistance to any applicant to the exclusion of any other applicant.

1.5.4 Confidentiality: Except as otherwise may be necessary for purposes of conducting due diligence of an applicant's qualifications and during Commission meetings, each Commissioner shall keep confidential all information concerning any applicant, except that information which may reflect unfavorably on an applicant's suitability for judicial office shall be disclosed to the Chairperson. The Chairperson shall disclose any such information to the Commission and to investigators employed on behalf of the Commission for purposes of due diligence. No discussions, motions, opinions, votes or facts revealed during meetings of the Commission may be directly or indirectly disclosed by any Commissioner to any person other than another Commissioner in accordance with this Code of Conduct. Except as may be required to conduct due diligence, all substantive communications with applicants outside of meetings and interviews shall be conducted by the Chairperson or her designee.

1.5.5 Ex Parte Communications: Except as may be required during the conduct of due diligence investigations, and excluding communications with the Chairperson and the Executive Director, all communications between Commissioners concerning applicants shall occur in the course of Commission meetings and not otherwise.

1.5.6 Commission Letterhead: All written communications by the Commission or any Commissioner with any applicant or with any person or entity concerning an applicant shall be limited to Commission stationery. No law firm or law practice letterhead stationery shall be used in connection with any such communication.

1.5.7 Conflict of Interest: All Commissioners shall avoid self-promotion in the course of their service and shall not seek any advantage in threatened or pending litigation or in professional or personal relationships related to their service or membership on the Commission. It is inappropriate for any Commissioner to distribute business cards, firm letterhead, or advertising that make reference to Commission membership. It is appropriate for a Commissioner to include the fact of appointment on her resume. No Commissioner or her immediate family may accept a gift or anything of value from any applicant, or the immediate family members of any applicant, unless the Commissioner had a bona fide friendship with the applicant and recused herself from participation in consideration of the applicant.

1.5.8 Civility: All Commissioners shall display courtesy and respect to all applicants as well as to other Commissioners. Questioning of applicants that resembles techniques appropriate for cross-examination of a hostile witness is inappropriate for interview of applicants.

1.6 Commission Member Handbook: The Executive Director shall prepare and periodically revise a handbook for Commissioners to inform them of Commission procedures, forms, protocols and to train Commissioners in the performance of their duty. The handbook may be posted on the Commission website for public inspection. In the event of a conflict between the handbook and the terms of this Executive Order, the Executive Order shall govern.

Section 2.0 Qualifications for Judicial Office: The Governor will not nominate any person for judicial office who does not meet the following minimum qualifications. Any application

that fails to conform to these minimum qualifications may be rejected by the administrative staff of the Commission without further action or review by the Commission.

2.1 Applicants for Justice Positions: All applicants for the position of Justice in any court shall meet the following minimum qualifications for consideration by the Governor:

2.1.1 Massachusetts Bar Membership: All applicants shall be a member of the Massachusetts bar in good standing at the time of the application.

2.1.2 Education: All applicants shall be graduates from an accredited undergraduate college or university as well as a law school accredited by the Commonwealth of Massachusetts or American Bar Association.

2.1.3 Residency: All applicants shall be residents of the Commonwealth of Massachusetts at the time of application.

2.1.4 Experience: All applicants shall have minimum levels of legal experience and training as follows:

2.1.4.1 Appeals Court: 13 years.

2.1.4.2 Trial Courts: 10 years.

2.1.5 Citizenship: All applicants shall be citizens of the United States of America.

2.2 Applicants for Magistrate and Recorder Positions: All applicants for the position of Clerk-Magistrate or Land Court Recorder in any court shall meet the following minimum qualifications for consideration by the Governor:

2.2.1 Education: All applicants shall be graduates from an accredited undergraduate college or university or have at least fifteen years of experience in the court applied for or court of comparable jurisdiction.

2.2.2 Residency: All applicants shall be residents of the Commonwealth of Massachusetts at the time of application.

2.2.3 Experience: All applicants shall have minimum levels of training and experience as follows:

2.2.3.1 Members of the Bar: Applicants who are members of the Massachusetts bar shall have been members of the bar for at least three years.

2.2.3.2 Non-Members of the Bar: Applicants who are not members of the bar shall be able to demonstrate at least five years experience in the court applied for, or five years in a court of comparable jurisdiction, or five years of relevant experience.

