

**IC 33-27**

**ARTICLE 27. JUDICIAL NOMINATING COMMISSION**

**IC 33-27-1**

**Chapter 1. Definitions**

**IC 33-27-1-1**

**Applicability**

Sec. 1. The definitions in this chapter apply throughout this article.  
*As added by P.L.98-2004, SEC.6.*

**IC 33-27-1-2**

**"Attorney commissioners"**

Sec. 2. "Attorney commissioners" means the three (3) individuals admitted to the practice of law who are elected to the judicial nominating commission by the electors.  
*As added by P.L.98-2004, SEC.6.*

**IC 33-27-1-3**

**"Electors"**

Sec. 3. "Electors" means individuals who are attorneys in good standing admitted to the practice of law in Indiana.  
*As added by P.L.98-2004, SEC.6.*

**IC 33-27-1-4**

**"Mail"**

Sec. 4. "Mail" includes ordinary mail or personal delivery.  
*As added by P.L.98-2004, SEC.6.*

**IC 33-27-1-5**

**"Nonattorney commissioners"**

Sec. 5. "Nonattorney commissioners" means the three (3) individuals not admitted to the practice of law who are appointed to the judicial nominating commission by the governor.  
*As added by P.L.98-2004, SEC.6.*

## **IC 33-27-2**

### **Chapter 2. Commissioners, Employees, and Staff**

#### **IC 33-27-2-1**

##### **Nonattorney commissioners; appointment; term; residency; vacancy**

Sec. 1. (a) The governor shall appoint three (3) nonattorney citizens of Indiana, one (1) each from the First District, the Second District, and the Third District of the court of appeals, as commissioners of the judicial nominating commission.

(b) One (1) month before the expiration of a term of office of a nonattorney commissioner, the governor shall either reappoint the commissioner as provided in section 5 of this chapter or appoint a new nonattorney commissioner. All appointments made by the governor to the judicial nominating commission shall be certified to the secretary of state and to the clerk of the supreme court not later than ten (10) days after the appointment.

(c) Except as provided in subsection (e), the governor shall appoint each nonattorney commissioner for a term of three (3) years.

(d) An appointed nonattorney commissioner must reside in the court of appeals district for which the nonattorney commissioner was appointed. A nonattorney commissioner is considered to have resigned the position if the residency of the nonattorney commissioner changes from the court of appeals district for which the nonattorney commissioner was appointed.

(e) When a vacancy occurs in the office of a nonattorney commissioner, the chairman of the commission shall promptly notify the governor in writing. Vacancies in the office of nonattorney commissioners shall be filled by appointment by the governor not later than sixty (60) days after the governor receives notice of the vacancy. The term of the nonattorney commissioner appointed to fill the vacancy is for the unexpired term of the member whose vacancy the new nonattorney commissioner has filled.

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

#### **IC 33-27-2-2**

##### **Attorney commissioners; electors and elections; residency; term; vacancy**

Sec. 2. (a) For purposes of electing attorney members to the judicial nominating commission, the state shall be divided into three (3) districts, corresponding to the First District, the Second District, and the Third District of the court of appeals.

(b) The qualified electors consist of the individuals who are registered with the clerk of the supreme court as attorneys in good standing under the requirements of the supreme court.

(c) The electors of each district shall elect one (1) resident of their district who is admitted to the practice of law in Indiana to the judicial nominating commission. The term of office of each elected member is three (3) years, beginning on the first day of January following the election. During the month before the expiration of an

elected member's term of office, an election shall be held to fill the succeeding three (3) year term of office. Attorney commissioners on the commission must reside for the term of their office in the district from which they were elected. An attorney commissioner is considered to have resigned the position if the residency of the attorney commissioner changes from the court of appeals district for which the attorney commissioner was elected.

(d) Except when a term of office has less than ninety (90) days remaining, vacancies in the office of an attorney commissioner to the judicial nominating commission shall be filled for the unexpired term of the member creating the vacancy by a special election. An attorney commissioner who is elected to fill an unexpired term shall commence the attorney commissioner's duties immediately upon the certification of the new attorney commissioner's election to the secretary of state.

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

### **IC 33-27-2-3**

#### **Election procedure**

Sec. 3. The attorney commissioners of the judicial nominating commission shall be elected by the following process:

(1) The clerk of the supreme court shall, at least ninety (90) days before the date of an election, send a notice by mail to the address for each qualified elector shown on the records of the clerk informing the electors that nominations for the election must be made to the clerk of the supreme court at least sixty (60) days before the election.

