



CBA-CJI Diversity on the Bench Coalition

2024 REPORT AND RECOMMENDATIONS

Nominating Commissions

Foreword

The Coalition’s work this year has been extremely rewarding. Though we began 2024 with several goals and multiple working groups ready to charge ahead, it became apparent that before we could offer solutions, we had to meaningfully understand the issues.

Conducting the Nominating Commission Focus Groups was enlightening. The experience left us with a deep respect for the work commissioners do—completely unpaid—to help ensure our courts have the best judges. It also revealed commissioners need additional support, and that there may be ways to increase both the fairness and, equally important, the perception of fairness in the judicial selection process.

In preparing this report, we sought to capture the views of a broad sampling of commissioners. We encouraged participants to share openly, ensuring a safe and confidential environment for their voices.

The many volunteer hours that went into the focus groups and this report were fueled by a deep desire to understand the inner workings of the commissioners’ process and where it might be improved to ensure full representation on the bench. Now that we have a better sense of those issues, we offer targeted recommendations.

In Gratitude and Service,

Hon. Cynthia D. Mares

Hon. Maritza Dominguez Braswell

Diversity on the Bench Coalition

Co-Chairs, 2024

CBA-CJI DIVERSITY ON THE BENCH COALITION 2024 REPORT AND RECOMMENDATIONS: NOMINATING COMMISSIONS

Introduction and Executive Summary

The Diversity on the Bench Coalition (“Coalition”) is a collaboration between the Colorado Bar Association and the Colorado Judicial Institute. The Coalition works to ensure the state judiciary in Colorado reflects the diverse backgrounds and experiences of the entire population across the state. The current chairs are U.S. Magistrate Judge Maritza Dominguez Braswell and Hon. Cynthia D. Mares. More information about the Coalition is available [here](#).

In January and May 2024, the Coalition conducted a series of Focus Groups with former members of judicial nominating commissions from around the State. The goal was to understand their experiences, thereby gaining greater insight into the judicial candidate review and

selection process. Questions focused on what has been working well for the nominating commissions, what needs improvement, and what opportunities there might be to better facilitate the recruitment, nomination, and selection of high-quality judicial candidates who will fairly reflect the communities they will serve.

The Coalition interviewed 16 former commissioners in a series of four approximately 90-minute sessions. All commissioners reported they enjoyed their service, but they also identified concerns. Some of the most common concerns were:

- A lack of a consistent (or any) on-boarding process for commissioners;
- A lack of knowledge about existing resources for commissioners;

- No process for non-lawyer commissioners to learn about the essential traits and qualifications needed to be a judge;
- Inconsistent support (meaning some reported support, some reported some support, and others reported no support) from the Chief Judge of the district and from *ex officio* Justices of the Supreme Court;
- Small numbers of diverse candidates in rural districts;
- A lack of information about the demographics of the district and the court. Commissioners reported that if they had this information, it would help them make more informed decisions; and
- Confusion about whether commissioners were permitted to speak with people outside the commission in their work.

The purpose of this report is two-fold: first, to support and enhance the work of our commissions, and second, to promote the selection of qualified judicial candidates that reflect the population they serve. The report provides an overview of the Coalition's process for collecting this information, a summary of the Coalition's findings, and a set of recommendations to the Governor, the Attorney General, the Chief Justice of the Supreme Court, the President of the Senate, and the Speaker of the House.

The list of recommendations is not meant to be exhaustive, but rather the start of a larger discussion. The Coalition thanks all stakeholders for their commitment to the State of Colorado, and for the opportunity to be a part of this important work.

FOCUS GROUP MAKEUP AND PROCEDURE

Focus Group Makeup. The Coalition selected retired commissioners from a list provided by the Director of Colorado Boards and Commissions. The Coalition wanted to include participants from urban and rural areas. Participants voluntarily responded to email requests from former Coalition Chair Judge Gary Jackson. Some were individuals that Judge Jackson met during the Coalition's "spotlight panels" in Denver, Jefferson, Arapahoe, El Paso and Denver counties, during his four years as Chair of the Coalition.

The focus groups consisted of 16 former commissioners from various judicial nominating commissions. The former commissioners served at different times from 2011-2023. They included former commissioners from major metropolitan districts, rural districts on the Eastern Plains and the High Country, and from the Supreme Court nominating commission. Ten were current or former attorneys, and six were laypersons. Collectively, the focus group participants offered nearly 100 years of commission experience.

