

**RULES OF THE VWAA  
STATEWIDE JUDICIARY COMMITTEE AND  
CHAPTER JUDICIAL REVIEW COMMITTEES**

**April 2019**

- A. Purpose: The statewide Judiciary Committee (“JC”) shall have as its purpose the gathering, organization and dissemination of information on the potential candidates for judgeships and magistrateships.
- B. Composition:
- (1) The President appoints a Chair or Co-chairs of the JC from the membership and this appointment must be approved by the Board of Directors.
  - (2) The President shall appoint at least five (5) other members of the VWAA representing different geographical regions throughout the Commonwealth to serve on the JC. The JC also may include some or all of the chairs of any chapter judicial review committee formed by a local chapter. These appointments also must be approved by the Board of Directors.
  - (3) Appointments to the JC and chapter judicial review committees may be made on a rolling basis as needed to maintain the composition and effectiveness of a committee.
- C. Meetings:
- (1) The JC shall meet annually with the Board of Directors. The purpose of the meeting shall be to review procedures of chapter judicial review committees, facilitate consistency among the chapters, review current issues within the judiciary, and any other matters of importance pending at that time or as directed by the President or Board of Directors.
  - (2) Unless otherwise determined by the President, the JC and Board shall meet during the Fall of each year.
- D. Responsibility of JC:
- (1) The JC shall have as its purpose the gathering, organization and dissemination of information on the potential candidates for judgeships and magistrateships. If requested by the Board of Directors, the JC also may collect and disseminate information on candidates for quasi-judicial offices.

- (2) The JC may provide ratings and reports to the Board of Directors regarding candidates for judgeships, magistrateships or quasi-judicial offices.
- (3) The JC may request the position of the local bar associations on candidates for judgeships and consider the positions of those associations in carrying out the JC's functions.
- (4) In reviewing candidates for quasi-judicial offices, the JC shall follow the procedures established herein for the review and evaluation of judicial candidates.

E. Formation and Oversight of Chapter Judicial Review Committees:

- (1) The JC shall, in conjunction with Chapter Presidents and the Board of Directors, oversee judicial review committees at the chapter levels to review and disseminate information on candidates for positions on the Circuit, General District and Juvenile & Domestic Relations courts.
- (2) All chapter judicial review committees shall follow the procedures and policies set forth herein.
- (3) Chapter judicial review committees may be standing committees or may be formed on an ad hoc basis to address specific openings for which candidates are to be considered.

F. Procedures and Standards for Screening Candidates:

- (1) Candidates for judicial vacancies known or anticipated at the federal or statewide level shall be evaluated and considered by the JC or a committee of VWAA members appointed by the JC for such purpose. Candidates for judicial vacancies on regional Circuit, General District and Juvenile & Domestic Relations Courts shall be evaluated and considered by the nearest chapter judicial review committee.
- (2) When a vacancy in a judicial office exists or is anticipated, the JC Chair, chapter judicial review committee chair, or his or her designee shall be responsible for publicizing the interest of the VWAA in reviewing and rating potential candidates, inviting all VWAA members (not just members of the local chapter) to serve on the review committee to evaluate candidates, coordinating with other bar associations with respect to the screening process, and notifying the JC Chair of the vacancy. Example notices are attached hereto as **Tab 1.**
- (3) A review committee shall have a minimum of three (3) qualified and discreet members with a committee size of at least five (5) qualified and discreet members preferred. Any review committee of less than three (3) members shall be permitted to issue only a "qualified" or "not qualified" rating. The review

committee chair shall make every effort to establish a committee representing the diversity of practice required for the judicial or quasi-judicial position being filled.

