



AMERICAN BAR ASSOCIATION
STANDING COMMITTEE
on the FEDERAL JUDICIARY

WHAT IT IS *and* HOW IT WORKS

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American Bar Association
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AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON THE FEDERAL JUDICIARY

The American Bar Association's Standing Committee on the Federal Judiciary has been conducting independent peer evaluations of the professional qualifications of nominees to the federal bench since 1953.¹ From 1953–2000 and from 2009–2016, the Standing Committee conducted its evaluations on prospective nominees to the lower federal courts on a pre-nomination basis at the request of the President. From 2001–2008, the Standing Committee conducted its evaluations after the President submitted the names of nominees to the Senate but prior to action by the Senate Judiciary Committee.

In March 2017, the Standing Committee resumed the practice of conducting its evaluations on a post-nomination basis. Regardless of when its work is done, the Committee has always evaluated only the professional competence, integrity and judicial temperament of each nominee

I. OVERVIEW

A. Committee Composition

The Committee consists of fifteen members – two members from the Ninth Circuit, one member from each of the other federal judicial circuits and the Chair of the Committee. The President of the ABA appoints members for staggered three-year terms; and, no member may serve more than two terms. Appointment to the Committee is based on a lawyer's possession of the highest professional stature and integrity. The members have varied professional experiences and backgrounds.

B. Scope and the Evaluative Function

The Committee evaluates the professional qualifications of Article III nominees to the Supreme Court of the United States, the United States circuit courts of appeals, the United States district courts and the Court of International Trade; and Article IV nominees to the territorial district courts for the Virgin Islands, Guam and the Northern Marianas Islands. The Committee does not propose, recommend or endorse candidates for nomination to the federal judiciary, as doing so would compromise its independent evaluative function.

In conducting its evaluation of each nominee, the Committee focuses strictly on professional qualifications: integrity, professional competence and judicial temperament. The Committee does not consider a nominee's philosophy, political affiliation or ideology. The Committee's objective is to provide impartial peer evaluations of the professional qualifications of judicial nominees in order to assist the Senate Judiciary Committee in assessing whether such individuals should be confirmed by the Senate. The Committee submits its final rating to the

White House, the Senate Judiciary Committee and the United States Department of Justice to assist in the confirmation process. The Committee's performance of its historic role in the evaluation process helps ensure that the most qualified persons serve on the federal judiciary.

C. Impartiality and Independence

The impartiality and independence of the Committee and its procedures are essential to the effectiveness of its work. The ABA's Board of Governors, House of Delegates and Officers are not involved in any way in the work of the Committee. Furthermore, no disclosures regarding the Committee's substantive work are made to ABA volunteers, up to and including the President of the ABA. Its work is insulated from, and independent of, all other activities of the ABA. Further its work is not affected by ABA policies, other than those stated herein.

To preserve the integrity and independence of the Committee, no member may be an Officer of the ABA, member of the Board of Governors or a candidate for such offices while serving on the Committee. To further ensure the impartiality of the Committee, as a condition of appointment, each member agrees not to seek or accept a federal judicial nomination while serving on the Committee and for at least one year thereafter.

In addition, for one year after a judge's appointment, if the member who conducted the evaluation of that judge enters an appearance in a case assigned to him or her, the member must disclose to opposing counsel and the Court that he/she conducted the evaluation on behalf of the Committee. This disclosure obligation applies only to the member, not to other attorneys in the member's firm.

Also, while serving on the Committee, each member agrees not to participate in, or contribute to, any federal election campaign or engage in any partisan political activity on the federal level. The prohibition on partisan federal political activity requires that a member, while on the Committee, not host any fund-raiser or publicly endorse a candidate for federal office.

In view of the confidence reposed in the Committee and the vital importance of the integrity and credibility of its processes, these constraints are strictly enforced.²

D. Confidentiality

A cornerstone of the Committee's peer review process is confidentiality. The Committee strictly maintains the confidentiality of its internal evaluation materials and reports, which are not disclosed to anyone other than Committee members.

The Committee does not give consideration to comments made by anonymous sources, and such comments will not be relied upon by the Committee in its rating of a nominee. Instead, all interviewees who wish to have their comments regarding a nominee considered by the Committee must agree to the disclosure of their identity only to Committee members.

The Committee maintains the strict confidentiality of the identity of all judges, lawyers and all other individuals who provide information regarding the professional qualifications of a nominee unless the interviewee has agreed to waive confidentiality. The assurance of confidentiality given to each interviewee by the Committee is essential to its ability to obtain candid assessments of a nominee's professional qualifications.