Focus Group Procedure. The purpose of the interviews was to understand commissioners' perspectives on their work with nominating commissions. In particular, the Coalition was interested in whether they believed they have access to the resources, tools, and training they need to recommend qualified judicial candidates to the Governor. Prior to the interviews, each commissioner received a list of questions that would be covered.

The first two interviews were conducted on January 29-30, 2024. The interviewers were the Hon. Gary M. Jackson of Denver, the Hon. Cynthia D. Mares of Arapahoe County, and Bill Scarpato, an attorney based in Denver.

The third and fourth interviews were conducted on May 29-30, 2024. The interviewers were the Hon. Gary M. Jackson, the Hon. Cynthia D. Mares and the Hon. Maritza Braswell.

Each focus group was asked the same basic set of questions, which focused on several topics:

- 1. General questions**—what the commissioners felt went well or what could have been done better on their commissions;
- 2. Commission process questions** — how the commissioners interviewed judicial candidates;
- 3. Questions about resources** — whether commissioners accessed existing resources like the Judicial Department’s Nominating Commission Handbook and YouTube video introduction for incoming commissioners, and if so, what their impressions were;
- 4. Diversity questions** — whether commissioners were well-equipped to evaluate and recommend qualified diverse judicial candidates; and

- 5. Concluding questions** — an opportunity to report or discuss anything else about nominating commission work.

The complete set of questions is attached to this report.

At the outset of the Focus Groups, Hon. Gary M. Jackson introduced himself and the other interviewers and received permission from the commissioners to record their responses. Each interview session lasted approximately 90 minutes and was video recorded. More detailed synopses of these recorded sessions are available for review.

RESULTS

The former commissioners were enthusiastic participants in the focus groups and expressed their contentment in serving as commissioners. Most participants felt the commissions broadly represented the communities of their judicial districts and were focused on recommending qualified, diverse candidates.

Although some commissioners noted the absence of any commissioners of color on their commission, no commissioner expressed concern over gender disparity.

The commissioners raised several issues concerning the functioning of their commissions during their service:

Onboarding assistance and commissioner education are not provided consistently. The most widely raised issues concerned commissioners’ preparation to serve. Many commissioners had not reviewed, and in fact were not aware of, the Judicial Department’s Handbook for Nominating

Commissions, the Department’s YouTube video, or the Judicial Diversity Outreach Annual Legislative Report (which has been prepared from 2019-24).¹ At least one non-lawyer expressed his concern that he was not adequately educated on the duties and responsibilities of being a judge, and that he did not feel comfortable contacting a judge to discuss the background and credentials of a judicial candidate. In addition, most commissioners commented that they were not provided with the demographic breakdown of their districts, leaving them unable to make well-informed decisions about whether and to what extent their district bench was representative of the population.

Some commissioners reported not receiving any information at all about the commission process until their first meeting to fill a judicial vacancy.

As a result, several commissioners expressed the need for better onboarding and education before beginning their work. They expressed their desire

NOTE

1. While many Commissioners served before these resources had been created, this response was true of the Commissioners who served after their creation as well.

to have at least one meeting of the entire commission prior to a judicial vacancy announcement to help commissioners get to know each other and establish a procedure for their selection process. Many commissioners also endorsed implementing a “buddy system” to pair incoming and experienced commissioners.

***Ex officio* Justices and Chief Judges provide helpful but sometimes inconsistent support to the commissions.**

Several commissioners also discussed their experience working with *ex officio* Justices of the Supreme Court and with the Chief Judge of their district. Many commissioners said it was helpful when their Chief Judge met with them to discuss the needs of the district and what qualifications the ideal candidate should have. But there appeared to be no uniformity in Chief Judges having meetings with commissioners before the beginning of a selection process, or, where there were meetings, in what information Chief Judges provided. In addition, some members of rural districts claimed that the *ex officio* Justice’s travel schedule hindered the interview and vetting process. (Some commissioners also believed that 20-minute interviews were insufficient as a general matter.) They also reported significant variability in the information the *ex officio* Justice would provide to facilitate the selection process.

