

## EVALUATION CRITERIA

**American Bar Association Guidelines.** These guidelines are intended for use by bar association committees and judicial nominating commissions which are evaluating applicants for state and local judicial office. It is assumed that the evaluators desire to recommend to the electorate or to the appointing authority the applicants who are most qualified by virtue of merit.

The guidelines attempt to identify those characteristics to be sought after in the judicial applicants. They attempt to establish criteria for the prediction of successful judicial performance. The identified traits are not mutually exclusive and cannot be wholly separated from one another. The outlined areas have been selected as essential for inquiry in considering all applicants for judicial office. With the exception of integrity, which is always indispensable, the degree to which the characteristics should be present in any particular applicant may vary in relation to the responsibility of the office.

These guidelines are not intended to deal with methods or procedures for judicial selection; nor are they intended to provide specific operating rules for the commissions and committees. The guidelines are not intended as a definitive review of the qualifications of sitting judges when being considered for retention or evaluation, since judicial experience will then provide important additional criteria which are treated elsewhere.

It is hoped that the use of these guidelines, if made known to the public and the press, will enhance the understanding and respect to which the judiciary is entitled in the community being served. The ultimate responsibility for selecting the judiciary is in the appointing power of any given judicial system. The function of these guidelines is to present minimum criteria for appointment; the more rigorous the criteria the better the quality of the judiciary.

### **1. Integrity.** An applicant should be of undisputed integrity.

The integrity of the judge is, in the final analysis, the keystone of the judicial system, for it is integrity which enables a judge to disregard personalities and partisan political influences and enables him or her to base decisions solely on the facts and the law applicable to those facts. It is, therefore, imperative that a judicial applicant's integrity and character with regard to honesty and truthfulness be above reproach. An individual with the integrity necessary to qualify must be one who is able, among other things, to speak the truth without exaggeration, admit responsibility for mistakes and put aside self-aggrandizement. Other elements demonstrating integrity are intellectual honesty, fairness, impartiality, ability to disregard prejudices, obedience to the law and moral courage.

An applicant's past personal and professional conduct should demonstrate consistent adherence to high ethical standards. The evaluator should make inquiry of judges before whom the applicant has appeared and among other members of the bar as to whether or not an applicant's representations can be relied upon. An applicant's disciplinary record, if any, should be considered. Hence, an applicant should waive any privilege of confidentiality, so that the appropriate disciplinary body may make available to the

evaluator the record of disciplinary sanctions imposed and the existence of serious pending grievances. The reputation of the applicant for truthfulness and fair dealing in extra-legal contexts should also be considered. Inquiry into an applicant's prejudices that tend to disable or demean others is relevant. However, since no human being is completely free of bias, the important consideration is that of whether or not the applicant can recognize his or her own biases and set them aside.

**2. Legal Knowledge and Ability.** An applicant should possess a high degree of knowledge of established legal principles and procedures and have a high degree of ability to interpret and apply them to specific factual situations.

Legal knowledge may be defined as familiarity with established legal principles and evidentiary and procedural rules. Legal ability is the intellectual capacity to interpret and apply established legal principles to specific factual situations and to communicate, both orally and in writing, the reasoning leading to the legal conclusion. Legal ability connotes also certain kinds of behavior by the judge such as the ability to reach concise decisions rapidly once he or she is apprized of sufficient facts, the ability to respond to issues in a reasonably unequivocal manner and to quickly grasp the essence of questions presented.

Legal knowledge and ability are not static qualities, but are acquired and enhanced by experience and the continual learning process involved in keeping abreast of changing concepts through education and study. While an applicant should possess a high level of legal knowledge, and while a ready knowledge of rules of evidence is of importance to judges who will try contested cases, an applicant should not normally be expected to possess expertise in any particular substantive field. More important is the demonstration of an attitude reflective of willingness to learn the new skills and knowledge which will from time to time become essential to a judge's performance and of a willingness to improve judicial procedure and administration.

A review of an applicant's academic distinctions, participation in continuing legal education forums, legal briefs and other writings, and reputation among judges and professional colleagues who have had first-hand dealings with the applicant will be helpful in evaluating knowledge and ability.

**3. Professional Experience.** An applicant should be a licensed, experienced lawyer.

An applicant should be admitted to practice law in the jurisdiction. The length of time that a lawyer has practiced is a valid criterion in screening applicants for judgeships. Such professional experience should be long enough to provide a basis for the evaluation of the applicant's demonstrated performance and long enough to ensure the applicant has had substantial exposure to legal problems and the judicial process.

