

# Tenth Judicial District Judicial Nominating Commission Rules of Procedure

---



## MISSION STATEMENT

The mission of the Tenth Judicial District Judicial Nominating Commission is to nominate persons for judicial positions in the Tenth Judicial District who meet the qualifications under state law and are recognized for their integrity, character, ability, experience and judicial temperament so as to select the most qualified candidates for the position.

*K.S.A. §20-2903 (1995)*

- 1. Chairperson.** Pursuant to state law, the Chairperson of the Commission shall be a justice of the Supreme Court or a district judge who is not a judge in the Tenth Judicial District appointed by the chief justice of the Supreme Court and serves at the chief's pleasure. It is the Chairperson's duty to preside at all meetings of the Commission, but he or she is not entitled to vote. *K.S.A. §20-2903 (1995)*.
- 2. Secretary.** The Secretary of the Commission shall be selected by a vote of eight Commission members present and voting at any formally called meeting. The Secretary shall serve as such until the end of his or her term in office. The Secretary of the Commission shall be the custodian of all Commission records. In the absence of the Chairperson or upon his or her delegation, the Secretary shall be the sole source of communications with the media and the representative of the Commission for purposes of any public statements concerning the activities of the Commission. The Secretary will be responsible for disseminating public notice of all meetings.
- 3. Scheduling.** Upon notification of an opening, the Secretary of the Commission will work with the Chairperson to establish a schedule for submission of applications. The Chairperson has five days after the announcement of the vacancy to set the schedule for accepting nominations and conducting interviews. *K.S.A. 2006 Supp. §20-2909*. The following dates will be established: a closing date by which applicants must submit the required application; a date for an initial Commission meeting to consider which applicants will be interviewed and a date for interviews and voting.
- 4. Solicitation of Public Comment.** Upon the announcement of a vacancy and determination of the scheduling as outlined in section 3 above, the Commission, through its Secretary, will issue a press release announcing the same and soliciting comments from the public regarding the position to be filled or applicants therefore. The public is invited to write or fax comments to the Secretary. The Secretary shall forward said comments to the other Commissioners at the same time he or she forwards the applications as provided in section 7 herein.
- 5. Recruitment.** Commissioners may actively encourage qualified persons to apply for a judicial position. However, Commissioners shall indicate to recruited applicants that the mere solicitation of their application is not a promise of the Commissioner's endorsement throughout the process. The recruited applicant shall be advised that he or she will be subject to the same evaluative scrutiny as other applicants.

6. **Number Selected.** At least two, but no more than three, names must be submitted to the Governor for consideration within 45 days of notification of vacancy, unless the Chief Justice grants an extension. Although the selection should be made promptly and expeditiously, it must have “due regard for the importance of selecting the best possible nominees.” *K.S.A. 2006 Supp. §20-2909.*
7. **Initial Review.** Upon receiving each application, the Secretary shall cause to be conducted a criminal history, credit history, and ethics history review. The results of said review shall be given to each Commissioner at the initial application review meeting described in section 8, below. Copies of applications shall be forwarded to Commissioners at the close of the application submission deadline.
8. **Commission Meeting to Determine Interviewees.** On a predetermined date after the application submission deadline, the Commission shall meet to review applications and determine which applicants will be invited to interview with the Commission. At the conclusion of this meeting, Commissioners will return to the Secretary all criminal history, credit history, and ethics history information received. One copy of each is to be retained by the Secretary until the conclusion of the selection process. The remainder shall be destroyed at the conclusion of the meeting. Criminal history, credit history, and records of the Office of Kansas Disciplinary Administrator and the Kansas Judicial Qualifications Commission obtained as part of an applicant’s background investigation shall remain confidential and shall not be disclosed outside the Commission for any reason.
9. **Deliberations.** The Commission shall adjourn into executive session for deliberations regarding which applicants will be interviewed. The Commission shall also adjourn into executive session for deliberations following the interviews to determine the applicants whose names will be forwarded to the Governor. However, no voting shall take place in executive session. Conversations taking place in executive session are confidential and shall not be disclosed outside the Commission. *K.S.A. 2006 Supp. §75-4319.*
10. **Invitation to Interview.** The Secretary of the Commission shall send invitations to interview to those applicants so chosen by the Commission. In addition, the Secretary shall send letters to those not chosen for an interview advising that the applicant was not selected for an interview.
11. **Commission Liaison; Duties.** Each interviewee will be randomly assigned one lay member and one attorney member of the Commission. Said Commissioners shall be responsible for conducting a background investigation on said applicant. The Commissioners will report a summary of their findings to the whole Commission prior to the interview. In addition, said members will serve as the applicant’s liaison to the Commission, answering any questions he or she might have and advising the applicant regarding the process.
12. **Background Investigations.** A judicial, personal and professional review will be conducted. In the course of their investigation, the Commissioners may seek information beyond that contained in the application submitted by the candidate. They may obtain pertinent information from knowledgeable persons known to the Commission members, the Office of Kansas Disciplinary Administrator, the Kansas Judicial Qualifications Commission, judges, personal references given by the applicant, criminal justice agencies, or other sources. Prior to contacting any reference, the Commissioner shall

send a letter to the reference advising of future contact and restating the rules regarding confidentiality of nominating commission records as outlined in Supreme Court Rule 1101. A copy of the letter template is attached hereto as Attachment I.

