



The State Bar of California

OPEN SESSION AGENDA ITEM 702 JANUARY 2024

DATE: January 18, 2024

TO: Members, Board of Trustees

FROM: Justin A. Palmer, Chair, Commission on Judicial Nominees Evaluation
Bridget Gramme, Deputy Chief of Programs

SUBJECT: Judicial Nominees Evaluation Commission Task Force Proposed Revisions to Rules: Return from Public Comment and Request for Adoption.

EXECUTIVE SUMMARY

At the Board of Trustees' November 2023 meeting, the Chair of the Commission on Judicial Nominees Evaluation (JNE), Justin A. Palmer, presented a package of proposed amendments to the State Bar Rules governing JNE. The proposed amendments reflected the work of a seven-member task force, as directed by the Board at its July meeting, to conduct a comprehensive review of the rules. After a series of meetings, seeking feedback from current and former JNE commissioners and staff, the task force was unanimous in its recommendation that the Board adopt amendments to 13 rules to conform to current practices and add one new rule regarding the procedures for requesting withdrawal of candidates for JNE evaluation.

The task force recommended that the Board release two options for public comment on rule 7.52 regarding judicial candidate interviews: Option 1 would maintain the existing requirement that the commission interview judicial candidates in person; Option 2 would amend the rule to permit remote interviews for superior court candidates while maintaining the in-person requirement for appellate and supreme court candidates. The Board voted to release the proposed amendments, including the two options for rule 7.52, for a 45-day public comment period expiring on January 4, 2024. Three comments were received as described below.

Staff and JNE leadership would like to again recognize the task force for its excellent and thoughtful work revising the rules and recommend that the Board adopt the rules as proposed. While they recognize the preference for in-person interviews, given the State Bar's continued fiscal challenges and the success of Zoom interviews during the pandemic, staff and JNE

leadership jointly recommend that the Board adopt Option 2 for rule 7.52 and reevaluate the rule's impact at its January 2026 meeting.

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." 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.

The proposed package of rule amendments before the Board is the culmination of several months of discussion and consideration. In March of 2023, the Board, at staff's recommendation, released proposed amendments to State Bar Rules 7.52 and 7.60 for a 45-day public comment period, which would have removed the requirement that candidate interviews and commission meetings be conducted in person, effectively permitting these tasks to be performed remotely where appropriate. Staff proposed these amendments in the context of significant fiscal challenges facing the State Bar and JNE operational changes that had been recently implemented to streamline operations and potentially increase the number of candidates the commission evaluates each cycle.

After receiving numerous comments opposing the proposed amendments during the public comment period and at the May meeting, the Board postponed its vote to the July 2023 Board meeting and directed staff and JNE leadership to explore a compromise. In July, the Board concurred with staff and JNE leadership's joint request that a task force be formed to conduct a comprehensive review of all of the rules governing JNE, the final product of which is before the Board today in Attachment A.

DISCUSSION

The only substantive comments received during the public comment period pertained to rule 7.52 and whether to conduct candidate interviews in person versus by remote means. The task force devoted substantial time to discussion of this rule. Some members, reflecting the sentiment of public comments received on this topic over the past year, emphasized the high quality of in-person interviews compared to virtual meetings. Others emphasized the general social acceptance and ubiquity of remote proceedings, believing that virtual interviews offered similar experiences to an in-person interview, enhanced the overall JNE process, and offered cost savings for the State Bar and the candidates.

Ultimately the task force recommended, and the Board released, two options for public comment:

Option 1:

Keep the existing rule, which would uphold the commission's longstanding tradition of conducting candidate interviews in person.

and

Option 2:

Proceed with remote proceedings as acceptable for trial court candidates but maintain the requirement that interviews of all supreme court and court of appeal take place in person.

The task force proposed the second option as a compromise position, recognizing the importance of in-person interviews, and maintaining them for supreme court and appellate court candidates, but permitting remote interviews for the majority of the interviews, which are superior court candidates.

During the comment period, the State Bar received three comments on the proposed changes, representing the views of one former commissioner who is a current judicial officer, one public member, and one attorney. The complete text of the comments received is provided in Attachment B.

