

## NOMINATION AND CREDENTIALING PROCESS

1. The College accepts nominations from September 1st to February 1st. Nomination forms are available on the website or if requested, by email. The application is a two-part form - one for the nominee to complete and one for the nominators to complete. Each of the two required nominators must complete their own form and statement in support of the nominee. Nominations can be emailed or sent via mail and may contain photocopied signatures.

2. The February 1<sup>st</sup> deadline for nominations is strictly enforced; however, there will be occasions when the deadline falls on a weekend. If this is the case, the deadline automatically becomes 5:00 pm (et) on the following Monday. The Board may consider other extenuating circumstances for extending the deadline on a case by case basis.

3. The Board of Governors has appointed Circuit Credentials Committees (CCC) to complete due diligence on all nominees. These Committees follow the pattern of the Federal Circuits. (The 9th Circuit has been divided into two committees, North and South, because of size and geographic distance.) A Canadian Credentials Committee will be responsible for all Canadian applications. The job of these committees is to determine which candidates should be recommended for membership. Committees will review reference letters and Fellows comments, following up on all information for verification purposes, if necessary.

4. Completed nominations for each Circuit are emailed to all members of the CCC. In addition, the following Word formatted documents will be emailed shortly after the nominations are sent: a model diligence letter, reference reply form, and nominee evaluation form. This last form explains the importance of the ranking system in the evaluation and selection.

5. Committees have approximately twelve weeks to complete their task. Recommendations are to be returned during late April (specific date is determined each year) using the nominee evaluation form.

6. The nominee evaluation form is an essential part of the credentialing process. The committee should complete a form for each candidate in their circuit and rate the candidate as "highly qualified," "qualified," "not qualified" or "unable to respond," accompanied by an explanation. Although the Board no longer requires ranking of highly qualified candidates, the ranking of candidates who are rated "qualified" should be done separately in order of the Committee's preference.

Please provide an in-depth narrative. It is imperative that all recommendations, particularly negative recommendations, be appropriately supported. Committee members not in agreement with a committee recommendation should feel free to submit any concerns or questions they believe have not been resolved, either with the circuit report or as a separate mailing, addressed to the College's Executive Director. If you wish, you may submit a cover letter with these materials outlining the recommendations of your committee; however, this letter does not relieve you from completing and returning a Nominee Evaluation Form for each candidate. Applications without a Nominee Evaluation Form will not be forwarded to the Board Credentials Committee (BCC) for final review.

7. A list of candidates from every circuit is emailed to all Fellows, soliciting comments on the nominees. Fellows are asked to forward their comments directly to the circuit chairperson whose committee is evaluating the candidate.

8. After receiving the CCC recommendations, copies are sent to members of the Board Credentials Committee. All applications, references, recommendations and related materials are reviewed at a meeting of the BCC, and a recommended list of new candidates is compiled. Circuit Chairs are invited to join this meeting, via Zoom or conference call, to discuss their candidates with the BCC.

9. A full Board of Governors' meeting takes place in June where the list of recommended candidates is presented to the Board. A formal vote confirms the election of these candidates.

10. Letters to the newly elected Fellows are sent out following the formal vote of the Board of Governors and include the membership package.

11. If, for any reason, the Board of Governors is unable to reach a consensus on a candidate, and this candidate requires additional diligence by the circuit credentials committee responsible, the announcement of all approved candidates will be delayed until resolution of the candidate(s).

12. Candidates who are not elected to membership are deferred for either one year, three years or five years. A letter is sent to nominators explaining the situation and advising them as to when their candidate can be re-nominated. Individuals who are re-nominated in subsequent years do not receive priority consideration.

13. An email letter will be sent to the Circuit Credentials Committee chairs advising them of the decisions of the Board shortly after letters are mailed to the newly elected Fellows.

14. Notification of the decision of the Board is made by letter to the newly elected Fellow from the Board only. Inquiries as to the Board's decision will not be honored until such time as the notification letters have been mailed and receipt expected. A list of the new Fellows will also be posted on the College's website and an email will be sent out to all Fellows approximately ten days after the letters of congratulations have been mailed.

