

NEW YORK STATE BAR ASSOCIATION



# NYSBA

## Task Force on the Evaluation of Candidates for Election to Judicial Office

Informational Report

**December 2018**



Opinions expressed are those of the Task Force preparing this Report and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.

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# Report of Task Force on the Evaluation of Candidates for Election to Judicial Office

**“Judicial elections, if fair and open, could be an essential forum for society to discuss and define the attributes of judicial excellence and to find ways to discern those qualities in the candidates. The organized bar, the legal academy, public advocacy groups, a principled press, and all the other components of functioning democracy must engage in this process.”** Concurring Opinion of Mr. Justice Kennedy in *New York State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, 212 (2008).

## I Introduction to the Work of the Task Force

### A. The Task Force and Its Mandate

The New York State Bar Association’s [NYSBA] Executive Committee on June 1, 2018 established the “Task Force on the Evaluation of Candidates for Election to Judicial Office” [Task Force]. The mission statement provides that the Task Force:

will investigate and report on the various vetting structures that exist throughout New York State pertaining to candidates for election to judicial office. Based upon its investigation, the task force will propose best practices, guidelines and minimum standards for review of such judicial candidates. It will also make recommendations to assist local bar associations, good government groups and other stakeholders in developing effective non-partisan evaluation and screening of candidates for election to judicial office and improving those efforts that already exist.

President Michael Miller in his speech to the House of Delegates at NYSBA’s June 16, 2018 meeting at Cooperstown elaborated on the role of the Task Force. He stated:

There is no more important pillar to the foundation of our justice system than the quality of our judiciary. It has long been the policy of NYSBA to advocate for the selection of judges by appointment, rather than by election. However, as long as there are judicial elections, it is vitally important that the process of evaluation is fair and fosters the best judiciary possible. I have heard from the highest levels of the court system that there are significant concerns regarding the existing evaluation system. Therefore, we have established the Task Force on the Evaluation of Candidates for Election to Judicial Office, co-chaired by Robert L. Haig, and former Court of Appeals Judge Susan Phillips Read.<sup>1</sup>

At the initial meeting of the Task Force on August 1, 2018, President Miller reiterated the significance of the work of the Task Force. His charge to the members of the Task Force was, “I

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<sup>1</sup> Michael Miller, “President’s Report to the House of Delegates,” June 16, 2018.

don't need to have to tell you folks how important the quality of our judiciary is...It's not hyperbole; this is incredibly important stuff." President Miller found that as stewards of the judicial system, the Bar Association should not be allowing a vacuum where no process is in place to review the qualifications of candidates for judicial office.

President Miller's thoughts were similarly emphasized by the Hon. Lawrence K. Marks, the Chief Administrative Judge of the Courts. Judge Marks, on behalf of the Administrative Board of the Courts advised the Task Force that the Independent Judicial Elections Qualification Commissions would be disbanded at the end of 2018. "A decision had been made to take the Judiciary out of the business of evaluating judicial candidates." Judge Marks stated, "The plan is to disband them at the end of the calendar year." The concerns are, despite the best efforts of the commission members, that the judicial election qualification commissions are not working well and that the system is "not fulfilling the goals it was set out to do." Judge Marks also questioned whether it was appropriate for the court system to be injecting itself into administering a political process by administering a system of evaluating judicial candidates.

With the imminent termination of the Independent Judicial Election Qualification Commissions, the importance of the work of the Task Force has grown significantly. Action would need to be taken in 2019 to insure the continued availability of judicial screening throughout New York State.

The 26-member Task Force is co-chaired by Robert L. Haig, Esq. of Kelley Drye & Warren LLP and the Hon. Susan Phillips Read (Court of Appeals, ret.) of Greenberg Traurig LLP. The other members of this geographically, experientially and otherwise diverse Task Force are:

- Alyssa M. Barreiro, Esq., Wilmington Trust [Broome County]
- Eileen E. Buholtz, Esq., Connors, Corcoran & Buholtz, PLLC [Monroe County]
- Jeffrey T. Buley, Esq., Brown & Weinraub LLC [Albany County]
- David Louis Cohen, Esq., Law Office of David L. Cohen, Esq. [Queens County]
- Vincent E. Doyle, III, Esq., Connors LLP [Erie County]
- Norman P. Effman, Esq., Wyoming County Public Defender [Wyoming County]
- Timothy J. Fennell, Esq., Amdursky, Pelky Fennell & Wallen, P.C. [Oswego County]
- Lucas A. Ferrara, Esq., Newman Ferrara LLP [New York County]
- Michael J. Gaffney, Esq., Law Office of Michael J. Gaffney [Richmond County]
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- Daniel J. Kornstein, Esq., Emery Celli Brinckerhoff & Abady LLP [New York County]
- A. Thomas Levin, Esq., Meyer, Suozzi, English & Klein P.C. [Nassau County]
- Lawrence A. Mandelker, Esq., Eiseman Levine Lehrhaupt & Kakoyiannis, PC [New York County]
- Alan Mansfield, Esq., Greenberg Traurig LLP [New York County]
- Michael J. McNamara, Esq., Seward & Kissel LLP [New York County]
- Neil Merkl, Esq., Kelley Drye & Warren LLP [New York County]
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- Thomas E. Myers, Esq., Bond, Schoeneck & King, PLLC [Onondaga County]
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- Sandra Rivera, Esq., Rivera Law, PLLC [Albany County]
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- Kevin S. Schwartz, Esq., Wachtell, Lipton, Rosen & Katz [New York County]
- Kathleen Marie Sweet, Esq., Gibson McAskill & Crosby LLP [Erie County]
- G. Robert Witmer, Jr., Esq., Nixon Peabody LLP [Monroe County]

Kevin M. Kerwin, Esq. has served as the Staff Liaison for NYSBA, and Bennett M. Liebman, Esq., a Government Lawyer in Residence at Albany Law School, has served as the Reporter for the Task Force.

The Task Force conducted meetings on August 1, 2018, October 3, 2018, November 15, 2018 and December 3, 2018.

The Task Force reviewed the work of the New York State Commission to Promote Public Confidence in Judicial Elections [the Feerick Commission], the Independent Judicial Election Qualification Commissions [IJEQCs], and local, affinity and specialty bar associations that evaluate judicial candidates subject to election; and researched judicial screening in other states.

The Task Force surveyed local, affinity and specialty bar associations asking them to assess their work and positions on judicial screening and their work with the IJEQCs. The Task Force solicited views on judicial screening and the efficacy of the current judicial screening regimen from political party leadership in each county, individual members of the IJEQCs and sitting elected judges.

The conclusions and recommendations of the Task Force are very much driven by the facts that the Task Force ascertained during its extensive investigations of current practices throughout New York State. For example, in many parts of the state, bar associations provide excellent judicial screening, and we are not inclined to reconstruct what is not broken.

Perhaps most importantly, individual members of the Task Force engaged in reporting their own assessments on the work of local bar associations in screening candidates, on the role of the IJEQCs, and on what they believed to be both politically achievable and desirable in the uncertain and complex world of New York State government.

The Task Force worked collaboratively and with extraordinary collegiality to achieve the goals established by its mission statement.

## B. The Task Force Surveys

### 1. Survey of Bar Associations

The Task Force in early August of 2018 sent a survey to 130 local, affinity and specialty bar associations to ascertain their thoughts on the evaluation of candidates for election to judicial office and their interactions with the IJEQCs. Responses to the survey were spotty with slightly more than 10% of the organizations responding to the survey. While most of the respondents had

little to do with the IJEQCs, those that had worked with the IJEQCs had a mixed response. Some credited the IJEQCs as being a positive experience while others questioned the value and the knowledge of the IJEQCs in their districts. In the absence of the IJEQCs, all the bar associations that are currently conducting evaluations would continue to do so. Many of the respondents welcomed the possible opportunity to participate in a NYSBA/regional effort to conduct candidate evaluations.

## 2. Survey of Members of the Independent Judicial Election Qualification Commissions

An email questionnaire was sent in mid-October to 180 members of the IJEQCs. 43 members (24%) responded to the questionnaire.

An overwhelming majority of those Commission members who responded thought that the current process was effective, and almost all respondents believed that the candidate interviews were crucially important. There was considerable controversy over the ratings system. Many believed that the rating system was effective but could benefit from greater clarity. The most serious point seemed to be the use of the “Highly Qualified” ratings and its relationship to the “Qualified” rating. Several people thought “Highly Qualified” favored sitting judges only. Others thought there should be more clarity and differentiation between the two ratings, and in general more specific criteria and more choices. To some, the categories, especially “Qualified,” were too broad. The respondents also believed that calling references (especially those not listed by the candidate) was important, and that the Commissions should continue.

The responses also favored mandatory participation, greater publicity, and more willingness to make adverse findings.

## 3. Survey of Judges

With the assistance of the Office of Court Administration, in mid-October, emails were sent to a database that included approximately 1,200 sitting judges in New York State. Responses were due by November 1, 2018. 98 elected judges (8.2% of the 1,200 judges) representing 11 of the 13 judicial districts responded. It is possible that the limited time frame for responses could have affected the number of judges who responded to the survey.

The survey results showed several common themes. A number of respondents believed that the screening committee questionnaires should be standardized or uniform, that the screening committee members be independent and knowledgeable about the relevant courts, that the public be clearly informed about the rating system, that results should be published and that local bar associations should coordinate their work so that candidates need not participate in multiple interviews and complete multiple questionnaires. Some of the responses displayed a wide range of sentiments. For example, while many respondents believed that the screening process should be mandatory, others believe that screening should be eliminated and determinations about candidates be left to the voters.

Overall, the survey results suggest that: NYSBA and/or local bar associations should publicize the names of judicial candidates who refuse to participate in judicial screening so that voters can take that information into account before voting; political party leaders should encourage

candidates to participate in judicial screening; NYSBA and local bar associations should organize regional judicial screening for those counties that do not have local judicial screening; and the local bar associations should be encouraged to coordinate their questionnaires, interviews and ratings.

#### 4. Survey of County Political Leaders

Given the outsized role played by political party leadership in the determination of who serves as a judge in New York State, the Task Force sent an electronic questionnaire to the Democratic and Republican Party leaders in all of New York's 62 counties.

The six-question survey submitted to the county leaders was designed to ascertain how political parties felt about the entrance of the bar associations into their electoral realm. Was there a common attitude among party leaders about using non-partisan screening committees to evaluate the qualifications of candidates for elective judicial office? The leaders were asked whether there should be pre-nomination screening of all judicial candidates, when the results of such screening should be publicly disclosed, whether they would even trust bar association screening and whether they would view bar association involvement as a challenge to their control of the judicial nomination process.

Only 16 of the 124 county political leaders (12.9%) chose to respond to the survey. Over 80% of the respondents agreed that a screening committee should evaluate the qualifications of all judicial candidates prior to the date of their nomination, and the same 80% would support evaluation of judicial candidates by a screening panel, the members of which were selected with input from their party. 90% of the respondents stated that their party does not require a potential judicial candidate to obtain the party's permission before agreeing to be evaluated by the relevant bar associations.

On the other hand, nine of the 16 respondents would not support evaluation of judicial candidates by a screening panel, the members of which were selected without input from their party. Only nine of the 16 respondents believed that the evaluations should be disclosed to the media for dissemination prior to the candidates' nomination, and that same nine of 16 stated that their party would not nominate a judicial candidate who declined to be evaluated by the relevant bar associations.

While it may be hard to draw any firm conclusions from this limited survey size and the self-selection of the respondents, there appeared to be significant support of judicial screening and evaluation in theory. Yet, where the screening of judicial candidates might be viewed as impinging on the prerogatives of political selection, that support for judicial screening grew less.

#### 5. Other Potential Inquiries

The Task Force considered whether or not to poll New York voters for their views on the screening of candidates for the judiciary. While the members of the Task Force believed that a survey might produce useful information on the public's views on the qualification of judges, the costs involved in conducting a poll, coupled with the limited time period for the Task Force's report, were sufficient to convince the majority of the Task Force members that a poll was

unnecessary. Some expressed the view that there was little reason to believe that a poll would provide information that was significantly different than the polls undertaken in the prior decade by the Feerick Commission.<sup>2</sup>

Similarly, given the considerable work that the Feerick Commission had performed with focus groups, the Task Force saw little reason to utilize focus groups.

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<sup>2</sup> The polling of registered voters undertaken by the Marist Institute for Public Opinion for the Feerick Commission in October of 2003 showed that voters were divided over how well they thought elected judges were performing their jobs in New York State. 45% of the voters believed that the judges were good or excellent while 48% rated the job performance of judges as fair or poor. While over two-thirds of voters believed that judges were fair and impartial, Latino and African-American voters were considerably less likely than white voters to believe that judges were fair and impartial. The voters believed that wealthier parties receive more favorable treatment than others. 90% of voters believed that it was important that judges be independent from political party leaders and campaign contributors, but 86% of voters believed that political party leaders had a great deal or some influence over who becomes a judge. The Marist poll data is contained in Appendix B of the Feerick Commission's June 29, 2004 report.

## II Executive Summary

**The Task Force’s review of judicial screening systems in New York State found that the discontinuation of the independent judicial election qualification commissions in 2019 will leave a significant vacuum in the evaluation of elected judicial candidates in some areas of New York State.** If the Task Force is to be successful in its mission of “developing effective non-partisan evaluation and screening of candidates for election to judicial office and improving those efforts that already exist,” it is vital to help effectuate systems that will truly foster the best judiciary possible.

**The Task Force understands that its goals are to develop recommendations, best practices and guidelines that are effective, practical and politically achievable.** It does little good to recommend a utopian judicial evaluation system for New York State that cannot realistically be accomplished. New Yorkers deserve a system that can be put in place in 2019. The Task Force’s recommendations in no manner depart from the NYSBA’s longstanding commitment to the commission based appointive system for selecting judges in New York State.

**The Task Force believes that in 2019, NYSBA needs to address and to recommend actions to assure that all candidates for election to the judiciary in New York State are effectively screened to determine their qualifications.**

**The systems in place by local bar associations vary from county to county.** County, affinity and specialty bar associations have their own evaluation systems. Some local bar associations have a significant number of members and resources, and do an extensive, complete and non-partisan job in evaluating judicial candidates. Other bar associations – especially outside the City of New York – lack this capacity. In some counties, the bar association screening processes are active, robust and efficacious. In others, there is minimal screening.

**The Task Force believes that the one-size-fits-all approach to determining the composition of judicial screening panels will not work for New York State.** The State and the local bar associations are extremely diverse, with widely varying resources, and the methods for selecting judges in this state are extraordinarily complex. The Task Force is not trying to impose a single judicial evaluation structure on the entire state. A top-down one-sized approach providing a statewide uniform structure is likely to be a recipe for failure.

**Where the existing bar association reviews are effective, the Task Force recommends their continuation.** There are dozens of judicial screening review processes in place throughout New York State. The culture, the assets, the procedures and the mechanics of local bar associations vary tremendously. The Task Force believes that in some areas of the State, the systems that are in place are operating effectively. They should not be changed.

**In New York City, the City Bar– working with the five county bar associations within the City – has a vigorous and successful system in place that works to promote the highest standards of the judiciary.** On Long Island, in the 10<sup>th</sup> Judicial District, both the Nassau County Bar Association and the Suffolk County Bar Association maintain vibrant judicial

evaluation systems that are working effectively. In many of the upstate urban counties, the county bar associations are working forcefully and are employing evaluation systems that serve the public and the judiciary well. The Task Force believes that these bar associations should be encouraged to continue their efforts. There are effective judicial evaluation systems in place in ten of the 11 largest counties in New York State. Nearly three-quarters of the state's population is currently being well served by the work of the local bar associations.

**Nonetheless, there are some judicial districts (such as the 7<sup>th</sup> Judicial District, which encompasses Monroe County and seven smaller counties) where there is almost no judicial screening whatsoever.** There are many small counties in other districts (such as Hamilton County in the 4<sup>th</sup> District and Lewis County in the 5<sup>th</sup> District) where the size of the county and the absence of a significant body of resident attorneys in the county virtually precludes the possibility or even the potential for any meaningful judicial screening.

**The Task Force believes that increased judicial screening needs to be encouraged throughout the state.** NYSBA should not allow the systematic screening currently performed by the IJEQs to fall through the potential upstate cracks. Screening ought to be available for all judicial candidates. In order to assist those judicial districts with limited screening, the Task Force recommends that NYSBA work with all local bar associations in those districts to establish regional or district screening committees in 2019. Underwriting support for this initiative should come from the Office of Court Administration which has funded and staffed the IJEQs.

**NYSBA must take appropriate action to continue non-partisan evaluation and screening of candidates for election to judicial office.** This should include the establishment of a NYSBA working group to help implement the availability of screening panels throughout the state and the creation of resource guides as well as web pages to assist bar associations on the subject of judicial screening.

**In keeping with its mission, the Task Force accordingly has developed a series of best practices that should help guide local bar associations and regional screening commissions in their role in evaluating candidates for judicial office.** These best practices should include:

1. The bar association should establish a separate judiciary committee which would be charged with the duty of investigating and evaluating candidates for judgeships.
2. Judiciary committees should consider and establish term limits for members of the committee to ensure new members with diverse perspectives and opinions.
3. The questionnaire used by the City Bar to evaluate candidates should be used as a suggested model for other bar associations conducting evaluations, with local bar associations using variations to fit their needs and capabilities.
4. The members of the judiciary committee, or a subcommittee of the judiciary committee, would conduct investigations of the candidates for the judiciary.
5. The judiciary committee should use six basic criteria to evaluate judicial candidates. These criteria would be integrity, independence, intellect, judgment, temperament, and experience. Individual bar associations would be free to add additional criteria, but these six standards should serve as best practices at the heart of the evaluation process.

6. The judiciary committee should use a two-tiered rating system where candidates would be rated either as “Approved” or “Not Approved.”
7. Where a judiciary committee offered only two ratings to candidates, a majority vote would be needed to secure an “Approved” rating.
8. Candidates who received the “Not Approved” rating should be entitled to petition the judiciary committee to reconsider its evaluation.
9. An appeals process should be a required feature of a judicial evaluation process.
10. A judiciary committee should implement exclusion and recusal provisions to address actual or perceived conflicts of interest.
11. The judiciary committee should consider utilization of candidate waiver of confidentiality forms, such as those used by the IJEQCs.
12. Membership on judiciary committees should reflect the state and region’s diversity in order to promote public confidence in the court system.
13. Bar associations should consider the possibility of naming non-lawyers to the judiciary committees.
14. The entire operation of the judicial screening system must be held in the highest confidentiality.
15. Candidates who receive a “Not Approved” rating and who expeditiously withdraw their candidacy for judicial office should not have their rating publicized in any manner.
16. Bar associations should consider, without revealing confidential information, providing informal feedback to candidates about their performance.
17. Bar associations should determine a policy as to whether the judiciary committee’s rating of a candidate will remain valid beyond the immediate election ratings for which the review is being conducted and, if so, for how many years a rating for a judicial candidate would be valid.
18. Bar association ratings of judicial candidates should be conducted at the earliest possible point in the election cycle.

**NYSBA should work with the local bar associations in making the ratings of judicial candidates known to the public.** Where the local bar association does seek NYSBA involvement, NYSBA should work with the local bar to maximize the public distribution and exposure of the candidate ratings.

### III The Background of the Judicial Evaluation Process in New York

#### A. The Early History

New York State has for 172 years been largely committed to the election of judges. As a result of the 1846 Constitutional Convention, the state shifted from a system of appointive judges to one where all judges were elected.<sup>3</sup>

While the number of appointed judges has increased, the Feerick Commission reported that “73% of the State's 1,143 full-time judges are elected.”<sup>4</sup> In addition, New York’s methods for judicial selection make for a complete enigma. “New York uses almost as many methods of judicial selection as there are courts.”<sup>5</sup> “New York State has a complicated judicial system, perhaps the most complicated in the nation. We have at least 11 different levels of courts, although some people claim that there are actually 13 distinct courts. And we select judges for different courts in different ways—a judge may be appointed by the Governor from a list open to all lawyers, or appointed from a pool of elected trial court judges, or elected through a primary system, or elected through a nomination system. In some cases, judges for the same court may be elected in certain parts of the state and appointed in others.”<sup>6</sup>

After the 1846 Constitution, at the state supreme court level, the political parties directly chose their candidates.<sup>7</sup> In 1911, towards the close of the Progressive era, and after years of intense advocacy for direct primaries by former Governor Charles Evans Hughes (as well as support from former President Theodore Roosevelt<sup>8</sup>), primary elections were mandated for most every elected position in the State by the Ferris-Blauvelt Direct Nominations bill.<sup>9</sup>

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<sup>3</sup> Constitution of 1846, Article VI, §12 “The judges of the court of appeals shall be elected by the electors of the state, and the justices of the supreme court by the electors of the several judicial districts, at such times as may be prescribed by law.” The question of whether and how best to select state judges and how to structure the State court system was arguably the principal topic of the 1846 Convention. “The importance of the subject was fully appreciated by the Convention, and the suggestion was made several times while the judiciary article was under consideration, that the reconstruction of the judicial system was the chief reason for calling the Convention.” Charles Z. Lincoln, 2 *The Constitutional History of New York from the Beginning of the Colonial Period to the Year 1905*, 140 (1906).

<sup>4</sup> Commission To Promote Public Confidence In Judicial Elections, *Final Report To The Chief Judge Of The State Of New York*, 5 (2006). [hereinafter referred to as Final Report].

<sup>5</sup> Commission To Promote Public Confidence In Judicial Elections, *Report to the Chief Judge of the State of New York*, 5 (2004). [hereinafter referred to as 2004 Report].

<sup>6</sup> *Id.*, Appendix A at 36.

<sup>7</sup> A joint legislative committee in 1910 stated, “The investigation of this Committee convinces it that no political movement in recent years has so excited the public mind, has aroused so much animosity, has split national parties into such bitterly opposing factions, as has the agitation for and the operation of direct nomination systems in the several northern States which are trying the experiment.” *Report of the Joint Committee of the Senate and Assembly of the State of New York Appointed to Investigate Primary and Election Laws of this and Other States* (1910).

<sup>8</sup> See “State Convention Mere Device for Registering Decrees of the Bosses Says Roosevelt at Elmwood Meeting,” *Buffalo Courier* June 11, 1913; Theodore Roosevelt, “Two Issues: Direct Primaries and Judges of The Right Type,” *Outlook*, July 12, 1913.

<sup>9</sup> L. 1911, ch. 891. “Direct Primary Bill Is Passed,” *New York Sun*, October 5, 1911. “Voters to Enroll Soon After Nov. 15,” *New York Times*, October 8, 1911. The Ferris-Blauvelt law was amended by Chapter 820, L.1913. “Bills All Passed by Legislature,” *New York Tribune*, December 13, 1913, “Legislature’s Deathbed Repentance” *New York*

The workings of the Ferris-Blauvelt law were such that many believed that it gave party bosses excessive control over judicial nominations. Former Chief Judge of the Court of Appeals Edgar Cullen stated, “Already nearly everyone sees that Judges ought to be selected by conventions rather than by direct primaries.”<sup>10</sup> While one might have assumed that direct primaries might have lessened the role of the political parties in determining the candidates, in the case of judicial elections – where there was limited public interest and minimal public knowledge of the qualifications of individual candidates – many believed that the party leaders had carte blanche to select their judicial choices.<sup>11</sup>

Republican legislators had been generally opposed to the Ferris-Blauvelt law, and in 1920, Republican Nathan Miller (a former judge of the Court of Appeals) was elected Governor. Miller was an outspoken opponent of the direct primary system for judges.<sup>12</sup> In 1921, a joint legislative committee recommended the abolition of the direct primary for Supreme Court justices and its replacement by “judicial district conventions.”<sup>13</sup> The Legislature soon took action, and the direct primaries for the supreme court were replaced by nominations via party conventions. The legislation specified that “party nominations of candidates for the office of the justice of the supreme court, shall be made by party conventions.”<sup>14</sup>

This 1921 system has lasted until the current day. As described by the United States Court of Appeals for the Second Circuit, “The Legislature did not entirely dispense with primary elections. Instead, it enacted a three-part scheme that combines a primary election, a nominating convention, and a general election. During the first phase, the State holds a primary election at which rank-and-file party members elect judicial delegates. N.Y. Elec. L. §§ 6–106, –124. Next, those delegates attend a convention at which they select their party’s nominees. N.Y. Elec. L. §§ 6–106, –124, –158. The individual so chosen receives a place on the general election ballot as

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*Tribune*, December 13, 1913, stating “The state will have a direct primary law abolishing all nominations by party convention and an Election Day ballot minus the party column.”

<sup>10</sup> “The State Convention,” *New York Times*, May 1, 1917. See also “Noted Men Attack the Direct Primary System,” *New York Times*, March 14, 1918.

<sup>11</sup> Successful 1920 Republican gubernatorial candidate Nathan Miller stated, “The direct primary we have was inaugurated in the interest of Tammany Hall, to enable Tammany to control the Democracy of the State of New York.” “Hoover Makes Strong Plea for Judge Miller,” *New York Tribune*, October 23, 1920.

<sup>12</sup> “Miller Declares Primary a Fraud,” *New York Times*, Oct. 23, 1920; “Miller Ready to Lead Fight on Primaries,” *Albany Times Union*, March 11, 1921. By contrast, Republican Charles Whitman, who served as governor from 1914-1918, had been a supporter of the primary system. See “Republicans Hold to Direct Primary,” *New York Times*, September 29, 1916. Legislation to end the direct primary for supreme court justices had been vetoed by Governor Alfred E. Smith in 1920. See “Vetoes Bill to Name Judges by Convention,” *New York Times*, May 18, 1920; “Smith Vetoes Bill for Convention to Nominate Justices,” *New York Tribune*, May 18, 1920. In his veto message Smith wrote, “The fitness of any candidate, for any office, can best be discussed by all the members of the party which makes the nomination. It is infinitely better for the State that every candidate, particularly a candidate for a place in the judiciary, receives his nomination at the hands of a majority of the voters of his party, than through the favor of the few.” “To Amend the Election Law so as to Break Down the Direct Primary System by Substituting Party Nominating Conventions for the Office of Justice of the Supreme Court,” *Public Papers of Alfred E. Smith, Governor*. 324 (1920).

<sup>13</sup> *Report of the Joint Legislative Committee on Election Law*, 6 (1921).

<sup>14</sup> L. 1921, Ch. 479 §4. See also “Leaders Rush Repeal Vote of Primary,” *New York Times*, April 11, 1921. Besides ending primaries for supreme court justices, the legislation also ended primaries for all statewide political offices. Primaries for statewide offices in New York were only reauthorized in 1967. See L. 1967, ch.716. See also Richard Madden, “Rockefeller Signs Bill Authorizing Direct Primaries,” *New York Times*, May 3, 1967.

the party's nominee. N.Y. Elec. L. § 7-116(1). Last, the State holds a general election at which Justices are elected. N.Y. Elec. L. § 8-100(1)(c)."<sup>15</sup>

Most significantly, the 1921 system has withstood constitutional scrutiny. A unanimous Supreme Court in *Lopez-Torres v. New York St. Board of Elections*,<sup>16</sup> ruled that the law did not violate the First Amendment associational rights of independent candidates challenging candidates favored by the party convention system. The Justices did not rule on the wisdom of the New York Law. Justice Souter's concurring opinion read in its entirety:

While I join Justice Scalia's cogent resolution of the constitutional issues raised by this case, I think it appropriate to emphasize the distinction between constitutionality and wise policy. Our holding with respect to the former should not be misread as endorsement of the electoral system under review, or disagreement with the findings of the District Court that describe glaring deficiencies in that system and even lend support to the broader proposition that the very practice of electing judges is unwise. But as I recall my esteemed former colleague, Thurgood Marshall, remarking on numerous occasions: "The Constitution does not prohibit legislatures from enacting stupid laws."<sup>17</sup>

Justice Kennedy in his concurring opinion wrote:

Even in flawed election systems there emerge brave and honorable judges who exemplify the law's ideals. But it is unfair to them and to the concept of judicial independence if the State is indifferent to a selection process open to manipulation, criticism, and serious abuse.

Rule of law is secured only by the principled exercise of political will. If New York statutes for nominating and electing judges do not produce both the perception and the reality of a system committed to the highest ideals of the law, they ought to be changed and to be changed now.<sup>18</sup>

At no point in the existing system is there any government requirement that judicial candidates subject to election be evaluated or screened for their capabilities, integrity and independence.

The idea of screening judicial candidates is hardly a new one. Many local organizations use a sort of screening process to identify preferred judicial candidates for their constituents. For instance, local bar associations and local branches of the League of Women Voters often interview and rate candidates for local judicial office."<sup>19</sup>

For more than a half century, NYSBA leadership has supported the concept of judicial screening to promote an independent, principled and qualified judiciary. In 1961, as local governments in

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<sup>15</sup> *Lopez-Torres v. New York St. Board of Elections*, 453 F. 161, 172 (2<sup>nd</sup> Cir. 2006); rev'd 552 U.S. 196 (2008).

<sup>16</sup> 552 U.S. 196 (2008). Justice Scalia's opinion for the Court found plaintiff's claimed "associational right not only to join, but to have a certain degree of influence in, the party" had no support in the First Amendment or the precedents of the Court. *Id.* at 203.

<sup>17</sup> *Id.* at 209

<sup>18</sup> *Id.* at 212-213.

<sup>19</sup> *Id.* at 37.

New York State began the consideration of formally utilizing judicial screening procedures, the State Bar Association's Executive Committee adopted the following resolution:

WHEREAS to assure the election of qualified candidates for judicial office it is vital that the organized bar be consulted on the qualifications of judicial candidates before nominations be made; therefore be it resolved that the New York State Bar Association in convention assembled;

Before any judicial nomination is made, an adequate opportunity should be given by the appropriate bar associations to report on the qualifications of candidates for judicial office.<sup>20</sup>

In 1962, New York City Mayor Robert Wagner inaugurated the concept of a nonpartisan evaluation committee to review his potential judicial nominees.<sup>21</sup> He started a voluntary merit selection system for the city's criminal and family courts.<sup>22</sup> In commenting on the Wagner action, NYSBA president, and former Presiding Justice of the Appellate Division, First Department, David Peck termed Wagner's work "as 'the most exciting development' in the drive by the organized bar to gain a stronger voice in the selection of judges."<sup>23</sup> Justice Peck added that the Wagner evaluation committee was a "happy augury for the better judicial selections in New York City."<sup>24</sup>

The State Bar Association was similarly positive about a plan worked out by the Nassau County Bar Association<sup>25</sup> with the political leaders in that county under which the parties would submit potential judicial candidates to the bar association for approval before they were recommended for party nomination.<sup>26</sup>

While the Wagner administration's "Mayor's Committee on the Judiciary" was continued during the administrations of Mayors Lindsay and Beame,<sup>27</sup> little action was taken at the state level. The closest the state may have come to enacting a screening policy for elected judges came in 1970. Assembly Speaker Perry Duryea gave his support to legislation that required the screening of all candidates for the Supreme Court. No individual could be nominated by a political party unless the screening committee had determined that the nominee was highly qualified.<sup>28</sup> The Assembly leadership stated that the leadership of the State Senate supported the mandatory screening bill.<sup>29</sup> State Republican Party leaders were said to be in favor of mandatory screening.<sup>30</sup> State Senator

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<sup>20</sup> "Association Activities," 33 *N.Y. St. B. J.* 205, 206 (1961).

<sup>21</sup> Peter Kihss, "Judgeship Panel Takes First Step," *New York Times*, June 6, 1962. See also James Edward Lozier, "Judicial Selection in New York: A Need for Change," 3 *Fordham Urban Law Journal* 605, 626 (1975).

<sup>22</sup> Martin I. Kaminsky, *A Proposal for Mandatory Preselection Screening for State Court Judges*, 51 *St. John's L. Rev.* 516, 541 (1977).

<sup>23</sup> Douglas Dales, "Screening Policy on Judges Hailed," *New York Times*, June 23, 1962.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See Charles P. Buckley, Jr., "The 'Nassau Plan' for Selection of Better Judges," 34 *N.Y. St. B. J.* 345 (1962)

<sup>27</sup> Lozier *supra* at note 21.

<sup>28</sup> Thomas P. Ronan, "Bill in Albany Would Require Screening of Judiciary Aspirants," *New York Times*, January 30, 1970. See Assembly Bill No. 3195 (1970) by Mr. Hansen.

<sup>29</sup> *Id.*, Edward G. Smith, "Panel Is Sought to OK Judges," *Newsday*, January 30, 1970.

<sup>30</sup> Dick Zander, "Judicial Screening Favored," *Newsday*, January 31, 1970.

John Dunne from Nassau County declared, “This appears to be a highly desirable aid to choosing the best possible candidates for the Supreme Court.”<sup>31</sup> Nonetheless, State Senate Majority Leader Earl Brydges, withdrew his support of the mandatory screening bill and stated that he doubted it would pass the Senate.<sup>32</sup> Instead, he supported the use of advisory screening panels whose advice would be “highly respected” but not binding upon nominating conventions.<sup>33</sup>

In the absence of any chance that Speaker Duryea’s proposal would be acted on by the Senate, the Speaker’s own proposal was defeated in the Assembly by a vote of 79-64.<sup>34</sup> The State Senate then passed the advisory judicial screening bill supported by Senator Brydges by a vote of 33-23.<sup>35</sup> The Senate proposal was not taken up by the Assembly.

With the Legislature not supporting judicial screening,<sup>36</sup> any state judicial screening needed to be established by the Governor’s Office, and it would only extend to judges appointed by the Governor. Governor Hugh Carey in February of 1975 formally introduced the concept of judicial screening to the State.<sup>37</sup> He promulgated an Executive Order creating judicial nominating commissions to recommend “well qualified” candidates to the Governor for those judicial offices for which the Governor had the power of appointment.<sup>38</sup> Every successive Governor has utilized a variant of the system instituted by Governor Carey to provide for judicial nominating/screening commissions. Currently in place is Governor Cuomo’s Executive Order No. 15.<sup>39</sup>

That Order establishes a series of judicial screening commissions. These commissions are to recommend candidates for appointment who are highly qualified, and the governor is to select an appointee from the candidates recommended by the commissions. There is a state screening commission to screen candidates for the Court of Claims. There are four departmental judicial screening commissions that evaluate candidates for the Appellate Division and vacancies in the office of Supreme Court Justice. Finally, there are county judicial screening committees which recommend appointments “to the offices of Judge of the County Court, Judge of the Surrogate's Court, and Judge of the Family Court outside of the City of New York.”<sup>40</sup>

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<sup>31</sup> Smith, *supra* at note 29.

<sup>32</sup> Francis X. Clines, “State Judicial Reform Bill Hits a Snag,” *New York Times*, March 5, 1970.

<sup>33</sup> *Id.* Senate Bill No. 4621 (1970) by Mr. Brydges. Similar advisory screening bills introduced by Senator Brydges passed the Senate in both 1969 (S.4621) and in 1971 (S. 1899).

<sup>34</sup> William E. Farrell, “Judicial Reform Backed by Duryea Is Defeated,” *New York Times*, March 17, 1970; Robert Reno, “Duryea Court Bill Fails,” *Newsday*, March 17, 1970, “Duryea-Backed Bill to Reform Judicial Plan Fails in Albany,” *Schenectady Gazette*, March 17, 1970. Democratic opposition to the bill was based on the belief that the screening committees would likely have more Republican than Democratic members. At the conclusion of the legislative session, on April 19, 1970, when it was certain that the Senate would not act on the Duryea –supported bill, the Assembly repassed the legislation.

<sup>35</sup> Francis X. Clines, “Bill on Judiciary Gains in Albany,” *New York Times*, March 25, 1970.

<sup>36</sup> Even as of 1977, the *New York Times* could write, “Scores of proposals for restructuring the courts have been made only to meet defeat in the Legislature.” Tom Goldstein, Appointment of Judges Winning,” *New York Times*, November 9, 1977.

<sup>37</sup> Lozier, *supra* note 21 at 631. By his Executive Order No. 5, Governor Carey created a system of judicial nominating committees for his selections.

<sup>38</sup> 9 NYCRR §3.5 (February 21, 1975).

<sup>39</sup> 9 NYCRR §8.15.

<sup>40</sup> *Id.*

While the Legislature has not seen fit to require the use of judicial screening committees for elected judges, there is a judicial screening committee in legislation for selecting nominees to the Court of Appeals. In 1977, the Constitution was amended to make the positions of Judges on the Court of Appeals appointive rather than elected positions.<sup>41</sup> The Judges would be selected by the Governor, subject to the advice and consent of the Senate. The Governor's nominee would need to come from a list of candidates determined to be well qualified based on their "character, temperament, professional aptitude and experience"<sup>42</sup> by a newly created Commission on Judicial Nomination. The legislature was charged under the Constitution with the duty of providing for the organization and procedure of the Commission on Judicial Nomination.<sup>43</sup>

The Legislature in 1978 established the framework for the process of selecting judges of the Court of Appeals.<sup>44</sup> The Commission would submit to the Governor seven candidates for appointment to the position of Chief Judge and between three to five nominees for the position of Associate Judge.<sup>45</sup> In 1983, the maximum number of candidates to be recommended for Associate Judge was increased from five to seven.<sup>46</sup> The Commission has been in place now for 40 years and has screened all Court of Appeals judges from Chief Judge Lawrence Cooke in 1979 to Associate Judge Paul Feinman in 2017.

NYSBA continued its support for judicial screening in its review of the Feerick Commission report. Soon after the first Feerick Commission report was issued in 2003, NYSBA established the Special Committee on Court Structure and Judicial Selection chaired by former Court of Appeals Judge Richard D. Simons. The Special Committee supported the basic concept developed by the Feerick Commission for independent judicial evaluation qualifications commissions. In late June of 2004, the Special Committee voted in favor of the Feerick Commission recommendations subject to the need to further involve local bar associations in the screening process and the need to provide judicial candidates with a right to appeal from IJEQC determinations.