All commenters generally support the proposed package of amendments. With respect to rule 7.52, two of the three supported Option 1, citing the importance of in person interviews to assess the qualifications of judicial officers—particularly where the investigating team is evaluating criticisms regarding demeanor and temperament. One commenter did not support either option, taking issue with Option 2's distinction between superior court and appellate court candidate interviews, and arguing that this option wrongly implies that the appointment of superior court judges is somehow of lower importance than appointment of Court of Appeal and Supreme Court justices. Pointing out that the superior court is the only court with which the vast majority of Californians interact, this commenter recommends a third option to conduct remote interviews for all candidates without distinction.

Staff and JNE leadership have met and carefully considered the comments received, keeping in mind the extensive discussions held on this topic over the past year. We agree with the commenters that in-person interviews are highly effective in getting to know and understand the candidates on a deeper level, and that a fair and thorough evaluation of all individuals being considered for the judiciary is of utmost importance. But the financial realities remain.

Staff estimate that nearly \$150,000 would have to be added to JNE's annual budget to cover the costs of returning to in-person interviews for all candidates in a time with the State Bar is facing a significant structural deficit in its budget. Efforts over the past year to secure additional funding to support JNE's work from the state General Fund, or from a fee increase, have so far been unsuccessful. Additionally, almost all of the candidate interviews over the past four years have taken place via Zoom during the pandemic, and we believe the commission has done an excellent job interviewing the candidates and conducting thorough evaluations during this time. Zoom interviews have also saved money for candidates, who must cover their own costs to travel to State Bar offices to participate in the interview, and have unquestionably been easier to schedule. On balance, we believe Option 2 presents an appropriate compromise, and

recommend that the Board adopt this option along with the other recommended amendments in the package presented in Attachment A.

FISCAL/PERSONNEL IMPACT

Taking into consideration the new State Bar travel policy effective January 1, 2024, which increases per diem and mileage reimbursement rates, staff estimate the cost of resuming in person candidate interviews for all candidates to be approximately \$149,000 annually. If the Board ultimately adopts “Option 1” presented in rule 7.52, this amount would need to be added to JNE’s budget for 2024. If the Board adopts “Option 2,” staff estimate the cost to be approximately \$21,000 annually to conduct in-person candidate interview for appellate court and supreme court candidates. Staff do not anticipate that the other recommended rule changes will have a fiscal or personnel impact.

AMENDMENTS TO RULES OF THE STATE BAR OF CALIFORNIA

Title 7 (Miscellaneous Provisions), Division 1 (Commission on Judicial Nominees Evaluation),

Amend Rules 7.3, 7.4, 7.5, 7.8, 7.22, 7.40, 7.41, 7.45, 7.47, 7.50, 7.52, 7.56, 7.60, 7.61

Add Rule 7.42

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 amendments to Title 7 of the Rules of the State Bar as proposed in Attachment A, effective immediately; and it is

FURTHER RESOLVED, that the Board of Trustees adopts Option 2 for rule 7.52; and it is

FURTHER RESOLVED, that the Board of Trustees directs staff to return to the Board at its January 2026 meeting to report on the implementation of rule 7.52 and propose any recommended revisions.

ATTACHMENTS LIST

- A. Proposed Amendments to JNE Rules
- B. Table of Public Comments Received

Commission on Judicial Nominees Evaluation Compendium of Governing Authority

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TITLE 7. MISCELLANEOUS PROVISIONS

Adopted July 2007

DIVISION 1. COMMISSION ON JUDICIAL NOMINEES EVALUATION

Chapter 1. General provisions

Rule 7.1 Commission on Judicial Nominees Evaluation

The Board of Trustees of the State Bar of California has established a Commission on Judicial Nominees Evaluation (“commission”) pursuant to statute¹ to confidentially investigate and evaluate the judicial qualifications of those identified by the Governor for appointment or nomination to a judicial office.

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

Rule 7.2 Membership and terms

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

- (A) the commission is to consist of at least twenty-seven and no more than thirty-eight members, at least eighty percent of whom must be active licensees in good standing of the State Bar and the balance public members;
- (B) one of the State Bar licensees is to be a former judge, preferably of an appellate court; and
- (C) the membership is to consist of a variety of persons of different backgrounds, abilities, interests, and opinions who are broadly representative of the ethnic, sexual, and racial diversity of the population of California.²

Rule 7.2 adopted effective July 17, 2009; amended effective January 1, 2012; amended effective January 25, 2019.