2.2.4 Citizenship: All applicants shall be citizens of the United States of America.

2.3 Code of Conduct for Applicants for Judicial Office: All persons applying for appointment as a judicial officer agree to abide by the following code of conduct while their application is pending:

2.3.1 Lobbying of Commission Prohibited: Lobbying for appointment to judicial office is inconsistent with the dignity of the office and the function of the Commissioners. Applicants for judicial office shall not call or email and shall not cause or encourage other persons to call or email any Commissioner (including the Commissioner's family members or law partners) in support of their application. Upon request by the Commission, applicants who have been invited to an interview with the Commission are permitted to submit to the Executive Director up to 10 letters of recommendation from persons with actual knowledge of their abilities. The Executive Director and the Commissioners may properly entertain telephone calls that provide material information regarding the fitness of any applicant for judicial office that the caller is reluctant to put in written form out of concern for safety, retaliation, retribution or other legitimate motive. It is appropriate for persons to return telephone calls or emails initiated by a Commissioner.

2.3.2 Lobbying of Governor's Office Prohibited: Following the Commission's transmission to the Governor's Chief Legal Counsel of the names of those applicants whom the Commission has voted to recommend to the Governor for nomination, applicants shall continue to abide by the restraints on lobbying set forth in Section 2.3.1 with respect to communications with the Governor, the Governor's Chief Legal Counsel, and members of the Governor's staff.

2.3.3 Political Contributions to Executive Prohibited: Commencing with the submission of the application, no person applying for appointment as a judicial officer shall make any political contribution to the Governor, Lieutenant Governor, or any member of the Governor's Council at any time while the application is pending.

2.4 Code of Conduct for Nominees for Judicial Office: After an applicant has been informed that she will be nominated by the Governor to judicial office, the nominee shall comply with the following code of conduct. Failure materially to comply with the following may result in the nomination being withdrawn prior to receipt of advice and consent by the Council:

2.4.1 Political Contributions Prohibited: After nomination, no nominee shall make any political contribution to any person holding or seeking county, state, or federal elected office.

2.4.2 Appearance in Court: Except as necessary to seek leave to withdraw from representation, a continuance or to avoid prejudice to a client's interests, or as a judge may otherwise order, no nominee shall appear as counsel in the court or court division to which she has been nominated. In the event of appearance, the nominee shall disclose the pendency of the nomination and give opposing counsel or *pro se* parties an opportunity to object.

2.4.3 Conformance with Canons of Judicial Conduct: All nominees shall comply with Canon 1, Canon 2 and Canon 5 of the Canons of Judicial Conduct, contained within the Rules of the Supreme Judicial Court, except as a client's interests may otherwise require within the bounds of the law.

Section 3.0 Notice of Judicial Office Vacancies: The Executive Director shall identify all vacancies that will occur during the Governor's term of office as the result of retirements mandated by the state Constitution ("mandated vacancies"). The Executive Director also shall identify all vacancies caused by death, voluntary retirement, resignation or removal from judicial office ("actual vacancies"). The Executive Director shall update the list of actual vacancies no less than once quarterly.

3.1 Posting of Mandated and Actual Vacancies: At the direction of the Governor's Chief Legal Counsel, the Executive Director shall cause to be posted on the Commission web site all mandated and actual vacancies, listed by department and division and identifying the name of the incumbent judicial officer holding or most recently holding said position. In the case of mandated vacancies, the posting shall list the date as of which the vacancy will occur. This information also shall be made available by the Executive Director to any member of the public or Commission upon request.

3.2 Advertisement of Vacancies: With the approval of the Governor's Chief Legal Counsel, the Executive Director from time to time shall cause to be advertised the pendency of actual and mandated judicial vacancies for consideration by members of the bar and the public. All advertisements shall include the Commission web site address as well as a statement to the effect that the Commission encourages applications by qualified persons of diverse gender, race, ethnicity, background, and experience.

3.3 Recruitment of Applicants: The Commission shall take steps to ensure, to the greatest extent possible, that the applicant pool from which their selections are made includes talented individuals from all parts of the Commonwealth, reflecting the full diversity of its citizens.

3.4 Rolling Consideration of Applications: Applicants shall specify on their applications the vacancies for which they wish to be considered and must submit their applications by the governing deadline, which the Commission shall post on its web site. Applications shall be considered timely if received in hand or postmarked on or before the specified deadline. Applicants shall not apply for any vacancy earlier than six months prior to the posted deadline or retirement date. The Commission will review and consider, on a rolling basis, the applications of all qualified candidates in connection with the vacancies for which they have applied.

Section 4.0 Form of Application: Subject to the approval of the Governor's Chief Legal Counsel, the Commission shall develop and post on its web site the application forms to be used for the position of Justice and for the position of Clerk-Magistrate or Recorder.

