

M.R. 3140

IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS

Order entered March 1, 2023.

(Deleted material is struck through, and new material is underscored.)

Effective immediately, Illinois Supreme Court Rule 39 is amended, as follows.

Amended Rule 39

Rule 39. Appointment of Associate Judges

(a) Terms.

(1) The terms of all associate judges in office shall expire on June 30th of every fourth year subsequent to 1975, unless the associate judge is appointed after April 1st during the reappointment year and thereby subject to reappointment in the next quadrennial reappointment period. ~~regardless of the date on which any judge is appointed.~~ Notwithstanding the provisions for conditional notices of vacancy as contained in paragraph (a)(2) of this rule, the office of an associate judge shall be vacant upon his or her death, resignation, retirement, or removal, or upon the expiration of his or her term without his or her reappointment. When a sitting associate judge submits in writing his or her resignation, the chief judge of the circuit may, no sooner than 120 days before the effective date of such resignation, cause notice of the vacancy to be given pursuant to subpart (b) of this rule, provided that the candidate appointed to fill the vacancy shall not take office before the effective date of such resignation.

(2) In those instances where a sitting associate judge is running unopposed or where two or more associate judges are the only candidates opposing one another in the general election and an associate judge vacancy therefore can be anticipated, the Administrative Director may, upon the chief judge's request, approve posting of a conditional notice of vacancy not more than 30 days prior to the general election and absent a letter of resignation from a sitting associate judge. The conditional notice of vacancy shall clearly advise potential associate judge candidates that the vacancy is contingent upon certification by the Illinois Board of Elections of general election results declaring a sitting associate judge the winner. Prior to the distribution of ballots provided for in paragraph (b)(4), the Director shall await the Illinois Board of Elections' certification of the general election results.

(b) Filling Vacancies. Vacancies in the office of associate judge shall be filled in the following manner:

(1) *Notice of Vacancy.* Upon approval of the Director of the Administrative Office of the Illinois Courts, the chief judge of the circuit shall, after forwarding a copy of the notice to the

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SUPREME COURT
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Director, cause notice to be given to the bar of the circuit, in the same manner as notice of matters of general interest to the bar is customarily given in the circuit, that the vacancy exists and will be filled by the judges of the circuit. The notice of vacancy shall be given as soon as practicable, but no later than 30 days after the accumulation of five consecutive vacancies for which notice has not been given. If the chief judge of the circuit fails to give notice within the time period prescribed by this provision, the Chief Justice of the Supreme Court may direct the Director of the Administrative Office of the Illinois Courts to give notice of the vacancies in the manner prescribed by this rule.

(2) *Applications and Certification.* Any attorney who seeks appointment to the office of associate judge must be a United States citizen, licensed to practice law in this state, and a resident of the unit from which he or she seeks appointment. Applicants shall have 30 days after the notice of vacancy is given within which to electronically file with the Director of the Administrative Office of the Illinois Courts a signed application on the form prescribed and furnished by the Director. If an applicant is not able to submit an application electronically, an applicant shall have 30 days after the notice of vacancy is given within which to file with the Director of the Administrative Office of the Illinois Courts two signed originals of an application on the form prescribed and furnished by the Director. Applications must be received by the Director within the 30-day period. Applications transmitted via facsimile will not be accepted. At the close of the application process, the Director shall certify to the chief judge a list of those applicants who have timely filed and provide a copy of those applications.

(3) *Nomination.* In judicial circuits having a population of more than 500,000, the chief judge of each circuit and at least two but not more than 10 additional circuit judges selected by their fellow circuit judges shall serve as a nominating committee for candidates for appointment to the office of associate judge of their circuit. If there are fewer than 20 circuit judges in a circuit, all of the circuit judges may sit as a nominating committee. When one or more vacancies in the office of associate judge are to be filled, the nominating committee shall select from the applications filed twice as many names of qualified candidates as there are vacancies to be filled.

(4) *Distribution of Ballots and Related Materials.*

(i) In judicial circuits having a population of more than 500,000, the chief judge shall notify the Director of the names of those candidates selected by the nominating committee and request that the Director initiate the balloting process. Within 14 days after the chief judge's notification, the Director shall place the name of each candidate on a ballot in alphabetical order. The ballot shall also contain blank spaces equal in number to the number of vacancies to be filled, in which spaces may be written the name of any qualified applicant whose name does not appear on the ballot as a candidate.

(ii) In judicial circuits having a population of less than 500,000, the chief judge shall request that the Director initiate the balloting process. Within 14 days after the chief judge's request, the Director shall place the name of each candidate on a ballot in alphabetical order.

(iii) A ballot and a brief biographical synopsis of each candidate shall be mailed to each circuit judge in the circuit. Each ballot shall also be accompanied by a stamped, addressed

return envelope, an envelope marked "For Ballot Only," and a signature card. Upon request, any circuit judge may obtain a copy of the complete application of any applicant.

