



The State Bar of California

OPEN SESSION AGENDA ITEM 703 MAY 2023

DATE: May 18, 2023

TO: Members, Board of Trustees

FROM: Bridget Gramme, Deputy Chief of Programs

SUBJECT: Proposed Amendments to State Bar Rules Related to Commission on Judicial Nominees Evaluation In-Person Candidate Reviews (Rules 7.52 and 7.60):
Return from Public Comment and Request for Adoption

EXECUTIVE SUMMARY

State Bar Rules 7.52 and 7.60 require interviews and presentations conducted in the course of evaluations by the Commission on Judicial Nominees Evaluation (JNE) to occur in person absent unusual circumstances. At its March meeting, the Board of Trustees voted to circulate for a 45-day public comment period a proposal that would amend these rules to remove the requirement to conduct these tasks in person, effectively permitting the use of remote interviews and meetings where appropriate. In the March item, to illustrate the need for the rule changes and to provide the Board with additional context, staff presented both already implemented and potential future operational changes that support the need for these amendments. Staff also provided additional context for the operations of the JNE Commission overall, including information about feedback received from the governor's judicial appointments secretary and the structural deficit in the fund that supports the commission's work.

During the comment period, 28 individuals and 8 organizations provided comments; the vast majority opposed the rule changes. As set forth in detail below, the comments generally respond to concerns about the potential impact of staff's proposed operational changes—particularly the proposal to move the Saturday portion of JNE's Friday/Saturday meetings to Zoom—and do not address the text of the rule changes themselves. Staff has engaged in significant dialogue with the commission and its leadership, including a lengthy session in which Executive Director Leah Wilson attended a recent meeting and heard commissioners' concerns. After considering comments, staff has determined that a hybrid in-person/Zoom

(Friday/Saturday) meeting format would be problematic and should not be pursued. Staff does however maintain its recommendation that the Board adopt the amendments to the rules as proposed.

BACKGROUND

Government Code section 12011.5(a) requires that when the governor prepares to fill judicial vacancies, the names of candidates for the judgeships must 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.

Pursuant to State Bar rule 7.2, the commission, its chair and vice chair are appointed by and serve at the pleasure of the Board and is comprised of at least 27 and no more than 38 members. JNE commission meetings have traditionally been scheduled as two-day meetings on a Friday and Saturday, six times per year, and alternating between the State Bar’s San Francisco and Los Angeles offices. The commission also holds a two-day orientation meeting in San Francisco each January to onboard new commissioners.

The present rule amendment proposals are presented in the context of significant fiscal challenges facing the State Bar and JNE operational changes that have been introduced over the course of the last year, as briefly outlined below.

THE 2023 BUDGET AND JNE OPERATIONAL CHANGES

Last year, in a conversation with State Bar staff, the judicial appointments secretary provided feedback on the length and quality of the evaluation reports and requested to increase the number of candidates the commission evaluates each 90-day cycle considering the growing number of judicial vacancies in California. In response to this feedback, the commission adopted a streamlined format for candidate reports, and streamlined processes and procedures to maximize efficiency in the evaluation process. For example, the commission has successfully moved its operations onto a SharePoint site so that commissioners may access candidate reports in advance of each meeting, schedule candidate interviews via a shared calendar, securely share notes and documents between investigative teams, and conduct electronic voting at commission meetings.

Most significantly, as of December 2022, the commission was asked to review candidate evaluation reports in advance of each meeting. Prior to December 2022, the commission had a long-standing practice of reading the entirety of reports out loud verbatim during commission meetings; reports were not shared with commissioners in advance. Last year, staff developed a secure vehicle for sharing evaluation reports in advance of commission meetings and, at staff’s recommendation in cooperation with JNE leadership, the commission transitioned in December to a practice of reading report summaries during meetings, versus entire reports, with the expectation that members read the reports in full prior to the meeting itself.

The JNE function is entirely supported by attorney licensing fees, which have been increased one time in the last 25 years. Prior to the pandemic, the State Bar funded travel for all commissioners to attend meetings, two nights of hotel per commissioner associated with these meetings, commissioner travel related to candidate interviews, and three full time staff members. Significant cost savings were realized during the pandemic, when all meetings and interviews transitioned to remote format. Other than one evaluation cycle in 2022, candidate interviews have remained remote. Meetings, however, returned to an in-person format in April of 2022.

The 2023 JNE budget totals \$813,000. This amount supports in-person meetings for the commission but only one night of hotel per commissioner for those meetings. The 2023 budget does not contemplate in-person candidate interviews, nor does it account for the additional costs associated with one of the two JNE meeting days being held on a Saturday.

The State Bar's General Fund (GF), which supports the JNE function, has a budget shortfall of \$4.3M. With that reality in mind, the Board adopted an austerity budget in 2023 that requires State Bar subentities other than JNE to meet remotely for the majority of their meetings, imposes a 15 percent vacancy rate on State Bar staff as well as a three-month hiring freeze for any vacant positions, and significantly limits staff travel; although most of the Office of the Chief Counsel's trial teams are split between Los Angeles and San Francisco for example, supervisors and other staff in these teams are generally not funded to travel between locations. In fact, the overall budget for State Bar staff (GF) travel equates to the travel budget for the commission alone.

THE CURRENT RULES PROPOSALS

At its March meeting, the Board voted to release proposed amendments to two State Bar rules pertaining to the commission for a 45-day public comment period: rule 7.52, which governs the commission's process for judicial candidate interviews, and rule 7.60, which governs the investigating commissioners' presentations of their findings to the full commission. Both rules currently require that the interviews and presentations be conducted in person absent unusual circumstances. Staff proposed amendments to these rules that would eliminate the in-person requirement for both. (See Attachments A and B). These amendments are needed to align with the current practice for candidate interviews and to codify the existing practice of permitting lead investigators to remotely present their candidate reports to the commission if they are unable to attend in person. Moreover, the proposed amendments are consistent with a statewide trend as policymakers are implementing the benefits of remote meeting technology into a number of governmental agency settings.¹

In presenting this item to the Board in March, [Item 701](#), staff provided the Board with some potential operational changes to the commission's work that would align JNE operations to the

¹ See e.g. [SB 544](#) (Laird) (remote meetings for state agencies under Bagley-Keene Open meeting act); [SB 537](#) (Becker) (remote meetings for multijurisdictional, cross-county agencies); [SB 411](#) (Portantino) (remote meeting procedures for neighborhood councils).

available 2023 budget and conform JNE meetings to State Bar policy that Saturday meetings will only be held when absolutely necessary.² While the Board need not approve operational changes, staff provided these proposals to illustrate the need for the proposed amendments to the rules.

Specifically, staff suggested the following new operational changes in March:

- Maintain the existing Friday/Saturday meeting schedule for 2023–24, with in person meetings on Fridays but convert the Saturday portion of the meeting to zoom if needed³
- Transition meetings to Thursdays/Fridays beginning in June 2024⁴

PUBLIC COMMENTS RECEIVED

During the comment period, 33 comments were received on the proposed rule changes, representing the views of eight organizations⁵ and 28 individuals⁶. Twenty one of the individual commenters are current or former JNE commissioners. A complete set of letters and comments received is provided as Attachment C.

Several of the commenters joined in the overall sentiments expressed by former JNE chairs Stella Ngai, Jody Nunez, David Fu, and Aminder Singh that, “Taken in isolation, some may view each of the proposed amendments and operational changes as discrete or innocuous. However, all of the foregoing must be viewed in concert; taken together, they may impact the fairness of JNE’s evaluations and lead to downstream unintentional impact on the inclusiveness of the California bench under future gubernatorial administrations.”

In general, the majority of the commenters state their opposition to the proposed amendments to both rules, but the substance of their concerns address operational changes that have already occurred, or the proposed transition to an in-person/Zoom format for Friday/Saturday JNE meetings. Most commenters express concern that the proposed changes will diminish the quality and fairness of the judicial evaluation process, particularly as it applies to judicial candidates from underrepresented backgrounds.

A number of commenters, including former JNE chairs and current commissioners, recommend that the board appoint a Task Force on the Future of JNE to conduct additional study on how JNE restructuring may unintentionally undermine the diversity of the commission’s composition

² See November 16, 2018 [Agenda Item 704](#) at p. 6; and [minutes](#).

³ The commission has conducted three meetings in the new meeting format replacing the full report reading with summaries. Since the new format has been adopted, meetings have gone considerably faster. Staff believes that with a limit of 30 candidates, there would be very few if any candidates left to be considered on Saturday.

⁴ The JNE year begins at the June meeting and ends with the April meeting the following year.

⁵ Letters on behalf of organizations include a letter from the current chair of the JNE Commission representing the views of the Commission as a whole, the Black Women Lawyers Association of Los Angeles, Legal Aid Association of California, California Association of Black Lawyers, the Judicial Council of the California Association of Black Lawyers, the Asian American Bar Association of the Greater Bay Area, the Orange County Association of Affinity Judicial Officers, and the Association of African American California Judicial Officers

⁶ Four former JNE chairs submitted a letter expressing their joint views.

and impact candidate ratings. While staff understands the concerns expressed in the comments, staffing the commission and the Review Commission on Judicial Nominees Evaluation (RJNE)⁷ is a time-intensive effort, and there is limited capacity to support a task force on top of this work. Accordingly, staff does not recommend that the Board establish a task force at this time.

Although creation of a task force is not recommended, staff has been working diligently to address these concerns and made revisions to its initial recommendations in light of these comments, as detailed below. Staff has also been analyzing available data to better understand the expressed concerns. Staff specifically has reviewed candidate evaluation rankings over the past several years, analyzing the impact of remote meetings and interviews on candidate final ratings, as well as the composition of JNE versus that of other State Bar subentities. In advising the commission and its leadership that staff is analyzing data to better understand the impact of various operational changes that have been implemented and may occur, some members have cautioned that the data itself does not tell the whole story and that the value of the discussions in the evaluation process cannot be fully captured by numbers. That being said, staff believes that both experience and data should inform both the commission's and the Board's deliberations.

OUTREACH TO COMMISSION AND GOVERNOR'S OFFICE

As has occurred over the course of the past year, staff have continued extensive conversations with the JNE chair and vice-chair about operational changes that have been implemented and are being proposed in an attempt to address concerns and develop solutions that preserve the integrity and quality of the JNE evaluation process while accommodating the State Bar's financial capacity to support this work and the policy objective of efficient use of staff and volunteer time.

Ms. Wilson and JNE staff have also been in regular communication with the governor's judicial appointments secretary to keep him apprised of the State Bar's capacity to support the judicial nominee evaluation process in light of financial constraints. Specifically, staff has made clear that without additional funding, the State Bar will be limited in the number of candidates the commission can evaluate each cycle. Ms. Wilson, the JNE chair, and Trustees Shelby and Toney also held two meetings with staff in the governor's office in April and May, renewing the State Bar's request that the governor support the JNE evaluation process with state General Fund money. At the time of this writing, staff has not received word whether the appeal for funding will be granted.

⁷ Pursuant to rule 7.66, RJNE is a separate, five-member committee appointed by the Board to review requests for reconsideration from candidates who receive a "Not Qualified" rating from the commission. RJNE is comprised of two Board members (a public and licensee member), one past member of the commission, and two at large members appointed at the discretion of the Board. Depending on the number of requests received, RJNE meets remotely up to six times per year, and has its own 90-day cycle independent of the commission's.

DISCUSSION

PROPOSED AMENDMENT TO RULE 7.52 – CANDIDATE INTERVIEWS

The proposed amendment to Rule 7.52, as circulated for public comment, would eliminate the requirement that JNE interviews of judicial candidates take place in person absent unusual circumstances. (See Attachment A)

Eight commenters agree with the proposed amendment, including four current or former JNE commissioners, and an additional three commenters agree if modified to permit the candidate to request an in-person interview if they believe that they would benefit from meeting with the members of the commission. Commissioners who commented in support of the recommendation stated that they did not observe a meaningful difference between interviewing candidates remotely or in person and recognized the benefits of permitting remote interviews including scheduling and cost savings.

Sixteen comments specifically oppose the proposed amendment, many of which argued that the non-verbal benefits of in-person interviews cannot be replicated in the virtual environment. Several commenters echoed similar concerns to those of the California Association of Black Lawyers (CABL), that “Eliminating the chance for observation of a candidate’s demeanor and personality will reduce the integrity of the judicial evaluation process,” and that conducting remote judicial candidate interviews in perpetuity may have a direct and disparate impact on candidates of color. Others noted that a rule change is unnecessary since the existing rule already permits remote means of interviewing candidates at the chair’s discretion.

The existing rule requires the investigating team to “interview a candidate in person, unless the chair authorizes the use of remote means in unusual circumstances.” During the pandemic, health and safety precautions clearly justified the “unusual circumstances” for the remote interviews; but as more than one commenter pointed out, the governor lifted the State of Emergency in February. Therefore, a rule change is required to continue remote candidate interviews as a general practice.

While staff does not disagree that in-person interviews may provide the investigating team with additional insight as to a candidate’s demeanor and non-verbal reactions to questions, current and former commissioners’ comments stating that they have not observed a meaningful difference between in-person and remote interviews are compelling. This is particularly true given the benefits of remote interviews in addition to cost savings: ease of scheduling, the ability for the chair to assign geographically diverse commissioners to the same investigating team without concern about the interview location, and, importantly, the clear preservation of the interview record for the benefit of the RJNE. Indeed, the judicial appointments secretary conducts his own interviews of judicial candidates via Zoom. Further, as outlined below, an analysis of candidate ratings pre- and post- the onset of remote interviews does not suggest that the remote format negatively impacts candidates. On balance, staff recommends that the Board adopt the rule as proposed.

With respect to the modification suggested by some commenters to permit in-person interviews if a candidate so requests, while staff agrees that there may be some benefits to this approach, staff believes that concerns about both inconsistency in candidate experience and the ability to contain costs outweigh those potential benefits.

