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Home > Code of Laws Title/Chapter List > Title 2

**South Carolina Code of Laws
(Unannotated)
Current through the end of the 2010 Session**

Title 2 - General Assembly

CHAPTER 19.

ELECTION OF JUSTICES AND JUDGES

SECTION 2-19-10. Judicial Merit Selection Commission; appointment; qualifications; term.

(A) Whenever an election is to be held by the General Assembly in Joint Session, for members of the judiciary, a Judicial Merit Selection Commission, composed of ten members, shall be appointed, in the manner prescribed by this section, to consider the qualifications of the candidates. The Judicial Merit Selection Commission shall meet at least once annually and at other times as may be designated by the chairman. The commission, at its first meeting and then annually, shall elect a chairman and a vice chairman who shall serve for a term of one year and until their successors are elected and qualified, and adopt rules necessary to the purposes of the commission. These rules shall address, among other things:

- (1) the confidentiality of records and other information received concerning candidates for judicial office;
- (2) the conduct of proceedings before the commission;
- (3) receipt of public statements in support of or in opposition to any of the candidates;
- (4) procedures to review the qualifications of retired judges for continued judicial service;
- (5) contacting incumbent judges regarding their desire to seek re-election;
- (6) prohibition against candidates communicating with individual members of the commission concerning the qualifications of candidates unless specifically authorized by the commission.

A member may succeed himself as chairman or vice chairman. Six members of the commission constitute a quorum at all meetings.

(B) Notwithstanding any other provision of law, the Judicial Merit Selection Commission shall consist of the following individuals:

- (1) five members appointed by the Speaker of the House of Representatives and of these appointments:
 - (a) three members must be serving members of the General Assembly; and
 - (b) two members must be selected from the general public;
- (2) three members appointed by the Chairman of the Senate Judiciary Committee and two members appointed by the President Pro Tempore of the Senate and of these appointments:
 - (a) three members must be serving members of the General Assembly; and
 - (b) two members must be selected from the general public.

(C) In making appointments to the commission, race, gender, national origin, and other demographic factors should be considered to ensure nondiscrimination to the greatest extent possible as to all segments of the population of the State.

(D) The term of office of a member of the commission who is not a member of the General Assembly shall be for four years subject to a right of removal at any time by the person appointing him, and until his successor is appointed and qualifies. A member of the commission who is a serving member of the General Assembly shall serve for the term of office to which he has been elected.

(E) A vacancy on the Judicial Merit Selection Commission must be filled for the remainder of the unexpired term in the same manner as provided for the original selection.

(F) No member of the commission shall receive any compensation for commission services, except those set by law for travel, board, and lodging expenses incurred in the performance of commission duties.

(G) No member of the Judicial Merit Selection Commission is eligible for nomination and appointment as a judge or justice of the state court system or administrative law judge division while serving on the commission and for a period of one year thereafter.

SECTION 2-19-20. Investigation by Commission; publication of vacancies.

(A) It is the responsibility of the Judicial Merit Selection Commission to determine when judicial vacancies are to occur in the administrative law judge division and on the family court, circuit court, court of appeals, or Supreme Court and to expeditiously investigate in advance the qualifications of those who seek nomination. For purposes of this chapter, a vacancy is created in the administrative law judge division or on the family court, circuit court, court of appeals, or Supreme Court when any of the following occurs: a term expires; a new judicial position is created; or a judge can no longer serve due to resignation, retirement, disciplinary action, disability, or death.

(B) The commission, upon receiving notice of a judicial vacancy, ascertaining that a judicial vacancy shall occur, or receiving the decision of an incumbent judge regarding his seeking re-election, shall notify the Supreme Court of the vacancy for publication in the advance sheets provided by the Clerk of the Supreme Court at least thirty days prior to closing applications for the vacancy. The commission shall, if practicable, also notify the South Carolina Bar, other professional legal organizations it considers appropriate, and each newspaper of this State with daily circulation of the vacancy at least thirty days prior to closing applications for the vacancy. This notice must include, but not be limited to, the judicial office in which the vacancy occurs, the address to which, and the date by which interested candidates may apply.

