

**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 31st, 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