

AGENCY 90. JUDICIARY  
SUB-AGENCY 800. JUDICIAL NOMINATING BOARD  
CHAPTER 001. BOARD RULES

CVR 90-800-001 (2016)

90 800 001. Board Rules

RULE 1. Applicability

These rules shall govern the procedure for the Judicial Nominating Board.

RULE 2. Board Chair and ~~Vice Chair~~ Vice Chair

The ~~board~~ Board shall elect from among its members a Chair ~~chair~~ and Vice Chair ~~vice chair~~ to serve for a term of two years ~~or~~ until the expiration of ~~his/her~~ his or her term on the Board, ~~or his or her resignation~~, whichever occurs first. The Chair, if present, ~~or the Vice Chair~~ Vice Chair ~~in his/her~~ the Chair's absence, shall preside at any meeting of the Board. In their absence, the Board shall ~~choose~~ elect a member of the Board to act as chair.

RULE 3. Board Secretary

The Board shall ~~choose~~ elect one of its members to serve as secretary. It shall be the duty of the secretary to prepare and keep the minutes of all meetings. In the secretary's absence, the Board shall ~~choose~~ elect a member to ~~be~~ serve as acting secretary. For meetings subject to the Open Meeting Law, minutes shall be prepared consistent with 1 V.S.A. § 312(b)(1).

RULE 4. Notice of Judicial Vacancy

Upon receipt by the Board of a notice of a vacancy from the Governor, the Chair shall request the Vermont Supreme Court to send a the appropriate "Notice of Judicial Vacancy" ~~in the form shown in Form 1 to such newspapers as the Board shall from time to time determine and to all the~~ members of the Vermont State Bar by electronic mail.

RULE 5. Board Members Conduct

(a) A Board member shall consider each candidate for a judicial office in an impartial, objective manner. A Board member shall not consider the race, color, religion, ~~or~~ ancestry, national origin, sex, sexual orientation, gender identity, place of birth, age, or disability of a candidate. ~~Political affiliation of a candidate shall not be considered unless required by law.~~

(b) If a Board member knows of any personal or business relationship ~~which he/she~~ that he or she has with a candidate, and the relationship may influence, or appear to influence, the decision of the Board member as to this candidate, the Board member shall report this fact to the Chair. ~~Such report shall be included within the minutes or otherwise in writing made a part of the~~

~~proceedings of the Board. The Chair shall report any disclosed relationships to the full Board prior to any candidate interviews or discussion of any candidacies. If a majority of the Board determines votes that such a relationship may unduly influence the Board member's decision as to this the candidate, the Board member shall not vote upon the candidate and this fact shall be noted in the records of the Board relating to the candidate shall not participate in any deliberations concerning the candidate, including the candidate interview.~~

~~(c) All communications between Board members, between a Board member and a candidate, or between a Board member and any other person or organization with respect to the judicial qualifications of a candidate shall be kept confidential and discussed only among board members. Further, the identify of candidates for appointment shall be kept confidential except in communications to the Governor. This shall not preclude any Board member from making inquiry as to the reputation of any judicial candidate as long as such communication is investigational in nature. In any such communication, the Board member should be careful not to suggest his/her personal opinion nor that of any other member of the Board. Board members shall, in any communications with non-Board members, preserve the confidentiality and integrity of the Board and nominating process.~~

#### RULE 6. Board Meetings

(a) Meetings of the Board may be called by the Chair or by a majority of the members by written notice to the other members specifying the time and place of meeting. Such notice shall be mailed or sent at least seven ~~(7)~~ days before the time specified, except that a meeting may be held on shorter notice if the notice specifies that such meeting is required. The place and time of such meeting will be specified in the notice. Notice of meeting may be waived by any Board member either before or after the meeting takes place, and attendance at a meeting by any member shall constitute a waiver of notice by such member unless ~~he/she~~ he or she shall, at or promptly after the beginning of the meeting, object to the holding of the meeting on the ground ~~or~~ of lack of, or insufficiency of, notice.

(b) Meetings of the Board may be held without notice at any time or place whenever the meeting is one as to which notice is waived by all members or whenever the Board at a previous meeting shall have designated the time and place for such a meeting.

(c) The Chair shall call at least one meeting each year for the principal purpose of reviewing Board operating procedures and briefing new Board members on the rules of procedure of the Board.

(d) A quorum of the Board shall be eight ~~(8)~~ Board members. The Board shall act by majority vote of Board members present. ~~It may interview through a subcommittee of three or more.~~

#### RULE 7. Recruitment of Candidates

Board members may actively ~~seek out and~~ encourage qualified individuals to apply for judicial office. ~~Board members should always keep in mind that often the person with the~~

~~highest qualifications will not actively seek judicial appointment. Thus Board members ought to seek out well-qualified persons and to encourage them to agree to accept nomination even if a Board member is so intimately acquainted with such a person that the Board member may ultimately be unable to vote (pursuant to Rule 5b) for this person's nomination. No Board member should ever indicate to a prospective candidate that he/she is likely to receive approval by the Board or in any way commit either themselves or the Board to voting in favor of that candidate at a future time. Any candidate should be specifically informed that he/she cannot be guaranteed approval by the Board. If an individual so encouraged by a Board member applies, the Board member shall report this communication to the Board Chair. The Board member's ability to participate in the candidate's interview, in the discussion of the applicant's candidacy, and in the vote on the applicant's candidacy shall be determined pursuant to Rule 5(b).~~

#### RULE 8. Preliminary Screening of Candidates

~~As part of the preliminary background investigation, each candidate will be required to fill out the Board's questionnaire entitled "Questionnaire for Candidates for Judicial Office" (Form 2) and such waivers and authorizations as the Board from time to time may require. Further screening may be performed by the Board on those candidates who may come from portions of the State of Vermont not represented on the Judicial Nominating Board. Such information shall be solely for the purpose of compiling background information and inquiry shall only be made at the specific direction of and in a manner approved shall complete any application or questionnaire required by the Board, and agree to any waivers or authorizations required by the Board.~~

#### RULE 9. ~~Investigation~~ Consideration of Candidates

(a) ~~Any~~ In addition to speaking to references listed by a candidate, any Board member may make further inquiry so as to determine the general reputation of any candidate. ~~Such information~~ Information obtained through such inquiry shall be confidential and confidentiality shall be maintained relative to it. All such information shall be identified to the Board together with the identity of those disclosed to the Board along with the identity of the individuals making such information available. The information shall be limited to inquiries as to the ~~trial~~ legal experience, general reputation, qualifications, and other qualities ~~which~~ that the Legislature may establish as criteria for the selection of candidates.

(b) All communications among Board members, a Board member and a candidate, or a Board member and any other person or organization with respect to an applicant's candidacy shall be kept confidential and discussed only among Board members.

(c) The identity of candidates for appointment shall be kept confidential except in communications to the Governor. This subsection shall not preclude any Board member from making inquiry as to the reputation of any judicial candidate as long as the communication is investigational in nature. In all communications, the Board member should take reasonable care not to indicate his or her personal opinion or the opinion of any other member of the Board. Discussions with nonmembers shall always commence with a request that the conversation and name of any applicants be treated as confidential.

(d) The Board shall submit to the Office of Court Administrator a list of all the candidates. The Office of Court Administrator shall disclose to the Board:

(1) information about professional disciplinary action taken or pending concerning any candidate in any jurisdiction, and

(2) results of a Vermont Crime Information Center (VCIC) criminal background check.

#### RULE 10. Interview

(a) All eligible candidates for ~~judicial~~ any position shall be interviewed.

(b) ~~When the number of candidates for non-judicial position makes such an interview process not feasible in the opinion of the Chair, he/she may establish a preliminary screening of the various applications and make determination as to those who shall be interviewed by subcommittee or such committee as the Board might adopt. In such event, any Board member may cause any candidate to be interviewed by requesting the same of the Chair. The interviews shall be in person and conducted in a dignified and confidential atmosphere.~~ application submission period closes, the Chair shall determine if any applicant is ineligible under Rule 11(a) to seek the position. Upon such a determination, the Chair shall notify the Board of this determination and the basis for it. The Board shall vote on the eligibility of an applicant if requested to do so by a member within seven days of the Board's receipt of the applications.

#### RULE 11. Selection Criteria

(a)(1) To be eligible for appointment to a judicial position a person shall be an attorney at law who has been engaged in the practice of law or a judge in the state of Vermont for a period of at least five out of the ten years preceding his or her appointment as a judge or Justice, a person shall be a Vermont resident and an experienced lawyer who is a judge or has practiced law in Vermont for a minimum of ten years, with at least five years immediately preceding his or her application to the Board. The Board may make exceptions to the five-year requirement for absences from practice for reasons including family, military, academic, or medical leave.

(2) To be eligible for appointment as a magistrate, a person shall be a Vermont resident and an experienced lawyer who has practiced law in Vermont for at least five years immediately preceding his or her application to the Board.

(b) In evaluating candidates, the Board members shall use criteria and standards for nomination including ~~but not limited to such factors as integrity;~~ legal knowledge and ability; judicial temperament; impartiality; ~~health;~~ communication capability; financial integrity; work ethic; administrative capability; experience, including courtroom experience; diligence; ~~administrative and communicative skills;~~ social consciousness; and public service.

(c) ~~With respect to a candidate for superior or district judge, particular consideration shall be given to the nature and extent of his or her trial practice.~~ For Superior Court, a candidate shall have sufficient trial or other comparable experience that ensures knowledge of the Vermont Rules of Evidence and courtroom procedure. For the Environmental Division of the Superior Court, a candidate shall be experienced in environmental and zoning law.

RULE 12. Selection of Nominees

(a) When all relevant background information on each candidate has been compiled and the candidates have been interviewed by the Board ~~members or a subcommittee of the Board~~, the Board shall ~~meet for the purpose of selecting, by vote, select~~ nominees to be sent to the Governor.

(b) Before proceeding to a vote on the candidates, the Chair shall ~~read the names of the candidates in alphabetical order. Thereafter, the Chair shall~~ open the meeting to a discussion of each ~~particular~~ candidate's qualifications for judicial office. ~~After this procedure has been followed for each candidate, the Chair shall open the meeting to, including~~ a general discussion of the relative qualifications of all candidates.

(c) Upon completion of the discussion of the candidates' qualifications, the Board shall vote by secret ballot.

(d)(1) The Board shall vote once on each candidate.

(2) Notwithstanding subdivision (1) of this subsection, one re-vote may be conducted for an applicant if a majority of Board members present votes to conduct the re-vote and:

(A) substantial new information emerges after the initial vote but before the conclusion of the nominating process; or

(B) good cause exists for a re-vote.

RULE 13. Transmittal to the Governor

The names of the nominees, together with their confidential vote totals and questionnaires, shall be hand-delivered to the Governor or mailed to ~~his/her~~ his or her personal attention. The names shall be listed in alphabetical order.

RULES 14. Rule Amendment

Proposals to amend these rules shall be made by a majority of the total Board members acting at a regular or special meeting duly warned for that purpose setting forth the proposed amendment, and shall be adopted pursuant to 4 V.S.A. § 601~~(b)~~(d) and 3 V.S.A. Chapter 25.

AGENCY 90. JUDICIARY  
SUB-AGENCY 800. JUDICIAL NOMINATING BOARD  
CHAPTER 001. BOARD RULES

CVR 90-800-001 (2016)

90 800 001. Board Rules

RULE 1. Applicability

These rules shall govern the procedure for the Judicial Nominating Board.

RULE 2. Board Chair and Vice Chair

The Board shall elect from among its members a chair and vice chair to serve for a term of two years until the expiration of his or her term on the Board or his or her resignation, whichever occurs first. The Chair, if present, or the Vice Chair in the Chair's absence, shall preside at any meeting of the Board. In their absence, the Board shall elect a member of the Board to act as chair.

RULE 3. Board Secretary

The Board shall elect one of its members to serve as secretary. It shall be the duty of the secretary to prepare and keep the minutes of all meetings. In the secretary's absence, the Board shall elect a member to serve as acting secretary. For meetings subject to the Open Meeting Law, minutes shall be prepared consistent with 1 V.S.A. § 312(b)(1).

RULE 4. Notice of Judicial Vacancy

Upon receipt by the Board of a notice of a vacancy from the Governor, the Chair shall request the Vermont Supreme Court to send the appropriate "Notice of Judicial Vacancy" to all members of the Vermont State Bar by electronic mail.

RULE 5. Board Members Conduct

(a) A Board member shall consider each candidate for a judicial office in an impartial, objective manner. A Board member shall not consider the race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, age, or disability of a candidate.

(b) If a Board member knows of any personal or business relationship that he or she has with a candidate, and the relationship may influence or appear to influence the decision of the Board member as to this candidate, the Board member shall report this fact to the Chair. The Chair shall report any disclosed relationships to the full Board prior to any candidate interviews or discussion of any candidacies. If a majority of the Board votes that a relationship may unduly

influence the Board member's decision as to the candidate, the Board member shall not vote upon the candidate and shall not participate in any deliberations concerning the candidate, including the candidate interview.

(c) Board members shall, in any communications with non-Board members, preserve the confidentiality and integrity of the Board and nominating process.

#### RULE 6. Board Meetings

(a) Meetings of the Board may be called by the Chair or by a majority of the members by written notice to the other members specifying the time and place of meeting. Such notice shall be mailed or sent at least seven days before the time specified, except that a meeting may be held on shorter notice if the notice specifies that such meeting is required. The place and time of such meeting will be specified in the notice. Notice of meeting may be waived by any Board member either before or after the meeting takes place, and attendance at a meeting by any member shall constitute a waiver of notice by such member unless he or she shall, at or promptly after the beginning of the meeting, object to the holding of the meeting on the ground of lack of, or insufficiency of, notice.

(b) Meetings of the Board may be held without notice at any time or place whenever the meeting is one as to which notice is waived by all members or whenever the Board at a previous meeting shall have designated the time and place for such a meeting.

(c) The Chair shall call at least one meeting each year for the principal purpose of reviewing Board operating procedures and briefing new Board members on the rules of procedure of the Board.

(d) A quorum of the Board shall be eight Board members. The Board shall act by majority vote of Board members present.

#### RULE 7. Recruitment of Candidates

Board members may actively encourage individuals to apply for judicial office. If an individual so encouraged by a Board member applies, the Board member shall report this communication to the Board Chair. The Board member's ability to participate in the candidate's interview, in the discussion of the applicant's candidacy, and in the vote on the applicant's candidacy shall be determined pursuant to Rule 5(b).

#### RULE 8. Screening of Candidates

As part of the preliminary background investigation, each candidate shall complete any application or questionnaire required by the Board, and agree to any waivers or authorizations required by the Board.

## RULE 9. Consideration of Candidates

(a) In addition to speaking to references listed by a candidate, any Board member may make further inquiry so as to determine the general reputation of any candidate. Information obtained through such inquiry shall be disclosed to the Board along with the identity of the individuals making such information available. The information shall be limited to inquiries as to the legal experience, general reputation, qualifications, and other qualities that the Legislature may establish as criteria for the selection of candidates.

(b) All communications among Board members, a Board member and a candidate, or a Board member and any other person or organization with respect to an applicant's candidacy shall be kept confidential and discussed only among Board members.

(c) The identity of candidates for appointment shall be kept confidential except in communications to the Governor. This subsection shall not preclude any Board member from making inquiry as to the reputation of any judicial candidate as long as the communication is investigational in nature. In all communications, the Board member should take reasonable care not to indicate his or her personal opinion or the opinion of any other member of the Board. Discussions with nonmembers shall always commence with a request that the conversation and name of any applicants be treated as confidential.

(d) The Board shall submit to the Office of Court Administrator a list of all the candidates. The Office of Court Administrator shall disclose to the Board:

- (1) information about professional disciplinary action taken or pending concerning any candidate in any jurisdiction, and
- (2) results of a Vermont Crime Information Center (VCIC) criminal background check.

## RULE 10. Interview

(a) All eligible candidates for any position shall be interviewed.

(b) When the application submission period closes, the Chair shall determine if any applicant is ineligible under Rule 11(a) to seek the position. Upon such a determination, the Chair shall notify the Board of this determination and the basis for it. The Board shall vote on the eligibility of an applicant if requested to do so by a member within seven days of the Board's receipt of the applications.

## RULE 11. Selection Criteria

(a)(1) To be eligible for appointment as a judge or Justice, a person shall be a Vermont resident and an experienced lawyer who is a judge or has practiced law in Vermont for a minimum of ten years, with at least five years immediately preceding his or her application to the Board. The Board may make exceptions to the five-year requirement for absences from practice for reasons including family, military, academic, or medical leave.

(2) To be eligible for appointment as a magistrate, a person shall be a Vermont resident and an experienced lawyer who has practiced law in Vermont for at least five years immediately preceding his or her application to the Board.

(b) In evaluating candidates, the Board members shall use criteria and standards for nomination including integrity; legal knowledge and ability; judicial temperament; impartiality; communication capability; financial integrity; work ethic; administrative capability; experience, including courtroom experience; diligence; social consciousness; and public service.

(c) For Superior Court, a candidate shall have sufficient trial or other comparable experience that ensures knowledge of the Vermont Rules of Evidence and courtroom procedure. For the Environmental Division of the Superior Court, a candidate shall be experienced in environmental and zoning law.

#### RULE 12. Selection of Nominees

(a) When all relevant background information on each candidate has been compiled and the candidates have been interviewed by the Board, the Board shall, by vote, select nominees to be sent to the Governor.

(b) Before proceeding to a vote on the candidates, the Chair shall open the meeting to a discussion of each candidate's qualifications for judicial office, including a general discussion of the relative qualifications of all candidates.

(c) Upon completion of the discussion of the candidates' qualifications, the Board shall vote by secret ballot.

(d)(1) The Board shall vote once on each candidate.

(2) Notwithstanding subdivision (1) of this subsection, one re-vote may be conducted for an applicant if a majority of Board members present votes to conduct the re-vote and:

(A) substantial new information emerges after the initial vote but before the conclusion of the nominating process; or

(B) good cause exists for a re-vote.

#### RULE 13. Transmittal to the Governor

The names of the nominees, together with their confidential vote totals and questionnaires, shall be hand-delivered to the Governor or mailed to his or her personal attention. The names shall be listed in alphabetical order.

#### RULES 14. Rule Amendment

Proposals to amend these rules shall be made by a majority of the total Board members acting at a regular or special meeting duly warned for that purpose setting forth the proposed amendment, and shall be adopted pursuant to 4 V.S.A. § 601(d) and 3 V.S.A. Chapter 25.