(C) The Judicial Merit Selection Commission shall announce and publicize vacancies and forthcoming vacancies in the administrative law judge division, on the family court, circuit court, court of appeals, and Supreme Court. A person who desires to be considered for nomination as justice or judge may make application to the commission. No person may concurrently seek more than one judicial vacancy. The commission shall announce the names of those persons who have applied.

(D) Any person wishing to seek a judicial office, which is elected by the General Assembly, shall file a notice of intention to seek the office with the Judicial Merit Selection Commission. Upon receipt of the notice of intention, the commission shall begin to conduct the investigation of the candidate as it considers appropriate and may in the investigation utilize the services of any agency of state government. This agency shall, upon request, cooperate fully with the commission.

SECTION 2-19-25. Solicitation of Bar assessment.

The Judicial Merit Selection Commission is authorized to investigate and obtain information relative to any candidate for an administrative law judgeship or a family court, circuit court, court of appeals, or Supreme Court judgeship from any state agency or other group including, but not limited to, court administration and any law enforcement agency, to the extent permitted by law. The chairman of the commission shall notify the president of the South Carolina Bar of the judgeships to be filled and of the candidates for those judgeships no later than four weeks before the scheduled date for the public hearing. The chairman of the commission shall also request the South Carolina Bar to offer the commission an assessment of each candidate's qualifications for the judgeship sought, and the date by which the assessment must be returned to the commission. This assessment must specify the bar's finding as to whether each candidate is qualified or unqualified for the judgeship sought and the reasons for that finding. The commission may receive the bar's assessment in that form and at that time it desires but shall attach the assessments to its findings of fact in such form as the commission considers appropriate. Failure of the bar to return the assessment by the date requested is not a ground for delaying the applicable hearings or election.

SECTION 2-19-30. Hearings; executive session.

(A) Upon completion of the investigation, the chairman of the Judicial Merit Selection Commission shall schedule a public hearing concerning the qualifications of the candidates. Any person who desires to testify at the hearing, including candidates, shall furnish a written statement of his proposed testimony to the commission no later than two weeks prior to the date and time set for the hearing unless sufficient cause is determined by the Judicial Merit Selection Commission for allowing the submitting individual's testimony after the deadline. The commission shall determine the persons who shall testify at the hearing. All testimony, including documents furnished to the commission, must be submitted under oath and persons knowingly furnishing false information either orally or in writing are subject to the penalties provided by law for perjury and false swearing.

(B) During the course of the investigation, the commission may schedule an executive session at which each candidate, and other persons whom the commission wishes to interview, may be interviewed by the commission on matters pertinent to the candidate's qualification for the office to be filled.

(C) A reasonable time thereafter the commission shall render its tentative findings as to whether the candidate is qualified for the office to be filled and its reasons therefor as to each candidate.

(D) As soon as possible after the completion of the hearing, a verbatim copy of the testimony, documents submitted at the hearing, and findings of fact must be transcribed and published or otherwise made available in a reasonable number of copies to the members of both houses prior to the date of the scheduled election, and a copy thereof shall be furnished to each candidate and anyone else upon request. A charge for these copies may be made as authorized in the Freedom of Information Act.

(E) A candidate may withdraw at any stage of the proceedings and in this event no further inquiry or consideration of his candidacy shall be made. All materials concerning that candidate including his report, transcript, application, materials, and other information gathered during the commission's investigation must be kept confidential and destroyed as soon as possible after the candidate's written notification to the commission of his withdrawal. The information concerning a withdrawn candidate also shall be exempt from disclosure pursuant to Chapter 4 of Title 30.

SECTION 2-19-35. Criteria for investigations and consideration of Commission.

(A) The responsibility of the Judicial Merit Selection Commission is to investigate and consider the qualifications of the candidates for judicial office in the administrative law judge division or on the family court, circuit court, court of appeals, or Supreme Court. Investigations and consideration of the commission should include, but are not limited to, the following areas:

- (1) constitutional qualifications;
- (2) ethical fitness;
- (3) professional and academic ability;
- (4) character;
- (5) reputation;
- (6) physical health;
- (7) mental stability;
- (8) experience; and
- (9) judicial temperament.

(B) In making nominations, race, gender, national origin, and other demographic factors should be considered by the commission to ensure nondiscrimination to the greatest extent possible as to all segments of the population of the State.

SECTION 2-19-40. Exemption from hearing.

