



# NEW YORK STATE BAR ASSOCIATION

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December 16, 2016

Honorable Andrew M. Cuomo  
Governor of the State of New York  
State Capitol  
Albany, New York 12224

Dear Governor Cuomo:

The New York State Bar Association has considered the qualifications of the seven individuals whose names were submitted by the Commission on Judicial Nomination for possible appointment as Associate Judge of the Court of Appeals.

We reviewed each candidate's background, studied their decisions and/or writings and interviewed those who know them. Personal interviews were conducted with each candidate. While the specific matters discussed with each nominee varied, they generally included background, experience and temperament to serve as Associate Judge.

Based on these evaluations, the candidates have been rated by the New York State Bar Association as follows:

Eric O. Corngold, Esq.:	“Well Qualified”
Hon. Judith J. Gische:	“Well Qualified”
Caitlin J. Halligan, Esq.:	“Well Qualified”
Hon. Erin M. Peradotto:	“Well Qualified”
Benjamin E. Rosenberg, Esq.:	“Well Qualified”
Robert A. Spolzino, Esq.:	“Qualified”
Rowan D. Wilson, Esq.:	“Well Qualified”

I am enclosing a copy of the “Guidelines for Evaluating Qualifications of Judicial Candidates.” We hope you will find this information helpful in making an appointment to the office of Associate Judge of the Court of Appeals.

Please let me know if you would like any further information.

Respectfully,

Claire P. Gutekunst

**NEW YORK STATE BAR ASSOCIATION  
COMMITTEE TO REVIEW JUDICIAL NOMINATIONS  
GUIDELINES FOR EVALUATING QUALIFICATIONS OF JUDICIAL CANDIDATES**

(As amended by House of Delegates 1/25/13)

**A. Judicial Offices Considered**

1. The Committee to review Judicial Nominations (hereinafter "Committee") shall consider and report to the President of the Association upon the qualifications of a candidate for appointment to the Court of Appeals of the State of New York or for Chief Judge thereof.
2. Upon request of the President of the Association, the Committee shall consider and report to the President upon the qualifications of a candidate for election or appointment to the following courts:
  - a. State Courts
    1. The Appellate Division of the Supreme Court of the State of New York;
    2. The Supreme Court of the State of New York;
    3. The Court of Claims of the State of New York.
  - b. Federal Courts
    1. The United States Court of Appeals for the Second Circuit;
    2. The United States District Courts located in the State of New York.
3. In making such requests, the President shall give due regard to the activities of the American Bar Association and the various local bar associations in New York State with respect to candidates for these courts, toward the end that there shall be cooperation between the New York State Bar Association and these other associations.

**B. Ratings and Criteria**

1. The qualifications of a candidate shall be evaluated as provided in these guidelines and the Committee shall rate the candidates as "not qualified," "qualified" or "well qualified."
2. In rating a candidate, the Committee shall consider professional ability and experience, character, temperament and the possession of the special qualities necessary or desirable for the performance of the duties of the office for which the candidate is being considered. The higher the judicial office, the greater should be the professional qualifications considered necessary or desirable for that office. The rating "qualified" shall be reserved for candidates who have affirmatively demonstrated qualifications which are regarded by the Committee to be necessary for the performance of the duties of the office for which they are being considered. The rating "well qualified" shall be reserved for candidates who, in addition, possess pre-eminent qualifications for the performance of the duties of such office.

**C. Appointment of Subcommittee**

1. When consideration of a candidate's qualifications is undertaken by the Committee, the Chair shall appoint a Subcommittee charged with the duty of actively investigating a candidate's qualifications. If a candidate presently serves as a judge, it shall be the policy, unless impracticable, to appoint members to the Subcommittee who do not practice within the territorial jurisdiction of the candidate.
2. The Subcommittee, with the assistance of Association staff, shall make a complete and thorough investigation into the candidate's qualifications, which investigation shall include but not be limited to: (a) the securing of written biographical and other data from the candidate in the form which the Committee shall from time to time determine, and (b) if practicable, a personal interview with the candidate.
3. Upon completing its investigation, the Subcommittee shall report its findings to the full Committee at a meeting thereof. With its report, the Subcommittee shall submit all biographical or other materials it deems pertinent to its investigation. As part of its report, the Subcommittee may recommend whether the candidate should be rated as: (a) not qualified; (b) qualified; (c) well qualified.

**D. Evaluation by Committee**

1. Upon announcement by the New York State Commission on Judicial Nomination of candidates for appointment to the Court of Appeals of the State of New York, or upon request of the President of the Association with regard to vacancies in any other judicial office specified in Section A, the Chair shall call a meeting of the Committee to which the candidate or candidates who are under consideration shall be invited for purposes of personal interview. In addition, the Chair, pursuant to Section C, shall appoint a Subcommittee to investigate the qualifications of each candidate and report thereon at the meeting of the full Committee.
2. The President and President-Elect of the Association shall be ex officio non-voting members of the Committee. No member of the Appellate Panel of the Executive Committee may be a member of this Committee.
3. In addition to the regular members of the Committee, the President, at the commencement of each Association year in June, shall appoint five alternate members, with at least one alternate from each of the State's judicial departments. Should any regular member be unable to attend the meeting of the Committee or otherwise participate in its activities, the President, in consultation with the Chair, may designate an appropriate alternate who shall substitute in all respects for the regular member.
4. At the meeting of the Committee, a majority of the regular members, including any alternates designated to substitute for regular members, shall constitute a quorum. Following receipt of the Subcommittee reports and personal interview of candidates, the Chair shall poll the Committee members present by secret written ballot to determine whether the candidates shall be rated as not qualified, qualified, or well qualified, and any of the ratings shall require concurrence of the lesser of two-thirds of the entire Committee or three-quarters of those Committee members in attendance, provided a quorum is present. Committee members must be present in person to vote and may not cast a vote by proxy. The vote shall be taken with only the Committee members and assigned Association staff present.
5. The Chair shall report the results to the President of the Association, together with such explanatory comment and recommendations as the Committee may desire to furnish. Except as hereinafter set forth, the Executive Committee shall take no part in the rating of candidates.
6. There shall be no right of appeal from the finding of the Committee, except as set forth in Section F.

