

# JUDICIAL APPOINTMENTS COMMITTEE

Virginia Association of Criminal Defense Lawyers  
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[CONFIDENTIAL DRAFT: NOT FOR DISTRIBUTION]

Policies and  
Procedures  
for Judicial  
Evaluations

# CONTENTS

CONTENTS.....	1
INTRODUCTION.....	2
1 Composition .....	3
2 Scope .....	4
3 Ethics.....	5
4 Evaluation Process .....	7
Annexes .....	9
Annex I Final Evaluation Report Template.....	10
Annex II Executive Summary of Committee Votes on Judicial Candidates .....	12
Annex III Annual Demographics Report Template.....	13

## INTRODUCTION

The Virginia Association of Criminal Defense Lawyers (VACDL) is a statewide organization of over 600 attorneys whose practice is primarily focused on the representation of those accused of criminal violations. Founded in 1992 as the Virginia College of Criminal Defense Attorneys, VACDL changed its name in 2002 to reflect its affiliation and strong ties to the National Association of Criminal Defense Lawyers. VACDL's mission is to improve the quality of justice in Virginia by seeking to ensure fairness and equality before the law. To achieve this important goal, we participate in legislative matters so that all sides are heard, work with the judiciary to make advances in serving the people who come to court, and provide continuing legal education to practitioners to improve their skills.

The VACDL's Judicial Appointments Committee was established to serve the organization's goal of providing fair and impartial evaluations of judicial nominees to state district court, circuit court, and appellate judicial seats as well as federal district court seats in the Eastern and Western District of Virginia, based on applications from candidates as well as requests for evaluations by the chairs of the Senate Judiciary Committee and the House of Delegates' Courts of Justice Committee. The VACDL is one of nine bar groups in the Commonwealth of Virginia that has been asked to weigh in on judicial vacancies.

The Committee focuses on evaluating the competence, integrity, and judicial temperament of each nominee.

# 1 Composition

## 1. Composition of the VACDL

The VACDL is comprised of attorneys in good standing with the Virginia State Bar from throughout the Commonwealth of Virginia whose practice focuses primarily on representing those who are accused of violations of the criminal law.

## 2. Composition of the VACDL Board of Directors

The VACDL board is comprised of 25 VACDL members who are elected on the following basis:

- a. 1 member from each of the eleven Virginia Congressional Districts, who are elected on the basis of votes cast by members from those Congressional Districts;
- b. 1 member from five regions, which are defined by judicial district, and who are elected on the basis of votes cast by members from those judicial districts;
- c. 5 at-large members, who may be voted on by all members without regard to congressional district or region;
- d. The current VACDL President and President-Elect, as well as the immediate past president of the organization; and
- e. The Executive Director of the Virginia Indigent Defense Commission.

Each Director serves rotating three-year terms, and may serve no more than three consecutive terms. These three-year terms are staggered such that approximately one-third of the available seats become vacant every year. The members come from various professional experiences and backgrounds, and share in common their commitment to criminal defense work and criminal justice.

The VACDL Board also has an Executive Committee which is comprised of nine members of the Board of Directors.

## 3. Composition of the Committee on Judicial Appointments

The Committee on Judicial Appointments consists of three to five board members who have volunteered for their role on the Committee.

## 2 Scope

The Committee on Judicial Appointments evaluates the professional qualifications of nominees to the Virginia Supreme Court, Virginia Court of Appeals, Virginia Circuit Courts, and Virginia General District and Juvenile & Domestic Relations Courts, as well as nominees to the District Courts for the Eastern and Western Districts of Virginia. The Committee does not propose candidates for these seats; however, it does provide recommendations indicating whether the candidates are “highly recommended”, “recommended”, or “not recommended”.

In conducting nominee evaluations, the Committee on Judicial Appointments maintains its focus on professional qualifications, namely, the candidate’s integrity, professional competence, and judicial temperament.

