

## Final Proposed Filing - Coversheet

### Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms shall be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

**PLEASE REMOVE ANY COVERSHEET OR FORM NOT REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

**Certification Statement:** As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

### Judicial Nominating Board Rules

\_\_\_\_\_/s/ Eleanor Spottswood\_\_\_\_\_, on 1/1/2025  
(signature) (date)

Printed Name and Title:

Eleanor Spottswood, Chair

RECEIVED BY: \_\_\_\_\_

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Minutes
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:  
**Judicial Nominating Board Rules**
2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE  
24P 024
3. ADOPTING AGENCY:  
Judicial Nominating Board
4. PRIMARY CONTACT PERSON:  
*(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).*

Name: Eleanor Spottswood

Agency: Judicial Nominating Board

Mailing Address: c/o Office of the Court Administrator,  
109 State Street, Montpelier VT 05609-0701

Telephone: 802-391-0061 Fax:

E-Mail: eleanor.spottswood@gmail.com

Web URL *(WHERE THE RULE WILL BE POSTED)*:

[https://www.vermontjudiciary.org/attorneys/  
judicial-nominating-information](https://www.vermontjudiciary.org/attorneys/judicial-nominating-information)

5. SECONDARY CONTACT PERSON:  
*(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).*

Name:

Agency:

Mailing Address:

Telephone: Fax:

E-Mail:

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:  
*(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE, EXEMPTING IT FROM INSPECTION AND COPYING?)* No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

*(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).*

4 V.S.A. § 601(d)

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

As authorized by 4 V.S.A. § 601(d), the rules establish criteria and standards for the nomination of candidates for Justices of the Supreme Court, Superior judges, magistrates, and the Chair and members of the Public Utility Commission based on the attributes identified in 4 V.S.A. § 602(d).

9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

The rules govern standards for screening judicial candidates. These amendments: update conflict of interest standards to conform to new legislation; reduce duplicative interviews; emphasize the importance of writing for Supreme Court candidates; and minor miscellaneous edits to conform to statute and practice.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

The amendments conform to new conflict of interest legislation; reduce excessive time spent on duplicative interviews; and reflect writing skills necessary for Supreme Court candidates.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

The rule coherently reflects reasonable criteria and standards for judicial selection.

**17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES  
AFFECTED BY THIS RULE:**

Judiciary; Public Utility Commission; candidates for judicial vacancies; candidates for Public Utility Commissioner vacancies; members of Judicial Nominating Board; Governor; Court Administrator.

**18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):**

None. Possible slight positive impact on Judicial Nominating Board budget with reduction in duplicative interviews, but this is very hard to measure given the infrequency with which the Board meets.

**19. A HEARING WAS NOT HELD.**

**20. HEARING INFORMATION**

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING, PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

