JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Commission for Impartial Courts
Hon. Ming W. Chin, Chair
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DATE: December 15, 2009

SUBJECT: Commission for Impartial Courts: Final Report (Action Required)

Issue Statement

In September 2007, Chief Justice Ronald M. George established the Commission for Impartial Courts and appointed Supreme Court Associate Justice Ming W. Chin as its chair. The commission was charged with studying and providing recommendations to the Judicial Council on ways to strengthen our court system, increase public trust and confidence in the judiciary, and ensure judicial impartiality and accountability for the benefit of all Californians. This report contains the commission's recommendations for promoting ethical and professional conduct by judicial candidates; better regulating campaign financing practices; expanding public information and education about the judiciary, both during judicial election campaigns and otherwise; and improving the methods and procedures of selecting and retaining judges.

Recommendation

The Commission for Impartial Courts recommends that the Judicial Council, effective immediately:

1. Receive and accept the final report of the Commission for Impartial Courts;

2. Direct the Administrative Director of the Courts to provide for consideration at the February 2010 Judicial Council business meeting an implementation plan for the recommendations as approved by the Judicial Council and a prioritization of those recommendations; and

3. Direct the Administrative Director of the Courts to report to the council by December 2010 on the implementation of these recommendations.

Rationale for Recommendations

The formation of the Commission for Impartial Courts followed up on the work of the 2006 statewide Summit of Judicial Leaders sponsored by the Judicial Council in the wake of threats against the independence of state judiciaries across the country. In many states, courts increasingly had come under attack from partisan and special interests seeking to influence judicial decisionmaking, and judicial elections were becoming more like elections for political office: expensive, negative, and overly politicized. These kinds of national developments could not be ignored—the question was not *if* these trends would spread to California, but *when.* The commission's creation reflected widespread concern that unless strong leadership in addressing the challenges to nonpartisan and impartial judiciaries was quickly exercised, the very legitimacy of California's court system could be in jeopardy.

The 88-member commission was composed of a steering committee that oversaw and coordinated the work of four task forces, each of which was given a charge pertaining to one of the primary areas of interest. Each task force was assigned a consultant with expertise in the area of its charge and engaged in a comprehensive investigation of the key issues affecting its subject matter.

The Task Force on Judicial Candidate Campaign Conduct, chaired by Associate Justice Douglas P. Miller of the Court of Appeal, Fourth Appellate District, was charged with making recommendations regarding proposals to promote ethical and professional conduct by candidates for judicial office. The guiding principle of this task force was that judicial quality and impartiality require that judges and judicial candidates be held accountable to the very highest ethical and professional standards in connection with their campaign conduct.

Judge William A. MacLaughlin of the Superior Court of Los Angeles County chaired the Task Force on Judicial Campaign Finance. This task force was charged with making recommendations on proposals to better regulate contributions to, financing of, or spending by candidates on campaigns for judicial office or to improve or better regulate judicial campaign advertising. A major consideration of the task force was the growing influence of money in judicial elections as polling data reflected that the public and also a significant number of judicial officers perceived that campaign contributions in judicial elections have an effect on judicial decisionmaking.

Administrative Presiding Justice Judith D. McConnell of the Court of Appeal, Fourth Appellate District, chaired the Task Force on Public Information and Education, which was charged with making recommendations regarding proposals to improve public information and education concerning the judiciary. This task force focused its goals on building the public's trust and confidence in a fair and impartial court system by encouraging the judicial branch to take a leadership role in advancing quality civics education, improving candidate information available to voters, increasing transparency on the part of judges and other court officials, and strengthening judicial accountability.

The Task Force on Judicial Selection and Retention, chaired by Associate Justice Ronald B. Robie of the Court of Appeal, Third Appellate District, was charged with making recommendations regarding proposals to improve the methods and procedures of selecting and retaining judicial officers. The recommendations of this task force were guided by the convictions that judicial impartiality and accountability require a transparent judicial selection and retention process and that voters in judicial elections must have sufficient information about the qualifications of candidates in order to make informed decisions.

Commission membership reflected the variety of constituencies interested in preserving and enhancing our system of impartial justice: appellate justices; trial court judges and executive officers; former members of the California Legislature; attorneys and leaders of the bar; members of the business community; and representatives of educational institutions, the media, and civic groups. During their terms, the steering committee and four task forces held approximately 25 meetings, two joint plenary sessions involving the entire commission membership, and one public forum.

The Commission for Impartial Courts studied practices in jurisdictions within and outside the state and ultimately developed a total of 71 recommendations designed to elevate standards of judicial candidate campaign conduct, tighten judicial finance regulations, improve our methods of judicial selection and retention, and increase transparency and better educate the public about the judicial branch. The final recommendations being presented to the Judicial Council can be found in the final report in Attachment A.

Alternative Actions Considered

Each recommendation was the result of much study and discussion by a task force and then the steering committee. In the report text, many of the recommendations are followed by a summary of this discussion in order to provide a better understanding of the development process and all the different alternatives that were eventually considered.

The recommendations include items that will necessitate further study and review; changes in legislation, statute, or the Code of Judicial Ethics; and preparation of educational and training materials for the courts, the judiciary, and the public. Many of the recommendations may require additional funding. Some will perhaps necessitate a substantial change in the culture and practice of our courts and justice partners. The commission did not want these factors to dictate whether a recommendation would be forwarded to the Judicial Council. Its overriding goal was to make recommendations for the best possible system that would result in strengthened judicial impartiality and accountability and increased public trust and confidence in the state's judiciary.

Comments From Interested Parties

In order to provide members of the California judiciary and other stakeholders the opportunity to learn about the work of the Commission for Impartial Courts first-hand, the commission chairs spoke individually and as a group, when possible, with more than 20 judicial and civic organizations, such as the California League of Women Voters and the AOC Education Division/Center for Judicial Education and Research institutes. They also participated in many panel discussions sponsored by groups such as the California Judges Association, the State Bar of California, and the University of the Pacific. These interactions provided the commission with an excellent way to obtain public input and immediate feedback on its goals and potential recommendations.

In July 2008, the steering committee held a public forum in Sacramento with the goal of exploring the political pressures that threaten the fairness and impartiality of the judicial branch. Commentary and recommendations were sought from prominent government, justice system, academic, and civic leaders. Some of the specific topics addressed included increased spending and negative campaigning in judicial races; the need for judicial independence and public trust in our judiciary; and the rule of law by which judges decide cases with regard to law but without regard to personal belief, voter views, and financial support and without fear of reprisals for making unpopular decisions. The speakers' comments were considered by the commission in formulating its recommendations.

Finally, the commission developed draft recommendations, which were sent out for public comment from March 23 through July10, 2009. Several members of the public also provided commentary at the August 10, 2009, meeting of the steering committee. The number of comments received from 119 persons and entities totaled 413. The steering committee reviewed each submission and responded to all comments that were specific to the recommendations. In many cases, the recommendations were revised to reflect the commentators' concerns or suggestions; some were withdrawn; and one new recommendation (number 38)

was developed. A chart summarizing the comments and responses follows this report (see Attachment C).

Implementation Requirements and Costs

Implementation requirements and costs will need to be provided once specific proposals are developed to carry out the recommendations. Some, such as a change in a statute, would have minimal implementation requirements and costs; others might require additional funding.

Attachments

A. *Commission for Impartial Courts: Final Report*
B. Recommendations Conversion Chart
C. Chart of Comments

Attachment A

Commission for Impartial Courts: Final Report

RECOMMENDATIONS FOR SAFEGUARDING JUDICIAL QUALITY, IMPARTIALITY, AND ACCOUNTABILITY IN CALIFORNIA

DECEMBER 2009

JUDICIAL COUNCIL OF CALIFORNIA

COMMISSION FOR IMPARTIAL COURTS

Commission for Impartial Courts: Final Report

Recommendations for Safeguarding Judicial Quality, Impartiality, and Accountability in California

December 2009

JUDICIAL COUNCIL OF CALIFORNIA

COMMISSION FOR IMPARTIAL COURTS

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Executive Summary

The Commission for Impartial Courts was formed by Ronald M. George, Chief Justice of California and Chair of the Judicial Council, in September 2007. The commission's overall charge was to study and recommend ways to ensure judicial quality, impartiality, and accountability for the benefit of all Californians. The commission's membership included not only appellate justices and trial court judges but also court executive officers; prominent former members of the Legislature; and leaders of the bar, media, law schools, business community, educational institutions, and civic groups.

Problem Statement

California's courts have long been recognized as among the finest in the country. Under the leadership of Chief Justice George, the California judiciary has implemented a number of far-reaching improvements over the past several years. During that time, there have been few threats to the impartiality of California's judiciary. This is not the case elsewhere, however. As has been widely reported in the press, many states have seen a rise in attacks on courts and judges by partisan and special interests seeking to influence judicial decisionmaking. Likewise, in many states, judicial elections have increasingly taken on the qualities of elections for other political offices in that they are becoming more expensive, negative, and politicized.

At a two-day summit convened by the Judicial Council in November 2006, California's judicial leaders concluded that unless the Judicial Council took decisive action, the trends seen in other states would inevitably spread to California. Summit participants identified four basic approaches to preserving the impartiality of and the public's confidence in California's judiciary: (1) changes to improve judicial candidate campaign conduct, (2) changes to improve the financing of judicial campaigns, (3) activities to improve voter information about judicial candidates and public understanding of the role of the courts and the nature of judicial decisionmaking, and (4) modification of the current method of judicial selection and retention. Chief Justice George thereafter established the 88-member commission—divided into a steering committee and four separate task forces—to study and report on each of the approaches the summit identified.

The commission's overall goal was to identify the specific problems that are either currently facing California or that could arise here in connection with the four substantive areas listed above and then to make recommendations to the Judicial Council to allow it to exercise leadership effectively in addressing California's need for a nonpartisan and impartial judiciary. The work of the commission focused on furtherance of the public good and finding solutions that serve the long-term and common interests of all Californians.

Judicial Accountability

Among the commission's principal objectives, the concepts of judicial quality and judicial impartiality may be better understood by the general public than the concept of judicial accountability. Thus, accountability warrants further preliminary discussion before turning to the particulars of the commission's recommendations.

Under the rule of law, all governmental power and authority, including the judicial power, is derived from the will of the people as expressed in the laws and constitutions of our nation. The courts hold others accountable to the laws and constitutions and are themselves accountable to those same authorities. The roles and decisionmaking processes of judges differ, however, from the roles and decisionmaking processes of other governmental officials, and, as a consequence, the mechanisms through which judges are held accountable for their conduct and decisions differ from the mechanisms through which other governmental officials are held accountable. The constitutional duties of a judge sometimes require the judge to make decisions that go against the will of other governmental officials, special interests, or even a majority of the people. Judges are to be guided in their decisions solely by the law and constitution—not by any partisan or political considerations—and must be free from any undue influence from special interests or public opinion.

Because judges' decisions are to be based solely on the law, those decisions are not subject to review by other branches of government based on popular or political considerations. Rather, they are subject to review solely by other judges, learned in the law and legal procedure, who serve on higher courts as established by the laws and constitutions. This does not mean, of course, that judicial decisions are not an appropriate subject of public comment, debate, and criticism or that decisions cannot be changed through legal processes. To the contrary, they certainly should be debated and can be changed. But it does mean that in deciding cases judges are accountable to the current laws and constitutions, not to political or special interests or public opinion as it exists at the moment. Attempts to use judicial elections to hold judges accountable to political or special interests—rather than to the law and constitutions—for their judicial decisions threaten the impartiality of our courts.[1]

There are two other aspects of judicial accountability. Given the unique and critical role of the judiciary, it is imperative that judges serve with the utmost integrity and that, in both fact and appearance, their personal conduct conforms to the highest ethical and professional standards. The conduct of judges—as opposed to the substance of their

[1] Of course, judges can properly be held accountable through the judicial election process for their conduct on or off the bench, including, for example, their integrity, demeanor, fairness, communication skills, temperament, professionalism, community involvement, and the manner in which they handle their many administrative responsibilities as a judge.

judicial decisions—is therefore regulated by some of the toughest ethical rules in the world and, in California, by a special constitutional body established to hear and rule on public complaints of judicial misconduct. The California Code of Judicial Ethics covers judges' conduct both on and off the bench and is enforced by the California Commission on Judicial Performance (CJP), a majority of whose 11 members are neither judges nor lawyers but lay members of the public. On a finding of misconduct, the CJP has the authority and responsibility to impose discipline, up to and including removal from office.

The third aspect of judicial accountability refers not to the decisions or conduct of an individual judge but to the overall performance of a court or the judicial branch as an institution with respect to issues of administration and management. Such issues include the treatment of court users with courtesy and respect, the timely and expeditious handling of cases, the provision of helpful information and effective services, continuing judicial education, resource acquisition and management, personnel policies, accessibility, facility safety and convenience, and the handling of court records. The California judicial branch is publicly accountable for its administrative performance through such mechanisms as transparency, media coverage, the budget process, adoption of performance standards and measures, and regular reporting to the public and to other branches of government. Although this report contains several recommendations designed to enhance this aspect of judicial accountability (see, e.g., recommendation 48), generally the report and recommendations focus on the first two aspects of judicial accountability in the context of judicial election campaigns.

Structure of the Commission

The commission was composed of a steering committee and four task forces:[2] Judicial Candidate Campaign Conduct, Judicial Campaign Finance, Public Information and Education, and Judicial Selection and Retention. The membership of the steering committee and the task forces is detailed in Appendixes A–E.

Steering committee

The steering committee was chaired by Associate Justice Ming W. Chin of the California Supreme Court and was charged with overseeing and coordinating the work of the commission's four task forces, receiving periodic task force reports and recommendations, and presenting its recommendations in a report to the Judicial Council.[3]

[2] Task force chairs also served as members of the steering committee.
[3] The charges to the steering committee and the four task forces are attached as Appendix F to this report.

Task forces and working groups

Each task force was given a charge pertaining to one of the commission's primary focus areas. The task forces in turn divided into a number of working groups to address specific subject matter areas.

Task Force on Judicial Candidate Campaign Conduct

This task force, chaired by Associate Justice Douglas P. Miller of the Court of Appeal, Fourth Appellate District, was charged with evaluating and making periodic reports and final recommendations to the steering committee regarding proposals to promote ethical and professional conduct by candidates for judicial office, including through statutory change, promulgation or modification of canons of judicial ethics, improving mechanisms for the enforcement of the canons, and promotion of mechanisms that encourage voluntary compliance with ethics provisions by candidates for judicial office.[4] The task force broke into two working groups, charged with (1) considering whether the task force should recommend that the Supreme Court amend the California Code of Judicial Ethics[5] or that the judicial branch should seek changes to the disqualification provisions in the Code of Civil Procedure in response to *Republican Party of Minnesota v. White*[6] and its progeny and (2) addressing the types of campaign conduct that are permissible and desirable.

Task Force on Judicial Campaign Finance

This task force, chaired by Judge William A. MacLaughlin of the Superior Court of Los Angeles County, was charged with evaluating and making periodic reports and final recommendations to the steering committee regarding any proposals to better regulate contributions to, financing of, or spending by candidates on campaigns for judicial office or to improve or better regulate judicial campaign advertising, including through enhanced disclosure requirements.[7] The task force broke into two working groups, responsible for proposals to (1) better regulate contributions to, financing of, or spending by candidates on campaigns for judicial office and (2) improve or better regulate judicial campaign advertising and financial reporting, including through enhanced disclosure requirements. The issue of public financing was not specific to either working group and was considered by the task force as a whole.

Task Force on Public Information and Education

This task force, chaired by Administrative Presiding Justice Judith D. McConnell of the Court of Appeal, Fourth Appellate District, was charged with evaluating and making periodic reports and final recommendations to the steering committee regarding any proposals to improve public information and education concerning the judiciary—both

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[4] See Appendix F.

[5] The Code of Judicial Ethics is alternatively referred to as "the code" throughout this report.

[6] *White* (2002) 536 U.S. 765. (See Appendix G for background analysis.)

[7] See Appendix F.

during judicial election campaigns and otherwise. Such proposals could include methods to improve voter access to accurate and unbiased information about the qualifications of judicial candidates and to improve public understanding of the role and decisionmaking processes of the judiciary.[8] The task force broke into four working groups, which focused on (1) public outreach and response to criticism, (2) education, (3) voter education, and (4) accountability.

Task Force on Judicial Selection and Retention

This task force, chaired by Associate Justice Ronald B. Robie of the Court of Appeal, Third Appellate District, was charged with evaluating and making periodic reports and final recommendations to the steering committee regarding any proposals (1) to improve the methods and procedures of selecting and retaining judges and (2) regarding the terms of judicial office and timing of judicial elections.[9] The task force broke into two working groups on (1) judicial selection and (2) judicial retention.

Consultants

Each task force was assigned a consultant with expertise within the area of the task force's charge.

Charles Gardner Geyh, a national expert on judicial independence, accountability, administration, and ethics, served as consultant to the Task Force on Judicial Candidate Campaign Conduct. Mr. Geyh has been a professor at Indiana University Maurer School of Law since 1998. He is the author of *When Courts and Congress Collide: The Struggle for Control of America's Judicial System* (University of Michigan Press, 2006) and co-author of *Judicial Conduct and Ethics* (4th ed., Lexis Law Publishing, 2007) with James J. Alfini, Steven Lubet, and Jeffrey Shaman. In addition, Mr. Geyh was co-reporter to the American Bar Association (ABA) Joint Commission to Evaluate the Model Code of Judicial Conduct.

Deborah Goldberg served as consultant to the Task Force on Judicial Campaign Finance. Ms. Goldberg was formerly the director of the Democracy Program at the Brennan Center for Justice, a nonpartisan public policy and law institute that is a part of the New York University School of Law, and currently serves as a managing attorney with Earthjustice, a nonprofit public interest law firm dedicated to environmental issues. Ms. Goldberg is the principal author and editor of *Writing Reform: A Guide to Drafting State & Local Campaign Finance Laws* and a co-author of three editions of *The New Politics of Judicial Elections* (covering election cycles 2000, 2002, and 2004). She is a graduate of Harvard Law School and served as law clerk to Justice Stephen G. Breyer, then on the United States Court of Appeals for the First Circuit, and to Judge Constance Baker Motley, United States District Court for the Southern District of New York.

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[8] *Ibid.*
[9] *Ibid.*

Bert Brandenburg served as consultant to the Task Force on Public Information and Education. Mr. Brandenburg is the executive director of the Justice at Stake Campaign, a national partnership working to keep courts fair, impartial, and independent. He serves on the board of directors of the National Institute on Money in State Politics and on the National Ad Hoc Advisory Committee on Judicial Campaign Conduct.

Seth S. Andersen served as consultant to the Task Force on Judicial Selection and Retention. Mr. Andersen is the executive vice-president of the American Judicature Society (AJS). Founded in 1913, AJS is a national, nonpartisan organization of judges, lawyers, and members of the public who work to maintain the independence and integrity of the courts and to increase public understanding of the judiciary. Among its primary areas of focus are judicial independence and judicial selection. Mr. Andersen was assisted by Malia Reddick, Ph.D., director of research and programs at AJS.

Public Forum

The commission held a public forum in Sacramento on July 14, 2008. It was attended by more than 150 members of the public and the media and had the goal of exploring the political pressures that threaten the fairness and impartiality of the judicial branch. The commission sought commentary and recommendations from the following prominent government, justice system, academic, and civic leaders:

- Hon. Gray Davis, former Governor of California;
- Hon. Pete Wilson, former Governor of California;
- Hon. Don Perata, former President pro Tempore of the California Senate;
- Hon. Thomas J. Moyer, Chief Justice of Ohio;
- Hon. Ira R. Kaufman, then-President, California Judges Association;
- Mr. Jeffrey L. Bleich, then-President, State Bar of California;
- Professor Kathleen M. Sullivan, Stanford Law School;
- Professor Laurie L. Levenson, Loyola Law School, Los Angeles;
- Mr. Manny Medrano, Reporter/Anchor, KTLA News, Los Angeles; and
- Ms. Mary G. Wilson, President, League of Women Voters of the United States.

Chief Justice Moyer, chair of the Conference of Chief Justices' Task Force on Politics and Judicial Selection, spoke about spending on judicial races and the increase in negative campaigning during the past decade in Ohio and other states across the country.

Former California Governors Pete Wilson and Gray Davis both stressed the need for judicial independence and public trust in our judiciary. Governor Wilson was particularly concerned with the abuse of political questionnaires. Governor Davis suggested that more information about all candidates for trial court judicial elections should be available to voters.

Legal scholars Laurie Levenson and Kathleen Sullivan both spoke about the principles of judicial independence and impartiality and about the rule of law by which judges decide cases with regard to law but without regard to personal belief, voter views, and financial support and without fear of reprisals for making unpopular decisions.

The steering committee and task forces reviewed and considered the recommendations made by the above speakers. Where appropriate, those recommendations have informed the recommendations of the task forces.

Public Comment on the Draft Report

The commission developed draft recommendations, which were sent out for public comment from March 23 through July 10, 2009. In all, 413 comments were received from 119 persons and entities. The steering committee reconvened on August 10 and 11, 2009, to discuss the comments and to hear additional, in-person comments from members of the public. The steering committee reviewed each submission and responded to all comments that were specific to the recommendations in the draft report.[10] In many cases, the recommendations were thereafter revised to address concerns or suggestions raised by those who commented. Some recommendations were withdrawn, and one new recommendation (number 38) was developed.

Commission Findings

Informed by the underlying concepts of judicial impartiality, quality, and accountability, the commission made a number of findings, which are presented below and grouped by general subject matter. These findings, which resulted from the work of the commission's four task forces, all lend support to the commission's recommendations.

Findings related to judicial candidate campaign conduct

In arriving at its recommendations concerning judicial candidate campaign conduct, the commission was guided by the following findings:

- Judicial quality and impartiality require that judges and judicial candidates be held accountable to the very highest ethical and professional standards in connection with their campaign conduct.
- Although *White* has raised concerns about the validity of any provision regulating judicial campaign speech and courts in other jurisdictions have taken various views on the scope of *White*, that decision should be interpreted so as not to prohibit restrictions on judicial campaign speech other than the "announce clause."
- One of the greatest threats to judicial independence comes from third-party interest groups making significant campaign contributions and engaging in other

[10] A chart summarizing the comments and responses follows this report (see Attachment C).

campaign-related activity, and many states have responded by creating judicial campaign oversight committees to monitor conduct by these third-party groups and to address misconduct by candidates.

- Judicial candidates should be educated about the differences between judicial elections and elections to political office and about ethical campaign conduct.
- Although judges are prohibited by canon 3B(9) of the Code of Judicial Ethics from publicly commenting on pending cases, this prohibition does not apply to attorney candidates.
- Judicial questionnaires propounded by special interest groups are often designed to elicit "commitments" from candidates on controversial issues; candidates who respond to these questionnaires risk violating canon 5B(1) of the code, which prohibits making statements to the electorate "that commit the candidate with respect to cases, controversies, or issues that could come before the court, . . ." and may be required to recuse themselves from cases in the future that involve those issues.
- The use of slate mailers and endorsements in judicial elections raises several issues related to judicial ethics, including the appearance that a judge is endorsing other candidates or measures listed on the slate mailer in violation of canon 5.
- Misrepresentations by judges or attorney candidates in speeches, advertisements, or mailers can affect public trust and confidence in the judiciary.

Findings related to judicial campaign finance

There have been increasing concerns throughout the country about the impact of money—whether in the form of campaign contributions or independent expenditures—in the elections of public officials. And there has been particular concern both within and from outside the judiciary about the impact of money in judicial elections, given the unique role of the judiciary in our structure of government. The public expects and is entitled to impartiality in judicial decisions and, as a result, the more influence that moneyed interests have or appear to have on judicial candidates, the more harm is done to the public's trust and confidence that judicial decisions are based on the rule of law as opposed to other considerations.

In response to these concerns, the commission has considered and recommended changes that could reasonably be made to reduce the potential influence of money on judicial decisionmaking and to improve the public's confidence in the impartiality of that process. Those recommendations were guided by the following findings:

- Judicial quality and impartiality require that judicial candidates, campaigns, campaign contributors, and others seeking to influence the outcome of judicial elections be publicly accountable for their respective campaign finance activities.
- There has been a significant increase in the amount of campaign contributions and independent expenditures in judicial elections in other states during the past

decade, nearly all of which have occurred in contested supreme court elections.[11]

- Polling data reflect that the public and a significant number of judicial officers perceive that campaign contributions in judicial elections have an effect on judicial decisionmaking.[12]
- Recently, high levels of judicial campaign spending and independent expenditures have occurred in states with contested supreme court elections, but not in states with retention elections.[13]
- The most effective method of promoting the public's trust and confidence in the impartiality of the judiciary is to adopt requirements for effective disclosure of contributions and mandatory disqualification at both the trial and appellate levels.
- California's current statutory and regulatory requirements regarding (1) what information must be disclosed pertaining to contributions and expenditures and (2) the timing of such disclosures are among the most comprehensive in the nation.
- Although disclosures pertaining to judicial candidates' contributions and to expenditures and independent expenditures are public information, it can be difficult or impracticable for the public to access that information.
- The use of treasury funds by corporations and unions for direct political contributions or independent expenditures in judicial elections may undermine the public's trust and confidence in the impartiality of the judiciary.
- There is currently no demonstrated need for public financing of judicial elections in California.

Findings related to public information and education

In reaching its recommendations about public information and education, the commission was guided by the following findings:

- Judicial quality, impartiality, and accountability require transparency on the part of judges and other court officials, mechanisms for public evaluation of judicial and court performance, and that the public have the information and civics education required to make informed decisions on matters affecting the judiciary.

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[11] See James Sample, Lauren Jones, and Rachel Weiss, *The New Politics of Judicial Elections 2006* (Justice at Stake Campaign, 2007), available at *www.brennancenter.org/content/resource/the_new_politics _of_judicial_elections_2006*. See also Bert Brandenburg and Roy A. Schotland, *Sandra Day O'Connor Project on the State of the Judiciary: Justice in Peril: The Endangered Balance Between Impartial Courts and Judicial Election Campaigns* (2008) 21 Geo. J. Legal Ethics 1229; Rachel Weiss, *Fringe Tactics: Special Interest Groups Target Judicial Races* (The Institute on Money in State Politics, Aug. 25, 2005), available at *www.followthemoney.org/press/Reports/200508251.pdf*.

[12] Memorandum from Stan Greenberg (chairman and chief executive officer, Greenberg Quinlan Rosner Research) and Linda A. DiVall (president, American Viewpoint) to Executive Director Geri Palast, Justice at Stake Campaign (Feb. 14, 2002), available at *www.gavelgrab.org/wp-content/resources/polls /PollingsummaryFINAL.pdf.*

[13] See Sample, Jones, and Weiss, *The New Politics of Judicial Elections 2006*, *supra*, at pp. 59–60.

- In California, the public, legislators, students, and voters are not sufficiently educated about the role of the courts and the importance of judicial impartiality.
- There is an urgent, immediate, and long-term need to inform and educate the public—particularly students, voters, and the media—about the importance of fair, impartial, and accountable courts.
- Lack of information and misinformation about the role of the courts in a democracy makes the judiciary and judicial institutions more vulnerable to unwarranted attacks.
- Efforts to educate the public should involve not only the provision of information and outreach to the public, but also the solicitation of feedback from the public about issues such as judicial performance, satisfaction with the courts, and the like.
- Civics instruction in the schools has been dramatically limited during the past decades, and while positive efforts have been made in court-community outreach and educational programs, more is needed.
- No consistent response mechanism is in place to deal with unwarranted attacks on the judicial process.

Findings related to judicial selection and retention

In recent years, many states have seen a dramatic increase in threats to both the impartiality of and the public's confidence and trust in state judiciaries. A number of these threats pertain in some way to issues involving the selection and retention of judges, especially the increased politicization and partisanship in judicial selection and the perceived lack of appropriate accountability by some judges to the public they serve.

While California has been fortunate so far in the overall nonpartisan, nonpolitical nature of judicial elections, there seems to be general agreement that the state is not immune to these issues, which could arise at any time. An improved selection process that highlights the importance of merit and seeks to improve the diverse nature of the bench will certainly increase public trust and confidence in the judiciary, as will increasing appropriate accountability of the bench. Finally, removing aspects of the system that might encourage partisanship will reduce the likelihood of a highly politicized judiciary.

Under the present system of judicial selection in California, the State Bar's Commission on Judicial Nominees Evaluation (JNE) evaluates and reports to the Governor on every person before appointment as a trial court judge or an appellate court justice.[14] The California system functions largely in the same manner as the merit selection systems in some other states. The primary difference between California's system and the traditional merit selection system is that in the traditional system the commission screens all applicants for the position and forwards the names of the best qualified to the Governor.

[14] Gov. Code, § 12011.5.

Subject to the above, the commission's recommendations concerning judicial selection and retention are founded on the following findings:

- Judicial quality, impartiality, and accountability require that judicial selection and retention processes be transparent and that voters in judicial elections have sufficient information about the qualifications of the candidates to make informed decisions.
- California's JNE system works well and is partially responsible for the high quality of judicial appointments in California.
- Voters in contested and open elections are often not well informed about judicial candidates. Public opinion surveys and social science research support this finding. According to a 2001 national survey, only 22 percent of Americans know "a great deal" about what their state courts and judges do.[15] Another indicator of the low level of knowledge that voters have about judicial candidates is ballot roll-off, or the percentage of the electorate that casts votes for the major offices on the ballot but does not vote in judicial races. Between 1980 and 2000, the average roll-off in state supreme court elections was 25.6 percent, with the highest levels of roll-off for nonpartisan and retention elections.[16]
- Based on detailed consideration of state-sponsored judicial evaluation programs in other states, mandatory, public judicial evaluation programs are uniquely suited to trial courts that hold retention elections and are not suitable in states like California, in which trial court elections are contested.[17]
- A voluntary, non-governmental program of judicial candidate evaluation would, however, provide voters with valuable information in contested elections.
- California's present system of elections for superior court judges and appellate court justices is working appropriately, although certain specific changes could improve the system.

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[15] Justice at Stake Campaign and Greenberg Quinlan Rosner Research, National Survey of Voters (Oct. 30–Nov. 7, 2001), available at *www.gavelgrab.org/wp-content/resources/polls/JASNationalSurveyResults.pdf.* This national figure coincides with results from two recent state polls. According to a 2008 survey by Decision Resources, Ltd., only 5 percent of Minnesotans know "a lot" about the state's court system; according to a 2007 survey by Public Opinion Strategies, only 12 percent of Missourians know "a great deal" about the state's courts and judges.

[16] See Melinda Gann Hall, "Voting in State Supreme Court Elections: Competition and Context as Democratic Incentives" (2007) 69 *Journal of Politics* 1147.

[17] See Rebecca Love Kourlis and Jordan M. Singer, *Using Judicial Performance Evaluations to Promote Accountability* (2007) 90 Judicature 200. As shown in the table on page 204 of that publication, of those states with official judicial performance evaluation (JPE) programs, only those states with retention elections make public the evaluation results for individual judges. Two states in which judges are appointed (Hawaii and New Hampshire) release summary reports for their courts.

Recommendations

The four task forces met individually during a period of 16 months. They each worked with consultants and formed working groups to study the primary focus areas of their charges. Preliminary recommendations were developed and presented to the steering committee at a joint business meeting in February 2009. Those recommendations were sent out for public comment in March 2009 and were revisited by the steering committee in August 2009, following the close of the public comment period. Based on the work of the task forces and the comments received and considered, the steering committee withdrew some recommendations, made changes to others, and consolidated many so that now 71 recommendations are being presented by the commission to the Judicial Council.

Judicial Candidate Campaign Conduct

Amendments to the Code of Judicial Ethics in the Wake of *Republican Party of Minnesota v. White*[18]

As discussed at length in Appendix G, California does not have an announce clause; rather, canon 5B of the Code of Judicial Ethics contains the commit clause, which provides that a judicial candidate must not "make statements to the electorate or the appointing authority that commit the candidate with respect to cases, controversies, or issues that could come before the courts . . . ." The *White* case did not address either the commit clause or the pledges and promises clause.

The commission believes that the California Supreme Court reacted reasonably and conservatively to *White* when it amended the Code of Judicial Ethics in 2003. The court amended canon 5B only to delete the phrase "appear to commit" from the commit clause. Before that amendment, the canon prohibited candidates from making statements that "commit or appear to commit the candidate with respect to cases, controversies, or issues that could come before the courts." But while the commission does not believe that any other changes to the canons are mandated by *White*, it recommends that a number of suggestions be made to the Supreme Court.[19]

Recommendation 1

The Code of Judicial Ethics should be amended to include the American Bar Association Model Code of Judicial Conduct definition of "impartiality."

[18] A detailed analysis of the *White* decision was prepared by the Task Force on Judicial Candidate Campaign Conduct and is attached to this report as Appendix G.

[19] The commission is aware that any changes to the Code of Judicial Ethics must be adopted by the Supreme Court, which typically refers proposed amendments to its Advisory Committee on the Code of Judicial Ethics.

Discussion: The California code does not contain a definition of "impartiality," although the term is used frequently in the canons and commentary. In contrast, the ABA model code includes the following definition of "impartiality," which was added in response to *White:*

> "Impartial," "impartiality," and "impartially" mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.

The commission agrees that the model code's definition of "impartiality" should be incorporated into the Code of Judicial Ethics. Reasons for adopting the model code definition are that (1) the definition tracks the language in the *White* decision by couching itself in terms of an absence of bias or prejudice toward parties and maintaining an open mind on issues, (2) it would be beneficial to have a uniform definition nationwide, and (3) there appears to be no good reason to diverge from the model code definition.

Recommendation 2
The commentary to canon 4B of the Code of Judicial Ethics should be amended to encourage judges to educate the public on the importance of an impartial judiciary.

Recommendation 3
The commentary to canon 5B of the Code of Judicial Ethics should be amended to encourage judicial candidates to discuss their qualifications for office and the importance of judicial impartiality.

Discussion of recommendations 2–3: California's Code of Judicial Ethics generally does not use hortatory language. The model code and some state codes, however, expressly encourage certain judicial conduct. For example, comment 2 to rule 2.1 of the model code provides: "Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system." Canon 4 of the Florida Code of Judicial Conduct states: "A judge is encouraged to engage in activities to improve the law, the legal system, and the administration of justice."

Although the Code of Judicial Ethics does not contain hortatory language, standard 10.5 of the California Standards of Judicial Administration encourages judges to participate in community outreach efforts and to serve as guest speakers in the community to educate others about the court system.[20]

[20] Standard 10.5(a) states: "Judicial participation in community outreach activities should be considered an official judicial function to promote public understanding of and confidence in the administration of justice." Standard 10.5(b) provides: "The judiciary is encouraged to . . . (2) Develop local education

The commission considered whether hortatory provisions should be added to the Code of Judicial Ethics that would encourage judges to take an active role in educating the community on the meaning of an impartial judiciary.

After initially considering amending the commentary to canon 2A,[21] the commission decided to recommend that the commentary to canon 4B[22] of the Code of Judicial Ethics be amended by adding the following language:

> Public confidence in the judiciary depends, in part, on the public's understanding of the judicial role. A judge is encouraged to educate the public on the meaning and importance of an impartial judiciary.

The commission also considered whether the commentary to canon 4B should be amended to expressly "encourage" judges "to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law." Ultimately this proposal was not pursued because it could be interpreted as encouraging judges to advocate for changes in the law.

The commission agreed that the commentary to canon 5B of the Code of Judicial Ethics, which addresses conduct during judicial campaigns, should be amended by adding the following language:

> When making statements to the electorate, judges and candidates are encouraged to discuss their own qualifications for office and the meaning and importance of judicial impartiality.

It is recommended that the phrase "their own" in the proposed amendment be included to encourage candidates to discuss why they are qualified for office rather than why their opponents are not qualified. Candidates would not be prohibited from talking about their opponents, but under canon 5B(2), a candidate may not "knowingly, or with reckless disregard for the truth, misrepresent the identity, qualifications, present position, or any other fact concerning the candidate or his or her opponent."

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programs for the public designed to increase public understanding of the court system; . . . (4) Serve as guest speakers, during or after normal court hours, to address local civic, educational, business, and charitable groups that have an interest in understanding the court system but do not espouse a particular political agenda with which it would be inappropriate for a judicial officer to be associated . . . ."

[21] Canon 2A states: "A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

[22] Canon 4B states: "A judge may speak, write, lecture, teach, and participate in activities concerning legal and nonlegal subject matters, subject to the requirements of this Code."

Recommendation 4
Canon 5 of the Code of Judicial Ethics should be reexamined for consistency in its use of the terms "judge" and "candidate."

Discussion: The commission recommends that the Supreme Court Advisory Committee on the Code of Judicial Ethics reexamine canon 5 for consistency in its use of the terms "judge" and "candidate." For example, although canon 5A addresses conduct by "[j]udges and candidates for judicial office," the advisory committee commentary following the canon discusses only conduct by judges.

Recommendation 5
The Code of Judicial Ethics should be amended by adding a new canon 3E(2), providing that a judge is disqualified if he or she, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that a person aware of the facts might reasonably believe commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

Discussion: In response to *White*, the ABA in 2003 added the following disqualification provision to the model code, now codified as rule 2.11(A)(5), under which a judge is disqualified if

> [t]he judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

The commission agreed that California should adopt a similar provision, but with two distinctions. First, the commission would include an objective standard in the provision. To avoid confusion, the language should track as closely as possible the objective disqualification language of Code of Civil Procedure section 170.1(a)(6)(A)(iii).[23] Second, although the model code provision includes the phrase "appears to commit," the commission determined that adding a reasonableness standard to cover implied commitments is a better approach and is consistent with the Code of Judicial Ethics and the Code of Civil Procedure. Many members also felt that the "appears to commit" phrase is vague and subject to constitutional attack. Finally, the commission noted that adding a disqualification provision for commitment statements would provide judges with an express and sound basis to explain to the electorate that if they announce their views on certain issues, they may later be disqualified from hearing cases involving those issues. The commission thus recommends adoption of the following language:

[23] Code Civ. Proc., § 170.1(a)(6)(A)(iii) provides that a judge is disqualified if "[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial."

> A judge is disqualified if the judge, while a judge or judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that a person aware of the facts might reasonably believe commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

The commission recommends that the new rule be added to the Code of Judicial Ethics (as new canon 3E(2)) instead of amending Code of Civil Procedure section 170.1. Placement in canon 3E(2) would make the provision applicable to appellate justices and trial court judges, unlike placement in section 170.1, which applies only to trial court judges. Adding this new language to the canons would also unify in the Code of Judicial Ethics both the rule prohibiting commitments (canon 5B) and the rule setting forth the consequence of making a commitment. The committee also recommends that consideration be given to including commentary in the code stating that the "facts" should include, for example, the context of the public statement, how long ago the statement was made, and the entirety of the statement.

Recommendation 6
A definition of "commitment" that includes "pledges" and "promises" should be added to the Code of Judicial Ethics.

Discussion: In *White,* the United States Supreme Court specifically declined to address the constitutionality of the pledges and promises clause. Although California does not have this clause, it existed in the model code until the 2003 revisions and is still contained in many state codes. Rule 4.1(A)(13) of the ABA Model Code of Judicial Conduct currently prohibits judges and judicial candidates from making, in connection with cases, controversies, or issues that are likely to come before the court, "pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office."

When it considered revisions to the Code of Judicial Ethics after *White,* the Supreme Court Advisory Committee on the Code of Judicial Ethics decided against recommending to the court that it add the pledges and promises clause to the code because doing so might fuel speculation about its meaning. The commission considered, however, whether language addressing pledges and promises should be added somewhere in the Code of Judicial Ethics in order to be consistent with the model code and to prevent a distinction from being drawn between statements prohibited by the California code and those prohibited by the model code. It was noted that adding this language may not be necessary because "pledges" and "promises" may already fall within the prohibition on commitments in canon 5B.

The commission recommends that a definition of “commitment” be added to the Code of Judicial Ethics stating that the term includes “pledges” and “promises.” This clarification should also be explained in the commentary to canon 5B and in the commentary to the proposed new disqualification provision in canon 3E(2).

Voluntary Codes of Conduct and Judicial Campaign Conduct Committees

There is a growing movement nationwide to establish judicial campaign conduct committees that encourage and support appropriate conduct by judicial candidates. Such committees educate candidates about appropriate campaign conduct and criticize inappropriate campaign conduct. Unlike the Commission on Judicial Performance, they are designed to address allegations of misconduct on an expedited basis. And while they do not have disciplinary authority per se, they may publicly address inappropriate conduct and may report such conduct to the relevant disciplinary authorities.

Recommendation 7

An unofficial statewide fair judicial elections committee should be established to educate candidates, the public, and the media about judicial elections; to mediate conflicts; and to issue public statements regarding campaign conduct in statewide and regional elections and in local elections where there is no local committee.

Recommendation 8

The formation of unofficial local fair judicial elections committees to educate candidates, the public, and the media about judicial elections; to mediate conflicts; and to issue public statements regarding campaign conduct in local elections should be encouraged.

Recommendation 9

A model campaign conduct code for use by the state and local oversight committees should be developed.

Discussion of recommendations 7–9: In considering the advisability of developing judicial campaign conduct committees in California, the commission agreed that one of the greatest threats to judicial independence comes from significant third-party and special interest group involvement in judicial elections. The commission believes that California should be in the vanguard in aggressively addressing the conduct of third parties and special interest groups during judicial elections, in addition to ensuring that candidates conduct themselves and their campaigns in a manner that ensures judicial integrity, confidence in the judicial process, and judicial independence.

The commission considered two different approaches to this issue. One approach would be to establish an official statewide committee with authority to prescribe ethical rules for all judicial elections and to take action against candidates who violate those rules. Under this approach, there would be a uniform statewide standard of conduct separate from the

Code of Judicial Ethics and a single government oversight entity that would address the conduct of all participants, including candidates and third parties, in judicial elections. Such a uniform statewide approach would cover both contested superior court elections and appellate court retention elections. For example, the Legislature could establish a statewide oversight committee with authority to monitor not only candidates' campaign conduct but also the conduct of partisan and special interest groups in judicial elections. An official committee might be effective because it could be granted authority to take immediate action against a candidate engaged in unethical conduct.

One concern with an official committee, however, is that as a governmental body its actions could provide the basis for First Amendment challenges; any action or enforcement by an official committee may be tantamount to state action that limits political speech. Additionally, an official committee may be perceived as a protection mechanism for incumbents. These concerns have led to the creation of unofficial oversight committees in most instances. In California, there is also a separation of powers issue with a legislatively-created oversight body. Article VI, section 18(m) of the California Constitution grants the Supreme Court, not the Legislature, the authority to regulate the conduct of judges both on and off the bench.

The other approach considered by the commission would be to create unofficial statewide and local oversight committees. Such committees could seek to preserve fair judicial elections by educating candidates, the public, and the media about the differences between judicial and political elections, by mediating conflicts, and, as a last resort, by issuing public statements regarding improper campaign conduct, i.e., a "speech versus speech" approach. These committees could formulate voluntary codes of conduct for all judicial candidates and ask candidates to sign pledges to comply with the codes. Before taking a public position on specific conduct, these committees could discuss questionable conduct with the participants and, if matters cannot be resolved, provide a hearing process.

Ultimately, the commission agreed that the factors favoring unofficial statewide and local committees outweigh those in favor of an official statewide committee. However, because an official committee could potentially be the most effective approach, it should be reconsidered periodically as the constitutional constraints on the regulation of judicial campaign conduct evolve.

Therefore, the commission recommends the creation of an independent, unofficial, statewide campaign conduct committee to be named something such as the "Fair Judicial Elections Committee." This committee would address campaign conduct in appellate retention elections and in superior court elections in counties that do not have a local campaign conduct committee (discussed below). It could create a model voluntary code of campaign conduct and ask all judicial candidates under its jurisdiction to sign a pledge

to adhere to the code. The committee would lay the foundation for fair judicial elections by publicly explaining how they fundamentally differ from political elections and how a campaign conduct code helps to ensure the impartiality and integrity of our courts. A network of media relationships could be created to convey this message to the public. The committee's educational sessions would be open to candidates, campaign managers, the media, and the public. All complaints lodged with the committee would be confidential to prevent candidates from using the complaint process as a campaign tool. And the committee must be capable of employing an expedited procedure that allows it to address conduct in the days immediately preceding an election.

An unofficial statewide committee as recommended should not, however, supplant local campaign conduct committees with local codes of conduct. Because most judicial election controversies in California occur in superior court races, the formation of local committees may be more appropriate as a means of addressing complaints and educating candidates, the public, and the local media. The statewide committee could encourage the formation of local committees and provide resources such as model standards, model codes, and other tools to aid in their development. Where there is no local committee, however, the statewide committee would be available for oversight.

Composition of the unofficial committees, both statewide and local, must be balanced, as their effectiveness will rest largely on their credibility with the public, the judicial candidates, and special interest groups. Such committees should be nonpartisan (or bipartisan) and should include well-respected members of the community such as lawyers, media experts, former judges, ethics experts, community and religious leaders, academics, and representatives of nonpartisan organizations such as the League of Women Voters.

The committees will work best if they are independent, self-governing, and self-perpetuating. Ideally, they would be funded by sources not identified with any group having an interest in judicial election outcomes, e.g., judges, lawyers, or political groups. However, other than grants from such organizations as the National Center for State Courts (NCSC), the League of Women Voters, or the State Justice Institute, it may be difficult to identify funding sources outside the legal community that have an interest in preserving fair judicial elections. The commission also considered obtaining money from judicial election campaign surplus funds, state and local bar associations, bar foundations, or a nonprofit organization created by the Judicial Council but does not make any specific recommendations regarding funding.

Discussion of nonbinding standards and campaign guidelines for judicial candidates
In October 2006, the Oregon judiciary adopted a resolution titled "Resolution Regarding Professionalism and Fairness in Judicial Election Campaigns." The resolution states nonbinding standards and campaign guidelines for judicial candidates. The Constitution

Project issued a similar document titled “The Higher Ground: Standards of Conduct for Judicial Candidates.” It explains that judges are not politicians and states principles for judicial candidates to follow in judicial elections.

The commission rejects the idea of the California judiciary, either alone or jointly with the State Bar, adopting and issuing a similar resolution because it would be ineffectual and subject to accusations of protectionism by the public and special interest groups. Rather, the type of information contained in these documents should come from the independent oversight committees and through other kinds of public education.

Judicial Candidate Training and Advisory Opinions

Recommendation 10

The Code of Judicial Ethics should be amended to require all judicial candidates, including incumbent judges, to complete a mandatory training program on ethical campaign conduct.

Discussion: The commission recommends that all candidates for judicial office, including incumbents, be required to complete training in ethical campaign conduct. This would apply only to candidates who appear on the ballot. Thus, superior court judges who are unopposed when their terms expire and who do not therefore appear on the ballot would not be required to complete the training. Appellate justices, however, appear on the ballot in retention elections, so this provision would be applicable to them.

Other states, including New York and Ohio, have mandatory judicial candidate ethics training. In California, article VI, section 18(m) of the California Constitution appears to authorize the Supreme Court to require this type of training. It provides that the Supreme Court “shall make rules for the conduct of judges . . . and for judicial candidates in the conduct of their campaigns. These rules shall be referred to as the Code of Judicial Ethics.” Based on this provision, the commission believes the training requirement should be incorporated into the Code of Judicial Ethics, as opposed to a rule of court, because attorney candidates are governed by the code but not by court rules.

The Administrative Office of the Courts (AOC) Education Division/Center for Judicial Education and Research (CJER) and the State Bar could collaborate to develop a training program that would be made available online so that candidates in remote counties need not travel to attend a course. The training should include an interactive component so participants can ask questions. Judges and attorneys who complete the training program should receive continuing legal education credit.

Recommendation 11
Judicial candidate training on ethical campaign conduct should include:

- Identifying issues raised by judicial candidate questionnaires;
- Distributing a model letter and a model questionnaire that candidates can use in lieu of responding to an interest group questionnaire;
- Using the advisory memorandum on responding to questionnaires prepared by the National Ad Hoc Advisory Committee on Judicial Campaign Oversight;
- Encouraging candidates to give reasoned explanations for not responding to improper questionnaires rather than simply citing advisory opinions;
- Using candidate Web sites; and
- Explaining why partisan activity by candidates is disfavored.

Discussion: Judicial questionnaires propounded by special interest groups are often designed to elicit commitments from candidates on controversial issues that could come before the courts. Candidates who respond to these questionnaires, which are increasingly popular, may be seen as indicating to the electorate how they will rule on these issues if they are elected. Canon 5B(1) prohibits a judicial candidate from making statements to the electorate "that commit the candidate with respect to cases, controversies, or issues that could come before the courts . . . ." Judicial candidate training should involve alerting candidates to the issues raised by questionnaires and highlighting the parameters of the *White* decision. The training should not, however, involve advising candidates on whether or how to respond to questionnaires.

The commission agreed that it would be helpful to develop a model letter and a model questionnaire that could be used by judicial candidates in lieu of responding to interest group questionnaires. A model letter could clearly explain why a judicial candidate should not express personal views on controversial or high-profile issues and the fundamental importance of the impartial and independent application of the law to each case that comes before the court. A model questionnaire would contain questions designed to elicit relevant information about a judicial candidate's background, qualifications, and suitability for the bench but would not ask for the candidate's views on controversial issues.

Consideration was given to asking organizations such as the NCSC, the American Judicature Society, the State Bar, or the California Judges Association (CJA) to distribute to judicial candidates the model letter and model questionnaire. No decision was reached as to which organizations to approach. There was agreement, however, that these materials could be disseminated by local or statewide fair judicial elections committees or through mandatory judicial candidate training programs. The NCSC could be involved in some manner so that similar materials could be made available in other jurisdictions.

The National Ad Hoc Advisory Committee on Judicial Campaign Oversight, which was established by the NCSC, issued an advisory memorandum on July 24, 2008, containing advice on how to respond to questionnaires. (See Appendix H.) It contains the following recommendations:

- Do not be rushed in deciding how to handle the questionnaire.
- Never use the preprinted answers provided on the questionnaire.
- Consider responding with a letter.
- Never use a judicial canon to justify a decision to not respond.
- Distinguish general interest, nonadvocacy groups from special interest advocacy groups and be consistent.

The commission concluded that the memorandum is useful but limited because it does not provide candidates with a framework for crafting a response. The memorandum contains information that could be used as part of a comprehensive approach to dealing with this issue; for example, it could be included in mandatory candidate training materials or made available to fair judicial elections committees.

The commission discussed the likelihood that the new Supreme Court Committee on Judicial Ethics Opinions will issue advisory opinions to judicial candidates concerning questionnaire-related issues. In addition, the CJA's Judicial Ethics Committee operates a hotline that offers ethics advice to sitting judges and candidates for judicial office. The commission agreed that it would be preferable for a judicial candidate who decides to not respond to a judicial questionnaire or a particular question to give a reasoned explanation for why he or she believes it would be inappropriate to respond, rather than simply citing an advisory opinion.

In addition to training on judicial questionnaires, the commission recommends that the creation and content of Web sites by judicial candidates be included as a component of mandatory candidate training.

Finally, the training should cover why partisan elections are disfavored and why partisan activity among judicial candidates is discouraged.

Possible constitutional or legislative amendment

The commission considered a proposal made by former Governor Pete Wilson at the July 14, 2008, public forum to amend the California Constitution by adding a provision that expresses the public's desire that judicial candidates refrain from stating their positions on controversial issues. Similar proposals for a new statute or legislative resolution that would encourage judges not to comment on issues that could come before the courts were also considered. The commission determined not to pursue these proposals at this time because the other options discussed should be adequate for handling questionnaire-related issues and would be easier to implement.

Recommendation 12
Both the California Judges Association's Judicial Ethics Hotline and the new Supreme Court Committee on Judicial Ethics Opinions should be publicized as resources that judicial candidates can use to obtain advice on ethical campaign conduct.

Discussion: The CJA's Judicial Ethics Committee operates a hotline that offers ethics advice to judicial officers and candidates for judicial office. It is rare, however, for an attorney candidate to contact the hotline for ethics advice. Given that CJA already provides ethics advice to all judicial candidates, the commission agreed that efforts should be made to publicize the existence of CJA's service rather than create a new hotline. Further, once the new Supreme Court Committee on Judicial Ethics Opinions has been formed, efforts should also be made to publicize the existence of this body, which will provide ethics opinions to both sitting judges and attorney candidates.

Recommendation 13
Collaboration among the Administrative Office of the Courts, State Bar, California Judges Association, and National Center for State Courts should be recommended to develop brochures to educate judicial candidates.

Discussion: The commission agrees that brochures should be developed and distributed to candidates to educate them on how judicial elections differ from other elections and on appropriate campaign conduct. The brochures also should be provided to county registrars for distribution to candidates. In addition, the brochures should be provided to campaign consultants and campaign managers. The AOC, State Bar, CJA, and NCSC should be asked to develop the brochures.

Public Comment on Pending Cases

Recommendation 14
The sentence "This canon does not prohibit a judge from responding to allegations concerning the judge's conduct in a proceeding that is not pending or impending in any court" should be added to the commentary following canon 3B(9) of the Code of Judicial Ethics, but the prohibition against public comment on pending cases should not be extended to attorney candidates for judicial office.

Discussion: Canon 3B(9) prohibits a judge from making any public comment about a pending or impending proceeding in any court, or any nonpublic comment that might substantially interfere with a fair trial or hearing. There is no similar prohibition applicable to attorney candidates in the Code of Judicial Ethics or the California Rules of Professional Conduct.[24]

[24] Rule 1-700 of the California Rules of Professional Conduct requires an attorney candidate for judicial office to comply with canon 5 of the Code of Judicial Ethics.

The commission considered whether the prohibition against public comment on pending cases should be extended to attorney candidates in order to avoid public debate on pending matters that could interfere with fair hearing procedures or subject a judge to calculated, groundless attacks to which he or she could not respond. Ultimately, the commission opted against such an extension to attorney candidates because it could be subject to a successful attack on First Amendment grounds. Nevertheless, the commission agreed that it would be useful to judges to add the following sentence to the commentary following canon 3B(9): "This canon does not prohibit a judge from responding to allegations concerning the judge's conduct in a proceeding that is not pending or impending in any court."

Recommendation 15
The commentary to canon 3B(9) of the Code of Judicial Ethics should be amended to provide guidance to judges on acceptable conduct in responding to attacks on rulings in pending cases.