PROPOSED AMENDMENT TO RULE 7.60 – CANDIDATE REPORT PRESENTATIONS

Rule 7.60 sets forth the requirements for reports at the conclusion of an investigation and evaluation of a judicial candidate. Specifically, it requires the investigating team to provide the commission with a written report on the candidate and provides that, “absent unusual circumstances, the lead commissioner must present the report in person.” The proposed amendment circulated for public comment would remove the requirement that investigating commissioners present their report “in person,” thus providing more flexibility as to the meeting format.

Most of the comments received (29 out of 33) oppose this recommended amendment, but nearly all of those comments are directed towards operational changes, outlined below, as opposed to the text of the proposed rule itself. The four commenters who registered support for the proposal did not provide any comments stating their reasoning.

In addition to general comments stating the superiority of in person meetings over virtual ones for judicial candidate evaluation purposes, some commenters raised more specific concerns that the proposed amendment to Rule 7.60 removing the in-person presentation requirement would be problematic because it could be a prelude to further changes like eliminating meetings altogether, further diminishing the quality and integrity of the evaluation process.

Staff appreciates the strong sentiment many current and former commissioners have expressed with regards to operational changes including the possibility of holding meetings remotely. In response to these concerns, as well as feedback Executive Director Wilson received from commissioners during JNE’s April meeting, staff is no longer recommending a transition to a Friday/Saturday in-person/remote format. Instead, staff will bring a budget amendment to the Board at its July meeting supporting the continuation of Friday/Saturday in-person only meetings through the end of 2023.⁸

With respect to a future transition to a Thursday/Friday meeting format, staff proposes to assess the impact of such a change on current and prospective commissioners over the course of the next several months. Commenters on this topic were fairly unanimous in their opposition to transitioning meetings to Thursdays, raising concerns that commissioners who work in the government and nonprofit/legal aid sectors will not be able to afford to take 12 days of work off per year for JNE meetings, thus reducing the diversity of practice among the commissioners. They argue that this will lead to the commission being comprised of a majority of Big Law

⁸ Staff recommends that the current approach—Friday/Saturday in-person only meetings—be maintained through the conclusion of the current JNE year, or June 2024. The 2024 budget submitted to the Board will reflect this recommendation.

licensees who do not represent the ethnic, gender, and racial diversity of California's population. Staff has done a preliminary analysis of this issue by comparing the current composition of JNE versus other State Bar subentities particularly in relation to the question of government attorney members; preliminary results are outlined in the Data Analysis section below. Staff recommends surveying current and prospective JNE Commissioners to better understand the impact of a change in meeting days on participation in a manner that enables analysis by practice/employment sector and other key demographic factors. Staff has discussed this approach with the Board's appointments liaisons and JNE leadership and will work with them to finalize the survey design and timing.

DATA ANALYSIS

As stated above, staff takes seriously the concerns expressed by current and former commissioners regarding the impact of already implemented and future proposed operational changes. These concerns primarily center on a view that candidates of color, particularly women, have been/will be negatively impacted by changes to longstanding operational practices. Similarly, commissioners have expressed concern about the composition of JNE itself and how it might be impacted by a transition from Friday/Saturday to Thursday/Friday meetings. Staff has begun exploring these concerns as summarized below.

Interview Practices

Staff has analyzed the impact of in-person versus remote interviews using two measures:

1. Average ratings, with 1 representing NQ and 4 representing EWQ.⁹
2. Proportion of candidates rated WQ or EWQ.

For this analysis, 600 pre-pandemic, in-person interviews were assessed, and 450 remote interviews.

As reflected in tables 1 and 2 below, both measures show that ratings are generally higher post-pandemic (remote), with 62 percent rated WQ or EWQ before 2020 and increasing to 70 percent post-2020. Further, the data shows that:

- The increase was higher for nonwhite candidates
- White women candidates experienced a slight decline after 2020 in the proportion rated WQ or EWQ.

⁹ Per section 12011.5 (c) of the Government Code, the commission must rate each candidate as Exceptionally Well Qualified (EWQ), Well Qualified (WQ), Qualified (Q), or Not Qualified (NQ).

Table 1. Average Ratings, In-Person vs. Remote Interviews



Remote Meetings

While staff is no longer recommending transitioning to Zoom Saturdays, preliminary analysis of the impact of remote meeting format on candidate ratings was conducted. An interesting finding here is that of 525 candidate evaluations reviewed, only 6 percent, or 33, experienced a changed rating during a commission meeting, meaning that the vast majority of candidate ratings do not change from the ranking contained in an evaluation report pre-meeting, making it difficult to assess a remote vs. in-person meeting impact.

Discontinuing the Practice of Reading Entire Candidate Reports Aloud During Meetings

Because this practice was implemented only in December 2022, it is too early for meaningful analyses to have been conducted. That being said, in comparing pre- and post – December 2022 candidate ranking data there are no statistically significant findings to report, with some candidate types realizing an increase in WQ and EWQ ratings overall (White Men, White Women, Men of Color) subsequent to the report reading practice change, and some staying constant (Women of Color). Given the small percentage of candidate ratings that change during the meetings themselves (6 percent as noted above), it is unlikely that a measurable impact on candidates in relation to this modified operational practice can be determined.

Subentity Composition

Many commenters expressed opposition to a future transition to a Thursday/Friday, versus Friday/Saturday, meeting format, saying doing so would negatively impact the composition of the Commission, particularly with respect to public sector and nonprofit attorneys. Currently, and according to data generated from multiple sources, it is estimated that 44 percent of JNE members are public sector attorneys, as compared to 26 percent of the members of other subentities and the Board of Trustees. This variance is statistically significant.

State Bar staff remains committed to working with JNE leadership, the commission, and the governor's office to maintain the quality and integrity of this very important work. Staff will

continue to assess the impact of further operational changes on the candidates and the commission before they are implemented, but maintains its original recommendation that the Board adopt the proposed rule changes as written.

FISCAL/PERSONNEL IMPACT

If the Board does not adopt the proposed amendment to Rule 7.52 and the commission reverts to in person candidate interviews, this will result in increased travel costs for commissioners to attend these interviews, and therefore a budget adjustment to account for the increase. This cost is estimated to total between \$50,000 and \$100,000 annually.

As noted above, a budget adjustment will also be needed to accommodate in-person Saturday meetings for the 2023–24 year, irrespective of the outcome of the Board’s decision on the proposed rule amendments.

AMENDMENTS TO RULES OF THE STATE BAR OF CALIFORNIA

Title 7, Division 1, Chapter 3, Rules 7.52 and 7.60

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None: operational

RECOMMENDATIONS

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

RESOLVED, that the Board of Trustees adopts the proposed amended rule 7.52 of the State Bar Rules attached hereto as Attachment A; and it is

FURTHER RESOLVED, that the Board of Trustees adopts the proposed amended rule 7.60 of the State Bar Rules attached hereto as Attachment B.

ATTACHMENTS LIST

- A.** Proposed amendments to State Bar Rule 7.52
- B.** Proposed amendments to State Bar Rule 7.60
- C.** Compilation of Public Comments received

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 7.60 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 to the commission at its meeting~~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.

Public Comments Received via Formsites Regarding Proposed Amendments to Rule 7.52

Total Comments: 29 (Attorneys: 24; Public Members: 3; Decline to State: 2) Agree (A): 9 | Agree if modified (AM): 3 | Disagree (D): 17 | No position (NP): 0

Name	Attorney/ Public Member/ Judge	Commenting on behalf of organization	Professional Affiliation	Position (A/AM/D/NP)	Public comments
(Sandra) Ai Mori	Attorney	No		D	As others who have conducted both virtual and in-person candidate interviews have stated, physically being in the same room as the candidate and being able to observe their demeanor and determine their credibility enhances the interview experience for all parties and helps to ensure that the commission reaches the correct rating. Currently, interviews may take place virtually at the Chair's discretion; there is no need to change the rule.
Anonymous	Attorney	No		A	
Anonymous	Attorney	Decline to state		AM	A remote interview is fine as an introduction to the candidate and may result in enough of an impression to make the decision as to fitness. However, it should only be an introduction and the candidate should be required (at his or her own expense, most of the judicial candidates that I have had the pleasure of knowing made plenty of money) to attend an in-person interview. This is not just a "job", it is an office of public service and the public deserves a candidate willing to put themselves out a little to be confirmed.
Anonymous	Decline to state	Decline to state		A	
Anonymous	Decline to state	Decline to state		D	Disagree with ALL recommendations made. The vetting process is working and has worked in the past. Judicial posts are one of the most important/influential in the state and may lead to federal (lifetime appointments).
Brenda Harbin-Forte	Judge (ret.)	No		D	See attached letter.
Caley Anderson	Attorney	No	JNE Commissioner	A	Appropriate and time/fund-saving, although in-person interviews are somewhat more enlightening and can still be video recorded. But it may not be worth the significant cost in a low-budget environment.

Name	Attorney/ Public Member/ Judge	Commenting on behalf of organization	Professional Affiliation	Position (A/AM/D/NP)	Public comments
Diane A. Bellas	Attorney	No	2019 JNE Commission Chair / Public Defender of Alameda County (Retired)	D	See attached letter.
Elizabeth K D'Orazio	Attorney	Decline to state		D	See attached letter.
Frine Eger Gelston	Attorney	No		D	Currently, interviews may take place virtually at the Chair's discretion; there is no need to change the rule.
Jasmine Horton	Attorney	Yes	Black Women Lawyers Association of Los Angeles, Inc.	D	<p>Dear State Bar Board of Trustees, Black Women Lawyers Association of Los Angeles, Inc., (BWL) firmly disagrees with the proposed changes to State Bar Rules 7.52 and 7.60. We do not believe that the State Bar's objectives of promoting diversity and inclusion in the legal system is achieved by these changes. In fact, BWL believes that the proposed changes to State Bar Rules 7.52 and 7.60 will have a direct and disparate impact on candidates of color, especially Black attorneys seeking judicial appointment.</p> <p>BWL Comment Opposing Proposed Amendments to Rule 7.52</p> <p>The State Bar is that the Bar is unreasonably weighing travel and lodging cost savings against a robust, thorough, and effective judicial vetting process. While we understand the State Bar's mandate to stay within certain budgetary confines. However, we do not believe that budgetary cuts should reduce the integrity of the Judicial Nominees Evaluation (JNE) process for candidates seeking judgeships across our state. Currently, Rule 7.52 requires JNE investigators to interview judicial candidates in person unless there are unusual circumstances. The Deputy Chief of Programs, in the March 16, 2023, memo, proposes remote judicial candidate interviews to save the State Bar and judicial candidates money. During the pandemic, it was necessary to conduct</p>

Name	Attorney/ Public Member/ Judge	Commenting on behalf of organization	Professional Affiliation	Position (A/AM/D/NP)	Public comments
					remote interviews to stop the spread of the contagious virus, COVID-19. However, on February 28, 2023, the Governor ended the COVID-19 State of Emergency and the world, for the last four years, has been educated on virus transmission prevention. We are now safely meeting in person and adhering to conduct that will protect ourselves and others, such as masking and social distancing. While Zoom meetings are convenient, along with it often comes Zoom fatigue and distraction. We are also concerned about the hybrid meeting proposal. If this method is employed, the vetting process will differ as some candidates will be evaluated in person while other candidates will be evaluated on Zoom. BWL is concerned that conducting remote judicial candidate interviews in perpetuity may have a direct and disparate impact on candidates of color. Often, an interview is the deciding factor in the selection process. Eliminating the chance for observation of a candidate's demeanor and personality will reduce the integrity of the judicial evaluation process. Anyone can come across as a qualified candidate on paper and on Zoom, but it is the in-person interviewing component that will determine if a candidate possesses the requisite communication skills, and temperament to be a judge. Daily, judges interact with court staff, counsel, and the jury in person. The judicial evaluation process should include assessing a candidate's demeanor and behavior in person, like how a judge assesses a witness' character and credibility while testifying on the stand. Based on the above, BWL strongly urges the Board of Trustees to vote against Proposed Rule 7.52.
Jeff El-Hajj	Attorney	No		A	I conducted in-person and virtual interviews while on the JNE Commission. Nothing is lost by conducting them virtually. And there are considerable travel/time/cost savings.
Josi Swonetz	Attorney	Yes	California Association of Black Lawyers	D	See attached letter.
Kellie Walters	Attorney	No		D	Generally, I am in favor of meetings conducted by Zoom. However, in this case, it would be a mistake. It would put a damper on discussion and

Name	Attorney/ Public Member/ Judge	Commenting on behalf of organization	Professional Affiliation	Position (A/AM/D/NP)	Public comments
					silence necessary voices that might offer diverse experiences and opinions. This concern is only multiplied by the likelihood that this proposed amendment is in the interest of efficiency, which would just push the Governor nominated candidates right through at the detriment of possibly more qualified candidates.
Lin Chan	Attorney	Yes	Asian American Bar Association of the Greater Bay Area	D	The Asian American Bar Association of the Greater Bay Area (AABA) is one of the largest local Asian American bar associations in the country. AABA has been the voice of the San Francisco Bay Area's Asian Pacific American (APA) legal community since 1976. AABA fosters professional development, community, and service. We are advocates and allies for civil rights, representation, and equality. AABA has received concerns about the impact of the proposed rule changes on candidates for judicial office from historically underrepresented groups. AABA is committed to promoting a diverse judiciary that reflects that diversity of the population it serves. AABA requests that the State Bar study potential impacts of the proposed rule changes on judicial candidates from historically underrepresented groups.
martin homec	Attorney	No		D	All remote meetings should be preceded by a 30 day notice with anonymous comments available to allow anyone with knowledge of inappropriate behavior to comment privately.
Richard Oberto	Attorney	Decline to state	Attorney	A	
Ryan Tacorda	Attorney	No		A	
Salena Copeland	Attorney	Yes	Legal Aid Association of California	AM	Our comments are largely focused on the full commission meetings, but we do want to ensure that if any candidates request an in-person interview, that the State Bar have a process to allow for that. It's been our experience that smaller meetings are more successful via remote/zoom than meetings with larger numbers of attendees. See attached letter.
Stella Ngai	Attorney	No		D	7.52(A) currently provides sufficient flexibility for remote interviews, as demonstrated during the public health emergency.