7/25/2024

**KEYWORDS** (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

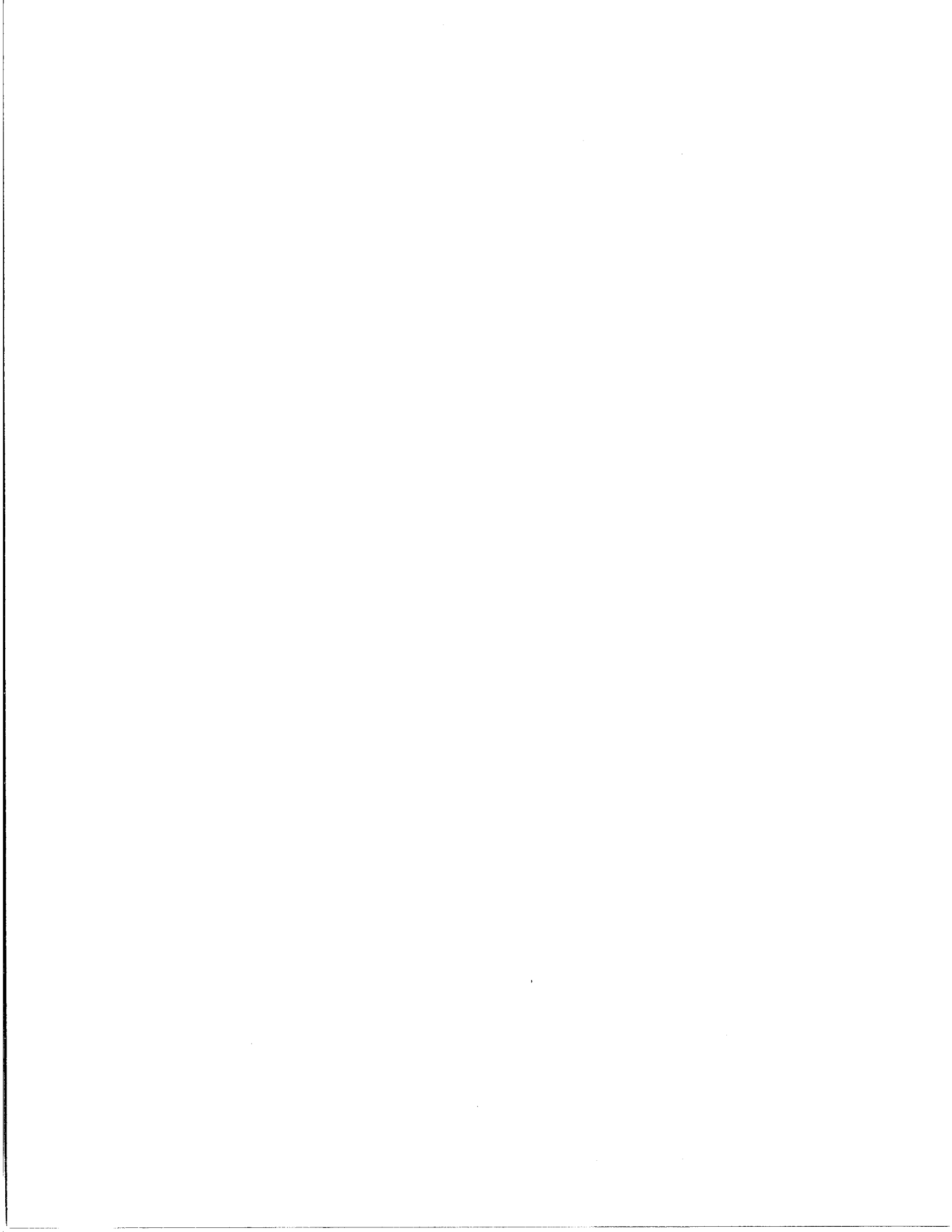
judicial nominating

judicial selection

judiciary

court

judge



## Adopting Page

### **Instructions:**

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. **TITLE OF RULE FILING:**

**Judicial Nominating Board Rules**

2. **ADOPTING AGENCY:**

Judicial Nominating Board

3. **TYPE OF FILING** (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment if the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. **LAST ADOPTED** (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

Judicial Nominating Board Rules,

November 30, 2017, Secretary of State Rule Log #17-064



## INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

**Meeting Date/Location:** September 11, 2023, virtually via Microsoft Teams  
**Members Present:** Chair Sean Brown, Brendan Atwood, Jennifer Mojo, John Kessler, Diane Sherman, Michael Obuchowski, Nicole Dubuque, and Jared Adler (exited meeting at 4:00 PM)  
**Minutes By:** Melissa Mazza-Paquette

- 2:00 p.m. meeting called to order, welcome and introductions.
- Review and approval of [minutes](#) from the August 14 and August 30, 2023 meetings.
- No additions/deletions to agenda. Agenda approved as drafted.
- Public comment made by Jay Greene of the Office of Racial Equity regarding the 'Amyotrophic Lateral Sclerosis (ALS) Registry Rule' proposed rule by the Vermont Department of Health:
  - Suggests that the reporting mechanism also incorporate options for non-binary people to be correctly reported in their gender identity on their legal documentation to the national data set as well.
- Presentation of Proposed Rules on pages 2-6 to follow:
  1. Judicial Nominating Board Rule Amendments, Judicial Nominating Board, page 2
  2. Suitability in Annuity Transactions (Reg. I-2023-01), Department of Financial Regulation, page 3
  3. Amyotrophic Lateral Sclerosis (ALS) Registry Rule, Vermont Department of Health, page 4
  4. Reporting of Offender Information, Agency of Human Services, Department of Corrections page 5
  5. Child Support Guidelines, Agency of Human Services, Department for Children and Families, Office of Child Support, page 6
- Due to the meeting running past the scheduled time and therefore lack of quorum, the following rules were moved to the October ICAR meeting:
  6. Residential Care Home and Assisted Living Residence Licensing Regulations, Agency of Human Services, Department of Disabilities, Aging, and Independent Living
  7. Independent School Program Approval Rules, State Board of Education
  8. Vermont Low Emission Vehicle and Zero Emission Vehicle Rules, Agency of Natural Resources
  9. Investigation and Remediation of Contaminated Properties Rule (IRule), Agency of Natural Resources
- Next scheduled meeting is October 9, 2023 at 2:00 p.m.
- 4:10 p.m. meeting adjourned.



