

**LOREN MILLER BAR ASSOCIATION
JUDICIAL EVALUATION COMMITTEE
RULES AND PROCEDURES**

1. DEFINITIONS

- 1.1. **“Board”** means the Loren Miller Bar Association Executive Board.
- 1.2. **“Candidate”** means any person seeking a rating from the Judicial Evaluation Committee either for election or appointment to judicial office.
- 1.3. **“Chair”** means the Chair of the Judicial Evaluation Committee.
- 1.4. **“Committee”** means the Judicial Evaluation Committee.
- 1.5. **“LMBA”** means the Loren Miller Bar Association.
- 1.6. **“Members”** means a member of the Judicial Evaluation Committee.

2. AUTHORIZATION & PURPOSE

- 2.1. **Authority.** The Committee exists and functions under the Bylaws of LMBA. LMBA created the Committee to carry out the rating and other functions set forth below.
- 2.2. **Purpose.** The primary purpose of the Committee is to improve access to justice and equal treatment in the judicial system for African Americans and other minorities by rating Candidates based on merit. The rating process is to be transparent and fair, and in fulfilling its purpose, the Committee shall disseminate its Candidate ratings as set forth below.

3. ORGANIZATION OF COMMITTEE

- 3.1. **Composition.** The Committee shall be composed of no fewer than seven (7) members. All Members must be members in good standing of the bar of the highest court in any of the fifty (50) states or the District of Columbia during their term of service; provided, however, at the discretion of the Chair and with the approval of the Board, up to two member of the Committee may be non-lawyers, and may include one law student. Each person appointed as a Member shall be a Member for all purposes. All Members must be active members of LMBA.
- 3.2. **Chair.** LMBA's President shall appoint the Chair of the Committee. The Chair should have at least one year's experience serving on the Committee or, if no person with such experience is available, should have similar experience with some other judicial evaluation process.
- 3.3. **Committee Diversity.** The Chair shall consult with the Board to ensure the appointment of diverse and representative Committee members. The Chair shall make every effort to ensure that the Committee's Members represent a broad cross section of the legal profession in terms of substantive practice areas, size of practice, and employment sector. Each year the Chair shall submit a roster of Committee Members to the Board for review.
- 3.4. **Co-Chair/Vice-Chair.** The Chair may appoint a Co-Chair or Vice-Chair, whose duties shall consist of assisting the Chair as may be necessary or required. The Vice-Chair shall have full authority to act as Chair of the Committee in the absence of the Chair.
- 3.5. **Secretary.** The Chair may appoint a Secretary, whose duties shall consist of preparing the minutes of each meeting; the minutes shall include nothing other than the number of Members present for the rating, the names of the Candidates rated by the Committee, the ratings given, and any other formal decisions by the Committee.

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- 3.6. **Board members.** When necessary members of the Board may serve on the Committee, but must recuse themselves for any vote by the Board as described in paragraph 4.5.
- 3.7. **Vacancies.** At least once a year, the Committee shall review the Committee membership and shall endeavor to fill any vacancies.

4. RIGHTS & DUTIES OF COMMITTEE MEMBERS

- 4.1. **Term.** Each Member shall serve on the Committee for a term of one (1) year, which runs from June 1 to May 31. No Member shall serve more than four (4) consecutive terms.
- 4.2. **Attendance.** The Chair shall advise all Members of the need to devote adequate time to the work of the Committee, including the need to attend Committee meetings.
- 4.3. **Support or Endorsement of Candidates.** Committee members shall not personally endorse, campaign for, or contribute financially to any Candidate in a judicial race for which the Committee has rated or could rate a Candidate. Committee members shall not make any advance commitment with respect to a Candidate that might affect their impartiality (or appearance of impartiality). This provision applies equally to situations in which the Candidate is seeking appointment by the Governor to a judicial vacancy.
- 4.4. **Seeking Appointment or Election.** Members shall be ineligible to seek or receive a rating from the Committee for a period of one (1) year following the Member's resignation from the Committee or expiration of the Member's term, whichever shall occur first.
- 4.5. **Conflict of Interests.** Members shall not participate in the interview or vote on the rating of a Candidate if:
 - 4.5.1. the Candidate is in the same firm as the Committee member;

