RESOLVED, That the American Bar Association adopts the black letter of the
STANDARDS ON STATE JUDICIAL SELECTION dated July 2000.
STATE JUDICIAL SELECTION STANDARDS
(BLACK LETTER)

JULY 2000
Proposed Standards

1. Terminology

Appointing authority. An appointing authority is either an individual (e.g. the governor of a state) or a body (e.g. a state legislature or state supreme court) that has the ultimate authority to appoint an individual to judicial office. See Standard B.3.

Candidate. A person seeking judicial office through either appointment or election.

Endorsing authority. An endorsing authority is either an individual (e.g. a political party official) or a body (e.g. a political party state-making committee) that plays a key gatekeeping role in endorsing a judicial candidate to fill a judicial vacancy through either a partisan or nonpartisan election. See Standard B.4.

Inclusive judiciary. A judiciary that includes individuals who are broadly representative of the population served.

Independent judiciary. Denotes an impartial judiciary that is free from inappropriate outside influences when deciding cases, and from inappropriate influences from other governmental entities when dealing with institutional matters.

Judicial eligibility commission. A judicial eligibility commission is a bi-partisan body of lawyers and public members that assists appointing authorities, endorsing authorities, and voters by evaluating the qualifications of candidates for judicial office. See Standard B.1.

Judicial nominating commission. A judicial nominating commission is a bi-partisan body of lawyers and public members that independently generates, screens and submits a list of judicial nominees to an official who is legally or voluntarily bound to make a selection from that list. See Standard B.2.
Open judicial selection process. A process in which the appointing or endorsing authority seeks and encourages information from a broad array of interested individuals and organizations.

Public member. A member of the public who is not a lawyer or a member of a bar association, and serves on a judicial eligibility commission or nominating commission.

Qualified judiciary. A judiciary selected on the basis of the criteria set forth in Standard A.1 and is used herein to describe a judiciary that is inclusive and independent.

Regularized judicial selection process. A process that proceeds according to a customary or pre-announced plan.

Retention evaluation body. A retention evaluation body is a bi-partisan body composed of lawyers and public members that evaluates the performance of judges who must stand in retention elections. See Standard B.5.

2. Judicial Selection Standards

Part A: Judicial Selection and Retention Criteria.

Standard A.1: Selection Criteria. Judicial selection criteria should include, but not necessarily be limited to:

(i) Experience. A candidate for judicial office should be a member of the Bar of the highest court of a state for at least 10 years and have been engaged in the practice or teaching of law, public interest law, or service in the judicial system.

(ii) Integrity. The candidate should be of high moral character and enjoy a general reputation in the community for honesty, industry and diligence.

(iii) Professional Competence. Professional competence includes intellectual capacity, professional and personal judgment, writing and analytical ability, knowledge of the law and breadth of professional experience, including courtroom and trial experience. Candidates for appellate judgeships should further demonstrate scholarly writing and academic talent, and the ability to write to develop a coherent body of law.
(iv) **Judicial Temperament.** Judicial temperament includes a commitment to equal justice under law, freedom from bias, ability to decide issues according to law, courtesy and civility, open-mindedness and compassion.

(v) **Service to the Law and Contribution to the Effective Administration of Justice.** Service to the law and contribution to the effective administration of justice includes professionalism and a commitment to improving the availability of providing justice to all those within the jurisdiction.

**Standard A.2: Retention Criteria.** In addition to the criteria set forth in Standard A.1, in evaluating the judicial performance of a judge standing for retention election, the following should be considered:

- preparation, attentiveness and control over judicial proceedings;
- judicial management skills;
- courtesy to litigants, counsel and court personnel;
- public disciplinary sanctions; and
- quality of judicial opinions.

**Part B: Primary Actors in Selection Process**

**Standard B.1: Judicial Eligibility Commission.** To assist appointing authorities, endorsing authorities, and the electorate in achieving the goal of a qualified, inclusive, and independent judiciary, a credible, deliberative, bi-partisan body known as a Judicial Eligibility Commission should be created to review the qualifications of judicial candidates pursuant to recognized selection criteria.

(a) **Independence.** The Judicial Eligibility Commission should maintain its independence from all inappropriate influences, particularly from appointing and endorsing authorities, and should operate in a manner that instills public confidence and encourages applicants from a broad range of personal and professional backgrounds.

(b) **Selection of Members and Commission Composition.** Members of the Judicial Eligibility Commission should be selected by multiple sources, including, but not necessarily limited to, governors, legislatures, supreme courts, and bar associations. The Commission should be composed of both lawyer and public members, and their selection should be based on the personal qualities and integrity of the individual members.

(c) **Open, Regularized, Confidential Process.** The Judicial Eligibility Commission should establish rules and procedures for evaluating candidates for judicial office. Additionally, the Eligibility Commission should operate in an open, regularized fashion, while respecting the candidate’s desire for confidentiality.

(d) **Screening and Recommendation of Candidates.** A Judicial Eligibility Commission should give careful and equal consideration to each candidate for a judicial
office, and should apply judicial selection criteria set forth in Part A to determine whether a candidate is qualified for judicial office. Only the names of those candidates found qualified by the commission should be published and placed on the list of qualified candidates and reported to the appointing or endorsing authority.

(e) Commission Scope and Funding. The Judicial Eligibility Commission should be established and funded on a statewide basis. In larger or more populous states, regional commissions may be established but should be funded and operate under the aegis of a statewide commission.

Standard B.2: Judicial Nominating Commission. In performing its recruiting, screening, and nominating roles, a Judicial Nominating Commission should operate in an open, regularized, and independent manner that encourages applications from the widest segment of the potential candidate pool and that employs a process that fairly assesses all candidates by using a broad range of selection criteria in an effort to achieve a qualified, inclusive, and independent judiciary.

(a) Independence. A Judicial Nominating Commission should maintain its independence from all inappropriate influences, particularly from the appointing authority, and should operate in a manner that instills public confidence and encourages applicants from a broad range of personal and professional backgrounds.

(b) Selection of Members. Selection of members should be based on the personal qualities and integrity of the individual, and not a particular member’s propensity to vote for particular judicial candidates.

(c) Open, Regularized, Confidential Process. A Judicial Nominating Commission should establish rules and procedures for nominating candidates for judicial office. A Judicial Nominating Commission should operate in an open, regularized fashion that also respects the candidate’s desire for confidentiality.

(d) Recruitment of Candidates. Nominating commissions should actively recruit qualified individuals for judgeships and in performing this function should operate in a manner that imparts public confidence in the judicial selection system, and encourages a broad range of applicants.

(e) Screening and Deliberation of Candidates. A Judicial Nominating Commission should give careful and equal attention to each candidate for a judicial office, and should apply selection criteria set forth in Part A in an effort to produce a qualified, inclusive, and independent judiciary.

(f) Communication With Appointing Authority. A member of a Judicial Nominating Commission should not initiate contact with the appointing authority while serving on a nominating commission.
Standard B.3: Appointing Authority. The primary goal of individuals or official bodies who are responsible for judicial appointments should be a qualified, inclusive, and independent judiciary.

(a) Open, Regularized Process. In making appointments to the judiciary, the appointing authority should use an open, regularized process to review the qualifications of judicial candidates. The appointing authority should appoint only from lists of qualified candidates submitted by the Judicial Eligibility Commission (see Standard B.1) or a Judicial Nominating Commission (see Standard B.2).

(b) Selection. In reviewing the qualifications of candidates submitted by the Judicial Eligibility Commission or Judicial Nominating Commission, the appointing authority should consider a broad range of publicly disclosed selection criteria (see Part A). The appointing authority should select for judicial office only those individuals deemed qualified by the Judicial Eligibility Commission or Judicial Nominating Commission.