Name	Attorney/ Public Member/ Judge	Commenting on behalf of organization	Professional Affiliation	Position (A/AM/D/NP)	Public comments
Susan Lea	Attorney	No		D	Zoom calls or phone conversations are no substitute for an in person meeting. There is nothing more important than the selection of a judge. I would alter the language to allow an alternative to an in person meetings only in an emergency. Schedules and cost savings are of no importance here when we are determining who will be recommended to be appointed judge. Judges are the most powerful persons in the justice system, and they can render severe harm to California's residents, the "public". Selecting or recommending a judicial candidate is the single most important act of the State Bar. Covid-19 did no favors for America, and using zoom calls to make such a decision is irresponsible.
T. Peter Pierce	Attorney	No		A	See attached letter.
Terrie E. Roberts	Judge	Yes	Superior Court Judge and Chair of Judicial Council for CABL	A	See attached letter.
Theodore P. Horton-Billard Jr.	Attorney	No	Self employed legal consultant	D	As a former JNE Commissioner, I found the face to face interviews were a critical part of my ability to fully assess the candidates. The online interviews don't provide the same experience and can sometimes be complicated by poor reception affecting audio and/or visual integrity. There really is no suitable substitute for sitting down, across the table from a candidate to interview them face to face. It really can affect your perception of the candidate and your ability to see such things as personal mannerisms, subtle emotions and other body language tells. I ask the Bar not adopt the proposed amendments.
Tobi Inlender	Public Member	No	former JNE Commission public member	D	In-person interviews are a signification opportunity for investigating commissioners to assess candidate's demeanor and responses to occasionally difficult questions and issues to be explored. While a Zoom interview is useful in extenuating circumstances, the quality of the interview and ability to engage with the candidate is different and lesser.
Todd Darrow Irby	Judge		No	D	See attached letter.
Todd Thompson	Attorney	No		A	

Name	Attorney/ Public Member/ Judge	Commenting on behalf of organization	Professional Affiliation	Position (A/AM/D/NP)	Public comments
Ugochi Anaebere-Nicholson	Attorney	No	Staff Attorney, The Public Interest Law Project; Current JNE Commissioner (2021-2024)	AM	I am a current Commissioner on the JNE Commission and agree with this proposed change with one slight modification, that the Candidate be given an option to select an in-person interview, if they believe that they would benefit for meeting with the members of the Commission, as this is a job interview to join the judiciary, and the candidate, who is the one being interviewed for this important function, should have the opportunity to elect for an in-person interview.
William C. Kwong	Attorney	No		D	As a former CJNE member (2004-2007), I cannot conceive how the proposed amendments would enable the commission to provide independent, comprehensive, accurate, and fair evaluations of candidates nominated for judicial appointment. Removing the "in-person" requirement risks diminishing the "comprehensive" evaluation that comes from observing body language and facial expressions (that cannot be captured by Zoom). Additionally, virtual meetings stifle meaningful conversation. In short, most trials across the nation are still held in person because too much is lost when they are held by Zoom. The same is true for CJNE. Consequently, I recommend against the proposed amendment.

Public Comments Received Regarding Proposed Amendments to Rule 7.60

Total Comments: 29 (Attorneys: 24; Public Members: 3; Decline to State: 2) Agree (A): 4 | Agree if modified (AM): 0 | Disagree (D): 25 | No position (NP): 0

Name	Attorney/ Public Member/ Judge	Commenting on behalf of organization	Professional Affiliation	Position (A/AM/D/NP)	Public comments
(Sandra) Ai Mori	Attorney	No		D	As a current JNE commissioner (2021-2024 term), I have attended both virtual and in-person meetings. In-person meetings have been far superior to virtual meetings in many ways, including being able to have more robust conversations about important issues like diversity and implicit bias. When we are in the same room, we are able to relate to and read each other more effectively. We talk to each other during breaks and get to know each other, which builds camaraderie. The relationships I have established with my fellow commissioners during in-person meetings have made it easier for me to speak up during candidate discussions, as compared to when I had to raise my virtual hand and speak to a computer screen of Zoom boxes filled with the faces (or names only, if their videos were turned off) of people I had never met. Sitting in front of a Zoom screen for two-day meetings was difficult and exhausting; virtual meetings will surely lead to Zoom fatigue and a less-than-ideal applicant pool. The discussions we have and the issues we decide are too important to be done virtually. I wholeheartedly share the concerns expressed so eloquently by many others, including past JNE Chairs Diane Bellas (April 7, 2023 letter), Stella Ngai, Aminder Singh, David Fu, and Jody Nunez (April 6, 2023 letter), and retired Judge Brenda Harbin-Forte (April 25, 2023 letter). I hope that all of our voices together convey to the Board of Trustees how strongly we oppose these proposed amendments, and how deeply we care about the future of our judiciary.
Anonymous	Attorney	No		A	
Anonymous	Attorney	Decline to state		A	
Anonymous	Decline to state	Decline to state		A	

Name	Attorney/ Public Member/ Judge	Commenting on behalf of organization	Professional Affiliation	Position (A/AM/D/NP)	Public comments
Anonymous	Decline to state	Decline to state		D	
Brenda Harbin- Forte	Judge (Ret.)	No		D	See attached letter.
Caley Anderson	Attorney	No	JNE Commission er	D	<p>Strongly disagree with the abolition of the in-person requirement for JNE meetings proper. The quality of discussion and interaction remotely suffers badly, and this plan, while requiring less time during the weekend, requires MORE time during the working week, which is extremely difficult for us, the volunteer commissioners, who are also working attorneys. I believe strongly in the mission of the JNE Commission and often try to persuade professional contacts to serve, but the larger the in-week time commitment, the fewer people who will be willing to serve.</p> <p>The collegial atmosphere and culture of JNE is vital to its success. In-person meetings facilitate that culture AND provide greater depth and breadth of discussion about judicial candidates. I am particularly troubled that some candidates would receive in-person discussion and some would not, which seems potentially unfair.</p> <p>I also note that the Commission has been asked to cover an extremely heavy and increasing workload, and this proposal would cut down on the time and quality we'd be able to dedicate to candidates at the same time the quantity of candidates we are asked to consider stands significantly increased.</p> <p>Overall I think this rule change, and the proposed streamline it is meant to enable, would critically harm the quality of the important work that the Commission performs.</p>

Diane A. Bellas	Attorney	No	2019 JNE Commission Chair / Public Defender of Alameda County (Retired)	D	See attached letter.
Elizabeth K D'Orazio	Attorney	Decline to state		D	See attached letter.
Frine Eger Gelston	Attorney	No		D	<p>I am a current JNE commissioner (2021-2025 term), and I share all of the concerns expressed by many other JNE commissioners, past and present, including JNE Chairs Diane Bellas (April 7, 2023 letter), Stella Ngai, Aminder Singh, David Fu, and Jody Nunez (April 6, 2023 letter), and retired Judge Brenda Harbin-Forte (April 25, 2023 letter). I have had the privilege of attending in-person meetings since my shadow meeting in April 2024. Changing the rule 7.60 to allow for the meetings to be conducted remotely on Saturdays through April 2024, would mean that some candidates will get the benefit of robust in-person discussions, while other candidates will not because their discussion will be had in the inferior virtual meetings. Additionally, the proposed schedule change after April 2024 to Thursday and Friday meetings will mean that many members like myself will not be able to volunteer our time to the commission. As a research attorney for a superior court, I do not have “professional development” leave as many private firm attorneys have. Instead, I take 48 hours of my vacation leave per year to attend the in-person meetings on Friday. I also take an additional 48 hours of vacation leave per year to conduct candidate interviews. In addition to the 96 hours of vacation leave per year that I donate to JNE, I also spend my lunch hours, breaks, evening and weekends conducting the JNE commission work. As rewarding and as important the commission work is, it will not be possible for me to remain in the commission if the meetings were to change move to Thursday and Friday meetings. I have spoken to other commissioners who are also in the public sector working for government or non-profits, and they have also indicated that they will not be able to continue to volunteer for the commission if this</p>

					<p>change takes place. It is common knowledge that many public sector members are women and people of color. Moving the meetings to Thursday and Fridays will gut the commission of its diversity, and in turn, will affect the diversity of the judiciary and ultimately impact the people of the State of California. I also want to note that changes imposed on the commission thus far in the name of efficiency, have actually made the job of the commission a lot more difficult and made the proceedings less confidential. For example, instead of reading the entire report out loud during the meetings, only the summary of the report is read at the meeting. All of the candidate reports are shared with the commissioners via the SharePoint site about a week in advance of the meeting. And contrary to the claim made in Agenda Item 701 March 2023, all of the reports can be downloaded, which poses a security risk. And by having the commissioners review approximately 30 reports ahead of the meeting means that the commissioners have less time to review the candidates PDQs ahead of the meeting, which hinders the commissions' ability to have in-depth discussions about the candidates. I also join other commissioners and implore the Board of Trustees to reject the proposed rule change.</p>
Jasmine Horton	Attorney	Yes	Black Women Lawyers Association of Los Angeles, Inc.	D	<p>Rule 7.60 requires, absent unusual circumstances, for a lead commissioner to present their report in person. The March 16, 2023, memo concluded that JNE Commission meetings are two days because candidate reports are read verbatim. The memo then goes on to say that candidate reports are accessible on SharePoint at least a week before a JNE Commission meeting, and that presenting reports in full is no longer necessary. Presenting a report and accessing a report via SharePoint are not one in the same. SharePoint should not take the place of a full presentation and evaluation of a judicial candidate's qualifications. Reading reports allows for more meaningful conversations regarding a candidate's qualifications and it should not be curtailed because of cost savings to the State Bar. BWL is also concerned that eliminating this step in the evaluation process may have a snowball effect. If the reading of reports is eliminated or the time allowed to present a candidate's report is reduced, the State Bar may then propose JNE Commission meetings be limited to one day. We advocate for all judicial candidates to have a fair chance of being fully vetted, which will only occur if wholesome</p>

					<p>conversations are held. The State Bar proposed changes of weekday scheduled meetings for the JNE Commission will in its view reduce lodging costs and eliminate overtime staff costs. However, JNE Commission meetings are every other month and the benefit of fully vetting a judicial candidate who will have the responsibility of interpreting laws impacting our community outweighs such cost savings. Additionally, The State Bar should take into consideration that many government and public service employees who volunteer on state bar committees and commissions would not be available to volunteer during the week. Saturday meetings encourage the involvement of public sector employees. Weekday meetings may force public sector employees to choose between contributing diverse perspectives regarding issues affecting our profession and taking leave or clearing work schedules. Based on the above, BWL strongly urges the Board of Trustees to vote against Proposed Rule 7.60.</p>
Jeff El-Hajj	Attorney	No		D	<p>I am cycling out of the JNE Commission in April 2023, having served on the commission since 2020. It has been one of the most rewarding volunteer experiences of my career. But it has also been incredibly challenging given the substantial time commissioners must commit to thoroughly investigate candidates and attend meetings every other month. I also have a somewhat unique perspective, in that I served on the commission during a period that involved both remote meetings via Zoom and in-person meetings. As you know, JNE commissioners are an entirely volunteer workforce who for the most part also juggle demanding, full-time careers. We dedicate our free time to the commission, and in return we want to feel that our efforts are valued and appreciated. The proposed change to rule 7.60 risks harming the State Bar's ability to attract and retain JNE commissioners.</p> <p>The staff report suggests two options to change the current Friday/Saturday meeting schedule. Both have significant deficiencies.</p> <p>The first option is to switch to a Thursday/Friday meeting schedule. Simply put, that schedule is unworkable. Very few working professionals can take two days off every other month to attend meetings. This is particularly true</p>

					<p>if that travel schedule would require a flight early in the morning on Thursday due to the State Bar's refusal to cover two hotel nights. I have a fairly flexible schedule, but there is Public Member way I would be able to devote 12 business days per year to the commission. I would also not be able to recommend commission participation to colleagues if it meant sacrificing 12 vacation days per year.</p> <p>The second option is maintaining a Friday/Saturday schedule, but conducting any Saturday sessions via Zoom. While this option is significantly better than the Thursday/Friday schedule, I fear it will adversely affect the commission's ability to collaboratively review candidates. Consensus on candidate ratings is built through trust, and trust is best established through in-person discussion (both during meetings and, crucially, at the informal dinners commissioners attend before and after in-person meetings). By reducing those in-person interactions, I fear the quality of the commission's evaluations will suffer. When our meetings occurred solely virtually during the pandemic, there was a noticeably higher level of acrimony in the discourse that has not been present in in-person meetings.</p> <p>I understand there are budgetary constraints that these rule proposals are meant to address. But the commission's work is too important to be jeopardized by proposals made in the name of efficiency without due concern for adverse consequences. Thank you for your consideration.</p>
Josi Swonetz	Attorney	Yes	California Association of Black Lawyers	D	See attached letter.
Kellie Walters	Attorney	No		D	Moving to one-day meetings may prevent certain populations from having a role, meaningful or otherwise. These populations include but are not limited to, people with disabilities who may not be able to travel to and from SF/LA for the meetings. As such, they will miss work and incur travel expenses to stay in a hotel the day before or after - costs that the State Bar will not reimburse. Additionally, this will preclude rural people

					from serving on the JNE Commission, as it will be too hard to get to and from SF/LA for the one-day meetings. Finally, nonprofit staff attorneys are significantly less likely to partake because their lower salaries may not allow them to cover the expenses required to make a whirlwind trip to SF/LA to attend the meeting. This will leave only retired or private attorneys serving on the Commission, hugely impacting the diversity of the Commission members themselves.
Lin Chan	Attorney	Yes	Asian American Bar Association of the Greater Bay Area	D	<p>The Asian American Bar Association of the Greater Bay Area (AABA) is one of the largest local Asian American bar associations in the country. AABA has been the voice of the San Francisco Bay Area's Asian Pacific American (APA) legal community since 1976. AABA fosters professional development, community, and service. We are advocates and allies for civil rights, representation, and equality.</p> <p>AABA has received concerns about the impact of the proposed rule changes on candidates for judicial office from historically underrepresented groups. AABA is committed to promoting a diverse judiciary that reflects that diversity of the population it serves. AABA requests that the State Bar study potential impacts of the proposed rule changes on judicial candidates from historically underrepresented groups.</p>
martin homec	Attorney	No		D	All remote meetings should be preceded by a 30 day notice with anonymous comments available to allow anyone with knowledge of inappropriate behavior to comment privately.
Richard Oberto	Attorney	Decline to state	Attorney	A	
Ryan Tacorda	Attorney	No		D	<p>Thank you for your work and providing us the ability to comment on the pending proposed rules. As a current JNE Commissioner, I disagree with this proposed amendment to Rule 7.60. I have had the good fortune of beginning my tenure with JNE when in-person meetings were reinstated, after two years of remote meetings due to the pandemic. Omitting in person report reading will lead to little or reduced candidate discussion that makes the JNE Commission such a high-quality deliberative body. Presenting reports in an in-person meeting ensures that each commissioner has the relevant information about the candidate, at the time the candidate is being considered at the meeting. Moving to zoom</p>

