TITLE 7. MISCELLANEOUS PROVISIONS

Adopted July 2007

DIVISION 1. COMMISSION ON JUDICIAL NOMINEES EVALUATION

Chapter 1. General provisions

Rule 7.1 Commission on Judicial Nominees Evaluation

The Board of Trustees of the State Bar of California has established a Commission on Judicial Nominees Evaluation ("commission") pursuant to statute[1] to confidentially investigate and evaluate the judicial qualifications of those identified by the Governor for appointment or nomination to a judicial office.

Rule 7.1 adopted effective July 17, 2009; amended effective January 1, 2012.

Rule 7.2 Membership and terms

The commission, its chair, and its vice-chair are appointed by the Board of Trustees and serve at the pleasure of the Board. To the extent feasible,

(A) the commission is to consist of at least twenty-seven and no more than thirty-eight members, at least eighty percent of whom must be active members in good standing of the State Bar and the balance public members;

(B) one of the State Bar members is to be a former judge, preferably of an appellate court; and

(C) the membership is to consist of a variety of persons of different backgrounds, abilities, interests, and opinions who are broadly representative of the ethnic, sexual, and racial diversity of the population of California.[2]

Rule 7.2 adopted effective July 17, 2009; amended effective January 1, 2012.

Rule 7.3 Temporary commissioners

(A) The chair may appoint a former member of the commission as a temporary commissioner to assist the commission with its workload. An appointee must recently have been commission chair or served three full terms on the commission or its review committee. A temporary commissioner may lead an investigation.

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[1] Government Code § 12011.5.
[2] See Government Code §§ 11140, 11141, and 12011.5.

(B) A temporary commissioner may participate only in the consideration of and vote on the candidate the chair has assigned the commissioner to investigate.

Rule 7.3 adopted effective July 17, 2009.

Rule 7.4 Removal of commissioners

The Board may remove from office any commissioner whom the commission chair has identified in a report to the President of the Board as failing to perform assigned duties or regularly attend scheduled meetings.

Rule 7.4 adopted effective July 17, 2009.

Rule 7.5 Duties of commissioners

Each commissioner must

(A) not endorse or participate in a judicial candidate's campaign for office;

(B) not vote on a candidate if absent for any time from the meeting at which the commission votes on the candidate;

(C) not participate in any other judicial evaluation process;

(D) not apply for or accept a State of California judicial appointment or permit his or her name to be submitted for evaluation as a candidate for such an appointment while a majority of the commission consists of members with whom he or she has served;

(E) report to the chair or vice-chair of the commission for appropriate action any concern that a fellow commissioner has breached these rules or law applicable to the commission; and

(F) comply with these rules after signing a declaration that he or she has read, understood, and agrees to comply with the rules, the declaration being made under oath upon taking office and then annually.

Rule 7.5 adopted effective July 17, 2009.

Rule 7.6 Time limit changes

For good cause and with the consent of a candidate for judicial office, unless otherwise provided by law, a time limit prescribed by these rules may be changed.

Rule 7.6 adopted effective July 17, 2009.

Rule 7.7 Information on candidates

(A) To evaluate the judicial qualifications of a candidate for a judicial office, each commissioner must consider the following information:

(1) a current Application for Appointment provided by or to the Governor's office;

(2) any past application materials and commission evaluations that have not been deemed unreliable by a Review Committee; and

(3) past State Bar complaints against and discipline imposed on a candidate, except for complaints based on allegations that the commission deems unfounded.

(B) The commission may also consider information regarding candidates solicited from local or statewide bar associations that may have knowledge of the candidate through their own judicial evaluation procedures.

Rule 7.7 adopted effective July 17, 2009.

Rule 7.8 Commission records

(A) Upon completion of his or her service or term, a commissioner must forward to the State Bar for retention for two years any completed Confidential Comment Forms and other records related to a commission investigation or activity. Copies of records stored electronically must be transferred to the State Bar and deleted from any electronic device not issued by the State Bar. After two years, all the forms and other documents related to an investigation or activity must be destroyed, unless the Board of Trustees, its President, or the chair instructs otherwise.

(B) Records related to a Review Committee decision must be destroyed three years after the decision.

Rule 7.8 adopted effective July 17, 2009; amended effective September 2, 2010; amended effective January 1, 2012.

