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INSIGHT

U.S. Circuit and District Court Nominees Who Received a Rating of "Not Qualified" from the American Bar Association: Background and Historical Analysis

Updated November 13, 2017

The process used by the American Bar Association (ABA) to evaluate judicial nominees has, over the years, remained a topic of ongoing interest among Senators during the judicial confirmation process. This CRS Insight provides background information and historical analysis of U.S. circuit and district court nominees who received, from 1953 to the present, a rating of "not qualified" from the Standing Committee on the Federal Judiciary of the ABA. Since 1953, every presidential Administration, except those of George W. Bush and Donald Trump, has sought ABA prenomination evaluations of its prospective U.S. circuit and district court nominees. During the Bush presidency, as well as during the current Administration, the ABA has provided postnomination evaluations of nominees.

The ABA committee, which evaluates all individuals nominated to U.S. circuit and district court judgeships, is made up of 15 lawyers with varied professional experiences and backgrounds. According to the ABA, the evaluation by the committee focuses strictly on a candidate's professional qualifications—specifically, a candidate's integrity, professional competence, and judicial temperament—and does not take into account an individual's philosophy, political affiliation, or ideology (note, however, that some have, at times, disputed this characterization).

In evaluating integrity, according to the committee, it "considers the prospective nominee's character and general reputation in the legal community, as well as the prospective nominee's industry and diligence." In evaluating professional competence, it assesses a prospective nominee's "intellectual capacity, judgment, writing and analytical abilities, knowledge of the law, and breadth of professional experience." And in evaluating judicial temperament the committee considers "the prospective nominee's compassion, decisiveness, open-mindedness, courtesy, patience, freedom from bias, and commitment to equal justice under the law."

As stated above, the ABA, at present, provides postnomination evaluations of individuals nominated to U.S. circuit and district court judgeships. At the conclusion of the evaluation process, each member of the

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ABA committee rates the candidate as "well qualified," "qualified," or "not qualified" and independently conveys his or her rating to the chair. If the candidate is found "not qualified" (either unanimously or by a majority of the committee), the committee determined that the nominee does "not meet the committee's standards with respect to one or more of its evaluation criteria—integrity, professional competence, or judicial temperament."

There are instances when the committee is not unanimous in its rating of a nominee. When this happens, "the majority rating represents the committee's official rating of the prospective nominee." The data provided in this Insight include only those nominees whose official rating from the ABA was "not qualified" (i.e., they do not include nominees who a minority of committee members evaluated as not qualified).

The evaluations of judicial candidates are provided by the ABA on an advisory basis. It is solely in a President's discretion, for example, as to how much weight to place on a judicial candidate's ABA rating. Hence, a "not qualified" ABA rating of a judicial candidate in some instances may dissuade a President from nominating an individual, while in other instances the President may nominate regardless of the rating.

As shown by **Figure 1**, the number of nominees who received a "not qualified" rating has varied across presidencies (ranging from a high of nine nominees during the Eisenhower presidency to no nominees who received such a rating during the Nixon, Reagan, George H. W. Bush, and Obama presidencies).

Overall, of the approximately 2,950 individuals nominated to U.S. circuit and district court judgeships from 1953 through November 12, 2017, 40 (or 1.4%) received a rating of not qualified. Of the 40 nominees who received a not qualified rating, 6 (15.0%) were nominated to be circuit court judges and 34 (85.0%) were nominated to be district court judges. Of the 40 total nominees who received such a rating, 21 (52.5%) were nominated by a Republican President and 19 (47.5%) were nominated by a Democratic President.

Among recent presidencies, the George W. Bush presidency had the greatest number of nominees, seven, who received a rating of not qualified. The seven nominees represented approximately 2% of all the individuals he nominated to circuit and district court judgeships. As discussed above, the ABA was not asked during the Bush presidency to provide prenomination evaluations of prospective U.S. circuit and district court nominees. This might explain, in part, the relatively greater number of nominees who were *known* to have received a not qualified rating since prior Presidents might have chosen not to nominate such individuals when confidentially informed by the ABA of its rating.