4.1 Part One of Application: The application form shall be divided into two parts. Part One of the application shall include information reflecting the applicant's name, residential

address, age, other personal identifying information, and the names and contact information for all persons serving as references for the applicant. Part One shall include information demonstrating that the applicant meets the minimum qualifications for appointment to judicial office, as described above. A current, one-page resume shall be attached as a cover page to Part One containing brief professional history and educational background. Part One shall be stapled (or clipped if too large) separately from Part Two.

4.2 Part Two of Application: Part Two of the application shall include information reflecting the applicant's qualifications for judicial office. Except as may necessarily be revealed as a qualification, Part Two shall not contain any personal identifying information regarding the applicant. Applicants who are solo practitioners should identify their practice in Part Two without mention of the applicant's name. Names of references shall not be included in Part Two. A writing sample shall be attached as Appendix A-1 to Part Two and shall not exceed 20 pages. Part Two shall be stapled (or clipped if too large) separately from Part One.

4.3 Coding of Applications: The applicant shall code the front page of Part One and the front page of Part Two of each copy of the application, in the upper right corner, with a code which consists of the applicant's middle initial and the last four digits of the applicant's social security number (i.e. M6543). Such coding will permit the Executive Director to index and identify the name of the applicant in Part Two without disclosing the name of the applicant to Commission members.

4.4 Preaddressed Postage Prepaid Envelopes: Each applicant shall be responsible for providing 21 postage-prepaid envelopes, addressed to each Commission member, of sufficient size to permit Part Two of the application to be mailed to the Commissioners. Envelopes should not bear any return address that could identify the applicant. Commissioner addresses are available on the Commission website or by calling the Executive Director. Commission staff will be responsible for mailing Part Two of the application to each Commission member using such envelopes.

4.5 Review of Nominee Application by Governor's Council: The application of any applicant nominated for judicial office may be reviewed by the Governor's Council in the performance of its constitutional duties within the Executive Branch of government while the applicant's nomination is pending. The Governor's Chief Legal Counsel also may request that the application be reviewed by the Joint Bar Committee. Such applications do not constitute public records.

4.6 Application Instructions: The Executive Director shall prepare and periodically revise instructions for applicants to assist the application process and for ease of use by applicants.

Section 5.0 Application Process: Applicants shall mail or deliver to the Commission office (Judicial Nominating Commission, Room 54, State House, Boston 02133) 24 copies (one original and 23 copies) of Part One and Part Two of the application. Commission staff will forward Part Two of the application to each Commissioner and index and file Part One of the application for future reference. Except as otherwise provided in this Executive Order, no

Commission staff person shall provide and no Commission member shall request information regarding the identity of persons who have submitted a Part Two application for review.

5.1 Staff Review: The Executive Director is responsible for reviewing all applications for conformity with the qualifications for judicial officers and compliance with this Order. All applications shall be acknowledged in writing. Part Two of all applications meeting the minimum qualifications shall be mailed to each member of the Commission.

5.2 Blind Initial Review: Commissioners shall review Part Two applications to determine who, based on the qualifications described in Part Two, will be invited to appear before the Commission for an interview. On motion made by any Commissioner, and supported by at least one-third of those Commissioners casting a vote, a quorum being present, an applicant will be invited for an interview. All voting shall be conducted pursuant to the procedures set forth in Section 6.0, et seq., below. After the Commission has acted on an application, the Executive Director and/or a member of the Commission staff shall disclose to each Commissioner a list of the names of the applicants accepted for interview and those not accepted for interview. Upon request by any Commissioner, the Executive Director and/or a staff member of the Commission shall also disclose Part One of the application of any applicant not accepted for interview. Thereafter, any Commissioner may move for reconsideration of the interview decision pursuant to Section 6.5, below.

5.3 Interview: Any Commissioner may ask questions which in the Commissioner's judgment will assist in performing their function. All questions and comments to applicants shall be courteous, fair, respectful, and shall not inquire into particular decisions that a judicial officer has made or will likely be required to make as a judicial officer concerning the merits of any actual case. Applicants may be asked questions concerning their management and administrative capabilities and decisions. Applicants may be invited for additional interviews in the discretion of the Commission, including for the purpose of addressing commentary received or issues raised during the due diligence process described in Section 5.4, below.