**Proposed Rule: Judicial Nominating Board Rule Amendments, Judicial Nominating Board  
Presented By: Eleanor Spottswood and Erik Fitzpatrick**

In light of written communication between the Governor's counsel and Judicial Nomination Board, motion made to accept the rule by John Kessler, seconded by Mike Obuchowski, and passed unanimously, with the following recommendations and minus section 10A3 that has an automatic two-year moratorium on the candidates who are deemed not well qualified:

1. Proposed Filing – Coversheet
  - a. #8: Include statement as to what the rule is and what it covers.
  - b. #9: Use complete sentences.
  - c. #10: Identify how the rule meets the definition of arbitrary rather than stating definition of arbitrary.
  - d. #12: Correct 'Nominatig' spelling.
  - e. #15: Include date.
  - f. #16: Include at least three keywords or phrases.
2. Adopting Page, #4: Include title.
3. Economic Impact Analysis, #3: Include information as requested or explain why there isn't any impact anticipated.
4. Public Input Maximization Plan, #3 and #4: List all who participated to date or will be involved, including those you plan to reach out to and who participated in the meetings to date, to inform them that the proposed rule was available for comment.



## Economic Impact Analysis

### **Instructions:**

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

**Judicial Nominating Board Rules**

2. ADOPTING AGENCY:

Judicial Nominating Board

3. CATEGORY OF AFFECTED PARTIES:

*LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:*

Little or no impact. Possible reduction to Board's overall meeting length due to fewer repeat interviews.

4. IMPACT ON SCHOOLS:

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:*

No impact anticipated

5. **ALTERNATIVES:** *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

No impact anticipated

6. **IMPACT ON SMALL BUSINESSES:**

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):*

No impact anticipated

7. **SMALL BUSINESS COMPLIANCE:** *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

No impact anticipated

8. **COMPARISON:**

*COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:*

No impact anticipated

9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

No impact anticipated

## Environmental Impact Analysis

### **Instructions:**

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

**Judicial Nominating Board Rules**

2. ADOPTING AGENCY:

Judicial Nominating Board

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

No impact anticipated

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

No impact anticipated

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

No impact anticipated

6. RECREATION: *EXPLAIN HOW THE RULE IMPACTS RECREATION IN THE STATE:*

No impact anticipated

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*  
No impact anticipated
8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*  
No impact anticipated
9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*  
No impact anticipated

## Public Input Maximization Plan

### **Instructions:**

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

This form must accompany each filing made during the rulemaking process:

1. **TITLE OF RULE FILING:**

**Judicial Nominating Board Rules**

2. **ADOPTING AGENCY:**

Judicial Nominating Board

3. **PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:**

Public meetings held prior to Board votes approving rule amendments on 10/13/2022 and 12/12/2022. Meetings publicized to members of the Vermont Bar via the Judiciary's listserv. Written comments solicited, received, and distributed to Board members in advance of the meetings; written and oral comments considered at the meetings from the participants listed below.

4. **BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:**

Comments were received and considered from Governor's Counsel Jaye Johnson, Jay Greene from the Office of Racial Equity, Chief Superior Judge Thomas Zonay, Jake Marren, Kevin Lumpkin, Walter Judge, Tim Ashe, Herbert Ogden, Howard Kalfus, Judge Dan Richardson, James Marc Leas, Judge Timothy Tomasi, and ICAR.