**Credentials Committee Resources: Reference Table**

Timeline for 2021 Review	<b>Attached as Tab 1</b>
BCC Liaisons to Credentials Committee	<p>With any questions or concerns, it is suggested that the first phone call be to our Executive Director, Susan Wan. Susan can either answer the question or point you in the right direction. In addition, the Board Credentials Committee has also designated liaisons to each circuit committee, who will be checking in with committee chairs during the process. Any confidential issues concerning a nominee should be directed to a member of this committee. Below is a breakdown of committee assignments</p> <p><a href="#">Arlene Steinfield</a> - 1<sup>st</sup>, 5<sup>th</sup> and 10<sup>th</sup> Circuits  <a href="#">Yona Rozen</a> - 2<sup>nd</sup>, 3<sup>rd</sup> and 11<sup>th</sup> Circuits  <a href="#">Cynthia Nance</a> - 8<sup>th</sup>, 9<sup>th</sup> North, 9<sup>th</sup> South Circuits  <a href="#">Lori Ecker</a> - 6<sup>th</sup>, 7<sup>th</sup> and Canadian Circuits  <a href="#">John Higgins</a> - DC and 4<sup>th</sup> Circuits</p>
Change in Practice Area	<p>CCCs should evaluate a candidate based on their entire body of work, not only the practice area they currently identify with. A recent change in practice area should not be the sole reason for a candidate to be denied admission. Similarly, CCCs should not disqualify a candidate who has recently relocated to a new circuit and is not well known yet. The full career, in all locations where the candidate has practiced and the groups therein, should be reviewed.</p>
Clerkships	<p>Clerkships early in a candidate’s career (first three years of practice) will count towards the twenty-year requirement. However, career law clerks will have to establish their labor and employment law practice as stated in the bylaws and as requested in the Nominee Part B – Advocate Form, question no. 9.</p>
Committee Member Involvement with Candidate Application (reference, nominator or colleague)	<p>If a Circuit Credentials Committee (CCC) member is a nominator, the member can participate in discussions regarding the nominee, but must recuse him/herself from the final vote. If the CCC member is a law partner or colleague in the same organization as the nominee, the member must recues him/herself from the discussion as well as the final vote. If a CCC member is listed</p>

	as a reference for a nominee, the member can participate in both the discussion and final vote for the applicant.
Committee responsibility for confirming 20-year rule	Instead of asking circuit credentials committee to do additional research to confirm that nominees do in fact meet the 20 years in practice rule, the responsibility should be placed on the nominee to verify they are in fact eligible. As such, the newly amended bylaw language regarding membership will be included in question no. 9 of the Nominee form.
Designating Adversarial references on Nominee form	Nominees will be asked to identify specifically the adversarial references listed on their application, in an effort to more easily confirm that this requirement has been met.
Diversity of references and with regards to a candidate	<p>Often we are faced with the question of considering the spectrum of references provided and the weight that a committee should place on the variety of such references. Although the application form states that "where appropriate a broad array of references, including regular adversaries, is strongly encouraged," committees should keep in mind that there will be exceptions to this standard, specifically academics, sitting judges, arbitrators, government officials and in-house counsel, whose exposure to opponents or court cases may not be as common. This lack of exposure to opponents or major litigation experience is not in and of itself reason for a recommendation against membership. References should be of a professional nature as opposed to a social nature, and where appropriate inclusive of opponents, judges, arbitrators and clients.</p> <p>Circuit Credentials Committees are advised to review each candidate thoroughly and determine who is highly qualified in accordance with the information available. In an effort to have one standard of diversity, and not thirteen, the issue of diversity will be resolved at the Board Credentials level. Please use this same guideline when reviewing multiple candidates from the same law firm. If desired, you can point this fact out in a cover letter or on the recommendation form.</p>
Due Process Procedure	A due process procedure for addressing allegations of disqualifying nominee conduct is <b>attached as Tab 2.</b>

<p>Following up with non-responsive reference</p>	<p>With respect to the reference reply forms received for a particular nominee, if, two weeks before the final recommendation is due, a minimum of four references have not been received, and follow up phone calls have been made, a CCC member will call both nominators and they will be advised that their nominee's selection is in danger due to the lack of responses from the listed references. If, when the final committee vote is taken, the nominee does not have the minimum number of references, the nominee evaluation form will be completed as "Unable to Respond". The candidate will receive a letter stating that he/she may re-apply the following year; however, if references do not respond timely the following year, he/she will not be allowed to re-apply for three years.</p>
<p>Government Attorneys: review guidelines</p>	<p>As you evaluate a government attorney candidate, please consider whether the individual is either setting or effectively recommending agency or departmental policy in the promulgating of rules, regulations and programs and/or deciding whether to bring litigation and the manner in which that litigation is conducted. In carrying out those responsibilities, the nominee should have earned the respect of the public and the community which the Agency or governmental department services by: 1) engaging in principled decision-making that takes into account the facts, the law, and parties' position; 2) reaching out to the public by being accessible to individual members of the bar, speaking at labor-management employment conferences, participating in bar or association projects and similar initiatives; 3) and effectively facilitating the resolution of conflict by actively and creatively pursuing settlement at appropriate stages or by bringing parties together so that accommodations can be made.</p>
<p>In-House Counsel: review guidelines</p>	<p>As you evaluate an in-house counsel candidate, the usual litigation criteria would be applicable, to the extent that the nominee is involved in litigation. Further, as to being a student of the law, in-house counsel would more likely be involved in state bar activities or be associated with other organizations that have a legal or community service orientation. In addition, eligible in-house counsel would be people who have taken the lead on projects such as diversity which could impact the activities of corporations, associations or labor organizations.</p>
<p>Level of Accomplishment</p>	<p>The ideal candidate for the College is a person who has not only earned the respect of clients, opposing counsel and the courts, but who also shows evidence of a preeminent practice reputation</p>

