



The State Bar of California

OPEN SESSION AGENDA ITEM 707 JULY 2023

DATE: July 20, 2023

TO: Members, Board of Trustees

FROM: Ellin Davtyan, General Counsel, Office of General Counsel
Brady R. Dewar, Assistant General Counsel, Office of General Counsel

SUBJECT: Proposed Amendments to California Rules of Court Related to State Bar Court Judges and Nominations and Appointments of State Bar Trustees (Rules 9.11 and 9.90): Request to Circulate for Public Comment

EXECUTIVE SUMMARY

Pursuant to California Rules of Court, rules 9.11 and 9.90, the State Bar supports two Supreme Court-appointed committees that evaluate candidates for appointment to State Bar Court judgeships and the Board of Trustees, respectively. The Supreme Court has directed the State Bar to develop and propose to the Court amendments to these rules to require the committees to collect information on and consider candidates' actual and potential conflicts of interest. This agenda item proposes such amendments, and requests that the Board of Trustees approve them for circulation for public comment for 45 days. After public comment, the proposed amendments are anticipated to be returned to the Board at its September meeting for approval to submit to the Supreme Court.

BACKGROUND

APPLICANT EVALUATION AND NOMINATION COMMITTEE

California Rules of Court, rules 9.11 (rule 9.11) authorizes and establishes the Applicant Evaluation and Nomination Committee (AENC). The AENC, supported by State Bar staff, collects applications for appointment and reappointment to the State Bar Court, and evaluates and rates applicants for appointment to the State Bar Court by all of the State Bar Court's appointing authorities (the Supreme Court, the governor, the Senate Committee on Rules, and the Speaker of the Assembly).

The AENC consists of seven members appointed by the Supreme Court. No more than four members may be licensees of the State Bar in good standing; no more than three members may be public members who have never been a State Bar licensee or admitted to practice before any court in the United States; two members must be retired or active judicial officers; and two members must be present members of the Board of Trustees.¹

Pursuant to rule 9.11(a)(3), the AENC must adopt, subject to Supreme Court approval, procedures for notice to potential applicants of vacancies, receipt of applications, solicitation and receipt of public comment, evaluation and rating of applicants, and transmittal of information to the Supreme Court and other appointing authorities. The current AENC procedures (Attachment A) establish a process in which after an initial review, a subset of applicants is identified for interviews, with the list of applicants to be interviewed subject to modification by the Supreme Court or other appointing authorities. Those applicants are then interviewed, evaluated, and rated. (Attachment A at section F(3)–F(4).)

AENC evaluations are confidential pursuant to rule 9.11 and the procedures adopted by the AENC and approved by the Supreme Court.

The AENC evaluates candidates for appointment to the State Bar Court based on a wide array of factors set forth in rule 9.11(b)(3). The committee must rate all candidates as “not recommended,” “recommended,” or “highly recommended,” and must transmit the ratings, as well as a report stating the reasons therefore, to the Supreme Court and, if applicable, other appointing authority. Only applicants who are rated as recommended or highly recommended by the AENC or by the Supreme Court may be appointed.

While the factors AENC is currently directed to consider include “objectivity, community respect, and integrity,” AENC is not currently expressly required to consider candidates’ actual or potential conflicts of interest.

The AENC is anticipated to begin soliciting applications for appointments and reappointments to the State Bar Court in late 2023, in anticipation of the end of three State Bar Court judges’ current terms in 2024.

STATE BAR TRUSTEES NOMINATING COMMITTEE

California Rules of Court, rule 9.90 (rule 9.90) authorizes and establishes the State Bar Trustees Nominating Committee (TNC). The TNC, supported by State Bar staff, collects, evaluates, and rates applications for appointment by the Supreme Court to the Board of Trustees. The TNC is not involved in appointments to the Board of Trustees by other appointing authorities.

The TNC consists of seven members appointed by the Supreme Court. Five members must be licensees of the State Bar in good standing; two members must be retired or active judicial officers.

¹ When the AENC last met, its Trustee members were Trustee Mark Toney and former Trustee Sonia Delen.

Pursuant to rule 9.90(a)(4), the TNC must adopt, subject to Supreme Court approval, procedures for receipt and initial screenings of applicants, receipt of evaluation of selected applicants, evaluation and rating of applicants, and transmittal of information to the Supreme Court. The current TNC procedures (Attachment B) establish a process in which after an initial review, a subset of applicants is identified for interviews, with the list of applicants to be interviewed subject to modification by the Supreme Court. Those applicants are then interviewed, evaluated, and rated. (Attachment B section 8–10).)

TNC evaluations are confidential pursuant to rule 9.90 and the procedures adopted by the TNC and approved by the Supreme Court.

The TNC evaluates candidates for appointment to the Board of Trustees based on a wide array of factors set forth in rule 9.90(a)(5). The committee must rate all candidates as “not recommended,” “recommended,” or “highly recommended,” and must transmit the ratings, as well as a report stating the reasons therefore, to the Supreme Court.

While the evaluation factors TNC is currently directed to consider include “objectivity, community respect, and integrity,” they do not currently expressly include actual or potential conflicts of interest.

The TNC is not anticipated to begin soliciting applications for appointments and reappointments to the Board of Trustees until early next year, as State Bar staff understands the Supreme Court to have a sufficient number of applications already evaluated by TNC to fill its one appointment and one reappointment this year.

Supreme Court Direction for Rule of Court Amendments and Timeline for Amendments

On March 22, 2023, the Supreme Court issued a letter to the State Bar’s Executive Director directing the State Bar to consider and draft amendments to rules 9.11 and 9.90 that would require the AENC and TNC, respectively, to “identify and assess each candidate’s actual and potential conflicts of interest” in order to “better achieve the goal of selecting independent and unbiased candidates.” The Court specifically directed that the amendments, at a minimum, should:

- (1) require candidates to disclose financial and nonfinancial interests that might affect, or might be affected by, the candidate’s service in the State Bar office in question; (2) require candidates to provide a list of attorneys whom the candidate would identify as creating a conflict in any future service with the State Bar; and (3) require the committees to review this information and evaluate whether it might disqualify a candidate or reduce a candidate’s rating.

