

# **Rules and Procedures of the Commission on Judicial Nominees Evaluation**

**(Adopted by the Board of Governors, December 15, 1984,  
effective February 4, 1985; amended July 19, 1986;  
May 7, 1988; October 22, 1988; July 26, 1997; February 5, 2000;  
April 1, 2000; March 27, 2004, effective April 1, 2004;  
June 23, 2005, effective January 1, 2005)**

## **MISSION STATEMENT**

*The mission of the Commission on Judicial Nominees Evaluation of the State Bar of California is to assist the Governor in the judicial selection process and thereby to promote a California judiciary of quality and integrity by providing independent, comprehensive, accurate, and fair evaluations of candidates for judicial appointment and nomination. (Adopted July 26, 1997.)*

## **RULE I DEFINITIONS**

### **SECTION 1. Not Voting Due to Absence From Meeting Room**

Not voting due to absence from meeting room means a commissioner who was absent during any part of the discussion or voting. (Adopted March 27, 2004, effective April 1, 2004.)

### **SECTION 2. Abstaining**

Abstaining means a commissioner was present during discussion but is abstaining from voting on candidate for any reason. (Adopted March 27, 2004, effective April 1, 2004.)

### **SECTION 3. Commission Activity**

Commission activity means activities that include, but are not limited to, interviews, votes of individual commissioners or the commission as a whole; comments during meetings and between investigating commissioners; any matter connected with the investigation. (Adopted March 27, 2004, effective April 1, 2004.)

### **SECTION 4. Confidential Comment Form**

Confidential Comment Form means the questionnaire sent to potential raters who may have knowledge of the candidates. Forms include, but are not limited to, professional ability, judicial temperament, professional reputation, work ethic and bias. (See rule II, section 2, Confidential Comment Forms – Lists and Mailings.) (Adopted March 27, 2004, effective April 1, 2004.)

## **SECTION 5. Disciplinary Complaint**

Disciplinary complaint means a communication that is found by the Office of Intake/Legal Advice to warrant an investigation of a State Bar member's alleged misconduct that may result in the member's discipline. (Adopted March 27, 2004, effective April 1, 2004.)

## **SECTION 6. Personal Data Questionnaire or Application for Appointment**

Personal Data Questionnaire or Application for Appointment means the application form created by the Governor's Office for candidates to provide personal background information to the Commission. (Adopted March 27, 2004, effective April 1, 2004.)

## **SECTION 7. Personal Interview**

Personal interview means an interview during which the investigating commissioners are physically present at the same location as the candidate; a personal interview may include interviews by telephone or videophone in unusual circumstances and subject to the chair's approval. (Adopted March 27, 2004, effective April 1, 2004.)

## **SECTION 8. Special Committee**

Special committee means a three-member committee appointed by the Board of Governors to investigate allegations of breach of confidentiality. (Adopted March 27, 2004, effective April 1, 2004.)

## **SECTION 9. Ratings – Appellate Judges**

- a. **Exceptionally Well Qualified:** Possessing qualities and attributes considered to be of remarkable or extraordinary superiority so that, without real doubt, the candidate is deemed fit to perform the appellate judicial function with distinction.
- b. **Well Qualified:** Possessing qualities and attributes considered to be worthy of special note as indicative of a superior fitness to perform the appellate judicial function with a high degree of skill, effectiveness and distinction.
- c. **Qualified:** Possessing qualities and attributes considered sufficient to perform the appellate judicial function with a high degree of skill and effectiveness.
- d. **Not Qualified:** Possessing less than the minimum qualities and attributes listed above. (Adopted December 15, 1984, effective February 4, 1985; amended July 26, 1997; March 27, 2004, effective April 1, 2004 (renumbered, former Rule I, § 2).)

## SECTION 10. Ratings – Trial Judges

- a. **Exceptionally Well Qualified:** Possessing qualities and attributes considered to be of remarkable or extraordinary superiority so that, without real doubt, the candidate is deemed fit to perform the judicial function with distinction.
- b. **Well Qualified:** Possessing qualities and attributes considered to be worthy of special note as indicative of a superior fitness to perform the judicial function with a high degree of skill and effectiveness.
- c. **Qualified:** Possessing qualities and attributes considered sufficient to perform the judicial function adequately and satisfactorily.
- d. **Not Qualified:** Possessing less than the minimum qualities and attributes considered necessary to perform the judicial function adequately and satisfactorily.  
(Adopted December 15, 1984, effective February 4, 1985. Amended July 26, 1997; March 27, 2004, effective April 1, 2004 (renumbered, former Rule I, § 1).)

## RULE II PROCEDURES TO BE FOLLOWED BY THE COMMISSION

### SECTION 1. Assignment of Commissioners

- a. **Assignments**
  1. **Trial Courts:** The chair (or staff, in the chair's absence) shall assign two or more commissioners to investigate and report to the commission any candidate for the trial bench. At least one assigned commissioner shall be a lawyer member.
  2. **Appellate Courts:** Three or more commissioners shall be assigned to investigate and report to the commission any candidate for appellate courts. At least one of the assigned commissioners shall be a public member.
- b. **Lead Commissioner**

One commissioner shall be appointed lead commissioner. That commissioner shall contact his or her co-commissioners for purposes of assuring that the rules of the commission are complied with and to set up procedures to facilitate the investigation and reduce duplication of effort. Prior to the investigation's commencement and the mailing of any questionnaires to evaluators, the lead commissioner shall notify the candidate of the pending investigation. (Adopted December 15, 1984, effective February 4, 1985; amended March 27, 2004, effective April 1, 2004.)