					<p>meetings will result in less discussion, greater distractions for participants that will be unfair to candidates. All candidates deserve engaged, focused discussion from commissioners who are in physical proximity to each other, to foster full conversations about judicial applications.</p> <p>In addition, the in person meetings fosters the camaraderie and collegiality that connects fellow commissioners, forges trust between us, and serves as the needed foundation for the tremendous amount of volunteer work we've all committed to. Moving to zoom meetings will diminish all of this.</p>
Salena Copeland	Attorney	Yes	Legal Aid Association of California	D	<p>LAAC understands the financial reasons for shifting the in-person interviews of JNE candidates to remote/zoom interviews and the financial reasons to allow remote meeting access for the full commission's meetings. That said, we have concerns with the change.</p> <p>We believe that in-person meetings, especially for the full commission's discussion of judicial candidates, is critical. We urge the State of California to cover the costs of the travel for all commissioners and would support any budget request to the legislature to do so.</p> <p>Importantly, we believe there is a real risk to the diversity of the judiciary if full commission meetings move to remote/zoom. It has been clear to us over the past three years of remote meetings that many voices are silenced in large zoom meetings. Some people, usually the people who hold positional power, feel confident in speaking up and interrupting or disagreeing with the group. Others find that more difficult, even when in an in-person meeting, and it's virtually impossible on a zoom. In in-person meetings, you can signal through hand gestures that you are ready to speak - you can say that you want to respond to an immediate point or get in the queue to raise a different issue. Not everyone follows the "raise hand" feature in remote meetings. Even well-facilitated zoom meetings still have a challenge of distracted individuals who aren't following along and who start to agree with the majority, which inhibits robust discussions.</p>

					<p>Though the budget decision to switch from Friday-Saturday meetings to Thursday-Friday meetings has already been made, we encourage the State Bar to reconsider that decision as soon as the budget allows. We have spoken with several past members of JNE who shared that they had to take vacation time to participate in full JNE meetings. We believe that moving the meetings to two working days will be a huge barrier to participation for both legal aid and government attorneys. If there are six meetings per year, and a staff attorney must take 12 vacation days to participate, that essentially means that they can take no personal vacations. This change may unintentionally privilege private bar attorneys who do not need to take vacation days to participate in two-day meetings.</p> <p>We want to make sure that the JNE commission includes representatives from both legal aid and government offices. When JNE is overrepresented by private bar, there may be no one in the room to ask the important questions about a candidate's pro bono history, board service, or other volunteer and community engagement. There may be no one in the room to ask hypotheticals about presiding when the litigants are both self-represented. There may be no one to ask the hard questions about implicit bias against people who are low-income or who come from communities other than the candidate's own background.</p> <p>For these reasons, we oppose the move to allow Commission meetings by remote access and strongly encourage the State Bar to return to Friday-Saturday meetings when budget allows.</p> <p>See attached letter.</p>
Stella Ngai	Attorney	No		D	Please see letter signed by Jody Nunez, Aminder Singh, David Fu, and me. Thank you.
Susan Lea	Attorney	No		D	Please see my comments above which are incorporated herein by this reference. If people don't want to take the time necessary to choose the best judicial candidates, then they should move aside and let someone else do it.
T. Peter Pierce	Attorney	No		D	See attached letter.

Terrie E. Roberts	Judge	Yes	Superior Court Judge and Chair of Judicial Council for CABL	D	See attached letter.
Theodore P. Horton-Billard Jr.	Attorney	No	Self employed legal consultant	D	For many of the same reasons I feel it is important to conduct face to face interviews, I believe JNE meetings should also be conducted in person. Being able to speak directly to the lead investigating commissioner, in person, is the most effective way to communicate the investigative results and question those who met with the candidate directly. And when the Commission is voting, it's important to be able to look around the room at the other Commissioners to get a sense of whether further discussion might be warranted. You really can't "read the room" as easily or as effectively on a Zoom call. As JNE recommendations are critical to the quality of our judiciary and each candidate deserves the utmost consideration, to make the interview and voting processes less effective in order to save a few bucks seems misguided and wrong. If the Bar is looking to cut costs I'm confident they can find more appropriate places to cut.
Tobi Inlender	Public Member	No	former JNE Commission public member	D	This change will negatively affect the depth of discussion and quality of the important work and results of the Commission as a whole. It will be diminished to the detriment of candidates and to the value of JNE's in-depth assessment to the Governor.
Todd Darrow Irby	Judge		No	D	See attached letter.
Todd Thompson	Attorney	No		D	If the flexibility sought by the amendment were to be used solely in unusual circumstances, it might be defensible. I am concerned, however, that the amendment is sought as a prelude to a substantial change in JNE procedures, such as (1) the elimination of any requirement that Commissioners present their reports live at the meeting, (2) the shifting of Saturday meetings to Thursday, and (3) the eventual elimination of live meetings in favor of Zoom. All these changes would substantially lessen the effectiveness of the Commission and undermine its efforts to recruit qualified commissioners. I make these comments as a former JNE commissioner who is familiar with its procedures.

					<p>Live presentation of the reports is necessary to insure that all commissioners are aware of the content of the reports prior to discussion. Expecting commissioners to read 35 or so separate reports in the short time allowed before the meeting and, more importantly, expecting them to keep those reports straight during a meeting that considers 35 or more candidates is unreasonable. It might save meeting time, but it would result in much less useful discussions and less reliable evaluations.</p> <p>Moving the meetings to Thursday would impose unwarranted burdens on commissioners. They are already required to miss one work day for Commission meetings. To expand that to two work days is, again, unreasonable. Commissioners are, for the most part, busy lawyers who must attend to the demands of their job by the minute. Missing a day of work is difficult; missing two days in a row is impossible. That is, of course, why the meetings now occur on Fridays and Saturdays. The Commission should not make such demands on its commissioners -- or, alternately, it should not expect to recruit diligent attorneys as Commissioners.</p> <p>Moving meetings to Zoom would similarly limit the effectiveness and recruitment of the Commission. Zoom meetings are simply not as effective. It is more difficult for commissioners to pay attention and understand the proceedings. There is a benefit to being live, and it is a critical benefit in ensuing effective JNE decisions. Further, the opportunity to meet other commissioners is much of the attraction of JNE service. I made many valuable friends and contacts through the JNE meetings. To create a circumstance in which commissioners are able to meet only by Zoom, without the opportunity for personal interaction, will greatly diminish the appeal of service on the Commission.</p> <p>There is nothing wrong with flexibility. But I don't trust the State Bar any further than I can throw it. I have no doubt that the flexibility permitted by these changes will soon be converted into permission to gravely change the nature of JNE proceedings, to the detriment of the Commission and its decisions.</p>
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Ugochi Anaebere-Nicholson	Attorney	No	Staff Attorney, The Public Interest Law Project; Current JNE Commissioner (2021-2024)	D	<p>I am one of the few Commissioners with a public interest background. In actively trying to recruit colleagues to the commission in my practice area-- representing indigent persons and communities, I have found it extremely difficult to recruit and encourage new members to join the commission because of the on-going changes to the time commitment. The current schedule of Friday/Saturday has given us the ability to coordinate our schedules, especially for those of us who are litigation attorneys, travel to the meetings and give our full attention to the important work of the commission. Many commissioners are working full time as professionals or are retired persons volunteering in various capacities and it would be nearly impossible to spend Thursday/Friday away from our offices, families, and volunteer work to fly in day of, work for a full day on commission activities, and then work remotely the next day. With the proposed shift and with no guarantee that the commitment of time will not shift again without input from the commissioners who have diligently and dedicatedly worked closely with State Bar team on a significant number of candidates each cycle, I am concerned that many qualified people who are active members of the legal community, particularly those of us who are full-time litigators, are not going to be able to join the commission.</p> <p>Finally, this proposed change will deprive us and future commission members of what has made JNE special and unique: the opportunity to engage in spirited and respectful debate and review to ensure that we are presenting quality candidates before the Appointments Secretary and the Governor for appointment to the bench. I served my first year remotely due to the COVID-19 pandemic, and the quality of our meetings vastly improved when we appeared in person. Debate is lost when reduced to remote and cannot replace body language, i.e., excitement or concern, which are important features for the work we are doing: evaluating candidates for judicial office. These are functions of the commission that are not replicated remotely or in chat. Thank you for considering these comments.</p>
William C. Kwong	Attorney	No		D	<p>As a former CJNE member (2004-2007), I cannot conceive how the proposed amendments would enable the commission to provide independent, comprehensive, accurate, and fair evaluations of candidates nominated for judicial appointment. Removing the "in-person"</p>

					requirement risks diminishing the "comprehensive" evaluation that comes from observing body language and facial expressions (that cannot be captured by Zoom). Additionally, virtual meetings stifle meaningful conversation. In short, most trials across the nation are still held in person because too much is lost when they are held by Zoom. The same is true for CJNE. Consequently, I recommend against the proposed amendment.
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Justin A. Palmer
249 East Ocean Boulevard, Suite 501
Long Beach, CA 90802

April 28, 2023

The State Bar of California Board of Trustees
180 Howard Street
San Francisco, CA 94105

Dear Board of Trustees:

The Commission on Judicial Nominees and Evaluations (“JNE” or “Commission”) discussed the proposed changes to Rules 7.52 and 7.60, and related operational impact on the Commission’s work when we last convened. All Commissioners, including those whose service ended last term, unanimously voted to oppose the recommended changes outlined in the memorandum authored by State Bar staff on March 16, 2023. The Commission regards these changes as unnecessary and a deterrent to diversity, equity, inclusion and the stated commitment of the State Bar to improve access to justice.

I offer this letter in my capacity as 2023 chair of the Commission, and the views and opinions are those expressed by the individuals present during our last meeting. The Commission also asked me to share a brief word about its history, composition and impact on our judiciary, in hopes that it may lend more context for its unanimous opposition. The Commission was created in 1979 pursuant to *Government Code* §12011.5, which requires the Governor to submit all names of judicial candidates to the Commission for review. Before that time, judicial candidates were evaluated by State Bar Board of Trustees as a matter of course.

The Commission is comprised of licensed attorneys within the public and private sectors, non-attorney public members and former judicial officers. We endeavor to be a representative swath of the great and diverse State of California, consistent with the express purpose of *Government Code* §12011.5(b): to be “broadly representative of the ethnic, gender, and racial diversity of the population of California.”

The Commission and its rules are rooted in principles of fairness, due process, diversity and inclusion. The Commission believes its traditions and work cannot persist without in person meetings. A JNE referral is an extraordinary accomplishment for a candidate – these individuals have worked their entire lives for this opportunity, and the commission takes its role in evaluating candidates seriously. Commissioners report that virtual meetings impact the quality, fairness and integrity of the judicial evaluation process, citing among other things zoom fatigue, failing to appreciate nuances of a judicial candidate or other candidates receiving more scrutiny than others.

These are weighty and nuanced issues; and the recommended changes threaten to impact the quality of bench officers across our state by disrupting the best practices needed to thoroughly evaluate judicial candidates on behalf of the Governor and the State of California.

The Commission thanks you for considering its perspective.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Palmer", with a long horizontal stroke extending to the right.

Justin A. Palmer
Chair | State Bar JNE Commission

Cc: Leah Wilson; State Bar JNE Staff; 2022-2023 JNE Commissioners

6 April 2023

The State Bar of California
Board of Trustees
180 Howard Street
San Francisco, CA 94105

Dear Board of Trustees:

We write to comment on the March 2023 Agenda Item 701 regarding the proposed amendment to State Bar Rule 7.60 regarding in person reports at JNE meetings, as well as other operational changes described in the item. We are former JNE Chairs.

First, we want to thank the Board for its discussion about this item at the March meeting. We know the Board is unwavering in its commitment to its mission of public protection. The Board's public protection mission encompasses JNE's charge of providing independent, comprehensive, accurate, and fair evaluations of candidates nominated for judicial appointment.

We also want to thank you for the State Bar's commitment to the advancement of diversity, equity, and inclusion in the legal profession. We appreciate your focus on the pipeline into the legal profession, retention and career advancement, and judicial diversity.

Today, we write to express our deep conviction that the proposed change to Rule 7.60 and other JNE operational changes constitute a restructuring of JNE that will reduce discussion of judicial candidates, thus undermining the fairness of the commission's evaluations. This in turn, may have the unintended consequence of resulting in lower ratings for BIPOC women candidates.

Taken in isolation, some may view each of the proposed amendments and operational changes as discrete or innocuous. However, all of the foregoing must be viewed in concert; taken together, they may impact the fairness of JNE's evaluations and lead to downstream unintentional impact on the inclusiveness of the California bench under future gubernatorial administrations.

With that said, we are sensitive to the Governor's request to review more candidates in each 90-day cycle. We are proud that our Governor prioritizes judicial appointments,

including his appointments of eminently qualified candidates who may not have been considered in prior administrations.

