



# PHILADELPHIA BAR ASSOCIATION

## **COMMISSION ON JUDICIAL SELECTION AND RETENTION GUIDELINES FOR EVALUATION OF ATTORNEY AND JUDGE CANDIDATES**

### **I. ORGANIZATION**

**A. The Commission on Judicial Selection and Retention shall be organized in accordance with the Bylaws of the Philadelphia Bar Association.**

### **B. Rules and Procedures**

#### **1. Investigative Division Composition**

- a. The division shall be composed of not more than one hundred and twenty members, one-third of whom shall be lay persons.
- b. Each member shall serve a three-year term; no member shall serve more than two consecutive terms.
- c. Members of the division shall cover a broad spectrum of the profession and the public, and be appointed by the Chancellor with the advice and consent of the Board of Governors.

#### **2. Standards**

- a. Criteria for evaluation and review procedure shall be established by the Commission.
- b. There shall be a comprehensive review of each candidate for judicial office including:
  1. interviews with the candidate and persons who have had professional dealings with a candidate;
  2. an examination of the candidate's academic and professional background; and
  3. an examination of the social media sites and online presence of the candidate accessible to the public. The Commission reserves the right to request an examination of non-public areas of such sites at its discretion.

- c. The division shall seek wide participation by the legal profession, the judiciary and the public in the review of candidates. Where appropriate, public interest groups shall be requested to provide information regarding the qualifications of the individuals being reviewed.

### **3. Assignment of Candidates**

- a. Consideration of all candidates shall be in accordance with the Bylaws of the Philadelphia Bar Association.
- b. All candidates must submit a complete answer to the Commission's personal data questionnaire. All lawyer candidates shall give written authorization to the Commission and its Investigative Division to obtain information from the Disciplinary and Continuing Legal Education boards of the Supreme Court of Pennsylvania, the Pennsylvania Lawyers Fund for Client Security, the Pennsylvania Ethics Commission, the Philadelphia Board of Ethics and from the Municipal Court and the Court of Common Pleas of Philadelphia. All sitting judge candidates shall give written authorization to the Commission and its Investigative Division to obtain information from the above agencies, the Pennsylvania Judicial Conduct Board and Court of Judicial Discipline, and from the court administrator of the court on which they sit and such appellate courts as may be appropriate.
- c. The Commission shall return to a candidate any questionnaire which is not complete.
- d. Upon receipt of a candidate's completed questionnaire and applicable written authorization, the Vice Chair of the Commission shall assign members of the Investigative Division, one of whom shall be a lay person, as a team to review that candidate. One member of the team shall be designated by the Vice Chair as the team leader. The Vice Chair shall also assign a member of the Commission to serve as liaison to the reviewing team. The liaison is expected to attend the interview of the candidate and to participate in the review conducted by the reviewing team.
- e. All members of the Commission shall receive notice of the assignment of the reviewing teams.
- f. Members of the Commission shall notify the reviewing team or the Chair or Vice Chair of any relevant questions or facts which should be explored or any witnesses who should be contacted during the review of the candidate.

**4. Disqualification**

- a. An assigned member of a reviewing team shall be disqualified if he or she has a personal relationship or a continuing or longstanding professional relationship with a candidate or is counsel for a party in a material matter assigned to a candidate.
- b. A member of a reviewing team shall disqualify himself or herself if he or she cannot objectively and fairly fulfill his or her responsibility.
- c. A member of a reviewing team shall not extend or accept a social media invitation involving a candidate during the course of the review of the judicial candidacy, and shall disclose to the Commission any existing social media relationship.

**5. Confidentiality**

- a. Confidentiality is essential to the work of the Commission. Any information obtained during the course of a review or evaluation by a reviewing team of a candidate shall not be revealed to any person, including the candidate, other than to other members of the reviewing team and members of the Commission.
- b. A violation of the confidentiality rule shall be sufficient cause for termination as a member of the Investigative Division.

**6. Participation by Reviewing Team During Evaluation Procedure**

- a. A reviewing team shall participate in the evaluation procedure with respect to their assigned candidate as provided herein.