Discussion: The commission considered whether to recommend revising canon 3B(9) to allow a judge to respond to an attack on a ruling in a pending case. Canon 3B(9) states in part: "This Canon does not prohibit judges from making statements in the course of their official duties or from explaining for public information the procedures of the court, and does not apply to proceedings in which the judge is a litigant in a personal capacity." When a judge responds outside of the enumerated circumstances, it may give the appearance that the judge has resorted to inappropriate means to defend the judge's own rulings, which may negatively affect the perception of fairness. (See *Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079.) Because there is little direction on how to interpret this provision in canon 3B(9), most judges err on the side of caution and do not make any public statements.

The commission recommends that the advisory committee commentary to canon 3B(9) be amended to provide guidance to judges on acceptable conduct by adding the following explanatory language:

> <u>"Making statements in the course of their official duties" and "explaining for public information the procedures of the court" include providing an official transcript or partial official transcript of a court proceeding open to the public and identifying and explaining the rules of court and procedures used in a decision rendered by a judge.</u>

There is a concern that adding the proposed language to the commentary could embolden judges to make statements to bolster their rulings or that go beyond the case. The proposed amendment, however, does not create any new exceptions to the prohibition in canon 3B(9); instead, it clarifies conduct that is already permissible under the rule. A

public statement by a judge also remains subject to the other canons governing judicial conduct. To the extent possible, a court's public information officer should be involved in issuing any public statement in response to an attack on a judge's ruling.

Recommendation 16
Local county bar associations should consider creating independent standing committees that will respond to inaccurate or unfounded attacks on judges, judicial decisions, and the judicial system.

Discussion: The commission considered whether it would be a violation of canon 3B(9) for a judge to initiate a public response to an attack on the judge through a third party. It agreed that each local county bar association should consider creating a standing committee—independent from state or local government—that can respond to inappropriate or unfounded criticism of judges, judicial decisions, or the judicial system, including, but not limited to, criticism made during an election campaign. These committees should not have active judge members but should have some retired judge members to provide judicial perspective.[25]

The commission agreed that it would not violate the canon for a judge to file a confidential complaint with such a voluntary standing committee or otherwise to alert such a committee to the fact that someone is attacking a ruling in a pending matter. Voluntary standing committees that respond to attacks on judges by fighting speech with speech also comport with the First Amendment.

Recommendation 17
The California Judges Association's Response to Criticism Team and its network of contacts should be publicized.

Discussion: A judge who has been attacked may also contact the CJA's Response to Criticism Team, which maintains contacts with local bar groups, or a fair judicial elections committee if one exists. Thus, there should be increased publicity of CJA's Response to Criticism Team and its network of contacts.

Slate Mailers, Endorsements, and Misrepresentations

Recommendation 18
The statutory slate mailer disclaimer should be strengthened by requiring mailers to cite canon 5 of the Code of Judicial Ethics and, when a candidate is placed on a mailer without his or her consent, to prominently disclose that fact.

[25] This recommendation may overlap with recommendations 17 and 42, which address other methods of responding to criticism of the judiciary or its members.

Recommendation 19
An amendment to Government Code section 84305.5 should be sponsored to apply to organizations that support or oppose judicial candidates.

Discussion of recommendations 18–19: A slate mailer is defined as a "mass mailing which supports or opposes a total of four or more candidates or ballot measures." (Gov. Code, § 82048.3.) The mailers generally contain endorsements or recommendations for various partisan and nonpartisan offices—including judicial offices—and ballot measures. A candidate can pay to be placed on a mailer, or an organization publishing the mailer can list a candidate without the candidate's permission. One ethical concern with these mailers is the perception that a candidate listed on the mailer is endorsing the other candidates or measures on the mailer. Canon 5 requires judges to refrain from inappropriate political activity, and canon 5A(2) prohibits judges from publicly endorsing candidates for nonjudicial office. The judicial candidate has no control over the message or the presence in the mailer of other candidates, whose views may not be consistent with notions of judicial impartiality or whose presence on the mailer may suggest an endorsement by the judge.

Government Code section 84305.5(a)(2) requires that a notice be placed on slate mailers stating: "Appearance in this mailer does not necessarily imply endorsement of others appearing in this mailer, nor does it imply endorsement of, or opposition to, any issues set forth in this mailer." The same section also requires inclusion of the admonition that the sender of the mailer is "not an official political party organization."

The commission recommends sponsoring a number of amendments to the statute. First, the statute should be amended to require that the slate mailer cite explicitly to canon 5 and remind the reader that judges are not permitted to endorse partisan political candidates or causes. Second, the statute should be amended to require that when a judicial candidate is placed on the mailer without his or her consent, the lack of consent be prominently disclosed. Finally, the commission recommends that the Legislature revisit Government Code section 84305.5 to consider whether it should be expanded so that it applies to organizations that support or oppose *candidates.* Currently, the statute on its face appears to apply only to an "organization or committee primarily formed to support or oppose one or more *ballot measures*." [Emphasis added.]

Recommendation 20
Judicial campaign instructional materials providing best practices regarding the use of slate mailers should be developed.

Discussion: The commission concluded that it would be useful to develop judicial campaign instructional materials to inform candidates that they may run afoul of certain canons if they allow their names to be placed on mailers espousing certain views.

Candidates should be instructed that not only the title of the mailer but the context, layout, and inclusion of other messages and individuals in the mailer may combine to make the mailer an inappropriate vehicle for a judicial race.

The commission considered a proposal that would require judicial candidates to inspect a slate mailer before agreeing to purchase a place on it. That proposal was rejected as unworkable because the mailers are assembled quickly, there are many prospective purchasers, and the contents can change without notice.

Recommendation 21
Judicial candidates should be advised to obtain written permission before using an endorsement and to clarify which election the endorsement is for, to honor any request by an endorser to withdraw an endorsement, and to request written confirmation of any oral request to withdraw an endorsement.

Discussion: The commission recommends that judicial candidates be advised to (1) obtain written permission before using an endorsement and to clarify whether the endorsement is for the primary or general election or both; (2) honor any request by an endorser, oral or written, to withdraw an endorsement; and (3) request written confirmation of any oral request to withdraw an endorsement. These best practices could be included in precampaign instructional material and in voluntary pledges signed by the candidates.

Regarding the types of individuals or entities that a candidate should accept as endorsers, elected public officials and persons holding partisan political office, such as a local senator, are permissible. The candidate should be alerted, however, to the consequence that such an endorsement could lead to subsequent recusals in the courtroom.

Recommendation 22
Judicial candidates should be prohibited from seeking or using endorsements from "political organizations," as defined in the terminology section of the Code of Judicial Ethics.

Discussion: The commission concluded that there should not be a statute, rule, or canon amendment that would prohibit judicial candidates from (1) publicly identifying themselves or their opponents as members of a political organization or (2) running on a slate associated with a political organization. There are constitutional concerns with such prohibitions.

Despite some expressed reservations about constitutionality, the commission does, however, recommend that judges be prohibited from *seeking or using* endorsements from political organizations. Rule 4.1(A)(7) of the ABA Model Code of Judicial Conduct

contains such a prohibition, providing that "a judge or judicial candidate shall not seek, accept, or use endorsements from a political organization." To allay concerns about constitutionality due to vagueness, the commission agreed that the scope of the term "political organization" should be limited by referencing the definition of that term in the terminology section of the Code of Judicial Ethics, which states: "'Political organization' denotes a political party, political action committee, or other group, the principal purpose of which is to further the election or appointment of candidates to nonjudicial office."

Underlying this proposed prohibition is the concept that all judicial offices in California are nonpartisan. (Cal. Const., art. II, § 6(a).) Barring judicial candidates from seeking or using such endorsements would help maintain the nonpartisan nature of judicial elections. Although political parties are free to endorse or oppose judicial candidates (see *Unger v. Superior Court* (1984) 37 Cal.3d 612); *Geary v. Renne* (9th Cir. 1990) 911 F.2d 280 (en banc); *California Democratic Party v. Lungren* (N.D. Cal. 1994) 860 F.Supp. 718), there is no controlling authority for the proposition that a judicial candidate must be permitted to seek and use those political party endorsements.[26]

In contrast to the model code language, however, the commission does not recommend that judicial candidates be prohibited from *accepting* such endorsements, as that would require the candidate proactively to reject an endorsement. The commission concluded that banning candidates from seeking and using political organization endorsements would sufficiently meet the objective of keeping judicial elections nonpartisan.

Recommendation 23
Instructional materials about the importance of truth in advertising should be developed.

Discussion: Canon 5B(2) provides that a candidate shall not "knowingly, or with reckless disregard for the truth, misrepresent the identity, qualifications, present position, or any other fact concerning the candidate or his or her opponent." To promote compliance with this canon, the commission recommends that the precampaign instructional material discussed above include information about the importance of truth in advertising. In addition, voluntary pledges signed by the candidates should include a commitment to the goal of truth in advertising.

[26] In *Republican Party of Minnesota v. White* (8th Cir. 2005) 416 F.3d 738 (en banc), cert. denied *sub nom. Dimick v. Republican Party of Minnesota* (2006) 546 U.S. 1157, the United States Court of Appeals for the Eighth Circuit declared unconstitutional a clause in the Minnesota Code of Judicial Conduct that prohibited judges from seeking, accepting, or using endorsements from a political organization.

Recommendation 24
Canon 5 of the Code of Judicial Ethics or its commentary should be amended to place an affirmative duty on judicial candidates to control the actions of their campaigns and the content of campaign statements, to encourage candidates to take reasonable measures to protect against oral or informal written misrepresentations being made on their behalf by third parties, and to take appropriate corrective action if they learn of such misrepresentations.

Discussion: The commission recommends that canon 5 or its commentary be amended to require candidates to control the actions of, and the content of any statements issued by, their campaigns. This would include a duty to review and approve campaign statements and materials produced by campaign committees, consultants, campaign volunteers, and members of informal, honorary committees. Because candidates cannot be expected to control the actions of third parties, the amendment would also encourage, rather than require, candidates to take reasonable measures to protect against oral or informal written misrepresentations being made in their support by third parties and would encourage candidates to take appropriate corrective action if they learn of such misrepresentations.

Recommendation 25
The Code of Judicial Ethics should be amended to add a list of prohibited campaign conduct.

Discussion: After reviewing rule 4.1 of the ABA model code,[27] which contains an exhaustive list of prohibited campaign conduct, the commission agreed to recommend

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[27] Rule 4.1, titled "Political and Campaign Activities of Judges and Judicial Candidates in General," is provided here as a stylistic example California may wish to follow. It states:
"(A) Except as permitted by law, or by Rules 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not:
(1) act as a leader in, or hold an office in, a political organization;
(2) make speeches on behalf of a political organization;
(3) publicly endorse or oppose a candidate for any public office;
(4) solicit funds for, pay an assessment to, or make a contribution to a political organization or a candidate for public office;
(5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;
(6) publicly identify himself or herself as a candidate of a political organization;
(7) seek, accept, or use endorsements from a political organization;
(8) personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;
(9) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others;
(10) use court staff, facilities, or other court resources in a campaign for judicial office;
(11) knowingly, or with reckless disregard for the truth, make any false or misleading statement;
(12) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or
(13) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

that the canons be amended to include a list—similar in style to rule 4.1—of improper campaign conduct.

Recommendation 26
A letter—to be sent by the courts to county registrars before each election cycle—should be developed addressing permitted use of the title "temporary judge" or "judge pro tem" by candidates.

Recommendation 27
Canon 6 of the Code of Judicial Ethics should be amended to clarify how the title "temporary judge" or "judge pro tem" may be properly used.

Discussion of recommendations 26–27: The commission considered the issue of misuse of the title or position of "temporary judge." Typically, the misuse involves an attorney allowing the title to be used in campaign literature or in a ballot statement. Although temporary judges receive mandatory ethics training under rule 2.812(c) of the California Rules of Court, the commission recommends that a letter from the local court containing a set of instructions and explanations about the permitted use of the title also be provided to the registrar of voters before each judicial election cycle. This letter could be developed by the Judicial Council.

The commission also considered whether canon 6D(8)(c) should be clarified by the Supreme Court. That canon allows an attorney to use his or her judicial title to "show [his or her] qualifications." This open-ended statement has resulted in attorneys using the title as if it were an occupation, such as "deputy district attorney." Canon 6D(9)(b) permits use of the title or service in a variety of employment application scenarios, including when the title or service is contained in a "descriptive statement submitted in connection with an application . . . for appointment *or election* to a judicial position . . . ." (Emphasis added.) The commission recommends that canon 6 be revisited with a view toward clearing up ambiguities on how and when the title may be used.

Recommendation 28
The State Bar should be encouraged to discipline attorney candidates who engage in campaign misconduct.

Discussion: Unsuccessful attorney candidates who engage in misconduct are under the jurisdiction of the State Bar, not the CJP. According to State Bar officials, no California attorney has been disciplined for misconduct in connection with a campaign for judicial office. Consequently, the commission recommends that voluntary fair judicial elections

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(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A)."

committees emphasize addressing attorney candidate misconduct. In addition, the State Bar should be urged to pursue disciplinary actions against attorneys who violate the Code of Judicial Ethics during judicial campaigns. It should be stressed that an attorney's conduct during a campaign can have a major effect on public perception of the judiciary.

Judicial Campaign Finance

Contribution Limits

While the commission ultimately did not make recommendations as to contribution limits in judicial elections, it is necessary to begin this section of the report with a discussion of contribution limits as a foundation for the recommendations that follow.

Under California law, there currently are no limits on the amount one can contribute to a judicial candidate. The commission considered whether to recommend imposing limits on contributions to judicial candidates by various persons or entities but decided instead to recommend that a system of mandatory disclosure and disqualification be adopted to enhance the public's trust and confidence that judicial decisionmaking will not be affected by monetary contributions. Had the commission recommended the imposition of contribution limits, it likely would have recommended that those limits be uniform across all types of contributors, whether individual or entity.[28]

Imposing contribution limits on judicial candidates

One way to limit the influence of money on judicial decisionmaking is to limit the amount that a person or entity may contribute to a judicial candidate. The commission recognized that the current lack of contribution limits applicable to judicial candidates in California could lead to a public perception that judges can be "bought." Indeed, data support that both the public and a number of sitting judges believe that contributions to judges, especially in large amounts, can affect judicial decisionmaking.[29] Thus, even if not needed to prevent actual high-dollar spending in California, the lack of contribution limits might itself negatively affect the public's trust and confidence in an impartial judiciary. That is, the mere presence of contribution limits arguably could enhance the public's perception of a judiciary free from outside moneyed influence.

On the other hand, studies also show that most attempts to influence judicial decisionmaking through campaign contributions occur in contested elections at the supreme court level.[30] In California, however, Court of Appeal and Supreme Court justices are subject only to nonpartisan retention elections, where large spending amounts arguably have less of an impact than they would in partisan or contested elections. Thus,

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[28] The commission concluded that restricting contributions from attorneys who appear before a judge candidate is inadvisable and impractical because it would impair a sitting judge's ability to raise money while not subjecting attorney challengers to the same restriction. In addition, to the extent that campaign contributions to judicial candidates may create the appearance that the successful candidate is beholden to the contributors, this concern can be addressed through disclosure and disqualification requirements. Therefore, the commission did not recommend restricting contributions from attorneys who appear before a judge candidate.

[29] Greenberg and DiVall memorandum to Palast, Feb. 14, 2002, *supra*.

[30] See Sample, Jones, and Weiss, *The New Politics of Judicial Elections 2006, supra*.

there is a question of whether contribution limits are necessary given California's judicial election system.

In examining the potential need for contribution limits, the commission recognized that judicial candidates—unlike candidates for legislative or executive office—do not generally have an established voter base from which they can readily obtain campaign funding. Thus, judicial candidates are likely to find it more difficult than other candidates to raise the money needed to run a campaign for contested office at the trial court level or to run a retention campaign where significant independent expenditures (IEs) are being made to unseat the incumbent. The ability to raise needed sums of money from what could be a limited number of contributors would be hindered if those contributors were faced with contribution limits.

In addition to concerns over unduly limiting the ability of judicial candidates to raise necessary funds, there are other bases for the commission's decision. For example, data from recent California Fair Political Practices Commission (FPPC) hearings addressing the issue of IEs show that when contribution limits are imposed, spending by IE groups rises dramatically, negatively affecting the public's ability to get accurate data on who is truly funding certain election-related efforts.[31] In other words, imposing contribution limits may actually make it more difficult for the public to "follow the money."

There are also practical and logistical obstacles to establishing a workable system of contribution limits applicable to judicial candidates. For example, an ideal contribution limit scheme would somehow account for the fact that the cost of running a judicial election varies widely from county to county in California, based in part on the varying costs of the candidates' statements. Similarly, the system would account for the possibility that the public's perception of the size of a contribution that would cause a judge to appear to lose impartiality could also vary from county to county. While not insurmountable, challenges such as these could require time and resources that would not be necessary if an alternative plan were pursued.

Ultimately, because the issue of concern is not contributions in themselves, but rather the effect that they may have or appear to have on judicial decisionmaking, the commission concluded that there is a better solution—mandatory disclosure coupled with mandatory disqualification—that would be less likely to impair the ability of candidates to finance a campaign, yet that would still address the focal issue of the effect of money on actual or perceived judicial impartiality.

[31] See generally California Fair Political Practices Commission, *Independent Expenditures: The Giant Gorilla in Campaign Finance* (June 2008), available at *www.fppc.ca.gov/ie/IEReport2.pdf*.

Limitations on a judicial candidate's ability to solicit contributions
The commission noted that several federal appellate courts have held that state provisions prohibiting judicial candidates from personally soliciting campaign funds are unconstitutional. (See *Republican Party of Minnesota v. White* (8th Cir. 2005) 416 F.3d 738; *Weaver v. Bonner* (11th Cir. 2002) 309 F.3d 1312; *Siefert v. Alexander* (W.D.Wis. Feb. 17, 2009, No. 08-CV-126-BBC) 2009 U.S. Dist. Lexis 11999); *Yost v. Stout* (D.Kan. Nov. 16, 2008, No. 06-4122-JAR) 2008 U.S. Dist. Lexis 107557); *Carey v. Wolnitzek* ((E.D.Ky. Oct. 15, 2008, No. 3:06-36-KKC) 2008 U.S. Dist. Lexis 82336); but see *Wersal v. Sexton* (D.Minn. Feb. 4, 2009, No. 08-613 ADM/JSM) 2009 U.S. Dist. Lexis 10900) (court upheld constitutionality of canon prohibiting a candidate from personally soliciting campaign contributions except from groups of more than 20 persons or by signing a letter); *Simes v. Judicial Discipline and Disability Commission* (2007) (247 S.W.3d 876) (the Arkansas Supreme Court held that a prohibition on candidates personally soliciting campaign contributions is constitutional).) Because the constitutionality of such a provision is questionable and because this would unfairly restrict a judicial candidate's ability to raise funds, the commission opted not to recommend pursuing such a prohibition.

Mandatory Disclosure and Disqualification

Recommendation 29
A system should be adopted under which each trial court judge is required to disclose to litigants, counsel, and other interested persons appearing in the judge's courtroom all contributions of $100 or more made to the judge's campaign, directly or indirectly. Specifically:

- The commentary to the disclosure provision in canon 3E(2) of the Code of Judicial Ethics should be amended to require a trial judge to maintain an updated list of campaign contributions of $100 or more and to disclose to litigants appearing in court that the list is available for viewing in the courthouse and online;
- The commentary to canon 3E(2) should be amended to state that the obligation to disclose campaign contributions continues for a minimum of two years after the judge assumes office; and
- The commentary to canon 5B should be amended to cross-reference the proposed new commentary to canon 3E(2).

Recommendation 30
Each trial court judge should be subject to mandatory disqualification from hearing any matter involving a party, counsel, party affiliate, or other interested party who has made a monetary contribution of a certain amount to the judge's campaign, directly or indirectly, subject to the following:

- The contribution level at which disqualification shall be mandatory shall be the same as the level, specified in Code of Civil Procedure section 170.5(b), at which a judge is considered to have a "financial interest" in a party, requiring disqualification;
- Notwithstanding the above mandatory disqualification amount, trial court judges shall continue to disqualify themselves based on contributions of lesser amounts when doing so would be required by Code of Civil Procedure section 170.1(a)(6)(A);
- The Judicial Council should recommend that the amount specified in Code of Civil Procedure section 170.5(b)—which, as of the date of this recommendation, is $1,500—be periodically reviewed and adjusted as appropriate;
- The mandatory disqualification described above shall be waivable by those parties to the matter who were not involved in making the contribution in question; and
- The obligation to disqualify shall begin immediately on receipt of the contribution in question and shall run for two years from the date that the candidate assumes office or from the date the contribution was received, whichever is later.

Recommendation 31
Appellate courts should be required to send to the parties—with both the first notice from the court and with the notice of oral argument—information on how they may learn of campaign contributions if there is an upcoming retention election or there was a recent election.

Recommendation 32
Appellate justices' campaign finance disclosures should be maintained electronically and should be accessible via the Web and possibly through a link to the California Secretary of State Web site.

Recommendation 33
Each appellate justice should be subject to mandatory disqualification from hearing any matter involving a party, counsel, party affiliate, or other interested party who has made a monetary contribution of a certain amount to the justice's campaign, directly or indirectly, subject to the following:

- For justices of the Courts of Appeal, the contribution level at which disqualification shall be mandatory shall be the same as the level, stated in canon 3E(5)(d) of the Code of Judicial Ethics, at which a justice is considered to have a "financial interest" in a party requiring disqualification;
- For justices of the Supreme Court, the contribution level at which disqualification shall be mandatory shall be the same as the contribution limit, stated in Government Code section 85301(c) and California Code of Regulations title 2, section 18545, in effect for candidates for Governor;

- Notwithstanding the above mandatory disqualification amounts, appellate justices shall continue to disqualify themselves based on contributions of lesser amounts when doing so would be required by canon 3E(4) of the Code of Judicial Ethics;
- The mandatory disqualification described above shall be waivable by those parties to the matter who were not involved in making the contribution in question; and
- The obligation to disqualify shall begin immediately on receipt of the contribution in question and shall run for two years from the date that the candidate assumes office or from the date the contribution was received, whichever is later.

Discussion of recommendations 29–33: Issues associated with disclosure and with mandatory disqualification at all court levels are addressed below.

Disclosure at the trial court level

In the commission's view, mandatory disclosure by judges and appellate justices of all contributions of $100 or more—the level at which contributions are reportable—would enhance public trust and confidence in an impartial judiciary without the need for contribution limits.[32] For example, if the public knows that an affected litigant will be told of—and presumably have the chance to act on—a contribution made to a judicial officer by the litigant's opponent or another interested party, then the public will have a "check" to help ensure that money given to judges and justices will not result in biased decisions.

However, disclosure alone—i.e., without mandatory disqualification based on some level of contribution—would not sufficiently bolster public trust and confidence in judicial decisionmaking free from the influence of campaign contributions. In recent high-profile instances in other states, judges have disclosed accepting millions of dollars from interested litigants or lobbies, yet have not disqualified themselves.[33] When the public

[32] Further, the commission believes that the disclosure obligation (and the resulting mandatory disqualification, as discussed below) should be triggered by both direct contributions and "indirect" contributions. While the exact parameters of what constitutes an "indirect" contribution are best decided on implementation—and while the commission's intent is not to impose significantly more stringent disclosure requirements than those already imposed by the FPPC—the commission contemplates that one example of such an indirect contribution would include a contribution by a person or entity to a third party, which is either reported to the FPPC or otherwise made public (e.g., via advertising), and which third party then makes the contribution directly to the candidate. In such an instance, if the judge knows or reasonably should know the identity of the original, "indirect" contributor, the disclosure obligation would be triggered as to that contributor. The commission also anticipates that, in many instances, independent expenditures that clearly support a judge will qualify as "indirect" contributions.

[33] The most notable example is from West Virginia. There, as reported in the recent U.S. Supreme Court opinion *Caperton v. A.T. Massey Coal Co., Inc.* (2009) --- U.S. ---, 129 S.Ct. 2252, a recently elected justice of West Virginia's Supreme Court refused to disqualify himself from a case involving Massey Coal, despite the fact that that company's chief executive officer had contributed a reported $3 million on independent expenditures tending to support the justice's election campaign and oppose his opponent. The Supreme Court held that under the facts of the *Caperton* case, the justice's disqualification was required under constitutional due process principles.

becomes aware of extreme examples like this, trust and confidence in the integrity of judges as a whole declines.

The concept of disclosure raises logistical issues as to how, when, and for how long the recommended disclosures must be made. The commission noted that canon 3E(2) of the Code of Judicial Ethics provides: "In all trial court proceedings, a judge shall disclose on the record information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification." In determining whether a particular campaign contribution amount should trigger a disclosure requirement, the commission agreed that a judge should disclose any contribution from an attorney, law firm, party, witness, or other interested party appearing before the judge in an amount equal to or greater than the amount that must be reported to the FPPC. Currently, the minimum amount a candidate must report to the FPPC is $100. (See Gov. Code, § 84211(f).) Tying the amount to the figure in section 84211(f) would allow for an increase if the statute is later amended. Notably, the $100 figure is also consistent with CJA's Formal Ethics Opinion #48 (1999), which states that a judge should disclose on the record any contribution of $100 or more when the contributor is involved in a case before the judge.

Regarding how long a judge must continue to disclose a contribution to parties appearing before him or her, the commission concluded that the required disclosure period should continue for a minimum of two years after the date on which the judge assumes office. The recommendation is consistent with CJA Opinion #48, which recommends a period of two years, and also with the commission's recommendation, discussed below, that the obligation to disqualify last for two years.

Finally, the commission considered how disclosure should be made. First, judges should be required to maintain a list of contributors of $100 or more, updated weekly or as soon after receipt of the contribution as practical. In some circumstances, a judge might be able to comply with the disclosure requirement by orally advising the parties on the record that the list of contributions is available for viewing at a specified, accessible location in the courthouse. A judge could also advise the parties that the list is available on the court's Web site if such posting is feasible. The commission also considered whether posting a list in the courtroom would be more effective than oral disclosure, but some concerns were raised about the coercive effect this may have on litigants and attorneys, who may feel compelled to make a contribution. For this reason, the commission ultimately decided not to recommend a specific, or even a preferred, method of disclosure.

Under this proposal, a judge who knowingly receives a campaign contribution from a party or attorney in between the weekly updates would be obligated to disclose that contribution as soon as practical. Depending on the circumstances, this may require

disclosure before the next weekly update is prepared. If a judge has reason to believe that disclosure of a particular campaign contribution will not be communicated effectively by reference to the list, or if there is some other circumstance warranting disclosure on the record in open court, the judge cannot rely on referring the parties to the list and must directly disclose.

In light of the above, the commission recommends that the following language be placed in the advisory committee commentary following canon 3E(2):

> A judge shall disclose to the parties any judicial election campaign contribution received, directly or indirectly, from a person or entity appearing before the judge in a proceeding if the contribution is in an amount required to be reported to the Fair Political Practices Commission (FPPC) pursuant to Government Code section 84211(f). A judge is not required to disclose a contribution below the FPPC threshold amount unless there are other circumstances that would mandate such disclosure in accordance with this Code.
>
> Except as set forth below, a judge may satisfy the disclosure requirements under this Canon by advising the parties that a list of all contributions to the judge's election campaign of $100 (or the current minimum amount required by the FPPC) or more is available for viewing at a specified, accessible location in the courthouse and, if feasible, on the court's Web site. A judge must update the list on a weekly basis or as soon after receipt of the contribution as practicable.
>
> A judge will not satisfy the disclosure requirements under this Canon if the judge has reason to believe that disclosure of a particular campaign contribution will not effectively be communicated to a party by reference to a list of FPPC–reported contributions or there is some other circumstance warranting disclosure of a specific contribution on the record in open court.
>
> The obligation to disclose a judicial campaign contribution continues from the date on which the contribution is received until a minimum of two years after the date on which the judge assumes office following election.

In addition, the advisory committee commentary to canon 5B, which addresses conduct during judicial campaigns, should include a cross-reference to this proposed new commentary to canon 3E(2) because some candidates may look to canon 5 for information on campaign conduct.

Disclosure at the appellate court level

Ultimately, the commission's goal was to provide for a similar level of disclosure at both the appellate and trial court levels, although the commission recognized that differences in court administration and procedure between the two levels would make identical disclosure recommendations impractical. For example, the commission discussed whether the requirements of canon 3E(2), which applies only to trial court judges, should apply to justices of the Courts of Appeal and the Supreme Court; it ultimately concluded that it would be difficult to impose a disclosure requirement on the appellate courts because the parties typically are in court for the first time at oral argument. In addition, disclosure does not have the same practical effect at the appellate level because there is no existing mechanism for a litigant to disqualify an appellate justice following disclosure. Nevertheless, the commission recommends that appellate courts be required in some fashion to send to the parties—with both the first notice from the court and with the notice of oral argument—information on how they may learn of campaign contributions if there is an upcoming election or there was a recent election. This could, for example, be accomplished by a rule of court promulgated by the Judicial Council.

Disqualification at the trial court level

The commission is of the view that mandatory disqualification of judicial officers at all levels, in conjunction with mandatory disclosure, would be more effective than contribution limits, i.e., it would enhance the public's confidence that the system has safeguards in place to prevent judicial decisionmaking from being influenced by monetary contributions. While the commission considered whether disqualification should be left entirely to the discretion of the judicial officer—albeit perhaps subject to more detailed benchmarks than are currently provided for by law[34]—it ultimately concluded that some objective standard should be adopted for the sake of greater public confidence in the impartiality of the judiciary as well as to avoid the unlikely potential of a Massey Coal–type situation (see footnote 33) in which a judicial officer fails to recuse even when he or she has received significant economic support from a party appearing before the court.

Mandatory disqualification raises a number of subissues, including the threshold amount at which the disqualification must occur, how to determine whether the disqualification threshold has been met with respect to multiple contributions made by individuals employed by or affiliated with the same entity, the need for the disqualification to be

[34] Currently, when trial court judges receive contributions from persons or entities appearing before them, they must look to Code Civ. Proc., § 170.1(a)(6)(A) to determine whether they are disqualified. Section 170.1(a)(6)(A) provides that a judge is disqualified if (1) the judge believes his or her recusal would further the interests of justice, (2) the judge believes there is a substantial doubt as to his or her capacity to be impartial, or (3) a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. Rule 2.11(A)(4) of the ABA model code addresses this situation specifically by mandating disqualification if a judge accepts a campaign contribution of a certain amount, leaving the amount for each state to determine.

waivable in order to prevent "gaming" of the system—i.e., making contributions to a judicial officer for the express purpose of causing his or her disqualification—and the length of time for which the disqualification obligation exists. These same issues, as well as additional ones discussed below, exist not only for the trial courts but also at the Court of Appeal and Supreme Court levels.

Disqualification threshold amount. Concerning the dollar level at which disqualification should be mandatory, the commission considered whether to recommend a fixed amount or whether instead to recommend a variable amount such as some percentage of a candidate's total contributions received. Ultimately the commission determined that a uniform, fixed amount would be the most efficient and effective solution. With respect to what that amount should be, a variety of factors were considered, including the public's perception of the effect of certain sums of money on judicial decisionmaking and the need of judicial candidates to raise sufficient sums to allow them to campaign effectively. The commission also recognized a concern that an increased need for fundraising by judges who are already on the bench, which could be the result if the threshold were set too low, has the potential to be both a burden and a distraction affecting judicial productivity.

In arriving at its recommended threshold for trial court judges, the commission observed that Code of Civil Procedure section 170.5—which defines a "financial interest" mandating disqualification as, among other things, a financial interest in a party of $1,500 or more—arguably reflects a legislative determination that that amount is meaningful with respect to a judge's ability to be impartial, or at least to give the appearance of impartiality.[35] The commission was concerned, however, that that dollar figure has not changed in recent years and thus has recommended that while mandatory disqualification be tied to the level at which a judge must disqualify himself or herself because of a financial interest, the actual dollar figure at which that occurs should be reexamined periodically and amended accordingly. Further, the commission crafted its recommendation to emphasize that while $1,500 is the current amount at which it recommends that disqualification be mandatory, that recommendation in no way is meant

[35] In reaching this conclusion, the commission consulted the results of a database that was commissioned and prepared under the guidance of the Task Force on Judicial Campaign Finance for the purpose of examining whether actual fundraising differed from expected norms. That database was created by obtaining and inputting information from all available campaign disclosure/reporting statements, from 2000 through 2006, filed by candidates for judicial office in the counties of Alameda, Orange, Los Angeles, and Sacramento. The database was programmed to permit the compilation, per candidate, of the (1) highest contribution received, (2) mean contribution amount received, (3) total number of contributions received, and (4) total expenditures. The database also contains limited information about the source of each contribution. Having reviewed the average contribution amounts received by the judicial candidates examined, as well as the relatively small number of contributions received in excess of $1,500, the commission was persuaded that setting the mandatory disqualification amount at that level would not significantly impede the right of potential contributors to participate in the political process nor the ability of judicial candidates to raise the necessary level of campaign funding.

to supplant the requirements of Code of Civil Procedure section 170.1(a)(6)(A). That code provision may require disqualification in additional circumstances relating to contributions—including the receipt of a contribution in an amount lower than the recommended threshold—if, for example, the contribution would cause a reasonable person to question whether the judge who received the contribution can be impartial.[36]

Effect of multiple contributions on the disqualification threshold. The commission also recognized the potential issues that could arise if a candidate were to receive multiple contributions from individuals who are employed by or otherwise affiliated with the same entity. The commission's intent is that its recommendation would mandate disqualification if such individual contributions meet or exceed the recommended disqualification threshold. The commission acknowledges, however, that it may not always be apparent to a judicial officer whether contributions are indeed coming from individuals within the same entity, and the intent is not to impose an additional burden on judicial officers to go beyond the readily ascertainable information pertaining to the contributions they receive. Rather, the commission intends that a judicial officer disqualify himself or herself if he or she knows or reasonably should know that multiple individual contributions that would, in the aggregate, amount to the recommended threshold are all affiliated with the same entity.

Waiver of mandatory disqualification. Mandatory disqualification carries with it the possibility of a litigant gaming the system, i.e., making a large contribution to a particular judge for the express purpose of forcing that judge to disqualify himself or herself. Thus, any mandatory disqualification system, at any court level, must account somehow for this possibility. The commission concluded that the best means of doing so is through a provision under which the noncontributing party may waive a disqualification that would otherwise occur because of another party's or counsel's campaign contributions.

Length of the mandatory disqualification obligation. The commission considered when the obligation to disqualify should arise and how long it should last. For incumbents, it is logical for the obligation to arise as soon as the contribution is received; any other result would undermine the purpose of the disqualification, which is to prevent a judge from adjudicating a matter involving a contributor of $1,500 or more. For candidates who are elected, the obligation would arise on taking office. In terms of how long the obligation should continue, the commission agreed that two years is reasonable—given, for example, the length of time it takes for matters to move through the courts and the logistical burden if judges were subject to the obligation for too long a period of time—although it considered alternatives ranging from one year to the entire election cycle (currently six years for trial court judges). The commission also agreed that the two years

[36] Likewise, Code Civ. Proc., § 170.1(a)(6)(A) might, in some circumstances, require disqualification beyond the two-year period recommended by the commission and discussed below.

should be measured from the date that the candidate takes office or from the date that the contribution is received, whichever is later.

Disqualification at the Court of Appeal level

The issue of whether appellate justices at both Court of Appeal and Supreme Court levels should be subject to mandatory disqualification at all gave rise to considerable discussion, as such a requirement would present unique challenges at the appellate level. For example, appellate justices currently are not subject to a peremptory challenge the way that trial court judges are, which arguably reflects a policy decision that appellate justices should not be subject to disqualification on the same bases as trial court judges. On the other hand, canon 3E(5)(d) of the Code of Judicial Ethics requires disqualification at the appellate level when a justice has a financial interest of $1,500 or more in a party, which parallels the law applicable to trial court judges.

Ultimately, the commission agreed that public trust and confidence is even more an issue with appellate decisions because of their considerably greater impact and the attention and scrutiny that they receive. Thus, the commission has recommended that justices at both Court of Appeal and Supreme Court levels be subject to mandatory disqualification based on contributions, the same as trial court judges.[37]

Turning to the disqualification subissues discussed in connection with trial court judges above, the same concerns about waivers and timing exist at the appellate level, so the commission's recommendations on those subissues are parallel across all court levels. The issue of the monetary level at which Court of Appeal justices (and, as discussed below, Supreme Court justices) must disqualify themselves is more complex at the appellate level, however. For example, campaign contribution data obtained from the California Secretary of State's Cal-Access database suggests that while Court of Appeal justices standing for retention often raise no money (e.g., when they are not subject to any effort to defeat their retention bid through the making of independent expenditures), when those justices are required to raise money, it is often in greater amounts than at the trial court level.[38] This may be because of the higher dollar amounts that appear to be spent to unseat retention candidates, because of the larger jurisdiction served by justices of the Courts of Appeal, or both. Regardless, the commission carefully considered whether Court of Appeal justices should be subject to a higher disqualification threshold than trial court judges.[39]

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[37] The chair of the Task Force on Judicial Campaign Finance reported that he conducted an informal survey of Court of Appeal justices on this issue and that the overwhelming majority of them favored the idea of mandatory disqualification at the appellate level.

[38] The Cal-Access database can be searched online, by candidate and year, at *http://cal-access.ss.ca.gov /campaign/candidates*.

[39] For example, the threshold disqualification amount for Court of Appeal justices could be tied to the current contribution limit for candidates for statewide office other than the Governor or for candidates for the Legislature.

However, the commission ultimately concluded that the $1,500 threshold strikes the best balance between the competing values of maintaining public trust and confidence in impartial judicial decisionmaking and allowing judicial candidates to engage in necessary fundraising and should apply to both the trial courts and the Courts of Appeal,[40] especially given that the parallel "financial interest" provisions of the Code of Civil Procedure and the Code of Judicial Ethics use the same $1,500 figure for disqualification at both the trial and appellate levels.[41] It bears noting that the recommended threshold would not necessarily prohibit a potential contributor from instead making independent expenditures in support of a retention candidate, although such an expenditure could possibly be considered an indirect contribution or could trigger a disqualification requirement—albeit not mandatory—under the Code of Judicial Ethics.

Disqualification at the Supreme Court level

Mandatory disqualification at the Supreme Court level raises many of the same issues discussed above in connection with the trial courts and Courts of Appeal. Rather than revisiting those issues, the discussion in this section will focus on issues unique to the commission's recommendations about the Supreme Court.

The primary issue of difference is the dollar level of the disqualification threshold for the Supreme Court. As noted above, a reasonable position is that Supreme Court justices—like all other judicial officers—should be subject to mandatory disqualification based on a contribution of $1,500 or more. However, the commission agreed that in actual practice that amount would be too low and likely would not be workable.

As has been noted, data from other states show that most spending in judicial elections—particularly high-dollar spending—occurs at the Supreme Court level.[42] Thus, when a Supreme Court justice's retention bid is challenged, there is a strong possibility that spending against that justice would be in the millions of dollars. As such, the commission considered the amount of money that Supreme Court justices reasonably could be expected to need to raise in determining the appropriate disqualification threshold. In other words, assuming that the amount that a Supreme Court justice would need to raise exceeds that of a trial court judge or Court of Appeal justice by a significant factor, it would not make sense to subject the former to the same disqualification threshold as the latter.

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[40] Again, this is the level at which mandatory disqualification applies. A justice may still be required to disqualify himself or herself based on a lower contribution amount in accord with canon 3E(4) of the Code of Judicial Ethics.

[41] It is true that, under this rationale, it could be argued that justices of the Supreme Court also should be subject to disqualification based on a $1,500 contribution. That issue, including the commission's rationale for recommending a higher disqualification threshold at the Supreme Court level, is discussed below.

[42] See Sample, Jones, and Weiss, *The New Politics of Judicial Elections 2006, supra*, at p. 15.

In the commission's view, which is supported by spending trends in other states, a higher disqualification threshold at the Supreme Court level is reasonable and will permit necessary fundraising while at the same time ensuring judicial impartiality. Thus, the commission has recommended that the disqualification threshold amount for Supreme Court justices should be the same as the contribution limit amount applicable to candidates for Governor.[43] That amount arguably reflects a legislative and administrative determination about the appropriate upper level of contribution for a candidate for statewide office. While a disqualification is not the same as a contribution limit, the two are functional equivalents with respect to limiting the effect of money on subsequent political behavior.

Limitations on Corporate and Union Financing of Judicial Elections

The commission considered whether to recommend limiting direct and/or indirect corporate and union financing of judicial candidates or of independent expenditures.[44]

Recommendation 34

Legislation should be sponsored prohibiting corporations and unions from expending treasury funds on contributions directly to judicial candidates or to groups making independent expenditures in connection with campaigns for judicial office.[45]

Discussion: Under current law, it is not permissible to limit the amount that may be spent on independent expenditures, nor is it permissible to limit the overall amount of money that a person or entity engaged in making IEs may raise. It would most likely be legally permissible,[46] however, to limit the ability of corporations and unions to expend treasury funds on IEs and on direct contributions to candidates for judicial office.[47] Instead,

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[43] Of course, there is a clear distinction between Supreme Court justices standing in retention elections and gubernatorial and other candidates for statewide political office, and the commission's recommendation is in no way intended to politicize the former or to suggest that Supreme Court retention campaigns should be run in the same manner as campaigns for the office of Governor.

[44] Note that this issue relates to both direct contributions and independent expenditures and thus is relevant to the detailed discussion of the latter below.

[45] This recommendation is not intended to prohibit corporations and unions from forming separate, segregated funds or political action committees (PACs) for these purposes.

[46] The commission notes that, as of the date of this report, the U.S. Supreme Court is preparing to rehear arguments in *Citizens United v. Federal Election Commission*, --- S.Ct. ----, 2009 WL 2486386 (U.S.), 78 USLW 3080, 08-205. At issue in the rehearing is, among other things, whether federal restrictions on the use of corporate treasury funds for electioneering are an unconstitutional burden on free speech. Obviously, if the Supreme Court establishes new constitutional limits on the regulation of corporate (or union) financing of elections, this recommendation could be mooted. Thus, the commission recommends that the *Citizens United* case be carefully followed before this recommendation is implemented.

[47] The commission is not aware of any data indicating that corporations and unions have historically been major sources of IEs targeting judicial candidates in California. As discussed below, most IEs are made at the appellate level. However, in a system such as California's, where appellate elections are nonpartisan retention elections—meaning that moneyed interests seeking to unseat an incumbent justice have no ability to affect who that justice's successor will be—it may be the case that corporations and unions have not viewed it as cost-effective to spend money on IEs targeted at retention candidates.

corporations and unions would be required to make contributions or spend money through PACs. This would mean, in effect, that all corporate and union spending would represent the will of the individual members of those entities who contributed to the PAC, rather than the will of the board of directors charged with managing shareholders' investments or another controlling body.

The commission is of the opinion that such a limitation would increase the public's trust and confidence that judicial decisionmaking is free from moneyed influence. Corporations and unions typically are far better poised than individuals to infuse substantial amounts of money into elections. Requiring contributions and expenditures to be made through PACs prevents corporate and union management from seeking influence in the courts without oversight by shareholders, employees, and members of those organizations.

The commission is aware that some judicial candidates may rely on endorsements by and funding from certain public unions and corporations, particularly at the trial court level. Again, however, this recommendation would not limit such support. Rather, the recommendation would require only that corporate and union funding be made through PACs, as opposed to coming directly from treasury funds. Indeed, given federal tax laws, it may already be the case that tax-exempt organizations such as unions cannot or do not spend treasury funds on candidate campaigns. Thus, this recommendation may be viewed as leveling the playing field as between corporations and unions by requiring that both types of entities have individual members' support for whatever political expenditures they make in the entities' names.

Electronic Filing of Judicial Candidate Campaign Finance Disclosures

Judicial candidates, like candidates for other elective office, are required by law to report certain financing information, at specified times, to the California FPPC.[48] Issues arising from those requirements include what must be reported and when, as well as the means by which information is reported and, therefore, made accessible to the public. For the latter, the commission considered whether to recommend that judicial candidates be required to electronically file (e-file) their mandatory disclosures, and, if so, with what agency and at what aggregate contribution/expenditure level.

[48] The statutes and regulations governing disclosure reporting are detailed and complex, and a full discussion of those authorities is beyond the scope of this report. Manuals explaining the disclosure requirements can be found on the FPPC Web site at *www.fppc.ca.gov/index.html?id=505#cam*.

Recommendation 35
Legislation should be sponsored to require that all candidates for judicial office—regardless of their total dollar amount of contributions received and/or expenditures made—be required to file in some electronic format with the California Secretary of State's office all campaign disclosure documents that they would also be required to file in paper form.[49]

Discussion: In arriving at this recommendation, the commission first considered what recommendations, if any, to make with respect to the content and timing of judicial candidates' reports regarding contributions received and expenditures made. The current state of California's disclosure law has received praise for its comprehensiveness, suggesting that no changes are necessary. Specifically, in a survey of all 50 states done by the Campaign Disclosure Project, a collaboration of the University of California at Los Angeles School of Law, the Center for Governmental Studies, and the California Voter Foundation, California was ranked second overall (after Washington State) in terms of disclosure of campaign finance information.[50] Significantly, California ranked first overall in terms of the substance of the law itself. As noted by the Campaign Disclosure Project:

> California maintained the number one ranking in the law category, and has earned an A in this area in each of the five assessments. Strengths of the law include detailed contributor disclosure, including occupation and employer data; last-minute contribution and independent expenditure reporting; and strong enforcement provisions.[51]

Based on the recognized excellence of California's current legal scheme regarding disclosure reporting, the commission decided that it was not necessary to recommend any amendments or additions to that body of law.

The commission has recommended, however, that legislation be pursued to require that judicial candidates at all levels electronically file their campaign finance disclosures. In addressing its charge, and particularly in connection with preparing the limited database described in footnote 35 above, the Task Force on Judicial Campaign Finance desired to review a number of disclosure reporting statements filed by judicial candidates in certain counties for certain election cycles. However, in attempting to obtain those documents—which are public information—the task force discovered that actually accessing them can be logistically difficult and time-consuming. One challenge comes from the fact that

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[49] The commission has not made any recommendation about the exact electronic format—e.g., scanned PDF file, entry into the fields of the Secretary of State's Cal-Access database—that judicial candidates should be required to use when filing their disclosure documents and instead recommends that that issue be referred to an appropriate group for detailed consideration and further recommendation.
[50] See *www.campaigndisclosure.org/gradingstate/ca.html.*
[51] *Ibid.*

while judicial candidates are required to submit this information both to their local county registrars of voters and to the California Secretary of State's office, some candidates do not know of the latter requirement. Thus, some judicial candidates' information must be obtained from local county registrars, and the availability of information and practices for obtaining it vary from county to county.

Further, even reports that are properly submitted to the Secretary of State's office can be difficult for the public to access. One reason for that difficulty appears to result from the fact that superior court judges are not defined as statewide officers under the Political Reform Act. Thus, unlike appellate court retention candidates, trial court judges are not required to e-file their disclosure reports. As a result, even if a trial court judicial candidate has properly filed reports with the Secretary of State's office, a member of the public must still request a paper copy of the disclosures and pay the copying and mailing costs. And if the disclosures were made in a past election cycle, it may be necessary to obtain the reports not from the Secretary of State's office, but rather from the State Archives, which can add an additional layer of complication and delay. In short, the public's right of access, while legally guaranteed, is very difficult to exercise in actual practice.

In light of the above, the commission agreed that some system of e-filing of all judicial candidates' disclosure reports would greatly enhance the public's ability to access information about who is contributing to judicial campaigns and in what amounts, as well as what judicial candidates are spending their campaign funds on and in what amounts. This, in turn, would increase the public's trust and confidence that the judiciary is not subject to influence by monetary contributions. Informal conversations with Secretary of State staff suggested that there would be little resistance from either the Secretary of State's office or the local county registrars if the Secretary of State's office were made the official host agency for these e-files. And it appears that the actual statutory changes that would be needed in order to require superior court judicial candidates to e-file would be relatively minimal, with no major legislative rewrites required.

One change that would be required, however, relates to the threshold at which the e-filing requirement is triggered. Under current law, candidates who are required to e-file do not have to do so until they reach an aggregate contribution and expenditure amount of $50,000. Judicial races, however, often do not reach this $50,000 e-filing threshold, which would mean that maintaining that threshold for judicial candidates could result in no actual improvement in the public's ability to access those candidates' disclosure reports. Thus, the commission has recommended eliminating the threshold for judicial candidates and requiring all contribution and expenditure reports to be e-filed.

In considering what form the e-filing should take, the commission considered Cal-Access, the online e-filing database that the Secretary of State's office maintains for,

among other things, candidates for statewide office. In informal conversations, Secretary of State staff suggested that the cost, in both dollars and staff required, of adapting Cal-Access to accept e-filing by trial court judicial candidates would likely be low.

The commission also considered the results of meetings that the Task Force on Judicial Campaign Finance had with actual campaign treasurers to get their perspective on Cal-Access and whether it would be an appropriate vehicle for e-filing trial court judicial candidates' disclosure reports. In those meetings, it was noted that while the Secretary of State's office makes available free software that can be used to e-file on Cal-Access, that software does not include other necessary functionality such as ledgers. Thus, a candidate who uses the free software may also need to use third-party ledger software. In practical effect, this may mean that instead of inputting data twice, candidates may opt to use third-party software instead of the free software from the Secretary of State's office, which in turn means that many or most candidates may see a cost associated with being required to e-file on Cal-Access. And while that cost may not be considered expensive in the context of many campaigns, given the relatively low cost of a judicial campaign, it could be financially burdensome on a candidate to have to spend limited funds on e-filing in addition to other expenses.

A second option would be to have judicial candidates simply submit scanned electronic copies (e.g., PDF files) of their reports to the Secretary of State's office. The benefit of this option is that there would be no cost and little effort associated with the submission; the paper reports could simply be scanned and e-mailed to the Secretary of State's office for posting to a searchable Web site. One drawback is that the data in reports e-filed in this manner would not be subject to all of the search and cross-reference functions that are available with a true electronic database such as Cal-Access.

Ultimately, the commission decided not to make a recommendation about what form of e-filing would best balance the public's need for access and candidates' need for an efficient, cost-effective filing system. Instead, that issue should be considered further by the appropriate implementation group.

Independent Expenditures

Before addressing specific issues relating to independent expenditures,[52] this report provides some general background information that will serve as a framework for the discussion below. Data show that groups making IEs in judicial elections often have substantial resources with which to influence the campaign process; sometimes they can bring more money to the table than the actual candidates running for judicial office.[53] This phenomenon raises particular concerns when appointed judges who have never run

[52] Recall that the recommendation above concerning limits on corporate and union treasury spending also affects IEs.
[53] See Sample, Jones, and Weiss, *The New Politics of Judicial Elections 2006, supra*, at p. 21.

campaigns are standing for retention. But the problems posed by substantial "independent" spending in judicial elections are not limited to that context.

Justices who are up for retention are at a special disadvantage for two reasons. First, unlike some trial court judges, they did not need to raise funds to support their initial selection, so they may not have preexisting contributor lists to which they can turn if they are attacked. That problem is exacerbated when opponents of appointed judicial officers wait until late in the election season to launch opposition campaigns, as IE sponsors often do.

Second, IE groups with substantial monetary resources may be able to buy up large chunks of available airtime in the days before an election, making it difficult even for candidates who do have resources or outside support to respond to their opposition. The candidates may have to use less-effective or more time-consuming means of communication. As a result, the message of the IE may be far more likely to reach voters than would any information coming from the sitting judge.

These features of independent expenditures undermine public confidence not only in the fairness of judicial elections but also in the fairness and impartiality of judicial decisionmaking. When incumbent judicial officers face the threat of attack by high-spending IE groups, the public may come to believe that decisions by those judges will be influenced by their desire to avoid such attacks. That is, the public may conclude that judges and justices are susceptible to the influence of money not only through the contributions to those judicial officers, but also through the threat of large IEs being made against those officers if they render decisions contrary to the interests of the groups funding the IEs.

Another concern raised by IEs is that they may greatly influence the public's perception through advertising or other means of information dissemination that presents false or misleading information about judges, judicial decisionmaking, and the role of the judicial branch generally. Put another way, IE groups seeking to unseat an incumbent judge may, depending on how they paint that judge or his or her actions, give the public an entirely incorrect impression of the role of the judiciary, and the incumbent may be unable to raise sufficient money to counter any such advertising. The public may be left with an incorrect impression, and this misunderstanding could damage the public's perception of the judicial branch as a whole.

The above concern is related to two additional issues relating to independent expenditures. First is the difficulty that the public may face in understanding exactly who the persons or entities are behind IE groups, which often have bland, nondescriptive names like "Californians for Better Justice." While little can be done to regulate the content of IE-funded advertising, greater transparency may be achievable through

disclosure of major contributors to the group making the expenditure. If the public could more easily learn whose financial interests were funding IEs targeted at unseating or defeating judicial candidates, any negative comments about those candidates could be put into a more accurate context.

Second is the fact that in some states IE groups have targeted judges as candidates who can be attacked fairly easily and cheaply as a means of motivating a voter base for some unrelated purpose. For example, in a district with a close congressional race, an attack on a justice who has ruled on a controversial issue may be used to motivate a political constituency upset with the ruling on that issue to the polls, where they will also vote in the congressional race.

Against the above background, the commission considered whether to recommend sponsoring amendments to relevant statutes and/or regulations to broaden California's definition of what constitutes an IE—and therefore is subject to, among other things, laws relating to disclosure and corporate/union spending limits—to the extent permissible under the Constitution. The commission also considered whether to recommend sponsoring legislation to (1) expand the scope of what information must be reported by IE groups under applicable campaign finance reporting laws or that must appear in the disclaimers on the face of advertisements funded by IE groups or (2) make changes affecting the timing of disclosures regarding IEs.

California's legal definition of what constitutes an independent expenditure

Initially, the commission considered whether to recommend sponsoring amendments to appropriate California statutes and regulations so that California's definition of an independent expenditure—one subject to, e.g., disclosure laws—is as broad as possible under current case law.[54] While the commission's draft report included such a recommendation, on further consideration—resulting in part from comments received during the public comment period—the commission ultimately decided not to make that recommendation. The decision not to go forward with the recommendation was based primarily on the concern that it could have unintended political consequences outside of the judicial branch, i.e., the contemplated amended definition would affect not only races for judicial office but for all political offices in California. Nonetheless, and for the reasons discussed below, the commission remains concerned about the effect on judicial elections of the fact that California's current statutory/regulatory definition is not in line with federal law and is narrower than is legally permitted.