5.3.1 Ad Hoc Subcommittees: Whenever the number of applicants awaiting interview exceeds the ability of the Commission timely to provide recommendations for nomination to judicial office, the Chair in her discretion may designate five or more Commissioners to serve as an ad hoc subcommittee to conduct interviews. Any such subcommittees shall be grouped corresponding to a particular Trial Court department in which actual or mandated vacancies exist that are currently under consideration. The subcommittee shall report its majority findings and recommendations to the Commission for consideration and vote. All voting provisions governing the Commission shall govern votes taken in subcommittee.

5.3.2 Referral to Full Commission: On motion of any Commissioner and vote of at least one-third of those Commissioners casting a vote, a quorum being present, any applicant interviewed by a subcommittee shall be called back for interview by the Commission.

5.4 Due Diligence: After interview, the Commission shall decide whether to proceed with due diligence inquiries regarding each applicant. On motion made by any Commissioner, and supported by at least 40% of those Commissioners casting a vote, a quorum being present, an applicant shall proceed to due diligence. All voting shall be conducted pursuant to the procedures set forth in Section 6.0, et seq., below. The Executive Director shall assign two or more Commissioners to undertake due diligence responsibility for a particular applicant for report at the next scheduled meeting or such further meeting as the Chair may designate. The Executive Director and/or the JNC Coordinator may assist in the due diligence inquiries as needed. All due diligence research shall utilize a form provided by the Executive Director to assure uniform inquiry and basis for dissemination of due diligence information to the Commission.

5.4.1 Consultation with County Bar Associations: In connection with the due diligence process, the Commission shall consult with a representative of the bar association for the county in which the vacancy under consideration exists.

5.4.2 Authority to Conduct Further Due Diligence: The Commission has the authority, in its discretion, to conduct supplemental due diligence inquiries on any applicant while the application is pending before the Commission.

5.5 Deliberations and Nomination Recommendations: After completion of the due diligence process and upon consideration of information and evidence regarding the applicants obtained during the due diligence or otherwise, Commissioners shall deliberate and discuss the relative strengths and weaknesses of applicants and may consider the particular needs of courts for which actual or mandated vacancies exist in determining relevant strengths and weaknesses of applicants. All information raised in deliberations is strictly confidential and shall not be revealed outside the Commission membership. Using the voting procedure described in Section 6.0, et seq. below, the Commission shall vote on whether to recommend an applicant to the Governor for nomination. In accordance with Section 6.4, the affirmative votes of at least 60% of those Commissioners casting a vote, a quorum being present, shall be required to forward an applicant's name to the Governor's Office to be considered for nomination.

5.6 Notification of Recommendations: The Executive Director shall notify the Governor's Chief Legal Counsel of those applicants whom the Commission has voted to recommend to the Governor for nomination and specify the actual or mandated vacancy, by court or courts, for which each applicant is being suggested.

Section 6.0 Voting Procedures: This section shall govern all voting conducted by the Commission with respect to any decision made concerning an applicant for judicial office. All other voting, such as motions to approve minutes or motions for recess or to adjourn, may be made by any method announced by the Chair of the Commission. The Commission may not waive these provisions regarding applicant-related voting procedure, except the Chair in her discretion may call for voice votes or show of hands on decisions whether to grant an interview or proceed to due diligence.

6.1 Ballot Form: All ballots shall be provided to the Commissioners by the Commission staff. Each ballot shall include the name of one Commissioner on a preprinted format, with each Commissioner provided ballots in sufficient supply for use at the meetings. The ballot shall include at least 10 lines on which each Commissioner may list her choices when called upon to vote. Each ballot shall include a signature line and the following certification: "By signing this ballot, I hereby swear under the penalties of perjury that I have complied with the Code of Conduct for Commissioners described in Section 1.5 of the Executive Order. I further certify that the foregoing votes represent my own recommendations as a matter of conscience and judgment to the best of my ability." The name of the Commissioner submitting a ballot shall not be announced or made available for review by other Commissioners except the Chair, Governor's Chief Legal Counsel and Commission staff; the name of Commissioners on each ballot shall be maintained for internal use only to assure the integrity of the voting process.

6.1.1 Absentee Ballots: Any Commissioner whom the Chair determines is unable for good cause to be present in person to cast her votes may vote by absentee ballot by giving or faxing or mailing her completed and signed ballot form to the Chair or the Executive Director in advance of the vote.