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- 4.5.2. the Candidate is in a business relationship with the Committee member, or is in a space sharing relationship with the Committee member;
 - 4.5.3. the Committee member is directly engaged in current or ongoing litigation or negotiations as opposing party or counsel for a client in a proceeding involving the Candidate;
 - 4.5.4. the Committee member is related to the Candidate by blood or marriage, or is the domestic partner of the Candidate;
 - 4.5.5. the Committee member has been sanctioned by, has filed a Bar complaint against, or has had a Bar complaint filed against him or her by the Candidate;
 - 4.5.6. the Committee member has a personal bias or prejudice concerning the Candidate that may materially affect the member's ability to render a fair and impartial rating and evaluation;
 - 4.5.7. the Committee member has personally endorsed, campaigned for, or contributed financially to the Candidate's election or appointment to the office that is the subject of the rating; or
 - 4.5.8. under a reasonable person standard, the Committee member's participation in the interview or vote creates an actual or perceived conflict of interest or causes concerns about the appearance of fairness.
 - 4.5.9. Notwithstanding the foregoing, all Committee members shall be entitled to provide background information about a Candidate.
- 4.6. **Removal.** The Committee may terminate or replace any Member for failure to devote adequate time to the work of the Committee, for failure to attend Committee meetings, or for any other good cause. Any such removal or termination requires a 2/3 vote by the Committee.

5. RECORDS

- 5.1. The Committee records shall be limited to a single official file to be maintained by the Chair, in either paper or electronic form. The file shall be kept confidential and shall include the following material only:
 - 5.1.1. The Uniform Judicial Evaluation Questionnaire furnished by each Candidate, or such other written information as the Committee requests from the Candidate, or such other information the Chairperson(s) or Committee deems appropriate. The questionnaires shall be retained for three years.
 - 5.1.2. Minutes of Committee meetings, as described in paragraph 3.5, which shall be retained for 10 years.
 - 5.1.3. The rating letter or other correspondence that notifies the candidate of his rating or in which the candidate indicates he or she would like to appeal the rating shall be retained for 10 years.
 - 5.1.4. Any evaluation notes taken by Members shall be retained with the official file for 14 calendar days. Upon expiration of this period, the Chair shall destroy any such notes.
- 5.2. **Access to Records.** Access to the items listed above paragraphs 5.1.1 through 5.1.3 shall be determined by the Chair, after consultation with the Committee. Items listed in paragraph 5.1.4 shall remain confidential.

6. SECRECY AND FIDELITY

- 6.1. Members shall pledge to absolute secrecy in connection with all matters that come before the Committee. The proceedings of the Committee shall be kept in strictest confidence. No information obtained by the Committee or which comes before the Committee shall be divulged by any Member, except to the

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Board Committee when appropriate. Only the LMBA President or the Chair may advise candidates of the results of the Committee's ratings.

- 6.2. Members shall accept appointment to the Committee only upon giving their express written pledge acknowledging that they have read these guidelines and know their contents and agree to be bound by them, and that the member is aware that:
 - A. Proceedings of the Committee are to be kept confidential;
 - B. Members are not eligible to seek and currently are not seeking election to any judicial vacancy and the Member is not currently serving as a pro tem judge;
 - C. Members shall adhere to the limitations of candidate evaluations as described below.
- 6.3. The members shall not make any advance commitment respecting any relationship with an applicant or candidate which might affect their impartiality.

7. MATERIALS

- 7.1. **Information Given to Candidates.** The Committee shall provide Candidates with an electronic copy of these Rules and Procedures.
- 7.2. **Information Provided by Candidates.** Each Candidate shall submit a copy of the Uniform Judicial Evaluation Questionnaire, or similar form with detailed background information, résumé and any other information the candidate wishes to submit to the Committee at least 14 calendar days before the Committee meets to consider his or her qualifications and rating.
- 7.3. **Material Changes.** Candidates shall be required to notify the Committee promptly if there are any material changes in the responses of the Candidate

to the questionnaire between the time the questionnaire is completed by the Candidate and the expiration of the rating.

- 7.4. **List of Possible Questions.** The Committee shall develop a non-exhaustive list of questions that may be used during Candidate interviews. This list of questions should be reviewed by the Committee and the Board periodically and revised as necessary. The Committee shall retain discretion at all times over the manner of questioning and questions to be posed during Candidate interviews.

