

# STATE OF KANSAS

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**GOVERNOR LAURA KELLY**

## **EXECUTIVE ORDER NO. 20-01**

Establishing the Court of Appeals Nominating Commission

**WHEREAS**, Kansas law provides that the Governor appoints Kansas Court of Appeals judges and that such appointments are subject to consent of the Senate;

**WHEREAS**, the Kansas Court of Appeals is our state's busiest appellate court, deciding 1,740 civil or criminal cases in 2018;

**WHEREAS**, decisions of the Court of Appeals can affect our civil liberties and the safety of our communities, and impact the legal rights of citizens and businesses throughout Kansas;

**WHEREAS**, any judicial appointment process must be transparent, above reproach, and free from undue influence;

**WHEREAS**, nominees for the Governor to appoint as justices of the Kansas Supreme Court and judges of many district courts in Kansas are selected using nonpartisan, merit-based nominating commissions, and before 2013, nominees for Court of Appeals judges were selected using a similar nonpartisan, merit-based nominating commission;

**WHEREAS**, nonpartisan, merit-based nominating commissions have proven to result in the appointment of highly qualified, dedicated judges committed to independent, impartial interpretation and application of the law;

**WHEREAS**, the appointment of judges from a diversity of backgrounds enhances the quality of justice dispensed by Kansas courts and encourages respect for the law and the courts;

**WHEREAS**, because the judges who sit on our courts should reflect and understand the experiences of the citizens they serve, diversity—either professional or personal—is itself a qualification for the bench;

**WHEREAS**, while judges should have traditional qualities such as an excellent understanding of the law and significant expertise in the practice of law, judges should also be able to empathize with Kansans from varying backgrounds and experiences, most of whom will encounter the courts for a variety of reasons at one time or another;

**WHEREAS**, those selected as judges in Kansas have always been well qualified, but they have not always formed a wider bench that reflected the demographic diversity of Kansans; and

**WHEREAS**, for decades other states' governors have issued executive orders to establish nonpartisan, merit-based judicial nominating commissions to ensure that the judicial selection process is free from undue influence and identifies the best, most deserving applicants to serve as judges.

**NOW, THEREFORE**, pursuant to the authority vested in me as Governor of the State of Kansas, I hereby establish the Court of Appeals Nominating Commission ("Commission"):

1. **Membership.** The Commission shall be composed of nine commissioners, each appointed by the Governor, and shall include the following:
  - a. five residents of Kansas who are active members of the Kansas bar or retired judges,
  - b. four residents of Kansas who are not active members of the Kansas bar or retired judges, and
  - c. from each congressional district at least one person appointed under subparagraph 1.a and one person appointed under subparagraph 1.b.
2. **Prohibitions.** No member of the Commission shall, while she/he is a member, hold any other public office by appointment or any official position in a political party or for six months thereafter be eligible for nomination for the office of judge of the Court of Appeals.
3. **Terms.** Subject to the provisions below regarding initial appointments, commissioners shall serve terms of four years and may serve multiple terms, but no commissioner shall serve more than two full terms. For the Governor's initial nine appointments to the Commission, first terms will be as follows:
  - a. three commissioners shall serve initial two-year terms and then shall be eligible to serve two four-year terms;
  - b. three commissioners shall serve initial three-year terms and then shall be eligible to serve two four-year terms; and
  - c. the remaining three commissioners will serve four-year terms under the provisions of this paragraph.
4. **Chairperson.** The Governor shall select one of the five commissioners appointed under subparagraph 1.a to serve as chair. A commissioner may serve multiple terms as chair, but no commissioner shall be chair for more than two four-year terms.
5. **Bylaws.** To govern the Commission's proceedings and work, the Commission may adopt, by a majority vote, bylaws consistent with this order and relevant law.
6. **Removal.** The Commission's bylaws may address under what circumstances a member of the Commission may be removed prior to the expiration of a two-year term, including for reasons such as nonparticipation or conduct unbecoming a person holding a position of public trust.