## **SECTION 2. Confidential Comment Forms – Lists and Mailings**

### **a. Candidate's Mailing List**

Upon receiving the name of a candidate, the commissioners charged with investigating the candidate's qualifications shall request the candidate provide fifty (50) to seventy-five (75) names of persons who are reasonably likely to have knowledge of the candidate's qualifications, and to whom confidential questionnaires will be sent.

### **b. Commission's Random Mailing Lists**

Upon receiving the name of a candidate, the commissioners charged with investigating the candidate's qualifications shall prepare a list of persons who are reasonably likely to have knowledge of the candidate's qualifications, and to whom confidential questionnaires may be sent. Each such list should reflect a broad cross-section of the names of attorneys in the counties and the areas of law in which the candidate practices. The list shall be kept with the investigating commissioner's file for a period of at least one year after the action taken by the commission as provided in section 4 of rule III [Confidentiality/Retention of Materials] of these rules and procedures.

### **c. Required Mailing:** Absent unusual circumstances, the commissioners charged with investigating the candidate's qualifications shall send confidential questionnaires to the following:

1. Seventy-five (75) names selected at random from the mailing list prepared pursuant to subdivision b of this section;
2. All members of the bench in each county in which the candidate practices, except the County of Los Angeles, where the confidential questionnaire shall be sent to a reasonable number of judges who are representative of the judges before whom the candidate practices and to all members of the bench in the branch and division of the superior court before whom the candidate primarily practices;
3. All names listed in the candidate's Personal Data Questionnaire or Application for Appointment and all other persons whose names are submitted by the candidate; and
4. If the candidate is in criminal law practice, all district attorneys and public defenders in the county in which the candidate practices. If there are more than fifty (50) names in a category, then confidential questionnaires should be sent to a minimum of fifty (50) names at random from each category.

### **d. Minimum Total Returns; Goal**

The goal of the commission shall be to base reports on a minimum total return of fifty (50) responses indicating knowledge. Any commissioner who receives negative or adverse comments concerning a candidate shall make reasonable efforts to contact the source or sources of said comment and report to the commission the results of that contact.

e. **Sources of Information**

Whenever possible the investigating commissioners will not place continuing and exclusive reliance on the same sources of information in evaluating various candidates from any given area.

f. **Noncompliance With Section**

If, as a consequence of unusual circumstances, the commissioners charged with investigating the candidate's qualifications are not able to comply fully with this section, the report to the Governor shall state the unusual circumstances preventing compliance. (Adopted December 15, 1984, effective February 4, 1985; amended July 26, 1997; March 27, 2004, effective April 1, 2004.)

**SECTION 3. Interview**

a. **Personal Interview; Timing**

All commissioners charged with reporting to the commission should personally interview the candidate. The interview should not be the first step in the investigation. Thus, the personal interview with the candidate shall be held after a majority of the questionnaires have been received but leaving sufficient time prior to the reporting date for the candidate's rebuttal of adverse comments.

b. **Personal Interview; Number of Interviewers**

Trial court candidates shall be interviewed in person by no fewer than two commissioners at least one of whom is an attorney. For appellate candidates, no fewer than three commissioners shall be present at the interview and at least one shall be a public member. Interviews shall not be conducted via telephone absent unusual circumstances, and with the chair's permission. (Added March 27, 2004, effective April 1, 2004.)

c. **Disclosure of Adverse Allegations to Candidate**

The subject matter of substantial and credible adverse allegations received regarding factors relevant to the candidate's suitability for judicial office, including temperament, industry, integrity, ability, experience, and health, physical or mental condition, or moral turpitude which, unless rebutted, would be determinative of the candidate's unsuitability for judicial office, shall be disclosed to the candidate, as specifically as possible, without any breach of confidentiality, as provided for in Government Code section 12011.5, and these rules and procedures, not less than four days before the interview. The adverse allegations that are taken from the confidential comment forms must be corroborated prior to disclosure to the candidate.

d. **Discussion of Factors Relevant to Qualifications**

At the interview, the commissioners should discuss with the candidate all factors relevant to the candidate's qualifications for the bench. The discussion should be as

specific as possible without any breach of confidentiality as provided for in Government Code section 12011.5 and these rules and procedures, and should include both positive and negative information.

**e. Purpose of Interview; Tape Recording**

The purpose of an interview is to provide a candidate with a reasonable opportunity to respond to adverse information and to present any additional information that may support his or her qualifications. All interviews shall be tape recorded with the candidate's consent and the tape recording of an interview of a candidate shall be retained with the lead investigating commissioner's file for at least one year and then forwarded to the Staff Director who will retain the material for an additional two years after the action of the commission as provided for in rule III, section 4 [Confidentiality/Retention of Materials]. The candidate's consent to that recording shall be a precondition to any review under rule II, section 12 [Notification of Not Qualified Rating; Review of Not Qualified Rating] of these rules.

**f. Submission of Additional Information; Time Requirements**

After the interview, a candidate may submit to the commission additional information or material in response to adverse allegations raised in the interview; the interview should be scheduled, when practicable, at least two to three days before the commission meeting when the rating of the candidate is to be determined.

**g. Waiver of Time Requirements**

For good cause, and with the consent of the candidate, the commission may waive compliance with these time requirements.