II. NOMINATIONS TO FEDERAL COURTS OTHER THAN THE SUPREME COURT

A. Evaluation Criteria

The Committee's evaluation of nominees to the federal bench is directed solely to their professional qualifications: integrity, professional competence and judicial temperament.

When the Committee evaluates "integrity," it considers the nominee's character and general reputation in the legal community, as well as the nominee's industry and diligence.

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

In evaluating "judicial temperament" the Committee considers the nominee's compassion, decisiveness, open-mindedness, courtesy, patience, freedom from bias and commitment to equal justice under the law.

The Committee believes that a nominee to the federal bench ordinarily should have at least twelve years' experience in the practice of law. In evaluating the professional qualifications of a nominee, the Committee recognizes that substantial courtroom and trial experience as a lawyer or trial judge is important. Due consideration will be given to distinguished accomplishments in the field of law or experience that is similar to in-court trial work – e.g., appearances before or service on administrative agencies or arbitration boards, trial experience before tribal courts, or teaching trial advocacy – and may be considered as a substitute for a nominee's lack of substantial courtroom experience.

The Committee believes that appellate court nominees should possess an especially high degree of legal scholarship, academic talent, analytical and writing abilities, and overall excellence. The ability to write clearly and persuasively, to harmonize a body of law, and to give meaningful guidance to the trial courts and the bar for future cases are particularly important skills for nominees to the appellate courts. Because an appellate judge deals primarily with the review of briefs and the records of lower courts, the Committee places somewhat less emphasis on the importance of trial experience as a qualification for the appellate courts.

In evaluating a nominee's professional experience, the Committee may take into consideration whether opportunities for advancement in the profession for women, persons of color, and other minority groups were limited.

While the Committee recognizes that civic activities and public service are valuable experiences for a nominee, they are not a substitute for significant experience in the practice of law in either the private or public sector.

B. Evaluation Procedures

The evaluation of a nominee is usually assigned to a current member of the Committee from the judicial circuit in which the judicial vacancy exists.³ If the member is unavailable, the evaluation is performed by a current Committee member from a different circuit or a former Committee member.

The Department of Justice sends to each nominee a comprehensive questionnaire prepared by the Senate Judiciary Committee (SJQ)⁴ that seeks wide-ranging information related to the nominee's fitness for judicial service and a waiver from the nominee to permit disciplinary records to be checked. The nominee returns the completed questionnaire and signed waiver to the Department of Justice, which then forwards both documents to the Chair of the Committee. The Chair, in turn, forwards the documents to the evaluator and informs the other members of the nomination. Each member performs a conflict check to determine if recusal, as outlined in Section II.F., is required.

The evaluator's receipt from the Chair of the nominee's SJQ and the signed waiver form marks the official starting point for the evaluation process. The evaluator makes extensive use of the nominee's responses to the SJQ in the evaluation process; consequently, the prompt submission of thorough responses to the questionnaire is important to the timeliness of the evaluation.

The evaluator examines the legal writings of the nominee, conducts research about the nominee, and identifies and reviews reported and unreported court decisions, briefs, legal memoranda, publications, speeches, hearing and argument transcripts, articles, and other writings by or involving the nominee. The evaluator utilizes the nominee's signed waiver form to obtain information regarding any disciplinary actions or proceedings involving the nominee.

The central feature of each evaluation are the evaluator's extensive confidential interviews with a broad cross-section of judges, lawyers and others to obtain their assessments of the nominee's integrity, professional competence and judicial temperament, and the underlying bases for such opinions. The evaluator seeks to interview persons identified in the nominee's responses to the SJQ; federal, state and administrative judges before whom the nominee has appeared; lawyers who have been co-counsel or opposing counsel in cases handled by the nominee; and, if the nominee is a former or sitting judge, other judges who have served with the nominee.

In addition, interviews may be conducted with law school professors and deans; legal services and public interest lawyers; representatives of professional legal organizations; and community leaders and others who have information concerning the nominee's professional

qualifications. Comments from groups involved in the recommendation of nominees for the federal judiciary may be received. The evaluator will conduct any interviews or follow-up inquiries deemed to be warranted after receipt of such materials.

Every evaluation includes a personal interview of the nominee by the evaluator, which is usually conducted at the nominee's office. The interview of the nominee takes place near the end of the evaluation after most of the interviews with lawyers, judges and community members have been completed.

While confidentiality is the linchpin of the Committee's evaluation process, the Committee strives at the same time to be fair to the nominee with respect to adverse comments that are received during the course of the evaluation.

