AMENDMENT TO THE CALIFORNIA RULES OF COURT
Adopted by the Supreme Court on November 21, 2023, effective December 1, 2023

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**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 (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) Identification and collection of actual and potential conflicts of interest for those applicants selected for interviews by the committee. These procedures, at a minimum, must require these applicants to confidentially disclose any financial and nonfinancial interests that might affect or might be affected by service by the applicant as a State Bar Court judge and a list of attorneys whom each applicant would

identify as creating a conflict in any future service by the applicant 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.

*(Subd (a) amended effective December 1, 2023; previously amended effective February 15, 1995, July 1, 2000, January 1, 2007, January 1, 2009 January 1, 2019, and July 1, 2022.)*

**(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) The committee must use the information obtained under the procedures developed pursuant to (a)(3)(D) of this rule to evaluate the actual or potential conflicts of interest of applicants selected for interviews. The committee shall consider whether the applicant's actual or potential conflicts of interest should disqualify the applicant or reduce the applicant's rating under (a)(3)(E) of this rule. In making this determination, the committee shall consider whether the applicant has financial or nonfinancial interests or relationships with other attorneys that may impact the applicant's ability to perform the duties of a State Bar Court judge in a manner that avoids impropriety, the appearance of impropriety, or frequent disqualification. The committee shall include its determination on this issue in the report to the Supreme Court required under (b)(1) of this rule, and, as applicable, to other appointing authorities under (b)(2) of this rule.

~~(4)~~(5) Upon transmittal of its report to the Supreme Court under (b)(1) of this rule, and, as applicable, to other appointing authorities under (b)(2) of this rule, 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.

*(Subd (b) amended effective December 1, 2023; adopted effective February 15, 1995; previously amended effective July 1, 2000, January 1, 2007, January 1, 2009, and July 1, 2022.)*

**(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 9.11 amended effective December 1, 2023; adopted as rule 961 effective December 1, 1990; previously amended February 15, 1995, July 1, 2000, January 1, 2009, January 1, 2019, and July 1, 2022; previously amended and renumbered effective January 1, 2007*

**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" (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) Identification and collection of actual and potential conflicts of interest for those applicants selected for interviews by the committee. These procedures, at a minimum, must require these applicants to confidentially disclose any financial and nonfinancial interests that might affect or might be affected by service by the applicant as a Trustee and a list of attorneys whom each applicant would identify as creating a conflict in any future service by the applicant as a Trustee;

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

~~(D)~~(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.

*(Subd (a) amended effective December 1, 2023; previously amended effective January 1, 2019.)*

**(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) The committee must use the information obtained under the procedures developed pursuant to (a)(4)(C) of this rule to evaluate the actual or potential conflicts of interest of applicants selected for interviews. The committee shall consider whether the applicant's actual or potential conflicts of interest should disqualify the applicant or reduce the applicant's rating under (a)(4)(D) of this rule. In making this determination, the committee shall

consider whether the applicant has financial or nonfinancial interests or relationships with other attorneys that may impact the applicant's ability to perform the duties of a Trustee with disinterested skill and undivided loyalty to the State Bar as described in Business and Professions Code section 6036, subdivision (b), or may impact the Board of Trustee's appearance to the public as a body that conducts its work with disinterested skill and undivided loyalty. The committee shall include its determination on this issue in the report to the Supreme Court required under (b)(1) of this rule.

*(Subd (b) amended effective December 1, 2023.)*

*Rule 9.90 amended effective December 1, 2023; adopted effective January 23, 2013; previously amended effective January 1, 2019.*