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Secretary of State
Tre Hargett

STATE OF TENNESSEE

EXECUTIVE ORDER

BY THE GOVERNOR

No. 87

AN ORDER REGARDING THE GOVERNOR'S COUNCIL FOR JUDICIAL APPOINTMENTS

WHEREAS, on May 17, 2016, Governor Bill Haslam issued his Executive Order No. 54 to constitute the Governor's Council for Judicial Appointments (the "Council") for the purposes of advising the Governor with regard to filling vacancies on Tennessee's appellate courts, which are subject to gubernatorial appointment pursuant to Article VI, Section 3 of the Tennessee Constitution; and

WHEREAS, from time to time, it is appropriate to update the provisions affecting the Council; and

WHEREAS, this Order restates the substantive provisions of Governor Haslam's Executive Order No. 54 while making certain minor changes regarding terms and limits for members of the Council and the chair, such revisions appearing in paragraphs 2.c, 2.d, 2.f, 2.i, and 2.p; and

WHEREAS, the current members of the Council have discharged their duties with the utmost competence, candor, and professionalism, and, therefore, shall maintain their positions on the Council and be eligible for reappointment pursuant to this Order.

NOW THEREFORE, I, Bill Lee, Governor of the State of Tennessee, by virtue of the power and authority vested in me by the Tennessee Constitution and other applicable law, do hereby order and direct that:

1. The Council. The Governor's Council for Judicial Appointments (the "Council") shall remain as currently constituted for the purpose of advising me in regard to filling vacancies in Tennessee appellate courts.

2. Membership of the Council.

   a. The Council shall consist of eleven members.

   b. The members shall be appointed by the Governor and shall serve at the pleasure of the Governor.

   c. The members serving on the Council as of the date of this Order shall continue to serve in such capacity through September 30, 2021, at which point members shall be appointed to the following initial terms:

      i. Five (5) members shall be appointed for an initial term from October 1, 2021, through January 19, 2023. These members shall not be eligible for reappointment.

      ii. Six (6) members shall be appointed for an initial term from October 1, 2021, through January 19, 2024. These members shall be eligible for reappointment.

   d. Thereafter, the Governor shall appoint members for a term of two (2) years, beginning on the 20th day of January. Such members shall be eligible for reappointment for one (1) additional full term. Membership on the Council that occurred prior to October 1, 2021, does not count towards the member's term limit.

   e. The appointments to the Council shall have the following geographic designations:

      i. Three (3) members shall be appointed from the western division of the State;

      ii. Three (3) members shall be appointed from the middle division of the State;

      iii. Three (3) members shall be appointed from the eastern division of the State; and

      iv. Two (2) members shall be appointed at large.

   f. If a member ceases to serve for any reason, then the Governor shall appoint a successor from the departing member's specified geographic area, if any, to fill the unexpired term. Filling an unexpired term does not constitute a full term for purposes of term limits. The successor shall be eligible for two (2) additional full terms. Membership on the Council that occurred prior to October 1, 2021, does not count towards the successor's term limit.

   g. Seven (7) members of the Council shall constitute a quorum.

h. At least eight (8) of the members of the Council shall be attorneys.

i. [Reserved.]

j. Appointments to the Council shall take into consideration diversity.

k. Each member of the Council shall be at least thirty years of age, shall have been a citizen of this State for at least two (2) years immediately prior to appointment, and shall have been a resident of the grand division from which that member is appointed in accordance with Section 2(e)(i)-(iii) above, for at least one (1) year immediately prior to appointment.

l. Each attorney member shall be duly licensed to practice by, and in good standing with, the Supreme Court of Tennessee.

m. Members of the Council shall not receive any compensation for their services but shall be reimbursed for their official travel expenses pursuant to policies and guidelines promulgated by the Department of Finance and Administration.

n. No member of the Council shall be a salaried office holder of this State or the United States, nor shall any member of the Council hold any office in any political party or political organization; provided, that members of the national guard and members of any armed forces reserve organization, any district attorney general or an employee of a district attorney general, and any district public defender or an employee of a district public defender shall not be considered as salaried office holders. This subsection (m) shall not apply to the solicitor general or any employee of the attorney general and reporter, any of whom shall be eligible to serve as a member of the Council.