(c) Use of Judicial Nominating Commission and Judicial Eligibility Commission. The appointing authority should establish or assist in the establishment of either a Judicial Eligibility Commission (see Standard B.1) or a Judicial Nominating Commission (See Standard B.2).

Standard B.4: Endorsing Authority. The primary goal of individuals or official bodies who are responsible for endorsing judicial candidates for election should be to facilitate the selection of a qualified, inclusive, and independent judiciary.

(a) Open, Regularized Process. In endorsing judicial candidates, the endorsing authority should use an open, regularized process to review the qualifications of judicial candidates. The endorsing authority should endorse only those candidates who appear on lists of qualified candidates submitted by the Judicial Eligibility Commission (see Standard B.1).

(b) Selection. In reviewing the qualifications of candidates submitted by a Judicial Eligibility Commission, the endorsing authority should consider a broad range of publicly disclosed selection criteria (see Part A).

(c) Use of a Judicial Eligibility Commission. The endorsing authority should encourage the use of a Judicial Eligibility Commission (see Standard B.1).
Standard B.5: Retention Evaluation Body. A retention evaluation body should operate in a manner that is consistent with the goal of achieving and maintaining a qualified, inclusive, and independent judiciary.

(a) Evaluation Methodology. A retention evaluation body should review judges based on the criteria set forth in Part A, and operate in a fair, efficient, confidential and logical manner.

(b) Dissemination. A retention evaluation body should disseminate evaluation results as broadly as possible and in a manner that educates the citizenry about the judicial candidates.

Part C: Supporting Actors in Selection Process

Standard C.1: Bar Associations. State and local bar associations should place a high priority on facilitating the selection and retention of a qualified, inclusive, and independent judiciary.

(a) Assisting Appointing Authority and Endorsing Authority. Bar Associations should assist the appointing authority and endorsing authority by encouraging the use of a Judicial Eligibility Commission or Judicial Nominating Commission, and should assist such commission by conducting appropriate investigation and inquiry of their members and with their communities to review the qualifications of judicial candidates.

(b) Selection of Members of Judicial Eligibility Commission or Judicial Nominating Commission. Where bar associations are responsible for the selection of members of a Judicial Eligibility Commission or Judicial Nominating Commission, bar associations should operate in a manner that is independent of the appointing or endorsing authorities, with the goal of producing a qualified, inclusive, and independent judiciary. When making appointments to a Commission, bar associations should be mindful of the goal of achieving a commission that is independent and inclusive.

(c) Service to the Law. Bar associations should encourage their members to assist in the judicial selection process by serving on a Judicial Eligibility Commission or a Judicial Nominating Commission, and educating the electorate about the process of judicial selection.

(d) Endorsement of Candidates. Bar association endorsement of judicial candidates should reflect the goal of achieving a qualified, inclusive, and independent judiciary.

(e) Educational Programs in Ethics for Candidates. Bar associations should provide educational programs in ethics and judicial standards to candidates who must be held to such standards during any judicial election. This program shall also include state laws on financing judicial campaigns and disclosures.
Standard C.2: Judicial Candidates. Judicial candidates should conduct themselves in a manner that brings legitimacy to the judicial selection process and maintains the integrity of an independent judiciary.

(a) Disclosure. Judicial candidates should disclose all real or potential conflicts of business or personal interest related to a Judicial Eligibility Commission, Judicial Nominating Commission, endorsing authority, appointing authority, media outlet, or other relevant entity.

(b) Election Campaigns. Judicial candidates should comply with state law and ethical rules governing the selection of judges, and should act in a manner that brings legitimacy to the selection process. Judicial candidates in elective jurisdictions should comply with all relevant judicial ethics rules governing campaign activities.

(c) Judicial Eligibility Commission or Judicial Nominating Commission. Judicial candidates should supply information to a Judicial Eligibility Commission or Judicial Nominating Commission as required by law or rules of the appropriate Commission.

(d) Confidentiality. A judicial candidate should keep confidential those Judicial Eligibility Commission or Judicial Nominating Commission activities that the commissioners would themselves be required to keep confidential.

Standard C.3: Individual Attorneys. Consistent with their obligations under the Model Rules of Professional Conduct, attorneys should use their special knowledge of, and professional interest in, the judicial system to legitimize the judicial selection process and assist in achieving the goal of a qualified, inclusive, and independent judiciary.

Standard C.4: Public and Private Organizations. Public and private organizations which take public positions regarding the selection or election of judicial candidates should respect the desired goal of producing a qualified, inclusive, and independent judiciary.

Standard C.5: Media Interests. The appointment and election of qualified judges is crucial to the administration of a sound justice system and the media are encouraged to make increased efforts to advise the public as to the qualifications of candidates for judicial office.
In 1999, the American Bar Association Standing Committee on Judicial Independence ("Standing Committee") established a Commission on State Judicial Selection Standards ("Commission"). The Commission was charged with drafting model standards for the selection of state court judges. A generous grant from the Open Society Institute provided funding for the work of the Commission. Members of the Commission include representatives of the Standing Committee, the ABA Judicial Division, Conference of Chief Justices, Citizens for Independent Courts, League of Women Voters, and American Judicature Society. The Commission reviewed hundreds of documents and articles and heard testimony from fifteen experts, including judges, a state senator and a governor, academics, and a representative of the media. Draft Standards were widely circulated among ABA entities, bar associations, courts and other interested organizations. Comments were received and incorporated as the Commission members deemed appropriate. The Standards purport to apply to state trial and appellate judges in courts of general jurisdiction, as well as judges in courts of limited jurisdiction such as those dealing with juvenile, family and probate matters. Excluded from the scope of the Standards are courts usually not of record, such as town or village courts, as well as administrative law judges.

Background

It is the prerogative of the citizens of each state, generally through its constitution, to describe the process by which the judiciary is selected. For the last 224 years, there has been disagreement about a preferred method of selection as reflected in the diverse approaches in many state constitutions and in the continuing debate in state legislatures. It may be that this debate over judicial selection has generated more attention than any other topic affecting the administration of justice. Yet there has been little change over the past decade. It is time to reinvigorate the debate over judicial selection with fresh perspectives.

There are more than 25,000 state court judges throughout the country. They range from justices of the highest court of each the 50 states to those who daily preside over trials of criminal, civil and family law matters. Collectively, they have a vital assignment – to administer justice according to the rule of law and to protect the rights of the people both as to each other and from excesses of the other branches of government. It is a task that is neither easy to explain nor to perform. The hallmark of judicial responsibility is the independence to perform this task without fear or favor. Since public confidence is essential to deference to the judgments of courts, the appearance of impartiality is essential. Inherent in the task at whatever level is knowledge of the law and its application as appropriate to the facts. The proper administration of justice involves the exercise of judgment, discretion and much more. How do we identify individuals with the requisite qualifications to assure us that they will perform the judicial task with distinction and, given the reality that no one becomes a judge without being touched by the political brush, how do we assure that only those with the requisite qualities become judges?

The overwhelming majority of our state court judges are dedicated to their work of administering justice, many for inadequate compensation and frequently with inadequate support and surroundings. It is unfortunate that there is scarce support among citizens or the legislators to
remedy these inadequacies and a remarkable lack of understanding as to the significance of the judicial role. Some states have identified qualities thought to be reliable predictors of solid judicial performance as well as procedures to assure that these qualities are relied upon in judicial selection. Other states unfortunately have not and we believe this failure is a significant contributing factor to the erosion of the public’s respect for and confidence in the administration of justice.

Justice systems involve complex interrelationships among all branches of government and the judiciary performs a pervasive role in the administration of these justice systems. A judicial system must serve the people’s search for justice and, without the confidence and respect of the public one of the principal aims of government fails. Testimony by individuals before the Commission illustrated dissatisfaction not only by and on behalf of minorities in the judicial selection process, but also by those who believe special interests have begun to play a more significant role in the judicial selection process. Financial contributions to judicial elections are a prime cause of distrust in the integrity and independence of the judicial systems. It is difficult for the people to view a judge who is dependent on partisan contributions to be independent in decision making.