### **Responsiveness Summary**

The Judicial Nominating Board declined to revise its proposed rules in response to comments received in July 2024 by Tim Ashe and Walter Judge. The comments were substantially similar to comments received during prior rounds of public comment on these rules, including from each of these commenters.

### **Changes Made Since the Filing of the Proposed Rule**

Since the filing of the Proposed Rule, the Judicial Nominating Board has revised proposed Rule 11(a)(1) and (2) to conform to the statutory changes made by the legislature to 4 V.S.A. § 602(c)(1) and (2) in 2024 Act No. 169 (H.780). The requirements of Rule 11(a)(1) and (2) match the language of 4 V.S.A. § 602(c)(1) and (2) exactly. This revision ensures that remains true.



Ella Spottswood &lt;ella.spottswood@gmail.com&gt;

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**09/11/23 Draft ICAR Minutes**

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Ella Spottswood &lt;ella.spottswood@gmail.com&gt;

Wed, Sep 13, 2023 at 4:26 PM

To: "Mazza-Paquette, Melissa" &lt;Melissa.Mazza-Paquette@vermont.gov&gt;, "Brown, Sean" &lt;Sean.Brown@vermont.gov&gt;

Hi Melissa and Chair Brown,

Thank you for sending the minutes around. I want to object to the characterization of section 10A3 as an "automatic two-year moratorium". As I believe I explained at the meeting, 10A3 would create a presumption that a candidate continues to be not well qualified for two years, which could be reconsidered by the Board upon re-application. Can you please correct the minutes?

Thank you,

Ella

On Wed, Sep 13, 2023 at 2:18 PM Mazza-Paquette, Melissa <Melissa.Mazza-Paquette@vermont.gov> wrote:

Good afternoon,

Please be advised that the draft minutes have been updated online to reflect changes to the 1<sup>st</sup> and 5<sup>th</sup> proposed rules and a correction to the spelling of a presenter's name in the 4<sup>th</sup> rule.

Please note that minutes and agendas from ICAR meetings are posted in draft form until reviewed for approval at the following meeting, therefore changes may occur until such time.

Thank you,

Melissa

**Melissa Mazza-Paquette**Personal pronouns: she/her ([more info on pronouns](#)) | Private Secretary

Office of the Secretary of Administration

109 State Street, 5<sup>th</sup> Floor | Montpelier, VT 05609-0201

802-828-3322 office

[aoa.vermont.gov](http://aoa.vermont.gov)



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**From:** Mazza-Paquette, Melissa <Melissa.Mazza-Paquette@vermont.gov>

**Sent:** Wednesday, September 13, 2023 10:12 AM

**To:** Adler, Jared <Jared.Adler@vermont.gov>; Atwood, Brendan <Brendan.Atwood@vermont.gov>; Brown, Sean <Sean.Brown@vermont.gov>; Dubuque, Nicole <Nicole.Dubuque@vermont.gov>; Kessler, John <John.Kessler@vermont.gov>; Mojo, Jennifer <Jennifer.Mojo@vermont.gov>; Obuchowski, Mike <Mike.Obuchowski@vermont.gov>; Sherman, Diane <Diane.Sherman@vermont.gov>; Dindo, Charlene <charlene@leg.state.vt.us>; Corliss, Louise <louise.corliss@vermont.gov>; SOS - VSARA Statutory Filings <SOS.StatutoryFilings@vermont.gov>; ella.spottswood <ella.spottswood@gmail.com>; Stevens, Rachel <Rachel.Stevens@vermont.gov>; Sarah Buxton <sarah@TarrantGillies.com>; Samuelson, Jennifer <Jennifer.Samuelson@vermont.gov>; Greene, Jay (they/them) <Jay.Greene@vermont.gov>; Davis, Xusana <Xusana.Davis@vermont.gov>; Macel, Stan <Stan.Macel@vermont.gov>; Borcharding, Hillary <Hillary.Borcharding@vermont.gov>; Block, Mary <Mary.Block@vermont.gov>; Weill, Natalie (she/her) <Natalie.Weill@vermont.gov>; Antoine, Christopher <Christopher.Antoine@vermont.gov>; Burke, Ana (she/her/hers) <Ana.Burke@vermont.gov>; Leavitt, Suzanne <Suzanne.Leavitt@vermont.gov>; Cota, Pamela <pamela.cota@vermont.gov>; Scott, Carolyn L <Carolyn.L.Scott@vermont.gov>; Ritzer, Deirdra <Deirdra.Ritzer@vermont.gov>; Provencher, Lynda <Lynda.Provencher@vermont.gov>; Donovan, Shawn <Shawn.Donovan@vermont.gov>; Erik Fitzpatrick <efitzpatrick@leg.state.vt.us>; Hatt, Kyle <Kyle.Hatt@vermont.gov>; Seman, Jessica <Jessica.Seman@vermont.gov>