The candidate pool is not deep enough in rural districts. The major difference between rural and urban commissions was the number of judicial candidates that applied for a vacancy. In the rural ar-

reas there were very few, if any, diverse applicants applying, especially Latinx where the Latinx population is high. Because of the lack of candidates in rural communities, the question was raised whether a commissioner had the added responsibility of recruitment for future vacancies.

Another difference was that in rural communities’ commissioners often personally knew candidates’ background outside of the selection process. This could prove helpful in some instances but could also open the door to unfair or biased considerations.

Commissioners were frequently confused about who they could talk to about the selection process.

Several commissioners said they were not sure who they could speak to about the process. Among other items raised, some commissioners were unclear whether they could speak with:

- Their Chief Judge or another jurist about the qualifications of a particular applicant, or about what the court was looking for in an applicant generally;
- member of the public who reached out claiming to have information about an applicant; or
- An applicant who was not selected for submission to the Governor about why they were not selected.

Overall, the participating commissioners were proud of their service and took their work very seriously. However, it was clear they also felt under-resourced, sometimes ill-equipped, and often confused in the work they performed.

RECOMMENDATIONS

In light of the feedback received during the Focus Groups, the Coalition offers the following recommendations:

1. Implement an exit interview for outgoing commissioners. The focus groups were highly informa-

tive about the inner workings of the commissions and what could be done to improve their functionality. To build on this investigation, the Coalition believes it would be beneficial to implement a standing exit-interview process for outgoing commissioners.

To that end, the Coalition has prepared a draft online survey (attached) to distribute to outgoing commissioners when their service ends. This would provide stakeholders with a broader, longer-term dataset that could inform future reforms. The Coalition would be willing to review survey results and issue periodic recommendations.

2. Develop a robust onboarding process. It appears incoming commissioners receive varying information about what is expected of them, if they receive any information at all. The Coalition stands ready to work with other stakeholders to develop a uniform onboarding process and set of materials, with some variation to account for differences across districts. Among other things, this could potentially include:

- A welcome letter from the chief judge of the relevant district that provides an overview of resources for commissioners; identifies key information related to the current judicial work/needs of the district; and explains the appropriate and inappropriate lines of communication by commissioners during the selection process;
- An orientation presented by a respected person, such as a senior commissioner or a judicial officer, that discusses the commission process, expectations, what commissioners should look for in a well-qualified judicial applicant (the content could be uniform across all districts, with room for some customization by the presenter);
- Written materials that provide demographics of the district and of the bench (pulled from the Judicial Diversity Outreach Annual Legislative Report).²
- A meet-and-greet among the current members of the relevant commission.

This onboarding information would be most helpful if the commissioners received it immediately before the review and selection process. Commissioners reported receiving information when they were first selected, but it was of little help when they were finally called to service months or even years later. The Coalition welcomes the opportunity to discuss how these efforts can be coordinated at the appropriate time (e.g., an “Onboarding Checklist” for the chair, or for the chief judge in the district, or both).

3. Start a buddy system. Several commissioners said they would have benefited from being formally paired with a more experienced commissioner when they began their service. The Coalition believes this could be a straightforward and effective way of helping commissioners hit the ground running at the beginning of their terms. Though a buddy in the same district could help identify the unique aspects of the process in that district, the Coalition recognizes this may not always be possible (especially in smaller communities with limited volunteers). Buddies from neighboring or similarly situated districts could also be helpful and would be a good “outside” resource in the event a commissioner is confused about something but feels nervous about sharing it with their own group.

4. Publish expectations for how chief judges and the Justices can assist the commissions. While commissioners expressed appreciation for the assistance of the judicial officers who helped them, that help was not always consistently available. The Coalition therefore recommends written guidance for how Justices and chief judges in each district could aid the commissions.

The written guidance for chief judges could also provide ways for the chief judge in each district to seek support from active and retired judges in their dis-

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trict. For example, a chief judge might ask a small group of judges to each present 20 minutes of content that would be helpful to the commissioners (e.g., “Top Five Skills a Judge Needs for a Criminal Docket” or “What I Wish I Knew Before Joining the Bench” or “The Three Types of Cases We See the Most of in this District”).

