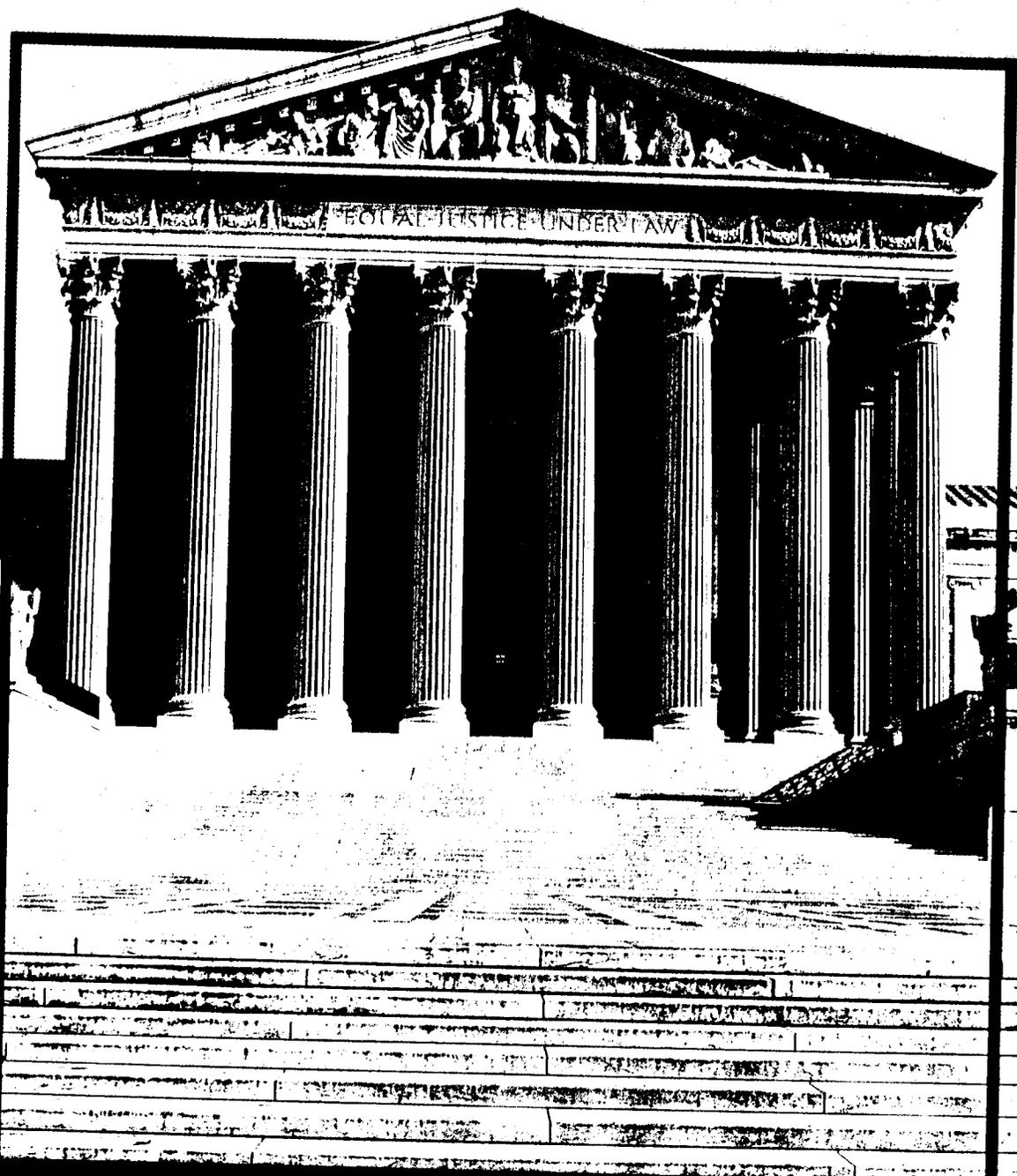


AMERICAN BAR ASSOCIATION



**STANDING COMMITTEE
ON FEDERAL JUDICIARY**
What It Is and How It Works

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THE ABA STANDING COMMITTEE ON FEDERAL JUDICIARY

What It Is and How It Works

The Standing Committee on Federal Judiciary of the American Bar Association consists of fifteen members -- two members from the Ninth Circuit, one member from each of the other twelve federal judicial circuits and one member-at-large. The members have varied backgrounds and professional experience and are appointed for staggered three-year terms by the President of the ABA. No member serves more than two terms.

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The Committee evaluates the qualifications of persons considered for appointment to the Supreme Court of the United States, Circuit Courts of Appeals, District Courts and the Court of International Trade. For historical and practical reasons, the Committee's procedures for appointments to lower federal courts differ from those for Supreme Court appointments and therefore are summarized separately below.