- (4) Candidates shall complete the VWAA Judicial Questionnaire; provided, however, that a committee may accept applications prepared by the candidate for another bar association if time constraints so require as long as the candidate is required to submit answers to any VWAA policy questions then in use (contained in Section VII of the Judicial Questionnaire). The VWAA Judicial Questionnaire can be found on the VWAA website.
- (5) All candidates shall be provided with a copy of these rules.
- (6) The names of the review committee members shall be disclosed to the candidates prior to the interviews of candidates.
- (7) The review committee's rating of candidates for a judicial position shall be directed solely to the candidate's professional qualifications for the position: integrity, professional competence and judicial temperament.
- (8) The review committee shall establish a day or days to conduct interviews of each candidate interested in being considered by the VWAA, or may conduct such interviews in conjunction with other bar associations. Interviews may be in-person, by phone or via video conference. All candidates to be evaluated by the VWAA shall be interviewed if they seek to obtain a ranking higher than "qualified." A committee may consider the written qualifications of a candidate who is unable to meet with the committee; provided, however, that no such candidate will be given a ranking higher than "qualified." All materials disseminating the results of any review committee where a candidate has provided his or her qualifications only in writing shall disclose this rule.
- (9) Prior rankings for any candidate who has appeared before a VWAA committee in previous years for a judicial or quasi-judicial position also shall be provided to the review committee to the extent such records are available.
- (10) Prior to the interview, the review committee chair shall delegate the responsibility of investigating the reputation and qualifications of each candidate to a member of the review committee. The investigation should include contact with any references identified by the candidate and other persons having personal knowledge of the candidate, prior to the interview. This information shall be shared with the committee in a manner to ensure full and timely consideration of the information.
- (11) After a candidate is interviewed by the review committee, the committee members shall conduct a brief caucus. In the event that there are any specific incidents, events, or issues which cause concern in the mind of at least one

committee member regarding the candidate's qualifications, the committee member shall describe the specific incident, event, or issue to the whole committee during the caucus, and the candidate shall be given the opportunity to return to the room to discuss the incident with the committee. Each candidate will be asked to provide a telephone number where he or she can be reached by the committee should such a specific incident, event, or issue be disclosed during the committee's deliberation after the conclusion of all of the interviews.

- (12) In reviewing the qualifications of candidates, the review committee shall be guided by the ABA Guidelines for Reviewing Qualifications of Candidates for Judicial Office ("ABA Guidelines"), which are attached at **Tab 2**.
- (13) The review committee shall not consider or rely upon comments regarding the professional qualifications of candidates made by anonymous sources. Persons who wish to have their comments about a candidate considered must be advised and agree that their identities and comments will be shared with other committee members. If unsolicited outside information is provided, the review committee shall use its discretion to determine whether it will consider such information; if it decides to consider such information, it must notify the candidate of the information.
- (14) Candidates shall be assigned one of four (4) ratings, as follows:
  - i. **NOT QUALIFIED:** Applied to any applicant who fails to meet the minimum requirements for fairness, experience, intellect, temperament, professionalism, integrity and/or other basic criteria set forth in the ABA Guidelines. The review committee shall prepare a summary of issues relating to such finding, which summary shall be provided to the JC Chair and the Board of Directors.
  - ii. **QUALIFIED:** Applied to any applicant who meets the minimum requirements for fairness, experience, intellect, temperament, professionalism, integrity and/or other basic criteria set forth in the ABA Guidelines. There shall be a rebuttal presumption that a candidate who had been previously rated as qualified by the JC in a prior year for the same court (in terms of both jurisdiction and court tier) shall receive at least a qualified rating thereafter. If the presumption is rebutted, the basis for this decision will be stated in the review committee's summary.
  - iii. **RECOMMENDED:** Applied to applicants whose qualifications are sufficiently above the minimum requirements to warrant the review committee's affirmative recommendation.
  - iv. **HIGHLY RECOMMENDED:** Reserved for any candidate who is especially well-qualified for the position and merits special recommendation.

- (15) The review committee shall have discretion in determining how to vote on candidate ratings (i.e. how many rounds of voting, voting by hand vs. closed ballot). A rating of NOT QUALIFIED or HIGHLY RECOMMENDED requires the approval of two-thirds (2/3) of those voting. A rating of QUALIFIED or RECOMMENDED requires a simple majority (more than 50%) of those voting.

