



# THE STATE BAR OF CALIFORNIA

180 Howard Street  
San Francisco, Ca 94105  
(415) 538-2000

---

Date: May 4, 2005 **Item V.A**  
From: Richard Rubin, Chair, Interim Report of JNE Committee Report  
To: Member Involvement Relation Services Committee  
Re: Interim Report of JNE Committee Report

---

## **BACKGROUND**

The JNE Commission was created in 1979 by legislative enactment to review and evaluate all candidates seeking appointment to local and federal courts through gubernatorial nomination. It was the legislature's intent that this process be carried out in accordance with the highest standards of impartiality and confidentiality.

The Commission is composed of 36 members, mainly attorneys from throughout the state and has also included retired judges and public members. The Board of Governors has the duty of making all the appointments. The goal has been to comprise a Commission which is ethnically, religiously and politically diverse in its make-up.

It is generally accepted that the Commission's autonomy should be safeguarded while at the same time ensuring that it is respectful of every Governor's nominations yet politically impartial, even-handed and thorough in evaluating the merits of every candidate.

An advisory committee\*\* (see below) which previously did an extensive study of JNE Commission operations concluded that "...the proper role of the JNE Commission is as an advisor to the Governor....rather than as a "check" on the gubernatorial appointment power." It also concluded "that the public protection purpose inherent in an evaluation of judicial candidate qualifications and independent status of JNE are critical considerations."

## **PURPOSE OF THE COMMITTEE**

The Committee was formed on the authorization of State Bar President, Howard Miller, and was charged with doing a general evaluation of JNE Commission policies, standards and procedures which came under scrutiny as a result of the premature leaking last summer of the name of a candidate who was judged unqualified for appointment. The grounds for this candidate's disqualification were stated to be "lack of legal practice experience, including recent civil trial, jury and criminal trial experience, and sufficient relevant experience for the Court of Appeal," which was vigorously challenged by many. Because the JNE Review Committee has the authority to rescind JNE Commission rulings of candidates judged "Not Qualified," the Bar Committee

determined that it should also examine the composition and workings of the JNE Review Committee.

To better inform its deliberations and to avoid duplication of efforts by prior study panels that made significant recommendations about the operations of the JNE Commission and the JNE Review Committee, many of which have been adopted, the Committee studied in some detail their prior findings and recommendations.

These included: *\*\*The Report of the Advisory Committee to Review the Rules and Procedures of the Commission on Judicial Nominees Evaluation (aka the Ward Committee) May 31, 1997, and Comments and Objections to the Report, June 25, 1997; The Commission on Judicial Nominees Evaluation, February 18, 2005; The Report of the Commission for Impartial Courts, November 2006.*

The Committee also reviewed the recommendations contained in a letter of October 5, 2009 to the Board from former State Bar Governor, and former JNE Review Committee member, John Dutton.

## **RECOMMENDATIONS**

It should be emphasized that the Committee has not yet completed its review. However, it has initially identified a number of areas where it sees deficiencies and where improvements appear warranted. Some of these recommendations may require legislative action.

### *(1) Investigation upon Breach of Confidentiality (Rule 7.22)*

Under present practice a special committee of the Board of Governors (if one is appointed) has the discretion to investigate a claim of breach of confidentiality by a JNE commissioner. The Committee recommends that the State Bar President, subject to Board approval, be required to appoint such an investigative committee within 7 days of the report of any such breach.

Rationale: To avert adverse repercussions on the infrequent occasions when the names of judicial nominees are prematurely disclosed to the press or otherwise made public as occurred in 2009, the Committee believes that a procedure must be put in place that triggers an investigation of any breaches of confidentiality with minimum delay. Such action was also deemed necessary in the interests of public protection.

### *(2) Change in Rating Classification (Rule 7.61-B Reports to Governor)*

Under present practice the JNE Commission can only issue a rating of "NOT QUALIFIED" for candidates deemed as such. The Committee recommends that, while this rating should be preserved, an alternative rating "NOT RECOMMENDED AT THIS TIME" should be permitted. This deviates slightly from Recommendation # 18 of the Ward Committee, which called for replacement of the "NOT QUALIFIED" rating with the rating "NOT RECOMMENDED AT THIS TIME."

Rationale: Recognizing that while there are some nominees who because of ethical, intellectual, health and other considerations may lack the requisite judicial temperament, others should not be discouraged from reapplying who might be judged qualified at a future time after further experience. It was felt that the Commission should have the discretion of making this alternate rating.

*(3) Change in Rating Notification (Rule 7.61-G)*

Under present practice the State Bar has the discretion of either disclosing or not making public the name of any candidate appointed by a Governor to the trial court after notice to the candidate who the Commission has found not qualified. The Committee recommends that such notice be made mandatory, and that this disclosure apply also to candidates judged not qualified at this time.

Rationale: This change was recommended in the interests of full transparency and to avoid the potential for misconceptions as to why such disclosure may have been withheld.

SUMMARY

The Committee is still reviewing other areas regarding the operations of both the JNE Commission and JNE Review Committee and will report back to the Board on its findings and recommendations.