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CHARLES D. BAKER
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LIEUTENANT GOVERNOR

By His Excellency

CHARLES D. BAKER
GOVERNOR

EXECUTIVE ORDER NO. 558

Revoking and Superseding Executive Order 500

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

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SECRETARY OF STATE
REGULATIONS DIVISION

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, Charles D. Baker, 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 500 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 justices 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 2/3 of the then appointed Commissioners. 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 at any time.

1.2 Officers: The Commission shall have three officers among its 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 member of the Commission staff, shall serve as the Clerk to the Commission during meetings and assist the Chairperson as the Chairperson 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 seven 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 to regularly attend meetings of the Commission, unless arrangements have been made to participate by teleconference or other technological means 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 the Governor's Chief Legal Counsel's 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 act 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 themselves, refrain from voting, and absent themselves from the room during discussions concerning (a) any applicant who is the current business or law partner of the Commissioner and (b) any applicant whom the Commissioner believes they are 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 the Chairperson's 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 the Commissioner's resume. No Commissioner or immediate family of a Commissioner 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 themselves 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.

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 Commission staff 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 the following minimum levels of legal experience and training for the following courts:

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 in any court or recorder of the Land 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. The Executive Director and the Commissioners may 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 applicants or persons to return telephone calls or emails initiated by a Commissioner.

2.3.2 Lobbying of Governor's Office Prohibited: Following transmission of the names of those applicants whom the Commission has voted to recommend to the Governor for nomination to the Governor's Chief Legal Counsel, 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 before the Commission or at the Governor's Office for a period of 18 months after a recommendation to the Governor by the Commission.

2.4 Code of Conduct for Nominees for Judicial Office: After an applicant has been informed that the applicant 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: No nominee shall appear as counsel in the court or court division to which they have been nominated, 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. 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 all pertinent 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. For the avoidance of doubt, no nominee shall be required to cease practicing law during the pendency of his or her nomination.

Section 3.0 Identification 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 shall also identify all vacancies caused by death, voluntary retirement, resignation or removal from judicial office ("actual vacancies").

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 website 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. The Executive Director shall update the list of actual vacancies no less than once quarterly.

This information also shall be made available by the Executive Director to any Commissioner or member of the public upon request. Notice of such posting shall also be distributed to bar associations and Massachusetts Lawyers Weekly in an effort to reach members of the bar and the public. The website and all such notices shall also include a statement to the effect that the Commission encourages applications by qualified persons of diverse gender, race, ethnicity, background, and experience.

3.2 Recruitment of Applicants: The Governor's Chief Legal Counsel, the Executive Director and the Commission shall take reasonable 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.

3.3 Consideration of Applications: Applicants shall specify the vacancies for which they wish to be considered and must submit their applications by the deadline posted on the Commission's website. Applications shall be considered timely, if received before the specified deadline. The Commission will review and consider the applications of all qualified candidates in connection with the vacancies for which they have applied.

Section 4.0 Form of Application and Instructions: Subject to the approval of the Governor's Chief Legal Counsel, the Executive Director shall develop and post on the Commission's website the application forms to be used for the position of justice and for the positions of clerk-magistrate or recorder of the Land Court and instructions for preparation of the applications. Applications do not constitute public records.

4.1 Part One of Application: The application form shall be divided into two parts. Part One of the application shall include: the applicant's name, residential address, age, other personal identifying information, the names and contact information for all persons serving as references for the applicant, information demonstrating that the applicant meets the minimum qualifications for appointment to judicial office, as described above and a current, one-page resume containing brief professional history and educational background. Part One shall be a separate document 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 and a writing sample that shall not exceed 20 pages. Part Two shall not contain any personal identifying information regarding the applicant, except as may necessarily be revealed as a qualification. 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. Part Two shall be a separate document from Part One.

