

EXECUTIVE ORDER OF MARCH 31, 2003

01.01.2003.11

Proclaiming an Extended Session of the Maryland General Assembly

WHEREAS, I, Robert L. Ehrlich, Jr., Governor of the State of Maryland, being advised that the Budget Bill has not been finally acted upon by the General Assembly seven days before the expiration of the 2003 regular Session of the General Assembly;

WHEREAS, Article III, Section 52 (10) of the Maryland Constitution provides that under these circumstances the Governor shall issue a proclamation extending the Session for a period as may, in the Governor's judgment, be necessary to allow for the passage of the Budget Bill; and

WHEREAS, Other matters may not be considered during such extended Session except a provision for the cost thereof.

NOW, THEREFORE, I, ROBERT L. EHRLICH, JR., GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND THE LAWS OF MARYLAND, DO HEREBY PROCLAIM THAT THE 2003 REGULAR SESSION OF THE MARYLAND GENERAL ASSEMBLY IS HEREBY EXTENDED, COMMENCING AT MIDNIGHT ON MONDAY, APRIL 7, 2003, IN THE STATE CAPITAL IN THE CITY OF ANNAPOLIS FOR THE PURPOSE OF PASSING THE STATE BUDGET BILL. THIS EXTENSION MAY NOT EXCEED TEN DAYS, OR SUCH OTHER PERIOD AS SPECIFIED BY AMENDMENT TO THIS EXECUTIVE ORDER.

EXECUTIVE ORDER OF APRIL 7, 2003

01.01.2003.12

Judicial Nominating Commissions

(Amends Executive Order 01.01.2003.09)

WHEREAS, The appointment of eminently qualified persons to the Judicial Branch is of paramount importance to the Governor and the people of Maryland;

WHEREAS, The process from which a judicial appointment is made by the Governor must be respected, be free from political influence, and be beyond reproach;

WHEREAS, In 1970, the Governor of the State of Maryland created the Judicial Nominating Commission System for the purpose of recommending to the Governor the names of persons for appointment to the appellate and trial courts of Maryland, and providing for the composition and general functions and procedures of the Judicial Nominating Commissions;

WHEREAS, The System has been continued with revisions in order to retain effectiveness in ensuring the the appointment of qualified persons to the

Judiciary of Maryland, most recently by Executive Order 01.01.2003.09; and

WHEREAS, Technical corrections to Executive Order 01.01.2003.09 are appropriate.

NOW, THEREFORE, I, ROBERT L. EHRLICH, JR., GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, HEREBY AMEND EXECUTIVE ORDER 01.01.2003.09 AND PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:

A. Definitions.

- (1) In this Executive Order the following words have the meanings indicated.
- (2) “Appellate Court” means the Court of Appeals of Maryland [and] OR the Court of Special Appeals of Maryland.
- (3) “Trial Court” means the District Court of Maryland [and] OR the Circuit Court [of] FOR a county or Baltimore City.
- (4) “Secretariat” means the Administrative Office of the Courts.

B. Appellate Judicial Nominating Commission.

- (1) Creation and Composition. The Appellate Judicial Nominating Commission is created as part of the Executive Department. It consists of 17 persons chosen as follows:
 - (a) Six members of the Maryland Bar appointed by the Governor and who shall be chosen as follows:
 - (i) Each member shall be a resident and qualified voter selected from the State at large; and
 - (ii) Such members may not hold offices of profit or trust under the Constitution or laws of this State or offices in any political party, or be full-time employees of the State.
 - (b) Four members appointed by the Governor who may not be lawyers and who shall be chosen as follows:
 - (i) Each member shall be a resident and qualified voter selected from the State at large; and
 - (ii) Such members may not hold offices of profit or trust under the Constitution or laws of this State or offices in any political party, or be full-time employees of the State.
 - (c) Seven members of the Maryland Bar who shall be selected as follows:

- (i) One member shall be selected by the members of the Maryland Bar in each of the seven appellate judicial circuits;
 - (ii) Each such member shall be a qualified voter of the State, and shall reside or maintain a principal office for the practice of law in the appellate judicial circuit from which elected;
 - (iii) These persons shall be elected by members of the Maryland Bar who are qualified voters of the State and who maintain their principal offices for the practice of law in the appropriate appellate judicial circuit;
 - (iv) Such members may not hold offices of profit or trust under the Constitution or laws of this State or offices in any political party, or be full-time employees of the State;
 - (v) The elections in each circuit shall be conducted by the Secretariat pursuant to rules promulgated by the Court of Appeals of Maryland; and
 - (vi) Each candidate for an elected lawyer position shall submit a petition signed by 15 lawyers.
- (d) No more than one lawyer from the same firm or legal office may serve on the Commission.
 - (e) To the fullest extent possible, the composition of the members appointed by the Governor and the members elected by the members of the Maryland Bar shall fairly and appropriately reflect the minority and female population of the area from which appointed or elected.
- (2) Chairperson. The Governor shall designate one of his appointees as the Chairperson.
 - (3) Vice Chairperson. The Commission, by a vote of a majority of its full authorized membership, shall select from among the members a Vice Chairperson. The Vice Chairperson may perform any duty of the Chairperson during his/her absence, unavailability or inability to act.
 - (4) Terms. The terms of the members of the Commission extend to the date of qualification of the Governor elected at each quadrennial election, and until their successors are duly chosen. However, if the Commission meets not less than twice in any 12-month period and a Commission member who is not disqualified from participating fails to attend at least 50 percent of the Commission meetings held in that period, the term of the member is terminated automatically at the end of the period and another member shall be promptly selected.

- (5) Vacancies. If a vacancy occurs on the Commission by reason of the death, resignation, removal, or disqualification of a member appointed by the Governor, a successor shall be appointed by the Governor, in accordance with Section B(1)(a)[,] OR (b)[, or (c)]. If the vacancy occurs by reason of the death, resignation, removal, or disqualification of a member elected by the members of the Maryland Bar, a successor shall be selected pursuant to rules promulgated by the Court of Appeals of Maryland.
- (6) Ineligibility for Judicial Appointment. The Governor may not appoint a member of the Commission to a vacancy that occurs on an Appellate Court during the term for which the member was chosen.
- (7) Number of Recommendations. The Commission shall submit to the Governor a list of not less than five nor more than seven nominees for each vacancy on an Appellate Court.

C. Trial Courts Judicial Nominating Commissions.

- (1) Creation.
 - (a) The Trial Courts Judicial Nominating Commissions are created as part of the Executive Department. For the purposes of operation and administration of the Commissions, the State shall be divided into Commission Districts as follows:
 - (i) Commission District 1 – Somerset, Wicomico and Worcester Counties;
 - (ii) Commission District 2 – Cecil, Kent and Queen Anne’s Counties;
 - (iii) Commission District 3 – Baltimore County;
 - (iv) Commission District 4 – Harford County;
 - (v) Commission District 5 – Allegany and [Garret] GARRETT Counties;
 - (vi) Commission District 6 – Washington County;
 - (vii) Commission District 7 – Anne Arundel County;
 - (viii) Commission District 8 – Carroll County;
 - (ix) Commission District 9 – Howard County;
 - (x) Commission District 10 – Frederick County;
 - (xi) Commission District 11 – Montgomery County;
 - (xii) Commission District 12 – Calvert and St. Mary’s Counties;
 - (xiii) Commission District 13 – Prince George’s County;

- (xiv) Commission District 14 – Baltimore City;
 - (xv) Commission District 15 – Charles County; and
 - (xvi) Commission District 16 – Caroline, Dorchester, and Talbot Counties.
- (b) After January 15, 2002, if any county in a multi-county Commission District achieves a population of 100,000 or more as of July 1 of each quadrennial election year, based on the figures reported periodically by the U. S. Bureau of the Census, Population Division, that county shall be entitled to be a separate Commission District and to have a separate Commission without further action by law or otherwise.
- (2) Composition. Each Commission shall consist of 13 persons chosen as follows:
- (a) Five members of the Maryland Bar appointed by the Governor and who shall be chosen as follows:
 - (i) Each member shall be a qualified voter of the State and shall reside or maintain a principal office for the practice of law in the Commission District from which appointed;
 - (ii) At least one member shall be a resident of the Commission District from which appointed;
 - (iii) In each multi-county Commission District, there shall be at least one such member who maintains a principal office for the practice of law in each county in the Commission District; and
 - (iv) Such members may not hold offices of profit or trust under the Constitution or laws of this State or offices in any political party, or be full-time employees of the State.
 - (b) Four members appointed by the Governor who may not be lawyers and who shall be chosen as follows:
 - (i) Each shall be a resident and qualified voter of the Commission District from which appointed;
 - (ii) Such members may not hold offices of profit or trust under the Constitution or laws of this State or offices in any political party, or be full-time employees of the State; and
 - (iii) In each multi-county Commission District, there shall be at least one such member who resides in each county in the Commission.

