

PENNSYLVANIA BAR ASSOCIATION JUDICIAL EVALUATION COMMISSION

ORGANIZATION AND RULES

I. ORGANIZATION

- A. JUDICIAL EVALUATION COMMISSION: The Commission shall be known as the "Pennsylvania Bar Association Judicial Evaluation Commission." The Commission shall be responsible for developing and implementing a judicial evaluation process for appellate judicial candidates in the Commonwealth of Pennsylvania. The Commission's procedures shall include reviewing the investigative panel's report, interviewing each candidate, discussing qualifications and reaching an agreement upon and issuing a rating for each candidate for appellate judicial office.

1. COMPOSITION AND SELECTION OF COMMISSION

- a. The Commission shall be composed of 18 voting members of whom no more than twelve shall be attorneys, and the immediate past chair of the Commission who shall be a non-voting member.
- b. The PBA President shall appoint all Commission members.
- c. Unless completing an unexpired term, Commission members shall serve no more than two consecutive three-year terms. A member appointed to serve the balance of an unexpired term will thereafter be eligible to complete two additional three-year terms.
- d. To allow for succession to leadership, a member is eligible to serve up to two additional three-year terms if appointed by the PBA president as vice chair or chair of the Commission.
- e. Commission members shall be selected with special sensitivity to race and gender diversity. The Commission composition also shall reflect sensitivity (but no quota) with regard to party affiliation and county geographic diversity.

2. COMMISSION MEMBER RULES (Applicable to Investigative Panel Members)

- a. All members of the Commission and all Investigative Panel members shall refrain from the following activities during their respective terms:
 - 1) Attending Pennsylvania appellate judicial political fundraising events.
 - 2) Contributing to Pennsylvania appellate judicial candidates or participating directly or indirectly in any decision to contribute to a Pennsylvania appellate judicial candidate, including contributing to any PAC which makes contributions to or

supports, directly or indirectly, Pennsylvania appellate judicial candidates. Contributions to Pennsylvania appellate judicial candidates by immediate family members (spouse/significant other and children residing at home or in college) of Commission or Panel members also are prohibited.

- 3) Seeking election to any judicial or other public or political office.
 - 4) Discussing any confidential investigations, discussion, deliberation or action of the Commission or Panel.
 - 5) Endorsing a candidate for Pennsylvania appellate judicial office or allowing the use of one's name to promote or support such a candidate.
 - 6) Participating in the evaluation process of a candidate who the Commission or Panel member previously had supported via campaign contributions, or otherwise, within a period of five years prior to the date of the current election. Under these circumstances, the Commission or Panel member must excuse himself/herself from that particular candidate's evaluation.
 - 7) Participating in the evaluation process of a candidate where a Commission or Panel member and/or his/her family member previously had been represented by a candidate or a member of the candidate's law firm within a period of five years prior to the date of the current election. Under these circumstances, the Commission or Panel member must excuse himself/herself from that particular candidate's evaluation.
- b. Failure to comply to the above conditions shall result in removal of the member from the Commission or Investigative Panel.
 - c. The Commission may adopt further regulations for itself and for the Investigative Panels that are consistent with the Commission's purpose and with the intent and objectives of these Rules.
- B. INVESTIGATIVE DIVISION: Investigative panel members shall be composed of individuals from all areas of the state who are divided into three-member panels composed of two lawyers and one layperson. A panel shall be responsible for conducting the initial candidate interview. The panel also is responsible for contacting individuals who have had professional or personal dealings with the candidate. Following the investigation, the panel shall submit a report to the Commission. The report shall be confidential. A representative from the panel (preferably the Chair) shall attend the Commission's interview with the candidate. Following the interview, the Commission shall receive further input from the panel representative, who then shall depart the meeting prior to the Commission's determination of a rating for the candidate. In the instance of any candidate who has been previously rated, the Investigative Panel shall confirm that the candidate has complied with the PBA's "Judicial Candidate's Pledge" and include it with their investigative report.

1. SELECTION OF INVESTIGATIVE PANEL MEMBERS

- a. The PBA President shall appoint Investigative Panel members.
- b. Investigative Panel members shall be bound by the same rules as members of the Commission.
- c. Investigative Panel members shall be selected with special sensitivity to race and gender diversity. The Investigative Panel composition also shall reflect a sensitivity (but no quota) with regard to party affiliation and county geographic diversity.

