



The State Bar of California

OPEN SESSION AGENDA ITEM 707 MAY 2022

DATE: May 19, 2022

TO: Members, Board of Trustees

FROM: Bridget Gramme, Deputy Chief of Programs

SUBJECT: Proposed Amendment to Rule 7.40 (Assignment of Judicial Nominees Evaluation Commissioners) of the Rules of the State Bar: Request to Circulate for Public Comment

EXECUTIVE SUMMARY

State Bar Rule 7.40 requires that, when evaluating candidates for the Court of Appeal or Supreme Court, the Commission on Judicial Nominees Evaluation (JNE) assign a team of three commissioners that must include one public member. There are currently a large number of pending and expected vacancies for judges serving on the California Courts of Appeal, and a relatively small number of public commissioners serving on the JNE Commission. This agenda item therefore recommends Board approval to circulate for a 45-day public comment period a proposal that would clarify that assignment of a public member should be made “to the extent practicable,” and make other clarifying changes to rule 7.40.

BACKGROUND

Government Code section 12011.5(a) requires that when the governor prepares to fill judicial vacancies, the names of candidates for the judgeships be submitted “to a designated agency of the State Bar of California ... for evaluation of their judicial qualifications.” The Board of Trustees created the JNE Commission to fulfill this function. Each year, on average, between 150 and 200 candidates are investigated, evaluated, and rated by the JNE Commission.

Title 7 of the State Bar Rules specifies the procedures under which the JNE Commission operates. Rule 7.40 requires that the chair of JNE, or staff in the chair’s absence, appoint a team of commissioners, one of whom is designated as lead, to investigate candidates and report to the commission. For candidates for the superior court, the rule requires the appointment of a

two-person team. Subsection (B) specifies that for candidates for the Court of Appeal or Supreme Court, a team of three or more commissioners must be appointed, one of whom is a public member.

Currently, there are 38 JNE commissioners, four of whom are public members. According to the most recent Judicial Vacancy Report, as of May 1, 2022, there are 11 pending judicial vacancies in the appellate courts, and the governor's office reports that they expect several more in the coming year with impending retirements.

DISCUSSION

The governor's office provides the JNE Commission with a list of candidates for evaluation every 90 days. Given the size of the commission, and the in-depth nature of the investigations, the commission typically has the capacity to evaluate 25 to 30 judicial candidates per cycle. The commission is relatively limited in its ability to evaluate appellate court vacancies in accordance with rule 7.40 given the small number of public members on its roster. In a typical cycle, the commission brings on pro tem members (former commissioners who volunteer on a particular investigation) to meet the public member requirements. Even with these volunteers, the commission typically only evaluates two to three candidates for the Courts of Appeal per cycle.

At this rate, it would take approximately one year to evaluate 11 candidates for the Court of Appeal to fill the existing vacancies and longer, as additional vacancies emerge due to expected retirements in the coming year.

In light of this, in consultation with the governor's office which has expressed an interest in the commission increasing its capacity to evaluate appellate candidates, staff recommends amending rule 7.40 to add the term "to the extent practicable" to the requirement that investigative teams evaluating appellate candidates must contain a public member. This would reiterate the importance of public voices as the preferred composition of investigative teams while giving the commission flexibility to evaluate more appellate candidates per cycle if necessary.

Staff also recommends that subsection (A) be amended to clarify that "at least" one of the members of the investigating team for superior court candidates be a licensee of the State Bar.

FISCAL/PERSONNEL IMPACT

The State Bar may experience minor cost savings with the proposed amendments in reduced travel and expense costs for pro tem commissioners.

AMENDMENTS TO RULES OF THE STATE BAR OF CALIFORNIA

Title 7, Division 1, Chapter 3, Article 1, Rule 7.40

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None

RECOMMENDATIONS

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

RESOLVED, that the Board of Trustees authorizes staff to make available for a 45-day public comment period the proposed amended rule 7.40 of the State Bar Rules attached hereto as Attachment A.

ATTACHMENT LIST

- A.** Proposed amendments to State Bar Rule 7.40

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, [at least](#) one of whom is a State Bar licensee; and
- (B) for a candidate for the Court of Appeal or Supreme Court, a team of three or more commissioners, one of whom, [to the extent practicable](#), is a public member.