After the Chief Administrative Judge proposed rules in November of 2004 to establish IJEQCs, the Special Committee again supported the IJEQC screening process.<sup>47</sup> It also continued to press for a right to appeal determinations and the need to ensure that local bar associations played a meaningful role in the process.

The Executive Committee of the State Bar in 2004 largely supported the findings of the Special Committee. The Executive Committee recommended the adoption of the proposed IJEQC rules of the Chief Administrator of the Courts with the additional procedural safeguards. The Executive Committee desired more participation by local bar associations, a right of appeal by

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<sup>41</sup> "Amendment Victory Spurs Court Change," *New York Times*, November 10, 1977.

<sup>42</sup> NY Constitution, Article VI, §2.c.

<sup>43</sup> *Id.*

<sup>44</sup> L. 1978, ch. 156.

<sup>45</sup> See generally Sheila Rule, "Court Amendments Still Face a Hurdle," *New York Times*, March 30, 1978.

<sup>46</sup> L.1983, ch. 35.

<sup>47</sup> The Special Committee would have preferred making participation in the IJEQ process mandatory for all candidates.

candidates to contest a finding by the IJEQCs, the barring of sitting judges from serving on IJEQCs, and the mandatory evaluation of all candidates.<sup>48</sup>

## B. The Feerick Commission

Chief Judge Judith S. Kaye in April of 2003 formed the 29-member New York State Commission to Promote Public Confidence in Judicial Elections [Feerick Commission]<sup>49</sup> in order "to provide New York's courts with a blueprint for preserving the dignity of judicial elections and promoting meaningful voter participation, which will serve to reaffirm public trust in our judiciary."<sup>50</sup> Dean Feerick has noted that Chief Judge Kaye's specific instruction to him was, "Don't get hung up with appointive systems and changing the elective system and the idea of amending the New York State Constitution, because you know there's no support for that."<sup>51</sup> "Finding out what we could do to promote confidence in judicial elections was the task and assignment of our commission, a commission of twenty-nine citizens and judges—a lot of different backgrounds, from every part of the state."<sup>52</sup>

The Feerick Commission issued its first interim report in December 2003, a second in June 2004, and its third final Supplemental Report in February 2006. Chief Judge Kaye, in reviewing the body of work of the Feerick Commission, stated, "In their totality, these reports represent a body of work unprecedented in depth and quality. The Feerick Commission held statewide public hearings, conducted citizen focus groups, sponsored a public opinion poll and a survey of judges, met with political leaders, addressed bar and judicial groups, testified before legislative committees, and heard from numerous individuals in meetings and correspondence."<sup>53</sup> The Feerick Commission itself noted that it had held public hearings, conducted focus group meetings, sponsored a public opinion poll, conducted a survey of sitting judges, met with political leaders, addressed bar, judicial and civic groups, testified before the Senate Judiciary Committee and heard from many citizens in private meetings."<sup>54</sup> "The Commission also conducted extensive research on the history of judicial elections in New York State and elsewhere."<sup>55</sup>

The Feerick Commission determined to develop "an interdependent set of reforms to the current judicial election system."<sup>56</sup> It created an "integral model comprised of recommendations—on candidate selection, campaign conduct, campaign finance and voter education—meant to be instituted together."<sup>57</sup> In its first interim report issued on December 3, 2003, the Commission

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<sup>48</sup> New York State Bar Association, Minutes of Executive Committee, Conference Call Meeting December 16, 2004.

<sup>49</sup> John D. Feerick Esq., the former dean of Fordham Law School, served as the chair of the Commission.

<sup>50</sup> Press Release, New York State Unified Court System, *Commission to Foster Public Confidence in State's Elected Judges and the Electoral Process* (Apr. 16, 2003). See also James C. McKinley, Jr., "State Can't Afford to Let Court System Remain Inefficient, New York's Chief Judge Says," *New York Times*, January 4, 2003.

<sup>51</sup> John D. Feerick, "Why We Seek Reform," 34 *Fordham Urb. L.J.* 3, 4 (2007).

<sup>52</sup> *Id.* at 4.

<sup>53</sup> Judith S. Kaye, The State of the Judiciary 2006 [www.nycourts.gov/Admin/stateofjudiciary/soj2007.pdf](http://www.nycourts.gov/Admin/stateofjudiciary/soj2007.pdf) - 178k - 2007-02-26 [last viewed October 15, 2018].

<sup>54</sup> Final Report, *supra* at note 4.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

recommended “establishment of independent commissions to evaluate the qualifications of judicial candidates throughout the State; amendments to the Chief Administrator’s Rules Governing Judicial Conduct concerning campaign speech restrictions, disqualification and campaign expenditures; the creation of a campaign ethics and conduct center; the expansion of judicial campaign finance disclosure; and the establishment of a State-sponsored judicial election voter guide.”<sup>58</sup>

Specifically, as part of its candidate selection focus, the Feerick Commission recommended that the independent judicial election qualifications commissions should have the following jurisdiction and authority:

“Each judicial district should have a commission;

- The commission members should reflect the State’s great diversity;
- The commissions should actively recruit judicial candidates;
- The commissions should publish a list of all candidates found well qualified;
- The commissions should apply consistent and public criteria to all candidates;
- Member terms should be limited;
- Uniform rules should govern commission proceedings and its members’ conduct;
- The commissions should have the necessary resources to fulfill their functions; and
- The Chief Administrator’s Rules Governing Judicial Conduct should require all judicial candidates to participate in the IJEQCC process.”<sup>59</sup>

The June 2004 Report “provided more detail on the interim recommendations for State-sponsored independent judicial election qualifications commissions, for a State-sponsored judicial voter guide and an update on the Commission’s campaign finance disclosure recommendation. It also addressed issues of public financing, voter education, retention elections and the enforcement of the judicial conduct rules.”<sup>60</sup>

The June 2004 report recommended a 15-member independent judicial election qualification commission in each of New York’s judicial districts. The selections to the IJEQCs would be made by the Governor, the legislative leaders, the Chief Judge, the Presiding Justice of the applicable Appellate Division, the State Bar Association and four local bar associations.

Members would only serve a single three-year term. They would become re-eligible to serve on the panel after a one-year absence. Membership on the IJEQCs should reflect the state’s diversity in order to promote public confidence in the court system.

The IJEQCs would actively recruit judicial candidates, use uniform rules and consistent procedures, and apply a rigorous process to the judicial applicants. Two-thirds vote of a quorum of the IJEQC would be needed to find a candidate qualified. Finally, all candidates were to be

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<sup>58</sup> *Id.*

<sup>59</sup> Final Report *supra* note 4 at Appendix A. See also 2004 Report *supra* note 5 at 18-19.

<sup>60</sup> *Id.* A summary of the recommendations of the 2003 and 2004 Feerick Commission reports can be found in Appendix A of its Final Report.

required to participate in the IJEQC process, and the IJEQCs would publish a list of all the qualified candidates.<sup>61</sup>

The final 2006 report focused on the use of judicial nominating commissions as the means to nominate candidates to the Supreme Court. The report was issued one week after the federal district court decision in *Lopez Torres v. New York State Bd. of Elections*,<sup>62</sup> which found that the use of nominating commissions infringed the First Amendment rights of candidates for the Supreme Court. In that report, the Feerick Commission concluded that in the absence of public financing of judicial elections, the primary system – the assumed alternative to replace the convention system – was not superior to the convention system. Instead, the Commission proposed a series of reforms to the convention system to make it more open and equitable to potential candidates, including a reduction in the number of delegates to the judicial district convention; a minimum of two delegates to the convention from each assembly district; weighted voting, reducing the number of signatures required for nomination as a delegate or alternate delegate candidate to 250; and additional reforms designed to make the delegates to the nominating convention more independent.

While legislation was introduced to implement many of the Feerick Commission recommendations, these legislative proposals were largely unsuccessful. The State Assembly in 2004<sup>63</sup> and 2005<sup>64</sup> passed its “Judiciary Qualification Act,” introduced by Assembly Member Helene Weinstein which proposed many of the Feerick Commission’s recommendations including the establishment of mandatory judicial candidate screening panels. While the Senate in 2005 did hold a hearing on the independent screening of judges<sup>65</sup>, the Judiciary Qualification Act was not acted upon by the state Senate. Assemblywoman Weinstein’s “Judiciary Qualification Act” was not passed by the Assembly in 2006 or 2007.<sup>66</sup> Only enacted was a single bill in 2005, which implemented the Commission’s recommendation that all judicial candidates’ campaign finance disclosures be made available online in a timely, inexpensive and accessible format.<sup>67</sup>

### C. The Independent Judicial Election Qualification Commissions

Soon after the initial report by the Feerick Commission supported the introduction of independent judicial election qualification commissions, the leadership of New York’s state court system began to look at the process of establishing IJEQCs via court rule. On November 8, 2004, Chief Administrative Judge Jonathan Lippman released for public comment proposed rule changes based on the work of the Feerick Commission. These administrative efforts picked up momentum as the legislature failed to act on the IJEQC recommendation of the Feerick Commission.

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<sup>61</sup> 2004 Report, *supra* note 5 at 19-22.

<sup>62</sup> 411 F. Supp. 2d 212 (EDNY 2006) aff’d 462 F. 3<sup>rd</sup> 161 (2<sup>nd</sup> Cir 2006); rev’d 552 US 196 (2008).

<sup>63</sup> Assembly Bill No. 11456 (2004) by the Assembly Rules Committee at the request of Ms. Weinstein.

<sup>64</sup> Assembly Bill No. 7 (2005) by Ms. Weinstein.

<sup>65</sup> Matt Smith, *Associated Press*, “State Judge-Selection Process Scrutinized During Hearing,” March 9, 2005.

<sup>66</sup> See Assembly Bill No. 2897 (2007).

<sup>67</sup> L. 2005, ch. 406. That chapter applied to all political committees and not simply to those involved with judicial elections.

In 2006, the Court of Appeals approved rules establishing a statewide system of independent judicial qualification commissions and screening all candidates for elective judicial office. Chief Judge Kaye emphasized that “these commissions do not alter the current elective system but rather bolster it by providing credible, independent local bodies to evaluate the qualifications of judicial aspirants. The ratings issued by these panels will stand as assurance to the public that whoever ultimately appears on the ballot has been found qualified for judicial service.”<sup>68</sup>

In early 2007 Chief Judge Kaye and Chief Administrative Judge Lippman announced “the appointment of first-rate qualification commissions in every Judicial District of the State. These commissions, consisting of local lawyers and members of the public appointed by the Presiding Justices, the Chief Judge, and the State and local bar associations, will screen candidates for election beginning in April, so that the process can be complete before candidates have to go on the ballot. A published list of candidates found qualified will be provided to the media and made available in voter guides.”<sup>69</sup>

The IJEQCs were established by the rules of the Chief Administrator of the Courts, effective on February 14, 2006,<sup>70</sup> which created a new part 150 of the rules relating to the operations of independent judicial election qualifications commissions. The preamble to the substantive rule stated “It is essential to the effectiveness of an elected judiciary that well qualified candidates obtain judicial office. Yet the public frequently is unaware of the qualifications of candidates who run for judicial office, because the candidate-designation process often is not conducted in public view. The public will have greater confidence in the judicial election process if they know that those judicial candidates who appear on the ballot were screened by independent screening panels and found to possess the qualities necessary for effective judicial performance.”<sup>71</sup>

There would be a 15-member panel created for each judicial district. The judges would be screened for “public election to the Supreme Court, County Court, Surrogate's Court, Family Court, New York City Civil Court, District Courts and City Courts.”<sup>72</sup> The Chief Judge would select five of the members (two of whom would be non-lawyers). The Presiding Justice of the applicable Appellate Division would select five members (again with two of the members being non-lawyers). The State Bar Association would select one member, and four local bar associations, as designated by the Presiding Justice would name one member. The Chief Judge would select the chair of the panel.<sup>73</sup>

Initially, the IJEQCs standard for evaluation included “professional ability, character, independence and integrity; reputation for fairness and lack of bias; and temperament, including courtesy and patience.”<sup>74</sup> Over the years that standard was amended to include:

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<sup>68</sup> Judith S. Kaye, *The State of the Judiciary* 2006 5 (2006).

<sup>69</sup> Judith S. Kaye, *The State of the Judiciary* 2007 5 (2007)

<sup>70</sup> 2006-10 N.Y. St Reg. 101 (March 8, 2006).

<sup>71</sup> 22 NYCRR § 150.0.

<sup>72</sup> 22 NYCRR§150.1.

<sup>73</sup> 22 NYCRRR §150.2. See generally Rebecca Love Kourlis; Jordan M. Singer, *A Strategy for Judicial Performance Evaluation in New York*, 72 Alb. L. Rev. 655, 661- 664 (2009).

<sup>74</sup> New York State Register 28 N.Y. Reg. (March 8, 2006).

professional ability; character, independence and integrity; reputation for fairness and lack of bias; and temperament, including courtesy and patience. Candidates found highly qualified must be preeminent members of the legal profession in their community; have outstanding professional ability, work ethic, intellect, judgement and breadth of experience relevant to the office being sought; possess the highest reputation for honesty, integrity and good character, including the absence of any significant professional disciplinary record; and either demonstrate or exhibit the highest capacity for distinguished judicial temperament, including courtesy, patience, independence, impartiality and respect for all participants in the legal process.<sup>75</sup>

Initially, a two-thirds vote of a quorum was needed in order to find a candidate “Qualified” for judicial office.<sup>76</sup> Currently, there is an added category of “Highly Qualified.”<sup>77</sup> A majority vote of a quorum is now required to find a candidate “Qualified” for judicial office. A two-thirds majority of the quorum is needed to find a candidate to be “Highly Qualified.”<sup>78</sup>

Given the issues involving the court system’s authority to impose its procedures on candidates for elective office, the Chief Administrative Judge did not make participation in the IJEQC review process mandatory. Consequently, the failure to participate in the IJEQC process is not an ethical violation. Nothing “requires judges or candidates for elective judicial office to cooperate with the Part 150 Commissions. Absent such a mandate, there is no ethics violation should a judge or candidate for elective judicial office decline to engage in the Commissions’ evaluation process.”<sup>79</sup>

An appendix to Part 150 provides most of the procedures to be followed by the IJEQCs in the course of their reviews of candidates.<sup>80</sup> The procedures, when viewed in their totality, represent what should be regarded as a court operated vigorous process.

Whatever the good intentions of the founders of the IJEQC system, it should be clear that its evaluations have not received much public notice. While in the early days of the existence of the IJEQCs, there was some media scrutiny on the evaluations of the candidates, by now it is clear that the IJEQC evaluations are given minimal attention by the media.<sup>81</sup> Several Task Force members observed that almost no New Yorkers — including the majority of lawyers — are even aware of the existence of the IJEQCs, with the belief that nobody would know if and when the IJEQCs go out of existence.

While a noble experiment, there have been concerns that it is not working well and that it is not fulfilling the goals it was set out to fill. Too many candidates opt out because the process is seen too often as burdensome, duplicative and risky.

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<sup>75</sup> 22 NYCRR §150.5(b).

<sup>76</sup> State Register *supra* at note 70.

<sup>77</sup> See 22 NYCRR §150.10 Appendix A, Section 3.

<sup>78</sup> 22 NYCRR §150.5(c).

<sup>79</sup> Advisory Committee on Judicial Ethics, *Opinion 07-91*, June 7, 2007.

<sup>80</sup> 22 NYCRR §150.10.

<sup>81</sup> See Robert Magee, “The Trial, the Bench, the Net, and the First Amendment: The Possibilities of Reform in New York State Judicial Elections,” 25 *Touro L. Rev.* 1003, 1064 (2009) suggesting that the IJEQCs should play more of an educational role and less of an evaluative role.

Moreover, some have maintained that the Court system is not the right branch of government to be involved in the evaluation of its own elective officials. There is a philosophical issue as to whether that the courts are the right entity to run what is seen as a political process. No other jurisdiction handles judicial evaluation through the court system, and it can be argued that the IJEQCs are not an appropriate part of a court system.

In any event, it is certain the IJEQC system will come to an end in 2018. The Task Force was advised definitively that the IJEQCs would cease their work at the end of the 2018 calendar year. Despite high hopes, over the years of its operation, the IJEQC system has experienced limited participation by judicial candidates and dwindling publicity for its ratings. Accordingly, the current leadership of the State Courts has decided to discontinue the Part 150 Commissions as of December 31, 2018, and NYSBA pledged to undertake this Task Force to vet and build on statewide and local bar association initiatives already in place throughout the State and ensure robust evaluation of judicial candidates tailored to reflect local needs.

#### D. Judicial Evaluation by New York Bar Associations

##### 1. The Statewide Associations

###### (a) The New York State Bar Association

NYSBA has guidelines for evaluating the qualifications of certain judicial positions. There is a Committee to Review Judicial Nominations, which reviews candidates for the Court of Appeals, and, upon the request of the president of NYSBA, other federal and state appointive judicial candidates.

Candidates are evaluated on their “professional ability and experience, character, temperament, and the possession of the special qualities necessary or desirable for the performance of the duties of the office.” There are three rating categories, “Not Qualified,” “Qualified” and “Well Qualified.” The rating of “Well Qualified” is reserved for candidates who possess “preeminent qualifications.”

A subcommittee actively investigates each candidate. Determinations of the ratings are made by a concurrence of the lesser of two-thirds of the full membership of the committee or three-quarters of the committee members present. Voters must be present in person, and their votes are by secret ballot.

Candidates who are rated as “Not Qualified,” have a right of appeal. The appellate panel consists of the President and President-Elect of NYSBA and seven members of the Executive Committee. A vote to modify the finding of the Judicial Nominations committee also requires the concurrence of the lesser of two-thirds of the full membership of the appellate panel or three-quarters of the members of the appellate panel who are present. The entire work of the committee and the appellate panel is confidential.

(b) Women’s Bar Association of the State of New York [WBASNY]

Members of the judiciary/courts committee are appointed by the President from each chapter of WBASNY. There are currently 20 chapters. Each member serves a three-year term, and members can be reappointed for additional terms. There are very strict recusal provisions for committee members.

An investigative subcommittee is appointed for each candidate. The evaluation criteria are “experience,” “integrity,” “professional competence,” “judicial temperament” and “service to the law and contribution to the effective administration of justice and/or the community.”

There are three ratings plus a fourth additional discretionary rating. The three grades are “Approved,” “Approved as Highly Qualified,” and “Not Approved.” The discretionary grade is for “Commended” where the candidate has “demonstrated an outstanding sensitivity to issues of gender bias women, children and minorities.” For candidates who do not participate in the evaluation process, there are possible ratings of “Disapproved for Refusal to Participate” or “Not Rated for a Legitimate Purpose.”

The rating of “Approved” requires a majority vote, but a two-thirds vote is needed to achieve the “Approved as Highly Qualified” or a “Commended” rating.

The committee reports its findings to the President and the officers of WBASNY. By a two-thirds vote, the officers can either change the rating – if the committee decision was made by a margin of three or fewer votes - or disapprove the rating and return the evaluation to the committee for reconsideration. If the officers take no action to disapprove or change the rating, the committee’s report is deemed approved.

The proceedings are considered highly confidential.

2. The Association of the Bar of the City of New York [City Bar]

The City Bar, over a period of 150 years, dating to the era of the Tweed Ring, has developed detailed procedures to govern its judicial evaluation process. There is a standing Committee on the Judiciary composed of 50 members from across the City. Significant efforts are made to secure membership on the committee that reflects the geographic and other diversity of the City. Members serve a three-year term, and every year one-third of the committee rotates off. Once a member’s term expires, that member cannot be reappointed to the committee for at least a year.

A subcommittee is appointed to perform a detailed investigation of the qualifications of each candidate. The candidate completes a uniform judicial questionnaire, which is similar to the form that has been used by the IJEQCs. A member of the Judiciary Committee serves as the subcommittee’s Reporter and Chair. The Reporter “must prepare a report setting forth the results of the subcommittee’s investigation.”

The City Bar reviews the qualifications of all candidates for judicial office for courts based in New York City. The City Bar works cooperatively with all five county bar associations within New York City as part of its screening.

The full Judiciary Committee considers the report of the subcommittee and an interview with each candidate. In evaluating candidates for judicial office, the Committee on the Judiciary should determine whether the candidates have the following qualifications: “integrity, impartiality, intellectual ability, knowledge of the law, industriousness, and judicial demeanor and temperament.”

Candidates receive either a grade of “Approved or “Not Approved.” The “Approved” ratings are reserved for “candidates who have affirmatively demonstrated qualifications which are regarded by the committee to be necessary for the office for which they are being considered.”

Candidates who are found “Not Approved” may ask for a rehearing, which is subject to the “sole discretion” of the chair of the Judiciary Committee. “Not Approved” candidates may in prescribed circumstances, appeal the rating to the Executive Committee. In order to appeal, there must have been a requisite number of votes among voting members of the committee in support of finding the candidate “Approved.” The City Bar maintains strict rules requiring recusals and disqualifications from voting by judiciary committee members. “No members of the Judiciary Committee, or of the subcommittee investigating the candidate’s qualifications may make such a [campaign] contribution directly or indirectly, or participate actively in the campaign of any candidate for judicial or other office within the jurisdiction of this Committee.”

All of the work of the committee forming the basis of its rating determinations is confidential.

### 3. The Major Suburban and Urban County Bar Associations

#### (a) Albany County Bar Association

The Albany County Bar Association has a judiciary committee of 15 members selected by the Association president. Members serve three-year terms and may serve no more than two consecutive terms. “At least three new members shall be designated each year.” The Association strives for a diverse membership on the judiciary committee. No more than six members of the committee may be from the same political party.

The committee reviews Supreme Court candidates and candidates for countywide positions. It does not review Albany city court judges. The committee requires a completed written questionnaire and a personal interview. A minimum of nine committee members must “be present at the interviewing of and voting on any applicant.” There is no proxy voting.

There are 11 separate criteria for rating candidates. These criteria are very broad and include integrity, experience, professional ability, education, reputation and a host of other factors. The criteria are to “be given equal weight with no single factor being determinative or preclusive of any particular rating.” There are four grades for candidates. They are “Outstanding,” “Well Qualified,” “Qualified” and “Not Recommended.” An 80% vote of committee members is needed to achieve the “outstanding” rating. A 60% vote is required for “Well Qualified.” “Qualified” and “Not Recommended” ratings require a majority vote.

Individuals with “Not Recommended” ratings may appeal the rating to the Executive Committee of the Association. The Executive Committee determines whether the judiciary committee’s

“rating was erroneous in light of the evidence presented to it” and then determines what the candidate’s rating will be.

There is a conflict policy, and all proceedings are confidential.

#### (b) Broome County Bar Association

The Broome County Bar Association has a judicial candidate committee which is composed of 24 members serving three-year terms. The membership “should reflect the diversity of the membership” of the association.

There are term limits. A committee member may serve a maximum of six consecutive years or seven consecutive years if the member serves as an alternate member. Once the member is term limited, the member may not serve on the committee for two years.

The candidates are evaluated based on a set of 11 attributes. These are “competence,” “temperament,” “courteousness,” “dignity,” “diligence,” “fairness,” “freedom from prejudice,” “impartiality,” “integrity,” “promptness” and “ability and/or experience”

There are four authorized ratings: “Highly Qualified,” “Qualified,” “Not Qualified” and “Not Rated.” A two-thirds vote is needed to achieve the “Highly Qualified” rating. A majority vote is needed to achieve the “Qualified” rating. Failure to receive the “Qualified” rating marks the candidate as “Not Qualified.”

Any candidate who does not achieve a “Highly Qualified” rating can appeal the rating to the board. The board by majority vote may remand the decision to the committee for review. The board may also review the decision itself. The board by a majority vote can affirm the committee decision, set aside the committee decision if it finds by a majority vote that the initial decision was “arbitrary and capricious” or remand the decision to the committee.

The entire evaluation procedure is confidential.

#### (c) Erie County Bar Association

The Erie County Bar Association has a judiciary committee which is composed of 29 members. The board of directors of the association appoints the committee members. There are nine new members each year, and not more than 14 members may belong to the same political party. Fifteen members are needed for a quorum.

The candidates are rated on 11 separate benchmarks which include integrity, experience, professional ability, education, reputation, industry and temperament. There are four ratings: “Outstanding,” “Well Qualified,” “Qualified” and “Not Recommended.”

An 80% vote of the committee is needed for the “Outstanding” rating. A two-third’s vote is needed for “Well Qualified.” A majority vote is needed for “Qualified” and “Not Recommended.” A candidate who receives the “Not Recommended” rating may request reconsideration by the committee. The board’s procedures include a mechanism “whereby the applicant’s request for reconsideration is first presented to the committee, which will make

recommendations to the board in accordance with the board's procedures for reconsideration." The board will then make a final determination on the candidate.

A candidate can appeal a "Not Recommended" rating to the board of the Bar Association.

There are recusal and conflict-of-interest provisions, and the procedures are held in "strictest confidence."

#### (d) Monroe County Bar Association

The Monroe County Bar Association no longer screens judicial candidates. A longstanding feud between one of the political leaders and the bar association escalated to a point where more than a year ago, the association decided to end judicial screening.

#### (e) Nassau County Bar Association

The Nassau County Bar Association has extensive written rules governing its operations. Its Judiciary Committee consists of 21 members appointed by the President with the approval of the Board of Directors. No judicial or non-judicial employee of a court of record may be a member of the Committee.

Members are appointed in two classes, for two-year terms. There are term limits. These permit a maximum of three consecutive terms and no more than seven years in any nine-year period. Once the member reaches the term limit, there is a required two-year waiting period before the member can return to the Committee.

No more than ten members of the Committee may be enrolled in the same political party. Committee members are prohibited from serving as an officer or member of any campaign committee for any candidate for judicial office in New York State.

Committee members may not directly or indirectly contribute to, support, or participate in the campaign of any candidate for judicial office in New York State.

13 members of the Committee constitute a quorum. All actions of the Committee are taken by a majority of the members present and voting. All proceedings are confidential.

A secret ballot is taken to determine by majority vote, of those present and voting, whether the candidate is "Well Qualified" or "Not Approved at This Time." No matter how many committee members are present, at least seven affirmative votes are required for the "Well Qualified" rating.

Criteria are whether or not (1) the person has established a reputation for good character and temperament, (2) the person has a sufficient degree of professional experience, scholarship and ability to perform the duties of the office for which the person is being considered, (3) whether the conduct of such person has been above reproach, (4) whether such person is known as a conscientious, studious, thorough, courteous, patient, punctual, just and unbiased person who can be counted upon to be fearless and truthful when subject to public and/or political pressure,

(5) whether such person is of good moral character and (6) whether such person is emotionally, cognitively and physically able, with any reasonable accommodations, to fulfill the duties of the office for which the person is being considered.

Any person found “Not Approved at this Time” may request reconsideration by the Committee. The reconsideration is de novo.

Candidates dissatisfied with the results can appeal to the Board of Directors and be heard in executive session. The Board of Directors’ review is treated as an appellate review, not a de novo review. The Board of Directors’ decision is either “Well Qualified” or “Not Approved at This Time.” Decisions contrary to that of the Committee require the support of a two-thirds vote of the Directors present and voting.

#### (f) Oneida County Bar Association

The Oneida County Bar Association has a 13-person judiciary committee. The committee makes a recommendation to the board of directors. The committee members have one-year terms and are limited to a maximum of six consecutive years.

There are four ratings: “Highly Qualified,” “Qualified,” “Not Qualified,” and “No Rating” for candidates who fail to cooperate. The recommendations are made by majority vote.

#### (g) Onondaga County Bar Association

The Onondaga County Bar Association has a 39-person judiciary committee which is elected by the Board of Directors of the association. “In so far as possible, the membership of the committee shall be representative of the bar association as a whole.” The committee makes its recommendations on candidates to the board of directors. A three-person subcommittee performs the investigation. The committee members serve one-year terms. Twenty committee members in person are required for a quorum on voting on the qualifications of candidates.

There are two grades for candidates: “Recommended as Qualified” and “Not Recommended.” A two-thirds vote is required to achieve the “Recommended as Qualified” rating. If a candidate scores less than the two-thirds vote, that candidate is “Not Recommended.” The criteria for rating candidates are: “competence, courteousness, dignity, diligence, fairness, freedom from prejudice, impartiality, integrity, promptness and temperament.”

There are disqualification rules, and candidates rated “Not Recommended” may appeal to the directors of the board of the Bar Association. The board can only reverse the recommendation of the committee by a two-thirds vote. On appeal, a candidate and/or a representative may appear before the board.

The entire process is confidential.

(h) Suffolk County Bar Association

The Suffolk County Bar Association has a Judicial Screening Committee consisting of 25 members, five of whom are designated from the Suffolk County Criminal Bar Association. Terms are three years, and the terms are staggered. All are appointed by the Association President subject to the approval of the Board of Directors. Committee members may not be members of the Executive Committee of a political party during their Committee tenure. In addition, the Committee is specifically directed to “discourage political considerations from outweighing fitness in the election or appointment of candidates for judicial office.”

Officers or Directors of the bar association may not represent a candidate before the Committee with regard to qualifications while in office or for a period of three years thereafter.

All candidates are “required to complete a questionnaire, the form and content of which shall be proposed by the Committee” and to submit to an interview. The Committee can dispense with the questionnaire and interview of a candidate interviewed by the Committee during a previous one- year period.

The burden is upon the candidate to affirmatively establish qualifications for the office sought. “No candidate shall be presumed to be qualified for office.” Candidates may request disqualification of any member of the Committee. The Chair determines whether prejudice or other good cause exists for disqualification.

The Committee considers, and votes by secret ballot separately as to each of the following criteria: Temperament, Character and Integrity, Legal Scholarship and Professional Ability and Reputation. The rules for the Committee establish definitions for each of the criteria.

After these initial deliberations are completed, the Committee first votes by secret ballot as to the issue of “character and integrity.” The Committee member either votes that the candidate is: (1) “Qualified” or (2) “Not Approved at This Time.”

Each ballot cast for “Not Approved at This Time” must include the Committee member’s statement about the reasons for his/her vote.

A two-thirds vote is required for a finding of “Qualified,” which means the candidate possesses affirmative qualities with respect to candor, impartiality and respect for and adherence to ethical standards and conduct.

If the candidate fails to receive the two-thirds vote, on the character and integrity criterion (known as a “passing vote”), the candidate is found “Not Approved at This Time” for the office under consideration.

The Committee members then vote on the remaining three criteria. If the candidate receives a majority vote in his or her favor on the other three criteria (and has achieved the two-thirds vote on the “character and integrity” criterion), then the candidate is found “Qualified” by the Committee.

There is a limited right to a rehearing based on “good cause.” At least one-third of the Committee members who made the “Not Approved” finding must agree to a rehearing.

Adverse committee determinations may be appealed to the Board of Directors. The committee’s decision is given “substantial deference” and can only be reversed if the Board finds that the committee decision was arbitrary, capricious or irrational by clear and convincing evidence.

The proceedings are confidential.

(i) Westchester County Bar Association

The Westchester Bar Association has a Judiciary Committee which meets prior to each annual election to interview candidates who have completed an extensive questionnaire. The Committee reviews the qualifications of the candidates, reviews state records concerning the ethics and judicial conduct of the candidates and conducts in-person interviews.

The Executive Committee of the Bar Association needs to confirm the recommendations of the Judiciary Committee.

The Judiciary Committee has six ratings. These are “Exceptionally Well Qualified,” “Well Qualified,” “Qualified,” “Meets Minimum Requirements,” “Not Qualified,” and “Not Qualified by Failure to Appear.” Where a candidate fails to appear for the interview, that candidate is rated either “Not Qualified” or “Not Qualified by Failure to Appear.”

4. Smaller, Affinity and Specialty Bar Associations

(a) Central New York Women’s Bar Association (based in Syracuse)

The Central New York Women’s Bar Association has a judiciary committee with a minimum of 12 members who serve three-year terms.

There are four rating categories: “Commended,” “Qualified,” “Not Qualified” and “Not Rated.” Candidates are graded on seven separate factors. These are “judicial temperament,” “legal ability and experience,” “legal writing ability,” “general reputation,” “industriousness,” “impartiality” and “attitudes towards gender neutrality and sensitivity to gender issues.” In order to achieve the “Commended” status, the candidate must score well in the first six categories and especially well in the “attitude towards gender neutrality” category.

Three-fourths of the judiciary committee must be present at the interviewing and voting on each candidate. A majority vote determines the rating to be given each candidate.

The full board of directors can request the judiciary committee to reconsider its decision. Candidates given the “Not Qualified” rating may appeal the decision. The appeal is heard by five Board members appointed by the Board of Directors.

The procedures are confidential.

(b) Greater Rochester Association for Women Attorneys

The Greater Rochester Association for Women Attorneys has a judiciary committee composed of a minimum of 15 members who serve two-year terms. Members can serve past their initial term, and it is recommended that not more than half the members rotate off at one time. The committee strives for an even balance between “political parties, large firms/small firms, public sector representation, and litigators as well as non-litigators.”

The Association has extensive conflict of interest provisions for committee members.

The criteria for evaluating candidates include five explicit categories. These are “experience,” “integrity,” “professional competence,” “judicial temperament,” and “service to the law and contribution to the effective administration of justice and/or the community.” These are the same criteria used by the WBASNY.

There are five rankings. Candidates can be judged “Exceptionally Well Qualified,” “Well Qualified,” “Qualified” or “Not Qualified.” Candidates who reach the rating of “Qualified” or better can receive the additional rating of “Commended” if they demonstrate “outstanding sensitivity to issues of women, minorities and bias.”

“Qualified” and “Well Qualified” candidates need a majority of members voting. “Exceptionally Well Qualified” candidates need a three-quarters vote. To achieve the “Commended” rating, the successful candidate needs a three-quarters vote plus one additional vote. The judiciary committee formally makes a recommendation to the board of directors. The board by a majority vote will either accept the rating or remand the rating to the judiciary committee.

A candidate who receives a “Not Qualified” rating may appeal the rating to the board where it is heard by a five-member appeals panel. The appeals panel determined whether the committee’s rating “was erroneous in light of the evidence presented to it.”

The entire evaluation procedure is confidential.

(c) Oswego County Bar Association

The Oswego County Bar Association has a nine-member judicial screening committee. Membership on the screening committee is intended to be representative of the membership of the Bar Association. Members on the committee serve one-year terms.

The candidates are judged on the following criteria: competence, courteousness, dignity, diligence, fairness, freedom from prejudice, impartiality, integrity, promptness and temperament.

There are only two ratings given candidates: “Recommended as Qualified” and “Not Qualified.” The vote is a majority vote. The committee vote is a recommendation to the full Bar Association. Candidates who have received a “Not Qualified” grade can appeal the recommendation.

The review procedures are confidential.

#### (d) Ulster County Bar Association

The Ulster County Bar Association may create evaluation committees composed of 6-10 members “to pass upon the qualifications of candidates for election or appointment.” The committee is chaired by the first vice president of the bar association. The committee members are “solicited annually from the members of the Ulster County Bar Association” and must be admitted to practice law for at least eight years.

The evaluation committees review each candidate’s credentials and assign ratings of “Highly Qualified,” “Qualified” and “Not Qualified” to candidates. The ratings are determined by majority vote. A “committee may also compose a brief paragraph or list of strong points, areas in need of improvement and general comments about each candidate.”

The evaluation committee will not publicize a “Not Qualified” rating if the candidate, within three business days, agrees to withdraw from consideration for the office.

#### E. Evaluation Systems Employed by Other States

Upon the request of the Task Force, the National Center for State Courts provided information on how judicial screening is implemented or carried out in other states. The data comes from states where judicial screening is mandated either by the state’s laws or constitution. The 15 states are Alaska, Arizona, Colorado, Connecticut, Hawaii, Iowa, Kansas, Missouri, Nebraska, New Mexico, Rhode Island, South Carolina, Utah, Vermont and Wyoming. In these states, the screening is typically done for appointive – rather than for elective – judiciary positions.

As a general rule, these states in their screening for trial court judge follow what they term the “classic” structure, which was advocated by the American Judicature Society and the American Bar Association. This “classic” structure involves a 3-3-1 composition mix where there are three bar members selected by the leadership of the state bar, three non-attorneys selected by the governor or other elected officials, and one judge of a higher court who often serves as the chair of the committee. In some states, selections of the governor for the screening commission are frequently subject to a form of legislative confirmation. For example, in Alaska, three non-attorney members of the judicial council are selected by the governor, subject to confirmation by the full legislature, three are selected by the state bar, and the seventh member is the chief justice of the supreme court, who also serves as the chair of the council.<sup>82</sup>

For circuit court judges in Missouri, there is a circuit court judicial commission. It consists of five members. One is the chief judge of the intermediate appellate court for the district. Two are selected by the members of the state bar in the district, and two non-lawyers are selected by the governor.<sup>83</sup>

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<sup>82</sup> AK Const. Art. 4, § 8. A similar 3-3-1 commission is in place in Wyoming, WY CONST Art. 5, § 4.(c). For the trial court nominating commission in Utah, the governor appoints all six members, but two are from nominations submitted by the state bar. The chief justice appoints an ex officio non-voting member. Only a maximum of four members can be attorneys. UT ST § 78A-10-302.

<sup>83</sup> V.A.M.S. Const. Art. 5, § 25(d).

