

# State of Connecticut

GEORGE JEPSEN  
ATTORNEY GENERAL



Hartford

March 5, 2014

Robert S. Bello, Chairperson  
Judicial Selection Commission  
18-20 Trinity Street  
Hartford, CT 06106

Dear Chairperson Bello:

You have requested a formal opinion regarding the proper treatment of applications to the Judicial Selection Commission (Commission) for consideration for judicial nomination by candidates who have previously served as Superior Court judges but resigned. We conclude that a candidate who has resigned from his position as a Superior Court judge and now seeks to be considered for nomination to the Superior Court must apply as a new candidate for consideration to the Commission. We also conclude that a candidate who has resigned from the Superior Court but who had been and continued to be on the list of candidates for the Appellate Court need not apply again for consideration for the Appellate Court but remains on the list of candidates for that court.

The Commission plays an important constitutional role in the selection of candidates that the Governor may consider for nomination as judges. Article Fifth, § 2 of the Connecticut Constitution establishes the Commission's authority relating to judicial nominations. It provides:

Judges of all courts, except those courts to which judges are elected, shall be nominated by the governor exclusively from candidates submitted by the judicial section commission. The commission shall seek and recommend qualified candidates in such numbers as shall by law be prescribed.

The General Assembly has enacted legislation to carry out the Commission's constitutional role. Section 51-44a(f) of the General Statutes provides, in pertinent part:

[T]he commission shall seek qualified candidates for consideration by the Governor for nomination as judges of the Superior Court, Appellate Court and Supreme Court. The commission shall adopt regulations, in accordance with the provisions of chapter 54, concerning criteria by which to evaluate the qualifications of candidates, including incumbent judges who seek appointment to a different court. The commission shall investigate and interview the candidates, including judges seeking appointment to a different court. A list of such qualified candidates shall be compiled by the commission.

Conn. Gen. Stat. § 51-44a(f). Section 51-44(h)(1) of the General Statutes provides, in pertinent part:

Judges of all courts, except those courts to which judges are elected, shall be nominated by the Governor exclusively from the list of candidates or incumbent judges submitted by the Judicial Selection Commission.

Conn. Gen. Stat. § 51-44a(h)(1). Thus, the Governor may nominate persons for the Superior, Appellate and Supreme Courts only from the list of candidates compiled by the Commission after it has investigated and interviewed candidates seeking appointment.

Although not expressly mandated by the governing statutes or the Commission's regulations, you indicate the Commission's practice has been to compile separate lists for candidates for the Superior Court, Appellate Court and Supreme Court. You further indicate that it has been the Commission's practice that a candidate's name remains on the list for each respective court until the candidate has been appointed to that court or the candidate requests his or her name be removed. The statutes and regulations do not provide a procedure or mechanism for the review or removal of candidates that have been placed on the lists. Finally, you indicate that it is the Commission's practice that, after voting in executive session on whether to recommend an applicant, the Commission sends a letter to the applicant informing the applicant of the results of the vote, but only

notifies the Governor as to those applicants that are recommended for nomination.<sup>1</sup>

You present two scenarios concerning persons that have submitted applications for the Commission's consideration. The first involves an applicant who had previously served as a Superior Court judge but who had resigned after serving a few years. The applicant recently submitted an application for qualification for appointment to the Superior Court, and the Commission investigated and interviewed the applicant and voted on the application.

We confirm that this was the proper procedure for this applicant. Once appointed to the Superior Court, the individual was removed from the list of Superior Court candidates. To be considered for a new appointment to the Superior Court, a new application and evaluation by the Commission was required.

The second scenario involves an applicant who also had previously served as a Superior Court judge and had resigned from that judicial office. However, this applicant, prior to his resignation from the Superior Court, had previously applied for and was placed by the Commission on the list of recommended candidates for the Appellate Court. Although, consistent with the Commission's practice, the applicant remained on the Appellate Court list, the applicant had nonetheless applied again for consideration for the Appellate Court. The Commission conducted its investigation and interview of the applicant, but voted not to recommend the applicant to the Governor for nomination to the Appellate Court.

You ask several questions about this second scenario, including: (1) Did the applicant need to apply or was the applicant still validly on the list of qualified Appellate Court candidates? and (2) What effect did the new application and the Commission's subsequent evaluation and vote have on the applicant's inclusion on the Appellate Court list?

First, the applicant had previously been recommended for the Appellate Court, and consistent with the Commission's practice, he remained on the list of recommended candidates for that court when he submitted his application. Whatever his reasoning for doing so, he did not need to apply anew.

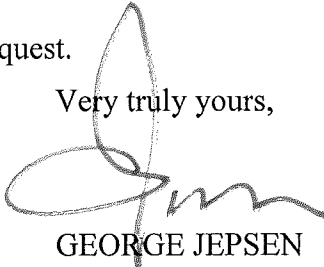
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<sup>1</sup> Other than certain exceptions not relevant here, the Commission's investigation, deliberations, files and records are confidential and not open to the public. Conn. Gen. Stat. § 51-44a(j).

Second, we conclude that the applicant should remain on the list of candidates despite his submission of a new application and the Commission's subsequent interview and evaluation of the applicant. In the absence of any provision in the statutes or the Commission's regulations about removal from the list of candidates generally or about the effect of a new application specifically, we see no reason that the Commission's longstanding practice – that a candidate remains on the list of qualified candidates unless the candidate is appointed or requests removal from the list – should not control in the circumstances presented here. *See Tuxis Ohr's Fuel, Inc. v. Administrator*, 309 Conn. 412, 422-23 (2013) (longstanding agency interpretation of statute should be afforded deference). In effect, the applicant was requesting that he be included on a list of recommended candidates on which he had already been placed. The Commission's negative vote did not have the effect of removing him from the list on which he otherwise validly remained.

We trust this is responsive to your request.

Very truly yours,

A handwritten signature in black ink, appearing to read "G. Jepsen", is written over the typed name and title.

GEORGE JEPSEN  
ATTORNEY GENERAL