Recognized deficiencies in elective systems have, in the past, led many states to adopt principles of merit selection in some format. While many states have a selection system that uses a nominating commission, over eighty percent of judges stand for election, either in partisan or non-partisan elections. In the past ten years, there has been little to no movement to an appointive system for selecting judges. Recent legislative initiatives in several states that called for a change to an appointive-based system of judicial selection have not met with success.

Given these realities, the ABA has worked, and continues to work, to address matters that adversely effect public trust and confidence in the justice system. The Standards now proposed continue the efforts of the ABA to address judicial selection with an aim to improving the process.

The Standards

There is a two-part thesis for the recommended Standards. First, whatever the system for selection of state trial and appellate judges, there is an implied covenant with the people that the judges selected will be persons who have demonstrated by well-defined and well-recognized qualifications their fitness for office. Second, there should be a credible, deliberative body that, pursuant to published criteria and procedures, finds that persons considered for judicial office have these qualifications. The credibility of this body is crucial and the components of credibility include: a method of appointing members to the body that transcends political partisanship; assurance of an appropriate balance of lawyer and non-lawyer members; assurance of bi-partisan, or non-partisan, determinations by providing for a balanced representation among the members of the major political parties; a membership that reflects the geographical, racial, ethnic and gender diversity of the state; published criteria and procedures by which determinations of qualifications are made; and assurance that the deliberative body will be independent, such as providing provisions for staggered terms and an adequate budget.
The recommendations do not extend to championing either side of this debate, but rather aim to explore minimum standards for the qualifications of those who seek appointment or election to the bench. What are the qualities that the people want in individuals charged with administering "justice for all"? How can it be ensured that judicial aspirants have those qualities and that only they will be selected?

The Standards set forth the criteria that are the requisite qualifications for judicial selection and retention. The Standards then recognize and identify various actors involved in judicial selection and retention, either in appointive or elective states. The Standards describe the preferred function and role of these actors. These actors have been divided into two groups: the first group describes those actors who play, or should play, a direct and primary role in the process; the second group represents individuals or groups whose activities influence judicial selection.

**Judicial Eligibility Commission:** This commission is proposed to review and evaluate the qualifications of judicial aspirants and can play an important role in either appointive or elective jurisdictions. As a credible, deliberative body, it may be provided for in different ways, for example, by amendment of the state constitution, legislative enactment, or executive order. The Judicial Eligibility Commission is intended to promote a quality judiciary, to provide public accountability and encourage judicial independence. The concept of the Judicial Eligibility Commission is rooted in the positive aspects of a Judicial Nominating Commission: a mainstay of the appointive system. Bringing this component of an appointive system to the elective system should lead to enhanced public knowledge of and confidence in the qualifications of judicial candidates. By reviewing and evaluating qualifications of judicial aspirants, the Judicial Eligibility Commission makes an important contribution in ensuring a qualified judiciary, regardless of selection method. As a body representative of the community, it ensures public participation in the selection process and encourages dissemination of information about judicial nominees, which provides judicial accountability. This citizen involvement and awareness, coupled with a deliberative assessment of the qualifications of judicial aspirants, will protect judicial independence. Accordingly, the Judicial Eligibility Commission strikes an essential accommodation among the multiple goals of judicial quality, accountability and independence.

**Judicial Nominating Commission:** These commissions are the cornerstone of merit selection systems and play a vital role in the evaluation of judicial candidates. In most states utilizing a merit selection system with nominating commissions, the nominating commission functions as a credible, deliberative body. In these situations, there may not be a need for the creation of a new and separate entity such as the Judicial Eligibility Commission. While the objectives of a Judicial Eligibility Commission and a Judicial Nominating Commission are similar, the results of each commission are different. Eligibility Commissions would assess the qualifications of all judicial candidates and pass on the names of all those found to be qualified. The Eligibility Commission merely passes upon the qualifications of candidates and expresses no preference among those candidates found qualified. Nominating Commissions review the qualifications of all candidates and make a recommendation of only a few candidates to the appointing authority. Therefore, if the Eligibility Commission finds all the candidates to be qualified, then all the names are released to the appointing authority, endorsing authority or directly to the public.
whereas a Nominating Commission, by its nature, must limit the candidate pool to a small number, usually three to five names.

Appointing Authority: The appointing authority in a state is the person or body responsible for naming judges to the bench, whether by initial appointment or interim appointment. It is incumbent upon the appointing authority to respect judicial independence and work in a manner that instills public trust and confidence in the judiciary. By utilizing an impartial Eligibility Commission or a Nominating Commission, the appointing authority has the ability to put the most qualified individuals on the bench, without tainting the selection process with partisan bias.

Endorsing Authority: Endorsing authorities are those people, whether an individual or a body of people, who are responsible for the slatemaking process for a political party. The Standards do not call for the creation of a new entity to serve this role. Rather, the Standards are addressed to those bodies of a political party that are responsible for setting the party’s slate for elections. In many partisan judicial election states, the endorsement of a particular party can make or break a candidacy. It is vital that those bodies developing the slate for the political party do so with an eye to finding the most qualified judicial candidates possible, not just the most loyal party members. The process of getting to the bench has just as much of an impact on public trust and confidence in the judiciary, and judicial independence, as the actions of a judge in his or her decision-making. By working with a Judicial Eligibility Commission, which will provide a thorough, unbiased assessment of the qualifications of judicial candidates, a political party can be assured of selecting a highly qualified judicial candidate to represent its party on the ballot.

Retention Evaluation Body: Some states with judicial retention elections have established retention evaluation bodies, by statute or constitutional provision, that conduct surveys of those persons with direct knowledge of judges subject to retention. The results of these surveys are intended to aid voters in judicial retention elections. State formalization of the retention evaluation process would add legitimacy to the body’s recommendations and allow the use of state funds to assist in researching candidates and disseminating the results. These bodies serve the direct purpose of educating the citizenry about judicial candidates facing retention. If a state creates a Judicial Eligibility Commission it is possible that this commission could also serve as a retention evaluation body. Again, the impartial assessment of a judicial candidate’s qualifications, and the broad dissemination of such findings serves to empower the citizens as they cast their ballot in an election.

Supporting Actors: Part C of the Standards addresses those actors who play an important role in the selection process, but do not directly select judges or candidates. These actors include Bar Associations, Judicial Candidates, Individual Attorneys, Public and Private Organizations and Media Interests. These actors influence the selection process and their participation must be unbiased. These actors also play an important role in the success of a Judicial Eligibility Commission, by providing accurate, unbiased information. Media interests, especially, with the ability to reach a vast audience, are integral to providing wide dissemination of information from either the Judicial Eligibility Commission or the Retention Evaluation Body. The formulation of these Standards provides a method to ensure the quality of state court judiciaries without reopening the debate of appointive versus elective systems.
CONCLUSION

It is our recommendation that the ABA House of Delegates adopt the Standards on State Judicial Selection as set forth above, so that the ABA can urge those involved in the process of judicial selection in the state courts adopt the proposed standards and procedures, as appropriate. It is our belief that the utilization of these standards and procedures will ensure a qualified judiciary, which will increase the public's confidence and trust in the judicial system.

Respectfully submitted,

Alfred P. Carlton, Jr., Chair
Standing Committee on Judicial Independence
Edward W. Madeira, Jr., Chair
Standing Committee on Judicial Independence's
Commission on State Judicial Selection Standards

July 2000
APPENDIX 1

STATE JUDICIAL SELECTION STANDARDS
(BLACK LETTER AND COMMENTARY)

JULY 2000
Proposed Standards

1. Terminology

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   **Candidate.** A person seeking judicial office through either appointment or election.

