

Chapter 7

Interviewing the Candidates



The goal of this chapter is to encourage commissions to adopt systematic interviewing procedures. Systematic procedures help commissions to conduct fair and comparable interviews, and signal that to both the public and the applicants. The appendix to this chapter includes a procedural checklist for planning effective applicant interviews (see Appendix A).

The interview is a critical step in the selection process. Up to this point, from the applicant questionnaire and investigation results, the commission has been collecting information *about* the applicant. Now the commission can gather additional information *from* the applicant. The interview thus provides an opportunity to meet the person behind the application, allowing each commissioner to assess the applicant's demeanor, attitudes, oral communication abilities, maturity and candor.

Effective interviews provide an additional basis for comparing candidates, supplementing information gleaned from the applicant questionnaire and investigation. Standard questions should be asked of everyone interviewed; the answers will give commissioners an objective tool for comparing all candidates. However, other questions should be tailored to the particular individual. Information provided in the applicant questionnaire or gathered during the investigation sometimes raises questions or concerns that should be clarified by questions tailored to individual applicants.

The American Judicature Society strongly recommends that all commissioners participate in the face-to-face interviews with candidates. Full-commission interviews more efficiently use commissioners' and candidates' time, minimize the possibility that inappropriate questions will be asked, and tap the shared observations of commissioners who all hear the same information at the same time. Furthermore, all interviews should be of the same duration so all candidates have equal time before the commission.

Notification and Scheduling Procedures

Before notifying those applicants chosen for an interview¹, an interview schedule must be established. To avoid any appearance of impropriety, the commissioners should determine a random order of the interviews. Where the names have been randomly selected for an interview slot, the commission will avoid accusations that favored applicants were given special placement in the interview schedule. Commissioners can accomplish this efficiently via email or conference call; the chair, for example, could circulate a draft schedule for review and comment by the other commissioners. By giving members the opportunity to develop the interview schedule, the chair can help to ensure that every commissioner will be available and prepared.

Next, applicants should be advised of all necessary information for the interview. The notice to the applicant should briefly state the date, time and location of the interview, the expected duration of the interview and whether it will be private or public, and the anticipated format, e.g., that the interviews will be conducted by

the entire commission or a quorum acting as a committee of the whole, and whether there will be a public hearing in conjunction with the interviews. In addition, applicants should be advised if any information resulting from the interview will be made public or will accompany the list of nominees submitted to the appointing authority.

Commission Preparation

A well-prepared commission is able to conduct informative interviews. Commissioners can formulate better questions after reviewing responses to the questionnaire and the results of reference checks and other investigations. Preparing questions in advance, writing them down (or at least noting key phrases), and determining which commissioners will ask each question will alleviate the two most common errors made by interviewers: domination by the interviewer and redundancy. Observations have shown that the average interviewer talks too much. “If you talk more than 15% of the time you are not conducting a competent interview. The interviewee, the candidate, should talk 85% of the time.”² Another source recommends that the interviewer talk no more than 25% of the time.³

Group interviews can create special problems. The “typical multiple interview team repeats and replicates and wallows around with the same kinds of questions throughout the process due primarily to the lack of preparation.”⁴ Advance preparation can minimize these problems.

Determining the Questions

Before conducting any interviews, the commission will find it helpful to first review the job description to identify the professional knowledge, skills and personal traits a successful candidate needs. A brief set of relevant general questions can be developed. These questions, applicable to all interviewees, will be very useful in comparing the candidates. In addition, commissioners will be more relaxed in an interview where the questions have been in their hands for some time.

Categories of questions. There are several kinds of interview questions. One kind is *closed ended*. These are *yes/no* questions that elicit brief, factual responses. If the applicant questionnaire has been well designed to provide relevant facts, the commission will need to ask few or no questions of this type.

Another kind of question is *open ended*. This type of question requires more explication from the candidate and can be a rich source of information about his

or her values, attitudes and experiences. One expert notes that “open-ended questions are an excellent way to prompt an applicant to provide a great deal of information in a short time.”⁵ Be sure these questions are clear and focused. If they are too vague or general, open-ended questions will elicit vague, general and ultimately meaningless responses.