In an effort to balance the historical weight that has been given during the judicial nominations process in Virginia to attorneys with civil law and prosecutorial backgrounds, the Committee significantly considers the extent to which candidates have substantial experience in the field of criminal and indigent defense.

Furthermore, the Committee compiles and releases an annual demographics report (Annex II) which takes into consideration the gender, race/ethnicity, sexual orientation and gender identity, veteran status, and disability status of candidates it evaluates. While the Committee does not place any additional weight upon these diversity factors when evaluating candidates, it collects this data specifically to advance diversity and inclusion in the legal profession by drawing attention to existing disparities on the Virginia bench, and encouraging attorneys from diverse groups to enter the pipeline and ultimately provide to the state legislature a panoply of judicial candidates that appropriately reflects the diverse demographics of the Virginia bar and the Commonwealth more broadly.

## 3 Ethics

### 1. Impartiality and Independence

To preserve the integrity of the Committee on Judicial Appointments, no Committee member, including the Chair, participates in evaluating or votes on the rating for a nominee in any case where their participation would create an appearance of impropriety or raise questions about the impartiality of the Committee member.

Committee members may not participate in the evaluation of or vote for the rating for a nominee who is a judge before whom they currently have a case pending. A Committee member who has colleagues or relatives who are nominees subject to VACDL's comment would similarly not participate. It is not immediately disqualifying for a Committee member to have a colleague who has cases pending before a nominee; however, Committee members are encouraged to use their discretion and best judgment in determining how to proceed. The Committee is a neutral, non-partisan, and deliberative body.

### 2. Confidentiality

The Committee on Judicial Appointments strictly maintains the confidentiality of its internal evaluation materials and reports, with the exception of the aforementioned demographics report, which is disaggregated from the specific identity of nominees. These evaluation materials are not disclosed to anyone outside the Committee, with the exception of cases where a Committee member must recuse themselves from a vote such that a member of the Executive Committee or the broader VACDL Board of Directors must stand in to serve in their stead.

The Committee maintains confidentiality of the identity of all persons who provide information pertaining to the professional qualifications of a candidate.

### 3. Recusal Procedures by Board Members

In the spirit of Virginia's self-regulating bar, Committee members who know of any reason they should be disqualified from participating in the evaluation of or vote on the rating of a nominee will immediately recuse themselves. In the event a Committee member recuses themselves, the Chair of the Committee on Judicial Appointments will promptly seek a replacement for them from the Executive Committee. If, for some reason, a replacement from the Executive Committee is promptly unavailable, a replacement will be sought from the Board of Directors.

In the event of recusal by the Chair, the Chair will seek their replacement for that particular evaluation by soliciting the services of a former Chair. If that person is not available to oversee the evaluation in a timely fashion, the Chair will seek a replacement from the Executive Committee, or, if such a person is unavailable, from the Board of Directors.

A Chair or Committee member who has recused themselves from the evaluation process on a candidate may not communicate with the candidate about their candidacy or the VACDL evaluation process, may not access any documents relating to the candidacy, including the Final Evaluation Report, may not vote on the candidate, and may not provide any input to any voting member of the Committee on Judicial Appointments regarding that candidate.

In the event a Committee member recuses themselves from the evaluation process because of a non-conflict related reason (e.g., illness, other professional commitments), they will not be prevented from considering the nominee's qualifications, commenting on the Final Evaluation Report or other records, and will not be

prevented from casting a vote. However, if a Committee member so placed feels that they do not have the requisite information before them to cast a vote or cast an informed vote, they may abstain.

## 4 Evaluation Process

### 1. Consideration of Applicants

Applicants may apply specifically to the VACDL Committee on Judicial Appointments (through VACDL's Executive Director or the VACDL Board of Directors) for evaluation of their candidacy. Alternatively, where the VACDL Committee on Judicial Appointments (through the VACDL Executive Director or VACDL Board of Directors) is solicited to interview judicial candidates by other deliberative bodies, including the Virginia State Bar, it will reach out to those candidates. When engaging in this process, the Committee will review all materials submitted by the applicant and will additionally conduct interviews.