8. EVALUATION PROCESS

- 8.1. **Triggering the Process.** The evaluation process begins when a Candidate submits a written rating request to the Committee. Once a request is received, the Chair shall send the Candidate a letter stating the Candidate's interview date, time, and location. The letter shall also request that the Candidate provide the Committee with an *electronic* copy of the Candidate's Uniform Judicial Evaluation Questionnaire and other relevant materials at least 14 calendar days before the Candidate's interview.
- 8.2. **Failure to Provide Timely Materials.** The letter shall also state that failure to provide complete information may result in either the Committee declining to interview the Candidate or an adverse impact on the Candidate's rating.
- 8.3. **Reference Checks.** The Committee should not rely entirely on what it learns from the Candidate directly and may conduct a discrete outside inquiry, including but not limited to contacting references listed by the Candidate in the Candidate's completed Judicial Candidate Evaluation Questionnaire.
- 8.4. **Reference Checkers.** The Chair shall divide the references to be checked equitably among the Members. If a Member is unable to complete his or her

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assigned reference checks, he or she shall immediately notify the Chair so that the Chair may reassign the reference checks to another member.

- 8.5. **Number of References to be Checked.** The Committee should make reasonable efforts to conduct a reference check from the references listed in a Candidate's questionnaire, but it may not always be possible to check every reference given the limited resources and volunteer nature of the Committee. No person should be contacted by the Committee if a Candidate who is only seeking appointment has requested that such contact not be made.
- 8.6. **Timing of Reference Check.** When practicable, the Committee should check references before a Candidate's interview. Members should be mindful of the need to devote adequate attention to the reference checking process sufficiently in advance of the scheduled interview to ensure the adequate and thorough performance of the reference checking function.
- 8.7. **Reference Check Protocol.** When interviewing references, Members shall:
- 8.7.1. Identify him or herself and state that he or she is calling on behalf of LMBA;
 - 8.7.2. Indicate the Candidate for whom he or she is calling and advise the reference that all information will be kept confidential within the Committee;
 - 8.7.3. Ask for specific, factual examples regarding a Candidate, rather than just relying on the reference's opinion;
 - 8.7.4. If the reference reports relevant information from another source, the Member should make every effort to contact that source directly.
- 8.8. **Other Sources of Information.** The Committee need not rely entirely on what it learns from the Candidate or from the references listed by the Candidate in the Judicial Candidate Evaluation Questionnaire. Committee

members may contact or review other sources to obtain information about the Candidate, as they deem appropriate. Other sources may include but are not limited to contacts with people who have personal knowledge of the Candidate (whether or not listed by the Candidate as references), public records, electronic searches, professional discipline organizations, and judicial evaluation surveys. Any persons contacted should be assured that the source of the information provided by them will be kept strictly confidential.

8.9. **Consideration of Matters Not Proved.** In the course of the work of the Committee, the Committee may be confronted with a variety of allegations about Candidates that the Committee is not equipped to either prove or disprove. Such allegations may come to the Committee second or third hand or from sources who wish not to be identified. The Committee, guided by a Co-Chair, shall exercise its judgment and discretion in dealing with such allegations in a manner appropriate under the circumstances, with due regard given to the sources of the information, the presence or lack of support for the allegations, the nature of the judicial position to be filled, other information derived from or about the Candidate, the response, if any, of the Candidate to direct or indirect questions posed by Committee members, and considerations of due process and fundamental fairness. The Committee should not dwell on any particular subject, including allegations that may be difficult to prove, during the interview. A Candidate should be given adequate time during the interview to address other issues.

8.10. **Candidate Interviews.** Each Candidate shall be interviewed by the Committee, except where such interview is not required by these Rules and Procedures. During the interview with the Candidate, Committee members may choose to ask questions about information or issues so identified. The interviews should proceed as follows:

8.10.1. **Quorum.** A quorum of at least four (4) Members must be present for each Candidate interview, including the Chair, Co-Chair, or the

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Vice Chair. In no event shall an evaluation proceed with fewer than four (4) Members present.