If adverse comments are made about the nominee, the evaluator will disclose to the nominee during the personal interview as much of the underlying basis and context of the adverse comments as reasonably possible, consistent with the promise of confidentiality made to interviewees. The evaluator also will discuss with the nominee any adverse comments that are a matter of public record or otherwise already known by the nominee.

If an adverse comment about the nominee is made by someone who has not waived confidentiality, and if disclosure of the substance of that adverse comment would necessarily compromise the promise of confidentiality given to the source of the comment, it will not be reported by the evaluator to the nominee nor revealed to, or considered by, the Committee in its evaluation and rating of the nominee.

During the personal interview, the nominee will be afforded a full opportunity to address and rebut any adverse information or comments disclosed by the evaluator, and to respond to any disciplinary issues. If the nominee identifies persons or provides documents or other information that can shed additional light on the adverse comments or on the nominee's professional qualifications, the evaluator will conduct appropriate follow-up interviews and such further investigation as may be deemed necessary.

If information concerning the health of the nominee that bears on professional qualifications is obtained during the evaluation and taken into consideration, the nominee will be afforded the opportunity to address any concerns in this regard as well.

At the conclusion of an evaluation, a written Informal Report is prepared by the evaluator for review by the Chair. The Informal Report sets forth a description of the nominee's background; the identity of each interviewee and a summary of each interview; a summary of the interview with the nominee, including the nominee's response to any adverse information or comments disclosed by the evaluator; an evaluation of the nominee's professional qualifications; and a recommended rating. In addition, the evaluator includes the nominee's SJQ and copies of other relevant materials, including writing samples, significant cases, and articles by or about the nominee. Materials pertaining to any prior evaluations of the nominee performed by the Committee also are included.

The evaluator submits the Informal Report to the Chair, who reviews it for thoroughness and completeness by checking, among other things, that all disciplinary agencies have been contacted, interviews of individuals with diverse backgrounds have been conducted, sufficient writing samples have been reviewed, the nominee has had the opportunity to address and rebut any adverse information that will be used in the report, and a thorough explanation has been given for the recommended rating. It is suggested that, absent extraordinary circumstances, at least forty (40) interviews should be conducted of a cross-section of people who know the nominee.

The Chair then directs the evaluator to send the Formal Report, SJQ, and copies of other relevant materials considered by the evaluator to each Committee member, unless a member has been recused from the evaluation. If a Committee member has any questions concerning the Final Report and the accompanying materials, those questions are discussed with the evaluator or Chair.

C. Votes and Ratings of the Committee

There are three possible ratings that a nominee may receive from the Committee: “Well Qualified,” “Qualified,” and “Not Qualified.” To merit a rating of “Well Qualified,” the nominee must be at the top of the legal profession in his or her legal community; have outstanding legal ability, breadth of experience, and the highest reputation for integrity; and demonstrate the capacity for sound judicial temperament.

The rating of “Qualified” means that the nominee satisfies the Committee’s very high standards with respect to integrity, professional competence and judicial temperament, and that the Committee believes that the nominee is qualified to perform all of the duties and responsibilities required of a federal judge.

When a nominee is found “Not Qualified,” the Committee has determined that the nominee does not meet the Committee’s standards with respect to one or more of its evaluation criteria – integrity, professional competence or judicial temperament.

The Chair does not vote on the rating to be given to a nominee, except in the rare instance of a tie vote among the rest of the Committee. If a former Committee member has conducted the evaluation, that former Committee member does not vote on the rating to be given to the nominee.

Each voting member independently reviews the Final Report and its enclosures and independently conveys to the Chair his or her vote on the rating to be given to the nominee. Once all votes are tallied, the Chair, by letter, transmits the Committee’s rating to the nominee, the Senate Judiciary Committee, the White House and the Department of Justice. If the Committee has been unanimous in its rating, the Chair so states. Otherwise, the Chair discloses that the nominee received a certain rating from either a majority (8-9 members) or substantial

majority (10-13 members) of the Committee and notes that a minority gave the nominee another rating or ratings. The majority rating represents the Committee's official rating of the nominee. The rating also is posted on the Committee's website for the public record.

D. Appointment of Second Evaluator if There May Be a "Not Qualified" Rating

In any instance in which an evaluator apprises the Chair that the evaluator may recommend that a nominee be rated "Not Qualified," the Chair will appoint a second evaluator to conduct an independent review of the nominee's professional qualifications.

