



# The State Bar of California

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## **OPEN SESSION**

### **AGENDA ITEM**

**54-114 MARCH 2021**

### **BOARD EXECUTIVE COMMITTEE III.F**

**DATE:** March 18, 2021

**TO:** Members, Board Executive Committee  
Members, Board of Trustees

**FROM:** Sarah L. Cohen, Attorney, Mission Advancement & Accountability Division

**SUBJECT:** Commission on Judicial Nominees Evaluation: Change in Term Structure and Appointment of Co-Vice-Chair

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## **EXECUTIVE SUMMARY**

This item requests that the Board approve a technical change to the manner in which the terms of JNE commissioner appointments are structured: replacing three one-year terms with a single, three-year term. This item also requests that the Board appoint a co-vice-chair to serve alongside incoming 2021 JNE Commission Vice-Chair Alana Arcurio.

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## **BACKGROUND**

The Commission on Judicial Nominees Evaluation (JNE) is a subentity of the State Bar created by Government Code section 12011.5 for the purpose of evaluating judicial candidates under consideration for appointment by the Governor. Pursuant to statute, prior to exercising judicial appointment authority, the Governor is required to submit the names of candidates to the JNE Commission for evaluation. The JNE Commission must investigate the candidates' judicial qualifications and report back to the Governor within 90 days with ratings of exceptionally well qualified, well qualified, qualified, or not qualified. The JNE Commission must also provide the reasons for its rating and it does so in a formal report.

There are 38 members of the JNE Commission. Commissioners serve three one-year terms. Leadership on the commission is provided by two officers appointed by the Board of Trustees: the vice-chair and the chair.

The JNE Commission is composed of both public (nonlawyer) and lawyer members, up to a maximum of 38 members. See Attachment B – Current 2020 JNE Commission. The JNE Commission meets approximately six times each JNE year, which begins in June and ends in April. The first meeting of the new 2021 JNE Commission will be in June 2021, and the final meeting will be in April 2022. Each meeting is two days long. On average, 25 to 30 judicial candidates are considered at each meeting.

Currently, commissioners serve three consecutive one-year terms, pending satisfactory annual evaluations from the JNE Commission Chair. Only the chair may serve a fourth year. Each year, commissioners must reapply and confirm that they will be able to keep up with the demands of the JNE Commission workload. Commissioners seeking reappointment have preference over new applicants because of the steep learning curve involved in mastering the JNE software and developing a firm understanding of the candidate investigation and evaluation process.

Historically, the JNE Commission vice-chair position has been used to prepare a member of the commission to serve in the leadership role of chair. Commissioners who serve as vice-chair do so during their third year and then, instead of rolling off the commission at the end of that term, assume the role of chair in a fourth year of service. The vice-chair has substantial responsibilities, as assigned by the chair. Serving in the vice-chair position provides a hands-on training opportunity to develop the expertise necessary to perform the functions of the chair in the fourth year.

## **DISCUSSION**

### **Change in Term Structure**

As stated above, commissioners currently serve three consecutive one-year terms. This cumbersome structure is unique to the JNE Commission and serves no clear purpose.

In addition, the structure is burdensome to the JNE commissioners and officers, State Bar staff, and the Board of Trustees. To continue serving on the JNE commission, current commissioners are required to complete an application for reappointment and comply with conflict of interest declaration and oath requirements in their second and third years instead of only once. JNE officers are asked to make recommendations regarding reappointment of current commissioners to the Board Appointments Liaisons. The appointments liaisons are tasked with making recommendations to the Board Executive Committee and full Board, including recommendations regarding reappointment of current commissioners. The administrative burden of these various reappointment processes falls on State Bar staff.

And, typically, everyone who serves one year ends up serving three years.

The proposed, nonsubstantive change in term structure would replace the three one-year terms with a single three-year term, thereby shedding the inefficient reappointment layer of the JNE Commission appointments process. By approving this change, the administrative burden on State Bar staff would be lifted, and the Board could focus on the critical work of appointing new members, new alternates, and new officers. Current and incoming JNE Commission officers were consulted about the proposed change and enthusiastically welcome

the change. The commissioners also were apprised, and no objections were received. To the contrary, a number of commissioners expressed their support, including a former bench officer member who responded: “That’s the best news I’ve heard all day!!!”