We are concerned that the well-intentioned desire to move more candidates through the evaluation process may result in a JNE restructuring that leads to the impacts described below.

1. Omitting in person report reading and other operational changes will lead to little to no candidate discussion

Rule 7.60 Reports to Commision requires the lead commissioner to present her report to the commission 'at its meeting.' The proposed rule eliminates the words, 'at its meeting.' The item states that eliminating report reading will leave "*...more time for focused discussion of the candidate while substantially reducing the time it takes to conduct each meeting overall.*" (Agenda Item 701, p.3.) We agree with the latter part of that statement - meeting time will be reduced. We disagree that the proposed rule change will facilitate more focused discussion of the candidate. Rather, the lack of report reading will lead to concurrence with the recommended rating with little to no discussion.

Reading reports aloud in the meeting ensures that each commissioner has the relevant information about the candidate, *at the time* the candidate is being considered at the meeting. Decoupling report reading from the candidate agenda item at the meeting will reduce discussion about each candidate rather than foster discussion.

In addition, the planned transition to remote Saturday meetings - coupled with the proposed Rule 7.60 change eliminating report reading - will contribute to an overall decline in robust candidate discussion, which as stated previously, is unfair to the candidates. Stella Ngai and Aminder Singh served on JNE before and during the COVID-19 pandemic. Virtual JNE meetings were materially inferior to in-person JNE meetings for more than one reason, including the real differences in focus and engagement when meeting away from the sanctum of a confidential State Bar office. Commissioners' lack of access to totally private ZOOM rooms at home, ZOOM fatigue, family obligations (which are a part of the at-home landscape when attempting to ZOOM from home) - all were factors that led to increased commissioner absences from meetings, and even resignations from JNE. All candidates deserve engaged, focused discussion from commissioners who are in physical proximity to each other, to foster full conversations about judicial applications. To ensure candidate fairness, all candidates should be discussed at in-person meetings, rather than a hybrid approach where some

candidates are discussed in person and some are discussed over ZOOM, which may lead to disparate evaluations of candidates.

2. Less discussion is unfair to the candidates

Reduced or eliminated discussion about each candidate is problematic for more than one reason. First, it vests more power in the lead investigating commissioner, as the entire commission defaults to the lead's recommendation because they may not have had time to read the report in advance of the meeting. Even if they have read the report, it is unreasonable to expect hardworking commissioners to retain all the relevant facts about candidates other than the ones they themselves investigated. Hence, the candidate will go to a vote without an informed discussion, as commissioners defer to the rating of the lead commissioner. This violates the spirit of Rule 7.26, which requires the entire commission to assign a rating to each candidate; this is unfair to candidates.

Second, we are seriously concerned about the unintended effect of reduced candidate discussion and decreased meeting time on BIPOC women candidates. We have observed that BIPOC women candidates are more likely to be criticized by their colleagues, managers, and opposing counsel on the criteria of work ethic, professional skills, legal capacity, legal experience, temperament, industry, intellectual capacity, and judgment. Put another way, BIPOC women typically are more likely to receive criticisms around most of the qualities by which they are to be evaluated under JNE Rule 7.25. Compressed meetings, ZOOM meetings, and reduced discussion time do not allow for sufficient exploration of the bias that may have led to those criticisms. This in turn, may ultimately lead to lower ratings.

Systemic, institutional bias and implicit bias likely contribute to how BIPOC women receive more substantiated criticism in a typical evaluation cycle than other candidates. Rules and operational changes designed to promote the compression of JNE meetings may result in BIPOC women candidates not being afforded the time and discussion needed to unpack the criticism leveled at them.

3. The planned operational change to Thursday/Friday JNE meetings will lead to a less representative commission in violation of the Government Code

Government Code section 12011.5(b) states that “..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...”

The Board is well aware of the tremendous time commitment that JNE commissioners invest in the judicial evaluation process. Replacing the Saturday meeting day with Thursday will affect JNE recruitment, because the schedule will favor applicants to the commission with certain types of practices over licensees who work in the public sector and for public interest non-profits. Taking two weekdays off every two months for JNE meetings - 12 days each year as opposed to the current six days - is infeasible for those with limited paid time off. Public sector and nonprofit lawyers may also be deterred from applying to serve on JNE because they may not have the resources and backup to manage their paid workload with the doubling of time off needed if the schedule moves to Thursdays/Fridays.

A Thursday/Friday meeting schedule may lead to more Big Law licensees applying to serve on JNE because they may have more control over their schedules and the resources to take twelve weekdays off each year. A commission stacked with Big Law commissioners is likely not going to be broadly representative of the ethnic, gender and racial diversity of California per Gov. Code 12011.5(b.) A commission that is diverse in thought, background, and practice can mitigate various types of unconscious bias and foster the vigorous discussions about candidates that has been the hallmark of JNE evaluations.

In closing, we urge decision makers to act with caution around JNE rule and operations changes. The push for streamlined JNE operations should be examined in a deliberate, measured, and transparent way to ensure that the restructuring does not come at the expense of candidate fairness. There must be a balance between the drive for efficiency and the need to ensure full and fair consideration to all candidates.

The Board may wish to request additional study on how JNE restructuring may 1. unintentionally undermine the diversity of the commission’s composition and 2. impact candidate ratings.

To that end, we respectfully request that the Board consider charging a Task Force on the Future of JNE. If JNE is being asked to evaluate more candidates without more resources, perhaps the State Bar is no longer the right place for JNE to be housed. The mission of fair and comprehensive judicial evaluations deserves a close study of JNE operations to balance expediency with candidate fairness.

Sincerely,

Stella Ngai

Stella Ngai

2021 JNE Commission Chair

Jody Nunez

Jody Nunez

2022 RJNE Chair

2016 JNE Commission Chair

David Fu

David Fu

2017 JNE Commission Chair

Aminder Singh

Aminder Singh

2020 JNE Commission Chair

Hon. Brenda F. Harbin-Forte (Retired)

2501 109th Avenue
Oakland, CA 94603
judgebrenda2019@comcast.net

By email to secretariat@calbar.ca.gov and US Mail

April 25, 2023

Board of Trustees
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Dear Board of Trustees:

I write to comment on your proposed amendment to State Bar Rules 7.52 and 7.60 regarding in-person reports at meetings of the Commission on Judicial Nominees Evaluations (JNE) as well as other operational changes described in your March 2023 Agenda Item 701.

I am a retired Alameda County Superior Court judge. I am a current member of the JNE Commission, a past chair of the State Bar's Council on Access & Fairness, a past Chair of the Courts Working Group of the State Bar's Diversity Pipeline Task Force, the past chair or planning committee member of the statewide judicial diversity summits that have been held every five years since 2006, and past and current faculty for numerous programs on judicial diversity put on by the State Bar and other entities in this state and as far away as the Fuji Islands.

In short, I have been laser-focused on ways to increase judicial diversity as an attorney and as a judge for more than twenty years. The proposed changes to Rules 7.52 and 7.60 will eventually destroy all of the progress that has been made in diversifying the bench, because they will reduce discussion times for all judicial candidates, undermine the fairness of judicial evaluations, negatively impact the diversity of practice areas from which JNE commissioners will be selected, and have the unintended consequence of resulting in lower ratings for applicants of color, women, and LGBT candidates.

I will not reiterate but will adopt as my own the persuasive and cogent arguments made by former JNE Commission chairs Diane Bellas, Stella Ngai, David Fu, Jody Nunez, and Aminder Singh, as well as the numerous other arguments in opposition to the rules changes that have been submitted by others. I will stress that the planned transition to remote Saturday meetings,

coupled with the proposed change to eliminate report reading, will indeed contribute to an overall decline in robust discussions regarding candidates.

I was on the JNE commission when all meetings were remote, and now we meet in person. The in-person discussions are decidedly better than the remote ones. Sadly, the reality remains that women and applicants of color are more likely than others to be downgraded by raters in the area of work ethic, professional skills, legal capacity, legal experience, temperament, industry, intellectual capacity, and judgment. I am concerned that the same pattern appears to be emerging for LGBTQ candidates.

During in-person discussions, we are now able to ferret out and fully explore any implicit biases that may have affected a proposed rating. In this way, all JNE Commissioners are better informed about their own personal rating of a candidate. Giving some candidates the benefit of the in-person discussion on a Friday, while depriving other candidates of that opportunity through Saturday remote meetings, is the height of unfairness, and will not lead to the most qualified candidates being recommended to the Governor's office.

I would also like to stress that the proposal to move meetings permanently from Friday and Saturday to Thursday and Friday will lead to a JNE Commission that is less representative of the residents of California, in contravention of the clear mandate of Government Code section 12022.5(b) that judicial candidates be evaluated by representatives of the ethnic, gender, and racial diversity of the California's population.

The diversity of gender, ethnicity, and practice areas of JNE commissioners in recent years has been much more broad than in years past. The result of this diversity is reflected in the broad diversity of the judicial appointments. Returning to the days when more Big Law licensees who have more control over their schedules and who can afford to take 12 work days off a year, as opposed to the 6 days that public sector and public interest licensees can more easily manage, will result in a bench that looks more like the judiciary in 2006, when I chaired the planning committee for the first statewide summit on judicial diversity.

I also want to point out that many of us on the JNE Commission were disappointed that we were not given a real voice in fashioning the form a restructuring should take. Imposing the changes from the top down, by

Board of Trustees, State Bar of California
April 25, 2023
Page 3

people who are not out here in the field doing the real work is, quite frankly, an insult to those of us doing the hard work on the bar's mission of public protection. We are volunteers who devote untold numbers of hours to our evaluations and meetings, who are classic "subject matter experts," yet we were overlooked in making the Board's proposals.

I join the former JNE Commission chairs in asking the Board to appoint a Task Force on the Future of the Judicial Nominees Evaluation Committee. Let's bring to the table all of the stakeholders who will be affected by the changes, including members of the public. Just as having a diverse judiciary that is comprised of judicial officers who can bring diverse life experiences to bear on judicial decisions makes for a better quality of justice in our courts, so too will a diverse task force make for a better quality decision.

Finally, the idea that it is not within the State Bar's public protection mission to ensure a diverse judiciary, a fallacy asserted a few years ago when the Board decided to prohibit COAF from further taking the lead in efforts to diversify the judiciary, and is being trotted out again to justify more changes that will negatively impact judicial diversity, remains laughable in its disingenuousness. The bench did not begin to become more diverse until after I led the State Bar's efforts to convene the 2006 Summit on Diversity in the Judiciary. After much success, the State Bar prohibited those efforts. Now you are poised to throttle the good work the JNE Commission is doing to increase judicial diversity. There is no bigger threat to public protection than going back to the days when our judiciary was filled with white males who would not give women attorneys, attorneys of color, and LGBTQ attorneys, fair opportunities to represent their diverse clients in court and achieve just results based on the law and not on stereotypes and biases. The State Bar should not take us back to those days.

The planned changes are not only untenable, they are unconscionable. They send the wrong message, especially coming on the heels of the Tom Girardi debacle and your admission that African American attorneys have been disproportionately disciplined. I implore you to reject these changes.

Sincerely,



Hon. Brenda Harbin-Forte (Ret.)

cc: Governor Gavin Newsom

California Legislative Black Caucus

California Asian American & Pacific Islander Legislative Caucus

California Latino Legislative Caucus

Diane A. Bellas
103 Waterford Terrace
San Rafael, CA 94903

April 7, 2023

The State Bar of California
Board of Trustees
180 Howard Street
San Francisco, CA 94105

Dear Board of Trustees:

As a concerned attorney who has been a continuous, active licensee of the State Bar of California since 1982, and in my capacity as 2019 Chair of the Commission on Judicial Nominees Evaluation (JNE), I am writing to respectfully urge your Board's rejection of the proposed change to Rule 7.60 as well as any and all operational changes deriving therefrom. I concur, as well, with the comments of past JNE Commission Chairs Stella Ngai (2021), Aminder Singh (2020), David Fu (2017) and Jody Nunez (2016), as contained in their April 6, 2023 letter to your Board. These proposed changes will adversely affect the quality of the Commission's work, and will inevitably degrade neutrality and fairness in the evaluation process, as well the Commission's ability to act consistent with its authority, as derived from the Legislature in Government Code section 12011.5.

I respectfully encourage your Board to examine any and all proposed changes to JNE Rules through one critical lens: ***Will the proposed change protect the public and enhance the quality, fairness, and integrity of the evaluation process?*** The changes under consideration fail this test.

I served in JNE leadership during the transition between the administrations of Governors Brown and Newsom. An extraordinarily high volume of candidate referrals imposed tremendous demands on the Commission, which successfully met those demands with a united, fiercely determined effort made possible by the relationships of trust fostered and strengthened during highly structured and intensive bi-monthly, two-day, in-person meetings. These relationships, within this framework, allowed for the full and fair consideration of candidates from diverse sectors and backgrounds, with a nuanced level of discussion of candidates who have not pursued “traditional” legal careers, or whose educational or professional pedigrees—and/or challenges—are not commonly considered signifiers of the potential for judicial excellence. The converse was also true; candidates in possession of such signifiers were not exempt from thorough and fair consideration which, when necessary, resulted in a determination of unsuitability for judicial appointment. These decisions, the product of thoughtful consideration of many factors, is the rightful province of an unbiased, fair commission whose confidential work—consistent with the

State Bar's mission as well as the Commission's reason for being—protects the public's interest in a strong, fair and impartial bench.