When requested by the legislature, the VACDL Committee on Judicial Appointments will utilize the questionnaire created by the Virginia State Bar and any supporting materials appended to it and conduct interviews of candidates.

### 2. Evaluation Criteria

#### a. Experience

A candidate for judicial office should be a member of the Virginia State Bar and have been engaged in the practice of law within the Commonwealth. Substantial courtroom experience, including criminal defense trial and appellate experience, is significantly important for nominees to trial and appellate courts. Significant experience in trial-like work, including teaching in law schools, is relevant information that is considered by the Committee.

#### b. "Integrity"

"Integrity" is defined as the candidate's high moral character and general reputation in the legal community for honesty, industry, and diligence, as well as their good standing with the Virginia State Bar.

#### c. "Professional Competence"

"Professional Competence" includes qualities such as judgment, analytical abilities, writing abilities, knowledge of the law, and length and breadth of professional experience.

#### d. "Judicial Temperament"

"Judicial Temperament" includes the candidate's commitment to due process and equal justice under the law, decisiveness, open-mindedness, freedom from bias, courtesy, professionalism, patience, civility, compassion, and thoughtfulness.

#### e. Criminal Defense Experience

The Committee takes into consideration specifically whether the candidate has spent any part of their career engaged in criminal defense practice. If the candidate has engaged in this practice, the Committee further considers the amount of time they have spent in the practice as well as their general reputation in their community as a competent, diligent, and zealous advocate for their clients. Even for appellate positions, the Committee considers the amount of litigation experience that a candidate has in support of their application.

#### f. Communication Skills

Communication skills include the ability to write and speak persuasively, as well as to present issues, orders, rulings, and judgments in a manner cognizable not only to counsel, but also to parties to the litigation and the public at large. It is important for candidates to communicate with parties in a manner that is appropriate



to their level of understanding and experience as well as empathetic to their circumstances. Communications from the bench should provide guidance to members of the bar and the public for all future cases.

g. Additional Factors

The Committee considers the extent to which candidates have engaged in pro bono work, particularly to the extent that it implicates indigent criminal or legal aid practice. It also considers the extent to which candidates have engaged in civic activities and public service. However, such activities and services will not be considered a substitute for significant experience in the practice of law.

3. Evaluation Process

The Committee will agree to assign two members to investigate each candidate. Committee members conducting the investigation will review the materials submitted by the candidate, and will seek information relating to their experience, integrity, professional competence, judicial temperament, criminal defense experience, communication skills, and other factors. They will interview nominees and engage in any other additional investigation deemed necessary. Following their review and investigation, the board members will supply the information contained within the Final Evaluation Report (see Annex I) to the Committee at large, which will vote on the qualifications of all candidates.

4. Ratings

The VACDL Judicial Appointments Committee rates candidates “highly recommended”, “recommended” or “not recommended”.

On the basis of a simple majority vote of those present and voting, candidates shall be deemed “recommended.” On the basis of a second simple majority vote of those present and voting, the Committee will determine whether any of the recommended candidates are sufficiently distinguished to be deemed “highly recommended”. Candidates who fail to receive any majority vote will be deemed “not recommended” by the Judicial Appointments Committee.

At the conclusion of deliberations, the Committee Chair shall prepare an Executive Summary of the reasons for the Committee’s votes with respect to each candidate’s designation, and the vote count will be recorded. (Annex II).