**h. Confidentiality of Communications**

No provision of these rules shall be construed to permit the disclosure to the candidate of information from which the candidate may infer the source, and information shall not be disclosed to the candidate or be obtainable by any process that would jeopardize the confidentiality of communications from persons whose opinions have been sought on the candidate's qualifications. (Adopted December 15, 1984, effective February 4, 1985; amended July 19, 1986; July 26, 1997; April 1, 2000; March 27, 2004, effective April 1, 2004.)

**SECTION 4. Reports to the Commission**

The form and manner of any individual commissioner's report to the commission shall be set by the commission and include information as determined by each commissioner. Each report shall include the number of questionnaires mailed, the numerical breakdown of the responses and ratings, a summary of the substantial and credible information received and the recommended evaluation. Except in unusual circumstances, reports will not be given via telephone conference calls. (Adopted December 15, 1984, effective February 4, 1985; amended March 27, 2004, effective April 1, 2004.)

## **SECTION 5. No Appearance Before the Commission**

Candidates will not be interviewed by the entire commission, nor will they be allowed to appear before the commission in connection with their nomination. (Adopted December 15, 1984, effective February 4, 1985.)

## **SECTION 6. Qualities/Factors For Consideration In Evaluating Candidates**

The commission seeks to find the following qualities in judicial candidates. However, the absence of any one factor on the lists below is not intended automatically to disqualify a candidate.

- a. **Qualities for all judicial candidates:** impartiality, freedom from bias, industry, integrity, honesty, legal experience, professional skills, intellectual capacity, judgment, community respect, commitment to equal justice, judicial temperament, communication skills, job-related health. In addition, for:
- b. **Trial court candidates:** decisiveness, oral communication skills, patience.
- c. **Appellate court candidates:** collegiality, writing ability, scholarship.
- d. **Supreme Court Candidates:** collegiality, writing ability, scholarship, distinction in the profession, breadth and depth of experience. (Added April 1, 2000; amended March 27, 2004, effective April 1, 2004 (renumbered, former Rule I, § 3).)

## **SECTION 7. Resubmission of Candidates by Governor – Reinvestigation Factors to Consider**

- a. **Resubmission of Candidates:** When the Governor resubmits to the commission the name of a candidate whom the commission has recently evaluated and found “not qualified,” the commission shall vote again upon the qualifications of the person.
- b. **Procedure:** Prior to voting, and at its first meeting following receipt of the resubmittal, the commission shall proceed, as outlined below. The chair will determine at that time whether it will investigate further or rely upon the commission’s earlier investigation. In making this determination, the chair shall consider all relevant factors, including but not limited to the following:
  1. whether there may be facts or information not previously investigated or concerning acts or occurrences since the previous investigation;
  2. the extent to which additional facts or information would aid the commission as to the determination of a material issue;
  3. the extent to which affording a candidate a further opportunity to rebut adverse information would assist the commission in determining a material issue or merely be cumulative; and

4. the nature and extent of the previous investigation and its timeliness.
  - (a). Absent unusual circumstances, a previously completed investigation should not be deemed timely if more than twelve (12) months have lapsed between the time of the completion of the prior investigation and the Governor's resubmission of the candidate for consideration.
  - (b). In any event, there shall be a current disciplinary record check before the commission votes.
  - (c). If the chair determines that further investigation and evaluation is required, the chair will decide whether the investigating commissioners shall be those who conducted the original investigation or whether new investigators are assigned. (Adopted December 15, 1984, effective February 4, 1985; amended March 27, 2004, effective April 1, 2004 (renumbered, former Rule II, § 6).)

## **SECTION 8. Summary Evaluations**

### **a. Candidate's Name Submitted for Two Courts**

When the Governor submits at the same time a name as a candidate for judge of a higher and lower court, the commission shall conduct a separate evaluation of the candidate for each judicial office.

### **b. Resubmission for Same Level Court Following Initial Evaluation**

When the Governor first submits a name as a candidate for judge of the superior court or of the court of appeal and a report is made to the Governor following the investigation and evaluation, and the Governor then submits the same name as a candidate for the same level court in a different county or appellate district, the commission may conduct a summary evaluation and rate the person as a candidate for the subsequent court based on the previously completed evaluation if the information contained therein is sufficient. In determining whether such information is sufficient, the commission shall follow the procedure set forth in section 7 of this rule. If such information is insufficient, or if the rating of a summary evaluation is "not qualified," a separate and full evaluation shall then be made of the person as a candidate for the other court position.

### **c. Resubmission of Candidate for Court of Appeal**

When the Governor first submits a name as a candidate for Justice of the Supreme Court and a report rating the candidate "qualified" or above is made to the Governor following the investigation and evaluation, and the Governor then submits within a reasonable time thereafter the same name as a candidate for judge of the court of appeal, the name of the potential candidate or appointee shall be deemed rated based on the previously completed evaluation. (Adopted December 15, 1984, effective February 4, 1985; amended April 1, 2000; March 27, 2004, effective April 1, 2004 (renumbered, former Rule II, § 7).)

## **SECTION 9. Reports to Governor**

### **a. Information to be Included in Report to Governor**

In advising the Governor of the opinion of the commission regarding the qualifications of candidates, the report of the commission to the Governor shall include the following information: the names of the investigating commissioners; the numerical count of the commission's vote except when the finding of the commission is that a candidate is "not qualified;" the number of confidential questionnaires that were mailed and the number that were returned.

