# WSBA Judicial Recommendation Committee

## Guidelines

## I. GENERAL

### A. Authorization and Organization

The committee exists and functions under the Bylaws of the Washington State Bar Association.

1. **Composition**

   The JRC shall be composed of 22 members.

   Factors to consider shall include:

   a. Age/Years in Practice
   b. Geographic location
   c. Size of Firm
   d. Race/Ethnicity
   e. Gender
   f. Nature of Practice/Areas of Expertise
   g. Typical Client Representation (i.e.: civil plaintiff or defense, criminal prosecution or defense, government regulatory)

   Annually, the JRC Chair, with WSBA staff, shall inventory the JRC membership based upon composition goals and committee tenure to determine membership needs.

   A member of the Board of Governors shall serve as a non-voting liaison to the committee.

2. **Appointment Process**

   a. Interested members must submit an application, a resume, and letter of interest in order to be considered for the JRC.
   b. The JRC Chair shall be appointed by the WSBA President for one year.
   c. A Vice-Chair shall be appointed by the WSBA President for one year. Subject to confirmation by the Board of Governors' appointment, the Vice-Chair shall serve that year, and assume the position of JRC Chair the following year, unless such individual declines to serve in that capacity. Prior to the end of each committee year, WSBA staff to the JRC and the Vice-Chair, in consultation with the Chair, shall make a recommendation to the President, President-elect, and BOG for one or more candidates to serve as Vice Chair Selection of candidates will take into account the need to make leadership opportunities available to individuals across the full spectrum of the JRC membership.
   d. WSBA staff to the JRC, the Chair and (if applicable the Vice-Chair) of the JRC, shall review all applications and make a recommendation to the President, President-elect and Board of Governors for candidates to fill the vacant positions,

with reference to the Committee's existing composition and its composition goals. All resumes and cover letters shall be submitted with the recommendation.

e. Subject to the requirements outlined above, the WSBA President and President-elect shall each nominate JRC 4 members. Each governor shall nominate one (1) JRC member.
f. The Board of Governors shall vote on all nominations to appoint JRC members.
g. One-third of its members shall be appointed each year for a term of three years, subject to annual review and approval by the Board of Governors.
h. If a committee member is absent from two consecutive meetings without reasonable cause, that member shall be replaced.

3. **Orientation**
All committee members with less than one full year of service on the Committee shall attend an orientation/training meeting once a year prior to participating in any interviews. Essential components of the training shall include: the judicial recommendations process, confidentiality, criteria for ranking, prohibited questions and issues of diversity, and appeal of the committee's decision.

**B. Records**

The chair or a designee shall keep confidential records of the committee, which shall include the following material:

1. The information questionnaire furnished by each applicant, or such other information as the chair or committee deems appropriate;
2. The recommended list of judicial candidates;
3. The letter of transmittal of the recommended list and other official correspondence;
4. A list of persons who have declared an interest in judicial office, but whose applications are held pending because no vacancy then exists or because they have not yet been considered for inclusion on the list; and
5. Abbreviated minutes of committee meetings, including attendance.

**C. Confidentiality**

1. The proceedings and records of the committee, including the comments of applicants, committee discussions, and committee votes, shall be kept strictly confidential.
2. All members of the committee shall be advised of the requirements of committee membership and shall be informed of the procedures and criteria to be used by the committee at the time of their appointment to the committee.
3. As a precondition to being interviewed and rated by this committee, each applicant must agree in writing that he or she will not use in any election campaign a rating the applicant received from the committee as an applicant for appointment.

**D. Participation**

1. Any member of this committee shall be ineligible for appointment to any judicial vacancy as to which this committee has responsibilities while a member of this committee, and shall not seek a rating from the committee for such a position for a period of two years following the close of the individual's last term of service.
2. Committee members shall not endorse, campaign for, or individually contribute to any candidates who are running for election to any office as to which the committee has responsibilities.
3. At least 12 committee members must be present to constitute a quorum.

## II. PROCEDURES

### A. Objectives and Means of Accomplishment

The primary objective of the committee is to assist in the appointment of excellent judges. To accomplish this, the committee shall:

1. Prepare and maintain a list of individuals who are well qualified for and interested in appointment to the appellate bench.
2. When a vacancy occurs, send a list of presently well-qualified and interested individuals to the WSBA Board of Governors for transmission to the Governor.

