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To the Citizens of Missouri:

The Appellate Judicial Commission understands that certain politicians and others have made public statements raising questions about the commission's recent process of nominating three individuals for the governor's consideration for the current vacancy on the Supreme Court of Missouri. The commission offers the following explanation of its process to all interested members of the public.

First, it should be noted that the Appellate Judicial Commission is not and never has been a part of the Supreme Court of Missouri. Rather, it is a separate entity created by article V of the Missouri Constitution with the purpose of removing partisan politics from the selection of judges. In article V, section 25 of the constitution, the people purposely stated that the judicial nominating commissions – including the Appellate Judicial Commission – are governed by rules promulgated by the Supreme Court. Otherwise, the legislature and the governor could enact legislation that would thwart the people's directive that the role of the partisan branches of government would be minimized in the judicial selection process.

Supreme Court Rule 10, enacted in its current form 35 years ago, has the force and effect of law, and is the law that governs the commission. Rules 10.28 and 10.29 prohibit the commission from publicizing the names of any persons under consideration and require the commission to keep all matters discussed confidential until it selects three nominees, whose names are then made public. Rule 10 requires that the deliberations of the commission be made in executive session. Providing the information that certain politicians and others have requested would require the commission to violate the law that specifically governs it. In fact, the Sunshine Law itself states that its general policies do not apply where "otherwise provided by law."

In stark contrast to the picture being painted by certain politicians and others, the constitutional provisions and rules governing the judicial nominating commissions do not deprive the public of necessary information about the candidates to fill appellate vacancies. In fact, they guarantee that the public knows who the three finalists are for any judicial position on a court under the Missouri nonpartisan plan. Rule 10.29 requires that once a judicial nominating commission reaches a decision as to the three nominees, it shall execute a certificate of nomination for the governor. Rule 10.28 specifically exempts this certificate of nomination from the rule's confidentiality requirements. As such, the public always will be aware of the three individuals under consideration by the governor for a vacancy on a nonpartisan court.

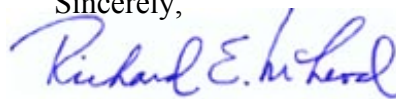
The same public awareness does not exist for any other non-elected position anywhere in state government. In the legislature, the caucuses in each chamber elect their respective leaders in meetings closed to the public. And the process that the governor's office follows in appointing the heads of the executive branch agencies, members of the state's various boards and commissions, and interim appointments for judicial vacancies on courts that are not part of the nonpartisan plan, similarly is not open to the public. Those agencies subject to the Sunshine Law – enacted after Rule 10 – close from the public individually identifiable personnel records and discussions relating to personnel decisions in accordance with section 610.021, RSMo.

The process the Appellate Judicial Commission followed last month in choosing the three nominees from among the applicants was exactly as envisioned by the Missouri Constitution. Each applicant filled out a comprehensive application available online to applicants and members of the public alike. Each applicant then had the opportunity for private one-on-one interviews with each member of the commission prior to the commission's meeting. (Contrary to some public conjecture, these interviews were not recorded or otherwise transcribed.) The commissioners then met in an executive session to discuss all the applicants and, through the balloting procedure mandated by Rule 10, to select the three nominees, which it then provided to the governor and publicized in a news release.

Since that time, the commission has gladly worked with the governor's office to furnish all the additional information that it is able to provide. The commission provided to the governor's office full and complete copies of the nominees' applications. The governor's chief of staff has informed the commission that the governor's office had received complete applications. The commission continues to work with the governor's office to assist it in obtaining further background information about the three nominees and today makes available online the entire correspondence between the commission and the governor's office regarding these nominees.

The commission has discharged its constitutional duty to nominate three persons for the governor's consideration. The commission wishes the governor and his staff all the best as they engage in the process they deem appropriate in determining which of the three public nominees to appoint to fill the vacancy on the Supreme Court.

Sincerely,



Richard E. McLeod, Esq.

Secretary, Appellate Judicial Commission