The second evaluator, who is either a current or former Committee member, performs a review to determine the thoroughness of the evaluation conducted by the first evaluator. In addition, after a careful and independent review of the materials and information prepared by the first evaluator, as well as the nominee's responses to the SJQ and legal writings, the second evaluator conducts whatever additional interviews or follow-up inquiries he or she deems warranted. The second evaluator also conducts a new interview of the nominee in accordance with the procedures set forth in Section II.B. The second evaluator prepares an Informal Report setting forth the identity of each interviewee and a summary of the interviews conducted; a summary of the interview with the nominee; and, his or her own recommended rating for the nominee.

After reviewing the Informal Reports prepared by the first and second evaluators, the Chair directs the evaluators to prepare separate Formal Reports and to send them simultaneously to the Committee members. Each Committee member (except any member who has been recused from the evaluation) will independently review these Formal Reports and the enclosures and advise the Chair of his or her own vote concerning the rating to be given to the nominee.

On rare occasions, the evaluator will recommend a "Qualified" rating, but a majority of the Committee will vote to rate the nominee "Not Qualified." In these situations, the procedures described in this section will be adapted to assure that the nominee receives additional review before the rating is finalized and made public.

E. Recusal and Abstention

No Committee member, including the Chair, shall participate in the evaluation or vote on the rating of a nominee in any instance in which such participation would give rise to the appearance of impropriety or would otherwise be incompatible with the purposes served and functions performed by the Committee, or where such member's impartiality might reasonably be questioned.

A Committee member whose partner, associate, co-employee or relative is a nominee, or who knows of any other disqualifying reason shall immediately recuse himself or herself from participating in the evaluation. A Committee member shall recuse himself or herself from any evaluation involving a sitting judge before whom the member has a pending case. This proscription ordinarily does not apply when other lawyers of the Committee member's firm have

pending cases before the judge-nominee, although recusal also may be appropriate in such a situation.

A Committee member who worked on the nominee's state judicial campaign shall recuse himself or herself, no matter when the work was undertaken. A Committee member who made a monetary contribution to the nominee's state judicial campaign shall recuse himself or herself if the contribution was made within one (1) year of that individual's referral to the Committee as a nominee to the federal bench.

In the event of recusal by the Chair, the Chair will seek his or her replacement for that particular evaluation by soliciting the service of a former Chair. If a former Chair is not available to oversee the evaluation in a timely fashion, the current Chair will ask a current or former member to serve as Chair for the evaluation in question. In such circumstances, the temporary Chair does not vote on the rating to be given to the nominee.

A recused member or Chair will not have access to the Final Report on the nominee in question and will not vote on the rating for the nominee.

In rare instances, a Committee member may abstain from participating in a vote on a nominee because of, for example, sickness, an extended trial or a professional commitment has prevented the member from fully considering the Final Report and evaluating the nominee's professional qualifications.

F. Submission of Written Statement to the Senate Judiciary Committee

In the instance where a nominee has been rated "Not Qualified" by the Committee and a hearing on the nomination is scheduled by the Senate Judiciary Committee at which the Committee is testifying, a written statement is prepared and submitted to the Senate Judiciary Committee explaining the reasons for the Committee's rating. In order to preserve the confidentiality previously promised to interviewees, the statement does not identify the persons who provided information received by the Committee.

The written statement is submitted to the Senate Judiciary Committee and to the nominee forty-eight (48) hours in advance of the nominee's scheduled confirmation hearing, if the Committee has at least seven days' advance notice of the hearing date and is assured that the statement will not be disseminated publicly until the date of the hearing. Otherwise, the Committee submits its written statement twenty-four (24) hours in advance of the nominee's confirmation hearing.

The Chair and the evaluators who conducted the first and second evaluations of the nominee normally are given the opportunity to testify at the nominee's confirmation hearing.

G. Supplemental Evaluations

The Committee will conduct a supplemental evaluation of nominees whose nominations have been returned by Congress or withdrawn and then subsequently re-submitted by the President. However, a supplemental evaluation may not be performed if there is insufficient time for the Committee to complete it.

The event and scope of the supplemental evaluation will be determined by the length of time since the most recent evaluation and rating by the Committee and whether there have been any new developments of a material nature bearing on the nominee's professional qualifications since that date. The supplemental evaluation will be conducted by a current or former member of the Committee, who will have access to the materials pertaining to any prior evaluation(s) of the nominee. In general, the supplemental evaluation will focus on any new information of a material nature that has been adduced since the Committee's most recent evaluation and rating of the nominee. However, the Chair may request that the evaluator seek additional information relating to the time period before the most recent evaluation, if necessary, to ensure that the Committee has a full and complete record of the nominee's professional qualifications.

