

MCBA President's Message: MCBA to substitute educational activities for judicial ratings process

By: Mark J. Moretti © April 12, 2017



On April 5, after extensive and careful consideration and debate, the MCBA Board of Trustees voted to convert its judicial rating process into educational efforts designed to inform the public about candidates running for judicial office. The decision came after review of a report prepared by a Blue Ribbon Task Force appointed by me in June 2016 to review the process, to make recommendations as to how to make the judicial evaluation process better and to opine on whether an alternative approach

may be more appropriate. The MCBA Judiciary Committee, the MCBA Bench Bar Committee and the MCBA Litigation Section also provided their comments to the Board of Trustees after reviewing the Task Force Report.

The Blue Ribbon Task Force had been appointed because of the expressed misgivings about certain procedural aspects of the process and the fact that many judicial candidates were simply not participating in it (some at the urging of their political party). That made it clear to me that we needed to include the political parties in the work of the task force so that they would have confidence in the results and encourage their candidates to participate. There have been task forces in the past that have recommended changes in the process, but this was the first one that included direct participation by the political parties.

The Blue Ribbon Task Force consisted of two former Appellate Division judges (one Republican, one Democrat), a former chief administrative judge, a representative of each of the political parties (Republican, Democratic and Conservative), a former GRAWA president and two former MCBA presidents. The primary driver of the decision to create the task force was that the rating process, as it currently exists, was nearly universally recognized as not fulfilling the purpose for which it was set up — i.e., assisting the political parties in choosing judicial candidates and assisting the public in voting for candidates who were deemed highly qualified or at least qualified by a bipartisan committee of trial lawyers charged with evaluating them.

Initially, it was clear that, with revisions or not, the political parties would continue to make their decisions on candidates prior to and without the input of the MCBA judicial rating process. More importantly, an examination of past election results seemed to show that voters selected candidates based largely on political party, ethnic background, television advertising and other factors rather than on MCBA ratings. Nor could anyone reasonably foresee that the rating process would have any future meaningful effect on how the public votes for judicial candidates (at least in the near future).

At the same time, the judicial rating process had considerable costs associated with it. Those costs included not only the attorney and staff time devoted to interviewing the candidates, speaking to lawyers who had cases with the candidates, and evaluating opinions and briefs written by the candidates, but also the fact that an increasing number of judges and attorneys have become alienated from the bar association as a result of those ratings and of the evaluation process as a whole.

The task force recommended 12 potential changes to the current rating process. However, by more than a two-thirds majority, the task force recommended that the Board of Trustees eliminate the rating system even if the 12 amendments were adopted. The task force further recommended that the MCBA convert the program to an educational one designed to explore the candidate's background, reasons for running, judicial philosophy, and other relevant factors.

In making this decision, the Board of Trustees recognized that some may want to continue the current system and will be disappointed, but in the end the Board of Trustees decided this educational emphasis, particularly if done with media coverage, would have a more concrete impact on how the public views the candidates rather than our current one- or two-word label and would be in the best interest of the MCBA, its members, and the public.

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