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- (c) Four members of the Maryland Bar who shall be selected as follows:
 - (i) Such members shall be selected by the members of the Maryland Bar who are qualified voters of the State and who maintain principal offices for the practice of law in the Commission District;
 - (ii) Each member shall be a qualified voter of the State and shall reside or maintain a principal office for the practice of law in the Commission District from which elected;
 - (iii) At least one member shall be a resident of the Commission District from which elected;
 - (iv) In each multi-county Commission District, there shall be at least one such member who maintains a principal office for the practice of law in each county in the Commission District;
 - (v) Such members may not hold offices of profit or trust under the Constitution or laws of this State or offices in any political party, or be full-time employees of the State;
 - (vi) The elections in each Commission District shall be conducted by the Secretariat pursuant to rules promulgated by the Court of Appeals of Maryland; and
 - (vii) Each candidate for an elected lawyer position shall submit a petition signed by 15 lawyers.
 - (d) No more than one lawyer from the same law firm or legal office may serve on the same trial [court] COURTS judicial nominating commission.
 - (e) To the fullest extent possible, the composition of the members of a Commission appointed by the Governor and the members elected by the members of the Maryland Bar shall fairly and appropriately reflect the minority and female population of the Commission District.
- (3) Chairperson. The Governor shall designate one of his appointees to each Commission as the Chairperson of the Commission.
 - (4) Terms. The terms of the members of each Commission extend to the date of qualification of the Governor elected at each quadrennial election and until their successors are duly chosen. However, if a Commission meets not less than twice in any 12-month period and a Commission member who is not disqualified from participating fails

to attend at least 50 percent of such Commission meetings held in that period, the term of the member is terminated automatically at the end of the period, and another member shall be promptly selected.

- (5) Vacancies. If a vacancy occurs on a Commission by reason of the creation of a new Commission District or by reason of the death, resignation, removal, or disqualification of a member appointed by the Governor, a successor shall be appointed by the Governor in accordance with Section C(2)(a)[,] OR (b) [or (c)]. If the vacancy occurs by reason of the death, resignation, removal, or disqualification of a member elected by the members of the Maryland Bar, a successor shall be selected pursuant to rules promulgated by the Court of Appeals of Maryland.
- (6) Ineligibility for Judicial Appointment. The Governor may not appoint a member of these Commissions to a vacancy that occurs on a Trial Court during the term for which the member was chosen.
- (7) Number of Recommendations. A Commission shall submit to the Governor a list of not more than seven nominees for each vacancy on a Trial Court within its Commission District. The Commission shall submit a minimum number of nominees so that the number of nominees for each vacancy, including any eligible nominee on a list previously submitted as provided by Section G(2), is no less than the number specified in the following table:

Number of Lawyers Contributing to [Clients' Security Trust] CLIENT PROTECTION Fund in the County	Minimum Number of Nominees Per Vacancy
(a) More than 750	5
(b) 201-750	4
(c) 31-200	3
(d) 30 or less	2

D. Recommending Less Than Minimum Number.

- (1) A Commission may recommend less than the minimum number of nominees required by Sections B(7) [and] OR C(7) under the following conditions:
 - (a) If multiple vacancies exist for which recommendations must be made, a Commission may submit a list containing the required minimum number of nominees for one vacancy plus two additional names for each vacancy in excess of one; or

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- (b) If it concludes that there is less than the required minimum number of persons willing to accept appointment who are legally and fully professionally qualified. However, a Commission shall obtain the prior approval of the Governor in order to recommend fewer than four names under Section B(7) or fewer than three names under Section C(7)(a) or (b) or fewer than two names under Section C(7)(c).
 - (2) If any person recommended for appointment is unwilling to accept appointment, or is disqualified, or is otherwise unavailable for appointment, a Commission may, upon request of the Governor, submit an additional nominee if needed to increase the list to the prescribed minimum number of names.
 - (3) If the position to be filled is then held by an incumbent judge who is eligible for and desires reappointment, the Commission, with the prior approval of the Governor, may submit a list containing less than the prescribed number of names.
- E. Commission Procedures.
- (1) Each Commission shall operate under procedures specified in rules adopted by the Chief Judge of the Court of Appeals of Maryland consistent with this Executive Order. The Secretariat and the Governor shall provide for the training of Commission members in effectively evaluating judicial candidates and in screening for sensitivity to diversity issues.
 - (2) Upon notification by the Secretariat that a vacancy exists or is about to occur in a judicial office for which a Commission is to make nominations, the Commission shall seek and review applications of proposed nominees for the judicial office. Application shall be made on the form prescribed by the Secretariat. The Commission shall notify the Maryland State Bar Association, Inc. and other appropriate bar associations of the vacancy and shall request recommendations from them. The Commission may also seek recommendations from interested citizens and from among its own members.
 - (3) The Commission shall evaluate each proposed nominee. In the course of its evaluation, the Commission may seek information beyond that contained in the personal data questionnaire submitted by a candidate. The Commission may obtain pertinent information from knowledgeable persons known to Commission members, the Attorney Grievance Commission, judges, personal references given by the candidate, criminal justice agencies, or other sources. The Commission shall place public notices in at least one newspaper read by members of the general public inviting written and signed comments to the Commission regarding the named applicants for judicial appointment. A criminal justice agency, including the Central