The evaluator prepares a Supplemental Report that is reviewed by the Chair, as set forth in Section II.B. The chair then directs the evaluator to send the Supplemental Report, as well as all additional materials pertaining to any prior evaluation of the nominee, to Committee members for their consideration. A rating of the nominee will be issued by the Committee after the supplemental evaluation is completed and that rating will supersede any prior rating of the nominee.

III. NOMINATIONS TO THE SUPREME COURT

It is extremely important to the Committee's meaningful evaluation of Supreme Court nominees that the Committee has sufficient time to evaluate the nominees in depth. The procedures described below enable the Committee to provide assistance to the Senate in the confirmation process.

A. Evaluation Criteria

As with nominations to the lower courts, the Committee's evaluation of nominees to the Supreme Court is directed solely to their professional qualifications: integrity, professional competence and judicial temperament.⁵ The Committee does not take into account the nominee's philosophy, political affiliation or ideology. The Committee's evaluation of a Supreme Court nominee is based on the premise that a Justice must possess exceptional professional qualifications.

A Supreme Court nominee should possess an especially high degree of legal scholarship, academic talent, analytical and writing abilities, and overall excellence. The ability to write clearly and persuasively, to harmonize a body of law, and to give meaningful guidance to trial courts, circuit courts and the bar for future cases are particularly important skills for a Supreme

Court nominee. The significance, range and complexity of the issues considered, as well as the finality and nation-wide impact of the Supreme Court's decisions, are among the factors that require exceptional ability.

B. Evaluation Procedures

While the evaluation of a Supreme Court nominee is primarily conducted by the current Committee member(s) from the circuit where the nominee has practiced or served as a judge, all members of the Committee participate in the evaluation. Interviews are conducted nationwide with those persons likely to have information regarding the integrity, professional competence and judicial temperament of the Supreme Court nominee. Those interviewed include, where appropriate, federal and state judges, practicing lawyers in both private practice and government service, law school professors and deans, legal services and public interest lawyers, representatives of professional legal organizations, community and national leaders, and others who are in a position to evaluate the nominee's integrity, professional competence and judicial temperament.

Teams of law school professors examine the legal writings (opinions, briefs, speeches, books, blogs and articles) of the nominee. Customarily, this task is accomplished by dividing writings into areas of the law and having the writings reviewed by professors who are recognized experts in each field or subject on which the nominee has written. The law school teams are usually under the direction of a dean or a senior professor. A separate team of distinguished practicing lawyers, some of whom may be former Supreme Court law clerks or practice before the Supreme Court, also examines the legal writings of the nominee. Each team submits to the primary evaluator responsible for conducting the evaluation a summary of the findings for separate inclusion in the evaluator's Formal Report to the Committee.

The primary evaluator conducts the interview of the nominee in accordance with the procedures set forth in Section II.B. The Chair may participate in the interview.

The evaluator prepares a Formal Report containing a description of the nominee's background; summaries of all interviews conducted, including the interview with the nominee; summaries prepared by the law school teams and practitioner teams; an analysis of the nominee's legal writings; an evaluation of the nominee's professional qualifications; and, a recommended rating.

In addition, all materials pertaining to any prior evaluations of the nominee performed by the Committee are furnished to Committee members for their review, prior to any vote on the rating to be given to the nominee. The same recusal and abstention procedures set forth in Section II.F apply to evaluations of Supreme Court nominees, and voting by the Committee is conducted in the same matter set forth in Section II.C.

C. Ratings

To merit the Committee's rating of "Well Qualified," a Supreme Court nominee must be a preeminent member of the legal profession, have outstanding legal ability and exceptional breadth of experience, and meet the very highest standards of integrity, professional competence and judicial temperament. The rating of "Well Qualified" is reserved for those found to merit the Committee's strongest affirmative endorsement.

The rating of "Qualified" means that the nominee satisfies the Committee's high standards with respect to integrity, professional competence and judicial temperament; and, that the Committee believes the nominee is fully qualified to perform all of the duties and responsibilities required of the distinguished office of a Supreme Court Justice.

When a nominee is rated "Not Qualified," the Committee has determined that the nominee does not meet the Committee's high standards with respect to one or more of its evaluation criteria – integrity, professional competence or judicial temperament.

The Chair, in a letter, reports the Committee's rating of the Supreme Court nominee to the White House, the United States Department of Justice, the Senate Judiciary Committee and the nominee. The rating also is posted on the Committee's website for the public record.

