

**RULES OF THE FAIRFAX BAR ASSOCIATION
JUDICIAL SCREENING
May 2016**

A. Composition

The Judicial Screening Committee (JSC or Committee) is composed of 9 members; in addition to the Committee, the names of qualified alternate members are available should the committee members be unable to serve during a specific screening.

When one or more vacancies are announced or anticipated, a Judicial Screening Panel (JSP or Panel) comprised of available and appropriate committee or alternate members, is convened to interview applicants for the vacancies. The Judicial Screening Panel shall consist of no more than 10 members, including the Fairfax Bar Association (FBA) President, *ex officio*, with voting rights, or the President's designee, and nine (9) members from the Judicial Screening Committee and as many qualified alternate members as may be necessary.

If neither the JSC Chair nor Vice Chair is able to serve as chair on a particular JSP, the FBA President will select the JSP Chair.

B. Election to the JSC and Alternates

- (1) The members of the JSC shall be elected by the FBA Board of Directors for terms of three (3) years. JSC members must be Regular Members of the FBA. Three members shall be elected each year, and no member may serve consecutive terms unless such member had been elected to fill a vacancy of one year or less in a term.
- (2) Each year the President-Elect shall designate one of the three members with two years remaining on his/her term to serve as Vice Chair. Such member will serve as JSC Chair the following year, and he or she will assume the duties of the Chair in the event of the Chair's absence. In that event, the FBA President will appoint a temporary Vice Chair. Both the Chair and the Vice Chair must have previously served at least one year as a member of the JSC or alternatively, must have served on at least one Judicial Screening Panel.
- (3) In the event that the JSC is disbanded or otherwise rendered inactive due to the General Assembly's refusal to appoint, the FBA Board of Directors shall as necessary, reconstitute an active JSC by electing a requisite number of members with staggered terms. The President-Elect shall designate two individuals to serve as Chair and Vice Chair. In such event, the Vice Chair does not have to have two years remaining on his/her term.
- (4) Regular Members of the FBA who are interested in serving on the JSC or as an alternate shall complete a formal application for appointment to the JSC. The

application form shall contain an acknowledgment by the applicant that he or she understands the time commitment required of members and that he or she is a member in good standing of the FBA, and agrees to execute a confidentiality agreement with respect to the screening process. Additionally, the Committee applicant must certify that he/she will not pursue a vacancy on any bench within one year of serving on the FBA's judicial screening panel. The form shall provide for the applicant to specify: his or her area(s) of practice; the percentage of his or her practice which consists of litigation; the court or courts in which he or she appears with regularity; and the year of his or her admission to the Virginia State Bar.

- (5) Applications shall be reviewed by a Nominating Committee appointed by the Immediate Past President of the FBA, which shall be afforded sufficient time to review the applications before making its recommendations. In addition to the three regular elected members, the Nominating Committee shall recommend alternate members. The alternates shall be prepared to serve on the Panel if a quorum of regular members cannot be assembled when a judicial vacancy occurs and the JSP is convened. Alternates must sign all documents required of the JSC members, and must also certify they will not pursue a vacancy on any bench within one year of serving on a panel for the FBA's judicial screening process. If additional qualified members are required as alternates, they shall be selected by the JSP Chair and the FBA President.
- (6) The JSC Chair shall conduct an organizational meeting for all committee members and alternates prior to the announcement of judicial vacancies, if possible, to review the rules and procedures under which the Committee operates.
- (7) In recommending and electing the regular and alternate members of the JSC, the Nominating Committee and the Board of Directors shall be guided by the FBA's principle that the membership/composition of the JSC shall be as diverse as possible. Such diversity shall consider, but not be limited to:
 - a. Types of practice
 - b. Public Service practitioners
 - c. Small firm
 - d. Large firm
 - e. Ethnicity of candidates
 - f. Race of candidates
 - g. Age of candidates
 - h. Gender of candidates
 - i. Other factors which reflect diversity considerations
- (8) To promote diversity among the applicants for the JSC, the Board of Directors shall invite the Specialty Bars (e.g., VWAA, NOVABAA, Hispanic Bar, Asian Pacific American Bar, Defense & Plaintiffs Bars, Seniors Bar, and Young Lawyers Section) to encourage their qualified and interested members to apply for

positions on the JSC. The FBA Board of Directors requests that the representatives of these specialty bars 1) be a Regular Member of the FBA, and; 2) not sit on any other screening panels during the same screening that he/she serves on the FBA Panel.