### **b. Not Qualified Candidate – Report of Vote**

1. **Seventy-five Percent or More of the Commission Voting:** When the finding of the commission is that a candidate is "not qualified" and that finding is based on a vote of at least 75 percent of the commissioners voting, the report advising the Governor of the opinion of the commission shall state that "at least 75 percent of the commissioners voting find the candidate not qualified."
2. **Less than Seventy-five Percent of the Commission Voting:** When the finding of the commission is that a candidate is "not qualified" and that finding is based on a majority of the commissioners voting, but by less than 75 percent, the report advising the Governor of the opinion of the commission shall state the numerical count of the commission's vote.
3. **Basis of "Not Qualified" Rating:** The commission may find a candidate to be "not qualified" on the basis of substantial and credible information received in the investigation of the candidate and on a majority vote of at least ten (10) commissioners only, or of a quorum of the commission, whichever is the greater. If the vote of the commission is tied such that the two ratings receiving the largest and equal number of votes are "qualified" and "not qualified," the report to the Governor shall give the count and state that the candidate is considered "qualified." (Adopted December 15, 1984, effective February 4, 1985; amended July 26, 1997; March 27, 2004, effective April 1, 2004 (renumbered, former Rule II, § 8).)

## **SECTION 10. Order of Consideration**

Candidates generally will be reported to the Governor in the order in which they are submitted. When it is requested that a candidate be considered out of order, the reasons shall be stated to the chair who will then determine whether the commission will so consider the candidate. (Adopted December 15, 1984, effective February 4, 1985; amended March 27, 2004, effective April 1, 2004 (renumbered, former Rule II, § 9).)

## **SECTION 11. Criteria for Establishing Merit**

The evaluation of a judicial candidate submitted to the commission shall be based on the particular candidate's individual merit only. The criteria for establishing a candidate's merit are set forth in section 6 of this rule [Qualities/Factors For Consideration In Evaluating Candidates]. (Adopted December 15, 1984, effective February 4, 1985; amended April 1, 2000; March 27, 2004, effective April 1, 2004 (renumbered, former Rule II, § 10).)

## **SECTION 12. Notification of Not Qualified Rating; Review of Not Qualified Rating**

The commission's report to the Governor constitutes the commission's opinion. An opinion of "not qualified" may be rescinded as herein provided upon written request of the candidate made within sixty (60) days of the date the candidate is notified of such opinion.

### **a. Notification of Not Qualified Rating:**

Upon request of the Governor, the chair of the commission, or in the discretion of the chair, the staff director shall, within ten days of sending to the Governor an opinion of "not qualified," notify the candidate in writing of the "not qualified" rating and the review rights available under this section.

### **b. Review Committee:**

A three-member committee consisting of one member of the Board of Governors who serves as liaison to the commission and two past members of the commission shall be appointed by the Board of Governors to review requests for reconsideration. The committee may in its absolute discretion rescind the opinion of the commission upon its good cause belief that any of the following has occurred:

1. Violation of the rules or procedures of the commission materially affecting the processing of the evaluation;
2. Conflict of interest or bias in the processing of the evaluation;
3. Inadequate or biased mailing list used in the evaluation; or
4. New evidence is available that the candidate had no reasonable opportunity to present, which evidence if presented, could have changed the result.

### **c. Rescission, Written Request for New Evaluation**

In the event the opinion of the commission is rescinded and, upon written request of the candidate made within thirty (30) days of the candidate's being notified of such rescission, the chair may institute a new investigation with new investigators. (Adopted December 15, 1984, effective February 4, 1985; amended July 19, 1986; February 5, 2000; March 27, 2004, effective April 1, 2004 (renumbered, former Rule II, § 11).)

## **SECTION 13. Appointment by Governor Following Election to Judicial Office**

Notwithstanding any provision to the contrary in these rules and procedures, the name of a potential appointee for a vacancy in a judicial office in the superior court shall be deemed submitted and reported "qualified" if that potential appointee has been elected to fill that particular judicial office, and following his or her election the Governor determines to appoint him or her to fill the vacant and unexpired term immediately preceding his or her own. (Adopted December 15, 1984, effective February 4, 1985; amended March 27, 2004, effective April 1, 2004 (renumbered, former Rule II, § 12).)

### **RULE III CONFIDENTIALITY**

#### **SECTION 1. Disclosure of Information Prohibited**

Except as otherwise provided in Government Code section 12011.5 or in these rules and procedures, this rule prohibits disclosure of any information of any nature to anyone. (Adopted December 15, 1984, effective February 4, 1985.)

#### **SECTION 2. Confidentiality of Commission Activity**

##### **a. Disclosure of Information**

All phases of the commission's activity, i.e., the results of interviews with any raters, the vote or comments of any individual commissioner or the vote of the commission as a whole, as well as any other matters connected with the investigation, are absolutely confidential and shall not be disclosed to anyone other than another commissioner, a member of the Board of Governors or designees of the Board of Governors appointed pursuant to rule II, section 12 [Notification of Not Qualified Rating; Review of Not Qualified Rating], or rule III, section 7 [Breach of Confidentiality] to review certain matters affecting or relating to the Commission on Judicial Nominees Evaluation, or an appropriate staff member of the State Bar or, subject to the provisions of rule II, section 9 [Reports to Governor], an authorized representative of the Governor's office. No copy or duplicate of writings connected with the activities of the commission shall be distributed to the Board of Governors. Nothing herein is intended to preclude members of the Board of Governors from reviewing the files of the commission at the offices of the State Bar. However, individual commission members may provide information to members of the Board of Governors with the authorization of the chair.