In other states, the leadership of the legislative body is involved in the selection of the screening commission. For example, in Connecticut, the judicial selection commission is composed of 12 individuals, all selected by elected officials. The governor selects six members, half of whom are non-lawyers. Individual legislative leaders pick one each, and the law specifies whether they are to select lawyers. Not more than six members can belong to the same party.<sup>84</sup>

In Vermont, there is a judicial nominating board which nominates supreme court judges, superior court judges and magistrates. It is an 11-member board. Attorneys admitted to practice before the supreme court select three members. The House and the Senate select three members each, and the governor selects two members. The board appointments are structured in a way that non-lawyers will constitute a majority of the board.<sup>85</sup>

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<sup>84</sup> C.G.S.A. § 51-44a.

<sup>85</sup> VT ST T. 4 § 601.

## **IV Analyzing Judicial Screening in New York State**

In addition to the screening done by the IJEQCs, there is a considerable amount of judicial screening taking place in New York State. The local, affinity and specialty bar associations throughout the state have taken it on themselves to screen judicial candidates.

The framework for judicial screening is basically similar throughout the bar associations. The association appoints a committee – typically a judiciary committee – which reviews the written submissions and interviews judicial candidates. The committee then votes on the qualification of the candidates, and candidates found to be unqualified are generally entitled to ask the committee for reconsideration and/or appeal the committee’s decision to the executive body of the bar association.

Yet, within this basic framework of candidate review, there are myriad issues and considerations. No bar association handles the candidate screening process in the same manner. The differences among the practices of the bar associations are considerable. There are no minimum basic standards. There are no best practices. Each bar association does as it sees fit.

This critique is not in any way meant to imply or suggest that the bar associations are performing their screening in a less than satisfactory manner. In fact, the evidence is to the contrary. The bar associations that are doing judicial screening are, by and large, providing excellent work in their screening. The bar association members are volunteering enormous amounts of time to improve the judicial process. They should only be commended for their time, efforts, patience and services. The screening systems work because of the dedication of the members of the local bar associations.

Yet the differences among the bar association practices and policies are significant, and they largely define any analysis of the judicial screening process in New York.

### **A. Different Regional Approaches Throughout the State**

The Task Force believes that in some areas of the State, the systems that are in place are operating effectively. Not surprisingly, the performance of the bar associations often depends on the resources that they can bring to the process. In New York City, the City Bar – working with the five county bar associations in the City – devotes significant time and resources to the process. The City Bar has a system in place that works to promote the highest standards of the judiciary. The system is working well within New York City. The traditionally competitive bar associations have joined together collaboratively to establish an effective evaluation system.

Outside the City of New York, the workings of the judicial evaluation systems vary. The fact is that the evaluation process in New York City while highly admirable, is not replicable outside New York City. Yet in many of the suburban and upstate urban counties, the existing screening processes are efficacious.

On Long Island, in the 10<sup>th</sup> Judicial District, both the Nassau County Bar Association and the Suffolk County Bar Association maintain vibrant judicial evaluation systems that are working effectively. In many of the upstate urban counties, (which would include Albany, Broome, Erie,

Oneida and Onondaga counties) the county bar associations are working forcefully and are employing evaluation systems that serve the public and the judiciary well.

Nonetheless, there are 35 counties in upstate New York with a population of less than 100,000. 15 counties have populations below 50,000, with less than 5,000 in Hamilton County. The county bar associations in these 35 counties have limited financial resources. There are only a few elected judicial positions in counties with small populations. They have a limited pool of attorneys, and these factors virtually preclude the possibility or even the potential for any meaningful judicial screening. Screening works in some upstate areas but not in all areas.

#### B. Different Standards Throughout the State

The bar associations have implemented different sets of procedures and standards in their assessment of candidates. The procedures and standards that differ throughout the state include the following:

- Who selects the judiciary panel? Is it the president or the board of directors of the bar association?
- Do the members of the judiciary panel serve fixed terms? Are there term limits for the members? Are the terms of the members staggered? Is there a cooling-off period during which panel members who have been term-limited may not rejoin the panel?
- Is there a questionnaire requirement, and how does it differ from the IJEQC questionnaire or the City Bar's questionnaire?
- Who casts the binding votes on the candidate rating qualifications? Is it the judiciary panel, or does the governing body of the bar association review what are essentially advisory recommendations of the judiciary committee?
- Is there an in-depth investigation of judicial candidates? Is it undertaken by a subcommittee of the judiciary panel or by a single member of the panel?
- Is diversity in membership a stated goal for the judiciary panel? Is the diversity goal to establish a panel that is representative of bar association membership or, should it be representative of the demographics of the area served by the bar association?
- Are non-lawyers permitted to serve on a judiciary panel?
- Is there a secret ballot at the meeting where the candidates are rated? Is proxy voting authorized, and is there a need to be physically present at a meeting in order to vote? Can a panelist utilizing a phone or other form of electronic communication be deemed present?
- Must a panel member participate in screening of all candidates for a particular office in order for that panelist to participate in rating candidates for that particular office?
- What is the quorum requirement for meetings of the judiciary panel?
- What should the conflict policy be for members of the judiciary panel? Must they recuse for political contributions to a candidate? Prior legal association with the candidate or the candidate's firm? Previous work with the candidate on that candidate's election campaigns? Previous business relationship with the candidate? Can public officials

(including judges) or party officials be part of a judiciary panel? Can a written conflicts policy be effective?

- What are the criteria to be used for the ratings of judicial candidates? The survey of the bar associations showed up to 11 criteria in regular use by the bar associations. How does a bar association determine which criteria to use, and is there much of a difference between the individual criteria? For example, the IJEQCs utilize six separate criteria: “professional ability; character, independence and integrity; reputation for fairness and lack of bias; and temperament, including courtesy and patience.” Is integrity, however, different than independence? Is character different than integrity? Is patience different than temperament? There reaches a point where adding additional attributes to judicial qualities may simply be gilding the lily. Can there be an excess of judicial criteria?
- Should there be negative criteria which the panel should be precluded from utilizing? For example, the judicial screening committees established by the Governor are precluded from giving “any consideration to the age, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status or political party affiliation of the candidate.”
- How many grades can a panel give to a candidate? While in some associations, candidates receive only two possible grades and can be rated as either as “Approved/Qualified,” or “Not Approved/Qualified,” other bar associations use from three to six grades. In a three-grade system, there is often the added grade of “Highly Approved/Qualified.” Some associations give a separate grade to candidates who are not rated because they refused to participate in the process. Some associations add a “Commended” category to demonstrate that candidate’s sensitivity to issues that are particularly important and relevant to that bar association. For example, the Greater Rochester Association for Women Attorneys ranks candidates as “Exceptionally Well Qualified,” “Well Qualified,” “Qualified” or “Not Qualified.” Candidates ranked “Qualified” or higher can receive the additional rating of “Commended.”
- Should candidates be graded either as “Approved” or “Qualified?”
- Is there a majority or a super-majority requirement for certain candidate grades?
- Will the judiciary panel evaluate a candidate who does not appear for evaluation?
- Are rehearings authorized? Who decides on the rehearing, the judiciary panel, the chair of the judiciary committee, or the full executive board? Do you need a certain number of dissenters from a rating to authorize a rehearing? If there is a rehearing, is the original rating decision entitled to respect, or is there a de novo review of the original rating?
- Can a candidate deemed unqualified withdraw before a report is made public?
- Who can appeal the rating? Is the appeal authorized for anyone who did not receive the top rating (i.e., candidates who received an “Approved/Qualified” rating in an association that utilized the “Highly Approved/Qualified” rating) or only for individuals found “Not Approved/Qualified?” Who hears the appeal: the full executive board or a committee of the board? Is the appellant entitled to representation at the meeting of the appeals board? What respect is given to the original decision of the judiciary panel? Can new evidence that was not before the judiciary panel be submitted by the appellant? Can the appeals

body remand the decision back to the judiciary panel for its decision, or must the appeals board make the decision itself?

- In associations where the board makes the actual decisions based on recommendations by the judiciary panel, can the judiciary panel recommendation be changed by a majority vote or is there a need for a super-majority vote to change a recommendation? In these associations, is the board limited to reviewing “Not Approved/Qualified” applications, or could a board change a rating from “Approved/Qualified” to “Highly Approved/Qualified?”
- At what point in time during the political process should the judiciary committee issue its ratings?
- For what period of time is a candidate rating valid? Should it be for one year or a period of time greater than one year? Should the rating only apply to the position for which the candidate was initially evaluated?
- Are the reasons for the decision made public? Is the reasoning supporting the decision made available to the candidates? If a candidate is appealing an adverse panel decision, is the basis for the panel’s decision disclosed to the candidate in order to assist that candidate with the appeal? Should the judiciary panel provide feedback to the candidates? Should it provide detailed feedback on judicial performance?
- How much of the process is confidential?
- How is the public advised of the ratings?
- How is the public advised of candidates who refused to participate in the screening process?

### C. The Role of the Political Parties

No analysis of the judicial selection system can ignore the fact that it is largely part and parcel of the political process. Political party leadership has the decisive say in who becomes an elected judge in New York State. This is a veritable fact of life.

The relationship between political party leadership and the bar associations involved in screening judges varies across the state. Some political leaders cooperate with bar associations. Others do not. Some political leaders are openly antagonistic to the work of the bar associations.

Members of the Task Force generally understood that when push came to shove, the political leaders would make decisions in their own interest and not consistent with the interests of the evaluation systems of the bar associations.

The November 2018 Supreme Court elections in New York State help to illustrate the reach of the political leadership. In the 11 judicial districts where more than one candidate was running for a judgeship, the dominant party in the district won 49 of the 50 contests. The dominant party’s candidates were often unopposed or ran with cross-endorsements from other parties. Few

of the contested elections were remotely close.<sup>86</sup> Judicial elections inhabit a political world; the bar associations find themselves in supporting roles.

The Task Force members understand the reality of the role of the political parties in judicial elections. The intention of the Task Force is to develop best practices that will garner the support of the political leaders and make them part of a system that legitimately evaluates the qualifications of all candidates seeking elective judicial office.

#### D. The Multiplicity of Bar Associations

The Task Force is encouraged by the fact that numerous local, affinity and specialty bar associations are engaged in the process of screening judicial candidates. That is the proper role of bar associations and what they should be doing. The Task Force believes that the process of judicial candidate evaluation will only be enhanced by the active involvement of more bar associations.

The primary concern of the Task Force is that the active participation of so many bar associations does not overburden judicial candidates. It should not in any way serve to deter qualified candidates from seeking judicial office.

The Task Force encourages bar associations in their respective judicial districts to use the same basic judicial questionnaire and to coordinate their activities with other bar associations to make the review process less onerous for candidates for the judiciary.

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<sup>86</sup> In the one exception in 2018, the winning candidate from the non-dominant party had endorsements from two minor parties. The one dominant party candidate who lost the election lacked the endorsement of the two minor parties.

## V Recommendations and Conclusions

### A. General Recommendations

The Task Force's review of judicial screening systems in New York State found that the discontinuation of the independent judicial election qualification commissions will leave a significant vacuum in the evaluation of elected judicial candidates in some areas of New York State. Whether or not the IJEQCs ever were able to succeed in their mission of ensuring New York voters of a well-qualified judiciary, the absence of any formalized statewide review of judicial candidates will leave New Yorkers in some areas of the state in a weaker position to judge the merits of judicial candidates. If the Task Force is to be successful in its mission of "developing effective non-partisan evaluation and screening of candidates for election to judicial office and improving those efforts that already exist," it is vital to help effectuate systems that will truly foster the best judiciary possible.

The Task Force understands that its goals are to develop recommendations, best practices and guidelines that are effective, practical and politically achievable. It does little good to recommend a utopian judicial evaluation system for New York State that cannot realistically be accomplished. New Yorkers deserve a system that can be put in place in 2019.

To that end, the Task Force in its review of the current bar association practices has postulated a number of core precepts. The Task Force's recommendations in no manner depart from the NYSBA's longstanding commitment to the merit selection of judges in New York State.

Rather, the Task Force's belief is that in 2019, the State Bar Association needs to address and to recommend actions to assure that candidates for election to the judiciary in New York State are effectively screened to determine their qualifications.

The systems in place by local bar associations vary from county to county. County, affinity and specialty bar associations have their own evaluation systems. Some local bar associations have a significant number of members and resources, and do an extensive, complete and non-partisan job in evaluating judicial candidates. Other bar associations – especially outside the City of New York – lack this capacity. In some counties, the bar association screening processes are active, robust and efficacious. In others, there is minimal screening.

The Task Force believes that the one-size-fits-all approach to determining the composition of judicial screening panels will not work for New York State. The State and the local bar associations are extremely diverse, and the methods for selecting judges in this state are extraordinarily complex. What works in Soho may not work in Schenectady or Skaneateles. What works in Garden City may not work in Gowanda. The Task Force is not trying to impose a single judicial evaluation structure on the entire state. A top-down one-sized approach providing a statewide uniform structure is likely to be a recipe for failure.

Where the existing bar association reviews are effective, the Task Force recommends their continuation. It is simple. It is not rocket science. Where the screening system is not broken, the Task Force sees no reason to fix it.

The simpler the evaluation system, the easier it will be to implement. There are dozens of judicial screening review processes in place throughout New York State. The culture, the assets, the procedures and the mechanics of local bar associations vary tremendously. The simpler and more uniform we make the process, the more likely the process will be successful. The Task Force accordingly has developed a series of best practices that should help guide local bar associations in their role in evaluating candidates for judicial office. The Task Force believes that the adoption of these practical guidelines will help to assure a high-quality judiciary for New York State.

The Task Force believes that in some areas of the State, the systems that are in place are operating effectively. They should not be changed. As the Task Force noted previously, this is the case in New York City where the City Bar— working with the five county bar associations within the City – has a vigorous and successful system in place that works to promote the highest standards of the judiciary. There is strong participation by the judicial candidates, and even the candidates are generally satisfied with the workings of the evaluation system.

On Long Island, in the 10<sup>th</sup> Judicial District, both the Nassau County Bar Association and the Suffolk County Bar Association maintain vibrant judicial evaluation systems that are working effectively. In many of the upstate urban counties, the county bar associations are working forcefully and are employing evaluation systems that serve the public and the judiciary well. The Task Force believes that these bar associations should be encouraged to continue their efforts.

In reviewing the work of the local bar associations, there are effective judicial evaluation systems in place in ten of the 11 most populous counties in New York State. Nearly three-quarters of the state’s population is currently being well served by the work of the local bar associations.

Nonetheless, there are some judicial districts (such as the 7<sup>th</sup> Judicial District, which encompasses Monroe County and seven smaller counties) where there is almost no judicial screening whatsoever.<sup>87</sup> There are many small counties in other districts (such as Hamilton County in the 4<sup>th</sup> District and Lewis County in the 5<sup>th</sup> District) where the size of the county and the absence of a significant body of resident attorneys in the county virtually preclude the possibility or even the potential for any meaningful judicial screening. Moreover, there are very few elected, judicial positions in small population counties. For example, Lewis County has no city court judges and only one county-wide judge elected once every ten years, i.e., a “three hat judge” (Surrogate/County Court/Family Court Judge).

The Task Force believes that increased judicial screening needs to be encouraged throughout the state. The State Bar should not allow the systematic screening currently performed by the

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<sup>87</sup> Monroe County, the ninth largest county in the state with a population of approximately 750,000, is the largest county where the county bar association does not conduct judicial screening. See [https://www.newyork-demographics.com/counties\\_by\\_population](https://www.newyork-demographics.com/counties_by_population) [last viewed November 26, 2018].

IJEQs to fall through the upstate cracks. Screening ought to be available for all judicial candidates. In order to assist those judicial districts with limited screening, the Task Force recommends that the State Bar work with all local bar associations in those districts to establish regional screening committees in 2019. Underwriting support for this initiative should come from the Office of Court Administration which has funded and staffed the IJEQs.

These regional screening panels should have broad representation from counties in the judicial district. The State Bar must take appropriate action to continue non-partisan evaluation and screening of candidates for election to judicial office. This should include the establishment of a State Bar working group to help implement the availability of screening panels throughout the state and the creation of resource guides as well as web pages to assist bar associations on the subject of judicial screening. The Task Force believes that it would be valuable to include local officials and representatives of local bar associations in any working group.

Again, while a uniform system will not work for every district in New York, the State Bar needs to join forces with local bar associations to create regional systems that will work to improve and ensure the overall quality of the state's judiciary.

#### B. Best Practices for Bar Association Evaluation Committees

The qualities of a jurist do not know any geographical boundaries. Therefore, the judicial screening systems in place in the state ought to –as much as possible – be using the same procedures in order to properly evaluate candidates. This is part of the mandate of the Task Force. Our mission statement requires that “the task force will propose best practices, guidelines and minimum standards for review of such judicial candidates.” Given the overwhelming number of potential issues involved in creating and maintaining a judicial screening system, the Task Force focused on the most important elements of a “best practices” program. The Task Force believes that the establishment of best practices will help to improve the judiciary and make the evaluation process simpler for both the candidates and those charged with evaluating the candidates.

The determination of “best practices” was not an easy task for the Task Force. Some members of the Task Force believed that the overall goal of an independent and well-accomplished judiciary would be better served by the establishment of what might be termed “apple pie” minimum standards for rating judicial candidates rather than the use of “best practices.” Many also believed that in reviewing the individual best practice benchmarks, the use of minimum standards — rather than the mandating of detailed criteria — could prove helpful to local bar associations in achieving these “best practice” benchmarks.<sup>88</sup> While the Task Force was able to come to quick agreement on many of the best practice benchmarks, a number of these measures were subject to significant debate.

The Task Force members also wanted to assure bar associations that in no manner was there a belief that the “best practices” would serve as mandates. Local bar associations have their own

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<sup>88</sup> For example, instead of providing in detail all the conflict of interest standards that would be appropriate for members of a judiciary committee, it might be preferable and simpler to suggest that judiciary committees establish certain basic conflict standards.

customs and their own history. They may have limited resources. As a rule, they are the best judges of what evaluation procedures work best in their communities. Rather, the “best practices” are designed to provide direction and a course to set for the future of judicial screening.

### 1. Judiciary Committee

The bar association should establish a separate judiciary committee which would be charged with the duty of investigating and evaluating candidates for judgeships. The members of the judiciary committee should be appointed either by the board of directors or the executive committee of the bar association or by the president of the association. The committee should be constituted in a manner to avoid the appearance of any political partisanship or domination. The determinations of the judiciary committee should stand on their own as independent valid decisions and should not merely be considered as recommendations to the governing board of the bar association.<sup>89</sup>

### 2. Terms of Committee Members

The Task Force would encourage and recommend as a best practice that judiciary committees consider and establish term limits for members of the committee to ensure members with diverse perspectives and opinions. The Task Force believed that it was a worthy goal to have a blend of both experienced and new members on the judiciary committee. To that end, the Task Force’s position is that: (a) members of the judiciary committee should serve specific terms,<sup>90</sup> (b) the terms of members should be staggered and (c) members should be term limited. The members who are term-limited should be obliged to wait a minimum period of time (likely a year) before being able to rejoin the judiciary committee. In selecting committee members, bar associations should take into consideration different practice areas, and seek to have committee membership which is representative of the population of the State and the local region.

### 3. Questionnaire

The Task Force believed that the questionnaire used by the City Bar to evaluate candidates should be used as a suggested model for other bar associations in conducting evaluations. The City Bar questionnaire is comprehensive but not overtaxing. Bar associations that believe that questionnaire to be unduly burdensome would be free to omit some of the City Bar questions, or adopt questionnaires more suitable to their needs and procedures.<sup>91</sup> The use of a single questionnaire in each respective judicial district would prevent candidates for judicial office from being subject to the potentially superfluous filing of multitudinous forms.

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<sup>89</sup> A discussion was held by the Task Force on the question of whether it might be preferable if the governing board of the bar association actually issued the rating to candidates based upon the recommendation of the judiciary committee.

<sup>90</sup> The Task Force, having reviewed information gathered from various bar associations, found that the length of the term of judiciary committee members varies, but many have terms lasting approximately three years.

<sup>91</sup> Some of the questions on the questionnaire may raise complex issues that are beyond the scope of this report, including questions concerning the mental and physical health of applicants.

#### 4. Investigations and Meetings

The members of the judiciary committee, or a subcommittee of the judiciary committee, would conduct investigations of the candidates for the judiciary. The results of these investigations would be reported at a meeting of the judiciary committee. Candidates for judicial office would also be afforded an opportunity to meet with the judiciary committee.<sup>92</sup> A member of the judiciary committee should be required to vote on the qualifications of all candidates who are competing for the same judicial position.<sup>93</sup>

#### 5. Criteria for Evaluation

The subject of what criteria should be used to evaluate judicial candidates drew considerable discussion from the Task Force. The potential for the inclusion of a smorgasbord of criteria that would rival the Girl Scout and Boy Scout laws in length was not found to be a desirable ideal for a screening commission. Instead, the Task Force believed that the criteria should contain a basic statement of core judicial attributes. The basic six criteria would be integrity, independence, intellect, judgment, temperament, and experience. Individual bar associations would be free to add additional criteria, but these six standards should serve as best practices at the heart of the evaluation process.

#### 6. Ratings

The Task Force first debated whether to have two or three ratings for judicial candidates. Under the two-tiered rating system, candidates would be either rated as “Not Approved/Qualified” or “Approved/Qualified.” The three-tiered rating system would add a third category. Candidates would be rated as “Not Approved/Qualified,” “Approved/Qualified,” or “Highly Approved/Qualified.” The advocates for the three-tiered rating system argued that if the goal of the evaluation system was to select the most highly qualified judicial candidates and to retain the best judges, then a three-tiered system which specifically rated top candidates as “Highly Approved/Qualified” would be the best way to achieve this goal. The advocates for the two-tiered system were concerned that some candidates might not participate in the process if they feared they would not receive the “Highly Approved/Qualified” rating. (The candidates might fear that the failure to obtain a “Highly Approved/Qualified” rating might affect their opportunities for advancement in the court system.) They also feared that adding the “Highly Approved/Qualified” rating would unduly place the judiciary committee in the position of putting a thumb on the judicial selection process scale by unduly favoring selected candidates. Backers of the two-tiered system also believed that the goal of the judiciary committee was simply to determine which candidates were qualified. Some advocates for the two-tiered rating

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<sup>92</sup> The issue was raised as to whether a candidate, who submits a questionnaire but who, for whatever reason, is unable to appear for an interview, should be rated “Not Approved” as a candidate. This best practice affords the candidate an opportunity for an interview. It leaves full flexibility to bar associations to determine the candidate’s rating. Bar associations are not being advised that they must find a candidate “Not Approved” based on the failure to appear in person for an interview.

<sup>93</sup> For example, if there are three candidates vying for a position on the supreme court, a judiciary committee member should vote on the qualifications of all three candidates.

system also contended that multi-tiered systems undercut the success that two-tiered systems have had, both downstate and upstate, in saying “no” to very weak attorney candidates, who frequently withdraw their candidacies after a “Not Approved/Qualified” review.

The Task Force determined that the two-tiered rating system was preferable.

The Task Force also debated the issue of whether the rating given to candidates should be that of either “Qualified” or “Approved.” This particular debate was further complicated by the related issue of whether the rating given candidates who were found not to be “Approved/Qualified” should be a simple “Not Approved/Qualified” or a the more provisory “Not Approved/Qualified *at this Time*” rating.

Advocates for the “Qualified” grade believed that use of this term would be beneficial in trying to attain the best qualified candidates for the judiciary. A “Qualified” judiciary should not be diluted by the idea of an “Approved” Judiciary. They also believed that the use of the word “Approved” gave the appearance that the judiciary committee had endorsed a candidate.

On the other hand, the advocates for the “Approved” grade believed that an “Approved” grade realistically established that the candidate had been found to have affirmatively demonstrated the necessary qualifications for the performance of the office that he or she was seeking. Thus, there was no reason to find that the “Approved” grade had in any manner been diluted. They similarly did not believe that the use of the term “Approved” established that the judiciary committee had endorsed any candidates. The advocates for the “Approved” grade also believed that the use of “Not Qualified” as a grade for candidates might be interpreted as pejorative and excessively demeaning to candidates, and would unnecessarily encourage appeals from candidates wanting to remove such a negative finding from the record.

On the issue of whether to use “Not Approved/Qualified” rating or the “Not Approved/Qualified *at this Time*” rating, the supporters of the “Not Approved/Qualified *at this Time*” standard believed that by seeming less demeaning, it prevented disappointed candidates from appealing the ratings. The backers of the “Not Approved/Qualified” rating believed that it forced more candidates into participating in the bar association evaluation process because candidates otherwise did not see that receiving a “Not Approved/Qualified *at this Time*” rating hurt their candidacy.

The Task Force determined to use the “Approved” and “Not Approved” grading system. The Task Force did not approve the use of the “Not Approved *at this Time*” or “Not Qualified” standards.

## 7. Voting Procedures

In many ways, the Task Force debate on whether a super-majority (assumedly a two-thirds vote) would be needed to secure an “Approved” rating, echoed the debate on the issue of the tiered ratings. Some members believed that the goal of a high-quality judiciary would be best secured by the requirement of a super-majority vote. The Task Force took the position that where a bar association offered only two ratings to candidates, a majority vote would be needed to secure an

“Approved” rating. In bar associations offering three ratings, a super-majority would be proper to secure a “Highly Approved” rating.

#### 8. Reconsideration

The members of the Task Force believed that candidates who received the “Not Approved” rating should be entitled to petition the judiciary committee to reconsider its evaluation. The Task Force adopted the approach of the City Bar and took the position that reconsideration should be determined at the discretion of the chair of the judiciary committee.

#### 9. Appeals Process

The Task Force agreed that an appeals process was a necessary feature of a judicial evaluation process.<sup>94</sup> The appeal would be to the board of the bar association that created the judiciary committee. Appeals would need to be taken swiftly after the judiciary committee had issued a “Not Approved” rating. There are questions over whether the appellate board should directly overrule the decision of the judiciary committee or whether the board should refer the decision back to the judiciary committee for reevaluation. The Task Force believed that this was a decision best left to the local bar association.

The Task Force also took the position that individual bar associations should establish their own understandable and transparent policies that would govern the other issues involved in the appeals process. These issues would include: (a) Is there a requirement that there must be a sufficient number of dissents to the determination at the judiciary committee in order for a candidate to have a right to appeal?; (b) Should the appellate board hear the appeal de novo, or should it give the judiciary committee’s decision a degree of deference?; and (c) Should the candidate be entitled to legal representation at the meeting of the appellate board?

#### 10. Conflicts Policy

The Task Force believed that the judiciary committees should implement exclusion and recusal provisions to address actual or perceived conflicts of interest. Best practices for a conflicts policy should include the following: (1) Elected officials and judicial office holders should not be a part of the judiciary committee. (2) Recusal from evaluation of a candidate should occur when there is a conflict of interest or appearance of one. Recusal will exclude a committee member from participating in investigation, deliberation and vote on a particular candidate, and all other candidates for the same office under the following circumstances: (a) a committee member or a close family member or business associate is involved in a candidate’s nomination process, including, but not limited to, political contribution in cash or in kind at any time during the election cycle, or work on a candidate’s election committee; (b) a candidate is associated with the committee member’s law firm or practice; and (c) a committee member has family, employment or business affiliation or other relationship with a candidate that is so close or adversarial that the committee member’s participation in the evaluation would present an actual conflict of interest or the perception of one.

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<sup>94</sup> In the case of the regional screening panels suggested in this report, there would of necessity be no appeal, and the candidates would need to ask the screening panel for reconsideration.

Few issues before the Task Force prompted more debate than the issue of establishing a conflict of interest policy for members of judiciary committees. Several upstate members of the Task Force were concerned that a blanket ban on public officials serving on judiciary committees would unduly restrict the number of knowledgeable potential members of judiciary committees. Some Task Force members believed that the conflicts specified in (2) should result in an exclusion from the judiciary committee and not merely a recusal. There were issues over the definition to be given the term “family,” and the meaning of an “election cycle.” Questions were raised over whether law firm political contributions to candidates should trigger recusals with a majority of the Task Force of the opinion that a firm’s contribution should require the recusal of a judiciary committee member. The minority view noted that many firms give to all candidates, making such a rule unnecessary and unduly-limiting.

#### 11. Candidate Waiver of Confidentiality Forms

The Task Force discussed the importance of judiciary committees obtaining information on candidates from the New York State Commission on Judicial Conduct and from Department or local attorney disciplinary/grievance committees. Many local bar associations have historically required candidates for elective judicial office to sign waivers of confidentiality protections, and the bar associations have obtained relevant information from these governmental or bar association agencies. Task Force members noted that the IJEQCs had developed excellent standardized waiver forms covering: (a) the State Commission on Judicial Conduct, and (b) all local attorney grievance committees. Several local bar associations have been convinced to use the IJEQC waiver forms for the convenience of candidates on a regional basis. The Task Force suggests the utilization of these IJEQC forms as models because they are easily adapted for future local or regional use.<sup>95</sup>

#### 12. Diversity

Task Force members believed that membership on the judiciary committees should reflect the state and region’s diversity in order to promote public confidence in the court system. As such, the committees should promote and advance the full and equal participation of attorneys of color and other diverse attorneys in the assessment of the qualifications of judicial candidates.

Diversity in gender, race, color, ethnic origin, national origin, religion, sexual orientation, age and disability offers an opportunity for judiciary committees to evaluate candidates through the benefit of various perspectives.<sup>96</sup> NYSBA has a long history of encouraging and promoting diversity and inclusion and elimination of bias in the legal profession as well as in our society. In keeping with that history, bar associations and other judiciary committees should work to ensure diversity of their members.

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<sup>95</sup> The IJEQC waiver forms are included in Appendix I to this report.

<sup>96</sup> Members of the Task Force also believed that diversity in fields of practice as well as diversity in practice setting (e.g. sizes of firms, employment in not-for-profit organization and government employment) would be of value in the selection of membership on a judiciary committee.

### 13. Non-Lawyer Members on the Judiciary Committee

Task Force members were divided on the issue of whether non-lawyers should be part of the judiciary committees. On the one hand, the screening committees in other states created by state laws or constitutions generally have non-lawyer members, and non-lawyer members could increase diversity and bring greater public credibility to the screening process. The Commission on Judicial Nomination — established to evaluate Court of Appeals candidates — has non-lawyer members. So do the screening committees established by the Governor’s Executive Order on judicial nominations. Nonetheless, the bar associations do not name any of the non-lawyer members to these state-created commissions. It could hardly be expected that a bar association would name to a judiciary committee someone who was not a member of the bar association. The Task Force took the position that bar associations should consider the possibility of naming non-lawyers to the judiciary committees.

### 14. Confidentiality

The Task Force believed that entire operation of the judicial screening system must be held in the highest confidentiality.

### 15. Withdrawal by Candidates

The Task Force believed that a candidate who receives a “Not Approved” rating and who expeditiously withdraw his/her candidacy for judicial office should not have his/her rating publicized in any manner.

### 16. Feedback to Candidates

The Task Force believed that local bar associations should consider, without revealing confidential information, providing informal feedback to candidates about their performance. The feedback could be provided at approximately the same time as the screening or as part of a separate process. On the whole, the members of the Task Force believed that informal feedback could provide opportunities to improve judicial and/or legal performance. Concerns were voiced by other Task Force members that candidates might not be pleased to receive negative feedback, and there were fears that dissatisfied candidates could conceivably retaliate against judiciary committee members.

### 17. The Duration of the Judicial Rating

The Task Force believed that local bar associations should establish policies that would determine for how many years a rating for a judicial applicant would be valid. That rating would only be valid for the particular judicial office for which the applicant was a candidate. It was also acknowledged and suggested that there be a mechanism established that should there be a change of circumstance during the period in which the rating is valid, the rating could be altered or potentially withdrawn. As such, bar associations should consider those factors that would be considered a change of circumstances and identify same to all candidates prior to the interview process. Such potential change in circumstances might include: criminal activity, judicial or attorney discipline, or a pending or open investigation of judicial or attorney complaints.

The bar associations should also provide guidance to candidates on how they might utilize and advertise these ratings as well as how a change in circumstance might be considered and addressed by the judicial screening committee.

## 18. Timing of the Ratings Process

The Task Force noted that the usefulness and impact of local bar association ratings can be influenced by their timing in the nominating/election process. It was the Task Force's view that ratings should be conducted at the earliest possible point in the election cycle, ideally before a candidate has been endorsed by his/her county committee, and well-before his/her formal nomination, whether by party endorsement, primary, or convention nomination. By rating candidates at an early stage, the local bar association will increase the potential that its ratings will influence the nominating process, while also making it less likely that the local bar screening process will be seen as politically influenced. The Task Force recognized that in some counties, political realities may prevent the ratings process from occurring at the earliest stages, but it found that holding the ratings process as early in the election cycle as possible was the best practice.

### C. Outreach and Publicity of Ratings

The Task Force took the position that the State Bar should work with the local bar associations in making the ratings of judicial candidates known to the public. Where the local bar association does not want added publicity for its ratings, or where the local bar association does not seek State Bar involvement, the State Bar should not be involved in distributing the results of the ratings. This should be a local bar association choice.

Where, however, the local bar association does seek State Bar involvement, the State Bar should work to maximize the public distribution and exposure of the candidate ratings. The State Bar should share the ratings with other public news media outlets, and use its own social media capacities to make the ratings available to the general public. The State Bar needs to ensure that judicial ratings are well publicized and should encourage local bar associations to seek appropriate publicity for their ratings.

The State Bar should also use its resources to make sure that the gubernatorial screening committees and other judicial screening committees are made aware of the candidate ratings made by the local bar associations.

### D. Aspirational Goals

The Task Force remains committed to the goal of a well-administered comprehensive public screening system for the review of judicial candidates. The Task Force — absent political concerns — would favor mandatory screening for all judicial candidates and would suggest that any mandatory screening requirement be accompanied by a program that would provide campaign seed money to candidates whom the screening committees find to be "Qualified." The availability of public campaign funds might help encourage qualified candidates and also make it more likely that there would be competitive elections in districts often considered to be safe for one political party.

Finally, the Task Force believes that the State Bar should continue its efforts to educate the public about judicial elections. The Task Force understands that this has always been a most difficult task. The rise of social media — and the concomitant decline in the influence of traditional public news sources — has only made this task more difficult. Nonetheless, a well-informed public that understands the importance of the judiciary in maintaining the rule of law is a necessity in a working democracy. The State Bar must continue to devote efforts to educating the public about judicial elections.

## **VI Resolution for House of Delegates Consideration**

[to be drafted]

## VII Appendices

- A. New York City Bar Uniform Questionnaire for Judicial Candidates
- B. Select Judiciary Committee Bylaws from Bar Associations in New York State
- C. National Center for State Courts Survey of Judicial Evaluation Systems
- D. Task Force Survey and Responses from Local, Affinity and Specialty Bar Associations – Summary by Robert T. Schofield, IV, Esq.
- E. Task Force Survey and Responses from Members of IJEQCs – Summary by Elena DeFio Kean, Esq., and Daniel Kornstein, Esq.
- F. Task Force Survey and Responses from Judges – Summary by Alan Mansfield, Esq., and Michael J. McNamara, Esq.
- G. Task Force Survey and Responses from County Political Leaders – Summary by Lawrence A. Mandelker, Esq.
- H. Candidate Waiver of Confidentiality Forms used by the IJEQCs

**Appendix A.**

New York City Bar  
Uniform Questionnaire for Judicial Candidates

# UNIFORM JUDICIAL QUESTIONNAIRE

## CONFIDENTIAL

1. Full Name:

Have you ever been known by any other name (other than a recognizable nickname)? \_\_\_Yes \_\_\_No

If yes, specify the name(s) and year(s) of name change and/or the years during which the other name or names were used:

2. Date, place of birth and country of citizenship:

3. Current residence address:

4. Current home telephone:

Number of years at current address: \_\_\_\_\_ If less than one year, previous address(es) during past year:

5. Do you rent, other than for a season, or own any additional homes? \_\_\_Yes \_\_\_No If yes, please list address(es):

6. Current business address:

7. Current business telephone:

8. Identify the Court or public office and, where applicable, Judicial Department, Judicial District, County, or Court District for which you are a candidate and state whether you are a candidate for election or for appointment:

9. (*For elective offices*) Political party or parties which are supporting your candidacy, or of which you are seeking nomination:

10. Did you serve in the armed forces? \_\_\_Yes \_\_\_No If yes, please give the following information:

**Dates of Service**

**Branch of Service**

**Nature of Discharge**

11. List in reverse chronological order all employment and periods of unemployment since graduation from law school. (If law school attendance did not commence within a few months following completion of undergraduate course study, list also all employment and periods of unemployment between college and law school.) Continue on additional page, if necessary.