Examples of open-ended questions are:

- What are the specific aspects of this judicial position that moved you to apply for it?
- Describe the ideal judge.
- What experience and skills would you bring to the position?
- What is the most significant challenge facing the court for which you are applying, and how can that challenge be addressed?
- How do you set goals? Manage your time?
- What would you do if you had to master an unfamiliar area of the law in a relatively short time?
- Under what circumstances should the state constitution be interpreted differently from an identically worded provision in the federal constitution?

A third kind is *situational*, which requires the candidate to describe how he or she would handle a specific situation. This is an example of a situational, or hypothetical, question taken from a Colorado handbook⁶:

- What sort of control do you feel a judge should exercise over his or her courtroom and case load?
 - For example, if the attorneys on both sides of a case came to you with a stipulated motion to continue a trial scheduled to begin in one week and to last for four days, what do you feel your obligations would be?
 - Or, as another example, if attorneys feud in the courtroom, are disrespectful toward one another or other participants in the process, what should a judge do?
 - Last, if an attorney displays a clearly inappropriate bias in the courtroom—such as calling a female witness by her first name and her male counterpart by his surname—what, if anything, should a judge do?

The fourth type of question, gaining credence in the business world, is *behavioral*. As one author writes,

[Behavioral interviewing] is a process that is based on the premise that the most accurate predictor of future performance is past performance in a similar situation. Behavioral interviewing focuses on examples of past behavior that can be used to predict future actions, attitudes and/or needs....In behavioral interviewing we always ask questions relating to something the person has done or something that happened to him or her, as opposed to hypothetical examples.⁷

Here is one example of a behavioral question:

- Describe the most challenging ethical dilemma you have encountered. How did you handle it?

The following examples of behavior-based questions are taken from the Colorado handbook:⁸

- For example, to explore how the candidate handles workload pressures, you might ask: “Can you give the commission an example of a time when you had too many high priority matters to deal with, and how you handled it?”
- To explore temperament, you might ask: “Give me an example of a time when you lost your temper in a legal proceeding. What did you do?”

Selected general questions, if posed to all interviewees, will help commissioners determine the candidate’s oral communication capability, professional maturity, decisiveness, managerial experience, emotional adjustment and sensitivity to ethical concerns. Other general questions can be designed from the evaluative criteria set out in Chapter 5.

Proper and Improper Questions

Commissioners need not restrict their interview to general questions. In fact, it may prove quite helpful to question the applicants on certain controversial issues. These questions will serve to probe the applicants’ understanding of current issues while allowing the commissioners to observe how the judicial candidates respond under pressure. To avoid the appearance of improper political interrogation, however, commissioners should determine in advance how sensitive questions should be phrased, as well as which questions would be improper.

Many participants in the merit selection process agree that carefully phrased questions on social issues are invaluable in providing insight into an applicant’s approach to analyzing a legal issue and to see how the candidate responds under

pressure. Other participants have warned, however, that commissions should not be “opinion shopping” and judges cannot and should not be “one issue” people.⁹ Nor should the commission appear to be imposing a litmus test. When inappropriate questions are asked, the chair should intervene, advising the candidate to use discretion when answering such a question or requesting that the commissioner who posed it to rephrase it to allow the candidate more latitude in formulating an answer. Two examples of successful rephrasing are shown below:

1. *Improper:* Are you in favor of capital punishment?

Proper: Have you ever had to support a legal position that was contrary to your personal moral belief?

2. *Improper:* How would you decide the affirmative action case about to come before the court?

Proper: What are the salient issues in the controversy over affirmative action?

Some questions are improper and/or illegal. Examples of questions that are not job-related and should not be asked include:

1. What is your political affiliation?
2. What is your political ideology?
3. Where were your parents born?¹⁰
4. Do you belong to any religious organization?
5. What are your plans for a family?

