SUPREME COURT
FILED
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Jorge Navarrete Clerk
Deputy

S274869

ADMINISTRATIVE ORDER 2022-06-15

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

AMENDMENTS TO RULE 9.11 OF THE CALIFORNIA RULES OF COURT

On May 31, 2022, the court received a request by the State Bar of California to amend rule 9.11 of the California Rules of Court.

The court hereby amends rule 9.11 of the California Rules of Court, as set forth in the Attachment. These amendments are effective July 1, 2022.

It is so ordered.

CANTIL-SAKAUYE
Chief Justice

CORRIGAN
Associate Justice

LIU
Associate Justice

KRUGER
Associate Justice

GROBAN
Associate Justice

JENKINS
Associate Justice

GUERRERO
Associate Justice

ATTACHMENT

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 ~~must~~ may be licensees of the State Bar in good standing, two must be retired or active judicial officers, and no more than three ~~one must~~ may be ~~a~~ public members who ~~has~~ have never been 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 ~~(neither of whom may be from the Board's Discipline Committee)~~.

(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) Evaluation and rating of applicants; and

(E) 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 ~~three qualified~~ candidates for each vacancy. Candidates shall be rated as "not recommended," "recommended," ~~and~~ 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) 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.