(Attachment C)

The letter directed these new amendments to be put forth on an expedited basis. Accordingly, after consulting with Court staff regarding the appropriate timeline, State Bar staff developed the proposed amendments set forth in Attachments D–E (redline) and F–G (clean) for presentation to the Board at its July 2023 meeting. (This is an expedited timeline from the usual procedure for new and amended rules, which are usually presented to the Board at its November or May per the policy set forth in State Bar Administrative Advisory No. 22–04.) Consistent with past practice for Rule of Court amendments (and consistent with the treatment of proposed amendments to the Rules of the State Bar of California pursuant to Rules of the State Bar of California, rule 1.10(a)), State Bar staff proposes circulating the proposed amendments for a 45-day period, with an anticipated return to the Board for approval for submission to the Supreme Court at its September 2023 meeting. This timeline will allow for adoption of the new rules before AENC or TNC evaluate any new applications.

DISCUSSION

State Bar staff have developed proposed amendments to rules 9.11 and 9.90 that require AENC and TNC, respectively, to gather and consider information on actual and potential financial and nonfinancial conflicts of interest. (See Attachment D for proposed amendments to rule 9.11; Attachment E for proposed amendments to rule 9.90.) The proposed amendments require the AENC and TNC to evaluate the actual and potential conflicts of interest of all candidates to be interviewed by the committees, and to consider that information in their evaluations of candidates.

State Bar staff initially considered identifying in the proposed amended rules 9.11 and 9.90 the specific information that candidates must disclose to the committees, but after input from the office of the Chief Justice of California, will instead work on including the details relating to the specific required disclosures in amended AENC and TNC procedures, to be developed by the AENC and TNC following the adoption of the amended rules 9.11 and 9.90. These procedures will then be submitted to the Supreme Court for approval.

State Bar staff anticipates the new procedures to require disclosure of information including:

- The financial interests (including certain investments, sources of income, gifts, etc.) that the candidates would need to disclose on their Statements of Economic Interests² (known as Form 700s) if they were appointed;
- Information about relationships with licensees that would be disclosed if the applicant were to complete the questionnaire State Bar employees and Trustees answer every year to assist in the recusal of the Office of Chief Trial Counsel pursuant to Rules of Procedure of the State Bar of California, rule 2201;

² Candidates for Trustee will disclose as Trustees would pursuant to the Conflict of Interest Code for the Board of Trustees of the State Bar of California, an amended version of which is before the Board of Trustees at this meeting for submission to the Supreme Court. Candidates for State Bar Court judge will disclose as State Bar Court judges would pursuant to the Conflict of Interest Code for Designated Employees of the State Bar of California.

- Information about compensated and non-compensated membership on boards, professional association memberships, and volunteer positions;
- Information about personal or professional relationships with State Bar employees, Trustees, contractors, or committee or commission members;
- Information about business relationships with the State Bar;
- Information about past employment or volunteer positions with the State Bar; and
- For Trustees, because they make decisions regarding admissions requirements and procedures, information regarding known relationships with likely applicants to become a State Bar licensee during the term in office for which they are applying.

With input from the office of the Chief Justice of California, State Bar staff recommends that such conflicts information be collected from all applicants who are selected to be interviewed by the AENC or TNC, rather than from all applicants in their initial application materials. Collecting and evaluating this information at a later stage in the application and review process will reduce burden on staff and applicants—potentially reducing barriers to application—while ensuring that detailed conflicts information is considered for all applicants who are ultimately considered for appointment.

Additionally, as noted above, while rule 9.11 and 9.90 already provide for confidentiality, the proposed amendments specifically provide that candidates' disclosures regarding financial and nonfinancial interests shall be made on a confidential basis.

The proposed rule amendments, together with the required updates to the AENC and TNC procedures to follow adoption of the amended rules, meet the requirements of the Supreme Court's directive and will assist the Supreme Court (and, for the State Bar Court, other appointing authorities) in appointing State Bar Court judges and Trustees who will make decisions unaffected by conflicts of interest and who will support the public perception of the State Bar Court and Board of Trustees as objective bodies dedicated to public protection. Accordingly, State Bar staff recommends that the proposed amendments to rules 9.11 and 9.90 set forth in Attachments D and E be circulated for public comment.

FISCAL/PERSONNEL IMPACT

If adopted by the Supreme Court, the proposed amendments to rules 9.11 and 9.90 would result in some additional work for existing State Bar staff in supporting the collection and review of conflicts of interest information by AENC and TNC.

AMENDMENTS TO RULES OF COURT

Title 9, Division 2, Chapter 3, rule 9.11 ("State Bar Court judges")

Title 9, Division 7, rule 9.90 (“Nominations and appointments of State Bar trustees”)

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

Goal 4. Protect the Public by Engaging Partners

- d. 1. Collaborate with the legislature and other stakeholders to increase public protection and support the State Bar’s mission.

RECOMMENDATIONS

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

RESOLVED, that the Board of Trustees approves circulating for a 45-day public comment period the proposed amendments to California Rules of Court, rules 9.11 and 9.90, as set forth in Attachments D and E.