As of this writing, 49 individuals have been nominated by President Trump to U.S. circuit and district court judgeships and have also received a rating from the ABA. Of the 49, 4 (8.2%) received a rating of "not qualified," 17 (34.7%) received a rating of "qualified," and 28 (57.1%) received a rating of "well qualified" (including 11, or 78.6%, of 14 circuit court nominees who received a well qualified rating).

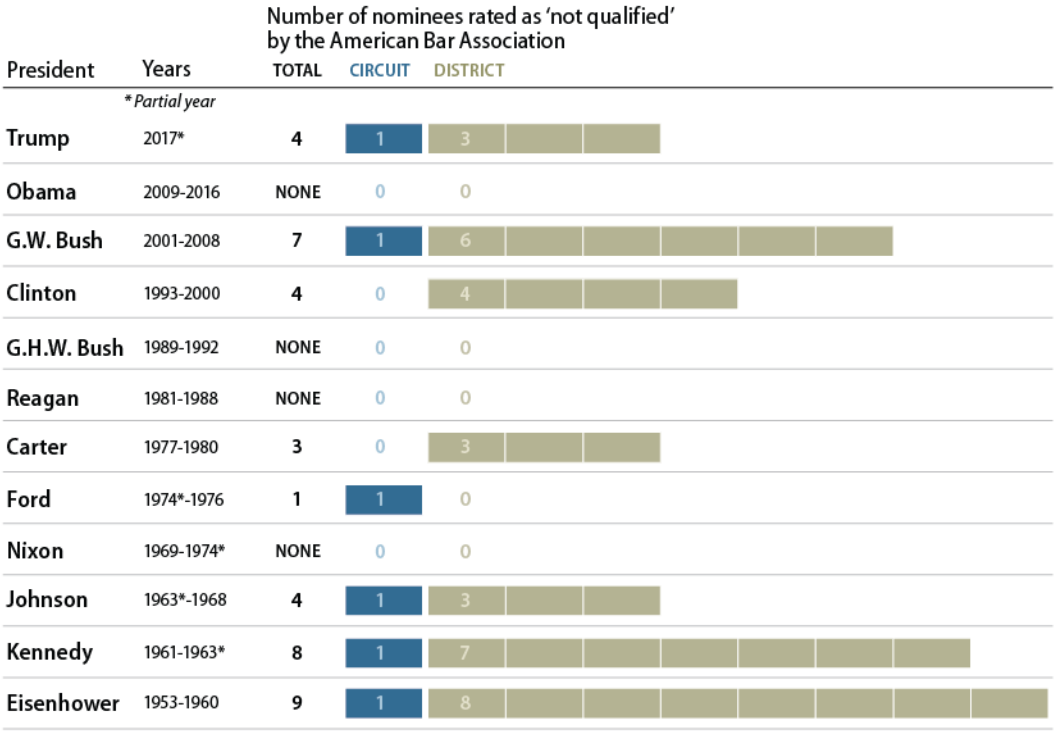
The number of nominees, as of this writing, who have received a not qualified rating during the Trump presidency is not notably high (when compared to the number of nominees who received such a rating over the entirety of each of the previous 11 presidencies).

What is distinctive, however, at least when compared to other presidencies, is that both a U.S. circuit court nominee and at least one district court nominee have received a rating of not qualified during President Trump's first year in office (which last occurred in 1961 during the first year of the Kennedy presidency).

Note that a previous version of this Insight was published on November 9, 2017; this version provides updated data current as of November 12, 2017.

Figure 1. Number of U.S. Circuit and District Court Nominees Who Received a "Not Qualified" Rating from the American Bar Association

(Updated on November 12, 2017)



Source: Congressional Research Service.

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