### **Appointment of 2021 JNE Commission Co-Vice-Chair**

Typically, the vice-chair is the only candidate for chair and, barring unforeseen circumstances, is expected to be appointed to the fourth-year chair position. Unforeseen circumstances have materialized. At the July 2020 meeting, the Board appointed Alana Arcurio to serve as the 2021 JNE Commission vice-chair, serving alongside incoming 2021 JNE Commission Chair Stella Ngai. Alana Arcurio recently informed State Bar staff and the current JNE officers, Chair Aminder Singh and Vice-Chair Stella Ngai, that a change in personal circumstances will require her to step away from the commission sometime during her vice-chair year.

Alana Arcurio’s appointment as vice-chair takes effect next month, at the conclusion of the April 2021 JNE meeting, the final meeting of the 2020 JNE Commission. State Bar staff and current officers have discussed Alana Arcurio’s situation at length and have agreed on an approach that they believe will best serve the commission if approved by the Board. This approach involves selecting a co-vice chair from the original vice-chair applicant pool, thus filling the vice-chair role for the first part of the coming JNE year with two co-vice-chairs. At such time as Alana Arcurio resigns from the commission, the co-vice-chair would automatically become the sole vice-chair and presumptive chair of the 2022 JNE Commission.

The original vice-chair applicant pool consisted of three applicants, Alana Arcurio, Brian Danitz and Adam Hofmann. The Board Appointments Liaisons at that time, Juan De La Cruz and Mark Broughton, interviewed all three in the spring of 2020. The July 2020 agenda item summarizes the interview and recommendation process as follows:

The appointments liaisons interviewed the three vice-chair candidates by Zoom, and were uniformly impressed with the level of interest and commitment shown by each of the candidates. Although a difficult choice given the high caliber of the candidates, the appointments liaisons concur in recommending that Alana D. Arcurio serve as Vice-Chair of the 2021 JNE Commission.

The other vice-chair candidates, Brian Danitz and Adam Hofmann, have both expressed a willingness and interest in serving as co-vice-chair alongside Alana Arcurio. They understand that appointment as co-vice-chair involves a commitment to serve not only as co-vice-chair of the 2021 JNE Commission, but importantly, as chair of the 2022 JNE Commission.

Former Appointments Liaisons De La Cruz and Broughton were apprised of the situation regarding Alana Arcurio’s vice-chair year and, based on their 2020 evaluations of the vice-chair candidates, recommend that the Board appoint as co-vice-chair Adam Hofmann. Trustees De La Cruz and Broughton are appreciative of the good will, commitment and cooperation shown by Brian Danitz and Adam Hofmann, which they believe is a testament to the exceptional character and capabilities of those selected to serve on the JNE Commission.

## **FISCAL/PERSONNEL IMPACT**

None

## **AMENDMENTS TO RULES OF THE STATE BAR**

Title 7, Miscellaneous Provisions, Division 1, Commission on Judicial Nominees Evaluation, Chapter 1, General Provisions

Rule 7.3 – Temporary commissioners

Rule 7.5 – Duties of commissioners

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

Section 4, Subentities of the State Bar, Sub-Section 4.9, Term of Membership, Page 17

Appendix E, Subentity Duties, Composition, and Appointing Authorities, Page 67

## **STRATEGIC PLAN GOALS & OBJECTIVES**

Goal: None - core business operations

## **RECOMMENDATIONS**

**Should the Board Executive Committee concur in the proposed action, passage of the following resolution is recommended:**

**RESOLVED**, that the Board Executive Committee recommends that the Board of Trustees approves technical revisions to the Board of Trustee Policy Manual and State Bar Rules, as shown in the attachments to this agenda item, to convert the Commission on Judicial Nominees Evaluation's (JNE) three one-year term structure into a one three-year term structure effective immediately, such that the terms of the current commissioners will automatically convert to a three-year term commencing on the effective date of their original appointment to the JNE Commission; and it is