ATTACHMENTS LIST

- A.** Procedures of the Applicant Evaluation and Nomination Committee
- B.** Revised TNC Evaluation and Nominations Process
- C.** March 22, 2023, Letter to Leah Wilson from Clerk and Executive Officer of the Supreme Court
- D.** Proposed Amendments to Rule 9.11 (Redline)
- E.** Proposed Amendments to Rule 9.90 (Redline)
- F.** Proposed Amendments to Rule 9.11 (Clean Version)
- G.** Proposed Amendments to Rule 9.90 (Clean Version)

Procedures of the Applicant Evaluation and Nomination Committee

A. Definitions

- (1) “Committee” refers to the Applicant Evaluation and Nomination Committee established by the Supreme Court to assist in the appointment or reappointment of judges of the State Bar Court.
- (2) “Position” refers to the office of each appointed judge of the State Bar Court that would become vacant on October 31 in any year because of the expiration of the judge’s six year term.
- (3) “Other Appointment Authorities” refers to the Governor, the Senate Committee on Rules, and the Speaker of the Assembly.
- (4) “Rule 9.11” refers to California Rules of Court, Rule 9.11.

B. Timeline

In each year in which the six-year term of a judge of the State Bar Court will expire, the committee must establish a specific timeline for that year’s nominations process and present it to the Supreme Court, which may request changes as it deems appropriate.

C. Confidentiality

Except as may be provided by the Supreme Court, and the procedures herein, the committee’s communications, meetings, records, opinions expressed to the committee by raters or others with regard to an applicant’s qualifications, interviews with applicants, the comments of any individual committee members or the committee as a whole, and all other committee activities are confidential.

D. Applications

- (1) Applications and supporting material for appointment or reappointment must be submitted in a form required by the committee. Applications will be solicited widely through advertisements in legal publications; on-line posting on the State Bar website and, in cooperation with the Supreme Court, on the court’s website; notices to local and specialty bar associations; and such other methods as the committee may find effective.
- (2) The application period must be open for a minimum of 21 days.

E. Initial Screening

- (1) The committee must conduct an initial screening of applicants meeting the minimum qualifications under Business and Professions Code section 6079.1, subdivision (b).

(2) After its initial screening, the committee must transmit in confidence to the Supreme Court and, as applicable to the Other Appointment Authorities, the committee's tentative list of the applicants that the committee intends to further evaluate and rate, together with copies of the applications and materials of all the applicants. The Supreme Court and the Other Appointment Authorities may add or remove names of applicants from the lists of applicants to be evaluated and rated, but only for the position or positions for which the particular authority will make an appointment.

F. Evaluation

(1) Following notification from the Supreme Court, and from the Other Appointment Authorities as applicable, of the names of those to be further evaluated, the committee must distribute confidential evaluation forms to obtain additional comments and information about the applicants.

(2) The confidential evaluation forms must be provided to those identified by an applicant and to others as determined by the committee to be reasonably likely to have knowledge of an applicant. Such forms shall contain an accurate disclosure regarding those who may review completed forms. Completed confidential evaluation forms must be submitted by the deadline set by the committee.

(3) Based on the confidential evaluation forms submitted, the committee must make a preliminary evaluation and rating of the applicants and select at least three applicants for each position for interviews. The committee must transmit to the Supreme Court, and to the Other Appointment Authorities as applicable, the list of applicants the committee intends to interview. The Supreme Court and the Other Appointment Authorities may add or remove applicants to be interviewed, but only for the position or positions for which the particular authority will make an appointment. The committee must then interview the applicants on the lists so approved.

(4) After the interviews, the committee must evaluate the qualifications of and rate each applicant. In determining the qualifications of an applicant, the committee will consider the factors under Rule 9.11(b)(3) and Government Code section 12011.5. Applicants are to be rated as "not recommended," "recommended," and "highly recommended." A rating of "not recommended" relates only to the position under consideration and does not indicate any lack of ability or expertise of the applicant generally. Applicants may also be given a numerical rating based on the following formula: "Highly Recommended +" = 9, "Highly Recommended" = 8, "Highly Recommended -" = 7; "Recommended +" = 6, "Recommended" = 5, "Recommended -" = 4; and "Not Recommended +" = 3, "Not Recommended" = 2, "Not Recommended -" = 1.

(5) Supreme Court Appointments. Not less than 90 days before the expiration of the term of office of a judge of the State Bar Court on October 31, the committee must prepare a report with the committee's recommendations of at least three qualified candidates, ranked in order of preference, for each position. The committee's report must include its evaluation, rating, and recommendation of each applicant and the reasons

therefor, including a succinct summary of each recommended applicant's qualifications. The report must be marked "CONFIDENTIAL" and be transmitted to the Supreme Court together with all returned confidential evaluation forms with all personal identifying information redacted when appropriate.

(6) Appointments by Other Appointment Authorities. Not less than 90 days before the expiration of the term of office of a judge of the State Bar Court on October 31, the committee must prepare a report with the committee's recommendations of at least three qualified candidates, ranked in order of preference, for each position. The committee's report must include its evaluation, rating, and recommendation of each applicant and the reasons therefor, including a succinct summary of each recommended applicant's qualifications. The report must be marked "CONFIDENTIAL" and be transmitted to the Other Appointment Authorities as applicable together with all returned confidential evaluation forms with all personal identifying information redacted when appropriate.

G. Vacancies

Except for the timelines described herein, these procedures apply to filling vacancies occurring during the term of any judge appointed by the Supreme Court, the Governor, the Senate Committee on Rules and the Speaker of the Assembly.

Revised TNC Evaluation and Nominations Process

The TNC nominations process includes the following steps and procedures:

1. Application and outreach

Available positions and application materials will be posted on the State Bar website. This information will also be widely distributed and publicized through other means including social media, all-licensee quarterly emails, and local and specialty bar associations, and, in cooperation with the Supreme Court, on the Court's website, and such other methods as the committee may find effective.

2. Initial staff screening

Upon receipt of the applications, TNC staff will screen the applications. This screening will include a determination of whether the applicant is a licensee in good standing of the State Bar. All applications meeting the minimum qualifications will be transmitted to members of the TNC along with staff's initial assessment of the candidate pool, and options for independent references for the committee to consider.