Chapter 2. Standards

Rule 7.20 Confidentiality required

(A) Except as permitted by law[3] or these rules, commission investigations, opinions expressed to the commission by raters or others with regard to a candidate's qualifications, interviews with candidates or others, meetings, the vote or comments of any individual commissioner or the vote of the commission as a

[3] Government Code § 12011.5.

whole, and all other commission activities and records are absolutely confidential. Disclosure is prohibited even of the name of a candidate or the fact that the commission is considering a candidate.

(B) To ensure the integrity and confidentiality of the commission's activities and records, the Board of Trustees and its members are not permitted to receive copies of commission records or inspect its records except as authorized by law or these rules.

(C) This rule applies to the Board of Trustees, commissioners, and employees and agents of the State Bar but not to candidates.

Rule 7.20 adopted effective July 17, 2009; amended effective January 1, 2012.

Rule 7.21 Confidentiality exclusions

None of the following constitutes a breach of confidentiality under these rules:

(A) confidential inquiries made in the course of investigations;

(B) information commissioners share or discuss to discharge their responsibilities under these rules, such as information about interviews with raters, Confidential Comment Forms, comments of individual commissioners, and votes;

(C) information required by the review committee appointed to review commission ratings of not qualified;[4]

(D) information required to investigate and determine a claim of breach of confidentiality;[5]

(E) attendance at commission meetings or inspection of commission records at the offices of the State Bar by members of the Board of Trustees;

(F) information that the chair authorizes individual commissioners to provide to members of the Board of Trustees;

(G) presentations or recommendations, supported with reasons, made by the chair or the chair's designee to the Commission on Judicial Appointments;[6]

(H) public disclosure as permitted by law of a not qualified rating of a candidate the Governor has appointed to a trial court;[7]

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[4] Rule 7.66.
[5] Rule 7.22.
[6] Government Code § 12011.5(h).
[7] Government Code § 12011.5(g).

(I) disclosure by the chair or staff to a candidate of a not qualified rating; and

(J) any discussion regarding law, rules, or procedures applicable to the commission.

Rule 7.21 adopted effective July 17, 2009; amended effective January 1, 2012.

Rule 7.22 Breach of confidentiality

A special committee of the Board of Trustees must investigate a claim of breach of confidentiality.[8] The President of the State Bar, subject to the approval of the Board, must appoint the special investigative committee within 7 days of the report of a breach of confidentiality.

Rule 7.22 adopted effective July 17, 2009; amended effective November 19, 2010; amended effective January 1, 2012.

Rule 7.23 Disclosure of conflicts of interest

In order to avoid conflicts of interest that may interfere or appear to interfere with the commission's ability to impartially assess the qualifications of a candidate for judicial office, a commissioner or board member attending a commission meeting or inspecting commission records must immediately disclose to the chair the nature of any significant present or past familial, professional, business, social, political, or other relationship with a candidate, whether direct or indirect.

Rule 7.23 adopted effective July 17, 2009.

Rule 7.24 Disqualification from participation

(A) If a commissioner or the chair determines that a relationship would unduly influence or appear to influence the commissioner's consideration of a candidate's qualifications, the commissioner must not investigate or evaluate the candidate and must refrain from attempting to influence the evaluation of any other commissioner. Factors to be considered in making the determination include the date of the relationship, its duration, and whether it is more than casual or incidental. If the commissioner determines that the relationship does not require disqualification and the chair disagrees, the determination of the chair prevails.

(B) A disqualified commissioner may complete a Confidential Comment Form on a candidate but may not be present when the commission considers or votes on the candidate or be identified as a rater at a commission meeting.

[8] See Business & Professions Code §§ 6044, 6049, 6050, 6051, 6051.1, and 6052.

(C) A board member whose relationship with a candidate may interfere or appear to interfere with the commission's ability to impartially assess the qualifications of the candidate may not be present when the commission meets to consider the candidate, may not review commission records regarding the candidate, and must refrain from attempting to influence the evaluation of any commissioner regarding the candidate.

Rule 7.24 adopted effective July 17, 2009.

Rule 7.25 Qualities evaluated

In evaluating the qualifications of judicial candidates, the commission must consider the extent to which candidates possess the following qualities, the absence of any one of which is not intended to be disqualifying: impartiality, freedom from bias, industry, integrity, honesty, legal experience broadly,[9] professional skills, intellectual capacity, judgment, community respect, commitment to equal justice, judicial temperament, communication skills, and job-related health. In addition

(A) Superior court candidates are expected to have the qualities of decisiveness, oral communication skills, and patience;

(B) Court of Appeal candidates are expected to have the qualities of collegiality, writing ability, and scholarship; and

(C) Supreme Court candidates are expected to have the qualities of collegiality, writing ability, scholarship, distinction in the profession, and breadth and depth of experience.

