

RULES AND GUIDELINES FOR CONDUCTING JUDICIAL EVALUATIONS AND INTERVIEWS

Adopted by the Puerto Rican Bar Association of Illinois' (PRBA),
Judicial Evaluation Committee (JEC)
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I. GOALS OF THE PRBA EVALUATION PROCESS

The goals of the PRBA's evaluation process are to obtain a fair, accurate and complete evaluation of each candidate for judicial office. The following guidelines for investigations and interviews of candidates are designed to accomplish these objectives. If you have any concerns about how these guidelines are to be applied in any particular evaluation, please contact the PRBA's Chairperson for the Judicial Evaluation Committee.

II. BACKGROUND REGARDING THE EVALUATION PROCESS

Judicial evaluations conducted by the PRBA as a member of the Alliance of Bar Associations for Judicial Screening (the Alliance) will typically proceed in the following manner. First, candidates will submit written materials, consisting of a biographical questionnaire and responses to a set of written questions prepared by the Alliance. Second, one or more investigators will be assigned by the Alliance to conduct the investigation of each

candidate. Third, the investigator(s) will conduct an investigation (see discussion in Part III, below). Fourth, the candidate will be interviewed by a panel of Alliance representatives which will consist of at least one member of the PRBA's JEC (see discussion in Part IV, below). Immediately following the interview, the interview panel will briefly discuss the candidate and individual panel members' reaction to the candidate. Finally, based on all of the information enumerated above, the PRBA will issue its evaluation of the candidate.

III. THE INVESTIGATION

The investigator should begin by meticulously reviewing the candidate's materials. If a co-investigator has been assigned, the investigators should immediately contact each other to determine how to apportion the work. The investigators should talk to *no less than fifteen lawyers* who have had experience with the candidate. More contacts are usually necessary if the contacts disagree significantly in their assessment of the candidate's qualities or skills. (Investigators should expect to have to call twenty or more people in order ultimately to talk to fifteen of them, as some lawyers will not return phone calls regarding evaluations. In addition, investigators should expect that the process of obtaining contact with and interview fifteen individuals regarding a candidate will take at least several days).

The candidate's written materials will provide the names and numbers of lawyers who have appeared before the candidate (if he or she is a sitting judge) or who have had experience with the candidate as a practicing attorney. In addition, however, the investigator(s) should try to obtain a substantial number of "off-list" contacts. To get "off the list," the investigator can (1) ask on-list contacts whether they can suggest additional persons with direct professional experience with the candidate; (2) if the candidate is a sitting judge, observe the judge in his or her courtroom and obtain the names of lawyers appearing before him or her; (3)

contact lawyers known by the investigator to be in the same practice areas as the candidate to obtain the names of persons who have experience with the candidate; (4) run a LEXIS or Westlaw search to obtain names of opposing counsel (for candidates not currently on the bench) or to obtain names of counsel appearing before the candidate (where the candidate is a sitting judge); and (5) contact the PRBA Chairperson or a member of the Alliance Executive Committee for assistance.

III. A. Criteria for Evaluating Candidates

The PRBA evaluates candidates based on the extent to which they meet the criteria listed below. PRBA Investigators should ask people interviewed about the candidate's ability in each of these areas:

1. **Litigation Experience.** A judicial candidate should have a thorough understanding of the entire legal process, which one typically acquires through litigation experience. Substantial trial experience, although not essential, is nonetheless very important. Significant contributions in other areas such as learned writings and academia may compensate for a lack of trial experience, particularly for appellate positions.
2. **Professional Experience.** The Illinois Constitution provides that no person shall be eligible to hold the office of Judge or Associate Judge unless that person is a citizen of the United States, licensed to practice law in Illinois, and resident of the unit that selects him or her. Anyone under consideration as Appellate Court Judge or Circuit Court Judge should have significant professional experience. A candidate for the Appellate Court should have engaged in some form of practice or have had trial or bench

experience that demonstrates the candidate's ability to reason, communicate, and make decisions.

3. **Health and Age of a Candidate** are relevant only insofar as these affect the ability of a candidate to carry out the duties of the office and the number of years of service that the candidate may be able to perform.
4. **Legal Knowledge and Ability.** A judicial candidate's professional competence may be demonstrated by his or her professional writing, ability to analyze legal doctrines and principles of current case law and statutes, and performance as an attorney in and out of court. Investigators should inquire as to the references' opportunities to evaluate the candidate's legal knowledge and skill. Comments from opposing counsel, for example, may be particularly useful.
5. **Integrity.** A judicial candidate should be ethical, unbiased, honest, and sincere. A candidate should uphold the canons of professional conduct and his or her personal conduct should be above reproach.
6. **Sensitivity to Diversity and Bias.** A judicial candidate should act and deal with others appropriately to reduce or eliminate conduct or words which manifest bias based on race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status.
7. **Judicial Temperament.** A judicial candidate should be even-tempered, professional, and slow to anger. A candidate should not be excitable and should be able to deal effectively with stress and unexpected developments.