<b>Name of Firm or Employer</b>	<b>Address</b>	<b>Name of Supervisor</b>	<b>Dates of Employment (Month /Year)</b>	<b>Nature of Employment (or activity while unemployed)</b>	<b>Reason for Leaving</b>

12. (a) Have you ever held public or political office, elected or appointed, other than ones listed in answer to Question 11 above?  *Yes*  *No* If yes, please state position held, dates of service and whether the office was attained by election or appointment:
- (b) Do you or any members of your family hold any memberships (other than voter registration) in political organizations or engage actively in any political activities?  *Yes*  *No* If yes, please describe:
- (c) Are you related by blood or marriage to, or do you have a significant relationship with anyone involved in the appointing or nominating process with respect to the position you are seeking?  *Yes*  *No* If yes, please give name, position and relation:
- (d) Are you related by blood or marriage to, or do you have a significant relationship with any attorney or judge, or any other person whose employment, position, affiliation or activity may reasonably create, with respect to your carrying out the duties of the office you are seeking, the appearance of a conflict of interest?  *Yes*  *No* If yes, please supply name, relation and employment, position, affiliation or activity:
13. Have you ever been engaged, on your own account or with others, in any business or profession, part-time or full-time, other than those listed in your answer to Question 11 above?  *Yes*  *No*

Type of Business or Profession	Name of Employer	Address	Position Held	Dates (Mo. / Yr.)	Reason for Termination of Business

14. (a) Have you ever been issued a license, other than a marriage license, license to practice law, license as a notary public or a driver's license? Yes No If yes, please describe the license, and list the dates of its initial issuance and its last renewal:

(b) Has any license, including a license to practice law, a license as a notary public, or a driver's license, ever been revoked or suspended? Yes No If yes, please describe the circumstances:

15. College and professional schools (other than law schools) attended:

<u>School</u>	<u>Location</u>	<u>Degree</u>	<u>Honors</u>	<u>Dates Attended</u>	<u>Date of Graduation</u>
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16. Law Schools attended:

<u>School</u>	<u>Location</u>	<u>Degree</u>	<u>Honors</u>	<u>Dates Attended</u>	<u>Date of Graduation</u>
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17. (a) List the post-law school continuing legal education courses in which you have participated within the past four years (in reverse chronological order) that qualified for mandatory continuing legal education credit:

<u>Description of Course</u>	<u>Date</u>	<u>Sponsor</u>	<u>Number of Hours</u>
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(b) List all judicial training courses in which you have participated within the past four years (in reverse chronological order):

<u>Description of Course</u>	<u>Date</u>	<u>Sponsor</u>	<u>Number of Hours</u>
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(c) For your most recent biennial registration period, did you satisfy New York State's mandatory continuing legal education requirement? \_\_\_Yes \_\_\_No If no, please describe the circumstances:

(d) **FOR ATTORNEYS:** Have you complied with all registration requirements for lawyers in the State of New York and any other jurisdiction in which you are licensed to practice law? \_\_\_Yes \_\_\_No If no, please describe the circumstances:

**FOR JUDGES:** Have you attended the mandatory Judicial Ethics Training courses offered at the Judicial Institute? \_\_\_Yes \_\_\_No If yes, please provide dates and location of all such courses attended. If no, please provide the dates and location of any such courses for which you are registered in the future.

18. State all courts in which you are admitted or have ever been admitted to practice, together with dates of admission:

(a) **New York (give Judicial Department):**

**Date of Admission:**

(b) **All other Federal and State Courts:**

**Dates of Admission:**

(i):

(ii):

(iii):

(iv):

19. State all areas of law in which you have concentrated or have had substantial experience for any sustained period of time:

20. (a) Have you ever resigned from a position as, or for other reasons, ceased to be a member of the bar or bench of any state or court in any jurisdiction? \_\_\_Yes \_\_\_No If yes, please describe the circumstances:

(b) Have you ever resigned from a position as, or for other reasons, ceased to be a member of a governmental body, a hearing officer or magistrate or an occupant of any other similar position? \_\_\_Yes \_\_\_No If yes, please describe the circumstances:

(c) Have you ever been the subject of a claim, or received individual counseling from an employer arising from an actual or prospective claim, about discrimination or harassment on the grounds of an individual's actual or perceived age, race, creed, color, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status? \_\_\_Yes \_\_\_No If yes, please describe the circumstances:

(d) It is expected that a judge and other public officials shall not, by words or conduct, manifest, or appear to condone, bias or prejudice, including but not limited to bias or prejudice based upon age, race, creed, color, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status and shall require staff, court officials and others subject to his or her direction and control to refrain from such words or conduct. Will you be able to meet this expectation?  *Yes*  *No* If no, please describe the circumstances:

21. Are you now, or have you ever been, the subject of any complaint or charge filed with any disciplinary committee, court or supervising judge, government agency or bar association arising out of your official or professional responsibilities during the course of your:

(a) law practice?  *Yes*  *No*

(b) public or judicial service?  *Yes*  *No*

(c) campaign for public or political party office?  *Yes*  *No*

If yes, please describe each complaint or charge and its outcome, including whether the governmental agency or other entity to whom such complaint or charge was made censured you, issued a caution, imposed a sanction or took any other action whatsoever criticizing your conduct, even if the complaint or charge was dismissed:

22. Are you now, or have you ever been the subject of any claim of malpractice, in an action or otherwise?  *Yes*  *No*  
If yes, please describe the claim and/or proceeding and its outcome. If you are or were a member of a firm or organization that was the subject of any claim of malpractice, please describe the claim if it is related to a case or matter on which you worked and state whether your conduct was the subject of the claim:

23. Have you, your firm, your employer or any of your clients ever been cited for contempt or otherwise had a sanction imposed upon you or them as a result of your conduct in any judicial or administrative proceeding?  *Yes*  *No* If yes, please describe, even if the citation or sanction was later withdrawn, suspended or modified:

24. Have you ever been cited for contempt of court, other than on the occasions listed in your answer to Question 23, or been summoned, arrested or charged with any offense or crime other than a non-moving traffic violation (include proceedings in the armed forces), even if the citation, summons, arrest or charge was later withdrawn, voided, vacated or dismissed?  *Yes*  *No* If yes, please describe the nature and outcome of each case:
25. In relation to any conduct, act or omission on your part or done with your knowledge, has any Federal, State, City or other governmental agency, or a grand jury initiated or completed an investigation of you or of any law firm, corporation, business, partnership, joint venture, government agency or other similar entity with which you are, or were at the relevant time, affiliated?  *Yes*  *No* If yes, please describe each investigation and its outcome:
26. Have you ever been involved as a party to any litigation (criminal, civil or administrative), other than an action you have previously identified in answer to Question 22?  *Yes*  *No* If yes, please describe including the disposition of the matter (e.g., pending, settled, judgment, dismissed):
27. Are there any unsatisfied judgments, tax warrants, tax liens or mechanics' liens outstanding against you or property you own or have an interest in?  *Yes*  *No* If yes, please describe:
28. Are you in default or has any party claimed that you are in default of any court order, including alimony or support decrees?  *Yes*  *No* If yes, please describe:

29. Has any petition in bankruptcy ever been filed by or against you?  *Yes*  *No* If yes, please describe:
30. Have you timely filed all required Federal, State and City income tax returns appropriate to your place of residence?  *Yes*  *No* If no, please describe:
31. Has any Federal, State, City or other taxing authority claimed that you have failed to pay adequate taxes, penalties or other charges for any tax year?  *Yes*  *No* If yes, please describe:
32. A judge is expected to be on the bench or otherwise handling legal matters by about 9:30 A.M. for at least seven hours per day, five days per week, and at times, a judge's responsibilities may require him or her to be on the bench or at work into the evenings and on weekends. Are you able to perform these tasks on your own or with reasonable accommodation?  *Yes*  *No* If no, please describe the circumstances:
33. A judge may be required to handle emergency applications, cope with media scrutiny, issue quick decisions, deal with fractious litigants, recall significant amounts of information, and otherwise respond to extremely stressful situations. Are you able to perform these tasks on your own or with reasonable accommodation?  *Yes*  *No* If no, please describe the circumstances:
34. Do you currently use any illegal drugs, abuse alcohol, or abuse any prescription drugs?  *Yes*  *No* If yes, please describe:
35. Has an employer or supervisor ever counseled you regarding, or expressed concern about, your absenteeism?  
 *Yes*  *No*
- a. If yes, please describe the frequency of the absenteeism complained of:
- b. Was the situation rectified? If yes, how:

36. Do you know of any factors that would adversely affect your ability to competently serve as a judge, to comply with a judge's ethical responsibilities, or to complete the day-to-day responsibilities that a judge is required to assume?  *Yes*  *No* If yes, please explain:

37. Are you a member of any bar association or professional organization?  *Yes*  *No* If yes, please give the following information for each such association or organization:

**Name of Association**

**Dates of Membership**

**Committee Service**

38. Describe any significant community activities in which you have engaged:

39. Have you written articles for publication?  *Yes*  *No* If yes, please give the name and date of the publication and the title of each article:

40. Have you had any teaching experience in law or related fields?  *Yes*  *No* If yes, please describe:

41. Have your qualifications for public office previously been reviewed by any bar or other professional association?  *Yes*  *No* If yes, please identify the organization, state the date of the review, and detail all findings by the organization:

42. (a) If you are seeking elective office, do you subscribe, and have you adhered, to the campaign guidelines established for judicial candidates by the New York State Bar Association (published in the New York State Bar Association Journal; Committee on Professional Ethics Opinion No. 289, dated April 27, 1973)?  *Yes*  *No*  *Not Applicable* If you answered this question in the negative, please explain:

(b) If you are seeking elective office, have you, or has anyone on your behalf, issued any campaign literature concerning the election in which you are a candidate?  *Yes*  *No* If yes, please attach copies.

- (c) If you are seeking elective office, have you read the rules of the Chief Administrative Judge relating to inappropriate political activity by a judge or a candidate for public election to judicial office (22 NYCRR 100.5) ?
  
- (d) Have you complied with the rules mentioned in (c) above?
  
- (e) If you are seeking elective office, please ask your campaign treasurer to provide copies of campaign expenditure reports, if available. Campaign expenditure reports should be mailed to Committee on the Judiciary, Association of the Bar of the City of New York, 42 West 44<sup>th</sup> Street, New York, New York 10036.

**ATTACH THE FOLLOWING SCHEDULES TO THIS QUESTIONNAIRE.  
AS TO EACH SCHEDULE, SPECIFY THE QUESTION NUMBER TO WHICH IT APPLIES.**

*In answering Questions 43-51 about your litigation experience, you may include adversarial proceedings before a court, an administrative tribunal or an arbitrator or other forum for alternate dispute resolution. In addition, you should count as "trials" all adversarial evidentiary hearings involving presentation of witness testimony.*

43. **For Attorneys:** Attach a statement specifying:
- (a) the types (i.e., civil, criminal or administrative) and number of each type of trials you have conducted in the past ten years;
  - (b) the number of the cases in category (a) of this question which ended in a verdict or judgment or ruling by the trier of fact;
  - (c) the number of cases listed in category (a) of this question which were tried before a jury;
  - (d) the courts or other tribunals in which the cases were tried;
  - (e) the number and types of appeals briefed in the past ten years;
  - (f) the number of appeals argued and the courts in which the arguments were heard;
  - (g) the number and types of dispositive motions you have litigated in the past ten years;
  - (h) the number of dispositive motions you have argued and the courts or other tribunals in which the arguments were heard; and
  - (i) the title and citation of reported cases in which you conducted the trial, wrote the brief and/or argued the appeal, or wrote the papers on the dispositive motion.
44. **For Attorneys:** Submit a list of the last ten trials, dispositive motions, or appeals in which you have actively and substantially participated in any state or federal court at the trial or appellate level, including the title of the case, the index, docket or indictment number, the court in which the case was heard, a concise description of the nature of the case, the date of the trial or oral argument, the name, address and telephone number of each adversary and co-counsel, and the name(s) of the judge(s) who presided at trial or sat on the appellate panel. For each appellate matter, please submit one copy of your brief.
45. **For Attorneys:** Submit a list of the name, court and telephone number of the last ten judges, other than the judges listed in your answer to Question 44, before whom you appeared in the last three years (other than for routine calendar appearances).
46. (a) **For Attorneys:** Attach a statement describing your legal experience other than litigation. Include in that statement a general description of the last ten matters you handled and the names, addresses and telephone numbers of the lawyers, other than your associates, employees, partners, co-tenants, supervisors or employers, with whom you worked on each of those ten matters. For example, judicial law clerks should list the attorneys with whom they have had substantial contact. Similarly, law professors should list attorneys, judges and/or other law professors who are familiar with their work.
- (b) **For Attorneys:** Submit a minimum of three recent examples of your legal writing, and if you are not the sole author of the example, please explain your role in its preparation.
47. **For Judges:** Submit a list of your ten most recent opinions with the citation to each or a copy thereof if not published.
48. **For Judges:** Submit a list of the last ten trials or appeals over which you have presided, including the title and dates of each case, a brief description of the nature of each case, and the names, addresses and telephone numbers of the attorneys involved.
49. **For Judges:** Submit a list of the governmental agencies, private agencies, private lawyers and private law firms which have appeared before you in the last year on a regular basis, specifying the name and phone number of the supervising attorneys for such agencies and law firms.
50. **For all candidates:** Submit a list of the names, addresses and telephone numbers of any judges, public officials or attorneys whom you suggest the Committee contact with respect to your candidacy.
51. **For all candidates:** Please specify any additional information which is reasonable to expect the Committee would want to know when it considers your qualifications for the office you seek.



## **Appendix B.**

### Select Judiciary Committee Bylaws from Bar Associations in New York State

- Albany County Bar Association
- Broome County Bar Association
- Central New York Women's Bar Association
- Erie County Bar Association
- Nassau County Bar Association
- Onondaga County Bar Association
- Oswego County Bar Association
- Women's Bar Association of the State of New York

## **Appendix B.**

### Select Judiciary Committee Bylaws from Bar Associations in New York State

- Albany County Bar Association

**THE ALBANY COUNTY BAR ASSOCIATION**  
112 STATE STREET, ALBANY, NY 12207

**GUIDELINES**  
**JUDICIAL QUALIFICATIONS COMMITTEE**

**Purpose:**

The Albany County Bar Association Judicial Qualification Committee (“Committee”) shall pass upon the qualifications of judicial candidates who have been nominated to, filed nomination petitions, for, or otherwise applied for judicial office in:

Supreme Court in the Third Judicial District  
Albany County Court  
Albany County Surrogate Court  
Family Court of Albany County

The Committee shall evaluate all nominees or applicants (“applicants”) who have been nominated or applied for the judicial offices listed above. The Committee may, in its discretion, evaluate the qualifications of other judicial candidates.

**Criteria and Ratings:**

1. The ratings for the applicants will be:
  - “Outstanding”
  - “Well Qualified”
  - “Qualified”
  - “Not Recommended”
  
2. The factors or criteria which will be used to rate the various applicants, which will be given equal weight with no single factor being determinative or preclusive of any particular rating, include but are not limited to:
  - Integrity
  - Experience
  - Professional Ability
  - Education
  - Reputation
  - Industry
  - Temperament
  - Fairness
  - Statutory Standards
  - Attitude
  - Punctuality

3. A rating shall be determined by secret ballot and shall require the following votes of the Committee:
  - “Outstanding” Eighty percent (80%) of the Committee members present and voting
  - “Well Qualified” Sixty-percent (60%) of the Committee members present and voting
  - “Qualified” Majority of the Committee members present and voting
  - “Not Recommended” Majority of the Committee members present and voting.
4. The Committee shall continue to vote on a rating for an applicant until a rating is determined in accordance with the above-stated percentages.
5. An applicant who receives the rating “Not Recommended” shall be so notified, by the Chair of the Committee, at least two days in advance of the release of such ratings for publication. When notifying an applicant that he or she has received a rating of “Not Recommended” the Committee shall give the applicant a written general explanation of the factors underlying such rating. The explanation shall be sufficiently general so as to protect the confidentiality of all who gave information pertinent to the rating or participated in any deliberations thereon. Each applicant receiving a rating of “Not Recommended” shall also be promptly given the procedure for requesting reconsideration and the date for which the ratings will be published. At any time prior to the date fixed for publication of the rating, the applicant may withdraw his or her application upon written notice to the Committee Chair, withdrawing his or her candidacy for the judicial office and agreeing not to accept appointment thereto.

**Composition of the Committee:**

1. The Committee shall be comprised of fifteen (15) members and at least three (3) alternates, each of whom shall be a member of the Association in good standing, of whom at least three new members shall be designated each year. The Committee’s composition will reflect the diversity of the membership of the Association with respect to demographics and experience. No more than six (6) members shall be from the same political affiliation.
2. Members shall be appointed by the President of the Association and subject to approval by the Association’s Board of Directors. No current member of the Association’s Executive Committee, as that body is comprised in the Association’s bylaws, shall be eligible to serve on the Committee.
3. The members of the Committee shall serve for three year terms. A Committee member may be appointed to serve on the Committee more than once but shall not serve more than two (2) consecutive terms.
4. The Committee will be chaired by one of its members, who shall be designated the Chair of the Committee by the President of the Association. In addition to having the powers and duties necessary and attendant to the functioning of the Committee, the Chair will be responsible for designating one or more alternate members to serve in a vacancy cycle when one or more regular members in unable to serve.

### **Evaluation Process:**

1. Each applicant shall be scheduled for a personal interview with the Committee. In addition, each applicant shall be provided with a copy of these guidelines and a list of names of the Committee members who will be serving during the rating cycle.
2. The Committee shall request all applicants who are to be rated for judicial office to submit a completed written questionnaire which shall also constitute an application for judicial rating. The failure of an applicant to submit a questionnaire may be considered in evaluating the applicant and given such weight as the Committee, as the case may be, deems appropriate.
3. The members of the Committee and the Executive Director of the Albany County Bar Association shall have a fiduciary duty to keep all personal or confidential information contained in the applicant's application confidential and shall not disclose same to anyone who is not a member of the Committee or, in the event of a request of reconsideration, a member of the Executive Committee of the Albany County Bar Association who is participating in the appeal.
4. All members of the Albany County Bar Association may be invited to provide the Committee with input regarding the qualifications of the applicants. All input shall be accompanied by the name of the member submitting the input, but the identity of the member shall remain confidential to the Committee. Input should be solicited at least one (1) week prior to any applicant's interview through a mailing (print or electronic) to the ACBA membership. A comment form will be distributed so as to give structure for members to file their comments.
5. Prior to interviewing the applicants, the members of the Committee shall have read the written material submitted by the applicant, and shall have discussed all input received from other members of the ACBA or other members of the community at large including the references provided by the applicant. Any negative comments received in any fashion about any applicant shall be discussed with said applicant during the interview process.

### **Proceedings and Deliberations**

1. The Chair shall be responsible for maintaining order and dignity throughout the interviews.
2. At least nine (9) members of the Committee shall be present at the interviewing of and voting on any applicant. Only the Committee members present at the interview of every applicant interviewed for a particular judicial office shall vote on a rating for any of the applicant in that vacancy cycle. To the extent possible, the members who participate in the interviewing and voting should be balanced by party affiliation.
3. If a member of the Committee has a conflict of interest involving any of the applicants, he or she shall disclose that conflict to the Chair who will make a preliminary determination on whether the conflict acts as a disqualification to that member's participation in that ratings cycle. If the member does not wish to serve to avoid the conflict, he or she may decline to serve during that vacancy cycle. If he or she wishes to serve, the Chairs will consider if the conflict can be

disclosed and waived, or whether recusal is required. The member will be bound by the decision of the Chair on whether or not recusal is required. If the Chairs determine that conflict is one that can be addressed by disclosure and waiver, the Chairs will disclose the conflict as follows in the following order to seek the consent of the parties to the member's continued service: (1) the applicant with whom the conflict arises, (2) the remaining members of the Committee, and (3) the remaining applicants. If the Chair determines that recusal is necessary, or if an applicant or a majority of the Committee fails to give consent to the waiver of the conflict, the Committee Member who has the conflict will not serve during the rating cycle.

4. Each member of the Committee shall have full and equal voting rights. No member may abstain from voting unless he/she will abstain from all votes during the rating cycle.
5. No member of the Committee shall vote by proxy or vote in any manner if he or she was not present for all interviews for a particular judicial office during rating cycle.
6. Each member of the Committee shall have the right to pose appropriate questions to the applicants during the personal interview for the purposes of determining the qualifications of such applicant.
7. No member of the Committee shall be permitted to ask questions that would require an applicant to specify the ruling she/he would make on a particular issue.
8. An applicant may decline to answer a question they deem to be inappropriate and will be notified in advance of the interview of their right to do so.
9. Voting shall be by secret ballot.
10. The Association shall notify all applicants, or their designated representative(s), of the Committee's ratings within 48 hours of the personal interview. In order to facilitate the reconsideration process, where the Committee has rated any applicant "Not Recommended," the ratings will not be disclosed to any other persons, including the media, until at least 48 hours has passed from disclosure of the ratings to the last applicant. If no "Not Recommended" rating will be issued, the ratings may be disclosed to the media and other interested persons on the date previously set by the Committee and shared with all applicants.

#### **Reconsideration Process for a Rating of "Not Recommended"**

1. Only an applicant who has received a "Not Recommended" rating may file for reconsideration.
2. The applicant may file a request for reconsideration to the Executive Committee of the Association by notifying the Executive Director, within 24 hours after she/he has been notified of the Committee's ratings. Such notification may be made in any manner reasonably calculated to notify the Executive Director (letter, fax, email, telephone call, etc.), but shall only be effective if the Executive Director acknowledges receipt of such notification in writing (via letter, fax, email, etc.).
3. The Executive Committee of the Association will convene in person to hear and decide all

reconsiderations within two business days of receipt by the Executive Director of an applicant's notice of appeal.

4. The applicant shall make a presentation on his/her behalf, either in person or by telephone, and the Chair will make a presentation on behalf of the Committee, to the Executive Committee. The Chair's role is not that of an advocate; the Chair should merely impart the information considered by the Committee in recommending the "Not Recommended" rating.
5. On appeal, an applicant may present any evidence or information, oral or written, that she/he is qualified for the judicial position sought. No confidential information presented to the Committee may be revealed to the applicant during the reconsideration process. However, confidential information presented to the Committee may be revealed to the applicant in the appeals process if such information was a reason used by the Committee to rate an applicant "Not Recommended," but the identity of the person giving such information to the Committee shall always remain confidential and the vote of the Committee shall always remain confidential. Confidential information includes, but is not limited to, comments from the membership, comments from the Committee, comments from references, and the vote of the Committee.
6. The Executive Committee of the Association is charged with the responsibility to determine whether the Committee's rating was erroneous in light of the evidence presented to it and, if so, what the proper rating should be. Within 24 hours after the appeal is heard, the Executive Committee shall notify the applicant and the Chair, in writing, of its determination, but it shall not be required to specify the reasons underlying the determination. The Executive Committee's determination shall become the applicant's rating and, at that time, the ratings will be released to the the media and other interested persons immediately.

## **Appendix B.**

### Select Judiciary Committee Bylaws from Bar Associations in New York State

- Broome County Bar Association

**BY-LAWS**

**JUDICIAL CANDIDATE  
COMMITTEE**

**2017**

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**ARTICLE 1  
ORGANIZATION OF COMMITTEE**

**Section A. Organization Meeting:**

The Judicial Candidate Committee [“the Committee”] shall meet within a reasonable time after its members have been selected by the Board of Directors of the Broome County Bar Association [“the Board”] for the purpose of appointing officers other than the Chairperson [“the Chair”], and for other organizational purposes.

**Section B. Membership Requirements**

The Committee shall consist of twenty-four (24) members of the Broome County Bar Association. Of the twenty-four (24) members to be appointed for the first year, eight (8) shall be appointed to serve for one (1) year, eight (8) shall be appointed for two (2) years, and eight (8) shall be appointed to serve for three (3) years. Thereafter as the terms of the members expire, the successors shall serve for three (3) year terms. The membership of the Committee should reflect the diversity of the membership of the Broome County Bar Association.

A committee member must have been admitted to membership in the Broome County Bar Association for a minimum of five (5) years and be approved by a majority of the Board. Insofar as possible the members of the Committee shall be nominated and selected by the President of the Bar Association from those attorneys who regularly appear in courts of record as advocates on behalf of litigants in the judicial system, are cognizant of the qualities required to serve as a judicial officer in such courts, and are able to represent the membership of the Bar Association as a whole in the selection of competent candidates for judicial office.

Any member of the Committee who is absent from two (2) consecutive meetings of the Committee without being excused there from by the Chair shall be considered as having resigned from the Committee, whereupon a replacement shall be chosen by the Board.

A candidate for judicial office shall not act as a member of the Judiciary Committee during the period of that member’s candidacy. A replacement for such member shall be chosen by the Board.

A Committee member may serve a maximum of six consecutive years on the Committee, or seven consecutive years if the member serves as an alternate member as set forth below. A former Committee member who has not served on the Committee for at least two (2) years is eligible for reappointment to the Committee.

There shall also be eight (8) alternate members of the Committee from whom the Chair may select and designate as many as are needed to participate in the meetings of the Committee so as to ensure a quorum as defined and required in Section "F" of these By-Laws. The alternate members shall serve for one (1) year and shall consist, to the extent possible, of those members of the Committee whose full term of service, including any consecutive renewal term of a service as allowed under these By-Laws, has come to an end. An alternate member's one (1) year term of service shall commence on the day following the end of the member's term or service and continue for one (1) year thereafter. If in any year there are less or more than eight (8) members of the Committee whose terms of service come to an end, or if for any other reason there is not a total of eight (8) retiring members of the Committee who are available to serve as alternate members, the nomination and selection of additional or, if there is a need to reduce the number, fewer alternate members, as the case may be, shall be by the President of the Bar Association.

### **Section C. Special Meetings**

Special meetings shall be called as deemed necessary by the Chair, or upon the request of the Board, or upon the written request, stating the purpose of the meeting, of at least ten (10) members of the Committee.

### **Section D. Place of Meeting**

Meetings shall be held at the Broome County Bar Association Office at a date, and time fixed by the Chair.

### **Section E. Notice of Meeting**

Written notice stating the place, date and time of a meeting is required, unless in the opinion of the Chair circumstances require that a meeting be called on oral notice, in which event notice shall be given by a means that is reasonably likely to provide notice to the member. E-mail may constitute written notice if previously authorized by a Committee member.

### **Section F. Quorum**

Sixteen (16) members present in person shall constitute a quorum of the Committee for balloting on the qualifications of candidates for judicial office. For all other business, twelve (12) members present in person shall constitute a quorum.

**Section G. Voting**

Except as specifically provided in Sections R and S of these Rules, all material matters under consideration shall be determined by a majority of the votes cast, and such votes shall be oral unless at least five (5) of the members present request a secret written ballot which shall be tabulated by the Secretary.

**ARTICLE 2  
JUDICIAL CANDIDATE COMMITTEE OFFICERS**

**Section H. Officers**

The officers of the Committee shall be the Chair, a Vice Chair, a Secretary, and Assistant Secretary. The Chair shall be appointed by the President of the Bar Association with the approval of the Board. The other officers shall be appointed by the Chair subject to the approval of the Committee.

**Section I. Chair**

The Chair shall preside at all meetings of the Committee, shall be member ex-officio of each sub-committee, and shall appoint the Secretary, Assistant Secretary, and members of sub-committees.

**Section J. Vice-Chair**

The Vice-Chair shall perform the functions of the Chair in the Chair's absence, disability, or refusal to act.

**Section K. Secretary and Assistant Secretary**

The Secretary shall record the proceedings of the Committee. The Assistant Secretary shall perform the duties of the Secretary in the Secretary's absence or disability.

**Section L. Subcommittees**

The Chair shall designate the members and chair of all subcommittees. Subcommittees shall have such duties as the Chair of the Committee shall assign.

**ARTICLE 3**  
**RECOMMENDATIONS FOR JUDICIAL OFFICE**

**Section M. Definition and Principles**

The word “candidate” shall mean a person who officially seeks appointment, certification, re-certification, election, re-election or nomination for judicial office. The best interests of the state, the community, and the members of the bar, require an able and objective judiciary. It shall be the purpose of this Committee to elevate the quality of the judiciary, among other means, by recommending for judicial office only those attorneys who have demonstrated excellence in judicial qualities, by encouraging political parties and their leaders to endorse for election and re-election only well qualified lawyers and judges, and by discouraging the candidacy of those who are not well qualified.

The Committee will attempt to evaluate all candidates for the following judicial positions or for those seeking re-certification for those positions: New York Supreme Court Justice of the Sixth Judicial District; Broome County Judge; Broome County Surrogate; Broome County Family Court Judge; Hearing Examiner of the Broome County Family Court; Binghamton City Court Judge; and such other judicial offices as may be created within the Sixth Judicial District. The Committee shall not evaluate candidates for Town and Village Courts.

The Committee may evaluate candidate for the following judicial positions: Court of Appeals Judge; Justice of the Appellate Division of the Third Judicial Department; Federal District Court Judge; and Magistrate Judge of the Sixth Judicial District.

The Committee may evaluate a candidate at the candidate’s request, at the request of any member of the Broome County Bar Association, or at the request of the appointing authority, whether endorsed by a political party and whether or not the candidate makes timely application to the Committee for such evaluation.

The Committee shall utilize and be limited to the following Rating Definitions in its evaluation of candidates:

Highly Qualified: The candidate possessed the highest combination of legal ability, integrity, temperament, and experience and would be capable of outstanding performance as a judge or justice of the Court for which he/she is a candidate.

Qualified: The candidate possessed the legal ability, integrity, temperament and certain experience to be able to perform satisfactorily as a judge or justice of the Court for which he/she is a candidate.

Not Qualified: Based upon the candidates legal ability, integrity, temperament, or lack of experience at the time of the evaluation, the candidate would not be expected to perform satisfactorily as a judge or justice of the Court for which he/she is a candidate.

Not Rated: Based on the candidate's failure or refusal to submit the required Waiver and/or Questionnaire, the Committee may issue a rating of Not Rated based thereon with such further explanation as may be necessary

A rating of "Not Qualified" should not be a reflection on a lawyer's abilities nor should it discourage a candidate from seeking another judicial office or that particular judicial office at a later time. The qualities required for able advocacy on behalf of a client and those required for excellence in judicial performance may not fully coincide, since the vigor and partisanship of the lawyer in superior performance as an advocate of a client's case may disclose a temperament or qualities that are not ideal for a judge. A lawyer's chosen area of practice, though capably performed, may also be so circumscribed as to preclude a judgment as to the more diverse qualifications required for excellence in the performance of a judicial office. Consequently, the failure of a lawyer to obtain the Committee's recommendation as "Highly Qualified" or as "Qualified" shall not reflect upon that lawyer's qualifications to practice in his or her chosen area of the legal profession. Although members of the Committee recognize that most lawyers in the community have the capacity to fulfill a judicial office adequately, the goal of the Committee and purpose of these rules is to obtain judicial excellence.

#### **Section N. Members Conduct**

In determining the qualifications of each candidate, the members of the Committee shall be mindful of the principles of the Committee and shall conduct their deliberations with the same qualities of temperament, objectivity and fairness that the Committee seeks in a candidate for judicial office.

#### **Section O. Confidentiality**

To fulfill the purposes of the Committee in accordance with these principles, full and frank discussions is mandatory. Consequently, the discussions within the Committee must be held in strict confidence by each member of the Committee equal to the confidentiality required in an attorney-client relationship. Any member of the Committee charged with a breach of this requirement of confidentiality may be suspended by the Chair pending an investigation, hearing, and recommendation by a subcommittee comprised of three (3) members of the Committee appointed by the Chair. Any recommendations and/or findings of the subcommittee shall be made to the Board with final action to be taken by the Board as it deems necessary to fulfill these

confidentiality requirements, including the removal of the Committee member and selection of a replacement.

## **Section P. Submission Procedure**

1. Candidates: The name of each proposed candidate shall be submitted for prompt consideration by the Committee and prompt determination by the Board. Any candidate who does not submit his or her name for evaluation by the Committee may, nevertheless, be submitted as provided under Article 3 Section M.

2. Waiver and Questionnaire: Each proposed candidate shall be required to submit a written waiver of confidentiality authorizing release of records, including records of any grievance proceedings or complaints concerning the candidate, for the use of the Committee and the Board. Each candidate shall also be required to submit 24 copies of a completed questionnaire on a form provided for such purpose by the Committee. A portion of the contents of the questionnaire shall be designated as and considered confidential unless the candidate agrees that the contents be made public. Any candidate who does not submit a written waiver or questionnaire may be evaluated on such information as the Committee shall acquire prior to the date of such evaluation, including issuance of an evaluation of Not Rated due to the candidate's failure or refusal to submit the required Waiver and/or Questionnaire.

3. Publication of Candidate's Name: The names of candidates under consideration by the Committee shall be published in the Bar Association news letter or similar communication sent to members with an invitation for members' comments as to a candidate. A summary of the comments submitted by members shall be made by the Chair and announced to the members of the Committee at the meeting at which the qualification of the candidates is considered. The summary and comments shall be strictly confidential.

4. Grievance Information: The Grievance Committee of the Sixth Judicial District and/or the Commission on Judicial Conduct in the case of sitting judges shall be furnished the names of the candidates and invited to release to the Committee any information concerning any former or pending disciplinary proceedings against a candidate.

5. Destruction of Questionnaires, Evaluations and Ballots: All questionnaires, evaluations and ballots shall be destroyed immediately following their consideration by the Committee and/or Board.

**Section Q. Committee Reporting Procedure:**

1. Subcommittees: The Chair shall appoint a subcommittee of not less than seven members to investigate the qualifications of candidates for each open seat. The subcommittee shall report its findings and recommendations in writing to the full Committee at least one week prior to the meeting held to consider the qualifications of the candidate.

2. Questionnaires: At least one week prior to the meeting to consider the qualifications of a candidate, copies of the non-confidential portion of the questionnaire as completed by the candidate shall be distributed by the Chair to all Committee members for their review. The Chair shall review the confidential portion of the questionnaire and shall notify committee members if the candidate responses should be reviewed by committee members in person at the Bar Office prior to the meeting to consider the qualification of a candidate. The confidential portion of the questionnaire will not be duplicated other than through password protected electronic means approved by the Board of Directors and shall be available for review by any committee member SOLELY at the Broome County Bar Association Office.

3. Invitations to Candidates: All candidates shall be invited to appear before the Committee and will be given the names of members of the committee prior to the appearance.

4. Additional Information: In addition to information received by the Committee as a result of the questionnaire submitted by the candidate, the Committee may request additional information relating to the candidate from the candidate or from others. To this end, each sub-committee chair shall assure that a reasonable number of sources are solicited for information relevant to each candidate's qualifications, as set for below, to serve as a judge or justice of the court for which he or she seeks election.

**Section R. Qualifications and Ballots:**

1. Qualifications: When evaluating a candidate the members of the Committee shall consider whether the candidate has the following qualifications:

- a. COMPETENCE
- b. TEMPERMENT
- c. COURTESOUSNESS
- d. DIGNITY
- e. DILIGENCE
- f. FAIRNESS
- g. FREEDOM FROM PREJUDICE
- h. IMPARTIALITY
- i. INTEGRITY
- j. PROMPTNESS
- k. ABILITY AND/OR EXPERIENCE

2. Ballots: The ballot form used by the Committee shall recite Sections R and S of these rules and provide spaces for Committee members to mark either “HIGHLY QUALIFIED” – “QUALIFIED” – or “NOT QUALIFIED”. All ballots shall be written but shall remain secret as to the identity of the voting member.

**Section S. Two-Thirds Requirement:**

1. A candidate must receive the vote of at least two-thirds (2/3) of the Committee members present and voting to be deemed “HIGHLY QUALIFIED” by the Committee. A candidate must receive the vote of at least a majority of the Committee members present and voting to be deemed “QUALIFIED” by the Committee. A candidate must receive the vote of at least the majority of the Committee members present and voting to be deemed “NOT RATED” by the Committee.

2. A candidate who does not receive the necessary two-thirds or majority vote shall be deemed “NOT QUALIFIED” by the Committee.

3. Ballot Count: The Secretary [or Assistant Secretary] and another Committee member assigned by the Chair shall count the ballots and report the ballot count as to each candidate to the members of the Committee at the meeting. The Secretary [or Assistant Secretary] shall record in the minutes of the meeting the ballot count as to each candidate.

**Section T. Mandatory Non-Participation:**

Any member of the Committee or of the Board of Directors who is a partner; an associate or ‘of counsel’; to or in the law practice of the candidate under consideration by either body, or is a member of the candidate’s immediate family or household, shall be excused by the Chair from any meeting concerning the candidate’s qualifications, and shall not participate in any discussion or balloting as to that candidate.

Any member of the Committee who has been actively engaged in the campaign or any candidate for the designated judicial office shall be excused from any discussion or balloting as to that judicial office. This rule is not intended to disqualify members of the Committee who may encourage members of the Bar Association they may deem qualified to become candidates for judicial office.

**Section U. Notification of Recommendation and Appeal Procedure:**

Immediately following the meeting during which the Committee votes and makes its rating determination of a candidate:

1. Notify Candidate: The Chair shall notify the candidate, in writing, by mail or personal service, of the rating determination of the committee and shall further advise the candidate as follows:

- a. That the Board has been informed of the Committee's determination.
- b. That the determination of the Committee must be reviewed by the Board before it becomes final.
- c. That the candidate has the right to appeal the determination in the manner set forth in the following Section V.

2. Report to the Board: The Chair shall report, in writing, the Committee's rating determination to the President of the Bar Association.

#### **Section V. Board Appeal and Review Procedures**

1. Appeal: A candidate who is deemed "QUALIFIED", "NOT QUALIFIED" or "NOT RATED" by the Committee shall have the right to appeal to the Board from the Committee's determination as follows:

- a. A written Notice of Appeal shall be personally served upon the President or Vice President and upon the Chair within five (5) days of receipt by the candidate of the determination of the Committee.
- b. Said Notice of Appeal shall set forth, in summary manner, the reasons for the candidate's appeal and his or her requested relief.
- c. The Board shall meet, as soon as practicable, to consider the Appeal. The Committee Chair and one (1) committee member designated by the Committee Chair shall be in attendance with the Board as the Appeal is considered.
- d. The candidate and/or a representative of a candidate may appear before the Board to discuss the candidate's reasons for the Appeal and to answer questions as may be presented by the members of the Board. The Committee Chair and one (1) committee member designated by the Committee Chair shall be in attendance with the Board should a candidate appear before the Board.
- e. The Board shall review the candidate's questionnaire and shall meet with the Committee Chair and one (1) committee member designated

by the Committee Chair to discuss the substance of the Committee's deliberations and determination.

