

**VIRGINIA STATE BAR
JUDICIAL CANDIDATE EVALUATION COMMITTEE
PROCEDURES AND POLICIES**

I. Committee Purpose

The Virginia State Bar (VSB) Judicial Candidate Evaluation Committee (“JCEC” or “Committee”) is a special committee of the VSB formed to conduct, at the request of members of the Virginia General Assembly or members of the Virginia delegation to the United States Congress, the investigation and recommendation of candidates for judicial office in the state appellate courts of Virginia and the federal district courts and courts of appeal in Virginia. In doing so, the Committee is charged with the responsibility of identifying among presented candidates those individuals who are uniquely and highly qualified for the associated vacancy as a result of the candidate’s experience, integrity, professional competence, temperament, service to the law and the administration of justice, communication skills, ethical and moral character, fairness, and impartiality.

I. II. Committee Composition

A. The Committee ~~The Virginia State Bar (VSB) Judicial Candidate Evaluation Committee (JCEC or Committee)~~ consists of thirteen active lawyer members, one from each of the bar’s ten disciplinary districts and three from the state at large, elected to staggered three-year terms by Council on recommendation of the nominating committee. Committee members are not eligible to serve a second consecutive three-year term, but former members may serve as members pro tempore. The VSB’s Executive Committee shall assign a representative to serve as a liaison to the JCEC as a non-voting member. The chair is selected annually by the Committee ~~each year~~.

In instances where one or more currently serving members of the Committee are not available to participate in the process of developing and making recommendations for a particular judicial vacancy, the chair of the Committee may appoint, as members *pro tempore*, a like number of past members of the Committee who are willing and able to serve during the process of developing and making recommendations for that judicial vacancy.

A currently serving member of the Committee who, by reason of a conflict of interest or otherwise, must be recused from participating in the consideration of more than three (3) candidates for a particular judicial vacancy shall be replaced by a member pro tempore as described above.

B. The Committee is a neutral, non-partisan, deliberative body.

II. III. Committee Procedures

A. If requested by a member or committee of the Virginia General Assembly in the instance of a judicial vacancy on the Supreme Court of Virginia or the Court of Appeals of

Virginia, or if requested by a United States Senator or Congressman representing Virginia in the instance of a vacancy in the federal district courts in Virginia or a Virginia seat on the United States Court of Appeals for the Fourth Circuit, If requested by the appointing authority, when a judicial vacancy occurs on the Supreme Court of Virginia, the Court of Appeals of Virginia, the federal district courts in Virginia, or a Virginia seat on the United States Court of Appeals for the Fourth Circuit, it is the responsibility of the Committee to investigate, consider and recommend, where appropriate, seek nominees candidates for the vacancy. A member or committee of the Virginia General Assembly and a member representing Virginia in the United States Senate or the United States House of Representatives requesting the investigation of candidates for judicial office shall be deemed a “Requesting Party.”

B. The chair of the Committee will assign no fewer than two members of JCEC to investigate each candidate. In making the assignments, the chair will endeavor to assign a member of the Committee from a particular VSB disciplinary district to investigate candidates from that district. A member of the Committee from a particular VSB disciplinary district will normally be assigned to investigate any and all nominees from that district. The Committee members conducting the investigation should seek information relating to the experience, integrity, professional competence, temperament, service to the law and to the effective administration of justice and communication skills of the candidate.

C. Sources will be assured of confidentiality by the investigating Committee member, who will report orally to the Committee on his or her overall findings and conclusions as to each nominee candidate without attribution.

D. After judicial nominees candidates are investigated by individual members of the Committee, it will act as a whole to conduct personal interviews with nominees of candidates and engage in any other additional investigation deemed necessary.