4.3 Review of 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.

Section 5.0 Application Process: The Executive Director shall post on the Commission's website the procedures for the application process. The Commission's process shall include a Commission staff review of the submitted application, and a blind review, an interview and due diligence by the Commission, as set out in this Executive Order.

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 Executive Order. All applicants are required to comply with the instructions and failure to comply may result in the rejection of the application. All applications shall be acknowledged in writing by the Commission staff.

5.2 Blind Initial Review: Commissioners shall review Part Two of all applications to determine who, based on the qualifications described in Part Two, will be invited to appear before the Commission for an interview. After discussion and on motion made by any Commissioner, and supported by at least 1/3 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 6.3, below. 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.

5.3 Interview: At the interview of any applicant, a Commissioner may ask questions which in the Commissioner's judgment will assist in performing the review of the applicant. 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.

5.4 Due Diligence: After the 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 50% 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 one or more Commissioners to undertake due diligence inquiry for a particular applicant. The Executive Director and/or the Commission staff may assist in the due diligence inquiries as needed. All due diligence research shall be presented on a form provided by the Executive Director.

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 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. The affirmative votes of at least 2/3 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 Ad Hoc Subcommittees: Whenever the number of applicants awaiting review exceeds the ability of the Commission to provide timely recommendations for nomination to judicial office, with the approval of the Chief Legal Counsel, the Executive Director and the Chair may designate five or more Commissioners to serve as an ad hoc subcommittee to engage in blind review, conduct interviews, perform due diligence inquiries, and/or make recommendations. Any such subcommittees shall be grouped with the particular trial court department in which actual or mandated vacancies are currently under consideration. The subcommittee shall report its findings and recommendations to the Commission, which findings and recommendations shall be subject to approval of the Commission. All voting provisions governing the Commission shall govern votes taken in subcommittee.

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 the Chair's 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 in a form designated by the Executive Director in compliance with this Executive Order. 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 this 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 shall be included on the ballot, however the name shall not be announced to or made available for review by anyone 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 a vote, and who has a reasonable basis to do so, may vote by absentee ballot in a manner determined by the Chair or the Executive Director.

6.1.2 Proxy Votes: Proxy votes are prohibited.

6.2 Number of Names Forwarded: The Commission shall typically send between three and six applicant names to the Governor for each vacancy, unless the Commission determines, based on the strength of the applicant pool, that circumstances warrant the transmission of a lesser or greater number of names.

6.3 Motions for Reconsideration: Motions for reconsideration shall be in order, at each stage in the review of applications. A Commissioner moving for reconsideration shall state the reason that the Commissioner believes reconsideration to be appropriate. 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 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.

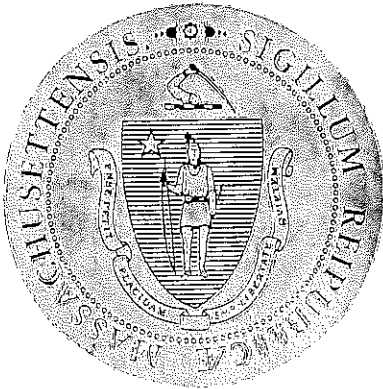
7.2 Joint Bar Committee: Before making recommendations to the Governor from among the list of applicants recommended by the Commission, the Chief Legal Counsel may seek the recommendations and assistance of the Joint Bar Committee. For each applicant, the Joint Bar

Committee shall report to the Governor's Chief Legal Counsel that the applicant is well qualified, qualified or not 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 vacancy for a period of up to 18 months after the date of the recommendation, at any stage of the application process relating to that vacancy, subject to such updated due diligence as the Governor's Chief Legal Counsel may require.

Section 8.0 Publication on Website and Public Distribution: This Executive Order shall be posted on the Commission website and 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 5th day of February in the year of our Lord two thousand fifteen and of the Independence of the United States of America two hundred thirty-nine.

Handwritten signature of Charles D. Baker in cursive script.

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts

Handwritten signature of William Francis Galvin in cursive script.

WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS