

## ATTACHMENT 2

### DESCRIPTION OF THE 2009 APPOINTMENT PROCESS

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#### BACKGROUND

The Board has charged the Board Committee on Volunteer Involvement (VIC) with the review of the non-disciplinary appointment recommendations for 50+ State Bar sub-entities and external groups (see attached list of entities).

The appointment process is cyclical, with the board review determined by the term's end date and the board's meeting schedule. Most appointments must be made between March and July, and therefore, the bulk of VIC's appointment review will be at this time.

Except for outreach issues and policy discussions, VIC's work will be conducted in closed session. Only the Board of Governors is authorized to make the appointments, and every appointment is confidential until the full Board makes the appointment. In addition, the fact that someone applied for appointment is confidential. Information concerning applications is released only to those involved in the appointment process such as board members and authorized committee members and staff.

State Bar committee appointments are governed by the Board's appointment policies and procedures (found in the Board Book at Tab 15) and by statutory provisions. The appointments to external groups are governed by the policies of the external organization and by Board policy.

#### TYPES OF APPOINTMENTS

##### **A. Interim Appointments**

Interim appointments are appointments to fill unexpected mid-year vacancies and they differ from regular appointments in that the terms of become effective immediately and retain the original expiration dates of the members being replaced (i.e., those appointed to these positions fill only the remaining portion of the term). The vacancies are generally due to members who've resigned or declined an appointment.

Each year, about 6% of the State Bar committee members are unable to continue to serve or to make the time commitment because of a change in job or personal circumstances. Depending on the specific circumstances, for these appointments, Board policy permits committees to recommend an applicant from

the most recent applicant pool or a newly recruited applicant. Applicants filling unexpired terms of one year or less are eligible for reappointment to a full three-year term.

Interim appointments are considered on the consent agenda unless there are policy issues to be considered or a VIC member requests discussion of the item. Interim appointments occur throughout the year, but the most appear on the November and March agendas.

## **B. Annual Appointments to Standing, Special and Section Executive Committees**

February 2, 2009 is the application deadline for most standing, special and section executive committees. All applications and letters of recommendation must be submitted to the Appointments Office for processing. The applications, instructions and policies are distributed to the individual committees no later than March 1.

Many committees appoint a nominating subcommittee to review and rank the applications. The subcommittee then submits its recommendations to the full committee for a vote. In some cases, the subcommittee may conduct interviews. The reviewing committees considers all aspects of the application, weighing the qualifications of the applicant, the letters of recommendation, the committee's requirements and needs for the coming year, and the Board's policies regarding appointment.

By mid-April, the committee chair submits the committee's final recommendation and ranking of the new applicant pool to VIC. The committee letter describes the committee's nominations for officers, reappointments (if any), and new members. Upon receipt of the committee's recommendation, staff reviews the nominations for potential policy conflicts (e.g., same firm, prior service, discipline, or nomination to more than one committee) prior to distribution to VIC for review.

Unless there is a policy issue or a request from a VIC member to discuss a particular committee's recommendations, all annual committee recommendations are placed on VIC's Closed Consent agenda.

### **VIC: New Procedure for 2008-2009 Annual Committee Appointments**

For the review of the annual committee appointments in the spring, the VIC chair has assigned three or more committees to each VIC member. This is a new procedure requiring each VIC member to report on the appointment recommendations for these assigned committees at the May 2009 meeting.

For about half the committees, the VIC member will also be the committee's designated board liaison. For the other committees whose board liaison is not a member of VIC, the VIC member will need to coordinate discussion of the appointment recommendations with assigned liaison.

Specifics of the new procedure include:

1. At the time the committee discusses the appointment applications, each VIC member coordinates attendance at the committee meeting with the committee's assigned board liaison. The VIC member is to discuss the appointment recommendations with the assigned liaison to determine if there are any concerns or issues that should be brought to VIC's attention.
2. If the assigned board liaison is unable to attend the committee meeting at which the applications were discussed, the VIC member may attend this meeting, or contact the committee chair directly to discuss the committee's recommendations before VIC's May meeting.
3. If a VIC member has any concerns about the recommendations, he/she is to notify the board committee coordinator and the VIC chair so that the committee's nominations will be pulled from the consent agenda prior to the May meeting.
4. Committees will be notified if their recommendations will be pulled from VIC's consent agenda. Pursuant to the board's adopted procedures, the committee may send a representative to attend the VIC meeting to participate in the discussion of its nominations.
5. At the May meeting, VIC will consider the committees' nominations. If VIC approves a committee's nominations, the recommendations are submitted to the full Board action at the May meeting. If VIC has concerns about the nominations, VIC may defer action to the July meeting in order to discuss the matter further with the committee.