(5) *Balloting.* Each circuit judge shall complete his or her ballot by voting for not more than one candidate for each vacancy to be filled, enclose the ballot in the envelope marked "For Ballot Only," seal the envelope, sign the signature card, and enclose that envelope and signature card in the stamped, addressed return envelope, which shall be delivered to the Director within 14 days of the date the ballots were distributed. The Director shall count the ballots which are accompanied by a signed signature card, tabulate the results and certify them to the chief judge, maintaining the secrecy of the ballots.

(6) *Results of Balloting; Runoffs.*

(i) In judicial circuits having a population of more than 500,000 the candidates receiving the most votes shall be declared to be appointed to fill the vacancies. Where a tie prevents a winner from being declared, reballoting shall proceed in the manner provided above for the first balloting except that ballots shall include only the names of those candidates whose tied votes prevented a winner from being declared.

(ii) In judicial circuits having a population of less than 500,000 the candidates receiving votes from a majority of the circuit judges who have voted shall be declared to be appointed to fill the vacancies. If there are not enough candidates receiving majorities to fill all the vacancies, the Director shall list alphabetically on a runoff ballot the remaining candidates, in number equal to twice the number of remaining vacancies, who received the most votes in the first balloting (or twice that number plus any who are tied with the candidate in the list who received the least number of votes). The candidates receiving the most votes in the runoff balloting shall be declared to be appointed to vacancies not filled as a result of the first balloting. Where a tie prevents a winner from being declared, reballoting shall proceed in the manner provided above for the first balloting except that ballots shall include only the names of those candidates whose tied votes prevented a winner from being declared.

(c) Reappointment of Associate Judges Upon Expiration of Their Terms.

(1) *Request for Reappointment.* An associate judge, subject to reappointment pursuant to paragraph (a), may file a request for reappointment with the chief judge of the circuit at least three months but not more than six months before the expiration of his or her term. At least 63 days before the expiration of the terms of associate judges, each chief judge shall certify to the Director the names of the associate judges in the circuit, subject to reappointment pursuant to paragraph (a), who have requested reappointment.

(2) *Distribution of Ballots.* At least 40 days before the expiration of the terms of associate judges, the Director shall prepare and distribute ballots on which each circuit judge shall vote on the question whether each associate judge who has requested reappointment shall be reappointed for another term. Each ballot shall be accompanied by a stamped, addressed return envelope, an envelope marked "For Ballot Only," and a signature card.

(3) *Balloting.* Each circuit judge shall complete his or her ballot, enclose it in the envelope marked "For Ballot Only," seal the envelope, sign the signature card, and enclose the sealed envelope and signature card in the stamped, addressed return envelope, which shall be delivered to the Director within 14 days after it was distributed. The Director shall count the

ballots which are accompanied by a signed signature card, tabulate the results and certify them to the chief judge, maintaining the secrecy of the ballots. If three fifths of the circuit judges voting on the question vote in favor of reappointment of an associate judge, he or she shall be declared reappointed for another term.

(d) Definition of “Circuit Judge.” For the purposes of this rule, “circuit judge” shall include a circuit judge elected or appointed to a term of office within a circuit (or a unit defined by law which is smaller than the circuit), including a circuit judge who is assigned to the Supreme or the Appellate Court (whether relieved of judicial duties on the circuit court or not), and a circuit judge temporarily recalled from retirement and assigned to judicial duty as a circuit judge in the circuit from which the circuit judge had been elected or appointed, but shall not include a circuit judge who was elected or appointed in another circuit but is temporarily assigned to a circuit which is in the process of selecting or retaining an associate judge. A circuit judge appointed to office during the balloting period may vote to fill associate judge vacancies in his or her circuit if the circuit judge has been sworn in and has provided a copy of his or her signed oath of office to the Director. The newly appointed circuit judge must complete and deliver his or her ballot to the Director within the same 14-day period that the ballots were distributed to the circuit judges under paragraph (b)(5). In no instance will the 14-day period specified in paragraph (b)(5) be extended for those circuit judges appointed to office during the balloting period.

Effective July 1, 1971; amended effective October 14, 1971; amended April 1, 1992, effective August 1, 1992; amended December 3, 1997, effective January 1, 1998; amended December 17, 1999, effective immediately; amended March 16, 2001, effective immediately; amended November 27, 2002, effective immediately; amended May 28, 2003, effective immediately; amended January 25, 2007, corrected January 26, 2007, effective February 1, 2007; amended April 23, 2009, effective July 1, 2009; amended Oct. 30, 2012, effective immediately; amended Dec. 28, 2012, eff. immediately; amended Jan. 29, 2015, eff. immediately; amended Aug. 10, 2015, eff. Sept. 1, 2015; amended Oct. 15, 2015, eff. immediately; amended May 31, 2018, eff. immediately; amended Mar. 1, 2023, eff. immediately.

Committee Comments

(July 1, 1971)

This rule implements section 8 of article VI of the new Illinois Constitution, which provides, “Associate Judges shall be appointed by the Circuit Judges in each circuit as the Supreme Court shall provide by rule.”