o. Any member of the Council who becomes a salaried office holder of this State or the United States, or who accepts any office in any political party or political organization, in each instance failing to comply with subsection (m), vacates the member's office as a member of the Council.

p. A chair of the Council shall be selected by the Governor and shall serve at the pleasure of the Governor.

q. A member of the Council who misses more than two (2) meetings in a given year of the member's term on the Council may be subject to removal by the Governor.

3. Administration of the Council.

a. Upon the request of the Governor and with the consent of the Administrative Office of the Courts, the Administrative Office of the Courts shall keep and maintain all records of the Council as well as furnish the Council with any other secretarial

or clerical services or assistance it may require. The Administrative Office of the Courts will notify all Council members of the date, time and place of any Council meetings or hearings.

b. The Council is authorized to create procedures and ethics policies for the conduct of its business and the discharge of its duties that have not been addressed in this Executive Order.

4. Nomination Procedures.

a. The Council shall require every applicant for a judicial vacancy or impending judicial vacancy to submit an application on a form approved by the Governor. The application shall be submitted to the Administrative Office of the Courts for distribution to the Council members.

b. The Nomination Procedures for the various courts are as follows:

i. Intermediate Appellate Courts. If a vacancy occurs during the term of office of a judge of the Court of Appeals or Court of Criminal Appeals, or if the Governor is reliably informed that a vacancy is impending, the Governor shall provide written notice of the vacancy or impending vacancy to the Council. An impending vacancy occurs if an incumbent judge fails to file a written declaration of candidacy required by statute, or if the Governor is reliably informed that a vacancy is impending for another reason, including resignation or retirement at a future date. After the Council receives notice from the Governor, it shall, at the earliest practicable date, hold a public meeting in the grand division from which the vacancy is to be filled. If the vacancy is impending, the public meeting may be held at any time prior to the occurrence of the vacancy.

ii. Supreme Court. If a vacancy occurs during the term of office of a judge of the Supreme Court, or if the Governor is reliably informed that a vacancy is impending, the Governor shall provide written notice of the vacancy or impending vacancy to the Council. An impending vacancy occurs if an incumbent judge fails to file a written declaration of candidacy required by statute, or if the Governor is reliably informed that a vacancy is impending for another reason, including resignation or retirement at a future date. After the Council receives notice from the Governor, it shall, at the earliest practicable date, hold a public meeting in Nashville. If the vacancy is impending, the public meeting may be held at any time prior to the occurrence of the vacancy.

iii. Workers' Compensation Appeals Board. Upon request by the Governor, the Council is authorized to conduct a public hearing to fill any vacancy on the Workers' Compensation Appeals Board ("Appeals Board"), created by Tennessee Code Annotated, Section 50-6-217. If a vacancy occurs during

the term of office of a judge of the Appeals Board, or if the Governor is reliably informed that a vacancy is impending due to a resignation, retirement or for another reason, the Governor may provide written notice of the vacancy or impending vacancy to the Council. After the Council receives notice from the Governor, it shall, at the earliest practicable date, hold a public meeting in Nashville. If the vacancy is impending, the public meeting may be held at any time prior to the occurrence of the vacancy.

iv. Tennessee Claims Commission. Upon request by the Governor, the Council is authorized to conduct a public hearing to fill any vacancy on the Tennessee Claims Commission ("Claims Commission"), created by Tennessee Code Annotated, Section 9-8-301. If a vacancy occurs during the term of office of a member of the Claims Commission, or if the Governor is reliably informed that a vacancy is impending due to a resignation, retirement or for another reason, the Governor may provide written notice of the vacancy or impending vacancy to the Council. After the Council receives notice from the Governor, it shall, at the earliest practicable date, hold a public meeting in Nashville. If the vacancy is impending, the public meeting may be held at any time prior to the occurrence of the vacancy.