Notwithstanding the provisions of this chapter, when there is no known opposition to a candidate, and there appears to be no substantial reason for having a public hearing, whether or not a candidate is an

incumbent, and no request is made by at least six members of the Judicial Merit Selection Commission for a public hearing, the commission chairman upon recommendation of the commission may determine that the public hearing is unnecessary and it may not be held.

SECTION 2-19-50. Confidentiality of records, information and other material; destruction thereof.

All records, information, and other material that the Judicial Merit Selection Commission has obtained or used to make its findings of fact, except materials, records, and information presented under oath at the public hearing, must be kept strictly confidential. After the commission has reported its findings of fact, all records, information, and material required to be kept confidential must be destroyed. The information required to be kept confidential also shall be exempt from disclosure pursuant to Chapter 4 of Title 30.

SECTION 2-19-60. Powers of Commission.

The Judicial Merit Selection Commission in the discharge of its duties may administer oaths and affirmations, take depositions, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary in connection with the investigation of the candidate.

No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, or other records before the Judicial Merit Selection Commission on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no individual shall be prosecuted or subjected to any criminal penalty based upon testimony or evidence submitted or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury and false swearing committed in so testifying.

In case of contumacy by any person or refusal to obey a subpoena issued to any person, any circuit court of this State or circuit judge thereof within the jurisdiction of which the person guilty of contumacy or refusal to obey is found, resides, or transacts business, upon application by the Judicial Merit Selection Commission may issue to this person an order requiring him to appear before the commission to produce evidence if so ordered or to give testimony touching the matter under investigation. Any failure to obey an order of the court may be punished as a contempt hereof. Subpoenas shall be issued in the name of the Judicial Merit Selection Commission and shall be signed by the commission chairman. Subpoenas shall be issued to those persons as the commission may designate.

SECTION 2-19-70. Prohibition against dual offices, privileges of the floor, and pledges.

(A) No member of the General Assembly may be elected to a judicial office while he is serving in the General Assembly nor shall that person be elected to a judicial office for a period of one year after he either:

- (1) ceases to be a member of the General Assembly; or
- (2) fails to file for election to the General Assembly in accordance with Section 7-11-15.

(B) The privilege of the floor in either house of the General Assembly may not be granted to any candidate or any immediate family member of a candidate unless the family member is serving in the General Assembly, during the time the candidate's application is pending before the commission and during the time his nomination by the commission for election to a particular judicial office is pending in the General Assembly.

(C) No candidate for judicial office may seek directly or indirectly the pledge of a member of the General Assembly's vote or, directly or indirectly, contact a member of the General Assembly regarding screening for the judicial office until the qualifications of all candidates for that office have been determined by the Judicial Merit Selection Commission and the commission has formally released its report as to the qualifications of all candidates for the vacancy to the General Assembly. No member of the General Assembly may offer his pledge until the qualifications of all candidates for that office have been determined by the Judicial Merit Selection Commission and until the commission has formally released its report as to the qualifications of its nominees to the General Assembly. The formal release of the report of qualifications shall occur no earlier than forty-eight hours after the nominees have been initially released to members of the General Assembly. For purposes of this section, indirectly seeking a pledge

means the candidate, or someone acting on behalf of and at the request of the candidate, requesting a person to contact a member of the General Assembly on behalf of the candidate before nominations for that office are formally made by the commission. The prohibitions of this section do not extend to an announcement of candidacy by the candidate and statements by the candidate detailing the candidate's qualifications.

(D) No member of the General Assembly may trade anything of value, including pledges to vote for legislation or for other candidates, in exchange for another member's pledge to vote for a candidate for judicial office.

(E) Violations of this section may be considered by the merit selection commission when it considers the candidate's qualifications. Violations of this section by members of the General Assembly shall be reported by the commission to the House or Senate Ethics Committee, as may be applicable. Violations of this section by nonlegislative commission members shall be reported by the commission to the State Ethics Commission. A violation of this section is a misdemeanor and, upon conviction, the violator must be fined not more than one thousand dollars or imprisoned not more than ninety days. Cases tried under this section may not be transferred from general sessions court pursuant to Section 22-3-545.

SECTION 2-19-80. Nomination of qualified candidates to the General Assembly.