**FURTHER RESOLVED**, that the Board Executive Committee recommends that the Board of Trustees appoints Adam Hofmann and Alana Arcurio to serve as Co-Vice-Chairs of the 2021 Commission on Judicial Nominees Evaluation (JNE), each for a one-year term commencing at the close of the last business meeting of the 2020 JNE Commission on April 24, 2021, and expiring at the close of the last business meeting of the 2021 JNE Commission on April 23, 2022, or until further order of the Board of Trustees, whichever occurs earlier; and it is

**FURTHER RESOLVED**, that the Board Executive Committee recommends that the Board of Trustees appoint Adam Hofmann to serve as Vice-Chair of the 2021 Commission on

Judicial Nominees Evaluation (JNE) for a term commencing immediately upon resignation of Alana Arcurio as Co-Vice-Chair during the 2021 JNE Commission year and expiring at the close of the last business meeting of the 2021 JNE Commission on April 23, 2022, or until further order of the Board of Trustees, whichever occurs earlier.

**Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, approves technical revisions to the Board of Trustees Policy Manual and State Bar Rules, as shown on the attachments to this agenda item, to convert the Commission on Judicial Nominees Evaluation's (JNE) three one-year term structure into a one three-year term structure effective immediately, such that the terms of the current commissioners will automatically convert to a three-year term commencing on the effective date of their original appointment to the JNE Commission; and it is

**FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, appoints Adam Hofmann and Alana Arcurio to serve as Co-Vice-Chairs of the 2021 Commission on Judicial Nominees Evaluation (JNE), each for a one-year term commencing at the close of the last business meeting of the 2020 JNE Commission on April 24, 2021, and expiring at the close of the last business meeting of the 2021 JNE Commission on April 23, 2022, or until further order of the Board of Trustees, whichever occurs earlier; and it is

**FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, appoints Adam Hofmann to serve as Vice-Chair of the 2021 Commission on Judicial Nominees Evaluation (JNE) for a term commencing immediately upon resignation of Alana Arcurio as Co-Vice-Chair during the 2021 JNE Commission year and expiring at the close of the last business meeting of the 2021 JNE Commission

#### **ATTACHMENT(S) LIST**

- A.** JNE Commission Resource Material: Statutory Authority, Rules of the State Bar, and Officer Duties
- B.** 2021 JNE Commission Membership
- C.** Proposed Amendments to Title 7, Division 1, Chapter 1, Rule 7.3, State Bar Rules
- D.** Proposed Amendments to Title 7, Division 1, Chapter 1, Rule 7.5, State Bar Rules
- E.** Proposed Amendments to Section 4, Sub-Section 4.9, Board of Trustees Policy Manual
- F.** Proposed Amendments to Appendix E, Board of Trustees Policy Manual

## Statutory Provisions

### *Government Code Sections*

**12011.5 (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 Section 6013.5 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, gender, and racial diversity of the population of California and composed in accordance with Sections 11140 and 11141. 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. Each member of the designated agency of the State Bar responsible for evaluation of judicial candidates shall complete a minimum of 60 minutes of training in the areas of fairness and bias in the judicial appointments process at an orientation for new members. If the member serves more than one term, the member shall complete an additional 60 minutes of that training during the member's service on the designated agency of the State Bar responsible for evaluation of judicial candidates.

**11140.** It is the policy of the State of California that the composition of state boards and commissions shall be broadly reflective of the general public including ethnic minorities and women.

**11141.** In making appointments to state boards and commissions, the Governor and every other appointing authority shall be responsible for nominating a variety of persons of different backgrounds, abilities, interests, and opinions in compliance with the policy expressed in this article. It is not the intent of the Legislature that formulas or specific ratios be utilized in complying with this article.

### *Business & Professions Code Section*

**6013.5.** Notwithstanding any other provision of law, six members of the board shall be members of the public who have never been members of the State Bar or admitted to practice before any court in the United States.

**EXCERPT FROM STATE BAR RULES  
GOVERNING JNE MEMBERSHIP AND DUTIES OF COMMISSIONERS**

**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<sup>1</sup> 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.<sup>2</sup>

*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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<sup>1</sup> Government Code § 12011.5.