Generally speaking, the regulation—whether through disclosure requirements or limits on corporate and union contributions—of independently funded campaign advertising raises

[54] Such case law includes *McConnell, United States Senator, et al. v. Federal Election Commission* (2003) 540 U.S. 93 [124 S.Ct. 619], and *Federal Election Commission v. Wisconsin Right to Life, Inc.* (2007) 551 U.S. 449 [127 S. Ct. 2652] (*WRTL II).*

potential First Amendment concerns, in that overly restrictive regulation may be held to have an unconstitutional chilling effect on political speech. Historically, most courts have distinguished between communications that may or may not be regulated by considering whether the ads constituted "express advocacy" (regulation permitted) or "issue advocacy" (protected by the First Amendment). The test for express advocacy was the so-called "magic words" test, under which a communication was considered express advocacy that could be constitutionally regulated only if it used specific magic words such as "vote for," "vote against," and the like. Otherwise, a communication was considered issue advocacy and was not subject to the same disclosure requirements, contribution limits, and other limits applicable to express advocacy.[55] As discussed below, however, the United States Supreme Court in the *McConnell* case recently rejected the idea that the distinction between express advocacy and issue advocacy is constitutionally required.[56] Therefore, it is now constitutionally permissible to regulate a wider scope of electioneering communications than in the past.

In California, the statutory and regulatory definitions of "independent expenditure" on the books were drafted in accord with the opinion of the United States Court of Appeals for the Ninth Circuit in *Federal Election Commission v. Furgatch* (9th Cir. 1987) 807 F.2d 857.[57] That opinion, however, which was alone among federal circuit decisions in rejecting the magic words test for express advocacy, was expressly rejected by the Court of Appeal, First Appellate District, in 2002 in *Governor Gray Davis Committee v. American Taxpayers Alliance* (2002) 102 Cal.App.4th 449. Under the latter, California adopted the magic words test for campaign advertising subject to regulation in California.

Notwithstanding the *Governor Gray Davis* opinion, the California statutes and regulations defining an IE for purposes of, for example, disclosure laws, were never formally amended to add a magic words test. Nevertheless, the FPPC continues to regulate campaign advertising in a manner consistent with that decision. As noted above, however, subsequent United States Supreme Court opinions allow for California's statutory and regulatory provisions in this area to be revisited.

Specifically, the current constitutional jurisprudence about the permissible definition of an IE is set forth in the *McConnell* and *WRTL II* opinions, cited above. Those opinions allow for a broader definition of an IE than that in *Governor Gray Davis*. Specifically, the *McConnell* court rejected the notion that only advertising that uses magic words may be regulated without running afoul of constitutional principles by holding that the distinction between express advocacy and issue advocacy is not constitutionally mandated. Thus, under *McConnell*, it was held permissible to impose restrictions on

[55] These regulations do not include limits on how much money IE groups may spend or on what; such limitations are not constitutionally permissible.
[56] It must also be noted, however, that the constitutionality of the *McConnell* decision is one of the issues presently before the United States Supreme Court in the *Citizens United* case, discussed *supra*.
[57] See, e.g., Gov. Code, § 82031; Cal. Code Regs., tit. 2, § 18225.

corporate and union treasury spending on "electioneering communications"—which restrictions the task force has recommended above—and to impose certain disclosure and reporting requirements in connection with spending on those communications. Notably, it was held constitutional for a statute to define an electioneering communication as encompassing far more than simply ads using magic words; an "electioneering communication" was defined under the statutory scheme in question as an ad that referred clearly to a candidate (for federal office), targeted that candidate's constituents, and ran within a specified time period before an election. Such a definition clearly would encompass far more than merely ads using magic words.

The *McConnell* holding was scaled back by the court in *WRTL II*, in that the ban on the use of corporate treasury funds for electioneering communications was held unconstitutional as applied because the ads in question were found not to be express advocacy or its functional equivalent. Nonetheless, even with the limits imposed under *WRTL II*, the current state of the law allows for spending bans on something more than solely magic words–type express advocacy. Moreover, *WRTL II* did not affect the federal disclosure requirements with respect to electioneering communications.

Based on the above, the current interpretation given to California's regulations and statutes—an interpretation that is in line with the *Governor Gray Davis* magic words holding—is narrower than would be legally permissible under current constitutional jurisprudence. Thus, it would be possible to seek legislative and regulatory amendment to broaden the definition of what constitutes an IE in California.

While the commission is of the view that California's statutory and regulatory schemes should be updated to reflect accurately the current state of the law—and that public trust and confidence in the impartiality of the judiciary would increase if the public were better able to track the sources of monies spent in connection with judicial elections—the commission ultimately decided not to recommend pursuing statutory or regulatory amendments. As noted above, the commission's primary reason for withdrawing its earlier recommendation on this issue was the concern that such a recommendation, if implemented, would have significant implications for all elections in California, i.e., its effect would not be limited to judicial elections. Such a recommendation is outside the scope of this commission.

Content and timing of disclosures pertaining to advertising in judicial elections
The commission also considered whether to recommend sponsoring amendments to appropriate California statutes and/or regulations to affect both the content and timing of disclosures pertaining to advertising in connection with judicial elections, whether funded independently or by a candidate. Although, as discussed below, the commission did not recommend any amendments affecting the content of those disclosures, it did initially recommend amendments requiring that the disclosures be made earlier than currently

required, at the time that any person or entity makes a contract for that advertising. On further consideration, however, the commission decided to withdraw that recommendation. The commission's concern was that the recommendation, while sensible in theory, could prove unworkable in actual practice. Further, the commission also noted a similar concern to that discussed above in connection with the definition of an independent expenditure, namely that the recommendation could have unintended consequences on campaigns other than for judicial office and would therefore be outside of the commission's purview. Although it has been withdrawn, the concerns that supported the recommendation are discussed below.

Before addressing the timing of disclosure, however, the commission first considered the specific content of what must be disclosed in advertising in judicial campaigns. The commission noted that sometimes contributions to one IE group come from yet another IE group, making it more difficult for the public to trace the source of the money that is being spent on certain communications. Situations like this arguably would make it desirable to sponsor amendments to current reporting requirements to mandate reporting of information at a deeper level, i.e., reporting not only which groups are contributing to groups that make IEs, but also to require reporting of groups that are contributing to those contributor groups, all in the same report.

However, the commission ultimately decided not to recommend sponsoring any changes to California's current law regarding the information that must be disclosed in connection with independent expenditures. As discussed above, California's existing law in this area has been nationally recognized for its comprehensiveness, including with respect to requirements for the reporting of IEs.[58]

Likewise, the commission does not recommend sponsoring any amendments to laws that specify the information that must appear in the disclaimers displayed in IE-funded advertising. Under current law, the face of political advertisements must display certain information about the two largest contributors of $50,000 or more to the IE group that funded the ad. Because judicial elections in general tend to generate less spending, it is possible that in those elections there would be no contributors of more than $50,000 to IE groups funding advertising. Thus, it would arguably be desirable from the perspective of informing the public to lower the $50,000 disclaimer threshold for judicial elections.

As noted, however, the commission ultimately decided not to recommend sponsoring such an amendment. Again, the primary basis for this decision was the fact that California law is already very comprehensive and stringent with respect to the disclaimer requirements, so imposing even more stringent requirements could be viewed as unnecessary. Further, the fact that all advertising is expensive, regardless of the type of

[58] See the Campaign Disclosure Project Web site at *www.campaigndisclosure.org/gradingstate/ca.html.*

election involved, makes it likely that, even in judicial elections, if there is advertising, some contributors will have met the $50,000 contribution threshold.

Lastly, the commission does not recommend sponsoring changes to the timing of certain IE reporting, although it did initially make such a recommendation. On further consideration, however, including of the public comments received, the commission withdrew that recommendation. It did so primarily for two reasons. First, the commission was concerned whether the recommendation would be reasonably workable in actual practice. Second, the commission was concerned that the recommendation, if adopted and pursued, could have unintended consequences beyond judicial elections—it could affect campaigns for other offices, which was not the commission's intent nor within its scope. Despite withdrawing the recommendation, the commission remains concerned about the current timing of disclosures regarding advertising in judicial elections, for the reasons discussed below.

Candidates for judicial office (particularly in retention elections, where campaign funds are not typically raised as a matter of course) are highly susceptible to last-minute attacks by IE groups,[59] whether in the form of advertising or otherwise. This is because, under current law, reporting is required at the time that the communication is made. In other words, if an independent expenditure is made for a television ad designed to unseat an incumbent justice, the reporting of the sources that funded the IE must be made at the time the ad airs (or later, depending on when the next report is due). Thus, in practical terms, an IE group may spend money on and prepare an attack ad that is not run until very close to the election, at which time the candidate will not have had time to prepare and will have little time in which to respond.

The above scenario may work not only to the detriment of the candidate, but also to the detriment of the public. Such reporting gives the public less time before the election in which to obtain information about the persons or groups who are behind the IE. Indeed, the report for a last-minute attack ad may not be due until after the election, when it is too late to affect the voters' decisions. Earlier disclosure would allow the public more time to try to understand who is funding attack ads and possibly to discern why. In the commission's view, this is a worthy goal, as a public that is well informed about the sources of money being expended both for and against candidates is likely to have more trust and confidence in the system as a whole.

The difficult question, however, is when that earlier reporting should be required to occur. One possibility would be to require reporting at the time a contract for advertising or other public efforts is signed. Ultimately, however, the commission was concerned that such a requirement could be "gamed" by delaying the signing of a contract until

[59] While discussion on this issue focused primarily on advertising funded through IEs, the commission recognizes that some advertising might be funded by the candidates themselves.

immediately before the advertisement is to air. Thus, the commission's initial recommendation was that reporting be required whenever a contract is "made," which was meant to include any level of commitment to expend IE funds on advertising relating to a judicial election.

The commission was aware, however, that in some instances, just because money is committed to, or even spent on, advertising or other communications does not mean that those ads or communications will ever be made or run. Further, advertisements may be committed to even before the IE group involved has decided exactly who or what issue will be the "target" of those ads. Thus, while the commission agreed in principle that earlier disclosure would be preferable, it ultimately did not make such a recommendation given the logistical hurdles that would have been inherent in implementing and enforcing it.

On a related topic, the commission also considered whether to recommend sponsoring statutory or regulatory amendments to enhance either the mechanisms that are currently available for ensuring compliance with IE disclosure and reporting requirements or the penalties for violations of those requirements. Currently, if a candidate or IE group violates a provision of the campaign finance disclosure and reporting laws, there are a number of options for addressing that violation. For example, the FPPC may impose monetary penalties. There is also a possibility that criminal charges could be prosecuted against the violator, although this is rare in actual practice. Despite these provisions, the commission examined whether to recommend sponsoring amendments to impose even more stringent enforcement or penalty options.

The commission ultimately concluded, however, that the current options are sufficient. If those options are not being exercised to the full extent possible, it is likely because of agency understaffing or underfunding (for example, at the FPPC), not to any deficiencies in the available mechanisms themselves. There may be value, however, in outreach or educational efforts designed to inform the public and campaign personnel about the enforcement and penalty provisions that already exist. The commission's hope is that doing so will both reduce the number of violations and satisfy the public that adequate protections are in place.

Public Financing of Judicial Elections

Recommendation 36

Spending in connection with judicial elections should be closely observed for developing trends that would indicate a need to reconsider whether to sponsor legislation to create a system of public financing at the trial court or appellate court level, but such legislation should not be sponsored at this time.

Discussion: There has been increased nationwide interest in recent years in the public financing of elections. Some states have adopted systems of full or limited public funding, including for judicial elections. The primary purpose of the latter is to reduce or eliminate the potential, actual, or apparent influence of campaign contributions on judicial decisions.

In examining the issue, the commission considered several aspects of public financing generally, including how such systems may be structured, the implications for such a system on judicial elections, and how such a system might be structured in connection with retention elections.

As has been noted in this report, the instances of concern that have occurred elsewhere in the country in connection with judicial elections have been at the appellate level, primarily in supreme court races, and it is quite possible that such instances have not yet occurred in California because of its nonpartisan retention elections for the appellate courts. Whatever the reasons, the commission concluded that there has not been a demonstrated systemic need for public financing in California. That conclusion, when taken together with the limitations of public financing and the state's continuing fiscal problems, caused the commission to recommend not sponsoring legislation establishing public financing of judicial elections at this time. That recommendation is subject to the caveat that future events—such as trends showing increased spending and fundraising in California—may require further consideration of the issue in the future.

Public financing systems in general

The first area of consideration was ways in which public financing systems, all of which are voluntary under constitutional jurisprudence, may be structured. For example, some public financing systems are structured as "clean money" systems, in which candidates collect a certain number of small, qualifying contributions and are then eligible to receive a lump-sum grant to cover the full cost of a basic campaign. In those systems, if one candidate opts in and another does not—and if the nonparticipating candidate raises funds over a certain amount (usually all or a substantial percentage of the participating candidate's spending limit)—the participating candidate gets a one-to-one match in public funds up to a certain specified cap, which is typically two or three times the base spending limit. A similar matching program applies to independent expenditures made in support of a nonparticipating candidate or against a participating candidate.

In considering different potential public financing models, the commission recognized that, under all of the models, nonparticipating candidates remained free to outspend participating candidates. For example, if a wealthy, self-funded candidate or a well-funded IE group were determined to spare no expense to defeat another candidate, it is likely that no public financing system could ever fund the targeted candidate on an equal level. Thus, any recommended system would, at best, increase the ability of a

participating candidate to get out his or her message, and certain hot button issues could cause an influx of money in an election in an amount that exceeds a public financing system's ability to address.

Public financing of judicial elections generally

In judicial elections in particular, the commission noted the challenge in convincing the public of the need for and the importance of public financing, especially in light of California's current fiscal crisis. Any recommended system would need to be funded at a level that is both palatable to the public and meaningful to the candidates.

Consideration was also given as to whether a capped public financing system could work in California. Given California's size and the potential amount of money that could be spent on a judicial race here, there is a concern that a cap at any fiscally manageable level would be seen as too limiting, and thus might make public financing an unappealing choice for candidates. On the other hand, no jurisdiction to date has ever implemented a public financing system that did not have some cap in place to limit the overall amount of public funds that any given candidate may receive, and the lack of such a cap could be both politically and financially unworkable.

The commission also discussed more limited forms of public financing for judicial elections. For example, it might be possible to use public funds to offset the cost of judicial candidates' candidate statements, the cost of which are currently set on a county-by-county basis, resulting in a significant disparity in the cost of simply entering a judicial race. As an alternative, public funds could be used to prepare educational biographies or some other means of informing the public about judicial candidates.

Assuming a workable, fiscally sound system could be developed, the commission agreed that public financing generally could have a positive effect in terms of furthering the appearance of judicial impartiality by lessening the influence of outside monetary contributions to judicial candidates. Put another way, public trust and confidence in the impartiality of the judiciary might increase if the public felt that judges and justices could make rulings free from the threat of disproportionate amounts of money being spent to unseat them if they rule in a particular way. On the other hand, the commission recognized that while it is possible and reasonable to distinguish candidates for judicial office from other candidates, it could nonetheless prove difficult to enact a public financing system applicable only to judicial races.

Public financing of trial court (i.e., contested) elections

Preliminarily, the commission noted that the few other states that have public financing of judicial elections do so only at the appellate court level; no state has adopted public financing of trial court elections. Considering the issue in the context of California, the commission agreed that there has not to date been a demonstrated systemic problem of

large sums of money being spent in trial court elections sufficient to warrant creating a system of public financing at that level. Further, it is possible that providing public financing at the trial court level could increase the number of candidates, making judicial elections more competitive and resulting in the types of campaign tactics that have undermined public trust and confidence in other states.

Public financing of appellate (i.e., retention) elections

Currently, only a few states have public financing of judicial elections, and then only for contested appellate races. The commission is of the view that in California, with our system of appellate retention elections, public financing would arguably be less effective than in other states. This is due in large part to (1) the potential public perception that such financing unfairly favors the incumbent and (2) the unpredictability of an adequate funding level, given the potential resources of IE groups that would be spending money to oppose a candidate's retention bid.

The commission's first concern was that any system that provides public funds to retention candidates could be seen as unduly favoring incumbents by giving them public monies, while those seeking to unseat them are forced to rely on private funding for their advertising. On the other hand, and as discussed above, appellate justices in California typically do not have an established voter base, so the presence of public financing might instead be seen as leveling the playing field between those candidates and outside moneyed interests. Further, the role of justices—as with all judicial officers—is to make decisions based on the rule of law, even when those decisions may be unpopular. The commission noted that appellate justices, especially those at the Supreme Court level, are particularly susceptible to high-dollar attacks based on rulings that are legally sound yet socially unpopular, which argues in favor of some system of public financing to allow justices to respond at least on some level to campaigns designed to unseat them.[60] One way to alleviate possible concerns about the public financing of retention elections would be to make a candidate's receipt of public funds contingent on that candidate being evaluated—possibly in a nonelection year—by an appropriate body and receiving a rating of a certain level.

The commission's second major concern related to the fact, discussed above, that when spending occurs at all in an appellate election, it is likely to be at a relatively high level, particularly when an IE group makes a concerted effort to unseat an incumbent candidate. Thus, there is a question about whether it would ever be possible in California to fund an appellate-level public financing system at a meaningful level sufficient to meet the needs of participating candidates.

[60] It is also possible, however, that IEs could be made in support of a justice's retention campaign, as opposed to being contributed directly to the justice himself or herself.

Assuming that a publicly acceptable and adequately funded system could be put into place, questions remain as to the logistics of how that system would work in the retention context, i.e., where there is no actual "opponent" against whom to track and match funds. One possibility would be to put the available public funds into a sort of escrow. As IE spending in opposition to a candidate occurred, the candidate could withdraw money from the escrow according to a certain ratio—e.g., for every dollar spent against a candidate, the candidate could withdraw a dollar from the escrow.

The commission ultimately concluded that there has not to date been evidence of a systemic problem in California with respect to large sums of outside money being spent in appellate elections. This is likely due in large part to the fact that appellate elections in California are nonpartisan retention elections. Nonetheless, the possibility exists that even though moneyed interests have no ability to select the replacement for a justice who is defeated in a retention bid, such interests might still decide it is worthwhile to spend significant amounts of money in an effort to unseat a justice. This is particularly true with respect to social issues. Given California's budget, it is uncertain whether any system of public financing could ever truly address, on a fiscal level, concerted attacks designed to unseat appellate justices.

However, the commission recommends that spending trends in California be closely monitored on an ongoing basis and that this issue be revisited if the trends seen in other parts of the country become more prevalent in California's appellate elections. In the face of such spending trends, even the mere presence of a public financing system could curtail certain attack campaigns and would likely increase public trust and confidence by creating a safety net so that justices would not appear to be reluctant to make unpopular decisions simply as a way to avoid having to raise money to respond to such campaigns.

Public Information and Education

The commission's recommendations in this section of the report address the need to improve transparency and better inform the public of the role and operations of the state court system. They also provide practical guidance for receiving input from the public, working with the media, providing information to voters, and responding to public comments and criticism of the judicial branch. The recommendations call for a branchwide leadership group to identify, coordinate, and facilitate court, community, and education outreach efforts; to develop a strategic plan for a meaningful contribution to civics education; and to look for opportunities to educate the public, enhance judicial awareness of the media, and cultivate partnerships with other branches of government.

In arriving at its recommendations on public information and education, the commission focused on ways to respond to unwarranted criticism, personal attacks on judges, and institutional attacks on the judiciary; inappropriate judicial campaign conduct; and other challenges to judicial impartiality arising from unpopular judicial decisions. The commission considered available avenues to develop and strengthen partnerships with other organizations, such as state and local bar associations, educational institutions, and the California Judges Association, which has a program for responding to criticism of judges.

In connection with these recommendations, the commission has provided a model rapid response plan for responding to unwarranted criticism (Appendix I), a tip sheet for judges to use when responding to press inquiries (Appendix J), and a detailed guide on developing a strategic plan to promote and implement quality civics education and education about the courts in public schools throughout California (Appendix K).

Public Outreach and Response to Criticism

Democracy can thrive only with the informed participation of its citizens. State and federal Constitutions have given the three branches of government different roles and responsibilities. Of the three branches, the judiciary is the least understood by the public. As reflected in a survey of the public and attorneys in 2005 and reported in the *Trust and Confidence in the California Courts* report, public knowledge about the courts is low. The goal of each of the recommendations below is to better inform the public about the rule of law and the importance of an independent judiciary in its implementation.

Recommendation 37

To improve transparency and better inform the public of the role and operations of the state court system and to enhance public outreach, the judicial branch should identify and disseminate essential information that would increase both the public's access to justice and its opportunities for input. To that end, the following are recommended:

- A leadership advisory group should be appointed to oversee, identify, and coordinate public outreach programs and opportunities for public input; to establish benchmarks of good practice; and to promote the assembly of local teams to assist courts with local outreach programs;
- The AOC should collect, summarize, and evaluate public outreach resources and methods for public input that are currently available for judges and court administrators and should also collect, summarize, and evaluate educational materials for K–12 teachers and for judges and court administrators making classroom visits;
- The AOC should maintain a list of resources for local courts that will reflect the diversity of the state and explore ethnic media outlets;
- Web sites should be enhanced to include the role of the judicial branch and explain how judges are elected or appointed; information concerning how judges are selected or elected should be placed prominently on the California Courts Web site;
- A compelling video on the role of the judicial branch should be created for use in various venues and should be posted on local court Web sites;
- The judicial branch should view any public gathering place—such as jury rooms or nonjudicial settings—as an opportunity to inform the public about the role and importance of the judiciary in a democracy;
- Courts should be identified to pilot programs dealing with community outreach and education; and
- Information about how judges are elected or appointed should be incorporated into outreach efforts and communications with the media.

Discussion: The commission believes that trust and confidence in the impartiality and accountability of the judiciary as a whole would be greatly increased through better communications, understanding, and outreach between the public and judicial branch entities such as the courts and the AOC. To that end, the commission is of the view that the judicial branch should take an active role in providing helpful information to the public that will not only increase the public's understanding of the branch but also facilitate the public's ability to provide meaningful input back to the branch.

As one step in the process of enhancing community outreach activities, courts should identify and cultivate leaders at the local level.[61] The hope is that these leaders will inspire other judges or local bar members also to engage in public outreach efforts.

[61] Rule 10.603 of the California Rules of Court requires the presiding judge to support and encourage judges to actively engage in community outreach to increase public understanding of and involvement with the justice system and to obtain appropriate community input regarding the administration of justice. In addition, standard 10.5 of the Standards of Judicial Administration provides that judicial participation in community outreach program activities should be considered an official judicial function in order to promote public understanding of and confidence in the administration of justice.

Further, the recommended leadership advisory group should partner with local courts, bar associations, the California Judges Association, the National Center for State Courts, the State Bar, and others to offer outreach and public information programs and media guidelines to courts or regional areas. And bench-bar coalitions should be encouraged to reach out to key stakeholders and interest groups, including political parties, in order to increase awareness and understanding of the judicial branch.

Examples of the type of outreach contemplated include:

- Matching similar courts (e.g., based on geographic location) to partner on outreach programs;
- Posting a court's total outreach hours on a Web site;
- Awarding continuing education credits for involvement in education efforts; and
- Encouraging retired judges to engage in outreach efforts.

Further, the commission recommends that the AOC maintain a list of public outreach options for local courts that will:

- Reflect the diversity of the state's demographic and geographic differences and include descriptions of the programs, the targeted audiences, and where they can be used; and
- Explore ethnic media outlets to reach more audiences and investigate multimedia outreach opportunities, such as the California Courts Web site, local court Web sites, libraries, radio broadcasts, podcasts, public service announcements, public video hosting sites, instant messaging, and the California Channel.

Whenever possible, programs and materials should be provided in languages in addition to English.

Opportunities to inform the public could be done through videos, brief talks, newsletters, or questionnaires. In considering appropriate public settings for such education, the commission considered, for example, jury assembly rooms. Potential jurors could be educated via juror questionnaires or videos in the assembly rooms, by listening to a judge reviewing the process after a trial or dismissal, or by receiving a thank-you postcard. Other opportunities to reach audiences include outreach to attorneys renewing State Bar dues, law students requesting bar applications, law enforcement training programs, business schools, the Department of Motor Vehicles, and other licensing agencies.

The commission agreed that a brief and compelling video that illustrates the critical role an impartial judiciary plays in a democracy should be created. The video should include an explanation of how judges are appointed or elected. The film should address various audiences, including the general public, community groups, jurors, and high school

seniors. Incorporating video clips of judges in various courts, including drug court and peer court, is suggested. Reference to support materials for teachers (e.g., curriculum materials, creative ideas for usage, and online tools) is also recommended to help teachers use the video. The video and support materials should be Internet-based.

Because Web sites serve as the public face of the superior courts, current AOC plans include the development of resources to help interested superior courts redesign their Web sites. Information about how judges are elected should be placed prominently on the California Courts Web site, as is currently provided on the Web sites of the Courts of Appeal. Web traffic to nonpartisan sources of information should be increased by partnering with other groups, such as bar associations. The feasibility of a channel for the judicial branch on one or more public video hosting sites[62] should be studied.

Lastly, and as mentioned above, the commission also suggests that the AOC investigate the possibility of establishing a judicial branch channel on one or more public video hosting sites such as YouTube.[63] One model for possible consideration is the California State YouTube channel that was launched in 2008 by the executive branch. The commission envisions that the judicial branch channel would be dedicated to improving public outreach and education and would feature programming from the AOC, Judicial Council, Supreme Court, and superior courts.

Recommendation 38
To improve the quality of justice and the public's trust and confidence in the judiciary, solicitation of public feedback on issues such as judicial performance and satisfaction with the courts should be encouraged, facilitated, and enhanced at all times.

Discussion: The commission is of the view that effective communication with the public is a two-way street. Emphasis must be placed not only on efforts to provide information *to* the public, but also on receiving information and feedback *from* the public. The AOC has a vehicle in place for facilitating a dialogue between the courts and the public. Three in-depth training workshops were conducted in 2006 to provide court leaders with practical advice and strategies for use in engaging their communities. Specifically, courts used the *California Courts: Connecting With Constituencies* instructional guide and Trial Court Improvement Fund mini-grants to embark on strategic planning efforts. The 2006 program arose from the Judicial Council's short-term strategy to revive community-focused court planning in response to the 2005 Public Trust and Confidence Survey. Currently, program funds are being used to help courts improve their online communications through Web site redesign; with the increase in online usage, superior

[62] One example of such a site is YouTube.
[63] The commission notes that, as of the date of this report, the AOC is investigating how YouTube works and whether there are any problems or issues with posting state videos to that site.

court Web sites have become the electronic face of the courts and provide a good vehicle for two-way communications with the public.

In addition, judicial and bar leaders should be encouraged to inspire others not only to engage in outreach efforts but also to seek out and take advantage of opportunities for public input. Such opportunities will vary by court. For example, exit questionnaires could be used to collect feedback from jurors, litigants, witnesses, and others as they leave the courthouse. This would give courts the public's perspective on what is working and whether it continues over time. Other opportunities include focus groups, which can reveal opinions on specific issues; anonymous suggestion boxes; and Town Hall meetings.

Recommendation 39
Training should be developed for judges and justices on how to present clearly the meaning or substance of court decisions in a way that can be easily understood by litigants, their attorneys, and the public.

Discussion: In the commission's view, many judicial opinions are not written in a manner that is easily digestible by nonattorneys. Introductory remarks or paragraphs could summarize a case and the court's decision in a way that can enhance media accuracy.

Recommendation 40
Local and statewide elected officials should be educated on the importance of the judicial branch.

Discussion: Some attacks against the judicial branch come from politicians who lack knowledge or understanding of the judicial branch and its role. The commission believes that many legislators could benefit from a basic introduction to the courts. A number of programs already exist that provide such education; these should be reinforced for local use with area representatives. The following are examples of programs that are run by the AOC Office of Governmental Affairs:

- Legislative–Executive–Judicial Forum—follows the Chief Justice's annual State of the Judiciary address to a joint session of the Legislature;
- Bench-Bar Coalition—members meet with legislators at the state capital during Day in Sacramento activities;
- Day-on-the-Bench—a statewide program in which legislators spend a day visiting a court; and
- New Legislator Orientation Program—affords an opportunity to meet and interact with new members of the Legislature and provide education about the branch.

Recommendation 41
Judges and court administrators should be better trained on how to interact with the media, and training for the media in reporting on legal issues should be supported and facilitated.

Discussion: The Bench-Bar-Media Committee (BBMC), chaired by Associate Justice Carlos R. Moreno of the California Supreme Court, was appointed by the Chief Justice in March 2008. The purpose of the BBMC is to help foster improved understanding and working relationships among California judges, lawyers, and journalists. The committee will be considering a variety of issues, such as media access to public records and the use of cameras in the court, and will facilitate the creation of local bench-bar-media committees.

In addition to the work of the BBMC, the commission agrees that media training for judges and court administrators should be offered in programs such as New Judge Orientation and the Judicial College, as well as through the Trial Court Presiding Judges, Court Executives, and Appellate Advisory Committees. Such programs currently exist throughout the nation.

A number of resources already exist that could be used in the training. For example, the *California Judicial Conduct Handbook*, published by the CJA, has a section on dealing with the media, and the AOC recently published the *Media Handbook for California Court Professionals.* The National Judicial College, working with the NCSC and the media, has three programs aimed at journalists, judges, and court staff. Referred to as "law school for reporters," these programs exist in various counties.

In addition to those for judges and court leaders, educational efforts should focus on the media. Following research and collaboration with the BBMC, AOC staff should draft an effective practice curriculum for educating the media. Further, current media education programs should be supported and leveraged to educate the media on legal affairs reporting.

The commission believes that all of the recommended programs should be ongoing because of turnover in court leadership and among staff of the media.

Recommendation 42
In order to improve transparency and be responsive to public comments and constructive criticism of the judicial branch, the judicial branch should do the following:

- Adopt both a model method for responding to unwarranted criticism of the judicial branch and a tip sheet for judges to use when responding to press inquiries;[64]
- Create an advisory group to provide ongoing direction and oversight of the recommended response plan and ensure that the services it proposes are provided; and
- Ensure that valid criticisms are referred to the appropriate bodies for response.

Discussion: The commission has adopted guidelines developed by the Task Force on Public Information and Education for responding immediately to unfair criticism of, or unusual media attention toward, either the judicial branch or a judge. The intent is to use the guidelines when unfair criticism or attention threatens to undermine fair and impartial courts. The guidelines also discuss the handling of judicial misconduct claims and other potentially warranted complaints. The rapid response plan is intended to be used by existing local and statewide associations. Through the adoption of a rapid response plan, accurate, consistent, and timely information can be provided while maintaining the public's trust and confidence in the justice system.

In coordination with this plan, the task force also developed Responding to Press Inquiries: A Tip Sheet for Judges. The tip sheet provides guidelines for judges concerning ethical constraints when speaking to the public about cases.

The commission believes that an advisory group should be established to provide ongoing direction and oversight of this plan and to ensure that the services it proposes are provided in an enduring manner.

Education

A fair and impartial court system is vital for maintaining a healthy democracy, protecting individual rights, and upholding the Constitution. The strength of the judiciary requires that each new generation of citizens understand and embrace our constitutional ideals, institutions, and processes. While a focus on K–12 education is a broad and ambitious aspect of the commission's overall charge, the commission agrees that the judicial branch should take a leadership role to ensure that every child in California receives a quality civics education and to encourage and support judges, courts, and teachers in the education of students about the judiciary and its function in a democratic society.

One concern driving the commission's recommendations in this area is the impression that citizens lack the knowledge and skills to participate effectively in government because of inadequate K–12 civics education. Although the federal No Child Left Behind Act of 2001 mentions social studies as a core subject area, its current testing in reading

[64] See Appendix I, Rapid Response Plan: A Model Guideline for Responding to Unfair Criticism of the Judicial Branch; and Appendix J, Responding to Press Inquiries: A Tip Sheet for Judges.

and math has put pressure on school districts to give emphasis to these subjects to the detriment of civics and history. On the most recent U.S. Department of Education's National Assessment of Educational Progress in civics, only a quarter of the high-school students were judged to be proficient.[65]

To learn a subject, children need multiple experiences, not just one, yet there are no civics educational programs that span multiple years of a student's education. Cultural differences due to immigration, coupled with a multiplicity of languages, increase the complexity of reaching children. The commission believes that the judicial branch's attention should be focused on the framework and standards committees that establish what is taught in schools. Programs need to be institutionalized within each county and spearheaded by the branch as a whole, rather than left to the initiative of individual judges. An additional challenge is the requirement for evidence-based evaluation criteria for such programs.

Connecting with ethnic groups is also important, and the commission believes that the best way to reach immigrant populations is by reaching school-age children, who often help their families become familiar with local culture. The commission is concerned, however, that students at high-impact schools may have less opportunity for learning social studies and related topics because of those schools' focus on math, reading, and science. A recent study found that nonwhite students from low-income families who attend high schools in lower socioeconomic areas receive significantly fewer high-quality civics learning opportunities than other students.[66]

The California courts already offer a number of K–12, law-related civics education programs, including the California Supreme Court's special outreach sessions for high school students; the Appellate Court Experience program; the Courts in the Classroom Web site; various youth and peer courts throughout the state; the Peer Courts DUI Prevention Strategies Project; and other programs through the AOC Center for Families, Children & the Courts. These are effective programs that some educators simply do not know exist.

Recommendation 43
Every child in the state should receive a quality civics education, and judges, courts, teachers, and school administrators should be supported in their efforts to educate students about the judiciary and its function in a democratic society. To that end, the following are specifically recommended:

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[65] See Constitutional Rights Foundation in collaboration with the Center for Civic Education and the Alliance for Representative Democracy, Educating for Democracy: The California Campaign for the Civic Mission of Schools, *The California Survey of Civic Education* (2005), *www.cms-ca.org/research.htm.*
[66] Joseph Kahne and Ellen Middaugh, *Democracy for Some: The Civic Opportunity Gap in High School,* CIRCLE Working Paper 59 (The Center for Information & Research on Civic Learning and Engagement, Feb. 2008).

- Strategies for meaningful changes to civics education in California should be supported, and a strategic plan for judicial branch support for civics education should be developed;[67]
- Political support should be sought from leaders in the Legislature, the State Bar, the law enforcement community, and other interested entities to improve civics education;
- Teacher training programs, curriculum development, and education programs on civics should all be expanded to include the courts;
- Presiding justices and presiding judges should be encouraged to grant continuing education (CE) credits to judicial officers and court executive officers who conduct K–12 civics and law-related education;
- The State Bar Board of Governors should be asked to grant Minimum Continuing Legal Education (MCLE) credits to attorneys who conduct K–12 civics and law-related education programs;
- The AOC should be directed to help pilot extensive civics-related outreach in three jurisdictions; and
- Recognition programs that bring attention to teachers, judges, and court administrators who advance civics education should be promoted.

Discussion: The commission believes that the judicial branch should continue to participate in strategies to elevate the importance of civics education—which should begin in kindergarten—and this recommendation is intended to state a number of specific means of helping ensure that that education takes place. The recommended civics education should include broad concepts about democratic and republican forms of government and should not be limited to the importance of courts and their impartiality.

Current civics education programs

The commission notes that numerous training programs already exist in this state. For example, more than 100 K–12 teachers from around the state have participated in California on My Honor: Civics Institute for Teachers, with 60 expected to participate in 2009. The AOC and the State Bar provide teacher stipends for the four-day training. The program has been conducted for three years and has reached more than 15,000 students. The AOC developed Courts in the Classroom, a Web tutorial for students in grades 8–12 focusing on the judicial system. That tutorial includes a teacher's resource manual. Participants of the Civics Institute for Teachers and a few trial courts have reviewed the tutorial and are supportive of its use in the classroom.

Many programs not only influence children, they also educate their parents. The Constitutional Rights Foundation and the Center for Civic Education are nonprofit educational organizations offering programs, publications, videos, and training on many fronts. Bar associations provide ongoing programs for K–12 and adult learners. Appendix

[67] See Appendix K, Proposed Strategic Plan to Improve Civics Education.

L, Organizations With Civics Education Programs for California Schools, indicates the array of organizations involved in civic education efforts. Whenever possible, education programs and materials should be provided in languages in addition to English.

Strategies for change in civics education

Academic standards for civics education already exist, and the Judicial Council should support having the schools honor those standards and strengthen the quality of their instruction. To that end, the commission notes that a meeting was held with Mr. Jack O'Connell, State Superintendent of Public Instruction; Justice Ming W. Chin; Justice Judith D. McConnell; commission member Bruce B. Darling, executive vice-president of the University of California; and commission project director Christine Patton. The meeting was requested to discuss the work of the commission and the lack of in-depth civics education in the K–12 curriculum framework. As a result of this conversation, two letters were prepared and sent to Superintendent O'Connell. One covered the current history and social science framework and its lack of consistent coverage concerning the role of the judicial branch. The second recommended a teacher for appointment to the History–Social Science Curriculum Framework and Evaluation Criteria Committee.

Organized efforts by the judicial branches in other states were reviewed and discussed by the Task Force on Public Information and Education. Justice R. Fred Lewis of the Florida Supreme Court gave a presentation on Justice Teaching, a program developed for the Florida courts in 2006. The program calls on judges and lawyers to serve as resources for teachers and students in 3,000 K–12 schools. Justice Teaching has been successful because Justice Lewis, the Chief Justice at the time of the program's inception, spearheaded the effort, meeting with all presiding judges in the state, developing a governance structure, and establishing partnerships with the county superintendents of schools and each school's principal. The Florida Law Related Education Association provided funding and staff support to the program. The volunteer judges and lawyers are required to attend the Justice Teaching Institute to receive training on the lesson plans and continuing legal education credits.

The task force considered the elements of the Florida program essential to the success of providing education on the judicial system in K–12 schools. The components include enlisting a high-profile champion, appointing an oversight committee to provide support for a sustainable program, developing a strategic plan, developing a governance structure, identifying allies, and establishing partnerships.

Based on these efforts, and in an effort to strengthen civics education in our schools, the Task Force on Public Information and Education developed components to be included in a strategic plan referred to as the Proposed Strategic Plan to Improve Civics Education (see Appendix K). Because a leadership body has yet to be appointed, however, the full development of a strategic plan would have been premature.

Political support for enhanced civics education
Another way to improve civics education is to partner with influential groups such as the Governor's Office, the Legislature, the state Department of Education, and officers of Educating for Democracy: The California Campaign for the Civic Mission of Schools, a project of the Constitutional Rights Foundation in collaboration with the Center for Civic Education and the Alliance for Representative Democracy. The commission notes that California economists were successful in revising curriculum standards to include an economics component and, in connection with this recommendation, suggests that the model used by those economists be researched and possibly duplicated with respect to enhancing civics education about the judiciary.

Currently, the state Department of Education and Board of Education are reviewing the history and social science K–12 curriculum framework and evaluation criteria in 2009 and will move to adopt a new curriculum framework in 2011. The commission urges the Judicial Council and the AOC to take all steps necessary to ensure effective participation in the review of the curriculum framework and evaluation criteria.

Further, Educating for Democracy: The California Campaign for the Civic Mission of Schools, working with the Assembly Committee on Education, introduced Assembly Bill 2544 (Mullin; 2008), a model civic education staff development program. At the request of the Task Force on Public Information and Education, the Judicial Council voted to support the measure, as did the League of Women Voters. While the measure did not pass, the commission recommends that the Judicial Council continue to support it.

Continuing education credits
Presiding justices and judges should be encouraged to grant CE credits to judicial officers and court administrators conducting K–12 civics and law-related education. The Standards of Judicial Administration currently state that judicial participation in community outreach programs should be considered an official judicial function. The system is already in place for judges and court administrators to receive credit for teaching in K–12 classrooms. At the discretion of the presiding judge, a judge or court executive officer conducting classroom teaching may receive credit for up to 7 hours every three years under the category of self-directed study. They are expected to complete a total of 30 hours of education every three years.[68] The commission agreed that most who participate are committed to teaching with or without credits but noted that it would do no harm to create the opportunity for credits.

In addition, the State Bar Board of Governors should be asked to grant Minimum Continuing Legal Education credits to attorneys conducting K–12 civics and law-related programs. Continuing education for attorneys is governed by rule 9.31 of the California

[68] Cal. Rules of Court, rules 10.451–10.481.

Rules of Court and by rule 2.72 of the MCLE Rules and Regulations. The requirements are 25 hours every three years; self-directed study is limited to 12.5 hours every three years. Unfortunately, education activities on legal topics presented to nonlawyers are not considered activities for which MCLE credits can be obtained.

Pilot civics-related outreach programs

The commission recommends that the AOC conduct a pilot program for extensive civics-related outreach in three jurisdictions—to be determined—following collecting and evaluating outreach programs and making them available in a single repository.

Recognition programs

In the commission's view, recognizing individuals who promote civics education will reinforce outreach practices and encourage others to participate.

Additional actions

Additional actions that could be taken in support of these recommendations include seeking judges to comment at the state Board of Education open meetings on curriculum standards and encouraging the courts and bar associations to participate in Law Day, Constitution Day, and Bill of Rights Day. Collaborative efforts should be investigated between the National Archives, California museums, California schools, and the Judicial Council whereby schoolchildren would travel to museums to view important documents on American history.

Voter Education

An engaged and educated electorate is essential to maintaining public trust and confidence in a fair and impartial court system. Voters are entitled to abundant, full, and fair information that will empower them to make informed choices about candidates for judicial office. The commission agrees that the judicial branch needs to play an active role in encouraging a more informed and aware voting public, including affirming for courts and judges the value of providing neutral information to voters, creating resources for the coordination of voter education and outreach efforts by the courts, and advocating for legislative and rule changes that would provide greater and more useful information for voters.

National efforts support that there is a need for enhanced voter education about judicial elections. In 2002, the nonpartisan Justice at Stake Campaign was created by a national partnership of 45 judicial, legal, and citizen groups to educate the public about the importance of fair and impartial courts. That same year, Justice at Stake hired a research and communications firm to conduct focus groups on judicial elections. The focus groups indicated that although voters would like to know how judges would decide particular issues, they are generally satisfied by candidate statements and general information regarding legal and professional experience, work, history, and education. There is a lack

of consistency in this state on judicial candidate information provided to voters. Some bar associations conduct and publish judicial candidate evaluations, but the current candidate information in voter pamphlets was not designed for judicial candidates.

Recommendation 44
To ensure that voters can make informed choices about candidates for judicial office, the following are recommended:

- Voter focus groups should be conducted within California to determine what information to provide in education materials;
- Voter education materials should be developed to inform voters about the constitutional duties and responsibilities of judges and justices and the role of the state court system;
- Judicial candidates should participate in candidate forums and respond to appropriate questionnaires;
- Efforts should be undertaken to determine the most effective uses of multimedia tools to promote voter education;
- Collaboration should be established among the Judicial Council, the League of Women Voters, the California Channel, and other groups to inform and educate voters; and
- Politically neutral toolkits regarding voter information and best practices on public outreach should be developed for use by judicial candidates.

Discussion: The commission recommends numerous actions to help educate voters and better enable them to make informed decisions when voting in judicial elections. As an initial step, the commission believes that it is important to conduct focus groups in California to try to ascertain what type of information would be useful to the voters. In addition to other benefits, the use of voter focus groups in this state would establish credibility in the development of educational materials.

Then—and accounting for the results of the focus groups—there should be a multi-pronged, concerted effort made to better educate voters about judicial elections. Currently, there is no such statewide coordinated effort. The Judicial Council and the AOC should help courts set up communication networks and coordinate and share voter education practices. The recommended collaboration could take the form of outreach videos, voter guides, and public service announcements. By way of example, a video could be created featuring interviews with judicial candidates. Voter education would benefit from pilot projects and recognition programs.

Statements in voter education guides could educate voters about the judicial candidates and their state's court system. The commission noted that the California judicial branch does not provide this type of information in voter guides and that it is important to do so. General descriptions concerning the responsibilities of judges should emphasize that

judicial officers must be insulated from public pressure and remain free to decide each case fairly and impartially based on the law. Placing the responsibility for including these statements on individual judicial candidates is not ideal, as California has the highest candidate statement fees in the country, thus raising issues of fairness, accessibility, and consistency.

On the other hand, the commission agreed that candidates should participate in candidate forums and respond to appropriate questionnaires as other ways to inform and educate the public. One possibility that the commission considered in connection with candidate forums is to approach the Chief Justice about communicating the importance of judicial participation in candidate forums, perhaps in a letter to the state's judges.

Other avenues and opportunities for obtaining information on judicial elections should also be explored and pursued. Possibly, such information could be provided at libraries. A video could be created on the role of the courts in our system of government and include an explanation of how judges are appointed or elected. The video could be hosted on local courts' Web sites. Along those same lines, Web traffic to existing nonpartisan sources of information should be increased by partnering with other groups, such as bar associations. Examples of multimedia tools include the California Courts Web site and possible links to other sites.[69] One-way content delivery systems such as podcasts, YouTube–like platforms, and instant messaging should also be explored.

In addition to the above measures, which are targeted at providing information to voters, the commission recommends that a toolkit be developed for use by judicial candidates. The goal of such a toolkit would be to assist the candidates in ethically, accurately, and helpfully informing the voting public about their campaigns. It is important that the recommended candidate toolkit be neutral, not election specific, and that it be accessible by both judges and candidates. The model toolkit could be developed following focus group input and legal research and could include, for example, the following:

- Campaign conduct guidelines;
- Guidance on completing candidate questionnaires; and
- Inclusion of or links to candidate biographical information.

Education of Potential Applicants for Judgeships

Recommendation 45

The State Bar should be asked to offer an educational course to potential judgeship applicants.

[69] The commission has suggested that an opinion be sought from the AOC Office of the General Counsel on whether it is legally permissible for the California Courts Web site or local court Web sites to include links to election information.

Discussion: The commission considered a proposal regarding education for people who are considering applying for a judicial position that was prepared by the Ohio State Bar Association and ABA Standing Committee on Judicial Independence. A copy of the proposal is attached to this report as Appendix M.[70] The commission recommends that the State Bar be asked to offer such a course as a trial program. Based on the trial program experience, the course may become part of the regular biennial conference and may also be modified and offered elsewhere.

Accountability and Judicial Self-Improvement

The judicial branch must work to enhance trust and confidence in the courts through access, procedural fairness in court proceedings, and judicial accountability. As discussed earlier in this report, assuring the public that the judiciary is accountable means, among other things, that courts and judges exhibit high standards of impartiality, lack bias, exercise courtesy and professionalism, and promote efficiency and timeliness.

The judicial branch has recognized the importance of these values. The second goal of the judicial branch's long-term strategic plan is "Independence and Accountability." Bert Brandenburg, executive director of Justice at Stake, has said that independence and accountability are of equal importance in the eyes of the public and that the road to independence is through accountability. One of the most significant hurdles, however, is the public's lack of awareness about current accountability measures for courts. The recommendations in this section of the report are designed in part to address that issue.

The commission's recommendations go beyond simply educating the public about current means of ensuring accountability, however. They also recommend the creation of a model judicial self-improvement program for voluntary use by courts or individual judges. Such a program would, in the commission's view, enhance the public's understanding of the concept of judicial accountability, as it would allow court users to formally and officially provide feedback on individual judicial performance and know that it is being considered and acted upon.[71]

Official judicial self-improvement programs—some of which are confidential, some not—that provide feedback to judges on their performance from attorneys, litigants, jurors, witnesses, and members of the public currently operate in at least 16 states.[72] (In many other states or local jurisdictions, state or local bar groups operate judicial

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[70] This proposal was originally made at the ABA annual meeting in 2008 but was withdrawn for reintroduction at the midyear meeting in February 2009 in Boston. The revised version of the proposal is the one attached.

[71] Note that several of the CourTools performance measures mentioned in recommendation 48 involve surveys of court users on the court's performance as an institution, just as a judicial self-improvement program would provide public feedback on the work of individual judges

[72] See Institute for the Advancement of the American Legal System, *Shared Expectations: Judicial Accountability in Context* (2006).

evaluation programs providing periodic attorney feedback to judicial officers.) Although many of these official judicial self-improvement programs are conducted in states with appointed judiciaries or retention elections in which the feedback is also used for retention purposes, in a number of states, including those with contested judicial elections, the feedback is used solely for self-improvement purposes.[73] The American Bar Association's February 2005 Guidelines for the Evaluation of Judicial Performance call on all court systems to develop and implement such programs.[74]

In states with contested judicial elections, the feedback consists of survey responses from attorneys, jurors, litigants, other court users, and sometimes other judges and court staff on qualities such as legal knowledge, impartiality, fairness, communication skills, temperament, calendar management, punctuality, preparation, and efficiency. Survey responses are anonymous and confidential, and responses regarding individual judges are not publicly disseminated. In some states the aggregate survey responses are used to develop appropriate judicial education and professional development programs, and in other states the individual survey responses are communicated to the presiding or administrative judge for judicial assignment or professional development purposes. In many jurisdictions a court coordinating committee oversees the program. In other jurisdictions the programs appear to operate voluntarily and without the benefit of any coordinating committee. The coordinating committees typically consist of judges, attorneys, and public members. Judges who have participated in such self-improvement programs generally praise the programs, note the usefulness of the information collected and that the information is not available from any other source, and have even requested that surveys be expanded to include additional information in the future.

Recommendation 46
A model self-improvement program should be developed for voluntary use by courts and individual judges.

Discussion: The commission engaged in considerable discussion about the use of judicial performance evaluations. Generally, there was a consensus that some sort of confidential evaluation measures would be appropriate for the purposes of judicial self-improvement. However, the commission did not agree on the specifics of such a program. Accordingly, the commission has recommended the development of a model program—possibly along the lines of those used in other states—which would then be made available for voluntary use by courts and judges.

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[73] See, for example, Marcy R. Podkopacz, *Report on the Judicial Development Survey*, Fourth Judicial District of the State of Minnesota (May 2005), *www.courts.state.mn.us/documents/4/public/Research /Judicial_Development.doc.*
[74] American Bar Association, Black Letter Guidelines for the Evaluation of Judicial Performance, Guideline 1.1 (Feb. 2005).

Recommendation 47
The public should be informed that systems are in place to deal with judicial performance issues in fair and effective ways, including elections, appellate review, media coverage, the Commission on Judicial Performance, the State Bar's Commission on Judicial Nominees Evaluation, and local bar association surveys.

Discussion: The commission believes that one of the most significant issues regarding accountability is the public's lack of awareness of current accountability measures for courts. These include elections, appellate review, media coverage, the CJP, the State Bar's Commission on Judicial Nominees Evaluation, and local bar association surveys. Public outreach and voter education efforts should inform the public of the systems that are already in place to deal with judicial performance issues in fair and effective ways.

Recommendation 48
Courts should be encouraged to use CourTools or similar court performance measures.

Discussion: Another existing judicial accountability mechanism is a set of management tools that measure court performance. Court performance measurement tools, such as the NCSC's CourTools pilot project now under way in California, are potentially very useful. Designed by the NCSC to help courts evaluate and improve their performance, the measurements may improve court processes and make court systems more accountable. Eleven superior courts in California have implemented CourTools.

One court that has implemented 10 measures of CourTools plans to post the results of its largely positive assessment on its Web site. That court is also using the findings from CourTools to update its strategic plan. And while CourTools requires more staffing time to implement, the commission agrees that CourTools provides transparency and accountability and can be modified to reduce staffing time.

Judicial Selection and Retention

Merit Selection and Judicial Selection Under the JNE Process

Recommendation 49

The State Bar's Commission on Judicial Nominees Evaluation process, a unique form of a merit-based screening and selection system that has served California well, should be retained.

Discussion: The fundamental goal of all merit selection systems is to produce the best-qualified nominees for appointment to the bench. The JNE system in California serves this goal by providing for a thorough, nonpolitical evaluation of the professional qualifications and fitness to serve of all applicants for judicial appointment submitted by the Governor to JNE. The statutory requirement that all potential appointees must undergo JNE review before appointment discourages unqualified applicants from seeking appointment to the bench and constrains Governors from nominating unqualified people for judicial vacancies.

The selection process that has come to be known as "merit selection" first appeared in 1940 with the adoption of the "Missouri Plan." The American Judicature Society's model merit selection plan calls for a judicial nominating commission to recommend nominees to the appointing authority, executive appointment, and retention elections after brief initial terms of office. Some states have a fourth component—confirmation of executive appointments. California's selection process shares many of the same features as the traditional merit selection process, except that the JNE commission evaluates only those applicants whose names are submitted by the Governor.

The pros and cons of merit selection have been debated extensively. Advocates of merit selection, including the American Judicature Society, argue that such systems strike the appropriate balance between judicial independence and accountability to the public; place the focus on professional qualifications in the initial selection of judges; and reduce or eliminate electoral campaigning, interest group influence, and fundraising from judicial selection. Critics of merit selection plans maintain that the politics of the organized bar replace the politics of contested elections and that merit-selected judges as a whole are not demonstrably more qualified or competent than their elected counterparts.[75]

In 33 states and the District of Columbia, a merit selection system is used to select some or all judges at different points in the initial selection process. No two states use precisely the same merit selection system. Fourteen states use merit selection for all judges at all times, while nine states use it only for appellate judges and in some instances for trial

[75] See Henry R. Glick and Craig F. Emmert, *Selection Systems and Judicial Characteristics: The Recruitment of State Supreme Court Judges* (1987) 70 Judicature 228. Differences in educational and professional backgrounds were attributable to region rather than selection method.

court judges in some jurisdictions. In addition, nine states use such systems only to fill midterm vacancies on some or all levels of court. There are significant variations among states in nominating commission rules and procedures, the number of nominees sent to the appointing authority, and the binding nature of the commission's nominations on the appointing authority, among other features.[76]

The State Bar has submitted the following description of the procedure used by JNE in making its evaluation:[77]

> The volunteer commission thoroughly investigates California judicial candidates while maintaining a code of strict confidentiality. JNE has 90 days to complete its evaluation, but it cannot appoint judges or mandate the appointment of judges.
>
> Two commissioners, at least one of whom is an attorney, are assigned to investigate each candidate for a trial court appointment. At least three commissioners, one of whom is a public member, investigate each candidate under consideration for an appellate or Supreme Court appointment.
>
> JNE commissioners investigate all information in the candidate's judicial application and send out confidential comment forms to hundreds of lawyers, judges, and others who know the candidate.
>
> The commission must receive at least 50 knowing responses from the mailings. The investigating commissioners also interview the candidate. If the commissioners find any criticisms of the candidate to be substantial and credible, they are required to notify the candidate not less than four days before the interview. At the interview, the candidate is given an opportunity to respond to and present information to rebut all reported criticisms.
>
> The Commission on Judicial Nominees Evaluation considers many factors when determining the viability of a candidate for judicial office. The commission considers the candidate's industry, temperament, honesty, objectivity, respect within the community, integrity, work-related health, and legal experience. JNE construes legal experience broadly. For example, it will evaluate litigation and nonlitigation experience. It will

[76] For detailed information on all facets of these systems, see American Judicature Society, *Judicial Merit Selection: Current Status* (2009).
[77] E-mail dated October 21, 2008, from Joseph Starr Babcock, Special Assistant to the Executive Director, The State Bar of California, and member of the task force.

examine legal work performed in a business or nonprofit entity, in any of the three branches of government, and in the arena of dispute resolution. JNE will also consider experience gained as a law professor as well as experience earned in other academic positions.