To illustrate appropriate and inappropriate questions for its district magistrate nominating commissioners, Idaho has developed a table of various sensitive topics and questions that may be asked, and those which must be avoided. That table is reproduced in Appendix C.¹¹

Tailoring the Inquiry

In addition to the questions applicable to all judicial candidates, commissioners may need to add questions tailored to a particular applicant’s background. Individualized questions will not only add a personal dimension to the interview process, but also enable the candidate to fill in any gaps or respond to any negative information that surfaces in reference or background checks. Interviewers should not be reluctant to ask probing and revealing questions of the applicants. Although nominating commissioners “may have an understandable concern

about the humanistic aspect of putting somebody in the hot seat,”¹² the individuals interviewed will have to make difficult decisions affecting lives and property should they become sitting judges. An interview is the appropriate time to determine a candidate’s decisiveness and ability to respond under pressure.

Tailored questions may pertain to a candidate’s:

- background and work experience;
- financial interests;
- ability to adjust to a judge’s salary; and
- place of residence and ability to change a residence if required by the vacancy.

In short, the types of questions asked in an interview, and their phrasing, will determine the quality of the interview. A quality interview will leave an impression of the applicant’s goals, view of the court, ability to respond under pressure and personal character. By determining questions in advance and by fairly applying the questions to every judicial candidate, a commission will ensure interviews that will add new dimensions to the candidates’ written applications. Commission interviews will improve over time as commissioners refine their questions by interviewing many candidates. Appendix B includes several suggested interview questions.

Structuring the Interview

Length of the interview. An interview must be long enough to allow each interviewer to ask a question with ample time for the applicant to respond. Survey results of federal nominating commissions indicated that interviews of approximately 45 minutes’ duration provided an optimum amount of time.¹³ Most commissioners agree that interviews should rarely be less than 30 minutes.

After each interview, an additional five to ten minutes may be set aside for commission discussion of the preceding interview. This short exchange among commissioners will serve to voice common concerns and responses while helping to fix the individual candidates in commissioners’ memories and providing a brief respite between interview sessions.

Procedures during the interview. Commissions may find it helpful to further structure the interview by observing a set procedure to be followed in each session. First, the chair may introduce the candidate to the commission as a whole and add brief remarks to acquaint the applicant with each individual commissioner. The chair may then wish to reiterate how the interview will proceed and how

long it will last, and inform the applicant of his or her right to refuse to answer any question while encouraging the applicant to explain any refusal. This procedure will set the tone for the interview, acknowledging both the right of sitting judges to refuse to answer questions relating to pending cases and the right of attorneys to refuse to answer questions that would entail disclosing privileged information.

Remembering the principle that the applicant should talk more than the interviewers, the commissioners may wish to leave some extra time at the end of the interview to allow the candidates to ask questions, or to invite them to make a brief statement at the beginning and/or end of their interviews.

Ethical Considerations

Problems of commission partiality will be most pronounced in the applicant interview. Even when prejudices are not obvious they can interfere with the effectiveness of an interview. Many interviewers have judged the interviewee ahead of time, a natural result of impressions gained from the questionnaires and investigation results.

Interviewers, therefore, may need to consciously force themselves to keep an open mind. One interviewer observed: "I hate people who wear sunglasses in office buildings....I have to constantly watch myself to make sure my biases, my prejudices, of which you have millions, and of which I have millions, don't creep inadvertently, surreptitiously or subconsciously into the process."¹⁴

Avoiding bias and maintaining impartiality in an interview will always be important. Questions may appear to be biased when they are tailored to a particular applicant. To avoid bias, tailored questions should be specific but carefully phrased. Follow-up questions are a sign of respect for the interviewee and indicate that the commissioners are listening carefully to his or her responses. They can result in more meaningful interviews. The questioning, however, should always be courteous and fair. Applicants should not feel that the entire commission has conspired against them, nor should one commissioner dominate the questioning. By rotating the questioning and perhaps allowing each commissioner one follow-up question, these problems may be minimized.

Certain aspects of interviewing raise questions of impartiality and propriety. The media and the applicants will be concerned with who has the first and the last interviews and how much time was devoted to each interview. To avoid accusations of impropriety, each commission should schedule its interviews randomly and stay within established time limits for each interview.

Conclusion

The interview serves to personalize the selection process. Commissioners meet, observe and talk with the candidates for judicial office. Effective discourse with the applicants should result in informed voting by each commissioner when selecting the final nominees. Because the interview provides valuable insight into the candidate's personality, some commissions require that each commissioner participate in all the interviews as a prerequisite for voting. By allowing only those commissioners who have seen and heard the all the candidates to vote for nominees to be submitted to the appointing authority, the integrity of the selection process is maintained. The personal element that only an interview can provide fulfills the goal of merit selection by fostering the informed selection of nominees for judicial office.