## Annexes

# Annex I Final Evaluation Report Template

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CONFIDENTIAL

[date]

VIRGINIA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS  
COMMITTEE ON JUDICIAL APPOINTMENTS

REPORT OF FINAL EVALUATION OF [NAME OF CANDIDATE] TO  
[NAME OF COURT TO WHICH NOMINATED]

[Name of Evaluator 1]

[Name of Evaluator 2]

[Name of Evaluator 3]

[Name of Evaluator 4]

[Name of Evaluator 5]

RECOMMENDATION: [Please indicate Recommended/Not Recommended/Highly Recommended]

## Part A: Candidate Information

Name:

Current Position:

Length of Time That Position was Held:

**Candidate Education:** [Please list all colleges and universities, degrees, dates of graduation]

**Employment History:** [Please list and briefly describe all professional positions, including law firms, government positions, etc., with relevant dates]

**Service History:** [Please note any social service, pro bono work, or other volunteer work in which the candidate has engaged]

**Bar and Court Admissions:** [Please list all jurisdictions and courts to which the candidate is admitted]

**Disciplinary History:** [Please list any disciplinary activity that may have been imposed against the candidate either by the Virginia State Bar, the Judicial Inquiry and Review Commission, or any other bodies]

**Demographic Information (where available):** Please select whether the candidate has indicated anywhere in their application their gender, race/ethnicity, sexual orientation and gender identity, veteran status, and disability status. Please note the source of this information (written application materials vs. interview)

## Part B: Personal Interview Summary

[Please provide a detailed summary of the candidate interview. Please specifically note all the matters that were discussed, impressions about the temperament of the candidate during the interview, responses to any adverse comments.]

## Part C: Summary of Documents Reviewed

[Please include a list of all the documents that were supplied by the candidate for evaluation and any other documents from other sources—e.g., if there are newspaper articles or letter opinions by the candidate that were considered, please provide links to those documents so that other Committee members can review them. Please provide a summary which includes impressions about the relevant evaluative categories, i.e., integrity, professional competence, judicial temperament, communication skills, other].

**Part D: Conclusion and Recommendations**

[Please provide a summary conclusion based on all the information that was gathered, and provide a rationale for the rating of Qualified/Well Qualified. Please make specific use of the categories listed in the Evaluation Criteria section of these Policies and Procedures].

## Annex II Executive Summary of Committee Votes on Judicial Candidates

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CONFIDENTIAL

[date]

VIRGINIA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS  
COMMITTEE ON JUDICIAL APPOINTMENTS

REPORT OF FINAL EVALUATION OF CANDIDATES FOR

[NAME OF COURT TO WHICH NOMINATED]

CANDIDATE 1: [name]

RATING: [Qualified/Well Qualified/Not Rated]

VOTE COUNT: [x for/y against] [if the candidate was rated Well Qualified, please provide vote tallies for both the Qualified and the Well Qualified vote]

REASONING OF COMMITTEE:

[please provide a summary of the reasons articulated by the Committee during its deliberations, calling specific attention to the Evaluation Criteria contained within the Policies and Procedures document].

## Annex III Annual Demographics Report Template

Please note that all data is to be aggregated on the basis of self-reported information by the candidate. The candidate should not be obligated to provide this data.

### A: Gender Data

	Well Qualified		Qualified		Total	
	N	%	N	%	N	%
Women						
Men						
Unknown						
Total						

### B: Ethnicity/Race Data

	Well Qualified		Qualified		Total	
	N	%	N	%	N	%
Asian						
Black/African American						
Hispanic/Latino						
White						
Other Race/Ethnicity						
Unknown						
Total						

### C: SOGI Data

	Well Qualified		Qualified		Total	
	N	%	N	%	N	%
Heterosexual						
Bisexual						
Gay/Lesbian						
Identifies with gender assigned at birth						
Does not identify with gender assigned at birth						
Unknown						
Total						

D: Veteran Status

	Well Qualified		Qualified		Total	
	N	%	N	%	N	%
Veteran						
Non-veteran						
Unknown						
Total						

E: Disability Status

	Well Qualified		Qualified		Total	
	N	%	N	%	N	%
Disabled						
Non-disabled						
Unknown						
Total						

