

Multnomah Bar Association Judicial Screening Process

Introduction

The MBA Judicial Screening Committee (JSC) is comprised of 21 MBA members and three public members, appointed by the MBA president. Members serve three-year terms, staggered so that approximately one-third of the members turn over each year.

To qualify for appointment as a public member, a person must work or reside in Multnomah County and be at least 21 years of age. No person may serve as a public member who is 1) a lawyer or former lawyer in any jurisdiction, 2) employed by a lawyer, 3) married to or a domestic partner of a lawyer, or 4) the parent, child or sibling of a lawyer. Public members should have familiarity with the legal system. Public members shall have the same authority and responsibilities as lawyer members of the committee, except that a public member may not serve as chair or vice-chair of the committee.

The committee is appointed with attention to diverse backgrounds, experience and practice areas. The MBA president shall appoint a committee chair and vice-chair from among the lawyer members of the committee. No committee member is eligible for appointment or election to any judicial vacancy for which the committee has responsibility. Three unexcused absences in any given committee year (July 1 – June 30) shall result in a recommendation to the president that the member be replaced.

During their tenure, members of the MBA Judicial Screening Committee shall not endorse candidates for election or appointment to Multnomah County trial court positions.

The committee follows carefully designed procedures and applies consistent criteria when screening judicial candidates. When screening candidates for appointment by the governor, the JSC creates a list of “highly qualified” candidates, which the MBA president forwards to the governor’s office. After the MBA’s list has been sent to the governor, it becomes public information. The MBA issues a press release to the local media and posts it on the MBA Web site.

The proceedings of the committee shall be kept in strictest confidence. Requests for information regarding the committee’s action shall be directed to the president. The chair and the MBA president or MBA president’s designated person shall be the sole spokespersons for the committee.

While the deliberations and discussions of the committee are confidential, its procedures are not. The MBA does not rank applicants who are deemed “highly qualified” but submits a list in alphabetical order. The fact that a candidate is not among the list of “highly qualified” does not mean that the candidate is not qualified. The MBA process and list of “highly qualified” candidates should not be confused with the American Bar Association rating system.

A copy of the MBA Judicial Screening Process and application forms are available by request from the MBA office at any time and may be found on the MBA Web site. Pro tem and judicial candidates must submit both a completed MBA application and the Supreme Court or Governor’s application, respectively.

The MBA shall keep the list of applicants and for those who are designated “highly qualified” for appointment to a judicial vacancy, their applications. It shall also keep a list of those lawyers who have applied for appointment as a pro tem judge and the committee’s recommendation whether the application should be approved or disapproved. The chair or vice-chair, and their designated representatives, shall retain any records necessary to complete their report to the governor. After their report is completed, those records shall be destroyed. All other records of the committee’s review of an applicant, including, but not limited to, all notes of interviews and background investigation, shall be destroyed upon completion of the screening process for which the files were generated, except as noted in Section B, Subsection 6(c) below.

Pro tem judge applicants are screened by a similar process using the same criteria.

Governor’s Appointments

A. Preliminary

The committee shall take no action unless a quorum is present. With the exception of action taken on pro tem applications, a quorum consists of two-thirds (2/3) of the committee, present personally or participating in the meeting by telephone conference. There shall be no proxy voting.

Upon being advised of a judicial vacancy that will be filled by gubernatorial appointment, the JSC chair shall:

1. Apprise committee members of the vacancy(ies) and provide notice of meeting dates and deadlines for completing the screening process.
2. Consult with the governor’s office as needed to confirm that the MBA list of candidates is complete.
3. Assign subcommittees to research and interview individual candidates. Each candidate shall be interviewed by a subcommittee of no less than three committee members. The number of members on each subcommittee is dependent upon the availability of committee members and the number of candidates. Subcommittees shall be balanced, to the extent possible, by type of practice, gender, background and experience.
4. Review with the committee the criteria against which qualifications are measured and the screening process to be followed.
5. Distribute each candidate’s completed governor’s “Interest Form for Judicial Appointments” and the completed MBA application form to the appropriate subcommittee chair.
6. Ensure that committee members obtain copies of any disciplinary complaint(s) filed against each candidate and their disposition(s).