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- 1 The commission or its staff person should have given applicants advance notice of the probable date(s) of the interviews, perhaps when acknowledging receipt of the application form.
 - 2 Dr. Mel Reid, "Luncheon Address to the Ninth Institute for Judicial Nominating Commissions" (Tampa: February 25, 1983).
 - 3 Carolyn B. Thompson, *Interviewing Techniques for Managers* 131 (New York: McGraw-Hill 2002).
 - 4 *Supra* note 2.
 - 5 Wayne Outlaw, *Smart Staffing—How to Hire, Reward and Keep Top Employees for Your Growing Company* 110 (Chicago: Upstart Publishing Company, a Division of Dearborn Publishing Group, Inc. 1998).
 - 6 *Colorado Judicial Nominating Commission Handbook* 16 (1997 Ed.).
 - 7 *Supra* note 3 at 2.
 - 8 *Supra* note 5 at 16.
 - 9 Larry C. Berkson and Susan B. Carbon, *The United States Circuit Judge Nominating Commission: Its Members, Procedures and Candidates* 97, 100 (Chicago: American Judicature Society, 1980).
 - 10 Questions 3-5 *supra* note 5, at 116.
 - 11 *District Magistrates Commission Orientation Manual* 16-17 (Boise: Idaho Supreme Court, Revised April 12, 2002).
 - 12 Reid, *supra* note 2.
 - 13 Berkson, *supra* note 9 at 93. *See also* Outlaw, note 5 at 109: "An in-depth interview requires 45 minutes to an hour and a half."
 - 14 Dr. Mel Reid, Luncheon Address to the Ninth Institute for Judicial Nominating Commissions (Tampa: February 25, 1983).

APPENDIX TO CHAPTER 7

A.Procedural Checklist for Commissioners

B.Suggested Interview Questions

C.Idaho Interview Guidelines

A. Procedural Checklist for Commissioners

I. Notification and Scheduling

- Chair randomly draws names to determine interview order
- Chair emails or faxes draft interview order to commissioners (including time allotted to each interview) for review and comment; discusses in conference call if necessary

Notify applicant of:

- date, time, location and duration of the interview
- interview format
- information supplied to appointing authority
- other information that may be made public

II. Determine Interview Questions

- Review job description; identify the key personal and professional skills, knowledge and traits needed by a successful candidate
- Develop relevant general questions to be asked of all candidates, and decide which should be open-ended, situational (or hypothetical) or behavioral
- Tailor questions to particular candidates in order to fill in any gaps or inconsistencies in the applicant questionnaire or to address issues that may arise in reference, credit, professional discipline or criminal background checks (or, in states that use them, bar survey results or public-comment sessions)
- Discuss and develop questions confronting controversial issues
- Discuss which kinds of questions are improper and should not be asked

III. Procedures

- Discuss procedures during the interview
- Determine criteria commissioners have to meet to be eligible to vote for final nominees
- Decide how to handle the situation if any improper questions are asked (i.e., who will intervene)

B. Suggested Interview Questions

Open-ended Questions (see also sample questions on page 134)

I. Candidate's View of the Court System

1. What do you see as the strengths and weaknesses of the present _____ Court?
2. Describe some changes you would like to see made in the _____ Court:
 - a. in types of cases considered
 - b. with respect to opinions
 - c. in the way the court operates

II. Candidate's Skills, Experience and Personal Traits

1. What do you believe would be your most important contribution to the court?
2. What do you see as the frustrations, if any, of service on the court?
3. What aspects of the job would you expect to find boring?
4. What elements in your training, background and experience have prepared you to deal with each aspect of this court's jurisdiction?
5. What elements in your training, background and experience have prepared you to deal with questions of legal rights for women and minorities?
6. What elements in your training, background and experience have prepared you to deal with business, commercial and regulatory issues?
7. What are your most important interests outside of your current work?
8. Please tell us how you will decide whether it will be necessary to forego other interests in order to keep up with the court's caseload. If any, which ones?