##### **b. Information That May Be Released**

The foregoing shall not be deemed to preclude any of the following:

- 1. Commission on Judicial Appointment:** Reports being made to the Commission on Judicial Appointments presenting the commission's views concerning appellate court candidates or appointees in accordance with subdivision (h) of Government Code section 12011.5.

2. **Appointment of Candidate Found Not Qualified:** When the Governor has appointed a person to a trial court whom the commission has found “not qualified,” the Board of Governors may, in accordance with subdivision (g) of Government Code section 12011.5, make public this fact after due notice to the appointee of its intention to do so.
3. **Discretion of the Governor:** Any communication made in the discretion of the Governor to the candidate in furtherance of the purposes of Government Code section 12011.5, including the report of the commission; and as provided in subdivisions (f), (g) and (h) of Government Code section 12011.5, shall not constitute a waiver or privilege or breach of confidentiality with respect to communications of or to the State Bar in furtherance of Government Code section 12011.5 or concerning the qualifications of candidates or appointees.
4. **Not Qualified Rating:** Communication to candidates of a “not qualified” rating pursuant to rule II, section 12 [Notification of Not Qualified Rating; Review of Not Qualified Rating]. As provided in subdivision (f) of Government Code section 12011.5, no such communication, disclosure or notice shall constitute a waiver of privilege or breach of confidentiality. (Adopted December 15, 1984, effective February 4, 1985; amended February 5, 2000; March 27, 2004, effective April 1, 2004.)

### **SECTION 3. Prohibited Disclosures**

#### **a. Commission Member Disclosures to Others**

A commission member, in respect of persons whose names are submitted to the commission for consideration of their qualifications for appointment to the bench, shall not disclose to others in any manner, except for the purposes of performing the investigation and confidential inquiry in connection with the commission's consideration of such person:

1. The name of any person whose name has been submitted to the commission;
2. Whether any person's name has or has not been submitted to the commission, or any information regarding when the candidate will be considered by the commission;
3. The discussions, deliberations or actions of the commission concerning any candidate;
4. Any information concerning a candidate obtained during investigation or at a meeting of the commission nor his or her own opinion concerning that candidate;
5. The Personal Data Questionnaire or Application for Appointment of candidates whose names have been submitted to the commission.

**b. Reports to Governor's Office**

The foregoing does not preclude confidential reporting to the Governor's office of the commission's recommendations concerning judicial candidates as provided in Government Code section 12011.5 and in the manner prescribed by the commission and these rules and procedures. The foregoing does not preclude a commission member from discussing with anyone the statutory provisions relating to the commission or the commission's rules and procedures. (Adopted December 15, 1984, effective February 4, 1985; amended March 27, 2004, effective April 1, 2004.)

**SECTION 4. Retention of Materials**

Each member or former member of the commission shall retain in his or her possession completed "Confidential Comment Forms" returned to him or her concerning potential appointees to the bench investigated by such commissioner for a period of one year and then forward to the Staff Director who will retain the material for an additional two years after the candidate has been acted on by the commission. After two years, the Confidential Comment Forms and all other documents or writings which the investigating commissioners have been authorized to retain shall be destroyed by the State Bar of California, unless otherwise instructed by the Board of Governors, the President of the State Bar, or the Chair of the Commission. Review Committee files in possession of the Staff Director shall be destroyed two years after the Review Committee decision. (Adopted December 15, 1984, effective February 4, 1985; amended March 27, 2004, effective April 1, 2004.)

**SECTION 5. Confidentiality Requirements Extend to State Bar Board of Governors, Employees**

Members of the Board of Governors, designees of the Board of Governors and employees and agents of the State Bar are prohibited from disclosing confidential information they received in the same manner as provided in this rule for commissioners. (Adopted December 15, 1984, effective February 4, 1985; amended March 27, 2004, effective April 1, 2004.)

**SECTION 6. Oath of Office**

Each member of the commission shall take, subscribe to and file the oath of office as required by the Board of Governors. The oath shall be filed with the Secretary of the State Bar. (Adopted December 15, 1984, effective February 4, 1985.)

**SECTION 7. Breach of Confidentiality**

**a. Appointment of Special Committee**

Upon a claim of breach of confidentiality, a three-member special committee shall be appointed by the Board of Governors pursuant to section 6044 [Investigative Powers] of the Business and Professions Code, to investigate and determine such claim.

1. **Special Committee Authority:** In the conduct of investigations, the special committee may, among other things, administer oaths and affirmations, compel, by subpoena, the attendance of witnesses and the production of books, papers and documents pertaining to the alleged breach of confidentiality.
2. **Merit of Claim:** Any claim of breach of confidentiality shall be investigated fully, including but not limited to, confronting the commission member or members against whom the claim has been made, and if the claim is found to have merit, a report shall be made to the entire commission, the President of the State Bar and the board liaison to the commission.
3. **Report:** The report shall include a recommendation as to whether or not the special committee shall request the Board of Governors to remove the member or members from the commission. The special committee shall also report the failure of any commission member to cooperate in the investigation of the claim. No member of the commission against whom a claim of breach of confidentiality is brought shall serve on a special committee investigating said claim.

b. **Claim Against Board Member or State Bar Staff Member**

If a claim of breach of confidentiality is brought against a member of the Board of Governors or staff member of the State Bar, the claim shall be referred to the Board of Governors for its investigation and determination in the manner it provides. (Adopted December 15 1984, effective February 4, 1985; amended March 27, 2004, effective April 1, 2004.)