- 8.10.2. **Pre-interview Considerations.** Before or after the interview with the Candidate, the reference checkers for the Candidate shall present to the Committee all information gathered about the Candidate. Members shall convey to the Committee any additional information that may be of concern to the Committee. Sensitive or questionable matters regarding a Candidate shall be raised among the Committee before the Candidate's interview. If the matter will be considered in the rating, at the Chair's discretion the Candidate should be allowed to address those issues.
- 8.10.3. **Convening the Interview.** The Chair shall convene each interview unless the Chair is absent or has recused him or herself in whole or in part from the interview, in which case the Co-Chair or Vice-Chair shall convene the interview.
- 8.10.4. **Candidate Statement.** The interview shall begin with the Candidate being offered an opportunity to make a brief opening statement, and shall conclude with the Candidate being offered the opportunity to make a brief closing statement.
- 8.10.5. **Time Limit.** The committee will take the time necessary, given the constraints of each meeting session, to ensure that each candidate is provided a full and fair opportunity to respond to questions and provide meaningful and importation information.
- 8.10.6. **Modifications.** The Committee may modify the interview and consideration format as may be reasonable or necessary in a particular case.

8.10.7. **Number of Interviews.** Absent unusual circumstances, as deemed by the Chair, no Candidate shall be interview more than once for the same position within three (3) years.

8.11. **Evaluation Discussion.** Discussion and voting should occur immediately after the interview. Each Member shall give their reference reports immediately after the Candidate's interview. The Committee should engage in frank and open discussion to fully evaluate the Candidate. Any opinions and information shared in this discussion shall be kept in strict confidentiality within the Committee.

9. RATINGS

9.1. **Basic Rating Criteria.** The following criteria are the individual characteristics that LMBA values in Candidates for the bench. The criteria are not hierarchical, exclusive, nor listed in any relative order, and the Committee assesses these factors based on information gathered about the Candidate from materials submitted by the Candidate, the Candidate's references, and other relevant sources of information. The criteria shall be published on the LMBA website. When rating Candidates, the Committee shall consider whether the Candidate has:

- 9.1.1. maturity, integrity, courtesy, intellectual honesty, fairness, good judgment, curiosity, and common sense;
- 9.1.2. a demonstrated commitment to equal justice under the law, and fairness and open-mindedness with sensitivity to and respect for all persons, regardless of race, color, gender, sexual orientation, national origin, ancestry, religion, political ideology, creed, age, marital status, or physical or mental handicap, disability, or impairment. This commitment and sensitivity can be evidenced by the individual's involvement in community affairs and activities, professional practice, and personal and professional background;

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- 9.1.3. the courage and ability to make difficult decisions under stress;
- 9.1.4. the competence, ability, and experience to manage pretrial and trial proceedings, including administrative proceedings, arbitrations, settlement conferences, and commissioner or magistrate responsibilities. It should include an ability to address diverse issues, weigh conflicting testimony, apply the law to the facts, understand the dynamics of the trial or conflict resolution process, and command respect from attorneys, litigants, and other participants in the process;
- 9.1.5. the ability to work with a wide variety of subject matters;
- 9.1.6. demonstrated excellence in legal ability and practice;
- 9.1.7. demonstrated capacity for hard work;
- 9.1.8. the potential for ongoing professional development and demonstrated leadership in the profession;
- 9.1.9. the ability to communicate clearly and effectively, orally and in writing, with all participants in the judicial process and other branches of government;
- 9.1.10. interest and commitment to working with other judges, court administrators, and other branches of government to improve the administration of justice;
- 9.1.11. a demeanor conducive to all participants in legal proceedings before the Candidate being treated with fairness and respect, and receiving an opportunity to be heard fairly and without prejudice;
- 9.1.12. a knowledge of issues facing the African American community and a willingness to confront these issues without bias or prejudice;

