

**PROCEDURAL RULES FOR
THE JUDICIAL MERIT SELECTION COMMISSION**

Revised: April 25, 2016

1. The commission shall meet as soon after appointment as practicable and thereafter at least once annually for purposes of organization and election of a chairman and vice chairman and to adopt rules necessary for the purposes of the commission. The chairman of the commission must be a legislator.
2. Each chairman shall select appropriate counsel and staff to serve the needs of the commission. The chairmanship and vice chairmanship of the commission shall alternate on a calendar-year basis between the House of Representatives and the Senate. However, both the House of Representatives and Senate shall provide appropriate counsel and staff each year to perform the duties of the commission. If the chairman and vice-chairman positions are vacant, the most senior Senator shall preside until a chairman or vice chairman is elected.
3. The chairman shall preside over all meetings and hearings of the commission. In his absence, the vice-chairman shall preside. In the absence of both the chairman and vice-chairman, the most senior legislator shall preside until the chairman or vice-chairman is present.
4. Commission staff will create a database in which the terms of every judge subject to screening by the commission will be stored. This database will be used by staff to monitor when judicial vacancies are to occur in accordance with the provisions of § 2-19-20.

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 reelection 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.

5. The period within which a candidate must file a notice of intention to seek a particular judicial office shall be a minimum of three weeks, commencing on the date of publication of the public notice.
6. Candidates must specify the race and seat number in which they are interested in the letter of intent required to receive application materials. Once a candidate has submitted a letter of intent, the candidate may not withdraw and submit a letter of intent for a different seat. However, a candidate may withdraw at any point in the screening process, and the candidate will no longer be considered a judicial candidate for that screening. Pursuant to S.C. Code Section 2-19-20(D), once a person submits his or her letter of intent to the Judicial Merit Selection Commission, the person is considered a candidate for purposes of the applicable statutes and governing rules. Candidates may not contact members of the Judicial Merit Selection Commission regarding their candidacy.
7. The Judicial Merit Selection Commission shall release, prior to the application filing deadline, the names of those individuals who have submitted the written acknowledgement form or their application

package.

8. Upon receipt of a written notice of intent to seek a judicial seat, and on the date set for distribution of applications, the Judicial Merit Selection Commission staff shall give the candidate a Universal Serial Bus (USB) or flash drive containing the application forms that the candidate must complete. Each candidate must use the USB or flash drive to complete the forms on a computer and must return the USB or flash drive with the forms on it completed by the deadline for applications. Each candidate also must submit a printed copy of each form containing the candidate's original signature by the deadline for applications. If a candidate does not have access to a computer or is unable to comply with this rule for some other good reason, he or she should submit a written request to be exempted from this rule. In such a situation, staff will give the candidate printed copies of the forms and will accept typed or hand-written answers, if received by the deadline for applications. If the written application and the USB, flash drive, or diskette are not returned by the deadline, the candidate will be disqualified from the judicial race. This rule also applies to the letters of recommendation that the candidate requests from five other people, including his or her banker, unless extenuating circumstances exist beyond the candidate's control. A photocopy or electronic submission of a letter of recommendation will not be accepted.
9. Candidates must file all application materials with the Judicial Merit Selection Commission by the deadline for candidate applications. Failure to comply with the deadline shall be a complete bar to consideration of that candidate by the commission. No right of appeal exists for a missed deadline. The Chief Counsel of the Commission or his designee may reject a candidate's application at the deadline, if on its face, the application does not meet the constitutional or statutory qualifications of citizen of the United States and South Carolina, resident of the State of South Carolina for at least five years prior to the judicial election, at least 32 years old, and a licensed attorney at law for at least eight years.
10. The Judicial Merit Selection Commission is authorized to investigate and obtain information relative to any candidate 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.
11. Judicial Merit Selection Commission legal staff shall conduct an interview with each candidate and all witnesses at dates and times to be determined by the commission's legal staff.
12. Upon the scheduling of a public hearing concerning the qualifications of judicial candidate(s), the commission staff shall inform the public of those candidates to be screened and the date, place, and time of the hearing through a news release to be sent to the media in each major market in South Carolina, applicable bar organizations, and the candidates at least two weeks prior to the date of the hearing.
13. Any person, organization, or association wishing to come before the Commission to testify at a hearing or submit documents for consideration by the Commission must submit a sworn statement to the Commission using the witness affidavit form provided by the Commission by such deadline as the Commission may establish prior to the hearing, but 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 affidavit must either be

