



## Judicial Evaluation – Toward De Facto Merit Selection?

By better educating and motivating the electorate, the ISBA and other bar groups can reduce the influence of special interests on judicial elections.

**A**mong the important functions the ISBA performs, one of the most important is its involvement in the judicial evaluation process. During my term, I hope to improve the process and strengthen our role.

### The importance of the role of bar associations

During my over 31 years of practice, there has been an increase in the quality of our state court bench. This is probably due to a number of factors, including a concerted effort to assign circuit court judges according to their experience and aptitude.

But it is critical that the best and the brightest continue to be chosen and retained for the important, and increasingly demanding, role of judge. This is where the “rubber meets the road” in our system of justice. Without a quality bench, the bar cannot do its job properly, and the “customers” of the system – the litigants – are not well served. Moreover, even the perception that judges may be subject to the influence of special interests who spend money on judicial elections undermines the system of justice.

Practicing lawyers have the most day-in, day-out contact with judges, and with lawyers who aspire to be judges. They are in the best position to provide objective information about their qualifications.

As a result, the bar association’s work in gathering and disseminating this information is critical to an informed decision by the “electorate,” i.e., the public with respect to supreme, appellate, and full circuit judges – and full circuit judges with respect to the appointment of associate judges. It is also important in helping to temper the impact of special interests on the outcome of judicial elections.

### The ISBA’s role

The ISBA justifiably spends consid-

erable resources in this effort. Outside Cook County, ISBA informs the electorate using two methods.

The first is the judicial advisory poll, administered by the JAP Committee to ISBA members in the applicable circuit or district and to other lawyers who request to participate based on personal knowledge of the candidate. The polling is conducted on all candidates for judicial election/retention and, upon request of chief judges or the supreme court, for appointment of judges. In several areas in the state, the ISBA conducts polling jointly with local county bars.

The second is the judicial evaluation, performed by ISBA’s Judicial Evaluations Committee (outside Cook County). The evaluations committee conducts comprehensive investigations and interviews of candidates for election/retention to the supreme and appellate courts, using a process similar to the one in Cook County, which is described below.

The hardworking committees that administer these important projects work closely with the judiciary. In fact, approximately half of the members of ISBA’s Judicial Advisory Polls Committee are judges.

In Cook County, the ISBA collaborates as part of the Alliance of Bar Associations for Judicial Screening with a number of other bar groups to investigate and evaluate candidates for election, appointment, and retention to the circuit and appellate courts. The Alliance is currently composed of 10 bar associations,<sup>1</sup> including the ISBA.

Joining forces with the Alliance provides many benefits, including one-step participation for the greater convenience of judicial candidates and the sharing of resources among the constituent bar associations in conducting the time-consuming investigations and interviews required for a fair evaluation process.

The Alliance issues a lengthy stan-

dardized questionnaire to candidates, which candidates fill out and return. The Alliance then assigns trained volunteer lawyers (generally two for each judge) to investigate the judges. The investigators are required to contact references and do other factual research (including going beyond sources on the questionnaire) to get pertinent information.

The results of the investigation are

**Unless ratings are communicated effectively, they lose their impact and the work that goes into them is lost.**

disseminated to the attorneys who then interview the candidates in person. There is a rigorously enforced policy on confidentiality. After the interview, each of the constituent bar associations individually discusses and separately rates the candidate.

It is important that the process be fair and impartial to candidates. The ISBA, and the Alliance, are sensitive to any criticism or suggestions in this regard, and consistently re-evaluate their procedures with this in mind.

### How effective is the process?

The judicial evaluation process is not without critics. Some charge that despite the bar’s extensive work, it does not have sufficient impact, and voters are unable to process the information provided, particularly in Cook County where scores of

1. The other current members of the Alliance include the Asian-American Bar Association, Black Women Lawyers Association of Greater Chicago, Chicago Council of Lawyers, Cook County Bar Association, Decalogue Society of Lawyers, Hellenic Bar Association, Lesbian and Gay Bar Association of Chicago, Puerto Rican Bar Association of Illinois, and Women’s Bar Association of Illinois.

candidates may be on the ballot.

Some of this criticism is unwarranted. The bar associations' work *does* have an impact.

One example is in retention elections. Every six years, full circuit judges must run for retention and receive a minimum of 60 percent "yes" votes of those voting to retain their seats. By a large margin, most judges are justifiably rated qualified and retain their positions.

Critics complain that those (very few) judges who are uniformly rated not qualified by the Alliance members in Cook County are nevertheless routinely retained by a 60 percent or greater margin. The critics ignore the fact, however, that the percentage of "yes" votes is generally significantly lower for those few judges with "not qualified" ratings, and that this does have an impact.

No one likes to get bad grades. And I would expect that those very few judges who receive a low approval rating reflect upon their performance and strive to

improve it.

On the other hand, there is no question the process can be improved. I have a three-point plan for Cook County.

First, we should combine the resources of all the major bars in Cook County that rate judges. There is good news in this regard – the Chicago Bar Association, the largest of the Cook County bars not part of the Alliance, has recently agreed to participate with the Alliance for the next judicial retention election in 2008.

Second, we should work toward a more unified rating by the Alliance, rather than having each constituent bar association issue its own ratings. This would provide a simpler, less diffuse, less confusing message to voters. Again, good news – the Alliance and the CBA are planning to issue a unified rating in the 2008 retention elections in those instances where all of the constituent bars agree on the rating for a particular judge.

Third, we should communicate rat-

ings to the electorate more effectively. Unless the message is delivered effectively, it loses its impact, and the extensive work that precedes it is wasted. The Alliance and the CBA are discussing various means to accomplish that goal.

### **De facto merit selection?**

The issue of merit selection of judges, as opposed to popular election, has been debated extensively over the course of the last 30 years, and undoubtedly well before that. The ISBA is on record as supporting a merit selection system in concept.

I have serious doubts that such a system will ever be legislated, at least in my lifetime. But to the extent that the bar associations have an even greater impact on the electorate, we can help blunt the impact of special interests in judicial elections and move toward a de facto system of merit selection in Illinois. ■

Reprinted from the *Illinois Bar Journal*,  
Vol. 95 #9, September 2007.  
Copyright by the Illinois State Bar Association.  
[www.isba.org](http://www.isba.org)