Rule 7.3 ~~Temporary~~ Pro tempore commissioners

- (A) The chair may appoint a former member of the commission as a ~~temporary pro tempore~~ pro tempore commissioner to assist the commission with its workload. An appointee must recently have been commission chair or served at least one three-year term on the commission or its review committee. A ~~temporary pro tempore~~ pro tempore commissioner may lead an investigation.

¹Government Code § 12011.5.

²See Government Code §§ 11140, 11141, and 12011.5.

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

Rule 7.3 adopted effective July 17, 2009; amended effective March 19, 2021.

Rule 7.4 Removal of commissioners

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

Rule 7.4 adopted effective July 17, 2009.

Rule 7.5 Duties of commissioners

Each commissioner must

- (A) not endorse or participate in a judicial candidate's campaign for office;
- (B) not vote on a candidate if absent for any time from the meeting at which the commission votes on the candidate;
- (C) not participate in any other judicial evaluation process;
- (D) not apply for or accept a State of California judicial appointment or permit his or her name to be submitted for evaluation as a candidate for such an appointment while a majority of the commission consists of members with whom ~~he or she has~~ they have served, either as a regular or pro tempore member of the commission;
- (E) report to the chair or vice-chair of the commission for appropriate action any concern that a fellow commissioner has breached these rules or law applicable to the commission; and
- (F) comply with these rules after signing a declaration that he or she has read, understood, and agrees to comply with the rules, the declaration being made under oath upon taking office.

Rule 7.5 adopted effective July 17, 2009; amended effective March 19, 2021.

Rule 7.6 Time limit changes

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

Rule 7.6 adopted effective July 17, 2009.

Rule 7.7 Information on candidates

- (A) To evaluate the judicial qualifications of a candidate for a judicial office, each commissioner must consider the following information:
 - (1) a current Application for Appointment provided by or to the Governor's office;
 - (2) any past application materials and commission evaluations that have not been deemed unreliable by a Review Committee; and
 - (3) past State Bar complaints against and discipline imposed on a candidate, except for complaints based on allegations that the commission deems unfounded.
- (B) The commission may also consider information regarding candidates solicited from local or statewide bar associations that may have knowledge of the candidate through their own judicial evaluation procedures.

Rule 7.7 adopted effective July 17, 2009.

Rule 7.8 Commission records

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

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

Chapter 2. Standards

Rule 7.20 Confidentiality required

- (A) Except as permitted by law³ or these rules, commission investigations, opinions expressed to the commission by raters or others with regard to a candidate's qualifications, interviews with candidates or others, meetings, the vote or comments of any individual commissioner or the vote of the commission as a whole, and all other commission activities and records are absolutely confidential. Disclosure is prohibited

³ Government Code § 12011.5.

even of the name of a candidate or the fact that the commission is considering a candidate.

- (B) To ensure the integrity and confidentiality of the commission's activities and records, the Board of Trustees and its members are not permitted to receive copies of commission records or inspect its records except as authorized by law or these rules.
- (C) This rule applies to the Board of Trustees, commissioners, and employees and agents of the State Bar but not to candidates.

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

Rule 7.21 Confidentiality exclusions

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

- (A) confidential inquiries made in the course of investigations;
- (B) information commissioners share or discuss to discharge their responsibilities under these rules, such as information about interviews with raters, Confidential Comment Forms, comments of individual commissioners, and votes;
- (C) information required by the review committee appointed to review commission ratings of not qualified;⁴
- (D) information required to investigate and determine a claim of breach of confidentiality;⁵
- (E) attendance at commission meetings or inspection of commission records at the offices of the State Bar by members of the Board of Trustees;
- (F) information that the chair authorizes individual commissioners to provide to members of the Board of Trustees;
- (G) presentations or recommendations, supported with reasons, made by the chair or the chair's designee to the Commission on Judicial Appointments;⁶
- (H) public disclosure as permitted by law of a not qualified rating of a candidate the Governor has appointed to a trial court;⁷
- (I) disclosure by the chair or staff to a candidate of a not qualified rating; and

⁴ Rule 7.66.