## **RULE IV CONFLICT OF INTEREST**

### **SECTION 1. Purpose**

This rule is intended to establish standards and procedures to assist the commission and its members in avoiding conflicts of interest, bias or prejudice that may interfere with the commission's ability to discharge its duties. (Adopted December 15, 1984, effective February 4, 1985; amended May 7, 1988.)

### **SECTION 2. Disclosure of Relationship**

If a commissioner has or has had any significant familial, professional, business, social, political or other relationship, either adversarial or allied, direct or indirect, with a candidate, he or she shall immediately disclose to the commission's chair the nature and circumstances of the relationship. (Adopted December 15, 1984, effective February 4, 1985; amended May 7, 1988; October 22, 1988.)

### **SECTION 3. Disqualification from Participation**

If the commissioner having such a relationship determines that it would unduly influence his or her consideration of the candidate's qualifications, the commissioner shall disqualify himself or herself from participating in the investigation, report, deliberations, and ultimate evaluation of the candidate involved in the conflict and refrain from attempting to influence other commissioner's evaluations of the candidates. (Adopted December 15, 1984, effective February 4, 1985; amended May 7, 1988; October 22, 1988.)

### **SECTION 4. Factors to be Considered**

Factors to be considered in determining whether the relationship requires disqualification include remoteness in time of the relationship, duration of the relationship (transitory, recurring, or long term), and the extent to which the relationship is distinguishable from a casual, incidental contact. (Adopted December 15, 1984, effective February 4, 1985; amended May 7, 1988.)

### **SECTION 5. Chair's Determination**

If a commissioner determines that a particular relationship does not require disqualification, and the chair determines that the relationship does require disqualification, the chair's determination shall prevail. (Adopted December 15, 1984, effective February 4, 1985; amended May 7, 1988.)

### **SECTION 6. Disqualified Commissioner – Provide Information**

A disqualified commissioner is not precluded from completing a Confidential Comment Form providing information concerning a candidate. However, a commissioner providing information pursuant to this provision may not be identified during the hearing. (Adopted December 15, 1984, effective February 4, 1985; amended May 7, 1988.)

### **SECTION 7. Condition of Appointment**

As a condition of appointment, each commission member agrees that:

- a. **Prohibited Participating in Judicial Candidate's Campaign for Office:** During his or her service on the commission, he or she will abstain from endorsing or participating in any judicial candidate's campaign for office, and will refrain from appearing before or voting on any other committee or commission involved in the judicial selection process; provided, however, that the foregoing does not preclude the chair or the chair's designee from appearing before the Commission on Judicial Appointments and presenting the commission's views about appellate court appointees; and
- b. **Commission Member Application for Judicial Appointment:** Service on the commission results in a relationship between commissioners that may create a conflict of interest if commissioners who have served together later evaluate one another. Therefore, no commissioner shall apply for or accept a State of California judicial appointment, nor permit his or her name to be submitted for evaluation as a candidate

for such an appointment while a member of the commission and until such time thereafter as a majority of the commission consists of members with whom that commissioner did not serve; and

- c. **Conflict of Interest – Statement Under Oath:** Upon taking office, and annually thereafter, each commissioner shall complete a statement under oath indicating that they have read and understand Rule IV regarding conflicts of interest and agree to comply with its provisions. (Adopted December 15, 1984, effective February 4, 1985; amended July 26, 1997; March 27, 2004, effective April 1, 2004.)

## **RULE V INFORMATION AVAILABLE TO THE COMMISSION**

### **SECTION 1. Assignment of Commissioners**

Staff shall advise all members of the commission which commissioner shall be lead commissioner for conducting the investigation of each candidate and which commissioners are assigned to the investigation. (Adopted December 15, 1984, effective February 4, 1985; amended March 27, 2004, effective April 1, 2004.)

### **SECTION 2. Candidate Biographical Materials**

All members of the commission shall receive from staff all biographical material received from the Governor's office concerning all of the candidates, which material shall include, but not be limited to, current Personal Data Questionnaires or Application for Appointment. (Adopted December 15, 1984, effective February 4, 1985; amended March 27, 2004, effective April 1, 2004.)

### **SECTION 3. Updated Materials**

When the Personal Data Questionnaire or Application for Appointment pertaining to the judicial candidate is more than one year old at the time the investigation commences, staff shall obtain an updated Personal Data Questionnaire or Application for Appointment.

### **SECTION 4. Prior Evaluations**

Staff will provide copies of prior evaluations to members of the commission for consideration of past commission evaluations of a candidate during a subsequent investigation of the same candidate. (Added July 26, 1997.)

### **SECTION 5. Disciplinary Complaints Against Candidates**

The commission shall obtain information concerning State Bar discipline of a candidate and/or complaints filed with the State Bar concerning a candidate. Notwithstanding designation of a communication as a complaint, if it is determined that such complaint is based upon unfounded allegations, it shall not be deemed to be a complaint of record against a member of the State Bar for purposes of consideration in connection with the appointment of the member to any position. (Adopted December 15, 1984, effective February 4, 1985; renumbered July 26, 1997.)