3. Initial committee screening

The TNC will conduct its initial conference call to determine which applicants should be considered for further evaluation. During this call and throughout the evaluation and recommendation process, the TNC will consider the factors set forth in Rule 9.90(a)(5), which provides:

(5) In recommending candidates, in order to provide for the appointment of trustees who bring to the board a variety of experiences, the committee should consider:

- (A) Legal services attorneys, solo practitioners, attorneys with small firms, and attorneys with governmental entities;
- (B) Historically underrepresented groups, such as those underrepresented because of race, ethnicity, gender, and sexual orientation;
- (C) Legal academics;
- (D) Geographic distribution;
- (E) Years of practice;
- (F) Attorneys who are in their first five years of practice;
- (G) Participation in voluntary local or state bar activities;
- (H) Participation in activities to benefit the public; and
- (I) Other factors demonstrating a background that will help inform the work of the board.

The TNC will also consider the following, as provided in Rule 9.90(b)(2):

In determining the qualifications of an applicant for appointment or reappointment the committee should, in addition to the factors cited in subsection (a)(5), consider the following: focus on the

Revised TNC Evaluation and Nominations Process

public interest, public service, commitment to the administration of justice, objectivity, community respect, integrity, ability to work collaboratively, and balanced temperament.

During this initial screening, for any candidate chosen for further evaluation, the TNC will finalize a list of at least 2-3 suggested independent references beyond those provided in the application for staff to contact for confidential evaluations.

4. Supreme Court initial review

The TNC will transmit the committee's tentative list of applicants recommended for further evaluation, along with the application materials, to the Supreme Court for initial informal consideration. The TNC will submit to the Supreme Court all applicant materials in the format specified by the Court. The TNC will seek the Supreme Court's direction on whether any names should be added to, or removed from, the TNC's tentative list of applicants to be considered further.

Following receipt of the Court's response, the TNC will notify the applicants who have been selected for further consideration.

5. Confidential reference checks

Staff will request prior discipline history and conduct confidential reference checks for all candidates. Each candidate will have at least five reference checks, to include both candidate-provided and independent references.

6. TNC individual ranking

A reference check summary and individual preliminary ranking form will be sent to the members of the TNC, so that the individual members of the TNC may rank candidates based on application materials and confidential reference checks.

7. TNC selection for interviews

The TNC will meet to discuss their individual rankings and confirm a list of at least three candidates to be interviewed for each opening.

8. Supreme Court formal review of final candidate list

The TNC will transmit its interview list to the Supreme Court for formal consideration.

9. TNC interviews

Once the Supreme Court has provided its direction on the final candidates list, the TNC will schedule and conduct interviews of all applicants on the final candidates list.

10. TNC rating

Following the interviews, the TNC will meet to evaluate the qualifications of and rate all the interviewed applicants. Candidates will be rated as "not recommended," or "recommended," or "highly recommended. A rating of "not recommended" relates only

Revised TNC Evaluation and Nominations Process

to the position under consideration and does not indicate any lack of ability or expertise of the applicant generally.

11. Recommendations to Supreme Court

The TNC will transmit to the Supreme Court its recommended nomination of at least three qualified candidates, ranked in order of preference, for each vacancy.

12. The Supreme Court will notify the TNC of its selection for each vacancy.

13. The Supreme Court will notify each appointee of his or her selection.

14. Following notification of the appointee(s), the TNC will send letters to those not appointed thanking them for their interest and willingness to devote their time and expertise to serve the profession.

15. Each new appointee will be sworn in at the State Bar Annual Meeting

Throughout this process, the TNC ensures the confidentiality of its evaluations.



Supreme Court of California

JORGE E. NAVARRETE
CLERK AND EXECUTIVE OFFICER
OF THE SUPREME COURT

EARL WARREN BUILDING
350 McALLISTER STREET
SAN FRANCISCO, CA 94102
(415) 865-7000

March 22, 2023

SENT VIA USPS AND EMAIL

Leah Wilson, Executive Director
State Bar of California
180 Howard Street
San Francisco, CA 94105
leaht.wilson@calbar.ca.gov

RE: Selection of State Bar Court Judges and Board of Trustees

Dear Ms. Wilson:

At present, California Rules of Court, rules 9.11 and 9.90, establish independent committees that review the qualifications of candidates and present recommendations to the court regarding its appointments to the State Bar Court and State Bar Board of Trustees. To better achieve the goal of selecting independent and unbiased candidates, the court directs the State Bar to consider and draft amendments to rules 9.11 and 9.90 that would require the committees established by those rules to identify and assess each candidate's actual and potential conflicts of interest. At a minimum, these amendments should: (1) require candidates to disclose financial and nonfinancial interests that might affect, or might be affected by, the candidate's service in the State Bar office in question; (2) require candidates to provide a list of attorneys whom the candidate would identify as creating a conflict in any future service with the State Bar; and (3) require the committees to review this information and evaluate whether it might disqualify a candidate or reduce a candidate's rating.

The court further requests that these new amendments be put forth on an expedited basis.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Navarrete", is written over the printed name.

JORGE E. NAVARRETE

Clerk and
Executive Officer of the Supreme Court

cc: Ruben Duran, Chair, State Bar Board of Trustees
Brandon Stallings, Vice-Chair State Bar Board of Trustees

Rule 9.11. State Bar Court Judges**(a) Applicant Evaluation and Nomination Committee**

(1) In order to ensure that individuals appointed by the Supreme Court or by the executive or legislative branches have been evaluated objectively, the Supreme Court has established an independent Applicant Evaluation and Nomination Committee to solicit, receive, screen, and evaluate all applications for appointment or reappointment to any position of judge of the State Bar Court (hearing judge, presiding judge, and review department judge). The role of the committee is to determine whether appointees possess not only the statutorily enumerated qualifications, but also any qualifications that may be required by the Supreme Court to assist in the exercise of its ultimate authority over the discipline and admission of attorneys (see *Obrien v. Jones* (2000) 23 Cal.4th 40; *In re Attorney Discipline System* (1998) 19 Cal.4th 582; Cal. Const., art. VI, sec. 9).