The proffered reasons for a Rule change foreshortening full and fair consideration of judicial candidates, or opening the door to this possibility, bear critical examination by your Board. Such a change is neither neutral nor inconsequential. Transactional metrics of “cost” and “efficiency” are seductive as ostensible reasons for change, but they are illusory, as the JNE Commission is neither costly nor inefficient. Any suggestion to the contrary is without merit. The JNE budget allocation is less than one half of one percent of the entire State Bar budget. On balance, the commission is comprised of more than 35 volunteer attorney and public members who work efficiently and diligently to investigate and comprehensively evaluate hundreds of judicial candidates annually. JNE leadership provides guidance to commissioners during the investigative process, and at meetings ensures that commissioners give voice to questions, clarifications and challenges to assumptions based on implicit bias. Leadership ensures that each commissioner's vote is based upon consideration of the candidate's self-reported information (PDQ), as well as the investigating team's report and recommendation, and that no consideration has been given to matters barred from consideration by JNE rules or principles of fairness and due process. This complex process benefits from its inherent checks and balances, insofar as candidates' self-reporting, rater evaluations, and even investigating teams' conclusions are—and should be—subject to objective scrutiny by the full commission, so that the ensuing deliberative process is informed and fair.

Changes reducing commissioner meeting participation, limiting the information considered by commissioners at the meeting, or restricting the ability of commissioners to meaningfully question reporting colleagues, devalue this process and adversely affect fair outcomes. Truncation of meeting scope, duration and content; bifurcation of meeting formats; rescheduling to weekday meetings only; mandating virtual interviews where the Rules currently allow them at the Chair's discretion—these measures are offered as a cure for no ill. Nor have their proponents explained how these measures enhance the quality, fairness and integrity of the judicial evaluation process.

Recent years have seen development of a body of wisdom regarding the relative merits of virtual and in-person meetings. This wisdom teaches that a virtual format can serve task-based objectives such as briefings or general planning, despite the existence of boundaries on what one observes and hears. In contrast, in-person meetings are necessary when the high-stakes nature of decision-making involves challenging group conversations and interpersonal complexities—precisely as occurs with the Commission. When meeting in person, forged bonds of trust allow for candor; divergent views containing potential or actual emotional content are shared; and negative feedback is more freely proffered or willingly received. Focus and professionalism are more sustainable in person, whereas distraction in a virtual format is inevitable. In virtual format,

leadership cannot effectively monitor the level of engagement of commissioners; non-participation increases, as does the likelihood of misunderstandings arising from the virtual erasure of tone, expression and body language. In person, leadership can observe when a person wishes to speak but is reluctant to do so, and can ensure that all wishing to speak are recognized and heard. These differences are not trifling. Insofar as each candidate in a session is entitled to the same degree of full and fair consideration, the meeting format must provide as much, both substantively and procedurally.

Thus, a hybrid meeting format consisting of an in-person meeting followed by a virtual meeting violates an uncoded rule of fairness that the last candidate of a session is entitled to the same full and fair consideration as the first candidate. As suggested above, the virtual day of a hybrid meeting will find the group dynamic substantially diminished, along with the level and nature of attention given candidates. This disparity will give rise not only to the appearance of unfairness, but to unfairness in fact.

Of additional significance is the pernicious affect wrought by a change from Friday/Saturday meetings to Thursday/Friday meetings. Commissioners who appear in court almost daily on multiple matters often have limited flexibility in case coverage and calendaring. One can foresee increased meeting absences from within this group. Similarly, recruitment from this group—in large part consisting of government and non-profit attorneys—will become problematic, especially from small and/or rural offices, including those of solo practitioners. Such exclusion will lessen diversity of practice on the commission and deny candidates the diversity of perspectives to which they are entitled under the Government Code. The Friday/Saturday schedule promotes equity with respect to the hardship of lost work time and personal time. In this way, no commissioner is unduly privileged by professional supports that allow for the unfettered use of work time as well as the personal enjoyment of weekend time.

It is axiomatic that the objective and focus of the meeting must be the presentation and discussion of commissioner findings and recommendations, as contained in each report. Commissioners derive immeasurable value from hearing reports read aloud at meetings, a process for which there is no effective substitute. Although all commissioners are expected to prepare thoroughly for meetings, information retention levels are as variable as people themselves are. When a report is read aloud in real time, retention is not an issue. Each commissioner possesses the same information in that moment. Discussion that follows is not dependent on whose recollection is better, or on whether a particular recollection is accurate. Time is not absorbed by debates or questions about what was said in the report, but on questions going to the nature of the investigation itself, its thoroughness, the accuracy and fairness of its assumptions and conclusions. This process reflects procedural integrity and honors the Commission's charge. To require less, through an eviscerating Rule change, is to render the Commission's work perfunctory.

The JNE Commission should not suffer “death by a thousand cuts” if it is to continue serving its legislative mandate. The July, 2022 enactment of a Rule change eliminating the requirement of a public member commissioner on the team evaluating appellate candidates was one such cut (Rule 740(B)). Whether enacted in response to a temporary increase in appellate candidate referrals and in the belief that the former Rule stood as an impediment to the expeditious filing of appellate vacancies, or for any other reason, its enactment had the effect of uncoupling the *essential* role of public members from the evaluation of candidates for appointment to an appellate bench whose decisions affect lives in a broad and enduring manner, having the greatest impact on the public—protection of which is the State Bar's charge. A continuous, robust recruitment of public members, and utilization of *pro-tem* public member commissioners is a reasoned approach to addressing this real need. Negotiation with the Governor's Office is another such reasoned approach (for example, during my tenure, the Commission agreed to conduct two, additional, off-calendar meetings to evaluate appellate candidates).

The aforementioned Rule change has presaged additional changes implemented by its proponents. These include the outsourcing of confidential reports for final editing, and the elimination of substantive training materials that have been developed over time as a reference for navigating complex issues relating to confidentiality, investigation, interviews, formulation of criticisms, rater interviews, report writing, ethics, fairness and the like. Orientation training has been substantially reduced in scope, with omission of requisite soft skill training. The elimination of in-meeting report reading, and changes in report and presentation formats, have the effect of privileging summary conclusions above thoughtful, detailed analysis of the person under consideration. It defies reason that this and other changes will protect the public and enhance the quality, fairness and integrity of the judicial evaluation process. Rather, they radically alter the Commission's ethos and, one may reasonably assume, they will not be the last to come before your Board.

If these and similar changes are enacted by your Board, it is regrettable that, going forward, sitting commissioners will soon consist of only those who experience the commission as a substantially lesser version of its former self, constrained by metrics which have no proper application to the process of ensuring the rigorous, neutral, unpoliticized, full and fair consideration of judicial candidates, across shifting administrations and through time. While this outcome will, for a time, quiet outcry at the degradation of historically exacting norms, it will be only a matter of time before circumstances giving rise to establishment of the Commission in the first place, occur again, with no institutional guard in place to protect the public from the excesses of patronage and bias reflected in judicial appointments, and the long-lived consequences of those appointments.

Board of Trustees
Page 5 of 5

Thank you for your consideration, and for your work on behalf of the State Bar and all Californians.

Sincerely,

Diane A. Bellas



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www.calblacklawyers.org
contact@calblacklawyers.org

April 28, 2023

California State Bar
180 Howard Street
San Francisco, CA 94105

Subject: Comment of the California Association of Black Lawyers on Proposed Amendments to State Bar Rules 7.52 and 7.60

Dear State Bar Board of Trustees,

The California Association of Black Lawyers (CABL) strongly opposes the proposed changes to State Bar Rules 7.52 and 7.60. The State Bar's objectives include promoting diversity and inclusion in the legal system. CABL believes that the proposed changes to State Bar Rules 7.52 and 7.60 may have a direct and disparate impact on candidates of color, especially Black attorneys seeking judicial appointment.

1. CABL's Comment Opposing Proposed Amendments to Rule 7.52

The State Bar is unreasonably weighing travel and lodging cost savings against a robust, thorough, and effective judicial vetting process. CABL understands the State Bar has a mandate to stay within certain budgetary confines. However, reducing the integrity of the Judicial Nominees Evaluation (JNE) process for candidates seeking judgeships across our state is not a place to trim the budget or cut corners.

Current Rule 7.52 requires JNE investigators to interview judicial candidates in person unless there are unusual circumstances. The Deputy Chief of Programs, in the March 16, 2023, memo, proposes remote judicial candidate interviews to save the State Bar and judicial candidates money. During the pandemic, it was necessary to conduct remote interviews to stop the spread of the contagious virus, COVID-19. However, on February 28, 2023, the Governor ended the COVID-19 State of Emergency and the world, for the last four years, has been educated on virus transmission prevention. We are now safely meeting in person and adhering to conduct that will protect ourselves and others, such as masking and social distancing. While Zoom meetings are convenient, along with it often comes Zoom fatigue and distraction. We're also concerned about the hybrid meeting proposal. If this method is employed, the vetting process will differ as some candidates will be evaluated in person while other candidates will be evaluated on Zoom.

CABL is concerned that conducting remote judicial candidate interviews in perpetuity may have a direct and disparate impact on candidates of color. Often times, an interview is the deciding factor in the selection process. Eliminating the chance for observation of a candidate's demeanor and personality will reduce the integrity of the judicial evaluation process. Anyone can come across as a qualified candidate on paper and on Zoom, but it is the in-person interviewing component that will determine if a candidate possesses the requisite communication skills, and temperament to be a judge. On a daily basis, judges interact with court staff, counsel, and the jury in person. The judicial evaluation process should include assessing a candidate's demeanor and behavior in person similar to how a judge assesses a witness' character and credibility while testifying on the stand.

Based on the above, CABL strongly urges the Board of Trustees to vote against Proposed Rule 7.52.

1. CABL's Comment Opposing Proposed Amendments to Rule 7.60

Rule 7.60 requires, absent unusual circumstances, for a lead commissioner to present their report in person. The March 16, 2023, memo concluded that JNE Commission meetings are two days because candidate reports are read verbatim. The memo then goes on to say that candidate reports are accessible on SharePoint at least a week before a JNE Commission meeting, and that presenting reports in full are no longer necessary.

Presenting a report and accessing a report via SharePoint are not one in the same. SharePoint should not take place of a full presentation and evaluation of a judicial candidate's qualifications. Reading reports allows for more meaningful conversations regarding a candidate's qualifications and it should not be curbed because of cost savings to the State Bar. CABL is also concerned that eliminating this step in the evaluation process may have a snowball effect. If the reading of reports is eliminated or the time allowed to present a report is reduced, the State Bar may then propose, JNE Commission meetings be limited to a day. We advocate for all judicial candidates to have a fair chance to be vetted which will only occur if wholesome conversations are held.

The State Bar proposes changing the JNE Commission meeting schedule to weekdays which will in its view reduce lodging costs and eliminate the cost of overtime for staff. CABL is not opposed to a healthy work-life balance for State Bar staff. However, JNE Commission meetings are every other month and the benefit of fully vetting a judicial candidate who may one day interpret laws affecting our community greatly outweighs cost savings. The State Bar is also not considering government and public service employees who volunteer on state bar committees and commissions. Saturday meetings encourage involvement of public sector employees. Weekday meetings may force public sector employees to choose between contributing diverse perspectives regarding issues affecting our profession and taking leave or clearing work schedules.

Based on the above, CABL strongly urges the Board of Trustees to vote against Proposed Rule 7.60.



Sincerely,

Shanae Buffington

Shanae Buffington, President
California Association of Black Lawyers

ABOUT THE CALIFORNIA ASSOCIATION OF BLACK LAWYERS (CABL)

CABL was established in 1977 primarily to change the face of California's judiciary. Other objectives and purposes included seeking out and eradicating the roots and causes of racism, and vigorously defending Black people from those who would consciously or otherwise deny us basic human and legal rights. Today, CABL is organized around 10 affiliate bar associations in California and represents the interests of more than 5,000 African American attorneys, judicial officers, law professors and law students. CABL is an affiliate of the National Bar Association



Website: calblacklawyers.org | **Email:** contact@calblacklawyers.org

Address: 1009 East Capitol Expressway #519, San Jose, California 95121



Association of African American California Judicial Officers, Inc.

PRESIDENT

HON. HUEY COTTON
Los Angeles County
Superior Court

April 28, 2023

Via email to: Secretariat@calbar.ca.gov and U.S. Mail

The State Bar of California
180 Howard Street
San Francisco, CA 94105
Attention: Board of Trustees

Re: *Open Session Agenda Item 701 March 2023 Re: Proposed Amendments to State Bar Rule 7.60*

To the Members of the Board of Trustees of the State Bar of California:

On behalf of the Association of African American California Judicial Officers, Inc. ("AAACJO") we want to express our organization's concern that proposed amendments to State Bar Rule 7.60 may have unintended consequences. AAACJO is a statewide organization of approximately 150 judicial officers committed to diversity and excellence in all areas of the judicial process, including the judicial selection. More than half of our members were appointed to the bench since 2005, the same period in which the Commission on Judicial Nominees Evaluation (JNE) diversified its members and utilized in-person Friday-Saturday evaluation meetings. As stakeholders in the judicial appointment process, we offer the following comments on the proposed changes to State Bar Rule 7.60.

First, the proposed changes to Rule 7.60 should be deferred and referred to a committee of diverse stakeholders for further consideration. The perspectives set forth in the April 25, 2023 letter to the Board of JNE Commission by member Judge Brenda Harbin Forte (Ret.), the April 7, 2023 letter to the Board by past JNE Commission Chair Diane A. Bellas, and the April 6, 2023 letter by past JNE Commission Chairs Stella Ngai (2021), Aminder Singh (2020), David Fu (2017) and Jody Nunez (2016) to be persuasive. While the Board must make efforts to meet its budgetary goals, it should not do so at the expense undermining decades of progress toward a more diverse judiciary. We are convinced the Legislature did not intend to encourage the Board to make budgetary decisions that would have a negative impact upon the diversity of the bench. We urge the Board to take a closer look at the ramifications of the proposed changes and the inevitable impact on historically underrepresented communities.

Second, AAACJO is committed to eliminating neutral rules and practices that have a disparate impact on Black, Indigenous, People of Color (BIPOC) becoming judges. If the proposed changes to Rule 7.60 would create such a negative effect, then it is our shared obligation to oppose it, refine it and ensure its intended efficiencies and savings while preserving the values of inclusivity and diversity, which we are all

so rightfully proud of.

Finally, AAACJO applauds this Board and JNE for pursuing creative and cost-effective methods of operating. At the same time, we ask that you carefully evaluate the proposed changes to Rule 7.60 and the impact that they will have upon the continued shared goal of a diverse bench.