(2) A nomination in writing accompanied by a signed petition of thirty (30) electors from the nominee's district, and the written consent of the nominee shall be filed, by mail or otherwise, by any electors or group of electors admitted to the practice of law in Indiana who reside in the same district as the nominee, in the office of the clerk of the supreme court at least sixty (60) days before the election.

(3) The clerk of the supreme court shall prepare and print separate ballots for each court of appeals district. These ballots must contain the names and residence addresses of all nominees residing within the district for which the ballots are prepared, and whose written nominations, petitions, and written statements of consent have been received sixty (60) days before the election.

(4) The ballot must read as follows:

Indiana Judicial Nominating Commission

BALLOT FOR DISTRICT ( )

To be cast by individuals residing in District ( ) and registered with the Clerk of the Supreme Court as an attorney in good standing under the requirements of the Supreme Court. Vote for one (1) member listed below for Indiana Judicial Nominating Commissioner for the term commencing \_\_\_\_\_.

District ( )

(Name) (Address)

(Name) (Address)

(Name) (Address)

To be counted, this ballot must be completed, the accompanying certificate completed and signed, and both together mailed or delivered to the Clerk of the Supreme Court of Indiana, Indianapolis, Indiana, not later than \_\_\_\_\_.

DESTROY BALLOT IF NOT USED

(5) In each district, the nominee receiving the most votes from the district shall be elected.

(6) The clerk shall also supply with each ballot distributed a certificate, to be completed and signed and returned by the elector voting the ballot, certifying that the voter is registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court, and that the voter voted the ballot returned. A ballot not accompanied by the signed certificate of the voter shall not be counted.

(7) To maintain the secrecy of each vote, a separate envelope shall be provided by the clerk for the ballot, in which only the voted ballot may be placed. This envelope shall not be opened until the counting of the ballots.

(8) The clerk of the supreme court shall mail a ballot and the accompanying material to all electors at least two (2) weeks before the date of the election.

(9) The ballot and the accompanying certificate must be received by the clerk of the supreme court by 4 p.m. on the last day of the election period.

(10) Upon receiving the completed ballots and the accompanying certificate the clerk of the supreme court shall insure that the certificates have been completed in compliance with this article. All ballots that are accompanied by a valid certificate shall be placed in a package designated to contain ballots. All accompanying certificates shall be placed in a separate package.

(11) The clerk of the supreme court, with the assistance of the secretary of state and the attorney general, shall open and canvass all ballots after 4 p.m. on the last day of the election period in the office of the clerk of the supreme court. A ballot received after 4 p.m. may not be counted unless the chief justice orders an extension of time because of unusual circumstances. Upon canvassing the ballots, the clerk of the supreme court shall place all ballots back in their packages. These, along with the certificates, shall be retained in the clerk's office for six (6) months, and the clerk may not permit anyone to inspect them except upon an order of the supreme court.

(12) Not later than ten (10) days after the election, the clerk shall certify the results to the secretary of state.

(13) In an election held for selection of attorney commissioners of the judicial nominating commission, if two (2) or more nominees are tied, the canvassers shall resolve the tie by lot in

a manner that they shall determine, and the winner of the lot is considered elected.

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

#### **IC 33-27-2-4**

##### **Notification**

Sec. 4. After the attorney commissioners have been elected, and after the names of the nonattorney commissioners appointed by the governor have been certified to the secretary of state as provided in this chapter, the clerk shall notify, by regular mail, the members of the commission of their election or appointment.

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

#### **IC 33-27-2-5**

##### **Duration in office**

Sec. 5. A member of the judicial nominating commission may serve until the member's successor is appointed or elected. An attorney commissioner or a nonattorney commissioner is not eligible for successive reelection or reappointment. However, an attorney commissioner or a nonattorney commissioner who has been appointed or elected to fill a vacancy on the commission for less than one (1) year is eligible upon the expiration of that term, if otherwise qualified, for a succeeding term.

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

#### **IC 33-27-2-6**

##### **Compensation**

Sec. 6. A member of the judicial nominating commission shall serve without compensation for the member's services, except for per diem and travel expenses and other necessary and reasonable expenses.

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

#### **IC 33-27-2-7**

##### **Personnel; appropriations**

Sec. 7. (a) The judicial nominating commission may employ investigators and other experts that the commission determines are necessary to carry out its functions and purposes. The commission may employ special counsel in a proceeding if the commission determines the employment is advisable.

(b) The division of state court administration shall serve the judicial nominating commission in performing the commission's statutory and constitutional functions.

