



SUPREME COURT OF MISSOURI
en banc

February 19, 2009

IN RE: PROCEDURES for ELECTION of APPELLATE JUDICIAL
COMMISSION MEMBER in 2009

ORDER

1. The procedures attached hereto are hereby approved.
2. It is ordered that this order and the procedures attached hereto shall be published in the South Western Reporter and the Journal of The Missouri Bar.

Day - to - Day

LAURA DENVIR STITH
Chief Justice

2009
Procedures for Appellate Judicial Commission Election
In the Court of Appeals, Western District,
Rule 10.165
Electronic Balloting

Pursuant to Rule 10.165, Electronic Balloting in Lieu of Paper Balloting, the following procedures shall govern the balloting for the election of a Missouri Bar member to the Appellate Judicial Commission in 2009.

(a) Initiation of Electronic Voting Preparations

The clerk of the district of the Court of Appeals responsible for the election shall notify the Office of State Courts Administrator (OSCA) that an election is to take place. The clerk shall identify details such as date of the election and officials responsible for the election. OSCA shall initiate the creation of the election database and shall instruct the election administrators in the Court of Appeals district as to their duties for set-up of the election.

(b) Electronic Voter File

Not less than thirty days nor more than sixty days before the election, upon request of the Supreme Court, The Missouri Bar shall certify to the Supreme Court and the Office of State Courts Administrator the electronic file of lawyers residing in the Court of Appeals district who are eligible to vote in the election. The file shall contain name, Missouri Bar ID and password (also known as Personal Identification Number or PIN), address, county of residence and e-mail address for all lawyers eligible to vote. The certified file shall control eligibility to vote electronically. No additions to the electronic file of eligible voters shall be made after the date the voter file is certified.

The Office of State Courts Administrator (OSCA) shall load the voter file into the electronic election software application and work with the clerk of the Court of Appeals district to ensure that an appropriate number of paper ballots will be available. OSCA shall send the Supreme Court and the clerk conducting the election a confirmation that the number of voter records loaded matches the number of voters provided in the voter file.

(c) Notification of Electronic Election

Prior to the close of candidate filing for the election, the clerk conducting the election shall send one or more e-mail announcements of the upcoming election to all lawyers whose e-mail addresses appear in the voter file provided by The Missouri Bar. All e-mail

announcements shall provide notice of the web address that will be used for electronic voting and the names and telephone numbers of contact persons at the clerk's office. Candidate names shall not be provided in notification e-mails prior to the close of candidate filing.

Not later than ten days after the close of candidate filing, the clerk conducting the election shall send all lawyers with e-mail addresses in the voter file an e-mail announcement that the voting period is open. In addition to the information contained in earlier e-mails, the e-mail announcement shall include the names of the candidates and their biographical sketches. At the same time, the clerk shall arrange for the mailing of paper ballots in accordance with procedures set forth in section (h) - Paper Ballot Distribution.

During the voting period, the clerk may send additional e-mail reminders of the availability of electronic voting.

(d) Voter Credentials

The Missouri Bar identification number and The Missouri Bar Personal Identification Number (PIN) used for access to The Missouri Bar's secure members-only web site shall be used to confirm eligibility to vote electronically. The electronic election software shall not allow anyone to access the ballot who does not enter the Missouri Bar ID and PIN that were certified in the electronic voter file.

After the lawyer has cast one vote electronically, the software shall prevent any further access to the ballot by that ID and PIN. Appropriate error messages shall be displayed to anyone attempting to vote who does not appear in the voter file or who has already voted.

The Missouri Bar shall answer questions from lawyers about their own identification numbers and PINs.

(e) Voting Period

The voting period shall begin not later than ten days after the last date that candidates may file a petition of nomination. For the electronic voting system, voting shall end at midnight the Friday before the date of the election set forth in Rule 10.06. The election software application shall prevent voting after that time. Paper ballots may continue to be received until 10:00 a.m. on the date of the election as provided in Rule 10.13.

(f) Confidentiality of Electronic Voting

The electronic election software shall prevent election administrators from viewing or printing the votes cast for candidates until after the close of the electronic voting period.

The software shall not provide a list of voters with their corresponding votes. The clerk shall not reveal if a person has or has not voted. Whether a person has or has not voted shall be confidential and shall not be revealed by the election administrators.

(g) Write-in Candidates

The electronic election software shall allow voters to write in a candidate. After the voting period ends, the software shall provide a list of write-in candidates that displays the exact information that voters entered on their ballots. If a run-off election is held, the software shall not allow the option of entering write-in candidates.

(h) Paper Ballot Distribution

The clerk conducting the election shall arrange to mail paper ballots and accompanying ballot materials to lawyers in the voter file without an e-mail address in the file. The clerk shall also mail a paper ballot to any lawyer in the voter file whose e-mail address returns an Undeliverable notice, and to any lawyer who notifies the clerk that he or she is unable to vote electronically and requests a paper ballot. The initial paper ballot mailing to lawyers without e-mail addresses in the voter file shall occur not later than ten days after the last date that candidates may file a petition of nomination and not later than the e-mail notice that includes candidate names.

Upon confirmation by the Supreme Court clerk to the clerk conducting the election of eligibility to vote in the election, the clerk conducting the election shall provide paper ballots to lawyers newly sworn in as members of The Missouri Bar and lawyers who notify the Supreme Court of change of residence address to a location within the district after the date the electronic voter file is certified.

(i) Vote Counting

Beginning the day of the election, the election software shall allow election administrators to view and print lists of the number of votes cast electronically for each candidate. The clerk conducting the election shall count the paper ballots received by 10 a.m. the day of the election.

On the day of the election, the election administrators shall verify that no person cast a vote both electronically and by paper ballot. This shall be accomplished by comparing the list of electronic voters produced by the election software application with the signature cards submitted by voters with their paper ballots. If any voter is found to have voted by both electronic and paper ballots, all votes cast by that person shall be disqualified and removed from the voting results. In addition, the software will enable the removal from the result of any electronic vote by a voter whose vote or qualifications is successfully challenged.

The clerk conducting the election shall combine the paper ballot vote totals with the totals of votes cast electronically and announce the uncertified results when the tabulation process is complete. Within ten days after the election the clerk shall certify the document containing the combined election results to the Secretary of State and the clerk of the Supreme Court. The combined vote totals shall not distinguish between votes cast electronically and votes cast by paper ballot.

(j) Run-off Elections

If the clerk conducting the election determines that a run-off election is required, the election shall be managed under the procedures set forth for the initial election, except that write-in candidates are not allowed.

(k) Retention of Ballots

Electronic ballots and related documentation in the electronic election software shall be retained for a period of six months after the completion of the election canvass. At the end of the six months, unless directed otherwise by the Supreme Court, the clerk conducting the election shall direct the Office of State Courts Administrator to delete the election database containing the ballots for the election. The clerk shall destroy paper ballots and signature cards at the same time that OSCA deletes the electronic database for the election.