Thank you for your time and consideration.

Respectfully submitted,

Huey Cotton

Huey P. Cotton, President, AAACJO
Cell: 818-618-0396

Copy: Appointments Secretary Luis Cespedes c/o Debbie.Cun@GOV.ca.gov

HON. TODD D. IRBY

**11260 B Avenue
Auburn, California 95603
(530) 745-2119
Tirby@placer.courts.ca.gov**

April 30, 2023

Board of Trustees
The State Bar of California
180 Howard Street
San Francisco, California 94105

Re Proposed Amendment to State Bar Rules 7.52 and 7.60

Dear Board Members:

I write to comment on the proposed amendments to State Bar Rules 7.52 and 7.60, which govern the presentation of in-person reports at periodic, regularly scheduled meetings of the State Bar's Commission on Judicial Nominees Evaluation (JNE or Commission), as well other operational changes described in your recent Agenda Item 701, dated March 2023.

From 2001 through 2011, prior to my current service as a Placer County Superior Court Judge, I was honored to serve as a member of JNE (Chair, 2005-2006) as well as the Commission's appellate arm, RJNE (Chair, 2010-2011). In short, after carefully reviewing the proposed above-referenced amendments I sincerely believe that the changes, if enacted, will significantly undermine much of the progress that has been achieved in diversifying California's judiciary over the past twenty-five years by reducing allotted discussion times for all judicial candidates, thereby undermining the fairness of each candidate's judicial evaluation and increasing the likelihood that applicants of color, women, and LGBTQ candidates will be given decreased consideration. Moreover, I also fervently believe that enacting the proposed transition to remote Saturday meetings and eliminating report reading will significantly reduce the quality and quantity of the commissioners' robust debates regarding the merits of each candidate's application that invariably precede the commissioners' final vote on each candidate's application.

Throughout my JNE tenure the Commission's critical work in support of the Governor's efforts to select the most diverse and well-qualified judiciary possible was conducted in person over two approximately eight to ten hour sessions on Fridays and Saturdays in the State Bar's Northern and Southern California offices, on an alternating basis. During those meetings each of the candidate's investigating commissioners would field inquiries from the Chair, Vice Chair, and remaining commissioners' regarding various aspects of the candidate's application as well as the results obtained from their investigation into the candidate's personal and professional background. Given the diverse personal and professional backgrounds of the Commission's

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The State Bar of California
April 30, 2023
Page Two

members, as well as their well-honed investigative and inquisitive skills, the foregoing process proved to be an invaluable method of assisting the Commission in carrying out its mandate of assisting the Governor's efforts to assure that each of California's citizen be granted access to justice through the creation and maintenance of a fair and impartial judiciary.

I fear that if the proposed changes to the Rules are implemented, particularly changing the Commission's meeting days from exclusively in-person on Friday and Saturday to Thursday and Friday, as well as allowing remote attendance on one or more days rather than requiring in-person attendance on both days, it could ultimately result in the creation of a JNE that is less representative of California's citizenry, thereby undermining the clearly-articulated mandate in Government Code section 12011.5(b) that judicial candidates be evaluated by representatives who mirror the ethnic, gender, and racial diversity of this state's populace.

While I recognize that in this day and age the State Bar is often being asked, and rightfully so, to provide more and more services to our state's citizens, particularly to those who have been victimized by the predatory behavior of some legal practitioners who were previously held in the highest esteem by members of the Bar, the Bar's leadership must not forget that its greatest responsibility is to assure that each of our state's citizens is provided, to the greatest degree possible, the fullest, freest, and most unfettered access to justice and the preservation of the rule of law--regardless of race, ethnicity, gender, or sexual preference.

In my humble opinion, the clearest path to successfully achieving and preserving the foregoing mandate is to continue to take all necessary steps to assist the Governor and his Appointments Secretary in selecting judicial officers who are learned, humble, and possessed of great wisdom who hail from diverse racial, cultural, and professional points on the state's societal compass. Toward the Bar's continued efforts to achieve those goals, I respectfully urge the Board to reject the proposed amendments.

Respectfully,

Todd D. Irby

Hon. Todd D. Irby
Superior Court of Placer County



Hon. Terrie E. Roberts
San Diego Superior Court

Chair

Hon. Todd Irby
Placer Superior Court

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Los Angeles Superior Court
Parliamentarian

Judicial Council of CABL
P. O. Box 5191
Hercules, CA 94547-1707

CABLJudicialCouncil@gmail.com

By email to secretariat@calbar.ca.gov

May 1, 2023

Board of Trustees
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed change to State Bar Rule 7.60

Dear Board of Trustees:

The Judicial Council of the California Association of Black Lawyers (CABL) is mindful and appreciates the Board's need to make cost-effective changes; however, we respectfully urge the Board to reconsider the proposed change to State Bar Rule 7.60 regarding in-person reports at meetings of the Commission on Judicial Nominees Evaluations (JNE).

The Judicial Council of CABL was established in 1977, with a guiding purpose of changing the face of California's judiciary. In our more than forty years of advocating for a more diverse judiciary, we have never been more optimistic than in the past sixteen years due to the tremendous progress we have seen in achieving a solid and sustained increase in judicial diversity across our state. Courts from around the state and the legal community have benefitted from the increase in judicial diversity and even more so, the public we serve has benefitted from a diverse judiciary that reflects the communities we serve. We are concerned that the proposed change to Rule 7.60 threatens the vital and immense progress that has thus far been achieved.

The Judicial Council of CABL has reviewed Open Session Agenda Item 701 from the March 16, 2023 State Bar meeting and the Proposed Amendments to State Bar Rule 7.60 contained therein, as well as letters submitted by Ret. Judge Brenda Harbin Forte on April 25, 2023, Past JNE Commission Chair Diane A. Bellas on April 7, 2023 and Past JNE Commission Chairs Stella Ngai (2021), Aminder Singh (2020), David Fu (2017) and Jody Nunez (2016) on April 6, 2023. We firmly believe that the Board of Trustees should heed the call of these individuals, all of whom have worked tirelessly to support the JNE mission. Their unequivocal position, based on their years of personal experience, is that the proposed change will degrade the fairness in the evaluation process.

Our concern is that the proposed change to Rule 7.60 is, on its face, unfair because only some candidates would have the benefit of having their applications discussed in a full and robust in-person meeting, where there is increased participation, candor, observations of body language, and observations of any desire or reluctance to speak. Virtual meetings are devoid of these qualities and thus present the risk that the level of attention given to the candidates would be diminished.

The proposed change to Rule 7.60 is also unfair because it requires an arbitrary decision to be made on *which* candidates will have their applications discussed in-person and *which* candidates will not. The result would be inherently unfair because the proposed change does not, by its own terms, treat all candidates the

same. Arbitrarily giving some candidates the benefit of an in-person discussion on a Thursday, while depriving other candidates of that opportunity through Friday virtual meetings, will not result in an equal and fair evaluation process for *all* candidates. Rating candidates for judicial office is necessarily a high-stakes decision. As such, all candidates should be given the same full and fair consideration before this weighty decision is made.

We also urge you to reconsider your proposal to move meetings permanently from Friday and Saturday to Thursday and Friday because it could result in reducing the ability of Commissioners who are sole practitioners or who work for government agencies or non-profits, from being able to take two days off on a bi-monthly basis. As a result, this change could have the unintended consequence of changing the diversity of the JNE Commissioners and JNE's ability to recruit new members.

For all of these reasons, we appeal to this Board to reconsider the proposed change to Rule 7.60 and at a minimum, refer this crucial issue to a committee of diverse stakeholders for further consideration.

Respectfully submitted,

Terrie E. Roberts

Judge Terrie E. Roberts
Chair, Judicial Council of the CABL

cc: Mr. Luis A. Céspedes
Judicial Appointments Secretary

Hernandez, Alfredo

From: Yvette Ott <yvetteott@sbcglobal.net>
Sent: Sunday, April 30, 2023 9:31 PM
To: secretariat
Subject: Opinion Regarding Change to State Bar Rule 7.40

Categories: Add to packet

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Sent via email

April 30, 2023

California State Bar
Board of Trustees

Dear Members of the Board of Trustees,

Having had the privilege of serving as a public member of the JNE Commission from 2015-2018, I was dismayed to recently find out about the 2022 change to State Bar Rule 7.40. The unique perspective public members provide when evaluating candidates for the California Supreme and Appellate Courts cannot adequately be represented if participation is limited to the JNE meeting discussion and rating process. Allowing this to occur in any circumstance compromises the value of our contributions.

Involving public members in interviewing and observing candidates gives life and enhanced meaning to our perceptions. This cannot be replicated if the opportunity to participate at this stage is removed. The information we seek from candidates and raters often diverges from that sought by attorneys. This difference adds dimension to investigative interviews and promotes the development of nuanced recommendations.

During my tenure, fellow commissioners often commented my observations and rational for recommendations influenced their final vote. I attributed this to their appreciation for the well faceted investigations accomplished by marrying my approach to gathering information and examining candidates through the lens of my life experience with that of attorneys.

The State Bar will be taking a step backward in its efforts to "enhance the diversity, equity and inclusion of the legal profession," if the role of public members is diminished by moving forward with the 2022 change to State Bar Rule 7.40. The value of having attorneys and public members team to personally vet judicial candidates for our state's Supreme and Appellate courts is significant and fosters having a judiciary reflective of the communities in which we live.

Respectfully,

Yvette Ott
Former JNE Commissioner

Orange County Association of Affinity Judicial Officers



OCAAJO

May 1, 2023

Via email: secretariat@calbar.ca.gov

Board of Trustees
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Open Session Agenda Item 701 March 2023 - Proposed Amendments to State Bar Rule 7.60

Dear Board of Trustees:

On behalf of the Orange County Association of Affinity Judicial Officers (OCAAJO), I write to share OCAAJO's comments on the proposed amendment to State Bar Rule 7.60 regarding in person reports at meetings of the Commission on Judicial Nominees Evaluations (JNE) included as Item 701 on the March 2023 Agenda.

First a bit about OCAAJO. We a dynamic group of state and federal, sitting and retired Orange County judicial officers from diverse backgrounds [ages, races, ethnicities, genders, sexual orientation, religions] and their judicial supporters who are devoted to the mission of the association. Founded on December 2, 2020, our mission is to promote public trust and confidence in the courts by: (1) providing fair, impartial and equal justice to all, including underserved and unrepresented communities; (2) fostering respect and civility in the judicial system by supporting and advancing diversity and inclusion, and (3) developing and delivering educational programs designed to increase public understanding of the court system.

It is in connection with our mission of supporting and advancing diversity and inclusion in the judicial system that compels us to join in the respective oppositions to the proposed amendment to Rule 7.60 submitted by the following individuals:

1. Ret. Judge Brenda Harbin Forte, letter dated April 25, 2023;
2. Former JNE Commission Chair Diane A. Bellas, letter dated April 7, 2023; and
3. Former JNE Commission Chairs Stella Ngai (2021), Aminder Singh (2020), David Fu (2017) and Jody Nunez (2016), letter dated April 6, 2023.

As aptly noted in the April 6, 2023 letter by four former JNE Commission Chairs, "Taken in isolation, some may view each of the proposed amendments and operational changes as

discrete or innocuous. However, all of the forgoing must be viewed in concert; taken together, they may impact the fairness of JNE's evaluations and lead to downstream unintentional impact on the inclusiveness of the California bench under future gubernatorial administrations." OCAAJO applauds the Governor's request to review more candidates in each 90-day cycle, but we too are concerned that the well-intentioned desire to move more candidates through the evaluation process may result in a JNE restructuring that leads to the impacts as noted in the Former JNE Commission Chairs' letter of April 6, 2023. We repeat those concerns verbatim here with permission:

1. Omitting in person report reading and other operational changes will lead to little to no candidate discussion

Rule 7.60 Reports to Commission requires the lead commissioner to present her report to the commission 'at its meeting.' The proposed rule eliminates the words, 'at its meeting.' The item states that eliminating report reading will leave" ... *more time for focused discussion of the candidate while substantially reducing the time it takes to conduct each meeting overall.*"(Agenda Item 701, p.3) We agree with the latter part of that statement – meeting time will be reduced. We disagree that the proposed rule change will facilitate more focused discussion of the candidate. Rather, the lack of report reading will lead to concurrence with the recommended rating with little to no discussion.

Reading reports aloud in the meeting ensures that each commissioner has the relevant information about the candidate, *at the time* the candidate is being considered at the meeting. Decoupling report reading from the candidate agenda item at the meeting will reduce discussion about each candidate rather than foster discussion.

In addition, the planned transition to remote Saturday meetings – coupled with the proposed Rule 7.60 change eliminating report reading – will contribute to an overall decline in robust candidate discussion, which as state previously, is unfair to the candidates. Stella Ngai and Aminder Singh served on JNE before and during the Covid-19 pandemic. Virtual JNE meetings were materially inferior to in-person JNE meetings for more than one reason, including the real differences in focus and engagement when meeting away from the sanctum of a confidential State Bar office. Commissioners' lack of access to totally private ZOOM rooms at home, ZOOM fatigue, family obligations (which are part of the at home landscape when attempting to zoom from home) – all were factors that led to increased commissioner absences from meetings, and even resignations from JNE. All candidates deserve engaged, focused discussion from commissioners who are in physical proximity to each other, to foster full conversations about judicial applications. To ensure candidate fairness, all candidates should be discussed at in-person meetings, rather than a hybrid approach where some candidates are discussed in person and some are discussed over ZOOM, which may lead to disparate evaluations of candidates.

2. Less discussion is unfair to the candidates

Reduced or eliminated discussion about each candidate is problematic for more than one reason. First, it vests more power in the lead investigating commissioner, as the entire commission defaults to the lead's recommendation because they may not have had time to read the report in advance of the meeting. Even if they have read the report, it is unreasonable to expect hardworking commissioners to retain all the relevant facts about candidates other than the ones they themselves investigated. Hence, the candidate will go to a vote without an informed discussion, as commissioners defer to the rating of the lead commissioner. This violates the spirit of Rule 7.26, which requires the entire commission to assign a rating to each candidate; this is unfair to candidates.