(c) The general assembly may appropriate the sums it considers necessary for expenses that may be incurred in the administration of this article.

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

#### **IC 33-27-2-8**

##### **Staff duties**

Sec. 8. (a) The staff of the judicial nominating commission shall make the findings of fact concerning individuals eligible to fill a vacancy in a judicial office as the commission directs.

(b) The staff shall compile biographical sketches of each nominee running for election to the judicial nominating commission. The information compiled shall be submitted to the clerk of the supreme court for mailing, along with the ballots, to qualified electors. The biographical sketches prepared under this subsection must include the following information for each nominee:

- (1) Name and address.
- (2) Legal background, including:
  - (A) type of practice;
  - (B) law firm; and
  - (C) law school year of graduation, honors, other pertinent information.
- (3) General educational background.
- (4) A short statement by the nominee stating the nominee's efforts and achievements in bringing about improvement and betterment of the administration of justice.
- (5) Public offices or positions, including:
  - (A) all public salaried positions; and
  - (B) all services contributed to a public or charitable organization.
- (6) Business and civic affairs.
- (7) Any other pertinent information that the commission considers important.

(c) The staff shall carry out any other duties assigned to it by the general assembly and by the judicial nominating commission when acting in that capacity and in its capacity as the commission on judicial qualifications.

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

#### **IC 33-27-2-9**

##### **Commissioners, employees, and staff; immunity from civil liability**

Sec. 9. The commissioners, employees, and staff of the judicial nominating commission are immune from civil liability for any act or proceeding taken, or communication or statement made, relevant to the evaluation of a candidate under IC 33-27-3-2.

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

#### **IC 33-27-2-10**

##### **Agencies, organizations, other associations, or persons; immunity from civil liability**

Sec. 10. An agency, an organization, a person, or an association described in IC 33-27-3-2(c) is immune from civil liability for providing information or assistance in an investigation under IC 33-27-3-2 or for testifying before the judicial nominating commission if:

- (1) the information or testimony is relevant to the evaluation of a candidate under IC 33-27-3-2(a); and

- (2) the information or testimony is:
  - (A) an expression of opinion; or
  - (B) a statement of fact made without:
    - (i) knowledge that the statement is false; or
    - (ii) reckless disregard for the truth.

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

### **IC 33-27-3**

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

##### **IC 33-27-3-1**

###### **Duties**

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

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

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

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

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

##### **IC 33-27-3-2**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

whichever occurs first.

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

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

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

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

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

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

### **IC 33-27-3-3**

#### **Withdrawal or death of nominees; multiple vacancies**

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

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

### **IC 33-27-3-4**

#### **Failure of governor to appoint; appointment by chief justice;**

**changes in list**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **IC 33-27-4**

### **Chapter 4. Appointment of Senior Judges**

#### **IC 33-27-4-1**

##### **Application**

Sec. 1. A person who desires to serve as a senior judge under IC 33-23-3 may apply to the judicial nominating commission for certification to the supreme court as a senior judge.

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

#### **IC 33-27-4-2**

##### **Certification**

Sec. 2. The judicial nominating commission shall certify to the supreme court a person desiring to serve as a senior judge if the person meets requirements for service as a senior judge set by the supreme court under IC 33-24-3-7.

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

#### **IC 33-27-4-3**

##### **Restrictions on certification; retirement benefits**

Sec. 3. (a) Except as provided in subsection (b), a person may not be certified under this section if:

(1) the person:

(A) has not served as a:

(i) judge;

(ii) justice;

(iii) magistrate; or

(iv) commissioner appointed under IC 33-33-49 who has all the powers and duties prescribed for a magistrate; or

(B) is still serving as a:

(i) judge;

(ii) justice;

(iii) magistrate; or

(iv) commissioner appointed under IC 33-33-49 who has all the powers and duties prescribed for a magistrate;

of a court of record in Indiana;

(2) the person is not available for the minimum period of commitment for service as a senior judge specified by the supreme court under IC 33-24-3-7; or

(3) the combination of:

(A) the compensation for senior judges set under IC 33-23-3-5; and

(B) any retirement benefits that the person is receiving or is entitled to receive;

exceeds the minimum compensation to which judges of the circuit court are entitled under IC 33-38-5.

(b) A person who elects to forgo retirement benefits during the period of commitment as a senior judge may be certified as a senior judge under section 2 of this chapter upon verification by the judicial nominating commission of the availability to the person of the

election.

*As added by P.L.98-2004, SEC.6. Amended by P.L.3-2010, SEC.1;  
P.L.71-2010, SEC.1.*