**Subject:** 09/11/23 Draft ICAR Minutes

Good morning,

Please be advised that the draft minutes from Monday's ICAR meeting are available online at <https://aoa.vermont.gov/ICAR#Meetings>.

Thank you,

Melissa

**Melissa Mazza-Paquette**

Personal pronouns: she/her ([more info on pronouns](#)) | Private Secretary

Office of the Secretary of Administration

109 State Street, 5<sup>th</sup> Floor | Montpelier, VT 05609-0201

802-828-3322 office

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Eleanor Spottswood &lt;eleanor.spottswood@gmail.com&gt;

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## Comment on proposed JNB rules changes - Rule 10

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Tim Ashe &lt;timashe@burlingtontelecom.net&gt;

Mon, Jul 8, 2024 at 2:07 PM

To: eleanor.spottswood@gmail.com

I'm writing to comment on the proposed changes to the JNB rules. I served on the JNB for about three or four years over two stints, and helped with an earlier re-write the JNB's rules.

With the exception of the proposed changes to Rule 10, the proposed changes seem fine and offer greater clarity to existing JNB rules.

However, I do *not* support the proposed changes to Rule 10 for two reasons.

I'll illustrate my first objection with an example: If only, say, nine members of the JNB are present for an interview round, and a candidate goes up on a 5-4 vote, this means that the person would *automatically* advance with the next opening even if the next time he or she applies the person might receive 6 no votes with 11 JNB members in attendance, which would result in a denial of advancement. Of course the opposite could occur as well. A lot can happen in a two year period that could help or hurt a candidate (professional experiences, different JNB membership, or just a good/bad interview performance), but under this rule none of that would have any impact. I re-interviewed many dozens of applicants over the years. It could feel tedious at times, but it occasionally revealed new information - sometimes positive, sometimes negative - that either re-affirmed earlier decisions or made JNB members reconsider. There are sitting judges who this rule would have denied the chance to be reconsidered across a two year period - judges who on a second look were determined to be well qualified, and indeed were! And, frankly, there were on rare occasions candidates who on second look did not hold up as well to the JNB for whatever reason.

For many years, every candidate received an interview and there was no problem. It is the simplest, fairest process. If JNB members think the interviews just take up too much time, perhaps you could limit the questions for repeat applicants to a couple from the chair or a designated member.

Second, proposed (a)(4) of Rule 10 opens the door to the lobbying of JNB members. If an applicant has previously applied within the previous two years the proposed rule would make that person ineligible for consideration. But (a)(4) indicates that if four JNB members request it, then the candidate is automatically eligible again. This sends very mixed signals to potential applicants who were previously not deemed well qualified. On the one hand, they are not eligible to be considered based on subdivision (3). On the other, despite being ineligible, they actually may apply again and be made eligible if for some reason at least four JNB members request that the person become eligible. But on what basis would that occur? Possibly, the ineligible applicant's application would be distributed to JNB members and at least four of them would arrive at the same conclusion that the individual should be eligible (based I suppose upon some subjective feeling). More plausibly, there would be a campaign to influence at least four JNB members to give the applicant another chance. Whether the former or the latter, this reconsideration of an ineligible applicant raises real questions of fairness as it relates to other applicants who have previously applied and not been deemed well qualified. Wouldn't every previously denied applicant be wise to re-apply under this proposed rule? And won't it be hard for the JNB to justify re-instituting eligibility for some rather than all of those applicants?