III. Candidate's General Judicial Philosophy

1. Why do you want to be a judge?
2. What characteristics and qualities do you believe are important for a judge to possess?
3. To what extent do you think it important that a judge have a wide variety of legal experiences (civil-criminal) (state-federal)?
4. What is your view of the role of a court in society?
 - a. What is the court's role in relation to the legislature?
 - b. To what extent should a judge consider political, economic and social consequences of decisions?
5. How should a court reach the appropriate balance between stability and development in the law?

Situational (Hypothetical) Questions

See sample question on page 134; also, discuss with fellow commissioners challenging courtroom situations they have observed or heard about and formulate questions designed to elicit the candidate's analysis of the situation and his or her problem-solving suggestions.

How do you feel a judge should respond in the following courtroom situations?

1. In a capital murder case, the defendant's counsel is presenting an arguably inadequate defense. What factors would you consider in deciding whether the attorney was mounting an adequate defense? If you determined that the defendant was being inadequately represented, what would you do?
2. An unrepresented mother is seeking custody of her children in a contested divorce case. Her husband's attorney is raising objections to every statement she makes. She clearly is unable to effectively present her case, yet insists she cannot afford an attorney. You want to ensure she gets a fair hearing. What could or should you do?
3. You are hearing a termination of parental rights case. Under federal law, the case must proceed according to strict timelines. The social service agency consistently presents caseworker reports to the court, the prosecutor's office and the parents' attorney the morning of the hearings. There is no administra-

tive order in your judicial district mandating an earlier submission date. What are your options?

Behavioral Questions

See also sample questions on page 135.

1. Describe the most challenging ethical dilemma you have encountered. How did you handle it?
2. Describe for us the steps you took to prepare for this interview.
3. Describe a time when you worked on a team or in a group and tell us what role you played in that group.¹
4. Describe a situation in which you felt particularly effective. Describe a situation in which you felt particularly ineffective and explain exactly what you did about it. What did you learn from this experience?²

¹ From Edward C. Andler, *The Complete Reference Checking Handbook* 108 (New York: American Management Association [AMACOM], 1998).

² *Id.*

C. Idaho Interview Guidelines

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INTERVIEW GUIDELINES**

Subject	Acceptable Questions	Questions to Avoid
Race or Color		All Questions
Religion or Creed		All Questions
National Origin		All Questions
Sex		All Questions.
Marital Status		Are you married? Where does your spouse work? What are the ages of your children, if any?
Age	If selected, will you be at least 30 years of age when you assume this office?	How old are you? What is your date of birth?
Health and Disability	This position requires that a person perform the following tasks: <u>Describe</u> - Will you be able to perform these functions with or without a reasonable accommodation? If an applicant indicates that s/he can perform the tasks with an accommodation, s/he may be asked, "How would you perform these tasks and with what accommodation(s)?"	Do you have a disability? Will you require special leave because of disability? Have you ever been treated for any of the following diseases? Has any member of your family ever had any of the following diseases?
Address or Duration of Residence	Applicant's place of residence. How long have you resided at this address?	
Birthplace		All questions
Citizenship	Are you a U.S. citizen?	
Language	What foreign language(s) do you read fluently? Write fluently? Speak fluently?	How applicant acquired ability to read, write, or speak a foreign language.
Education	About the academic, vocational, or professional education of an applicant and the public and private schools attended.	
Experience	About the applicant's work experience.	
Character	Have you ever been convicted of any crime? If so, when, where, and what was the disposition of offense?	Have you ever been arrested?
Notify in Case of Emergency	Name and address of person to be notified in case of an accident or emergency.	

Subject	Acceptable Questions	Questions to Avoid
Military	Questions regarding any military disciplinary proceedings or actions taken against the applicant; did your military experience have any relationship to the position of magistrate judge?	Any questions regarding an applicant's separation or discharge for medical reasons.
Organizations	Describe the professional organizations of which you are a member. (Exclude organizations, the name or character of which indicates race, creed, color, or national origin of members.)	Describe all clubs, societies, and lodges to which you belong.
Personal Matters		Avoid inquiries or references to matters of marital status, pregnancy, and sexual preference.