Rule 7.25 adopted effective July 17, 2009.

Rule 7.26 Ratings assigned

(A) The commission must assign one of the following ratings to candidates for superior court:

(1) exceptionally well qualified to candidates possessing qualities and attributes of remarkable or extraordinary superiority that enable them to perform the judicial function with distinction;

(2) well qualified to candidates possessing qualities and attributes indicative of a superior fitness to perform the judicial function with a high degree of skill and effectiveness;

(3) qualified to candidates possessing qualities and attributes sufficient to perform the judicial function adequately and satisfactorily; or

[9] Government Code § 12011.5(d).

(4) not qualified to candidates possessing less than the minimum qualities and attributes required by these rules.

(B) The commission must assign one of the following ratings to candidates for the Court of Appeal or the Supreme Court:

(1) exceptionally well qualified to candidates possessing qualities and attributes of remarkable or extraordinary superiority that enable them to perform the appellate judicial function with distinction;

(2) well qualified to candidates possessing qualities and attributes indicative of a superior fitness to perform the appellate judicial function with a high degree of skill, effectiveness, and distinction;

(3) qualified to candidates possessing qualities and attributes sufficient to perform the appellate judicial function with a high degree of skill and effectiveness; or

(4) not qualified to candidates possessing less than the minimum qualities and attributes required by these rules.

Rule 7.26 adopted effective July 17, 2009.

Rule 7.27 Rating imputed

Notwithstanding any other provision of these rules, a candidate is deemed qualified if elected to superior court and then appointed by the Governor to fill the vacant and unexpired term for that office immediately preceding the term to which he or she has been elected.

Rule 7.27 adopted effective July 17, 2009.

Chapter 3. Procedures

Article 1. In general

Rule 7.40 Assignment of commissioners

The chair or staff in the chair's absence must appoint a team of commissioners ("team"), one of whom is designated as lead, to investigate candidates and report to the commission as follows:

(A) for a candidate for superior court, a team of two or more commissioners, one of whom is a State Bar member; and

(B) for a candidate for the Court of Appeal or Supreme Court, a team of three or more commissioners, one of whom is a public member.

Rule 7.40 adopted effective July 17, 2009.

Rule 7.41 Duties of lead commissioner

The lead commissioner must

(A) contact the other team members to establish procedures to facilitate the investigation, reduce duplication of effort, and assure compliance with these rules; and

(B) before beginning the investigation, notify the candidate that the investigation is pending.

Rule 7.41 adopted effective July 17, 2009.

Article 2. Confidential Comment Forms

Rule 7.45 Candidate's contact list

Upon receiving the name of a candidate, the team must ask the candidate to provide the names of and contact information for fifty to seventy-five people to whom Confidential Comment Forms may be sent because they are reasonably likely to have knowledge of the candidate's qualifications.

Rule 7.45 adopted effective July 17, 2009.

Rule 7.46 Commission's contact list

(A) Upon receiving the name of a candidate, the team must prepare a list of people to whom Confidential Comment Forms may be sent because they are reasonably likely to have knowledge of the candidate's qualifications. To the extent feasible, the list must reflect a broad cross-section of attorneys who practice the same types of law as the candidate and where the candidate practices.

(B) Whenever possible the team will not place continuing and exclusive reliance on the same sources of information in evaluating candidates from a given area.

Rule 7.46 adopted effective July 17, 2009.

Rule 7.47 Required distribution

(A) The objective of the team must be to obtain a return of at least fifty Confidential Comment Forms that provide information that is sufficient and credible for a fair evaluation.

(B) Absent unusual circumstances, the team must send confidential questionnaires to

(1) all those listed in a candidate's Application for Appointment and all others whose names are submitted by the candidate;

(2) seventy-five selected at random from the commission's mailing list;

(3) all judicial officers in each county where a candidate practices and seeks appointment, except for the County of Los Angeles;

(4) at least fifty percent of all judicial officers, including those reasonably likely to have knowledge of a candidate's qualifications if the candidate practices in the County of Los Angeles and all judicial officers in any other county where the candidate seeks appointment;

(5) all justices of any appellate district where a candidate practices and all justices of the California Supreme Court; and

(6) all or at least fifty randomly selected prosecutors and criminal defenders, whichever number is less, in any county where a candidate practices criminal law and any other county where the candidate seeks appointment.