Effectively, (3) strongly discourages previous applicants to try again in the same two year window, then (a)(4) contradictorily opens the door a bit, and encourages the wrong kind of external pressure on JNB members.

All of this would be solved by just allowing everyone who meets the minimum threshold eligibility to apply and then interviewing everyone.

I know from my own JNB experience that some of the interview rounds can be exhausting and require time away from work and other commitments. I recall one particular round that included 39 interviews across four days. It was a lot, but we did it. It was part of the commitment when we chose to seek election by our peers in the Bar, the House, or the Senate, or were appointed by the Governor. By interviewing every applicant, we never had to worry that we were treating any applicant more or less fairly than the others. I hope the JNB will not move forward with the changes to Rule 10 and just let the remainder go through.

[Quoted text hidden]



Eleanor Spottswood &lt;eleanor.spottswood@gmail.com&gt;

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**Comment on proposed JNB rules changes - Rule 10**

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**Walter Judge** <WJudge@drm.com>

Fri, Jul 12, 2024 at 12:58 PM

To: "eleanor.spottswood@gmail.com" &lt;eleanor.spottswood@gmail.com&gt;

Ella,

As an attorney and a former member of the JNB who served for six (6) years, I write to comment on the proposed JNB rule changes.

I have no issues with the various changes, except for Rule 10.

I oppose sending a candidate's name up without an interview just because that person was interviewed "within the last two years." A lot can happen to a judicial candidate in two years. A favorable interview two years prior, in front of a different JNB, is one thing, but that candidate could have a poor interview two years later and make a very different impression on the current JNB. I feel strongly that candidates should be reinterviewed for each position. For example, a candidate whose name was sent up two years ago for a Superior Court judgeship should absolutely be reinterviewed on an application for a Supreme Court opening. They are different jobs. Tim Ashe gave specific examples of why not giving a new interview to someone whose name was sent up by a previous panel is problematic. I endorse his views and won't repeat them here.

I have less of a problem with not granting an interview to someone who was interviewed in the last two years and who was found not qualified, but generally speaking I think all applicants for each position should be presumptively interviewed for each application. That is how we proceeded for the entire six years I was on the JNB.

Now, I could theoretically endorse a potential rule change that presumptively denies an interview to someone who's been interviewed multiple times in the prior two or four year terms and has been found unqualified every time.

Thank you for your time.

**Walter Judge** | Director, Litigation Group

199 Main Street, PO Box 190, Burlington, VT 05402-0190

Direct: 802.846.8326 • Main: 802.863.2375 • Mobile: 802.343.6887 • Email: wjudge@drm.com

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**2024 annotated JNB rule amendments.pdf**

119K

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

CVR 90-800-001 (2022)

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)(1) If a Board member ~~knows of~~ has 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~~ conflict of interest or appearance of a conflict of interest as defined in 3 V.S.A. § 1203(a), the Board member shall report this fact to the ~~Chair. The Chair shall report any disclosed relationships to the full Board~~ Chair. The Chair shall report any disclosed relationships to the full Board in writing prior to any candidate

interviews or discussion of any candidacies. Consistent with the requirements of 3 V.S.A. § 1203(b), the Board member shall provide the Board with a written statement that the member is choosing to: (1) recuse themselves from consideration of a candidate; or (2) proceed with consideration of the candidate. Upon request from any Board member, the Board shall vote on whether to affirm or overrule the Board member's written statement, subject to the requirements of the Code of Ethics. If a majority of the Board votes that a relationship may unduly influence the Board member's decision as to the candidate. If a Board member is recused, the Board member shall not vote upon the candidate and shall not participate in any deliberations concerning the candidate, including the candidate interview.

(2) If an attorney Board member has an active case with a candidate as opposing counsel, or has a case pending in front of a candidate who is a judge, there shall be a presumption that an appearance of a conflict of interest exists between that Board member and the candidate. The presumption may be rebutted by a majority vote of the Board pursuant to subdivision (b)(1) of this rule.

(3) A Board member who does not attend a candidate's interview shall not vote upon the candidate but may participate in the deliberations.

(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 within records overseen by the Office of the Court Administrator 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)(1) Unless otherwise provided by this rule, all ~~At~~ eligible candidates who apply for any a position shall be interviewed.