6.1.2 Proxy Votes: Proxy votes are prohibited.

6.2 Voting for Interview: Voting to determine which applicants will be invited for interview shall be conducted by listing the code numbers of all applicants under consideration whom the Commissioner wishes to interview. Votes shall be written on the ballot form, signed by the Commissioner, and given to the Executive Director. The Executive Director will announce each applicant listed on the ballot form, which shall be recorded by the Executive Director or a member of the JNC staff in attendance at the meeting. The Chair and the Executive Director shall not announce the name of the Commissioner casting any particular vote. There is no minimum or maximum number of applicants from those pending who can be listed on the ballot form for invitation for interview. Any applicant who receives the votes of at least one-third of those Commissioners voting, a quorum being present, shall be invited for an interview before the Commission.

6.3 Voting for Due Diligence: Voting for due diligence shall proceed in the same manner as voting for interview, except the affirmative votes of at least 40% of those Commissioners voting, a quorum being present, shall be required for an applicant to proceed to due diligence review.

6.4 Voting for Recommendation for Nomination: Voting for recommendation for nomination shall proceed in the same manner as voting for interview, except that the affirmative votes of at least 60% of those Commissioners casting a vote, a quorum being present, shall be required for an applicant to be recommended to the Governor for nomination. Commissioners who have reviewed the qualifications and obtained all relevant information concerning an applicant may vote by absentee ballot given to the Chair and signed by the Commissioner at any time before the vote is conducted.

6.4.1 Number of Names Forwarded: The Commission shall send no fewer than three and no more than six applicant names to the Governor for each vacancy, unless the Commission determines, based on the strength of the applicant pool, that unusual circumstances warrant the transmission of a lesser or greater number of names.

6.5 Motions for Reconsideration: At each stage in the review of applications, motions for reconsideration shall be in order. To be successful, a motion for reconsideration shall require the same level of support, a quorum being present, as the vote being reconsidered.

Section 7.0 Transmission to Governor's Office: The names of the applicants recommended for nomination for each actual or mandated vacancy shall be transmitted by the Chair or the Executive Director to the Governor's Chief Legal Counsel for review, interview or further due diligence as the Chief Legal Counsel may undertake with the assistance of the Commission staff. After review of the applicants recommended for nomination, the Governor may decline to nominate any applicant, seek further recommendations from the Commission, or request that the application process be re-opened for the position.

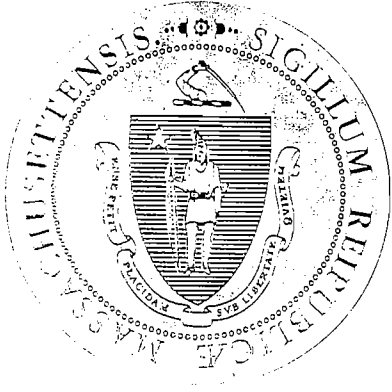
7.1 Further Investigation: The Chief Legal Counsel may request the assistance of the State Police Special Investigations Unit, the United States Internal Revenue Service, and the Massachusetts Department of Revenue to undertake further background and due diligence investigation of any person recommended for nomination and may require the applicant to provide releases or further documentation in support of such investigation.

7.2 Joint Bar Committee: Before making recommendations to the Governor from among the list of applicants recommended by the Commission, the Chief Legal Counsel may seek the recommendations and assistance of the Joint Bar Committee. For each applicant, the Joint Bar Committee shall report to the Governor's Chief Legal Counsel that the applicant is highly qualified, qualified or less qualified for appointment to judicial office. Failure of the Joint Bar Committee to make a recommendation within 21 days from the date of the request by the Chief Legal Counsel shall be deemed to be a "qualified" recommendation unless the Committee seeks leave from the Chief Legal Counsel in advance of that time for additional time for review for good cause.

7.3 Pendency of Recommendation: Any applicant recommended by the Commission for nomination may be considered for nomination by the Governor for any judicial office for a period of up to 18 months after the date of the recommendation, subject to such updated due diligence as the Governor's Chief Legal Counsel may require.

Section 8.0 Publication on Web Site and Public Distribution: This Executive Order shall be posted on the Commission website and shall be available to the public at no charge.

Section 9.0 Effect of Order: This Executive Order shall take effect immediately and shall continue in effect until amended, superseded or revoked by subsequent Executive Order.



Given at the Executive Chamber in Boston, this 12th day of January in the year of our Lord two thousand and seven, and of the Independence of the United States of America two hundred and thirty-one.

A handwritten signature in black ink, appearing to read "Deval L. Patrick".

DEVAL L. PATRICK, GOVERNOR
Commonwealth of Massachusetts

A handwritten signature in black ink, appearing to read "William Francis Galvin".

William Francis Galvin
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS