

JOINT COMMITTEE ON JUDICIAL RETENTION

RULES OF PROCEDURE

The Joint Committee on Judicial Retention adopts the following rules of procedure under the authority of section 607(b) of Title 4 to discharge its responsibility to review the candidacies of judges desiring to succeed themselves in office, and to report to the Joint Assembly of the General Assembly.

Section 1. ORGANIZATION

- (a) The committee shall elect a chair, vice chair and a clerk from among its members.
- (b) A quorum shall consist of five members of the committee.
- (c) All determinations of the committee shall be by a majority vote of the members present, a quorum having been obtained.
- (d) The committee shall make a record of testimony relating to a candidate's retention in office, and may make a record of its deliberations.
- (e) All meetings of the committee shall be open to the public, except when the committee votes to go into executive session. A motion that the committee go into executive session shall require a two-thirds vote of the members of the committee present and voting in open session. The motion shall indicate the matters to be considered in executive session, and shall take precedence over all motions except the motion to adjourn. A motion for executive session shall be in order for the consideration of matters relating to the appointment or employment or

evaluation of a justice or judge. Action shall not be taken while in executive session but shall be by roll call vote in open session.

(f) The committee shall meet on the call of the chair or; in the chair's absence, the vice chair, as often as necessary for the efficient discharge of its duties.

(g) These rules may be amended by an affirmative vote of not less than five members.

Section 2. INFORMATION ON CANDIDATES

(a) Prior to the convening of the session of the general assembly which will review the candidacy of a judge or justice seeking to be retained, the staff of the legislative council may gather such information and make such investigation as may be useful in the review of the judicial performance of each judge or justice. The staff shall conduct a survey of members of the bar who have appeared before each judge or justice. If practicable, the staff may conduct a survey of members of the public other than lawyers who may be knowledgeable of the judge or justice's judicial performance. The staff shall request information from each judge, including general biographical information, information on his or her education, employment, membership in associations or organizations, physical and mental condition, and financial affairs, and any other information bearing on the candidate's ability to perform his or her judicial responsibilities. All activities of legislative council staff authorized by this subsection shall be conducted in accordance with a plan approved by the chair. Legislative council staff shall not disclose any information concerning a judge which is not available as a matter of public record without the approval of the chair. With the approval of the chair and the legislative council, the staff of the

council may contract for such services as may be needed to fulfill the responsibilities of staff under these rules.

(b) A justice or judge desiring to be retained in office shall have the right to present oral or written testimony to the committee relative to his or her candidacy, may be represented by counsel or other person of his or her choosing, and may present witnesses to testify in his or her behalf.

(c) The committee shall take testimony of any person relative to the candidacy of a judge or justice desiring to be retained in office, but the committee in its discretion may place limitations on this testimony. Oral testimony and written comments of a member of the public shall be subject to section 3 of these rules.

(d) The committee may invite the Vermont Bar Association to testify or submit information in the form and to the extent which it deems appropriate relative to the candidacy of any justice or judge desiring to be retained in office.

(e) The committee may request any material or files from the court administrator relating to the judicial performance of a judge or justice seeking to be retained in office.

(f) The committee may compel the presence of any witness or the production of any document, not otherwise privileged, through the issuance of a subpoena approved for the specific purpose by a majority vote of the committee and signed by the chair. Subpoenas shall be served by or under the direction of the Sergeant-at-Arms of the General Assembly.

Section 3. HEARING PROCEDURES

(a) The committee shall provide, through legislative council staff, at least five days notice to the public and to each judge or justice seeking to be retained in office of any public hearing of the committee. Notice to each such judge or justice shall include a copy of any written comments received by the committee or legislative council staff.

(b) All witnesses testifying before the committee shall be sworn in by the clerk or chair and testify under oath.

(c) A justice or judge desiring to be retained in office shall be the first witness to present oral testimony relative to his or her candidacy. The candidate has the right to be present at all times, and shall have the right to respond to or rebut any testimony and written comments adverse to his or her candidacy either personally or through the presentation of other witnesses.

(d) Any witness may be subject to questioning by any member of the committee.

Witnesses shall not be subject to cross-examination by the candidate or the candidate's counsel, but the candidate or the candidate's counsel may present to the chair questions that he or she wishes to have directed to any witness. The committee shall determine whether such questions shall be posed to the witness. The committee shall also determine whether questions requested by other members of the General Assembly shall be posed to the candidate.

(e) The committee shall not be required to observe strict rules of evidence pertaining in courts of law in this state. Only a member of the committee may raise an objection to the admissibility or relevance of testimony. Objections shall be ruled upon by the chair or presiding

member, and such rulings shall be final, unless overruled by a majority vote of the members present.

Section 4. REPORT TO THE JOINT ASSEMBLY

The committee shall separately report to the Joint Assembly its recommendations for retention on each candidate, with such amplifying information as it deems appropriate.

Approved by the committee on _____

For the committee: _____

(2/14/95)