**7. Policy on Participation in Judicial Campaigns**

- a. Commission members and reviewers are absolutely prohibited from playing a role of any kind in the campaigns of candidates for judicial offices within the scope of the Commission's jurisdiction. This policy expressly prohibits a Commission member or reviewer from giving financial support to candidates for such judicial offices. This prohibition is absolute during an individual's tenure on the Commission or as a reviewer and is recommended for the one-year period immediately following the end of a Commission member or reviewer's tenure. The sole exception to this prohibition is the Philadelphia District Attorney, an elected official, who may support only candidates found "Recommended" by the Commission.

## II. STANDARDS FOR EVALUATION FOR JUDGE AND ATTORNEY CANDIDATES

A. Candidates may be questioned, both by the reviewing team and by Commission members, on a wide range of subjects, but a candidate should not be required to indicate how the candidate would decide issues of substantive law that may arise in future litigated cases. There should be no issue-oriented litmus test used in the evaluation of a candidate. No candidate will be excluded from consideration because of race, religion, creed, national origin, sex, sexual orientation, age or handicap, so long as the candidate satisfies the constitutional standards for judicial service. A candidate's ideas concerning the role of the judicial system and judges are relevant subjects of inquiry.

B. 1. **Recommended:** This evaluation shall be made for those individuals who are being considered for election, retention or appointment to a designated court and who clearly demonstrate substantial compliance with the following criteria:

a. **Legal ability sufficient to have earned the respect of lawyers and members of the bench.**

*A candidate should possess a high degree of knowledge of established legal principles and procedures and have a high degree of ability to interpret and apply them to specific factual situations. A sitting judge seeking retention should have demonstrated, over time, his or her knowledge of established legal principles and procedures as well as a high degree of ability to interpret and apply them to specific factual situations.*

Legal knowledge may be defined as familiarity with established legal principles and evidentiary and procedural rules. Legal ability is the intellectual capacity to interpret and apply established legal principles to specific factual situations and to communicate, both orally and in writing, the reasoning leading to the legal conclusion. Legal ability connotes also certain kinds of behavior by the judge such as the ability to reach concise decisions promptly once the candidate is apprised of sufficient facts, the ability to respond to issues in a reasonably unequivocal manner and quickly to grasp the essence of questions presented.

Legal knowledge and ability are not static qualities, but are acquired and enhanced by experience and by the continual learning process involved in keeping abreast of changing concepts through education and study. A candidate should possess a high level of legal knowledge and a ready knowledge of rules of evidence; however, a candidate should not normally be expected to possess expertise in any particular substantive field. More important is the demonstration of an attitude reflective of willingness to learn the new skills and knowledge which will from time to time become essential to a judge's performance and of a willingness to improve judicial procedure and administration.

A review of a candidate's overall professional record, including legal briefs and other written materials authored by the candidate, a willingness and commitment to professional development, and reputation among judges and professional colleagues who have had first-hand dealings with the candidate will be helpful in evaluating legal knowledge and ability.

**b. Trial or other experience which ensures knowledge of the rules of evidence and courtroom procedures.**

*A candidate should be an experienced lawyer, licensed in the jurisdiction in which the candidate seeks to be a judge. In certain compelling situations, an otherwise outstanding lawyer should not be deemed unqualified solely because of lack of trial experience.*

A candidate should be admitted to practice law in the jurisdiction in which the candidate seeks to be a judge. The length of time that a lawyer has practiced is a valid criterion in screening applicants for judgeship. Such professional experience should be long enough to provide a basis for the evaluation of the candidate's demonstrative performance and long enough to ensure that the candidate has had substantial exposure to legal problems and to the judicial process. Based on the Commission's experience, a candidate with less than 10 years of active legal practice is presumed not to be an experienced lawyer. It will require a demonstration of extraordinary competence, ability and experience for a candidate with less than ten years of active legal practice to overcome this presumption.

It is desirable for a candidate to have had substantial trial experience and a knowledge of the litigation process. Trial experience includes the preparation and presentation of matters of proof and legal argument in an adversary setting. The extent and variety of the candidate's experience in actual trials should also be considered and weighed heavily. However, other types of legal experience should also be carefully considered, such as negotiation and mediation skills. A private practitioner, a law teacher or corporate, government or public interest attorney may have experience which will contribute to successful judicial performance. Outstanding persons with such experience should not be deemed unqualified solely because of lack of trial experience. The depth and breadth of that professional experience and the competence with which it has been performed, rather than the candidate's particular type of professional experience should be considered.