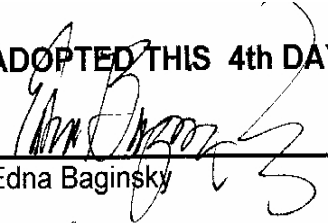
13. **Interviews.** Interviews shall be open to the public. However, an interviewee may not attend the interview of another interviewee. *K.S.A. 2006 Supp. §75-4318.*
14. **Voting.** No final action shall be taken except upon a vote of at least a majority of the members of the Commission (8). *K.S.A. §20-2907 (1995).* Following the interviews, the Commissioners present for all interviews will vote using the Tenth Judicial Nominating Commission Voting Rules attached hereto. Only Commissioners who have attended the interviews are eligible to vote. Voting by proxy or absentee ballot is not permitted. All votes shall be cast by written ballot, signed by the voter. Voting by secret ballot is prohibited. *K.S.A. 2006 Supp. §75-4318(a).* Following each vote, the Chairperson shall examine the ballots to verify that the voting rules have been followed. The Chairperson, or his or her designee, shall then tally the votes. Although all votes shall be cast by written ballot, the Chairperson shall not read aloud the name of the voter, but will announce the final tally.
15. **Notification.** Once the requisite nominees are selected, the names will be posted on the County website.
16. **Relinquishment of Records.** At the close of the session in which nominees are selected and forwarded to the Governor, all applicant records in the possession of each Commissioner shall be turned over to the Secretary of the Commission.
17. **Notification of Governor.** In the case of the position of District Court Judge, the Secretary shall certify the list of selected nominees and forward it to the Governor as well as their applications and supporting documentation. No Commission member shall attempt, directly or indirectly, to further influence the ultimate decision of the Governor. No attempt shall be made to rank such nominees whose names are made public or otherwise disclose a preference of the Commission.
18. **District Magistrate Judges.** In the case of district magistrate positions, all procedures set forth herein are to be followed with the exception of forwarding a list of names to the Governor. Pursuant to *K.S.A. 2006 Supp. §20-2914*, the Commission shall select the district magistrate judge. If the person selected is not regularly admitted to practice law in Kansas, the appointment shall be made on a temporary basis until such person has been certified by the supreme court as qualified to hold such office in the manner provided by *K.S.A. §20-337* and amendments thereto.
19. **Withdrawal of Nomination after Submission.** After the Commission has nominated and submitted to the Governor the required number of nominees for appointment to fill a vacancy in the office of judge of the district court, and prior to the appointment of a successor to such office, any nomination may be withdrawn for cause of a substantial nature affecting the nominee's qualifications to hold office, and another nominee may be substituted therefore; and if any nominee dies or requests in writing that his or her name be withdrawn, the Commission shall nominate another person to replace him or her. The Commission shall meet to determine the substitute nominee from the list of persons


already interviewed pursuant to these rules and voting shall take place as set out in paragraph 14 herein. *K.S.A. §20-2910 (1995)*.