JNE concludes its work by rating the candidate as exceptionally well qualified, well qualified, qualified, or not qualified. Ratings and information gathered during the investigation are not public. If a candidate is found not qualified by the commission, and the Governor appoints that candidate to a trial court, the State Bar may publicly disclose that fact. When the Governor nominates a person for the Court of Appeal or the Supreme Court, the commission makes a report at the public hearing of the Commission on Judicial Appointments for each candidate regardless of the commission's rating.

A candidate rated not qualified may request rescission of that rating within 60 days of being notified. A three-member review committee, composed of one member of the Board of Governors and two former JNE commissioners, will review the request for rescission. Should the review committee find that the JNE rules have been violated, the candidate may request a new evaluation by the commission. In 2007, approximately 13 percent of candidates were found not qualified.

Other pertinent features of JNE and its processes are discussed in more detail below.

Four levels of JNE ratings

The four levels of JNE ratings provide a helpful tool to the Governor in differentiating between various applicants for a judicial position. While the differences between "qualified" and "well qualified" may be somewhat more subjective, the differences between an "exceptionally well qualified" and a "well qualified" rating at the top and a "qualified" and "not qualified" rating at the bottom are fairly clear.

The following is the interpretation of the four ratings used by JNE in evaluating potential trial court judges and appellate justices:

Trial Judges—Definition of Ratings

- **Exceptionally Well Qualified.** Possessing qualities and attributes considered to be of remarkable or extraordinary superiority so that, without doubt, the person is fit to perform the judicial function with distinction.
- **Well Qualified.** Possessing qualities and attributes considered to be worthy of special note, indicative of a superior fitness to perform the judicial function with a

high degree of skill and effectiveness.

- **Qualified.** Possessing qualities and attributes considered to equip a person to perform the judicial function adequately and satisfactorily.
- **Not Qualified.** Possessing less than the minimum qualities and attributes considered necessary to perform the judicial function adequately and satisfactorily.

Appellate Judges—Definition of Ratings

- **Exceptionally Well Qualified.** Possessing qualities and attributes considered to be of remarkable or extraordinary superiority so that, without doubt, the person is suited to perform the judicial function with distinction.
- **Well Qualified.** Possessing qualities and attributes considered to be worthy of special note, indicative of a superior fitness to perform the judicial function with a high degree of skill, effectiveness, and distinction.
- **Qualified.** Possessing qualities and attributes considered indicative of a superior fitness to perform the judicial function with a high degree of skill and effectiveness.
- **Not Qualified.** Possessing less than the qualities and attributes considered indicative of a superior fitness to perform the judicial function with a high degree of skill and effectiveness.

Factors involved in arriving at a JNE rating

Rule II, section 6 of the JNE rules lists the qualities and factors for consideration in evaluating judicial applicants:

> The commission seeks to find the following qualities in judicial candidates. However, the absence of any one factor on the lists below is not intended automatically to disqualify a candidate.
>
> Qualities for all judicial candidates: impartiality, freedom from bias, industry, integrity, honesty, legal experience, professional skills, intellectual capacity, judgment, community respect, commitment to equal justice, judicial temperament, communication skills, job-related health.

In addition, for:

> Trial court candidates: decisiveness, oral communication skills, patience.
>
> Appellate court candidates: collegiality, writing ability, scholarship.

> Supreme Court candidates: collegiality, writing ability, scholarship, distinction in the profession, breadth and depth of experience.

Other criteria are listed in Government Code section 12011.5(d):

> In determining the qualifications of a candidate for judicial office, the State Bar shall consider, among other appropriate factors, his or her industry, judicial temperament, honesty, objectivity, community respect, integrity, health, ability, and legal experience. The State Bar shall consider legal experience broadly, including, but not limited to, litigation and nonlitigation 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 criteria used by JNE in evaluating an applicant for judicial office are similar to those used in other states. They are also consistent with the evaluative criteria recommended by the American Judicature Society in its training materials for members of judicial nominating commissions.[78]

Recommendation 50
In order to increase trust and confidence in the judicial selection process, the background and diversity of the commission members should be given more publicity, including by placing photographs of the members on the JNE Web site and making that site more accessible on the State Bar's home page.

Discussion: Public trust and confidence in the findings of JNE will increase if the diverse membership of JNE itself is better known to the public. The State Bar provides background information about the JNE membership on its Web site. Under the enacting statute, "The commission is to be broadly representative of the ethnic, gender, and racial diversity of the population of California."[79]

Recommendation 51
Legislation should be sponsored to require that a JNE rating of "not qualified" (and thus, by the absence of announcement, a rating of at least "qualified" or better) for a trial court judge be made public automatically at the time of appointment of a person with that rating.

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[78] These criteria include impartiality, integrity, judicial temperament, industry, professional skills, community contacts, social awareness, collegiality, writing and speaking ability, decisiveness, suitable age, and good health. (See Marla N. Greenstein and Kathleen M. Sampson, *Handbook for Judicial Nominating Commissioners* (American Judicature Society, 2d ed., 2004).)
[79] See *http://calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10111&id=1056*.

Recommendation 52
Legislation should be sponsored to make the current practice of releasing the JNE rating for a prospective appellate justice mandatory and permanent.[80]

Discussion of recommendations 51–52: Currently the JNE rating of a prospective appellate justice is released at the time of the Commission on Judicial Appointments hearing. While Government Code section 12011.5(h) permits either the Commission on Judicial Appointments or the State Bar Board of Governors discretionary authority to request or release any rating, the practice is that this information is always released. Nonetheless, there is no requirement that this be done, and the Board of Governors has full discretionary authority, after providing notice to the applicant,[81] to release or not to release "not qualified" ratings for trial court judge appointees.

The commission believes that disclosure of all "not qualified" ratings, particularly if done automatically, would increase the public's confidence in the process. While it is possible that release of all JNE ratings could dissuade some potential applicants, if the change in procedures were to be well publicized, all potential appointees would have fair notice that evaluation results are public.

Because the distinctions between the various forms of qualified ratings are more subtle and the applicant is qualified in all cases, the disclosure of specific ratings of "exceptionally well qualified," "well qualified," or "qualified" is not as important and may be unfair to trial court judges, who are subject to contestable elections. The same issue (i.e., release of the specific level of a qualified rating) does not apply to appellate justices, who are subject to uncontested retention elections.

In the commission's opinion, making the recommended changes by a statute rather than a rule will ensure greater permanency of the requirement.

Recommendation 53
The release of a rating by JNE should not be accompanied by a statement of reasons.

Discussion: The investigation and evaluation process by JNE is confidential, which enhances the accuracy and completeness of the information received. The release of reasons would compromise this confidentiality and ultimately the value and validity of the rating system. The release of reasons might also have a chilling effect on the gathering of information for the rating process if the commenter knows that his or her comment, even in a disguised or anonymous form, will be made public.

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[80] A number of the recommendations in this report propose language amending a current legal authority. All such proposed amendments are in Appendix N to this report.
[81] JNE Rules and Procedures, rule III, § 2(b)(4).

Recommendation 54
The following Web sites should explain the judicial appointment process and link to each other:

- The judicial branch's California Courts Web site; and
- The State Bar's JNE Web site and the Governor's Judicial Application Web site, both of which should be more user-friendly, contain appropriate information about JNE procedures and the rating system, and include videos explaining the judicial appointment process.

Discussion: The judicial branch's California Courts Web site should explain the judicial appointment process and link to both the State Bar's JNE Web site and the Governor's Judicial Application Web site with appropriate information about JNE procedures and the rating system. Both the JNE's and the Governor's Web sites should be more accessible and should contain videos explaining the judicial appointment process.

Recommendation 55
Law schools should be encouraged to provide information about the judicial appointment process to law students by, for example, encouraging qualified JNE members, both past and present, to give presentations at law schools.

Recommendation 56
To increase public knowledge of the judicial selection process, JNE should be encouraged to have its members speak to local and specialty bar associations, service organizations, and other civic groups.

Discussion of recommendations 55–56: Providing the public with knowledge of JNE and the judicial appointment process will help increase public confidence in that process. Further, JNE evaluation is a statutorily mandated function, and there do not appear to be any disadvantages to publicizing the procedures that it uses.

Recommendation 57
The State Bar should amend the JNE rules to require that any member of the State Bar Board of Governors who attends a JNE meeting comply with the JNE conflict of interest rules.[82]

Discussion: JNE rules presently provide that all commissioners complete a statement under oath that they have read and understand rule IV, which addresses conflicts of interest, and that they agree to comply with its provisions. Members of the Board of Governors who attend a JNE meeting should complete the same statement that JNE commissioners sign.

[82] See Appendix N.

The JNE rules currently provide that a member of the Board of Governors is subject to the same confidentiality rules as JNE commissioners. It is appropriate to extend this to the conflict of interest rules as well.

Recommendation 58
A study should be undertaken to develop effective methods of increasing public knowledge of judicial candidates and their qualifications, including development of a model of judicial candidate evaluation that can be used by county bar associations and others. The model should include the method of selecting appropriate members of the entity that conducts the judicial candidate evaluations, the timing of judicial candidate evaluations, and effective dissemination to the public.

Discussion: One of the most serious challenges presented by California's current system of contested judicial elections for trial court judicial positions[83] is that voters often are not well informed about the qualifications of judicial candidates to perform the complex and specialized duties required of trial court judges.[84] Unlike appointments to the bench where the Commission on Judicial Nominees Evaluation conducts a comprehensive evaluation of the qualifications of judicial applicants and reports its evaluation to the Governor, there is no similar process for the evaluation or reporting of the qualifications of those candidates who seek office by election.

An additional challenge arises when one of the candidates in a contested election is an incumbent judge. In retention elections the issue is solely whether the incumbent should remain in office and the election may thus appropriately serve as a judicial accountability mechanism focusing squarely on whether the incumbent's performance in office warrants retention. In a contested election in which one candidate is an incumbent, however, the issue for voters is not simply whether the incumbent's performance warrants retention, but which of the candidates is better suited to serve in the office. Contested elections involving an incumbent are not a hospitable environment for a single-minded focus on the objective of judicial accountability because voters must balance the objective of holding the incumbent accountable for his or her past performance against the other objective of selecting the most qualified of the candidates to serve in the future.

Yet a third challenge in contested elections involving an incumbent is that voters must to some extent compare apples and oranges, i.e., the qualifications and experience of a person with a record of service in judicial office for some period of time against the qualifications and experience of a candidate without such a record. Without further information about the respective qualifications of the candidates, voters are often at a loss and vote for neither candidate.

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[83] A review of data supplied by the California Judges Association indicates that on average there are 28 contested or open superior court elections on the ballot in each general election cycle. This ranges from a high of 47 elections (2002) to a low of 15 (2004), with a median number of 31. Some of the data may be incomplete, however, and the 1992 election year is excluded because of lack of data on open elections.
[84] See findings at pp. 10–11 of this report.

In order to address the public's need for more information about candidates for judicial office, the commission in its draft report proposed extending the JNE rating system to all candidates in contested judicial elections. Currently JNE evaluates only persons being considered for judicial appointment who are referred by the Governor. There is no process for the evaluation of candidates for judicial office who are seeking a judgeship by either opposing a sitting judge in an election or seeking election to an open position.[85]

This recommendation resulted in a large number of negative comments. The most significant objections were based on, among other things, the limited resources available to JNE to evaluate all candidates in a short period of time; the long time required for completion of the thorough JNE process, including appeals, which would greatly increase the time period from filing to election; and the difficulty of implementing such a process in counties of relatively small population.

Many commentators noted as a possible alternative, however, that bar associations in many major California counties, including Los Angeles, regularly perform evaluations of both sitting judges running for reelection and attorney challengers. These evaluations provide valuable information for voters, although dissemination of the results of these evaluations is often limited.

Ultimately, the commission concluded that rather than recommending the utilization of a JNE evaluation—a process that may not be workable—a study should be conducted, building on the experience of local bar evaluations, to determine effective ways of increasing public knowledge of judicial candidates and their qualifications. This would include developing a model of judicial candidate evaluation that can be broadly used by county bar associations and others.[86] The model should include the method of selecting appropriate members of the entity that conducts the judicial evaluations and methods of effective dissemination to the public.

The commission recognizes that processes for public reporting of mandatory evaluations regarding the judicial performance of incumbent judges have emerged in many states as appropriate and successful mechanisms for achieving judicial accountability. However, those are states with retention elections or reappointment processes for trial court office, and such processes have not for the reasons described above ever been extended to judges

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[85] See fn. 83.

[86] The only state in which a state-sponsored entity currently evaluates potential judicial candidates in contested elections is New York, which established independent judicial election qualifications commissions in early 2007. These statewide screening panels, which consist of both lawyers and non-lawyers, are charged with reviewing the qualifications of candidates within their districts and making public a list of candidates found qualified to seek judicial office. Participation in these evaluations is voluntary. It is too early to assess the effectiveness of these commissions. See also Jordan M. Singer, *Knowing Is Half the Battle: A Proposal for Prospective Performance Evaluations in Contested Judicial Elections* (2007) 29 U. Ark. Little Rock L.Rev. 725.

subject to contested election.[87] The ABA Guidelines for the Evaluation of Judicial Performance also conclude that in the case of contested elections it may be inappropriate for the judicial branch or any entity using public funds to disseminate performance evaluations of incumbent judges running for reelection.[88]

It is critical that the evaluating entity or entities enjoy the confidence of the candidates and the public. The members of such an entity should include lawyers and nonlawyers, and be well qualified, bipartisan, diverse, and balanced. The authority to appoint members of the entity should be shared among several credible and respected members of the community. At least at the outset, candidate participation should be voluntary. Voluntary participation would serve as a useful test of the program and avoid the issue of whether mandatory participation constitutes an unconstitutional additional qualification for judicial office. [89] The judicial candidate evaluation process may also require that the time prescribed by statute between the notice of intent to seek judicial office and the filing date be increased.

Expanding JNE evaluations to all applicants for gubernatorial appointment

One alternative to how JNE determines whom to evaluate would require an evaluation of every person who submits an application to the Governor, as opposed to the current system, under which only those applicants whose names are submitted to JNE by the Governor are evaluated. This raises a question, however, as to who should narrow down the initial group of applicants.

The current system of having the Governor narrow down the list seems more effective and efficient because the Governor has a variety of considerations to account for, some of which are not factors evaluated by JNE. The reduction of the pool of applicants by the Governor before JNE evaluation will still ensure that those who are eventually appointed have been evaluated by JNE without burdening JNE with evaluating applicants that would be unacceptable to the Governor.

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[87] See, Kourlis and Singer, fn. 17, *supra*.

[88] Guideline 4.1.2. The ABA recommends that bar associations provide voters with relevant information about incumbent judges in states where judges are selected in contested elections.

[89] Mandating that a judicial candidate submit to an evaluation as a condition of seeking judicial office could possibly be unconstitutional, absent its placement in the California Constitution, because the Legislature lacks authority to add qualifications or requirements for judges beyond what is set forth in the state Constitution. (*People v. Chessman* (1959) 52 Cal.2d 467, 500.) The current provision concerning appointments does not run afoul of the same provision because the requirement that the candidate's name be submitted to JNE is placed on the Governor. (Gov. Code, § 12011.5.) Arguably there could be a similar requirement for the registrar of voters in each county to submit the names to the evaluating entity. Still, without the candidate's cooperation, it is questionable whether a valid evaluation could be obtained. The requirement that the candidate submit his or her name to evaluation and cooperate with the evaluating entity, enshrined in the Constitution, would both ensure more valuable reports and be an indication of the value California places on qualified candidates.

Diversity of the Judiciary

The commission agrees that an important component of judicial selection in California is examining how to increase diversity among the judiciary. Other states are in accord, and some have placed aspirational language about judicial diversity into their state constitutions. For example, article 6, section 37(C), of the Arizona Constitution reads:

> A vacancy in the office of a justice or a judge of such courts of record shall be filled by appointment by the governor without regard to political affiliation from one of the nominees whose names shall be submitted to him as hereinabove provided. In making the appointment, the governor shall consider the diversity of the state's population for an appellate court appointment and the diversity of the county's population for a trial court appointment, however the primary consideration shall be merit.

The commission concluded that efforts to place such aspirational language in the California Constitution should not be pursued. In the commission's view, there would be little to be gained by pursuing such language in lieu of taking other action that may actually help gain a more diverse bench.

Recommendation 59

The courts should be directed to consider, when making appointments of subordinate judicial officers, both the diverse aspects of the applicants and the applicants' exposure to and experience with diverse populations and their related issues.[90]

Discussion: One of the sources of judicial appointments is from the subordinate judicial officers (SJOs) who serve the courts.[91] Thus, to the extent that the diverse nature of that group—either in terms of its own diversity or its experience with diverse populations—can be increased, the likelihood of more diverse judicial appointments also will increase. This is one area where the judicial branch has control and can help promote a more diverse bench. Any rule of court adopted on this issue should make clear that these qualities are not required but desired. Experience with diverse populations may well be the more important quality.

Recommendation 60

The Commission on Judicial Nominees Evaluation should gather information regarding judicial applicants' exposure to and experience with diverse populations and issues related to those populations and should then communicate this information to the Governor.

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[90] See Appendix N.

[91] Of the 1,482 superior court judges in California as of October 2008, 105 judges (7.1 percent of the total) were former SJOs. Of the 1,263 judges who first obtained office by appointment, 93 (or 7.4 percent of the total) were former SJOs.

Discussion: A judicial candidate's experience in working with diverse populations is an important consideration that will serve to increase the trust and confidence of California's diverse public in its judiciary. This includes the positive aspects of cultural awareness and working with diverse populations, as well as negative attitudes or actions toward people from diverse backgrounds. For example, while some might believe that a person who keeps his or her eyes focused on the ground is being disrespectful, in that person's culture such behavior may actually be one of respect. When evaluating any particular applicant, JNE is not responsible for and cannot appropriately assess how the racial, religious, economic, or practice background of that applicant might affect the overall makeup of the bench.

The commission engaged in intense discussions as to the appropriate role JNE should play with respect to any review of a particular judicial applicant's exposure to and experience with diverse populations. It was determined that because JNE is not the appointing authority, but rather assesses qualifications, an applicant's diverse background is not an appropriate evaluative factor to be considered. Concern was expressed that cultural diversity, as an evaluative factor, would be too difficult to measure using the JNE process.

While the commission does not recommend that an applicant's race, ethnicity, gender, religion, disability, sexual orientation, or other diversity *characteristics* be considered as an evaluative factor, it is important for the Governor to be aware of and to consider an applicant's *exposure to and experience with* diverse populations. The JNE process should include a means by which this information can be collected and communicated in summary form to the Governor's office. This procedure will enhance the selection process and will help to ensure that this important information is made available to the Governor's office.

Recommendation 61
The Governor should consider an applicant's exposure to and experience with diverse populations and issues related to those populations and request this information on the judicial application form.

Discussion: The commission recognizes that the Constitution gives the Governor the unqualified duty to fill vacancies in judicial offices.[92] Because most trial court judges and all appellate court justices originally take office by virtue of gubernatorial appointment, the exposure to and experience with diversity among the appointees of a Governor can dramatically affect the presence of those qualities on the bench.

[92] "[T]he Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins." (Cal. Const., art. VI, § 16(c) for superior court judges); "The Governor shall fill vacancies in those courts by appointment." (Cal. Const., art. VI, § 16(d)(2) for appellate court justices).

Although the Governor has unfettered discretion under the Constitution in making judicial appointments (except for the constitutional qualifications for office), the commission believes that issues of diversity should be considered by the Governor in the course of exercising that discretion. Of course, the weight given to this factor in any particular case would be solely within the Governor's discretion.

Recommendation 62
The judicial branch's public outreach programs should encourage qualified members of the bar to consider applying for judicial office.

Discussion: Part of any effort to increase diversity on the bench is increasing the diversity of those who apply for judicial positions. As discussed above, increasing the diversity of SJOs is one partial solution. Increasing the diversity of the applicant pool generally is another solution, and the judicial branch's public outreach efforts, which are discussed in great detail above, should encourage all qualified members of the Bar to consider applying for judicial office.

Citizenship as a qualification to become a judge
The commission considered whether to recommend sponsoring a constitutional amendment to require that a person be a U.S. citizen in order to become a judge in California. There is currently no such explicit requirement in this state,[93] and there is likely no implicit requirement. Currently only 20 states have an explicit constitutional or statutory requirement that judges be U.S. citizens. However, it is an implicit requirement in states where judges must be licensed attorneys or state bar members and licensure or bar membership is limited to U.S. citizens.

The commission feels that it is unlikely that a noncitizen would be appointed or elected a judge. Thus, the commission has not recommended sponsoring a constitutional amendment; doing so would, in the commission's opinion, be appropriate only in the context of recommending other constitutional amendments.

[93] The requirements in the Constitution do not state that a judge must be a citizen. (See Cal. Const., art. VI, § 15 [imposing only experience requisites including bar membership].) Case law holds that the Legislature lacks authority to add qualifications or requirements for judges beyond what is set forth in the state Constitution. (*People v. Chessman* (1959) 52 Cal.2d 467, 500.) The requirements for bar admission are similarly silent on the issue of citizenship. Of the eight specified requirements for admission, none speaks to residency or citizenship of the candidate. (Compare Cal. Const., art. IV, § 2(c) [requiring citizenship for members of the Legislature] and art. V, § 2 [requiring citizenship of the Governor].)

California's Electoral Process at Both Trial and Appellate Court Levels

In addressing judicial selection and retention, the commission evaluated California's current trial and appellate electoral processes, with an eye toward considering whether any aspects of those processes warrant recommended changes. The issues that were examined are discussed below.

Increasing the length of trial court judges' terms of office

The commission believes that the present term of six years for a trial court judge should be retained. Judicial officers currently have the longest term of office of any elected officials in California. The current term length for trial court judges appears to strike an appropriate balance between public accountability and judicial impartiality. Indeed, most judges up for reelection do not face contests. Although a term of eight years might provide a marginally greater protection of judicial impartiality,[94] a judge would still stand for election three times during a typical two-decade judicial career.

Reelection by contestable election versus retention election at the trial court level

The present system of contestable trial court elections following an initial appointment or election is preferable to the other systems considered by the commission: retention elections, triggered retention elections, or hybrid systems. Under the current system, a judge appears on the ballot only if an opponent files to run against the judge. If there is no opponent, the judge's name does not appear on the ballot and the judge is automatically reelected. Most trial court judges retain their offices unopposed. A discussion of each of the alternatives considered by the commission follows.

Regular retention elections

The California Constitution provides, "The Legislature may provide that an unopposed incumbent's name not appear on the ballot."[95] The Legislature has so provided.[96] A retention election system would require that every judge's name appear on the ballot, contrary to this policy. The phenomenon of ballot roll-off, in which voters cast votes for major offices but do not vote for other offices, such as judicial offices, could result in the removal of a judge from office for no reason other than the length of the ballot. This problem would be exacerbated in large counties with many judicial positions.

Triggered retention elections

The alternative of a triggered retention election has several disadvantages, depending on the type of trigger. Initially, any triggered system may imply that a judge's name appears on the retention ballot only if the judge's performance has resulted in some opposition to

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[94] Some studies indicate that judges tend to be less concerned about adverse public or political response to a decision when an election is less imminent.
[95] Cal. Const., art. VI, § 16(b).
[96] Elec. Code, § 8203.

his or her retention. Thus, such judges may attract a base of negative votes simply by being on the ballot, and a number of individuals may vote against any judge in a triggered retention election. A judge facing retention under a triggered system, therefore, may start with a significant negative base without regard to his or her actual performance or qualifications. No state currently has a triggered retention election system.

If the trigger is a petition of the voters, then interest groups, disgruntled litigants, political parties, or others with an axe to grind against a particular judge or in opposition to a single decision by a judge might be encouraged to launch campaigns to force judges to appear on the retention ballot. This could inject interest group politics into judicial elections in direct contravention to what the commission is trying to accomplish. In addition, some might see a system with a petition as the only triggering system as equivalent to a lifetime appointment subject only to recall.

The only other theoretically possible trigger would be a judge's unacceptable performance evaluation score. California does not have any formal, mandatory, judicial performance evaluation process designed for this purpose, nor does any other state. A similar proposal was made in Illinois in the late 1990s but was not adopted. The commission believes that its recommendations regarding evaluation of judicial candidates in contested elections are far more sound.

Hybrid elections

The commission also chose not to recommend a hybrid system in which there is an appointment followed by an initial contestable election followed by retention elections. This system is used in part in Illinois and Pennsylvania, neither of which is generally viewed as a positive model for judicial selection (although that reputation is primarily due to the partisan influence on judicial elections). New Mexico uses a similar system, with a nominating commission appointment followed by a contestable partisan election followed by retention elections. The opposition to this system is based on the same reasons as opposition to standard and triggered retention elections.

Open elections versus all initial selections by appointment at the trial court level

The present system, which permits open elections—that is, an election in which there is no incumbent judge on the ballot—should be retained. This is important to provide greater opportunities for judicial service.

While some concerns have been expressed that open elections can lead to partisan battles, contestable elections appear equally subject to that risk. In addition, open elections provide a useful alternative for good candidates who might not otherwise be appointed. A prohibition on open elections could also potentially lead to a less diverse bench in the event that governors consistently fail to nominate and appoint a heterogeneous pool of judges. The commission notes, however, that most studies of judicial selection methods

and diversity have found little consistent correlation between the two. In some states, women and people of color appear at a disadvantage in statewide contested election systems, while contested elections in other states have resulted in significant gains in judicial diversity. The diversity of the eligible pool of potential judges; the political dynamics, history, and culture of the state or jurisdiction; and other factors unrelated to the formal selection method appear to have a greater influence on the overall diversity of the bench.

Recommendation 63
An amendment should be sponsored to change the constitutional provision for the recall of a judge—which currently requires a petition with signatures of 20 percent of those voting for a judge in the most recent election—to require a petition with signatures of 20 percent of those voting for district attorney, the only county official elected in every county.[97]

Discussion: Because races for judicial office are likely to draw a low number of voters, using the number of voters who voted for that office in the most recent election as a base provides an inappropriately low threshold for mounting a recall petition against a judge. The commission instead recommends using the number of voters for the office of district attorney as a base, as district attorney is the only county official that is elected in every county.

Recommendation 64
A constitutional amendment should be sponsored to provide that a trial court judge shall serve at least two years before his or her first election.[98]

Discussion: Judges should have an opportunity to build a record on which they can run. The current system, which measures the time to the first election based on the occurrence of the vacancy rather than the appointment of the judge, may unfairly penalize a judge based on how promptly the vacant office is filled.[99] A strong argument can be made that two years is a minimum acceptable period of time for a judge to establish a record of service. Some highly qualified attorneys may be discouraged from abandoning a rewarding or lucrative practice to seek judicial appointment if they face the very real possibility of encountering a strong electoral challenge shortly after assuming the bench.

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[97] See Appendix N.
[98] *Id.*
[99] A chart showing initial term lengths for interim appointments nationwide is attached to this report as Appendix O.

Recommendation 65
Legislation should be sponsored to change the number of signatures needed for placing an unopposed judicial election on the ballot for a potential write-in contest from the current level of 100 signatures to 1 percent of the voters for district attorney in the last county election but not fewer than 100 signatures.

Recommendation 66
Legislation should be sponsored to amend current law—which provides that an unopposed judge may be challenged by write-ins at either or both the primary election and the general election—to permit only one challenge, which should be at the first (i.e., primary) election.

Discussion of recommendations 65–66: Current law provides that a petition with only 100 signatures (no matter the size of the county) can force an unopposed judge's name onto the ballot because of a potential write-in campaign.[100] This extremely low threshold can result in a judge being "targeted" for improper reasons. Increasing the number of threshold signatures needed to 1 percent of the voters for district attorney in the last county election (or 5 percent of the level for recall of a judge), but not fewer than 100, seems an appropriate number of signatures to demonstrate an interest where a person truly is seeking to run a write-in campaign. The application of such an amendment would, for example, raise the number of signatures in Los Angeles County, based on the most recent election, to just over 7,000 out of a population of 9,878,554 in 2007, based on a U.S. Census Bureau estimate.

In addition, there does not appear to be any reason why an unopposed judge should be subject to a write-in challenge at both the primary and general elections when, if the judge were opposed at the primary election, he or she would not be subject to a write-in challenge at the general election.[101]

Recommendation 67
An amendment should be sponsored to article VI, section 16 of the California Constitution to reorder the subdivisions therein and make minor wording changes for the sake of clarity.

Discussion: The subdivisions in section 16 of article VI of the California Constitution are currently in a somewhat confusing order. Subdivisions (a) and (d) deal with appellate

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[100]The number of signatures required to submit nomination papers for the purpose of challenging an incumbent is 20, and this recommendation is not intended to alter that number. (See Elec. Code, § 8062(a)(3).) Rather, this recommendation applies only to write-in situations, i.e., elections where only the incumbent has filed nomination papers, meaning that he or she would be unopposed but for a write-in campaign. The commission's goal is to reduce the ease of conducting last-minute, frivolous write-in campaigns.
[101] See Appendix N.

offices, while subdivisions (b) and (c) deal with superior court offices. The commission recommends a complete reordering of the language of the section to make it clearer. Subdivision (a) would cover terms, elections, and filling of vacancies for Supreme Court and Court of Appeal justices, and subdivision (b) would cover superior court judges.

The recommended reordering of the provisions is not intended to fundamentally alter the pattern of superior court contested elections and appellate court retention elections. The proposed amendments to section 16 are presented in two forms. Each change is shown as it would be made to the current organization of section 16,[102] and then the entire reorganized section is shown as a repeal and reenactment of the existing language.[103]

The current constitutional provisions are confusing concerning which officers are voted on at which elections. The term "general election" as used in the Constitution has two meanings, referring both to the direct primary election (currently held in June of even-numbered years) and the runoff or general election (held in November of even-numbered years). For superior court positions, it is possible (and it occurs with some regularity) that no candidate will receive a majority of votes at the first election and a runoff will be necessary. The normal process is to hold the initial election at the direct primary, with a runoff, if needed, in November. The proposed language makes explicit these two election dates.[104]

The proposed language also makes clear that when the office that a judge held was subject to the electoral process in that year, and at least one candidate has qualified for the election for that office before the incumbent leaves office, the election goes forward for a full term beginning the following year.[105]

Term of office of appellate justices

Judicial officers currently have the longest terms of office of any elected official in California. While this is appropriate, the commission concluded that there has been no demonstrated need for increasing the length of a judge's term. The current term length for appellate court justices appears to strike an appropriate balance between public accountability and judicial impartiality. Indeed, nearly all justices up for retention are confirmed.

While an argument could be made for lifetime appointments, especially of appellate court justices, who grapple with more politically sensitive cases,[106] a counterargument could be

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[102] *Id.*
[103] *Id.*
[104] This language appears in various provisions of the revision on section 16.
[105] This is the holding in *Stanton v. Panish* (1980) 28 Cal.3d 107. See Appendix N.
[106] "The standard of good behavior for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government. . . . [I]t is a[n] . . . excellent barrier to the encroachments and oppressions of the representative body. And it is the best

made for contestable elections. Outside of the federal system, most states do not have lifetime appointments for their judiciary. The current system of 12-year terms with retention elections seems an appropriate compromise between lifetime appointments and 6-year terms subject to contestable elections.

Recommendation 68
A constitutional amendment should be sponsored to provide that retention elections for appellate justices be held every two years (during both the gubernatorial and the presidential elections) rather than the present system of every four years (during the gubernatorial elections).[107]

Discussion: With elections every two years, there would be 50 percent fewer retention elections on a ballot and a concomitant reduction in ballot fatigue. Based on historical trends, elections in presidential years also would have somewhat greater turnout than elections in gubernatorial years. With elections every two years instead of every four, the length of time a person would serve before facing the initial retention election could be reduced by up to two years.

Recommendation 69
A constitutional amendment should be sponsored to provide that following an appellate justice's initial retention election, that justice serves a full 12-year term, rather than the current system of a 4-, 8-, or 12-year term, depending on the length of term remaining for the previous justice holding that seat.[108]

Discussion: Under the current system, at the first retention election, a justice is elected to the remaining term (or a full term if there is no remaining term) of his or her predecessor. This means that the term is 4, 8, or 12 years. Under the commission's recommendation, a justice would be retained for a full 12-year term at each retention election.

An exception would be made, however, when a 12-year term for a new justice would result in more than three justices from the Supreme Court or more than two justices from the same division of a Court of Appeal being up for retention at the same time. This exception would spread out the retention elections in a manner similar to the "one-third every four years" originally envisioned by the Constitution.

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expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws." (*The Federalist No. 78* (Alexander Hamilton).)
[107] See Appendix N.
[108] *Id.*

Recommendation 70
A constitutional amendment should be sponsored to provide that an appellate justice serve at least two years before the first retention election, paralleling recommendation 64 above concerning trial court judges.[109]

Discussion: Under the current system, a justice may face an initial retention election within a short time, i.e., less than a year following his or her appointment. The discussion presented with recommendation 64 above for allowing more time before an election for trial court judges is equally relevant here.

Recommendation 71
Further study should be made of ways to help ensure that judicial vacancies are filled promptly.

Discussion: Vacant judicial positions contribute to a backlog in the courts, delay justice, and potentially reduce the quality of justice. The commission recommends that further consideration be given to methods to ensure more prompt action on judicial vacancies.[110]

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[109] See Appendix N.
[110] See, e.g., Pub. Resources Code, § 25206. Under that provision, which the commission does not necessarily recommend for judicial vacancies, the Governor is required to fill vacancies in the State Energy Resources Conservation and Development Commission within 30 days of the date a vacancy occurs or the right to make the appointment falls to the Senate Rules Committee.

Consolidated List of Recommendations

Judicial Candidate Campaign Conduct

1. The Code of Judicial Ethics should be amended to include the American Bar Association Model Code of Judicial Conduct definition of "impartiality."

2. The commentary to canon 4B of the Code of Judicial Ethics should be amended to encourage judges to educate the public on the importance of an impartial judiciary.

3. The commentary to canon 5B of the Code of Judicial Ethics should be amended to encourage judicial candidates to discuss their qualifications for office and the importance of judicial impartiality.

4. Canon 5 of the Code of Judicial Ethics should be reexamined for consistency in its use of the terms "judge" and "candidate."

5. The Code of Judicial Ethics should be amended by adding a new canon 3E(2), providing that a judge is disqualified if he or she, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that a person aware of the facts might reasonably believe commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

6. A definition of "commitment" that includes "pledges" and "promises" should be added to the Code of Judicial Ethics.

7. An unofficial statewide fair judicial elections committee should be established to educate candidates, the public, and the media about judicial elections; to mediate conflicts; and to issue public statements regarding campaign conduct in statewide and regional elections and in local elections where there is no local committee.

8. The formation of unofficial local fair judicial elections committees to educate candidates, the public, and the media about judicial elections; to mediate conflicts; and to issue public statements regarding campaign conduct in local elections should be encouraged.

9. A model campaign conduct code for use by the state and local oversight committees should be developed.

10. The Code of Judicial Ethics should be amended to require all judicial candidates, including incumbent judges, to complete a mandatory training program on ethical campaign conduct.

11. Judicial candidate training on ethical campaign conduct should include:

    - Identifying issues raised by judicial candidate questionnaires;
    - Distributing a model letter and a model questionnaire that candidates can use in lieu of responding to an interest group questionnaire;
    - Using the advisory memorandum on responding to questionnaires prepared by the National Ad Hoc Advisory Committee on Judicial Campaign Oversight;
    - Encouraging candidates to give reasoned explanations for not responding to improper questionnaires rather than simply citing advisory opinions;
    - Using candidate Web sites; and
    - Explaining why partisan activity by candidates is disfavored.

12. Both the California Judges Association's Judicial Ethics Hotline and the new Supreme Court Committee on Judicial Ethics Opinions should be publicized as resources that judicial candidates can use to obtain advice on ethical campaign conduct.

13. Collaboration among the Administrative Office of the Courts, State Bar, California Judges Association, and National Center for State Courts should be recommended to develop brochures to educate judicial candidates.

14. The sentence "This canon does not prohibit a judge from responding to allegations concerning the judge's conduct in a proceeding that is not pending or impending in any court" should be added to the commentary following canon 3B(9) of the Code of Judicial Ethics, but the prohibition against public comment on pending cases should not be extended to attorney candidates for judicial office.

15. The commentary to canon 3B(9) of the Code of Judicial Ethics should be amended to provide guidance to judges on acceptable conduct in responding to attacks on rulings in pending cases.

16. Local county bar associations should consider creating independent standing committees that will respond to inaccurate or unfounded attacks on judges, judicial decisions, and the judicial system.

17. The California Judges Association's Response to Criticism Team and its network of contacts should be publicized.

18. The statutory slate mailer disclaimer should be strengthened by requiring mailers to cite canon 5 of the Code of Judicial Ethics and, when a candidate is placed on a mailer without his or her consent, to prominently disclose that fact.

19. An amendment to Government Code section 84305.5 should be sponsored to apply to organizations that support or oppose judicial candidates.

20. Judicial campaign instructional materials providing best practices regarding the use of slate mailers should be developed.

21. Judicial candidates should be advised to obtain written permission before using an endorsement and to clarify which election the endorsement is for, to honor any request by an endorser to withdraw an endorsement, and to request written confirmation of any oral request to withdraw an endorsement.

22. Judicial candidates should be prohibited from seeking or using endorsements from political organizations," as defined in the terminology section of the Code of Judicial Ethics.

23. Instructional materials about the importance of truth in advertising should be developed.

24. Canon 5 of the Code of Judicial Ethics or its commentary should be amended to place an affirmative duty on judicial candidates to control the actions of their campaigns and the content of campaign statements, to encourage candidates to take reasonable measures to protect against oral or informal written misrepresentations being made on their behalf by third parties, and to take appropriate corrective action if they learn of such misrepresentations.

25. The Code of Judicial Ethics should be amended to add a list of prohibited campaign conduct.

26. A letter—to be sent by the courts to county registrars before each election cycle—should be developed addressing permitted use of the title "temporary judge" or "judge pro tem" by candidates.

27. Canon 6 of the Code of Judicial Ethics should be amended to clarify how the title "temporary judge" or "judge pro tem" may be properly used.

28. The State Bar should be encouraged to discipline attorney candidates who engage in campaign misconduct.

Judicial Campaign Finance

29. A system should be adopted under which each trial court judge is required to disclose to litigants, counsel, and other interested persons appearing in the judge's courtroom all contributions of $100 or more made to the judge's campaign, directly or indirectly. Specifically:

    - The commentary to the disclosure provision in canon 3E(2) of the Code of Judicial Ethics should be amended to require a trial judge to maintain an updated list of campaign contributions of $100 or more and to disclose to litigants appearing in court that the list is available for viewing in the courthouse and online;
    - The commentary to canon 3E(2) should be amended to state that the obligation to disclose campaign contributions continues for a minimum of two years after the judge assumes office; and
    - The commentary to canon 5B should be amended to cross-reference the proposed new commentary to canon 3E(2).

30. Each trial court judge should be subject to mandatory disqualification from hearing any matter involving a party, counsel, party affiliate, or other interested party who has made a monetary contribution of a certain amount to the judge's campaign, directly or indirectly, subject to the following:

    - The contribution level at which disqualification shall be mandatory shall be the same as the level, specified in Code of Civil Procedure section 170.5(b), at which a judge is considered to have a "financial interest" in a party, requiring disqualification;
    - Notwithstanding the above mandatory disqualification amount, trial court judges shall continue to disqualify themselves based on contributions of lesser amounts when doing so would be required by Code of Civil Procedure section 170.1(a)(6)(A);
    - The Judicial Council should recommend that the amount specified in Code of Civil Procedure section 170.5(b)—which, as of the date of this recommendation, is $1,500—be periodically reviewed and adjusted as appropriate;
    - The mandatory disqualification described above shall be waivable by those parties to the matter who were not involved in making the contribution in question; and
    - The obligation to disqualify shall begin immediately on receipt of the contribution in question and shall run for two years from the date that the candidate assumes office or from the date the contribution was received, whichever is later.

31. Appellate courts should be required to send to the parties—with both the first notice from the court and with the notice of oral argument—information on how they may learn of campaign contributions if there is an upcoming retention election or there was a recent election.

32. Appellate justices' campaign finance disclosures should be maintained electronically and should be accessible via the Web and possibly through a link to the California Secretary of State Web site.

33. Each appellate justice should be subject to mandatory disqualification from hearing any matter involving a party, counsel, party affiliate, or other interested party who has made a monetary contribution of a certain amount to the justice's campaign, directly or indirectly, subject to the following:

    - For justices of the Courts of Appeal, the contribution level at which disqualification shall be mandatory shall be the same as the level, stated in canon 3E(5)(d) of the Code of Judicial Ethics, at which a justice is considered to have a "financial interest" in a party requiring disqualification;
    - For justices of the Supreme Court, the contribution level at which disqualification shall be mandatory shall be the same as the contribution limit, stated in Government Code section 85301(c) and California Code of Regulations title 2, section 18545, in effect for candidates for Governor;
    - Notwithstanding the above mandatory disqualification amounts, appellate justices shall continue to disqualify themselves based on contributions of lesser amounts when doing so would be required by canon 3E(4) of the Code of Judicial Ethics;
    - The mandatory disqualification described above shall be waivable by those parties to the matter who were not involved in making the contribution in question; and
    - The obligation to disqualify shall begin immediately on receipt of the contribution in question and shall run for two years from the date that the candidate assumes office or from the date the contribution was received, whichever is later.

34. Legislation should be sponsored prohibiting corporations and unions from expending treasury funds on contributions directly to judicial candidates or to groups making independent expenditures in connection with campaigns for judicial office.

35. Legislation should be sponsored to require that all candidates for judicial office—regardless of their total dollar amount of contributions received and/or expenditures made—be required to file in some electronic format with the California Secretary of

State's office all campaign disclosure documents that they would also be required to file in paper form.

36. Spending in connection with judicial elections should be closely observed for developing trends that would indicate a need to reconsider whether to sponsor legislation to create a system of public financing at the trial court or appellate court level, but such legislation should not be sponsored at this time.

Public Information and Education

37. To improve transparency and better inform the public of the role and operations of the state court system and to enhance public outreach, the judicial branch should identify and disseminate essential information that would increase both the public's access to justice and its opportunities for input. To that end, the following are recommended:

- A leadership advisory group should be appointed to oversee, identify, and coordinate public outreach programs and opportunities for public input; to establish benchmarks of good practice; and to promote the assembly of local teams to assist courts with local outreach programs;
- The AOC should collect, summarize, and evaluate public outreach resources and methods for public input that are currently available for judges and court administrators and should also collect, summarize, and evaluate educational materials for K–12 teachers and for judges and court administrators making classroom visits;
- The AOC should maintain a list of resources for local courts that will reflect the diversity of the state and explore ethnic media outlets;
- Web sites should be enhanced to include the role of the judicial branch and explain how judges are elected or appointed; information concerning how judges are selected or elected should be placed prominently on the California Courts Web site;
- A compelling video on the role of the judicial branch should be created for use in various venues and should be posted on local court Web sites;
- The judicial branch should view any public gathering place—such as jury rooms or nonjudicial settings—as an opportunity to inform the public about the role and importance of the judiciary in a democracy;
- Courts should be identified to pilot programs dealing with community outreach and education; and
- Information about how judges are elected or appointed should be incorporated into outreach efforts and communications with the media.

38. To improve the quality of justice and the public's trust and confidence in the judiciary, solicitation of public feedback on issues such as judicial performance and satisfaction with the courts should be encouraged, facilitated, and enhanced at all times.

39. Training should be developed for judges and justices on how to present clearly the meaning or substance of court decisions in a way that can be easily understood by litigants, their attorneys, and the public.

40. Local and statewide elected officials should be educated on the importance of the judicial branch.

41. Judges and court administrators should be better trained on how to interact with the media, and training for the media in reporting on legal issues should be supported and facilitated.

42. In order to improve transparency and be responsive to public comments and constructive criticism of the judicial branch, the judicial branch should do the following:

    - Adopt both a model method for responding to unwarranted criticism of the judicial branch and a tip sheet for judges to use when responding to press inquiries;
    - Create an advisory group to provide ongoing direction and oversight of the recommended response plan and ensure that the services it proposes are provided; and
    - Ensure that valid criticisms are referred to the appropriate bodies for response.

43. Every child in the state should receive a quality civics education, and judges, courts, teachers, and school administrators should be supported in their efforts to educate students about the judiciary and its function in a democratic society. To that end, the following are specifically recommended:

    - Strategies for meaningful changes to civics education in California should be supported, and a strategic plan for judicial branch support for civics education should be developed;
    - Political support should be sought from leaders in the Legislature, the State Bar, the law enforcement community, and other interested entities to improve civics education;
    - Teacher training programs, curriculum development, and education programs on civics should all be expanded to include the courts;
    - Presiding justices and presiding judges should be encouraged to grant continuing education (CE) credits to judicial officers and court executive officers who conduct K–12 civics and law-related education;

- The State Bar Board of Governors should be asked to grant Minimum Continuing Legal Education (MCLE) credits to attorneys who conduct K–12 civics and law-related education programs;
- The AOC should be directed to help pilot extensive civics-related outreach in three jurisdictions; and
- Recognition programs that bring attention to teachers, judges, and court administrators who advance civics education should be promoted.

44. To ensure that voters can make informed choices about candidates for judicial office, the following are recommended:

    - Voter focus groups should be conducted within California to determine what information to provide in education materials;
    - Voter education materials should be developed to inform voters about the constitutional duties and responsibilities of judges and justices and the role of the state court system;
    - Judicial candidates should participate in candidate forums and respond to appropriate questionnaires;
    - Efforts should be undertaken to determine the most effective uses of multimedia tools to promote voter education;
    - Collaboration should be established among the Judicial Council, the League of Women Voters, the California Channel, and other groups to inform and educate voters; and
    - Politically neutral toolkits regarding voter information and best practices on public outreach should be developed for use by judicial candidates.

45. The State Bar should be asked to offer an educational course to potential judgeship applicants.

46. A model self-improvement program should be developed for voluntary use by courts and individual judges.

47. The public should be informed that systems are in place to deal with judicial performance issues in fair and effective ways, including elections, appellate review, media coverage, the Commission on Judicial Performance, the State Bar's Commission on Judicial Nominees Evaluation, and local bar association surveys.

48. Courts should be encouraged to use CourTools or similar court performance measures.

Judicial Selection and Retention

49. The State Bar's Commission on Judicial Nominees Evaluation process, a unique form of a merit-based screening and selection system that has served California well, should be retained.

50. In order to increase trust and confidence in the judicial selection process, the background and diversity of the commission members should be given more publicity, including by placing photographs of the members on the JNE Web site and making that site more accessible on the State Bar's home page.

51. Legislation should be sponsored to require that a JNE rating of "not qualified" (and thus, by the absence of announcement, a rating of at least "qualified" or better) for a trial court judge be made public automatically at the time of appointment of a person with that rating.

52. Legislation should be sponsored to make the current practice of releasing the JNE rating for a prospective appellate justice mandatory and permanent.

53. The release of a rating by JNE should not be accompanied by a statement of reasons.

54. The following Web sites should explain the judicial appointment process and link to each other:

    - The judicial branch's California Courts Web site; and
    - The State Bar's JNE Web site and the Governor's Judicial Application Web site, both of which should be more user-friendly, contain appropriate information about JNE procedures and the rating system, and include videos explaining the judicial appointment process.

55. Law schools should be encouraged to provide information about the judicial appointment process to law students by, for example, encouraging qualified JNE members, both past and present, to give presentations at law schools.

56. To increase public knowledge of the judicial selection process, JNE should be encouraged to have its members speak to local and specialty bar associations, service organizations, and other civic groups.

57. The State Bar should amend the JNE rules to require that any member of the State Bar Board of Governors who attends a JNE meeting comply with the JNE conflict of interest rules.

58. A study should be undertaken to develop effective methods of increasing public knowledge of judicial candidates and their qualifications, including development of a model of judicial candidate evaluation that can be used by county bar associations and others. The model should include the method of selecting appropriate members of the entity that conducts the judicial candidate evaluations, the timing of judicial candidate evaluations, and effective dissemination to the public.

59. The courts should be directed to consider, when making appointments of subordinate judicial officers, both the diverse aspects of the applicants and the applicants' exposure to and experience with diverse populations and their related issues.

60. The Commission on Judicial Nominees Evaluation should gather information regarding judicial applicants' exposure to and experience with diverse populations and issues related to those populations and should then communicate this information to the Governor.

61. The Governor should consider an applicant's exposure to and experience with diverse populations and issues related to those populations and request this information on the judicial application form.

62. The judicial branch's public outreach programs should encourage qualified members of the bar to consider applying for judicial office.

63. An amendment should be sponsored to change the constitutional provision for the recall of a judge—which currently requires a petition with signatures of 20 percent of those voting for a judge in the most recent election—to require a petition with signatures of 20 percent of those voting for district attorney, the only county official elected in every county.

64. A constitutional amendment should be sponsored to provide that a trial court judge shall serve at least two years before his or her first election.

65. Legislation should be sponsored to change the number of signatures needed for placing an unopposed judicial election on the ballot for a potential write-in contest from the current level of 100 signatures to 1 percent of the voters for district attorney in the last county election but not fewer than 100 signatures.

66. Legislation should be sponsored to amend current law—which provides that an unopposed judge may be challenged by write-ins at either or both the primary election and the general election—to permit only one challenge, which should be at the first (i.e., primary) election.

67. An amendment should be sponsored to article VI, section 16 of the California Constitution to reorder the subdivisions therein and make minor wording changes for the sake of clarity.

68. A constitutional amendment should be sponsored to provide that retention elections for appellate justices be held every two years (during both the gubernatorial and the presidential elections) rather than the present system of every four years (during the gubernatorial elections).

69. A constitutional amendment should be sponsored to provide that following an appellate justice's initial retention election, that justice serves a full 12-year term, rather than the current system of a 4-, 8-, or 12-year term, depending on the length of term remaining for the previous justice holding that seat.

70. A constitutional amendment should be sponsored to provide that an appellate justice serve at least two years before the first retention election, paralleling recommendation 64 above concerning trial court judges.