The written guidance for chief judges should be specific enough that chief judges have a clear roadmap for providing support to the commissioners. Additionally, the written guidance should be prepared with an eye towards high impact on the commissioners (meaning they learn a lot) and low impact on the court (meaning minimal drain on chief judges, other judicial officers, and court staff time).

5. Develop clear criteria for the position and a short list of questions that every candidate will be asked. During the focus groups, at least one commissioner expressed concern that another commissioner knew a candidate well and was driving much of the discussion about the candidate. To foster the fair selection of high-quality judicial candidates and promote consistency in the operation of the commissions across the state, the Coalition recommends that a committee be formed to develop best practices for the review, interview, and selection of candidates. Best practices would help interrupt implicit or personal biases, maintain objectivity, and increase perceptions of fairness. Potential avenues for discussion could include the creation of a judicial “job description” that could be customized for each judicial district, or the development of 2-4 questions that every candidate is asked in their interview. While it is beyond the scope of this report to offer comprehensive suggestions, the Coalition stands ready to partner with the Governor’s Office and any other stakeholder in this effort. Any group or committee tasked with de-

veloping best practices should include a diverse set of voices and use inclusive criteria.

6. Recruitment. The Focus Groups made clear that rural districts do not have enough qualified judicial applicants. When commissioners from these districts were asked whether they focused on diversity in selecting applicants, several of them responded that they had few or no such applicants to consider.

The Coalition acknowledges the need for a greater pipeline of qualified candidates that reflect the communities they serve. The Coalition also recognizes that recruitment falls outside the duties and responsibilities of commissioners. Therefore, this report does not offer formal recommendations concerning recruitment and pipeline. However, the Coalition collected the following ideas from current judicial officers³:

- Start empowering potential from law schools.
- Engage with middle school and high school students, to get young people interested in the law.
- Be honest/transparent about the hiring process.
- Provide support for diverse attorneys to promote a robust pool of diverse applicants.
- Offer judicial mentors to diverse applicants.
- Recruit diverse judges for active engagement in recruitment of potential candidates.
- Tap into affinity bars and CODACC to recruit and support.

Again, because this report does focus on recruitment and pipeline efforts, these ideas are not developed. However, the Coalition recognizes the importance of pipeline-building and recruitment, and includes these ideas for future discussion, collaboration, and work.

NOTE

3. This information was collected during separate focus groups conducted with judicial officers. The purpose of those groups was to collect information about the retention process. However, the Coalition took the opportunity to also ask for their view on recruitment.

CONCLUSION

The commissioners we met during these focus groups displayed immense pride in what they do. We were inspired by their dedication and deep desire to serve. The Coalition is proud to have given voice to their observations and concerns, and we hope that the findings and recommendations in this report can be the start of productive conversations aimed at positive change in the Nominating Commission process.

We thank the Office of the Governor and the Judicial Department for their support of the Coalition's work. Though the Coalition is an independent body, the Governor's Office and the Judiciary have been excellent partners. They have also displayed a deep commitment to ensuring the recruitment process is inclusive, fair, and aimed at appointing the most qualified candidates across the state. They also share the Coalition's commitment to a bench that reflects the rich and diverse backgrounds of all people in the State of Colorado.

We also extend our deep appreciation to the commissioners who agreed to be interviewed, and to all of Colorado's commissioners for their service to our state. We look forward to continuing the work of ensuring that Colorado's bench fully reflects the communities it serves, and that Coloradans enjoy the highest possible quality of judicial service.

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CONTRIBUTORS

Honorable Cynthia D. Mares, *Judge, 18th Judicial District (Retired)*

Honorable Gary M. Jackson, *Judge, Denver County Court (Retired)*

Honorable Maritza Dominguez Braswell, *U. S. Magistrate Judge District of Colorado, Colorado Springs, Colorado*

V. William Scarpato III, *Attorney, Denver, Colorado*

Nicole Soto Quintero, *Law Clerk for Honorable Maritza Dominguez Braswell, U. S. Magistrate, Judge District of Colorado, Colorado Springs, Colorado*

Meghan Bush, *former Director of Local Bar & Legal Community Relations*

Katrina Silbaq, *Access to Justice Program Coordinator, Colorado & Denver Bar Associations*

DIVERSITY ON THE BENCH COALITION — NOMINATING COMMISSION ONLINE SURVEY QUESTIONS

GENERAL

1. **[1-5 Scale, with 1 being “strongly disagree” and 5 being “strongly agree”]** Do you think your Commission did a good job of selecting qualified candidates who were representative of your judicial district?
2. **[comment box]** What, if anything, do you think your Commission could have done better to select representative and well-qualified judicial candidates?
3. **[1-5 Scale, with 1 being “strongly disagree” and 5 being “strongly agree”]** Do you think there were any unrepresented or underrepresented parts of your community that should have had a voice on the Commission but didn’t?