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- 9.1.13. contributed to the African American community by improving access to justice through African American-specific public service, educational activities, or promoting and encouraging the advancement of African American lawyers in the legal profession;
 - 9.1.14. demonstrated commitment to public service through professional or community activities, or through *pro bono* work.
- 9.2. **Rating Categories.** After considering the above criteria, the committee shall rate the Candidate based on the following scale:
- 9.2.1. **Not Qualified** – A Candidate is “not qualified” if the Candidate fails to meet the criteria above in paragraph 9.1 to a degree sufficient to be considered minimally qualified for the judicial position sought.
 - 9.2.2. **Adequate** – A Candidate is “adequate” if the Candidate satisfies the criteria above in paragraph 9.1 to a degree sufficient to consider the Candidate minimally qualified for the judicial position sought, but the Candidate fails to demonstrate knowledge of issues facing the African American community and a willingness to confront these issues without bias or prejudice, or the Candidate has failed to contribute to the African American community by improving access to justice through African American-specific public service, educational activities, or promoting and encouraging the advancement of African American lawyers in the legal profession.
 - 9.2.3. **Qualified** – A Candidate is “qualified” if the Candidate satisfies the criteria above in paragraph 9.1 to a degree sufficient to consider the Candidate qualified for the judicial position sought.
 - 9.2.4. **Well Qualified**—A Candidate is “well qualified” if the Candidate satisfies some, but not all, of the criteria in paragraph 9.1 to a degree necessary to be considered well qualified for the position.

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Factors distinguishing a well-qualified Candidate from a qualified one may include, but are not limited to, a particular strength in one or more of the non-exclusive criteria identified above or a commitment to educating oneself about issues of particular concern to the African American community.

9.2.5. **Exceptionally Well Qualified**—A Candidate may be rated “exceptionally well qualified” if the Candidate satisfies a majority of the criteria above in paragraph 9.1 and, in addition, demonstrates knowledge and understanding of issues facing the African American community, and demonstrates outstanding accomplishments, which may include one or more of the following:

- A. Exceptional accomplishments in the Candidate’s professional practice or judicial career;
- B. Significant contributions to public service through community service or pro bono work;
- C. Exceptional experience in litigation, judicial, or administrative areas;
- D. Outstanding personal and professional integrity and a commitment to fairness in the administration of justice;
- E. A history of service which has specifically aided the African American community by improving access to justice for the community, educating the public about African American issues, or serving as a mentor or aiding in the professional development of African American attorneys.

9.2.6. **No Rating** – A Candidate may receive a “no rating” when the Committee has insufficient information to rate or for any other reason the Committee deems appropriate.

- 9.2.7. **Did Not Seek Rating** – A Candidate may receive a “did not seek rating” when she or he fails to participate in the rating process.

9.3. Rating Procedures.

- 9.3.1. **Who May Vote.** Only Members present throughout a Candidate’s interview and the discussion concerning reference checks may vote on the Candidate’s rating. A vote may only be taken if there are four more Members present for the vote and who are not disqualified or recused from voting.
- 9.3.2. **Voting Process.** To obtain a rating, a Candidate must receive affirmative votes from the majority of Members present. The voting on the rating of a Candidate shall begin with the “Qualified” rating. If the Candidate receives the required number of votes for the “Qualified” rating, voting shall proceed through the “Well Qualified” and “Exceptionally Well Qualified” ratings as long as the Candidate continues to receive the required number of votes to be rated in the category. The Candidate shall receive the highest rating for which the Candidate received the required number of votes to be rated. If the Candidate did not receive the required number of votes to receive the “Qualified” rating, the Committee shall rate the Candidate “Not Qualified”; provided, however, that in lieu of rating a Candidate, the Committee by majority vote shall have the authority to place a Candidate in the Categories “No Rating” or “Did Not Seek Rating.”
- 9.3.3. **Authority to Table or Continue Process.** If the Chair determines that the Committee for any reason does not have adequate information to credibly evaluate and rate a Candidate, the rating process, including the interview and vote, may be tabled or continued. The decision of a Chair to table or continue the rating process should only be undertaken after consulting with the

Committee, and after consideration of any relevant timing concerns and the requirement in these Rules and Procedures that only members present for a Candidate's interview may vote on the Candidate's rating, if an interview is required.

9.3.4. **Duration of Rating.** Except as specifically set forth in these Rules and Procedures, a Candidate's rating for a particular position shall remain in effect for a period of three (3) years from its issuance. The issuance of a new rating will supersede and make ineffective any prior rating, and the use of the prior rating shall be prohibited. Under extraordinary circumstances, as described in Section 11 below, a prior rating and its use may be reconsidered and/or suspended. Where a rating is ineffective or its use is suspended or prohibited, it shall not be used in campaign materials or for any purposes whatsoever.

9.4. **Board Ratification.** All ratings must be ratified by the Board. No rating may be forwarded by the Committee to the LMBA Executive Committee without the support of a majority of the members evaluating a particular candidate or applicant.