⁵ Rule 7.22.

⁶ Government Code §12011.5(h).

⁷ Government Code §12011.5(g).

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

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

Rule 7.22 Breach of confidentiality

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

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

Rule 7.23 Disclosure of conflicts of interest

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

Rule 7.23 adopted effective July 17, 2009.

Rule 7.24 Disqualification from participation

- (A) If a commissioner or the chair determines that a relationship would unduly influence or appear to influence the commissioner's consideration of a candidate's qualifications, the commissioner must not investigate or evaluate the candidate and must refrain from attempting to influence the evaluation of any other commissioner. Factors to be considered in making the determination include the date of the relationship, its duration, and whether it is more than casual or incidental. If the commissioner determines that the relationship does not require disqualification and the chair disagrees, the determination of the chair prevails.
- (B) A disqualified commissioner may complete a Confidential Comment Form on a candidate but may not be present when the commission considers or votes on the candidate or be identified as a rater at a commission meeting.
- (C) A board member whose relationship with a candidate may interfere or appear to interfere with the commission's ability to impartially assess the qualifications of the

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

candidate may not be present when the commission meets to consider the candidate, may not review commission records regarding the candidate, and must refrain from attempting to influence the evaluation of any commissioner regarding the candidate.

Rule 7.24 adopted effective July 17, 2009.

Rule 7.25 Qualities evaluated

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

- (A) Superior court candidates are expected to have the qualities of decisiveness, oral communication skills, and patience;
- (B) Court of Appeal candidates are expected to have the qualities of collegiality, writing ability, and scholarship; and
- (C) Supreme Court candidates are expected to have the qualities of collegiality, writing ability, scholarship, distinction in the profession, and breadth and depth of experience.

Rule 7.25 adopted effective July 17, 2009.

Rule 7.26 Ratings assigned

- (A) The commission must assign one of the following ratings to candidates for superior court:
 - (1) exceptionally well qualified to candidates possessing qualities and attributes of remarkable or extraordinary superiority that enable them to perform the judicial function with distinction;
 - (2) well qualified to candidates possessing qualities and attributes indicative of a superior fitness to perform the judicial function with a high degree of skill and effectiveness;
 - (3) qualified to candidates possessing qualities and attributes sufficient to perform the judicial function adequately and satisfactorily; or

⁹ Government Code § 12011.5(d).

- (4) not qualified to candidates possessing less than the minimum qualities and attributes required by these rules.
- (B) The commission must assign one of the following ratings to candidates for the Court of Appeal or the Supreme Court:
 - (1) exceptionally well qualified to candidates possessing qualities and attributes of remarkable or extraordinary superiority that enable them to perform the appellate judicial function with distinction;
 - (2) well qualified to candidates possessing qualities and attributes indicative of a superior fitness to perform the appellate judicial function with a high degree of skill, effectiveness, and distinction;
 - (3) qualified to candidates possessing qualities and attributes sufficient to perform the appellate judicial function with a high degree of skill and effectiveness; or
 - (4) not qualified to candidates possessing less than the minimum qualities and attributes required by these rules.

Rule 7.26 adopted effective July 17, 2009.

Rule 7.27 Rating imputed

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

Rule 7.27 adopted effective July 17, 2009.

Chapter 3. Procedures

Article 1. In general

Rule 7.40 Assignment of commissioners

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

- (A) for a candidate for superior court, a team of two or more commissioners, one of whom is a State Bar licensee; and
- (B) for a candidate for the Court of Appeal or Supreme Court, a team of three or more commissioners, one of whom, ~~to the extent practicable,~~ is a public member. ~~Whenever possible, a public member will be assigned to each such team.~~

Rule 7.40 adopted effective July 17, 2009; amended effective July 21, 2022.

Rule 7.41 Duties of lead commissioner

The lead commissioner must

- (A) contact the other team members to establish procedures to facilitate the investigation, reduce duplication of effort, and assure compliance with these rules; and
- (B) before beginning the investigation, notify the candidate that the investigation is pending; and-
- (C) schedule the candidate interview; and
- (D) notify the Chair in the event they determine the candidate is not in good faith participating in the investigation process. In the event the Chair determines that the candidate has not participated in the investigation process in good faith, the Chair may request that the Governor withdraw the candidate.