### B. Review of Candidates

1. The committee shall develop a Judicial Evaluation Questionnaire. Each candidate for appointment to judicial office should complete this form and deliver it to the committee before the committee meets to consider his or her qualifications. The committee may revise the form from time to time. If possible, a copy of each candidate's questionnaire should be sent to each committee member before the candidate's interview. All candidates should be required to advise the committee of any material changes to the answers to their questionnaire on file with the committee.
2. Prior to an interview, members of the committee shall call references and others who may have information about the candidates' qualifications and shall report the results of the calls to the committee.
3. Every candidate shall be interviewed by the committee and shall be provided with a copy of the committee's procedures and criteria prior to the interview. Additional information from the candidate may be requested. The Board of Governors shall be advised of those applicants to be interviewed by the committee prior to the interview date, so as to give the Board of Governors an opportunity to provide confidential feedback to the committee <u>in advance</u> of the interview.
4. The committee shall be scheduled to conduct committee business and review candidates on a quarterly basis with the schedule being set annually, in advance, by WSBA staff to the JRC with the concurrence of the chair and the vice chair. Under appropriate circumstances, including but not limited to the absence of a sufficient number of candidates to rate for the meeting, the Chair may, in his or her discretion cancel a scheduled meeting of the committee; *provided however*, that Interviews shall be held at least twice each year. A member of the Board of Governors shall attend every interview. Notice of interview dates shall be published monthly in the *Washington State Bar News*. A continuing list of well-qualified individuals shall be formulated following each series of interviews.
5. Individuals shall be removed from the list when they are no longer well-qualified or interested. No candidate should remain on an approval list for more than four years without again submitting to the interview and application process. A candidate being interviewed for purposes of remaining on the list shall be treated and considered in the same manner as a new candidate.
6. Reapplication and Reconsideration:
   a. Any individual removed from the list or not rated shall be eligible for reapplication to the committee at his or her request at a subsequent scheduled meeting of the committee two years following the date on which the committee's last action related to the individual was taken.
7. When a vacancy occurs, each individual on the list shall be contacted to verify continuing interest.

8. Each applicant shall be required to submit a release of his or her disciplinary record pursuant to ELC 3.4(c)(2). Refusal to do so shall be grounds for the committee to refuse to interview the applicant.

**C. Voting**

1. Each JRC member rates candidates on a *Rating Form* that sets forth criteria upon which each candidate shall be rated, as enumerated in Section III. Committee members shall use the form to document their evaluations of each criterion for each candidate.
2. To be rated as "well-qualified," a candidate must receive an affirmative vote of two-thirds of the committee members voting at the interview, but in no event shall an applicant be rated well qualified who receives less than nine affirmative votes.
3. Votes shall only be cast in person at a committee meeting.
4. Where a candidate is voted NOT well-qualified by a two-thirds vote of the committee, each JRC member who voted NOT well-qualified shall identify each criterion that was not met and the reason that committee member believes the criterion was not met.
5. Committee members shall disclose any relationship with an applicant that might affect their impartiality.
6. Each committee member making a disclosure under C.5 above shall be free to express his or her views or present pertinent information, but shall neither vote nor be present at the interview or during the committee's deliberations regarding any applicant with respect to whom the committee member can not be impartial.

**D. Notification to Candidates**

Following communication of the decision of the committee to the Board of Governors, the chair of the committee shall promptly notify in writing all applicants of the decision of the committee, without indicating the votes of the committee.

**E. Inadequate information**

Notwithstanding Section II, paragraph C.1. above, if following the interview process, the committee believes there is inadequate information on which to rate an applicant, the committee meeting at which the applicant is being considered may be continued, at the discretion of the chairs, to obtain whatever additional information is necessary to evaluate and rate said applicant. The continued committee meeting may be conducted either in person or via telephone conference, and only those members of the committee who were present at the original committee meeting may participate in said continued committee meeting. The committee vote on an applicant at a continued meeting shall be subject to all applicable requirements that apply to a regular meeting, except that each committee member may fax or email his or her decision form to WSBA staff to the committee promptly after the continued meeting. A member of the committee who was present at the original committee meeting and is not present for the continued meeting shall not vote on the candidate.

**F. Appeal of Committee Decisions and Request for Review**

In addition to the procedures set forth in section II.5 for reapplication and for submitting new information, the applicant or any member of the committee may appeal a JRC decision on an applicant's rating as follows:

1. **Who may seek a Review**
   The applicant and/or a member of the JRC Committee who was present at the interview and/or the BOG member who was present at the interview may request a review.

2. **Grounds for Review**
   The only grounds for invoking this review process are:
   a. The committee materially failed to follow its procedures, and such failure affected the outcome of the decision.
   b. The committee posed unfair or inappropriate questions to the applicant; or
   c. The committee's decision was materially affected by considerations, or by applying criteria, which are not set forth under section III ("Criteria"); or
   d. The JRC decision was materially influenced by considerations of bias or prejudice.

3. **Request for Review**
   The party desiring a review shall deliver a written request for a review of the committee's decision to (1) the committee chair, and (2) the WSBA President. The request must be made within 30 days of the date of mailing of the letter of notification of the committee's decision. The request for a review shall state in detail the facts, events, and circumstances that cause the party to believe that one of the grounds for review is satisfied.