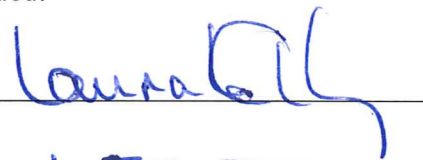
7. **No Compensation.** Commissioners shall receive no compensation or reimbursements for expenses and shall serve voluntarily.
8. **Open Government.** The Commission shall be subject to the Kansas Open Records Act and the Kansas Open Meetings Act.
9. **Court of Appeals Nominations.** Whenever the Governor is to make an appointment to fill a vacancy on the Court of Appeals, the Commission shall nominate three qualified applicants from whom the Governor will choose one to appoint. The Commission shall make its nominations after undertaking a robust and searching inquiry into each applicant's qualifications that shall include but not be limited to the following tasks:
  - a. collect and review applications, letters of reference, and other materials the Commission deems relevant and helpful;
  - b. inquire into the backgrounds, experiences, and qualifications of the applicant; and
  - c. interview the applicant.
10. **Nominations Based on Merit.** The Commission's nominations should be made based on merit, considering an applicant's full range of professional, legal, and personal qualifications.
11. **Publication of Applicants.** To comply with K.S.A. 20-3020(a)(3), whenever the Commission stops accepting applications, but not less than twelve days prior to the deadline for the Governor to make her appointment, the Commission shall forward the names and cities of residence of each applicant to the Governor's Office for publication.
12. **Timing of Nominations.** The Commission should make every effort to submit the nominations to the Governor as soon as possible and at least 28 days before the expiration of the deadline for the Governor to make an appointment under K.S.A. 20-3020. The Governor may establish a separate date for submitting nominations for individual appointments.
13. **No Lobbying.** After the Commission submits nominations to the Governor, no commissioner shall attempt, directly or indirectly, to further influence the decision of the Governor, except in response to communications initiated by the Governor, her Chief Legal Counsel, or other staff. No attempt shall be made to comment publicly or to disclose any preference of the Commission concerning applicants. Commissioners shall avoid giving preferential assistance to any applicant.
14. **Background Investigations.** The Governor's Office will request that the Kansas Bureau of Investigation conduct background investigations, pursuant to K.S.A. 75-712(d), of all nominees for Court of Appeals vacancies. As required by law, the information received from such an investigation will be confidential and not disclosed beyond the Governor or her staff as necessary to determine the nominee's qualifications. Such investigation is in addition to and not a substitute for the Commission's inquiry into the backgrounds, experiences, and qualifications of applicants required under this order.

15. **Governor's Selection Process.** After the Commission submits nominees for the Governor's consideration, the Commission's application file for each nominee, including any letters of reference, will be transferred to the Governor's Chief Legal Counsel. Additional letters of reference or recommendation from interested Kansans may be sent to the Governor's Office. The Governor's Chief Legal Counsel, the Director of Appointments, and other staff as appropriate will conduct first-round interviews of each nominee either in person, by phone, or via video conference. The Governor and Chief Legal Counsel will then interview each nominee. The Governor or her staff may require additional documentation or information from any applicant beyond that submitted to the Commission and may make additional inquiries into the qualifications of a nominee.
16. **Appointment.** After reviewing the nominees' application files, completing the interviews, and conducting any additional inquiries into the nominees' qualifications, the Governor will appoint the nominee who will best serve the interests of the State of Kansas and submit the appointment to the Senate for consent pursuant to K.S.A. 20-3020.
17. **Governing Law.** Nothing in this order is intended to conflict with or contravene any relevant statute or regulation regarding the appointment of Court of Appeals judges.

This document shall be filed with the Secretary of State as Executive Order No. 20-01. It shall become effective immediately and remain in force until rescinded.

THE GOVERNOR'S OFFICE

BY THE GOVERNOR



DATED

1.28.20



Secretary of State



Assistant Secretary of State