(2) The committee serves at the pleasure of the Supreme Court. It shall consist of seven members appointed by the court of whom no more than four may be licensees of the State Bar in good standing, two must be retired or active judicial officers, and no more than three may be public members who have never been a licensees of the State Bar or admitted to practice before any court in the United States. Two members of the committee must be present members of the Board of Trustees of the State Bar.

(3) The committee must adopt, and implement upon approval by the Supreme Court, procedures for:

(A) Timely notice to potential applicants of vacancies;

(B) Receipt of applications for appointments to those positions from both incumbents and other qualified persons;

(C) Solicitation and receipt of public comment;

(D) Review and evaluation of applicants' actual and potential conflicts of interest, with the procedures to require, at a minimum, confidential disclosure by each applicant to be interviewed by the committee of financial and nonfinancial interests that might affect or be affected by service as a State Bar Court judge and a list of attorneys whom each applicant would identify as creating a conflict in any future service as a State Bar Court judge;

~~(D)~~ (E) Evaluation and rating of applicants; and

~~(E)~~ (F) Transmittal of the materials specified in (b) of this rule to the Supreme Court and, as applicable, other appointing authorities.

The procedures adopted by the committee must include provisions to ensure confidentiality comparable to those followed by the Judicial Nominees Evaluation Commission established under Government Code section 12011.5.

(4) The Board of Trustees of the State Bar, in consultation with the Supreme Court if necessary, must provide facilities and support staff needed by the committee to carry out its obligations under this rule.

(b) Evaluations

(1) The committee must evaluate the qualifications of and rate all applicants for positions appointed by the Supreme Court and must submit to the Supreme Court the nominations of at least two candidates for each vacancy. Candidates shall be rated as "not recommended," "recommended," or "highly recommended." A rating of "not recommended" relates only to the position under consideration and does not indicate any lack of ability or expertise of the applicant generally. The committee must report in confidence to the Supreme Court its evaluation, rating and recommendation for applicants for appointment and the reasons therefore, including a succinct summary of their qualifications, at a time to be designated by the Supreme Court. The report must include written comments received by the committee, which must be transmitted to the Supreme Court together with the nominations.

(2) The committee must evaluate the qualifications of and rate all applicants for positions appointed by the Governor, the Senate Committee on Rules, or the Speaker of the Assembly, and must submit in confidence to the Supreme Court and, as applicable, to other appointing authorities, all applications for such positions together with the committee's evaluation, rating and recommendation for these applicants, including any written comments received by the committee, at a time to be designated by the Supreme Court.

(3) In determining the qualifications of an applicant for appointment or reappointment the committee must consider, among other appropriate factors, the following: industry, legal and judicial experience (including prior service as a judge of the State Bar Court), judicial temperament, honesty, objectivity, community respect, integrity, and ability. The committee must consider legal work experience broadly, including, but not limited to, litigation and non-litigation experience, legal work for a business or nonprofit entity, experience as a law professor or other academic position, legal work in any of the three branches of government, and legal work in dispute resolution.

The committee shall consider whether an applicant has demonstrated the ability to write cogently and to analyze legal provisions and principles. Among the issues the committee may also consider are (1) the applicant's demonstrated capacity to work independently and to set and meet performance goals, (2) the applicant's knowledge and experience relevant to issues that give rise to the majority of State Bar Court proceedings, including professional ethics and fiduciary obligations, (3) knowledge of practice and demeanor in the courtroom, and (4) whether the applicant has been in practice for 10 or more years. The committee shall accord weight to all experience that has provided the applicant with legal experience and exposure during which the individual has demonstrated the underlying skills necessary to serve as an effective State Bar Court judge. The committee shall apply the same criteria to candidates seeking appointment from all of the appointing authorities. Any evaluation or rating of an applicant and any recommendation for appointment or reappointment by the committee must be made in conformity with Business and Professions Code section 6079.1(b) and in light of the factors specified in Government Code section 12011.5(d), and those specified in this paragraph.

(4) Each applicant to be interviewed by the committee must disclose on a confidential basis all information required under the procedures developed pursuant to subsection(a)(3)(D) of this rule, for the committee to evaluate that applicant's actual or potential conflicts of interest. The committee must then consider whether the applicant's actual or potential conflicts of interest should disqualify the applicant or reduce their rating. In making this determination, the committee should consider whether financial or nonfinancial interests would impact the applicant's ability to perform the duties of a State Bar Court judge with disinterested skill and undivided loyalty to the State Bar or impact the State Bar Court's appearance to the public as a body that conducts its work with disinterested skill and undivided loyalty. The committee shall include the committee's determinations on this issue in its submission of evaluations and ratings to the Supreme Court and, as applicable, other appointing authorities.

(45) Upon transmittal of its report to the Supreme Court, the committee must notify any incumbent who has applied for reappointment by the Supreme Court if he or she is or is not among the applicants recommended for appointment to the new term by the committee. The applicable appointing authority must notify as soon as possible an incumbent who has applied for reappointment but is not selected.

(c) Appointments

Only applicants who are rated as recommended or highly recommended by the committee or by the Supreme Court may be appointed. At the request of the Governor, the Senate Committee on Rules, or the Speaker of the Assembly, the Supreme Court will reconsider a finding by the committee that a particular applicant is not recommended. The Supreme Court may make such orders as to the appointment of applicants as it deems appropriate, including extending the term of incumbent judges pending such order or providing for staggered terms.

