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SENATE BILL NO. 1481

Offered January 17, 2017

A BILL to amend the Code of Virginia by adding in Chapter 39 of Title 54.1 an article numbered 8, consisting of sections numbered 54.1-3945, 54.1-3946, and 54.1-3947, relating to the Judicial Candidate Evaluation Committee; Virginia State Bar.

Patron—Sturtevant

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 39 of Title 54.1 an article numbered 8, consisting of sections numbered 54.1-3945, 54.1-3946, and 54.1-3947, as follows:

Article 8.

*Judicial Candidate Evaluation Committee.***§ 54.1-3945. Judicial Candidate Evaluation Committee.**

The Virginia State Bar Judicial Candidate Evaluation Committee (JCEC or Committee) is established as an advisory committee in the judicial branch of state government for the purpose of evaluating judicial candidates.

The Committee shall consist of 13 active lawyer members, one from each of the 10 disciplinary districts of the Virginia State Bar (VSB) and three from the Commonwealth at large, elected to staggered three-year terms by the State Bar Council on recommendation of the nominating committee. Committee members are not eligible to serve a second consecutive three-year term, but former members may serve as members pro tempore. The VSB's Executive Committee shall assign a representative to serve as a liaison to the JCEC as a nonvoting member. The chairman shall be selected by the Committee each year.

Where one or more currently serving members of the Committee are not available to participate in the process of developing and making recommendations for a particular judicial vacancy, the chair of the Committee may appoint, as members pro tempore, a like number of past members of the Committee who are willing and able to serve during the process of developing and making recommendations for that judicial vacancy.

§ 54.1-3946. Investigation and evaluation process.

When a judicial vacancy occurs on the Supreme Court of Virginia, the Court of Appeals of Virginia, the State Corporation Commission, the Federal District Courts in Virginia, or a Virginia seat on the United States Court of Appeals for the Fourth Circuit, the JCEC shall consider and, where appropriate, seek candidates. A member of the JCEC from a particular VSB disciplinary district shall be assigned to investigate any and all candidates from that district. The VSB's Executive Committee shall be notified of the candidates' names once they are determined. Sources will be assured of confidentiality by the investigating Committee member, who shall report orally to the Committee on his overall findings and conclusions as to each candidate without attribution. After judicial candidates are investigated by individual members of the Committee, the Committee shall act as a whole to conduct personal interviews with candidates and engage in any other additional investigation deemed necessary.

Following investigation and personal interviews of the candidates, the Committee shall vote on the qualifications of all candidates. Any candidate who fails to receive an affirmative vote from a simple majority of those voting shall not be reported by the Committee. All candidates who receive an affirmative vote from a simple majority of those voting shall be deemed and reported as "Qualified." The Committee shall thereafter conduct a second vote to determine, by simple majority of those voting, whether any of the candidates deemed qualified possesses a level of qualification and distinction sufficient to merit the designation "Highly Qualified."

At the conclusion of the Committee's deliberations and voting, the Committee shall prepare an executive summary of the reasons for its actions with respect to each candidate being designated as either Qualified or Highly Qualified. The vote count for each candidate's evaluation of Qualified or Highly Qualified shall be included in the executive summary of each candidate.

The Committee's designations and executive summaries shall be provided to the VSB's Executive Committee and shall be deemed approved by the VSB's Executive Committee unless it takes action otherwise. The JCEC's designations and executive summaries shall thereafter be forwarded to the appointing authority in writing.

§ 54.1-3947. Evaluation criteria and considerations.

The evaluation shall follow the criteria and considerations provided in this section, and the

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59 *Committee member conducting the investigation shall seek information relating to the integrity,*
60 *professional competence, and judicial temperament of the candidate as follows:*

61 *1. Integrity is self-defining. The candidate's character and general reputation in the legal community*
62 *are investigated, as are his industry and diligence.*

63 *2. Professional competence encompasses such qualities as intellectual capacity, judgment, writing*
64 *and analytical ability, knowledge of the law, and breadth of professional experience.*

65 *3. In evaluating the experience of a candidate, substantial courtroom and trial experience as a*
66 *lawyer or a trial judge is important for candidates for both the appellate and the trial courts. Additional*
67 *experience that is similar to in-court trial work, such as appearing before or serving on administrative*
68 *agencies or arbitration boards or teaching trial advocacy or other clinical law school courses, shall be*
69 *considered by the Committee in evaluating a candidate's trial experience. Significant evidence of*
70 *distinguished accomplishment in the field of law may compensate for a candidate's lack of substantial*
71 *courtroom experience.*

72 *4. Recognizing that an appellate judge deals primarily with records, briefs, appellate advocates, and*
73 *colleagues in contrast to witnesses, parties, jurors, live testimony, and the theater of the courtroom,*
74 *somewhat less emphasis may be placed on the importance of trial experience as a qualification for the*
75 *appellate courts. Although scholarly qualities are necessary for the trial courts, appellate court*
76 *candidates should possess an especially high degree of scholarship and academic talent and an unusual*
77 *degree of overall excellence. The ability to write lucidly and persuasively, to harmonize a body of law,*
78 *and to give guidance to the trial courts for future cases are considered in the evaluation of candidates*
79 *for the appellate courts.*

80 *5. Civic activities and public service are valuable experiences, but such activity and service are not a*
81 *substitute for significant experience in the practice of law, whether that experience is in the private or*
82 *public sector.*

83 *6. In investigating judicial temperament, the candidate's compassion, decisiveness, open-mindedness,*
84 *courtesy, patience, freedom from bias, and commitment to equal justice under the law shall be*
85 *considered.*