### **C. Annual Appointments Requiring Application Ranking by VIC Members**

Pursuant to historical practice and the Board's adopted procedures, VIC members review and rank applicants for the following entities:

#### *State Bar entities*

- Committee of Bar Examiners (CBE)
- Commission on Judicial Nominees Evaluation (JNE)
- JNE Review Committee (RJNE)
- Lawyer Assistance Program (LAP) Oversight Committee

*External entities*

- ABA House of Delegates
- Judicial Council

VIC members typically will have two-three weeks after receiving the applications to review and rank the applications for the above entities. The rankings are submitted to the Appointments Office and then compiled for discussion and final action at the next VIC meeting.

In addition, for CBE, JNE, and LAP, the VIC subcommittee may schedule its interviews of the chair and vice chair candidates prior to the July meeting.

1. *CBE*: The State Bar appoints only the attorney members to CBE, and each year there are between one and three attorney vacancies. The CBE chair initially reviews the applications and submits a ranking and a written recommendation to VIC.

Ranking. For its review, VIC members receive CBE's written recommendation and ranking by late May or early June. Upon receipt of the VIC rankings, the rankings of CBE and VIC are combined and discussed at the July meeting.

Officers: If needed, interviews for the CBE chair and vice generally are conducted at CBE's June meeting in Pasadena. The CBE chair is a member of VIC's interview subcommittee.

2. *JNE*: The application deadline for JNE is June 1, 2009. JNE terms are one year and the members typically serve three one-year terms. Each year the applicant pool consists of approximately 20-25 commissioners up for a one-year reappointment and 30-50 new applicants. Depending on the number of reappointments, there are approximately 10-15 positions for new members and six-eight positions for alternates.

Ranking. A JNE leadership subcommittee initially reviews the applications and submits its written recommendation and ranking to VIC.

For the VIC review, VIC members will receive the reappointment and new appointment applications, the JNE chair's evaluations of the reappointment candidates, the JNE leadership's written recommendation, and ranking of the new applicants. VIC members will have approximately two-three weeks to review the materials and submit their vote on the reappointments and ranking of the new applicants. The reappointments and new applicant rankings are discussed at a separate VIC meeting (date to be determined). Historically, the JNE review has required two hours for discussion and selection of the proposed slate and alternates.

The JNE chair and staff director also attend this VIC meeting to participate in the discussion.

Officers: For the JNE chair and vice chair, a subcommittee usually conducts in-person interviews prior to the July meeting.

3. *JNE Review Committee (RJNE):* Rule II, section 12 b. of the JNE rules provides for the appointment of a three-member Review Committee (RJNE) to review requests for reconsideration of the JNE Commission rating of "not qualified." RJNE consists of three members: one former attorney member of the JNE Commission, one former public member of the JNE Commission, and one Board member who must also be a current liaison to the JNE Commission. The committee focuses its investigation on possible violations of the rules of procedure. The committee does not evaluate the qualifications of the candidate. Members serve staggered three-year terms.

Ranking. In 2009, the Board liaison will be available. The position must be filled by a sitting Board member who will serve as the board liaison to JNE for the 2009-2010 year. It is preferred that the board member be a first-year member in 2009-2010 so that the member may serve a full three years.

4. *LAP:* The LAP terms are set by statute and follow the calendar year (January 1-December 31). Members serve four-year renewable terms. Because the committee membership must meet specific criteria set by statute and because of the extensive learning curve, members often serve multiple terms. The State Bar appoints six of the 12 members, the Governor appoints four members and the Senate Rules Committee and the Assembly Speaker each appoint a member.

Ranking. At the November 2008 meeting, LAP will have a physician member and the chair appointment to consider. At the July 2009 meeting, there will be two attorney positions to consider as well as the 2010 officer appointments.

For the physician vacancy in November 2008, VIC will rank the new applications and discuss the rankings at the November meeting.

Officers: If interviews are needed, a subcommittee conducts the interviews for chair and vice chair between June 1 and the July 16 VIC meeting.

5. *ABA House of Delegates:* ABA and Board policies govern these appointments. The application deadline for the annual appointments to the ABA is February 2, 2009. The ABA House of Delegates is the policy-making body of the ABA, and pursuant to its rules, the State Bar appoints 11 delegates. The Bar does not reimburse its delegates for any expenses associated with their service in the ABA House of Delegates.

The State Bar's 11 delegates are part of the California delegation which also includes approximately 24 other delegates appointed by ten local bar associations, ABA sections and divisions, and former officers and board members. The elected State Delegate, John L. McDonnell, Jr. of Oakland, currently heads the California delegation.

Ranking: VIC members usually receive the applications in mid-February and have approximately two-three weeks to review and rank the applicants. VIC will discuss the rankings and make its final recommendation at the March meeting.