Repository, may release criminal history record information, including conviction and nonconviction data, to a Commission upon request of its chairman, for the purpose of evaluating a candidate.

- (4) No fewer than 9 members shall be present at a voting session of a trial court judicial nominating commission. No fewer than 11 members shall be present at a voting session of the Appellate Judicial Nominating Commission.
 - (5) A Commission shall select and nominate to the Governor persons found by the Commission to be legally and most fully professionally qualified to fill a vacancy. The Commissions shall evaluate the extent to which candidates have the following qualifications for judicial office: integrity, maturity, health, if job related, judicial temperament, diligence, legal knowledge, ability and experience, and community service. Commission members shall be sensitive to gender and diversity issues in the evaluation of judicial candidates. No person's name may be submitted unless the person has been found legally and most fully professionally qualified by a vote of a majority of the members present at a voting session, as taken by secret ballot, and unless the person has been interviewed by the Commission. The secret ballots shall be sealed [and delivered to] BY the Secretariat and may be opened only by demand of the Governor or by court order.
 - (6) The Commission shall report in writing to the Governor the names of the persons found by the Commission to be legally and most fully professionally qualified to fill a vacancy. The names of persons shall be listed in alphabetical order. The report shall be submitted within 85 days following notification by the Secretariat that a vacancy exists or is about to occur. The Commission shall release its report to the public concurrently with submission of its report to the Governor.
 - (7) Each Commission shall, through the Secretariat, distribute informational and educational materials concerning judicial vacancies and the functions of the Commission in order to inform the public of the judicial selection process of the State.
- F. Confidentiality. The name of an individual who submits a personal data questionnaire to a Commission may not be made public by the Commission until after the closing date for the submission of questionnaires. The Secretariat may submit the names of those individuals to a bar association, on receiving satisfactory assurances that no committee or officer of the bar association will release or permit the release to the public of any ranking of the individuals by, or the results of any ballots returned from the members of, the Bar association. A personal data questionnaire submitted to a Commission is confidential and may not be released by anyone other than the applicant, except that the Secretariat shall forward to the Governor the personal data questionnaires of those individuals

actually nominated to the Governor by a Commission. The evaluation of candidates by a Commission, including interviews, deliberations and voting, is confidential and may not be disclosed to anyone other than the Governor.

G. Appointment.

- (1) The Governor shall fill a judicial vacancy by selecting a person from the list of nominees submitted by the appropriate Commission.
- (2) With respect to any judicial vacancy, the Governor may also fill the most recent judicial vacancy by selecting a person from any list previously submitted by the appropriate Commission for a judicial vacancy on the same court for which the current list is submitted, if the previous list was submitted within a two-year period of the occurrence of the most recent vacancy and information on the nominees is updated, as necessary.

H. Effective Date. For purposes of the election and appointment of individuals to serve on the Appellate and Trial Court Judicial Nominating Commissions, this Executive Order is effective immediately. Notwithstanding the provisions of Sections B(4) and C(4) of this Order, existing judicial nominating commissions are hereby terminated and seventeen new judicial nominating commissions are created in accordance with provisions of this Executive Order.

EXECUTIVE ORDER OF APRIL 28, 2003

01.01.2003.13

Public Corruption and Misconduct

WHEREAS, Honest and honorable conduct in the performance of State business, free of the existence or perception of any corruption or other misconduct, is the primary goal of this Administration;

WHEREAS, Instances of prior questionable conduct, identified during transition, and thereafter, have arisen and continue to appear to arise, even to the present time;

WHEREAS, While the vast majority of Maryland State employees and contractors are entirely honest, upright and forthright in the conduct of State business, all departments and agencies must be vigilant to detect and deter any criminal or unethical conduct; and

WHEREAS, A clear and responsible path for investigation of possible criminal or unethical conduct must be established.

NOW, THEREFORE, I, ROBERT L. EHRLICH, JR., GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, HEREBY PROCLAIM THE