mailed to the Commission or hand delivered, as provided by the Commission, and must be signed and notarized. The complainant must also attach copies of any documentation, such as trial transcripts, orders, letters, or other materials that the complainant believes support the affidavit. The documentation must be attached to and submitted with the affidavit in hard copy, and may not be submitted by electronic or other means.

Commission staff is charged with reviewing the affidavit of complaint to determine if the allegations, if true, appear to present allegations relating to the candidate's character, competency, or ethics. However, if staff determines that the affidavit of complaint, on its face, does not state allegations relating to the candidate's character, competency, or ethics, the complaint will be dismissed and it will not be considered at the Public Hearing.

Also, the Judicial Merit Selection Commission may issue a subpoena at any time in order to provide for necessary investigations. Sufficient cause could include, but is not limited to, allegations related to the character and fitness of the candidate, which occurred on or after the deadline for filing a witness affidavit or allegations which would corroborate already filed witness affidavit forms. Character and other affidavits filed in support of the candidate will not be permitted for consideration by the Commission.

14. Each candidate shall be furnished a copy of all, if any, sworn statements and documents submitted in relation to his or her candidacy prior to the hearing, as soon after their receipt by the commission as practicable.
15. Unless indicated otherwise by the commission, the order of business for a hearing is as follows:
 - (a) The chairman will open the meeting and call for an executive session in which the chairman will brief the hearing's procedures and subject matter, and the commission will dispose of any matters affecting its rules or procedures.
 - (b) The commission will go into open session and the chairman will determine whether the candidates to be screened are present. Each candidate will in turn be sworn and stand before the commission. Staff counsel and any commission member who wishes will review the personal data questionnaire and question the candidate in regard to that information and any other matter relating to the candidate's qualifications, after which the questionnaire will be made a part of the record. The candidate will be allowed to respond and to explain his or her answers to all inquiries.
 - (c) The chairman will call and swear in witnesses who have either submitted a sworn statement by the deadline established by the commission prior to the hearing or have been subpoenaed by the commission to appear. Staff counsel and commission members will question the witnesses, and the candidate may submit proposed questions to the commission for consideration. Upon the completion of testimony, the candidate may respond to the testimony given.
 - (d) Upon hearing all testimony, the commission shall meet in executive session to discuss and make findings regarding the qualifications of the candidate.
 - (e) A reasonable time thereafter, the commission shall render a decision as to whether each candidate screened is qualified for judicial office and the reasons for the decision. The

commission shall review the qualifications of all candidates and select therefrom the names and qualifications of three candidates whom the commission considers best qualified for the judicial office under consideration along with a summary of those candidates who did not withdraw and whose names were not forwarded to the General Assembly for 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, the commission 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.