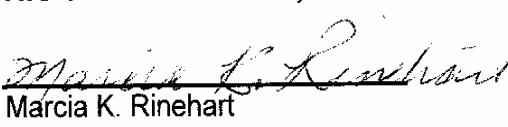
20. **Two or More Vacancies at Same Time.** Whenever there are existing at the time two or more vacancies in the judicial district and the Commission has submitted to the Governor the required number of nominees for each of such vacancies, the Commission may withdraw the lists of nominations prior to any appointment being made, and change any of the persons so nominated from one list to another and resubmit them as so changed, or may substitute a new nominee for any of those previously nominated. The action of the Commission in withdrawing nominations may be taken at the same meeting at which nominations are made, or at any later meeting called for such purpose. *K.S.A. §20-2910 (1995)*.
21. **Confidentiality of Records.** All records of the Commission shall be confidential and are not subject to disclosure to anyone not a member of the Commission or assisting the Commission. The following information regarding potential nominees may be disclosed by the Commission, in a form within its discretion: names, current employment positions, educational degrees received, previous employment or positions, cities of residence. Nothing in this rule prohibits disclosure by a Commission of information to the Governor as needed for consideration of nominated candidates. For purposes of this rule, the term "records" refers to any recorded information. *KS Supreme Court Rule 1101* and *K.S.A. 2007 Supp. §45-221(a)(1)*.
22. **Permanent Records.** The permanent records of the Commission shall consist of a copy of the letter of submittal from the Commission to the Governor and any and all motions to adjourn to executive session as required by *K.S.A. 2006 Supp. 75-4319(a)*. All other records generated in connection with the Commission's works shall be destroyed as soon as the candidate selected by the Governor is sworn into office, or the district magistrate judge is sworn into office.
23. **Ethics.** In the performance of their duties, the Commission members shall be ever mindful that they hold positions of public trust. No Commission member shall conduct him or herself in a manner which reflects discredit upon the judicial selection process or discloses partisanship or partiality in the consideration of applicants. Consideration of applicants shall be made impartially, discreetly, and objectively. Private meetings with declared applicants to discuss the applicant's qualifications are discouraged. The fact that such a meeting has taken place shall be disclosed to the whole Commission. A Commission member shall disclose to the whole commission all personal and business relationships with an applicant that may directly or indirectly influence his or her decision or give the perception to the public or other applicants that his or her decision may be influenced by said relationship and may recuse him or herself from applicable Commission proceedings in appropriate circumstances.

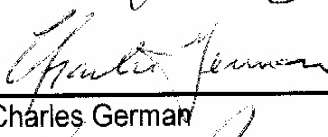
ADOPTED THIS 4th DAY OF APRIL, 2007 and AMENDED THIS 8<sup>th</sup> DAY OF MAY, 2008.

ADOPTED THIS 4th DAY OF APRIL, 2007 and AMENDED THIS 8<sup>th</sup> DAY OF MAY, 2008.

  
Edna Baginsky

  
Michelle A. Kinzer

  
Marcia K. Rinehart

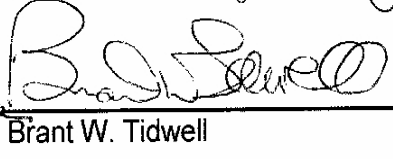
  
Charles Germain

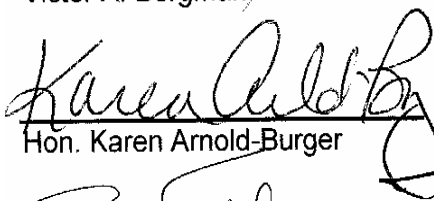
  
Hon. Larry McClain

  
Scott C. Gyllenberg

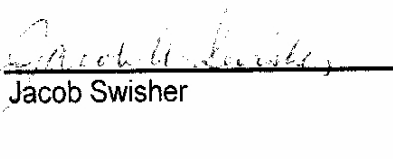
  
Victor A. Bergman

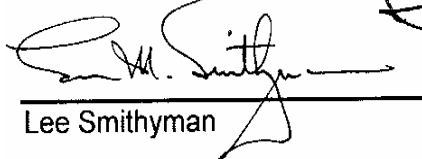
  
Janis K. McMillen

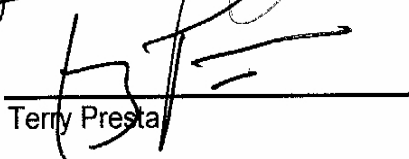
  
Brant W. Tidwell

  
Hon. Karen Arnold-Burger

  
Hon. Kevin Moriarty

  
Jacob Swisher

  
Lee Smithyman

  
Terry Presta

# Tenth Judicial District Judicial Nominating Commission Voting Rules

---

1. Each Commissioner is allotted 3 votes per round in each of the first two rounds.
2. Each Commissioner is allowed to cast only one vote per applicant per round.
3. Commissioners must cast each of their allotted votes each round.
4. **First Round.** All votes are cast on the entire list of interviewees. For an applicant to continue to be considered after the First Round, he or she must fall in the top 50% of votes received plus any ties.
5. **Second Round.** For an applicant to be selected, he or she must receive at least 8 votes. If more than three names remain that have 8 or more votes, voting will continue to the Third Round.
6. **Third Round.** Only those applicants receiving 8 or more votes in the Second Round are considered in this round. However, each Commissioner is allotted only 2 votes. For an applicant to be selected, he or she must receive at least 8 votes. If necessary, voting will continue until at least two, but no more than three, applicants receive 8 votes.
7. **Selecting Magistrates.** This voting procedure will be used for the selection of a magistrate judge, however when the process results in three finalists, voting will continue for the selection of a final candidate. Each Commissioner is allotted only 1 vote. To be selected as magistrate judge the applicant must receive at least 8 votes.