<sup>2</sup> 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.*



## **Commission on Judicial Nominees Evaluation Duties of Officers**

### **CHAIR**

#### **Time Commitment and Responsibilities:**

The time commitment for the chair is, at a minimum, double that of the commissioners. The chair spends a significant amount of time in telephonic conferences with JNE staff, commissioners and candidates. These conferences can occur on a daily basis, and are most frequent at the times assignments are made and prior to the interview of candidates. Additionally, the chair may be called upon to respond to proposed rule changes and legislation regarding JNE. The JNE Chair is responsible for alerting JNE staff of any press inquiries.

#### **Assignments**

1. Match candidates to commissioners, considering factors of geographical location, experience of commissioners, background and expense.
2. Attempt to vary assignments of commissioners as to lead vs. assisting commissioner and to vary pairings of commissioners.
3. Respond to all issues involving potential conflicts and recusal of commissioners from specific assignments. This may require telephone conferences with candidates, commissioners and State Bar staff.
4. Respond to commissioner and candidate questions regarding the rules and procedures of the commission
5. Periodically prepare written communications to the commission regarding changes in procedure and events which may have an impact on commission work.
6. Communicate with the Governor's Judicial Appointments Secretary regarding matters related to JNE.

#### **Meetings**

1. Conduct all JNE meetings, review draft reports during and at conclusion of meetings.
2. Plan orientation meeting for the new commissioners and help recruit speakers to address the full commission.
3. Periodically confer with JNE staff, the Executive Director, Chair of the State Bar, and members of the Board of Trustees on issues pertaining to JNE procedures, news releases, and other matters related to the JNE process and governance.
4. Attend local bar association meetings throughout the state to describe the JNE process.

#### **Attend Hearings of the Commission on Judicial Appointments**

1. Assist in drafting reports to the Commission on Judicial Appointments.
2. Prepare presentation to the commission.
3. Appear in person or assign appropriate commissioner to represent JNE at the Commission on Judicial Appointments hearing.

#### **Appointments**

1. Prepare performance evaluations of commissioners for use in the reappointment process.
2. When required, provide input on appointment process and assist JNE staff coordinator in reviewing the applicant pool.

## **VICE-CHAIR**

### **Time Commitment and Responsibilities:**

#### **Meetings**

1. Prior to the JNE meeting, the vice-chair assists the chair in the review and edit of blurbs that are electronically received.
2. At the JNE meetings, the vice-chair's main responsibility is to review the language of the evaluation reports (blurbs) which are sent to the Governor's office.
3. Preside at the JNE meetings in the absence of the chair.
4. Assist the chair at the orientation meeting for new commissioners.
5. Assist the chair with any in-house training pertaining to the entire commission.
6. Attend bar association events describing the JNE process.
7. Appear before the Commission on Judicial Appointments if chair is unavailable.

#### **Appointments**

1. Prepare performance evaluations of commissioners for use in the reappointment process.
2. When required, provide input on appointment process and assist JNE staff in reviewing the applicant pool.



# The State Bar of California

ATTACHMENT B

## 2021 JNE COMMISSION (February 2021–April 2022)

	Commissioner	City
<b>First Year</b>		
1.	Anaebere-Nicholson, Ugochi	Santa Ana
2.	Bollinger, André R.	San Diego
3.	Brown, Aundrea J.	Oakland
4.	Choe, Julia S.	Los Angeles
5.	Garrido, Diana	Martinez
6.	Guillory, Stacey	Oakland
7.	Harbin-Forte, Brenda - <i>Former Judicial Officer</i>	Oakland
8.	Horowitz, David - <i>Former Judicial Officer</i>	Studio City
9.	Lieberman, David - <i>Public Member</i>	Berkeley
10.	Malik, Chhaya	Berkeley
11.	Mori, Ai	San Francisco
12.	Serrano, Francesca	Oakland
13.	Yraceburn, Michael J.	Bakersfield
<b>Second Year</b>		
14.	Allender, Daniel	Los Angeles
15.	Crook, Jamie	Santa Francisco
16.	El-Hajj, Jeffrey	San Jose
17.	Lee, Tiffany	Palo Alto
18.	Hemann, Pamela - <i>Public Member</i>	Pasadena
19.	McMeel, Meghan	San Francisco
20.	Orozco, Agustin	Los Angeles
21.	Palmer, Justin	Long Beach
22.	Pierce, T. Peter	San Francisco
23.	Radogna, Anthony	Irvine
24.	Reif, Judith	Los Angeles
25.	Yoo, Donald	Los Angeles
<b>Third Year</b>		
26.	Brandt, Robert C.	Los Angeles
27.	Chirlin, Judith C. - <i>Former Judicial Officer</i>	Los Angeles
28.	Danitz, Brian	Burlingame
29.	Diallo, Souleymane P.	Riverside
30.	Hofmann, Adam W. ( <i>proposed co-vice-chair</i> )	Sacramento
31.	Johnson, Arwen R.	Los Angeles
32.	Kristovich, Bethany	Los Angeles
33.	Sapoznikow, Michael	Sacramento
34.	Seastrom, Brian G.	Newport Beach
35.	Sheik, Mani	San Francisco
36.	Yuen, Tammy Mui	Oakland
<b>Third Year Vice-Chair</b>		
37.	Mathews Arcurio, Alana D.	Elk Grove
<b>Fourth Year Chair</b>		
38.	Ngai, Stella	Oakland