(d) Discipline for misconduct or disability

A judge of the State Bar Court is subject to discipline or retirement on the same grounds as a judge of a court of this state. Complaints concerning the conduct of a judge of the State Bar Court must be addressed to the Executive Director-Chief Counsel of the Commission on Judicial Performance, who is the Supreme Court's investigator for the purpose of evaluating those complaints, conducting any necessary further investigation, and determining whether formal proceedings should be instituted. If there is reasonable cause to institute formal proceedings, the investigator must notify the Supreme Court of that fact and must serve as or appoint the examiner and make other appointments and arrangements necessary for the hearing. The Supreme Court will then appoint one or more active or retired judges of superior courts or Courts of Appeal as its special master or masters to hear the complaint and the results of the investigation, and to report to the Supreme Court on the resulting findings, conclusions, and recommendations as to discipline. The procedures of the Commission on Judicial Performance must be followed by the investigator and special masters, to the extent feasible. The procedures in the Supreme Court after a discipline recommendation is filed will, to the extent feasible, be the same as the procedures followed when a determination of the Commission on Judicial Performance is filed.

Rule 9.90. Nominations and Appointments of State Bar Trustees

(a) State Bar Trustees Nominating Committee

(1) The Supreme Court appoints five attorneys to the State Bar Board of Trustees, each for a four-year term. The court may reappoint an attorney for one additional term. The court may also fill any vacancy in the term of, and make any reappointment of, any appointed attorney member. Each appointee must be an active licensee of the State Bar and have his or her principal office in California.

(2) In order to ensure that individuals appointed by the Supreme Court to the State Bar Board of Trustees have been evaluated objectively, the court has established an independent "State Bar Trustees Nominating Committee" to receive applications and screen and evaluate prospective appointees. The role of the committee is to determine whether applicants possess not only the statutorily enumerated qualifications, but also any other qualifications that may be required to carry out the duties of the Board of Trustees.

(3) The committee serves at the pleasure of the court. The committee will consist of seven members appointed by the court of whom five must be active licensees of the State Bar in good standing, and two must be active or retired judicial officers. A committee chair and vice-chair are designated by the court. The court will seek to create a broadly representative body to assist it in its considerations.

Except as provided below, all full terms are for three years. Members may not serve more than two consecutive full terms. Members will continue to serve until a successor is appointed. Appointments to fill a vacancy will be for the balance of the term vacated. Members who are appointed to fill a vacancy for the balance of a term are eligible to serve two full terms in addition to the remainder of the term for which they were appointed.

To create staggered terms among the members of the committee, the Supreme Court will appoint initial members of the committee as follows:

(A) Four members each to serve a term of three years. The court may reappoint these members to one full term.

(B) Three members each to serve a term of two years. The court may reappoint these members to one full term.

(4) The committee must adopt, and implement upon approval by the Supreme Court, procedures for:

(A) Receipt of applications and initial screening of applicants for appointments to fill the vacant positions, including adoption of a comprehensive application form;

(B) Receipt of evaluations concerning selected applicants;

(C) Review and evaluation of applicants' actual and potential conflicts of interest, with the procedures to require, at a minimum, confidential disclosure by each applicant to be interviewed by the committee of financial and nonfinancial interests that might affect or be

affected by service as a Trustee and a list of attorneys whom each applicant would identify as creating a conflict in any future service as a Trustee;

(~~CD~~) Evaluation and rating of applicants;

and

(~~DE~~) Transmittal of the materials specified in (b) of this rule to the Supreme Court.

The procedures adopted by the committee must include provisions to ensure the confidentiality of its evaluations.

(5) In recommending candidates, in order to provide for the appointment of trustees who bring to the board a variety of experiences, the committee should consider:

(A) Legal services attorneys, solo practitioners, attorneys with small firms, and attorneys with governmental entities;

(B) Historically underrepresented groups, such as those underrepresented because of race, ethnicity, gender, and sexual orientation;

(C) Legal academics;

(D) Geographic distribution;

(E) Years of practice;

(F) Attorneys who are in their first five years of practice;

(G) Participation in voluntary local or state bar activities;

(H) Participation in activities to benefit the public; and

(I) Other factors demonstrating a background that will help inform the work of the board.

(6) The State Bar must provide the support the committee requires to discharge its obligations under this rule.

(b) Evaluations

(1) The committee must evaluate the qualifications of and rate all applicants and must submit to the court the nominations of at least three qualified candidates for each vacancy. Candidates are to be rated as "not recommended," "recommended," and "highly recommended." A rating of "not recommended" relates only to the position under consideration and does not indicate any lack of ability or expertise of the applicant generally. The committee must report in confidence to the Supreme Court its evaluation, rating, and recommendation for applicants for appointment and the reasons therefore, including a succinct summary of their qualifications, at a time to be designated by the Supreme Court. The report must include written comments regarding the nominees received by the committee, which must be transmitted to the Supreme Court together with the nominations.

(2) In determining the qualifications of an applicant for appointment or reappointment the committee should, in addition to the factors cited in (a)(5), consider the following: focus on the public interest, public service, commitment to the administration of justice, objectivity, community respect, integrity, ability to work collaboratively, and balanced temperament.

(3) Each applicant to be interviewed by the committee must disclose on a confidential basis all information required under the procedures developed pursuant to subsection(a)(4)(C) of this rule, for the committee to evaluate that applicant's actual or potential conflicts of interest. The committee must then consider whether the applicant's actual or potential conflicts of interest should disqualify the applicant or reduce their rating. In making this determination, the committee should consider whether financial or nonfinancial interests would impact the applicant's ability to perform the duties of a Trustee with disinterested skill and undivided loyalty to the State Bar or impact the Board of Trustees's appearance to the public as a body that conducts its work with disinterested skill and undivided loyalty. The committee shall include the committee's determinations on this issue in its submission of evaluations and ratings to the Supreme Court.