E. In evaluating candidates, the Committee should consider the following criteria:

1. Experience: A candidate for judicial office should be a member of the Virginia State Bar and have been engaged in the practice or teaching of law, public interest law, or service in the judicial system. Substantial courtroom and trial experience (as a lawyer or a trial judge) is important for nominees to candidates for both the appellate and the trial courts. Additional experience that is similar to in-court trial work — such as appearing before or serving on legislative bodies or committees, administrative agencies or arbitration boards, or teaching trial advocacy or other clinical law school courses — is may be considered by the Committee in evaluating a nominee’s candidate’s trial experience. Significant evidence of distinguished accomplishment in the field of law may compensate for a nominee’s candidate’s lack of substantial courtroom experience. Recognizing that an appellate judge deals primarily with records, briefs, appellate advocates and colleagues, the Committee may place somewhat more emphasis on the importance of scholarship and the ability to write lucidly and persuasively, to harmonize a body of law and to give guidance to the trial courts for future cases in the evaluation of nominees candidate for appellate courts vacancies.

2. Integrity: The candidate should be of high moral and ethical character and enjoy a general reputation in the community for honesty, industry, and diligence.

3. Professional competence: Professional competence includes intellectual capacity, professional and personal judgment, writing and analytical ability, knowledge of the law, and a breadth of professional experience, including courtroom and trial experience.

4. Temperament: Judicial temperament includes a commitment to equal justice under law, fairness, impartiality and freedom from bias, ability to decide issues according to law, courtesy and civility, open-mindedness and compassion.

5. Service to the law and contribution to the effective administration of justice: Factors in this category include professionalism and a commitment to improving the availability of providing justice to all. The Committee considers that civic activities and public service are valuable experiences, but that such activity and service are not a substitute for significant experience in the practice of law, whether that experience be in the private or public sector.

6. Communication skills: Communication skills include the ability to write and speak lucidly and persuasively; to present a question, a response, an order, a ruling, a decision and a judgment, such that it can be understood not only by the lawyers but the parties to the litigation and by the public as well. The communications should give guidance to the trial courts, the members of the bar and the public for future cases.

F. A candidate should not be considered in comparison to other candidates, but instead should be evaluated individually and objectively to ascertain whether that candidate possesses the qualifications, achieved with distinction, that make a candidate capable for the associated vacancy.

G. If a candidate has previously been evaluated by the Committee for the same position, and received a rating of "Qualified" or "Highly Qualified," there shall be a rebuttable presumption that the candidate merits at least the same rating. In order for the presumption to be rebutted, the Committee must be presented with information reflecting on the candidate's qualifications that warrants a vote to a lower rating. Only those candidates investigated, interviewed, and considered by the Committee for the subject vacancy may be designated by the Committee. There shall be two designations available for a candidate considered by the Committee – "Qualified" and "Highly Qualified." Only the designations reported by the Committee shall be deemed the official recommendations of the Committee.

FH. Following the investigation, and personal interviews, and discussion of the a candidate, the Committee shall vote on the qualifications of all candidates. Chair shall entertain a motion and a second from members of the Committee wishing to present the candidate to the Committee for approval as "Qualified." Following further discussion of the candidate subject to a motion, the Committee members eligible to do so shall vote on that candidate. A candidate receiving a vote of approval by a majority of those members of the Committee present and eligible to vote on that candidate shall be reported by the

Committee to be “Qualified.” However, a candidate receiving fewer than six (6) votes in favor of a designation of “Qualified,” although constituting a majority of those members of the Committee present and eligible to vote on that candidate, shall not be reported by the Committee as having received such designation.

~~1. Any candidate who fails to receive an affirmative vote from a simple majority of those voting shall not be reported by the Committee.~~

~~2. All candidates who receive an affirmative vote from a simple majority of those voting shall be deemed and reported as “Qualified.” The Committee shall thereafter conduct a second vote to determine, by simple majority of those voting, whether any of the candidates deemed qualified possesses a level of qualification and distinction sufficient to merit the designation “Highly Qualified.”~~

~~3. At the conclusion of the Committee’s deliberations and voting, the Committee shall prepare an executive summary of the Committee’s reasons for its actions with respect to each candidate being designated as either “Qualified” or “Highly Qualified.” The vote count for each candidate’s evaluation of “Qualified” or “Highly Qualified” shall be included in the executive summary of each candidate.~~

I. Following the Committee’s designation of a candidate as “Qualified,” the Chair shall entertain a motion and a second from members of the Committee wishing to present the candidate to the Committee for approval as “Highly Qualified.” Following further discussion of the candidate subject to a motion, the Committee members eligible to do so shall vote on that candidate. A candidate receiving a vote of approval by at least two-thirds of those members of the Committee present and eligible to vote on that candidate shall be reported by the Committee to be “Highly Qualified.” However, a candidate receiving fewer than seven (7) votes in favor of a designation of “Highly Qualified,” although constituting greater than two-thirds of those members of the Committee present and eligible to vote on that candidate, shall not be reported by the Committee as having received such designation.

