

NOTICE OF COMMENT PERIOD

The Nebraska Supreme Court considered proposed amendments to Neb. Ct. R. § 1-601 et seq. and Exhibit B, Judicial Nominating Commissions.

The Nebraska Supreme Court invites interested persons to comment on the proposed rule amendments and Exhibit B. Anyone desiring to submit a public comment for the Supreme Court's consideration should do so via email to joshua.shasserre@nejudicial.gov, with the following text listed in the email subject line: **Neb. Ct. R. § 1-601 et seq., Exhibit B, Judicial Nominating Commissions**. Comments will be accepted through March 2, 2026.

The full text of the amendments and Exhibit B is available below. To obtain a paper copy, please call the Clerk's Office at 402-471-3731.

CHAPTER 1: ADMINISTRATIVE OPERATIONS

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Article 6: Judicial Nominating Commissions.

§ 1-601. Application process.

(A) ~~Upon request to the judge chairperson of the appropriate Judicial Nominating Commission, the Clerk of the Supreme Court, or the State Court Administrator, an applicant for judicial appointment will receive a Judicial Vacancy Application Package which consists of instructions to the applicant, an application for judicial vacancy form, a copy of the Nebraska Revised Code of Judicial Conduct, a personal data sheet, and a copy of these rules. Such documents, which include "Fill in" versions of necessary forms, may also be found at and downloaded from the Nebraska Judicial Branch Web site at <http://supremecourt.ne.gov/forms>. An applicant interested in a judicial vacancy may access the Judicial Vacancy Application, forms, instructions, and other information on the Attorney Services Division portal.~~

~~(B)~~ The application, including any attachments, and the personal data sheet must be completed and submitted through the Attorney Services Division portal ~~filed by mail or electronically by e-mail with the commission chairperson~~ on or before the deadline set by the chairperson in the public notice which shall be not later than 21 days prior to the date of the public hearing. The Fair Credit Reporting Act Disclosure Statement and the Waiver of Confidentiality form attached to the application must be signed and sworn to before a notary public. Such notarized documents ~~may~~ shall be electronically submitted through the Attorney Services Division portal as a scanned document, provided that the applicant retains possession of the original bearing the required signatures and notary stamps. An

applicant may edit or add information to the application and any forms up to the date and time the application is due. After the deadline for submission of the application, no edits or additions may be made to the application or any forms.

(B) An applicant for any judicial vacancy may be investigated to, among other things, verify the accuracy of information provided. An investigation of each applicant is conducted by the Administrative Office of the Courts and Probation (AOCP), and the results are submitted to the Judicial Nominating Commission. The scope of the AOCP's investigation may include citizenship, residency, age, credit, taxes, education, employment, civil litigation, criminal litigation, law enforcement investigation and criminal charges, admission to the practice of law, service in the U.S. Armed Forces, or disciplinary action by any judicial conduct commission or state bar association of any jurisdiction. The commission may screen the applicants for further investigation or for interviewing.

~~(C) Submission of the documents referred to above may be by regular mail to Nebraska Supreme Court, P.O. Box 98910, Lincoln, Nebraska 68509. In the alternative, such documents may be electronically submitted by scanning the Application (which includes the Fair Credit Reporting Act Disclosure Statement and the Waiver of Confidentiality form), the personal data sheet, and the legal writing sample; saving each document as a separate PDF file; and attaching each PDF file to an e-mail sent to nsc.jnc@nejudicial.gov. It is recommended that the e-mail transmitting these documents requests acknowledgment of receipt by regular mail to Nebraska Supreme Court, P.O. Box 98910, Lincoln, Nebraska 68509.~~

~~(D) The personal data sheet is a confidential communication between the commission, its staff, and the applicant. However, a~~Any ~~applicant's name forwarded to the Governor shall be accompanied by the application, personal data sheet, and results of any investigation conducted on behalf of the commission. The personal data sheet is a confidential communication between the commission, its staff, and the applicant, and shall not otherwise be made public.~~

§ 1-602. Disqualification process. Judicial Nominating Commission members.

