

Judicial Merit Selection Commission

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MEDIA RELEASE **from** **Representative Alan D. Clemmons, Chairman** November 10, 2015

With the retirement of Chief Justice Toal on December 2015, and the retirement of incoming Chief Justice Costa Pleicones in December 2016, the make-up of the SC Supreme Court will undergo a significant change. This gives rise to questions regarding how justices and judges are vetted for nomination, and ultimately election to our state courts.

The Judicial Merit Selection Commission (“Commission”) was created in 1997 by a state constitutional provision, as well as statutes, to consider the qualifications and fitness of judicial candidates for all judicial positions on the Supreme Court, Court of Appeals, Circuit Court, Family Court and Administrative Law Court. The Commission also screens candidates for appointment to Master-in-Equity positions, and retired judges are screened by the Commission for continued service through subsequent appointment by the Chief Justice of the SC Supreme Court.

The Commission handles the initial vetting of judicial candidates (“candidates”). This comprehensive vetting includes announcing judicial vacancies and developing the application package that each candidate must complete prior to being screened for a particular seat. This package includes, for example, the candidate providing information on his legal education, personal background, significant cases he or she has handled, submission of his or her personal financial information, noting any disciplinary action with the Commission on Lawyer Conduct or Commission on Judicial Conduct which resulted in a finding of misconduct, listing any lawsuits filed against the candidate, giving answers related to the Canons of Judicial Conduct, and returning a completed Statement of Economic Interests as required by the Ethics Act. Once a candidate’s package has been submitted to the Commission’s staff, a credit check and SLED check on the candidate is conducted. The candidate must also complete an objective practice and procedures test for the seat he or she is seeking, which is graded anonymously by four screening attorneys. Bench and bar surveys are sent electronically by Ballotboxonline to members of the SC Bar for anonymous completion on each candidate.

The candidate will go through four separate interviews throughout the screening process. First, he or she will be interviewed and investigated by his local Citizens Committee for Judicial Qualifications. There are five regional Citizens Committees, which are composed of ten members from across the societal spectrum. Following that, a candidate will be interviewed by the SC Bar’s

Judicial Qualifications Committee, who also make at least thirty phone calls to Bar members regarding the candidate. Both Committees will issue a report to the Commission based on nine evaluative criteria outlined in the statute. The criteria includes: (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.

As part of the screening process, the candidate will be assigned a screening attorney who is employed by either the House of Representatives or Senate. Screening Attorneys will scrutinize candidates' applications carefully for any questions or concerns that need to be addressed during their interviews with candidates. Finally, the candidate is screened at a public hearing where the candidate is examined by his or her assigned screening attorney, and also Members of the Commission.

The Commission consists of ten members. The Speaker of the House appoints five members, including three House Members and two public citizens. The President Pro Tempore of the Senate appoints two public citizens, and the Chairman of the Senate Judiciary Committee appoints three Senators to serve. The following House members currently serve the Commission: Rep. Alan Clemmons, Chairman and an attorney from Myrtle Beach; Rep. Bruce Bannister, an attorney from Greenville; and Rep. David Mack, III, a businessman/radio talk show host/president of Sunrise Communications of Charleston from North Charleston. Public members from the House include: Robert Wilcox, Dean of USC School of Law from Columbia; and Susan Wall, an attorney from Charleston. From the Senate, the following Senators are serving: Senator Larry Martin, Vice-Chairman and an employee in textiles at Alice Manufacturing Company from Pickens; Senator George "Chip" Campsen, III, a businessman and an attorney from Charleston; and Senator Gerald Malloy, an attorney from Hartsville. Public members from the Senate include: Michael Hitchcock, an attorney and Executive Director of the SC Retirement Systems Investment Commission from Columbia; and Kristian Bell, an attorney from Lancaster.

Citizens are also afforded the opportunity to file a complaint against a candidate. Complaints must relate exclusively to a candidate's character, competency, or ethics. The complainant is not permitted to relitigate a case involving a candidate. If the complaint relates to the candidate's character and fitness to serve, then the complainant must also be willing to testify and be examined by Members of the Commission at the public hearing when the candidate is screened.

At the public hearing, a candidate is found either "unqualified;" "qualified, but not nominated;" or "qualified and nominated," for the specific seat for which they are being screened. A report is then prepared, which includes the names of the candidates screened, their qualifications based on the nine evaluative criteria, and the Commission's findings. This report is e-mailed to the Members of the General Assembly. They then have 48 hours (not including the weekend) to read the report before commitments may be given to candidates who are found qualified and nominated. There are certain campaigning guidelines that members of the General Assembly and candidates who are being screened must follow regarding pledging and commitments.

Two weeks after the statutorily permitted commitment date, an election is held in joint session to elect judicial candidates to the seats being screened. In order to be elected to a seat, a candidate must receive a majority of the vote of the Members of the General Assembly voting in joint session.

This gives a brief glimpse of the thorough vetting process for judicial candidates in our State's courts. Some ask how this process compares to other states' methods of selecting judges. According to William Hubbard, Immediate Past President of the American Bar Association and Partner at Nelson Mullins Riley & Scarborough, "While there is no perfect method of judicial selection, South Carolina's commission-based process does a good job screening judicial candidates based upon their qualifications. This prevents judicial candidates from having to raise money and become susceptible to outside influences, and helps South Carolina judges be impartial and uphold the law without worrying about politics."

For further information about the Judicial Merit Selection Commission and the judicial screening process, you may access the website at www.scstatehouse.gov/html-pages/judmerit.html.

Questions concerning the hearing and procedures should be directed to the Commission at (803) 212-6623.