

# JUDGING THE JUDGES

## Q&A with David L. Brown of the ABA Standing Committee on the Federal Judiciary



"It's a small contribution I can make as a private citizen to bettering the system. It is easy to think it's all politics. But this committee never talks politics. Nobody votes politically, ever. It's purely competency and temperament. It's refreshing, and contrary to what others might read or hear about."

— David L. Brown

As high-profile confirmation hearings for U.S. Supreme Court nominees play out in Washington, D.C., Iowa attorneys may not realize the important role a prominent Iowa attorney plays in this process. David L. Brown, partner at Hansen, McClintock & Riley in Des Moines, serves as vice chair for the American Bar Association Standing Committee on the Federal Judiciary. This committee evaluates the professional

qualifications of Article III nominees to the Supreme Court, the circuit courts of appeals, the district courts and the Court of International Trade. Brown estimates that in addition to evaluating most of the current federal bench in Iowa over the last 10 years, he has interviewed over 100 federal judges around the country. Brown discusses his role on this committee in the following Q&A exchange. ▶

**Q:** How and when did you get involved in the ABA Standing Committee on the Federal Judiciary?

**A:** In 2010 I was appointed to the ABA Standing Committee on the Federal Judiciary by then ABA President Steve Zach from Miami, Florida.

**Q:** What is the role of this committee in evaluating judicial nominees?

**A:** The committee evaluates each judicial nominee in terms of competency, temperament and integrity. These critiques are included in the committee's rating for a nominee which may be "Not Qualified," "Qualified" or "Well Qualified." In the event of a "Not Qualified" recommendation, there is a second evaluation which is always done by a different evaluator.

**Q:** Why does the committee provide this public service?

**A:** The committee provides this public service as the only non-partisan peer review the nominee will ever receive. Each member of the committee performs approximately 1,500 hours per year pro bono as a contribution to our system of justice and the independence of our federal judiciary.

**Q:** How does the committee perform its evaluations?

**A:** The evaluation for a specific nominee is assigned to a committee member. These committee members contact approximately 300 members of the bench, bar and academia who may have knowledge of the nominee. Each of the people who know the nominee is contacted and interviewed on a confidential basis. The lead evaluator then interviews the nominee for several hours before authoring a report and providing recommendation to the full committee for a rating by the full committee. The rating is then provided to the White House, the Department of Justice, the United States Senate and the nominee.

### Evaluations of nominees to the Supreme Court of the United States

For more than 60 years, the ABA Standing Committee on the Federal Judiciary has evaluated the professional qualifications of nominees to the Supreme Court by conducting extensive peer reviews of each nominee's integrity, professional competence and judicial temperament. In conducting its evaluations, the standing committee focuses solely on a nominee's professional qualifications. It does not take into consideration a nominee's philosophy, political affiliation or ideology.

While these criteria – integrity, professional competence and judicial temperament – are the basis for the standing committee's evaluation of all federal court nominees, the committee's investigations of Supreme Court nominees are particularly rigorous. The significance, range and complexity of the issues considered by the Supreme Court demand that nominees appointed to the court be of exceptional ability. The standing committee conducts the most extensive nationwide peer review possible on the premise that the highest court in the land requires a lawyer or judge with exceptional professional qualifications.

The standing committee utilizes three rating categories in reporting the result of its evaluation of a nominee to the Supreme Court: "Well Qualified," "Qualified," and "Not Qualified."

"Only two Iowa lawyers have had the privilege of serving on this committee since its inception in 1953, and those appointed are chosen because they embody the values of competence, integrity and a strong devotion to public service. We Iowans should be proud of David L. Brown and grateful for the work he and the committee do to protect our principals of liberty and justice for We the People."

— Jane Lorentzen, Iowa ABA Delegate

**Q:** Some of these appointments become controversial and very political. How does the committee keep politics out of its evaluation process?

**A:** The committee is non-partisan and does not consider politics in its evaluation. The president of the United States asks the committee to do the non-partisan peer review as an assistance to the process. This has been done since Dwight D. Eisenhower was president in the 1950s.

**Q:** Do you attend confirmation hearings for these nominees? Have you gotten to personally testify on their behalf?

**A:** We attend confirmation hearings. We are also able to view the confirmation hearings on the U.S. Senate website and routinely do this. So far, I have not had the privilege of testifying on behalf of a nominee although I have helped prepare ABA witnesses for testimony, most recently this fall. I also had the privilege of attending the recent Senate Hearing of United States Supreme Court Justice Amy Coney Barrett.

**Q:** What is the most interesting thing that has happened or that you have learned through your experience with this committee?

**A:** I have had the opportunity to evaluate many judicial nominees in the 11 federal circuit courts of appeal. My profound respect for the federal judicial system nationally is unsurpassed and my respect for the men and women who have served with me on the ABA Standing Committee on the Federal Judiciary is limitless. These are some of the finest lawyers that I have ever had occasion to meet and work with on any legal matter. It is truly an honor and a privilege to serve with them and be a part of the federal nomination process. I am grateful for this opportunity.



## ABA "Advocate of the Month" Spotlight

David L. Brown was honored as the American Bar Association's Advocate of the Month for October 2020. Iowa Sen. Chuck Grassley publicly recognized Brown at a recent Judiciary Committee hearing as a hard-working member of the legal profession for over 40 years.

A long time ABA member, Brown serves as vice chair for the ABA Standing Committee on the Federal Judiciary, as a delegate for the state of Iowa in the ABA House of Delegates and as a former member of the ABA Board of Governors.

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