The Committee never proposes candidates for the federal judiciary, believing that to do so might compromise its evaluative function. Rather, it considers prospective nominees referred to it by the Attorney General. Further, the Committee restricts its review to issues bearing on professional qualifications. The Committee does not consider a prospective nominee's philosophy or ideology. The President and the Senate may consider other aspects of the prospective nominee's qualifications.

The Committee's process is structured to achieve impartial evaluations of the integrity, professional competence and judicial temperament of prospective nominees for the judiciary. The Committee's goal is to support and encourage the selection of the best qualified persons for the federal judiciary. The Committee applies the above evaluative criteria to all prospective nominees.

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The integrity and independence of the Committee and its procedures are essential to the effectiveness of its work. Committee members may not participate in the work of the Committee if their participation would give rise to the appearance of impropriety. As a condition of appointment, each member agrees while on the Committee and for at least one year thereafter not to seek or accept federal judicial appointment and agrees while on the Committee not to participate in or contribute to any federal election campaign or political activity. Confidentiality in the Committee's evaluation procedures is a cornerstone in the Committee's effective operation and is strictly enforced. (See Governing Principles of the Standing Committee on Federal Judiciary, Appendix, p.11).

The United States Senate, through the Senate Judiciary Committee, has requested the opinion of the Committee on every federal judicial nomination since 1948 and the Committee has been consulted by every President concerning almost every federal judicial appointment since 1952.

I. APPOINTMENTS TO FEDERAL COURTS OTHER THAN THE SUPREME COURT

Under ordinary circumstances, the Committee is called upon to report on candidates for at least forty vacancies on the federal courts each year. Following the periodic enactment of omnibus judgeship bills creating new judicial positions, this number has often exceeded one hundred.

A. Evaluation Criteria

The Committee's evaluation of prospective nominees to these courts is directed to professional qualifications -- integrity, professional competence and judicial temperament.

Integrity is self-defining. The prospective nominee's character and general reputation in the legal community are investigated, as are his or her industry and diligence.

Professional competence encompasses such qualities as intellectual capacity, judgment, writing and analytical ability, knowledge of the law and breadth of professional experience.

The Committee believes that ordinarily a prospective nominee to the federal bench should have been admitted to the bar for at least twelve years. In evaluating experience, the Committee recognizes that women and members of certain minority groups have entered the profession in large numbers only in recent years and that their opportunities for advancement in the profession may have been limited. Substantial courtroom and trial experience (as a lawyer or a trial judge) is important for prospective nominees to both the appellate and the trial courts. Additional experience which is similar to court trial work -- such as appearing before or serving on administrative agencies or arbitration boards, or teaching trial advocacy or other clinical law school courses -- is considered in evaluating a prospective nominee's trial experience qualifications. Significant evidence of distinguished accomplishment in the field of law may compensate for a prospective nominee's lack of substantial courtroom experience.

Recognizing that an appellate judge deals primarily with records, briefs, appellate advocates and colleagues (in contrast to witnesses, parties, jurors, live testimony and the theater of the courtroom), the Committee may place somewhat less emphasis

on the importance of trial experience as a qualification for the appellate courts. On the other hand, although scholarly qualities are necessary for the trial courts, the Committee believes that appellate court nominees should possess an especially high degree of scholarship and academic talent and an unusual degree of overall excellence. The abilities to write lucidly and persuasively, to harmonize a body of law and to give guidance to the trial courts for future cases are considered in the evaluation of prospective nominees for the appellate courts.

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.

In investigating judicial temperament, the Committee considers the prospective nominee's compassion, decisiveness, open-mindedness, sensitivity, courtesy, patience, freedom from bias and commitment to equal justice.

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Finally, the prospective nominee's health is considered. The Committee believes that the public is entitled to the appointment to the federal judiciary of persons who are able to render long and vigorous service.

B. The Investigation

After a judicial vacancy occurs and prior to any nomination to fill that vacancy, the Chair of the Committee receives the name of a prospective nominee for evaluation from the office of the Attorney General. The investigation of the prospective nominee is usually assigned to the circuit member of the Committee in the judicial circuit in which the judicial vacancy exists, although it may be conducted by another member or a former member. (The individual making the investigation is hereinafter referred to as the "circuit member.")

The Attorney General's office sends to each prospective nominee a comprehensive ABA-designed questionnaire (called the "Personal Data Questionnaire") that seeks wide-ranging information related to fitness for judicial service. The responses are sent to the U.S. Department of Justice, the ABA Committee Chair and the circuit member. Receipt of the Personal Data Questionnaire is usually the starting point for the investigation. The circuit member makes extensive use of it in the investigation. The prompt, thorough and accurate preparation of a response to the Personal Data Questionnaire by the prospective nominee is extremely important to the investigation.

