

MCBA President's Message: Why do we do it?

by Susan Schultz Laluk

Published: November 10th, 2010



Susan Schultz Laluk

"Nothing is worth doing unless the consequences may be serious."

— George Bernard Shaw

During the first four months of my term as president of the Monroe County Bar Association, no issue has taken up more time or generated more controversy than the MCBA's evaluation of judicial candidates.

Our process has been criticized through the years as gender biased, racially biased and politically biased. Individual members of the committee have been accused of personal animus. People supportive of candidates who do poorly in the survey think we should not use a survey. People supportive of candidates who do well in the survey implore us to publish the raw survey results and abolish the rest of the process.

Some people think we should use only two ratings, qualified and non-qualified. (We currently also rate some candidates as highly qualified.) Others have suggested that we add a rating regarding sensitivity to issues regarding gender and minorities. (Both the Greater Rochester Association for Women Attorneys and the Rochester Black Bar

Association have sensitivity ratings.)

Many have told us that we shouldn't rate judicial candidates at all.

I recently received an e-mail from a concerned local citizen (a non-attorney, but a professional who regularly deals with attorneys and who professed tremendous respect for members of the bar).

"I wonder where you get your mandate to be a self-appointed arbiter of an individual's qualifications to hold public office. This is the citizen voters' job not the Monroe County Bar Association," he wrote.

It is a fair question and he is, of course, correct on the second point. Ultimately, the voters in New York state elect our state and local judges.

There is a wide variety of methods for choosing judges in the United States. Federal judges are appointed. About two-thirds of the states elect their judges in some fashion, including retention elections, in which incumbent judges do not run against an opponent, but remain in office if they receive a majority vote. In non-partisan elections, candidates are listed on the ballot with no party affiliation. Other states use gubernatorial appointment, commission selection, election by a state legislature, or some combination of various methods. I will not attempt here to address the issue of elections versus other ways to select our judiciary.

I will attempt to address why the MCBA evaluates judicial candidates. Most U.S. bar associations in metropolitan areas conduct judicial candidate evaluations similar to the MCBA's, as do many state and specialty bars. The American Bar Association rates federal judicial candidates, including U.S. Supreme Court nominees. Both of our local specialty bars, GRAWA and the RBBA, also rate the judicial candidates.

We send a survey to all practicing attorneys in Monroe County to solicit the experiences of hundreds of attorneys who certify they have had sufficient professional contact with the candidates to form a knowledgeable opinion of them. The survey asks for information about the knowledge, skills and temperament the attorneys have said are most important in judges. Our Judiciary Committee, which is politically balanced and diverse in gender, race and areas of practice expertise, bases its final ratings on the survey results, the candidates' responses to an extensive questionnaire, writing samples, interviews with references and in-person interviews by the committee. When there is an appeal, the board of trustees convenes to hear the candidates and a legal representative.

We do not endorse candidates. We do not rate candidates against each other, but against a set of standards that include experience, legal analysis, judicial temperament and demeanor, ethics and integrity, communication skills and sensitivity to discrimination. Often we rate multiple candidates for the same office as qualified or highly qualified.

The evaluation process is intended to be a public service, to provide voters with more information on the candidates' qualifications for judicial office. The MCBA encourages the public to assess the candidates independently and make up their own minds come election day (all of our press releases announcing our results include that language). Ultimately, the decision is in the voters' hands. Candidates who we rate as qualified or highly qualified sometimes lose. Candidates who we rate as unqualified sometimes win and go on to distinguished judicial careers.

Because judicial candidates are restricted in the kind of statements they can make during their campaigns, many voters often do not have much information on which to base a decision other than party affiliation. Our ratings are based on the experiences of hundreds of attorneys in our community who have worked with or observed the

candidates, and our committee's extensive research. Our judicial ratings, along with those from GRAWA and RBBA, and endorsements from various other organizations, offer additional information to voters regarding candidates' qualifications for judicial office.

A recent situation illustrates the need to provide the public with as much information as possible.

Appellate Division, Fourth Department Presiding Justice Henry Scudder ran for re-election this fall. Initially he was unopposed, but ended up running against Steven J. Lynch, an attorney who lives and practices Downstate. Lynch originally was the Independence Party candidate for state attorney general. He wanted to vacate the line so that it could go to the Democratic candidate, but the only way to withdraw was to die, move out of state, commit a felony or run for judicial office. Choosing the least drastic option, Lynch ran against Judge Scudder, since candidates are not required to reside in the district.

Judge Scudder was rated highly qualified by the MCBA, GRAWA and the RBBA. Because of Lynch's late entry into the race, he was not rated by the local bars, and he did not campaign actively. Judge Scudder won re-election, but despite his being highly rated and well respected by the local bar, his opponent garnered more than 128,000 votes. I suspect many of those voters did not know anything about Judge Scudder or Lynch other than their party affiliations. The highly qualified rating of Judge Scudder by the three local bars helped to provide more information to the voters.

There is no perfect evaluation system. Ask anyone who has watched the Olympics, or who's received a grade in school that was lower than they thought they deserved. Judicial candidate evaluations represent a big commitment of the MCBA's limited resources: money, staff time and, most significantly, volunteer time.

Hundreds of local attorneys take the time to respond to the survey. Our judiciary committee or board of trustees members each year spend countless hours ensuring due process to each of the candidates. We take our responsibility for conducting a fair and thorough evaluation very seriously.

President-elect Bryan Hetherington is now leading a task force that will recommend further improvements in our process to the board of trustees. Why do we do it? The MCBA is committed to improving the quality and accessibility of justice in our community, and a qualified judiciary is crucial to that mission. If not us, then who?

Susan Schultz Laluk is president of the Monroe County Bar Association and a partner at Hiscock & Barclay LLP, where she practices corporate, intellectual property and employment law. She can be reached at slaluk@hblaw.com.

Complete URL: <http://nydailyrecord.com/blog/2010/11/10/mcba-presidents-message-why-do-we-do-it/>