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   **Independent judiciary.** Denotes an impartial judiciary that is free from inappropriate outside influences when deciding cases, and from inappropriate influences from other governmental entities when dealing with institutional matters.

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   **Judicial nominating commission.** A judicial nominating commission is a bi-partisan body of lawyers and public members that independently generates, screens and submits a list of judicial nominees to an official who is legally or voluntarily bound to make a selection from that list. See Standard B.2.
Open judicial selection process. A process in which the appointing or endorsing authority seeks and encourages information from a broad array of interested individuals and organizations.

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Regularized judicial selection process. A process that proceeds according to a customary or pre-announced plan.

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Part A: Judicial Selection and Retention Criteria.

Standard A.1: Selection Criteria. Judicial selection criteria should include, but not necessarily be limited to:

(i) **Experience.** A candidate for judicial office should be a member of the Bar of the highest court of a state for at least 10 years and have been engaged in the practice or teaching of law, public interest law, or service in the judicial system.

(ii) **Integrity.** The candidate should be of high moral character and enjoy a general reputation in the community for honesty, industry and diligence.

(iii) **Professional Competence.** Professional competence includes intellectual capacity, professional and personal judgment, writing and analytical ability, knowledge of the law and breadth of professional experience, including courtroom and trial experience. Candidates for appellate judgeships should further demonstrate scholarly writing and academic talent, and the ability to write to develop a coherent body of law.

(iv) **Judicial Temperament.** Judicial temperament includes a commitment to equal justice under law, freedom from bias, ability to decide issues according to law, courtesy and civility, open-mindedness and compassion.

(v) **Service to the Law and Contribution to the Effective Administration of Justice.** Service to the law and contribution to the effective administration of justice includes professionalism and a commitment to improving the availability of providing justice to all those within the jurisdiction.

Standard A.2: Retention Criteria. In addition to the criteria set forth in Standard A.1, in evaluating the judicial performance of a judge standing for retention election, the following should be considered:

- preparation, attentiveness and control over judicial proceedings;
- judicial management skills;
- courtesy to litigants, counsel and court personnel;
- public disciplinary sanctions; and
- quality of judicial opinions.

Commentary

Literature on judicial selection is replete with lists of criteria that should be considered in selecting a qualified judiciary. Although the selecting authority may feel pressured to emphasize certain selection criteria over others when making a particular appointment, the selecting authority should endeavor to consider a broad range of criteria when making an appointment. Depending on the nature of the judgeship, additional consideration may be desirable. For example, courtroom or trial experience may be especially pertinent for judgeships at the trial...
level, while superior writing skills may be considered for appellate judgeships. Additionally, the appellate record of a judge might be considered. Studies of bar polling practices and the use of judicial nominating commissions have revealed a broad range of criteria. Lists of judicial selection criteria from a variety of sources are attached as an appendix.

Disclosure of selection criteria is essential. Although this standard prescribes no particular method for disclosure, the appointing authority should implement a disclosure format that is reasonably consistent, regularized, fair, and informative. Disclosure of selection criteria familiarizes the citizenry with the judicial selection procedure, and thus diminishes the perception of personal or political bias in the selection of judges. Additionally, disclosure of selection criteria encourages qualified candidates to seek judicial office by informing them of the qualities sought in a qualified judge.

Rules and procedures established by those responsible for assessing the qualifications of judicial candidates may require a waiver of confidentiality regarding disciplinary and legal proceedings concerning the judicial candidate. Moreover, participation in continuing legal education programs may be relevant when assessing judicial candidates, and should therefore be considered. Furthermore, a candidate’s experiences with regard to volunteering time for the improvement of the legal system or the bettering of his or her community are also relevant. Finally, when assessing the qualifications of a sitting judge, a candidate’s experiences with managing a caseload should be examined.

References

Patricia Garcia, Roadmaps: Judicial Selection (AMERICAN BAR ASSOCIATION, 1998).


Part B: Primary Actors in Selection Process

Standard B.1: Judicial Eligibility Commission: To assist appointing authorities, endorsing authorities, and the electorate in achieving the goal of a qualified, inclusive, and independent judiciary, a credible, deliberative, bi-partisan body known as a Judicial Eligibility Commission should be created to review the qualifications of judicial candidates pursuant to recognized selection criteria.
(a) Independence. The Judicial Eligibility Commission should maintain its independence from all inappropriate influences, particularly from appointing and endorsing authorities, and should operate in a manner that instills public confidence and encourages applicants from a broad range of personal and professional backgrounds.

(b) Selection of Members and Commission Composition. Members of the Judicial Eligibility Commission should be selected by multiple sources, including, but not necessarily limited to, governors, legislatures, supreme courts, and bar associations. The Commission should be composed of both lawyer and public members, and their selection should be based on the personal qualities and integrity of the individual members.

(c) Open, Regularized, Confidential Process. The Judicial Eligibility Commission should establish rules and procedures for evaluating candidates for judicial office. Additionally, the Eligibility Commission should operate in an open, regularized fashion, while respecting the candidate's desire for confidentiality.

(d) Screening and Recommendation of Candidates. A Judicial Eligibility Commission should give careful and equal consideration to each candidate for a judicial office, and should apply judicial selection criteria set forth in Part A to determine whether a candidate is qualified for judicial office. Only the names of those candidates found qualified by the commission should be published and placed on the list of qualified candidates and reported to the appointing or endorsing authority.

(e) Commission Scope and Funding. The Judicial Eligibility Commission should be established and funded on a statewide basis. In larger or more populous states, regional commissions may be established but should be funded and operate under the aegis of a statewide commission.

Commentary

A Judicial Eligibility Commission is intended to be a credible, deliberative body that operates pursuant to a recognized set of criteria to achieve the goal of a qualified, inclusive, and independent judiciary. No person should come to the bench, or be retained in judicial office, unless that person is found qualified by a Judicial Eligibility Commission or its equivalent. Where there is an effective Judicial Nominating Commission in place there is no need for a Judicial Eligibility Commission.

In a number of jurisdictions, the equivalent function is ably performed by Judicial Nominating Commissions that have been established by state constitution, statute, or executive order where the nominating commissions are operating satisfactorily as credible, deliberative bodies (see Standard B.2).

It is of paramount importance that Judicial Eligibility Commissions should operate independently from other actors in the judicial selection process. Much like nominating commissions, the primary purpose of a Judicial Eligibility Commission is to assist appointing authorities, endorsing authorities, and the electorate in the selection of a qualified, inclusive, and
independent judiciary. To facilitate this goal, a Judicial Eligibility Commission must be an independent body that expresses opinions about judicial candidates based on the commission's independent findings. If the influence of politics colors its judgment, the commission loses the confidence of the citizenry.

Establishing the credibility and independence of a Judicial Eligibility Commission begins with the selection of commission members. Although there is no rigid model, the selection of Judicial Nominating Commissioners is instructive. Like Nominating Commissions, Eligibility Commissions should be composed of both lawyer and public members. State bar associations typically choose lawyer members of nominating commissions either through election or direct appointment by bar leaders. Lawyer members are also chosen by state supreme courts in some jurisdictions. Governors and legislative bodies typically select public members. Thus, a core body of commissioners might be selected as follows:

- Governor selects two public members
- Legislature selects two public members
- Supreme Court selects two lawyer members
- Bar Association selects three lawyer members

Once this core group of nine commissioners is selected, a chair should be appointed. The chair might be a current or former member of the judiciary. In order to enhance the diversity of the commission, the Governor may appoint a limited number of additional commissioners. The chair should vote only to break a tie. In states where it may be deemed necessary to augment the commission membership when filling vacancies in certain geographic districts, two additional commissioners might be added from the district, a public member selected by the Governor and a lawyer member selected by the Supreme Court.

Commissioners may serve for no more than two three-year terms, and the terms of commissioners should be staggered. Members of a commission who would otherwise be eligible to hold judicial office should not be a candidate for a judicial vacancy while they are members of the commission or for four years following the end of their term on the commission.