- (f) Upon the completion of all business scheduled for the hearing, the chairman will adjourn the hearing; however, a subsequent meeting may be scheduled should there be other related matters the commission needs to address.
16. During public hearings only the candidate currently being screened, or candidates who have already been screened, may be in the room in which the hearings are conducted. Any candidate who has not yet been screened must not be in the room in which the hearings are conducted, or in the hallway or other close proximity where the candidate might overhear the proceedings. This rule also applies to the candidate's relatives, employees, counsel, friends, or others who might be inclined to relay information about the proceedings to the candidate. The Judicial Merit Selection Commission may consider violations of this rule in deliberations on the candidate's fitness for service on the bench. The Judicial Merit Selection Commission staff is responsible for monitoring compliance with this rule, providing a place for candidates and their guests to wait, and notifying each candidate of his or her turn before the Judicial Merit Selection Commission.
17. The commission will, in the process of evaluating the qualifications of a judicial candidate, consider all evidence presented and render a finding as to each candidate's qualifications to serve as a judge and the reasons for that finding. In evaluating a candidate's performance in a particular evaluative criterion, the commission shall determine whether the candidate's performance in that area does not meet expectations or meets expectations. The term "does not meet expectations" means that the commission believes that the candidate's performance in that particular area is not sufficient for someone seeking election as a judge. The term "meets expectations" means that the commission believes that the candidate's performance in that particular area is adequate for someone seeking election as a judge. If a candidate has been screened within the preceding twelve months from the date of the public hearing, then the prior report may be incorporated into the commission's findings with the candidate's consent. If the candidate is not one of the three candidates chosen by the commission to be recommended to the General Assembly, the candidate may withdraw, which will preclude his or her qualifications from being included in the commission's findings. The candidate may also opt to allow the commission to publish his or her name as a candidate who was not recommended, which will include the commission's findings on that candidate.
18. The chairman may call a meeting of the commission by notifying the members of the commission and informing each member of the nature of the meeting.
19. These commission rules may be amended or suspended, except as provided for by law, upon a majority vote of all commission members with said votes to be made either in person or by proxy.
20. A quorum for purposes of a screening hearing or commission meeting shall consist of at least six commission members. In all instances, a written proxy must be used if that member is to be counted

as if that member were present.

21. For votes regarding findings of the commission and the reasons therefore relating to the qualifications of a judicial candidate, each commission member's vote shall be recorded. If a commission member recuses him or herself from the vote or is absent without leaving a written proxy, the candidate found qualified and nominated must receive a majority of the votes of the members present and voting.
22. All evidence and testimony or proposed testimony shall remain confidential.
23. Candidates and witnesses may be accompanied by counsel; however, counsel cannot participate in the hearings.
24. 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. If a candidate knows of any solicitations for pledges on his behalf, the candidate has an affirmative duty to inform the commission of the activity. The commission must include in its screening report to the General Assembly any evidence and findings of fact regarding the solicitation of pledges attempted in violation of state law or screening commission rules.

The privilege of the floor in either house of the General Assembly may not be granted to a former member during the time his 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.

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 non-legislative commission members shall be reported by the commission to the State Ethics Commission. If the commission finds there is substance to an alleged violation, the violation shall be reported in the form of a formal complaint from the Judicial Merit Selection Commission to the Senate or House Ethics Committee or to the State Ethics Commission. The Ethics Committee or Ethics Commission shall respond to the Judicial Merit Selection Commission within ten days, as to the merit of the complaint. If the complaint is groundless, the election will be held as scheduled. If an investigation is required, the nature of that investigation will be included in the findings the commission makes to the General Assembly regarding qualifications of candidates. 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.

25. Unless conducted in an alternate manner allowed by law, retired judges shall be screened in a similar manner as active judges.
26. Unless expressly authorized by the commission, no candidate may contact any member of the commission concerning a candidate's qualification for judicial office. Violations of this rule will be considered by the commission when determining a candidate's fitness for judicial service.
27. No later than six months before the expiration of a judge's term, commission staff will contact the judge in writing by electronic communication (e-mail) to determine whether the judge intends to seek reelection for another term. The statement of intention made by the judge at that time shall not be considered binding on the judge.
28. The commission shall include in its survey of the bench and bar all clerks of court in South Carolina as well as any other county officials who have significant contact with members of the state's judiciary. This survey may be conducted through using an electronic ballot. It is recommended that a member of the bar, each clerk, or any other court official complete only one electronic ballot per judicial candidate.