The Committee prepares a written statement for submission to the Senate Judiciary Committee explaining the reasons for the Committee's rating. To preserve the confidentiality promised to interviewees, the statement does not identify any individual who provided information to the Committee unless the individual has waived confidentiality.

The Chair and the evaluator(s) primarily responsible for conducting the evaluation traditionally testify at the nominee's confirmation hearing, at the request of the Senate Judiciary Committee.

The Committee may submit a follow-up report to the Senate Judiciary Committee or to the entire Senate if new information is developed during the course of the hearing that warrants further evaluation by the Committee.

IV. RE-OPENING OF AN EVALUATION AFTER SUBMISSION OF A RATING

The Committee reserves the right to re-open an evaluation any time prior to the confirmation of a nominee if new information of a material nature develops that the Chair reasonably believes warrants additional investigation and re-examination of the prior rating rendered by the Committee. If an evaluation is re-opened, the evaluator will follow up promptly on the new information; conduct any interviews considered necessary, including possibly re-interviewing the nominee; and prepare a new Report and recommended rating of the nominee in accordance with the procedures set forth in Section II.B. Each Committee member

will consider the new Report and then vote on the rating of the nominee. If the rating differs from the prior rating, the prior rating shall be deemed superseded.

V. CONCLUSION

As it has for over six decades, the ABA Standing Committee on the Federal Judiciary continues to offer its comprehensive peer evaluations of Article III and Article IV judicial nominees as a service to the executive and legislative branches of our government and to the public. We believe that these evaluations have helped to maintain and enhance the high quality of the federal judiciary.

The Committee constantly seeks to learn from its experiences and to refine and improve its practices and procedures. To this end, the Committee welcomes suggestions from members of the bar and the public.

ENDNOTES

¹ In 1948, an independent committee of the ABA, which preceded the Standing Committee, started to evaluate the professional qualifications of federal judicial nominees and to submit its evaluations to the Senate on an informal basis.

² The Governing Principles of the Standing Committee on the Federal Judiciary are attached as Appendix I.

³ The Committee member conducting the evaluation hereinafter is referred to as the “evaluator.”

⁴ The SJQ as approved for use by the United States Senate Judiciary Committee is attached as Appendix II.

⁵ See Section II.A. for a description of the applicable evaluation criteria.

APPENDIX I

GOVERNING PRINCIPLES OF THE STANDING COMMITTEE ON THE FEDERAL JUDICIARY

The Standing Committee on the Federal Judiciary shall evaluate the professional qualifications of persons nominated to the federal bench on the basis of predetermined and objective evaluation criteria. The Committee will provide the White House, the U.S. Department of Justice and Members of the Senate Judiciary Committee its peer review evaluations of the professional competence, integrity and judicial temperament of such persons.

In view of the special nature of the function performed by this Committee and the confidence reposed in the Committee's evaluations, the integrity and credibility of its processes and the perception of these processes are of vital importance.

No member of the Committee, while serving as a member or within one year following such service, shall seek or accept a nomination to the federal bench.

No member of the Committee, including the Chair, shall participate in the evaluation or vote on the rating of a nominee in any instance in which such participation would give rise to the appearance of impropriety or would otherwise be incompatible with the purposes served and functions performed by the Committee, or where such member's impartiality might reasonably be questioned.

Because confidentiality and discretion are of critical importance to the evaluation processes of the Committee, only the President of the Association, the President's designee, or the Chair of the Committee shall respond to media or general public inquiries or make any statements to the media or general public relating to the work of the Committee.

The President of the Association shall take any action necessary to ensure adherence to these principles.

ADOPTED BY ABA BOARD OF GOVERNORS

Revised: February 2007

APPENDIX II

SENATE JUDICIARY QUESTIONNAIRE (AS OF MARCH 2017)

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).
2. **Position**: State the position for which you have been nominated.
3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.
4. **Birthplace**: State date and place of birth.
5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.
6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.
7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.
8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honor, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

9. **Bar Association:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.
- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.
- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.
- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.
- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you

have issued or provided or that others presented on your behalf to public bodies or public officials.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.
- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____
 - i. Of these, approximately what percent were:

jury trials? _____%; bench trials _____% [total 100%]

civil proceedings? _____%; criminal proceedings? _____% [total 100%]
- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the ten (10) most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the ten (10) most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal**: If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an “automatic” recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself *sua sponte*. Identify each such case, and for each provide the following information:
- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself *sua sponte*;
 - b. a brief description of the asserted conflict of interest or other ground for recusal;
 - c. the procedure you followed in determining whether or not to recuse yourself;
 - d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.
15. **Public Office, Political Activities and Affiliations**:
- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
 - i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;
 - ii. whether you practiced alone, and if so, the addresses and dates;
 - iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.
 - iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.
- b. Describe:
 - i. the general character of your law practice and indicate by date when its character has changed over the years.
 - ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.
- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.
 - i. Indicate the percentage of your practice in:
 - 1. federal courts;
 - 2. state courts of record;
 - 3. other courts;
 - 4. administrative agencies