C. Procedures and Standards for Screening Applicants

- (1) When a vacancy in a judicial office exists or is anticipated by the Board of Directors, the FBA shall receive applications from individuals who wish to be considered by the Virginia General Assembly for such judicial vacancy and a Judicial Screening Panel/Chair will be selected from available committee and alternate members. The JSP shall convene to interview each applicant. To the extent such records are available, the JSP shall also be provided with the Executive Summary of all prior rankings for any applicant who has appeared before the committee in previous years for a position on the same court. Once the deadline for submission of applications has passed, the names of all judicial screening applicants shall be posted on the FBA website.
- (2) Prior to the interviews, a JSP member shall recuse himself or herself from participating in the screening of all applicants for a vacancy or vacancies if the applicant: (i) is a business or legal partner of that JSP member; (ii) has had a personal, professional, or adversarial relationship with any applicant which could result in bias or prejudice on the part of the JSP member; (iii) is related by blood or marriage to any applicant; (iv) is a business partner of any applicant; or, (v) is affiliated with the same law firm or the same legal department or office as any applicant. The membership of the JSP shall be disclosed to the applicants prior to the interview process by email prior to the JSP being convened. If any applicant believes a proposed JSP member should be recused, the applicant shall within 24 hours notify the JSP Chair in writing, email is acceptable, and shall state his or her reasons for the requested recusal. The JSP Chair shall consider the applicant's written request for the recusal and may determine its merits. Should the JSP Chair have concerns about the matter, he/she shall determine by a simple majority vote from the proposed panelists whether the JSP member will be excluded from the screening process in which he or she is involved. This vote shall be taken by email ballot, counted by the JSP Chair and Vice Chair and the email ballots will be destroyed with no records being kept of the vote.
- (3) After the Judicial Screening Panel has been established for a specific screening and before the JSP convenes, should the JSP Chair or the individual panel members feel that he/she does not have enough information to make an intelligent decision regarding specific applicants, the members of the JSP shall hereby be given the authority to discreetly contact members of the legal community who may have relevant information. The JSP Chair may also assign panel members to investigate applicants before screening. Copies of the ABA Guidelines for Reviewing Qualifications of Applicants for State Judicial Office ("ABA Guidelines") shall be given to Panel members before the screening, and all Panel

members shall affirm in writing his/her receipt and review of the ABA Guidelines. Panel members may inquire about the applicant's qualifications as set forth in the ABA Guidelines, specifically: integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, health, financial responsibility, and public service as they relate to the applicant's suitability to serve on the bench. Any negative information developed by a panel member's independent inquiry shall be disclosed to the applicant at or prior to the interview so that the applicant has an opportunity to respond during the interview.

- (4) The JSP's interview questions will focus on matters relevant to determining the applicant's qualifications under the ABA Guidelines. The JSP will not ask question about an applicant's political affiliations or religious beliefs, except if the matter is raised by the applicant or contained in the application, then the JSP may ask follow up questions to confirm these affiliations and views would not carry over to the applicant's judicial performance.
- (5) Immediately before interviewing an applicant, the JSP may have the opportunity to meet in executive session for JSP members to disclose any relevant information about the applicant, such as information from research in paragraph C (3), and/or from the application. However, any 'bullet issues,' or issues that would dominate or color the applicant's interview, will be addressed as follows: Immediately after the applicant's interview, the applicant shall be excused to allow the Judicial Screening Panel the opportunity to conduct a brief caucus. In the event that there is a specific incident, event, or issue not fully addressed in the interview which causes concern for any Panel member, the Panel member shall describe the specific incident, event, or issue to the whole committee during the caucus, and if any committee member feels the information may affect his/her assessment, the applicant shall be given the opportunity to return to the room to discuss the incident with the Panel. Each applicant will be asked to provide a telephone number where he or she can be reached should such a specific incident, event, or issue be disclosed during the Panel's deliberation after the conclusion of all of the interviews.
- (6) All applicants are required by law to meet the appropriate Constitutional and statutory requirements for the judgeship. Va. Con. Art. 6 § 7 (1971). Va. Code §16.1-69, *et seq.* Va. Code § 17.1-500, *et seq.* In reviewing the qualifications of applicants, the JSP shall be guided by the ABA Guidelines for Reviewing Qualifications for State Judicial Office, specifically: integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, health, financial responsibility, and public service.
- (7) Applicants shall be assigned one of the following designations:

QUALIFIED: Applied to any applicant who meets all of the minimum requirements for integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, health, financial responsibility, and public

service. There shall be a rebuttable presumption that an applicant who had been previously rated as qualified by the JSC in a prior year for the same court shall receive at least a qualified rating thereafter. If the presumption is rebutted, the basis for this decision will be stated in the executive summary.

RECOMMENDED: Applied to applicants whose qualifications are sufficiently above the minimum requirements to warrant the Screening Committee's affirmative recommendation.

HIGHLY RECOMMENDED: Reserved for any applicant who is especially well-qualified for the position and merits special recommendation.

NOT FOUND QUALIFIED: An applicant shall be NOT FOUND QUALIFIED if such applicant does not meet one or more of the minimum requirements for integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, health, financial responsibility, and public service.

- (8) Votes shall be made by secret ballot, counted by the JSP Chair and Vice Chair, and destroyed immediately after the count. No records are to be kept of the vote count, and under no circumstances shall the vote count be divulged to anyone by the Chair or Vice Chair.
- (9) All JSP members must vote on each applicant. The aforesaid designations shall be arrived at by three separate votes, as follows:

A first vote by ballot will determine, by a simple majority, those applicants who meet the minimum qualifications and are to be reported as QUALIFIED.

A second vote by ballot will be taken to determine, again by a simple majority, which of the Qualified applicants, if any, the JSP believes should be RECOMMENDED.

Finally, the JSP will vote by ballot to determine whether any of the Recommended applicants merit the HIGHLY RECOMMENDED designation, which will require four-fifths of those voting.

- (10) The Screening Panel shall reconvene no later than the morning after the interviews are conducted to prepare a detailed and substantive Executive Summary of the reasons, positive or negative, for the Panel's opinion of each applicant. The Executive Summary shall address each applicant's qualifications as measured by the ABA Guidelines. In the event that the JSP reaches a consensus on an applicant's ranking, which differs from a ranking issued by the JSP for that applicant in a prior year for the same court, either a lower or a higher ranking, the Executive Summary shall explain the changed ranking with reasonable specificity.

The Executive Summary regarding an applicant will be given to that applicant. Any applicant may withdraw from further consideration, and upon submission of a signed statement in writing (fax or email) received by the FBA Executive Director within 48 hours from delivery of his/her Judicial Screening Executive Summary that he or she will neither stand for the membership vote nor be interviewed by the legislative delegation, the Executive Summary will not be released to the legislative delegation or made available to anyone other than a future JSP.

The Executive Summary for each applicant who wants his or her name to be submitted to the membership for endorsement whether or not the applicant is favorably reported will be made available to FBA members prior to voting and will be posted on the FBA's website.

D. Membership Voting

- (1) Ballots shall be distributed by the FBA office in accordance with the rules and procedures adopted by the FBA Board of Directors to all FBA Regular and Honorary members in good standing eligible to vote. Along with the ballots, the FBA shall make available the names and brief biographical summaries, Executive Summary, and photos of the applicant or applicants who have not opted out in accordance with Paragraph C (10) above.
- (2) The ballot shall be structured as follows:
 - (a) Name of Applicant
 - (b) Select One:
Endorsed _____ Not Endorsed _____ No Opinion _____
- (3) The following Explanation of Voting Categories shall be posted with each ballot:

EXPLANATION OF VOTING CATEGORIES

The following are general definitions of the judicial ballot voting categories. A vote must be entered for each applicant. If you do not have sufficient knowledge about an applicant, your vote should be "No Opinion."