Rule 7.41 adopted effective July 17, 2009.

Rule 7.42. Request for withdrawal

- (A) The chair may ask the Governor to withdraw a candidate if:
 - (1) a complaint, investigation, or other disciplinary matter against a candidate is pending before the State Bar or Commission on Judicial Performance when the Governor refers the candidate to the commission for evaluation, or
 - (2) a complaint, investigation, or other disciplinary matter against a candidate is pending before the State Bar or Commission on Judicial Performance is pending when the commission votes-on the candidate.
- (B) If the Governor declines to withdraw a candidate pursuant to subsection (A) the commission may consider the open complaint, investigation or other disciplinary matter against the candidate pending before the State Bar or Commission on Judicial Performance in assigning a rating pursuant to Rule 7.26.

Article 2. Confidential Comment Forms

Rule 7.45 Candidate's contact list

Upon receiving the name of a candidate, the team must ask the candidate to provide the names of and contact information for:

- (A) All attorneys and judicial officers mentioned in the candidate's Application for Appointment; and
- (B) Fifty to seventy-five people to whom Confidential Comment Forms may be sent because they are reasonably likely to have knowledge of the candidate's qualifications.

Rule 7.45 adopted effective July 17, 2009.

Rule 7.46 Commission's contact list

- (A) Upon receiving the name of a candidate, the team must prepare a list of people to whom Confidential Comment Forms may be sent because they are reasonably likely to have knowledge of the candidate's qualifications. To the extent feasible, the list must reflect a broad cross-section of attorneys who practice the same types of law as the candidate and where the candidate practices.
- (B) Whenever possible the team will not place continuing and exclusive reliance on the same sources of information in evaluating candidates from a given area.

Rule 7.46 adopted effective July 17, 2009.

Rule 7.47 Required distribution

- (A) The objective of the team must be to obtain a return of at least ~~fifty~~ seventy-five Confidential Comment Forms that provide information that is sufficient and credible for a fair evaluation.
- (B) Absent ~~unusual~~ special circumstances, the team must send Confidential Comment Forms ~~confidential questionnaires~~ to
 - (1) all those listed in a candidate's Application for Appointment and all others whose names are submitted by the candidate;
 - (2) ~~seventy-five~~ fifteen hundred individuals selected at random from the commission's contact mailing list;
 - (3) all judicial officers in each county where a candidate practices and all judicial officers where a candidate seeks appointment, ~~except for the County of Los Angeles; and~~
 - ~~(4)~~ (4) ~~at least fifty percent of all judicial officers, including those reasonably likely to have knowledge of a candidate's qualifications if the candidate practices in the County of Los Angeles, and all judicial officers in any other county where the candidate seeks appointment;~~
 - ~~(5)~~ (5) ~~all justices of any appellate district where a candidate practices and all justices of the California Supreme Court; and~~
 - ~~(6)~~ (4) ~~in the case of a candidate who practices criminal law, or at least fifty randomly selected prosecutors and criminal defenders, district attorneys and public defenders, whichever number is less, selected at random in any county where a candidate practices criminal law and in any other county included in the jurisdiction of the court where the candidate seeks appointment.~~

(C) Commission staff must send electronic Confidential Comment Forms to all justices of the California Supreme Court, all justices of any appellate district where a candidate practices or seeks appointment, all judges of the Ninth U.S. Circuit Court of Appeals, and all judges of the federal district courts where the candidate practices or in districts that overlap with jurisdiction of the court where the candidate seeks appointment.

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

Rule 7.47 adopted effective July 17, 2009.

Article 3. Candidate interviews

Rule 7.50 Prior disclosure of substantial and credible adverse allegations

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

Rule 7.50 adopted effective July 17, 2009.

Rule 7.51 Purpose and timing of candidate interviews

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

- (1) discuss as specifically as possible all factors positive and negative, relevant to qualifications regarding which the team requires further information, without breaching the confidentiality required by these rules; and
- (2) afford the candidate the opportunity to respond to the adverse information provided to the candidate¹⁰ and present additional information regarding qualifications that support his or her candidacy.

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

Rule 7.51 adopted effective July 17, 2009.

