



ABA STANDING COMMITTEE ON THE FEDERAL JUDICIARY

Frequently Asked Questions

What is the role of the ABA Standing Committee on the Federal Judiciary in evaluating judicial nominees?

The ABA Standing Committee on the Federal Judiciary evaluates the professional qualifications of Article III nominees to the Supreme Court, the circuit courts of appeals, the district courts, and the Court of International Trade. It also evaluates Article IV nominees to the territorial district courts for the Virgin Islands, Guam, and the Northern Mariana Islands.

The Standing Committee has been conducting its evaluations on a pre- or post-nomination basis since 1953. At present, the Standing Committee is conducting its evaluations *after* President Trump submits the names of his nominees to the Senate. Regardless of when it commences an investigation, the Standing Committee uses the same evaluation procedures and standards, and focuses exclusively on a nominee's professional qualifications.

What does the Standing Committee contribute to the vetting process?

The Standing Committee makes a unique contribution to the vetting process by conducting a thorough peer assessment of each nominee's professional competence, integrity, and judicial temperament. The Standing Committee's evaluations, which are narrowly focused and nonpartisan, provide the Senate and the Administration with the views of judges, lawyers, and other professionals who are colleagues of the nominee and in a position to provide candid, confidential assessments of the nominee's professional qualifications.

How does the Standing Committee perform its evaluations?

Following a process that has evolved over more than 60 years and is structured to assure a fair and impartial evaluation, the Standing Committee member assigned to the evaluation reaches out to a broad spectrum of lawyers and judges who may know the nominee and conducts confidential interviews with those who indicate that they are in a position to evaluate the nominee's professional qualifications to serve as a federal judge. Typically, the evaluator interviews 40 or more colleagues of the nominee. A more complex investigation may result in over 100 interviews. To promote candor, the evaluator promises confidentiality to each interviewee. The evaluator also reviews a sampling of the nominee's legal writings and investigates whether there has been any disciplinary action involving the nominee.

Toward the end of the investigation, the evaluator interviews the nominee in person, usually for several hours. During the interview, any adverse information that will be used in the evaluation is discussed with the nominee in as much detail as reasonably possible, consistent with the promise of confidentiality made to interviewees. The nominee is afforded a full opportunity to address and rebut any adverse comments and to direct the interviewer to additional sources of information.

The evaluator prepares a comprehensive confidential report of the investigation, which includes detailed summaries of each interview and the evaluator's recommended rating of Well Qualified, Qualified, or Not Qualified. After the Chair reviews it for thoroughness, the final report, along with the nominee's completed Senate Judiciary Committee Questionnaire and other relevant material, is sent to all Standing Committee members for review. Each member independently votes on a rating for the nominee. As a check on the process, if it appears likely that there will be a rating of Not Qualified, a second evaluator is appointed to conduct an independent evaluation and recommend a rating. In these cases, each member reviews both reports before voting on a rating for the nominee.

Once the votes are tallied, the Chair notifies the nominee, the Senate Judiciary Committee, and the White House in writing of the rating of the Standing Committee. At times, a vote results in a split majority/minority rating. Even though the split rating is reported, the majority rating is the Standing Committee's official rating.

Does the Standing Committee have veto power over a nomination or confirmation?

The Standing Committee's role is strictly advisory; the White House and Senate are free to consider the Standing Committee's rating of a nominee or to disregard it completely.

Does the Standing Committee consider a nominee's philosophy, political affiliation, or ideology?

No. The Standing Committee takes very seriously its responsibility to provide an impartial evaluation of a nominee's professional competence, integrity, and judicial temperament. Sometimes a genuine question arises from concerns raised by peers or from the nominee's own public statements with regard to whether the nominee can be an unbiased judge who will decide cases based strictly on the law and the facts rather than on the nominee's own strongly held philosophical or political beliefs. Only in that context might there be discussion with the nominee about the nominee's personal views on a specific matter. The only issue in question is the nominee's ability to put personal views aside and decide cases based on the law and the facts, free from bias.

Do ABA activities or policy positions influence the Standing Committee's evaluations?

No. The Standing Committee neither considers ABA policies nor asks about a nominee's views regarding ABA policies. These considerations are not relevant to its investigation of a nominee's professional qualifications. The Standing Committee strictly limits its inquiries to questions designed to solicit information regarding professional competence, integrity, and judicial temperament. As an added check, the work of the Standing Committee is insulated from, and independent of, all other activities of the ABA. Neither the Board of Governors nor the officers of the ABA has authority to tell the Standing Committee how to conduct its evaluations.

How does the Standing Committee keep politics out of its evaluation process?

To avoid compromising its position as a neutral evaluator, the Standing Committee has established several important operating principles, including the following:

- Neither the ABA nor the Standing Committee ever proposes or endorses candidates for the federal judiciary.
- No member of the Standing Committee may be an officer of the ABA or a candidate for such office while serving on the Standing Committee.
- All Standing Committee members must refrain from partisan political activity on the federal level and may not make campaign contributions while on the Standing Committee.
- As a condition of appointment, each member agrees not to seek or accept a federal judicial appointment while on the Standing Committee and for at least one year thereafter.

Why does the Standing Committee continue to provide this public service on a post-nomination basis?

The ABA believes that it has a responsibility to the Senate, the public, and the profession to continue to conduct evaluations to help assure a stellar judiciary. While we fully recognize that the Administration and the Senate take into consideration many factors during the nomination and confirmation process, we believe that a nominee's professional qualifications for a lifetime appointment to the bench should be a foundational consideration and that our impartial peer evaluations provide an important source of information not otherwise available to Senators.

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