## **SECTION 6. Outstanding Disciplinary Complaint**

If, at the time the commission votes on a candidate, there is a State Bar complaint pending against the candidate, the commission will request the Governor to withdraw the name unless the candidate is a sitting judge and the complaint arose from the candidate's activity as a member of the State Bar before his or her appointment or election to judicial office. If such a candidate is voted "not qualified," the Governor's office will be notified that the basis for the "not qualified" rating is the open complaint. (Adopted December 15, 1984, effective February 4, 1985; renumbered July 26, 1997; amended March 27, 2004, effective April 1, 2004.)

## **SECTION 7. Input of Local Bar Associations**

If the chair and an investigating commission member deem it advisable, he or she may submit names of candidates to local or statewide bar associations which may have knowledge of the candidate through judicial evaluation procedures set up by that bar association. (Adopted December 15, 1984, effective February 4, 1985; renumbered July 26, 1997; amended March 27, 2004, effective April 1, 2004.)

## **SECTION 8. Standard Forms**

The commission shall agree upon a standard cover letter and a "Confidential Comments Form" to be used by all commissioners when requesting information from sources. (Adopted December 15, 1984, effective February 4, 1985; renumbered July 26, 1997.)

## **SECTION 9. Claimed Rule Violations**

Any claimed violation of these rules and procedures shall not be a basis for invalidating the consideration or vote of the commission on any candidate. (Adopted December 15, 1984, effective February 4, 1985; renumbered July 26, 1997.)

# **RULE VI COMPOSITION OF COMMISSION AND APPOINTMENT AND REMOVAL OF COMMISSIONERS**

## **SECTION 1. Composition of Commission**

### **a. Commission Members**

The membership of the commission shall consist of at least 27, but not more than 38 attorney and public members with the ratio of public members to attorney members determined, to the extent practicable, by the ratio established in sections 6013, 6013.4, and 6013.5, inclusive, of the Business and Professions Code. The membership of the commission should include, when possible, one or more former members of the judiciary, with a preference for those with appellate backgrounds. The membership of the commission shall be broadly representative of the ethnic, sexual, and racial diversity of the population of California and composed in accordance with sections 11140 and 11141 of the Government Code. (Added July 26, 1997; amended June 23, 2005, effective January 1, 2005.)

**b. Pro Tempore Commissioners**

The JNE Chair may designate past JNE commissioners to sit on assignment as pro tempore commissioners to assist current commissioners in either Northern or Southern California if workload demands necessitate such assistance. Past commission members who sit on assignment will be members of the commission for that assignment only and allowed to vote only on the applicants for whom they are the lead or co-commissioners. To qualify to sit on assignment as a pro tempore commissioner, a past commissioner must, within the past three years, have served three full terms on JNE or three years on JNE Review Committee or have completed a term as JNE chair. Past JNE commissioners may sit on assignment as either lead or co-commissioners, assignments to be made on a geographical basis. (Adopted June 23, 2005, effective January 1, 2005.)

**SECTION 2. Appointment and Removal of Commission Members**

Commissioners, including the commission's chair and vice-chair, are appointed by and serve at the will and pleasure of the Board of Governors and may be removed from office with or without good cause. A commissioner shall be removed from office if the Board of Governors adopts the recommendation for removal reported to the president pursuant to section 7 [Breach of Confidentiality] of rule III or if the special committee reported that a commissioner has failed to cooperate with an investigation of a claim. The board shall also remove from office any commissioner when it is reported by the chair to the president that the commissioner has failed to perform assigned duties and failed to attend two consecutive commission meetings, or three commission meetings in a six-month period. The chair of the commission or any commissioner shall report any of the foregoing or any other breaches of applicable law to the president of the State Bar. If a commissioner is removed, all completed confidential comment forms and other confidential material in the possession of such commissioner shall be returned to the commission staff. (Adopted December 15, 1984, effective February 4, 1985; renumbered July 26, 1997.)

**RULE VII  
SEVERABILITY**

If any provision of these rules and procedures or the application of any such provision to any person or circumstances shall be held invalid, the remainder of these rules and procedures to the extent that they can be given effect, or the application of such provision to persons or circumstances other than those as to which they are held invalid, shall not be affected thereby, and to this extent the provisions of these rules and procedures are severable. (Adopted December 15, 1984, effective February 4, 1985.)

## RULES AND PROCEDURES OF THE COMMISSION ON JUDICIAL NOMINEES EVALUATION

### GOVERNMENT CODE

#### §12011.5 Judicial Vacancies—State Bar Evaluation of Candidates

(a) In the event of a vacancy in a judicial office to be filled by appointment of the Governor or in the event that a declaration of candidacy is not filed by a judge and the Governor is required under subdivision (d) of Section 16 of Article VI of the Constitution to nominate a candidate, the Governor shall first submit to a designated agency of the State Bar of California the names of all potential appointees or nominees for such judicial office for evaluation of their judicial qualifications.

(b) The membership of the designated agency of the State Bar responsible for evaluation of judicial candidates shall consist of attorney members and public members with the ratio of public members to attorney members determined, to the extent practical, by the ratio established in Sections 6013, 6013.4, and 6013.5, inclusive, of the Business and Professions Code. It is the intent of this subdivision that the designated agency of the State Bar responsible for evaluation of judicial candidates shall be broadly representative of the ethnic, sexual, and racial diversity of the population of California and composed in accordance with Sections 11140 and 11141 of the Government Code. The further intent of this subdivision is to establish a selection process for membership on the designated agency of the State Bar responsible for evaluation of judicial candidates under which no member of that agency shall provide inappropriate, multiple representation for purposes of this subdivision.

