



THE STATE BAR OF CALIFORNIA

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Date: December 10, 2009

To: Members, Board of Governors

From: Patti White, Chair Planning, Program Development and Budget Committee

Re: November 13, 2009 Board Planning Session Breakout Topic I – Commission for Impartial Courts (CIC)

Associate Justice Douglas P. Miller, of the Court of Appeal, Fourth Appellate District, who chaired the CIC Task Force on Judicial Candidate Campaign Conduct, generously lent his time to educate the Board about CIC recommendations for safeguarding quality, impartiality, and accountability in the judicial branch and the role of bar and legal services organizations in advancing these reforms.

The Commission for Impartial Courts (CIC) was formed by Ronald M. George, Chief Justice of California and Chair of the Judicial Council, in September 2007. The CIC's overall charge was to study and recommend ways to ensure judicial impartiality and accountability for the benefit of all Californians. The CIC's membership included not only appellate justices and trial court judges, but also court executive officers; prominent former members of the Legislature; and leaders of the bar, media, law schools, business community, educational institutions, and civic groups.

The commission was comprised of a 17-member steering committee, chaired by Associate Justice Ming W. Chin of the California Supreme Court, and had a 24-month term.

The steering committee was charged with overseeing and coordinating the work of the four task forces, receiving the periodic task force reports and recommendations, and presenting overall recommendations to the Judicial Council.

The commission had four task forces that served 18-months. Each task force was given a charge pertaining to one of the CIC's primary focus areas. The task forces in turn divided into a number of working groups to address specific subject matter areas.

- **Judicial Campaign Finance**

This task force evaluated and made periodic reports and final recommendations to the steering committee regarding any proposals to better regulate contributions to, financing of, or spending by candidates of campaigns for judicial office, or to improve or better regulate judicial campaign advertising, including through enhanced disclosure requirements

- Judicial Candidate Campaign Conduct**
 This task force evaluated and made periodic reports and final recommendations to the steering committee regarding any proposals to promote ethical and professional conduct by candidates for judicial office; including through statutory change, promulgation or modification of canons of judicial ethics; improving mechanisms for the enforcement of the canons; and promotion of mechanisms encouraging voluntary compliance with ethics provisions by candidates for judicial office
- Judicial Selection and Retention**
 This task force evaluated and made recommendations to the steering committee regarding any proposals to improve the methods and procedures of selecting and retaining judges and regarding the terms of judicial office and timing of judicial elections.
- Public Information and Education**
 This task force evaluated and made periodic reports and final recommendations to the steering committee regarding any proposals to improve public information and education concerning the judiciary, both during judicial election campaigns and otherwise.

Justice Douglas discussed some of the CIC recommendations which are noted below. The Consolidated List of Recommendations is attached as Appendix 1:

Judicial Candidate Campaign Conduct

Recommendation #5:

The Code of Judicial Ethics should be amended by adding new canon 3E(2), providing that a judge is disqualified if he or she, while a judge or judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that a person aware of the facts might reasonably believe commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

Recommendation #8:

The formation of unofficial local fair judicial elections committees to educate candidates, the public, and the media about judicial elections, to mediate conflicts, and to issue public statements regarding campaign conduct in local elections should be encouraged.

Recommendation #10:

The Code of Judicial Ethics should be amended to require all judicial candidates, including incumbent judges, to complete a mandatory training program on ethical campaign conduct.

Recommendation #13:

Collaboration among the Administrative Office of the Courts, the State Bar, the California Judges Association, and the National Center for State Courts should be recommended to develop brochures to educate judicial candidates.

Recommendation #16:

Local county bar associations should consider creating independent standing committees that will respond to inaccurate or unfounded attacks on judges, judicial decisions, and the judicial system.

Recommendation #22:

Judicial candidates should be prohibited from seeking or using endorsements from political organizations," as defined in the Terminology section of the Code of Judicial Ethics.

Recommendation #28:

The State Bar should be encouraged to discipline attorney candidates who engage in campaign misconduct.

Judicial Campaign Finance**Recommendation #29:**

A system should be adopted under which each trial court judge is required to disclose, to litigants, counsel, and other interested persons appearing in the judge's courtroom, all contributions of \$100 or more made to the judge's campaign, directly or indirectly. Specifically: (bullets follow)

Public Information and Education**Recommendation #37:**

To improve transparency and better inform the public of the role and operations of the state court system, and to enhance public outreach, the judicial branch should identify

and disseminate essential information that would increase both the public's access to justice and its opportunities for input.

Recommendation #43:

Every child in the state should receive quality civics education, and judges, courts, teachers, and school administrators should be supported in their efforts to educate students about the judiciary and its function in a democratic society.

Recommendation #45:

The State Bar should be asked to offer an educational course to potential judgeship applicants.

Judicial Selection and Retention

Recommendation #51:

Legislation should be sponsored to require that a JNE rating of “not qualified” (and thus, by the absence of announcement, a rating of at least “qualified” or better) for a trial court judge be made public automatically at the time of appointment of a person with that rating.

Recommendation #54:

The following Web sites should explain the judicial appointment process and link to each other:

- The judicial branch's California Courts Web site; and
- The State Bar's JNE Web site and the Governor's Judicial Application Web site both of which should be more user-friendly, contain appropriate information about JNE procedures and the rating system, and include videos explaining the judicial appointment process.

Recommendation #57:

The State Bar should amend the JNE rules to require that any member of the State Bar Board of Governors who attends a JNE meeting comply with the JNE conflict of interest rules

Recommendation #60:

JNE should gather information with respect to the applicant's exposure to and experience with diverse populations and issues related to those populations. JNE should then communicate this information to the governor.

Consolidated List of Recommendations

Judicial Candidate Campaign Conduct

1. The Code of Judicial Ethics should be amended to include the American Bar Association Model Code of Judicial Conduct definition of “impartiality.”
2. The commentary to canon 4B of the Code of Judicial Ethics should be amended to encourage judges to educate the public on the importance of an impartial judiciary.
3. The commentary to canon 5B of the Code of Judicial Ethics should be amended to encourage judicial candidates to discuss their qualifications for office and the importance of judicial impartiality.
4. Canon 5 of the Code of Judicial Ethics should be reexamined for consistency in its use of the terms “judge” and “candidate.”
5. The Code of Judicial Ethics should be amended by adding a new canon 3E(2), providing that a judge is disqualified if he or she, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that a person aware of the facts might reasonably believe commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.
6. A definition of “commitment” that includes “pledges” and “promises” should be added to the Code of Judicial Ethics.
7. An unofficial statewide fair judicial elections committee should be established to educate candidates, the public, and the media about judicial elections; to mediate conflicts; and to issue public statements regarding campaign conduct in statewide and regional elections and in local elections where there is no local committee.
8. The formation of unofficial local fair judicial elections committees to educate candidates, the public, and the media about judicial elections; to mediate conflicts; and to issue public statements regarding campaign conduct in local elections should be encouraged.
9. A model campaign conduct code for use by the state and local oversight committees should be developed.
10. The Code of Judicial Ethics should be amended to require all judicial candidates, including incumbent judges, to complete a mandatory training program on ethical campaign conduct.

11. Judicial candidate training on ethical campaign conduct should include:
 - Identifying issues raised by judicial candidate questionnaires;
 - Distributing a model letter and a model questionnaire that candidates can use in lieu of responding to an interest group questionnaire;
 - Using the advisory memorandum on responding to questionnaires prepared by the National Ad Hoc Advisory Committee on Judicial Campaign Oversight;
 - Encouraging candidates to give reasoned explanations for not responding to improper questionnaires rather than simply citing advisory opinions;
 - Using candidate Web sites; and
 - Explaining why partisan activity by candidates is disfavored.
12. Both the California Judges Association’s Judicial Ethics Hotline and the new Supreme Court Committee on Judicial Ethics Opinions should be publicized as resources that judicial candidates can use to obtain advice on ethical campaign conduct.
13. Collaboration among the Administrative Office of the Courts, State Bar, California Judges Association, and National Center for State Courts should be recommended to develop brochures to educate judicial candidates.
14. The sentence “This canon does not prohibit a judge from responding to allegations concerning the judge’s conduct in a proceeding that is not pending or impending in any court” should be added to the commentary following canon 3B(9) of the Code of Judicial Ethics, but the prohibition against public comment on pending cases should not be extended to attorney candidates for judicial office.
15. The commentary to canon 3B(9) of the Code of Judicial Ethics should be amended to provide guidance to judges on acceptable conduct in responding to attacks on rulings in pending cases.
16. Local county bar associations should consider creating independent standing committees that will respond to inaccurate or unfounded attacks on judges, judicial decisions, and the judicial system.
17. The California Judges Association’s Response to Criticism Team and its network of contacts should be publicized.
18. The statutory slate mailer disclaimer should be strengthened by requiring mailers to cite canon 5 of the Code of Judicial Ethics and, when a candidate is placed on a mailer without his or her consent, to prominently disclose that fact.
19. An amendment to Government Code section 84305.5 should be sponsored to apply to organizations that support or oppose judicial candidates.

20. Judicial campaign instructional materials providing best practices regarding the use of slate mailers should be developed.
21. Judicial candidates should be advised to obtain written permission before using an endorsement and to clarify which election the endorsement is for, to honor any request by an endorser to withdraw an endorsement, and to request written confirmation of any oral request to withdraw an endorsement.
22. Judicial candidates should be prohibited from seeking or using endorsements from political organizations,” as defined in the terminology section of the Code of Judicial Ethics.
23. Instructional materials about the importance of truth in advertising should be developed.
24. Canon 5 of the Code of Judicial Ethics or its commentary should be amended to place an affirmative duty on judicial candidates to control the actions of their campaigns and the content of campaign statements, to encourage candidates to take reasonable measures to protect against oral or informal written misrepresentations being made on their behalf by third parties, and to take appropriate corrective action if they learn of such misrepresentations.
25. The Code of Judicial Ethics should be amended to add a list of prohibited campaign conduct.
26. A letter—to be sent by the courts to county registrars before each election cycle—should be developed addressing permitted use of the title “temporary judge” or “judge pro tem” by candidates.
27. Canon 6 of the Code of Judicial Ethics should be amended to clarify how the title “temporary judge” or “judge pro tem” may be properly used.
28. The State Bar should be encouraged to discipline attorney candidates who engage in campaign misconduct.

Judicial Campaign Finance

29. A system should be adopted under which each trial court judge is required to disclose to litigants, counsel, and other interested persons appearing in the judge's courtroom all contributions of \$100 or more made to the judge's campaign, directly or indirectly. Specifically:
- The commentary to the disclosure provision in canon 3E(2) of the Code of Judicial Ethics should be amended to require a trial judge to maintain an updated list of campaign contributions of \$100 or more and to disclose to litigants appearing in court that the list is available for viewing in the courthouse and online;
 - The commentary to canon 3E(2) should be amended to state that the obligation to disclose campaign contributions continues for a minimum of two years after the judge assumes office; and
 - The commentary to canon 5B should be amended to cross-reference the proposed new commentary to canon 3E(2).
30. Each trial court judge should be subject to mandatory disqualification from hearing any matter involving a party, counsel, party affiliate, or other interested party who has made a monetary contribution of a certain amount to the judge's campaign, directly or indirectly, subject to the following:
- The contribution level at which disqualification shall be mandatory shall be the same as the level, specified in Code of Civil Procedure section 170.5(b), at which a judge is considered to have a "financial interest" in a party, requiring disqualification;
 - Notwithstanding the above mandatory disqualification amount, trial court judges shall continue to disqualify themselves based on contributions of lesser amounts when doing so would be required by Code of Civil Procedure section 170.1(a)(6)(A);
 - The Judicial Council should recommend that the amount specified in Code of Civil Procedure section 170.5(b)—which, as of the date of this tentative recommendation, is \$1,500—be periodically reviewed and adjusted as appropriate;
 - The mandatory disqualification described above shall be waivable by those parties to the matter who were not involved in making the contribution in question; and
 - The obligation to disqualify shall begin immediately on receipt of the contribution in question and shall run for two years from the date that the candidate assumes office or from the date the contribution was received, whichever is later.

31. Appellate courts should be required to send to the parties—with both the first notice from the court and with the notice of oral argument—information on how they may learn of campaign contributions if there is an upcoming retention election or there was a recent election.
32. Appellate justices' campaign finance disclosures should be maintained electronically and should be accessible via the Web and possibly through a link to the California Secretary of State Web site.
33. Each appellate justice should be subject to mandatory disqualification from hearing any matter involving a party, counsel, party affiliate, or other interested party who has made a monetary contribution of a certain amount to the justice's campaign, directly or indirectly, subject to the following:
 - For justices of the Courts of Appeal, the contribution level at which disqualification shall be mandatory shall be the same as the level, stated in canon 3E(5)(d) of the Code of Judicial Ethics, at which a justice is considered to have a "financial interest" in a party requiring disqualification;
 - For justices of the Supreme Court, the contribution level at which disqualification shall be mandatory shall be the same as the contribution limit, stated in Government Code section 85301(c) and California Code of Regulations title 2, section 18545, in effect for candidates for Governor;
 - Notwithstanding the above mandatory disqualification amounts, appellate justices shall continue to disqualify themselves based on contributions of lesser amounts when doing so would be required by canon 3E(4) of the Code of Judicial Ethics;
 - The mandatory disqualification described above shall be waivable by those parties to the matter who were not involved in making the contribution in question; and
 - The obligation to disqualify shall begin immediately on receipt of the contribution in question and shall run for two years from the date that the candidate assumes office or from the date the contribution was received, whichever is later.
34. Legislation should be sponsored prohibiting corporations and unions from expending treasury funds on contributions directly to judicial candidates or to groups making independent expenditures in connection with campaigns for judicial office.
35. Legislation should be sponsored to require that all candidates for judicial office—regardless of their total dollar amount of contributions received and/or expenditures made—be required to file in some electronic format with the California Secretary of State's office all campaign disclosure documents that they would also be required to file in paper form.
36. Spending in connection with judicial elections should be closely observed for developing trends that would indicate a need to reconsider whether to sponsor

legislation to create a system of public financing at the trial court or appellate court level, but such legislation should not be sponsored at this time.