All aspirants for judicial office in elective and appointive jurisdictions should be required to submit their names for review of their qualifications to the Judicial Eligibility Commission. The candidates may submit their names either on their own or through an endorsing or appointing authority. Individual commissioners may also recruit candidates for judicial vacancies pursuant to commission rules.

The commission should review the qualifications of candidates carefully and fairly to determine whether they are "qualified" for the particular judicial vacancy. The determination that a candidate is "qualified" should be based on the use of recognized judicial selection criteria. At a minimum, a candidate should not be rated "qualified" unless the candidate is found to have demonstrated these criteria.

Where the Judicial Eligibility Commission is reviewing the qualifications of sitting judges running for re-election or facing a retention election, the commission should consider the additional criteria listed in Standard A.2. In developing information on these candidates, the
commission should consider the experience of bodies charged with the evaluation of judges facing retention elections (see Standard B.5). In particular, bar associations and other groups that conduct surveys of sitting judges should be consulted (see Standard C.1, Standard C.4, and Standard C.5). Surveys should be adequately funded to allow for a sound evaluation process.

Only those candidates deemed “qualified” by the commission should be placed on the list of candidates to be sent to the appointing or endorsing authority.

The commission should adopt an initial set of rules and procedures that govern its operations. These should be disseminated widely, particularly to bar and media sources.

Judicial Eligibility Commissions should be established and funded at the state level, with additional support from local governmental bodies where regional commissions are established. The funding should be sufficient to allow for adequate staffing and facilities.

References

Ellen Mattleman Kaplan, Blueprint for the Future of Judicial Selection REFORM (PENNSYLVANIANS FOR MODERN COURTS, 1999).


Anthony Champagne and Judith Haydel, Editors, Judicial Reform in the States (UNIVERSITY PRESS OF AMERICA, 1995).


Charles H. Sheldon, Influencing the Selection of Judges: The Variety and Effectiveness of State Bar Activities, 30 WESTERN POLITICAL QUARTERLY 400 (1977).


Standard B.2: Judicial Nominating Commission. In performing its recruiting, screening, and nominating roles, a Judicial Nominating Commission should operate in an open, regularized, and independent manner that encourages applications from the widest segment of the potential candidate pool and that employs a process that fairly assesses all candidates by using a broad range of selection criteria in an effort to achieve a qualified, inclusive, and independent judiciary.

(a) Independence. A Judicial Nominating Commission should maintain its independence from all inappropriate influences, particularly from the appointing authority, and should operate in a manner that instills public confidence and encourages applicants from a broad range of personal and professional backgrounds.

(b) Selection of Members. Selection of members should be based on the personal qualities and integrity of the individual, and not a particular member's propensity to vote for particular judicial candidates.

(c) Open, Regularized, Confidential Process. A Judicial Nominating Commission should establish rules and procedures for nominating candidates for judicial office. A Judicial Nominating Commission should operate in an open, regularized fashion that also respects the candidate's desire for confidentiality.

(d) Recruitment of Candidates. Nominating commissions should actively recruit qualified individuals for judgeships and in performing this function should operate in a manner that imparts public confidence in the judicial selection system, and encourages a broad range of applicants.

(e) Screening and Deliberation of Candidates. A Judicial Nominating Commission should give careful and equal attention to each candidate for a judicial office, and should apply selection criteria set forth in Part A in an effort to produce a qualified, inclusive, and independent judiciary.

(f) Communication With Appointing Authority. A member of a Judicial Nominating Commission should not initiate contact with the appointing authority while serving on a nominating commission.

Commentary

Judicial Nominating Commissions serve a unique function. They are responsible for the nomination of judicial candidates in Nonpartisan Court Plan jurisdictions (also referred to as Missouri Plan or Merit Plan jurisdictions). Their role places them in the position of nominating individuals for judgeships. Thus, members of Judicial Nominating Commissions hold positions of public trust and should conduct themselves in a manner that reflects highly upon the judicial
selection process. Whenever feasible the citizenry should be informed, updated, and included in the nomination process.

Among the states, nominating commissions vary in their structure, composition and organization. Some states use one commission to select all judges, while other states use separate commissions for different judicial levels or separate commissions in different geographical areas. Typically, nominating commissions include an even number of lawyers and persons who are not lawyers. Often the commission will also include a single judge who usually cannot participate in voting, but can be of assistance in the procedural process. The state chief executive branch official usually selects lay commissioners. Lawyer commissioners are normally selected by either the chief executive branch official, bar association leaders, state attorneys general, state supreme court judges, or a combination of the aforementioned. Some states require legislative approval of some or all of the commission members.

Independence is essential to the successful operation of a Judicial Nominating Commission. Independence in this instance means the freedom to recruit, screen, and nominate judicial candidates as the commission sees fit, apart from undue influences stemming from political, personal, social, or business considerations. Undue influence is a dominating inclination to nominate based on criteria other than those related to judicial ability, judicial independence, and judiciary representation.

Nominating commissions should respect the value of an independent judiciary. At various times, commissioners may be unduly influenced by political or personal considerations that compromise the objectivity and fairness of the nomination process. Thus, commissioners should endeavor to reduce all undue influences based on a judicial candidate’s political affiliations, an appointing authority’s political agenda, or the commissioner’s own political affiliations. If a commissioner, other commissioners, or a judicial candidate believes a commissioner’s independence may be unduly compromised by influences associated with a general conflict of interest or an appearance of impropriety, the affected commissioner should consider removing him/herself from involvement in the selection of nominees for a particular vacancy.

Commissions should operate in an open, regularized, independent manner that is sensitive to the need of the public for information on judicial candidates, while also respecting a candidate’s desire for confidentiality concerning his/her personal information. Nominating commissions are responsible for investigating the personal and professional lives of the judicial candidates. Due to the sensitive nature of such information, individuals may be apprehensive about applying for judgeships. In an effort to reduce the fear candidates may have of exposing their private histories, commissioners should keep candidate information confidential. In some cases, commissions may even decide to keep the names of applicants anonymous. However, rules and procedures may require a waiver of confidentiality regarding disciplinary and legal proceedings concerning the judicial candidate.

Normally, each commission will select a chairperson. Usually this person is a state judge (generally a non-voting member of the commission), a voting committee member selected by the commission, or a rotating committee chairperson. The chairperson is usually the commission spokesperson. The spokesperson is the “outside voice” of the commission for purposes of
communicating with media outlets, the citizenry, the candidates, and the appointing authority. Selecting a single person to represent the commission legitimizes the commission, and lessens the potential for disbursement of misinformation or unethical communications.

It is an accepted and unfortunate fact that all too often qualified judicial candidates will not actively seek judgeships. Hence, state law permitting, commissioners should actively seek out and encourage qualified individuals to apply. If the recruitment of a qualified individual jeopardizes the impartiality of a particular commissioner, the respective commissioner should be disqualified from either participating or voting and encourage the potential candidate to apply nevertheless.

To assist the recruitment process, these standards encourage the use of a published notice of judicial vacancy. The recruitment process should reflect the goal of achieving a qualified, inclusive and independent judiciary.

The screening and investigation process can vary greatly between jurisdictions. Part A addresses selection criteria and should be consulted. A commission should endeavor to design a selection system that is objective and fair. Particularly, a commission should be mindful of giving full consideration to lesser known, but highly qualified judicial candidates. Ultimately, a commission should screen and select candidates consistent with the goal described above.

Unless altered by state law or custom, the chairperson should normally submit an alphabetical list of the judicial nominees to the appointing authority. Unless altered by custom or state law, the list of nominees should contain only the names of the nominees without reference to political affiliation or commission preference.