**Attachment A**

**Tenth Judicial District  
Judicial Nominating Commission  
Documentation of Adjournment to Executive Session**

---

Now on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, \_\_\_\_\_, duly qualified member of the Tenth Judicial District Judicial Nominating Commission, hereby moves that the Commission recess into executive session for the purpose of discussion of the qualifications of applicants/interviewees for the position of Judge of the Tenth Judicial District as allowed by K.S.A. 2007 Supp. §75-4319(b)(1). The open meeting shall resume this same date at \_\_\_\_\_ a.m./p.m. at the following location: \_\_\_\_\_.

Motion Seconded by: \_\_\_\_\_.

Number in favor of said motion: \_\_\_\_\_ Number opposed to said motion: \_\_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ at \_\_\_\_\_ a.m./p.m.

\_\_\_\_\_  
Secretary of Commission

The open meeting of the Tenth Judicial District Judicial Nominating Commission duly reconvened on \_\_\_\_\_, 200\_\_ at \_\_\_\_\_ a.m./p.m. at the following location:

\_\_\_\_\_.

\_\_\_\_\_  
Secretary of Commission

Tenth Judicial District  
 Judicial Nominating Commission  
 Interview Ballot

APPLICANT NAME	INTERVIEW	
	YES	NO
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		

Commissioner: \_\_\_\_\_ Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Attachment C

Tenth Judicial District  
 Judicial Nominating Commission  
 Interview and Liaison List

---

INTERVIEWEES	COMMISSIONER ASSIGNED	
	LAY	LAWYER
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		

Date: \_\_\_\_\_

Tenth Judicial District  
 Judicial Nominating Commission  
 Final First Ballot

---

APPLICANT NAME	VOTE FOR THREE
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	

Commissioner: \_\_\_\_\_ Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Note:** For an applicant to continue to be considered after the First Round, he or she must she must fall in the top 50% of votes received plus any ties. Voting will continue to the Second Round.

Tenth Judicial District  
 Judicial Nominating Commission  
 Final Second Ballot

---

APPLICANT NAME	VOTE FOR THREE
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	

Commissioner: \_\_\_\_\_ Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**NOTE:** Only those applicants falling in the top 50% of votes received plus ties are considered in this round. For an applicant to be selected at the conclusion of this round, he or she must receive at least 8 votes. If more than three names remain that have 8 or more votes, voting will continue to the Third Round.

Tenth Judicial District  
Judicial Nominating Commission  
Final Third Ballot

---

APPLICANT NAME	VOTE FOR TWO
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	

Commissioner: \_\_\_\_\_ Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**NOTE:** Only those applicants receiving 8 or more votes in the Second Round are considered in this round. If necessary, voting will continue in this round until at least two but not more than three applicants receive 8 votes.

Tenth Judicial District  
Judicial Nominating Commission  
Final Magistrate Ballot

---

APPLICANT NAME	VOTE FOR ONE
1.	
2.	
3.	

Commissioner: \_\_\_\_\_ Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Note:** Only those applicants receiving 8 or more votes in the Third Round are considered in this round. For an applicant to be selected, he or she must receive at least 8 votes. The applicant with the most votes over 8 will be selected.



Tenth Judicial District  
Judicial Nominating Commission

Date

Chair:  
Justice Lee A. Johnson

Members:  
Hon. Karen Arnold-Burger  
Edna Baginsky  
Victor A. Bergman  
Charles W. German  
Scott Gyllenborg  
Michelle A. Kinzer  
Hon. Larry McClain (ret.)  
Janis K. McMillen  
Hon. Kevin Moriarty  
Terry Presta  
Marcia K. Rinehart  
Lee M. Smithyman  
Jacob Swisher  
Brant W. Tidwell

Hon. Karen Arnold-Burger,  
Secretary  
12400 Foster  
Overland Park, KS 66213  
Phone: 913-327-6852  
Fax: 913-327-5760

Name  
Address  
City, State, Zip

Dear (Name of Reference),

Your name has been provided as a reference for *(insert name of applicant)*, who has applied for a position as District Judge in the Tenth Judicial District. Within the next few days you may be contacted by phone by *(insert name of commissioner)*, a member of the Tenth Judicial District Nominating Commission, to discuss *(name)*'s qualifications for the position. Pursuant to Supreme Court Rule 1101, all records of a judicial nominating commission are confidential and not subject to disclosure to anyone not a member of the commission or assisting the commission.

If you have any questions about the authenticity of any calls or contacts made to you about this applicant, please contact the undersigned for verification.

Sincerely,

Hon. Karen Arnold-Burger  
Secretary

**Attachment I**