c. When a judge informs the Governor that the judge will retire or resign, such notice shall be final upon receipt.

d. Notice of the time, place and purpose of the meeting shall be posted on the website of the Administrative Office of the Courts, and given by such other means and media as the Council deems proper.

e. At the discretion of the Council, an opportunity may be extended for public comment during the public hearing in accordance with the procedures established by the Council.

f. In addition to a public hearing, the Council may hold such additional interviews with the candidates as it deems necessary. The Council shall make independent investigation and inquiry to determine the qualifications of possible nominees for the judicial vacancy and shall endeavor to encourage qualified attorneys to accept nomination and agree to serve if appointed to the judicial vacancy.

g. All hearings of the Council shall be conducted publicly and shall comply with Title 8, Chapter 44, Part 1 of the Tennessee Code Annotated, except for the executive session and deliberations in Section 4(h).

h. Deliberations among the Council members shall occur immediately after the conclusion of the interviews. The Council shall adjourn the public hearing and interviews and deliberate in Executive Session. Such deliberations shall not be

open to the public and shall not be required to comply with Title 8, Chapter 44, Part 1 of the Tennessee Code Annotated.

i. At the conclusion of deliberations among the Council members, the Council shall reconvene the public hearing for purposes of voting. Council members shall vote anonymously by written ballots. The ballots shall be collected, announced, and tallied at the meeting by the chair or presiding officer.

j. As soon as practicable, and no later than sixty (60) days from receipt of written notice from the Governor that a vacancy has occurred or that a vacancy is impending, the Council shall select three (3) persons whom the Council deems best and most qualified, and available, to fill the vacancy and shall certify the names of the three (3) persons to the Governor as nominees for the judicial vacancy or impending judicial vacancy. The Council shall select each nominee by a vote of no less than a majority of all members of the Council.

k. All nominees sent by the Council to the Governor must be attorneys, who are duly licensed to practice law in this State and who are fully qualified under the Constitution and statutes of this State to fill the office for which they are nominated.

l. The Council shall provide the Governor with copies of the applications of the three (3) nominees and any other information requested by the Governor.

5. Appointment Process.

a. Prior to making an appointment, the Governor shall direct the Tennessee Bureau of Investigation or other appropriate agencies to perform appropriate financial and criminal background investigations and inquiries of the prospective appointees, and the Governor shall review and assess the results of the background investigations and inquiries. The results of the financial and criminal background investigations of the nominees shall not be subject to the Tennessee Open Records Act.

b. The Governor shall fill any vacancy by appointing one (1) of the three (3) persons nominated by the Council, or the Governor may require the Council to submit up to one (1) other panel of three (3) additional nominees. The Council shall submit the second panel within forty-five (45) days after the Governor requests the panel. Within sixty (60) days following receipt of the second panel of nominees, the Governor shall fill the appellate court vacancy by appointing any one (1) of the six (6) nominees certified by the Council.

c. If the Council does not furnish a list of three (3) nominees to the Governor within sixty (60) days after the Council receives notice of a vacancy or impending vacancy, or within forty-five (45) days after the Governor requests the second panel, then the Governor may fill the vacancy by appointing any

person who is duly licensed to practice in this State and who is fully qualified under the Constitution and statutes of this State to fill the office.

d. All Appeals Board appointments made pursuant to this Executive Order shall be effective on the date the vacancy occurs or on the date of appointment if the vacancy has already occurred. All Claims Commission appointments made pursuant to this Effective Order shall be effective in accordance with Tennessee Code Annotated, Section 9-8-302. All appellate court appointments made pursuant to this Executive Order shall be effective upon confirmation in accordance with Article VI, Section 3 of the Tennessee Constitution.

This Order shall be effective immediately and supersedes and rescinds Governor Haslam's Executive Order No. 54, dated May 17, 2016.

IN WITNESS WHEREOF, I have subscribed my signature and caused the Great Seal of the State of Tennessee to be affixed this 17th day of September, 2021.

GOVERNOR

ATTEST:

SECRETARY OF STATE