**Proposed Amendments to Title 7, Division 1, Chapter 1, Rule 7.3  
State Bar Rules**

Title 7, Miscellaneous Provisions, Division 1, Commission on Judicial Nominees Evaluation,  
Chapter 1, General Provisions

**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 ~~one three-year term~~ ~~three full terms~~ on the commission or its review committee. A temporary commissioner may lead an investigation.

**Proposed Amendments to Title 7, Division 1, Chapter 1, Rule 7.5  
State Bar Rules**

Title 7, Miscellaneous Provisions, Division 1, Commission on Judicial Nominees Evaluation,  
Chapter 1, General Provisions

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.~~

## Proposed Amendments to Section 4, Sub-Section 4.9 Board of Trustees Policy Manual

Section 4, Subentities of the State Bar, Subsection 4.9, Term of Membership, Page 17

### 4.9 TERM OF MEMBERSHIP

Members of subentities serve four-year staggered terms except where the rules of the subentity specify otherwise. The Board's general policy is to permit only a single term but may make exceptions at its discretion. Exceptions include:

- If the Board fills a vacancy mid-term, the appointee will serve the remainder of the term and is eligible at the Board's discretion for one additional consecutive term;
- ~~The terms for m~~ Members of the Commission on Judicial Nominees Evaluation ~~serve three-year terms are one year; members may serve three consecutive terms subject to satisfactory evaluation by the Chair at the end of each year~~ and may serve a fourth year as chair;
- The two Board members of the Review Committee of the Commission on Judicial Nominees Evaluation are selected by the Board chair at the start of each Board year and serve only one-year terms subject to reappointment by the successor Board chair.

If the Board exercises its discretion and allows reappointment to a second term, the member may not serve a third consecutive term. Members may, however, serve additional years if appointed chair, vice-chair or chair-elect, up to a total of two additional years if the member serves one year as vice-chair or chair-elect, and another as chair.

## **Proposed Amendments to Appendix E Board of Trustees Policy Manual**

Appendix E, Subentity Duties, Composition, and Appointing Authorities, Page 67

### **Commission on Judicial Nominees Evaluation (JNE)**

#### **Charge**

*Assist the Governor in the judicial selection process and thereby promote a California judiciary of quality and integrity by providing independent, comprehensive, accurate, and fair evaluations of candidates for judicial appointment and nomination.*

*(Government Code § 12011.5; State Bar Rules Title 7, Division 1)*

#### **Membership Composition, Appointment Process, and Terms**

##### **Number of Members**

At least 27 and no more than 38 members

##### **Specific Composition Requirements or Guidelines**

To the extent feasible, at least 80 percent of the members must be active, licensed attorneys in good standing and the balance public members. One of the licensed attorneys must be a former judge, preferably of an appellate court.

##### **Appointing Authority**

Board of Trustees

##### **Procedures for Appointment**

Board of Trustees Policy Manual, Section 4.2

##### **Officers**

Chair and vice-chair appointed by the Board of Trustees for one-year service

##### **Member Terms**

Three-year term as member and fourth year as Chair ~~1 Year with eligibility for reappointment for a maximum of 3 years total.~~