(A) The commission shall make nominations to the General Assembly of candidates and their qualifications for election to the Supreme Court, court of appeals, circuit court, family court, and the administrative law judge division. It shall review the qualifications of all applicants for a judicial office and select therefrom and submit to the General Assembly the names and qualifications of the three candidates whom it considers best qualified for the judicial office under consideration. If fewer than three persons apply to fill a vacancy or if the commission concludes there are fewer than three candidates qualified for a vacancy, it shall submit to the General Assembly only the names and qualifications of those who are considered to be qualified, with a written explanation for submitting fewer than three names.

(B) The nominations of the commission for any judgeship are binding on the General Assembly, and it shall not elect a person not nominated by the commission. Nothing shall prevent the General Assembly from rejecting all persons nominated. In this event, the commission shall submit another group of names and qualifications for that position. Further nominations in the manner required by this chapter must be made until the office is filled.

(C)(1) If the commission does not find the incumbent justice or judge qualified for the judicial office held and sought, his name shall not be submitted to the General Assembly for re-election and upon expiration of his then current term of office, he shall cease serving in that judicial position.

(2) If the commission finds an incumbent judge not qualified for the office sought, or if an incumbent judge dies, withdraws, or becomes otherwise disqualified for the office sought between the time he makes application for the office and the date of the election therefor, the election for the office may not be held at that scheduled time, and the commission shall proceed in accordance with the provisions of this chapter to make other nominations for the office as though a new vacancy without an incumbent exists in that office, including reopening the application process with all required notices. Nothing prevents the commission from including in its new nominations the names and qualifications of persons other than the incumbent judge it included in its previous nominations.

(D) The commission shall accompany its nominations to the General Assembly with reports or recommendations as to the qualifications of particular candidates.

(E) A period of at least two weeks must elapse between the date of the commission's nominations to the General Assembly and the date the General Assembly conducts the election for these judgeships.

SECTION 2-19-90. Approval of General Assembly in joint session.

The General Assembly shall meet in joint session for the election of judges. The date and time for the joint session shall be set by concurrent resolution upon the recommendation of the Judicial Merit Selection Commission. The Chairman of the Judicial Merit Selection Commission shall announce the commission's nominees for each judicial race, and no further nominating or seconding speeches shall be allowed by members of the General Assembly. In order to be elected, a candidate must receive a majority of the vote of the members of the General Assembly voting in joint session.

SECTION 2-19-100. Eligibility of retired judges for appointment.

In order to be eligible for appointment by the Chief Justice to serve, any retired justice or judge of this State must have been reviewed by the Judicial Merit Selection Commission under procedures it shall establish to review retired judges' qualifications for continued judicial service and be found by the commission to be qualified to serve in these situations within four years of the date of his appointment to serve, except that if a justice or judge retired before the expiration of his then current term, no further review of that justice or judge is required until that term would have expired.

SECTION 2-19-110. Vacancy in office of master-in-equity; recommendations by county legislative delegations.

Upon a vacancy in the office of master-in-equity, candidates therefor shall submit an application to the Judicial Merit Selection Commission. Upon completion of reports and recommendations, the commission shall submit such reports and recommendations on master-in-equity candidates to the appropriate county legislative delegations. The county legislative delegations shall then submit the name of a candidate to the Governor for consideration for appointment. Nothing shall prevent the Governor from rejecting the person nominated by the delegation. In this event, the delegation shall submit another name for consideration. No person found not qualified by the commission may be appointed to the office of master-in-equity. For purposes of this section, a vacancy is created in the office of the master-in-equity when any of the following occurs: a term expires, a new judicial position is created, or a judge no longer can serve due to resignation, retirement, disciplinary action, disability, or death. The Judicial Merit Selection Commission may begin screening prior to the actual date of the vacancy in the case of an expiration of term, resignation, or retirement pursuant to written notice thereof.

SECTION 2-19-120. Citizens Committees on Judicial Qualifications; membership; compensation.

(A) The Chairman of the Judicial Merit Selection Commission, upon the advice of the commission, shall select members to serve on Citizens Committees on Judicial Qualifications for each geographic district set by the commission. These committees shall, under the rules adopted by the commission, advise the commission concerning judicial candidates. The committees shall report their findings to the commission in such form as prescribed by the commission.

(B) The members appointed to the Citizens Committees on Judicial Qualifications shall be compensated with an emolument of one hundred dollars per round of screening.