It is desirable for an applicant to have had actual trial experience, as an attorney, a judge or both, beyond general litigation experience. This is particularly true for an applicant for the trial bench.

The extent and variety of an applicant's experience should be considered in light of the nature of the judicial vacancy being filled. Although substantial trial experience is desirable, other types of legal experience should also be carefully considered. An analysis of the work performed by the modern trial bench indicates that, in addition to adjudication, many judges perform substantial duties involving administration, discovery, mediation and public relations. A private practitioner who has developed a large clientele, a successful law teacher and writer, or a successful corporate, government or public interest attorney all may have experience which will contribute to successful judicial performance. Outstanding persons with such experience should not be deemed unqualified solely because of lack of trial experience. The important consideration is the depth and breadth of the professional experience and the competence with which it has been performed, rather than the applicant's particular type of professional experience.

For an applicant for the appellate bench, professional experience involving scholarly research and the development and expression of legal concepts is especially desirable.

**4. Judicial Temperament.** An applicant should possess a judicial temperament, which includes common sense, compassion, decisiveness, firmness, humility, open-mindedness, patience, tact and understanding.

Judicial temperament is universally regarded as a valid and important criterion in the evaluation of an applicant. There are several indicia of judicial temperament which, while premised upon subjective judgment, are sufficiently understood by lawyers and non-lawyers alike to afford workable guidelines for the evaluator.

Among the qualities which comprise judicial temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion and humility. Because the judicial function is essentially one of facilitating conflict resolution, judicial temperament requires an ability to deal with counsel, jurors, witnesses and parties calmly and courteously, and the willingness to hear and consider the views of all sides. It requires the ability to be even-tempered, yet firm; open-minded, yet willing and able to reach a decision; confident, yet not egocentric. Because of the range of topics and issues with which a judge may be required to deal, judicial temperament requires a willingness and ability to assimilate data outside the judge's own experience. It requires, moreover, an even disposition, buttressed by a keen sense of justice which creates an intellectual serenity in the approach to complex decisions, and forbearance under provocation. Judicial temperament also implies a mature sense of proportion; reverence for the law, but appreciation that the role of law is not static and unchanging; understanding of the judge's important role in the judicial process, yet recognition that the administration of justice and the rights of the parties transcend the judge's personal desires. Judicial temperament is typified by recognition that there must be compassion as the judge deals with matters put before him or her.

Factors which indicate a lack of judicial temperament are also identifiable and understandable. Judicial temperament thus implies an absence of arrogance, impatience, pomposity, loquacity, irascibility, arbitrariness or tyranny. Judicial temperament is a quality which is not easily identifiable but which does not wholly evade discovery. Its absence can

usually be fairly ascertained.

Wide-ranging interviews should be undertaken to provide insight into the temperament of a judicial applicant.

**5. Diligence.** An applicant should be diligent and punctual.

Diligence is defined as a constant and earnest effort to accomplish that which has been undertaken. While diligence is not necessarily the same as industriousness, it does imply the elements of constancy, attentiveness, perseverance and assiduousness. It does imply the possession of good work habits and the ability to set priorities in relation to the importance of the tasks to be accomplished.

Punctuality should be recognized as a complement of diligence. An applicant should be known to meet procedural deadlines in trial work and to keep appointments and commitments. An applicant should be known to respect the time of other lawyers, clients and judges.

**6. Health.** A candidate should be in good health.

Good health embraces a condition of being sound in body and mind relative to the extraordinary decision making power vested in judges. Physical handicaps and diseases which do not prevent a person from fully performing judicial duties should not be a cause for rejection of an applicant. However, any serious condition which would affect the applicant's ability to perform the duties of a judge may be further investigated by the evaluator.

Good health includes the absence of erratic or bizarre behavior which would significantly affect the applicant's functioning as a fair and impartial judge. Addiction to alcohol or other drugs is of such an insidious nature that the evaluator should affirmatively determine that a candidate does not presently suffer from any such disability.

The ability to handle stress effectively is a component of good mental health. A candidate should have developed the ability to refresh himself or herself occasionally with non-work-related activities and recreations. A candidate should have a positive perception of his or her own self-worth, in order to be able to withstand the psychological pressure inherent in the task of judging.