Rule 9.11. State Bar Court Judges

(a) Applicant Evaluation and Nomination Committee

(1) In order to ensure that individuals appointed by the Supreme Court or by the executive or legislative branches have been evaluated objectively, the Supreme Court has established an independent Applicant Evaluation and Nomination Committee to solicit, receive, screen, and evaluate all applications for appointment or reappointment to any position of judge of the State Bar Court (hearing judge, presiding judge, and review department judge). The role of the committee is to determine whether appointees possess not only the statutorily enumerated qualifications, but also any qualifications that may be required by the Supreme Court to assist in the exercise of its ultimate authority over the discipline and admission of attorneys (see *Obrien v. Jones* (2000) 23 Cal.4th 40; *In re Attorney Discipline System* (1998) 19 Cal.4th 582; Cal. Const., art. VI, sec. 9).

(2) The committee serves at the pleasure of the Supreme Court. It shall consist of seven members appointed by the court of whom no more than four may be licensees of the State Bar in good standing, two must be retired or active judicial officers, and no more than three may be public members who have never been a licensees of the State Bar or admitted to practice before any court in the United States. Two members of the committee must be present members of the Board of Trustees of the State Bar.

(3) The committee must adopt, and implement upon approval by the Supreme Court, procedures for:

- (A) Timely notice to potential applicants of vacancies;
- (B) Receipt of applications for appointments to those positions from both incumbents and other qualified persons;
- (C) Solicitation and receipt of public comment;
- (D) Review and evaluation of applicants' actual and potential conflicts of interest, with the procedures to require, at a minimum, confidential disclosure by each applicant to be interviewed by the committee of financial and nonfinancial interests that might affect or be affected by service as a State Bar Court judge and a list of attorneys whom each applicant would identify as creating a conflict in any future service as a State Bar Court judge;
- (E) Evaluation and rating of applicants; and
- (F) Transmittal of the materials specified in (b) of this rule to the Supreme Court and, as applicable, other appointing authorities.

The procedures adopted by the committee must include provisions to ensure confidentiality comparable to those followed by the Judicial Nominees Evaluation Commission established under Government Code section 12011.5.

(4) The Board of Trustees of the State Bar, in consultation with the Supreme Court if necessary, must provide facilities and support staff needed by the committee to carry out its obligations under this rule.

(b) Evaluations

(1) The committee must evaluate the qualifications of and rate all applicants for positions appointed by the Supreme Court and must submit to the Supreme Court the nominations of at least two candidates for each vacancy. Candidates shall be rated as "not recommended," "recommended," or "highly recommended." A rating of "not recommended" relates only to the position under consideration and does not indicate any lack of ability or expertise of the applicant generally. The committee must report in confidence to the Supreme Court its evaluation, rating and recommendation for applicants for appointment and the reasons therefore, including a succinct summary of their qualifications, at a time to be designated by the Supreme Court. The report must include written comments received by the committee, which must be transmitted to the Supreme Court together with the nominations.

(2) The committee must evaluate the qualifications of and rate all applicants for positions appointed by the Governor, the Senate Committee on Rules, or the Speaker of the Assembly, and must submit in confidence to the Supreme Court and, as applicable, to other appointing authorities, all applications for such positions together with the committee's evaluation, rating and recommendation for these applicants, including any written comments received by the committee, at a time to be designated by the Supreme Court.

(3) In determining the qualifications of an applicant for appointment or reappointment the committee must consider, among other appropriate factors, the following: industry, legal and judicial experience (including prior service as a judge of the State Bar Court), judicial temperament, honesty, objectivity, community respect, integrity, and ability. The committee must consider legal work experience broadly, including, but not limited to, litigation and non-litigation experience, legal work for a business or nonprofit entity, experience as a law professor or other academic position, legal work in any of the three branches of government, and legal work in dispute resolution.

The committee shall consider whether an applicant has demonstrated the ability to write cogently and to analyze legal provisions and principles. Among the issues the committee may also consider are (1) the applicant's demonstrated capacity to work independently and to set and meet performance goals, (2) the applicant's knowledge and experience relevant to issues that give rise to the majority of State Bar Court proceedings, including professional ethics and fiduciary obligations, (3) knowledge of practice and demeanor in the courtroom, and (4) whether the applicant has been in practice for 10 or more years. The committee shall accord weight to all experience that has provided the applicant with legal experience and exposure during which the individual has demonstrated the underlying skills necessary to serve as an effective State Bar Court judge. The committee shall apply the same criteria to candidates seeking appointment from all of the appointing authorities. Any evaluation or rating of an applicant and any recommendation for appointment or reappointment by the committee must be made in conformity with Business and Professions Code section 6079.1(b) and in light of the factors specified in Government Code section 12011.5(d), and those specified in this paragraph.

(4) Each applicant to be interviewed by the committee must disclose on a confidential basis all information required under the procedures developed pursuant to subsection(a)(3)(D) of this rule, for the committee to evaluate that applicant's actual or potential conflicts of interest. The committee must then consider whether the applicant's actual or potential conflicts of interest should disqualify the applicant or reduce their rating. In making this determination, the committee should consider whether financial or nonfinancial interests would impact the applicant's ability to perform the duties of a State Bar Court judge with disinterested skill and undivided loyalty to the State Bar or impact the State Bar Court's appearance to the public as a body that conducts its work with disinterested skill and undivided loyalty. The committee shall include the committee's determinations on this issue in its submission of evaluations and ratings to the Supreme Court and, as applicable, other appointing authorities.

(5) Upon transmittal of its report to the Supreme Court, the committee must notify any incumbent who has applied for reappointment by the Supreme Court if he or she is or is not among the applicants recommended for appointment to the new term by the committee. The applicable appointing authority must notify as soon as possible an incumbent who has applied for reappointment but is not selected.

(c) Appointments

Only applicants who are rated as recommended or highly recommended by the committee or by the Supreme Court may be appointed. At the request of the Governor, the Senate Committee on Rules, or the Speaker of the Assembly, the Supreme Court will reconsider a finding by the committee that a particular applicant is not recommended. The Supreme Court may make such orders as to the appointment of applicants as it deems appropriate, including extending the term of incumbent judges pending such order or providing for staggered terms.