(2) Except as provided in subdivision (4) of this subsection (a), a candidate who applies for a position shall be deemed well qualified for that position without an interview, and the candidate's name and application, along with updated professional disciplinary and criminal background information, shall be transmitted to the Governor pursuant to Rule 13 if:

(A) the candidate previously interviewed for that position within the last two years; and

(B) the candidate was deemed well qualified by the Board for that position and the candidate's name was transmitted to the Governor in connection with the previous application pursuant to Rule 13.

(3) Except as provided in subdivision (4) of this subsection (a), a candidate who applies for a position shall not be eligible or interviewed for the position if:

(A) the candidate previously interviewed for that position within the last two years; and

(B) the candidate was not deemed well qualified by the Board for that position and the candidate's name was not transmitted to the Governor in connection with the previous application pursuant to Rule 13.

(4) A candidate who has interviewed for a position within the previous two years shall be reinterviewed for that position, and the Board shall reconsider whether the candidate is well qualified for that position, if at least four Board members request to reinterview the candidate.

(5) If a candidate has interviewed more than once for the same position in the last two years, the result of the most recent interview shall control for purposes of subdivisions (2) and (3) of this subsection (a).

(b) As used in this Rule, "a position" means the position of Chief Justice, Associate Justice, Superior Court Judge, Magistrate, Chair of the Public Utility Commission, or member of the Public Utility Commission.

(c) 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 in Vermont immediately preceding his or her the candidate's application to the Board. The Board may make exceptions to the five-year requirement for absences from practice that the candidate's five years of practice in Vermont be

contiguous and immediately preceding the candidate's application 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~~ the candidate's application to the Board. The Board may make exceptions to the requirement that the candidate's five years of practice in Vermont be contiguous and immediately preceding the candidate's application for reasons including family, military, academic, or medical leave.

(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. For the Supreme Court, a candidate shall possess superior legal writing skills.

#### 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 well qualified 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 well qualified nominees, together with their confidential vote totals and questionnaires applications, 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.

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requirement that the candidate's five years of practice in Vermont be contiguous and immediately preceding the candidate's application for reasons including family, military, academic, or medical leave.

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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.



VERMONT **GENERAL ASSEMBLY**

# The Vermont Statutes Online

The Statutes below include the actions of the 2024 session of the General Assembly.

**NOTE:** The Vermont Statutes Online is an unofficial copy of the Vermont Statutes Annotated that is provided as a convenience.

## Title 4 : Judiciary

### Chapter 015 : Judicial Nominations and Appointments

(Cite as: 4 V.S.A. § 601)

#### § 601. Judicial Nominating Board created; composition

(a) The Judicial Nominating Board is created for the nomination of Supreme Court Justices, Superior judges, magistrates, and the Chair and members of the Public Utility Commission.

(b)(1) The Board shall consist of 12 members who shall be selected as follows:

(A) The Governor shall appoint two members, one of whom may be an attorney at law.

(B) The Senate shall elect three of its members, not all of whom shall be members of the same party, and only one of whom may be an attorney at law.

(C) The House shall elect three of its members, not all of whom shall be members of the same party, and only one of whom may be an attorney at law.

(D) Attorneys at law admitted to practice before the Supreme Court of Vermont, and residing in the State, shall elect three of their number as members of the Board. The Supreme Court shall regulate the manner of their nomination and election.

(E) The Executive Director of Racial Equity, or designee.

(2) The members of the Board shall serve for terms of two years. All appointments or elections shall be between January 1 and February 1 of each odd-numbered year, except to fill a vacancy. A House vacancy that occurs when the General Assembly is adjourned shall be filled by the Speaker of the House and a Senate vacancy that occurs when the General Assembly is adjourned shall be filled by the Senate Committee on Committees. Members shall serve until their successors are elected or appointed. Members shall serve not more than three consecutive terms in any capacity.

(3) The members shall elect their own chair, who will serve for a term of two years.

(c) Legislative members of the Board shall be entitled to per diem compensation and

reimbursement for expenses in accordance with 2 V.S.A. § 23. Members of the Board who are not otherwise compensated by their employer shall be entitled to per diem compensation and reimbursement for expenses in the same manner as board members are compensated under 32 V.S.A. § 1010. All compensation and reimbursement shall be paid from the legislative appropriation.