8. **Diligence.** A judicial candidate should be thorough in research, careful in preparation, and hardworking. The candidate's work should be consistent, attentive, persistent, and careful.
9. **Punctuality.** A judicial candidate should be prompt and punctual in the performance of his or her professional duties. The candidate should be able to manage a schedule, such as a court call, so as to give every matter the time it deserves. The candidate should recognize that the time of others is no less valuable than his or her own.
10. **Impartiality.** A judicial candidate must be able to be impartial in all cases, free of predispositions and prejudice towards any matter or towards any individual appearing before him or her.
11. **Professional Conduct.** It is appropriate to inquire into the professional conduct of the candidate, whether the candidate is an attorney or sitting judge. Essential are both strict adherence to the Rules of Professional Conduct and/or the Code of Judicial Conduct and pattern of behavior that reflects well on the profession and demonstrates a commitment to professional behavior.
12. **Character.** The elements of good character are often best reflected in the opinions of those who come in contact with the candidate. What is the candidate's reputation for veracity? How does the candidate handle and account for money, especially clients' funds? Is the candidate patient? Does the candidate possess tact? Moreover, a candidate's character will often be demonstrated by participation in activities outside of the practice

of law such as community service, charitable activities, and community activism.

B. Telephone Interviews

At the beginning of the telephone call, the investigator should establish the amount of knowledge the attorney has about the candidate; ask if the attorney and the candidate have any personal relationship; and (if the candidate is a sitting judge) determine how many times the attorney has appeared before the candidate, the nature of the cases, and whether the attorney won or lost. Praise from an attorney who lost a case before a judge should usually be given greater weight than the reverse. Additionally, praise from a contact who has a personal relationship with the candidate should be weighed accordingly. Further, information from off-list sources should generally be given greater weight than that from on-list sources.

The investigation is designed to obtain the frank opinion of attorneys as to the strengths and weaknesses of judges before whom they have appeared. While some attorneys will be positive towards almost all candidates and some will be negative towards almost all candidates, most attorneys will disclose useful information about the strengths and weaknesses of a candidate – particularly if asked specific questions about legal ability integrity, temperament, fairness, experience, respect for the rule of law, and independence. Over the course of the fifteen or more interviews, a pattern will usually develop where the attorneys will report consistent strength or weakness of a candidate in certain areas. Note that most lawyers tend to be positive when asked about judges being evaluated. Even the worst judges often have many respondents who praise their abilities. If there are a few lawyers who give consistent negative comments about a judge, it is worth following up on that issue and focusing on it in the candidate's interview.

If the investigator learns of concerns about aspects of a candidate's performance he or she should ask all subsequent attorneys about that aspect. DO NOT SAY: "I have heard that the judge is constantly late to court. Is that your experience?" Phrase the question more neutrally, and do not suggest that the area is a matter of special concern. For example: "What has been your experience with the candidate's punctuality?" If the concern is one which is of a particularly sensitive nature (for example, that the candidate is accused of criminal behavior or of having a substance abuse problem), the investigator should notify the PRBA Chairperson or a member of the Alliance Executive before proceeding further.

When judges sit in particular courts or lawyers practice in particular areas of law, it may be important to add certain kinds of questions relevant to that practice area. For example, it is appropriate to ask attorneys whether a judge in divorce court treats male and female litigants fairly. Similarly, it is important to ask whether judges in juvenile court respect all procedural rules and maintain a proper atmosphere. Adjust some of your questions to the court where a judge sits or a candidate practices.

Investigators may advise the individuals contacted that their responses will be kept confidential (where necessary to obtain information, the investigator may assure the respondent that his or her identity will not be revealed even to co-investigators or the Alliance Executive Committee). If the issue arises, investigators may also advise respondents that the courts have recognized a (qualified) privilege for judicial evaluations by bar associations.

C. Review of Written Work Product

The investigator should review a sample of the candidate's written work product. Candidates who are sitting judges may have issued written opinions; other candidates may have published articles, or submitted legal briefs with their applications. At a minimum, the candidate

will have responded to the Alliance questionnaire. Their responses should be reviewed not only for their substance, but also for the quality of the written work product.

D. Observation

If the candidate is a sitting judge, the investigator should go to court and observe the judge at work.