	<p>such as published writings by way of articles, law journals and learned treatises; speaking engagements at well recognized forums on issues involving labor and employment law; leadership by service as officers or other positions of responsibility within organizations of the Bar as well as external community organizations; academic achievement such as professorships in the area of labor and employment law, or other similar teaching assignments; engaging in significant pro bono activities, as well as community activities within their local, regional or national communities; or distinguished government service in the area of labor and employment law. It is important to remember that each candidate should be judged on this standard, and not how they compare to the other candidates in their circuit.</p>
<p>Level of Service and Scholarship</p>	<p>A candidate should not be penalized for activities that are deemed business development or firm promotion, nor should the motivation of a candidate’s service be assessed by the CCC. Blogs, podcasts and firm email advisories all intend to educate. Before any such writing is to be discounted, CCCs should obtain copies of the work product and evaluate the quality of such work, regardless of the media or audience.</p>
<p>References and Nominee Evaluation Forms</p>	<p>The required number of references that a candidate is asked to provide will now be eight (8), with at least one of the two adversarial references coming from an opposing counsel in a legal proceeding. References should include attorneys who can address skill and conduct from the past five years, but no longer than ten years. Circuit Chairs are also asked to ensure that Nominee Evaluation Forms completed by individual committee members all contain descriptive comments and that the format is consistent on every form.</p>
<p>References from Judges</p>	<p>The <i>Guide of Judiciary Policy</i> addresses concerns that some have raised regarding the use of sitting judges as references is <b>attached as Tab 3</b>.</p>
<p>Verbal comments re nominee</p>	<p>The solicitation of comments from our Fellows regarding candidates is a very important aspect of the election process and should be given serious consideration. However, when reviewing a candidate's materials, please keep in mind that any verbal comments which directly contradict a written reference from the same person cannot be accepted. As we acknowledge a Fellow's right to remain confidential in his/her remarks, we are unable to accept any contradiction of those remarks. It is also important to remember that written reference letters are confidential, and</p>

	<p>any copies not returned to the College offices with the Nominee Evaluation forms should be destroyed at the completion of your Circuit Credentials Committee duties.</p> <p>The CCC chair or committee members should advise the Fellow that any claims will need to be verified in order to be considered during the nominee deliberation and strongly urge the Fellow to assist the committee to this end. Please stress that confidentiality is a top priority. Committees should not consider anonymous accusations or claims that cannot be verified or confirmed.</p>
<p>Wait times for Deferrals – 1, 3 and 5 years</p>	<p><u>1 Year Wait</u> – This is given to a nominee who would have been deemed highly qualified but for certain limited shortcomings such as incomplete or inadequate reference response, diversity of references, listing of all scholarship and leadership activities. These are considered to be curable items for the nominee and the nominators may resubmit the nomination the following year, subject to doing so timely.</p> <p><u>3 Year Wait</u> – This is given to a nominee whose shortcomings with respect to qualifications required for admission are not considered likely to be curable in one year. By way of illustration and not limitation, such shortcomings may be the absence of sufficient scholarship in the field of Labor and Employment Law; the absence of demonstrated leadership; questions related to the nominee’s civility and professionalism, all resulting in the absence of a consensus among the Board of Governors that the nominee is highly qualified. The three-year wait will provide a nominee the opportunity to build a stronger resume. Following the three-year wait, the nominee may be re-nominated.</p> <p><u>5 Year Wait</u> – This is given to a nominee wherein serious concerns have arisen regarding the nominee’s professionalism and civility; where there has been a substantiated allegation of disqualifying behavior; or, where, in the view of the Board, the nominee does not now have nor will likely develop the qualifications in order to be considered for admission. The wait for re-nomination is five years. The Board believes that no nominee should be told they can never apply again, but a five-year wait infers that it is highly unlikely a nominee will be admitted as a Fellow.</p>

Principles and Criteria for Overturning Recommendations of Circuit Credentials Committees or Board Credentials Committee	<b>Attached as Tab 4.</b>
Procedural Changes in the Credentialing Process (re Overturning Committee Recommendations)	<b>Attached as Tab 5.</b>