The review committee may elect to determine a candidate's final rating by conducting four separate votes, as follows:

- i. A first (1st) vote will determine if any candidates fail to meet the minimum qualifications and are to be reported NOT QUALIFIED. Such vote shall require the approval of two-thirds (2/3) of those voting.
  - ii. A second (2nd) vote will determine by simple majority, those candidates who meet the minimum qualifications and are to be reported QUALIFIED.
  - iii. A third (3rd) vote will determine, again by simple majority, which of the Qualified candidates, if any, the review committee believes should be RECOMMENDED.
  - iv. Finally, the review committee will vote to determine whether any candidates merit the HIGHLY RECOMMENDED designation, which will require the approval of two-thirds (2/3) of those voting.
- (16) The review committee shall prepare a substantive summary of the specific reasons, positive or negative, for the committee's rating of each candidate. The summary shall address each candidate's qualifications as measured by the ABA Guidelines. The summaries of the candidates shall be of uniform format and approximate length. The ratings and summaries shall not be disclosed to any candidate until they are formally issued by the President.
- (17) A candidate who previously was reviewed and rated by a VWAA review committee for the same judicial or quasi-judicial position (in terms of both jurisdiction and court tier) may rely on his or her prior rating if: (1) the prior rating was done by a VWAA review committee within the preceding eighteen (18) month period; and (2) the candidate attests, in writing, that there have been no material changes in the veracity of the information contained in the questionnaire previously submitted by the candidate to the review committee. The candidate's election to rely on a prior rating shall be disclosed in all materials disseminating the results of a review committee process.
- (18) Except as set forth in the preceding paragraph, the review committee is not bound by a candidate's prior rating by a VWAA committee.

- i. In the event that the review committee reaches a consensus on a candidate's rating which differs from a rating issued by a VWAA committee for that candidate in a prior year for the same court (in terms of both jurisdiction and court tier), the committee's summary shall explain the changed rating with reasonable specificity.
  - ii. Prior to the dissemination of the ratings and summary to any third parties, the review committee chair shall contact any candidate who had been given a lower rating than a prior rating by a VWAA committee to offer such candidate the opportunity to withdraw his or her name and rating from all materials to be disseminated by the VWAA.
  - iii. Any candidate who chooses to withdraw his or her name shall be afforded full confidentiality; provided, however, that the review committee chair may confirm the candidate's participation in the VWAA process if asked by the appointing body or appointing official.
- (19) The review committee may reopen an evaluation at any time prior to the appointment of a candidate to the position if new information of a material nature develops that the committee chair reasonably believes warrants additional investigation and re-examination of the prior rating rendered by the committee.
- (20) The Board of Directors may suggest that the review committee consider new information and/or reconsider its recommendations, and the review committee shall act in a manner consistent with the Board of Director's instructions.

G. Confidentiality:

- (1) The details of the entire application and screening process, including the identities of the candidates, shall be kept strictly confidential by all participants. All internal evaluation materials, interview results, and discussions shall be confidential. There shall be no discussion of a candidate's qualifications when a review committee is not convened or preparing summaries, even with a member of the legislative delegation. Any member may recommend to the JC Chair or the review committee chair the removal of any review committee member who fails to maintain the confidentiality of the process. Any member removed from any review committee for this reason will be prohibited from service on any other review committee or the JC at any time thereafter.
- (2) The identity of all persons consulted by or providing comments or feedback to a review committee or its members regarding a candidate shall be kept confidential. The identity of these persons shall be disclosed only to review committee members unless the person otherwise agrees to the disclosure of his or her identity and to waive confidentiality.

H. Recusal and Conflicts:

- (1) No review committee member shall participate in the evaluation, deliberations or designation regarding candidates for a particular position in any instance in which his or her participation would give rise to the appearance of impropriety, where the member's impartiality reasonably may be questioned, or her participation otherwise would be incompatible with the function of the JC or the review committee.
- (2) A member shall recuse himself or herself from participating in screening candidates for a particular position if that member: (i) has had a personal, professional, or adversary relationship with any candidate which could result in bias or prejudice on the part of the member; (ii) is related by blood or marriage to any candidate; (iii) is a business partner or associate of any candidate; (iv) is affiliated with the same law firm or the same legal department or office as any candidate; or (v) within the prior five (5) years has been a business partner, associate, or in the same law firm or the same legal department or office as any candidate.
- (3) If a member is not able to participate in the interviews of all the candidates for a particular judicial vacancy, it is advisable that the member withdraw from participation in the screening process for that vacancy.
- (4) A committee member shall not participate in the rating of a judge designated to decide a pending case in which the member is counsel of record. The member, however, may participate in the evaluation, deliberation and rating process for other candidates for the same position. The fact of a committee member's abstention from evaluation of and vote on a particular candidate due to a pending case shall be noted in the letter or other document disseminating the results of the review process to any third parties.
- (5) In the event of a recusal, the review committee chair shall appoint a VWAA member as a substitute for the recused committee member for purposes of the review process.
- (6) A recused member shall not have access to any information developed for or discussed during the evaluation process from which he or she recused.