Once the candidate names have been submitted, some states permit the appointing authority to contact and consult individual commissioners regarding the judicial nominees. At all times in the selection process, however, nominating commissions and commissioners should avoid “lobbying” appointing authorities in favor of particular judicial candidates. Many states require individual commissioners to disclose to the full commission any communication either with the appointing authority or as to private communication with judicial candidates.

References


Marvin Comisky and Philip C. Patterson, The Judiciary — Selection, Compensation, Ethics, and Discipline (QUOIREM, 1987).
Standard B.3: Appointing Authority. The primary goal of individuals or official bodies who are responsible for judicial appointments should be a qualified, inclusive, and independent judiciary.

(a) Open, Regularized Process. In making appointments to the judiciary, the appointing authority should use an open, regularized process to review the qualifications of judicial candidates. The appointing authority should appoint only from lists of qualified candidates submitted by the Judicial Eligibility Commission (see Standard B.1) or a Judicial Nominating Commission (see Standard B.2).

(b) Selection. In reviewing the qualifications of candidates submitted by the Judicial Eligibility Commission or Judicial Nominating Commission, the appointing authority should consider a broad range of publicly disclosed selection criteria (see Part A). The appointing authority should select for judicial office only those individuals deemed qualified by the Judicial Eligibility Commission or Judicial Nominating Commission.

(c) Use of Judicial Nominating Commission and Judicial Eligibility Commission. The appointing authority should establish or assist in the establishment of either a Judicial Eligibility Commission (See Standard B.1) or a Judicial Nominating Commission (See Standard B.2).

Commentary

In the vast majority of American jurisdictions, chief executive branch officials have the authority to fill judicial vacancies by an appointment method. In four states (California, Maine, New Hampshire, and New Jersey), the basic judicial selection system is solely gubernatorial appointment. In the twenty-five states employing a "merit plan" for judicial selection, the governor appoints from a list of persons chosen by a Judicial Nominating Commission. Even in the twenty-one states where the basic selection method is a partisan or nonpartisan election, the governor often appoints individuals to fill interim vacancies occurring between elections. In sum, appointment accounts for the initial selection of many judges in the United States.
The appointing authority should respect the value of an independent judiciary in the selection process. An independent judiciary is essential to the consistent application of the law in a democratic society. There are many influences in the selection process that could compromise the candidate's independence when he or she reaches the bench. It is important that the election process be geared toward minimizing, if not eliminating, these compromising influences. For this reason, the appointing authority should respect judicial independence, even though it may come at some political costs. The temptation to "repay" campaign contributors or the party faithful with judgeships should be resisted. Downplaying such political considerations reinforces the perception of an independent and highly qualified judiciary.

Although appointing authorities will necessarily rely on numerous factors when selecting judges, their ultimate goal should be a qualified, inclusive, and independent judiciary. Typically, executive branch officials will seek candidates who share similar political philosophies. For this reason, the appointing authority often consults, or is pressured by, individuals who were influential in the appointing authority's election to office. These influences may include political parties, other public officials, and influential private interests. Appointing authorities also confer with bar leaders in selecting qualified candidates. Although an appointing authority may therefore be subject to numerous influences and pressures when selecting judges, the appointing authority's selection should rest primarily on the qualifications of the candidate. The appointing authority can best insure that a particular candidate is qualified for judicial office by using a Judicial Eligibility Commission (see Standard B.1) or a Judicial Nominating Commission (see Standard B.2).

An open, regularized process for the appointment of judges promotes objectivity by reducing the influence of inappropriate political pressures, and thereby adds legitimacy to the outcome. The use of an open, regularized process heightens the likelihood of achieving the goals of a qualified, inclusive, and independent judiciary. An open selection process will assist in the recruitment of a diverse candidate pool, thereby promoting the goal of achieving a judiciary that is representative of our society particularly in terms of race, ethnicity, gender, and age or other indicia of diversity.

If appointing authorities adhere to high standards regarding the judicial selection process, those responsible for confirming executive branch judicial appointees, usually legislative officials, will also be encouraged to adopt high standards. The confirming body should make every effort to achieve the goals of a qualified, inclusive and independent judiciary above partisanship and other irrelevant considerations.

The use of a Judicial Eligibility or a Judicial Nominating Commission assists the appointing authority in maintaining an open, regularized judicial selection process. In selecting members for either commission, the appointing authority should choose individuals of diverse backgrounds who are committed to the goals of achieving a qualified, inclusive, and independent judiciary.

References

Marvin Comisky and Philip C. Patterson, *The Judiciary—Selection, Compensation, Ethics, and Discipline* (Quorum, 1987).


Standard B.4: Endorsing Authority. The primary goal of individuals or official bodies who are responsible for endorsing judicial candidates for election should be to facilitate the selection of a qualified, inclusive, and independent judiciary.

(a) Open, Regularized Process. In endorsing judicial candidates, the endorsing authority should use an open, regularized process to review the qualifications of judicial candidates. The endorsing authority should endorse only those candidates who appear on lists of qualified candidates submitted by the Judicial Eligibility Commission (see Standard B.1).

(b) Selection. In reviewing the qualifications of candidates submitted by a Judicial Eligibility Commission, the endorsing authority should consider a broad range of publicly disclosed selection criteria (see Part A).

(c) Use of a Judicial Eligibility Commission. The endorsing authority should encourage the use of a Judicial Eligibility Commission (see Standard B.1).

Commentary

Endorsing authorities usually play key roles in states that employ partisan or nonpartisan judicial election systems. An example of an endorsing authority is a political party slatemaking committee. A party slatemaking committee selects the judicial candidate who will represent the party in an upcoming judicial election. In many ways, a slatemaking committee is as influential...
as an appointing authority. Hence, similar to appointing authorities, endorsing authorities should select judicial candidates in a manner that brings legitimacy to the selection process and promotes the selection of a qualified, inclusive, and independent judiciary.

In an effort to formalize the process of endorsing judicial candidates, a Judicial Eligibility Commission (see Standard B.1) should be utilized by endorsing authorities. Through the use of an Eligibility Commission, members of the public and the bar can be further included in the process of deciding judicial candidate endorsements. The use of such a commission brings legitimacy to the endorsement process, and adds validity to the judicial selection process in general.

While it is understandable that an endorsing authority will consider factors such as party loyalty in making an endorsement, it is not inconsistent to also facilitate the selection of a qualified, inclusive, and independent judiciary. To promote this goal, endorsing authorities should abide by the findings of an Eligibility Commission.

References

Patricia A. Garcia, Road Maps: Judicial Selection (AMERICAN BAR ASSOCIATION, 1998).


Lawrence Baum, The Selection of Judges (AMERICAN COURTS, 3RD. EDITION, 1994).


Standard B.5: Retention Evaluation Body. A retention evaluation body should operate in a manner that is consistent with the goal of achieving and maintaining a qualified, inclusive, and independent judiciary.

(a) Evaluation Methodology. A retention evaluation body should review judges based on the criteria set forth in Part A, and operate in a fair, efficient, confidential and logical manner.
(b) Dissemination. A retention evaluation body should disseminate evaluation results as broadly as possible and in a manner that educates the citizenry about the judicial candidates.

Commentary

Some states with judicial retention elections have established retention evaluation bodies, by statute or constitutional provision, that conduct surveys of those persons with direct knowledge of judges subject to retention. The results of these surveys are intended to aid voters in judicial retention elections. These states are Alaska, Arizona, Colorado, New Mexico, Tennessee, and Utah. Moreover, the state of Oklahoma has established an ad hoc body to perform this role. State formalization of the retention evaluation process adds legitimacy to the body’s recommendations and allows the use of state funds to assist in researching candidates and disseminating the results. These bodies serve the direct purpose of educating the citizenry about judicial candidates facing retention. This trend of states to fund retention evaluation bodies is applauded. Such bodies should receive full and adequate funding and should utilize sound survey methods.