- ii. Indicate the percentage of your practice in:
 - 1. civil proceedings;
 - 2. criminal proceedings.
- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
 - i. What percentage of these trials were:
 - 1. jury;
 - 2. non-jury.
 - e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.
- 17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
 - a. the date of representation;
 - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
- 18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)
- 19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.
- 20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other

future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.
22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).
23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).
24. **Potential Conflicts of Interest:**
 - a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.
 - b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.
25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.
26. **Selection Process:**
 - a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks				Notes payable to banks—secured			
U.S. Government securities—add schedule				Notes payable to banks—unsecured			
Listed securities—add schedule				Notes payable to relatives			
Unlisted securities—add schedule				Notes payable to others			
Accounts and notes receivable				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable—add schedule			
Real estate owned—add schedule				Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts—itemize:			
Autos and other personal property							
Cash value—life insurance							
Other assets—itemize:							
				Total Liabilities			
				Net Worth			
Total Assets				Total Liabilities and Net Worth			
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker, or guarantor				Are any assets pledged? (Add schedule)			
On leases or contracts				Are you defendant in any suits or legal actions?			
Legal claims				Have you ever taken bankruptcy?			
Provision for federal income tax							
Other special debt							

APPENDIX III

Outline of Confidential Formal Report Prepared by Evaluator and Distributed Only to Standing Committee Members

CONFIDENTIAL FORMAL REPORT

[date]

AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON THE FEDERAL JUDICIARY

Formal Report

TO:

[Name of Chair]

Chair, Standing Committee on the Federal Judiciary

FROM:

[Evaluator/Circuit Member]

NAME:

[Name of Nominee]

COURT:

[Name of Court to Which Nominated]

ADDRESS:

[Office Address]

[Home Address]

DATE AND PLACE OF BIRTH:

EDUCATION:

[List of all colleges and universities, degrees, dates of graduation, honors, etc.]

PROFESSIONAL (EMPLOYMENT RECORD):

[List of and description of all professional positions, including law firms, governmental positions, etc., with relevant dates]

BAR AND COURT ADMISSIONS:

[List all jurisdictions and courts in whichever admitted, including dates of admission]

MILITARY SERVICE AND DRAFT STATUS:

[Rank, type of discharge, date of discharge]

DISCIPLINARY HISTORY:

[Description of any disciplinary activity: Nominee lists disciplinary actions in SJQ, and a waiver is obtained so that Committee members may verify disciplinary history with appropriate authorities. Evaluators may discuss any disciplinary actions with appropriate representatives of the disciplinary authority and with the nominee.]

NEWSPAPER FILE:

[Review of online, newspaper and print references to a nominee.]

RECOMMENDATION:

[Well Qualified, Qualified, Not Qualified]

MATRIX OF PERSONS INTERVIEWED

[Evaluators typically prepare a table or matrix of all lawyers, judges, and other persons contacted and state whether an interview was conducted. The matrix notes whether the interviewee was identified by the nominee in the SJQ. This allows the Committee to readily ascertain whether all persons identified in the SJQ have been contacted. The Committee attempts to contact all persons identified by the nominee in the SJQ.]

SUMMARY OF INTERVIEWS

[This section provides a full summary of the confidential interviews with person contacted concerning the professional competence, temperament, and integrity of the nominee, including full name and description of the interviewee (e.g., name of lawyer, name of firm, city of practice), and a summary of all comments made by the interviewees, both positive and adverse, concerning the nominee. The contacts are questioned about the nominee's knowledge of the law, legal, analytic and reasoning abilities, and judgment, etc. If adverse comments are made, interviewees are asked to identify other sources with personal knowledge of the adverse information. Follow-up is conducted on all adverse comments. Any adverse comments are discussed with the nominee and included in the interview summary. The Committee does not use anonymous or unsolicited information unless it can be confirmed.]

FEDERAL JUDGES:

[Evaluators contact judges at all levels with knowledge of the professional qualifications of the nominee: Supreme Court, Courts of Appeals, District Courts, Magistrate Judges and Bankruptcy Judges.]

STATE JUDGES:

[Evaluators contact State judges at all levels that may have knowledge of the professional qualifications of the nominee.]