- f. The Board may review of the Committee's determination using an arbitrary and capricious standard regarding any matters raised in the Appeal.
- g. If the Board determines (by majority vote of a quorum of the Board) that there is or may be merit to the Appeal, the Board may either:
  - (1) Remand the matter to the Committee for reconsideration and revote. Such remand shall be in writing and shall set forth the Board's reasons for such remand. The Committee shall thereafter consider and act upon the matter, revote and report its final determination to the Board, or
  - (2) Proceed to review the Committee's determination in accordance with paragraph 2 below, considering those matters heard on the Appeal.

2. Review: The Board shall review the determination of the Committee using an arbitrary and capricious standard, and decide as follows:

- a. The Board, together with the Committee Chair and one (1) committee member designated by the Committee Chair, shall meet as soon as practicable following receipt of the written determination and/or report of the Committee.
- b. The Board shall review the candidate's questionnaire and shall meet with the Committee Chair and one (1) committee member designated by the Committee Chair to discuss the substance of the Committee's deliberations and determination.
- c. The Board shall vote to either:
  - (1) Affirm the rating determination of the Committee (by majority vote of a quorum of the Board), or
  - (2) Set aside the Committee's determination on the basis that said determination is arbitrary and capricious, and substitute its own judgement, or
  - (3) Remand the matter to the Committee for reconsideration and revote. [Following the procedure set forth at paragraph 1.g.(1) above.]

- d. The President shall immediately notify the candidate and the Committee, in writing, of the determination of the Board.
- e. AFTER Remand, the candidate shall have the right to appeal the committee's rating as set forth above ONLY if the committee determines the rating should be lower than originally determined. Such appeal shall proceed in accordance with paragraph "1" of this Section V.

3. Withdrawal of Candidate: At any time prior to the dissemination of the Board's final rating determination as provided in Section W hereinbelow, the candidate may withdraw his or her name as a candidate, as follows:

The candidate shall undertake the necessary steps to withdraw his or her candidacy with the appropriate County election and political party officials and shall notify the Board of his or her withdrawal of candidacy by written notice delivered to the President or Vice President of the Bar Association. If the candidate's name is so withdrawn, the rating determination shall not be disseminated, and the record of the proceedings of the Committee shall be sealed, subject to being re-opened if the candidate re-establishes his or her candidacy.

**Section W. Notice and Dissemination of Final Determinations by the Board:**

If a candidate for the judicial office involved continues as a candidate, the final determination by the Board that the candidate is "HIGHLY QUALIFIED", "QUALIFIED", "NOT QUALIFIED" or "NOT RATED" shall be disseminated by the President to the members of the Bar Association, the news media, and to the public in general.

**Section X. Effective Period:**

The Board's final determination as to any candidate for judicial office shall be limited to that office and remain in effect for two (2) years from the date of the final determination, unless new information is presented to the Committee that requires reconsideration before the two (2) years elapse. A candidate who fails to receive a "HIGHLY QUALIFIED" or "QUALIFIED" for a particular judicial office shall be eligible for reconsideration upon each subsequent vacancy in that office or any judicial office.

**ARTICLE 4  
AMENDMENT**

**Section Y.** The Rules for the Recommendation of Candidates for Judicial Office may be amended as may be required by a two-thirds (2/3) vote of the Board at a meeting duly called, with or without a recommendation from the Committee.

**BROOME COUNTY BAR ASSOCIATION**  
**JUDICIAL CANDIDATE REVIEW COMMITTEE**  
**CONFLICT OF INTEREST POLICY DISCLOSURE**

1. **Definition of conflicts of interest.** A conflict of interest arises when a member of the Judicial Candidate Review Committee may have a financial or a close personal or family relationship with a candidate for judicial office when the committee has undertaken to review the candidate or another candidate for the bench the candidate seeks in the same election cycle (a Candidate).

2. **Individuals covered.** Persons covered by this policy are the members of the Judicial Candidate Review Committee (“the Committee”).

3. **Facilitation of disclosure.** Persons covered by this policy will disclose in writing to the Chair of the Committee their interests or relationships that could give rise to an appearance of conflicts of interest with respect to their role on the Committee, including a list of family members, substantial business relationships, and other transactions or affiliations with businesses and other organizations or those of family members, that involve a Candidate. Such disclosure shall be made at or before the initial meeting of the Committee and updated at any time the person becomes aware of any duality of interest or possible conflict or apparent conflict of interest with respect to any Candidate.

Answering yes to any question does not immediately disqualify a person from participating as a member of the Committee, but will be reviewed by the Chair, and discussed as necessary with the Committee, as the Chair deems appropriate.

B. Have you or any immediate family member received any compensation or been involved in any financial transactions with any Candidate? (Y) \_\_\_ (N) \_\_\_

If yes, please provide details: \_\_\_\_\_  
\_\_\_\_\_

C. Have you or any immediate family member had any business relationship or dealing or financial relationship or dealings whether for himself/herself or on behalf of a client, or acting as an agent, which you believe may constitute an appearance of impropriety or may result in a potential conflict of interest with respect to your role on the Committee?. (Y) \_\_\_ (N) \_\_\_

If yes, please provide details: \_\_\_\_\_  
\_\_\_\_\_

G. Have you or a family member contributed to a Candidate’s campaign for election or re-election, worked for a Candidate’s election or re-election, displayed support for a Candidate or otherwise promoted a Candidate?. (Y) \_\_\_ (N) \_\_\_

If yes, please provide details: \_\_\_\_\_  
\_\_\_\_\_

H. Do you, or does a family member, have a close personal relationship with a Candidate? (Y) \_\_\_\_ (N) \_\_\_\_

If yes, please provide details:

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I. Is there any information not otherwise elicited by this Questionnaire which would give rise to a conflict of interest concern if known to the Committee, the public, or a Candidate? (Y) \_\_\_\_ (N) \_\_\_\_

If yes, please provide details:

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Signature: \_\_\_\_\_

Dated: \_\_\_\_\_

**ACKNOWLEDGEMENT**

**STATE OF NEW YORK)**

) ss.:

**COUNTY OF BROOME)**

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came

\_\_\_\_\_, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he/she executed the same as his/her free act and deed.

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Notary Public

## **Appendix B.**

### Select Judiciary Committee Bylaws from Bar Associations in New York State

- Central New York Women's Bar Association

A Chapter of the  
WOMEN' S  
BAR ASSOCIATION  
OF THE STATE OF  
NEW YORK

**Central New York Women's Bar Association**

P.O. Box 1842, Downtown Station, Syracuse, New York 13201-1842

GUIDELINES  
JUDICIAL SCREENING COMMITTEE

**Purpose:** The Committee shall endeavor to elevate the quality of the judiciary, among other ways, by recommending for judicial office only those individuals who have demonstrated remarkable qualifications, by encouraging political parties to endorse for election and re-election well qualified lawyers and judges, and by discouraging the candidacy of persons not qualified.

The Committee shall evaluate all candidates from Onondaga County and may evaluate all candidates within the Fifth Judicial District, except for Town and Village justices, whether or not timely endorsed by a political party.

The failure of a lawyer to achieve the Committee's recommendation should not reflect upon the lawyer in the practice of her or his profession. The qualities requisite for strong advocacy and for excellence in judicial performance do not fully coincide. The vigor and partisanship of the lawyer in superior performance as an advocate in the best interest of her or his client may disclose qualities of temperament not ideal for the judiciary. A lawyer's area of practice in which she/he has capably performed may be so circumscribed as to preclude a judgment of her/his qualifications for judicial office. Finally, the Committee recognizes that most lawyers practicing in this community have the capacity to fulfill judicial office at least adequately. The Committee's goal is judicial excellence.

Since members of the Board of Directors shall make determinations regarding the composition of the Committee and may make determinations concerning the ultimate work and determinations of the Committee, any Board member running for Judicial office must recuse herself/himself from any meetings and/or proceedings and/or voting of the Board on any issues whatsoever pertaining to judicial screening.

A. Composition of the Committee

1. Each Committee member should have at least three years of active practice of law prior to serving as a member on the Committee and shall be a member of the Women's Bar Association of the State of New York, Central New York Chapter (hereinafter CNYWBA). The Committee shall be composed of a majority of members who have at least five years of active practice of law and meaningful courtroom experience.

2. The Committee shall be comprised of at least twelve (12) members. Each Committee member shall be familiar with the Judicial Screening Guidelines and attend a training session with the Committee Chair prior to actively serving on the Committee.

3. The members of the Committee shall serve at the discretion of the Board of the CNYWBA for a three year term and shall convene in January of each calendar year.

4. Each Committee member shall authorize the Board of CNYWBA to remove her/him from the Committee, at any time at the Board's discretion. Each Committee member shall agree to waive the right of explanation or redress concerning any such removal.

5. Each member of the Committee shall disclose to the Board whether she/he holds office in a political party, either by election or by appointment, or holds any public office or is a candidate for public office on the local, county, state or national level during the time of Committee membership, or has held any such office or been a candidate for such office during the one year prior to Committee membership.

6. Each member of the Committee shall disclose to the Board whether she/he has served as a delegate to a judicial conference or convention of any political party during the time of Committee membership, or has served in any such capacity during the one year prior to Committee membership.

7. No member of the Committee shall be a public official including a judge or acting judge, or a candidate for public office in the local, county, state or national government during the time of Committee membership, nor have been such a candidate or held any such office during the one year prior to Committee membership.

8. Each Committee member shall disclose membership and/or positions held on governmental boards or entities.

9. Each Committee member shall disclose to the board her/his participation in any judicial or non-judicial campaign during the calendar year of such judicial election for which she/he is a member of Committee. Based on such disclosure the Board shall decide

whether any member shall be disqualified from screening procedures and voting on any particular candidate.

10. Each Committee member shall agree not to contribute funds to any judicial campaign for those seats subject to evaluation by the Committee in any amount during the calendar year of such judicial election for which she/he is a member of the Committee.

11. Each Committee member shall agree not to personally participate in any decision and/or decision making process of her/his law firm to contribute to any judicial campaign in the Fifth Judicial District during the calendar year of such judicial election for which she/he is a member of the Committee.

12. Each Committee member shall disclose to the Board, in detail, any past or present special kinship or professional or close personal association with any judicial candidate. Based on such disclosure the Board shall decide whether any member shall be disqualified from screening procedures and voting on any particular candidate.

13. Each Committee member shall disclose to the Board, in detail, any past or present conflict with a particular candidate. Based on such disclosure the Board shall decide whether any member shall be disqualified from screening procedures and voting on any particular candidate.

14. Each Committee member shall disclose to the Board the nature of any complaint against such member which is pending in any Grievance Committee of any Judicial District. Each Committee member shall assist the Board in obtaining material regarding the complaint, if so requested.

15. In the event that a Committee member has a political identification and/or involvement with the campaign of a particular judicial candidate, such relationship shall be disclosed. Based on such disclosure the Board shall decide whether any member shall be disqualified from screening procedures and voting on any particular candidate.

16. No Committee member shall disclose to anyone the deliberations and proceedings of the Committee, or its votes, at any time. All Committee members shall keep all information received in the course of the Committee's screening proceedings confidential.

17. All candidates shall receive a list of names of the Committee members prior to the commencement of the screening process of that candidate. Any candidate may ask that any member of the Committee be disqualified from participating in the screening of that candidate or any other candidate by submitting a written request for same to the Board. The Board shall be the ultimate arbiter as to whether any member shall be disqualified from

participating in the screening process. Disqualification of a member shall not affect the existence of a quorum for conducting the screening.

18. All disclosure made to the Board shall be confidential and shall not be further disclosed to any other person or entity outside of Board meetings.

B. Criteria and Ratings

1. The ratings for the candidates will be "commended", "qualified", "not qualified" and "not rated".

2. The factors or criteria, which will be used to rate the various candidates which will be given equal weight, with no single factor being determinative or preclusive of any particular rating, are:

- a. judicial temperament;
- b. legal ability and experience;
- c. legal writing ability;
- d. general reputation, character and fitness;
- e. industriousness, diligence and promptness;
- f. impartiality, freedom from bias and prejudice;
- g. attitudes toward gender neutrality and sensitivity to gender issues and contributions to the promotion of gender equality in the practice of law.

A candidate that received an average score in all categories of 4.25 or higher, and a score of 4.5 or higher in category "g" above, may receive a rating of "commended." The "commended" rating shall not be an endorsement of any candidate. It may be given to more than one candidate for any particular judicial office.

C. Evaluation Process

1. It shall be the responsibility of the committee chair to ensure applications are complete prior conducting the interviews. Each candidate shall be scheduled for a personal interview with the Committee. In addition, each candidate shall be provided with a copy of these guidelines, a list of names of the Committee members and a questionnaire prepared by the Committee and each candidate shall be asked to return the completed questionnaire, together with writing samples, five references, and waivers for the Grievance Committee for the Fifth Judicial District and the State Commission on Judicial Conduct prior to the personal interview date at such time and in such manner proscribed by the Committee. For a sitting judge, the five references shall include: two attorneys who have appeared before the judge, two professional colleagues, and one personal reference. For an attorney candidate who is not a sitting judge, the five references shall include: two opposing counsel, two professional colleagues, and one personal reference. Each candidate will be advised that there may be more than one interview and that further documentation may be required of the candidate.

2. The Chair shall assign Committee members to contact and check all references provided by each candidate prior to interviewing the candidate. All references of any candidate must be contacted prior to the Committee interviewing and voting on such candidate; and the Committee member responsible for checking the reference(s) of any candidate shall report the results of the reference checks to the entire Committee prior to the interview and the vote. The Chair shall be responsible for making sure the references of each candidate have been contacted and the results of such contacts have been discussed with the Committee prior to the interview and the vote.

3. All members of CNYWBA must be invited to provide the Committee with input regarding the qualifications of the candidates for judicial office. All input shall be accompanied by the name of the member submitting the input, but the identity of the member shall remain confidential to the Committee. Input will be solicited at least two (2) weeks prior to any candidate's interview through a mailing to CNYWBA membership. A comment form will be distributed so as to give structure for members to file their comments.

4. Prior to interviewing the candidates, the members of the Committee shall have read the written material submitted by the candidate, and shall have discussed all input received from other members of CNYWBA or other members of the community at large including the references provided by the candidates. Any negative comments received in any fashion about any candidate shall be discussed with said candidate during the interview process.

5. Candidates who fail to present complete applications or fail to appear for a personal interview or who have otherwise not contacted the Committee to make other arrangements will receive a rating of "not rated because declined to participate." All candidates shall be advised of this fact at the time they are invited to participate in the screening process.

D. Proceedings and Deliberations

1. The Chair shall be responsible for maintaining order and dignity throughout the proceedings.

2. At least a three-fourths of its members of the Committee shall be present at the interviewing of and voting on any candidate. Only the Committee members present at the interview of every candidate interviewed for each judicial race shall vote on and rate the candidates for that judicial race.

3. A member may abstain from voting, but abstention should be avoided except for lack of sufficient information or other situations which do not bear upon the qualifications of the candidate for judicial office.

4. Each member of the Committee shall have full and equal voting rights.  
However,

- a. each member of the Committee shall be present for the personal interview of any particular candidate in order to vote on such candidate;
- b. no member of the Committee shall vote by proxy; and
- c. a member of the Committee may attend the personal interview telephonically and participate in deliberations in the same manner.

5. Each member of the Committee shall have the right to pose appropriate questions to the candidates during the personal interview for the purposes of determining the qualifications of such candidates. The Committee shall be responsible for drafting at least one question for each of the seven factors and criteria set forth in paragraph B.2.a. through B.2.g. above such that each candidate for the same judicial office will be asked at least seven identical questions and be given an opportunity to respond. However,

- a. hypothetical questions that would require a candidate to draw a conclusion in the abstract are inappropriate and shall not be permitted;
- b. questions that would require a candidate to specify the ruling she/he would make on a particular issue are inappropriate and shall not be permitted; and
- c. a candidate may decline to answer a question they deem to be inappropriate and will be notified in advance of the interview of their right to do so.

6. Whenever possible, final votes will be taken on each candidate on the date of the personal interview with such vote subject to change only in the event of the unexpected discovery of adverse information not previously available to the Committee.

7. Voting shall be by secret ballot. A majority vote is required unless there is a tie. There shall be further discussion and a revote in the event that neither a tie nor a majority vote is determined.

8. In the event that a candidate receives a tie vote as between the categories of "commended" and "qualified", such candidate will receive a rating of "qualified" from the Committee.

9. In the event that a candidate receives a tie vote as between the categories of "qualified" and "not qualified" such candidate will receive a rating of "not qualified" from the Committee.

10. The Committee shall notify the President of the Board and the Board of its determination on each candidate. In the event that a candidate received a tie vote as set forth in paragraphs D.8. and D.9. above, the President and the Board shall be notified of same and receive an in depth report from the Chair regarding the screening process and deliberations on that candidate.

11. Within 48 hours after the Committee has reported its recommendations to the President and the Board, the Board will have the opportunity to request the Committee to reconsider the action of the Committee on any individual candidate. The request for reconsideration shall be made by a majority vote of the Board, but no Committee member shall participate in such vote. If a request for reconsideration is made, the Committee shall promptly meet (within 48 hours, if possible) to determine whether to reconsider. If the Committee decides to reconsider a candidate's rating, it must do so without delay, and then immediately report the result of the reconsideration to the Board President. Where a candidate is found "not qualified" after reconsideration or after a request for reconsideration has been denied, said candidate shall immediately be notified of the rating to allow that candidate an opportunity to invoke the appeal process. A request for reconsideration may be made in regard to any rating or recommendation. The reconsideration procedure has no impact on the availability of an appeal to a candidate who was rated "not qualified."

12. After the Committee reports its recommendations to the President and the Board, the Board shall publish the results. However, the ratings shall not be published until such time as all appeals have been concluded. All candidates shall be advised of her/his rating in writing prior to publication by letter signed by the Board President or the Chair of the Committee or both. Candidates who receive a rating of "not qualified" will be advised of the rating in writing prior to publication and the letter must specify the reasons for the "not qualified" rating, so that the candidate may formulate the basis for an appeal. If the candidate actually withdraws from the race and so notifies the Chair or the President, the Board will not publish that candidate's rating. For purposes of publishing the results, a candidate will not be considered to have withdrawn from the race for the judicial office sought if the candidate, or anyone on the candidate's behalf, makes substantial efforts to renew or continue the candidacy.

#### E. Appeals Process

1. Candidates must be advised of the appeals process when they are initially advised of the interviewing process.

2. Only a candidate who has received a "not qualified" rating may file an appeal. The candidate may file an appeal to the appeals panel by so notifying the Board President within 48 hours after she/he has been notified of such a rating. The appeals panel will convene and decide all appeals within 48 hours of filing.

3. The Board of Directors (except for any members of the Committee or the appellant-candidate) will appoint a panel of five Board members to hear appeals filed by candidates receiving the "not qualified" rating. The appeals panel will consist of the officers and immediate past president of the Board, and the President has the authority to appoint a substitute from the Board of Directors if any of the officers or past president cannot serve for any reason including but not limited to a conflict of interest. A quorum of all five members of the appeals panel is required before any appeal may be heard. All decisions must be made by majority vote.

4. The appeals panel is charged with the responsibility of determining whether the Committee's rating was erroneous in light of the evidence presented to it and, if so, what the proper rating should be. Within 24 hours after the appeal is concluded, the appeals panel shall notify the candidate and the Chair in writing of its determination, but it shall not be required to specify the reasons underlying the determination. The appeals panel's determination shall become the candidate's rating.

5. The candidate will make a presentation and the representative of the Committee will make a presentation on behalf of the Committee to the appeals panel. The Committee's representative's role is not that of an advocate; the representative should impart the information considered by the Committee in recommending the "not qualified" rating. The Committee's representative may not present any reason that the Committee used to rate a candidate "not qualified" unless that reason was contained in the candidate's notice. The candidate shall not be present during the Committee's representative's presentation, and the Committee's representative shall not attend the candidate's presentation. The appeals panel may question the candidate and the Committee representative.

6. On appeal, a candidate may present any evidence or information, oral or written, that she/he is qualified for the judicial position sought. No confidential information presented to the Committee may be revealed to the candidate in the appeals process. However, confidential information presented to the Committee may be revealed to the candidate in the appeals process if such information was a reason used by the Committee to rate a candidate "not qualified" (and it must be contained in the candidate's notice), but the identity of the person giving such information to the Committee shall always remain confidential and the vote of the Committee shall always remain confidential. Confidential information includes, but is not limited to comments from the membership, comments from the Committee, comments from references and the vote of the Committee. Any candidate whose rating remains "not qualified" after appeal may notify the President of the Board within 48 hours of notification of the appeals decision, that she/he withdraws as a candidate for that judicial office. In such a case, the ratings

will not be released.

Approved by Board, August 8, 1995

Amended by Board, May 11, 2000

Amended by Board, May 9, 2002

Amended by Board, May 11, 2004

Amended by Board, March 9, 2012

**JUDICIAL QUALIFICATIONS QUESTIONNAIRE:**

To what Court or Courts do you seek appointment, election or re-certification? \_\_\_\_\_

\_\_\_\_\_

**BIOGRAPHICAL DATA:**

\_\_\_\_\_  
Last Name First Name Middle Initial

\_\_\_\_\_  
Business Address Telephone

\_\_\_\_\_  
Home Address Telephone

\_\_\_\_\_  
Date of Birth Place of Birth

\_\_\_\_\_  
Marital Status Number of Dependents Ages of Dependents

**EDUCATION:**

\_\_\_\_\_  
Undergraduate College/University Dates of Attendance Degree\*

\_\_\_\_\_  
Undergraduate College/University Dates of Attendance Degree\*

\_\_\_\_\_  
Undergraduate College/University Dates of Attendance Degree\*

\_\_\_\_\_  
Law School Dates of Attendance Degree\*

\_\_\_\_\_  
Law School Dates of Attendance Degree\*

\*If no degree was awarded, please explain why: \_\_\_\_\_

\_\_\_\_\_

**EMPLOYMENT EXPERIENCE**

List relevant non-legal employment history with dates in chronological order beginning with the most recent:

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**PROFESSIONAL BACKGROUND**

Year of Admission to practice in New York: \_\_\_\_\_

Other States in which you are admitted to practice and years of admission: \_\_\_\_\_

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Courts before which you are admitted to practice and years of admission: \_\_\_\_\_

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List all *prior* affiliations as an Attorney:

Name	Address	Years of Affiliation
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Name	Address	Years of Affiliation
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Name	Address	Years of Affiliation
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Name	Address	Years of Affiliation
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Current Practice: \_\_\_\_\_

Name	Address	Years of Affiliation
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Type of Practice: (a) Solo Practitioner (b) Law Firm (c) Government (d) Agency  
(e) Corporation Law Department (f) Judiciary (g) Other

If you practice law in association with others (b, c, d, e, or f above), please state the name of the association, position(s) held, and duration of relationship: \_\_\_\_\_

State the nature of your experience in the law, including general areas of legal practice (i.e. corporate, contracts, torts, matrimonial): \_\_\_\_\_

What percentage of your professional practice in the last ten (10) years involved litigation?  
\_\_\_\_%

- What percentage of the litigation was in:
  - Supreme Court \_\_\_\_% County Court \_\_\_\_% City Court \_\_\_\_%
  - Surrogate's Court \_\_\_\_% Family Court \_\_\_\_% Federal \_\_\_\_%
  - Court of Claims \_\_\_\_% Administrative \_\_\_\_% Other \_\_\_\_%
  - What percentage of the litigation was Civil \_\_\_\_% Criminal \_\_\_\_% Administrative \_\_\_\_%
  - What percentage of the litigation was Jury \_\_\_\_% Non-Jury \_\_\_\_% Administrative \_\_\_\_%
  - Number of Jury Trials to Verdict: \_\_\_\_\_ Non-Jury Trials to Verdict: \_\_\_\_\_
  - Of the cases you tried to conclusion, set forth (on a percentage basis) whether you were sole, associate or chief counsel: \_\_\_\_\_

What percentage of your representation of clients in civil/criminal Court has been for:

- Civil: Plaintiffs: \_\_\_\_\_  
Defendants: \_\_\_\_\_
- Criminal: Plaintiffs: \_\_\_\_\_  
Defendants: \_\_\_\_\_

What percentage of your representative of clients in court has been for:

- Individuals: \_\_\_\_\_ Corporations/Businesses: \_\_\_\_\_ Insurance Carriers: \_\_\_\_\_
- Government: \_\_\_\_\_ Not-for-profit: \_\_\_\_\_ Other: \_\_\_\_\_

Describe your experience as an advocate in other forums (e.g. administrative hearings, arbitrations):

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State the number of Appeals in which you have participated, the name(s) of the Appellate Court(s), number of Appeals briefed, number of Appeals argued and general description of the litigating experience:

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Have you ever served as an arbitrator? If so, identify the forum in which you served and whether you were paid or served voluntarily.

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Have you held any judicial, quasi-judicial or other public office, elected or appointed and, if yes, what position(s) did you hold, when did you hold the position(s), were you appointed or elected, and how long did you hold the position: \_\_\_\_\_

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If you are a member of the Judiciary:

- Of Appeals taken from your decisions, set forth the percentage of cases where you were affirmed and name three (3) cases: \_\_\_\_\_

\_\_\_\_\_

- Of Appeals taken from your decisions, set forth the percentage of cases where you were reversed and name three (3) cases, and comment if you wish: \_\_\_\_\_

\_\_\_\_\_

- Which cases do you consider to have been your major cases or major decisions during the past five years and why: \_\_\_\_\_

\_\_\_\_\_

Have you engaged in the teaching of law, if so, set forth where, when, position held, and subjects taught: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

List any articles or other writings which you have published, giving title, subject matter, time and place of publication: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

List all organizations or clubs of which you are a member or officer, including civic, public service, social, fraternal, community, charitable, political, professional, and special interest organizations: \_\_\_\_\_

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List all Bar Association and professional societies of which you are a member or officer, and give titles and dates of positions held: \_\_\_\_\_

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List any honors, prizes, awards, publications or other forms of recognition you have received which you feel may be pertinent: \_\_\_\_\_

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Have you ever been subject of a complaint charging you with a breach of ethics or with unprofessional or illegal conduct by, or made to, any court, administrative body, bar association, disciplinary committee, or other professional group. If yes, please state the nature of the complaint, when it occurred, the person or panel that reviewed the complaint, and the outcome. Include names of relevant parties and your permission for us to review, including but not limited to, interviewing the parties. If additional space is needed, please attach separate sheets to this form.

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Have you ever plead guilty to or been convicted of a crime in any capacity? If so, please explain the charges, when it occurred, and the outcome. Include names of relevant parties and your permission for us to review, including but not limited to, interviewing the parties. If additional space is needed, please attach separate sheets to this form.

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Have you ever been a party to a civil proceeding? If yes, please state the nature of the proceeding, when it occurred, the subject matter and the outcome. Include names of relevant parties and your permission for us to review, including but not limited to interviewing the parties. If additional space is needed, please attached separate sheets to this form.

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Have you ever filed a petition in bankruptcy or had such a petition filed against you? If so, provide details.

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Have you ever had a judgment taken or liens filed against you? If so, provide details, including whether said judgment or lien has been satisfied.

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Please describe any work which you have done pro bono and/or representing minority clients and/or as assigned counsel.

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If you are an owner, officer or director of any business or organization or otherwise engaged in the management of a business, please furnish details.

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In your past and present position as an attorney/judge, describe any experiences you have had or observed involving issues of gender and/or racial bias:

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State any other information which you may regard as pertinent.

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Why do you seek judicial office?

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**CERTIFICATION**

I hereby certify that the information provided herein is true, accurate, and complete, to the best of my knowledge and ability.

\_\_\_\_\_

\_\_\_\_\_

Sworn to before me this \_\_\_ day of  
\_\_\_\_\_, 2011

\_\_\_\_\_

Notary Public

Please describe any work which you have done pro bono and/or representing minority clients and/or as assigned counsel.

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If you are an owner, officer or director of any business or organization or otherwise engaged in the management of a business, please furnish details.

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In your past and present position as an attorney/judge, describe any experiences you have had or observed involving issues of gender and/or racial bias:

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State any other information which you may regard as pertinent.

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Why do you seek judicial office?

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**CNYWBA JUDICIAL SCREENING COMMITTEE EVALUATION  
OF JUDICIAL CANDIDATES**

Please rate the candidate in each of the following categories. Please note that ratings are to be on a scale of 0-5, 5 being the highest rating.

Qualified: An average rating of 2.5 or higher.

Not Qualified: An average of 2.4 or lower.

Commended: An average score of the candidate in all categories of 4.25 or higher, **and** a score of 4.5 or higher in the area of attitude toward general neutrality and sensitivity to gender issues and contributions to the promotion of gender equality in the practice of law.

**CANDIDATE'S NAME AND POSITION SOUGHT:**

\_\_\_\_\_ Court

**Rating Criteria**

- \_\_\_\_\_ **a. Judicial Temperament**
- \_\_\_\_\_ **b. Legal Ability and Experience**
- \_\_\_\_\_ **c. Legal Writing Ability**
- \_\_\_\_\_ **d. General Reputation, Character & Fitness**
- \_\_\_\_\_ **e. Industriousness, Diligence & Promptness**
- \_\_\_\_\_ **f. Impartiality, Freedom from Bias and Prejudice**
- \_\_\_\_\_ **g. Attitude toward general neutrality and sensitivity to gender issues and contributions to the promotion of gender equality in the practice of law.**
- \_\_\_\_\_ **OVERALL AVERAGE**

**To the State Commission on Judicial Conduct, Attorney Disciplinary Committee, Attorney Grievance Committees, or Attorney Committee on Professional Standards of the Appellate Divisions in the State of New York:**

I, (Please print name) \_\_\_\_\_,  
hereby consent to the release by the State Commission on Judicial Conduct, Attorney Disciplinary Committee, Attorney Grievance Committees, or Attorney Committee on Professional Standards of the Appellate Divisions of the State of New York, to the Central New York Women's Bar Association Judicial Screening Committee, solely for use in the judicial screening process pursuant to Part 150 of the Rules of the Chief Administrative Judge, of any materials relating to the making, investigation and determination of complaints against me handled by the Committees, other than records and proceedings where the complaints were dismissed as unproven or unmeritorious.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
Notary Public

## **Appendix B.**

### Select Judiciary Committee Bylaws from Bar Associations in New York State

- Erie County Bar Association

**ARTICLE IX**  
**JUDICIAL RATINGS AND EVALUATION OF THE JUDICIARY**

1. **APPOINTMENT AND COMPOSITION OF THE JUDICIARY COMMITTEE.** The Board shall appoint members of the Association to fill vacancies on the Judiciary Committee. In the event that a member of the Committee is replaced for any reason, his or her replacement shall be of the same political affiliation. The Committee shall be composed of twenty-nine members, of whom at least nine new members shall be designated each year. Not more than fourteen members shall be of the same political affiliation. No member of the Committee shall seek election to a judicial office or publicly endorse or oppose any candidate for judicial office.

2. **AUTHORITY AND DUTY OF THE ASSOCIATION TO RATE CANDIDATES FOR JUDICIAL OFFICE.**

(A) The Association shall rate any person nominated for, or who has filed nomination petitions for, or whom the Board in its discretion determines may become a candidate for, judicial office in Supreme Court (if the candidate resides in or regularly practices or sits in Erie County), Erie County Court, Erie County Surrogate, Erie County Family Court, and Buffalo City Court.

(B) The Association, at the discretion of the Board, may rate any other applicant for judicial office in the Supreme Court, Eighth Judicial District; the Appellate Division, Fourth Department; the New York Court of Appeals; the United States District Court for the Western District of New York; or the United States Court of Appeals for the Second Circuit upon the request of the applicant, or the appointing official body or, upon the initiative of the Association.

3. **DUTIES OF THE JUDICIARY COMMITTEE.**

(A) The Judiciary Committee shall evaluate all persons whom the Association must rate for judicial office or whom, in its discretion, it chooses to rate, and shall report its determination of the rating of the applicant to the Board.

(B) The Judiciary Committee, upon the direction of the Board, shall receive, consider, and investigate complaints made as to the judiciary and those who serve as an adjunct to the judicial function, and report to the Board.

4. **JUDICIAL RATING PROCEDURE.**

(A) The Judiciary Committee shall request all persons who are to be rated for judicial office to submit a completed written questionnaire which shall also

constitute an application for judicial rating. Any such questionnaire submitted by an individual who is then an officer or director of the Association shall not be considered by the Committee until a written resignation executed by such individual, reciting his or her immediately-effective resignation as such officer or director, shall have been tendered to the Board.

**(B)** The questionnaire shall be in such form as may be prescribed by the Board from time-to-time. The failure of an applicant to submit a questionnaire may be considered in evaluating the applicant and given such weight as the Committee or Board, as the case may be, deems appropriate.

**(C)** Applications for judicial ratings are to be submitted no later than the date set forth in the questionnaire referred to herein. This condition may be waived by the Committee for good cause shown.

**(D)** The presence of fifteen members of the Committee shall constitute a quorum of the transaction of business.

**(E)** The judicial rating of an applicant shall include, but not be limited to, the consideration of the following criteria:

- (i) Integrity
- (ii) Experience
- (iii) Professional Ability
- (iv) Education
- (v) Reputation
- (vi) Industry
- (vii) Temperament
- (viii) Fairness
- (ix) Statutory Standards
- (x) Attitude
- (xi) Punctuality

and such other information as necessary to evaluate the applicant.

**(F)** The Committee, upon completing its evaluation of an applicant, shall make a determination as to a rating for such applicant. The rating determinations are to be as follows:

- Rating: "Outstanding"
- Rating: "Well Qualified"
- Rating: "Qualified"
- Rating: "Not Recommended"

**(G)** A rating shall be determined by secret ballot and shall require the following votes of the Committee:

Rating: “Outstanding”: Eighty percent of the Committee members present and voting.

Rating: “Well Qualified”: Sixty-seven percent of the Committee members present and voting.

Rating: “Qualified” and “Not Recommended”: Simple majority of the committee members are present and voting.

The Committee shall continue to vote on a rating for an applicant until a rating is determined in accordance with the above-stated percentages.

**(H)** An applicant who receives the rating “Not Recommended” shall be so notified, by any reasonable means determined by the Committee, at least two days in advance of the date determined by the Committee for the release of such rating for publication. Such applicant may request reconsideration of the rating within the time and in the manner established by the Committee. The Board shall promulgate procedures for such reconsideration, which shall include among other things a mechanism whereby the applicant’s request for reconsideration is first presented to the Committee, which will make recommendations to the Board in accordance with the Board’s procedures for reconsideration. The Board shall then, at a meeting at which no less than twelve Board members shall be present, make a final determination of the rating of such applicant. Any change by the Board on such reconsideration to any rating of the Committee shall require the affirmative vote of at least twelve Board members. No public announcement of the rating shall be made until two days after the applicant has been notified of the rating or of the results of any reconsideration. At any time prior to the date fixed for publication of the rating, the applicant may withdraw his or her application for a rating upon the execution of a written instrument on a form, the contents of which have been prescribed by the Board, withdrawing his or her candidacy for that judicial office and agreeing not to accept appointment thereto. Each applicant receiving such a rating shall promptly be provided with the prescribed form, the procedure for requesting reconsideration, and the date upon which the rating will otherwise be published. Upon the execution of such written instrument withdrawing his or her candidacy, the rating of the applicant shall not be published. If the applicant fails to execute such written instrument, the Committee, after the expiration of the two day period following notice to the applicant of the rating or the result of the reconsideration, as the case may be, shall publish the rating.

(I) When notifying an applicant that he or she has received a rating of “Not Recommended” the Committee shall give the applicant a written general explanation of the factors underlying such rating. This explanation shall be sufficiently general so as to protect the confidentiality of all who gave information pertinent to the rating or participated in any deliberations thereon. The Committee shall not make public the said explanation unless, in the judgment of the Committee, such public release is necessary to protect the reputation of the Association, or the integrity of the judicial rating process, or its acceptance by the public.

(J) All discussions and proceedings of the Committee concerning candidates, shall be held in the strictest confidence by each member of the Committee, and shall not be discussed at any time with any person not a member of the Committee except as may otherwise be required by applicable law. Any member of the Committee charged with a breach of this requirement of confidentiality may be suspended by the Chair of the Committee pending an investigation, hearing and recommendation by a subcommittee consisting of the President of the Association, the Chair of the Committee and the Board’s liaison to the Committee. After the subcommittee members have made their recommendation to the Board, final action shall be taken by the Board which may in its discretion remove such Committee member and choose a replacement for such member.

**5. JUDICIAL PERFORMANCE AND PROCEDURE.**

(A) The Association, in accordance with procedures established by the Board, may periodically solicit from the members of the Association, at least once every five years, written performance evaluations of sitting judges, except town and village justices, and of all family court hearing examiners and Supreme Court matrimonial referees. The performance evaluation ratings shall be as follows:

Rating:	S - Satisfactory
Rating:	I - Improvement Needed (with specific recommendations)
Rating:	U - Unsatisfactory

(B) The Board shall review the results of any such evaluations and take such action thereon as it deems appropriate.

**6. RECUSAL OF DIRECTORS AND JUDICIARY COMMITTEE MEMBERS.**

(A) No director or Judiciary Committee member who has within the last year endorsed a candidate in his or her efforts to attain judicial office through financial contribution or in any other manner, shall participate in the rating of such

candidate or any candidate running in opposition thereto. For purposes of this Section 6, the term “year” shall mean the period beginning with the day after the most recent Election Day in November through Election Day in the following November.