**E. Action by President**

1. Upon receipt of the report and findings of the Committee, if all candidates have been found qualified and/or well qualified, the President of the Association shall transmit such findings together with a copy of these Guidelines to the appropriate governmental authorities. The candidates shall be given written notification of such action and be furnished with a copy of these Guidelines.
2. In the event a candidate receives a rating of not qualified, the president shall by express mail or other similar written communication promptly notify the candidate of such determination, furnishing a summary of the reasons for such action and a copy of these Guidelines. In those instances where one or more of several candidates has received a rating of not qualified, the timing of the transmission of findings to governmental authorities with respect to those candidates found well qualified or qualified shall rest in the discretion of the President of the Association, giving due consideration to any appeals by candidates found not qualified and the statutory time limits within which action must be taken by the appropriate governmental bodies.

## **F. Appeals**

1. A candidate may appeal a rating of not qualified to an Appellate Panel of the Executive Committee (hereinafter "Appellate Panel") by filing written notice within two days of the receipt of such rating with the President of the Association at the Association's offices in Albany. In such event, the report of the Committee, insofar as it pertains to the appellant, shall not be transmitted to governmental authorities, or otherwise made public, until determination of the appeal. If an appeal is not taken within the prescribed period, the President shall transmit the findings of the Committee with respect to such candidate to appropriate governmental authorities.
2. The Appellate Panel shall consist of the President, the President-Elect, and seven members of the Executive Committee appointed annually by the President following commencement of the Association year on June 1. In making such appointments, the President shall designate at least one member from each of the State's judicial departments, with no more than two appointees to be selected from the same judicial district.
3. The Appellate Panel shall have authority to establish such additional procedures for the hearing of appeals as it may deem appropriate so long as such are not inconsistent with those set forth herein. The appellant shall be entitled to an oral hearing of the appeal by the Appellate Panel, if requested, and to the assistance of counsel. At least two days' written notice of the time and place of the scheduled hearing shall be given to the appellant by the Appellate Panel.
4. The Appellate Panel will be given all of the written material regarding the appellant's application which was distributed to the Committee. The Appellate Panel will also be informed of the Committee's rating of the appellant and the specific vote count as to each rating category for the appellant.
5. The Chair of the Committee or a Committee member designated by the Chair shall be invited to attend the hearing of the appeal for the purpose of presenting in camera the basis for the Committee's action including the results of the investigation, a summary of the appellant's interview, the views expressed by Committee members (without attribution) on the appellant's qualifications, and any other information the Chair or the Chair's designee feels is relevant to the Appellate Panel. In addition, prior to or at the hearing of an appeal, the Appellate Panel will consult in camera with the member(s) of the Subcommittee charged with appellant's investigation for a report on the Subcommittee's investigation. The Chair, the Chair's designee and the Subcommittee member(s) shall not otherwise take part in the proceeding before the Appellate Panel unless expressly requested by the Appellate Panel to do so.
6. In hearing an appeal, the Appellate Panel shall generally be limited to a review of the proceedings before the Committee, but may, for good cause shown, accept information not considered previously by the Committee.
7. In voting, the members of the Appellate Panel should give due deference to the rating of the Committee.
8. At the hearing of an appeal, a majority of the members of the Appellate Panel shall constitute a quorum. A vote to modify the rating of the Committee shall require concurrence of the lesser of two-thirds of the entire Appellate Panel or three-quarters of those Appellate Panel members in attendance, provided a quorum is present. The vote shall be by written ballot given only to assigned Association staff and otherwise secret, and shall be taken with only the Appellate Panel members and assigned Association staff present.
9. The Appellate Panel may approve, modify, or reject the action of the Committee.
10. The finding of the Appellate Panel shall then be transmitted to the appropriate governmental authorities and to the appellant by the President of the Association.
11. No further appeal shall be permitted beyond the Appellate Panel.

**G. Confidentiality**

1. The work of the Committee and the Appellate Panel shall be completely confidential; and, in no event, shall the Committee, the Appellate Panel, any of the members, or the Association staff, make public reports, proceedings or findings as to any candidate. This confidentiality shall not prevent the full exchange of information between the Committee and the Appellate Panel as to any appeal. No member of the Committee or Appellate Panel shall serve as a member of a committee supporting the election or appointment of any candidate for judicial office within the jurisdiction of the Committee nor shall any member otherwise sponsor such candidacy.
2. Sources of confidential information shall not be disclosed at any stage of the proceeding.
3. Any announcement concerning the findings of the Committee shall be made by the President of the Association, but the Committee may include as part of its report any recommendations as to the information to be released to the public in the event a candidate runs in a primary election or becomes a nominee.