71. Further study should be made of ways to help ensure that judicial vacancies are filled promptly.

Appendixes

Appendix A	Commission for Impartial Courts Steering Committee Roster
Appendix B	Task Force on Public Information and Education Roster
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Appendix M	American Bar Association, Standing Committee on Judicial Independence; National Conference of State Trial Judges; Appellate Judges Conference; Ohio State Bar Association, Report to the House of Delegates
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Appendix A

Commission for Impartial Courts
Steering Committee Roster

As of January 16, 2009
(Expired November 30, 2009)

Hon. Ming W. Chin, Chair
Associate Justice of the
California Supreme Court

Mr. Joseph W. Cotchett, Jr.
Attorney at Law
Cotchett, Pitre & McCarthy
Burlingame

Mr. Bruce B. Darling
Executive Vice-President
University of California

Hon. Peter Paul Espinoza
Assistant Supervising Judge of the
Superior Court of California,
County of Los Angeles

Mr. Thomas V. Girardi
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Girardi & Keese
Los Angeles

Mr. John Hancock
President
California Channel
Sacramento

Hon. Brad R. Hill
Associate Justice of the Court of Appeal,
Fifth Appellate District

Ms. Janis R. Hirohama
President
League of Women Voters of California
Manhattan Beach

Hon. William A. MacLaughlin
Judge of the Superior Court of California,
County of Los Angeles

Hon. Judith D. McConnell
Administrative Presiding Justice of the
Court of Appeal, Fourth Appellate District

Hon. Barbara J. Miller
Judge of the Superior Court of California,
County of Alameda

Hon. Douglas P. Miller
Associate Justice of the Court of Appeal,
Fourth Appellate District, Division Two

Hon. Dennis E. Murray
Presiding Judge of the
Superior Court of California,
County of Tehama

Hon. William J. Murray, Jr.
Presiding Judge of the
Superior Court of California,
County of San Joaquin

Hon. Ronald B. Robie
Associate Justice of the Court of Appeal,
Third Appellate District

Hon. Karen L. Robinson
Judge of the Superior Court of California,
County of Orange

Mr. Michael M. Roddy
Executive Officer
Superior Court of California,
County of San Diego

Mr. John H. Sullivan
President
Civil Justice Association of California
Sacramento

Ms. Patricia P. White
Member
State Bar of California
Board of Governors
Littler and Mendelson, P.C.
San Jose

JUDICIAL COUNCIL LIAISONS

Hon. Peter Paul Espinoza
Assistant Supervising Judge of the
Superior Court of California,
County of Los Angeles

Hon. Dennis E. Murray
Presiding Judge of the
Superior Court of California,
County of Tehama

GOVERNING COMMITTEE OF THE CJER LIAISON

Hon. Gail A. Andler
Judge of the Superior Court of California,
County of Orange

AOC ADVISOR TO THE COMMITTEE

Hon. Roger K. Warren (Ret.)
Scholar-in-Residence

AOC PROJECT DIRECTOR

Ms. Christine Patton
Regional Administrative Director
Bay Area/Northern Coastal Regional Office

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Assistant Division Director
Bay Area/Northern Coastal Regional Office

Ms. Susan Reeves
Court Services Analyst
Bay Area/Northern Coastal Regional Office

Ms. Barbara Whiteoak
Executive Secretary
Bay Area/Northern Coastal Regional Office

Appendix B

Task Force on Public Information and Education Roster

As of January 16, 2009
(Expired November 30, 2009)

Hon. Judith D. McConnell, Chair
Administrative Presiding Justice of the
Court of Appeal, Fourth Appellate District

Mr. Stephen Anthony Bouch
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Dr. Frances Chadwick
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President, Bar Association of San Francisco
Partner, Clarence & Dyer, LLP

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Director of Programs
Constitutional Rights Foundation
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Hon. Lynn Duryee
Judge of the Superior Court of California,
County of Marin

Hon. Martha M. Escutia
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Manatt, Phelps & Phillips, LLP
Los Angeles

Mr. John Fitton
Executive Officer
Superior Court of California,
County of San Mateo

Hon. Edward Forstenzer
Presiding Judge of the
Superior Court of California,
County of Mono

Mr. José Octavio Guillén
Executive Officer
Superior Court of California,
County of Sonoma

Hon. Steven E. Jahr (Ret.)
Judge of the Superior Court of California,
County of Shasta

Hon. Linda L. Lofthus
Judge of the Superior Court of California,
County of San Joaquin

Hon. Franz E. Miller
Judge of the Superior Court of California,
County of Orange

Dean Elizabeth Rindskopf Parker
Dean, University of the Pacific,
McGeorge School of Law

Hon. David Sargent Richmond
Assistant Presiding Judge of the
Superior Court of California,
County of Amador

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Writer/Producer
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AOC STAFF TO THE TASK FORCE

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Executive Office Programs Division

Ms. Linda Theuriet
Special Consultant
Executive Office Programs Division

Appendix C

Task Force on Judicial Candidate Campaign Conduct Roster

As of January 16, 2009
(Expired November 30, 2009)

Hon. Douglas P. Miller, Chair
Associate Justice of the Court of Appeal,
Fourth Appellate District, Division Two

Ms. Christine Burdick
Executive Director and General Counsel
Santa Clara County Bar Association

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Davis, Wright and Tremaine, LLP
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Hon. Joseph Dunn
Chief Executive Officer
California Medical Association
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Hon. Michael T. Garcia
Judge of the Superior Court of California,
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Mr. Dennis J. Herrera
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Ms. Beth Jay
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Hon. Ronni B. MacLaren
Judge of the Superior Court of California,
County of Alameda

Hon. Rodney S. Melville (Ret.)
Judge of the Superior Court of California,
County of Santa Barbara

Mr. G. Sean Metroka
Executive Officer
Superior Court of California,
County of Nevada

Hon. James M. Mize
Presiding Judge of the
Superior Court of California,
County of Sacramento

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Assistant Director Appellate Advocacy
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McGeorge School of Law

Mr. James N. Penrod
Member
State Bar of California Board of Governors
Morgan, Lewis & Bockius
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Hon. Maria P. Rivera
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First Appellate District, Division Four

Hon. Byron D. Sher
Former Member of the California Senate
Placerville

Mr. Alan Slater
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Judge of the Superior Court of California,
County of Orange

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Stanley Morrison Professor of Law
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John F. Kimberling Professor of Law
Indiana University Maurer School of Law

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Office of the General Counsel

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Administrative Coordinator
Office of the General Counsel

Mr. Sei Shimoguchi
Former Attorney
Office of the General Counsel

Appendix D

Task Force on Judicial Campaign Finance Roster

As of January 16, 2009
(Expired November 30, 2009)

Hon. William A. MacLaughlin, Chair
Judge of the Superior Court of California,
County of Los Angeles

Hon. Gail A. Andler
Judge of the Superior Court of California,
County of Orange

Ms. Rozenia D. Cummings
President
California Association of Black Lawyers
Mill Valley

Hon. Alden E. Danner
Judge of the Superior Court of California,
County of Santa Clara

Ms. Denise Gordon (Ret.)
Former Executive Officer
Superior Court of California,
County of Sonoma

Mr. Charles Wesley Kim, Jr.
Counsel
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Hon. Bruce McPherson
Former Member of the California Senate
Santa Cruz

Hon. Heather D. Morse
Judge of the Superior Court of California,
County of Santa Cruz

Ms. Angela Padilla
Member
The Bar Association of San Francisco
Orrick, Herrington & Sutcliffe
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Mr. Michael D. Planet
Executive Officer
Superior Court of California,
County of Ventura

Hon. Mark B. Simons
Associate Justice of the Court of Appeal,
First Appellate District, Division Five

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Appendix E

Task Force on Judicial Selection and Retention Roster

As of June 16, 2009
(Expired November 30, 2009)

Hon. Ronald B. Robie, Chair
Associate Justice of the Court of Appeal, Third Appellate District

Mr. Ralph Alldredge
Secretary/Treasurer of California Newspaper Publishers Association
Publisher, Calaveras Enterprise
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Mr. Chris Arriola
Deputy District Attorney
Office of the District Attorney, County of Santa Clara

Mr. Joseph Starr Babcock
Special Assistant to the Executive Director
The State Bar of California
San Francisco

Hon. H. Walter Croskey
Associate Justice of the Court of Appeal, Second Appellate District, Division Three

Hon. Marguerite D. Downing
Judge of the Superior Court of California, County of Los Angeles

Hon. Bonnie M. Dumanis
District Attorney
County of San Diego

Hon. Kim Garlin Dunning
Presiding Judge of the Superior Court of California, County of Orange

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Bartko, Zankel, Tarrant & Miller
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Hon. Terry B. Friedman
Judge of the Superior Court of California, County of Los Angeles

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Commission on Judicial Performance
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Hon. Edward Sarkisian, Jr.
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Hon. Sharon J. Waters
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California, County of Los Angeles

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Administrative Office of the Courts

Appendix F

Steering Committee and Task Force Charges

Commission for Impartial Courts Steering Committee

The Commission for Impartial Courts Steering Committee is charged with overseeing and coordinating the work of the four task forces, receiving the periodic task force reports and recommendations, and presenting its overall recommendations to the Judicial Council.

Task Force on Judicial Candidate Campaign Conduct

The Task Force on Judicial Candidate Campaign Conduct is charged with evaluating and making periodic reports and final recommendations to the steering committee regarding any proposals to promote ethical and professional conduct by candidates for judicial office, including through statutory change, promulgation, or modification of canons of judicial ethics; improving mechanisms for the enforcement of the canons; and promotion of mechanisms encouraging voluntary compliance with ethics provisions by candidates for judicial office.

Task Force on Judicial Campaign Finance

The Task Force on Judicial Campaign Finance is charged with evaluating and making periodic reports and final recommendations to the steering committee regarding any proposals to better regulate contributions to, financing of, or spending by candidates or campaigns for judicial office, and to improve or better regulate judicial campaign advertising, including through enhanced disclosure requirements.

Task Force on Public Information and Education

The Task Force on Public Information and Education is charged with evaluating and making periodic reports and final recommendations to the steering committee regarding any proposals to improve public information and education concerning the judiciary, both during judicial election campaigns and otherwise. Proposals may include methods to improve voter access to accurate and unbiased information about the qualifications of judicial candidates and to improve public understanding of the role and decisionmaking processes of the judiciary.

As the task force develops public information and education strategies, it should focus on ways to prevent or respond to unfair criticism, personal attacks on judges, institutional attacks on the judiciary, inappropriate judicial campaign conduct, and other challenges to judicial impartiality arising from unpopular judicial decisions. In forming strategies, the task force should consider all available avenues to develop and strengthen partnerships with other organizations, such as state and local bar

associations, educational institutions, and the California Judges Association, which has a program for responding to criticism of judges.

Task Force on Judicial Selection and Retention

The Task Force on Judicial Selection and Retention is charged with evaluating and making periodic reports and final recommendations to the steering committee regarding any proposals to improve the methods and procedures of selecting and retaining judges and regarding the terms of judicial office and timing of judicial elections.

Appendix G

Background Analysis of *Republican Party of Minnesota v. White* and Its Aftermath

The commission has made a number of recommendations relating to the post-*White* landscape. To provide context for those recommendations, the Task Force on Judicial Candidate Campaign Conduct prepared this appendix, which analyzes *White* and how case law concerning judicial elections has developed in its aftermath. The analysis also addresses amendments to the American Bar Association's Model Code of Judicial Conduct ("model code") and the California Code of Judicial Ethics ("code") as a result of *White*.

Introduction

In *White*, the U.S. Supreme Court held that a provision in the Minnesota Code of Judicial Conduct prohibiting a judicial candidate from announcing "his or her views on disputed legal or political issues" violated the First Amendment. The decision raised concerns about the validity of any provision regulating judicial campaign speech and whether judicial elections should be treated differently from elections for political office. Some lower federal courts have since relied on the decision to invalidate restrictions on judicial candidate speech that were not expressly addressed by the *White* court. The purpose of this analysis is to provide background on the *White* decision and a framework for considering possible amendments to California's rules governing judicial campaign conduct. This analysis addresses (1) the *White* majority opinion, (2) the dissenting opinions, (3) issues that were not discussed in the opinion, (4) lower federal court rulings interpreting *White*, (5) post-*White* revisions to the California Code of Judicial Ethics, and (6) post-*White* revisions to the model code.

The Majority Opinion

In *White*, Gregory Wersal, a lawyer running for the Minnesota Supreme Court, sought an advisory opinion from the Minnesota Lawyers Professional Responsibility Board, the state agency responsible for investigating and prosecuting ethical violations by lawyer candidates for judicial office, on whether it planned to enforce the canon in the Minnesota Code of Judicial Conduct. The canon provides that a "candidate for a judicial office, including an incumbent judge" shall not "announce his or her views on disputed legal or political issues."[111] This prohibition, which was based on canon 7B of the 1972 ABA Model Code of Judicial Conduct, is known as the "announce clause."[112] The Lawyers Board responded that it had significant doubts about the constitutionality of this provision but could not answer Wersal's question because he had not provided examples

[111] *Republican Party of Minnesota v. White* (2002) 536 U.S. 765, 769.
[112] *Id.* at p. 768.

of the announcements he wished to make.[113] Wersal then filed a lawsuit in federal district court seeking a declaration that the announce clause violated the First Amendment.[114] The Minnesota Republican Party joined the lawsuit as a plaintiff, alleging that the clause prevented it from learning Wersal's views and determining whether to support or oppose his candidacy.[115] The district court ruled that Minnesota's announce clause did not violate the First Amendment and the United States Court of Appeals for the Eighth Circuit affirmed.[116]

The United States Supreme Court, in a 5–4 decision authored by Justice Antonin Scalia, reversed the appellate court's ruling and held that the announce clause violated the First Amendment. The court found that Minnesota's announce clause was a content-based restriction on judicial campaign speech and was therefore subject to the strict scrutiny standard, which required Minnesota to show that the clause was narrowly tailored to serve a compelling state interest.[117] Minnesota had asserted that two compelling state interests justified its announce clause: preserving the impartiality of the judiciary and preserving the appearance of the impartiality of the judiciary.[118]

The holding in *White* turned on three different definitions of impartiality. First, Justice Scalia wrote for the majority that the announce clause failed to preserve impartiality defined in the "traditional sense" as "lack of bias for or against either *party* to the proceeding" [emphasis in original] because the clause only proscribed candidate speech on *issues*, not *parties*.[119] Second, Justice Scalia wrote that it was "perhaps possible" that impartiality could mean a "lack of preconception in favor of or against a particular *legal view*" [emphasis in original], but such an interest was not a compelling one because no judge comes to the bench without preconceptions about the law, nor would such inexperience be desirable.[120] Finally, he wrote that a third "possible meaning" of impartiality was "openmindedness," in the sense that a judge would "be willing to consider views that oppose his preconceptions, and remain open to persuasion" while on the bench.[121] The announce clause, however, was too underinclusive to preserve impartiality in this sense of the term because it regulated only statements made on the campaign trail, which are an "infinitesimal portion of the public commitments to legal positions that judges (or judges-to-be) undertake."[122]

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[113] *Id.* at p. 769.
[114] *Id.* at pp. 769–770.
[115] *Ibid*.
[116] *Ibid*.
[117] *White, supra*, 536 U.S. at pp. 774–775.
[118] *Ibid*.
[119] *White, supra*, 536 U.S. at pp. 775–776.
[120] *Id.* at pp. 777–778.
[121] *Id.* at p. 778.
[122] *Id.* at p. 779.

Concerning the assertion that statements made in an election campaign pose a special threat to openmindedness because the candidate, when elected judge, will be reluctant to contradict them, Justice Scalia noted that this "might be plausible" with regard to campaign *promises*, but Minnesota had a separate prohibition on campaign "pledges or promises," which was not challenged.[123] Justice Scalia wrote that it was "not self-evidently true" that judges would feel, or appear to feel, significantly greater compulsion to maintain consistency with nonpromissory statements made during a campaign than with such statements made at other times.[124]

Justice Scalia disagreed with the assertion that it would violate due process for a judge to sit in a case involving an issue on which he or she had previously announced his or her view because the judge would have a "direct, personal, substantial, and pecuniary interest" in ruling consistently with that previously announced view. Justice Scalia wrote that elected judges "*always* face the pressure of an electorate who might disagree with their rulings and therefore vote them off the bench" regardless of whether they had announced any views beforehand [emphasis in original].[125]

Justice Scalia also wrote that the majority does not make the argument that judicial campaigns must "sound the same as those for legislative office," but noted that the notion of a judiciary completely separate from the enterprise of "representative government" was "not a true picture of the American system," because judges possess the power to "make" common law and to shape state constitutions.[126]

The Dissenting Opinions

Justices Ruth Bader Ginsburg and John Paul Stevens filed dissents in *White*. Both dissents stressed that the fundamental difference between campaigns for judicial office and those for the political branches of government allowed for differences in election regulations. Justice Ginsburg wrote in her dissent: "Legislative and executive officials serve in representative capacities. They are agents of the people; their primary function is to advance the interests of their constituencies."[127] On the other hand, she suggested, "[j]udges . . . are not political actors. They do not sit as representatives of particular persons, communities, or parties; they serve no faction or constituency."[128] Justice Ginsburg thus would have concluded that "[s]tates may limit judicial campaign speech by measures impermissible in elections for political office."[129]

Justice Ginsburg also noted that the announce clause was part of Minnesota's "integrated system of judicial campaign regulation" designed to preserve the impartiality guaranteed

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[123] *White, supra*, 536 U.S. at p. 780.
[124] *Ibid.*
[125] *White, supra*, 536 U.S. at p. 782.
[126] *White, supra*, 536 U.S. at pp. 783–784.
[127] *White, supra*, 536 U.S. at p. 805.
[128] *Id.* at p. 806.
[129] *Id.* at p. 807.

to litigants through the due process clause of the Fourteenth Amendment.[130] She pointed out that Minnesota's announce clause was coupled with a provision—the "pledges and promises clause"—that prohibits candidates from making "pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office," which the parties agreed was constitutional.[131] Pledges and promises of conduct in office are inconsistent with a judge's obligation to decide cases on the basis of the facts and law before them; therefore, the prohibition against such statements serves vital due process interests.[132] Justice Ginsburg warned, however, that without the announce clause, the pledges and promises clause was "an arid form" that could be "easily circumvented" by making promises that were phrased as announcements.[133] Justice Ginsburg suggested, for example, that a prohibited promise—"'If elected, I will vote to uphold the legislature's power to prohibit same-sex marriages'"—could be rephrased as a permissible announcement—"'I think it is constitutional for the legislature to prohibit same-sex marriages.'"[134]

Justice Stevens wrote that opinions expressed by a lawyer before becoming a judge or judicial candidate do not disqualify anyone from judicial service.[135] But when a judicial candidate announces his views in the context of a campaign, he "is effectively telling the electorate: 'Vote for me because I believe X, and I will judge cases accordingly.'"[136] Even if the candidate, once elected, decides to disregard his campaign statements, it does not change the fact that the judge announced his views on issues "*as a reason to vote for him*."[137] [Emphasis in original.] Justice Stevens wrote that candidates who seek to enhance their candidacy by making statements beyond general observations about the law demonstrate "either a lack of impartiality or a lack of understanding of the importance of maintaining public confidence in the impartiality of the judiciary."[138]

Judicial Campaign Issues Not Decided By *White*

The scope of the *White* decision has been the subject of much debate in the legal community. Some commentators have taken the view that the decision effectively prohibits any attempt to restrict candidate speech in judicial election campaigns, while disciplinary and ethics bodies have argued that the decision should be interpreted narrowly in order not to prohibit judicial candidate speech restrictions that were not expressly addressed by the *White* court.[139] Thus, it is important to note the First Amendment issues in judicial campaigns that were not decided by *White*.

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[130] *White, supra*, 536 U.S. at p. 813.
[131] *Id.* at p. 812.
[132] *Id.* at p. 813.
[133] *Id.* at p. 819.
[134] *Id.* at p. 820.
[135] *White, supra*, 536 U.S. at p. 798.
[136] *Id.* at p. 800.
[137] *Ibid.*
[138] *Ibid.*
[139] See American Bar Association, *Report and Recommendations of the Standing Committee on Judicial Independence and the Standing Committee on Ethics and Professional Responsibility* (2003), p. 3.

First, *White* left intact state rules barring judicial candidates from making pledges or promises to voters during judicial campaigns. In the opinion, Justice Scalia expressly stated that Minnesota's pledges and promises clause was "a prohibition that is not challenged here and on which we express no view."[140]

Second, *White* addressed the right of a challenger seeking to obtain judicial office; it did not discuss or reach the constitutionality of limitations that might be placed on an incumbent judge running for retention or reelection. As noted by Justice Anthony M. Kennedy in his concurring opinion, the petitioner in *White* "was not a sitting judge but a challenger; he had not voluntarily entered into an employment relationship with the State or surrendered any First Amendment rights."[141]

Third, *White* addressed only a direct restriction on speech by judicial candidates; it did not address restrictions on their supporters or contributors, nor did it address judges' election-related conduct as opposed to their speech.

Fourth, the opinion did not discuss restrictions on the solicitation of judicial campaign contributions.

Finally, the opinion did not suggest any First Amendment limits on provisions that call for disqualification to prevent the appearance of a lack of impartiality when a judge, while a candidate for judicial office, has made a statement that commits or appears to commit the judge to ruling a particular way in a matter before him or her.

Lower Federal Court Rulings Interpreting *White*[142]

The *White* decision raised concerns for many in the legal community because, by invalidating the announce clause, it appeared to move judicial elections a step closer to elections for political office. Those concerns have increased because some lower federal courts have interpreted *White* broadly to invalidate, on First Amendment grounds, rules other than the announce clause that regulate judicial elections. For example, in 2005 the United States Court of Appeals for the Eighth Circuit held that clauses in the Minnesota Code of Judicial Conduct prohibiting (1) personal solicitation of contributions by judicial candidates and (2) partisan political activities violated the First Amendment.[143] It is

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[140] *White, supra*, 536 U.S. at p. 770.
[141] *White, supra*, 536 U.S. at p. 796.
[142] For ongoing information on cases interpreting *White*, consult the Web sites of the Brennan Center for Justice at the New York University School of Law, *www.brennancenter.org*, or of the American Judicature Society, *www.ajs.org*.
[143] *Republican Party of Minnesota v. White* (8th Cir. 2005) (en banc) 416 F.3d 738, cert. den. *sub nom. Dimick v. Republican Party of Minnesota* (2006) 546 U.S. 1157. See also *Carey v. Wolnitzek* (E.D.Ky., Oct. 15, 2008, No. 3:06-36-KKC) 2008 U.S. Dist. Lexis 82336 [granting summary judgment in favor of plaintiff's First Amendment challenges to Kentucky's canons prohibiting partisan political activity and personal solicitation of campaign funds]; *Siefert v. Alexander* (W.D.Wis. Feb. 17, 2009, No. 08-CV-126-

noteworthy, however, that some state courts have found similar provisions prohibiting personal solicitation and partisan political activity to be constitutional.[144]

In 2002, the United States Court of Appeals for the 11th Circuit held unconstitutional provisions in the Georgia Code of Judicial Conduct that prohibited a judicial candidate from (1) making negligent false statements and misleading or deceptive true statements and (2) personally soliciting campaign contributions. In the opinion, the 11th Circuit asserted that "the distinction between judicial elections and other types of elections has been greatly exaggerated, and we do not believe that the distinction, if there truly is one, justifies greater restrictions on speech during judicial campaigns than during other types of campaigns."[145]

In addition, four federal district courts have extended *White* to prohibit enforcement of canons that forbid candidates from pledging or promising to rule in a particular manner or from committing themselves in advance on legal issues,[146] even though the *White* court expressly declined to determine the constitutionality of such pledges and promises or commit rules.[147] By contrast, one federal district court and two state courts have upheld the constitutionality of these clauses.[148]

One federal district court has also enjoined enforcement of a canon that required judges to recuse themselves if, while a judge or a candidate for judicial office, they previously had made statements that "appear[ed] to commit" the judge with respect to an issue in a proceeding.[149] There are, however, a number of federal cases that have rejected First

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BBC) 2009 U.S. Dist. Lexis 11999) [permanently enjoining enforcement of canons prohibiting judges from (1) personally soliciting campaign funds, (2) endorsing a partisan candidate, and (3) joining a political party].

[144] See *Simes v. Judicial Discipline and Disability Commission* (Ark., 2007) 247 S.W.3d 876, 883–884 [Arkansas's prohibition on judicial candidates personally soliciting campaign contributions not unconstitutional]; *Inquiry Concerning Vincent* (N.M., 2007) 172 P.3d 605, 610 [New Mexico's prohibition on endorsement of a political candidate by judge not unconstitutional]; *In the Matter of Raab* (N.Y., 2003) 793 N.E.2d 1287, 1290–1293 [New York's prohibition on partisan political activity by a judicial candidate not unconstitutional].

[145] *Weaver v. Bonner* (11th Cir. 2002) 309 F.3d 1312, 1321.

[146] See *Bauer v. Shepard* (N.D.Ind., May 6, 2008, No. 3:08-CV-196-TLS) 2008 U.S. Dist. Lexis 37315; *Kansas Judicial Watch v. Stout* (D.Kan., 2006) 440 F.Supp.2d 1209, 1232–1234; *North Dakota Family Alliance, Inc. v. Bader* (D.N.D., 2005) 361 F.Supp.2d 1021, 1038–1039; *Family Trust Foundation of Kentucky v. Wolnitzek* (E.D.Ky., 2004) 345 F.Supp.2d 672, 703–704.

[147] *White, supra,* 536 U.S. at pp. 770, 773.

[148] See *Pennsylvania Family Institute v. Celluci* (E.D.Pa., 2007) 521 F.Supp.2d 351, 376–380 [pledges and promises clause and commit clause in Pennsylvania's canons could reasonably be construed narrowly and as such are not unconstitutional]; *In the Matter of Watson* (N.Y., 2003) 794 N.E.2d 1, 5–8 [New York's pledges and promises clause bans only statements inconsistent with the faithful and impartial performance of judicial duties and is not unconstitutional]; *Inquiry Concerning Kinsey* (Fla. 2003) 842 So.2d 77, 86–87 [Florida's pledges and promises and commit clauses serve compelling state interests in preserving the integrity of the judiciary and maintaining the public's confidence in an impartial judiciary and are narrowly tailored to protect those interests].

[149] *Duwe v. Alexande*r (W.D.Wis., 2007) 490 F.Supp.2d 968. But see *Florida Family Policy Council v. Freeman* (N.D.Fla., Sept. 11, 2007, No. 4:06-cv-00-395-RH-WCS) order of dismissal [Florida canon

Amendment challenges to more general disqualification rules providing that a judge is disqualified if his or her "impartiality might reasonably be questioned."[150]

Post-*White* revisions to the California Code of Judicial Ethics

In 1995, a constitutional amendment[151] gave the California Supreme Court authority to promulgate the California Code of Judicial Ethics, which states binding rules governing the conduct of California state judicial officers and of judicial candidates in the conduct of their campaigns. In 1996, the court formally adopted the California Code of Judicial Ethics.

At the time of the decision in *White*, the California Code of Judicial Ethics did not contain either an announce clause or a pledges and promises clause. Instead, canon 5B, which places limitations on judicial candidate speech, contained a "commit clause" prohibiting a judicial candidate from making certain statements that "commit or appear to commit the candidate with respect to cases, controversies, or issues that could come before the court." Canon 5B stated in full:

> A candidate for election or appointment to judicial office shall not (1) make statements to the electorate or the appointing authority that commit or appear to commit the candidate with respect to cases, controversies, or issues that could come before the courts, or (2) knowingly misrepresent the identity, qualifications, present position, or any other fact concerning the candidate or his or her opponent.

In 2003, following the decision in *White*, the California Supreme Court deleted the "appear to commit" language from canon 5B(1) because it may have been overinclusive. The commentary to the canon explains the deletion of this language as follows:

> This Code does not contain the "announce clause" that was the subject of the United States Supreme Court's decision in *Republican Party of Minnesota v. White* (2002) 536 U.S. 765. That opinion did not address the "commit clause," which is contained in Canon 5B(1). The phrase "appear to commit" has been deleted because, although judicial candidates cannot promise to take a particular position on cases, controversies, or issues

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requiring recusal if judicial candidate makes statement that commits or appears to commit the candidate with respect to parties, issues, or controversies does not violate First Amendment]. *Florida Family Policy Council* is currently on appeal to the 11th Circuit.

[150] See *Indiana Right to Life, Inc. v. Shepard* (N.D.Ind., 2006) 463 F.Supp.2d 879, 886–887; *Kansas Judicial Watch, supra,* 440 F.Supp.2d at pp. 1234–1235; *Alaska Right to Life Political Action Comm. v. Feldman* (D. Alaska, 2005) 380 F.Supp.2d 1080, 1083–1084; *North Dakota Family Alliance, Inc., supra,* 361 F.Supp.2d at pp. 1043–1044; *Family Trust Foundation of Kentucky, Inc., supra,* 345 F.Supp.2d at pp. 705–711.

[151] Cal. Const., art. VI, § 18(m).

> prior to taking the bench and presiding over individual cases, the phrase may have been overinclusive.

Also in 2003, the California Supreme Court amended canon 5B(2) to state that a candidate for judicial office shall not

> knowingly, or with reckless disregard for the truth, misrepresent the identity, qualifications, present position, or any other fact concerning the candidate or his or her opponent.

In addition, the commentary to canon 5B(2) was amended to add the following language:

> Canon 5B(2) prohibits making knowing misrepresentations, including false or misleading statements, during an election campaign because doing so would violate Canons 1 and 2A, and may violate other canons.

At the time of the 2003 amendment to canon 5B(2), the United States Court of Appeals for the 11th Circuit had held unconstitutional a provision in the Georgia Code of Judicial Conduct that prohibited a candidate from making negligent false statements and misleading or deceptive true statements.[152] And in August 2002, the California Commission on Judicial Performance cited *White* as a basis for dismissing formal disciplinary proceedings against a former judge, Patricia Gray, who was charged with making misleading statements about her election opponent in campaign mailers.

The California Code of Judicial Ethics did not incorporate the 2003 revisions to the model code, discussed below, that were made in response to *White*. In particular, unlike the model code, the Code of Judicial Ethics does not contain a definition of "impartiality," and the commit clause has not been extended beyond the judicial campaign context to apply to sitting judges in the performance of their regular adjudicative duties. In addition, there are no provisions in either the Code of Judicial Ethics or the Code of Civil Procedure—which contains the disqualification rules for trial court judges—that mandate disqualification if a judge or judicial candidate makes a public statement that commits or appears to commit the judge to rule a particular way in a proceeding or controversy. Under the current California rules, however, a judge or judicial candidate who has made such a statement may nevertheless be disqualified under the general rules requiring disqualification when a reasonable person aware of the facts would doubt the judge's ability to be impartial.[153]

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[152] *Weaver v. Bonner, supra*, 309 F.3d at p. 1321.
[153] See Cal. Code Jud. Ethics, canon 3E(4)(c); Code Civ. Proc., § 170.1(a)(6)(A)(iii).

The ABA Model Code of Judicial Conduct and Post-*White* Revisions

In 1924, the ABA adopted the Canons of Judicial Ethics with the intention of providing a "guide and reminder to the judiciary."[154] In 1972, the ABA adopted the Model Code of Judicial Conduct, which was designed to be enforceable and intended to preserve the integrity and independence of the judiciary.[155] California, however, has not adopted the model code, and its provisions therefore are not binding on California state judicial officers or judicial candidates.

The model code adopted in 1972 contained both an announce clause and a pledges and promises clause. Canon 7B(1)(c) stated that a candidate for judicial office should not:

> make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact.

In 1990, the ABA amended the model code. The rules regulating the conduct of judicial candidates were moved to canon 5 and the announce clause was replaced with a commit clause. Canon 5A(3)(d) of the 1990 code stated that a candidate shall not:

> (i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;
>
> (ii) make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court; or
>
> (iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent; . . .

In 2003, in light of *White*, the ABA adopted a number of amendments to the model code. First, canon 5A(3)(d) was amended to combine the "pledges or promises" and "commit" language and to eliminate the prohibition against statements that "appear to commit" the candidate. The 2003 revision to canon 5A(3)(d) provides that a candidate shall not:

> (i) with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office; or

[154] See preface to the 1972 Model Code of Judicial Conduct.
[155] *Ibid.*

(ii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;

The purpose of combining the pledges and promises and commit clauses was to create a single provision that clearly identified restricted campaign speech (statements concerning "cases, controversies, or issues that are likely to come before the court") and that clearly identified what was being protected ("inconsistent with the impartial performance of the adjudicative duties of the office").[156] The "appear to commit" language was deleted because it was considered too vague to withstand strict scrutiny analysis.[157]

Second, the model code was amended by the addition of canon 3E(1)(f), which added a disqualification provision that is directly related to judicial candidate speech. Canon 3E(1)(f) requires a judge to disqualify himself or herself if:

> the judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to (i) an issue in the proceedings; or (ii) the controversy in the proceeding.

This new disqualification canon was designed to make explicit the disqualification ramifications of a prohibited speech violation and to reflect the goals of canon 5A(3)(d).[158] Although it is unclear why the "appears to commit" language was deleted from the campaign speech prohibition but inserted into the disqualification provision, it is arguable that disqualification rules are not subject to the same First Amendment considerations as campaign speech.

Third, the model code was amended by the addition of canon 3B(10), which includes language that mirrors the speech restrictions imposed on judicial candidates by canon 5A(3)(d). Canon 3B(10) provides:

> A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

The purpose of adding canon 3B(10) was to preserve judicial independence, integrity, and impartiality by extending the speech restrictions on judicial candidates to all sitting judges in the performance of their regular adjudicative duties.[159]

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[156] See ABA, *Report and Recommendations, supra*, at p. 7.
[157] *Ibid.*
[158] See ABA, *Report and Recommendations, supra*, at p. 6.
[159] See ABA, *Report and Recommendations, supra*, at p. 6.

Finally, the 2003 amendments added a definition of the meaning of "impartiality" to the terminology section that tracks the analysis of impartiality in the majority opinion of *White* by couching the definition in terms of an absence of bias or prejudice toward parties and maintaining an open mind on issues. It states:[160]

> "Impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

In 2007, the model code was significantly reorganized and reformatted; however, the ABA maintained in substantially the same form the 2003 revisions discussed above that were implemented in response to *White*.[161] No significant *White*-related additions were made to the canons or rules in the 2007 model code. The comments[162] to rule 4.1, however, contain substantial new language that provides guidance and explanation concerning (1) the difference between the judicial role and that of a legislator or executive branch official; (2) participation in political activities; (3) campaign statements; and (4) the prohibition against making pledges, promises, and commitments.

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[160] See ABA, *Report and Recommendations, supra*, at p. 5.

[161] In the 2007 Model Code of Judicial Conduct, the prohibition on pledges, promises, or commitments by judicial candidates (formerly in canon 5A(3)(d)(i)) is now in rule 4.1(A)(13); the disqualification provision concerning statements that commit or appear to commit a judge (formerly in canon 3E(1)(f)) is now in rule 2.11(A)(5); and the provision extending speech restrictions on judicial candidates to all sitting judges (formerly in canon 3B(10)) is now in rule 2.10(B).

[162] The comments in the model code serve two functions: (1) they provide guidance on the purpose, meaning, and application of the rules; and (2) they identify aspirational goals for judges. A comment itself is not binding or enforceable. See Model Code of Judicial Conduct, Scope.

Appendix H

National Ad Hoc Advisory Committee on Judicial Campaign Oversight

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How Should Judicial Candidates Respond to Questionnaires?

An Advisory Memorandum
July 24, 2008

The Current Scene:

"Questionnaires" from interest groups to candidates for election or reelection to the bench are proliferating and becoming more pointed. Also more loaded, like the following paragraph, here quoting from a 7/19/06 federal court decision in Kansas.

> [The Questionnaire's] 'Decline to Respond' option is accompanied by an asterisk, which reads:
>
> This response indicates that I would answer this question, but believe that I am or may be prohibited from doing so by Kansas Canon of Judicial Conduct 5A(3)(I) and (ii), which forbids judicial candidates from making "pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office" or "statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court." This response also indicates that I would answer this question, but believe that, if I did so, then I will or may be required to recuse myself as a judge in any proceeding concerning this answer on account of Kansas Canon 3E(1), which requires a judge or judicial candidate to recuse him or herself when "the judge's impartiality might reasonably be questioned . . . ."[1]

An almost identical paragraph is used on every page of the Tennessee Family Action Council's June 2006 Questionnaire. A Georgia questionnaire (sent out in July) has a similar paragraph without the treatment of recusal.

NOTE that states in which candidates have declined to respond *because of* the Canons have been subject to lawsuits.

Of 64 Tennessee judges who received questionnaires, 25 sent letters declining to respond (some citing Chief Justice John Roberts, and almost all giving biographic information), 35 did not respond, and 3 gave limited responses (*e.g.*, that Reagan and Rehnquist best represent their political or judicial philosophy among the listed Presidents and Justices). The Tennesseans' letters
Declining to respond may be helpful. An Addendum provides excerpts from three of them. Tennessee, a few weeks later, voted on average 75 percent *for* retention of their 27 appellate judges.

[1] From *Kansas Judicial Watch v. Stout*, Case 5:06-cv-04056-JAR-KGS (D.Ct. Kansas 7/19/06), at 5-6. Citations to other relevant cases are available upon request.

Recommendations:

There is no simple right answer on how to respond. This is true because of variations in local circumstances and candidates' own preferences. Judicial candidates should research the law in their jurisdiction, consult with local judicial campaign committees, and definitely confer with other candidates.

1. Do not be rushed in deciding how to handle the questionnaire. Questionnaires often arrive only a few days before what the questionnaire states is the "due" date for responding. The Chief Justice of Tennessee opened his recent letter (declining to respond) noting that he had received the questionnaire on June 13; the due date was June 16. You should know that the response by all but a *very* few judges and candidates, has been either not responding at all or sending a letter like those in the Addendum. While this characterization is valid in general, we do not know or mean to presume about your jurisdiction. Some judges who have responded later said they were unaware that their responses would be made public, not merely as part of a tabulation. Generally, a judicial candidate should assume that any response to a questionnaire becomes part of a permanent file where statements made by the candidate can be used for years to come.

2. Never use the pre-printed answers provided on the questionnaire. Candidates have greater First Amendment rights to discuss views post-*White*, but no case law, statute, rule or practice creates any obligation to discuss any issue. Even a well intentioned and well written response may be used in a way you do not agree with. Indeed, simplifying a legal or political issue to a "yes/no" answer is inconsistent with the judge's role—*e.g.*, how the issue comes before the judges; what facts are proven and what law is applicable; and protecting the parties' due process rights.

3. Consider responding with a letter. A letter is an opportunity to educate voters on the role of judges and judicial independence and impartiality—and about yourself! Candidates who reply with a letter are advised to request that the letter be distributed to members of the group sponsoring the questionnaire. You might release the letter, especially if the interest group attempts to portray you as non-responsive. Candidates' letters might express their concern that completing the questionnaire will mislead voters about the relevance of any judges' personal views and the relevance of the issues raised in the questionnaire to being a judge since so few cases concern such issues.

4. Never use a judicial Canon to justify a decision not to respond. Since *White*, interest groups have successfully litigated (in four states, with two more pending) to strike down Canons that are read as prohibiting responses to their questionnaire, with recovery of costs and fees from the states.

5. Distinguish general-interest, non-advocacy groups from special interest advocacy groups—and be consistent. There is a notable difference between, on the one hand, general-interest media and general interest non-advocacy groups that have a neutral claim on a response to their questionnaires. On the other hand, there are special interest advocacy groups that are likely to draft questionnaires so as to encourage a candidate to make a pledge, promise or commitment. Different general-interest, non-advocacy groups send out their own questionnaires, but in our experience they are as neutral and as aimed at obtaining sheer information as are the general news media questionnaires. Any questions from any source that encourage a candidate to make a pledge, promise or commitment should not be answered. Once you have decided on your general approach to questionnaires, apply it consistently so that you won't be accused of favoritism.

ADDENDUM

Excerpts from 2006 Letters by Judges Declining to Answer the Questionnaire:

1. **Judge John Everett Williams (Tennessee):**

. . . . I believe that Chief Justice John Roberts set the gold standard in ethical conduct during his confirmation hearing. As did Justice Roberts, I do not wish to hint or signal that I am predisposed to rule on any matter that may come before me as a judge. I have pledged to maintain the highest degree of ethical conduct.

As a judge, my role is to interpret the law, not make it. My opinions reflect my strict adherence to the rule of law.

It is my hope and desire that by maintaining the highest degree of ethical conduct, I promote public trust and confidence in the independence of the judiciary.

2. **Judge Gary R. Wade (Tennessee):**

. . . .I am a great believer in the ethical canon of our profession which authorizes judges to engage in activities which promote respect for the administration of justice. On the theory that judges should make every effort to support worthy community causes as a part of that mission, I often lend support to a number of non-profit organizations with an educational, historic, or charitable purpose. For example, I am a founding member of the Friends of the Great Smoky Mountains National Park and have served as President of that organization since its inception in 1993. I am the immediate past President of both the Knoxville Zoo and the Walters State Community College Foundation. I support a number of other organizations, including the Sevier County Library Foundation, Boys and Girls Club of the Smoky Mountains, Safe Harbor Child Advocacy Center, and United Way of both Sevier and Knox Counties . . .

3. **Judge Peter D. Webster (Florida):**

Although I am aware of the Florida Supreme Court Judicial Ethics Advisory Committee's very recent Opinion Number 06-18, for the reasons that follow, I respectfully decline to answer the questionnaire.

I have been a judge for nearly 21 years, the first six on the circuit court in Jacksonville and Green Cove Springs and the last 15 on First District Court of Appeal in Tallahassee. In addition, I have been nominated twice for vacancies on the Florida Supreme Court and once for a vacancy on the United States District Court for the Northern District of Florida. As a result, I have spent a good portion of my life thinking about issues related to the judiciary. My experiences lead me to conclude without reservation that questionnaires such as that which I have received from your organization are ill-conceived. Over the long term, their impact cannot be anything but bad—bad for the judiciary as an institution; bad for the rule of law; and bad for the people of Florida.

To the extent you desire to learn more about my personal or professional background, you may find such information on line at either our court's (www.IDCA.org) or The Florida Bar's (www.floridabar.org) web site, or in print in *Who's Who in America*. The best gauge of my judicial philosophy may be found in the opinions I have authored, which number several hundred.

4. **Chief Justice Wallace B. Jefferson (Texas):**

I have completed answers to the 2006 Free Market Foundation Voters' Guide concerning judicial candidates. I have elected not to answer some of the questions. While I, of course, have opinions on many areas of substantive law, I have made it a practice to give litigants the opportunity to persuade me, based on the facts of their case and any developments in the law, that their position is meritorious. That "chance to persuade" is, in my view, a component of due process. Second, I would be subject to recusal were I to express an opinion on disputed legal issues before the case is actually decided by my Court. I have an obligation to minimize the areas in which recusal would be warranted so that I can be a participant, and not a spectator, in the administration of justice. With respect to particular questions, the answer to number 4 would depend on the circumstances. The areas about which you have inquired in questions 7, 8 and 9 (and to a degree, 5) involve decisions from the United States Supreme Court. It is irrelevant whether or not I believe them to have been "correctly decided." Under our constitutional form of government, those decisions (unless reversed or modified by the Supreme Court) control in both state and federal court regardless of any particular judge's view of their validity.

Thank you for your interest in the courts. I am always encouraged when members of the public take a genuine interest in the judicial branch.

Appendix I

Rapid Response Plan: A Model Guideline for Responding to Unfair Criticism of the Judicial Branch

A. Plan Proposal

This document provides guidelines for establishing a Statewide Rapid Response Team to respond immediately and systematically to unfair criticism of judges or the judiciary or to broad-based attacks on the judiciary stemming from the initiative process. The goal of the statewide team is to be available as a resource to individual courts and to the branch as a whole in order to provide accurate, consistent, and timely information while maintaining the public's trust and confidence in the justice system. A primary responsibility of the statewide team is to anticipate when a response will be needed, rather than merely reacting after an attack has been made.

Courts and local bar associations are encouraged to develop regional rapid response teams to consolidate resources. The California Judges Association has created a response plan with a useful district structure, which can be used as a model for local or regional teams. The statewide team can help courts create local or regional teams.

An independent coalition or commission appointed by the Chief Justice should provide oversight to the rapid response plan. Administrative Office of the Courts (AOC) staff with media experience should be assigned to the coalition to provide it with ongoing administrative services.

This plan was developed to respond to unwarranted attacks on the judicial branch. Specific complaints of judicial misconduct and judicial incapacity should continue to be communicated to the Commission on Judicial Performance. Complaints that do not rise to the level of judicial misconduct or judicial incapacity but are otherwise warranted should be redirected to the responsible authority or institution (e.g., the presiding judge or the court executive officer).

B. Membership of the Statewide Rapid Response Team

The Statewide Rapid Response Team should be made up of high-level members of the judicial branch and bar, as well as members of the public and any court executive officer, superior court presiding judge, or presiding justice directly affected by the unfair criticism or unusual media attention. Judges should not make up a majority of the membership in order to avoid the perception that the team seeks to protect individuals rather than the judiciary as an institution. Additional suggested team members include:

- California Judges Association leaders;
- Local bar association and State Bar leaders;
- Academics;
- Law school deans;
- Retired politicians with high name recognition;
- Local and state Bench-Bar-Media Committee members;
- Local and state community leaders, including representatives from government, religious and civic organizations, and minority communities;
- Retired judges and attorneys;
- Business community leaders;
- Representatives from each major political party;
- Former or retired members of law enforcement agencies; and
- Staff from the following offices of the AOC: the Executive Office, applicable regional office, Office of Governmental Affairs, Office of the General Counsel, and Office of Communications.

C. Components of the Statewide Rapid Response Team

The Statewide Rapid Response Team should have three components:

- Intake Team: This team, consisting of only a few members, should immediately determine the threat level and the necessity of a statewide response. The intake team should have a rotating membership and remain small to ensure rapid response (i.e., preferably within one hour, but not beyond the same business day). Staff from the AOC Office of Communications would participate in this group.
- Immediate Response Team: This team consists of members primarily responsible for communicating to the media and other involved groups. When identifying the members of this group, the rules and standards that prohibit all judges from commenting on any pending case must be taken into consideration.
- Communications Management Team: The members of this team are responsible for devising an overall strategy, advising on individual incidents, and assisting with the debriefing of the entire team after a response has been made. A list of responsibilities for the debriefing follows in section H.

D. Triggers for Deployment of the Statewide Rapid Response Plan

Triggers for deployment include:

- Unfair criticism: When a judge or the judiciary comes under unfair attack, and the attack threatens to undermine the perception of the courts as fair and impartial; or
- Unusual media attention: When a judge or the judiciary is the subject of unusually intense, broad, or negative media interest that threatens to undermine the perception of the courts as fair and impartial.

E. Intake Procedure

Any member of the Statewide Rapid Response Team may initiate a request for a response. The request should be sent by e-mail to all members of the Intake Team and should describe the comment or criticism, the date and location of the publication or broadcast, any recommended response strategy, and other pertinent facts.

Available members of the Intake Team should immediately determine whether the criticism is unfair or unwarranted. Each available member of the Intake Team should respond by e-mail immediately, indicating one of the following:

- Recusal;
- Support making a response;
- Oppose making a response; or
- No position.

If a majority of the Intake Team supports making a response, the Intake Team should suggest what the response should be, which members of the Immediate Response Team should deliver the response, and the appropriate audiences for the response. An ad hoc response team should be formed to create the response within one day.

F. Evaluation Factors

When considering whether a statewide response is required, the Intake Team should consider the following factors:

- Does the criticism demonstrate a serious misunderstanding about the courts, the justice system, or a court decision that is sufficiently serious that it demands correction?
- Is the criticism a serious misrepresentation of the courts, the justice system, or a court decision that is part of a disinformation campaign that could adversely affect the justice system?
- Is the criticism unwarranted or unjust?
- Will the response have the negative effect of prolonging or giving greater circulation to the criticism?
- Will a response serve a larger public purpose?
- Who are the best or most appropriate people to offer a credible response?

G. Communications Management

The Communications Management Team should:

- Determine the facts;
- Decide what information can be shared;
- Decide what information remains confidential;
- Identify the specific audiences;
- Develop talking points and use as a reference the talking points regarding the core values of judicial fairness and impartiality referenced in the commission's report;

- Identify the chief spokespersons;
- Determine appropriate communications channels, including news briefings and employee notification;
- Create a system to field multiple calls 24/7 from the press and public;
- Tell the truth, be accurate, and don't mislead;
- Deliver our own bad news; don't wait for the media to deliver it;
- Acknowledge mistakes and apologize if appropriate;
- Find the positives in the situation;
- Describe the lessons learned; and
- Refer to the "Responding to the Negative" chapter in the *Media Handbook for California Court Professionals*, located at http://serranus.courtinfo.ca.gov.

H. Debriefing

The debriefing should include the following tasks:

- Review the facts and the responses made;
- Tie up loose ends;
- Evaluate the communications response; and
- Develop a process for applying the lessons learned.

I. Local Response

If the unfair criticism or media attention appears to be strictly local, a superior court presiding judge or court executive officer may seek immediate advice from the appropriate AOC regional administrative director, who can apply experience gained in helping other courts with communications issues and can recommend other AOC resources if necessary. If the regional administrative director or assistant regional administrative director is unavailable, the judge or executive officer can call AOC Public Information Officer Lynn Holton at 415-865-7726, Office of Communications Manager Peter Allen at 415-865-7451, Communications Specialist Leanne Kozak at 916-263-2838, or Communications Specialist Philip Carrizosa at 415-865-8044.

Appendix J

Responding to Press Inquiries: A Tip Sheet for Judges

- Canon 3B(9) of the California Code of Judicial Ethics prohibits a judge from commenting publicly about a pending or impending proceeding in any court. A judge is still permitted to talk to the media, however. This tip sheet contains some general guidelines.
- Consider responding to press calls via speakerphone, with a member of staff or court administration in the room to ensure accuracy. Alert the reporter at the beginning of the call that the other person is present to take notes and provide supplemental answers and information.
- The California Judges Association (CJA) maintains a hotline at 415-263-4600.

1. **Explain your ruling on the record.** To the extent possible, judges involved in high-conflict litigation should try to anticipate and prepare for press inquiries in advance of hearings. The best way for you to explain the reasons for a controversial ruling is on the record in open court and in a detailed written ruling that begins with a summary paragraph that clearly presents the facts of the case, the legal issues, and the basis for the ruling. When the press inquiry is made, court staff can supply the reporter with a transcript and the ruling that contains the summary paragraph.
2. **Consult a trusted colleague.** If you are the subject of public criticism, consult a trusted colleague for objective guidance. Is the criticism warranted? Is there any action that you should take? Avoid isolating yourself or making a hasty or reactive public statement.
3. **Determine who is the most appropriate person to return the reporter's call.** Because it is generally considered good practice to return a press call, you should evaluate who should return the call. It might be more effective to have the presiding judge, court executive officer, court staff, or other knowledgeable person return it. In deciding who should return the call, you might consider:
   a. Are you embroiled? If you're feeling attacked, emotional, or defensive, you probably won't make the most effective statement.
   b. Is there a pending case? If so, have someone else in the court return the press inquiry, give the reporter a copy of canon 3B(9), and provide the reporter with any appropriate case information, such as court minutes, rulings, transcripts, pleadings, online information, and access to court files.
4. **Prepare your statement before returning any press inquiries.** You should be extremely careful about speaking to the press without first thinking through your

remarks. If a reporter catches you off-guard, ask for a return number or an e-mail address so that you can speak at a more convenient time. Find out what the reporter would like to discuss in advance so you can prepare for the interview. Consider taking the following steps:

a. Obtain the court file.
b. Review the transcript with your court reporter.
c. Write out your statement in advance.
d. Keep in mind that e-mail and voicemail are very effective ways to respond to press inquiries and to ensure the accuracy of your message.
e. Make your quote a complete statement about the message you want to deliver. Say only what you want to say. Make your message brief, clear, and understandable.
f. Practice your message first so that it is professional and reasonable and doesn't sound emotional or reactive.
g. Avoid saying "No comment." Instead, circle back to your core message. (e.g., "I appreciate your interest. What I want to emphasize is . . .")
h. Stress your overriding concern that justice be administered fairly, that the courts operate effectively to serve the community, and that you are committed to accountability.

5. **Call the CJA hotline at 415-263-4600 for further advice.**

Appendix K

Proposed Strategic Plan to Improve Civics Education

The Commission for Impartial Courts finds that:

1. The current level of civics education, including education about the role of the courts, is inadequate to prepare the members of California's diverse school-age population for assuming their responsibilities as citizens in a democracy; and
2. Poorly prepared students become poorly informed citizens, which puts our democratic form of government and its institutions at risk.

The commission recommends that the Supreme Court and the Judicial Council take a leadership role in advocating for better civics education in California by energetically supporting appropriate legislation and policies and by enlisting the support of other governmental entities, as well as of school superintendents and teachers. As an immediate first step, the Judicial Council should develop a strategic plan to provide ongoing leadership to promote and implement quality civics education and education about the courts in public schools throughout California.

Proposed Components of the Strategic Plan

The strategic plan might include the following components.

Leadership

- Establish a standing committee or advisory group to develop and monitor the plan;
- Include Supreme Court or Court of Appeal judicial officers;
- Provide adequate staff to implement and coordinate the strategic plan statewide;
- Develop evaluative measures for both the overall plan and individual components;
- Analyze the current program offerings based on educational research and provide a gap/opportunity analysis that considers target audiences (i.e., grade levels, demographics), objectives, and evidence of success;
- Create priorities based on needs, a cost/benefit analysis, and impact on learning; and
- Encourage judicial and State Bar leaders to take leadership roles in advocating for law-related civics education. This would include providing judges and lawyers with opportunities for sharing information and receiving training on public outreach and civics education.

Advocacy

- Enlist the support of other governmental branches and agencies;
- Support and endeavor to strengthen appropriate legislation or policies, including those of the California Department of Education;
- Raise public awareness about the need for civics education through the development of op/ed pieces, media appearances, and civics presentations;
- Encourage presiding judges and bench officers around the state to renew their commitment to public education and work with school officials and teachers in their area to promote civics education and education about the courts;
- Enlist the support of statewide parent-teacher associations;
- Include the subject of civics education in messages to the state Legislature; and
- Enlist the support of scholastic testing services.

Professional Development

- Expand statewide professional development programs for teachers;
- Develop a leadership base of teacher-leaders throughout the state in order to help expand professional development programs for teachers;
- Create assessment mechanisms to evaluate professional development programs. Include desired outcomes based on state and national standards, evidence of results, and a methodology for learning activities based on effective learning theory; and
- Provide training for judges and lawyers on public outreach and civics education.

Collaboration

- Establish and use criteria for collaboration with institutions of higher education, museums, and nonprofit civics education organizations to promote and cosponsor programs and events and inform teachers about state and nationwide resources;
- Establish methods and create opportunities to collaborate with school superintendents, administrators, and teachers;
- Promote quality program offerings to schools across the state;
- Establish communication between educators and professionals in law-related fields at conferences, institutes, and other law-related events; and
- Encourage educators and judicial officers to present at the California Council for the Social Studies annual conference and other teacher conferences.

Appendix L

Organizations With Civics Education Programs for California Schools

Organizations and Programs of Which the Judicial Council, Administrative Office of the Courts, or California Courts Have Direct Knowledge

Administrative Office of the Courts (AOC), 455 Golden Gate Avenue, San Francisco, CA 94102.
Programs:

- California on My Honor: Civics Institute for Teachers; AOC Executive Office Programs Division; 415-865-7530; www.courtinfo.ca.gov/reference/cift.htm
- Peer Court DUI Prevention Strategies Program, including curriculum and Web site; AOC Center for Families, Children & the Courts; www.courtinfo.ca.gov/programs/collab/peeryouth.htm
- Courts in the Classroom: An Interactive Journey Into Civics (interactive Web site); AOC Executive Office Programs Division; 415-865-7530; www.courtsed.org/courts-in-the-classroom
- *What's Happening in Court?: An Activity Book for Children Who Are Going to Court in California* (1999); AOC Center for Families, Children & the Courts; www.courtinfo.ca.gov/programs/children.htm

American Bar Association, Division for Public Education, 321 North Clark Street, Chicago, IL 60654; 800-285-2221; www.abanet.org/publiced/schoolshome.html
Programs: National Online Youth Summit, Gavel Awards, Dialogue Series, Conversations on the Constitution, Conversation on Inalienable Rights, Law Day materials, numerous other online resources for students and teachers

Bar Association of San Francisco, 301 Battery Street, Third Floor, San Francisco, CA 94111; 415-982-1600; www.sfbar.org
Programs: Law Academy and School to College

California Campaign for the Civic Mission of Schools, contacts: Todd Clark, Constitutional Rights Foundation, 213-316-2103, todd@crf-usa.org, or Carol Hatcher, Associate Director, Center for Civic Education, 661-399-2198; www.cms-ca.org

Center for Civic Education, 5145 Douglas Fir Road, Calabasas, CA 91302; 818-591-9321; www.civiced.org
Examples of programs: Campaign to Promote Civic Education; Civitas: An International Civic Education Exchange Program; Representative Democracy in America: Voices of the People; School Violence Prevention Demonstration Program; The Native American Initiative; We the People: The Citizen and the Constitution; and We the People: Project Citizen.

Constitutional Rights Foundation, 601 South Kingsley Drive, Los Angeles, CA 90005; 213-487-5590; www.crf-usa.org
Examples of programs: Appellate Court Experience, Courtroom to Classroom, Mock Trial, Summer Law Institute, and Expanding Horizons Internships

Court of Appeal, Second Appellate District, Ronald Reagan State Building, 300 South Spring Street, Second Floor, Los Angeles, CA 90013; 213-830-7000; www.courtinfo.ca.gov/courts/courtsofappeal/2ndDistrict/ace.htm
Program: Appellate Court Experience (a partnership with the Constitutional Rights Foundation, the Los Angeles County Bar Association's Appellate Courts Committee, and the California Academy of Appellate Lawyers)

Justice Teaching (Florida), 850-922-8926; justiceteaching@flcourts.org; www.justiceteaching.org
An initiative of former Florida Supreme Court Chief Justice R. Fred Lewis to promote an understanding of Florida's justice system and laws, develop students' critical thinking abilities and problem-solving skills, and demonstrate the effective interaction of its courts within the constitutional structure

Our Courts: 21st Century Civics, contact: Executive Director Abigail B. Taylor, 202-662-9880; abt25@law.georgetown.edu, www.ourcourts.org
A Web-based education project designed to teach students civics, and the program is the vision of former U.S. Supreme Court Justice Sandra Day O'Connor. Current resources on the site include quality online lesson plans and links to teaching resources and each branch of government in your state.