E. Preparation of Summary

After completing the telephone interviews, reviewing the candidate's work product and observing the candidate's courtroom (if applicable), the investigator should complete the form provided for summarizing the investigation. One copy of the completed form should be returned to the PRBA Chairperson and one copy sent to the Alliance Administrator *at least* three business days prior to the scheduled interview, to allow time for any follow-up questions necessary before the interview. All portions of the form are important to those who will be issuing the evaluations and should be completed.

IV. THE INTERVIEW

It is extremely important that the investigator attend the candidate's interview to summarize the results of the investigation and to answer any follow-up questions from the panel before or after the interview. Any investigator who is unable to attend the candidate's scheduled interview should immediately notify the PRBA Chairperson and the Alliance Administrator.

The purposes of the interview are to obtain answers from the candidate to any questions about his or her background which were not answered in the candidate's materials and investigation; to allow panel members to get a sense of the kind of person the candidate is; and to allow the candidate to respond to any specific criticisms uncovered in the course of the investigation. Many interviews are uneventful, and do not change the outcome of the evaluation.

However, interviews are an important component of the evaluation process, and can be very revealing, particularly for borderline candidates and the best and worst candidates.

Each interview panel has at least two co-chairs, each of whom is a representative of a different bar association. The co-chairs are generally responsible for make sure that the interview is fair and complete.

Immediately prior to the interview, each member of the interview panel should review the candidate's materials and the investigator's report. The investigator should summarize the results of the investigation, state the nature of any open issues or concerns, and answer any follow-up questions. When the candidate enters the room, one of the co-chairs should advise the candidate of the nature of our process. Members of the panel should then proceed with questions to the candidate.

Examples of questions to ask would include the following: "Please describe the most significant case you have handled"; "Why do you want to be a judge?"; "Have you ever witnessed discrimination on the basis of race, gender, ethnicity, or sexual orientation on the part of lawyers, judges, or other courtroom personnel?"; "Your experience has been primarily in civil/criminal proceedings. How would you handle an assignment to a criminal/civil courtroom?"

In formulating questions, interview panel members must always be respectful to the candidate, even if they find the candidate's responses to be problematic. Follow-up questions may be appropriate when a candidate's response appears to evade the question. However, after two or three questions on the same topic, questioners should move on to a different subject. The chairs have the authority and responsibility to cut off unduly prolonged questioning on a single topic and ask the interview panel to move on to a different one.

As the interview is limited to approximately twenty minutes, interview panel members should take care to make sure that no one person or group dominates the interview. Each participating bar association should have the opportunity to question the candidate. Again, it is the chair's responsibility to make sure that questioning is not dominated by one or a few of the panel members.

Interview panel members should also take care to allow the candidate ample opportunity to answer the question. Candidates should not be cut off in mid-answer. Conversely, however, the panel should not allow the applicant to filibuster. Some candidates engage in lengthy monologues to avoid having to answer tough questions from the panel.

If the investigation turned up any significant issue or criticism, the applicant should be asked about that issue during the interview. This is a question of fundamental fairness. In asking the candidate to respond to area of concern uncovered during the investigation, the confidentiality of sources must be maintained. However, with the bounds of confidentiality, a panel member should state that area(s) of concern and give the applicant an opportunity to respond. The chairs are responsible for making sure that questioning to this nature occurs whenever the investigation has revealed any significant issue or area of concern.

Examples of these kinds of questions would include the following: "We have heard reports that your litigation style is overly aggressive, for example, that you will not generally agree to brief extensions of time as a professional courtesy. How do you respond?"; "We had heard reports that you typically leave the bench at 2:00 p.m. everyday. Is this true, and, if so, how do you spend the rest of the day?"

Finally, chairs should allow each candidate to make a brief additional statement at the end of each interview if he or she wishes to do so.

V. CONCLUSION

PRBA JEC committee members participating in the Alliance evaluation process should bear in mind throughout the process that it is a CONFIDENTIAL one. The identity of sources of information about the candidates must NEVER be compromised. The candidate's responses to questions should also be kept confidential within the Alliance process. Similarly, comments about the candidate shared by interview panel members at the completion of the interview should be kept confidential within the Alliance process. (Information learned in the investigation and interview process may, however, be shared with decision-makers within the PRBA's JEC, although all PRBA JEC Members are obliged to maintain the confidentiality of this information. Investigation results and candidate's responses may also be used as the stated basis for a participating bar association's evaluation).

The ultimate goal of the PRBA's JEC is to provide a fair and accurate assessment of candidates seeking judicial office while observing strict confidentiality and maintaining the highest standards of integrity in our process. If you have any doubts or questions regarding your role as an investigator or an evaluator contact the PRBA Chairperson at once. Thank you for volunteering in this demanding, yet necessary part of improving our profession.