**7. Financial Responsibility.** An applicant should be financially responsible.

The demonstrated financial responsibility of an applicant is one of the factors to be considered in predicting the applicant's ability to serve properly. Whether there have been any unsatisfied judgments or bankruptcy proceedings against an applicant and whether the applicant has promptly and properly filed all required tax returns are pertinent to financial responsibility. Financial responsibility demonstrates self-discipline and the ability to withstand pressures that might compromise independence and impartiality.

**8. Public Service.** Consideration should be given to an applicant's previous public service activities.

Participation in public service and pro bono activities adds another dimension to the qualifications of the applicant. The degree of participation in such activities may indicate social consciousness and consideration for others. The degree to which bar association work provides an insight into the qualifications of the applicant varies in each individual. Significant and effective bar association work may be seen as a favorable qualification.

The rich diversity of backgrounds of American judges is one of the strengths of the American judiciary, and an applicant's non-legal experience must be considered together with the applicant's legal experience. Experience which provides an awareness of and a sensitivity to people and their problems may be just as helpful in a decision making process as a knowledge of the law. There is, then, no one career path to the judiciary. A broad, non-legal academic background, supported by varied and extensive non-academic achievements are important parts of an applicant's qualifications. Examples of such non-legal experience are involvement in community affairs and participation in political activities, including election to public office. The most desirable applicant will have had broad life experiences.

There should be no issue-oriented litmus test for selection of an applicant. No applicant should be precluded from consideration because of his or her opinions or activities in regard to controversial public issues. No applicant should be excluded from consideration because of race, creed, sex or marital status.

While interviews of applicants may touch on a wide range of subjects in order to test an applicant's breadth of interests and thoughtfulness, the applicant should not be required to indicate how he or she would decide particular issues that may arise on litigated cases. However, an applicant's judicial philosophy and ideas concerning the role of the judicial system in our scheme of government are relevant subjects of inquiry.

**Other Considerations for Qualification.** In addition to the ABA guidelines, a commissioner should consider the following in analyzing the qualifications of an applicant for judicial office.

**Diversity on the Bench.** When deciding among applicants whose qualifications appear to be relatively comparable, it is relevant to consider the background and experience of the applicants in relation to the current composition of the bench on which the vacancy exists. While the primary consideration must be merit, the constitutional requirement that the commissions consider the diversity of the state's or county's population in making their nominations is intended to promote a judiciary of sufficient diversity that it can most effectively serve the needs of the community.

**Impartiality.** A judge must be able to determine the law and sometimes the facts of a dispute objectively and impartially. Applicants may be evaluated on their ability to make the

transition from advocate to arbiter, and their ability to hear and consider all sides of an issue.

**Industry.** Applicants should demonstrate a willingness to dedicate themselves to diligent, efficient and thorough work. Rising court caseloads demand industry of judges. This means the ability to manage time, resources and priorities efficiently; to persevere against obstacles; to prepare thoroughly and punctually; and to resolve issues concisely and decisively.

**Trial Court Judges.** Substantial trial experience as an attorney, a judge or both is desirable. This includes the preparation and presentation of matters of proof in an adversarial setting for practicing attorney applicants, or the hearing, ruling and decision-making experience of a sitting judge applicant. However, litigation experience should not be overemphasized. A trial court judge must also be an able administrator and mediator.

A trial court judge should speak effectively in order to be understood by those appearing before the bench as well as by visitors in the courtroom. Communication skills are vitally important in dealing with litigants who are unrepresented by counsel and in communicating with jurors. The judge must be able to give the jury an understanding of its role and instruct the jurors on the law using plain language.

A trial court judge must be able to make quick decisions under pressure. The judge must be able to rule on motions and objections quickly in order to keep cases moving. A trial court judge must be able to quickly assimilate law and facts to respond to issues raised by counsel with confidence and without hesitation. The judge must be willing to make hard decisions and be able to rule with firmness.

**Appellate Court Judges.** Because of the collegial decision making process on the appellate bench, it is important judges be able to understand and respect differing opinions without personal rancor. A good appellate court judge should be able to give and receive criticism of opinions and arguments without giving or taking personal offense.

Appellate court judges should have well-developed research and writing skills, and backgrounds with broad experience. It is crucial that they be able to produce understandable opinions. The judge's written opinion should persuade the reader through its logic and internal coherence.