

Asian American Bar Association

of The Greater Bay Area

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The Federal Judicial Nomination Process

Federal Judicial Appointments: Gavel to Gavel

From "[Seeking APA Judges](#)" by Julie Soo, Copyright 2005

Getting to the federal bench can be thought of in two phases: (1) nomination and (2) confirmation. The Executive Branch has the power to appoint and the Legislative Branch is charged with selection and confirmation.

Nomination

The applicant fills out a 25-30 page application detailing personal history and career history, including a disclosure of friends, colleagues, clients, and opposing counsel. Personal history includes financial disclosures and any criminal history. The word of wisdom is to disclose rather than to get bumped by a surprise to someone in the chain of the decision-making process.

At the district court level, the home state senators or a selection committee designated by the home state senators -- often comprised of bar association leaders of the state -- vet the candidates. The Circuit Court of Appeals level is more complex because it is a decision that must be satisfactory to multiple states, the states that make up the particular circuit.

At the district court level, some states have a very informal vetting process or no real process at all. In contrast, states such as California and Wisconsin have a very formal vetting process, with a bi-partisan selection committee.

The White House Review and Confirmation

This is the world of politics. The applicant is no longer in charge. The process varies from administration to administration but some key milestones remain the same.

The Bush administration generally defers to the state if the process of vetting candidates was done in a bi-partisan manner and the White House has no other candidate in mind. It also looks to the highest-ranking Republican in the state, say the governor,

See a list of current [Asian Pacific Americans on the Federal Bench](#).

Read Julie Soo's article [Seeking APA Judges](#).

The article chronicles the efforts made to put more APAs on the judicial bench.



The late [Judge Herbert Y.C. Choy](#), born to Korean immigrant field workers in Hawaii, was the first Asian American appointed to the federal bench in 1971. He passed away in 2004.

for any comment on the recommendations.

The White House requests an FBI check of the candidate. This process can take 1 to 3 months, depending on the FBI's workload.

The FBI then puts together a "BI"-- a Background Information packet -- for the White House. The White House then has to make a decision on whether to nominate the candidate. This is often a "political gut check." Will the candidate get through the confirmation process? Are there any potentially embarrassing moments for the politicians supporting the candidate?

If the candidate passes muster with the White House, the White House issues an "Intent to Nominate" and announces the candidate. This is as formal as the White House gets. Until the requisite paperwork is received by the Senate, the forwarded candidate is not yet a "nomination."

The candidate is now in the hands of the [Senate Judiciary Committee](#), comprised of [19 members](#). The Senate Judiciary Committee has a special staff of investigators to sort through information on a candidate. The "questionnaire" becomes public information and is duplicated for all members of the Committee.

Confidential information such as finances and criminal history are locked in a safe.

The "blue slip" process. The chair of the Senate Judiciary Committee then schedules a hearing, if inclined to do so. The chair first issues two "blue slips" to the nominee's home state senators for a "yes" or "no" and any other comment. Once the "blue slips" come back, the chair can schedule a hearing.

Scheduling of the hearing is dependant on the "blue slip" process, but sometimes a chair will schedule a hearing over objections of home state senators.

Once a confirmation hearing is scheduled, the nominee becomes "open game." Letters from the public and opposition, if any, generally come in and are considered by senators receiving such correspondence.

The "mark-up" process. The "mark-up" process refers to the Senate acting on a nomination or a piece of legislation. The Senate only acts on items moved out of committee and affirmatively placed onto a calendar. The Executive Calendar contains nominees and treaties for consideration. The Legislative Calendar contains all other matters. The Senate Judiciary Committee is the only committee that meets every week, meeting every Thursday at 9:30 AM. A vote is taken and if successful, the nominee is moved out of committee to the Executive Calendar for a vote by the Senate as a whole.



[Judge Robert M. Takasugi](#)

(C.D. Cal.) was the first APA from the mainland to be appointed to the federal bench in 1976 by President Ford.