2. TRAINING OF INVESTIGATIVE PANEL MEMBERS

- a. On a periodic basis, the Commission shall hold a convocation in a central location where all panel members shall receive uniform instruction on how to conduct themselves as members of an Investigative Panel.
- b. A training manual containing at least the following shall be provided to each Investigative Panel member:
 - 1) Explanation of evaluation process;
 - 2) Role of the Investigative Division;
 - 3) Rules of the Investigative Division;
 - 4) Timetable for evaluations;
 - 5) Suggested questions for candidates and areas for further investigation of candidates;
 - 6) Candidate's questionnaire;
 - 7) Judicial Campaign Advertising Guidelines;
 - 8) Canon 7 of the Pennsylvania Code of Judicial Conduct; and
 - 9) Commission ratings criteria

II. EVALUATION PROCEDURE

The evaluation process may commence as soon as a candidate makes herself/himself known to the Commission.

- A. A letter and questionnaire shall be sent to the candidate from the Commission, which explains the ratings process and asking the candidate to complete the questionnaire by a particular return date. The questionnaire shall contain both a public and a confidential section.
- B. Process for candidate, rated within two years for the same seat.
 1. Candidate resubmits prior completed questionnaire with any necessary updated information, and any supplemental writings.

2. Investigative panel is appointed – (try for same, if possible).
 - a. If panel finds no new information of substance, panel conducts abbreviated interview with candidate (phone interview acceptable) and such additional interviews/investigations as deemed appropriate based upon interview of candidate.
 - b. Panel prepares report, which may be substantially the same as the prior report, with update.
- C. The candidate's questionnaire is returned and the Commission shall assign an investigative panel to schedule an interview with the candidate in his/her office.
- D. Interviews with individuals who have knowledge of the candidate shall be scheduled and conducted by the Investigative Panel.
- E. The Disciplinary Board of the Supreme Court of Pennsylvania and the Pennsylvania Judicial Conduct Board will be contacted by Commission staff seeking relevant information about each candidate.
- F. Once the candidate interview and field work are completed, the panel shall submit a written report to the Commission on the results of the investigation. The report is confidential.
- G. The Commission will schedule interviews with candidates and use the investigative panel reports as a basis for the candidate's interview. A representative from the investigative panel (preferably the panel Chair) shall attend the Commission session where the candidate will be interviewed.
- H. Following the candidate's interview, the receipt of input from the panel representative and the panel representative departing the meeting, the Commission shall deliberate and agree upon a rating for the candidate.
- I. If a candidate receives a rating of "Not Recommended" from the Commission, the candidate shall be notified and provided an opportunity to withdraw his/her name within a specific, short time frame. If the candidate elects to remain in the race, the rating shall be publicly announced.
- J. Candidates receiving ratings of "Recommended" or "Highly Recommended" from the Commission shall be notified of their rating contemporaneously with the public announcement of such ratings.
- K. Where possible, ratings will be announced on a date prior to the state political parties, endorsements of appellate judicial candidates.
- L. Candidates who receive a rating of "Not Recommended" may seek reconsideration of their rating for cause shown. A request for reconsideration will be referred to three members of

the Commission appointed by the Commission Chair (and may include the Chair) to consider the request. If the reconsideration request is granted, the full Commission shall reconvene (in person and/or by telephone conference) to reconsider the candidate's request. The Commission shall promptly decide the request and notify the candidate of its decision.

M. In the instance of any candidate who has been previously rated, the Investigative Panel shall confirm that the candidate has complied with the PBA's "Judicial Candidate Pledge" and include it with their investigative report.

III. CANDIDATE'S QUESTIONNAIRE

- A. Candidates' completed questionnaires shall be released to the public contemporaneous with the publication of their ratings.
 - 1. The questionnaire shall require the candidate to comply with the Judicial Campaign Advertising Guidelines.
 - 2. The cover page shall include a disclaimer, signed by the candidate, that the candidate understands and acknowledges that:
 - a. The candidate's rating and the rationale for the rating will be announced publicly following the final interview with the Commission;
 - b. The Commission will be granted consent to receive confidential information from the Disciplinary Board of the Supreme Court of Pennsylvania and the Pennsylvania Judicial Conduct Board about the candidate; and
 - c. The Commission has authority to change a rating during the course of a campaign as a result of a candidate's violation of the Judicial Campaign Advertising Guidelines or the Judicial Candidate's Pledge or for other good cause.

IV. RATINGS CRITERIA

- A. The criteria which the Commission shall use to evaluate candidates are attached hereto and incorporated herein as Exhibit "A."

V. RATINGS NOMENCLATURE AND RATIONALE

- A. The Commission shall rate candidates as being one of the following: "Highly Recommended," "Recommended," or "Not Recommended."
- B. A candidate for appellate judicial office in Pennsylvania who refuses to submit to the Commission's evaluation process shall receive a rating of "Not Recommended for Failure to Submit Application."
- C. Rationale for rating:

1. The Commission shall provide a written rationale, which supports each candidate's rating.
2. The Chair of the Commission shall assign a Commission member to prepare the written rationale for each candidate's rating. The draft rationale then will be distributed to all Commission members for comment and final approval.