**(B)** No member of the Committee or the Board shall take part in the interview, deliberations or shall vote concerning a candidate where there exists a conflict of interest, or the appearance of a conflict of interest. Each Committee and Board member is under an obligation to disclose his or her personal and professional relationship or other potential conflicts of interest with the candidates to be evaluated and may recuse him or herself from participation with regard to such candidate(s). A Committee or Board member who practices with a candidate in a law firm or other legal organization shall recuse him or herself from the proceedings with regard to that candidate. If the nature of the relationship between the candidate and the Committee or Board member is such that it would create the appearance of a conflict of interest if that member were involved in the evaluation of other candidates for the same judicial office, then such member should also recuse him or herself from the proceedings with regard to such other candidates. In the absence of recusal, a vote of a majority of the Committee or Board members present (excluding the member at issue) shall be required to disqualify a Committee member from participating concerning a particular candidate(s) on the ground that there exists the appearance of a conflict of interest.

## JUDICIARY COMMITTEE PROTOCOL

- To serve as chair of the committee the member must have previous Judiciary Committee experience.
- A secretary must be appointed at the orientation meeting by the chair to take detailed notes at each meeting. This includes pre and post interview discussions, questions from the committee and answers from the candidate. This will assist the committee and the board of directors in the process if a candidate receives a “Not Recommended” rating and requests reconsideration of the rating.
- The chair must re-affirm the oaths with committee members and candidates at the start of each meeting/interview.
- There will be no use of cell phones or electronic devices in the meeting room during the meetings or interviews, except from prior approval of the chair.
- Except in unusual circumstances, committee members will be given no less than 3 weeks to conduct their “On” and “Beyond” investigations.
- Committee reports from previous years will not be provided to committee members to assist in their “On” or “Beyond” investigations, nor can they be used by a candidate in lieu of a new application.
- Candidates will be offered the option of having their interview (audio) recorded, at the expense of the candidate.
- Ballots for each interview will be provided to the chair bearing each candidates name, to ensure one vote per committee member.
- All correspondence shall be handled by the Bar Association, including the chair’s correspondence.
- Within 24 hours of the conclusion of the meeting where a final rating for a candidate is granted, the chair will notify each candidate of the committee’s rating by telephone followed up with a confirming letter.
- Publication of ratings will not be released until all candidates for a particular court have been rated.
- All materials, such as On and Beyond Reports and Committee minutes, will be destroyed/shredded at the end of the committee year.

*As adopted at a meeting of the Board of Directors September 2016*

## JUDICIARY COMMITTEE POLICIES AND PROCEDURES FOR RATING JUDICIAL CANDIDATES

- 1) The Bar Association shall notify, through *The Buffalo Law Journal* and *The Bulletin* that a potential candidate has submitted an Application for Judicial Rating and that anyone who has information may call four or five members of the Judiciary Committee who will be chosen by the chairperson to receive the phone calls. Written information may also be sent to the Bar Association and all written information shall be signed.
- 2) The definition of “Qualified” shall be as follows:  
  
*The great public responsibility and power of the bench necessitates that the measure of qualification for judicial office must be greater than that required for the private practice of law. To be rated “Qualified” the applicant must meet each of the listed criteria to a reasonable degree. A rating of “Well Qualified” requires qualifications to a high degree, and a rating of “Outstanding” requires qualifications even beyond that high standard. In assessing an applicant’s qualifications it must be remembered that meeting the ‘standards of professional conduct expected of lawyers in their relationships with the public, with the legal system, and with the legal profession,’ is at least as important as the requirement of knowledge and proficiency in technical aspects of the practice of law.*
- 3) A release shall be prepared as proposed in the Report to obtain all records from the New York State Office of Attorney Grievance Committees, New York State on Judicial Conduct and the Bar Association’s Committee on Grievances.
- 4) The applicant shall be reminded of the requirement and shall sign a consent agreeing to keep the Judiciary Committee apprised of all up-to-date information regarding any ethics or grievance complaints against him or her.
- 5) The definition of “applicant” shall include but not be limited to an incumbent judge or justice who has filed a letter with the Office of Court Administration indicating a desire to seek other judicial office or who has expressed an interest in appointive or elective judicial office to a political party.
- 6) It will be the responsibility of the Judiciary Committee members and the Board of Directors to reveal all negative information regarding a potential candidate to the Judiciary Committee chairperson or his or her designee before the candidate’s appearance before the Judiciary Committee. The candidate shall be advised by the chairperson before the meeting of all negative comments.
- 7) The Judiciary Committee’s investigators shall, if possible, be familiar with the area of law in which the candidate practices and shall make every effort to contact people who practice within the same area of concentration.
- 8) An Association staff member shall be designated to assist the Judiciary Committee chairperson to process applications for judicial ratings and coordinate the Committee’s activities.

- 9) The application shall be changed to include a request for information for activities outside the legal profession and candidates will be asked to provide any and all information deemed relevant to their qualifications as a judge.
- 10) All potential candidates will be requested to submit an Application for Judicial Rating as soon as possible so that the rating can be completed and enable the applicant to use it in his or her request to the political parties for consideration.
- 11) Committee members will be asked to sign an Oath of Confidentiality at the beginning of each year and will be instructed not to release any information pertaining to the committee's business to anyone outside the committee, including members of the bench and bar who participate in the committee's investigations. It shall not be considered a violation of this policy for a committee member to later confirm orally to a source the substance of a conversation with that source.
- 12) If a candidate for judicial office has been formally rated by the Bar Association the previous year for the same judicial office for which he or she is currently a candidate, at the discretion of the Judiciary Committee, he or she will have the opportunity to update the original Application for Judicial Rating but must still participate in the rating process.
- 13) The Judiciary Committee roster will be published in the September issue of the *Bulletin*. Apart from the publication, any requests for the roster will be released only with the consent of the President and with an admonition that the candidate may not directly or indirectly contact any member of the committee.
- 14) The definition of "Qualified" is amended as noted above.
- 15) If a candidate is rated within the previous two years for the same judicial office being sought, then additional consideration shall be given to the previous Judiciary Committee rating.

*As amended at a meeting of the Board of Directors February 2008.*

## **Appendix B.**

### Select Judiciary Committee Bylaws from Bar Associations in New York State

- Nassau County Bar Association

same for further investigation. After such further investigation shall have been completed and acted upon by the Chair, and where the investigation has not revealed evidence to sustain the allegations in the complaint, the Chair shall send letters to the attorney and to the complainant advising them that the complaint has been dismissed. Where the investigation results in evidence of misconduct on the part of the attorney, the Chair shall refer the matter to the State Committee, with a recommendation as to action, and shall notify the attorney and complainant by letter of such reference to the State Committee.

3. In every matter, following investigation and action by the Chairman, the report of the Grievance Committee, together with all supporting documents, shall be forwarded to the Chief Counsel of the State Committee.

B. The Grievance Committee is not authorized to conduct any hearings and shall have no authority to discipline or take any action with respect to any attorney except as provided in these By-Laws.

C. Except as specifically provided in this Article, all proceedings, investigations, reports and activities of the Committee, its Chair and members shall be confidential.

## ARTICLE VIII

### JUDICIARY COMMITTEE

SECTION ONE. Organization. The Judiciary Committee shall consist of twenty-one members, all of whom shall be Life Members, Regular Members, or Sustaining Members of the Association, and each of whom shall be appointed by the President with the approval of the Board of Directors.

A. Each member of the Judiciary Committee shall have been a member of the Association in good standing for a continuous period of at least five years immediately preceding such appointment, and shall remain such throughout the term of appointment.

B. No more than four members of the Committee may be Past Presidents of the Association, and no more than four members of the Committee may be Elected

Directors of the Association. No Officer of the Association, and no judicial or non-judicial employee of a court of record may be a member of the Committee.

C. In making appointments to the Committee, the President shall appoint only persons who have performed outstanding service to the public and to the Bar, and who are recognized as persons of leadership and integrity. In making such appointments, the President shall endeavor that the Committee membership as a whole reflect a broad range of political participation and professional experience.

D. Each member of the Committee shall be appointed for a term of two years, commencing July 1 in the year of appointment and continuing until such term expires or a successor is appointed, whichever is later. Any vacancy shall be filled by appointment in the same manner as an original appointment, for the balance of the unexpired term. The Committee members shall be appointed in two classes: Class A, consisting of eleven members appointed for terms commencing and ending in odd-numbered years, and Class B, consisting of ten members appointed for terms commencing and ending in even-numbered years.

E. No person may serve as a member of the Committee for more than three consecutive terms, nor more than seven years in any nine year period, and any person who has served for such number of terms or period of time shall not be eligible for re-appointment to or further service on the Committee until the expiration of two years after the expiration date of the last such term or year of service. Nothing herein shall be construed as requiring the resignation from the Committee of any member who has not completed his or her term on the effective date of this term limitation.

F. With the approval of the Board of Directors, the President shall designate one member of the Committee who is either a Past President or an Elected Director of the Association, and who has had at least two years prior service as a member of the Committee, to serve as Chair, and one member of the Committee who is either a Past President or an Elected Director of the Association, and who has had at least one year of such prior service, as Vice-Chair. The Chair and Vice-Chair shall each serve terms of one year, commencing on July 1 in the year of their appointment and continuing to the expiration of term or until their respective successors are appointed, whichever is later. In the event the Chair is absent or unable to act, the Vice-Chair shall serve as Chair. In the event both the Chair and Vice-Chair are

absent or unable to act, the Chair shall designate a member of the Committee to act as Chair.

G. No member of the Committee may be an officer or member of any campaign committee for any candidate for judicial office in New York State. No member of the Committee, either directly or indirectly, may contribute to, support or participate in the campaign of any candidate for judicial office in New York State. If the President or the Chair determines that any member of the Committee has violated the foregoing provisions of this paragraph, the position of that member shall be deemed vacant.

H. A member of the Committee whose qualifications have been submitted to the Committee for review as a candidate for nomination, election, designation or appointment to judicial office shall vacate his or her position as a member of the Committee.

I. In the event any member of the Committee is absent from three or more meetings of the Committee within any calendar year, without having been excused by the Chair, the President or the Chair shall declare the position of such member vacant.

## SECTION TWO. General Procedures.

A. Thirteen members of the Committee shall constitute a quorum. All actions of the Committee shall be taken by a majority of the members present and voting, unless otherwise provided herein.

B. All proceedings of the Committee, and all proceedings of the Board of Directors, with respect to the review of the qualifications of any person or review of a determination of the Committee as to the qualifications of any person, or with respect to any other matter within the jurisdiction of the Committee, shall be confidential, except as otherwise provided in these By-Laws or for the purpose of defending against any lawsuit, administrative or grievance proceeding.

C. All votes by the Committee or the Board of Directors as to qualifications of any person shall be by secret ballot. Neither the Committee nor the Board of Directors may dispense with the requirement for a secret ballot for any reason.

### SECTION THREE. Power and Authority.

A. Upon written application to the Committee, the Committee shall review, and make determinations with respect to, the qualifications of any person for nomination, certification, selection or appointment to (a) judicial office in a court of record which customarily holds court sessions in Nassau County, (b) the office of District Attorney of the County of Nassau, (c) a position as an arbitrator, hearing officer, mediator or adjudicator of evidentiary matters in or on behalf of a court of record which customarily holds court sessions in Nassau County or of a panel of the Association, and (d) the office of United States Attorney for the Eastern District of New York, or any federal judicial office in or for the Eastern District of New York, including magistrate judge, bankruptcy judge, or any other similar position. A request for an application may be made by the person whose qualifications are to be reviewed or by any person charged with the duty of making an appointment or nomination or by any political party.

B. The Committee may also review and make recommendation with respect to, the qualifications of any person for nomination, certification, selection or appointment to judicial or other similar office at the request of such person or a bar association in an adjoining county notwithstanding that the said person, if appointed or elected, would customarily preside at or participate in proceedings held outside Nassau County.

C. In order to assist in fulfilling the functions of the Committee, at appropriate times the Chair of the Committee may notify any person proposed for nomination, appointment or certification to such office that the Committee is available to review the qualifications of such person. The Chair also may notify political parties and others of dates by which applications of persons to be interviewed must be submitted to the Committee for timely consideration.

D. In addition, the Committee may consider and investigate any complaint which may be laid before it, or which it may initiate, of wrongful or inappropriate conduct on the part of any judicial or non-judicial officer of any court of record in Nassau County. If, in the opinion of the Committee, any such complaint is well-founded, the Committee shall so report thereon to the Board of Directors for

action, and the Board shall thereupon take such action as in its judgment is appropriate.

#### SECTION FOUR. Standards and Procedures for Review and Determination of Qualifications.

A The Board of Directors shall adopt, may amend and shall cause to be published rules of procedure governing the process by which the Committee will review the qualifications of persons pursuant to these By-Laws. The Board of Directors shall consider such recommendations as the Committee shall make.

1. Such rules of procedure for consideration of persons for the position of arbitrator, mediator, small claims arbitrator, hearing officer, small claims assessment review hearing officer, or other similar position may (a) amend, vary or waive the requirement for a questionnaire or a personal appearance by such persons, (b) dispense with the requirement for recording of the interview or deliberations with respect to such persons, and (c) provide for review of the qualifications of such persons by a subcommittee of not less than three members of the Committee provided that the recommendation of such subcommittee thereafter shall be approved by an affirmative vote of a majority of the Committee members present and voting (but in no event fewer than seven votes) at a duly convened meeting thereof.

2. The rules also may permit the Committee to dispense with the requirement for a new questionnaire where the person has been interviewed for the same position within the past twelve months, provided that the Committee receives copies of the most recent prior questionnaire and a current sworn statement from the person with respect to any material changes since the completion of the prior questionnaire.

B. Notwithstanding any other provision in these By-Laws, the Committee shall not have jurisdiction to conduct any review or consideration, or conduct any reconsideration, and the Board of Directors shall not have jurisdiction to hear any appeal, with respect to the qualifications of any person who, prior to or during such review, consideration, reconsideration or appeal has been designated or nominated for election to, or appointed to, the position and term which is the subject of such review and, by reason thereof, cannot decline such nomination, designation or

appointment. At such time as such nomination, designation or appointment shall reach the point where it cannot be declined, any person not theretofore found "well qualified" shall be determined to be "not approved at this time" and any further review with respect to such person's qualifications shall terminate.

C. Except where these By-Laws permit the Committee to dispense with a personal interview, each person whose qualifications are being reviewed as provided in this Article shall personally appear before the Committee. The interview of such person and the deliberations of the Committee thereafter shall be recorded and the recording thereof preserved for a period of three years from the final determination.

D. In making its determination on any person's qualifications, the Committee shall consider whether or not (1) the person has established a reputation for good character and temperament, (2) the person has a sufficient degree of professional experience, scholarship and ability to perform the duties of the office for which the person is being considered, (3) whether the conduct of such person has been above reproach, (4) whether such person is known as a conscientious, studious, thorough, courteous, patient, punctual, just and unbiased person who can be counted upon to be fearless and truthful when subject to public and/or political pressure, (5) whether such person is of good moral character and (6) whether such person is emotionally, cognitively and physically able, with any reasonable accommodations, to fulfill the duties of the office for which the person is being considered.

E. After considering the foregoing matters, the Committee shall conclude, by concurring vote of the majority of the members present and voting, whether such person would be likely to perform with distinction the duties of the office for which the person is being considered. In the event of an affirmative conclusion, the Committee shall issue a determination that the candidate is "Well Qualified" for the office or position such person seeks; in the event of a negative conclusion, the Committee shall issue a determination that the candidate is "Not Approved At This Time" for such office or position.

F. Notwithstanding any other provision of these By-Laws with respect to quorum or voting requirements on the Committee, no person may be found "Well Qualified" by the Committee unless such finding is made by the affirmative votes

of at least seven members of the Committee or of a majority of those present and voting, whichever is greater.

G. As soon as practicable following such determination, the Chair shall report the determination to the President of the Association, to the person under consideration, and (if applicable) to the political party or other person responsible for the submission of the name of the person under consideration. In the event the Committee's determination is that a person under consideration is "not approved at this time", the Chair also shall advise such person of the right to reconsideration as provided hereinafter.

SECTION FIVE. Reconsideration by the Committee. In the event any person is determined to be "not approved at this time", such person may request reconsideration before the Committee, as provided in this section.

A. A person who is found "Not Approved At This Time" may request reconsideration by the Committee within three business days after receipt of notification from the Chair of such determination. Such request for reconsideration shall be in writing and shall be sent to the Executive Director at the Home of the Association.

B. Upon receipt of a request for reconsideration, the Chair shall cause to be prepared a transcript of the interview of such person under consideration and the deliberations of the Committee. The transcript shall be redacted by the Chair to eliminate references to the names of any person other than the person under consideration and all information which is likely to identify any person other than the person under consideration. A copy of such redacted transcript shall be supplied to the person under consideration, unless such person waives the right to the transcript.

C. The Committee shall be convened for such reconsideration within five business days of the receipt of a request for such reconsideration, except where such time is extended by the Chair for good cause or upon request of the person under consideration based on good cause shown in the discretion of the Chair or upon the consent of the person under consideration. No such extension may be granted for a period longer than ten business days from the date of the request for reconsideration.

D. At such reconsideration, relevant witnesses, new materials and new information may be submitted to the Committee. The person under consideration may be present and may be represented by counsel.

E. The determination made following reconsideration shall supersede the prior determination being reconsidered.

F. As soon as practicable following the determination after reconsideration, the Chair shall report the result to the President of the Association, to the person under consideration, and (if applicable) to the political party or other person responsible for the submission of the name of the person under consideration.

G. In the event the Committee's determination is that a person under consideration is "not approved at this time", the Chair shall advise such person of the right to review by the Board of Directors as provided hereinafter.

#### SECTION SIX. Review by Board of Directors

A. A person who has been determined after reconsideration to be "not approved at this time" may make a written request for review by the Board of Directors. Such request shall be made within three business days of receipt of notification of the result of the Committee's determination on reconsideration and shall be sent to the Executive Director at the Home of the Association.

1. Upon receipt of such written request, the Executive Director shall notify the President and Chair of the Committee. The Chair shall cause to be prepared the transcript of each interview of the person under consideration and the deliberations of the Committee. The transcript shall be redacted by the Chair to eliminate the reference of all names other than the name of the person under consideration and all information which is reasonably likely to identify any person other than the person under consideration.

2. A copy of such redacted transcript shall be supplied to the person under consideration, unless such person waives the right to the transcript.

B. Review by the Board of Directors shall be held in Executive Session and completed within ten business days after the delivery of the redacted transcript of the reconsideration interview and deliberation to the person under consideration, except where such time is extended by the President for good cause or an extension is requested by the person under consideration for good cause shown in the discretion of the Chair. No extension may exceed a period of ten business days. Upon such review, the two redacted transcripts shall be submitted to the Board of Directors, along with the person under consideration's written Questionnaire and a written report of the Chair as to the proceedings before the Committee.

1. Review by the Board of Directors shall be considered an appeal and not a *de novo* hearing or review. No witnesses shall be permitted and no new information, written or oral, shall be considered.

2. The person under consideration may be present and may be represented by counsel at the review before the Board of Directors, but neither the person under consideration nor counsel may be present during the deliberations and vote.

3. All members of the Committee shall be invited to participate in the review before the Board of Directors, and shall have an opportunity to address the Board with respect to the issue under consideration. However, no member of the Committee (including any Committee member who is also a member of the Board of Directors) may be present or participate in the deliberations or vote by the Board of Directors on such review.

4. Any member of the Board of Directors who has participated as a member of, or contributed to, the campaign committee for the candidacy of the person under consideration or any other person who is seeking the same office as the person under consideration shall be ineligible to attend or participate in the review proceedings.

C. After completion of review and deliberations, the Board of Directors shall apply the same standards as are to be applied by the Committee, and make a determination stated in one of the following forms:

1. the person under consideration is well qualified for the office such person seeks, or

2. the person under consideration is not approved at this time for such office.

D. The Board of Directors may make a determination on appeal contrary to that of the Judiciary Committee only by concurring vote of at least two-thirds of the members of the Board of Directors present and voting.

E. Upon a determination by the Board of Directors, the President promptly shall report such determination to the person under consideration, and (if applicable) to the political party or other person submitting the name of such person for review, and to the Chair of the Committee.

F. The determination of the Board of Directors shall be final with respect to the qualifications of the person under consideration for the office or offices for which such person was considered, and there shall be no further review or reconsideration of such determination.

SECTION SEVEN. Withdrawal. Prior to a final determination by the Committee with respect to the qualifications of a person for a particular office or position, or prior to submission of a request for review by the Board of Directors of a determination that such person is "not approved at this time", the request for review of that person's qualifications may be withdrawn by the person who submitted the name of such person, or by the person whose name was submitted.

A. No such withdrawal shall be permitted after submission of a request for review by the Board of Directors.

B. Upon such withdrawal, the Committee's determination with respect to such person's qualifications will be expunged, provided however that if such person thereafter is or continues to be a candidate for nomination, election, selection or appointment to the same office or position in the same year that such determination was made, the determination of the Committee shall be final and may be disclosed by the President or the Chair as provided in this Article.

C. No new or further application for review of qualifications of the person whose name has been so withdrawn shall be submitted by or on behalf of such person for the same office, nor shall any new or further application with respect to the same person for the same office be considered by the Committee, until after the conclusion of the general election next following the date of withdrawal.

#### SECTION EIGHT. Certification

A. The Committee may adopt a different form of questionnaire, subject to the approval by the Board of Directors, for judicial officers seeking certification or recertification, but shall apply the same standards and procedures as set forth in this Article except as stated herein.

B. Following review of the qualifications of a person for certification or recertification, the Committee shall issue a determination either that the person is qualified for certification/recertification or is not qualified for certification/recertification. This determination shall be in lieu of the determinations of “Well Qualified” and “Not Approved At This Time” otherwise provided for in this Article.

C. The Chair of the Committee shall convey the determination to the President of the Association, the person under review and the Office of Court Administration.

D. The provisions for reconsideration as well as Board of Directors review shall also be applicable herein.

#### SECTION NINE. Other General Provisions

A. All proceedings and determinations of the Committee and the Board of Directors pursuant to this Article shall be confidential and may not be disclosed to any person except as provided in this Article. Any member of the Committee may discuss such proceedings with the Board of Directors as may be necessary during the course of any review by the Board of Directors and the Chair may disclose such proceedings to the President.

B. After a final determination is made by the Committee or the Board of

Directors, as the case may be, the President, or the designee of the President, shall disclose and publicize, including posting at the Home of the Association and press release or otherwise, the final determination of the Association with respect to any person whose qualifications have been reviewed hereunder and who during the period of time in which such determination is effective is, or becomes, a candidate for election or appointment to the judicial or other office or position for which such review was conducted.

1. In making such disclosure, the President may also disclose such additional information as may be appropriate to inform the public or appointing official of the basis for the final determination.

2. Every reasonable effort shall be made to publicize such determination in sufficient time to inform the public and/or the appointing officer of such determination prior to the election or appointment of a person for such office or position.

C. In performing its functions, the Committee shall conduct such investigation and exercise due diligence, including solicitation of information from members of the Bar as may be appropriate. The Committee shall be entitled to consider any information presented and to afford the information such weight as the Committee deems appropriate.

D. If any person under consideration for judicial or other office described in this section shall fail or refuse to file a questionnaire on the form required by the Committee, or to consent to full disclosure as provided in such application, or to be interviewed as provided herein, the Committee shall find such person "not approved at this time" for the office such person seeks, and such determination shall not be subject to reconsideration by the Committee or review by the Board of Directors.

E. In the case of a candidate referred for review at the request of another bar association, such review shall be conducted in the manner described in this Article, except that the determination with respect to such person shall be reported to the President, such person and the referring bar association.

F. In any case where the Committee has jurisdiction to review the qualifications of a person, but the Committee determines that it would be inappropriate for it to do so, the Committee may request that such review be conducted by an equivalent committee of the county bar association in an adjoining county.

G. Any determination made pursuant to this Article with respect to the qualifications of any person for any position or office shall remain valid and effective until the next succeeding general election, and shall be of no force and effect thereafter. However any determination made for a certification/recertification shall be effective until December 31<sup>st</sup> of the year in which made.

H. All notices and advisements under this Article shall be in writing and shall be sent by:

- a. Electronic mail;
- b. Overnight carrier; or
- c. Regular mail

and shall be deemed to have been received the following business day if sent by electronic mail or overnight carrier and on the third business day after mailing if sent by regular mail.

I. Any person under consideration who is entitled to receive a transcript of any proceeding under this Article must pick up said transcript in person at the Home of the Association.

J. All completed questionnaires, together with supporting documentation, filed under this Article shall be retained at the Home of the Association for a period of three years after the conclusion of the review of the person submitting the questionnaire.

## ARTICLE IX

### SECTIONS

SECTION ONE. Establishment and Purposes. The Board of Directors, in its discretion, by a majority vote, may establish, discontinue and modify Sections of

## **Appendix B.**

### Select Judiciary Committee Bylaws from Bar Associations in New York State

- Onondaga County Bar Association

RULES FOR THE RECOMMENDATION OF JUDICIAL CANDIDATES BY THE  
ONONDAGA COUNTY BAR ASSOCIATION

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ARTICLE I  
Judiciary Committee Meetings

Section 1. Organization meeting. The Judiciary Committee ("the Committee") shall meet annually within a reasonable time after the Committee has been elected by the Board of Directors of the Onondaga County Bar Association (the "Board") for the purpose of appointing officers other than the Chairperson, hereinafter referred to as the "Chair", and for other organizational purposes.

Section 2. Membership Requirements. The Committee shall consist of thirty-nine (39) members of the Onondaga County Bar Association who shall serve one year terms. A proposed Committee member must have been admitted to practice a minimum of five (5) years and be approved by the majority vote of the Board. In so far as possible the membership of the Committee shall be representative of the membership of the Bar Association as a whole. Any member who shall be absent from two consecutive meetings of the Committee without being excused therefrom by the Chair shall be removed from the Committee, and a replacement for such member shall be chosen by the Board. No candidate for judicial office shall be a member of the Judiciary Committee during the period of that member's candidacy. The replacement for such member shall be chosen by the Board.

Section 3. Special meetings. Special meetings shall be called by the Chair at his or her direction or upon the request of the Board, or upon the written request, stating the purpose of the meeting, of at least ten (10) members of the Committee.

Section 4. Place of meetings. Meetings shall be held within the City of Syracuse or at a reasonably convenient place within Onondaga County, at a place, date and hour fixed by the Chair.

Section 5. Notice of meeting. Written notice stating the place, date, hour and purpose of the meeting is preferred, but meetings may be called upon oral notice if in the Chair's opinion the circumstances require. Notice shall be by such method or means as are reasonably likely to effect delivery to the member.

Section 6. Quorum. Twenty (20) members present in person shall constitute a quorum of the Committee for balloting on the

qualifications of candidates for judicial office. For all other business, sixteen (16) members present in person shall constitute a quorum.

Section 7. Voting. Except as otherwise specifically provided in Sections 18 and 19 of in these rules, all matters shall be determined by a majority of the votes cast, and all voting shall be oral, unless at least five members request a secret written ballot.

ARTICLE II  
Judiciary Committee Officers

Section 8. Officers. The officers shall be the Chair, two vice-chairs, a secretary, and assistant secretary. The Chair shall be appointed by the president of the Association with the approval of the Board; the other officers shall be appointed by the Chair, subject to the approval of the Committee.

Section 9. Chair. The Chair shall preside at all meetings of the Committee, shall be a member ex officio of each subcommittee, shall designate the priority of vice-chairs, and shall appoint a secretary, assistant secretary, and members of subcommittees.

Section 10. Vice-Chair. The vice-chairs in the designated priority shall perform the functions of the Chair in the Chair's absence, disability or refusal to act.

Section 11. Secretary and Assistant Secretary. The secretary shall record the proceedings of the Committee. The assistant secretary shall perform the secretary's duties in the secretary's absence or disability.

Section 12. Subcommittees. The Chair of the Committee shall designate the members and the chair of all subcommittees. Subcommittees shall have such duties as the Chair of the Committee shall prescribe.

ARTICLE III  
Recommendations for Judicial Office

Section 13. Definition and Principles. The word candidate shall mean a person who seeks appointment, certification, recertification, election, re-election or nomination for judicial office. The best interests of the state, community and the bar

require an able judiciary. The Committee shall endeavor to elevate the quality of the judiciary, among other ways, by recommending for judicial office only those individuals who have demonstrated excellent qualifications, by encouraging political parties to endorse for election and re-election well qualified lawyers and judges, and by discouraging the candidacy of persons not qualified.

The Committee will attempt to evaluate all candidates for the following judicial positions: Court of Appeals Judge, Appellate Division Justice - Fourth Department; New York State Supreme Court Justice - Fifth Judicial District; United States District Court Judge - Northern District of New York; Onondaga County Judge; Onondaga County Surrogate; Onondaga County Family Court Judge; Hearing Examiner - Onondaga County Family Court; Syracuse City Court Judge; and candidates for other judicial positions within the Fifth Judicial District. The Committee shall not evaluate candidates for Town and Village Justice Court. The Committee may evaluate a candidate at the candidate's request or at the request of any member of the Onondaga County Bar Association, whether or not timely endorsed by a political party and whether or not the candidate makes timely application to the Committee for such evaluation.

The failure of a lawyer to obtain the Committee's recommendation as qualified should not reflect upon the lawyer in the practice of the profession. The qualities requisite for able advocacy and for excellence in judicial performance do not fully coincide. The vigor and partisanship of the lawyer in superior performance as an advocate in the best interest of a client may disclose qualities or temperament not ideal for the judiciary. A lawyer's area of practice in which he or she has capably performed may be so circumscribed as to preclude a judgment of his or her qualifications for judicial office. Finally, the Committee recognizes that most lawyers practicing in this community have the capacity to fulfill judicial office at least adequately. The Committee's goal is judicial excellence.

Section 14. Members' Conduct. In acting upon the qualifications of each candidate, the Committee members shall be mindful of the principles of the Committee and shall act with the qualities of temperament, judgment and fairness which the Committee seeks in the judiciary. Political affiliation shall not be a consideration.

Section 15. Confidentiality . To fulfill the purposes of the Committee in accordance with its principles, full and frank discussion is mandated. The discussions and proceedings of the Committee concerning candidates shall be held in strictest confidence by each member, and no less than that shown a client in an attorney-client relationship. Any member of the Committee charged with a breach of this requirement of confidentiality may be suspended by the Chair pending an investigation, hearing and recommendation by a subcommittee of three members of the Committee appointed by the Chair. After the subcommittee members have made their recommendation to the Board, final action shall be taken by the Board which may in its discretion remove such Committee member, choose a replacement for such member, and/or refer the matter to the Onondaga County Bar Association Grievance Committee.

Section 16. Submission Procedure.

a. Candidates. Each proposed candidate shall be submitted for prompt consideration by the Committee and prompt final determination by the Board . Any candidate who does not submit his or her name for evaluation by the Committee may nevertheless be submitted by any member of the Onondaga County Bar Association.

b. Waiver and Questionnaire. Each candidate shall be asked to submit a written waiver of confidentiality authorizing the release of records, including records of any grievance proceedings or complaints concerning the candidate, for the use of the Judiciary Committee and the Board. Each candidate shall also be asked to submit thirty-nine (39) copies of a complete Questionnaire on a form provided for such purpose by the Bar Association. The contents of the Questionnaire shall be confidential unless the candidate agrees that the contents thereof may be made public. Any candidate who does not submit a written waiver or Questionnaire may be evaluated on such information as the Committee shall acquire prior to the date of such evaluation.

c. Publication of Candidates' Names. The names of candidates under consideration by the Committee shall be published in the Bar Association's monthly announcements, the Onondaga County BAR REPORTER, or similar written communications to members. Members of the Bar Association are invited to submit comments on candidates.

A summary of comments submitted by Bar Association members shall be made by the Chair, and this summary shall be announced to the members of the Committee at the meeting at which the qualifications of the candidate are considered. The summary and these comments shall be confidential.

d. Grievance Information. The Grievance Committee of the Fifth Judicial District and/or the Commission on Judicial Conduct in the case of sitting judges shall be furnished the names of the prospective candidates and invited to furnish information concerning former and pending disciplinary proceedings against the prospective candidates.

e. Destruction of Questionnaires, Evaluations, and Ballots. All Questionnaires, evaluations, and ballots shall be destroyed immediately following their consideration by the Committee and/or the Board.

Section 17. Committee Meeting Procedure.

a. Subcommittees. The Chair shall appoint a Subcommittee of three Committee members to investigate the qualifications of each candidate. The Subcommittee shall report its findings and recommendations to the full Committee at the meeting to consider the qualifications of the candidate.

b. Questionnaires. At the meeting to consider the judicial qualifications of a candidate, copies of the Questionnaire completed by the candidate shall be distributed by the Chair to all Committee members for their review. The Questionnaires shall be returned to the Chair by the end of the meeting.

c. Invitations to Candidates. All candidates shall be invited to appear before the Committee.

d. Additional Information. The Chair and/or the Subcommittee shall relay to the Committee additional information received from the Grievance Committee, from the Commission on Judicial Conduct, from Bar Association Members, or from any other sources. The Committee may request additional information concerning any candidate.

Section 18. Qualifications and Ballots.

a. Qualifications. In evaluating each candidate, the Committee members shall consider whether the candidate has the following qualifications: COMPETENCE, COURTEOUSNESS, DIGNITY, DILIGENCE, FAIRNESS, FREEDOM FROM PREJUDICE, IMPARTIALITY, INTEGRITY, PROMPTNESS, AND TEMPERAMENT.

b. Ballots. The ballot form shall recite Sections 18 and 19 of these Rules and provide spaces for the Committee member to mark either "RECOMMENDED AS QUALIFIED" or "NOT RECOMMENDED." All ballots shall be secret and written, notwithstanding the provisions of Section 7 of the Rules. A specimen ballot form is attached.

Section 19. Two-Thirds Requirement for "Recommended as Qualified".

a. "Recommended as Qualified." A candidate must receive "Recommended as Qualified" ballots from at least two-thirds of the Committee members present and voting to be "Recommended as Qualified" by the Committee.

b. "Not Recommended." A candidate who does not receive the necessary two-thirds "Recommended as Qualified" ballots shall be "Not Recommended" by the Committee.

c. Ballot Count. The secretary (or assistant secretary) and another committee member assigned by the Chair shall count the ballots and report the ballot count as to each candidate to the members of the Committee at the meeting. The Secretary (or assistant secretary) shall record the ballot count as to each candidate in the minutes of the meeting.

Section 20. Mandatory Non-Participation. A Committee member who is a partner or associate in the law practice of the candidate under consideration or who is a member of the candidate's immediate family shall be excused from the meeting and not participate during the discussion and balloting on that candidate.

A Committee member who has previously become or is actively engaged in the campaign of a candidate for a particular judicial office shall be excused from the meeting and not participate during the discussion and balloting on that candidate.

Section 21. Notification of Committee Recommendation and Appeal-Review Procedure. Immediately subsequent to the meeting during which a candidate was finally considered by the Committee, the Chair shall notify the candidate of the recommendation of the Committee as either "recommended as qualified" or "not recommended" and that the Board will be so notified immediately. Each candidate shall be further informed that the recommendation of the Committee must be reviewed by the Board before it is final. Candidates found "not recommended" by the Committee shall be informed of the right to appeal the recommendation of the Committee to the Board in the manner set forth below.

Section 22. Appeal and Review Procedures at the Board.

a. Chair Report. The Chair shall promptly report to the president of the Bar Association the Committee's recommendation as to each candidate as "recommended as qualified" or "not recommended" for review by the Board.

b. Board Meetings and Voting. The president shall call meetings of the Board to review the reports of the Committee and to hear any appeals as soon as practicable following each Committee report. A copy of the Questionnaire submitted by the candidate shall be available for distribution to each member of the Board at these meetings. The Chair may discuss the substance of the Committee's deliberations and recommendations with the Board without disclosure of the source of any individual comments within the Committee. All Board deliberations shall be strictly confidential to the members of the Board, the Chair, and any invited members of the Committee. A two-thirds vote of a quorum of the Board shall be required to reverse any recommendation of the Committee. Committee members who are also Board members may vote on a review or an appeal of the Committee's recommendations at the Board. Voting by the Board shall be by secret, written ballot in the form described in Section 18 above and attached.

c. Appeal Procedure. A candidate who is "not recommended" by the committee shall have the right to appeal to the Board from the Committee's recommendation as follows:

- (1) the written appeal must be in writing and personally served upon the President or a Vice President or the

Chair within five(5) days of receipt of written notification of the recommendation of "not recommended";

(2) each appeal shall be considered separately by the Board provided, however, more than one appeal may be heard at the same Board meetings; and

(3) on an appeal, a candidate and/or a representative may appear before the Board to be heard and discuss the candidate's qualifications and to answer such other inquiries as may be required by the Board.

d. Final Determination by Board. On an appeal or review, the Board shall either affirm or reverse the recommendation of the Committee, subject however to the requirement that a two-thirds vote of a quorum of the Board shall be required to reverse the recommendation of the Committee. In addition, if the Board initially votes to reverse a recommendation by the Committee that a particular candidate is "Recommended as Qualified," The President Board or the Chair shall notify the candidate of this initial vote by the Board and provide the candidate an opportunity to appear and be heard by the Board pursuant to th Appeal Procedure set forth in subdivision c above. The Board shall revote after the candidate has had an opportunity to appear and be heard. The Board's final determination that the candidate is either "recommended as qualified" or "not recommended" shall be the final determination of the Onondaga County Bar Association.

e. Notification to Candidate. The President shall notify the candidate of the final determination of the Board immediately in writing by mail.

f. Candidacy Withdrawal Option. If after an appeal or review, the Board's final determination is that a candidate is "not recommended", the candidate shall be given an opportunity to have his or her name withdrawn. If the candidate withdraws his or her name as a candidate for the judicial office by written notice delivered to the President of the Bar Association within 10 days of the Board's notification to the candidate, all deliberations, all determinations, and recommendations shall be considered sealed, strictly confidential, and not disseminated beyond the Board and the Committee, unless the candidacy of that candidate is continued.