The circuit member examines the legal writing of the prospective nominee and personally conducts extensive confidential interviews with those likely to have information regarding the integrity, professional competence and judicial temperament of the prospective nominee including, where pertinent, federal and state judges, practicing lawyers in both private and government service, law school professors and deans, legal services and public interest lawyers, representatives of professional legal organizations, community leaders and others who are in a position to evaluate the prospective nominee's integrity, professional competence and judicial temperament. In addition, comments from groups involved in the merit selection or evaluation of prospective nominees for the federal judiciary may be received and considered.

Interviews are conducted under an assurance of confidentiality. If facts adverse to the prospective nominee are discovered, the circuit member will advise the prospective nominee of those facts if he or she can do so without breaching the promise of confidentiality. If not, the Committee will not consider those facts in its evaluation unless those disclosing them authorize disclosure to the prospective nominee or the facts are otherwise available.

Sometimes a clear pattern emerges early in the interviews, and the investigation can be briskly concluded. In other cases, conflicting evaluations as to professional competence may be received, or questions may arise as to integrity or temperament. In those instances, the circuit member pursues the leads and problems as necessary to reach a fair and accurate assessment of the prospective nominee. This may involve a large number of interviews as well as the examination of trial transcripts and other relevant records.

A meeting of the circuit member, and in appropriate cases one or more other members of the Committee, is held with the prospective nominee. The circuit member discusses with the prospective nominee his or her qualifications for a judgeship. During the interview the circuit member also raises any adverse information discovered during the investigation and discusses it with the prospective nominee. The prospective nominee is given a full opportunity to explain the matter and to provide any additional information bearing on it. The circuit member may need to conduct additional interviews in order to complete this stage of the investigation.

In certain circumstances, one or more additional circuit members may be assigned to the investigation. A common

situation is where the prospective nominee's career has extended geographically over more than one circuit (a typical example of this is a member of Congress). In that case, it is customary to ask the circuit member in each such circuit to conduct the relevant interviews in his or her own circuit. All information is exchanged among the participating members prior to the preparation and submission of an informal report, and all information from all such interviews is contained in the formal report ultimately circulated to all members for their vote. A second investigator also may be appointed where it appears at any time during the evaluation process that the prospective nominee may receive a "Not Qualified" rating. As a matter of fairness to the prospective nominee another member of the Committee may be asked to come into the investigation, interview or reinterview the prospective nominee and conduct whatever supplemental inquiries he or she feels appropriate. In some particularly difficult cases, more than one additional committee member may be asked to participate.

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The circuit member prepares a written informal report to the Chair containing a description of the prospective nominee's background, summaries of all interviews conducted, including the interview with the prospective nominee, an evaluation of the prospective nominee's qualifications and a recommended rating. After receiving the informal report and discussing it with the circuit member, the Chair discusses the informal report with the Attorney General's office. While protecting the confidentiality of those interviewed, the Chair passes on the substance of the report and gives a tentative evaluation -- indicating that, if a formal report is requested, the prospective nominee will probably be found "Well Qualified," "Qualified" or "Not Qualified."

If the office of the Attorney General so requests, the circuit member prepares a formal or final report. The circuit member then sends the written formal report to all members of the Committee together with the response to the Personal Data Questionnaire and copies of any other relevant materials. After studying the formal report and its enclosures, each member sends a vote to the Chair. If questions are raised, the Committee may discuss the prospective nominee by telephone conference call or at a meeting.

The Chair confidentially advises the office of the Attorney General of the Committee's rating. If the Committee has been unanimous in its rating, the Chair so states. Otherwise the Chair discloses both the rating given by a majority or substantial

majority of the Committee and the minority's rating. If questions concerning the health of the prospective nominee have been raised during the investigation, the Committee's rating may be conditioned upon the prospective nominee's undergoing an independent medical examination.

If the President nominates the prospective nominee, a public hearing is held by the Senate Judiciary Committee. At the request of the Senate Judiciary Committee, the ABA Committee submits its rating for the public record and at the same time notifies the nominee of its rating. Until this stage of the process, the Committee does not make its rating public.

If the Committee has found a prospective nominee "Not Qualified," the question arises whether the President will nominate the prospective nominee. Only in rare instances has a President decided to nominate a person found "Not Qualified" by the Committee. In that event, the Committee will oppose the nomination in such ways as may be appropriate under the circumstances.

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C. Ratings

The Committee rates prospective nominees on the following scale:

To merit *Well Qualified*, the prospective nominee must be at the top of the legal profession in his or her legal community, have outstanding legal ability, wide experience, the highest reputation for integrity and either have shown, or have exhibited the capacity for, judicial temperament, and have the Committee's strongest affirmative endorsement.

The evaluation of *Qualified* means that the prospective nominee meets the Committee's very high standards with respect to integrity, professional competence and judicial temperament and that the Committee believes that the prospective nominee will be able to perform satisfactorily all of the responsibilities required by the high office of a federal judge.

When a prospective nominee is found *Not Qualified*, the Committee's investigation has indicated that the prospective nominee does not meet the Committee's standards with regard to integrity, professional competence or judicial temperament.