Rule 7.52 Conduct of candidate interviews

- (A) **OPTION 1 [EXISITNG]:** 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. **OR**

OPTION 2 The team must interview a candidate for the Supreme Court or a Court of Appeal in person, unless the chair authorizes the use of remote means in unusual circumstances. The team must interview a candidate for the Superior Court by remote means, unless the chair authorizes an in-person interview in unusual circumstances. A candidate may not be interviewed by or appear before the entire commission in connection with their ~~his or her~~ nomination.

- (B) In conducting the interview, the team must do nothing to enable the candidate to ascertain the source of information it has received under the assurance of confidentiality.
- (C) Unless the candidate objects, the interview must be recorded and the recording retained in accordance with these rules. A candidate who objects to recording is not entitled to review of a rating of not qualified.

Rule 7.52 adopted effective July 17, 2009.

Article 4. Evaluations

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

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

Rule 7.55 adopted effective July 17, 2009.

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

- (A) The commission may conduct a summary evaluation based on a completed evaluation and rating of qualified or higher ~~for~~ within the past twelve months of the Governor's request that the candidate be re-evaluated. The summary evaluation shall apply to:
- (1) a superior court candidate whom the Governor later proposes for the superior court of a different county; or
 - (2) a Court of Appeal candidate whom the Governor later proposes for a different district ~~of the~~ Court of Appeal.

¹⁰ Rule 7.50.

- (B) In determining whether to conduct a summary evaluation, the commission must consider the same factors the chair would consider when the Governor requests a new evaluation of a candidate.¹¹
- (C) In the event that the summary evaluation does not reveal additional negative matters, then the commission shall adopt the prior evaluation submitted to the Governor.

Rule 7.56 adopted effective July 17, 2009.

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

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

Rule 7.57 adopted effective July 17, 2009.

Article 5. Reports

Rule 7.60 Reports to commission

- (A) At the conclusion of an investigation and evaluation, the investigating team must provide the commission with a report detailing the results of its investigation in advance of the JNE Meeting. ~~the team must provide the commission with a written report on the candidate and, absent unusual circumstances, the lead commissioner must present the report in person.~~ The report must specify the number of Confidential Comment Forms mailed and the number received; categorize the responses; summarize substantial and credible information submitted; recommend a rating; and otherwise comply with commission instructions.
- (B) The commission shall meet in person to consider all candidates. Absent unusual circumstances, the lead commissioner must present the results of its investigation in person at the JNE Meeting. The chair shall consult with State Bar staff regarding the location and schedule of meetings.

Rule 7.60 adopted effective July 17, 2009.

Rule 7.61 Reports to Governor

- (A)
 - (1) A commission report to the Governor regarding the qualifications of a candidate must include the names of the team members; the number of Confidential Comment Forms mailed and the number returned; and the number of commission votes for each rating, except as provided in subdivision (B)(2)(a).

¹¹ See Rule 7.57.

- (2) When a report includes the number of commission votes, it must also provide the number of any commissioners who were present for the discussion of a candidate but then abstained from voting for any reason.
 - (3) A candidate is reported as not qualified only if a majority of commissioners voting rate the candidate not qualified. An abstention does not count as a vote.
 - (4) If half the commissioners voting rates a candidate not qualified and half rates the candidate qualified or better, the candidate is reported as qualified. For a candidate who is rated by a majority of commissioners voting as qualified or better, in the event of a tie vote among qualified, well qualified or exceptionally well qualified ratings, the candidate will be reported as having received the highest of the ratings that received the tie vote.
- (B)
- (1) The commission must find a candidate not qualified only on the basis of substantial and credible information.
 - (2) The report for a candidate found to be not qualified, must also
 - (a) state that “at least 75 percent of the commissioners voting find the candidate not qualified” and not provide the number of votes; or
 - ~~(3)~~ (b) state that “a majority that is less than 75 percent of the commissioners voting finds the candidate not qualified” and provide the number of votes.
- (C) If unusual circumstances prevent a team from creating mailing lists, distributing Confidential Comment Forms, obtaining responses, or otherwise meeting the requirements of these rules, the team must identify those circumstances in its report to the Governor.
- (D) ~~If a State Bar complaint against a candidate is pending when the commission votes on the candidate, the commission must ask the Governor to withdraw the name unless the candidate is a sitting judge and the complaint concerns activity that occurred before the candidate assumed judicial office. If the commission votes such a candidate not qualified, it must notify the Governor’s office that the basis for the not qualified rating is the open complaint.~~
- ~~(E)~~ (D) In general, the commission makes reports to the Governor in the order in which the Governor has submitted the names of candidates. The commission may consider a candidate out of order if the chair determines that there are reasons to do so.