J. A candidate (i) who fails to receive a motion and a second by members of the Committee for consideration as “Qualified;” (ii) who, after having been moved for consideration, fails to receive a vote of approval by at least a majority of those members present and eligible to vote on that candidate; or (iii) who receives fewer than six (6) votes in favor of a designation of “Qualified,” although constituting a majority of those members of the Committee present and eligible to vote on that candidate, shall not be reported by the Committee.

K. For any candidate who has previously been evaluated by the Committee for the same position and received a previous rating of “Qualified” within three (3) years immediately preceding the consideration of the candidate for the subject vacancy, no motion or second for the same designation shall be required, and the Committee shall vote upon the candidate for the subject vacancy. For any candidate who has previously been evaluated by the Committee for the same position and received a previous rating of “Highly Qualified” within three (3) years immediately preceding the consideration of the candidate

for the subject vacancy, no motion or second for the same designation shall be required, and the Committee shall vote upon the candidate for the subject vacancy. A candidate's previous designation of "Qualified" or "Highly Qualified" within three (3) years immediately preceding the consideration of the candidate for the subject vacancy shall be considered by the Committee in its evaluation of the candidate.

L. With respect to any candidate who has been considered on two occasions within the preceding three (3) years for separate vacancies on a specific court, and failed to receive the designation of "Qualified" for either vacancy, the Committee shall inform the Requesting Party of this circumstance and that the Committee will not undertake an investigation, interview, consideration, or designation of or regarding such candidate unless requested to do so by such Requesting Party.

- By way of example, a candidate who has failed to achieve the designation of "Qualified" on two consecutive occasions within the preceding three (3) years for separate vacancies in either the United States District Court for the Western District of Virginia or the United States District Court for the Eastern District of Virginia, shall not be considered for a vacancy on either of those courts within the three (3) year period following the date of the Committee's second consideration of the candidate, unless requested to do so by the Requesting Party. However, the candidate is not disqualified by such events from consideration for a vacancy on the United States Court of Appeals for the Fourth Circuit or the Virginia appellate courts.
- Similarly, a candidate who has failed to achieve the designation of "Qualified" on two occasions within the preceding three (3) years for separate vacancies in the Supreme Court of Virginia, shall not be considered for a vacancy on the Supreme Court of Virginia unless requested to do so by the Requesting Party. However, the candidate is not disqualified by such events from consideration for a vacancy on the United States Court of Appeals for the Fourth Circuit, the Virginia federal district courts, or the Court of Appeals of Virginia.

M. At the conclusion of the Committee's deliberations and voting, the Committee shall prepare an executive summary of the Committee's reasons for its actions with respect to each candidate being designated as "Qualified" and "Highly Qualified." The vote count for candidates reported by the Committee as "Qualified" and "Highly Qualified" shall not be disclosed in the executive summary of the candidates or otherwise.

HN. The Committee's designations and executive summaries shall be provided to the Executive Committee (EC) and shall be deemed approved by the EC unless the EC takes action otherwise. JCEC's designations and executive summaries shall thereafter be forwarded to the appointing authority Requesting Party in writing and, if permitted, presented orally in person, by the President or his or her designee.

IO. Following submission of the Virginia State Bar's designations and executive summaries, these documents will speak for the organization, and no representative of the Virginia State Bar is authorized to offer any further statement regarding any person's

qualifications or suitability for the vacancy, unless the process is re-opened by the appointing authority Requesting Party and the Virginia State Bar's evaluations are again requested for the vacancy utilizing the process outlined in this policy.

Proposed 9/17/18

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