6. *Judicial Council:* The Judicial Council is a state constitutional agency that provides policy direction to the courts, the Governor, and the Legislature concerning court practice, procedure and administration. The council consists of 27 members— four lawyer members appointed by the State Bar, the Chief Justice, fourteen judges appointed by the Chief Justice, one member from each house of the Legislature, and six advisory members, including representatives of the California Judges Association and state court administrative agencies.

The four current State Bar's appointments to the Council are: Ray Aragon, Tony Capozzi, Joel Miliband, and Jim Penrod. The application deadline for the Judicial Council is February 2, 2009. In 2009, the State Bar will have one lawyer appointment to make.

Ranking. VIC members usually receive the applications in mid-February and have approximately two-three weeks to review and rank the applicants. VIC will discuss the rankings and make its final recommendation at the March meeting.

#### ***D. Other Appointments***

1. *Fee Arbitration Panel and Presiding Arbitrator.* Each year VIC also considers the appointments and reappointments to the Bar's fee arbitration panel, including the Presiding Arbitrator. The fee arbitration panel consists of approximately 350-400 volunteer lawyer and non-lawyer

arbitrators. The arbitrators serve one-year terms, ending December 31<sup>st</sup>, and are annually reappointed at the November or December meeting.

Arbitrators may serve as long as they meet the qualifications. The Committee on Mandatory Fee Arbitration recruits volunteers for the panel throughout the year, and a few new appointments may be made at the March, May and July meetings

2. *External Entities:* VIC also monitors the appointment recommendations for the certain external organizations whose bylaws or rules require that the State Bar appoint one or more of its members. The appointments to these groups are governed by the by-laws and policies of the external organization. They include:

- California Bar Foundation Board of Directors
- California ALL Board
- Center for Civic Education Board of Directors
- Law School Council
- Legal Services Corporation (LSC) Boards of Directors (five entities)
  - California Indian Legal Services (CILS)
  - California Rural Legal Assistance (CRLA)
  - Legal Aid Foundation of Los Angeles (LAFLA)
  - Legal Aid Society of Orange County (LASOC)
  - Legal Services of Northern California (LSNC)

**List of Annual Board Appointments  
to State Bar and External Entities  
2008-2009**

Standing Committees

1. Administration of Justice, North and South (CAJ)
2. Alternative Dispute Resolution (ADR)
3. Appellate Courts (CAC)
4. Committee of Bar Examiners (CBE)
5. Delivery of Legal Services (SCDLS)
6. Federal Courts (CFC)
7. Group Insurance Programs (COGIP)
8. Professional Liability Insurance (COPLI)
9. Mandatory Fee Arbitration (CMFA)
10. Professional Responsibility and Conduct (COPRAC)

Section Executive Committees

11. Antitrust and Unfair Competition
12. Business Law
13. Criminal Law
14. Environmental Law
15. Family Law
16. Intellectual Property Law
17. International Law
18. Labor and Employment Law
19. Law Practice Management and Technology
20. Litigation
21. Public Law
22. Real Property Law
23. Solo and Small Firm
24. Taxation
25. Trusts and Estates
26. Workers Compensation Law

Special Commissions, Boards and Committees

27. California Board of Legal Specialization (BLS) and its Advisory Commissions and Consulting Groups
28. Appellate Law Advisory
29. Bankruptcy Law Advisory
30. Criminal Law Advisory
31. Estate Planning Trust and Probate Law Advisory
32. Family Law Advisory
33. Franchise and Distribution Law Advisory
34. Immigration and Nationality Law Advisory
35. Taxation Law Advisory
36. Workers Compensation Law Advisory
37. Admiralty and Maritime Law Consulting Group
38. Legal Malpractice Consulting Group

**List of Annual Board Appointments  
to State Bar and External Entities  
2008-2009**

*Special Commissions, Boards and Committees (continued)*

39. California Commission on Access to Justice
40. Client Security Fund Commission
41. Continuing Education of the Bar (CEB) Governing Committee
42. Council on Access and Fairness (COAF)
43. Judicial Nominees Evaluation (JNE) Commission
44. JNE Commission's Review Committee (RJNE)
45. Lawyer Assistance Program (LAP) Oversight Committee
46. Legal Services Trust Fund Commission

*External Entities*

47. ABA House of Delegates
48. California ALL Board
49. California Bar Foundation Board of Directors
50. Center for Civic Education Board of Directors
51. Judicial Council
52. Law School Council

*Legal Services Corporation (LSC) Governing Boards:*

53. California Indian Legal Services (CILS) Board of Directors
54. California Rural Legal Assistance (CRLA) Board of Directors
55. Legal Services of Northern California (LSNC) Board of Directors
56. Legal Aid Foundation of Los Angeles (LAFLA) Board of Directors
57. Legal Aid Society of Orange County (LASOC) Board of Directors