

Overview of Judicial Nominating Process

See Executive Order No. 558 and www.mass.gov/jnc for details.

1. **Judicial Nominating Commission (“JNC”) Meetings:** The JNC meets most weeks on Tuesday evenings at 5:30 p.m. Meetings tend to run for several hours, depending on the agenda. The JNC most often meets as a full committee in Boston. When interviewing applicants for vacancies in other regions, the JNC may meet in other locations. The Executive Director and the Chair, with the approval of the Governor’s Chief Legal Counsel, may designate *ad hoc* subcommittees to engage in blind review, conduct interviews, perform due diligence inquiries and/or make recommendations.
2. **Code of Conduct for Commissioners:** Throughout all stages of the JNC review process, Commissioners agree to abide by specific rules of conduct regarding impartiality, advocacy, confidentiality, *ex parte* communications, conflict of interest, political contributions, and civility, as detailed in Section 1.5 of the Executive Order. The impartiality provisions require disclosure of personal or business relationships with applicants, and, in some circumstances, recusal and abstention. The Executive Director maintains a record of all recusals and abstentions.
3. **JNC Website:** All current and future mandatory vacancies for judicial and clerk-magistrate positions are listed on the JNC’s website, www.mass.gov/jnc. The website lists all current vacancies, all vacancies posted for applications, and all mandatory vacancies through 2017. It also contains links to the application instructions and forms.
4. **Applications:** Applications may be filed only for vacancies posted on the website. Posted deadlines and instructions for applications must be followed in order for an application to be reviewed. Applicants must complete Parts I and II of the currently posted application and include a resume and writing sample.
5. **Staff Preliminary Review:** The JNC staff screens all applications for conformity with the minimum qualifications for appointments and for compliance with Executive Order No. 558, and sends written acknowledgments to all applicants.
6. **Distribution to Commissioners of Part II of Applications:** After completion of its preliminary review, the JNC staff shall electronically distribute copies of Part II of the applications to the Commissioners. Part II of the application does not disclose the applicant’s name and is the only part of the application seen by the JNC during the initial review. The Executive Director shall also electronically transmit weekly meeting agendas to the Commissioners, which provide advance notice of the date on which the JNC will be engaging in blind review of Part II of the applications for a particular vacancy.
7. **Blind Review:** During the blind review, the Commissioners discuss the applications for the vacancy or vacancies, listed on the agenda for that meeting. Since only Part II of the applications will have been circulated at this stage, the review is “blind” – i.e., without knowledge or identification of the applicants’ names. For applicants who have applied

previously to this Administration, their names are disclosed and prior application materials are circulated.

8. **Vote and Notification to Applicants of Interview Dates and Submission of Recommendations to Commissioners:** Following discussion, the Commissioners vote to determine which applicants will be invited for a JNC interview (1/3 of votes required to advance to interview). Applicants advanced to interviews are notified by the JNC staff by telephone and/or email of the date, time, and location of the interview. Prior to the interview, applicants are given the opportunity to submit up to 10 letters of recommendation, which are distributed by JNC staff to Commissioners for review. Quality over quantity of letters of recommendation is emphasized. The Commissioners and/or the Governor's Office do not count the letters, but look at how well the recommender knows and writes about the candidate. Those applicants not selected for interviews are notified by a letter from the Executive Director.
9. **Distribution of Part I of the Application:** The JNC staff distributes Part I of the application to the JNC after an applicant has been advanced to an interview.
10. **Interviews:** In general, interviews are approximately 20 minutes in length and are conducted by the JNC en banc or by a subcommittee of the JNC.
11. **Vote and Notification to Applicants of Advancement of Due Diligence:** The Commissioners discuss the qualifications of applicants who were interviewed at that meeting, based on the interview, Parts I and II of the application, and letters of recommendation. Following that discussion, the Commissioners vote on advancing applicants to the due diligence stage of the process (50% required to advance). Those applicants selected for due diligence are notified by the JNC staff. Those applicants not selected for due diligence are notified by letter from the Executive Director.
12. **Due Diligence:** The Executive Director assigns one or two Commissioners to serve as the due diligence team for each applicant who has advanced to the due diligence phase. Approximately two weeks are given to perform its due diligence work, which consists of seeking comments from judges, attorneys and others regarding the applicant. Commissioners are not limited to calling references listed on an applicant's application. Commissioners go "off-list" to seek out other individuals who know the applicants, professionally or personally. Commissioners prepare written reports detailing the due diligence inquires and circulate these reports prior to the JNC meeting at which the reports will be discussed.
13. **Vote and Recommendations to the Governor:** The JNC discusses the due diligence reports previously circulated and votes on recommending the applicants to the Governor (2/3 votes required for recommendation). The JNC typically sends a slate of between three and six recommendations to the Governor for each vacancy.
14. **Notification to Applicants:** Those applicants recommended to the Governor by the JNC are notified by the JNC staff by telephone and/or email. Those applicants not recommended by the JNC are notified by letter from the Executive Director.

15. **Reconsideration Motions:** Motions for reconsideration are in order immediately following each stage of the JNC's review of an application. The JNC staff tabulates ballots the week of the vote after the JNC meetings, and sends the results via email to all Commissioners. Reconsideration motions must be submitted to the Executive Director before the next stage of review. Votes on reconsideration motions require the same level of support as the vote being reconsidered.
16. **Legal Counsel Review:** The JNC forwards a slate of names for a particular vacancy to the Governor's Office of Legal Counsel. The Chief Legal Counsel interviews all recommended applicants, requests detailed background checks by the State Police Investigations Unit and filing information from the United States Internal Revenue Service and the Department of Revenue, and may conduct additional due diligence. The Chief Legal Counsel recommends and approves a slate of applicants for review by the Joint Bar Committee. The Joint Bar Committee has 21 days to report back to the Chief Legal Counsel. After receiving a favorable report on applicants' qualifications from the Joint Bar Committee, the Chief Legal Counsel may recommend applicants to the Governor for specific vacancies. An interview with the Governor is the final step prior to a final decision on a nomination.
17. **Governor's Nomination:** The Governor may consider applicants for judicial nomination for a period of 18 months after the date of the JNC recommendation. The Governor may nominate applicants recommended by the JNC to any judicial vacancy (not only to the vacancy for which the applicants were recommended). The Governor may decline to make a nomination for a particular vacancy that has been posted, seek further recommendations from the Commission for a particular vacancy, or decide to repost a vacancy to encourage additional applications. A nomination is public once the nomination letter is delivered to the Governor's Council, and a press release is issued at that time.
18. **Governor's Council:** All judicial nominations must be confirmed by the Governor's Council, which consists of eight elected councilors from across the Commonwealth. The Governor's Council requires each nominee to complete a questionnaire, provide a witness list and to appear before the Council at a public hearing. The Governor's Council then votes publicly on whether or not to give its advice and consent to the nomination. The confirmation process takes approximately 3 to 4 weeks.
19. **Appointment:** The date of the confirmation vote by the Governor's Council is the official appointment date. All appointees must take the official oath of office prior to commencing service, and that oath must be administered within 90 days of the confirmation vote.