10. PUBLICATION OF RATINGS

10.1. **Notice to the Candidate.** Candidates shall be notified by letter as soon as possible of the results of the rating process.

10.2. **Notice to Public.** LMBA may post Candidate ratings on www.LMBA.net any time after the Candidate has received notification as described above. The ratings for Candidates for judicial appointment may only be posted on www.LMBA.net with written authorization from such Candidates to the Chair. If a Candidate for judicial appointment later seeks election during the effectiveness of the Committee's rating, the Committee may post such Candidate's rating on www.LMBA.net without further notice to the Candidate

seeking appointment. The Committee may also provide Candidate ratings to www.votingforjudges.org or other similar organizations that compile judicial candidate information.

- 10.3. **Notice to Appointing Authority.** The Committee may forward Candidate rating to any judicial appointing authority.
- 10.4. **No Rationale for Votes to Be Provided.** The rating process employed by the Committee is necessarily a subjective one, and individual members may have different reasons for voting in a particular way with respect to Candidates. With respect to some Candidates, there may be one or more reasons justifying a particular rating that can be clearly articulated. In many cases, however, the reasons justifying a Candidate's rating are many in number or cannot be clearly articulated on behalf of all Committee members, and the rating process does not require that Committee members disclose their votes or rationale for those votes. For these reasons, and to preserve the confidentiality of the rating process, no disclosure is to be made of the votes taken by the Committee or the substance of discussions by the Committee.

11. RECONSIDERATION

- 11.1. **How Initiated.** A Candidate may request reconsideration of a rating by written request to the Committee or the Board within seventy-two (72) hours of receiving a rating notification letter. The Candidate's request should state the grounds for reconsideration and include any additional documentation supporting the request. The reconsideration process may also be triggered by a written complaint received by the Board or the Committee if supported by allegations that would call into question a Candidate's prior rating.
- 11.2. **Grounds for Reconsideration.** Grounds for re-evaluation of a rating include, but are not limited to:

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- 11.2.1. The discovery of information not available to the Committee at the time of the original interview which might have a tendency to affect the Committee's rating, had the information been available at the time of the interview;
 - 11.2.2. Criminal, unethical, or inappropriate conduct reflecting on the Candidate's fitness to serve on the bench that was not known at the time of the original interview;
 - 11.2.3. Discovery of misrepresentations, inaccuracies or discrepancies in the documents submitted to the Committee that were not apparent at the time of the original interview.
- 11.3. **Reconsideration Procedures.** The procedures for conducting any re-evaluation shall be as follows
- 11.3.1. **Initial Review.** The Committee shall review the request for reconsideration and determine if reconsideration is warranted. The Committee shall notify the Board of all requests for reconsideration.
 - 11.3.2. **Reconsideration Unwarranted.** If upon a simple majority vote the Committee determines that reconsideration is unwarranted, the Chair shall report to the Board and to the requesting Candidate, or other complaining party, that reconsideration will not be granted.
 - 11.3.3. **Reconsideration Warranted.** If upon a simple majority vote the Committee determines that reconsideration is warranted, then the Committee shall:
 - A. Inform the Candidate that the Committee is reconsidering their rating and provide the Candidate with sufficient notice of the reasons for the reevaluation.
 - B. Invite the requesting Candidate to submit further documentation supporting the request to reconsider and

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provide the opportunity to appear before the Committee.
Any in-person meeting shall be strictly confidential.

- C. Provide notice to the Members who participated in the Candidate's original rating and invite those prior members to provide their input.
- D. The Committee shall advise the Board of the results of the reconsideration and the Committee's recommendation for the new rating, if any. The Board shall make any final determination on whether to adopt the Committee's recommendation or maintain the original rating.
- E. The Chair shall inform the Candidate of the Board's decision.
- F. Any change to a Candidate's rating shall be published in accordance with the normal Rules and Procedures herein. As with all other ratings, the reasons for any change in a Candidate's rating shall not be made public to anyone. The Board may—in its sole discretion—publish the change of rating and the reasons therefore, if exceptional circumstances warrant such publication.

11.3.4. Publication of Rating Suspended During Appeal. The Candidate's initial rating shall be suspended pending reconsideration and the Candidate's rating shall not be made public until the reconsideration process is complete.