Play by the Rules, Alabama Center for Law & Civic Education, Cumberland School of Law, 800 Lakeshore Drive, Birmingham, AL 35229; 205-726-2433; http://pbronline.org
Programs in Alabama, Connecticut, Guam, Nevada, and Texas

Supreme Court of California, 350 McAllister Street, San Francisco, CA 94102; 415-865-7000; www.courtinfo.ca.gov/courts/supreme
Program: Special Student Outreach Sessions

Additional Organizations and Programs

Bill of Rights Institute, www.billofrightsinstitute.org
Buck Institute for Education, www.manta.com/coms2/dnbcompany_6s3ycz
California Association of Student Councils, www.casc.net
California Campus Compact, www.cacampuscompact.org
California Center for Civic Participation, www.californiacenter.org
California History-Social Science Project, http://csmpx.ucop.edu/csmp/projects/index.php?projectID=2&page_type=home
California Three Rs Project, http://score.rims.k12.ca.us/score_lessons/3rs/pages/bulletin.html
Center for Youth Citizenship, www.youthcitizenship.org

Center on Congress at Indiana University, www.tpscongress.org
Cesar E. Chavez Foundation, www.chavezfoundation.org
Character Education Partnership, www.character.org
Civicorps Schools, www.ebcc-school.org
Close Up Foundation, www.closeup.org
Families in Schools, www.familiesinschools.org
Junior Statesmen Foundation, www.jsa.org/jsf-homepage/the-junior-statesmen-foundation.html
Kids Voting USA, www.kidsvotingusa.org/page9650.cfm
LegiSchool Project, www.csus.edu/calst/legischool_project.html
Ludwick Family Foundation's Arsalyn Program, www.ludwick.org or www.arsalyn.org
National Center for the Preservation of Democracy, www.ncdemocracy.org
National Conference of State Legislatures, America's Legislators Back to School Program, www.ncsl.org/default.aspx?TabID=746&tabs=1116,88,407
Presidential Classroom, www.presidentialclassroom.org
Sacramento County Bar Association and the Federal Bar Association: Protect and Defend, Street Law, Inc., www.streetlaw.org

APPENDIX M

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON JUDICIAL INDEPENDENCE
NATIONAL CONFERENCE OF STATE TRIAL JUDGES
APPELLATE JUDGES CONFERENCE
OHIO STATE BAR ASSOCIATION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, That the American Bar Association urges state, local, territorial bar associations, and the highest court of each state to establish for those who have an interest in serving on the judiciary, a voluntary pre-selection/election program designed to provide individuals with a better appreciation of the role of the judiciary and to assist them in making a more informed decision regarding whether a judicial career is appropriate.

REPORT

The vast majority of people serving in the judiciary have no special training for the judicial role other than a law school education, bar passage, and some amount of experience in the practice of law. In recent years, suggestions have been made for a special curriculum (informational educational program) for individuals aspiring to judicial office. Under the aegis of the American Bar Association's Standing Committee on Judicial Independence ("SCJI" or the "Committee"),[1] a Study Group on Pre-Judicial Education[2] (the "Study Group")[3] was impaneled in 2001 and in 2003 issued a brief but interesting report.[4] The idea of IJE is that some form of voluntary pre-selection/election program designed to provide individuals with a better appreciation of the role of the judiciary and to assist them in making a more informed decision as to whether a judicial

[1] SCJI has taken a leadership role in promoting public trust and confidence in the judiciary as well as in the justice system more generally, including such recent efforts as the DVD video program *Protecting Our Rights, Protecting Our Courts*, the projudicial independence pamphlets *Countering the Critics*, *Countering the Critics II*, and *Rapid Response to Unjust and Unfair Criticism of Judges*, and (in cooperation with the ABA Judicial Division) the Least Understood Branch project. Other significant Committee projects have included influential reports on public financing of judicial campaigns and on judicial compensation, as well as sponsorship of revisions to the Model Code of Judicial Conduct.

[2] To avoid potentially unpleasant confusion between pre-judicial and prejudicial, a possibility identified by one of the white papers to the 2007 Symposium discussed below (see Fisher, *infra* note 24, at 3–4), the term used henceforth herein will be "Introductory Judicial Education" or its acronym "IJE."

[3] The Study Group comprised trial and appellate judges, lawyers, judicial and adult educators, bar association executives, and legal academics.

[4] See, e.g., Am. Bar Association, Standing Committee on Judicial Independence, Report of the Study Group on Pre-Judicial Education (Feb. 12, 2005) [hereinafter "Study Group Report"].

career is appropriate and would give aspirants a better understanding of the job they might someday seek.

As part of this effort, it was necessary for the Study Group to address the issue whether the effectiveness and perception of legitimacy of judicial selection might be enhanced through the establishment of a program of introductory judicial education. This involved consideration of the form this education might take, how the availability of this education might affect the pool of potential judges, how this education might assist those responsible for the selection of judges, and the potential impact of this education on the overall functioning of our system of justice.

As the Study Group observed:

> What we envision is not the displacement of existing selection mechanisms, but rather their enhancement by making available to potential judges educational programs designed to produce judicial candidates who are better prepared for the role and who can make a more informed decision regarding whether a judicial career is appropriate for them. The candidates themselves would benefit from attaining a better appreciation of the judicial role. Changes in the nature of law practice and the judicial role over the past several decades have rendered the gap between the two activities increasingly large. Lawyers are less able to appreciate all of what being a judge entails, and the skills learned in practice are less directly applicable to a judicial role that now includes a substantial managerial component.
>
> We also identify potential negative effects of [IJE], including its possible negative impacts on the pool of potential judges, which might vary depending on the format. To the extent that [IJE] involves significant costs, career interruption, or geographic relocation, some otherwise suitable candidates are likely to be discouraged from pursuing judgeships. In addition, there is some reason for concern regarding whether these effects would fall more heavily on women and those in public service or other less remunerative practice areas. These effects are, of course, speculative, but nonetheless deserve ongoing attention as the concept of [IJE] moves forward. [5]

Questions Raised in the Aftermath of the Study Group's Report

[5] *Id.* at 4–5.

The concept of Introductory Judicial Education is not only unobjectionable but, in the Committee's judgment, may well deserve enthusiastic support from the organized bar, which has an interest in maximizing the chances that the most highly qualified individuals will ascend to the bench. The devil is in the details, however, and, in the aftermath of the Study Group's Report, several details needed filling in. What, for example, would be the intended scope of IJE? Would it be a relatively short, seminar-like program, lasting a week or less? Would it be a formal, degree program requiring a year of full-time study in residence, much like a typical LL.M. curriculum? What sorts of subjects would comprise an IJE curriculum?

Apart from the Study Group Report, very little literature of substance existed on the subject of judicial education[6] generally and even less on IJE. Indeed, the latter consisted of only two offerings, one by a former Director of the ABA's Judicial Division[7] and the other by a judge of the Louisiana Court of Appeal, Third Circuit. [8] Recognizing that some might regard the promotion of IJE as advocating an approach to judicial selection akin to the civil law methodology of selecting judges, which presents the judiciary as a career path chosen early in a very different jurisprudential setting, [9] the Committee decided in favor of further deliberation. Rather than rush into the business of promoting the concepts underlying IJE, SCJI deferred developing a policy proposal for the ABA House of Delegates until such time, if any, as a broader consensus on the subject could be reached. Instead, the Committee organized a symposium to ascertain whether IJE as a concept might be appealing to those constituencies—including judges, lawyers, judicial educators, legal educators, judicial ethicists, judicial administrators, and bar associations—that would most likely be affected by implementation of an educational factor as part of the judicial selection process.

The Symposium

The Symposium was convened last year at the Ohio State University Moritz College of Law in Columbus, Ohio. Those represented at the Symposium included judicial conferences of the ABA Judicial Division, the ABA Center for Continuing Legal Education, the National Center for State Courts, the Association of American Law Schools, the American Judicature Society, the National Judicial College, the Conference of State Court Administrators, the Association of Judicial Disciplinary Counsel, the National Association of State Judicial Educators, the National Conference of Bar Presidents and the National Conference of Bar Executives. In addition, the Chief Justice of Ohio and state legislators from Ohio participated.

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[6] *I.e.*, continuing education for those who have *already* ascended to the bench.

[7] Luke Bierman, *Beyond Merit Selection*, 29 Fordham Urb. L.J. 851 (2002).

[8] Marc T. Amy, *Judiciary School: A Proposal for a Pre-Judicial LL.M. Degree*, 52 J. Legal Educ. 130 (2002). This article is an adaptation of Judge Amy's thesis for the degree of LL.M. in Judicial Process at the University of Virginia School of Law.

[9] This issue was specifically addressed at the 2007 Symposium described below and in one of the white papers prepared therefor.

Two new white papers were prepared especially for the Symposium by Professor Keith R. Fisher[10] of the Michigan State University College of Law and Associate Dean Joseph R. Stulberg[11] of the Ohio State University Moritz College of Law. These papers, in conjunction Judge Amy's aforementioned article[12] and the Study Group report, [13] were intended to offer the participants some background in the concepts underlying IJE.

Professor Fisher's paper focused initially on whether there was a sufficiently strong case to be made for IJE. He found that it could be justified neither by the experience of civil law jurisdictions[14] nor by the social, cultural, political, economic and demographic changes—including purported changes in the role of the trial judge—put forth by some commentators as requiring wholesale changes to the administration of justice. He found ample justification for IJE, however, in the increasingly well-documented distrust and lack of faith on the part of the general public, and in particular among minority communities, in the fairness and impartiality of our courts—matters that strike at the heart of the judiciary as an institution of government.

Fisher identified several behavioral elements that judges should emphasize in order to promote positive public perception, and enhance the legitimacy, of the judiciary, such as "(i) judges treating those who come before them with dignity and respect; (ii) full and fair opportunities for litigants to present their cases; and (iii) neutral decision-making by fair, honest, and impartial judges—in short, both actual and perceived substantive and procedural fairness."[15] Taking these public integrity issues as a point of departure, Fisher concluded that "there is certainly a case to be made for educating judges to conduct the business of the courts in a manner that not only lives up in fact to the ideals that lend legitimacy to the judiciary and judicial decisions but also dispels any significant public perceptions (or misperceptions, as the case may be) of biased or unequal justice." [16]

Consistent with this conception, Professor Fisher suggested that an IJE curriculum that could contribute to the educational factor consistent with the purposes identified might include training in such topics as judicial demeanor (including the treatment of court staff, attorneys, litigants, and others); interpreting body language; listening skills;

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[10] Keith R. Fisher, *An Essay on Education for Aspiring Judges* (White Paper, Symposium on Pre-Judicial *Education*, Ohio State University Moritz College of Law, 2007). Professor Fisher is currently the liaison to the Committee from the ABA Business Law Section.

[11] Joseph B. Stulberg, *Education for Aspiring Trial Court Judges: The Craft of Judging* (White Paper, Symposium on Pre-Judicial *Education*, Ohio State University Moritz College of Law, 2007).

[12] Amy, *supra* note 22.

[13] Study Group Report, *supra* note 13.

[14] Professor Fisher's examination of this question took as a representative sampling of sophisticated legal and judicial systems three jurisdictions, Germany, France, and Japan. He concluded that nothing in their judicial cultures (including their modes of training prospective judges) exhibited any hint of superiority over the U.S. experience and hence that no argument could be made for supplanting the latter with a civil law approach. "To the extent that a specialized program of study is designed to create a cadre of judges – a specialized judicial class, if you will—it is anathema to our legal system. Add to that the youth and inexperience of those eligible for career judicial positions, and one finds foreign law programs to be poor role models for adoption of [IJE] in the United States." Fisher, *supra* note 24, at 14.

[15] *Id.* at 19–20 (citations omitted).

[16] *Id.* at 20.

jury selection; efficient use of law clerks and staff attorneys; techniques of docket management; basic techniques of managing people with large personalities (including, but not limited to, lawyers) in the courtroom and in chambers conferences; balancing the needs of judicial office with pre-existing friendships in the bar, family obligations, and memberships in religious, professional, civic, and community organizations; judicial ethics; judicial independence versus judicial restraint; financial planning (*i.e.*, how to "afford" to be a judge); public perceptions and the importance of judicial decorum; dealing with threats to personal safety and security and that of court personnel and loved ones; determining when recusal is advisable, even where it is not mandatory; and balancing First Amendment rights against the needs of judicial discretion in public speaking, relations with news media, responding to public criticism of decisions, and election campaigning. [17] Under such an approach, Professor Fisher observed, IJE might "improve the overall quality of the pool of people seeking election or appointment to the bench." [18]

Associate Dean Stulberg's paper explored two aspects of judging. First, he focused on the administrative aspects of the judicial function in what has become known as "managerial judging" and concluded that there are many aspects to this portion of the judicial role that would benefit from IJE. For example, he suggested that a variety of curricula and pedagogies such as the psychology of judging, communications theory, family counseling, and team teaching would fulfill the aspects of managerial judging that far exceed the substantive law topics that are covered in law school. Offering these topics to judicial aspirants would be "a thoughtful response to the 'administrative perspective,' presuming consensus on the claim that there are theories, skills, insights, and practices distinctive to the judging role that are not necessarily effectively 'absorbed' or 'learned' in the conventional route to becoming a judge—*i.e.*[,] practicing law."

Second, Stulberg drew on a Carnegie Foundation study of the legal profession[19] to review the manner by which people become lawyers and are "transformed" in the process and develop a "framework . . . that is distinctive to, and constitutive of, thinking and acting as a lawyer." [20] This "'signature pedagogy'" provides "a primary means by which a student becomes acculturated to the enterprise." [21] Using this approach, he posed the question whether there is such a "signature pedagogy" for becoming a judge. Answering in the negative, Stulberg considered whether it is "important for there to be a shared culture among those who discharge the judicial role and, if so, need it be developed before becoming a judge?" [22] In answering the latter questions affirmatively, he then reviewed the processes and practices of labor arbitrators and civil case mediators to conclude that shared visions of impartiality are essential to all these enterprises and serve to reinforce particular skills and promote confidence and integrity to the process.

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[17] *Id.* at 24–25.

[18] *Id.* at 26.

[19] W. Sullivan, A. Colby, J. Wegner, L. Bond, & L. Schulman, *Educating Lawyers: Preparation for the Profession of Law* (2007).

[20] Stulberg, *supra* note 25, at 10.

[21] *Id.* at 11 (citation omitted).

[22] *Id.*

The Symposium also considered possible curricular issues in addition to those suggested by Professors Fisher and Stulberg. Hon. William B. Dressel, President of the National Judicial College, indicated that educating judges, and potential judges, presented particular educational objectives ranging from ethics, professionalism, managerial judging, self[-]evaluation, job security, and public criticism, to name just a few and apart from the substantive requirements of judicial decision making. He agreed that judging was sufficiently different from lawyering that it should be considered a different profession with a different set of professional parameters, ranging from preparation to socialization to acculturation. Judge Dressel offered an overview of a curriculum designed to be used for judicial aspirants, covering a wide array of the topics that judges in the modern era would be called upon to use as a professional distinct from the practicing bar. The collaboration of many in the educational process, including *inter alia* law schools, bar associations, and judicial educators, he argued, would be essential to the development of an acceptable IJE program. He suggested that a voluntary program was preferable to a mandatory one, because the former would demonstrate motivation on the part of the aspirant, avoid concerns about competition with the civil law system of judicial selection, and ensure openness for the process.

The Symposium also heard about efforts in Ohio, where the Chief Justice had already offered a legislative proposal that would incorporate a mandatory system of IJE into the judicial selection process. [23] Legislators and others from Ohio indicated that the motivation for incorporating IJE into the selection process was to create an additional factor that would aid the selectors in assessing the qualifications and commitment of judicial aspirants while simultaneously providing additional training and preparation for those who might be interested in (though not yet necessarily committed to) serving on the bench. The Ohio presenters indicated that they definitely viewed judging as a distinct profession, the training for which would improve the pool of aspirants, enhance the legitimacy of the judiciary among the electorate, and provide an ability to connect the craft of judging with public perceptions of the judiciary. Those in attendance agreed that, as with public financing of judicial campaigns in North Carolina, [24] having Ohio (or any other state) [25] serve as a laboratory to assess the IJE concept in practice[26] would be very

[23] By the time the Symposium was held, proposals similar to the one put forward by the Ohio Chief Justice had also been introduced in the Ohio legislature.

[24] *See* North Carolina General Assembly, Senate Bill 1054, *available at http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2001&BillID=S1054* (last visited May 12, 2008); Doug Bend, *North Carolina's Public Financing of Judicial Campaigns: A Preliminary Analysis*, 18 Geo. J. Legal Ethics 597 (2005). *See also* ABA Standing Comm. on Judicial Independence, Public Financing of Judicial Campaigns: Report of the Commission on Public Financing of Judicial Campaigns (2002), *available at http://www.abanet.org/judind/pdf/commissionreport4-03.pdf* (last visited May 12, 2008).

[25] As of this writing (May 2008), no IJE legislation has yet been enacted in Ohio.

important, especially in the absence of the kind of empirical studies mentioned by the Study Group.

After the foregoing presentations at the Symposium, the participants, with the benefit of their broad collective experience from several perspectives on the judicial selection process, reached consensuses on several substantive points: (1) judging is a distinct discipline of the legal profession that required an appreciation of unique knowledge, skills and abilities; (2) it would be preferable that, before assuming a judicial position, judicial aspirants have by experience or training qualifications that exceed admission and practice requirements; (3) the concept of IJE offers valuable opportunities to bridge the debate over whether election or appointment is preferable as means to select judges; and (4) differences between the roles and responsibilities of trial and appellate judges make it very important that implementation of any IJE curriculum accommodate all levels of the judiciary.

While the committee, after conferring and receiving input from all potentially affected entities of the ABA, is unwilling at this time to recommend an extensive program that would include all of the consensus points reached at the Symposium, it believes that IJE represents an innovative approach to bridging some of the most intractable and controversial issues in the centuries-old debate over judicial selection. The Recommendation to the House of Delegates, to which this Report is attached, is submitted for consideration not as an alternative to traditional modes of judicial selection but as a potential means of educating individuals with a better appreciation of the role of the judiciary and to assist them in making an informed decision as to whether a judicial career may be appropriate. It comes down to a very simple question—shouldn't a person know something about the job they are seeking, especially one that impacts the lives of our citizens? The Committee further believes that in developing and implementing IJE programs, consideration should be given to accessibility and affordability of programs so as not to exclude women, minorities or others who might feel excluded from participating. The Committee also wants to emphasize that participation on IJE programs should not be considered as giving rise to credentialing and/or certification of participants.

[26] *Cf.* New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (noting with approval states serving as laboratories for trying "novel social and economic experiments without risk to the rest of the country").

In sum, the Committee believes that the additional knowledge to be gained from an appropriate program of Introductory Judicial Education can burnish the stature of the judiciary and elevate the level of public trust and confidence that our judicial system rightfully deserves.

William K. Weisenberg
Chair
Standing Committee on Judicial Independence
November 2008

EXECUTIVE SUMMARY

(a) The Recommendations urge state, local and territorial bar associations to adopt programs of introductory legal education to assist lawyers with potential career aspirations of service in the judiciary; and that adopting such a program would assist in elevating public trust and confidence in the judiciary.

(b) The proposed policy, if adopted by state, local and territorial bar associations, will enhance the knowledge of lawyers aspiring to judicial service and thus raise the stature of the judiciary in the public eye and insure they are fully aware of the ethical and career demands of a judicial position.

(c) At this point in time, no organized opposition is known.

GENERAL INFORMATION FORM

Submitting Entity: ABA Standing Committee on Judicial Independence

Submitted By: William K. Weisenberg, Chair

1. Summary of Recommendation

That the American Bar Association urges adoption of programs of judicial education to assist lawyers who aspire to judicial service.

2. Approval by the Submitting Entity

The ABA Standing Committee on Judicial Independence approved the recommendation on October 18, 2008.

3. Has this or a similar recommendation been submitted to the House or the Board previously?

No

4. What existing Association policies are relevant to this recommendation and how Would they be affected by their adoption?

The ABA has a number of policies pertaining to judicial selection including merit selection for judges, public financing of judicial elections and qualification commissions to assist in the selection process. Introductory judicial education is consistent with preexisting ABA policy.

5. What urgency exists that requires action at this meeting of the House?

The adoption of these recommendations will prompt state and territorial bar associations and state and territorial legislative bodies to begin consideration of their adoption.

6. Status of Legislation

N/A

7. Cost to the Association (Both direct and indirect costs)

N/A

8. Disclosure of Interest (If applicable)

N/A

9. Referrals

ABA Judicial Division
ABA Section on Legal Education
ABA Section on Criminal Justice
ABA Section on Litigation
National Center for State Courts

10. Contact Person (Prior to the meeting)

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Judicial Division
Contact Information for Rep

11. Contact Person (Who will present the report to the House)

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Appendix N

Drafts of Proposed Implementing Provisions Regarding Judicial Selection and Retention

Article II, section 14 of the California Constitution would be amended to read:

(a) Recall of a state officer is initiated by delivering to the Secretary of State a petition alleging reason for recall. Sufficiency of reason is not reviewable. Proponents have 160 days to file signed petitions.

(b) A petition to recall a statewide officer must be signed by electors equal in number to 12 percent of the last vote for the office, with signatures from each of 5 counties equal in number to 1 percent of the last vote for the office in the county. Signatures to recall Senators, members of the Assembly, members of the Board of Equalization, and judges of courts of appeal ~~and trial courts~~ must equal in number 20 percent of the last vote for the office. Signatures to recall a judge of a superior court must equal in number 20 percent of the last vote for the office of District Attorney in that county.

(c) The Secretary of State shall maintain a continuous count of the signatures certified to that office.

Article VI, section 15 of the California Constitution would be amended to read:

A person is ineligible to be a judge of a court of record unless for 10 years immediately preceding selection~~,~~ the person has been a member of the State Bar or served as a judge of a court of record in this State, and at the time of taking the oath of office is a citizen of the United States.

Article VI, section 16 of the California Constitution would be repealed and reenacted to read:

~~(a) Judges of the Supreme Court shall be elected at large and judges of courts of appeal shall be elected in their districts at general elections at the same time and places as the Governor. Their terms are 12 years beginning the Monday after January 1 following their election, except that a judge elected to an unexpired term serves the remainder of the term. In creating a new court of appeal district or division the Legislature shall provide that the first elective terms are 4, 8, and 12 years.~~

~~(b) Judges of superior courts shall be elected in their counties at general elections except as otherwise necessary to meet the requirements of federal law. In the latter case the Legislature, by two-thirds vote of the membership of each house thereof, with the advice of judges within the affected court, may provide for their election by the system prescribed in subdivision (d), or by any other arrangement. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.~~

~~(c) Terms of judges of superior courts are six years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to a full term at the next general election after the second January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins.~~

~~(d) (1) Within 30 days before August 16 preceding the expiration of the judge's term, a judge of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed to the office presently held by the judge. If the declaration is not filed, the Governor before September 16 shall nominate a candidate. At the next general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate not elected may not be appointed to that court but later may be nominated and elected.~~

~~(2) The Governor shall fill vacancies in those courts by appointment. An appointee holds office until the Monday after January 1 following the first general election at which the appointee had the right to become a candidate or until an elected judge qualifies. A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.~~

~~(3) Electors of a county, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of superior courts.~~

(a)(1) Justices of the Supreme Court shall be elected at large. Justices of the Courts of Appeal shall be elected in their districts. Elections shall be held at the November general election in even-numbered years. The terms of Supreme Court and Court of Appeal justices are 12 years, beginning the Monday after the January 1 following the election, except that the Legislature, in creating a new Court of Appeal district or division, shall provide that the initial terms of the new justices are 4, 8, and 12 years.

(2) Within 30 days before the August 16 preceding the expiration of the justice’s term, a justice of the Supreme Court or a Court of Appeal may file a declaration of candidacy to succeed to the office presently held by the justice. If the declaration is not filed, the Governor shall nominate a candidate before September 16. At the next November general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question of whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate who is not elected may not be appointed to that court but later may be nominated and elected.

(3) The Governor shall fill vacancies in the Supreme Court and Courts of Appeal by appointment. An appointee shall appear on the ballot for a full 12-year term at the first November general election after the justice has served 2 years in office unless application of this rule would cause more than three justices in the Supreme Court or more than two justices in a division of a Court of Appeal to appear on the same ballot, in which case the most recent appointee or appointees shall appear on the ballot for a full 12-year term at the following November general election.

(4) A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.

(b)(1) Judges of superior courts shall be elected in their counties except as otherwise necessary to meet the requirements of federal law. In the latter instance the Legislature, by two-thirds vote of the members of each house, with the advice of the judges within the affected court, may provide for their election by the system prescribed in subdivision (6) or by any other system.

(2) Elections for superior court judges shall be held in even-numbered years at the primary election at which candidates for the November general election are selected. If a candidate receives a majority of the votes cast, the candidate is elected. If no candidate receives a majority of the votes cast, the two candidates receiving the most votes shall be candidates at the November general election. A term of a superior court judge is 6 years beginning the Monday after January 1 following the election.

(3) The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(4) A vacancy occurs when a judge leaves office before the end of his or her term at a time at which the election process has not begun for the next term of that office. The election process shall be deemed to have begun if at least one person, other than the judge, has qualified for election for the next term of that office.

(5) The Governor may fill vacancies in the superior court by appointment. An election for a 6-year term shall be held at the next general election following the occurrence of the vacancy, except the election shall not be held until after the judge has served at least 2 years in office.

(6) Electors of a county, by a majority of those voting and in a manner the Legislature shall provide, may make the following procedure applicable to the election of judges of the superior court in that county. Within 30 days before the August 16 preceding the expiration of the judge's term, a judge may file a declaration of candidacy to succeed to the office presently held by the judge. If the declaration is not filed, the Governor shall nominate a candidate before September 16. At the next November general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question of whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate not elected may not be appointed to that court but later may be nominated and elected. If the judge does not file a declaration of candidacy and the Governor does not nominate a candidate, a vacancy shall occur in the office upon the expiration of the judge's current term.

Proposed Modification of Section 16 Without Reorganization

(Note: Underlines and ~~strikeouts~~ show changes made to existing article VI, section 16 without reorganization. **[Boldfaced material between brackets]** show rearrangement of existing provision in proposed new provision.)

[Now paragraph (a)(1)] (a) ~~Judges~~ Justices of the Supreme Court shall be elected at large. ~~and judges~~ Justices of the Courts of Appeal shall be elected in their districts ~~at general elections at the same time and places as the Governor~~. Elections shall be held at the November general election in even-numbered years. The~~ir~~ terms of Supreme Court and Court of Appeal justices are 12 years, beginning the Monday after the January 1 following the~~ir~~ election, except that ~~a judge elected to an unexpired term serves the remainder of the term. In~~ the Legislature, in creating a

new Court of Appeal district or division, ~~the Legislature~~ shall provide that the ~~first elective~~ initial terms are 4, 8, and 12 years.

[Now paragraphs (b)(1)] (b) Judges of superior courts shall be elected in their counties ~~at general elections~~ except as otherwise necessary to meet the requirements of federal law. In the latter ~~case~~ instance the Legislature, by two-thirds vote of the membership of each house ~~thereof~~, with the advice of judges within the affected court, may provide for their election by the system prescribed in subdivision (~~d~~)(6), or by any other ~~arrangement~~ system. **[Now paragraph (b)(3)]** The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

[Now the last sentence of paragraph (b)(2)(c) A term~~s~~ of a judge~~s~~ of a superior court~~s~~ ~~are~~ is six years beginning the Monday after January 1 following the election. **[Now the second sentence of paragraph (b)(5)]** ~~A vacancy shall be filled by~~ An election ~~to~~ for a ~~full~~ 6-year term shall be held at the next general election following the occurrence of the vacancy, except the election shall not be held until after the judge has served at least 2 years in office. ~~after the second January 1 following the vacancy,~~ **[Now the first sentence of paragraph (b)(5)** ~~but t~~The Governor ~~shall appoint a person to~~ may fill ~~the~~ vacanc~~y~~ies in the superior court by appointment ~~temporarily until the elected judge's term begins~~.

[Now paragraph (a)(2)](d) (1) Within 30 days before the August 16 preceding the expiration of the ~~judge's~~ justice's term, a ~~judge~~ justice of the Supreme Court or a Court of Appeal may file a declaration of candidacy to succeed to the office presently held by the ~~judge~~ justice. If the declaration is not filed, the Governor ~~before September 16~~ shall nominate a candidate before September 16. At the next November general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question of whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate who is not elected may not be appointed to that court but later may be nominated and elected.

[Now paragraph (a)(3)](2) The Governor shall fill vacancies in ~~those courts~~ the Supreme Court and Courts of Appeal by appointment. An appointee ~~holds office until the Monday after January 1 following~~ shall appear on the ballot for a full 12-year term at the first November general election after the justice has served 2 years in office unless application of this rule would cause more than three justices in the Supreme Court or more than two justices in a division of a Court of Appeal to appear on the same ballot, in which case the most recent appointee or appointees shall appear on the ballot for a full 12-year term at the following November general election . ~~at which the appointee had the right to become a candidate or until an elected judge qualifies~~. **[Now paragraph (a)(4)]** A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.

[Now paragraph (b)(6)](3) Electors of a county, by a majority of those voting and in a manner the Legislature shall provide, may make ~~this system of selection~~ the following procedure applicable to the election of judges of the superior court~~s~~ in that county. Within 30 days before

the August 16 preceding the expiration of the judge's term, a judge may file a declaration of candidacy to succeed to the office presently held by the judge. If the declaration is not filed, the Governor shall nominate a candidate before September 16. At the next November general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question of whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate not elected may not be appointed to that court but later may be nominated and elected. If the judge does not file a declaration of candidacy and the Governor does not nominate a candidate, a vacancy shall occur in the office upon the expiration of the judge's current term.

[New language placed in paragraph (b)(2)] Elections for superior court judges shall be held in even-numbered years at the primary election at which candidates for the November general election are selected. If a candidate receives a majority of the votes cast, the candidate is elected. If no candidate receives a majority of the votes cast, the two candidates receiving the most votes shall be candidates at the November general election. A term of a superior court judge is 6 years beginning the Monday after January 1 following the election.

[New language placed in paragraph (b)(4)] A vacancy occurs when a judge leaves office before the end of his or her term at a time at which the election process has not begun for the next term of that office. The election process shall be deemed to have begun if at least one person, other than the judge, has qualified for election for the next term of that office.

Government Code section 12011.5 would be amended to read:

(a)–(f) * * *

(g) ~~If~~ When the Governor has appointed a person to a trial court ~~who has been found not qualified by the designated agency~~, the State Bar ~~may~~ shall make public whether the person was found to be either (1) not qualified or (2) qualified or better by the designated agency. ~~this fact after due notice to the appointee of its intention to do so, but that~~ That ~~notice or~~ disclosure shall not constitute a waiver of privilege or breach of confidentiality with respect to communications of or to the State Bar concerning the qualifications of the appointee.

(h) If the Governor has nominated or appointed a person to the Supreme Court or Court of Appeal in accordance with subdivision (d) of Section 16 of Article VI of the California Constitution, the Commission on Judicial Appointments ~~may~~ shall invite, ~~or~~ and the State Bar's governing board or its designated agency ~~may~~ shall submit to the commission its recommendation, and the reasons therefor, but that disclosure shall not constitute a waiver of privilege or breach of confidentiality with respect to communications of or to the State Bar concerning the qualifications of the nominee or appointee.

(i)–(o) * * *

Elections Code section 8203 would be amended to read:

In any county in which only the incumbent has filed nomination papers for the office of superior court judge, his or her name shall not appear on the ballot unless there is filed with the elections official, within 10 days after the final date for filing nomination papers for the office, a petition indicating that a write-in campaign will be conducted for the office and signed by ~~100~~ registered voters qualified to vote with respect to the office equal in number to at least 1 percent of the last vote for the office of District Attorney in that county, or 100 registered voters, whichever is greater.

~~If a petition indicating that a write-in campaign will be conducted for the office at the general election, signed by 100 registered voters qualified to vote with respect to the office, is filed with the elections official not less than 83 days before the general election, the name of the incumbent shall be placed on the general election ballot if it has not appeared on the direct primary election ballot.~~

If, in conformity with this section, the name of the incumbent does not appear ~~either~~ on the primary ballot ~~or general election ballot~~, the elections official, on the day of the ~~general~~ primary election, shall declare the incumbent reelected. Certificates of election specified in Section 15401 or 15504 shall not be issued to a person reelected pursuant to this section before the day of the ~~general~~ primary election.

Rule 10.704 would be added to the California Rules of Court to read:

Rule 10.704. Appointment of subordinate judicial officers

In making a selection for a person to be a subordinate judicial officer, the trial court shall consider, in addition to other relevant criteria, both the diverse aspects of each candidate and that candidate's exposure to and experience with diverse populations and issues related to those populations.

Section 7 is added to Rule IV (Conflict of Interest) of the JNE rules to read:

Section 7. Conflict of Interest Requirement Extend to State Bar Board of Governors, Employees

Members of the Board of Governors, designees of the Board of Governors, and employees and agents of the State Bar are subject to the same standards as procedures regarding conflict of interest in the same manner as provided in this rule for commissioners.

Appendix O

Length of Interim Appointment

	Initial term lengths for interim appointees
Alabama	> 1 year
Arizona	until next election
Arkansas	> 4 months after vacancy occurred
California	> 1 year after vacancy occurred
Florida	> 1 year
Georgia	> 6 months
Idaho	remainder of unexpired term
Illinois	> 60 days
Indiana	until next election
Kansas	> 6 months
Kentucky	> 3 months
Louisiana	ineligible for election
Maryland	> 1 year
Michigan	> 90 days after vacancy occurred
Minnesota	> 1 year
Mississippi	> 9 months after vacancy occurred
Missouri	until next election
Montana	remainder of unexpired term
Nevada	next election
New Mexico	next election
New York	> 3 months after vacancy occurred
North Carolina	> 60 days after vacancy occurred
North Dakota	> 2 years
Ohio	> 40 days after vacancy occurred
Oklahoma	remainder of unexpired term
Oregon	> 60 days
Pennsylvania	> 10 months after vacancy occurred
South Dakota	remainder of unexpired term
Tennessee	> 30 days after vacancy occurred
Texas	until next election
Washington	until next election
West Virginia	remainder of unexpired term if < 2 years
Wisconsin	> 5 months after vacancy occurs

Commission for Impartial Courts
Consolidated List of Original Recommendations

Conversion Chart (Original to New Numbers)

Judicial Candidate Campaign Conduct

Orig. #	Original Recommendation	New #	Notes
1	The Code of Judicial Ethics should be amended to include the American Bar Association Model Code of Judicial Conduct definition of "impartiality."	1	No change.
2	The commentary to canon 4B of the Code of Judicial Ethics should be amended to encourage judges to take an active role in educating the public on the importance of an impartial judiciary.	2	Text revised in final report.
3	The commentary to canon 5B of the Code of Judicial Ethics should be amended to encourage judicial candidates to discuss matters such as their qualifications for office and the importance of an impartial judiciary.	3	Text revised in final report.
4	Canon 5 of the Code of Judicial Ethics should be reexamined for consistency in its use of the terms "judge" and "candidate."	4	No change.
5	The Code of Judicial Ethics should be amended by adding new canon 3E(2), providing that a judge is disqualified if he or she, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that a reasonable person would believe commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.	5	Text revised in final report.
6	A definition of "commitment" that includes "pledges" and "promises" should be added to the Code of Judicial Ethics.	6	No change.

Orig. #	Original Recommendation	New #	Notes
7	An unofficial statewide fair judicial elections committee should be established to educate candidates, the public, and the media about judicial elections; to mediate conflicts; and to issue public statements regarding campaign conduct in statewide and regional elections and in local elections where there is no local committee.	7	No change.
8	The formation of unofficial local committees should be encouraged, and resources should be provided to aid in their development.	8	Text revised in final report.
9	A model campaign conduct code for use by the state and local oversight committees should be developed.	9	No change.
10	Consideration should be given to merging the recommended unofficial statewide campaign conduct committee with the rapid response team recommended below in recommendations 53 and 54. (See new recommendation 42.)	X	Recommendation withdrawn.
11	The Code of Judicial Ethics should be amended to require all judicial candidates, including incumbent judges, to complete a mandatory training program on ethical campaign conduct.	10	Number change.
12	Judicial questionnaires should be included as a component of candidate training.	11	Number change. Combined with original #13, 20, 22, 23, and 29.
13	Candidate Web sites should be included as a component of candidate training.	11	Number change. Combined with new #11.
14	Both the California Judges Association's Judicial Ethics Hotline and the new Supreme Court Committee on Judicial Ethics Opinions should be publicized as resources that sitting judges and attorney candidates can use to obtain advice on ethical campaign conduct.	12	Text revised in final report. Number change.

Orig. #	Original Recommendation	New #	Notes
15	Collaboration among the Administrative Office of the Courts, the State Bar, the California Judges Association, and the National Center for State Courts should be recommended to develop brochures to educate judicial candidates.	13	Number change.
16	The sentence "This canon does not prohibit a judge from responding to allegations concerning the judge's conduct in a proceeding that is not pending or impending in any court" should be added to the commentary following canon 3B(9) of the Code of Judicial Ethics, but the prohibition against public comment on pending cases should not be extended to attorney candidates for judicial office.	14	Number change
17	The commentary to canon 3B(9) of the Code of Judicial Ethics should be amended to provide guidance to judges on acceptable conduct in responding to attacks on rulings in pending cases.	15	Number change
18	Courts should work with local county bar associations to create independent standing committees that will respond to inaccurate or unfounded attacks on judges, judicial decisions, and the judicial system.	16	Text revised in final report. Number change.
19	The California Judges Association's Response to Criticism Team and its network of contacts should be publicized.	17	Number change
20	A model letter and a model questionnaire that candidates can use in lieu of responding to an interest group questionnaire should be developed.	11	Number change. Combined with new #11.
21	Commentary to the Code of Judicial Ethics should be amended to provide guidance to judicial candidates on handling questionnaires.	X	Recommendation withdrawn.
22	The advisory memorandum on responding to questionnaires by the National Ad Hoc Advisory Committee on Judicial Campaign Oversight should be used as part of a comprehensive approach to addressing judicial questionnaires.	11	Number change. Combined with new #11.

Orig. #	Original Recommendation	New #	Notes
23	Candidates should be encouraged to give reasoned explanations for not responding to improper questionnaires rather than simply citing advisory opinions.	11	Number change. Combined with new #11.
24	The statutory slate mailer disclaimer should be strengthened by requiring mailers to cite canon 5 of the Code of Judicial Ethics and, when a candidate is placed on a mailer without his or her consent, to prominently disclose that fact.	18	Number change.
25	An amendment to Government Code section 84305.5 should be sponsored to apply to organizations that support or oppose candidates.	19	Text revised in final report. Number change.
26	Judicial campaign instructional material setting forth best practices regarding the use of slate mailers should be developed.	20	Text revised in final report. Number change.
27	Judicial candidates should be advised to obtain written permission before using an endorsement and to clarify which election the endorsement is for, to honor any request by an endorser to withdraw an endorsement, and to request written confirmation of any oral request to withdraw an endorsement.	21	Number change.
28	Judicial candidates should be prohibited from seeking or using endorsements from political organizations.	22	Text revised in final report. Number change.
29	The Code of Judicial Ethics should be amended to explain why partisan activity by candidates is disfavored.	11	Number change. Combined with new #11.
30	Instructional material about the importance of truth in advertising should be developed.	23	Text revised in final report. Number change.
31	Canon 5 of the Code of Judicial Ethics or its commentary should be amended to require candidates to take reasonable measures to control the actions of campaign operatives and the content of campaign statements.	24	Text revised in final report. Number change.

Orig. #	Original Recommendation	New #	Notes
32	The Code of Judicial Ethics should be amended to add a list of prohibited campaign conduct.	25	Number change.
33	A letter—to be sent by the courts to county registrars before each election cycle—should be developed addressing permitted use of the title “temporary judge” by candidates.	26	Text revised in final report. Number change.
34	Canon 6 of the Code of Judicial Ethics should be amended to clarify how the title “temporary judge” may be properly used.	27	Text revised in final report. Number change.
35	The State Bar should be encouraged to discipline attorney candidates who engage in campaign misconduct.	28	Number change.

Judicial Campaign Finance

Orig. #	Original Recommendation	New #	Notes
36	A system should be adopted under which each trial court judge is required to disclose, to litigants, counsel, and other interested persons appearing in the judge's courtroom, all contributions of $100 or more made to the judge's campaign . . .	29	Text revised in final report. Number change.
37	Each trial court judge should be subject to mandatory disqualification from hearing any matter involving a party, counsel, party affiliate, or other interested party who has made a monetary contribution of a certain amount to the judge's campaign . . .:	30	Number change.
38	Appellate courts should be required to send to the parties—with both the first notice from the court and with the notice of oral argument—information on how they may learn of campaign contributions if there is an upcoming retention election or there was a recent election.	31	Number change.
39	Appellate justices' disclosures should be maintained electronically and should be accessible via the Web and possibly through a link to the California Secretary of State's Web site.	32	Text revised in final report. Number change.
40	Each appellate justice should be subject to mandatory disqualification from hearing any matter involving a party, counsel, party affiliate, or other interested party who has made a monetary contribution of a certain amount to the justice's campaign, directly or indirectly.	33	Number change.
41	Legislation should be sponsored prohibiting corporations and unions from using treasury funds on contributions directly to judicial candidates or to groups making independent expenditures in connection with campaigns for judicial office.	34	Number change.

Orig. #	Original Recommendation	New #	Notes
42	Legislation should be sponsored to require that all candidates for judicial office—regardless of their total dollar amount of contributions received or expenditures made—be required to file, in some electronic format with the California Secretary of State's Office, all campaign disclosure documents that they would also be required to file in paper form.	35	Text revised in final report. Number change.
43	Amendments should be sponsored to appropriate California statutes and regulations so that California's definition of an independent expenditure—subject to, e.g., disclosure laws—is as broad as possible under current case law, including *McConnell, United States Senator, et al. v. Federal Election Commission* (2003) 540 U.S. 93, and *Federal Election Commission v. Wisconsin Right to Life, Inc.* (2007) 127 S. Ct. 2652 ("*WRTL II*").	X	Recommendation withdrawn.
44	Amendments to appropriate California statutes and/or regulations should be sponsored to require that disclosures pertaining to advertising in connection with judicial elections—whether funded independently or by a candidate—be made at the time that any person or entity makes a contract for that advertising.	X	Recommendation withdrawn.
45	Spending in connection with judicial elections should be closely observed for developing trends that would indicate a need to reconsider whether to sponsor legislation to create a system of public financing at the trial court or appellate court level, but such legislation should not be sponsored at this time.	36	Number change.

Public Information and Education

Orig. #	Original Recommendation	New #	Notes
46	A leadership advisory group should be appointed to oversee, identify, and coordinate public outreach programs and opportunities; to establish benchmarks of good practice; and to promote the assembly of local teams to assist courts with local outreach programs.	37	Text revised in final report. Number change.
47	The AOC should collect, summarize, and evaluate public outreach resources currently available for judges and court administrators and should also collect, summarize, and evaluate educational materials for K–12 teachers and for judges and court administrators making classroom visits.	37	Number change. Text revised in final report. Combined into new #37.
48	The AOC should maintain a menu of public outreach options for local courts.	37	Number change. Text revised in final report. Combined into new #37.
49	The judicial branch should more fully embrace community outreach activities.	X	Moved to discussion under new recommend-ation #37.
50	The standing advisory group mentioned above in recommendation 46 (new Recommendation 37) should partner with local courts, bar associations, the CJA, the NCSC, the State Bar, and others to offer outreach and public information programs and media guidelines to courts or regional areas.	X	Moved to discussion under new recommend-ation #37.
51	Web sites should be enhanced to include the role of the judicial branch and explain how judges are elected, and information concerning how judges are elected should be placed prominently on the California Courts Web site.	37	Number change. Text revised in final report. Combined into new #37.

Orig. #	Original Recommendation	New #	Notes
52	A compelling video on the role of the judicial branch should be created for use in various venues.	37	Number change. Text revised in final report. Combined into new #37.
53	A model for responding to unfair criticism should be adopted, as should tips for judges to use when responding to press inquiries.	42	Number change. Text revised in final report.
54	A leadership group should be created to provide ongoing direction and oversight of the response plan recommended in recommendation 53 and to ensure that the services it proposes are provided in an enduring manner. The proposed group should also consider creating a model plan that can serve both as a plan to respond to unfair criticism and as a campaign oversight plan.	42	Number change. Text revised in final report. Combined with #53 into new #42.
55	Media training programs should be institutionalized and judges and court administrators should continue to be educated on how to interact with the media.	41	Number change. Text revised in final report. Combined with #56 into new #41.
56	Training for the media in reporting on legal issues—including a possible journalist-in-residence fellowship at the AOC—should be supported and facilitated, and funding for that training should be sought.	41	Number change. Text revised in final report. Combined with #55 into new #41.
57	Training should be developed for judges and justices on how to present clearly the meaning or substance of court decisions in a way that can be easily grasped by the media.	39	Number change. Text revised in final report.
58	Local and statewide elected officials should be educated on the importance of the judicial branch.	40	Number change. Text revised in final report.

Orig. #	Original Recommendation	New #	Notes
59	Leaders should be encouraged to inspire others to engage in outreach efforts.	X	Moved to discussion under new recommend-ation #37.
60	Groups in public settings should be educated about the importance of the judiciary.	37	Number change. Text revised in final report. Combined into new #37.
61	A video on the function and importance of the courts should be created for local court Web sites.	37	Number change. Text revised in final report. Combined into new #37.
62	The feasibility of a channel for the judicial branch on one or more public video hosting sites should be studied.	X	Moved to discussion under new recommend-ation #37.
63	Courts should be identified to pilot programs dealing with community outreach and education.	37	Number change. Text revised in final report. Combined into new #37.
64	Strategies for meaningful changes to civics education in California should be supported.	43	Number change. Combined into new #43.
65	A strategic plan for judicial branch support for civics education should be developed.	43	Number change. Combined into new #43.
66	Political support should be sought from leaders in the Legislature, State Bar, law enforcement community, and other interested entities to improve civics education.	43	Number change. Combined into new #43.

Orig. #	Original Recommendation	New #	Notes
67	Teacher training programs, curriculum development, and education programs on civics should all be expanded to include the courts.	43	Number change. Combined into new #43.
68	Presiding judges should be encouraged to grant CLE credits to judicial officers and court executive officers conducting K–12 civics and law-related education.	43	Number change. Text revised in final report. Combined into new #43.
69	The State Bar Board of Governors should be asked to grant Minimum Continuing Legal Education (MCLE) credits to attorneys conducting K–12 civics and law-related education programs.	43	Number change. Combined into new #43.
70	The AOC should be directed to help pilot extensive civics-related outreach in three jurisdictions.	43	Number change. Combined into new #43.
71	Recognition programs that bring attention to teachers, judges, and court administrators who advance civics education should be promoted.	43	Number change. Combined into new #43.
72	Judicial branch leaders should encourage judicial candidates to participate in candidate forums and respond to appropriate questionnaires.	44	Number change. Text revised in final report. Combined into new #44.
73	Information about how judges are elected should be incorporated into outreach efforts and communications with the media.	37	Number change. Combined into new #37.
74	Web traffic to existing nonpartisan sources of information should be increased by partnering with other groups, such as bar associations.	X	Moved to discussion under new recommend-ation #44.
75	Collaboration should be established between the Judicial Council, the League of Women Voters, the California Channel, and other groups to inform voters.	44	Number change. Combined into new #44.

Orig. #	Original Recommendation	New #	Notes
76	AOC staff should be directed to coordinate voter education and to assist the courts in setting up frameworks for coordinating and sharing practices.		Recommendation withdrawn
77	Politically neutral toolkits for judicial candidates regarding voter information and best practices on public outreach should be developed.	44	Number change. Combined into new #44.
78	Voter focus groups should be conducted within California to determine what to provide in education materials.	44	Number change. Combined into new #44.
79	A consultant should be engaged to review the most effective uses of multimedia tools to promote voter education.	44	Number change. Text revised in final report. Combined into new #44.
80	Statements that educate voters about judicial candidates and the state's court system should be placed in sample ballot statements or other voter education guides.	44	Number change. Text revised in final report. Combined into new #44.
81	The State Bar should be asked to offer an educational course to potential judgeship applicants in conjunction with the National Judicial College at the joint Judicial Council/CJA/State Bar conference in 2009.	45	Number change. Text revised in final report.
82	A study should be undertaken and recommendations made regarding confidential self-improvement evaluations (optional or otherwise) for judges.	46	Text revised in final report. Number change.
83	The public should be informed that systems are in place to deal with judicial performance issues in fair and effective ways, including elections, appellate review, judicial education, media coverage, the Commission on Judicial Performance, the State Bar's Commission on Judicial Nominees Evaluation, and local bar association surveys.	47	Text revised in final report. Number change.

Orig. #	Original Recommendation	New #	Notes
84	More widespread participation by the courts and the AOC should be encouraged in CourTools or similar court performance measures and in the development of toolkits and mentoring programs for courts that wish to participate in such projects.	48	Number change. Text revised in final report.

Judicial Selection and Retention

Orig. #	Original Recommendation	New #	Notes
85	The JNE process, a unique form of a merit-based screening and selection system that has served California well, should be retained in lieu of adopting another form of merit selection such as the Missouri Plan and expanded to apply to all contested judicial elections.	49	Text revised in final report. Number change.
86	The background and diversity of the JNE members should be given more publicity, including by placing photographs of the members on the JNE Web site and making that site more accessible on the State Bar's home page.	50	Text revised in final report. Number change.
87	Legislation should be sponsored to require that a JNE rating of "not qualified" (and thus, by the absence of announcement, a rating of at least "qualified" or better) for a trial court judge be made public automatically at the time of appointment of a person with that rating.	51	Number change.
88	Legislation should be sponsored to make the current practice of releasing the JNE rating for an appellate justice mandatory and permanent.	52	Number change.
89	The judicial branch's California Courts Web site should explain the judicial appointment process and link to both the State Bar's JNE Web site and the Governor's Judicial Application Web site with appropriate information about JNE procedures and the rating system.	54	Combined with Original #90. Number change.
90	The JNE's and the Governor's Web sites should be more accessible and should contain videos explaining the judicial appointment process.	54	Combined with Original #89. Text revised in final report. Number change.

Orig. #	Original Recommendation	New #	Notes
91	Law schools should be encouraged to provide information about the judicial appointment process to law students by, for example, encouraging qualified JNE members, both past and present, to give presentations at law schools.	55	Number change.
92	JNE should be encouraged to provide greater publicity by having its members capitalize on opportunities to speak to local and specialty bar associations, service organizations, and other civic groups.	56	Text revised in final report. Number change.
93	The State Bar should amend the JNE rules to require that any member of the State Bar Board of Governors who attends a JNE meeting comply with the JNE conflict of interest rules.	57	Number change.
94	All candidates in contested and open elections should be required to participate in a JNE form of evaluation, and the results of that evaluation should be published in the ballot materials together with a description of the JNE process, including the identity of those making the rating and what the ratings mean.	58	Text revised in final report. Number change.
95	All JNE ratings in contested elections—i.e., ratings of exceptionally well qualified, well qualified, qualified, and not qualified—should be reported as part of the voter information proposed as part of recommendation 94.	X	Recommendation withdrawn.
96	The release of a rating by JNE should not be accompanied by a statement of reasons.	53	Number change.
97	The courts should be directed to consider, when making appointments of subordinate judicial officers, both the diverse aspects of the appointees and the appointees' exposure to and experience with diverse populations and their related issues.	59	Text revised in final report. Number change.
98	One of the factors the JNE should consider is the candidate's exposure to and experience with diverse populations and issues related to those populations.	60	Text revised in final report. Number change.

Orig. #	Original Recommendation	New #	Notes
99	The Governor should consider an appointee's exposure to and experience with diverse populations and issues related to those populations.	61	Text revised in final report. Number change.
100	The judicial branch's public outreach and publicity programs should include one that encourages all members of the bar to consider applying for judicial office.	62	Text revised in final report. Number change.
101	An amendment should be sponsored to change the constitutional provision for the recall of a judge—which currently requires a petition with signatures of 20 percent of those voting for a judge in the most recent election—to require a petition with signatures of 20 percent of those voting for district attorney, the only county official elected in every county.	63	Number change.
102	A constitutional amendment should be sponsored to provide that a trial judge shall have served at least two years before his or her first election.	64	Number change.
103	Legislation should be sponsored to change the number of signatures needed for placing an unopposed judicial election on the ballot for a potential write-in contest from the current level of 100 signatures to 1 percent of the voters for district attorney in the last county election but not fewer than 100 signatures.	65	Number change.
104	Legislation should be sponsored to amend current law, which provides that an unopposed judge may be challenged by write-ins at either or both the primary election and the general election, to permit only one challenge, which should be at the first (i.e., primary) election.	66	Number change.
105	An amendment should be sponsored to article VI, section 16 of the California Constitution to reorder the subsections therein and make minor wording changes for the sake of clarity.	67	Number change.

Orig. #	Original Recommendation	New #	Notes
106	A constitutional amendment should be sponsored to provide that retention elections for appellate justices be held every two years (during both the gubernatorial and the presidential elections) rather than the present system of every four years (during the gubernatorial elections).	68	Number change.
107	A constitutional amendment should be sponsored to provide that following an appellate justice's initial retention election, that justice serves a full 12-year term, rather than the current system of a 4-, 8-, or 12-year term, depending on the length of term remaining for the previous justice holding that seat.	69	Number change.
108	A constitutional amendment should be sponsored to provide that an appellate justice serve at least two years before the first retention election, paralleling recommendation 102 above concerning trial court judges.	70	Text revised in final report. Number change..
109	Further study should be made of ways to help ensure that judicial vacancies are filled promptly.	71	Number change.