(A) (1) Pursuant to Neb. Const. art. V, § 21, and Neb. Rev. Stat. § 24-801 et seq., the commission is made up of eight voting members and a nonvoting chairperson who is a Supreme Court Justice. The Governor appoints four nonlawyer members, two alternate nonlawyer members, and the chairperson of the commission. The Nebraska State Bar Association members elect four lawyer members and four alternate lawyer members as provided by statute. Terms of members shall be staggered. Residency and political party

composition of each commission is governed by Neb. Const. art. V, § 21, and Neb. Rev. Stat. § 24-801 et seq.

(2) An alternate member shall serve as a member of the commission in the event of a member vacancy on the commission. The chairperson shall move an alternate to fill a vacancy of a member due to disqualification, resignation, or excused unavailability in compliance with statutory and constitutional requirements. An alternate member may serve in a temporary capacity if a member is disqualified or otherwise not available for a commission hearing. If a member resigns from any nominating commission, or leaves the commission for any other reason, the alternate shall fill the vacancy for the remainder of the unexpired term as provided by statute.

(3)(a) Pursuant to Neb. Const. art. V, § 21, and Neb. Rev. Stat. § 24-803(2), a member of the judicial nominating commission shall be deemed to have served on such commission if he or she was a member of the commission at the time of the publication of the notice required by Neb. Rev. Stat. § 24-810(1). For purposes of these rules, the term “member” includes alternate lawyer members.

(b)The nominees of any such commission cannot include a member of such commission or any person who served as a member of such commission within a period of 2 years of the member’s last date of service on the commission. For purposes of these rules, the last date of service on the commission is the date the commission last met and forwarded names of qualified nominees to the Governor.

(B) If a relationship between a commission member, or the Supreme Court member who chairs the commission, and an applicant falls into one of the following four categories, the commission member or chairperson shall recuse himself or herself from the commission:

(1) Any relationship to the applicant by blood or marriage by virtue of being the applicant's spouse, child, or spouse of a child. The commission member shall not be related to the applicant under the third degree of relationship test. The third degree of relationship test is defined as being the applicant’s or the applicant’s spouse’s parent, grandparent, aunt, uncle, sibling, nephew, or niece, or spouse of any of these relatives. Additionally, the commission member shall recuse himself or herself in situations where the applicant and commission member are sharing or have shared a residence during the past 5 years.

(2) Any arrangement involving the practice of law or an employment relationship including, but not limited to, partnership, professional corporation, or office sharing within the past 5 years.

(3) Any relationship in which the commission member and applicant are actively engaged in managing a common profitmaking business or venture.

(4) Any instance in which the member of the commission would cast his or her vote on a basis other than an applicant's qualification for the office.

(C) Any disqualified or excused unavailable member or alternate member shall be recused until the business of the active commission has concluded and then shall return as a member or alternate member for the remainder of his or her unexpired term.

~~(B)~~ If the person recusing himself or herself is the Supreme Court ~~member~~ Justice who chairs the commission, or if the chairperson is unavailable for the hearing, the Chief Justice or the next senior ~~judge~~ Justice shall request the Governor to appoint another member of the Court to chair such commission meeting.

~~(E)~~ Any person may challenge the impartiality of a member or the chairperson of a judicial nominating commission. The challenge shall be in writing and directed to the Supreme Court ~~member~~ Justice chairing such commission. If a challenge is raised regarding the impartiality of a member or the chairperson and the person so challenged declines to disqualify himself or herself, the unchallenged members of the commission shall rule on the challenge by a majority vote. Any such decision shall be attached to the information forwarded to the Governor and attached to the report submitted to the State Court Administrator.

~~(F)~~ A violation of § 1-602~~(A)~~~~(B)~~ by a commission member will not constitute cause for rescission of a judicial nomination or reopening of the commission process.

(G) Resignations shall be in writing, except where the tenure of a member is terminated by statute. All other voluntary resignations shall be sent to the chairperson of the commission and if a citizen member or alternate citizen member resigns, the resignation shall also be sent to the Governor. The chairperson shall inform the Clerk of the Supreme Court when there are vacancies on the commission by written resignation. Vacancies shall be filled as provided by statute.

(H) Immediately prior to the public hearing, the chairperson may hold a private session with the commissioners which includes a review of the statement of understanding of ethical considerations, qualifications checklist, legal and ethical obligations of commissioners, and considerations in the release of applicant information. Additional education may be provided by the Supreme Court.