LAWYERS:

[Lawyers contacted include those listed in the SJQ (opposing counsel and co-counsel, etc.) and a broad cross section of the bar (those identified through database searches and interviews), law professors, representatives of various bar associations and prominent practitioners with knowledge of the nominee's professional qualifications.]

OTHERS:

[Interviews may be conducted with non-lawyers, such as court personnel and community members.]

WRITINGS

[This section includes a full description of the writings of the nominee that discuss the nominee's writing style, clarity, legal analysis, etc. In addition to writing samples provided by the nominee, writings are obtained from public sources such as reporters, LEXIS NEXIS, Westlaw, law reviews and other lawyers. Often a representative sample of the writings will be included with the Formal Report.]

SUMMARY OF PERSONAL INTERVIEW OF NOMINEE

[This section is a detailed narrative of the interview of the nominee and contains a summary of all matters discussed, impressions of the evaluator, and responses to any adverse comments received during the interview, etc. If the nominee is a judge, special attention is paid to recusal and conflict of interest issues.]

CONCLUSIONS AND RECOMMENDATION

[In this section, the Evaluator provides conclusions reached from all information gathered and makes a recommendation of Well Qualified, Qualified or Not Qualified. The recommendation is supported by the detailed reasoning of the evaluator, often references the interviews and writings of the nominee, and specifically analyzes the criteria of professional competence, integrity and judicial temperament.]

EXHIBITS

[Complete Senate Judiciary Questionnaire and Financial Statement (Public Portion).]

[Other Exhibits (such as, selected writings, opinions, newspaper articles).]

[Prior Formal Reports of any nominees previously evaluated by the Standing Committee.]

APPENDIX IV

CHAIRS OF THE STANDING COMMITTEE ON THE FEDERAL JUDICIARY

2017-2018 Pamela A. Bresnahan Washington, D.C.	2007-2008 C. Timothy Hopkins Idaho Falls, ID	1997-1998 Blake Tartt Houston, TX
2016-2017 Nancy Scott Degan New Orleans, LA	2006-2007 Roberta D. Liebenberg Philadelphia, PA	1996-1997 Judah Best Washington, D.C.
2015-2016 Karol Corbin Walker Newark, NJ	2005-2006 Stephen L. Tober Portsmouth, NH	1995-1996 Carolyn B. Lamm Washington, D.C.
2014-2015 H. Thomas Wells, Jr. Birmingham, AL	2003-2005 Thomas Z. Hayward, Jr. Chicago, IL	1994-1995 William E. Willis New York, NY
2013-2014 Bettina R. Plevan New York, NY	2002-2003 Carol E. Dinkins Houston, TX	1993-1994 Robert P. Watkins Washington, DC
2012-2013 Judy Perry Martinez New Orleans, LA	2001-2002 Roscoe Trimmier, Jr. Boston, MA	1992-1993 William E. White New York, NY
2011-2012 Allan J. Joseph San Francisco, CA	2000-2001 Patricia M. Hynes New York, NY	1991-1992 Ronald L. Olson Los Angeles, CA
2010-2011 Ben H. Hill, III Tampa, FL	1999-2000 N. Lee Cooper Birmingham, AL	1989-1991 Ralph I. Lancaster, Jr. Portland, ME
2008-2010 Kim J. Askew Dallas, TX	1998-1999 Michael S. Greco Boston, MA	1987-1989 Harold R. Tyler, Jr. New York, NY

1984-1987
Robert B. Fisk
New York, NY

1983-1984
Frederick G. Buesser, Jr.
Detroit, MI

1980-1983
Brooksley Elizabeth Born
Washington, D.C.

1978-1980
Robert D. Raven
San Francisco, CA

1977-1978
R. Harvey Chappell,
Jr. Richmond, VA

1975-1977
Warren Christopher
Los Angeles, CA

1974-1975
William Reece Smith, Jr.
Tampa, FL

1973-1974
John Sutro
San Francisco, CA

1972-1973
Robert L. Trescher
Haverford, PA

1968-1972
Lawrence E. Walsh
Oklahoma City, OK

1965-1968
Albert E. Jenner
Chicago, IL

1962-1965
Robert W. Meserve
Boston, MA

1957-1962
Bernard G. Segal
Philadelphia, PA

1956-1957
Morrison Shafroth
Denver, CO

1956-1956
Franklin E. Parker, Jr.
New York, NY

1954-1956
Edward J. Fox
Eastern, PA

1952-1954
Howard F. Burns
Cleveland, OH