**c. A record and reputation for excellent character and integrity.**

*A candidate's personal and professional actions should demonstrate consistent adherence to high ethical standards. A candidate should be of undisputed integrity.*

The candidate's record and reputation for consistent adherence to high ethical standards is of the highest importance. The reputation of the candidate for truthfulness and fair dealing in both legal and extra-legal contexts is also of great importance.

The integrity of a judge is the keystone of the judicial system, for it is integrity which enables a judge to disregard personal prejudices, personalities and partisan political influences so that decisions are based solely on the facts and the law applicable to those facts. It is therefore imperative that a judicial candidate's integrity and character with regard to honesty and truthfulness be above reproach.

**d. Financial Responsibility.**

*A candidate should be financially responsible.*

The demonstrated financial responsibility of a candidate is one of the factors to be considered in assessing the candidate's ability to fulfill the responsibilities of judicial office. Whether there have been judgments or liens or bankruptcy proceedings instituted by or against a candidate and whether the candidate has promptly and properly filed all required tax returns may be relevant to financial responsibility. Financial responsibility demonstrates self-discipline and the ability to withstand pressures which might compromise independence and impartiality.

**e. Judicial temperament.**

*A candidate should possess judicial temperament, which includes patience, courtesy, impartiality, even temper, a well-defined sense of justice, compassion, fair play, humility, tact, common sense and understanding.*

Among the qualities which comprise judicial temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion and humility. Because the judicial function is essentially one of facilitating conflict resolution, judicial temperament requires an ability to deal with parties, counsel, jurors, and witnesses calmly and courteously, and the willingness to hear and consider the views of all sides. It requires the ability to be even-tempered, yet firm; open-minded, yet willing and able to reach a decision; confident, yet not egocentric. Because of the broad range of topics and issues with which a judge is typically required to deal, judicial temperament requires a willingness and ability to assimilate data outside the judge's own experience. Moreover, it requires an even disposition coupled with a keen sense of justice and a recognition that the administration of justice and the rights of the parties transcend the judge's personal feelings and desires. Judicial temperament implies, among other things, an absence of arrogance, impatience, and arbitrariness.

**f. Mental and physical capacity sufficient to discharge fully the duties of judicial office.**

*A candidate should possess the requisite mental and physical capacity needed to discharge fully the demanding duties of judicial office.*

A candidate should be in good mental and physical health. Diseases or impairments which do not prevent a candidate from fully performing judicial duties should not be a cause for rejection of a candidate.

A candidate should be free from current abuse of alcohol or drugs and should be able to handle stress constructively in an emotionally charged environment.

Medical documentation of current health status may be necessary.

**g. Record of Community Involvement**

*A candidate should have a record of involvement in public service, community affairs, pro bono activities or other volunteer efforts in an effort to improve the quality of life of others in the community. A candidate should be aware of and sensitive to the diversity of the general community.*

The rich diversity of backgrounds among members of the judiciary is an important strength of our judicial system and, therefore, a candidate's non-legal experience should be considered together with the candidate's legal experience. Participation in public service and pro bono activities adds another dimension to the qualifications of the candidate.

Experience which provides an awareness of and sensitivity to people and their problems may be just as helpful in the decision-making process as a knowledge of the law. Active involvement in community and civic affairs, pro bono activities and other kinds of public service are important aspects of a candidate's qualifications. It is desirable that a candidate have broad life experiences.

**h. Administrative Ability**

*A candidate should possess past administrative experience or strong administrative skills needed to administer justice effectively, fairly and efficiently.*

Increasingly, judges are called upon to possess strong administrative skills in order to balance effectively the demands of long court lists and complex litigation. Effective administrative skills are necessary for judges to dispose of cases within reasonable time limits without sacrificing the legitimate needs of individual litigants or their counsel.