D. Changing rating during campaign:

If a candidate violates the Judicial Campaign Advertising Guidelines or the Judicial Candidate's Pledge or engages in other conduct which constitutes good cause, the Commission has authority to and may change or withdraw a prior rating of "Highly Recommended" or "Recommended."

VI. PUBLIC ANNOUNCEMENT OF RATINGS

A. A candidate shall be notified promptly if he/she receives a rating of "Not Recommended."

1. If, within the period established by the Commission, a candidate withdraws from the race, the candidate's rating will not be made public except as otherwise set forth herein or in the PBA JEC Internal Operating Procedures.
2. If a candidate elects to remain in the race, the candidate's rating shall be publicly announced. Such announcement shall be prior to state party endorsements whenever possible.
3. The Commission Chair shall be available to the media for questions or information concerning the Commission's ratings of candidates and related issues.
4. Upon request, candidates' questionnaires shall be made available for all candidates for whom ratings have been issued.

B. At the public announcement of the ratings, the following shall be made available to the media:

1. Commission Organization and Rules;
2. Commission Membership;
3. Definitions of Criteria and Ratings;
4. Rationale for Individual Candidates' Ratings; and
5. Camera-ready graphic with ratings.

VII. EVALUATION PROCEDURE FOR JUDICIAL RETENTION CANDIDATES

A. Pennsylvania appellate judges who stand for retention election shall be subject to the same evaluation procedures as those set forth in Section II, above with the following exceptions and clarifications:

1. The Commission shall appoint an Investigative Panel to review the candidacy of each retention candidate.
2. A revised and shortened form of questionnaire will be used for all retention candidates. At least 10 opinions authored by the retention candidate within the last three to five years shall be identified as part of the response to the questionnaire. The Investigative Panel shall interview at least 20 lawyers who personally have appeared before the retention candidate, and such other interviews as may be appropriate. Thereafter, the Investigative Panel shall submit a report to the full Commission.
3. If the report submitted by the Panel to the Commission is “with concern,” the Chairman of the Commission shall immediately write to the candidate to report that, on the basis of the report received from the Investigative Panel, it would be in the candidate’s best interest to submit to an interview with the full Commission, which the Investigative Panel Chair shall attend. Failure to attend the requested interview may have probative weight in the Commission’s determination of a rating.
4. If the report submitted by the Panel comes to the Commission “without concern,” the Commission shall proceed to interview the Investigative Panel Chair and thereafter, to render its evaluation and recommendation. Following discussion with the Investigative Panel Chair, if the Commission has further questions of the candidate, the questions shall be reduced to writing and sent to the candidate for immediate response, or the candidate may be requested to appear before the Commission. Failure to respond to such written questions, or appear before the Commission if requested, may have probative weight in the Commission’s determination of a rating.
5. The Commission shall rate judicial retention candidates as being either: “Recommended” or “Not Recommended.”
6. A retention candidate for appellate judicial office in Pennsylvania who refuses to participate in the Commission's evaluation process shall receive a rating of "Not Recommended for Failure to Participate in the Evaluation Process."
7. As with candidates for elective judicial appellate office, the Commission shall provide a written rationale, which supports each candidate's rating consistent with the ratings nomenclature, and rationale procedures set forth in Section V, above. Retention candidates who receive a rating of “Not Recommended” from the Commission shall be so notified and provided an opportunity to withdraw their name from the ballot within a specific, short time frame. Such retention candidates also may seek reconsideration of their rating for cause shown pursuant to the procedures set forth in Section II.K., above.

VIII. PUBLIC EDUCATION AND INVOLVEMENT WITH JUDICIAL CAMPAIGNS

A. Media Relations

1. PBA and Commission leaders will endeavor to meet with newspaper editorial boards to explain the evaluation ratings process prior to the dates of each judicial election.
2. PBA and Commission staff shall serve as a "clearinghouse" for information about appellate court candidates.
3. The Commission shall distribute a guide to county associations to promote the Commission's ratings and the importance of participating in appellate court elections.
4. The PBA and the Commission shall assist reporters in understanding the meaning and operation of Canon 7 of the PA Code of Judicial Conduct.
5. The PBA shall prepare feature articles on the importance of the election of highly qualified judges to the state's appellate courts.
6. The Commission shall publish candidates' ratings on the PBA web site.

B. Public Education: The PBA may:

1. Establish a voters' toll-free hotline to provide ratings of candidates.
2. Print palm cards with ratings and distribute same to county bar associations and other organizations.
3. Prepare radio and newspaper advertising concerning the Commission's ratings and procedures.
4. Recruit speakers to address civic and other groups to emphasize the importance of electing highly qualified judges to the state's appellate courts.
5. See VIII. A.6.

****Unanimously approved by the Board of Governors November 13, 2019.***