Rule 7.61 adopted effective July 17, 2009; amended effective November 18, 2021

Article 6. Reconsideration

Rule 7.65 Reconsideration of not qualified rating

Only a candidate rated not qualified is entitled to request reconsideration of the rating. Within ten days of sending the Governor a rating of not qualified, the commission must notify the candidate in writing of the not qualified rating and the right to request reconsideration. The candidate must make a request in accordance with these rules within thirty days of receiving the written notice. The review committee will complete review of a candidate's request for reconsideration not later than 90 days after the State Bar receives the request. The State Bar will not make the not qualified rating public while the review is pending.¹²

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

Rule 7.66 Review committee

- (A) To review candidates' requests for reconsideration of a commission rating, the Board of Trustees must appoint a five-member review committee consisting of two members of the Board of Trustees, one of whom shall be a public member and one an attorney licensee, one past member of the commission, and two at large members to be appointed at the discretion of the Board of Trustees. Neither of these at large members will be current members of the Board of Trustees.
- (B) The review committee has absolute discretion to rescind the opinion of the commission if it has good cause to believe that
 - (1) violation of these rules has materially affected the commission's rating;
 - (2) conflict of interest or bias has affected the rating;
 - (3) an inadequate or biased mailing list was used;
 - (4) new evidence, which the candidate had no reasonable opportunity to present, could have changed the rating; or
 - (5) after review of the candidate's record, the commission's rating of not qualified is not supported by substantial evidence.
- (C) If a member of the review committee recuses himself or herself in a particular matter, the Executive Director of the State Bar must assign the matter to a temporary member who has previously served on the review committee.

Rule 7.66 adopted effective July 17, 2009; amended effective November 19, 2010; amended effective January 1, 2012; amended effective January 25, 2019.

¹² Government Code § 12011.5, subd. (g).

Rule 7.67 Candidate's request for new evaluation

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

Rule 7.67 adopted effective July 17, 2009.

Rule 7.68 Governor's request for new evaluation

- (A) If the Governor requests a new evaluation of a candidate whom the commission has rated not qualified, the chair must determine whether or not a new investigation is required.
- (B) To determine whether or not a new investigation is required, the chair must consider
 - (1) the extent to which the original investigation failed to include facts or information that should have been investigated;
 - (2) the extent to which acts or events occurring after the investigation could change the rating;
 - (3) the extent to which additional information or the candidate's further rebuttal of adverse information would assist the commission in assessing a material issue;
 - (4) whether the original investigation is still timely, "timely" normally meaning concluded within the last twelve months;
 - (5) the candidate's current disciplinary record; and
 - (6) other factors that may be relevant.
- (C) If the chair determines that a new investigation is not required, at its next meeting following receipt of the Governor's request the commission must vote to affirm its rating or assign a new one.
- (D) If the chair determines that a new investigation is required, the chair must assign it to the original team or a new one. Upon receipt of the team's report, the chair must provide it to the commission at its next meeting to vote on the candidate's qualifications.

Rule 7.68 adopted effective July 17, 2009.

