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IOWA DEPARTMENT OF JUSTICE  
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**PRIVILEGED AND CONFIDENTIAL**

The Hon. Justice David Wiggins  
Chair, State Judicial Nominating Commission

Mr. Todd Nuccio  
State Court Administrator

**VIA ELECTRONIC MAIL**

December 12, 2018

Re: State Judicial Nominating Commission

Dear Justice Wiggins and Mr. Nuccio:

This letter is in response to your request for informal advice about when an election should be held for three members of the state judicial nominating commission (“Commission”) whose six-year terms will expire on December 31, 2018. This question arises due to a six-month gap between the expiration of their terms under Iowa Code 46.2A and the July 1 start date for subsequent terms under Iowa Code 46.2.

The elected members who commenced six-year terms on January 1, 2013 will automatically hold over until new commissioners are elected for the six-year terms that begin July 1, 2019. Under Iowa law, “[e]xcept when otherwise provided, every officer elected or appointed for a fixed term shall hold office until a successor is elected and qualified, unless the officer resigns, or is removed or suspended, as provided by law.” Iowa Code 69.1A. An incumbent officer becomes a holdover officer automatically upon expiration of his or her term, and does not need to take any affirmative steps to effectuate the holdover. *Westphal v. City of Council Bluffs*, 275 N.W.2d 439, 443 (Iowa 1979). Holding over does not change the length of a term. *Welty v. McMahon*, 316 N.W.2d 836, 839 (Iowa 1982) (discussing the difference between “tenure” and “term”). The Iowa Supreme Court has analyzed the holdover doctrine in the context of the state judicial nominating commission, implicitly recognizing that commissioners may hold over. *Id.*

To the extent there are questions about appointed commissioners whose six-year terms under section 46.2A were also scheduled to expire on December 31, the holdover doctrine would apply equally to them.

Fortunately, the gap between terms is a one-time event that should not recur once the Commission returns to the May 1 and July 1 start dates for the six-year terms beginning in 2019.

Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Emily Willits", positioned below the word "Sincerely,".

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