**i. Devotion to improvement of the quality of justice.**

*A candidate should demonstrate, as part of the candidate's professional life, efforts directed at improving the quality of justice for all citizens.*

It is the responsibility of every attorney to work toward maintaining the integrity and improving the competence of the bar to meet the highest standards of legal practice.

Attorneys, by reason of education and experience, are well-qualified to recognize strengths and deficiencies in the legal system. Therefore, they should participate in proposing and supporting initiatives to improve or preserve the system. Such efforts might include, among others, active participation in the work of local, state and national professional associations and organizations and in legal educational programs for the profession and for the community.

**j. Demonstrated sound judgment in one's professional life.**

*A candidate should demonstrate sound judgment in his or her professional life.*

A candidate should demonstrate reliability, diligence, perseverance, common sense and attentiveness. A candidate should possess good work habits and the ability to set priorities in relation to the importance of the tasks to be accomplished.

A candidate should meet procedural deadlines, keep appointments and commitments, and respect the time of litigants, lawyers, judges and court personnel.

2. **Highly Recommended:** This evaluation shall be made for those extraordinary individuals who are being considered for election or appointment to a designated court and who, in addition to meeting the criteria set forth in Section II.B.1., are preeminent in the profession, exceptionally skilled in the law, possess a reputation for the utmost integrity and significantly will enhance or have enhanced the quality of the judiciary.
3. **Not Recommended:** This evaluation shall be made for those individuals who have not met the criteria set forth in Section IIB1 or who fail to submit a questionnaire or who fail to participate in the Commission's evaluation process.

**III. EVALUATION PROCEDURES**

- A. Each candidate shall be evaluated by the entire Commission. For purposes of such evaluation 17 members of the Commission shall constitute a quorum.
- B. In making its evaluation, the Commission shall consider the results of any plebiscite with respect to a judicial retention candidate, the report of the reviewing team assigned to that candidate, an appearance by a candidate before the Commission, and any other relevant and reliable information concerning the Candidate.



- C. The reviewing team assigned to a candidate being evaluated shall present its report which shall have been submitted previously in writing to the Commission and shall answer questions directed to it by members of the Commission.**
- D. Except for candidates for judicial retention, all candidates shall appear in person before the Commission to state their reasons for seeking judicial office. Unless extended by the Chair, all such initial appearances shall be limited to approximately five minutes in duration. No member of the Commission other than the Chair shall be permitted to question the candidate during an initial appearance of the candidate.**
- E. Members of a reviewing team are encouraged to attend both the candidate's initial appearance pursuant to Section IIID and final appearance before the Commission pursuant to Section IIIM, but shall not be entitled to be present for the Commission's discussion or vote or to confront and examine the candidate during such appearances.**
- F. Only the members of the Commission and no more than two members of the staff of the Bar Association designated for the purpose of assisting the Commission in ministerial functions may be present during the discussion or the voting with regard to a recommendation.**
- G. With respect to each candidate for election or appointment, the Commission shall vote as to whether such candidate is to be designated as Highly Recommended, Recommended or Not Recommended in accordance with Section II hereof. With respect to each candidate for judicial retention, the Commission shall vote as to whether such candidate is to be designated as Recommended or Not Recommended in accordance with Section II hereof. If a majority of Commission members present believe that the Commission does not have sufficient information with which to cast a vote, the Commission may direct that further review take place and that a vote on the candidate be rescheduled to a subsequent meeting.**
- H. The affirmative vote of Recommended by a majority plus one of the members of the Commission present and voting shall be required to designate a candidate as Recommended. The affirmative vote of Highly Recommended by 90% of the members of the Commission present and voting shall be required to designate a candidate as Highly Recommended.**
- I. At the initial appearance, if a candidate fails to receive the affirmative vote of at least 25% of the members of the Commission present and voting, then such candidate shall not be eligible to make a second appearance pursuant to Section IIIM, and shall receive a final designation of Not Recommended.**
- J. At the initial appearance, if a candidate fails to receive the affirmative vote required to be found Recommended, but receives the affirmative vote of at least 25% of the**

members of the Commission present and voting, then such candidate shall receive a “Preliminary Rating of Not Recommended,” and has the right to make a personal appearance pursuant to Section IIIM.