(c) Upon receipt from the Governor of the names of candidates for judicial office and their completed personal data questionnaires, the State Bar shall employ appropriate confidential procedures to evaluate and determine the qualifications of each candidate with regard to his or her ability to discharge the judicial duties of the office to which the appointment or nomination shall be made. Within 90 days of submission by the Governor of the name of a potential appointee for judicial office, the State Bar shall report in confidence to the Governor its recommendation whether the candidate is

exceptionally well-qualified, well-qualified, qualified, or not qualified and the reasons therefor, and may report, in confidence, such other information as the State Bar deems pertinent to the qualifications of the candidate.

(d) In determining the qualifications of a candidate for judicial office, the State Bar shall consider, among other appropriate factors, his or her industry, judicial temperament, honesty, objectivity, community respect, integrity, health, ability, and legal experience.

(e) The state Bar shall establish and promulgate rules and procedures regarding the investigation of the qualifications of candidates for judicial office by the designated agency. These rules and procedures shall establish appropriate, confidential methods for disclosing to the candidate the subject matter of substantial and credible adverse allegations received regarding the candidate's health, physical or mental condition, or moral turpitude which, unless rebutted, would be determinative of the candidate's unsuitability for judicial office. No provision of this section shall be construed as requiring that any rule or procedure be adopted which permits the disclosure to the candidate of information from which the candidate may infer the source, and no information shall either be disclosed to the candidate nor be obtainable by any process which would jeopardize the confidentiality of communications from persons whose opinion has been sought on the candidate's qualifications.

(f) All communications, written, verbal or otherwise, of and to the Governor, the Governor's authorized agents or employees, including, but not limited to, the Governor's Legal Affairs Secretary and Appointments Secretary, or of and to the State Bar in furtherance of the purposes of this section are absolutely privileged from disclosure and confidential, and any communication made in the discretion of the Governor or the State Bar with a candidate or person providing information in furtherance of the purposes of this section shall not constitute a waiver of the privilege or a breach of confidentiality.

**(g)** When the Governor has appointed a person to a trial court who has been found not qualified by the designated agency, the State Bar may make public this fact after due notice to the appointee of its intention to do so, but no such notice or disclosure shall constitute a waiver of privilege or breach of confidentiality with respect to communications of or to the State Bar concerning the qualifications of the appointee.

**(h)** When the Governor has nominated or appointed a person to the Supreme Court or court of appeal in accordance with subdivision (d) of Section 16 of Article VI of the State Constitution, the Commission on Judicial Appointments may invite, or the State Bar's governing board or its designated agency may submit to the commission its recommendation, and the reasons therefor, but no such disclosure shall constitute a waiver of privilege or breach of confidentiality with respect to communications of or to the State Bar concerning the qualifications of the nominee or appointee.

**(i)** No person or entity shall be liable for any injury caused by any act or failure to act, be it negligent, intentional, discretionary, or otherwise, in the furtherance of the purposes of this section, including, but limited to, providing or receiving any information, making any recommendations, and giving any reasons therefor. As used in this section, the term "State Bar" means its governing board and members thereof, the designated agency of the State Bar and members thereof, and employees and agents of the State Bar.

**(j)** At any time prior to the receipt of the report from the State Bar specified in subdivision (c) the Governor may withdraw the name of any person submitted to the State Bar for evaluation pursuant to this section.

**(k)** No candidate for judicial office may be appointed until the State Bar has reported to the Governor pursuant to this section, or until 90 days have elapsed after submission of the candidate's name to the State Bar, whichever occurs earlier. The requirement of this subdivision shall not apply to any vacancy in judicial office occurring within the 90 days preceding the expiration of the Governor's term of office, provided, however, that with respect to those vacancies and with respect to nominations pursuant to subdivision (d) of Section 16 of Article VI of the Constitution, the Governor shall be required to submit any candidate's name to the State Bar in order to

provide it an opportunity, if time permits, to make an evaluation.

**(l)** Nothing in this section shall be construed as imposing an additional requirement for an appointment or nomination to judicial office, nor shall anything in this section be construed as adding any additional qualifications for the office of a judge.

**(m)** The Board of Governors of the State Bar shall not conduct or participate in, or authorize any committee, agency, employee, or commission of the State Bar to conduct or participate in, any evaluation, review, or report on the qualifications, integrity, diligence, or judicial ability of any specific justice of a court provided for in Section 2 or 3 of Article VI of the California Constitution without prior review and statutory authorization by the Legislature, except an evaluation, review or report on potential judicial appointees or nominees as authorized by this section.

The provisions of this subdivision shall not be construed to prohibit a member of the State Bar from conducting or participating in such an evaluation, review, or report in his or her individual capacity.

**(n)** If any provision of this section other than a provision relating to or providing for confidentiality or privilege from disclosure of any communication or matter, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this section to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this section are severable. If any other act of the Legislature conflicts with the provisions of this section, this section shall prevail. (Added by Stats. 1979, ch. 534. Amended by Stats. 1984, ch. 16.)

# RULES AND PROCEDURES OF THE COMMISSION ON JUDICIAL NOMINEES EVALUATION

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