Second, we are seriously concerned about the unintended effect of reduced candidate discussion and decreased meeting time on BIPOC women candidates. We have observed BIPOC women candidates are more likely to be criticized by their colleagues, managers, and opposing counsel on the criteria of work ethic, professional skill, legal capacity, legal experience, temperament, industry, intellectual capacity, and judgment. Put another way, BIPOC women typically are more likely to receive criticisms around most of the qualities by which they are to be evaluated under JNE Rule 7.25. Compressed meetings, ZOOM meetings, and reduced discussion time do not allow for sufficient exploration of the bias that may have led to those criticisms. This in turn, may ultimately lead to lower ratings.

Systemic, institutional bias and implicit bias likely contribute to how BIPOC women receive more substantial criticism in a typical evaluation cycle than other candidates. Rules and operational changes designed to promote the compression of JNE meetings may result in BIPOC women candidates not being afforded the time and discussion needed to unpack the criticism leveled at them.

3. The planned operational change to Thursday/Friday JNE meetings will lead to a less representative commission in violation of the Government Code [§12011.5(b)].

Government Code section 12011.5(b) states that " ... 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 ..."

The Board is well aware of the tremendous time commitment that JNE commissioners invest in the judicial evaluation process. Replacing the Saturday meeting day with Thursday will affect JNE recruitment, because the schedule will favor applicants to the commission with certain types of practices over licensees who work in the public sector and for public interest non-profits. Taking two weekdays off every two months for JNE meetings - 12 days each year as opposed to the current six days - is infeasible for those with limited paid time off. Public sector and nonprofit


lawyers may also be deterred from applying to serve on JNE because they may not have the resources and backup to manage their paid workload with the doubling of time off needed if the schedule moves to Thursday/Fridays.

A Thursday/Friday meeting schedule may lead to more Big Law licensees applying to serve on JNE because they may have more control over their schedules and the resources to take twelve weekdays off each year. A commission stacked with Big Law commissioners is likely not going to be broadly representative of the ethnic, gender and racial diversity of California per Gov. Code 12011.5(b.) A commission that is diverse in thought, background, and practice can mitigate various types of unconscious bias and foster the vigorous discussions about candidate that has been the hallmark of JNE evaluations.

For all of these reasons, OCAAJO would also urge caution with respect to moving forward with the proposed amendment to Rule 7.60 as set forth in Item 701 of the March 2023 Agenda. There must be transparency and a balance between the drive for efficiency and the need to ensure full and fair consideration to all candidates. OCAAJO concurs with the suggestion that the Board request additional study on how JNE restructuring may unintentionally undermine the diversity of the commissions composition and impact candidate ratings.

We thank you for the opportunity to provide input on this important proposed amendment to State Bar Rule 7.60.

Respectfully submitted,


Karen L. Robinson
President



Orange County Association
of
Affinity Judicial Officers

Legal Aid Fights for Justice. We Fight for Them.



The State Bar of California
180 Howard Street, 10th floor
San Francisco, CA 94105-1639

May 1, 2023

RE: Public comment on proposed changes to the JNE commission

Dear members of the Board of Trustees

Thank you so much for soliciting public comment on this issue.

I am the executive director of the Legal Aid Association of California (LAAC), and have worked in legal aid for nearly 15 years. LAAC is the statewide membership organization for the over 100 nonprofits funded by the State Bar of California, so I am well-aware of the importance of various State Bar committees, commissions, and working groups. I have served on a number of State Bar or Judicial Council commissions and working groups over the last decade.

LAAC understands the financial reasons for shifting the in-person interviews of JNE candidates to remote/zoom interviews and the financial reasons to allow remote meeting access for the full commission's meetings. That said, we have concerns with the change.

We believe that in-person meetings, especially for the full commission's discussion of judicial candidates, is critical. We urge the State of California to cover the costs of the travel for all commissioners and would support any budget request to the legislature to do so.

Importantly, we believe there is a real risk to the diversity of the judiciary if full commission meetings move to remote/zoom. It has been clear to us over the past three years of remote meetings that many voices are silenced in large zoom meetings. Some people, usually the people who hold positional power, feel confident in speaking up and interrupting or disagreeing with the group. Others find that more difficult, even when in an

in-person meeting, and it's virtually impossible on a zoom. In in-person meetings, you can signal through hand gestures that you are ready to speak - you can say that you want to respond to an immediate point or get in the queue to raise a different issue. Not everyone follows the "raise hand" feature in remote meetings. Even well-facilitated zoom meetings still have a challenge of distracted individuals who aren't following along and who start to agree with the majority, which inhibits robust discussions.

Though the budget decision to switch from Friday-Saturday meetings to Thursday-Friday meetings has already been made, we encourage the State Bar to reconsider that decision as soon as the budget allows. We have spoken with several past members of JNE who shared that they had to take vacation time to participate in full JNE meetings. We believe that moving the meetings to two working days will be a huge barrier to participation for both legal aid and government attorneys. If there are six meetings per year, and a staff attorney must take 12 vacation days to participate, that essentially means that they can take no personal vacations. This change may unintentionally privilege private bar attorneys who do not need to take vacation days to participate in two-day meetings.

We want to make sure that the JNE commission includes representatives from both legal aid and government offices. When JNE is overrepresented by private bar, there may be no one in the room to ask the important questions about a candidate's pro bono history, board service, or other volunteer and community engagement. There may be no one in the room to ask hypotheticals about presiding when the litigants are both self-represented. There may be no one to ask the hard questions about implicit bias against people who are low-income or who come from communities other than the candidate's own background.

For these reasons, we oppose the move to allow Commission meetings by remote access and strongly encourage the State Bar to return to Friday-Saturday meetings when budget allows.

Sincerely,

A handwritten signature in cursive script that reads "Salena Copeland".

Salena Copeland
Executive Director
Legal Aid Association of California

Elizabeth K. D'Orazio
116 Crescent Road
Corte Madera, CA 94925
California Bar No. 126807
April 27, 2023

The State Bar of California
Board of Trustees
180 Howard Street
San Francisco, CA 94105

Dear Board of Trustees:

I served on the Judicial Nominees Evaluation (JNE) Commission from 2017-2020, and since 2020 have periodically served as a pro tem. commissioner. I am writing to object to the proposed amendments to State Bar (JNE) Rules 7.52 and 7.60.

Rule 7.52 requires that absent unusual circumstances, the investigating team must interview a candidate in person. Given my service on JNE preceded and included the Covid-19 pandemic, I can easily compare interviewing candidates in person and interviewing them online. As Trustee Shelby said at your March 16, 2023 meeting with regard to Trustee meetings ([Board of Trustees 3-16-23 - YouTube](#)), it is difficult to have “rich conversation” when we are not in the same room as the candidate. There is a tremendous benefit to seeing whether the candidate appears relaxed and looks a commissioner in the eye when responding to a question, or instead engages in finger tapping or rapid breathing as he or she responds to rater criticisms. Communication between the cocommissioners is also enhanced. It is much more difficult to pick up on subtle cues from the candidate or each other online. Indeed, as a practical matter, in order to appear to look a commissioner in the eye online, the candidate is actually looking at his or her computer camera; that is a very different dynamic than in-person rapport.

Rule 7.60 requires that JNE meet in person and that the investigating team’s report be read aloud at the meeting. Contrary to any implication made at your March 16, 2023 meeting, the report is not “thousands of pages,” but rather about four pages; reading it at the meeting consumes five minutes. JNE commissioners work extremely hard to prepare for each meeting. Reading the brief report out loud before discussion of the candidate simply focuses discussion, improves recall, and ensures that each commissioner is on the same page.

As to the proposal that one day of the JNE meeting be in person and the other day be remote, the same “rich discussion” that occurs at in person interviews is even more in play when robust and frank discussion is held regarding candidate qualifications. The

very different dynamic when a meeting is held remotely would diminish the quality of the Commission's evaluation of those candidates leading to possible error in the rating assigned and inconsistent treatment of that cycle's candidates. And eliminating Saturday meetings altogether will cripple what is the greatest strength of JNE — the diverse professional and personal backgrounds of its members and their unique contributions to the discussion that allow the JNE Commission to collectively reach the correct rating result.

I understand the goal of these proposed rule changes is to allow the JNE Commission to evaluate more candidates. But as Trustee Toney wisely observed at your March 16 meeting, if the Governor wants JNE to evaluate more candidates, he should support additional JNE funding. That seems a far more practical and effective approach. The proposed rule changes would instead, as former chairperson Diane Bellas eloquently stated in her April 7, 2023 letter to you, render the substance of JNE's work meaningless and perfunctory by removing the guardrails that ensure this work is accomplished fairly, consistently, and thoroughly.

I fully support the comments made by former JNE chairpersons Ngai, Fu, Nunez, and Singh in their April 6, 2023 letter and those of former JNE chairperson Diane Bellas in her April 7, 2023 letter.

All the best

Elizabeth K. D'Orazio

Elizabeth K. D'Orazio

April 9, 2023

Members of the Board of Trustees
State Bar of California
180 Howard Street
San Francisco, California 94105

Re: Comments on Proposed Amendments to State Bar Rules 7.52 and 7.60

Dear Members of the Board of Trustees:

Thank you for the opportunity to comment upon the proposed amendments to State Bar Rules 7.52 and 7.60, agendaized for the Board's consideration in May.

My service on the JNE Commission concludes on April 15, 2023. The privilege of serving on the Commission has been one of the highlights of my 31 years practicing law. Fellow commissioners, State Bar staff, and many of the candidates we have evaluated have left an indelible impression. I leave the Commission with a much more informed and enlightened view of our profession, and of my own responsibility to our profession, and frankly to our world, than I ever could have appreciated absent service. The Commission's mission is therefore something about which I care deeply.

Conducting candidate interviews remotely, as proposed by amendment to Rule 7.52, makes sense to me. I was able meaningfully to evaluate candidates via Zoom including those for whom my recommended rating was "not qualified." The in-person interviews conducted in April 2022 -- the only in-person interviews held during my tenure -- provided no appreciable benefit over Zoom interviews with respect to evaluating candidates.

I am far less sanguine, however, about the proposed amendments to Rule 7.60. My primary concern arises from the recommendation that Commission meetings, beginning in June 2024, occur on Thursdays and Fridays. A few commissioners, including myself, are fortunate enough to control our schedules, and would experience little or no financial impact if we devoted 12 weekdays (instead of 6 weekdays) per year to JNE Commission meetings. But the majority of JNE commissioners do not enjoy these luxuries. Many commissioners serve in government positions including the public defender's and district attorney's

offices (and federal counterparts); in-house county and city attorney's offices; and academia to name a few. Others maintain their own law offices and do not have the safety net of a law firm with colleagues. It is reasonable to conclude, and no exaggeration to say foreseeable, that many talented people in those positions -- who would render extraordinary service to the Commission -- simply would not bother applying. Asking for 12 days off in an understaffed office is no small matter. Some could never get the time off; others might be forced into unpaid leave creating a financial hardship; and there are myriad other reasons such as child care, spouse/partner schedules, etc. that would render service untenable.

Writing from my own experiences and observations, these impacts would be felt most profoundly by people of color and by women. Those positions in law firms where attorneys enjoy complete freedom to set their own schedules, and have the financial means to take time off, are still disproportionately populated by white men like me. Though we have seen creeping progress at junior and mid-levels, the fact remains that the freedom of power in the law firm world is largely concentrated in white men. There are of course exceptions depending upon geography, practice areas, and other factors, but I firmly believe my general observations reflect the larger reality. Should Commission meetings transition to Thursdays and Fridays, I fear that the composition of the Commission would no longer reflect the diversity contemplated by the rules governing JNE. The insightful comments of commissioners from backgrounds sharply divergent from mine have singlehandedly changed my views, and my rating, of several candidates.

Turning to meeting format, whether to resurrect the practice of reading full reports may inform the Board's decision on the related issue of remote versus in-person meetings. The topic of reports is therefore addressed first. The posting of reports is helpful and I appreciate the time that JNE staff has devoted to this process. That process should not, however, be a substitute for reading entire reports in person. I have found a lead commissioner's tone of voice, emphasis on words, and body language to be helpful in my own assessment of a candidate. During my tenure, the full Commission's final rating of a candidate has at times departed from the recommended rating. Though I cannot say with any certainty whether or how a lead commissioner's reading of a full report may have influenced other commissioners, it has influenced my own evaluation of a candidate. This critical aspect of the Commission's work is much less likely to be fully realized if only the summary of the basis for rating is read aloud. As I write

this, several occasions come to mind where I did not follow the recommended rating. In those cases, had the entire report not been read aloud, and my initial impressions instead were formed largely from the written word, I would have had less opportunity to reconsider those impressions. Our evaluation of a candidate whose career goal is judicial service -- and whose decisions will forever alter lives - warrants the nuanced discussions that follow reading reports in their entirety.

Turning to remote Commission meetings, I found them less effective than the in-person meetings held since April 2022. Our role demands undivided attention during the consideration of every candidate. I found this difficult (though not impossible) to achieve remotely, but found no difficulty at all in person. Staring at a screen for hours on end did not readily facilitate absorbing all of the details and nuances with respect to every candidate. This concern would be most acute if the entire candidate report were read at meetings, but that is not to say that the difficulty evaporates if only summaries are read. Much information and discussion still ensues, and I find myself better able to focus on details -- particularly at the end of the day -- when meetings are conducted in person.

I am generally aware of the budgetary pressures facing the State Bar, and recognize that there may be other factors unknown to me which the Board must consider in evaluating the proposed amendments to Rules 7.52 and 7.60. I very much appreciate the Board's time in considering my perspective.

Very truly yours,



T. Peter Pierce

JNE Commissioner, 2020-2023

cc: Leah Wilson, Executive Director
Bridget Gramme, Deputy Chief of Programs