[Judge Ronald S.W. Lew](#) (C.D.

Cal.), appointed in 1987, has been a leader in the Asian American community in Southern California.



2004 NAPABA President John Yang. Since forming its Judiciary Committee in 1994, the [National Asian Pacific American Bar Association \(NAPABA\)](#) has played an important role in supporting and endorsing APA candidates for the federal bench.



Judge Susan Oki Mollway (D.

Getting "Borked". Filibustering in the Senate can de-rail a candidate. The tactic effectively raises the bar on confirmation from a simple majority under constitutional rules to 60 percent required to end a filibuster. Political tactics are par for the course in partisan politics. In 1987, Democrats in a then-Democratic controlled Senate were able to bounce Judge Robert Bork's nomination to the Supreme Court with questions about his character and bringing to light some extreme views. Currently, a "nuclear option" is being considered to change filibuster rules, to lower the 60 votes necessary to close debate. Senate Majority Leader Bill Frist (R - Tenn.) has vowed to fight the 60-vote standard. (Editor's Note: For update, see [article](#) from CNN.com.

The Nomination Process

(from Independent Judiciary)

1. The U.S. Constitution requires that the president's appointments to the federal bench be made with the advice and consent of the Senate. Thus, the Senate must approve all nominees before they are appointed to the bench. Once appointed, federal judges serve for life unless they resign or are removed through the impeachment process.
2. When the Senate receives a nomination from the President, it sends the nomination to the Senate Judiciary Committee for consideration.
3. Before the Judiciary Committee holds a hearing on the nominee, it asks the Senators from the nominee's home state whether they approve of the nominee and asks the American Bar Association (ABA) to rate the nominee's legal ability.
4. If both homestate Senators approve of the nominees, the Judiciary Committee schedules a hearing once the ABA has reviewed the nomination.
5. After the hearing, the Committee votes on the nominee. If a majority of the committee votes in favor of the nominee, the nomination is sent to the full Senate for its consideration.
6. If a majority of the Senate (or 3/5 of the Senate if a Senator filibusters the nominee) vote in favor of a nominee, the nominee is confirmed for a lifetime appointment to the federal bench.

Links

[ABA Standing Committee on Minorities in the Judiciary](#)

Hawaii) became the first Asian American woman appointed to the federal bench in 1998, after a political two-year nomination process.



[Magistrate Judge Edward Chen](#) (N.D. Cal.) became the first and only Asian American judge in the history of the Northern District of California when he was appointed in 2001.



In 2003, [Magistrate Judge Tu Pham](#) (W.D. Tenn.) became the first Vietnamese American federal judge, as well as the youngest at age 31. Magistrate judges are not confirmed by the Senate.



Judge Dana Makoto Sabraw (S.D. Cal.) is the only Asian American district court judge (Article III) to be appointed to the federal bench during the Bush administration. He

[ABA Page of Judicial Nominations](#)

[The Brennan Center for Justice at NYU School of Law](#)

[The Coalition for a Fair & Independent Judiciary](#)

[Justice At Stake Campaign](#)

(a national partnership working for fair and impartial courts)

[Lawyer 's Committee for Civil Rights Under Law - links page](#)

[Senate Judiciary Committee Site](#)

[Senate Judiciary Committee Site: Current Nominations Status](#)

[US Department of Justice: Judicial Nominations Page](#)

[US Courts Page FAQ on Federal Judges](#)

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was appointed in 2004.
(Editor's Note: In 2007, George Wu (Central District of California) and Amul Thapar (Eastern District of Kentucky) were confirmed to the federal bench, as was Kiyoo Ann Matsumoto (Southern District of New York) in 2008.



Yale Law School Dean Harold Hongju Koh, who clerked for the late Supreme Court Justice Harry Blackmun, has been mentioned as a possible candidate himself for the U.S. Supreme Court. See [New York Times article](#) (free registration required).