Public Comments

RECOMMENDED PRACTICES FOR SAFEGUARDING JUDICIAL QUALITY, IMPARTIALITY AND ACCOUNTABILITY IN CALIFORNIA

GENERAL COMMENTS ABOUT THE REPORT OR RECOMMENDATIONS			
No.	**Commentator**	**Full Comments**	**Commission Response**
1.	Hon. Barbara A. Kronlund Presiding Judge of the Juvenile Court Superior Court of California, County of San Joaquin	Recommendations for Judicial Candidate Campaign Conduct: The CJA Ethics Committee might be willing to offer CIC an alternative to all these suggested amendments to the Canons, Commentary to the Canons, and additions to the Canons; what about the Ethics Committee recruiting its election experts on the Committee to write a Formal Opinion that includes all of their election topics? I think that would be superior to adding all of their recommendations to the Canons, which in my opinion, would possibly dilute the overall effectiveness of the Canons. Another possibility would be for the CJA to amend its current Judicial Elections materials/brochure, to include the numerous suggestions of the CIC report. In the alternative, if the Ethics Committee prefers not to write a Formal Opinion to address the Election issues, I would suggest the proper location for the majority of the recommendations should be in the Judicial Standards of Administration as opposed to the Canons. Or, Judge David Rothman's Judicial Conduct Handbook would be another good location for some of the discussion that may not truly belong in the Canons themselves. I am concerned about amending Canons and commentary unless there is really a compelling reason to do so. I fear that in some instances, the proposed amendments and additions might actually lead judges down a dangerous path which sets them up for Commission on Judicial Performance (CJP) inquiry and discipline, and clearly the CIC is not intending to do that with their recommendations; it just may be an unintended consequence.	This suggestion is more applicable to the implementation process and will be considered during the development of an implementation plan. The Supreme Court will be the final decision maker on edits to the canons.
2.	Hon. Michael T. Smyth Judge of the Superior Court of California, County of San Diego	I've finally gotten around to actually reading through the 100+ recommendations, and the scope and breadth of the recommendations are pretty stunning. I've worked in government in various capacities for 20 years, and I recognize this set of recommendations. They are exactly what you get when you task a committee, or a "task force", or a "tiger team", to assess a system and make recommendations for change. One, the members feel they	No response required.

Attachment C

GENERAL COMMENTS ABOUT THE REPORT OR RECOMMENDATIONS			
No.	**Commentator**	**Full Comments**	**Commission Response**
		are tasked with change, so one thing is certain: they will recommend changes, necessary or not, or they will have failed. Two, mission creep will lead them into areas that are outside of their original task, and typically outside of any expertise or experience the committee members have (were there any elected judges on the commission?). And three, the decision makers will adopt some or all of the recommendations because to not do so would send the message that both the committee and the idea of a committee were ill-advised failures. And, well, we can't have that. See also comment in disagreement with recommendation #94.	
3.	Hon. Rolf Michael Treu Judge of the Superior Court of California, County of Los Angeles	I have no comments relative to a specific recommendation, but wish to address the issue of judicial elections itself. Unless we face the fact that judicial elections are inimical to judicial impartiality and independence, and move toward their abolition, we will eventually be faced with the same problems other states currently are forced to deal with. There is good reason that no other 1st world country permits these elections. The United States Constitutional Convention recognized the danger and drafted Article III. Why should the citizens of California not be as entitled under their state constitution to the same protections found in Article III? I have drafted a proposed selection method for California for discussion (below). I believe it properly preserves the rights of the citizens, through their elected representatives, to participate in the judicial selection process. In terms of removal from office, I have proposed retaining the CJP, a safeguard not found in Article III. 1. Have the Governor, Speaker of the Assembly (or next highest ranking opposite party member if Governor and Speaker are of same party) and Chief Justice select a committee of nine (3 each) for each county (or combined for smaller counties). The Governor chooses one additional person (nonvoting, except in case of a tie) to chair each committee.	

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No.	**Commentator**	**Full Comments**	**Commission Response**
		2. Each committee will then solicit applications from interested attorneys of its county and processes them pursuant to guidelines to be established, with input from local bar associations, the public and the Judicial Nominations Evaluations Committee. 3. Majority vote approval of the committee will pass the nominees to the Governor. 4. Governor makes selection from the nominees presented for a lifetime appointment, with the advice and consent of the State Senate. 5. The Commission on Judicial Performance will remain as is. 6. Judicial recall will be abolished. The benefit of this system, in my opinion, is that both political parties and the judicial branch are represented on the committees; and that to be productive, a majority must be crafted, and no one party or interest can railroad a candidate through, or block a candidate. Moderate candidates will be preferred over radicals/ extremists on either end of the political spectrum. Bar, public and screening input is provided; the names then presented to the Governor will go through any additional vetting he or she deems appropriate. The Senate will have the final say in confirming (or not) the candidate.	This was considered by the Task Force on Judicial Selection and Retention and rejected.
4.	Jeffrey A. Rager The Rager Law Firm Torrance, California	I want to applaud your efforts. Your recommendations are well thought-out and should be implemented. You have my full support. We must strive for a non-political and unbiased judiciary.	No response required.
5.	Kirk Schwoebel	Apparently, you aren't aware of what's going on in the Los Angeles Superior Courts. "Impartial courts" are non-existent. Haven't been for 20 some years. When the state pays these judges and the county pays these judges, and they throw an attorney in jail for trying to get these judges to at least disclose these illegal payments, and they retaliate with SBX2-11 giving them immunity for crimes dating back 20 years. And take a look at the court records and see for yourself how many cases were found in favor of LA	

GENERAL COMMENTS ABOUT THE REPORT OR RECOMMENDATIONS			
No.	**Commentator**	**Full Comments**	**Commission Response**
		county when heard by one of these judges. Richard Fine has been in jail for over 100 days on a contempt charge, without bail. This is getting serious, not getting, has gotten, very serious. What's your position on this matter, and what steps have you taken to correct this serious lack of credibility on behalf of this situation?	Beyond the scope of the commission's charge.
6.	Los Angeles County Democratic Party Eric C. Bauman, Chair	The Los Angeles County Democratic Central Committee is also known as the Los Angeles County Democratic Party (LACDP). LACDP is the official governing body of the Democratic Party in the County of Los Angeles. It is the largest local Democratic Party entity in the United States, representing over 2.2 million registered Democrats in the 88 cities and unincorporated areas of LA County. LACDP conducts Democratic Party campaigns in LA County under the general direction of the California Democratic State Central Committee. The essence of LACDP's mission is to encourage the fullest possible participation of all voters registered with the Democratic Party and to disseminate the Democratic Party message, platform and philosophy to the voting public and to public officials at all levels of government. LACDP interviews, develops and endorses Democratic candidates for local nonpartisan public office, including judicial office. The LACDP shares with the Commission for Impartial Courts (CIC) its demonstrated dedication to the principle that California's courts must be free of bias. LACDP also agrees with CIC that the fact that candidates for judicial office stand for election (or retention) should not result in the compromise of their impartiality. Five of CIC's recommendations are of serious concern to the LACDP, and in its view do not belong in CIC's final report. Please see full comments under recommendations 25, 28, 41, 43, and 44. LACDP finds these recommendations inconsistent with principles of freedom of speech and association that are at the heart of the Constitution. These recommendations are also inconsistent with the principles of self-governance that underlie the	No response required.

GENERAL COMMENTS ABOUT THE REPORT OR RECOMMENDATIONS			
No.	**Commentator**	**Full Comments**	**Commission Response**
		electorate's participation in the selection and retention of judicial officers (the self-governance rationale for freedom of expression holds that, for democracy to work, the people must choose the best ideas and, to do so, they must be well-informed in a market-place of ideas unhindered by government interference. See Calvin R. Massey, *Hate Speech, Cultural Diversity and Foundational Paradigms of Free Expression* (1993) 40 UCLA L. Rev. 102. The LACDP applauds the Judicial Council and the Commission for their efforts to work toward elimination of bias and ensuring impartiality in the judiciary. The LACDP also salutes the Commission members for their long and tireless work on a very thorough report. For the reasons set forth specifically under recommendations 25, 28, 41, 43, and 44 (below), the LACDP urges the strengthening of the Commission's final report by the deletion of these five recommendations.	
7.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	For almost 40 years, I have involved myself in political campaigns on the local, state, and national level. I have been involved in fundraising for my own efforts, as well as for others running for political office. I have planned political strategy and advertising and have designed campaign mailers. I have registered voters, walked precincts to educate voters on the issues and candidates that I supported, and I have stood as a candidate for various state and local offices. Early in my career, I was a legislative assistant and actively worked for the appointment of judicial applicants through the Governor's office. As a lawyer, I served as a member of the Judicial Nominees Evaluation Commission (2000-2004). I served two terms as president of the local bar association. I served on the local committee designated to respond to unfair attacks on the local bench. I also had the privilege to serve as a member of the workgroup charged with rewriting the Indigent Defense Guidelines (2004-06). In June 2008, I was honored to be elected Judge of the El Dorado County Superior Court by 65.8% of the county electorate in a contested election. As	

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No.	Commentator	Full Comments	Commission Response
		a criminal defense attorney, I was honored to receive the support of our sheriff, district attorney, deputy sheriff's association, city police association, political organizations (Republicans to the Green Party), and citizens of every faith, creed, and sexual orientation. I preface my comments by providing my background in the political sphere before I remark on the recommendations of the Commission for Impartial Courts. This report and many of its recommendations are extremely troublesome. The report seems to address and recommend solutions for problems which the report itself acknowledges do not exist in California. California uses a hybrid system for appointing and retaining judges. The Governor appoints some to serve unexpired terms, while others may be elected directly by the voters. Ultimately, all judges in this state, whether trial or appellate, are elected with the final arbitrator being the voters. Regardless of the manner in which a judge initially assumes office, the electorate is permitted the final say. This insures the judges who serve in this state are always representative of the diversity of the community in which they serve. An examination of the bench in San Francisco or Los Angeles in comparison with Kern, Fresno, or Shasta Counties makes it readily apparent that the judges in their respective jurisdictions represent the communities in which they serve. Now, this report emerges making recommendations on how to change the system. The report assumes the system of selecting judges is somehow broken and needs repairing. The report is replete with references to problems in other jurisdictions (i.e. West Virginia) which have never manifested in this state. In short, this report recommends "fixes" for a system which is not broken. Moreover, the "fixes" are not just tweaking the system but are proposing a massive overhaul of the system. Everything from campaign conduct, financing, selection and retention has recommendations under the guise of "reform." I have chosen to comment on many, but not all, of the recommendations	

GENERAL COMMENTS ABOUT THE REPORT OR RECOMMENDATIONS

No.	Commentator	Full Comments	Commission Response
		forwarded in this report. Some of the recommendations make no real change to the process or are neutral adjustments which may add to the process without substantive change to the system of appointment, election, or retention of judges. My primary concern is how judges are selected, elected, and retained. Moreover, as a Trial Court Judge, my self interest is raised with recommendations for change within the trial courts. Therefore, I generally have commented only on those recommendations where change would affect the trial courts. Note that many of the suggestions between recommendations 37 through 84 deal with disclosure by Appellate and Supreme Court Justices or outreach programs to the schools and voters. I am not commenting on outreach to schools or the general public because as a general rule outreach makes good sense, provided that money is not a problem. However, before the AOC, State Bar or the Legislature spends money on outreach programs, it would be wise to make sure that money is available to provide equal access to the courts so that civil and criminal litigants have their day in court. At a time when court employees are being furloughed and the court is closed, the priority must be court operation and not public outreach. Finally, it is apparent from this report by the Commission for Impartial Courts that the best and most qualified judges are those who were originally appointed by the Governor. This assumption is flat out wrong. The basic tenet of the California system is that all judges are elected and subject to will of the electorate. How arrogant it is to lift judges above the people they serve. We must never be so high and mighty that we forget that judges are servants of the people. I urge the Commission for Impartial Courts to step back and consider the recommendations in light of how we involve more of our “common” citizens in the selection of our judges, not how we eliminate citizen involvement. For over 200 years of our national history, our judges have been men and women of renown, men and women of honesty and integrity, and men and women	See responses to comments on individual recommendations.

GENERAL COMMENTS ABOUT THE REPORT OR RECOMMENDATIONS			
No.	**Commentator**	**Full Comments**	**Commission Response**
		with common sense judgment. I am sad to say this report smacks of elitism. It presumes the local electorate is not qualified to assist in the selection of the men and women who they want to be judges. Throughout the report, suggestions are made to remove the interested public and replace them with the "educated elite." There is nothing more misguided than the transfer of involvement suggested in the report. I urge the Commission to withdraw the final report. Send it back to committee for further consideration of these comments and the comments of many of our other learned colleagues. To continue and release this report in its current form risks splitting the current bench because of many of these misguided recommendations. See below for comments on specific recommendations 5, 7, 8, 10, 20, 28, 32-37, 53, 54, 85-87, 94-96, 98, 99.	
8.	California Judges Association Hon. Mary E. Wiss, President	The California Judges Association (CJA) appreciates the opportunity to comment on the Report of the Commission for Impartial Courts (CIC). CJA shares CIC's concerns about alarming developments in other states which, if they took root in California, would jeopardize our strong tradition of a nonpartisan and impartial judiciary that serves the interests of all Californians. We wish to thank Chief Justice Ronald George for establishing the CIC to promote these important goals and CIC's members for their dedication to this project. We believe many of CIC's recommendations will both enhance the reputation of the judicial system and limit unwarranted and unfair criticism of judicial officers. However, CJA has reservations about a number of CIC's proposals, particularly in the categories of Judicial Candidate Campaign Conduct (which incorporates Judicial Ethics) and Judicial Selection and Retention, areas where CJA has traditionally been a significant voice in and for the California judiciary. As our comments indicate, CJA believes that some of the recommendations unreasonably burden incumbent judges in judicial	See responses to comments on individual recommendations.

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		elections. See below for comments on specific recommendations (1, 2, 5-10, 11, 16, 17, 21, 28, 29, 31, 32, 36, 37, 42-44, 82, 84, 85, 94, 102-104.)	
9.	Superior Court of California, County of Los Angeles	Presiding Judge Charles W. McCoy appointed a committee of some of the Los Angeles Superior Court's most experienced and respected judges, a number of whom have had extensive experience in political campaigns and elections at the local and state level, to review the Report of the Commission for Impartial Courts. The committee included Judges Lee Edmon, Burt Pines, Mike Nash, Michael Vicencia, Lance Ito, Bill Highberger, John Wiley, Marjorie Steinberg, Paul Bacigalupo, Elihu Berle, Susan Bryant-Deason and Jim Dabney. That committee proposed comments to the Report which were then reviewed and discussed at length at two meetings of the court's Executive Committee (made up of judicial officers elected by and representing judges in each of the districts around Los Angeles County). Following the first meeting, the Executive Committee members met with their constituent judges to discuss the Report and the proposed comments. Ultimately, with the exception of Recommendation 28, as to which there was no consensus, the comments that are being submitted by the Los Angeles Superior Court herein were adopted unanimously by the court's Executive Committee. The Los Angeles Superior Court commends the Commission for its outstanding efforts to advance the rule of law and to elevate the public's regard for the judiciary. The report collects and analyzes much of the scholarship in these areas. The Report is a careful study of these highly relevant issues and we support its creation and endorse the majority of its recommendations. And, we thank the authors and contributors for their time, commitment and dedication to the improvement of the judicial branch. Our concerns or objections with certain of the Report's recommendations are set forth in greater specificity below (see recommendations 5, 7-10, 11, 28, 32, 37, 68, 82, 84, 85, and 94.)	See responses to comments on individual recommendations.

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10.	Carol Ebbinghouse Law Librarian Court of Appeal, Second District	I would like to respectfully suggest that the Committee add public and county law libraries to the lists of educational, outreach and other organizations described in the Public Information and Education portions of the Final Report. Please consider how members of the public seek information about the courts, the judicial branch, and the services provided. People who need information usually go to their public library when they need information—whether for their own use, or to help a child with a homework assignment. Most California public libraries have at a minimum the California Annotated Codes, several Nolo Press and other legal self-help titles. The general civics curriculum materials and government reference works, American history titles, political science and other materials are also there to inform them of judicial impartiality and accountability, the role of the judiciary as a co-equal among the three branches of government as well as the balance of powers between the branches. People with access to the Internet often are directed to the www.courtinfo.ca.gov site, which is the front door to information about California's judiciary. Most people are referred to the www.publiclawlibrary.org “Ask Now” program which allows one to “get help from the librarian in real time.” Imagine having a law librarian at your disposal, right when you have a legal information question—at home or the office! However, many people in California do not have access to the Internet. They must go to their public library or their county's law library. At both types of libraries, the public has access to books, periodicals, the Internet and myriad legal and other commercial database services. These information resources are provided free of charge. When the State Bar of California wants to provide information for the public (e.g. their guides to elder law, rights of minors, etc.), they not only	The commission agrees that public and county law libraries should be included in relevant public outreach recommendations. The final report has been revised accordingly.

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		offer to send copies of their publications to lawyers for their waiting rooms, they send them to public and county law libraries as well. The League of Women Voters also recognizes the value of public libraries in disseminating information about judicial and other candidates as well as resources to consult to vote intelligently. State and federal government publications are distributed to libraries for free as well. Why do so many groups automatically think of public libraries when they want to "get the word out" to the public? Because, after all, it was the Council of California County Law Libraries that created the "Public Law Library" web site (www.publiclawlibrary.org) which provides links to California and Federal law research sites, general legal research links, a mini-research class page, links to city and county codes, court forms, court rules, etc., with links to information in Spanish, Italian, Portuguese, German, French, Japanese and Korean! County law libraries have often set up their own web sites, such as the Los Angeles County Law Library (www.lalaw.lib.ca.us), and are affiliated with the Northern California Association of Law Libraries (NOCALL), the San Diego Association of Law Libraries (SANDALL) and the Southern California Association of Law Libraries (SCALL) which has produced its own publication, "Locating the Law" available free on the Internet at www.aallnet.org/chapter/SCALL. The Committee would be hard pressed to find a group of legal professionals with a better track record for public outreach and grassroots organizing through existing local teams of academic, private and state, court and county law libraries throughout the state to assist courts with local outreach programs. See below for comments on specific recommendations 46-48, 50-52, 60, 61, 65, 73-75, 83, 86, 89, and 90.	
11.	Appellate Court Committee of the San Diego County Bar Association	After careful consideration and repeated discussion, the Appellate Court Committee of the San Diego County Bar Association has decided not to make any comments regarding the Commission for Impartial Courts Final	No response required.

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	Matthew Mulford, Chair	Report. The report's recommendations touch upon many aspects of the selection, election, retention and overall functioning of the judiciary, including the appellate bench, but in ways that are primarily political in nature. The Appellate Court Committee concluded that the subject matter was outside out usual realm of commenting on matters related to appellate rules and appellate practice. The report's aim of impartiality and ensuring an independent judiciary is of course one we wholeheartedly endorse.	
12.	Center for Judicial Excellence San Rafael, California Stephen Burdo	The Center for Judicial Excellence is thankful for the opportunity to provide comment on the CIC's proposed recommendations to the Judicial Council in this Comment Form. CJE also plans to expand upon these comments during the live public testimony portion of this process. Our overall assessment of the proposed recommendations provided by the CIC is that we would have hoped to see more recommendations addressing increased judicial transparency and accountability for Judges, Attorneys & Court Professionals in the CA Judicial System. Many of the recommendations provided in the report site the need for "Media Trainings" and "Standard Responses" for judges and other judicial officers on how to talk to the press, how to engage "special interests" and how to address "Unfair Criticism," with no recommendations addressing the investigation or discipline of Judges, attorneys and court professionals who are found in violation of relevant laws, rules and codes. Regarding recommendations 2, 10, 11, 18-21, 52-57, 61 and 66, CJE feels that individual judges should devote themselves to judging, and not coerced public relations. Our reasoning is based on our understanding that historically, when the Judicial Council has talked about "the importance of an impartial judiciary" it is talking about the importance of being free from oversight by the legislative and executive branch, or criticism by the public, rather than the importance of being free from outside political influence such as campaign contributions made to judges. In our opinion, these recommendations fall well short of taking the necessary steps to creating an	The commission agrees with your suggestion and has added some new areas in the report that discuss accountability.

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No.	Commentator	Full Comments	Commission Response
		environment of accountability and transparency within our state courts. See additional comments under specific recommendations (35, 49, 82, 83, and 103-105)	
13.	Hon. Darrell Steinberg President pro Tempore California State Senate	First, I wish to commend the Commission and its Steering Committee on its very fine work to study and recommend ways to ensure judicial impartiality and accountability for the benefit of all Californians. An impartial and independent judiciary is fundamental to the operation of our democracy and the dispensation of equal and fair justice under the law. Judicial accountability enhances public confidence in the judiciary, which is essential because of the crucial role the judiciary plays in adjudicating disputes and in preserving and protecting our democracy, our rule of law, and democratic processes. This I embrace wholeheartedly the goal of the Commission to study and recommend ways to strengthen the impartiality and accountability of the judiciary for the benefit of all. I also wish to commend the Commission on its Final Report and 109 recommendations for safeguarding judicial quality, impartiality and accountability in California. The report offers some sound insights into the challenges facing the judiciary in the 21st century, from the potential morphing of judicial elections into political contests, a result that would destroy judicial independence, to the need to increase the trust and confidence of a growing diverse public with the judiciary that is slowly diversifying but is still far from reflecting the diverse population it service. The report also makes numerous recommendations for legislation in many areas, and I look forward to working with the Judicial Council to implement as many of them as are attainable. But I must offer a cautionary note. Many of these recommendations carry a significant price tag, and in today's difficult budget times, it is essential for these new programs and procedures to identify funding sources adequate to cover the new costs. Last but not least, I wish to express concern over the glaring lack of significant discussion and recommendations for improving judicial	The commission agrees with your suggestion and has added some new areas in the report that discuss accountability. The commission discussed the pros and cons of judicial performance evaluations (JPEs). Two task forces spent a significant amount of time discussing and reviewing judicial accountability and judicial performance evaluations. The Task Force on Judicial Selection and Retention rejected JPEs because the process is only used in states that have Missouri-style merit selection with retention elections and not contested elections. The possibility that an evaluation of a sitting judge would unfairly tilt the election one way or another in a contested election was the main reason for rejecting governmental evaluations. Establishing a confidential program that could prove useful to a judge was

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		accountability, which I see as the most important goal of the Commission's work. Without judicial accountability, the public will not have confidence in its judiciary, no matter how qualified or impartial the judges appear to be. The report itself recognizes (p.72) that "independence and accountability are equal in the eyes of the public and that the road to independence is through accountability." Yet, of the 109 recommendations proposed by the Commission, it fails to make a single recommendation for the mandatory adoption of ideas to enhance public accountability. Of the three recommendations that are offered, recommendation 82 is to undertake a study regarding the possible use of "confidential self-improvement evaluations (optional or otherwise) for judges." Recommendation 83 is to educate the public in the ways judges may already be held accountable. While 84 would encourage more widespread participation by the courts and AOC in the use of CourTools or similar court performance measures, and encourage the development of "toolkits and mentoring programs" the recommendation is advisory for courts that wish to participate in such projects. In fact, of the reports 95 pages and 109 recommendations, less than 2 full pages and 3 recommendations are devoted to discussing potential ways to enhance judicial accountability. This relative dearth of discussion and recommendations relating to judicial accountability is a serious concern and can undermine the credibility of the entire report. While I understand the judiciary's discomfort with public judicial performance evaluations because of their subjective nature, the more the public has an opportunity to comment upon the operations of the court, the better the public will understand how a court works and have confidence in its proceedings. Simply educating the public as to how the court operates is a one-way communication; there is no ability to ascertain the public's reception of that communication or to receive any public feedback. Correspondingly, the more the public is shut out of the process of developing better court systems, the less trust and confidence it will have in	reviewed. The problem with such a system is that, under current public records law, there is no assurance that the results of the evaluations and feedback would remain confidential. If the material becomes public, the same problems discussed above remain. The Task Force on Public Education and Information notes that the judicial branch already has many accountability measures in place: elections, judicial review, the Commission on Judicial Performance (where the number of laypersons exceeds the number of judges and lawyers), judicial evaluations performed by private bar groups, and media reports. In addition, all the branch's decisions are open to the public. As to other accountability measures, 15 trial courts have implemented various measures of CourTools, a court performance measurement tool initiated by the National Center for State Courts. Some courts have found the program quite useful. However, the program requires money and resources not readily available.

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No.	Commentator	Full Comments	Commission Response
		the courts because the extant processes will not reflect the concerns of the public. There are myriad methods for public judicial performance evaluations (JPEs) that can, and do, fairly measure performance, particularly those that use appropriate process-driven criteria to determine whether a judge handled a specific case in a balanced, fair, and efficient manner. JPEs, when designed and used properly, are but educational tools at their core. They can provide constructive feedback to judges and help them identify areas of strength and areas potentially in need of improvement, all for the greater good. I understand that JPEs are used in varying forms in 19 states, the District of Columbia and in Puerto Rico, with six states making the results available to the public. Surely, California's judiciary should stand with those states that promote greater judicial accountability for the public and not less. Thank you for the opportunity to comment on your outstanding work and report. I look forward to working with the Judicial Council in our mutual goal to strengthen the impartiality, independence, and accountability of the state's judiciary.	Even with the current measures, the commission recommends that consideration of performance measures requires further study. Brief customer surveys can be useful for judges and can include requests on how to improve the court experience. Some courts mail questionnaires to former jurors asking them to comment on their experience with the court system. A 2005 survey on public trust and confidence in the California courts showed that 67 percent of the public has a good to very good opinion of the judiciary. The survey also showed a widespread lack of understanding about the judicial system and the other two branches of government. The Task Force on Public Information and Education, therefore, believes that public outreach and K–12 civics instruction is critical not only for understanding the judicial system, but also for understanding our representative form of government, and that our limited resources should be devoted to those pursuits.

JUDICIAL CAMPAIGN CONDUCT

1. The Code of Judicial Ethics should be amended to include the American Bar Association (ABA) Model Code of Judicial Conduct definition of "impartiality."

No.	Commentator	Full Comments	Commission Response
14.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree.	No response required.
15.	California Judges Association Hon. Mary E. Wiss, President	A number of the recommendations in the "Judicial Candidate Campaign Conduct" section of the Report call for amendments either to the Code of Judicial Ethics or to the Code's Commentary. For the most part, CJA believes these amendments are unnecessary and perhaps unwise. CJA is particularly concerned with the proposed addition of hortatory language to the Code. CJA believes that the Supreme Court's purposeful adoption of the mandatory form ("shall") in the Code provides clearer guidance to judges than the hortatory form ("should"), which can easily be misinterpreted and misapplied. Also, although a number of the recommendations contain sound content, CJA believes that they more appropriately belong in jurisprudential publications such as the David Rothman's *California Judicial Conduct Handbook* and/or election guides such as the CJA *Ethics in Judicial Elections* handbook. Finally, some of the suggested additions would not clarify or explain the canons to which they relate, creating a risk of confusion. CJA's comments on specific recommendations that call for amendments to the Code or Commentary are below (recommendations 1, 2, 3, 5, 6, 16, 17, 21, 29, 32) Disagree with recommendation 1, proposing that the Code define "impartiality." As this word has the same definition in every day parlance as it does in the world of judicial ethics, adding the definition to the Code would be superfluous and would invite speculation concerning its purpose.	The term "impartiality" appears throughout the Code of Judicial Ethics, and the terminology section of the code should contain a definition. The proposed definition reflects language used by the Supreme Court in *Republican Party of Minnesota v. White* and tracks the definition in the ABA's Model Code of Judicial Conduct.

Public Comments
RECOMMENDED PRACTICES FOR SAFEGUARDING JUDICIAL QUALITY, IMPARTIALITY AND ACCOUNTABILITY IN CALIFORNIA

1. The Code of Judicial Ethics should be amended to include the American Bar Association (ABA) Model Code of Judicial Conduct definition of "impartiality."

No.	Commentator	Full Comments	Commission Response
16.	Barbara Kauffman Attorney at Law San Rafael, California	Agree. I agree with the proposed definition, so long as any review of alleged bias or conflict of interest by the CJP, the courts, or pursuant to CCP 170.1 et seq., remains subject to the current objective standards set forth in CCP 170.1 et. seq. Whether or not a judge is impartial should never be determined by the judge in question. It must be determined by an out-of-county judge without ties to the challenged judge, pursuant to an objective standard (Would a person aware of the facts reasonably doubt the judge's ability to be impartial?).	No response required.
17.	Hon. Runston G. Maino Judge of the Superior Court of California, County of San Diego	Disagree	No response required.

2. The commentary to canon 4B of the Code of Judicial Ethics should be amended to encourage judges to take an active role in educating the public on the importance of an impartial judiciary.

No.	Commentator	Full Comments	Commission Response
18.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented to make sure that community outreach better educates the public about the judicial branch, increasing confidence in the judicial system.	No response required.

2. The commentary to canon 4B of the Code of Judicial Ethics should be amended to encourage judges to take an active role in educating the public on the importance of an impartial judiciary.

No.	Commentator	Full Comments	Commission Response
19.	Santa Clara County Bar Association Jil Dalesandro, President	Agree, if modified The Santa Clara County Bar Association recommends striking the words "take an active role in educating" and replace it with "educate" so that there is no modifier as to what kind of role is being encouraged. Each judge should determine the extent of his or her educational activities.	The commission agrees and has modified the report accordingly.
20.	California Judges Association Hon. Mary E. Wiss, President	Disagree with recommendations 2 and 3. These are of course desirable practices for judges to engage in, but including such hortatory language in the Commentary would not be helpful and would create confusion on the part of judges, the CJP, and the courts concerning the differences between required and recommended conduct.	"Encouraging" judges to do something is different than "requiring" it. This should not create confusion as to what is required and what is encouraged.
21.	Barbara Kauffman Attorney at Law San Rafael, California	Disagree. Individual judges should devote themselves to judging, not coerced public relations. My reasoning is based on my understanding that historically, when the Judicial Council has talked about "the importance of an impartial judiciary" it is talking about the importance of being free from oversight by the legislative and executive branch, or criticism by the public, rather than the importance of being free from outside political influence such as campaign contributions made to judges.	This recommendation is to include hortatory language, so it will not result in "coerced public relations." Standard 10.5(b) of the California Standards of Judicial Administration encourages judges to take an active part in increasing public understanding of the court system. "Importance of an impartial judiciary" includes freedom from outside political influence.
22.	Hon. Runston G. Maino Judge of the Superior Court of California, County of San Diego	Disagree	No response required.

3. The commentary to canon 5B of the Code of Judicial Ethics should be amended to encourage judicial candidates to discuss matters such as their qualifications for office and the importance of an impartial judiciary.

No.	Commentator	Full Comments	Commission Response
23.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented to make sure that: (1) judicial candidates are qualified, after evaluation by the JNE; (2) judicial candidates are not overly influenced by political organizations or political candidates; (3) large donors cannot influence a judicial campaign; and (4) community outreach better educates the public about the judicial branch, increasing confidence in the judicial system.	No response needed.
24.	Mr. David J. Pasternak Attorney, Los Angeles County	Agree if modified Suggest recommended commentaries to Canon 4B and Canon 5B of the Code of Judicial Ethics be changed from referring to "an impartial judiciary" to "fair and impartial courts." While lawyers and judges readily understand the meaning of "judicial independence," I have learned from my experience on the American Bar Association Standing Committee on Independence of the Judiciary that the public responds much more favorable to references to "fair and impartial courts." Because the suggested commentary is directed to judicial candidates, it would be wise to steer them in the appropriate direction toward the usage of the more favorable phrase of "fair and impartial courts." I do not believe this suggestion changes the gist of the Commission's recommendations at all.	The commission agrees with the suggested reference to "impartial courts" and has modified the report accordingly.
25.	California Judges Association Hon. Mary E. Wiss, President	Disagree. See comments under #2.	See response to comment #20.
26.	Barbara Kauffman Attorney at Law San Rafael, California	Disagree. I disagree with this recommendation with respect to discussions about "the importance of an impartial judiciary." See comment to #2 above.	See response to comment #21.

3. The commentary to canon 5B of the Code of Judicial Ethics should be amended to encourage judicial candidates to discuss matters such as their qualifications for office and the importance of an impartial judiciary.

No.	Commentator	Full Comments	Commission Response
		Individual judges should devote themselves to judging, not coerced public relations. I do think judges should be encouraged to engage in activities to improve the legal system and the administration of justice. The concern about this being interpreted as "encouraging judges to advocate for changes in the law" is entirely disingenuous. The CA Judicial Council already lobbies mercilessly and endlessly for changes in the law—usually related to expanded budgets and judicial perks, restricted oversight, and increased limits on the ability of lawyers and the public to criticize the judiciary. Candidates for judicial office should not be restricted to discussing their own qualifications. If their judge-opponents have documented flaws, they should have the ability to discuss them.	

4. Canon 5 of the Code of Judicial Ethics should be reexamined for consistency in its use of the terms "judge" and "candidate."

No.	Commentator	Full Comments	Commission Response
27.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree.	No response required.
28.	Barbara Kauffman Attorney at Law San Rafael, California	I disagree with Canon 5 of the Code of Judicial Ethics in general to the extent it allows campaign contributions by those appearing before judges, although this is inconsistent with Code of Civil Procedure section 170.1. The Judicial Council knows this. Justice at Stake (who has advised our Judicial	The issue of campaign contributions by those appearing before judges is addressed in recommendations # 36-40.

4. Canon 5 of the Code of Judicial Ethics should be reexamined for consistency in its use of the terms "judge" and "candidate."

No.	Commentator	Full Comments	Commission Response
		Council) has performed polls illustrating that 75% of the public, and at least 25% of judges, believe campaign contributions affect the outcome of judicial decisions. As former judge LaDoris Cordell has stated in Stanford Law School's videotaped discussion on judicial campaign contributions noted, it does not matter what the amount is—judges are aware of who gives them money and supports them, and who does not, and this can and does affect a judge's perspective.	

5. The Code of Judicial Ethics should be amended by adding new canon 3E(2), providing that a judge is disqualified if he or she, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that a reasonable person would believe commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

No.	Commentator	Full Comments	Commission Response
29.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree.	No response required.
30.	Hon. Barbara A. Kronlund Presiding Judge of the Juvenile Court Superior Court of California, County of San Joaquin	The language "that a reasonable person would believe commits the judge to reach a particular result" is vague. I have serious concerns that adding a new canon to the Code would set judges up for possible discipline, when this topic could more appropriately be included in an Opinion or Standard of Administration.	The Code of Judicial Ethics currently contains canons addressing disqualification (e.g., canon 3E), so it is an appropriate place for this disqualification provision. To avoid inconsistent standards, the commission decided to change the language to more closely track the language of Code of Civil Procedure section 170.1(a)(6)(A)(iii).

5. The Code of Judicial Ethics should be amended by adding new canon 3E(2), providing that a judge is disqualified if he or she, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that a reasonable person would believe commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

No.	Commentator	Full Comments	Commission Response
31.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	Disagree. This recommendation effectively prohibits any public comment by a judge at any time. How could it possibly be enforced and who will be appointed as the "comment police?" For example, a question such as "What is your position concerning marijuana and Prop. 215?" Answer: "I will support and enforce the laws on which the voters of this state have approved." Am I now disqualified from sitting on any case where medical marijuana is part of the case? For what length of time would I be disqualified? How would it be decided if a statement is such that a judge would be disqualified? Could you take a "political" statement made in court and use it in campaign advertising? Would not that cause politicalization of the courtroom? Rules should be easy to understand and enforce. Complex and vague rules should not be imposed on judges and bench officers. It will cause judges to constantly look over their shoulders trying to remember what may have been said on the campaign trail which may cause the judge trouble in the future.	The commission does not believe this language is vague. The proposed language is not intended to result in the disqualification of a judge who responds, "I will support and enforce the laws the voters of this state have approved."
32.	California Judges Association Hon. Mary E. Wiss, President	Disagree. This recommendation is superfluous. CCP Section 170.1(a)(6)(A)(iii), which provides that a judge is disqualified if "a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial," already would require disqualification in this circumstance. Redundant canons and statutes create the risk of conflicting interpretations by the courts and the CJP. If the purpose of this recommendation is to make Canon 3E(2) applicable to appellate justices, recommending amendment of CCP section 170.1(a)(6)(A)(iii) to include appellate justices would be a more appropriate solution.	To avoid inconsistent standards, the commission decided to change the language to more closely track the language of Code of Civil Procedure section 170.1(a)(6)(A)(iii). The commission believes it is appropriate to place this provision in the Code of Judicial Ethics. Even though there are disqualification provisions in section 170.1, canon 3E addresses the disqualification of both appellate justices (i.e., canons 3E(1), (3), (4) and (5)) and trial court judges (i.e., canons 3E(1) and

5. The Code of Judicial Ethics should be amended by adding new canon 3E(2), providing that a judge is disqualified if he or she, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that a reasonable person would believe commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

No.	Commentator	Full Comments	Commission Response
			(3)).
33.	Superior Court of California, County of Los Angeles	Disagree. This recommendation should not be adopted in its current form. Recommendation 5 is unnecessary. Canon 5B of the California Code of Judicial Ethics already bars "statements that commit the candidate with respect to cases . . . that could come before the courts . . . ." In addition, California Code of Civil Procedure section 170.1(a)(6)(A)(iii) already provides that a judge is disqualified when "[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial." We believe that the Commission's concerns about disqualification contained in this recommendation are adequately and sufficiently addressed by existing laws. Moreover, because the proposed new Canon 3E(2) uses different language from Canon 5B and C.C.P. § 170.1, we are concerned that it may cause confusion and, arguably, be interpreted to create a different standard. The new language provides that if a judge makes any "public statement" that a "reasonable person would believe commits the judge to reach a particular result" (even though the statement may be taken out of factual context and the judge may not believe he or she has committed to rule a particular way), disqualification may be required. That standard could be interpreted more broadly than Canon 5B and C.C.P. § 170.1 On page 13 of the report, the Commission states that it has proposed the new Canon 3E(2) to allow appellate justices to be subject to the existing laws. We believe that such a rationale can be more efficiently and clearly accomplished by sponsoring legislation to amend C.C.P. § 170.1 to include appellate justices within the provisions of subsection (a)(6)(A). This modest addition to statutory language would accomplish the stated goals of the recommendation without creating potential confusion regarding whether a	Code of Civil Procedure section 170.1(a)(6)(A)(iii) is a general provision, and this proposal is more specific. They do not conflict. See response above to comment #32. See response above to comment #32.

5. The Code of Judicial Ethics should be amended by adding new canon 3E(2), providing that a judge is disqualified if he or she, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that a reasonable person would believe commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

No.	Commentator	Full Comments	Commission Response
		new standard for disqualification has been created for trial judges. In addition to Recommendation 5, other of the Commissions' recommendations add hortatory language to the Code of Judicial Ethics. Doing so causes our court concern and we believe that the approach is undesirable. There was a deliberate decision to avoid using the term "should" in the Code and instead to use the term "shall." "Shall" is clearer than "should." "Shall" specifies exactly what conduct is mandated or proscribed. Similarly, we believe it is unwise to add definitions or commentary that do not explain or clarify the canon to which they relate.	The commission does not believe the hortatory language will be misconstrued as requiring judges to do something. In addition, the proposed language suggests use of the phrase "are encouraged to" rather than "should."
34.	Barbara Kauffman Attorney at Law San Rafael, California	Agree, if modified. The proposed language should be included in both the Code of Judicial Ethics, AND efforts should be made to include it in CCP section 170.1.	Because the Code of Judicial Ethics contains canons addressing disqualification, the commission believes it is sufficient to place this provision in that code.
35.	Hon. Runston G. Maino Judge of the Superior Court of California, County of San Diego	Disagree	No response required.

6. A definition of "commitment" that includes "pledges" and "promises" should be added to the Code of Judicial Ethics.

No.	Commentator	Full Comments	Commission Response
36.	Hon. Paul M. Marigonda	Agree.	No response needed.

6. A definition of "commitment" that includes "pledges" and "promises" should be added to the Code of Judicial Ethics.

No.	Commentator	Full Comments	Commission Response
	Judge of the Superior Court of California, County of Santa Cruz		
37.	California Judges Association Hon. Mary E. Wiss, President	Disagree. CJA agrees with the Supreme Court Advisory Committee on the Code of Judicial Ethics that adding this definition would promote speculation as to its meaning.	The Supreme Court Advisory Committee on the Code of Judicial Ethics has not evaluated this proposal. The proposal clarifies the meaning of canon 5B.
38.	Barbara Kauffman Attorney at Law San Rafael, California	I cannot agree or disagree unless the specific proposed language is specified.	The specific language has not yet been developed. It will be developed in the implementation process.
39.	Hon. Runston G. Maino Judge of the Superior Court of California, County of San Diego	Disagree.	No response required.

7. An unofficial statewide fair judicial elections committee should be established to educate candidates, the public, and the media about judicial elections; to mediate conflicts; and to issue public statements regarding campaign conduct in statewide and regional elections and in local elections where there is no local committee.

No.	Commentator	Full Comments	Commission Response
40.	Santa Clara County Bar Association Jil Dalesandro, President	Agree with recommendations 7, 8, and 9 if modified. The Santa Clara County Bar Association makes several suggestions regarding these recommendations. There should be an addition to one of these four recommendations, or a separate additional recommendation, that clarifies that a local oversight	There is no authority for restricting the type of advice given by the California

7. An unofficial statewide fair judicial elections committee should be established to educate candidates, the public, and the media about judicial elections; to mediate conflicts; and to issue public statements regarding campaign conduct in statewide and regional elections and in local elections where there is no local committee.

No.	Commentator	Full Comments	Commission Response
		committee should have exclusive responsibility for advice on campaign conduct. The FEPC is concerned that if a judicial candidate seeks advice from the state committee and/or the California Judges Association hotline for judicial candidates where a local campaign conduct code and a local oversight committee exists, the judicial candidate could be given inaccurate advice, rely on it, and be in violation of a local campaign rule. This suggestion could be part of Recommendation 14. The statewide campaign conduct committee should NOT be merged with the rapid response team as described in Recommendations 53 and 54. The objectives of these two bodies are very different and the approach of each should be different given the different objectives. A statewide campaign conduct committee would receive complaints of candidate misconduct, provide for responses from the respective candidates involved, abide to a formal hearing process and obey rigid procedures. These elements would be necessary to generate confidence in the work of the oversight committee, its ultimate decisions and to establish credibility for any public statements or actions taken by the committee. The oversight committee's procedures should be modeled after expedited administrative hearing procedures and processes. To accomplish that, Committee members should not be engaged in any other committee activities or charged with any other tasks. If they were, it would leave the oversight committee open to charges of potential bias, particularly where the other duty is defending judges and/or the judiciary who are attacked. To create, shield and preserve its credibility and integrity, the oversight committee must therefore be independent of any other views or activities. As a result of these different roles, the members of the campaign oversight and rapid response committees would need different skill sets and would need to maintain different perspectives on the issues brought before them. The campaign oversight committee's decisions must be viewed as impartial based on presentation of the "facts" to them. It would be	Judges Association (CJA) or the Supreme Court Committee on Judicial Ethics Opinions. If a candidate wishes to obtain advice from CJA or the Supreme Court Committee on Judicial Ethics Opinions, he or she should be free to do so. The commission has reconsidered the proposed merger of the recommended statewide conduct committee and the rapid response team and now believes they should not be merged. Therefore, this recommendation has been withdrawn.

7. An unofficial statewide fair judicial elections committee should be established to educate candidates, the public, and the media about judicial elections; to mediate conflicts; and to issue public statements regarding campaign conduct in statewide and regional elections and in local elections where there is no local committee.

No.	Commentator	Full Comments	Commission Response
		deliberative process where the campaign conduct rules are applied to those facts with committee's decision based on those "facts." The rapid response team, in contrast, would not need such a structured deliberative process. The views of the rapid response team could easily be viewed as subjective based on background and biases of members of the rapid response team, but that would likely enhance, and not hinder, its effectiveness. If, contrary to our recommendation, the two functions are merged, careful consideration should be given to the following issues: How to educate the public on the different processes used for each function -- campaign conduct oversight vs. responding to criticism of a judge or the judiciary -- to ensure that the public understands that a fair, impartial group and process took place in addressing candidate misconduct. If criticism of a judge or the judiciary arises during the course of a judicial campaign and it also involves allegations of candidate misconduct, clear delineation needs to be made between any public statements made with regard to either the criticism or candidate misconduct to ensure that the public statements have credibility. Ensure the individuals appointed to a merged committee have the skills needed for both functions.	
41.	Hon. Ariadne J. Symons Judge of the Superior Court of California, County of Santa Cruz	Disagree with recommendations 7, 28, 94 and 95. Requiring candidates for judicial election to go through a JNE process is ill conceived, unworkable and flatly undemocratic. The JNE process is closed and secretive. The election process is open and transparent. If a person has an objection to a candidate, they may make it openly and allow the electorate to decide what weight and significance to give to such an objection. The proposing committee is simply mistaken in thinking that the electorate is not sufficiently informed to make a good selection. It is	See also commission responses to comments #280 and #359 under recommendations #94 and #95.

7. An unofficial statewide fair judicial elections committee should be established to educate candidates, the public, and the media about judicial elections; to mediate conflicts; and to issue public statements regarding campaign conduct in statewide and regional elections and in local elections where there is no local committee.

No.	Commentator	Full Comments	Commission Response
		shockingly arrogant to propose that the JNE process is the only way to ensure the selection of qualified judges. It is the obligation of the candidate, as well as the candidate's supporters and detractors, to inform the voter precisely so they can make an informed choice. If detractors are not willing to make their criticisms public, which they are not required to do in the JNE process, perhaps that reflects upon the quality or validity of their criticisms. No other governmental office is subjected to such a requirement. There is nothing that suggests the electorate is sufficiently intelligent to be entrusted with the choice of governor or assemblyperson, but too ignorant to make a similar choice for a judicial office. The proposal to limit the seeking of endorsements is equally ill conceived. A candidate for elected office simply cannot run a campaign without seeking endorsements. That is the reality of the electoral process. Many candidates have endorsements from all political parties and a variety of interest groups. There is nothing inherently wrong with that. Indeed, a healthy range of endorsements may in fact demonstrate that a candidate will not be beholden to any particular group. Other judicial canons will prevent a judicial officer from presiding in any matter in which he or she may be perceived to be unfair. Whatever one thinks about the JNE process verses the electoral process there are two separate venues for judicial office: appointment and election. The proposals which would mingle the two should be defeated. As long as judges may be elected, they must be allowed the same opportunity as every other candidate for elected office to reach the voters. These specific proposals by the Commission for Impartial Courts should NOT be implemented.	The proposal is limited to prohibiting the seeking or using of endorsements from political organizations. The commission believes such a prohibition will help depoliticize judicial elections.

7. An unofficial statewide fair judicial elections committee should be established to educate candidates, the public, and the media about judicial elections; to mediate conflicts; and to issue public statements regarding campaign conduct in statewide and regional elections and in local elections where there is no local committee.

No.	Commentator	Full Comments	Commission Response
42.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	Disagree. Who chooses these "unofficial statewide fair judicial elections committees?" Why should outsiders meddle in local elections? Whenever outsiders meddle in the local election process, the voter reacts, and it is never pretty. The effect of this recommendation is to lower the public's regard for the judiciary.	The question of who appoints the members will be considered in the implementation process.
43.	California Judges Association Hon. Mary E. Wiss, President	Suggests modification to recommendations 7 through 10. These recommendations propose the creation of state and local "Fair Judicial Elections Committees." CJA, of course, supports the concept of encouraging fairness in judicial elections. However, we are concerned that the Report's recommendations are too broad and undefined. For example, the Report provides no guidance concerning how (or by whom) the members of such committees would be selected, how they would be funded, what due process protections would be included, and how objectivity would be protected. As an alternative, CJA asks that CIC consider a 2008 CJA publication entitled *Judicial Election Campaign Code of Ethics and Fair Election Practices Commission Procedures* authored by Justice Maria Rivera**,** a copy of which is attached hereto. The publication has been distributed to bar associations throughout the state. CJA believes the wide distribution of this document would effectively and fairly implement the CIC's recommendations concerning fair elections and CJA would welcome CIC's encouragement of such distribution in its final Report.	These issues are more applicable to the implementation process and will be considered during the development of an implementation plan. The commission declines to include this CJA publication as an appendix to the report.
44.	Superior Court of California, County of Los Angeles	Disagree with recommendations 7 through 10. We cannot support these recommendations until a number of questions are answered. The Report proposes the creation of state and local "fair judicial elections	

7. An unofficial statewide fair judicial elections committee should be established to educate candidates, the public, and the media about judicial elections; to mediate conflicts; and to issue public statements regarding campaign conduct in statewide and regional elections and in local elections where there is no local committee.

No.	Commentator	Full Comments	Commission Response
		committees." These committees would, among other things, be empowered publicly to address inappropriate conduct and "issue public statements regarding campaign conduct." Given the committees' title and purported function, their pronouncements would be expected to carry great weight in any election. In fact, the committee's public criticism of a candidate might be outcome-determinative. Given the considerable power and influence that will be vested in these local committees: • Who will select committee members? Will members be accountable to anyone? • How can the public and the judiciary be confident that its members are qualified, fair and objective? • Given the speed with which issues will arise and the need for timely determinations by these committees, what due process protections will be afforded the candidates? • Although the Santa Clara County Bar has such a committee, it is not clear what the results have been. • Would the Committee have a budget? Absent funding, it is difficult to know the measure of effort that could be ensured from its members. If funded, what is the source of that money? If this is a tax- supported committee, then is it truly "unofficial?" Or, if the private sector is the funding source, will the public consider these bodies truly independent? • Why are these committees proposed only for judicial races? If the concept is sound, why not propose these committees for all elections? Without additional information and further study, we cannot endorse going forward with these recommendations on a state-wide basis. And,	These questions will be considered in the implementation process. The commission's charge does not include making recommendations regarding nonjudicial elections. Regarding the suggestion of a pilot

7. An unofficial statewide fair judicial elections committee should be established to educate candidates, the public, and the media about judicial elections; to mediate conflicts; and to issue public statements regarding campaign conduct in statewide and regional elections and in local elections where there is no local committee.

No.	Commentator	Full Comments	Commission Response
		assuming that the Commission is able to provide further answers to these questions, the Los Angeles Superior Court would still propose that a pilot project in a relatively small number of counties first be conducted before forming these committees throughout the state.	project, the statewide committee would not be establishing local committees. That would be done locally. Thus, the statewide committee cannot dictate when or where local committees are established for purposes of facilitating a pilot project.
45.	Barbara Kauffman Attorney at Law San Rafael, California	Disagree. Only accountable, officially regulated entities should be "educating" judicial candidates.	The commission believes unofficial committees should be capable of and empowered to educate candidates.

8. The formation of unofficial local committees should be encouraged, and resources should be provided to aid in their development.

No.	Commentator	Full Comments	Commission Response
46.	Santa Clara County Bar Association Jil Dalesandro, President	Agree if modified. See Recommendation 7.	See response to comment #40.
47.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	Disagree. At a time when the courts are being asked to close one day or more per month and staff are being laid off around the state, what resources are available for a suggestion like this? Is it suggested that resources be allocated to support particular candidates for judicial election? This is certainly not the role of the court structure.	Questions regarding funding and the appointment of members are more applicable to the implementation process and will be considered during the development of an implementation plan.

8. The formation of unofficial local committees should be encouraged, and resources should be provided to aid in their development.

No.	Commentator	Full Comments	Commission Response
		Who appoints this committee? Why should a committee be established by the legal elites to influence which candidate is elected? Is it not the individual candidate's responsibility to inform the public as to his or her qualifications? There is nothing more anti-democratic to having outsiders meddle in the local election process with public or quasi-public money and, at the same time, restrict the involvement of the local electorate and interests as is suggested by other recommendations in this report.	
48.	Superior Court of California, County of Los Angeles	Disagree with recommendations 7 through 10. See comments under 7.	See response to comment #44.
49.	Barbara Kauffman Attorney at Law San Rafael, California	Disagree. Only accountable, officially regulated entities should be "educating" judicial candidates.	See response to comment #45.

9. A model campaign conduct code for use by the state and local oversight committees should be developed.

No.	Commentator	Full Comments	Commission Response
50.	Santa Clara County Bar Association Jil Dalesandro, President	Agree if modified. See Recommendation 7.	See response to comment #40.
51.	Superior Court of California, County of Los Angeles	Disagree with recommendations 7 through 10. See comments under 7.	See response to comment #44.
52.	Barbara Kauffman Attorney at Law San Rafael, California	Agree.	No response required.

10. Consideration should be given to merging the recommended unofficial statewide campaign conduct committee with the rapid response team recommended below in recommendations 53 and 54.

No.	Commentator	Full Comments	Commission Response
53.	Santa Clara County Bar Association Jil Dalesandro, President	Disagree. See comments under 7.	The commission has reconsidered the proposed merger of the recommended statewide conduct committee and the rapid response team and now believes they should not be merged. Therefore, this recommendation has been withdrawn.
54.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	Disagree with recommendations 10, 53 and 54. What is really proposed with these recommendations? It almost appears that a statewide "campaign committee or truth squad" is proposed. Again, who appoints these committees? Why should the AOC's politicalization of the court be better than the involvement of the respective political parties and individual supporters and voters? In whatever manner these committees, or truth squads, are formed, it will inevitability have a bias in one direction or the other. This involvement will not strengthen the reputation of the judiciary but will involve the bench in the political process and demonstrate political bias which will damage the reputation of the court.	Questions regarding appointment of members will be addressed in the implementation process. See response to comment #53.
55.	Superior Court of California, County of Los Angeles	Disagree with recommendations 7 through 10. See comments under 7.	See response to comments #44 and #53.
56.	Barbara Kauffman Attorney at Law San Rafael, California	Disagree. I strongly disagree. Monitoring of campaign conduct is one thing (and if implemented it should extend to Supreme Court retention elections as well). Encouraging the use of unofficial "teams" to respond on behalf of a judge who has been criticized is quite another. This is already being encouraged.	See response to comment #53 above.

10. Consideration should be given to merging the recommended unofficial statewide campaign conduct committee with the rapid response team recommended below in recommendations 53 and 54.