§ 1-603. Public hearing and ~~C~~ommission deliberation.

(A) The first public hearing is set by the chairperson and held within 60 days after final determination of the judicial vacancy. At least 10 days prior to the public hearing, the chairperson shall release the names of the applicants. For the public hearing, there shall be present for voting eight qualified members of the appropriate judicial nominating commission, including alternate members. Any member of the public shall be entitled to attend the public hearing to express, either orally or in writing, his or her views concerning candidates for judicial vacancy.

~~Each commission member will execute the official oath and a statement of understanding, attached hereto as exhibit A.~~ Use of live video and audio coverage (livestreaming) of the public hearing shall be at the discretion of the chairperson. No oral public comment shall be allowed via livestreaming.

(B) Each commission member will execute the official oath pursuant to Neb. Rev. Stat. § 24-801.01 and a statement of understanding of ethical considerations, attached hereto as exhibit A. Each commission member will be provided a Nebraska Judicial Nominating Commissioner's Handbook, the contents of which shall include the American Bar Association's Guidelines for Reviewing Qualifications of Candidates for State Judicial Office and a checklist of qualifications. The qualifications checklist will be used as a guide to provide uniformity in evaluating candidates.

(C) The commission is ~~encouraged to~~ may hold private interviews with candidates prior to or following the public hearing. While commission members may encourage qualified persons to apply for judicial vacancies, once the application period closes, any private interviews with persons who have submitted an application for a judicial vacancy shall be with the full commission present.

(D) Following the public hearing and the commission's deliberations, the chairperson shall be responsible for notifying the applicants and the Governor of the result of the deliberations. The list of applicants determined to be sufficiently qualified to hold the judicial position in question shall be submitted to the Governor in alphabetical order.

§ 6-104. Communications with the commission.

The commission's role in interviewing applicants for judicial positions includes a thorough assessment of each applicant's competence, integrity, and judicial temperament. The receipt of information concerning those qualifications must be balanced with the applicant's opportunity to respond to allegations that the applicant does not possess the qualifications of competence, integrity, and/or judicial temperament.

With those considerations in mind, as well as statutory provisions governing the confidentiality of communications, the following rules have been adopted to govern the communication process with the commission.

(A) All communications between members of judicial nominating commissions and between any member of the commission and any prospective applicant for judicial office, and all other communications with members of the commission except those at the public hearing, shall be confidential. Additionally, all such communications, including those at the public hearing, shall be privileged from use in any legal action, except one charging misconduct in office of a member of a judicial nominating commission or one involving contempt of court, or misconduct of an attorney, based on such communication.

(B) Any member of the public shall be entitled to attend a public hearing for any judicial vacancy and express, either orally or in writing, his or her views concerning applicants for the judicial vacancy. Written public comments may be submitted in lieu of in-person oral comments. Written public comments are public records and may be read or discussed during the public hearing and any private interview between the applicant and commission. There is no expectation of privacy in any oral or written public comment. Written public comments shall be submitted to the chairperson on or before the deadline set by the chairperson, using the form provided at exhibit B.

(C) Unsolicited information is oral or written communication to the commission that is not identified as public comment under § 6-104(B) from individuals who support or oppose an applicant. Unsolicited information may, at the discretion of the chairperson, be shared in confidence with the applicant, but shall not be publicly disclosed by the applicant or the commission. Unsolicited information should be received by the commission on or before the deadline set by the chairperson in the hearing notice. Unsolicited information received by an individual commission member should be shared with the full commission before or during the commission's private session and if appropriate, the information may be investigated by the commission.

(D) The Judge Reference Inquiry Form or Personal Reference Inquiry Form submitted in response to the investigation of the applicant is a confidential communication with the commission.

(E) Communications between the applicant and the commission during a private interview shall remain confidential, including after the active business of the commission has concluded.

(F) Anonymous communications, whether oral or in writing, received by the commission or any member of the commission regarding qualifications of an applicant shall not be considered by the commission.

(G) Unlawful attempts to influence any judicial nominating commission, as set forth in Neb. Rev. Stat. § 24-811, shall be considered contempt of the Nebraska Supreme Court and shall be reported to the appropriate disciplinary authority, if warranted.