Section 23. Notice and Dissemination of Final Determination by Board.

In the event the candidate in fact becomes or continues as a candidate for the judicial office involved, the final determination of the Board that the candidate was either "recommended as qualified" or "not recommended" shall be disseminated by the President to the members of the Bar Association, the news media, the public generally, and any other interested persons.

Section 24. Effective Period. The Board's final determination on appeal or review of a candidate for a specific judicial office shall be limited to that office and shall remain effective for a period of two years from the date of the final determination, unless information subsequently available to the Committee requires a reconsideration before the end of two years. A candidate who fails to receive a "recommendation as qualified" for a specific judicial office shall be eligible for reconsideration upon each subsequent vacancy in that specific office or any other judicial office.

ARTICLE IV  
Amendment

Section 25. These rules may be amended from time to time by a two-thirds vote of the Board, either with or without the Committee's deliberations and recommendations with the Board without disclosure of the source of any individual comments with0in the Committee. All Board deliberations shall be strictly confidential to the members of the Board, the Chair, and any invited members of the Committee. A two-thirds vote of a quorum of the Board shall be required to reverse any recommendation of the Committee. Committee members who are also Board members may vote on a review or an appeal of the Committee's recommendation at the Board. Voting by the Board shall be by secret, written ballot in the form described in Section 18 above and attached.

c. Appeal Procedure. A candidate who is "not recommended" by the Committee shall have the right to appeal to the Board from the Committee's recommendation as follows:

(1) the written appeal must be in writing and personally served upon the President or a Vice President or the Chair within five (5) days of receipt of written notification of the recommendation of "not recommended";

(2) each appeal shall be considered separately by the Board provided, however, more than one appeal may be heard at the same Board meeting; and

(3) on an appeal, a candidate and/or a representative may appear before the Board to be heard and discuss the candidate's qualifications and to answer such other inquiries as may be required by the Board.

d. Final Determination by Board. On an appeal or review, the Board shall either affirm or reverse the recommendation of the Committee, subject however to the requirement that a two-thirds vote of a quorum of the Board shall be required to reverse the recommendation of the Committee. In addition, if the Board initially votes to reverse a recommendation by the Committee that a particular candidate is "Recommended as Qualified," The President or the Chair shall notify the candidate of this initial vote by the Board and provide the candidate an opportunity to appear and be heard by the Board pursuant to the Appeal Procedure set forth in

subdivision c above. The Board shall revote after the candidate has had an opportunity to appear and be heard. The Board's final determination that the candidate is either "recommended as qualified" or "not recommended" shall be the final determination of the Onondaga County Bar Association.

e. Notification to Candidate. The President shall notify the candidate of the final determination of the Board immediately in writing by mail.

f. Candidacy Withdrawal Option. If after an appeal or review, the Board's final determination is that a candidate is "not recommended", , the candidate shall be given an opportunity to have his or her name withdrawn. If the candidate withdraws his or her name as a candidate for the judicial office by written notice delivered to the President of the Bar Association within 10 days of the Board's notification to the candidate, all deliberations, all determinations, and recommendations shall be considered sealed, strictly confidential, and not disseminated beyond the Board and the Committee, unless the candidacy of that candidate is continued.

**BALLOT FORM  
ONONDAGA COUNTY BAR ASSOCIATION**

Candidate Name \_\_\_\_\_

RECOMMENDED AS QUALIFIED	NOT RECOMMENDED

Sections 18 and 19 of the "Rules for the Recommendation of Judicial Candidates by the Onondaga County Bar Association" provide as follows:

Section 18. Qualifications and Ballots.

a. Qualifications

In evaluating each candidate, the Committee members shall consider whether the candidate has the following qualifications: COURTEOUSNESS, DIGNITY, DILIGENCE, FAIRNESS, FREEDOM FROM PREJUDICE, IMPARTIALITY, INTEGRITY, PROFESSIONAL COMPETENCE, PROMPTNESS, AND TEMPERAMENT.

b. Ballots

The ballot form shall recite Sections 18 and 19 of these Rules and provide spaces for the Committee member to mark either "RECOMMENDED AS QUALIFIED" or "NOT RECOMMENDED." All ballots shall be secret and written, notwithstanding the provisions of Section 7 of the Rules.

Section 19. Two-Thirds Requirement for "Recommended as Qualified".

a. "Recommended as Qualified"

A candidate must receive "Recommended as Qualified" ballots from at least two-thirds of the Committee members present and voting to be "Recommended as Qualified" by the Committee.

b. "Not Recommended"

A candidate who does not receive the necessary two-thirds "Recommended as Qualified" ballots shall be "Not Recommended" by the Committee.

c. Ballot Count.

The Secretary (or assistant secretary) and another committee member assigned by the Chair shall count the ballots and report the ballot count as to each candidate to the members of the Committee at the meeting. The Secretary (or assistant secretary) shall record the ballot count as to each candidate in the minutes of the meeting.

**Onondaga County Bar Association**  
**Diversity and Inclusion Committee**

**MISSION:**

The mission of the Onondaga County Bar Association (“OCBA”) Diversity and Inclusion Committee (“The Committee”) is to lead and guide the OCBA to create and foster a legal community wherein the same opportunities for growth, development and advancement are open to all; members are equally valued for their individual unique talents, skills, and contributions to the community; individual differences are celebrated and embraced; diverse discourse is valued and encouraged; and equal and full participation enhances and enriches the quality of legal services and administration of justice.

**DEFINITIONS:**

We define **diversity** as: an inclusive concept that encompasses, without limitation, race, color, creed, religion, gender, national origin, age, disability, marital status, parental status, citizenship, veteran’s status, sexual orientation, predisposing genetic characteristics, gender identity and expression, domestic violence victim status, or any other legally-protected status.

We define **inclusion** as: the act or state of affiliating, collaborating, involving and inviting everyone, including those who traditionally have been absent, to join in and assist in designing new systems that encourage every person to participate and contribute to the fullest extent of their ability.

**OBJECTIVES:**

1. Cultivate a bar that substantially reflects the diversity in the greater Onondaga County community.
2. Encourage and increase participation of members of traditionally underrepresented groups in the profession and the OCBA.
3. Eliminate barriers to the advancement and success of members to positions of leadership in the profession and in the OCBA – regardless of personal background or circumstances.
4. Promote a culture within the OCBA and greater community that is hospitable, welcoming and accommodating to all- regardless of personal background/circumstances.
5. Establish the OCBA as a premier local bar association that serves and addresses the interests, needs and concerns of all its members- regardless of personal background/circumstances.
6. Ensure that clients and people in need of legal representation receive quality legal services that are responsive to their needs taking into account their personal backgrounds/circumstances.
7. Create systems and practices that afford everyone an equal opportunity for access to justice.

## **Appendix B.**

### Select Judiciary Committee Bylaws from Bar Associations in New York State

- Oswego County Bar Association

OSWEGO COUNTY BAR ASSOCIATION

*Judicial Screening Committee*

*Rules and Procedures*

Adopted June 22, 2009

ARTICLE I

Judicial Screening Committee and Meetings

1. Formation and Membership. The Oswego County Bar Association ("the Bar Association") shall establish a Judicial Screening Committee ("the Committee"). The Committee shall consist of nine (9) members of the Bar Association who shall serve one year terms. A Committee member must have been admitted to practice law in New York for a minimum of five (5) years. Insofar as possible, the membership of the Committee shall be representative of the membership of the Bar Association as a whole. No candidate for judicial office shall be a member of the Committee during the period of that member's candidacy. The replacement for such member shall be chosen by the President of the Bar Association.

2. Organizational Meeting. The Committee shall meet at least once annually, and within a reasonable time after the Committee has been appointed by the President of the Bar Association.

3. Special Meetings. Special meetings shall be called by the Chair, in his or her discretion, or upon the request of the President of the Bar Association, or upon the written request, stating the purpose of the special meeting, of at least two (2) members of the Committee.

4. Place and Time of Meetings. Meetings shall be held in Oswego County at a reasonably convenient place, date and time set by the Chair or the requesting members.

5. Notice of Meeting. Written notice stating the place, date, time and purpose of all meetings is preferred, but meetings may be called upon oral or electronic notice if the circumstances require. Notice shall be by such method or means as are reasonably likely to effect delivery to the member.

6. Quorum. Six members of the full Committee, shall constitute a quorum of the Committee for balloting on the qualifications of candidates for judicial office.

7. Voting. All matters shall be majority of the votes cast of a quorum of Committee members. Voting on the qualifications of judicial candidates shall be by secret written ballot.

## ARTICLE II

### Judicial Screening Committee Officers

8. Chair. The Chair shall preside at all meetings of the Committee, and shall be appointed by the President.

## ARTICLE III

### Recommendations for Judicial Office

9. Definitions and Principles. A "candidate" shall mean any person who seeks appointment, certification, recertification, election, re-election or nomination for judicial office.

The best interests of the state, community and the bar require an able judiciary. The Committee shall endeavor to elevate the quality of the judiciary, among other ways, by recommending for judicial office only those individuals who have demonstrated excellent qualifications, by encouraging political parties to endorse for election and re-election well qualified lawyers and judges, and by discouraging the candidacy of persons not qualified.

The failure of a lawyer to obtain the Committee's recommendation as qualified should not reflect upon the lawyer in the practice of the profession. The qualities requisite for able advocacy and for excellence in judicial performance do not fully coincide. The vigor and partisanship of the lawyer in superior performance as an advocate in the best interest of a client may disclose qualities or temperament not ideal for the judiciary. A lawyer's care of practice in which he or she has capably performed may be so circumscribed as to preclude a judgment of his or her qualifications for judicial office. Finally, the Committee recognizes that most lawyers practicing in this community have the capacity to fulfill judicial office at least adequately. The Committee's goal is judicial excellence.

10. Judicial Offices To Be Evaluated. The Committee shall review and evaluate all candidates for the following judicial positions: Court of Appeals Judge, Appellate Division Justice - Fourth Department; New York State Supreme Court Justice - Fifth Judicial District; United States District Court Judge - Northern District of New York; Oswego County Judge; Oswego County Surrogate; Oswego County Family Court Judge; Oswego City Court Judge; Fulton City Court Judge; and all candidates for other judicial positions within the Fifth Judicial District, including Support Magistrate, or other officers selected for screening by the Bar Association. The Committee shall not evaluate candidates for Town and Village Justice Court.

The Committee may evaluate a candidate at the candidate's request or at the request of any member of the Oswego County Bar Association, whether or not timely endorsed by a political party and whether or not the candidate makes timely application to the Committee for such evaluation.

11. Members' Conduct. In acting upon the qualifications of each candidate, the Committee members shall be mindful of the principles of the Committee and shall act with

the qualities of temperament, judgment and fairness which the Committee seeks in the judiciary. Political affiliation shall not be a consideration.

12. Confidentiality. To fulfill the purposes of the Committee in accordance with its principles, full and frank discussion is mandated. The discussions and proceedings of the Committee concerning candidates shall be held in strictest confidence by each member, and no less than that shown a client in an attorney-client relationship. Any member of the Committee charged with a breach of this requirement of confidentiality may be removed from the Committee, immediately, by the Chair or President of the Bar Association.

13. Candidate Submission Procedure.

a. Candidates. Each proposed candidate shall be submitted for prompt consideration by the Committee and prompt final determination by the Bar Association. Any candidate who does not submit his or her name for evaluation by the Committee may nevertheless be submitted by any member of the Oswego County Bar Association.

b. Waiver and Questionnaire. Each candidate shall be asked to submit a written waiver of confidentiality authorizing the release of records, including records of any grievance proceedings or complaints concerning the candidate, for the use of the Committee. Each candidate shall also be asked to submit five (5) copies of a complete Questionnaire on a form provided for such purpose by the Bar Association. The contents of the Questionnaire shall be confidential unless the candidate agrees that the contents thereof may be made public. Any candidate who does not submit a written waiver or Questionnaire may be evaluated on such information as the Committee shall acquire prior to the date of such evaluation.

c. Publication of Candidates' Names. The names of candidates under consideration by the Committee may be published in the Bar Association's newsletter, or similar

communications to members. Members of the Bar Association are invited to submit comments on candidates. A summary of comments submitted by members of the Bar Association shall be made by the Chair, and this summary shall be announced to the members of the Committee at the meeting at which the qualifications of the candidate are considered. The summary and these comments shall be confidential.

d. Grievance Information. The Grievance Committee of the Fifth Judicial District and/or the Commission on Judicial Conduct in the case of sitting judges shall be furnished the names of the prospective candidates and invited to furnish information concerning former and pending disciplinary proceedings against the prospective candidates.

14. Committee Meeting Procedure.

i. a. Questionnaires. Prior to the meeting to consider the judicial qualifications of a candidate, copies of the Questionnaire completed by the candidate shall be distributed by the Chair to all Committee members for their review. The Questionnaires shall be returned to the Chair by the end of the meeting.

b. Invitations to Candidates. All candidates shall be invited to appear and be heard before the Committee.

c. Additional Information. The Chair shall report to the Committee additional information received from the Grievance Committee, from the Commission on Judicial Conduct, from Bar Association Members, or from any other sources. The Committee may request additional information concerning any candidate.

d. Committee Member Participation. All members of the Committee are expected to meaningfully participate in all aspects the judicial candidate screening process, including full, candid and confidential discussion.

15. Qualifications and Ballots.

a. Qualifications. In evaluating each candidate, the Committee members shall consider whether the candidate has the following qualifications: COMPETENCE, COURTEOUSNESS, DIGNITY, DILIGENCE, FAIRNESS, FREEDOM FROM PREJUDICE, IMPARTIALITY, INTEGRITY, PROMPTNESS, AND TEMPERAMENT.

b. Ballots. The ballot form shall be consistent with the provisions of these rules and provide spaces for the Committee member to mark either "RECOMMENDED AS QUALIFIED" or "NOT RECOMMENDED." All ballots shall be secret and written. A model ballot is attached as Exhibit "A."

16. Requirement for "Recommended as Qualified".

a. "Recommended as Qualified." A candidate must receive "Recommended as Qualified" ballots from the majority of the Committee members present and voting to be "Recommended as Qualified" by the Committee.

b. "Not Recommended." A candidate who does not receive the necessary "Recommended as Qualified" ballots from the majority of the present and voting committee members shall be "Not Recommended" by the Committee.

c. Ballot Count. The secretary and another committee member assigned by the Chair shall count the ballots and report the ballot count as to each candidate to the members of the Committee at the meeting. The Secretary shall record the ballot count as to each candidate in the minutes of the meeting.

17. Mandatory Non-Participation. A Committee member who is a partner or associate in the law practice, the candidate under consideration or who is a member of the candidate's immediate family shall be excused from the meeting and not participate during the

discussion and balloting on that candidate. A Committee member who has previously become or is actively engaged in the campaign of a candidate for a particular judicial office shall be excused from the meeting and not participate during the discussion and balloting on that candidate.

18. Notification of Committee Recommendation and Appeal-Review Procedure. Immediately after the meeting during which a candidate was finally considered by the Committee, the Chair shall notify the candidate of the recommendation of the Committee as either "recommended as qualified" or "not recommended" and that the President of the Bar Association will be so notified immediately. Each candidate shall be further informed that the recommendation of the Committee must be reviewed and approved by the members of Bar Association before it is final. Candidates found "not recommended" by the Committee shall be informed of the right to appeal the recommendation of the Committee to the Bar Association in the manner set forth below.

19. Appeal and Review Procedures.

a. Chair Report. The Chair shall promptly report to the President of the Bar Association the Committee's recommendation as to each candidate as "recommended as qualified" or "not recommended" for review by the Bar Association.

b. Appeal Procedure. A candidate who is "not recommended" by the Committee shall have the right to appeal to the Bar Association from the Committee's recommendation as follows:

(1) the appeal must be in writing and personally served upon the President of the Bar Association or the Chair within five (5) days of receipt of written notification of the recommendation of "not recommended";

(2) each appeal shall be considered separately by the members of the Bar Association provided, however, more than one appeal may be heard at the same Bar Association meeting;

(3) an appeal shall be heard at either a special or regular meeting of the Bar Association, called in accordance with the Bar Association's By-Laws and the customary provisions of the Bar Association, as soon as practicable after the written appeal is served; and

(4) on an appeal, a candidate and/or a representative may appear before the Bar Association to be heard and discuss the candidate's qualifications and to answer such other inquiries as may be required by the Bar Association.

c. Final Determination by Bar Association. On an appeal or review, the Bar Association shall either affirm or reverse the recommendation of the Committee.

d. Notification to Candidate. The President of the Bar Association shall notify the candidate of the final determination of the Bar Association immediately in writing by mail.

e. Candidacy Withdrawal Option. If after an appeal or review, the Bar Association's final determination is that a candidate is "not recommended", the candidate shall be given an opportunity to have his or her name withdrawn. If the candidate withdraws his or her name as a candidate for the judicial office by written notice delivered to the President of the Bar Association within five (5) days of the Bar Association's notification to the candidate, all deliberations, all determinations, and recommendations shall be considered sealed, strictly confidential, and not disseminated beyond the Bar Association and the Committee, unless the candidacy of that candidate is continued.

20. Notice and Dissemination of Final Determination by Bar Association. In the event the candidate in fact becomes or continues as a candidate for the judicial office involved, the final determination of the Bar Association that the candidate was either "recommended as qualified" or "not recommended" shall be disseminated by the President to the members of the Bar Association, the news media, the public generally, and any other interested persons.

21. Effective Period. The Bar Association's final determination on appeal or review of a candidate for a specific judicial office shall be limited to that office and shall remain effective for a period of two years from the date of the final determination, unless information subsequently available to the Committee requires a reconsideration before the end of two years. A candidate who fails to receive a "recommendation as qualified" for a specific judicial office shall be eligible for reconsideration upon each subsequent vacancy in that specific office or any other judicial office.

## ARTICLE IV

### Amendment

22. Amendment. These rules and procedures may be amended from time to time by a two-thirds vote of the Bar Association, either with or without the recommendation of the Committee. Such amendments shall be made at a duly called meeting of the Bar Association.

EXHIBIT "A" BALLOT FORM

OSWEGO COUNTY BAR ASSOCIATION  
JUDICIAL SCREENING COMMITTEE

Candidate Name \_\_\_\_\_

RECOMMENDED AS QUALIFIED	NOT RECOMMENDED

Sections 18 and 19 of the Oswego County Bar Association Judicial Screening Committee Rules & Procedures provide, in pertinent part, as follows:

Qualifications

In evaluating each candidate, the Committee members shall consider whether the candidate has the following qualifications: COURTEOUSNESS, DIGNITY, DILIGENCE, FAIRNESS, FREEDOM FROM PREJUDICE, IMPARTIALITY, INTEGRITY, PROFESSIONAL COMPETENCE, PROMPTNESS, AND TEMPERAMENT.

Ballots

The ballot shall provide spaces for the Committee member to mark either "RECOMMENDED AS QUALIFIED" or "NOT RECOMMENDED." All ballots shall be secret and written.

Majority Requirement for "Recommended as Qualified"

A candidate must receive "Recommended as Qualified" from the majority of the Committee members to be "Recommended as Qualified" by the Committee. A candidate who does not receive the necessary "Recommended as Qualified" ballots from the majority of the committee members shall be "Not Recommended" by the Committee.

JUDICIAL EVALUATION QUESTIONNAIRE

CONFIDENTIAL

I hereby apply to the Oswego County Bar Association for a judicial rating pursuant to the Rules for the Recommendation of Judicial Candidates by the Oswego County Bar Association (hereinafter "Rules"). I consent to an investigation relating to my character, personal and professional reputation, and any other matter referred to or relating to my application. I have executed the attached waiver and I authorize the Association to transmit the waiver to the New York State Grievance Committee with a request for any records held by it regarding my conduct. If I now hold or have in the past held any judicial office, I have executed the attached Request to the State Commission on Judicial Conduct and I authorize the Association to transmit the Request to the Commission.

I have received and read all the Association's Rules relating to Judicial Rating, and I recognize the authority vested in the Board of Directors to interpret the Rules and action taken thereunder in a final, conclusive and binding manner. I authorize the publication of my rating unless I receive a rating of "Not Recommended" for this Judicial Office" and withdraw my candidacy within five (5) days after notification of such rating. I understand the Rule that the Judiciary Committee's recommendation of a lawyer and the review by the Association for a specific judicial office shall be limited to that office and shall remain effective for a period of twelve months unless information subsequently available to the Committee requires a reconsideration of the recommendation.

(If the answer to any question requires additional space, please continue the answer using additional sheets as necessary. Every question must be answered. If a question is inapplicable write "N/A" in the answer space provided.

Full Name: \_\_\_\_\_

Address: \_\_\_\_\_

Home Telephone Number: \_\_\_\_\_

Business Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Beeper or Cellular Phone Number: \_\_\_\_\_

Position for Which You Wish to Apply: \_\_\_\_\_

## **Appendix B.**

### Select Judiciary Committee Bylaws from Bar Associations in New York State

- Women's Bar Association of the State of New York

**WBASNY JUDICIARY/COURTS COMMITTEE'S  
REVISED EVALUATION PROCEDURES**

**I. STATEMENT OF PURPOSE**

A. **Purpose.** The purpose of the Judiciary/Courts Committee (hereinafter "Committee") is to examine thoroughly all candidates ("Candidates") as defined in paragraph I, subdivision B below, and to rate said Candidates, so that WBASNY may inform the public and the appropriate appointing decision maker(s) ("Appointing Authority") about the Candidates' qualifications. The Committee's primary objectives are to determine whether Candidates meet appropriate standards of professional qualifications for the office sought, to strengthen the judiciary by encouraging merit nominations and merit appointments for judicial office, and to contribute to efforts to prevent political considerations from outweighing fitness in the selection of such Candidates. The evaluations shall be conducted in light of WBASNY's position as a statewide bar association having a diverse membership and of its mission.

B. **Definition of "Candidate".** A Candidate is an individual seeking appointment for the position of Chief Judge or Associate Judge of the New York Court of Appeals or for a position on the Federal Court of Appeals having jurisdiction over the State of New York. Activities by and on behalf of the Candidate in obtaining nomination for and appointment to any such position shall hereinafter be referred to as the Candidate's "Nomination Process". The Procedures described herein relate to evaluations for openings on the New York Court of Appeals. When the Committee evaluates Candidates for the Federal Court of Appeals, these Procedures shall be applied as nearly as practicable to the Nomination Process for appointment to that Court.

C. **Confidentiality of the Evaluation.** The work of the Committee is highly confidential. Deliberations at meetings of the Committee, any written reports generated by or for the Committee and, most important, the comments obtained about a Candidate from the bench, the bar, members of the public and Committee Members must all be kept private and confidential lest the Committee lose the confidence of the Candidates, lawyers, judges and other individuals upon whom it relies for information, and Appointing Authorities. Therefore, no Committee Member, Committee Chair or [undefined term and not needed in light of proposed revisions]WBASNY Officer [also undefined term] shall disclose at any time to anyone outside of the evaluation process the information obtained, the deliberations of the Committee, and any other part of the proceedings conducted hereunder. Notwithstanding the foregoing, Committee Members and Chair(s) may disclose information relating to the work of the Committee or the evaluation of any Candidate to the WBASNY Officers in connection with any Officer's involvement in these processes.

## II. SELECTION, COMPOSITION, AND VOTING RIGHTS OF THE COMMITTEE AND ITS CHAIR

A. **Committee Members.** The Committee shall consist of (i) one (1) member from each chapter in good standing of WBASNY, who shall be appointed by the President, and have at least two (2) years' experience before the courts of the State of New York or Federal Courts; and (ii) two (2) members of the Advisory Committee appointed by the President (collectively, "Committee Members"). Subject to the next sentence, each member of the Committee shall serve for a three-year term, except that the two (2) members from the Advisory Committee shall serve for a one-year term. However, none of these provisions shall prevent a committee member from being reappointed for another term. During the year in which these Revised Procedures first take effect, the President shall divide the Committee Members appointed under (i) above into three (3) classes in equal numbers, with one class appointed for one (1) year, another for two (2) years, and the third class for three (3) years. Thereafter, the President shall make appointments for full three-year terms, or for a lesser period if to fill an unexpired term of a Member.

B. **Deadline for Appointing Members/Alternates/Training.** (i) Every fiscal year, and no later than July 31<sup>st</sup>, chapter Presidents are to provide the WBASNY President with their recommended chapter member and one alternate to the committee. The alternate member shall not be part of deliberations, interviews, and investigative research, unless the alternate is substituting for the chapter member for the entire screening process for the judicial position being screened. (ii) WBASNY shall provide a mandatory, appropriate training for all new Committee Members, and new alternates.

C. **Officer Participation.** The WBASNY President, or any officers that the President assigns, shall, to the extent possible, attend the meeting(s) of the Committee as observers without votes.

D. **Selection of Chair[s] of the Committee.** Unless exceptional circumstances require otherwise, the Committee shall be chaired by a Chair or by Co-Chairs [hereinafter Chair/Co-Chairs] who are appointed by the President. At least one Co-Chair shall have served as a member of the Committee prior to being appointed as a Co-Chair. No Chair/Co-Chairs shall have any vote except in the event of a tie. In the event of a tie where Co-Chairs preside over a meeting, the Co-Chairs shall cast a single vote to break the tie. Co-Chairs shall decide beforehand how the single tie-breaking vote shall be determined.

E. **Quorum and Voting Requirements.** Each Committee Member has one vote. The quorum for the Committee to interview and to rate Candidates is a majority of the Committee's Members. Committee Members must be present at the Candidate's interview to vote on that Candidate. In any case where the computation of a quorum or vote results in a fraction, the fraction shall be rounded up to the next highest number. Voting shall be by written ballot.

F. **Participation in Other Screening Processes.** No Committee Member shall simultaneously serve on any other judicial screening committee that is screening for the same judicial position. Such other judicial screening committees with regard to Candidates for the New York Court of Appeals include but are not limited to screening committees of New York State Bar Association and the New York State Trial Lawyers Association. No Committee Member shall serve or have served on any advisory committee or screening committee established by any Appointing Authority or other persons involved in making recommendations to an Appointing Authority for the judicial position for which the Committee is screening, e.g., the Governor's Screening Committee for the New York Court of Appeals or an advisory committee to a United States Senator.

G. **Recusal.**

1. **Participation in any Candidate's Nomination Process.** No Committee Member is permitted to make any contribution of any type directly or indirectly to or participate directly or indirectly in any Candidate's Nomination Process. Where a Committee Member knows, or has reason to know, that his or her employer, law firm or law partner (or any political action committee formed by the employer, law firm or law partner) has participated in or is participating in the Nominating Process on behalf of any Candidate, said Committee Member shall recuse himself or herself from participating in the evaluations conducted hereunder, including but not limited to investigation of, deliberation regarding, and vote on all Candidates under consideration for the same position. Recusal precludes the recused Committee Member from being present in the room during the interview of, deliberations on, and voting on all Candidates for the same position.

2. **Additional reasons for recusal.** Recusal should also occur whenever any Committee Member participating in the evaluations hereunder has a relationship with a Candidate that is so close or adversarial (including but not limited to family relationship or business, professional or personal association or any circumstance that would give the appearance of bias or conflict) that the Committee Member's participation in the evaluation hereunder either would objectively be unfair to the Committee, the public, or the Candidate, or would legitimately be perceived by others to be inappropriate or unfair. But a Committee Member's having appeared with, against, or before a Candidate thereby having gained knowledge of the Candidate's personal and professional characteristics is not ipso facto grounds for recusal.

3. **Procedure for recusal.**

a. **By the Committee Member himself/herself.** A Committee Member's recusal from participating in the evaluations hereunder is in the first instance a matter for that Committee Member's personal determination. The Committee Member may make a full and complete disclosure to the Chair/Co-Chairs privately or to the Committee as a whole.

b. Recusal at the request of another Committee Member. Should any Committee Member believe that recusal of another Committee Member would be appropriate, appropriate efforts should be made to discuss the matter directly with the Committee Member in question before raising it with others. The Chair/Co-Chairs or, in the discretion of the Chair/Co-Chairs, a majority of the Committee Members present at the meeting has the right to determine whether the disclosed facts require recusal.

c. In any case, recusal does not preclude the recused Committee Member from offering factual information or opinions to the Committee or Investigating Subcommittee (as defined in paragraph III, subdivision C), provided that the Committee Member has first disclosed to the Committee or Investigative Subcommittee as the case may be the fact of and reasons for the Committee Member's recusal.

### III. EVALUATION PROCEDURE

A. Upon Learning of an Opening for a Seat on a Court. Upon learning of an opening on a Court to be considered hereunder, the Chair/Co-Chairs should make appropriate efforts to coordinate the Candidates' interviews with interviews to be conducted by the New York State Bar Association, the New York State Trial Lawyers Association and other bar associations.

B. Candidates' Applications for Appointment to the Appointing Authority. Upon receipt of the names of the Candidates, the Chair/Co-Chairs shall contact each Candidate and obtain the Candidate's application (including all attachments and related submissions including but not limited to writing samples) to the Appointing Authority for the judicial position at issue (the Candidate's "Judicial Application"). The Chair/Co-Chairs shall distribute each Judicial Application to all Committee Members.

C. Appointment of Investigative Subcommittees. The Chair/Co-Chairs shall appoint Committee Members to Investigative Subcommittees, one Investigative Subcommittee for each Candidate. The size of each Investigative Subcommittee should be based on the relative size of the Judicial Applications vis-à-vis each other, the number of Candidates under consideration, and the total number of Committee Members. The Chair/Co-Chairs should use their best efforts to assign to Investigative Subcommittees at least one member who is from the locale or venue in which the Candidate serves or works. The Chair/Co-Chairs shall apprise all Committee members of the names of all Candidates and the names of the Committee Members assigned to each Investigative Committee. The Chair/Co-Chairs shall further request that any Committee Members having any relevant information concerning a Candidate provide that information to the appropriate Investigative Subcommittee.

D. Role of the Investigative Subcommittees. The role of the Investigative Subcommittees is to investigate and report on the Candidate to whom it has been assigned. Upon receipt of the Candidate's Judicial Application, the Investigative Subcommittee should first review it to determine any particular areas of inquiry that should be pursued as part of its investigation and in the Committee's interview with the

Candidate, including any inquiry that is relevant to the Committee's determination of whether to apply the discretionary rating of "Commended". If information is provided directly to the Chair/Co-Chairs or to a Committee Member who is not assigned to the Investigative Subcommittee for a particular Candidate, the Member receiving the information shall provide it promptly to the relevant Investigative Subcommittee. The Investigative Subcommittee's investigation should include but not be limited to (a) contacting the people listed in the Judicial Application as references, colleagues, employers, supervisors, opposing counsel, and judges before whom the Candidate has appeared ("References"); (b) contacting other individuals known to the Committee members to have had significant professional contact with the Candidate ("Other Professional Contacts"); and (c) conducting other appropriate investigation including Westlaw, Lexis/Nexis, and internet searches and if possible observing the Candidate in the courtroom ("Other Investigation").

Where the Candidate is a practicing attorney, References and Other Professional Contacts may include the Candidate's past and present employers, supervisors, adversaries, co-counsel, judges in the courts in which the Candidate appears, bar association contacts, and members or employees of organizations with which the Candidate has been actively associated, e.g., as a board member, or for which the Candidate has provided pro bono representation.

Where the Candidate is a sitting judge, References and Other Professional Contacts may include attorneys who appear or have appeared before that judge, the judge's supervising judge and/or Administrative Judge, the judge's colleagues who have shared responsibility with or assumed responsibilities from the Candidate, bar association contacts, and if within an appropriate time period, the Candidate's past employers and members or employees of organizations with which the Candidate was actively associated, e.g., as a board member, or for which the Candidate provided pro bono representation. If the Candidate is a sitting judge who handles or has handled criminal matters, it is also advisable to ascertain the views of The Legal Aid Society or applicable public defender's office and the applicable District Attorney's office. Reasonable attempts should be made to observe the Candidate on the bench particularly if the Investigative Subcommittee receives negative comments about the Candidate's performance in the courtroom.

The Investigative Subcommittee in its discretion should conduct Other Investigation and interview additional Other Professional Contacts as it learns the identity of additional Other Professional Contacts during its investigation. Additional Other Professional Contacts may include, as appropriate, attorneys with whom the Committee members work, other personal or professional acquaintances who have had dealings with the Candidate, attorneys whose names appear in legal opinions as adversaries to or co-counsel with, or who have appeared before the Candidate, and offices of municipal corporation counsel, State Attorney General, and the U.S. Attorney, as may be appropriate to the Candidate.

Where the Candidate is a sitting judge, if the Investigative Subcommittee finds that there is significant divergence of opinion between attorneys for opposing sides who appear

before the Candidate (such as between landlords' attorneys and tenants' attorneys, criminal prosecutors and criminal defense attorneys, plaintiffs' attorneys and insurance defense attorneys, or attorneys representing husbands and attorneys representing wives), additional efforts must be taken in order to obtain a fair evaluation of the Candidate and the Candidate's qualifications for judicial office. This should include auditing the judge's performance in the courtroom, both on calendar calls and trials, and speaking to additional private practitioners who have had professional dealings with the Candidate.

E. **Report of the Investigative Subcommittees.** Each Investigative Subcommittee shall report its findings and recommendations to the Chair/Co-Chairs as early as possible and shall report its findings and recommendations to the Committee prior to the Committee's interview of the Candidate.

F. **Candidates' Interviews.** Before the interviews with the Candidates, the Committee shall discuss and agree on the conduct of the interviews and appropriate questions for use in Candidate interviews. Before each Candidate's interview, the Investigative Committee shall report its findings and recommendations to the Committee. The Committee shall interview each Candidate using as the basis for the interview the ratings as defined in paragraph IV, subdivision A, the criteria therefor as defined in paragraph V, and the information that it has acquired in its investigation. In its interview of the Candidate, the Committee shall follow the dictates of Canon 7 of the Code of Judicial Ethics. To the extent possible within the confines of the confidentiality required hereunder, the Candidate should be afforded an opportunity to address any issue that may be used as a reason for finding the Candidate "not approved". The tenor of the interview shall be friendly and open with the goal of obtaining all relevant information and of giving the Candidate an opportunity to present the best case for himself or herself. Questions other than those agreed to before the interviews may be allowed by the Chair/Co-Chairs, who shall rule out any questions that are not appropriate.

G. **Deliberation and Voting on Ratings.** In due course and at such logical and logistical point in the Candidates' interviews as the Committee determines is appropriate, the Committee shall deliberate and vote upon the rating of each Candidate.

#### IV. RATINGS

A. **Ratings.** The ratings set forth in this subparagraph A are subject to the computation-of-votes requirements in subparagraph B (Computation of Votes) below. No rating shall depend on whether the Candidate is or is not a member of WBASNY.

1. **Candidates who participate in the Committee's evaluations.**

a. The following ratings shall be used to evaluate Candidates who participate in the Committee's evaluation and shall be based on the criteria set forth in Article V below:

(1) Approved. This rating is available for Candidates who, in the Committee's opinion, possess the qualifications for the office.

(2) Approved as Highly Qualified. This rating is available for Candidates who, in the Committee's opinion, possess exceptional qualifications for the office.

(3) Not Approved. This rating shall be applied to any Candidate who, in the Committee's opinion, does not possess the qualifications for the office.

b. The following additional discretionary rating is also available:

(1) Commended. This additional rating is available to any Candidate found approved or approved as highly qualified who, in the Committee's opinion, has demonstrated an outstanding sensitivity to issues of gender bias, women, children, and minorities. The "Commended" rating is not an endorsement of any Candidate. The "Commended" rating may be given to more than one Candidate for any particular judicial office.

2. Candidates who do not participate in the Committee's evaluation. For any Candidate whom the Committee does not evaluate, the following ratings shall be used: "Disapproved for Refusal to Participate" for those Candidates who refuse to participate in the evaluation process, and "Not Rated for a Legitimate Reason" in the discretion of the Committee for those Candidates whom the Committee is unable to evaluate.

**B. Computation of Votes.**

1. Fractional computations. In any case where the computation of votes results in a fraction, the fraction shall be rounded up to the next highest number.

2. Approved. The rating of "Approved" requires the affirmative votes of a simple majority of those Committee Members voting.

3. Approved as Highly Qualified. The rating of "Approved as Highly Qualified" requires the affirmative votes of two-thirds of those Committee Members voting.

4. Commended. The rating of "Commended" requires the affirmative votes of two-thirds of those Committee Members voting.

5. Ratings for not participating in the Committee process. The rating for a Candidate who was not evaluated (i.e., “Disapproved for Refusal to Participate” or “Not Rated for a Legitimate Reason”) requires the affirmative votes of a simple majority of those Committee Members voting.

6. The Committee may attach an explanation to any Candidate’s rating. It is within the discretion of the President whether to include any such explanation in the publication and dissemination of the rating.

C. Effective Dates of Ratings. A rating for a particular office will remain in effect for twelve months from the date the rating is published unless (a) by the vote of a majority of Committee Members constituting a quorum for voting on ratings hereunder, the Committee rescinds a Candidate’s rating during the twelve-month period; or (b) the Candidate requests a *de novo* rating during that time, in which case s/he may resubmit to another evaluation hereunder, and the Committee shall determine the Candidate’s rating in the same manner as it determines the rating for any other Candidate.

## V. CRITERIA FOR DETERMINING RATINGS

A. Evaluation Criteria. Criteria for evaluating all Candidates include, but are not limited to:

1. Experience. A Candidate for judicial office shall be a member of the Bar of the highest court of a state for at least the minimum number of years required for the judicial office sought and shall have been engaged in the practice of law, in the teaching of law, or service in the judicial system.