I. Procedure for Approval of Committee Ratings by VWAA Board of Directors:

- (1) The review committee chair shall submit the committee's final ratings, candidate summaries, and brief biographies of the members of the review committee ("Recommendation Letter") to the JC Chair for review and editing by the JC and/or JC Chair. The JC Chair shall then submit the Recommendation Letter to the Board of Directors for approval. The ratings and summaries shall not be disseminated to anyone other than the Board of Directors (including the

candidates) until they have been approved by the Board of Directors. An example recommendation letter is attached hereto as **Tab 3**.

- (2) The Board of Directors may adopt any rating or summary from a review committee by a vote of two-thirds (2/3) of the directors present and voting at a regularly scheduled meeting of the Board of Directors; provided, however, that if delaying the vote until the next regularly scheduled meeting of the Board would adversely affect the timelines or effectiveness of the committee's work, one of the following two methods of approval may be used:
  - i. The Executive Committee is authorized to act on behalf of the Board. At least two-thirds (2/3) of the Executive Committee must vote in favor of a rating regarding a candidate in order to make the rating official; or
  - ii. The Board of Directors may act outside a regularly scheduled meeting, following notice to all members of the Board of Directors, by a two-thirds (2/3) vote of all directors.

J. Dissemination of Ratings:

- (1) Prior to the dissemination of the Recommendation Letter to any third parties, the committee chair shall contact any candidate voted "Not Qualified" to offer such candidate the opportunity to withdraw his or her name and rating from all materials to be disseminated by the VWAA. An example notice is attached hereto as **Tab 4**. Any candidate who chooses to withdraw his or her name shall be afforded full confidentiality; provided, however, that the review committee chair may confirm the candidate's participation in the VWAA process if asked by the appointing body or appointing official.
- (2) The review committee shall address (or cc:) the Recommendation Letter to the following (subject to the approval of the Board of Directors):
  - i. VWAA members;
  - ii. The chair of the Courts of Justice Committees of the Virginia House of Delegates and Virginia Senate, for state court positions;
  - iii. The members of the U.S. House of Representatives and the U.S. Senate Judiciary Committees, for vacancies on the federal bench;
  - iv. The Governor, in the event of an interim appointment or a request for review from the Governor;
  - v. The proper appointing official(s); and
  - vi. Any other person or organization deemed appropriate by the review



committee and approved by the Board of Directors.

- (3) Once approved by the Board of Directors, the Recommendation Letter shall be signed by the President of the VWAA and the JC Chair, disseminated to the persons and organizations set forth above, and posted on the VWAA website.

K. Communication with Members of Appointing Body or Appointing Official:

The President and/or her designee(s) shall be available to respond to inquiries about the screening process and shall also have the authority to appear before the General Assembly or any committees thereof, the Governor, or any other party charged with making or recommending judicial selections for the same purpose, any public, non-confidential information shall be disclosed in these sessions.

L. Record Keeping:

- (1) The JC Chair shall be required to maintain a file on all activities of the JC, including the following information, for three (3) years:
  - i. A list of all candidates for the position;
  - ii. Copies of all official correspondence disseminating the evaluation results to members of the appointing body;
  - iii. Copies of the summaries; and
  - iv. Copies of the brief biographies of the review committee members who participated in the deliberations which were provided to members of the appointing body.
- (2) Every chapter judicial review committee chair shall be required to maintain a file on all judicial activities within the Chapter, which shall be provided to each new chapter committee chair. These records shall include the information set forth in Section L(1) above and shall be maintained for three (3) years.
- (3) After the Recommendation Letter for a vacancy is issued, all JC and review committee member notes related to such activities shall be destroyed.