The American Judicature Society has recently published the first full report of four states that fund retention evaluation bodies. The report examines in detail the different versions of the retention evaluation bodies. Recommendations for establishing a state retention evaluation body are included in the report and should be consulted by persons interested in, or involved with, retention evaluation bodies.

Retention evaluations should occur in an objective environment, free from partisan or ideological interests. Evaluators should direct surveys at those persons with first-hand knowledge of the judge. Bodies should phrase questions with the goal of producing critical, specific, non-redundant responses from those polled. If the polling community is too large, random sampling should be utilized. At all times in the evaluating process, the identities of those polled should be kept confidential and anonymous comments should not be considered.

After the body has evaluated the candidates, the results should be disseminated to as large a voting audience as reasonably possible. Evaluators and others interested in judicial selection are encouraged to pool their resources in an attempt to effectively disseminate evaluation survey results. Results should be presented in an easy to understand logical form.

References


Part C: Supporting Actors in Selection Process

Standard C.1: Bar Associations. State and local bar associations should place a high priority on facilitating the selection and retention of a qualified, inclusive, and independent judiciary.

(a) Assisting Appointing Authority and Endorsing Authority. Bar Associations should assist the appointing authority and endorsing authority by encouraging the use of a Judicial Eligibility Commission or Judicial Nominating Commission, and should assist such commission by conducting appropriate investigation and inquiry of their members and with their communities to review the qualifications of judicial candidates.

(b) Selection of Members of Judicial Eligibility Commission or Judicial Nominating Commission. Where bar associations are responsible for the selection of members of a Judicial Eligibility Commission or Judicial Nominating Commission, bar associations should operate in a manner that is independent of the appointing or endorsing authorities, with the goal of producing a qualified, inclusive, and independent judiciary. When making appointments to a Commission, bar associations should be mindful of the goal of achieving a commission that is independent and inclusive.

(c) Service to the Law. Bar associations should encourage their members to assist in the judicial selection process by serving on a Judicial Eligibility Commission or a Judicial Nominating Commission, and educating the electorate about the process of judicial selection.

(d) Endorsement of Candidates. Bar association endorsement of judicial candidates should reflect the goal of achieving a qualified, inclusive, and independent judiciary.

(e) Educational Programs in Ethics for Candidates. Bar associations should provide educational programs in ethics and judicial standards to candidates who must be held to such standards during any judicial election. This program shall also include state laws on financing judicial campaigns and disclosures.

Commentary

Public officials, media interests, and others often rely on bar associations to assist in monitoring, evaluating, and selecting judicial candidates and sitting judges. For this reason, bar associations play an important role in the judicial selection process. Commonly, bar associations may be more influential in elective states than in appointive jurisdictions, however, their role in appointive states can be significant.
There are two main ways bar associations help executive branch officials appoint judges. One way bar associations assist an appointing authority is by informing the authority about the judicial nominees. Appointing authorities inquire about the potential judicial candidates and their qualifications and often bar associations respond through polls of their members or personal advice of bar leaders. Thus bar associations, and their representatives, have an obligation to be fair and thorough when discussing judicial nominees and their qualifications.

Bar associations also assist in the judicial selection process through the selection of judicial nominating commissioners and Judicial Eligibility Commissioners. In many jurisdictions, state, or occasionally local, bar association leaders are directly responsible for the selection of commissioners. Even where bar associations are not directly responsible for the selection of commissioners, bar leaders are often consulted by appointing authorities to aid them in their commission appointments. In appointive jurisdictions where nominating commissions are not employed, bar associations should advocate the voluntary use of nominating commissions by the appointing authority. In states that do not yet have a Judicial Eligibility Commission, bar associations should encourage its implementation.

Whether nominating commissions are statutory or voluntary, bar associations should select commission members based solely on the independent judgment of the association member and not based on the judgment of public officials or political interests.

In many appointive jurisdictions, bar associations are responsible for evaluating judicial candidates and sitting judges subject to retention elections. This evaluation often takes the form of bar polls. The purpose of these polls is ultimately to inform the citizenry about the judicial candidates. The polls serve a second function by helping judges determine their own performance. To that end, “Guidelines for Reviewing Qualifications of Candidates for State Judicial Offices” published by the American Bar Association should be consulted and followed.

Bar associations are influential when deciding whether to endorse a judicial candidate in either a retention or general judicial election. A state or local bar association is in the unique position of “rating” a judge as qualified or not. Sometimes media endorsements follow bar association endorsements. When endorsing judges running for retention, bar associations should be mindful of their primary educational role. Bar associations should decide to endorse solely on the qualifications of the judicial candidates. Bar associations should bear in mind the objectives of producing a highly qualified, inclusive, and independent judiciary. After a bar poll is conducted, the results should be disseminated to as broad an audience as possible. In states that utilize judicial elections for initial appointments, bar associations can be helpful in creating Judicial Eligibility Commissions.

Bar Associations should also provide educational programs in ethics and judicial standards to judicial candidates. These programs should address various ethical canons governing the election and campaign process, including state laws on financing judicial campaigns and disclosures. Bar associations might consider partnering with other organizations to provide such educational programs.

References
Standard C.2: Judicial Candidates. Judicial candidates should conduct themselves in a manner that brings legitimacy to the judicial selection process and maintains the integrity of an independent judiciary.

(a) Disclosure. Judicial candidates should disclose all real or potential conflicts of business or personal interest related to a Judicial Eligibility Commission, Judicial Nominating Commission, endorsing authority, appointing authority, media outlet, or other relevant entity.

(b) Election Campaigns. Judicial candidates should comply with state law and ethical rules governing the selection of judges, and should act in a manner that brings legitimacy to the selection process. Judicial candidates in elective jurisdictions should comply with all relevant judicial ethics rules governing campaign activities.

(c) Judicial Eligibility Commission or Judicial Nominating Commission. Judicial candidates should supply information to a Judicial Eligibility Commission or Judicial Nominating Commission as required by law or rules of the appropriate Commission.
(d) Confidentiality. A judicial candidate should keep confidential those Judicial Eligibility Commission or Judicial Nominating Commission activities that the commissioners would themselves be required to keep confidential.

Commentary

In appointive plan jurisdictions, the judicial candidate is usually a person interested in becoming a judge who must appear before a judicial commission or appointing authority, or is a sitting judge who must succeed in a retention election. In elective states, judicial candidates are usually attorneys or sitting judges who wish to be placed on a judicial ballot for selection by vote.

Judicial candidates are subject to certain rules and customs associated with judicial selection. The Model Code of Judicial Conduct, which has been adopted in some form in every state, regulates the conduct of judicial candidates. In particular, a judicial candidate should be aware of all relevant judicial ethics provisions in his or her jurisdiction and adhere strictly to them.

Every judicial selection process requires a fair inquiry concerning the qualities and characteristics of the judicial candidates. In presenting him or herself to the appointing official or evaluating body, the judicial candidate should respond to all inquiries truthfully and supply any and all information relevant to his or her candidacy for judicial office. At all times prior to selection, judicial candidates should cooperate with Judicial Nominating Commissions (see Standard B.2) and Judicial Eligibility Commissions (see Standard B.1).

Pursuant to the dictates of the Model Code of Judicial Conduct Canon 1 and Canon 4, judicial candidates should take steps to minimize the risk of conflict with judicial obligations. Additionally, these standards urge judicial candidates to avoid any personal or business related conflict of interest that may inappropriately affect the selection process. If a real conflict or a potential conflict of interest exists between a judicial candidate and a nominating commission, appointing authority, endorsing authority, eligibility commission, or media interest, the judicial candidate should take necessary steps to disclose such a conflict to those responsible for judicial selection or review. If disclosure of a substantial conflict cannot diminish the ill effects of the controversy, or if disclosure is not a reasonable option, the judicial candidate should withdraw from the selection process.