B. Review Process

1. Committee members shall disclose to the committee, any relationship with a candidate which might affect their impartiality.
2. No applicant shall appear personally before the committee, except at the request of the committee.
3. Committee recommendations shall be based solely on criteria approved by the MBA Board of Directors.
4. Applicants shall be evaluated without regard to race, religion, color, national origin, sex, age, sexual orientation, marital status, disability, political affiliation, expunged juvenile record, family relationship or any other non-merit factor.
5. The chair assigns each subcommittee the task of investigating one or more candidates. The subcommittee members investigate each assigned candidate using the criteria established by the MBA. Investigations may be conducted by telephone or by meeting with references named in the application and with additional persons. Investigative work must be done by subcommittee members and may not be delegated. The members interview each candidate and research any disciplinary complaints against that candidate. Those persons contacted for information about candidates shall be encouraged to be candid and to provide all information they know about the candidate that is pertinent to the judicial opening. They shall be assured that their identities and any specific information they provide will remain confidential and will not be disclosed to anyone outside the committee, including the candidate.
6. After investigation of all candidates is complete, the committee meets as a whole to create a list of “highly qualified” candidates.
 - a. The meeting begins with one of the members of each subcommittee reporting the results of the subcommittee’s investigation. The committee reviews the criteria, listens to the subcommittees’ reports on each of the candidates, and then makes a preliminary determination by voting as to whether that candidate is “qualified.” Candidates who receive more than fifty percent of the votes of those present are deemed to be “qualified.”
 - b. The committee then selects from the “qualified” list, those candidates it finds “highly qualified.” Those candidates who receive votes from two-thirds of those present make up the “highly qualified” list.
 - c. The “highly qualified” designation shall last for three years. The applications of candidates on the “highly qualified” list shall be retained in a secure place at the MBA.
 - d. Upon request, the committee may reconsider a candidate’s “highly qualified” status and by majority vote remove the candidate from the “highly qualified” list.

7. The chair provides the “highly qualified” list, in alphabetical order, to the MBA president, who sends a letter with the list of those candidates considered “highly qualified” to the governor. After the list has been sent, it becomes public information.
8. The MBA office mails a copy of the letter to each applicant and to the OSB. A press release is issued, which includes the list of “highly qualified” candidates and a brief description of the screening process. The press release is sent to local media and is posted on the MBA Web site.
9. Upon request of the governor, the MBA president, the JSC chair and others designated by the MBA president, may meet with the governor’s staff to review the findings of the JSC, including information regarding candidates who were not on the “highly qualified” list. No information will be revealed to the governor’s staff that can be attributed to any source; only general summaries of the committee’s findings will be disclosed.
10. Other requests for information regarding the committee’s action shall be directed to the president.

Pro Tem Judicial Appointments

A. Preliminary

MBA application forms for pro tem judge positions are available by contacting the MBA office or at www.mbar.org. When a completed application is received at the MBA office, the chair of the MBA JSC sends a letter to the applicant advising the applicant of the approximate time it will take the committee to send its recommendation to the presiding judge. That time period can be as long as four months. Pro tem appointments are subject to renewal every three years; each applicant must track the expiration date of the appointment.

A quorum for the purpose of reviewing and recommending applicants for pro tem judge positions shall consist of one-half (1/2) of the committee, present personally or participating in the meeting by telephone conference.

B. Review Process

1. The chair assigns a committee member to investigate the applicant with respect to the established criteria using references named in the application and with other persons. Those persons contacted for information about the applicant shall be encouraged to be candid and to provide all information they know about the applicant that is pertinent to the applicant’s appointment as a pro tem judge. They shall be assured that their identities and any specific information they provide will remain confidential and will not be disclosed to anyone outside the committee, including the applicant. The assigned committee member also researches any disciplinary complaints filed against the applicant.
2. The full committee meets to consider the application. At that meeting, the assigned committee member reports the results of the investigation and makes a recommendation. The committee shall use the same criteria for evaluating pro tem applicants as used in screening for permanent judicial positions, except that the committee may recommend that an applicant be given a qualified approval and limit its recommendation to certain pro tem functions. The committee reviews the report and the criteria and then votes on whether to

recommend approval or disapproval of the application. Those applicants who receive more than fifty percent of the votes of those present are approved for recommendation.

3. The chair informs the Presiding Judge in writing whether approval of an application is recommended. The chair also sends a copy of the Supreme Court application to the Presiding Judge. A copy of the chair's report to the presiding judge is provided to the MBA president.
4. Upon the request of the Supreme Court or the Presiding Judge of Multnomah County, the MBA president, the JSC chair and others designated by the MBA president, may meet with Supreme Court justices or the Presiding Judge to review the findings of the JSC, including information regarding candidates who were not recommended for appointment or reappointment. No information will be revealed that can be attributed to any source; only general summaries of the committee's findings will be disclosed.
5. Other requests for information regarding the committee's action shall be directed to the president.

CRITERIA for JUDICIAL APPLICANTS

The committee shall use the following criteria, each of which shall receive equal weight, for evaluating candidates for permanent or pro tem judicial positions:

- A. Integrity and character;
- B. Judgment and intellectual capacity;
- C. Experience including, but not limited to, trial experience;
- D. Industry and diligence;
- E. Judicial temperament, including whether the candidate would be courteous and considerate of counsel, parties, witnesses and jurors and whether the candidate is even tempered;
- F. Professional ability and knowledge of the law;
- G. Non-discriminatory attitude and behavior regarding, but not limited to, race, ethnic origin, gender, age, disability and sexual orientation;
- H. Contributions the candidate would make to the quality, character and diverse composition of the judiciary. The term "diverse" refers to a protected class and socio-economic background. It should carry equal, but not elevated, weight when deciding which candidates should be deemed the highly qualified applicants;
- I. General reputation in the community;
- J. Civic and community activities;
- K. Any other relevant facts that affect the applicant's ability to serve competently in a judicial capacity.

These criteria were developed from source materials including those from the American Judicature Society.