FREQUENTLY ASKED QUESTIONS ABOUT
THE ABA STANDING COMMITTEE ON THE FEDERAL JUDICIARY

March 2009

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

At the request of the Obama Administration, the ABA Standing Committee will evaluate the professional qualifications of individuals being considered by the President for nomination to the federal judiciary. As a result, the Standing Committee is resuming its historical role of evaluating the professional qualifications of prospective nominees in advance of their nomination.

The Standing Committee never proposes or endorses candidates for judicial nomination; its sole function is to evaluate those individuals whose names have been confidentially disclosed to the Standing Committee by the White House. In evaluating the professional qualifications of potential nominees, the Standing Committee considers only three criteria: professional competence, integrity and judicial temperament. The Committee does not consider ideology or political philosophy in any evaluation.

How did the ABA get involved in the process of evaluating candidates for the federal judiciary in the first place?

In 1948, an independent committee of the ABA started to evaluate the professional qualifications of federal judicial nominees and to submit its evaluations to the Senate. In 1953, at the request of President Dwight D. Eisenhower, the ABA committee started to evaluate the professional qualifications of potential nominees to assist him in resisting growing pressures to repay political debts by appointing persons who might not have the professional qualifications to exercise the important responsibilities of the Third Branch. From 1953-2000, the ABA Standing Committee evaluated the professional qualifications of potential nominees for nine administrations, Democratic and Republican alike.

How did the role of the Standing Committee change during President George W. Bush's Administration?

In March 2001, the Bush White House departed from long-standing practices and did not submit names of prospective nominees to the Standing Committee in advance of their nomination. Soon thereafter, members of the Senate Judiciary Committee asked the Standing Committee to continue to provide the Judiciary Committee with its evaluations of judicial nominees. Accordingly, from March 2001 through December 2008 (107th – 110th Congress), the Standing Committee undertook its evaluations of the professional qualifications of nominees after the President submitted the nominations to the Senate. At the conclusion of its evaluation, the Standing Committee conveyed its rating of the professional qualifications of each nominee to the White House, the Department of Justice, the Senate Judiciary Committee and the nominee

How does the Standing Committee perform its evaluation and what does its evaluation contribute to the process?

The Standing Committee makes a unique contribution to the vetting process by conducting an extensive, confidential peer review of each potential nominee's professional competence, integrity and judicial temperament. Following a process that has evolved over more than 50 years and is structured to assure a fair and impartial evaluation, the Committee member (or members) assigned to do the evaluation conducts confidential interviews with a broad spectrum of lawyers, judges and others who are in a position to evaluate the potential nominee's professional qualifications to serve as a federal judge. The candidate is interviewed and any adverse information that has been developed during the evaluation is discussed with the candidate, who is afforded a full opportunity to present additional information regarding those concerns.

The Standing Committee's extensive, unbiased peer-evaluation provides important information for the Administration, the Senate Judiciary Committee and the Senate to consider as they deliberate over who should be nominated and confirmed to a lifetime position on the federal bench.

Typically, in addition to conducting an extensive interview with the candidate, the evaluator interviews 40 or more colleagues of the candidate. A more complex investigation may result in over 100 interviews. At the conclusion of the evaluation, the evaluator submits to the Chair of the Standing Committee a detailed Informal Report, which includes a recommended rating for the nominee. After reviewing it for thoroughness, the chair discusses the findings of the Informal Report with the designated Administration official. If the White House requests the Standing Committee's rating of the prospective nominee, a Formal Report is prepared by the evaluator and distributed to Committee members for their consideration. Each member then votes the prospective nominee "well qualified," "qualified," or "not qualified." This rating is transmitted to the White House on a confidential basis. Once the President officially submits the nomination to the Senate, the Standing Committee's rating is transmitted to the nominee and the Senate Judiciary Committee and is posted on the Standing Committee's website. The rating is never publically released or discussed if the President declines to nominate the candidate...

Does the Standing Committee look at the politics or ideology of judicial nominees?

Absolutely not. The Standing Committee takes very seriously its responsibility to provide an impartial evaluation of a candidate's professional competence, integrity, and judicial temperament. The Committee's practices and procedures are structured to achieve this goal and do not permit consideration of philosophy or political ideology in any aspect of its evaluation.

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

No, the Standing Committee never considers ABA policies in any aspect of its deliberations. Those policies are not relevant to the Committee's investigation of a potential nominee's professional qualifications. The only relevant questions are about the nominee's professional competence, integrity and judicial temperament.

Does the Standing Committee report to the ABA and its officers?

No, the Committee's work is entirely independent and is carried out entirely by its members. The Standing Committee is insulated from other ABA activities to ensure the integrity of the evaluations. The ABA and its officers do not participate in any of the Standing Committee's interviews or deliberations and are not privy to the identity of potential nominees or the rating being issued by the Committee until the President officially submits the nomination to the Senate and the information is made public.

What does the record show with regard to political affiliation and ratings?

Since 1960, the ABA evaluated well over 2,000 individuals who were formally nominated by the past ten Presidents, from President Kennedy through President George W. Bush. All but 33 were rated either "qualified" or "well qualified." Of the 33 nominees the Committee found "not qualified," 23 were nominees of Democratic Presidents and 10 were nominees of Republican Presidents.

How many potential candidates were never nominated because of the Standing Committee's evaluation?

No one knows, as this information has never been revealed by the respective administrations.

How are members of the Standing Committee appointed, and how much time do they give to the Committee?

ABA presidents seek out ABA lawyers with outstanding reputations for professional competence and integrity, and who enjoy the utmost confidence and respect of their communities. Standing Committee members work tirelessly to help assure a highly qualified federal judiciary that is the envy of the world. To this end, each member of the Standing Committee spends roughly 1,000 hours per year on a *pro bono* basis to provide this vital public service.

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:

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

- Prior to nomination, the Standing Committee reports its rating only to the Administration. After the President forwards the nomination to the Senate, the Standing Committee reports its rating to the nominee and members of the Senate Judiciary Committee, not to ABA leadership.

For additional information, visit the ABA Standing Committee on the Federal Judiciary's Web site at http://www.abanet.org/scfedjud/