Usually judges who reach office in an appointive plan jurisdiction are required to take part in a retention election within a specified number of years after reaching the bench. A retention election judicial candidate has no competing judicial candidate(s), but instead must secure an “approval” by receiving a positive vote by at least a majority of voters. Canon 5 of the Model Code of Judicial Conduct regulates the activities of judicial retention election candidates. The judge who is going before the voters in a retention election should become familiar with the relevant judicial ethics provisions in his or her jurisdiction and comply with them. Judges facing retention should cooperate with state authorized evaluation bodies responsible for reviewing judicial candidates.
In most jurisdictions employing Judicial Nominating or Judicial Eligibility Commissions, certain discussions, findings, and research conducted by the commissions will be held confidential for the benefit of the judicial candidates and the selection procedure. Judicial candidates, whether successful or not, should abide by the jurisdiction's rules governing the confidentiality of the selection process and the work of the commissions.

References


Jeffrey M. Shaman, Steven Lubet, and James J. Alfini, Judicial Conduct and Ethics (MICHE, 1990).


Standard C.3: Individual Attorneys. Consistent with their obligations under the Model Rules of Professional Conduct, attorneys should use their special knowledge of, and professional interest in, the judicial system to legitimize the judicial selection process and assist in achieving the goal of a qualified, inclusive, and independent judiciary.

Commentary
Attorneys have a strong professional interest in the judicial selection process and possess special knowledge about the judicial system and judicial candidates. It is for this reason that Judicial Nominating and Eligibility Commissions would have lawyer members. Attorneys also act as references for judicial candidates. Often, individual attorneys are consulted by appointing officials or polled by bar associations concerning judicial candidates. Additionally, attorneys may be contacted, or may even contact, media sources regarding judicial candidates. Thus, individual attorneys and law firms have a tremendous amount of power to influence the judicial selection process.

This special knowledge attorneys have about judicial candidates brings with it certain responsibilities. When lawyers are involved either directly or indirectly in judicial selection, they should conduct themselves in a manner that brings legitimacy and respect to the selection process. If an attorney knows of information that could be relevant to an evaluating commission or an appointing authority, the attorney should disclose such information. Ultimately, lawyers should place the legal system on a higher footing than either personal feelings or personal loyalties to other individuals.

In short, attorneys should seek to bring legitimacy to the judicial selection process by maintaining high standards of conduct in every aspect of their involvement in the process. In addition, they should insist that others conduct themselves in a manner that seeks to achieve the goal of a qualified, inclusive, and independent judiciary.

References

Pay 2 Play Final Report (ABA STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY, 1999).


Frederick C. Hicks, Organization and Ethics of the Bench and Bar (LAWYERS COOPERATIVE PUBLISHING Co., 1932).

Standard C.4: Public and Private Organizations. Public and private organizations which take public positions regarding the selection or election of judicial candidates should respect the desired goal of producing a qualified, inclusive, and independent judiciary.

Commentary

In a variety of ways, different private and public organizations influence the judicial selection process. While their impact on judicial selection varies greatly, these organizations
should respect the goal of the selection process and not allow their particular interest or point of view to interfere with the goal of achieving a qualified, inclusive and independent judiciary. Organizations associated with particular issues and citizen groups can play a decisive role in deciding who should, or should not, be a judge. Of the various supporting actors affecting judicial selection, these groups may be the most unpredictable. The unpredictability of these groups makes their influence on the selection process difficult to measure. The large differences between these groups also make their influence difficult to assess.

References


Anthony Champagne and Judith Haydel, editors, Judicial Reform in the States (UNIVERSITY PRESS OF AMERICA, 1993).


Standard CS: Media Interests. The appointment and election of qualified judges is crucial to the administration of a sound justice system and the media are encouraged to make increased efforts to advise the public as to the qualifications of candidates for judicial office.

Commentary

Newspapers, magazines, television programs, Internet sites, radio programs, and other media sources together represent the large group of Media Interests. Collectively, this group can have an enormous impact on the selection of judges. Polls show that in our society voters receive candidate information mostly from some form of media service, and not from personal knowledge or personal contact with the candidates themselves. Americans trust the media to deliver candidate information in a fair and neutral manner. For these reasons, media interests should balance the coverage of judicial elections and campaigns in order to foster a democratic process.

In addition to standard “news-articles,” media sources educate the citizenry about the process of judicial selection and judicial candidates through the standard editorial or “op-ed” piece. A media group’s decision to endorse or oppose a judicial candidate should rest primarily
on the judicial capacity of the candidate, and not on any special relationship which exists between the media group and the judicial candidate. Media sources should also inform the public of any real or potential conflicts of interest related to business or personal associations with the judicial selection procedures, judicial candidates, or any other conflicts that may unduly influence the decision of the media group to endorse a judicial candidate.

Although the judicial selection process normally will generate less media interest in appointive jurisdictions than in elective jurisdictions, the press has an important role to play in educating the citizenry and informing an open and fair process. Appointing authorities, endorsing authorities, Judicial Nominating and Eligibility Commissioners, and others responsible for judicial appointments will be more likely to maintain high standards of conduct if they know their actions may be the subject of press coverage. In addition, judges facing elections are sometimes the targets of interest groups that may be unfairly critical of a judge’s handling of certain cases. The media can play an important role not only in presenting fair coverage of candidates and substantive issues, but also in broadening their coverage to educate the public about the importance of maintaining the independence of the judiciary.

Lastly, media interests are encouraged to publish findings produced by the primary actors and bar associations.

References


GENERAL INFORMATION FORM

Submitting Entity: Standing Committee on Judicial Independence
Submitted By: Alfred P. Carlton, Jr., Chair

1. **Summary of Recommendation(s)**
The Recommendation reaffirms the ABA support for judicial independence and encourages state jurisdictions to adopt the standards on state judicial selection.

2. **Approval by Submitting Entity.**
The Standing Committee on Judicial Independence voted approval of the proposed Standards on February 12, 2000.

3. **Has this or a similar recommendation been submitted to the House or Board previously?**
No.

4. **What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?**
The ABA has supported merit selection of judges since 1972. That support was reaffirmed in 1999. §1.21 of the Standards Relating to Court Organization, amended in 1990, addresses the selection of judges. Additionally, the ABA recently modified the Model Code of Judicial Conduct and the Model Rules of Professional Conduct to address campaign contributions to judges. These Standards continue the support for merit selection and are designed to bring elements of merit selection to the election process, thus urging reform of judicial elections.

5. **What urgency exists which requires action at this meeting of the House?**
During the last several years, judicial selection methods and judicial campaigns have come under increasing scrutiny and criticism. The high cost of elections and the infiltration of special interests into judicial campaigns has severely damaged the public’s trust and confidence in the integrity of the justice system. The appearance of bias, both in the election process and the appointment process, has been a source of increasing concern. The Standards are designed to bring credibility to the selection process and to set standards for qualifications of judicial aspirants.

6. **Status of Legislation.** (If applicable.)
None.

7. **Cost to the Association.** (Both direct and indirect costs.)
None.
8. Disclosure of Interest. (If applicable.)
None.

9. Referrals
The proposed Standards have been mailed to the Chairs and Staff liaisons of all ABA Sections, Divisions, Forums and Committees, as well as the President and Executive Director of all state, local and territorial bar associations.

10. Contact Person. (Prior to the meeting.)
Edward W. Madeira, Jr., Pepper Hamilton LLP, 3000 Two Logan Square, 18th and Arch Streets, Philadelphia, PA 19103; 215-981-4353.

11. Contact Person. (Who will present the report to the House.)
Alfred P. Carlton, Jr., Sanford Holhouser Law Firm, 219 Fayetteville Street Mall, Suite 1000, Raleigh, NC 27601; 919-755-1800; or Edward W. Madeira, Jr., Pepper Hamilton LLP, 3000 Two Logan Square, 18th and Arch Streets, Philadelphia, PA 19103; 215-981-4353.