Exhibit A

STATEMENT OF UNDERSTANDING OF ETHICAL CONSIDERATIONS

~~Exhibit A—Statement of Understanding of Ethical Considerations~~

~~Statement of Understanding of Ethical Considerations~~

In the performance of their duties, the judicial nominating commission members shall be ever mindful that they hold positions of public trust. No commission member shall conduct himself or herself in a manner which reflects discredit upon the judicial selection process or discloses partisanship or partiality in the consideration of applicants. Consideration of applicants shall be made impartially, discreetly, and objectively. A commission member shall disclose to the commission all personal and business relationships with a prospective applicant that may directly or indirectly influence his or her decision. After certification of a list of sufficiently qualified applicants to the Governor, no commission member shall attempt, directly or indirectly, to further influence the ultimate decision of the Governor. No attempt shall be made to rank such nominees whose names are made public or to otherwise disclose a preference of the commission.

In accordance with the above ethical considerations, I will accept the following responsibilities:

1. I will disclose any conflict of interest that I may have with any of the applicants.
2. I will avoid preselection of nominees, “hidden agenda,” or consideration of factors other than the merit of the applicants.
3. I agree not to unlawfully discriminate against any applicant ~~because of the applicant’s race, religion, gender, political affiliation, age, or national origin.~~
4. I will not divulge any of the applicants’ confidential information, any confidential communications, or the commission’s deliberations except as provided by the Judicial Nominating Commission rules.

Exhibit B

PUBLIC COMMENTS FOR JUDICIAL NOMINATING COMMISSION HEARING

Nebraska statutes and court rules require Judicial Nominating Commissions to hold a public hearing on each judicial vacancy, and members of the public are entitled to attend the public hearing to express, either orally or in writing, their views concerning any applicant for a judicial vacancy. **Comments (whether oral or written) expressed during the public hearing shall not be confidential communications.**

ORAL COMMENTS: If, during the public hearing, you want to express oral comments concerning the qualifications of any applicant for a judicial vacancy, you must personally attend the hearing. The date, time, and location of the public hearing is stated in the public hearing notice, available here: <https://nebraskajudicial.gov/administration/media-releases>. Oral comments will not be received via videoconference, telephone, or similar technology, even if the public hearing is livestreamed. All those expressing oral comments during the Judicial Nominating Commission will be required to state their full name, and oral comments will be subject to time limits imposed at the chairperson's discretion.

WRITTEN PUBLIC COMMENTS: If you wish to submit written public comments for consideration by the commission in lieu of oral comments, you must do so using the form **linked here**. You will be required to provide your full name. The written public comment must be submitted to the chairperson prior to the deadline set in the public notice, which can be found here: <https://nebraskajudicial.gov/administration/media-releases>.

Written public comments will be available to all Judicial Nominating Commission Members and any referenced applicant. Additionally, the comments may be read and/or discussed during the public hearing and any private interview between the applicant and commission. Written public comments containing profanity or inappropriate content may be redacted or not considered at the discretion of the chairperson.

Anonymous comments are not allowed. Incomplete names may result in the comment not being considered at the discretion of the chairperson.

[Form]

Written Public Comment Cover Sheet

All fields are required.

Do you intend this comment to be a public comment?

Yes

No*

First Name: _____ Last Name: _____

**Address: _____

City: _____ State: _____ Zip: _____

**Email address: _____

* Checking "No" only creates a nonpublic document that will be shared with the full commission and potentially the applicant. Please see Neb. Ct. R. § 6-104 regarding what information may be shared with the applicant at the discretion of the chairperson.

**Physical and email address information is used to verify receipt and legitimacy of the sender.

Please mail or email this Cover Sheet and Written Public Comment to the chairperson of the Judicial Nominating Commission prior to the deadline listed in the public notice, which can be found here: <https://nebraskajudicial.gov/administration/media-releases>.

Written Public Comment

Name of Person Submitting Public Comment:

Judicial Nominating Commission for: [court], [district number]

Judicial Applicant Name*:

Hearing Date:

*If submitting public comment for more than one applicant, please submit a separate written public comment for each judicial applicant.

Written Public Comment (additional pages may be used):