2. Integrity. A Candidate shall be of high moral character and enjoy a general reputation in the community for honesty, ethics, fairness, industry and diligence.

3. Professional competence. A Candidate shall have demonstrated intellectual capacity, professional and personal judgment, industry, writing and analytical ability, ability to weigh conflicting evidence, comprehension of legal arguments, the ability to make prompt and correct decisions, knowledge of the law, and breadth of professional experience both generally and specifically with regard to the position sought, including appropriate courtroom and trial experience.

4. Judicial temperament. A Candidate shall have demonstrated a commitment to equal justice under law, impartiality, lack of any prejudices, sensitivity to issues of gender bias, courtesy and civility to counsel and litigants, open-mindedness, and compassion.

5. Service to the law and contribution to the effective administration of justice and/or to the community. The Candidate shall have demonstrated service to

the law and to the effective administration of justice, and have shown a commitment to improving access to justice and to bettering the community.

6. In addition to the criteria set forth above, in evaluating the judicial performance of a judge seeking re-appointment or who has been nominated for a different judicial position, the following shall 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.

B. **Weight Given to Criteria.** The Committee may determine the appropriate weight to be given to these criteria, but should at least consider each of the above factors in rating each Candidate. The Committee may also determine what, if any, consideration should be given to any ratings a Candidate may have received previously from the Committee. Candidates shall be found "Approved" only if they exceed the minimum requirements of eligibility and competence.

## **VI. THE COMMITTEE'S REPORT OF RATINGS TO THE WBASNY PRESIDENT**

A. **Report to the WBASNY President; Action by the Officers.** The Chair/Co-Chairs shall immediately report the ratings orally and in writing to the President of WBASNY together with information as to the number of Committee Members present, the number of Committee Members voting, and the number of votes cast for each possible rating. The President shall immediately transmit the report, orally if possible and in writing, to the other Officers of WBASNY. By a vote of two-thirds (2/3) of all the Officers taken as soon as practicable after receipt of the written report, having in mind any deadlines for action by an Appointing Authority, the Officers may take any of the following actions, using such means and technology as are practically available to ensure a full and timely consideration of the report: (i) change a rating determined by the Committee if the rating was decided by a margin of three (3) or fewer votes; and (ii) disapprove any rating with a direction to the Committee to reconsider its determination. If the Officers do not take any action described in the prior sentence within five (5) days of transmittal to them, or such other time as the President may determine at the time of receiving the report from the Committee, the report and its dissemination shall be deemed approved. The report shall not be disseminated until the Officers have determined that it is final and the President has communicated his or her rating to each Candidate. If the report is not approved, there shall be no statement of any kind concerning such report or any portion thereof outside WBASNY.

B. **Committee's Reconsideration.** If the officers disapprove of any rating under Paragraph VI, subparagraph A (ii), the Committee shall reconvene as quickly as possible by such means and technology as are practicable to reconsider such rating(s).

1. Reconsideration of procedural error. If the reconsideration is for a procedural error committed by the Committee, the Committee shall conduct a re-vote on the Candidate to correct the procedural error.

2. Reconsideration for other reasons. If the reconsideration is for any other reason, the Committee shall as promptly as possible reconsider the rating and conduct a re-vote on the Candidate. The Committee may conduct whatever further inquiry, investigation or fact gathering as it deems appropriate, including any information or opinions that the Officers may communicate to the Committee in their direction to reconsider a rating. The re-vote on the Candidate shall be governed by the same majority and quorum requirements that governed the initial vote, as set forth above.

3. Report after reconsideration. The Chair/Co-Chairs shall immediately report to the WBASNY President the result of the Committee's reconsideration once the reconsideration is complete.

## **VII. PUBLICATION AND DISSEMINATION OF AND COMMENT ON THE RATINGS**

A. Publication and dissemination of the ratings. The final report of ratings shall be disseminated only in its entirety. Only the WBASNY President may publish or disseminate the ratings and only the WBASNY President may comment on the ratings or on the evaluations conducted hereunder.

Approved by a majority of Board of Directors this 19th day of May 2017.

s/  
WBASNY Secretary

## **Appendix C.**

National Center for State Courts  
Survey of Judicial Evaluation Systems

**National Center for State Courts -  
Qualifications used by the Commissions in the States Listed**

<b>State</b>	<b>GJ court(s)</b>	<b>Citation</b>	<b>Criteria Set By</b>
American Bar Association	n/a	<u>Guidelines for Reviewing Qualifications of Candidates for State Judicial Office</u>	n/a
Alaska	Superior	<u>Alaska Judicial Council: Judicial Selection Procedures</u>	Court Rule Or General Practice
Arizona	Superior	<u>Arizona Judicial Branch: Judicial Nominating Commissions - FAQs.</u>	Court Rule Or General Practice
Colorado	District	<u>Colorado Judicial Branch: Judicial Nominating Commissions</u>	Each Commission
Connecticut	Superior	<u>Connecticut Sec. 51-44a-20</u>	Statute
Hawaii	Circuit	<u>Judicial Selection Commission Rules</u>	Court Rule Or General Practice
Iowa	District	Unclear	
Kansas	District	<u>K.S.A. 20-2903</u>	Statute
Missouri	Circuit	Unclear	
Nebraska	District	<u>Supreme Court Rule 1-603</u>	Court Rule Or General Practice
New Mexico	District	<u>Rules Governing Judicial Nominating Commissions</u>	Court Rule Or General Practice
Rhode Island	Superior	<u>R.I. Gen. L. 8-16.1-4</u>	Statute
South Carolina	Circuit	<u>SC Code 2-19-35</u>	Statute
Utah	District	<u>Administrative Rule R356-2-10</u>	Rules create by Leg Branch agency (note: legislature forced removal of "diversity" from criteria in 2017)
Vermont	Superior	<u>Administrative Rule CVR 90-800-001</u>	Rules Created by Board itself
Wyoming	District	<u>Rules of the Judicial Nominating Commission of the State of Wyoming</u>	Court Rule Or General Practice

### National Center for State Courts - Composition of Various Judicial Nomination Commissions

The "classic" model advocated by the American Judicature Society, the American Bar Association, and others was 3-1-3 for trial courts

- 3 bar members elected by the members of the local bar (or the bar's leadership)
- 3 non-attorneys selected by the governor (or mayor or local executive)
- 1 judge of a higher court as chair

State	GJ court(s)	Bar Members	Nonbar	Judge	Others	Notes	Citation
Alaska	Superior	3 by bar board of governors	3 chosen by governor subject to House and Senate confirmation	Chief justice of court of last resort			Alaska Constitution Art. IV, Sec. 4 & 8
Arizona	Superior	5, no more than 3 of same political party, by bar board of governors and subject to Senate confirmation	10, chosen by governor and subject to Senate confirmation	Chief justice of court of last resort			Arizona Constitution Art. 6, Sec. 41
Colorado	District	No more than 3	At least 4	A justice of court of last resort (no vote)		In judicial districts with populations greater than 35,000, there must be three	Colorado Constitution Art. VI, Sec. 24

lawyer and four non-lawyer members. In judicial districts with populations of 35,000 or less, there must be at least four non-lawyer members; a majority vote of the governor, the attorney general, and the chief justice determines how many of the remaining three members must be lawyers.				Connecticut Sec. 51-44a	
None	3 by Governor + 1 by House Speaker + 1 Senate Majority Leader + 1 Senate Minority Leader	3 by Governor + 1 by House Speaker + 1 Senate Majority Leader + 1 House Minority Leader	At least 5, regardless of who selects, see	None	The governor shall appoint two members to the
Connecticut	Superior	Governor + 1 by Senate President pro tem + 1 House Majority Leader + 1 House Minority Leader	Circuit	Connecticut Sec. 51-44a	Hawaii Constitution Art. VI, Sec. 3
Hawaii	Circuit	No more than 4, regardless of who	Hawaii	Hawaii Constitution Art. VI, Sec. 3	Hawaii Constitution Art. VI, Sec. 3

note

selects, see  
note

commission. No more than one of the two members shall be a licensed attorney. The president of the senate and the speaker of the house of representatives shall each respectively appoint two members to the commission. The chief justice of the supreme court shall appoint one member to the commission. Members in good standing of the bar of the State shall elect two of their number to the commission in an election conducted by the supreme court or its delegate. No more than four

Iowa	District	3 members chosen by bar members residing in judicial election district	3 chosen by Governor with Senate consent	Senior District Judge		members of the commission shall be licensed attorneys.	Iowa Code 39.13
Kansas	District	2-5 chosen by lawyers of the judicial district	2-5 chosen board of county commissioners	A justice of court of last resort		Number of seats determined by number of counties in district	K.S.A. 20-2903 through 20-2906
Missouri	Circuit	2 chosen by lawyers residing in judicial district	2 chosen by Governor	Chief judge of intermediate appellate court for the circuit			Missouri Constitution Art. V, Sec. 25(d)
Nebraska	District	4 chosen by lawyers residing in judicial election district	4 chosen by Governor	Supreme Court justice designated by governor (nonvoting)		No more than 4 members may be of same political party	Nebraska Constitution Art. VI, Sec. 21
New Mexico	District	1 chosen by Governor + 1 chosen by Speaker of the House + 1 chosen by	1 chosen by Governor + 1 chosen by Speaker of the House + 1 chosen by	1 Chief Justice or designee + 1 Court of Appeals judge chosen by Chief Judge +	1 Dean of UNM Law School is ex officio chair		New Mexico Constitution Art. VI, Sec. 35 & 36

Rhode Island	Superior	President Pro tem of Senate + 4 chosen jointly by the president of the state bar and the judge members of the commission.	Governor but see notes	President Pro tem of Senate	1 Chief Judge of District Court	1 attorney chosen by Governor from list of 3 provided by Speaker of House +  1 attorney or nonattorney chosen by Governor from list of 3 provided by Senate President +  1 nonattorney chosen by Governor from list of 3 provided by Senate minority leader +  1 nonattorney	R.I. Gen. L. 8- 16.1-2
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South Carolina	Circuit	None required	None required	5 members appointed by Speaker of House, of which 3 must be General Assembly members and	<p>chosen by Governor from list of 3 provided by House minority leader +</p> <p>1 nonattorney from list of 4 provided jointly by House Speaker and Senate President +</p> <p>3 attorneys chosen by Governor without regard to any list</p> <p>1 nonattorney chosen by Governor without regard to any list</p>	SC Code 2-19-10
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Utah	District	2 chosen by Governor from list of 4-6 provided by state bar; free to selection additional attorneys, but no more than 4 bar members may be on commission at any time	Governor	A member of Judicial Council chosen by chief justice (no vote)	2 members of general public + 3 members appointed by Chair of Senate Judiciary Committee and 2 by President Pro Tem of Senate, of which 3 must be General Assembly members and 2 members of public	No more than 4 of same political party	UT Code 78A-10-302
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Vermont	Superior	3 chosen by state bar members	2 chosen by Governor	None	3 members of House chosen by House + 3 members of Senate chosen by Senate	4 VSA 602
Wyoming	District	3 chosen by state bar members	3 chosen by Governor	Chief justice of court of last resort		Wy. Statutes 5-1-102

**Appendix D.**

Task Force Survey and Responses from Local, Affinity and  
Specialty Bar Associations –  
Summary by  
Robert T. Schofield, IV, Esq.





## **SURVEY OF LOCAL, AFFINITY AND SPECIALTY BAR ASSOCIATIONS**

As part of its study, the Task Force mailed surveys to 130 local, affinity and specialty bar associations, about their involvement and awareness of the Independent Judicial Election Qualifications Commissions (IJEQCs), their existing screening procedures, if any, their willingness to engage in a screening process in the future, and the resources that might be needed to conduct/continue to conduct judicial screenings. Fourteen responses were received.

### *a. Overview*

In response to the question whether the bar associations participated in screening either independently or through the IJEQCs, nine of the 14 respondents stated that they were engaged in independent screening. The Queens County Bar Association, acknowledged that it also participated in screening by appointing members (typically three) to the IJEQC in its judicial district, and the New York County Lawyers Association has periodically provided one member to its district IJEQC.

### *b. IJEQC Participation*

Overall, the respondents seemed to lack detailed information about the operations of the IJEQCs. Several of the larger bars that responded to the survey stated that they were not involved with the IJEQCs, even though one might have expected that, due to their relative size within their judicial district, they would have been an appointing authority under the IJEQC rules (e.g., Albany County Bar Association and Bar Association of Erie County).

The Queens County Bar Association, offered that, in its region, where robust screening occurs through the local bar associations (in coordination with the City Bar's exemplary screening process), the IJEQC was seen as a "duplication of effort." Queens also noted that it

believed the joint Queens Bar-City Bar process required a higher standard of approval that was available through the IJEQCs.

*c. Local Screening*

Of the nine bars that responded as performing their own screening process, each stated that the existence / non-existence of the IJEQCs would not affect the continued existence of their screening efforts. Some noted, however, that they currently utilized the IJEQC questionnaire as the questionnaire for their local process, in part due to its comprehensiveness and in part to ensure that candidates did not have to complete an additional, duplicative questionnaire.

Most of the nine respondents that stated that they conducted and would continue to conduct judicial screening provided their specific screening procedures or pointed the Task Force to a location where those procedures could be reviewed. These screening processes generally contained the elements of effective judicial screening that the Task Force has discussed and focused on. As such, it is probably unlikely that these screening processes will require significant revisions in order to be considered “consistent” with the Task Force’s recommendations. A few respondents noted that they also screened candidates for non-elected judicial office, such as the Court of Appeals and/or local U.S. District Courts, as well (in one case, the Respondent stated that such screenings were the only screenings they conducted).

Of the respondents who stated a willingness to continue to conduct judicial screening irrespective of the existence of the IJEQCs, several expressed a willingness to coordinate future screening efforts with the State Bar, or at least consider whether such a relationship would improve the quality of the screening process in place. One statewide specialty bar, which currently only conducts screening for Court of Appeals’ vacancies, expressed a willingness to potentially participate with a regional effort to screen candidates for lower court offices too.

One respondent noted that it believed that the IJEQCs were hindered by the scope of their geography and that local lawyers in each county are in the best position to screen the judges/candidates, because they know them. That association cites this as one reason that regional screening efforts are not likely to work. To the contrary, another respondent expressed interest in a regional model in part because of the potential that it could offer some anonymity to the lawyers involved in screening and, thus, a protection from retaliation that can occur when the screeners are well known to a candidate/judge.

*d. Need for Resources*

The survey also asked bar associations to identify whether they needed resources to conduct judicial screening and, if so, what they were. Perhaps not surprisingly, most respondents that did or would engage in a screening process answered this question in the affirmative. Respondents listed the following things as resources that could be potentially helpful in facilitating screening programs: (1) money to offset costs of running screening programs; (2) assistance with pre-interview or initial screening processes; (3) availability of a common application that could be used for all associations doing screening; (4) scheduling and coordination of judicial screening interviews; (5) use and access to suitable office or conference space in which to conduct interviews; and (6) assistance with publicizing screening results once the local processes are completed. The Task Force acknowledged and reflected upon these requests in its overall assessment of best practices.

As noted previously, one respondent offered that its screening committee members were so well known in their legal community, that they saw a unique potential benefit in having their committee conduct screening as part of a regional effort; the belief being that in that case, it would be more likely that they would be “insulated” from retaliation as part of the larger group.

*e. Other Findings*

Two respondents stated that they were not currently engaged in judicial screening and that they had no plans to begin doing so. For one smaller rural association, the belief was that screening was not necessary – the ideal process for screening was “voters in general election.” One large bar association from a large urban area upstate (Monroe County) stated that it ceased all judicial rating activities approximately two years ago, stating that it was felt that the ratings process: (1) was expensive, (2) had little effect on voting outcomes, and (3) was perceived as causing serious damage to the association’s relationship with the judiciary. That local bar stated that it would not institute screening even if the IJEQCs were disbanded and would not participate in a regional process should one be created as a substitute. The Task Force learned from other sources the Monroe County decision was made, in part, due to conflict between the association’s process and certain political leaders in the county. The Task Force considered this situation notable because it likely represents the largest county (by population, approximately 750,000) that will become unserved by a judicial screening process when the IJEQCs disband.

**Appendix E.**

Task Force Survey and Responses from Members of IJEQCs –  
Summary by  
Elena DeFio Kean, Esq. and Daniel Kornstein, Esq.

## SURVEY OF INDEPENDENT COMMISSION MEMBERS

To inform its work, the Task Force turned to members of the Independent Judicial Election Qualification Commissions. These Commissions were established in 2007 in each of the 12 judicial districts in the state to provide a judicial screening process free from politics. Staffed by OCA, each Commission consists of fifteen members who serve for three-year terms, renewable for one additional term. Five members are appointed by the Chief Judge (two of those five are non-lawyers); five members are appointed by the Presiding Justice of the respective appellate division (two of those five are non-lawyers) one by NYSBA; and four by local bar associations. The applicable bar associations within the Judicial District are designated by the Chief Judge. The rules do not establish the basis upon which the local bar associations are designated, such as size, location within the Judicial District, or diversity. The Chief Judge picks the chairperson.

The Rules of the Chief Administrative Judge, Part 150.5 provide the criteria to be used to assess the candidates as well as the available ratings. Part 150.1 provides that the Commission members are to determine whether candidates are “highly qualified, qualified, or not qualified for the office to which they seek election”. In order to make these determinations, Part 150.5(b) provides that such evaluation include the professional ability; character, independence and integrity; reputation for fairness and lack of bias; and temperament, including courtesy and patience of the candidate. Those candidates rated highly qualified “must be preeminent members of the legal profession in their community; have outstanding professional ability, work ethic, intellect, judgment and breadth of experience relevant to the office being sought; possess the highest reputation for honesty, integrity and good character, including the absence of any significant professional disciplinary record; and either demonstrate or exhibit the highest

capacity for distinguished judicial temperament, including courtesy, patience, independence, impartiality and respect for all participants in the legal process.”

### The Survey

In light of the role of the Commission members in the assessment of participating candidates, the Task Force sought comments from the Commission members by means of an electronic survey. The survey consisted of the following five requests: (1) Please share with us your thoughts and impressions on the effectiveness of the current process; (2) Please share with us your thoughts and impressions on the ratings system; (3) Please share with us your thoughts and impressions on the importance of interviews; (4) Please share your thoughts and impressions on the importance of calling references; and (5) Please share with us anything else you consider relevant to our mission.

As these questions indicate, the survey was trying to draw on the relevant personal experiences and reactions of people intimately familiar with the issues and the process, that is, the Commission members themselves as opposed to “yes-no” inquiries. The survey was sent to each of the 180 current members of the Commission. It was the Task Force’s hope that the responses, whatever they were, would be important in guiding its work and affecting its conclusions. The targets of the survey – the Commission members – had the first-hand professional experience and independence to reflect on what it takes and what we need to maintain the high quality of judges in New York State.

### Results of the Survey

The results of the survey, which can be accessed at <https://www.surveymonkey.com/results/SM-3Y93SSGKV/>,

were significant. Of the 180 Commission members contacted, 43 questionnaires were completed and received ( 24%). Of course it would have been better if a higher percentage participated, but in any event the responses reflect some definite trends. Here are the results:

1. Effectiveness of Current Process: Most respondents (36 out of 43) gave positive comments. They ranged from “good,” “very good,” “better than appears,” “effective,” “highly effective,” “most effective,” “extremely effective,” to “appropriate,” “thorough and professional,” “works well,” “unbiased,” “thoughtful,” “excellent,” “best vetting system,” and a “beneficial public service.” At the same time, however, some respondents regarded the current process as “ineffective,” “meaningless,” “never completely thorough,” and “not foolproof.” These negative comments were blamed on the voluntary nature of candidate participation, lack of publicity and public awareness, “old boy cronyism,” and favoritism toward sitting judges. One person said candidates received a “Qualified” rating despite “glaring deficiencies.”

2. Ratings System. Although many (25 out of 43) respondents answered positively (e.g., “good,” “appropriate,” “solid,” fair and objective,”) the current ratings system raised some controversy. The most serious point seemed to be the use of the Highly Qualified ratings and its relationship to merely Qualified rating. Several people thought Highly Qualified favored sitting judges only. Others thought there should be more clarity and differentiation between the two ratings, and in general more specific criteria and more choices. To some, the categories, especially Qualified, were too broad. One respondent accurately described the problem as attempting “to objectify a process that contains a subjective component.”

3. Candidate Interviews. The issue in the survey that received the greatest consensus was the importance of personal interviews of judicial candidates. Almost everyone agreed they were important. They described the interviews as “essential,” “instrumental,”

“indispensable,” “the key element,” “the most critical,” and “integral.” But even on this issue there was some disagreement. One person called the interviews “not helpful” and another said they were “of little importance” because of the Commissions’ “unwillingness to issue adverse findings.” But these negative responses were outliers.

4. References. Calling a candidate’s references too turned out to be controversial. On one hand, 34 out of 43 regarded such references as important, even “very important,” “the most important part of our function,” “critical,” and “of great value.” On the other hand, several respondents also complained that calling listed references was of inherently limited value. It was much more important, they said, to call people not listed as references by the candidate. Listed references almost always, as one would expect, give positive comments only. Calling attorneys from listed recent cases – such as opposing counsel, co-counsel- as well as court personnel gives a more candid and accurate picture of the candidate. A number of respondents thought it would be useful to have training and collaboration in what questions to ask.

5. Other Comments. The miscellaneous comments were overwhelmingly favorable. One response was, “I love this process.” Another was, “let’s continue this, I think it is a great process.” Others called it “imperative,” “truly independent,” “really vital,” and “critical.” Several said it should be continued. By way of improvement, respondents recommended that the process be mandatory, that ratings and results be publicized better, that the public be educated about the ratings system, that the identity of those candidates who do not participate should be publicized, and that the Commission should opine regarding applicants’ suitability. Others thought that Commission members from political parties or local bar associations were inherently biased, and that the composition of the Commissions should be more geographically diverse within each district.

### Tentative Conclusions

From these responses, although limited, certain provisional conclusions can be drawn. An overwhelming majority of those Commission members who responded thought that the current process was effective, that the ratings system was effective but could benefit from greater clarity, that the interviews were crucially important, that calling references (especially those not listed by the candidate) was important, and that the Commissions should continue.

The responses also favored mandatory participation, greater publicity, and more willingness to make adverse findings.

### Concerns About the Survey

A review of the survey and its results suggests that it be interpreted with care. Further refinement and analysis may well be needed and should be considered. First, the survey was directed only at Commission members, who may have inherent bias about the value of their work. Second, only 24% of the Commission members responded, so that their comments may or may not be representative or a fair statistical sampling in this situation<sup>1</sup>. Third, the responses do not (for the most part) indicate which Judicial District is involved, so that the responses may be geographically skewed in a number of ways: upstate versus downstate, rural versus urban. Fourth, the responses do not identify whether from an attorney or non-attorney member, which may also affect or impact the response. Taking these shortcomings into consideration is necessary.

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<sup>1</sup> In at least one District, commission members reported that they were uncertain of the origin of the survey.

## Overall

Nonetheless, even with the survey's potential or perceived weaknesses, the viewpoints of the IJEQC members would support the following:

1. The IJEQC system would be greatly strengthened by making participation by all judicial candidates mandatory. Such mandatory participation would go a long way toward making the IJEQC an independent, non-partisan statewide judicial screening Commission. It would somewhat reduce the political nature of judicial nominations and elections.
2. Short of mandatory participation, a candidate's refusal to participate should be publicized.
3. The work of the Commissions in general, including their ratings, should be publicized much better.
4. The Commission should be willing to make adverse findings when appropriate.
5. Commission members should call unlisted candidate references to obtain more candid assessments.
6. The ratings system should be clarified and refined, with a focus on differentiating better between Qualified and Highly Qualified.
7. A new survey should be considered, one that would generate a higher percentage of responses and be more representative and informative. If a new survey is determined to be issued, the following items should be considered, (a) expanding it to immediate past Commission members; (b) requesting the Directors for the respective Commissions provide an introductory email encouraging Commission member participation; (c) questions regarding geographic locations and length of service should be included; and (d) questions determining attorney versus non-attorney participation.

8. If further consideration is given, more statistical data should be gathered by each Judicial District such as (a) number of participating candidates per year for a period of at least (5) years; (b) the overall ratings issued each year; (c) number of appeals of ratings; (d) the success of any such appeals; and (e) potential interview of the Directors for the various Judicial Districts.

## **Appendix F.**

Task Force Survey and Responses from Judges –  
Summary by  
Alan Mansfield, Esq. and Michael J. McNamara, Esq.

Full Survey can be found at:

<https://www.surveymonkey.com/results/SM-VTRRFWGKV/>

## **SURVEY OF JUDGES**

The Task Force on the Evaluation of Candidates for Election to Judicial Office (the "Task Force") conducted an anonymous survey of all sitting New York State Judges (excluding Town and Village Justices) who hold or have held elected judicial office concerning their experiences with judicial screening processes. The goal of the survey was to solicit the views of Judges regarding aspects of the screening process that work well, areas that could be improved and possible steps to increase participation by judicial candidates.

The survey questions were as follows:

- Q1) As a candidate for election to judicial office have you participated in judicial candidate screening?
- Q2) If you answered yes to question 1, which bar association(s) or Independent Judicial Qualifications Committee conducted the screening?
- Q3) If you answered yes to question 1, what was effective about the screening process?
- Q4) If you answered yes to question 1, what about the screening process should be improved?
- Q5) Do you believe that more candidates for election to judicial office would participate in judicial screening if the New York State Bar Association (NYSBA) and/or local bar associations before elections disclosed to the press and social media the names of judicial candidates who refused to participate in judicial screening?
- Q6) Do you believe that more candidates for election to judicial office would participate in judicial screening if they were encouraged to do so by political parties?
- Q7) If your county does not have a bar association-based judicial screening process would you participate in regional screening of candidates for election to judicial office organized by NYSBA and/or local bar associations in nearby counties?
- Q8) How can the process of screening candidates for election to judicial office be changed to increase participation?

With the assistance of OCA, an email was sent to a database of email addresses that includes approximately 1,200 sitting Judges in New York State on October 17, 2018. The email to the Judges contained a link to the anonymous survey along with an explanation that the survey was being conducted by this Task Force which was appointed by the President of the New York State Bar Association to investigate issues related to the evaluation of candidates for election to judicial office. Because the OCA database of email addresses used to transmit the message includes both elected and appointed judges, the email made it clear that the Task Force was only requesting responses from Judges who hold or have previously held elected judicial office. The recipients were asked to return the survey by October 30, 2018.

## SURVEY RESULTS

Completed questionnaires were returned by 98 sitting judges. Respondents represent judges sitting in 11 of the 13 judicial districts. (No identifiable responses were received from the 4<sup>th</sup> and 6<sup>th</sup> districts.) Approximately 87% of the respondents had previously participated in judicial screening.

### Question 5 asked the respondents:

Do you believe that more candidates for election to judicial office would participate in judicial screening if the New York State Bar Association (NYSBA) and/or local bar associations before elections disclosed to the press and social media the names of judicial candidates who refused to participate in judicial screening?

*Approximately 68% of the respondents answered yes.*

### Question 6 asked the respondents:

Do you believe that more candidates for election to judicial office would participate in judicial screening if they were encouraged to do so by political parties?

*Approximately 76% of the respondents answered yes.*

### Question 7 asked the respondents:

If your county does not have a bar association-based judicial screening process would you participate in regional screening of candidates for election to judicial office organized by NYSBA and/or local bar associations in nearby counties?

*Approximately 70% of the respondents answered yes.*

Questions 3, 4 and 7 asked the respondents to address what they found effective and what can be improved in the screening process in which they participated and what could be changed to increase participation by other candidates. While the responses do not lend themselves to statistical analysis, from an anecdotal perspective, several common themes emerged. A number of respondents believed that the screening committee questionnaires should be standardized or uniform, that the screening committee members be independent and knowledgeable about the relevant courts, that the public be made more informed about the rating system, that results should be published and that local bar associations should coordinate so that candidates do not have to participate in multiple interviews and complete multiple questionnaires. Some of the responses displayed a wide range of sentiments. For example, while many respondents believe that the screening process should be mandatory, others believe that screening should be eliminated and determinations about candidates be left to the voters.

## **RECOMMENDATIONS**

The survey results are consistent with the following recommendations:

- **NYSBA and/or local bar associations should disclose to the press and social media the names of judicial candidates who refused to participate in judicial screening sufficiently in advance of elections so that voters can take that information into account before voting.**
- **Political party leaders should be encouraged to require that candidates they support participate in judicial screening.**
- **NYSBA and local bar associations should organize regional judicial screening for those counties that do not have local judicial screening.**
- **Local bar associations should be encouraged to coordinate their questionnaires and interviews so that candidates do not have to participate in multiple, repetitive screening processes.**
- **Screening committees within a county should coordinate to use uniform ratings and to inform the public about judicial screening and what the ratings mean.**

## **Appendix G.**

Task Force Survey and Responses  
from County Political Leaders –  
Summary by  
Lawrence A. Mandelker, Esq.

Full Survey can be found at:

<https://www.surveymonkey.com/results/SM-NR7PQP57V/>

## Report on Survey of Political Leaders

Since colonial times there has been a philosophical debate between those who believe that judges should be appointed and those who believe that judges should be elected. Those favoring appointment argue that it readily allows expert advisors to evaluate the qualifications of potential appointees before recommending highly qualified candidates for appointment.

Those favoring election argue that it readily allows the public to evaluate the candidates' understanding of their lives, problems and issues and their ability to deal with them on a fair and equitable basis. It dispenses with screening panels which, under the guise of non-partisan evaluation of qualifications can engage in back-room deals seeking to reward or punish special interests.

New York presently uses both systems. Justices of the State Supreme Court are elected. Party nominations are made at Judicial Conventions, the delegates to which are elected at Party primaries. Designation to the Appellate Division is by the Governor, who's Judicial Screening Committees evaluate the qualifications of candidate for designation.

Judges of the New York Court of Appeals who, formerly were elected, are now nominated for appointment by the Committee on the Judiciary. It recommends seven (7) candidates for appointment to the Governor, who appoints one of them to office.

Judges of the New York Court of Claims – both those who adjudicate claims against the State and those who then serve as Acting Justices of the Supreme Court – are appointed by the Governor, with the advice and consent of the Senate. The qualifications of candidates for appointment to the Court of Claims are reviewed by the Governor's Judicial Screening Committee. The Governor also appoints judges to fill mid-term vacancies in Judicial Office.

Judges of the Surrogate Court, the County Court and the Family Court outside of New York City are elected. Candidates qualify for access to the ballot by filing either a petition designating them as candidates in a Party primary for nomination as the Party's candidates in the general election, or an independent nominating petition nominating them as candidates in the general election without having been nominated by a Party.

In New York City, Judge's of the Family Court and the Criminal Court are appointed by the Mayor. Their qualifications are screened by the Mayor's Committee on the Judiciary. Civil Court Judges are elected and qualify for the ballot by petition. Outside New York City, City Court Judges and –in certain jurisdictions, District Court Judges are elected and qualify for the ballot by petition.

Candidates for elective judicial office—regardless of whether they already hold judicial office -- are required to pay for and mount a campaign for election. They are prohibited from attacking or supporting any other candidate or stating anything that could be construed as pledging or promising a future ruling. Their literature features pictures of their families,

encomia to their community service and perhaps an abbreviated *curriculum vitae*. A voter seeking to evaluate a candidate's qualifications to hold judicial office finds it very difficult to access material from which the candidate's qualifications can be divined.

Good government groups have long advocated for widespread, if not universal evaluation of a candidate for elective judicial office's qualifications that would be available for voters before they cast their ballots. Enter the New York State Bar Association Task Force on the Evaluation of Candidates For Election to Judicial Office.

The Mission Statement for the Task Force on the Evaluation of Candidates For Election to Judicial Office requires that the Task Force:

- i) Investigate and report on the various vetting structures that exist throughout the State pertaining to candidates for election to judicial office;
- ii) Propose best practices, guideline and minimum standards for review of such judicial candidates;
- iii) Make recommendations to assist local bar associations, good government groups and other stakeholders in developing effective non-partisan evaluation and screening of candidates for election to judicial office and improving those efforts that already exist.

In an ideal world, before voting in an election for elective judicial office, a voter would be able to readily access an evaluation of the qualifications of the candidate(s) by a trusted<sup>1</sup> screening committee. In an ideal world no political party would even consider nominating or supporting a candidate for elective judicial office whose qualifications had not been favorably evaluated by a trusted screening committee. In an ideal world, no candidate for elective judicial office would ever think of facing the voters unless his or her qualifications had been favorably evaluated by a trusted screening committee. However, our hope for the ideal must deal with the reality of elections for judicial office namely, that the process of nominating candidates for election to judicial office is a political process controlled by the political parties. Unless use of trusted screening committees to evaluate the qualifications of candidates for elective judicial office were to be mandated by law, the views of those who control the political process would have to be considered if we are to "develop ... effective non-partisan evaluation and screening of candidates for election to judicial office and improv[e] those efforts that already exist."

Although New York recognizes eight political parties,<sup>2</sup> depending on the county, only the Democratic and Republican Parties exercise any control over the nominating process. We

<sup>1</sup> Trusted by the voters, by Party Leaders and by the candidates

<sup>2</sup> As of November 6, 2018, they include the two major parties, Democratic and Republican, and the six minor parties, Conservative, Working Families, Green, Libertarian, Independence and Serve America Movement. Under the Election Law, each political party is entitled to organize a State Committee as well as a County Committee for

decided to try and ascertain whether there was a common attitude among party leaders about using non-partisan screening committees to evaluate the qualifications of candidates for elective judicial office. The most practical way to do so appeared to send a short survey to the Democratic and Republican County Leaders of each of the State's 62 counties.

The survey contained five "yes" or "no" questions. One of the questions had two "yes" or "no" subparts; and one asked the respondent to explain his or her answer. The respondents' identities would not be disclosed.

The first question was designed to provide us with baseline information. It asked respondents whether a screening panel should evaluate the qualifications of *all* candidates for judicial office prior to nomination (emphasis added). Respondents were then asked to explain the reasons for their answers.

The second question was designed to elicit at what point respondents believed the evaluations should be made public. It asked whether the evaluations should be disclosed to the media prior to a candidate's nomination.

The third question was designed to elicit some insight into whether respondents would ever trust a screening panel. It asked whether respondents their organizations would support evaluation of judicial candidates by a screening panel, the members of which were selected either: a) without input from respondents' party; or with input from respondents' party.

The fourth and fifth questions were designed to elicit basic information about whether respondents view evaluation of judicial candidate qualifications by relevant bar associations as a challenge to their organizations' unilateral control of the nomination process for elective judicial office. The fourth question asked whether respondents' party would decline to nominate a candidate who declined to be evaluated by relevant bar associations. The sixth question asked whether respondents' party requires a judicial candidate to obtain its permission before agreeing to be evaluated by relevant bar associations.

Unfortunately only 16 of the 124 county political leaders (12.9%) chose to respond to the survey. Over 80% of the respondents agreed that a screening committee should evaluate the qualifications of all judicial candidates prior to the date of their nomination, and the same 80% would support evaluation of judicial candidates by a screening panel, the members of which were selected with input from their party. 90% of the respondents stated that their party does not require a potential judicial candidate to obtain the party's permission before agreeing to be evaluated by the relevant bar associations

On the other hand, nine of the 16 respondents would not support evaluation of judicial candidates by a screening panel, the members of which were selected without input from their party. Only nine of the 16 respondents believed that the evaluations should be disclosed to the media for dissemination prior

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each of the State's 62 counties (including the five counties located within the New York City). The Party's chief officer in each county is styled as the County Chair or, more popularly, the County Leader.

to the candidates' nomination, and that same nine of 16 stated that their party would not nominate a judicial candidate who declined to be evaluated by the relevant bar associations.

While it may be hard to draw any firm conclusions from the limited survey size and the self-selection of the respondents, there appeared to be significant support of judicial screening and evaluation in theory. Yet, where the screening of judicial candidates might be viewed as impinging on the prerogatives of political selection, that support for judicial screening grew less.\*

\*NB Bennett Liebman, in the last three paragraphs of this review, supplied the analysis of the results of the survey.

## **Appendix H.**

Candidate Waiver of Confidentiality Forms  
used by the IJEQCs

**To the New York State Commission on Judicial Conduct:**

I, \_\_\_\_\_(Please print name),

hereby consent to the release by the State Commission on Judicial Conduct to the Independent Judicial Election Qualification Commission, \_\_\_\_\_  
Judicial District, solely for use in the judicial screening process pursuant to Part 150 of the Rules of the Chief Administrative Judge, of any materials relating to the making, investigation and determination of complaints against me handled by the Commission, other than records and proceedings where the complaints were dismissed as unproven or unmeritorious and a letter of dismissal and caution was not issued.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**To the Attorney Disciplinary Committee, Attorney Grievance Committees, or  
Attorney Committee on Professional Standards of the Appellate Divisions in  
the State of New York:**

I, \_\_\_\_\_ (Please print name),

hereby consent to the release by the Attorney Disciplinary Committee, Attorney Grievance Committees, or Attorney Committee on Professional Standards of the Appellate Divisions of the State of New York, to the Independent Judicial Election Qualification Commission, \_\_\_\_\_ Judicial District, solely for use in the judicial screening process pursuant to Part 150 of the Rules of the Chief Administrative Judge, of any materials relating to the making, investigation and determination of complaints against me handled by the Committees, other than records and proceedings where the complaints were dismissed as unproven or unmeritorious.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 2

\_\_\_\_\_  
Notary Public



NEW YORK STATE BAR ASSOCIATION  
One Elk Street  
Albany, NY 12207