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# The Best and the Nicest: Making the Grade With the American College of Trial Lawyers

Jenna Greene, The Litigation Daily

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Want to know what you can do to be invited to join the ultraprestigious American College of Trial Lawyers?

The answer, according to the group's president: not much.

"The truly outstanding and collegial trial lawyers will be noticed and nominated," said Francis Wikstrom, a partner at Parsons Behle & Latimer in Salt Lake City, in an interview by email. "One may not apply, and 'campaigning' for membership is discouraged and counterproductive."

Founded in 1950, the college limits membership to no more than 1 percent of the total lawyer population in any state or Canadian province. In practice, Wikstrom said, it's actually 0.5 percent or less, with fewer memberships extended in recent years because of the decline in the number of trials.

There are currently about 5,700 fellows, including all the justices of the U.S. Supreme Court and the Supreme Court of Canada.

Apart from the members of the highest benches in the land, who else gets the nod, and why?

Those who are invited to join are first subject to an extensive investigation, including interviews with opposing counsel and judges. According to Wikstrom, civility and collegiality are major deciding factors.

He writes, "The three essential qualities for fellowship are outstanding trial skills, collegiality and civility, and impeccable ethics. We recognize that there are lawyers who may be skilled at trial but who treat others poorly. Those lawyers will never be invited to become fellows. We believe that truly outstanding trial lawyers not only possess the necessary trial skills, but also treat all participants in the justice system with dignity and respect at all times.

"We also place a high value on our local, regional and national meetings, where we can associate with fellows who share our values and who are wonderful people to be with. One hallmark of our meetings is that you never hear bragging. War stories are rare and usually involve something embarrassing that happened to the fellow."



A look at the membership roster is revealing. For example, U.S. District Judge **Jed Rakoff** of the Southern District of New York is a member, but Judge **Richard Posner** of the U.S. Court of Appeals for the Seventh Circuit is not. U.S. Securities and Exchange Commission chair **Mary Jo White** is in, but U.S. Attorney General **Loretta Lynch** is not.

Many of the biggest names in the private bar also made the grade, such as **David Boies**, chairman of Boies, Schiller & Flexner; **John Kecker**, the founder of Kecker & Van Nest; **Theodore Olson** of Gibson, Dunn & Crutcher; **Morgan Chu** of Irell & Manella; **Seth Waxman** of Wilmer Cutler Pickering Hale and Dorr; **Maureen Mahoney** of Latham & Watkins; **Evan Chesler**, chairman of Cravath, Swaine & Moore; and **Theodore Wells Jr.**

of Paul, Weiss, Rifkind, Wharton & Garrison.

There are also plenty of lawyers from small firms—every state is represented, from seven lawyers in Alaska to 498 in California.

So what exactly is the process for becoming a member?

For starters, partners at your law firm can't nominate you, second your nomination or even participate in your discussion or vote. "The partner must leave the room when the discussion and vote take place," Wikstrom said.

It makes Williams & Connolly's 10 members, including **Brendan Sullivan Jr.**, particularly impressive, especially since the 300-lawyer firm's lawyers all come from the District of Columbia and fall under the same 1 percent per state membership cap.

Wikstrom outlines the selection process, which is mind-boggling in its thoroughness.

"The initial investigation is by the state or province committee. A member of the committee will be assigned to develop a list of trials that have been handled by the prospective nominee and then to talk to as many judges and opposing counsel as possible from that list. The judges and lawyers will be asked, on a confidential basis, about their experience with the candidate and whether they consider her or him to be one of the outstanding trial lawyers in the jurisdiction.

"Once the preliminary investigation is completed, the state or province committee will vote whether to submit the nomination to the national office. The national office will then conduct a confidential poll of every fellow in the jurisdiction. The results of the poll will then be given to the regent who is responsible for that state or province and he/she will then conduct his/her own confidential investigation by calling fellows, judges and other opposing counsel who have had dealings with the candidate.

"Based on his/her investigation, the regent will then present the candidate to the Board of Regents and past presidents and recommend whether to approve the candidate. A candidate must receive the affirmative vote of two-thirds of the regents to be invited to apply for fellowship.

"A successful candidate will then be invited to fill out a detailed questionnaire and apply for fellowship. Any questionable responses will be further investigated by the regent and, if all checks out, the regent will recommend that the candidate be elected to fellowship by the board."

## Once you're in, what does the college actually do?

Wikstrom outlined current initiatives. "The college recently completed a seven-year project with the Institute for the Advancement of the American Legal System (IAALS) called the Task Force on Discovery and Civil Justice. The task force published several papers containing suggestions for reducing the cost and delays associated with discovery and for judicial management of cases, and these initiatives have been a catalyst for civil justice reform projects in federal and state courts throughout the country.

"The college also has ongoing projects seeking to provide pro bono representation for veterans seeking medical and disability benefits and seeking to convince the Department of Justice not to seek waivers of ineffective assistance of counsel and appeals in criminal plea agreements.

"Each year the college co-sponsors the National Trial Competition and the National Moot Court Competition in the U.S., and the Sopinka Cup Trial Competition and the Gale Cup Moot Court Competition in Canada.

"In conjunction with the ACTL Foundation, the college presents an annual Emil Gumpert Award to a worthy program designed to advance the administration of justice. This year, we awarded \$100,000 to the "Extra Judicial Measures Pilot Project" of Peacebuilders International in Toronto. The project employs "talking circles" or "restorative justice" for conflict resolution of young offenders as an alternative to arrest and criminal charges.

"Smaller awards were given to the runners-up—the Education Law Center's 'School-to-Prison Pipeline Project' in Philadelphia, Pennsylvania, and the Immigrant Legal Resource Center's legal relief for unaccompanied immigrant minors program in San Francisco, California.

"There are even more projects ongoing at the state and province level. The fellows of the college are frequently called upon to assist their state and province courts in matters impacting the administration of justice, including judicial independence and access to justice. The college is proud of the work being done every day by these fellows in furtherance of the mission of the college."

*Contact Jenna Greene at [jgreene@alm.com](mailto:jgreene@alm.com) or on Twitter [@jgreenejenna](https://twitter.com/jgreenejenna).*

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