- K. The vote as to each candidate shall be by secret ballot. The ballot shall list the criteria for evaluation in Section IIB1. Members of the Commission who evaluate a candidate as Not Recommended shall indicate those criteria which have not been met by the candidate.**
- L. A Not Recommended designation by the Commission, whether preliminary or final, must be accompanied by a written statement to the candidate setting forth the criteria that the candidate was found not to have met.**
- M. No candidate receiving a Preliminary Rating of Not Recommended pursuant to Section IIIJ shall be finally designated Not Recommended unless the candidate has been given an opportunity to appear again before the Commission. When the candidate makes an appearance following a Preliminary Rating of Not Recommended, the candidate shall have the right to make a statement which shall be limited to addressing ONLY those criteria the candidate did not meet pursuant to Section IIII. During this appearance, members of the Commission shall be permitted to question the candidate. The Commission shall then conduct a final evaluation vote as set forth herein.**
- N. A candidate designated Recommended shall not have an opportunity to appear before the Commission a second time in the same election cycle to seek a Highly Recommended rating.**
- O. 1. A finding of Highly Recommended, Recommended or Not Recommended shall remain in effect for two years.**
  - 2. A finding of Highly Recommended or Recommended may be renewed for a third year, provided the following criteria are met:**
    - a) The candidate shall submit a complete answer to the Commission’s Update Questionnaire and provide the authorizations set forth in Section IB3b.**
    - b) The Commission shall consider the candidate’s response to the Update Questionnaire, the results of all inquiries made pursuant to the authorizations and any other relevant and reliable information concerning the candidate.**
    - c) The members of the Commission, with a quorum present, shall vote by secret ballot whether to renew the candidate’s rating for a third year.**

This Section IIIO2 is in effect due to safety concerns and challenges presented by the COVID-19 pandemic and shall expire on December 31, 2021, unless renewed

by the Commission.

3. **When a candidate is nominated by a party within 30 days of the general election, the Commission shall have the option not to evaluate the candidate and issue a finding of Not Evaluated.**
  4. **When a candidate is found Highly Recommended or Recommended, he or she shall be advised in writing that it is the candidate's obligation to notify the Commission promptly of any material facts which would require changes in answers given in the candidate's questionnaire.**
  5. **The Commission may require the candidate to provide written updates of the Commission Questionnaire during the effective period of a Highly Recommended or Recommended evaluation.**
  6. **A candidate previously rated Not Recommended may submit, in writing, any new information which may impact on a reconsideration of that candidate's evaluation.**
  7. **By a majority vote of those members present and voting, the Commission may require a new review and evaluation for any judicial candidate notwithstanding the fact that a previous finding of Highly Recommended, Recommended or Not Recommended is still in effect.**
    - a) **The vote on such reconsideration shall be by written ballot only.**
- P.**
1. **Where a candidate withdraws after a Preliminary Rating of Not Recommended, any request made by such candidate for a new evaluation within one year of the Not Recommended finding shall be deemed to be a request for a personal appearance pursuant to Section IIIM. Any request made by such candidate for a new evaluation after the year period shall be treated as such.**
  2. **Where a candidate withdraws after a Preliminary Rating of Not Recommended and subsequently becomes a candidate for judicial office within the one year period without submitting to further review by the Commission, he or she shall be found Not Recommended.**
- Q.** **Notice of the Commission's evaluation shall be given in writing to each candidate. When the Commission's evaluation is Not Recommended, such written notice shall include a statement of reasons for such evaluation. In the event that a candidate evaluated by the Commission is a candidate in a judicial election, the Commission's evaluation shall be released to the Commission or agency authorized by the Governor to evaluate and recommend candidates for judicial appointment.**

#### IV. EVALUATION OF APPELLATE AND FEDERAL COURT CANDIDATES

**In determining whether to evaluate a candidate for any statewide for federal court position, the Commission should consider, *inter alia*, the following factors:**

- a) whether the Commission has been requested to provide an evaluation by the Pennsylvania Bar Association or the American Bar Association;
- b) whether the candidate has already served on a statewide or federal bench for sufficient period of time to permit an evaluation of his or her performance in such office;
- c) whether the candidate is a member of Philadelphia Bar;
- d) whether such evaluation would be in the public interest.

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