ENDORSED

By voting "ENDORSED" you are affirmatively asserting your belief that the particular applicant's name should be submitted to the legislature for consideration as a judicial applicant by the FBA.

NOT ENDORSED

By voting “NOT ENDORSED” you are asserting your belief that the particular applicant’s name should not be submitted to the legislature for consideration as a judicial applicant by the Fairfax Bar Association.

NO OPINION

A “NO OPINION” vote means you do not feel you have sufficient knowledge of the applicant to vote “ENDORSED” or “NOT ENDORSED.”

E. Submission to Members of Appointing Body or Appointing Official

After the close of all voting, the tabulation of the ballots, and the report of the tabulation by the FBA President to each applicant, the results of the membership vote shall be posted (including the vote count) on the FBA’s website. The following information shall be furnished to the local delegation of the Virginia General Assembly, or the Governor, or such other party charged with making or recommending judicial selection:

- (1) The JSC application, applicant’s biography, and the Executive Summary for each applicant who seeks to be interviewed by the members of the General Assembly, even though he or she did not receive a majority of Endorsed votes from the members of the FBA who had an opinion about the applicant or withdrew from the judicial screening process prior to the membership vote; and,
- (2) Brief biographies of the JSP members who participated in the deliberations.

Absent a request from the Chairs of the Northern Virginia Legislative Delegation or the Governor, the results of this screening process shall be utilized for the current advertised vacancy(ies), as well as any anticipated and unanticipated vacancy(ies) on the same court occurring during the period beginning with the commencement of the legislative session during which the advertised vacancy(ies) will be filled and continuing until the commencement of the next legislative session.

F. Communication with Members of Appointing Body or Appointing Official

Following submission of the materials and before the applicants are interviewed by the legislative delegation, the FBA President and the JSP Chair or Vice Chair shall be available to meet with the delegation to explain and field inquiries about the screening process. They 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.

G. Confidentiality

All JSC members, alternates, panelists, applicants and FBA staff shall sign a confidentiality agreement and shall keep the details of the entire screening process strictly confidential. A JSP member, alternate, or applicant may not under any circumstances repeat or discuss such information outside of the confines of the interview sessions, the deliberations sessions, and/or the post-deliberation meetings in which the Executive Summaries are discussed and drafted and will treat the deliberations in which he/she participates as a member of the JSP as confidential. JSP members will not under any circumstances repeat or discuss the deliberations with anyone not participating in the meetings as a member of the JSP. JSP members are specifically prohibited from discussing the applications, interviews, deliberations or proceedings with the applicants themselves other than during the interview sessions. As a prerequisite to becoming a member of the JSP, committee nominees and alternates must sign the Confidentiality Agreement. Any FBA member may recommend to the FBA President the removal of any committee, panel or alternate member who fails to abide by the terms of the Confidentiality Agreement. Any JSC/JSP member or alternate removed for this reason will be prohibited from service on the JSC/JSP committee, panel, or as an alternate at any time thereafter. Notwithstanding anything herein to the contrary, if an applicant breaches the confidentiality of the screening process, the JSP Chair, committee members, alternates, and panelists may respond to inquiries by the FBA President or his/her designee sufficient to provide the FBA President or his/her designee to respond to the applicant's breach of confidentiality. The sharing of confidential information with the FBA President or his/her designee in this context shall be deemed per se not to breach the Confidentiality Agreement.

Upon the President's determination that a Panelist has failed to maintain confidentiality as delineated herein, that Panelist shall be forever banned from participating in future judicial screenings.

H. No Appeals

While there is no appeal process for reconsideration of an applicant's designation, applicants are encouraged to contact the FBA President if they have any suggested changes to these rules, if they believe the process is not consistent with these rules, or if they have any other suggestions for improving the judicial screening process. The FBA President may then forward such suggestions to the Judicial Screening Oversight Committee for review and discussion of potential rules changes for future judicial screenings.