(C) A team member who receives negative or adverse comments on a Confidential Comment Form must make a reasonable effort to contact the person who completed the form and be prepared to report the results of the contact to the commission.

Rule 7.47 adopted effective July 17, 2009.

Article 3. Candidate interviews

Rule 7.50 Prior disclosure of substantial and credible adverse allegations

At least four business days before interviewing a candidate, the team must disclose to the candidate as specifically as possible without breaching the confidentiality required by these rules any substantial and credible adverse allegations related to temperament, industry, integrity, ability, experience, health, physical or mental condition, or moral turpitude that would be determinative of unsuitability for judicial office unless rebutted. The team may disclose only allegations it has corroborated.

Rule 7.50 adopted effective July 17, 2009.

Rule 7.51 Purpose and timing of candidate interviews

(A) When the lead commissioner determines that a reasonable time has lapsed for return of Confidential Comment Forms and a sufficient number of forms has been returned to enable the team to evaluate the candidate's qualifications, the entire team must interview the candidate to

(1) discuss as specifically as possible all factors positive and negative, relevant to qualifications regarding which the team requires further information, without breaching the confidentiality required by these rules; and

(2) afford the candidate the opportunity to respond to the adverse information provided to the candidate[10] and present additional information regarding qualifications that support his or her candidacy.

(B) Before voting on the candidate, the commission must afford the candidate a reasonable opportunity to provide the commission with additional information in response to adverse allegations raised in the interview.

Rule 7.51 adopted effective July 17, 2009.

Rule 7.52 Conduct of candidate interviews

(A) The team must interview a candidate in person, unless the chair authorizes the use of remote means in unusual circumstances. A candidate may not be interviewed by or appear before the entire commission in connection with his or her nomination.

(B) In conducting the interview, the team must do nothing to enable the candidate to ascertain the source of information it has received under the assurance of confidentiality.

(C) Unless the candidate objects, the interview must be recorded and the recording retained in accordance with these rules. A candidate who objects to recording is not entitled to review of a rating of not qualified.

Rule 7.52 adopted effective July 17, 2009.

Article 4. Evaluations

Rule 7.55 Separate evaluation of candidate for superior court and appellate court

When the Governor names a candidate for a superior court and an appellate court, the commission must conduct separate evaluations for each judicial office.

Rule 7.55 adopted effective July 17, 2009.

[10] Rule 7.50.

Rule 7.56 Summary evaluation of candidate previously evaluated for superior court or Court of Appeal

(A) The commission may conduct a summary evaluation based on a completed evaluation and rating of qualified or higher for

(1) a superior court candidate whom the Governor later proposes for the superior court of a different county; or

(2) a Court of Appeal candidate whom the Governor later proposes for a different district of the Court of Appeal.

(B) In determining whether to conduct a summary evaluation, the commission must consider the same factors the chair would consider when the Governor requests a new evaluation of a candidate.[11]

Rule 7.56 adopted effective July 17, 2009.

Rule 7.57 Evaluation of Supreme Court candidate named for Court of Appeal

If the commission has rated a candidate for the Supreme Court as qualified or higher, and the Governor within a reasonable time proposes the candidate for the Court of Appeal, the rating applies for the Court of Appeal vacancy.

Rule 7.57 adopted effective July 17, 2009.

Article 5. Reports

Rule 7.60 Reports to commission

At the conclusion of an investigation and evaluation, the team must provide the commission with a written report on the candidate and, absent unusual circumstances, the lead commissioner must present the report in person. The report must specify the number of Confidential Comment Forms mailed and the number received; categorize the responses; summarize substantial and credible information submitted; recommend a rating; and otherwise comply with commission instructions.

Rule 7.60 adopted effective July 17, 2009.

Rule 7.61 Reports to Governor

(A) A commission report to the Governor regarding the qualifications of a candidate must include the names of the team members; the number of Confidential Comment Forms mailed and the number returned; and the number of

[11] See Rule 7.57.

commission votes for each rating, except when the commission has found the candidate not qualified on the basis of substantial and credible information. When a report includes the number of commission votes, it must also provide the number of any commissioners who were present for the discussion of a candidate but then abstained from voting for any reason.