Public Information and Education

37. To improve transparency and better inform the public of the role and operations of the state court system and to enhance public outreach, the judicial branch should identify and disseminate essential information that would increase both the public's access to justice and its opportunities for input. To that end, the following are recommended:
- A leadership advisory group should be appointed to oversee, identify, and coordinate public outreach programs and opportunities for public input; to establish benchmarks of good practice; and to promote the assembly of local teams to assist courts with local outreach programs;
 - The AOC should collect, summarize, and evaluate public outreach resources and methods for public input that are currently available for judges and court administrators and should also collect, summarize, and evaluate educational materials for K–12 teachers and for judges and court administrators making classroom visits;
 - The AOC should maintain a list of resources for local courts that will reflect the diversity of the state and explore ethnic media outlets;
 - Web sites should be enhanced to include the role of the judicial branch and explain how judges are elected or appointed; information concerning how judges are selected or elected should be placed prominently on the California Courts Web site;
 - A compelling video on the role of the judicial branch should be created for use in various venues and should be posted on local court Web sites;
 - The judicial branch should view any public gathering place—such as jury rooms or nonjudicial settings—as an opportunity to inform the public about the role and importance of the judiciary in a democracy;
 - Courts should be identified to pilot programs dealing with community outreach and education; and
 - Information about how judges are elected or appointed should be incorporated into outreach efforts and communications with the media.
38. To improve the quality of justice and the public's trust and confidence in the judiciary, solicitation of public feedback on issues such as judicial performance and satisfaction with the courts should be encouraged, facilitated, and enhanced at all times.

39. Training should be developed for judges and justices on how to present clearly the meaning or substance of court decisions in a way that can be easily understood by litigants, their attorneys, and the public.
40. Local and statewide elected officials should be educated on the importance of the judicial branch.
41. Judges and court administrators should be better trained on how to interact with the media, and training for the media in reporting on legal issues should be supported and facilitated.
42. In order to improve transparency and be responsive to public comments and constructive criticism of the judicial branch, the judicial branch should do the following:
 - Adopt both a model method for responding to unwarranted criticism of the judicial branch and a tip sheet for judges to use when responding to press inquiries;
 - Create an advisory group to provide ongoing direction and oversight of the recommended response plan and ensure that the services it proposes are provided; and
 - Ensure that valid criticisms are referred to the appropriate bodies for response.
43. Every child in the state should receive quality civics education, and judges, courts, teachers, and school administrators should be supported in their efforts to educate students about the judiciary and its function in a democratic society. To that end, the following are specifically recommended:
 - Strategies for meaningful changes to civics education in California should be supported, and a strategic plan for judicial branch support for civics education should be developed;
 - Political support should be sought from leaders in the Legislature, the State Bar, the law enforcement community, and other interested entities to improve civics education;
 - Teacher training programs, curriculum development, and education programs on civics should all be expanded to include the courts;
 - Presiding justices and presiding judges should be encouraged to grant continuing education (CE) credits to judicial officers and court executive officers who conduct K–12 civics and law-related education;
 - The State Bar Board of Governors should be asked to grant Minimum Continuing Legal Education (MCLE) credits to attorneys who conduct K–12 civics and law-related education programs;
 - The AOC should be directed to help pilot extensive civics-related outreach in three jurisdictions; and

- Recognition programs that bring attention to teachers, judges, and court administrators who advance civics education should be promoted.
44. To ensure that voters can make informed choices about candidates for judicial office, the following are recommended:
- Voter focus groups should be conducted within California to determine what information to provide in education materials;
 - Voter education materials should be developed to inform voters about the constitutional duties and responsibilities of judges and justices and the role of the state court system;
 - Judicial candidates should participate in candidate forums and respond to appropriate questionnaires;
 - Efforts should be undertaken to determine the most effective uses of multimedia tools to promote voter education;
 - Collaboration should be established among the Judicial Council, the League of Women Voters, the California Channel, and other groups to inform and educate voters; and
 - Politically neutral toolkits regarding voter information and best practices on public outreach should be developed for use by judicial candidates.
45. The State Bar should be asked to offer an educational course to potential judgeship applicants.
46. A model self-improvement program should be developed for voluntary use by courts and individual judges.
47. The public should be informed that systems are in place to deal with judicial performance issues in fair and effective ways, including elections, appellate review, media coverage, the Commission on Judicial Performance, the State Bar's Commission on Judicial Nominees Evaluation, and local bar association surveys.
48. Courts should be encouraged to use CourTools or similar court performance measures.