COMMISSION PROCESS

4. **[1-5 Scale, with 1 being “strongly disagree” and 5 being “strongly agree”]** When you interviewed candidates, did your Commission use a consistent set of criteria and questions with each candidate?
5. **[1-5 Scale, with 1 being “strongly disagree” and 5 being “strongly agree”]** Did your Commission have any official or unofficial list of essential criteria for nominees?
6. **[1-5 Scale, with 1 being “strongly disagree” and 5 being “strongly agree”]** Did your Commission have any list of behaviors, practices, or accomplishments that any judge would need to exhibit during after their first year on the bench?
7. **[1-5 Scale, with 1 being “strongly disagree” and 5 being “strongly agree”]** Did you feel that the length of the interview was sufficient for you to make an informed choice?

RESOURCES FOR COMMISSIONERS

8. **[Yes/No]** When you were on the Commission, did you ever review the Judicial Department’s Nominating Commission Handbook?
 - a. **[IF YES]:**
 - i. **[1-5 Scale, with 1 being “strongly disagree” and 5 being “strongly agree”]** Was that a helpful tool for you?
 - ii. **[comment box]** What changes or additions, if any, do you think should be made to the Handbook?
9. **[Yes/No]** When you were on the Commission, did you ever review the Judicial Department’s Nominating Commission video posted to YouTube?
 - a. **[IF YES]:**
 - i. **[1-5 Scale, with 1 being “strongly disagree” and 5 being “strongly agree”]** Was that a helpful tool for you?
 - ii. **[comment box]** What changes or additions, if any, do you think should be made to the video?
10. **[YES/NO]** Do you think it would be helpful for Commissioners to have short, one-page summaries of topics related to good interviewing and hiring practices?
 - a. **[IF YES]:**
 - i. **[comment box]** What subjects would be most helpful?
11. **[YES/NO]** Were you provided with training, tools, or best practices for a fair and inclusive selection and interview process?

12. **[YES/NO]** Did your Commission have any sort of orientation process for new Commissioners before meeting to interview and select judicial candidates?

a. **[IF YES]**

i. **[1-5 Scale, with 1 being “strongly disagree” and 5 being “strongly agree”]** Was that orientation helpful?

ii. **[comment box]** What did that orientation entail?

b. **[IF NO]**

i. **[1-5 Scale, with 1 being “strongly disagree” and 5 being “strongly agree”]** Do you think a New-Commissioner Orientation would be helpful?

1. **[IF YES] [comment box]** What should that orientation entail?

13. **[YES/NO]** Did your Commission have any sort of “buddy system” or mentoring program to pair new and experienced Commissioners?

a. **[IF YES]**

i. **[1-5 Scale, with 1 being “strongly disagree” and 5 being “strongly agree”]** Was that system/program helpful?

ii. **[comment box]** What did that system/program entail?

b. **[IF NO]**

i. **[1-5 Scale, with 1 being “strongly disagree” and 5 being “strongly agree”]** Do you think a buddy system/mentoring program would be helpful?

1. **[IF YES] [comment box]** What should that system/program entail?

14. **[comment box]** Please describe any other resources or processes that you think would help Commissioners do their jobs well.

DIVERSITY

15. [1-5 Scale, with 1 being “strongly disagree” and 5 being “strongly agree”] Do you believe that your Commission was focused on interviewing and nominating diverse candidates?

CONCLUSION

16. [comment box] Please describe anything else you think we should know to better understand your experience on the Commission.

17. [comment box] Please describe anything else that you think should be done to help improve the work of the Nominating Commissions in Colorado.

18. [comment box] Please describe anything else that you think should be done to improve the diversity of the bench in our State courts.

**THANK YOU FOR YOUR PARTICIPATION
AND FOR YOUR SERVICE TO THE STATE OF COLORADO!**