(d) Discipline for misconduct or disability

A judge of the State Bar Court is subject to discipline or retirement on the same grounds as a judge of a court of this state. Complaints concerning the conduct of a judge of the State Bar Court must be addressed to the Executive Director-Chief Counsel of the Commission on Judicial Performance, who is the Supreme Court's investigator for the purpose of evaluating those complaints, conducting any necessary further investigation, and determining whether formal proceedings should be instituted. If there is reasonable cause to institute formal proceedings, the investigator must notify the Supreme Court of that fact and must serve as or appoint the examiner and make other appointments and arrangements necessary for the hearing. The Supreme Court will then appoint one or more active or retired judges of superior courts or Courts of Appeal as its special master or masters to hear the complaint and the results of the investigation, and to report to the Supreme Court on the resulting findings, conclusions, and recommendations as to discipline. The procedures of the Commission on Judicial Performance must be followed by the investigator and special masters, to the extent feasible. The procedures in the Supreme Court after a discipline recommendation is filed will, to the extent feasible, be the same as the procedures followed when a determination of the Commission on Judicial Performance is filed.

Rule 9.90. Nominations and Appointments of State Bar Trustees

(a) State Bar Trustees Nominating Committee

(1) The Supreme Court appoints five attorneys to the State Bar Board of Trustees, each for a four-year term. The court may reappoint an attorney for one additional term. The court may also fill any vacancy in the term of, and make any reappointment of, any appointed attorney member. Each appointee must be an active licensee of the State Bar and have his or her principal office in California.

(2) In order to ensure that individuals appointed by the Supreme Court to the State Bar Board of Trustees have been evaluated objectively, the court has established an independent "State Bar Trustees Nominating Committee" to receive applications and screen and evaluate prospective appointees. The role of the committee is to determine whether applicants possess not only the statutorily enumerated qualifications, but also any other qualifications that may be required to carry out the duties of the Board of Trustees.

(3) The committee serves at the pleasure of the court. The committee will consist of seven members appointed by the court of whom five must be active licensees of the State Bar in good standing, and two must be active or retired judicial officers. A committee chair and vice-chair are designated by the court. The court will seek to create a broadly representative body to assist it in its considerations.

Except as provided below, all full terms are for three years. Members may not serve more than two consecutive full terms. Members will continue to serve until a successor is appointed. Appointments to fill a vacancy will be for the balance of the term vacated. Members who are appointed to fill a vacancy for the balance of a term are eligible to serve two full terms in addition to the remainder of the term for which they were appointed.

To create staggered terms among the members of the committee, the Supreme Court will appoint initial members of the committee as follows:

(A) Four members each to serve a term of three years. The court may reappoint these members to one full term.

(B) Three members each to serve a term of two years. The court may reappoint these members to one full term.

(4) The committee must adopt, and implement upon approval by the Supreme Court, procedures for:

(A) Receipt of applications and initial screening of applicants for appointments to fill the vacant positions, including adoption of a comprehensive application form;

(B) Receipt of evaluations concerning selected applicants;

(C) Review and evaluation of applicants' actual and potential conflicts of interest, with the procedures to require, at a minimum, confidential disclosure by each applicant to be interviewed by the committee of financial and nonfinancial interests that might affect or be

affected by service as a Trustee and a list of attorneys whom each applicant would identify as creating a conflict in any future service as a Trustee;

(D) Evaluation and rating of applicants; and

(E) Transmittal of the materials specified in (b) of this rule to the Supreme Court.

The procedures adopted by the committee must include provisions to ensure the confidentiality of its evaluations.

(5) In recommending candidates, in order to provide for the appointment of trustees who bring to the board a variety of experiences, the committee should consider:

(A) Legal services attorneys, solo practitioners, attorneys with small firms, and attorneys with governmental entities;

(B) Historically underrepresented groups, such as those underrepresented because of race, ethnicity, gender, and sexual orientation;

(C) Legal academics;

(D) Geographic distribution;

(E) Years of practice;

(F) Attorneys who are in their first five years of practice;

(G) Participation in voluntary local or state bar activities;

(H) Participation in activities to benefit the public; and

(I) Other factors demonstrating a background that will help inform the work of the board.

(6) The State Bar must provide the support the committee requires to discharge its obligations under this rule.

(b) Evaluations

(1) The committee must evaluate the qualifications of and rate all applicants and must submit to the court the nominations of at least three qualified candidates for each vacancy. Candidates are to be rated as "not recommended," "recommended," and "highly recommended." A rating of "not recommended" relates only to the position under consideration and does not indicate any lack of ability or expertise of the applicant generally. The committee must report in confidence to the Supreme Court its evaluation, rating, and recommendation for applicants for appointment and the reasons therefore, including a succinct summary of their qualifications, at a time to be designated by the Supreme Court. The report must include written comments regarding the nominees received by the committee, which must be transmitted to the Supreme Court together with the nominations.

(2) In determining the qualifications of an applicant for appointment or reappointment the committee should, in addition to the factors cited in (a)(5), consider the following: focus on the public

interest, public service, commitment to the administration of justice, objectivity, community respect, integrity, ability to work collaboratively, and balanced temperament.

(3) Each applicant to be interviewed by the committee must disclose on a confidential basis all information required under the procedures developed pursuant to subsection(a)(4)(C) of this rule, for the committee to evaluate that applicant's actual or potential conflicts of interest. The committee must then consider whether the applicant's actual or potential conflicts of interest should disqualify the applicant or reduce their rating. In making this determination, the committee should consider whether financial or nonfinancial interests would impact the applicant's ability to perform the duties of a Trustee with disinterested skill and undivided loyalty to the State Bar or impact the Board of Trustees's appearance to the public as a body that conducts its work with disinterested skill and undivided loyalty. The committee shall include the committee's determinations on this issue in its submission of evaluations and ratings to the Supreme Court.