Public Comments on Proposed Interview Options

#	Commenter	Licensure Status	Former JNE Member	Preferred Option	Comments
1	Noah Rosenthal	Attorney	Never served on JNE	Neither	<p>I strongly disagree with the implication of Option 2 that the appointment of Superior Court judges is somehow of lower importance than the appointment of Court of Appeal and Supreme Court justices. For the vast majority of Californians who interact with the legal system, the Superior Court is the only court with which they interact. While I understand the importance of precedent on trial court outcomes, that simply serves to offset the fact that the superior courts handle the vast majority of legal matters, thus rendering the courts of appeal and the Supreme Court of equal importance to the superior courts.</p> <p>I would not treat interviewing appellate and Supreme Court appointees as more important than superior court appointees. I believe that sends a bad message to the public and to our superior court judges.</p> <p>However, I favor online interviewing and would support interviewing all appointees via video conference. Accordingly, I do not believe JNE should adopt either Option 1 or Option 2, but rather a third option of doing all interviews online. In the alternative, I would prefer that all interviews take place in person so as to not artificially diminish the importance of the superior courts.</p>
2	Dr. Frederick Mitchell	Nonattorney	Never served on JNE	Option 1 - Keep existing rule of in person interviews	<p>Interviewing a lawyer for the position of judge is not to be taken lightly. There are already too many corrupt judges in California who made judge with little or no real experience and devoid of integrity. Judge's are supposed to be the most unimpeachable members of our society. That is not the case. To suggest remote interviews for people that may someday make life or death rulings for our citizens is paying Californian's short shrift. Being a judge is not a regular occupation. It is an unlicensed position of great responsibility, privilege, and immunity. If a candidate for judge feels that showing up to be held accountable, in person, is too much of a burden, then he or she is not actually a candidate for a judgeship.</p>
3	Hon. Michelle Williams Court	Nonattorney	Former JNE Commissioner	Option 1 - Keep existing rule of in person interviews	<p>In my experience, the candidate interview was the most important part of the evaluation process. It is an opportunity to observe the candidate's demeanor and assess the veracity of the statements made in the PDQ. And for candidates with temperament-related negatives, the in-person interview was crucial to determining whether the candidate adequately addressed the criticism. While remote interviews convey substantive information, the in-person interaction is vital to a complete evaluation of the strength of a particular candidate. Remote interviews create a barrier to connecting with a candidate and provide a safe harbor to hide less flattering demeanor-related issues. They are also not conducive to meaningful</p>

					dialogue. This is especially important when evaluating candidates for the trial court. I strongly recommend keeping the existing rule for applications to all courts.
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Public Comments on Proposed Changes to Rule 7.3

#	Commenter	Licensure Status	Former JNE Member	Position* (A/AM/D/NP)	Comments
1	Noah Rosenthal	Attorney	Never served on JNE	NP	I do not wish to comment on this, but the form won't allow me to comment on Rule 7.52 without commenting on another rule, too.
3	Hon. Michelle Williams Court	Nonattorney	Former JNE Commissioner	A	

* A = Agree with proposal; AM = Agree if modified; D = Disagree with proposal; NP = No position on proposal

Public Comments on Proposed Changes to Rule 7.41

#	Commenter	Licensure Status	Former JNE Member	Position* (A/AM/D/NP)	Comments
3	Hon. Michelle Williams Court	Nonattorney	Former JNE Commissioner	A	

* A = Agree with proposal; AM = Agree if modified; D = Disagree with proposal; NP = No position on proposal

Public Comments on Proposed Changes to Rule 7.45

#	Commenter	Licensure Status	Former JNE Member	Position* (A/AM/D/NP)	Comments
3	Hon. Michelle Williams Court	Nonattorney	Former JNE Commissioner	A	

* A = Agree with proposal; AM = Agree if modified; D = Disagree with proposal; NP = No position on proposal

Public Comments on Proposed Changes to Rule 7.47

#	Commenter	Licensure Status	Former JNE Member	Position* (A/AM/D/NP)	Comments
3	Hon. Michelle Williams Court	Nonattorney	Former JNE Commissioner	A	

* A = Agree with proposal; AM = Agree if modified; D = Disagree with proposal; NP = No position on proposal

Public Comments on Proposed Changes to Rule 7.60

#	Commenter	Licensure Status	Former JNE Member	Position* (A/AM/D/NP)	Comments
3	Hon. Michelle Williams Court	Nonattorney	Former JNE Commissioner	A	

* A = Agree with proposal; AM = Agree if modified; D = Disagree with proposal; NP = No position on proposal

Public Comments on Proposed Changes to Rule 7.61

#	Commenter	Licensure Status	Former JNE Member	Position* (A/AM/D/NP)	Comments
2	Dr. Frederick Mitchell	Nonattorney	Never served on JNE	A	

* A = Agree with proposal; AM = Agree if modified; D = Disagree with proposal; NP = No position on proposal