4. **Procedure for Review**
   a. Within 20 days of receiving a written request for review, the WSBA President and the JRC Chair shall establish a Review Committee consisting of:
      - The JRC Chair
      - The JRC Vice-Chair (especially if the Chair is unavailable)
      - Two JRC committee members who vote that the applicant was well qualified (if fewer than two members voted that the applicant was well-qualified, then this category shall consist of the member, if any, who voted that the applicant was well-qualified);
      - Two JRC committee members who voted that the applicant was not well-qualified;
      - The Board of Governors liaison to the committee; and
      - Two members of the Board of Governors, designated by the WSBA President, one of whom shall be designated as Chair of the Review Committee.
   b. The Review Committee shall meet and evaluate the request for a review. The meeting may be conducted via telephone or video conference. Physical presence of Review Committee members in one meeting room is not required.
   c. Review Committee members shall be provided, reasonably in advance of meeting to deliberate on the request for review, (1) the copy of the statement requesting review (2) all materials considered by the JRC (3) the rating forms and (4) a written reminder that the materials are highly confidential and that the Review Committee members have an ethical obligation to prevent the disclosure of those materials to any unauthorized third party.
   d. The appeal shall be based upon the written materials submitted by the applicant and/or the party requesting review and other information as may be deemed necessary by the Review Committee Chair. The applicant and/or party

requesting review shall only be invited to meet with the Review Committee if deemed necessary by the Review Committee Chair to discuss his or her basis for appeal. The meeting may only occur after confirmations from all participants the proceedings are confidential.

e. Other than as provided above, the applicant requesting review shall not be present during the Review Committee's discussions or deliberations.
f. The Review Committee may conduct more than one meeting to evaluate a request for review, and may undertake to gather such further information as it deems appropriate.
g. Review Committee members shall at all times keep confidential the information assembled or generated in connection with its review except to the extent reasonably necessary to report to, or respond to inquiries from the WSBA President or Board of Governors.

**5. Decision on Review**

The Review Committee shall, by majority vote, rule whether there is sufficient basis for believing that in its rating of the applicant:

a. the JRC materially failed to follow its procedures, and such failure affected the outcome of the decision; or
b. the JRC posed unfair or inappropriate question(s) to the applicant and such unfair or inappropriate question(s) affected the outcome of the decision; or
c. the JRC's decision was materially affected by considerations, or by applying criteria, which are not set forth under section III ("Criteria") ; or
d. the JRC decision was materially influenced by considerations of basis or prejudice to require, in fairness, a reconsideration of the JRC's original rating.

If a majority of the Review Committee votes that reconsideration is required, the Review Committee Chair shall so advise the applicant.

The Review Committee shall direct the JRC to reconsider the applicant's request for a rating following such procedures as the Chair of the JRC determine are reasonable under the circumstances.

The JRC shall take measures to avoid the defects in the earlier proceeding, which led to the need for reconsideration.

With regard to the decision of the Review Committee, the BOG Liaison shall not have a vote. The JRC Chair shall not have a vote except in the event of a tie vote of the other committee members.

The Review Committee Chair shall inform the candidate of the Review Committee's decision promptly after communicating the decision to the Board of Governors

**6. Report to the Board of Governors**

The Review Committee shall provide a confidential written report to the Board of Governors consisting of:

a. a copy of the request for review;
b. a detailed explanation of the process by which the Review Committee considered the request;
c. the Review Committee's conclusions, with an explanation of the basis for the decision;

d. if the decision was to cause the JRC to reconsider the applicant's rating, an explanation of what occurred during the course of the reconsideration, including the JRC's subsequent action on the application.

A Review Committee member disagreeing with the decision on review shall be provided with the report to the Board of Governors, and may submit an addendum thereto setting forth his or her differences with the committee's decision or report.

**CRITERIA**

Only well-qualified applicants shall be recommended by the committee for appointment to the Supreme Court and the Court of Appeals. The committee shall consider the following:

1. Is the applicant a member of the Washington State Bar Association and in good standing in every bar in which that person is a member, where applicable?
2. Does the applicant have integrity, courage, good character, common sense, and respect for the judicial process and the dignity of the court?
3. Is the applicant fair and open minded and committed to equal justice under the law?
4. Has the applicant exhibited biases against any group or class of citizens?
5. Is the applicant willing to and physically, mentally, and emotionally capable of sustained work on difficult intellectual problems for the purpose of rendering diligent and energetic advice?
6. Has the applicant demonstrated excellent legal ability and competence? Relevant criteria shall include:
   A. An analytical ability to deal with a variety of legal problems;
   B. An interest in and aptitude for legal scholarship and writing;
   C. Sufficient legal experience;
   D. Qualities of wisdom, intellect, insight and impartiality; and
   E. Judicial temperament.
7. Has the applicant demonstrated an ability to work with others?
8. Has the committee taken prior action with respect to this candidate?

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