Judicial Selection and Retention

49. The State Bar's Commission on Judicial Nominees Evaluation process, a unique form of a merit-based screening and selection system that has served California well, should be retained.
50. In order to increase trust and confidence in the judicial selection process, the background and diversity of the commission members should be given more

publicity, including by placing photographs of the members on the JNE Web site and making that site more accessible on the State Bar's home page.

51. Legislation should be sponsored to require that a JNE rating of "not qualified" (and thus, by the absence of announcement, a rating of at least "qualified" or better) for a trial court judge be made public automatically at the time of appointment of a person with that rating.
52. Legislation should be sponsored to make the current practice of releasing the JNE rating for a prospective appellate justice mandatory and permanent.
53. The release of a rating by JNE should not be accompanied by a statement of reasons.
54. The following Web sites should explain the judicial appointment process and link to each other:
 - The judicial branch's California Courts Web site; and
 - The State Bar's JNE Web site and the Governor's Judicial Application Web site, both of which should be more user-friendly, contain appropriate information about JNE procedures and the rating system, and include videos explaining the judicial appointment process.
55. Law schools should be encouraged to provide information about the judicial appointment process to law students by, for example, encouraging qualified JNE members, both past and present, to give presentations at law schools.
56. To increase public knowledge of the judicial selection process, JNE should be encouraged to have its members speak to local and specialty bar associations, service organizations, and other civic groups.
57. The State Bar should amend the JNE rules to require that any member of the State Bar Board of Governors who attends a JNE meeting comply with the JNE conflict of interest rules.
58. A study should be undertaken to develop effective methods of increasing public knowledge of judicial candidates and their qualifications, including development of a model of judicial candidate evaluation that can be used by county bar associations and others. The model should include the method of selecting appropriate members of the entity that conducts the judicial candidate evaluations, the timing of judicial candidate evaluations, and effective dissemination to the public.
59. The courts should be directed to consider, when making appointments of subordinate judicial officers, both the diverse aspects of the applicants and the

applicants' exposure to and experience with diverse populations and their related issues.

60. The Commission on Judicial Nominees Evaluation should gather information regarding judicial applicants' exposure to and experience with diverse populations and issues related to those populations and should then communicate this information to the Governor.
61. The Governor should consider an applicant's exposure to and experience with diverse populations and issues related to those populations and request this information on the judicial application form.
62. The judicial branch's public outreach programs should encourage qualified members of the bar to consider applying for judicial office.
63. An amendment should be sponsored to change the constitutional provision for the recall of a judge—which currently requires a petition with signatures of 20 percent of those voting for a judge in the most recent election—to require a petition with signatures of 20 percent of those voting for district attorney, the only county official elected in every county.
64. A constitutional amendment should be sponsored to provide that a trial court judge shall serve at least two years before his or her first election.
65. Legislation should be sponsored to change the number of signatures needed for placing an unopposed judicial election on the ballot for a potential write-in contest from the current level of 100 signatures to 1 percent of the voters for district attorney in the last county election but not fewer than 100 signatures.
66. Legislation should be sponsored to amend current law—which provides that an unopposed judge may be challenged by write-ins at either or both the primary election and the general election—to permit only one challenge, which should be at the first (i.e., primary) election.
67. An amendment should be sponsored to article VI, section 16 of the California Constitution to reorder the subdivisions therein and make minor wording changes for the sake of clarity.
68. A constitutional amendment should be sponsored to provide that retention elections for appellate justices be held every two years (during both the gubernatorial and the presidential elections) rather than the present system of every four years (during the gubernatorial elections).
69. A constitutional amendment should be sponsored to provide that following an appellate justice's initial retention election, that justice serves a full 12-year term,

rather than the current system of a 4-, 8-, or 12-year term, depending on the length of term remaining for the previous justice holding that seat.

70. A constitutional amendment should be sponsored to provide that an appellate justice serve at least two years before the first retention election, paralleling recommendation 64 above concerning trial court judges.
71. Further study should be made of ways to help ensure that judicial vacancies are filled promptly.