(B) If the commission has found a candidate not qualified, the report must also

(1) state that “at least 75% of the commissioners voting or abstaining find the candidate not qualified” and not provide the number of votes; or

(2) state that “a majority that is less than 75% of the commissioners voting or abstaining finds the candidate not qualified” with the number of votes and provide the number of votes.

(C) If unusual circumstances prevent a team from creating mailing lists, distributing Confidential Comment Forms, obtaining responses, or otherwise meeting the requirements of these rules, the team must identify those circumstances in its report to the Governor.

(D) If a State Bar complaint against a candidate is pending when the commission votes on the candidate, the commission must ask the Governor to withdraw the name unless the candidate is a sitting judge and the complaint concerns activity that occurred before the candidate assumed judicial office. If the commission votes such a candidate not qualified, it must notify the Governor's office that the basis for the not qualified rating is the open complaint.

(E) If half the commissioners voting or abstaining rates a candidate not qualified and half rates the candidate qualified or better, the candidate is reported as qualified. A candidate is reported as not qualified only if more than half the commissioners voting or abstaining rate the candidate not qualified.

(F) In general, the commission makes reports to the Governor in the order in which the Governor has submitted the names of candidates. The commission may consider a candidate out of order if the chair determines that there are reasons to do so.

Rule 7.61 adopted effective July 17, 2009.

Article 6. Reconsideration

Rule 7.65 Reconsideration of not qualified rating

Only a candidate rated not qualified is entitled to request reconsideration of the rating. Within ten days of sending the Governor a rating of not qualified, the commission must notify the candidate in writing of the not qualified rating and the right to request reconsideration. The candidate must make a request in accordance with these rules

within thirty days of receiving the written notice. The review committee will complete review of a candidate's request for reconsideration not later than 90 days after the State Bar receives the request. The State Bar will not make the not qualified rating public while the review is pending.[12]

Rule 7.65 adopted effective July 17, 2009; amended effective November 19, 2010.

Rule 7.66 Review committee

(A) To review candidates' requests for reconsideration of a commission rating, the Board of Trustees must appoint a five-member review committee consisting of two members of the Board of Trustees, one of whom shall be a public member and one an attorney member, one past member of the commission, and two at large members to be appointed at the discretion of the Board of Trustees. Neither of these at large members will be current members of the Board of Trustees.

(B) The review committee has absolute discretion to rescind the opinion of the commission if it has good cause to believe that

(1) violation of these rules has materially affected the commission's rating;

(2) conflict of interest or bias has affected the rating;

(3) an inadequate or biased mailing list was used;

(4) new evidence, which the candidate had no reasonable opportunity to present, could have changed the rating; or

(5) after review of the candidate's record, the commission's rating of not qualified is not supported by substantial evidence.

(C) If a member of the review committee recuses himself or herself in a particular matter, the Executive Director of the State Bar must assign the matter to a temporary member who has previously served on the review committee.

Rule 7.66 adopted effective July 17, 2009; amended effective November 19, 2010; amended effective January 1, 2012.

Rule 7.67 Candidate's request for new evaluation

If the review committee rescinds a not qualified rating of the commission and the candidate requests a new investigation, the chair must appoint new investigators to conduct the new investigation. The candidate's request must be submitted in writing and be received within thirty days of issuance of notice of the recission.

[12] Gov. Code § 12011.5, subd. (g).

Rule 7.67 adopted effective July 17, 2009.

Rule 7.68 Governor's request for new evaluation

(A) If the Governor requests a new evaluation of a candidate whom the commission has rated not qualified, the chair must determine whether or not a new investigation is required.

(B) To determine whether or not a new investigation is required, the chair must consider

(1) the extent to which the original investigation failed to include facts or information that should have been investigated;

(2) the extent to which acts or events occurring after the investigation could change the rating;

(3) the extent to which additional information or the candidate's further rebuttal of adverse information would assist the commission in assessing a material issue;

(4) whether the original investigation is still timely, "timely" normally meaning concluded within the last twelve months;

(5) the candidate's current disciplinary record; and

(6) other factors that may be relevant.

(C) If the chair determines that a new investigation is not required, at its next meeting following receipt of the Governor's request the commission must vote to affirm its rating or assign a new one.

(D) If the chair determines that a new investigation is required, the chair must assign it to the original team or a new one. Upon receipt of the team's report, the chair must provide it to the commission at its next meeting to vote on the candidate's qualifications.

Rule 7.68 adopted effective July 17, 2009.