(d) The Judicial Nominating Board shall adopt rules under 3 V.S.A. chapter 25 that shall establish criteria and standards for the nomination of candidates for Justices of the Supreme Court, Superior judges, magistrates, and the Chair and members of the Public Utility Commission based on the attributes identified in subsection 602(d) of this title. The application form shall not be included in the rules and may be developed and periodically revised at the discretion of the Board.

(e) A quorum of the Board shall consist of eight members.

(f) The Board is authorized to use the staff and services of appropriate State agencies and departments as necessary to conduct investigations of applicants. The Office of Legislative Counsel shall assist the Board for the purpose of rulemaking.

(g) Except as provided in subsection (h) of this section, proceedings of the Board, including the names of candidates considered by the Board and information about any candidate submitted by the Court Administrator or by any other source, shall be confidential.

(h) The following shall be public:

(1) operating procedures of the Board;

(2) standard application forms and any other forms used by the Board, provided they do not contain personal information about a candidate or confidential proceedings;

(3) all proceedings of the Board prior to the Board's receipt of the first candidate's completed application; and

(4) at the time the Board sends the names of the candidates to the Governor, the total number of applicants for the vacancy and the total number of candidates sent to the Governor. (Amended 1966, No. 64 (Sp. Sess.), § 1, eff. Jan. 1, 1967; 1967, No. 306 (Adj. Sess.), § 2; 1969, No. 125, § 6; 1971, No. 161 (Adj. Sess.), § 1; 1975, No. 204 (Adj. Sess.), § 5; 1979, No. 141 (Adj. Sess.), § 8; 1985, No. 108 (Adj. Sess.), § 1, eff. March 25, 1986; 2009, No. 154 (Adj. Sess.), § 32; 2011, No. 162 (Adj. Sess.), § E.125.1, eff. March 7, 2012; 2013, No. 194 (Adj. Sess.), § 2, eff. June 17, 2014; 2015, No. 123 (Adj. Sess.), § 1, eff. May 23, 2016; 2019, No. 144 (Adj. Sess.), § 24; 2023, No. 169 (Adj. Sess.), § 1, eff. July 1, 2024.)



# Proposed Rules Postings

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### Search Rules

#### Deadline For Public Comment

Deadline: Jul 25, 2024

The deadline for public comment has expired. Contact the agency or primary contact person listed below for assistance.

#### Rule Details

Rule Number:	24P024
Title:	Judicial Nominating Board Rules.
Type:	Standard
Status:	Final Proposed
Agency:	Judicial Nominating Board
Legal Authority:	4 V.S.A. § 601(d)
Summary:	The rules govern standards for screening judicial candidates. These amendments: update conflict of interest standards to conform to new legislation; reduce duplicative interviews; emphasize the importance of writing for Supreme Court candidates; and minor miscellaneous edits to conform to statute and practice.
Persons Affected:	Judiciary; Public Utility Commission; candidates for judicial vacancies; candidates for Public Utility Commissioner vacancies; members of Judicial Nominating Board; Governor; Court Administrator.
Economic Impact:	None. Possible slight positive impact on Judicial Nominating Board budget with reduction in duplicative interviews, but this is very hard to measure given the infrequency with which the Board meets.
Posting date:	Jul 03,2024

## Hearing Information

There are not Hearings scheduled for this Rule

## Contact Information

### Information for Primary Contact

**PRIMARY CONTACT PERSON** - A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE.

Level: Primary  
 Name: Eleanor Spottswood  
 Agency: Judicial Nominating Board  
 Address: c/o Office of the Court Administrator 109 State Street  
 City: Montpelier  
 State: VT  
 Zip: 05609-0701  
 Telephone: 802-391-0061  
 Fax:  
 Email: [eleanor.spottswood@gmail.com](mailto:eleanor.spottswood@gmail.com)  
[SEND A COMMENT](#)

Website Address: <https://www.vermontjudiciary.org/attorneys/judicial-nominating-information>  
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## Keyword Information

Keywords:

judicial nominating  
 judicial selection  
 judiciary  
 court  
 judge

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