No.	Commentator	Full Comments	Commission Response
		The bench relies on top members of the bar to defend the bench. In Marin County, this has been a disaster. In one case, Judge Lynn Duryee was criticized in the newspaper in connection with a case wherein she allowed a father to move to Hawaii with a little girl, although the case had not yet gone to trial, and there were allegations of domestic violence and abuse. An attorney for the father (Renee Chernus) jumped in and solicited the Marin County Bar Association for a letter defending the judge. The MCBA issued such a letter defending Judge Duryee, sent out to hundreds of members of the Marin County Bar Association, based on information from a five-minute call with Renee Chernus—the father's lawyer!! A couple of weeks later, Renee's husband was selected by Marin bench, from a field of 60, to serve as Marin Court Commissioner. The bench asking the bar to defend its members creates a conflict of interest, and an appearance of "you scratch my back, I will scratch yours." If the bench wants to defend itself, there should be an official committee, subject to rules of conduct, that is accountable to the bench, bar, government and public for what it says. Judges are often criticized for good cause. Instead of taking measures to monitor and improve the behavior of the judiciary, the Judicial Council and Judiciary are recommending measures to address, after the fact, criticism of the judiciary. The Judicial Council and judiciary should be spending less time figuring out how to defend wayward judges against criticism and election challenges, and more time and money on a) uniform mandatory statewide training of judges; and b) implementation of Judicial Performance Evaluations, which have been recommended by the American Bar Association, and experts such as Bert Brandenburg, of Justice at Stake. JPE committees should be formed consistent with the Colorado Model, and evaluations should be solicited from those having contact with judges (lawyers, litigants, clerks, jurors, experts, etc.). The results of the evaluations could be made available prior to each judicial election, letting voters know	The commission is concerned about First Amendment issues associated with creation of an "official" committee.

10. Consideration should be given to merging the recommended unofficial statewide campaign conduct committee with the rapid response team recommended below in recommendations 53 and 54.

No.	Commentator	Full Comments	Commission Response
		whether that judge has been approved as following the Code of Judicial Ethics, and exhibiting appropriate judicial demeanor. It makes perfect sense that, armed with such evaluations, an official committee can in good conscious defend a judge by pointing to the evaluations.	

11. The Code of Judicial Ethics should be amended to require all judicial candidates, including incumbent judges, to complete a mandatory training program on ethical campaign conduct.

No.	Commentator	Full Comments	Commission Response
57.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented to make sure that: (1) judicial candidates are qualified, after evaluation by the JNE; (2) judicial candidates are not overly influenced by political organizations or political candidates; and (3) large donors cannot influence a judicial campaign.	No response required.
58.	Hon. Barbara A. Kronlund Presiding Judge of the Juvenile Court Superior Court of California, County of San Joaquin	Agree, if modified. As opposed to making election training "mandatory", it should be couched in terms of "expected" training to be consistent with our current non-mandatory but expected education requirements. This would be less objectionable and provide consistency within the judicial education realm.	The commission believes training should be mandatory for trial court judges and appellate justices, but only if their name appears on the ballot. (This would include contested trial court elections and all appellate court retention elections.)
59	Santa Clara County Bar Association	Disagree The Santa Clara County Bar Association is unequivocally opposed to	The commission believes appellate

11. The Code of Judicial Ethics should be amended to require all judicial candidates, including incumbent judges, to complete a mandatory training program on ethical campaign conduct.

No.	Commentator	Full Comments	Commission Response
	Jil Dalesandro, President	having mandatory ethics training for judges in uncontested retention elections. The FEPC recommends that the training be mandatory only if there is a contested election. The training required of all judges could include ethics training as part of the overall curriculum to ensure that judges in uncontested retention elections are exposed to the ethical requirements.	justices should be required to take training.
60.	California Judges Association Hon. Mary E. Wiss, President	Disagree. CJA strongly supports ethics training for judges. Historically CJA has been the principle provider of ethics education and advice for all judicial officers in California. However, we oppose Recommendation 11 because it would subject sitting judges to CJP discipline if they failed to comply with the requirement but would provide no sanction for an attorney candidate who refuses to comply and subsequently loses the election, as the CJP would have no jurisdiction over the candidate. CJA provides ethics education for judicial candidates in a handbook entitled *Ethics in Judicial Elections* a copy of which is attached hereto which is provided free to all judges in contested elections. In the past, CJA also sponsored classes for candidates that included an ethics component. However, the expense of providing these classes for the relatively small number of statewide candidates combined with the need to reserve facilities far in advance of the filing date without knowing the number of contested races have made the classes impractical. In CJA's experience, furnishing a comprehensive summary of the law governing judicial elections, including ethics, and making ethics experts available for consultation meet the need of judicial candidates for ethics education.	Rule 1-700 of the Rules of Professional Conduct requires an attorney candidate for judicial office to comply with canon 5 of the Code of Judicial Ethics. Failure to comply would subject the attorney to discipline by the State Bar. The commission does not believe providing judicial candidates with a comprehensive summary of the law governing judicial elections and making ethics experts available for consultation is as effective as an official training program.
61.	Superior Court of California, County of Los Angeles	Disagree. This recommendation should not be adopted in its current form. While our court supports voluntary training on ethical campaign conduct, the Commission proposes "mandatory" training. If attendance were	Rule 1-700 of the Rules of Professional Conduct requires an attorney candidate for judicial office to comply with canon 5 of the Code of Judicial Ethics. Failure

11. The Code of Judicial Ethics should be amended to require all judicial candidates, including incumbent judges, to complete a mandatory training program on ethical campaign conduct.

No.	Commentator	Full Comments	Commission Response
		mandatory and if a candidate failed to complete the program, what sanctions would be imposed? As written, there is no enforcement mechanism for challengers. Attorney candidates who fail to comply presumably will not be barred from placing their names on the ballot. The CJP cannot discipline an attorney who loses an election. As presently written, the requirement is unfair and treats incumbent judges more harshly than their opponents. Alternatively, if the training is to be a prerequisite for judicial office, then that requirement should be imposed by statute and not as part of the Code of Judicial Ethics.	to comply would subject the attorney to discipline by the State Bar. Article VI, section 18(m) of the California Constitution provides that the Code of Judicial Ethics shall contain rules for judicial candidates in the conduct of their campaigns. Therefore, the commission believes this requirement belongs in the Code of Judicial Ethics.
62.	Barbara Kauffman Attorney at Law San Rafael, California	Agree with recommendations 11 through 15. However, content of the campaign conduct guidelines should be open for comment.	Whether guidelines are open for public comment will be addressed in the implementation process.
63.	Hon. Runston G. Maino Judge of the Superior Court of California, County of San Diego	Disagree.	No response required.

12. Judicial questionnaires should be included as a component of candidate training.

No.	Commentator	Full Comments	Commission Response
64.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented to make sure that: (1) judicial candidates are qualified, after evaluation by the JNE; (2) judicial candidates are not overly influenced by political organizations or political	No response required.

12. Judicial questionnaires should be included as a component of candidate training.

No.	Commentator	Full Comments	Commission Response
		candidates; and (3) large donors cannot influence a judicial campaign.	
65.	Barbara Kauffman Attorney at Law San Rafael, California	Agree.	No response required.

13. Candidate Web sites should be included as a component of candidate training.

No.	Commentator	Full Comments	Commission Response
66.	California Judges Association Hon. Mary E. Wiss, President	CJA believes the CIC should recommend the inclusion of judicial candidates' website information in the sample ballots distributed to voters. Ballot statements have become very expensive, especially in the larger counties. Including information about a candidate's website would give each candidate a free opportunity to communicate important information to voters without reliance on mailers from political organizations or special interest groups, and would reduce the need for campaign financing.	The commission generally agrees with this comment and believes that providing more sources of information to voters—especially in judicial elections—is highly desirable. However, further study should be done to determine reasonable parameters for what could or should belong on a Web site cited in a voter pamphlet. See also discussion under new recommendation #44.
67.	Barbara Kauffman Attorney at Law San Rafael, California	Agree.	No response required.

14. Both the California Judges Association's Judicial Ethics Hotline and the new Supreme Court Committee on Judicial Ethics Opinions should be publicized as resources that sitting judges and attorney candidates can use to obtain advice on ethical campaign conduct.

No.	Commentator	Full Comments	Commission Response
68.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree.	No response required..
69.	Santa Clara County Bar Association Jil Dalesandro, President	Agree if modified. See Recommendation 7.	See response to comment #40 above.
70.	Barbara Kauffman Attorney at Law San Rafael, California	Agree.	No response required.

15. Collaboration among the Administrative Office of the Courts, the State Bar, the California Judges Association, and the National Center for State Courts should be recommended to develop brochures to educate judicial candidates.

No.	Commentator	Full Comments	Commission Response
71.	Barbara Kauffman Attorney at Law San Rafael, California	Agree.	No response required.

16. The sentence "This canon does not prohibit a judge from responding to allegations concerning the judge's conduct in a proceeding that is not pending or impending in any court" should be added to the commentary following canon 3B(9) of the Code of Judicial Ethics, but the prohibition against public comment on pending cases should not be extended to attorney candidates for judicial office.

No.	Commentator	Full Comments	Commission Response

16. The sentence "This canon does not prohibit a judge from responding to allegations concerning the judge's conduct in a proceeding that is not pending or impending in any court" should be added to the commentary following canon 3B(9) of the Code of Judicial Ethics, but the prohibition against public comment on pending cases should not be extended to attorney candidates for judicial office.

No.	Commentator	Full Comments	Commission Response
72.	Santa Clara County Bar Association Jil Dalesandro, President	Disagree The Santa Clara County Bar Association suggests that the canon regarding comments on pending cases applicable to judges in an election also apply to attorney candidates. This could be clarified in Canon 3.B., since Canon 3 is applicable to all candidates for judicial office pursuant to Canon 6.E. Or, it could be included as commentary in the canon related to disqualification since an attorney candidate who comments on a pending case and is elected would be subject to the same disqualification rules as a judge candidate who commented on a pending matter. In the alternative, the FEPC suggests that the following sentiment expressed in Recommendation 16 also be added to the comment accompanying Canon 3.B(6): "Even though the prohibition against public comment on pending cases is not mandatory for attorney candidates, to avoid public debate on pending matters that could interfere with fair hearing procedures or subject a judge to calculated, groundless attacks to which he or she could not respond, attorney candidates are strongly encouraged to follow the same rule as judicial candidates regarding public comment on pending cases."	The commission believes there are First Amendment issues associated with imposing this prohibition on attorney candidates or encouraging attorney candidates to comply.
73.	California Judges Association Hon. Mary E. Wiss, President	Undecided on recommendations 16 and 17. There are two conflicting analyses regarding Recommendations 16 and 17. One view is that the additional language to the Commentary to Canon 3B(9) will clarify that a judge is permitted to discuss a case when it is no longer pending in any court, and will also provide guidance regarding the permissible responses to attacks on pending cases. A contrary view is that the amendments proposed in these two recommendations are unnecessary and superfluous and are covered by existing rules.	This is a clarification.

16. The sentence "This canon does not prohibit a judge from responding to allegations concerning the judge's conduct in a proceeding that is not pending or impending in any court" should be added to the commentary following canon 3B(9) of the Code of Judicial Ethics, but the prohibition against public comment on pending cases should not be extended to attorney candidates for judicial office.

No.	Commentator	Full Comments	Commission Response
74.	Barbara Kauffman Attorney at Law San Rafael, California	Disagree. The ability to talk about a case after it is no longer "pending or impending" is already covered in the rule.	This is a clarification.

17. The commentary to canon 3B(9) of the Code of Judicial Ethics should be amended to provide guidance to judges on acceptable conduct in responding to attacks on rulings in pending cases.

No.	Commentator	Full Comments	Commission Response
75.	California Judges Association Hon. Mary E. Wiss, President	Undecided on recommendations 16 and 17. See comments under 16.	See response to comment #73.
76.	Barbara Kauffman Attorney at Law San Rafael, California	Disagree. I strongly disagree. In Marin County, we already have judges who shut litigants and lawyers up when they are trying to delve into or comment upon inappropriate judicial behavior, or matters that are prejudicial to the party the judge is favoring. Recently, one judge allowed a party to go and on, attacking the other party, notwithstanding multiple objections—and then refused to allow the other party to refute what had been said. This creates a very interesting and one-sided record. Allowing the use of transcripts so judges can "defend themselves" will encourage this practice, and also encourage judges to actively work to create a favorable transcript, for example, by asking questions, or inserting objections where counsel for one party fails to adequately do so. Yes, this happens in Marin County.	The proposed language clarifies actions that judges are already permitted to take. However, to avoid encouraging judges to make inappropriate comments in response to an attack, the commission decided to delete the words "quoting from" from the proposed amendment to the commentary.

18. Courts should work with local county bar associations to create independent standing committees that will respond to inaccurate or unfounded attacks on judges, judicial decisions, and the judicial system.

No.	Commentator	Full Comments	Commission Response
77.	Hon. Barbara A. Kronlund Presiding Judge of the Juvenile Court Superior Court of California, County of San Joaquin	Agree, if modified. This recommendation has some problems. It states that Courts should work with county Bar Associations to create independent standing committees to respond to judicial attacks, and says the "steering committee agreed that it would not violate the canon for a judge to file a confidential complaint with such a voluntary standing committee or otherwise to alert such a committee to the fact that someone is attacking a ruling in a pending matter". This last language bothers me because I could see this as an improper ex parte communication on a pending matter, and I could see it later be used by the CJP to illustrate the judge's embroilment over the case, attorney, or a number of things. How is this complaint filed by the judge "confidential"? Who guarantees confidentiality and how?	Upon reconsideration, the commission thinks the recommendation should be: “Local county bar associations should consider creating independent standing committees that will respond to inaccurate or unfounded attacks on judges, judicial decisions, and the judicial system.” This would avoid any court involvement in the process.
78.	Barbara Kauffman Attorney at Law San Rafael, California	Disagree. See comment under 10.	See response to comment #53

19. The California Judges Association’s Response to Criticism Team and its network of contacts should be publicized.

No.	Commentator	Full Comments	Commission Response
79.	Barbara Kauffman Attorney at Law San Rafael, California	Disagree. For the reasons set forth in 10 and 18, judges should NOT be soliciting lawyers to defend them. There should be an official committee, accountable to the public, the legislature, the bench and the bar, for statements it makes	The commission recommends adoption of a model for responding to unfair criticism and creation of a leadership group to oversee the response plan. (See

19. The California Judges Association's Response to Criticism Team and its network of contacts should be publicized.

No.	Commentator	Full Comments	Commission Response
		in defense of judges.	recommendations #53 and #54.) The details about this leadership group and model, e.g., whether there will be an "official" committee, will be addressed in the implementation process. In the meantime, the commission believes the existing Response to Criticism Team sponsored by the CJA should be publicized.

20. A model letter and a model questionnaire that candidates can use in lieu of responding to an interest group questionnaire should be developed.

No.	Commentator	Full Comments	Commission Response
80.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	Disagree. For many years the Canons have prohibited comment on pending cases or matters which might come before the court. Following the Judicial Canons provides the answer on how to respond to interest groups. Sending interest groups a form letter or questionnaire will only make the problem of dealing with the interest groups worse. Vanilla responses will inflame the fringes of the special interests with demands to clarify the answers. No response is better than a bland response. Simply letting the interest groups know the candidate's general judicial philosophy is usually enough to educate the group as to what kind of judge an individual will turn out to be. Any group that demands a litmus test on an issue is more interested in disqualifying a judge than finding a like-minded candidate.	The commission believes a model response and questionnaire would educate interest groups about what types of information judicial candidates should offer to voters. This recommendation is now a part of recommendation #11, which concerns mandatory ethics training for judicial candidates.

21. Commentary to the Code of Judicial Ethics should be amended to provide guidance to judicial candidates on handling questionnaires.

No.	Commentator	Full Comments	Commission Response
81.	Santa Clara County Bar Association Jil Dalesandro, President	Agree with recommendation, if modified. The Santa Clara County Bar Association suggests, in addition to the guidance on judicial questionnaires in Recommendation 21, that the ramifications of certain responses be clearly set forth—disqualification from certain matters once on the bench—if the responses could be considered pledges, promises, or commitments to perform adjudicative duties in a certain manner.	Upon reconsideration, the commission decided to withdraw this recommendation because the Code of Judicial Ethics is not an appropriate place for a discussion about handling questionnaires. Guidance on this topic would be more appropriate in a treatise on judicial election campaign practices or the CJA's *Ethics in Judicial Elections* handbook.
82.	California Judges Association Hon. Mary E. Wiss, President	Disagree. Although CJA agrees that guidance on this topic would be helpful to judges, it more properly belongs in election guides such as the CJA handbook *Ethics in Judicial Elections*, not in the Code of Ethics or its Commentary.	See response to comment #81 above.
83.	Hon. Runston G. Maino Judge of the Superior Court of California, County of San Diego	Disagree.	No response required.

25. An amendment to Government Code section 84305.5 should be sponsored to apply to organizations that support or oppose candidates.

No.	Commentator	Full Comments	Commission Response
84.	Hon. Barbara A. Kronlund	Agree, if modified.	

25. An amendment to Government Code section 84305.5 should be sponsored to apply to organizations that support or oppose candidates.

No.	Commentator	Full Comments	Commission Response
	Presiding Judge of the Juvenile Court Superior Court of California, County of San Joaquin	If CIC is seeking to have Gov. Code 84305.5(a)(2) amended, I think there should be an amendment that if a candidate specifically objects to being included in a slate mailer, then the candidate may not be so included. Your opponent can "set you up" to be on a controversial slate mailer, regarding abortion or gun control/rights, and this could have serious consequences for you as a candidate.	This suggested modification may raise constitutional issues.
85.	Los Angeles County Democratic Party Eric C. Bauman, Chair	Disagree. See also general comments and comments regarding recommendations 28, 41, 43 and 44. Recommendation #25, especially as it relates to political party organizations, is fatally flawed. It would require all organizations that endorse multiple candidates to use the statutory disclaimers prescribed for paid slate mailer organizations and primarily formed ballot measure committees. As an initial matter, this recommendation affects disclaimers for candidates for offices other than judicial offices. As such it is outside the scope of recommendations that LACDP feels are appropriate for the Judicial Council to adopt. Regulation of non-judicial candidates' campaigns and efforts on behalf of such candidates are political questions for the Legislature and Governor (or the People through the initiative process), not the Judicial Council. Accordingly this recommendation should be omitted from any final list of recommendations for this reason alone. However, even if the Recommendation were limited to judicial candidates, it would remain fundamentally flawed at least insofar as it applies to political party organizations. Disclaimers are a form of government mandated—or so-called "forced"—speech. As such, they should be narrowly tailored to serve a compelling governmental interest. *Wooley v. Maynard*, (1977) 430 U.S. 705. Particularly when what is at issue is core political speech, if an inaccurate impression is given by a speaker's communication, that false or misleading impression should be countered by the speech of other participants in the debate, not government mandated communications. LACDP does not believe there has been a convincing demonstration that the	This recommendation was intended to apply only to judicial candidates. The commission does not intend to prohibit the inclusion of judges on slate mailers if the judges do not consent. The commission believes the existing statute should apply to organizations promoting candidates as well as those promoting ballot measures.

25. An amendment to Government Code section 84305.5 should be sponsored to apply to organizations that support or oppose candidates.

No.	Commentator	Full Comments	Commission Response
		judicial candidate-related activities of organizations other than paid slate mailer organizations give rise to concerns warranting such government mandated speech. Moreover, the disclaimer requirements of Government Code section 84305.5 are false and misleading as they apply to political party organizations, such as the LACDP and its sister Democratic, Republican, and other political party organizations. Thus, Government Code section 84305.5 requires slate mail organizations to disclose that they are not party organizations and that appearance of a candidate thereupon does not imply endorsement of anything else in the mailer. However, political party committees, such as the LACDP, are political party organizations and, unlike participants on paid slate mailers, the candidates featured on political party organizations' multiple candidate slates have been vetted by the party organization to determine that they exhibit characteristics that party believes warrant their election, including the espousing of values which are consistent with the values of the political party organization.	

28. Judicial candidates should be prohibited from seeking or using endorsements from political organizations.

No.	Commentator	Full Comments	Commission Response
86.	William Mathews San Diego County government	Agree. Please put an end to political endorsements for judicial candidates. Election of judges should not be political folly – I have seen elections of judges far less qualified than their opponents due exclusively to their law enforcement endorsements. The result of all this is a currently lopsided judiciary in favor of former career prosecutors who, ironically, have never	No response required.

28. Judicial candidates should be prohibited from seeking or using endorsements from political organizations.

No.	Commentator	Full Comments	Commission Response
		represented an actual client in their entire careers.	
87.	Hon. Richard M. Mosk Associate Justice Court of Appeal, Second Appellate District, Los Angeles	Disagree. Quite apart from the constitutional and practical issues involved in banning judicial candidates from seeking support from partisan groups, how does one define a "partisan" group? Are pro and anti abortion or pro and anti gay rights groups "partisan"? If the official organ of a major party opposes the retention of all justices from the other party, those justices are helpless unless they can at least have their own party support the retention of all justices. In the real world, partisan groups do not necessarily act upon a solicitation of support. If a party does support or oppose a candidate, the candidate opposed or not supported is left at a severe disadvantage. Appellate justices often have faced the problem of unsolicited opposition of one group or another. For judges, especially appellate court justices, to obtain the support of groups in the community is worthwhile because they are not usually known. Appellate court justices receive a 30-45% "no" vote no matter what, so any opposition or support can be critical.	The commission believes this recommendation will help depoliticize judicial elections and that it is arguably constitutional. Upon reconsideration, the commission decided to reference the definition of "political organization" in the terminology section of the Code of Judicial Ethics.
88.	Ed Beall Watsonville	Agree. We often read in the newspapers a description of a court as being comprised of some number of Democrats and some number of Republicans. As long as judicial candidates are allowed to be endorsed by and to accept endorsements from the parties, news reporters have a sound basis for identifying judges by party. This supports the impression by the public that the courts are partisan, not non-partisan. If judicial candidates were required to proactively reject all endorsements by political parties it would be much more difficult for news reporters to characterize judges as partisans.	No response required

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No.	Commentator	Full Comments	Commission Response
89.	Hon. William W. Bedsworth Associate Justice Court of Appeal, Fourth Appellate District, Santa Ana	Agree. I want to express my wholehearted and enthusiastic endorsement of your provision to prohibit candidates for judicial office from seeking or using endorsements from political organizations. I ran for the Superior Court in 1986 (I was a prosecutor; the seat was empty), and then for re-election in 1992 (unopposed), and I was retained in my present seat in 1998. While all three elections raised problems of the type that would not occur under your proposal, it was the first that convinced me of its absolute necessity. Judicial independence is a phantasm if political party endorsement is allowed. The parties have plenty of clout without endorsement (I was not allowed to attend meetings of the party to which I did not belong in 1986, at which my opponents gathered considerable strength, and access to "the party faithful" as campaign workers is a huge advantage; neither requires endorsement), and allowing a candidate to advertise endorsement by the dominant political party in a county is tantamount to allowing that party to choose the judges in many places. At the very least it will exclude (I had written "discourage," but no one who thinks that is a strong enough verb is truly familiar with low profile elections) qualified candidates who know that in a low-profile election, party affiliation will be enough for many voters, and that few will choose to go beyond that to attempt critical personal judgments about qualifications. Equally important, the parties have very little interest in getting the most qualified judges. Their interest is in getting judges whose philosophy agrees with theirs. That is, of course, true with regard to most organizations that will choose to endorse in judicial races—from religious groups to insurance companies to teacher unions to single-issue lobbies. But none of those have the 800-pound-gorilla power of the political parties.	No response required.
90.	Hon. Ariadne J. Symons Judge of the Superior Court of California, County of Santa	Disagree with recommendations 7, 28, 94, and 95. See comments under 7.	See responses to comments #41, #280, and #359.

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No.	Commentator	Full Comments	Commission Response
	Cruz		
91.	Los Angeles County Democratic Party Eric C. Bauman, Chair	Disagree. See also general comments and comments regarding recommendations 25, 41, 43 and 44. This is the most troubling of the Commission's proposed recommendations. It would prohibit judicial candidates from seeking or using endorsements from political organizations. Political endorsements, especially political party endorsements, have both an associational element and a communicative element. Candidates communicate much about themselves and their values through identification of themselves and their candidacy with a political party. Voters learn much about a candidate's core belief system when a political party endorses that candidate. The United States Supreme Court has only just recently reiterated that precluding a candidate's communications on issues of public importance serves no legitimate government interest and is inconsistent with core First Amendment values. *Republican Party of Minnesota v. White*, (2002) 536 U.S. 765. For this reason, precluding candidates from seeking and using endorsements—particularly political party endorsements—is inconsistent with core constitutional values vital to the survival of our democracy. Moreover, First Amendment considerations aside, by interfering with the communication of valuable information to voters, this recommendation interferes with self-governance and, as a result, is a very poor policy choice. In our judicial election system, California voters are expected to be informed participants in the selection and retention of judicial officers. The best way to ensure that voters are informed is to invest everyone with a stake in the system with the ability to learn and communicate information about the candidates, their life and legal experience, demeanor, integrity, judicial philosophy, and performance under pressure. Formal endorsement procedures allow groups to learn and share information about candidates that otherwise might not be readily available to the public. In contrast, a rule precluding candidates from seeking an endorsement would inhibit groups	See response to comments #85 and #87 above.

28. Judicial candidates should be prohibited from seeking or using endorsements from political organizations.

No.	Commentator	Full Comments	Commission Response
		from raising issues about candidates that come to light only because there was a thorough vetting of the candidates through an endorsement process—particularly an interactive endorsement process.	
92.	Hon. Burt Pines Judge of the Superior Court of California, County of Los Angeles	Disagree. I assisted in the development of the comments you received from the Los Angeles Superior Court and I fully support those comments. As you will note from the comments, our Court was divided on Recommendation 28 and therefore took no formal position. I, for one, strongly opposed this recommendation during our internal discussions. Although I had not secured my judgeship through a contested election, I do have extensive experience in political campaigns and elections, having run at the local and state level, served in elective office, and worked on a number of campaigns. Among my reasons for opposing Recommendation 28 are the following: (1) The recommendation is likely to be found unconstitutional. (2) Political parties are a significant source of volunteers and contributors. (3) A party's endorsement is influential with many voters. (4) The prohibition would hamstring many candidates, particularly in a large county like Los Angeles. (5) The role of political parties in California is far different from the role of such parties in many eastern states where considerable patronage lies with the local party. (6) Many of our colleagues who secured their office through the election process sought and used political endorsements in their campaigns. There is no evidence that these judges subsequently misused their office for partisan political purposes.	See response to comment #87 above.
93.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	Disagree. Political organizations have a legitimate role in voter education. There is nothing inherently wrong with a candidate being endorsed by a political organization. These endorsements educate the voters and provide an	See response to comment #87 above.

28. Judicial candidates should be prohibited from seeking or using endorsements from political organizations.

No.	Commentator	Full Comments	Commission Response
		important source of information which will be used by the voters to make their choice on Election Day. Additionally, what is the definition of a "political organization?" Would a bar association constitute a prohibited endorsement? What about the California Women's Lawyers Association? What about the Sierra Club? What about the PTA or the local church? In zealousness to eliminate all politics from judicial elections, this ill-defined recommendation will ensure a less educated electorate rather than a better informed electorate.	
94.	California Judges Association Hon. Mary E. Wiss, President	Disagree. CJA recognizes the importance of maintaining California's nonpartisan judicial selection process and the necessity to prevent party officials from effectively selecting judicial candidates, as occurs in some other states. However, we believe the proposed prohibition would be neither effective nor enforceable. The courts have declared prohibitions on party endorsements to be unconstitutional. Also, the term "political organizations" (as opposed to "political parties") is vague and subject to misinterpretation. For example, the term could also include groups such as the ACLU, the Federalist Society, environmental advocacy organizations, etc. which espouse policies relevant to a judge's philosophy that have nothing to do with partisanship. This rule would also be difficult to enforce, as it would not preclude friends and supporters of a judicial candidate from seeking endorsements. In the view of some CJA members, political parties are a legitimate source of volunteers and contributors, as well as education for the voters in large counties. Historically, party endorsements have not resulted in judges using their office for partisan purposes. The proposed rule would also be unfair to incumbents. An incumbent judge who misused party endorsements would be subject to immediate discipline by the CJP. An attorney-candidate, on the other hand, would only risk sanctions in the event he/she won the election.	See response to comment #87 above.

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No.	Commentator	Full Comments	Commission Response
95.	Superior Court of California, County of Los Angeles	After extensive discussion among Los Angeles Superior Court judicial officers about Recommendation 28, the Los Angeles Superior Court takes no position regarding this recommendation. We have divergent points of view among our judges. Certain of us feel very strongly that the recommendation is potentially unconstitutional and would be unwise as it denies judicial candidates a significant source of financial support in a state where there is no evidence endorsements by political organizations have been problematic. Others believe the recommendation is sound because judicial elections should be non-partisan, and the recommendation promotes judicial independence.	No response required.
96.	Hon. Runston G. Maino Judge of the Superior Court of California, County of San Diego	Disagree	No response required.

29. The Code of Judicial Ethics should be amended to explain why partisan activity by candidates is disfavored.

No.	Commentator	Full Comments	Commission Response
97.	Hon. Barbara A. Kronlund Presiding Judge of the Juvenile Court Superior Court of California, County of San Joaquin	Agree, if modified. Explanation of why partisan activity by candidates is disfavored does not need to be in the Code of Ethics. Judge Rothman's next edition would be an ideal place for this information.	The commission agrees and has modified the report accordingly. The commission now recommends that the mandatory candidate training discussed in recommendation #12 should include a discussion of why partisan activity by candidates is disfavored.
98.	California Judges Association Hon. Mary E. Wiss, President	Disagree with recommendation 29 and 32. Although the intent of these proposed amendments is commendable, Canon 5 already addresses these issues adequately. Any additional explanation more properly belongs in election guides such as *Ethics in*	See response to comment #97 above.

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No.	Commentator	Full Comments	Commission Response
		Judicial Elections, not in the Code or its Commentary.	
99.	Hon. Runston G. Maino Judge of the Superior Court of California, County of San Diego	Disagree.	No response required.

30. Instructional material about the importance of truth in advertising should be developed.

No.	Commentator	Full Comments	Commission Response
100.	Barbara Kauffman Attorney at Law San Rafael, California	Agree.	No response required.

31. Canon 5 of the Code of Judicial Ethics or its commentary should be amended to require candidates to take reasonable measures to control the actions of campaign operatives and the content of campaign statement.

No.	Commentator	Full Comments	Commission Response
101.	California Judges Association Hon. Mary E. Wiss, President	Disagree. The Recommendation is unclear as to who counts as "operatives" and what rises to the level of "reasonable efforts." Such ambiguities expose candidates to potential liability and discipline where they might have difficulty in controlling campaign consultants or volunteers.	The Code of Judicial Ethics contains a definition of "require" that is relevant here. It says, "Any Canon prescribing that a judge 'require' certain conduct of others means that a judge is to exercise reasonable direction and control over the conduct of those persons subject to the

31. Canon 5 of the Code of Judicial Ethics or its commentary should be amended to require candidates to take reasonable measures to control the actions of campaign operatives and the content of campaign statement.

No.	Commentator	Full Comments	Commission Response
			judge's direction and control." The commission agrees to delete the word "operatives" from the recommendation. The commission now recommends that the canon or commentary be amended to "place an affirmative duty on judicial candidates to control the actions of their campaigns and the content of campaign statements." In addition, it would "encourage candidates to take reasonable measures to protect against oral or informal written misrepresentations being made on their behalf by third parties and to take appropriate corrective action if they learn of such misrepresentations."
102.	Barbara Kauffman Attorney at Law San Rafael, California	Agree.	No response required.

32. The Code of Judicial Ethics should be amended to add a list of prohibited campaign conduct.

No.	Commentator	Full Comments	Commission Response
103.	Hon. Barbara A. Kronlund Presiding Judge of the	Disagree. This list is a very bad idea. It would have to be an including but not	The commission believes such a list would be useful, even though it would be

32. The Code of Judicial Ethics should be amended to add a list of prohibited campaign conduct.

No.	Commentator	Full Comments	Commission Response
	Juvenile Court Superior Court of California, County of San Joaquin	limited to type of list, and as such adds nothing to anyone's knowledge. It has absolutely no place in the Code, but perhaps in an Opinion or Judge Rothman's Book.	an "including, but not limited to" list, and that the Code of Judicial Ethics is an appropriate place for the list.
104.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	Disagree. A list of prohibited campaign conduct requires some enforcement body/group to enforce/impose the rules. The logical agency is CJP. Once CJP becomes involved in the oversight of judicial campaigns, there will be no end to the complaints from candidates' supporters and investigations by the CJP. Do the courts really need the CJP or some other organization conducting "fair campaign" investigations? Voters have a unique perspective when reviewing candidates running for political office. Since the formation of our nation and state, we have depended upon the good will and the common sense of the people to determine the choice and direction of our political processes. The courts are not exempted, and we must have confidence in the good sense of the electorate to make the proper decisions on who should be elected judge.	The Code of Judicial Ethics already contains canons addressing campaign conduct, and the Commission on Judicial Performance has the authority to investigate and discipline judges who violate the canons. Adding a list of prohibited campaign conduct to the code would not change this.
105.	California Judges Association Hon. Mary E. Wiss, President	Disagree. See comments under 29.	See responses to comments #103 and #104 above.
106.	Superior Court of California, County of Los Angeles	Disagree. This recommendation should not be adopted in its current form. The report is internally inconsistent. At page 28 and in footnote 24, the Commission recommends amending the canons to include a list of improper campaign conduct similar to Rule 4.1. As stated in those parts of the Report, that rule (4.1(A)(7 & 8)) would prohibit candidates from not only seeking, accepting, or using endorsements from political organizations, but also from personally soliciting or accepting campaign contributions "other than through a campaign committee." At page 32 of the Report, however, the authors note the constitutional problems with restricting a candidate's ability to raise funds. As a result,	The commission is not recommending including in the list the same content found in the model code. Rather the recommendation is that the Code of Judicial Ethics include a list similar in style to that of the model code.

32. The Code of Judicial Ethics should be amended to add a list of prohibited campaign conduct.

No.	Commentator	Full Comments	Commission Response
		"the steering committee opted not to recommend pursuing such a prohibition." The steering committee's decision seems sound. At the very least, however, the Report contradicts itself. Given the discrepancy between the recommendations on pages 28 and 32, we do not agree with this recommendation.	
107.	Barbara Kauffman Attorney at Law San Rafael, California	Disagree. See comment under 4.	The issue of campaign contributions by those appearing before judges is addressed in recommendations # 36–40.

33. A letter—to be sent by the courts to county registrars before each election cycle—should be developed addressing permitted use of the title "temporary judge" by candidates.

No.	Commentator	Full Comments	Commission Response
108.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	Agree, if modified. Unlike many of the other suggestions, this recommendation makes a great deal of sense. County Registrars are unfamiliar with judicial elections, and. without guidance; the county election officials will not properly enforce the rules that govern judicial elections. I suggest the letter not only cover the title "temporary" but also the title of "pro tem." This term is also abused and judicial candidates and election officials need the guidance of the AOJ before allowing the terms to be used by candidates.	The commission agrees and has modified the report accordingly.

34. Canon 6 of the Code of Judicial Ethics should be amended to clarify how the title "temporary judge" may be properly used.

No.	Commentator	Full Comments	Commission Response
109.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	Agree, if modified. Again, this recommendation makes a great deal of sense. I recommend clarification of the "pro tem" term.	The commission agrees and has modified the report accordingly.

35. The State Bar should be encouraged to discipline attorney candidates who engage in campaign misconduct.

	Commentator	Full Comments	Commission Response
110.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	Disagree. Attorney candidates and incumbent judges are under the same rules when engaged in campaigns. The California Fair Political Practices Commission (FPPC) governs campaign finance, the Judicial Canons govern rules of conduct, and the voters are the ultimate arbitrators of the election process. The misguided addition of "voluntary fair judicial elections committees" to manipulate local judicial elections with the added muscle of the State Bar's disciplinary proceedings is an unnecessary and intrusive invasion into the election process. For more than 100 years, the voters have carefully selected judges for their local jurisdictions without the need of "outside" help from the judicial establishment.	The State Bar has the authority to discipline attorney candidates for judicial office for violating the Code of Judicial Ethics but typically takes no action. This recommendation is to encourage the State Bar to enforce the canons against attorney candidates.
111.	Barbara Kauffman Attorney at Law San Rafael, California	Disagree. The judiciary may be trying to encourage the State bar to discipline lawyers who legitimately criticize corrupt or otherwise problematic sitting judges they are running against.	The State Bar would only be encouraged to discipline attorney candidates if they violate the Code of Judicial Ethics.
112.	Center for Judicial Excellence	Disagree.	No response required.

35. The State Bar should be encouraged to discipline attorney candidates who engage in campaign misconduct.

	Commentator	Full Comments	Commission Response
	San Rafael, California Stephen Burdo		

JUDICIAL CAMPAIGN FINANCE

36. A system should be adopted under which each trial court judge is required to disclose, to litigants, counsel, and other interested persons appearing in the judge's courtroom, all contributions of $100 or more made to the judge's campaign, directly or indirectly. Specifically:

- The commentary to the disclosure provision in canon 3E(2) of the Code of Judicial Ethics should be amended to require a trial judge to maintain an updated list of campaign contributions of $100 or more and to orally disclose on the record to litigants appearing in court that the list is available for viewing in the courthouse and online;
- The commentary to canon 3E(2) should be amended to state that the obligation to disclose campaign contributions continues for a minimum of one year after the judge assumes office; and
- The commentary to canon 5B should be amended to cross-reference the proposed new commentary to canon 3E(2).

No.	Commentator	Full Comments	Commission Response
113.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented to make sure that: (1) judicial candidates are qualified, after evaluation by the JNE; (2) judicial candidates are not overly influenced by political organizations or political candidates; and (3) large donors cannot influence a judicial campaign.	No response required.
114.	Hon. David Rosenberg Presiding Judge of the Superior Court of California, County of Yolo	Agree if modified I have absolutely no problem with disclosure of all contributions over $100. My problem is the comment that indicates judges must "orally" disclose these contributions to litigants. This is unduly burdensome to judges, particularly those who have large calendars. It seems to be sufficient if the contributions are posted and readily available.	The commission agrees that oral disclosure should be one—but not the sole—option for disclosure. The recommendation has been modified accordingly.
115.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	Disagree. With extensive and strict FPPC campaign finance rules and regulations already governing the conduct of political fundraising and expenditures, imposing new rules to discourage or prevent the raising of small contributions to judicial campaigns will guarantee that only the "moneyed elite" will be judges in this state. This is a step that is runs counter to the diverse judiciary.	The recommendation is not intended to "discourage or prevent" small contributions; rather, it is designed to increase public trust and confidence in the fact that there are limits to the potential effect of money on judicial decisionmaking.

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- The commentary to canon 5B should be amended to cross-reference the proposed new commentary to canon 3E(2).

No.	Commentator	Full Comments	Commission Response
		Existing Canons and rules require the disclosure of those who have made a substantial contribution of either time or money to a judge within the preceding two (2) years. This recommendation has no stated time frame. Would a judge who received a contribution 10 years ago be required to disclose? What is the purpose of this sort of oppressive disclosure? A judge who would be influenced by a $100 contribution should not serve as a judge in the first place. In the larger jurisdictions, extensive record keeping would be required to make sure that "complete" disclosure is made. This disclosure is already mandated by California's FPPC rules. In many smaller jurisdictions, most of the lawyers and many of the potential litigants may have made contributions to the sitting judge. This might require a near constant disclosure by sitting judges and for what purpose? This type of disclosure will not make the courts open and fair. On the contrary, it will weigh the judges down with meaningless disclosure requirements without measurable benefit.	It is incorrect to say that there is no time frame; the initial recommended disclosure obligation was to last for one year after a judge takes office. However, the recommendation has been revised in the final report and now states that this disclosure obligation lasts for two years after a judge takes office. While it is true that current law requires that certain campaign finance disclosures be made to the California Secretary of State's Office, the commission has found that it is difficult for the public to readily access that information. As to the comment about judges being influenced by a $100 contribution, this recommendation is more about readily available public disclosure and not so much about actual influence. Code of Civil Procedure section 170.1(a)(6)(A) is still the controlling baseline authority,

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- The commentary to canon 5B should be amended to cross-reference the proposed new commentary to canon 3E(2).

No.	Commentator	Full Comments	Commission Response
			which requires a judge to disqualify him- or herself, regardless of the actual monetary amount of a contribution received, where a reasonable person would doubt a judge's ability to be unbiased.
116.	California Judges Association Hon. Mary E. Wiss, President	Disagree. CJA believes this recommendation is impractical and unnecessary. Judges already are subject to an effective reporting mandate in FPPC Form 700, which judges are required to file annually. In addition, candidates must periodically file reports on contributions during their campaign. Judges cannot reasonably be expected to recall every $100 contribution every time a case is called, particularly during a campaign, when contributions may be received daily. The FPPC reporting requirements adequately address the need for full disclosure of political contributions. If additional disclosures will be required, CJA believes a sign in the courtroom referring litigants and attorneys to the FPPC website would be a more practical method of insuring prompt disclosure than on-the-record disclosures as required by the canons.	While it is true that current law requires that certain campaign finance disclosures be made to the California Secretary of State's Office, the commission has found that it is difficult for the public to readily access that information. This recommendation does not require judges to recall every contribution received. Rather, it only requires that litigants be informed in some manner that a list of contributions is available. A referral to the Fair Political Practices Commission (FPPC) or California Secretary of State Web sites is not sufficient, as those sites do not contain

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No.	Commentator	Full Comments	Commission Response
			e-filed, searchable campaign finance disclosures for superior court judicial candidates. Further, the public may not immediately think to look at those agencies' Web sites on their own, and thus being told that judges' disclosures are available elsewhere will enhance the overall perception of transparency in judicial campaigns.
117.	Barbara Kauffman Attorney at Law San Rafael, California	Comments on recommendations 36 through 45. Overall question: How many California Judicial incumbents have been "unseated" by challengers in the last 20 years? Isn't it true that the answer is: very few? Isn't it true that generally, in California, judicial incumbents are far better funded than challengers? Overall comments: a judge's acceptance of campaign contributions, at any level, from a lawyer or litigant who appears before him, is inconsistent with Code of Civil Procedure section 170.1. The Judicial Council knows this. Justice at Stake (who has advised our Judicial Council) has performed polls illustrating that 75% of the public, and at least 25% of judges, believe campaign contributions affect the outcome of judicial decisions. As former judge LaDoris Cordell has stated in Stanford Law School's videotaped discussion on judicial campaign contributions noted, it does not matter what	Because judges are restricted in the campaign activities they may undertake, and because they do not have established political bases the way that candidates for partisan offices do, judges often must rely on contributions from attorneys and law firms. The recommended disclosure would allow a party to make a disqualification motion under Code of Civil Procedure section 170.6 if the party is concerned that a small-dollar contribution by

36. A system should be adopted under which each trial court judge is required to disclose, to litigants, counsel, and other interested persons appearing in the judge's courtroom, all contributions of $100 or more made to the judge's campaign, directly or indirectly. Specifically:

- The commentary to the disclosure provision in canon 3E(2) of the Code of Judicial Ethics should be amended to require a trial judge to maintain an updated list of campaign contributions of $100 or more and to orally disclose on the record to litigants appearing in court that the list is available for viewing in the courthouse and online;
- The commentary to canon 3E(2) should be amended to state that the obligation to disclose campaign contributions continues for a minimum of one year after the judge assumes office; and
- The commentary to canon 5B should be amended to cross-reference the proposed new commentary to canon 3E(2).

No.	Commentator	Full Comments	Commission Response
		the amount is—judges are aware of who gives them money and supports them, and who does not, and this can and does affect a judge's perspective. Assuming judges continue to accept contributions from lawyers, a list of contributors should be made available online, in perpetuity, so anyone can at any time see who has contributed to that judge, and how much. This should apply to superior court, appellate, and Supreme Court justices. The problem with putting a dollar limit on the amount a judge can accept before being forced to automatically recuse himself or herself is this: Suppose the limit is $1,500 (this is quite high, even for Marin County, where a $500 contribution is significant.) A judge can accept $1,499, and refuse to recuse himself, although we know that surveys show that the public and judges believe that **any** level of contribution affects the outcome of a case. Suddenly, the burden shifts to the person challenging the judge, to prove a contribution is going to bias the judge, and here there is a rule saying the limit is $1,500, so that must mean that up to that level is acceptable. Donors who previously contributed $500, may be inclined (or pressured) to contribute $1,499. Further, imposing a one or two-year time limit on disclosures is arbitrary. Memories can last a lifetime, and judges do not forget who helped get them elected. So if judges want to accept donations from people who appear before them, a detailed list of donors should be compiled, and kept indefinitely, and made readily available online. Judges should announce at the commencement of the case that that the lists are available online.	another party is problematic. And importantly, judges are subject to Code of Civil Procedure section 170.1(a)(6)(A), which may, depending on the facts, require disqualification regardless of both the commission's recommendations and the amount of a contribution received, i.e., section 170.1(a)(6)(A) could potentially, under the right facts, require disqualification based on the receipt of a contribution of less than $1,500. Whether a judge's contribution list is maintained online and for how long will be addressed in the implementation process. As to the dollar amount at which disqualification is mandatory, the commission notes that the $1,500 recommended does not necessarily

36. A system should be adopted under which each trial court judge is required to disclose, to litigants, counsel, and other interested persons appearing in the judge's courtroom, all contributions of $100 or more made to the judge's campaign, directly or indirectly. Specifically:

- The commentary to the disclosure provision in canon 3E(2) of the Code of Judicial Ethics should be amended to require a trial judge to maintain an updated list of campaign contributions of $100 or more and to orally disclose on the record to litigants appearing in court that the list is available for viewing in the courthouse and online;
- The commentary to canon 3E(2) should be amended to state that the obligation to disclose campaign contributions continues for a minimum of one year after the judge assumes office; and
- The commentary to canon 5B should be amended to cross-reference the proposed new commentary to canon 3E(2).

No.	Commentator	Full Comments	Commission Response
			represent its view of what objectively constitutes a "problem" amount of a contribution. Rather, that amount was chosen because it tracks what appears to be the Legislature's intent (as embodied in the Code of Civil Procedure) that that amount is a meaningful figure with respect to the public's perception of when a judge may cease to be impartial.

37. Each trial court judge should be subject to mandatory disqualification from hearing any matter involving a party, counsel, party affiliate, or other interested party who has made a monetary contribution of a certain amount to the judge's campaign, directly or indirectly, subject to the following:

- The contribution level at which disqualification shall be mandatory shall be the same as the level, set forth in Code of Civil Procedure section 170.5(b), at which a judge is considered to have a "financial interest" in a party requiring disqualification;
- Notwithstanding the above mandatory disqualification amount, trial court judges shall continue to disqualify themselves based on contributions of lesser amounts where doing so would be required by Code of Civil Procedure section 170.1(a)(6)(A);
- The Judicial Council should recommend that the amount set forth in Code of Civil Procedure section 170.5(b)—which, as of the date of this tentative recommendation, is $1,500—be periodically reviewed and adjusted as appropriate;
- The mandatory disqualification described above shall be waivable by those parties to the matter who were not involved in making the contribution in question; and
- The obligation to disqualify shall begin immediately upon receipt of the contribution in question and shall run for two years from the date that the candidate assumes office or from the date the contribution was received, whichever is later.

No.	Commentator	Full Comments	Commission Response
118.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented to make sure that: (1) judicial candidates are qualified, after evaluation by the JNE; (2) judicial candidates are not overly influenced by political organizations or political candidates; and (3) large donors cannot influence a judicial campaign.	No response required.
119.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	Disagree. Judges already disclose! At what dollar amount would disqualification be required? Why should litigants and counsel not have the decision as to when a judge hears a case? Corrupt judges should not hear any case, and the honest ones are not influenced by money or friendship. It is naïve to assume that a dollar amount disqualification will solve the imagined problem of money influence on the court. If what is truly desired is a campaign contribution limit for judicial elections, just be honest and say as much. But why should judicial campaigns be any different than other campaigns?	Under the recommendation, disqualification would be required for contributions of $1500 or more. That amount tracks the requirement in Code of Civil Procedure section 170.5 for disqualification based on a "financial interest." The recommended disqualification would be waivable, which means that litigants and counsel do have some say in the process.

37. Each trial court judge should be subject to mandatory disqualification from hearing any matter involving a party, counsel, party affiliate, or other interested party who has made a monetary contribution of a certain amount to the judge's campaign, directly or indirectly, subject to the following:

- The contribution level at which disqualification shall be mandatory shall be the same as the level, set forth in Code of Civil Procedure section 170.5(b), at which a judge is considered to have a "financial interest" in a party requiring disqualification;
- Notwithstanding the above mandatory disqualification amount, trial court judges shall continue to disqualify themselves based on contributions of lesser amounts where doing so would be required by Code of Civil Procedure section 170.1(a)(6)(A);
- The Judicial Council should recommend that the amount set forth in Code of Civil Procedure section 170.5(b)—which, as of the date of this tentative recommendation, is $1,500—be periodically reviewed and adjusted as appropriate;
- The mandatory disqualification described above shall be waivable by those parties to the matter who were not involved in making the contribution in question; and
- The obligation to disqualify shall begin immediately upon receipt of the contribution in question and shall run for two years from the date that the candidate assumes office or from the date the contribution was received, whichever is later.

No.	Commentator	Full Comments	Commission Response
			Public perception is very important, and the public must know that there are safeguards in place to prevent a *Caperton*- type situation. That is, the commission believes that it is not sufficient, from the perspective of public trust and confidence in the impartiality of the judiciary, to leave all disqualification decisions to the discretion of judges and justices. This is particularly true in light of unfortunate news reports from other states of *Caperton*-like situations, i.e., instances in which judges accept large campaign contributions from parties or counsel and yet refuse to self-disqualify. Mandatory disclosure coupled with

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- The contribution level at which disqualification shall be mandatory shall be the same as the level, set forth in Code of Civil Procedure section 170.5(b), at which a judge is considered to have a "financial interest" in a party requiring disqualification;
- Notwithstanding the above mandatory disqualification amount, trial court judges shall continue to disqualify themselves based on contributions of lesser amounts where doing so would be required by Code of Civil Procedure section 170.1(a)(6)(A);
- The Judicial Council should recommend that the amount set forth in Code of Civil Procedure section 170.5(b)—which, as of the date of this tentative recommendation, is $1,500—be periodically reviewed and adjusted as appropriate;
- The mandatory disqualification described above shall be waivable by those parties to the matter who were not involved in making the contribution in question; and
- The obligation to disqualify shall begin immediately upon receipt of the contribution in question and shall run for two years from the date that the candidate assumes office or from the date the contribution was received, whichever is later.

No.	Commentator	Full Comments	Commission Response
			mandatory disqualification is an alternative to contribution limits. The commission considered the former preferable because it satisfies the public's confidence that there are limits on the ability of money to influence judicial decisionmaking while at the same time allowing judicial candidates to raise the funds necessary to run their campaigns. As to the difference between judicial campaigns and campaigns for other elective office, the commission notes that judicial candidates are not the same as candidates for other office. For example, they do not have established support

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- The contribution level at which disqualification shall be mandatory shall be the same as the level, set forth in Code of Civil Procedure section 170.5(b), at which a judge is considered to have a "financial interest" in a party requiring disqualification;
- Notwithstanding the above mandatory disqualification amount, trial court judges shall continue to disqualify themselves based on contributions of lesser amounts where doing so would be required by Code of Civil Procedure section 170.1(a)(6)(A);
- The Judicial Council should recommend that the amount set forth in Code of Civil Procedure section 170.5(b)—which, as of the date of this tentative recommendation, is $1,500—be periodically reviewed and adjusted as appropriate;
- The mandatory disqualification described above shall be waivable by those parties to the matter who were not involved in making the contribution in question; and
- The obligation to disqualify shall begin immediately upon receipt of the contribution in question and shall run for two years from the date that the candidate assumes office or from the date the contribution was received, whichever is later.

No.	Commentator	Full Comments	Commission Response
			bases, and thus typically have fewer donors, which argues against contribution limits. Also, judicial candidates are currently the only candidates who are not subject to contribution limits, meaning that they are already treated differently than other candidates under California law.
120.	California Judges Association Hon. Mary E. Wiss, President	Disagree. Although CJA recognizes that large campaign contributions can impair the public's perception of judicial impartiality, CJA believes that current law adequately addresses this issue. CCP section 170.1(a)(6)(A)(iii) requires disqualification whenever such a contribution would cause a person to reasonably doubt the judge's ability to be impartial. CJA also has serious questions about the scope of the CIC recommendation. For example, if the proposed limits applied to multiple individuals working for the same employer, a judge could easily receive	In the commission's view, Code of Civil Procedure section 170.1 is not sufficient standing alone, especially in the face of cases like *Caperton*. That is, section 170.1 does not fully assuage the public's concern that the primary limit on judges' ability to accept contribution and yet still adjudicate cases involving the contributors is their own discretion.

37. Each trial court judge should be subject to mandatory disqualification from hearing any matter involving a party, counsel, party affiliate, or other interested party who has made a monetary contribution of a certain amount to the judge's campaign, directly or indirectly, subject to the following:

- The contribution level at which disqualification shall be mandatory shall be the same as the level, set forth in Code of Civil Procedure section 170.5(b), at which a judge is considered to have a "financial interest" in a party requiring disqualification;
- Notwithstanding the above mandatory disqualification amount, trial court judges shall continue to disqualify themselves based on contributions of lesser amounts where doing so would be required by Code of Civil Procedure section 170.1(a)(6)(A);
- The Judicial Council should recommend that the amount set forth in Code of Civil Procedure section 170.5(b)—which, as of the date of this tentative recommendation, is $1,500—be periodically reviewed and adjusted as appropriate;
- The mandatory disqualification described above shall be waivable by those parties to the matter who were not involved in making the contribution in question; and
- The obligation to disqualify shall begin immediately upon receipt of the contribution in question and shall run for two years from the date that the candidate assumes office or from the date the contribution was received, whichever is later.

No.	Commentator	Full Comments	Commission Response
		$1,500 in contributions from a public law office such as a district attorney's or public defender's office, or a large corporate or governmental entity. Would this limitation also apply to law firms, or a private citizen who hosts a fundraiser? Also, if this recommendation were adopted, we would suggest setting different contribution disqualification amounts relative to the cost of the typical county campaigns. The size and expense of county elections differ greatly throughout the state. A $1,500 contribution in Los Angeles would fund a much smaller portion of a campaign budget than a similar donation in a rural county. CJA also recommends that the limitation only apply to individuals.	The issue of whether to apply the recommended disqualification threshold to aggregate contributions is one that will be addressed during implementation of the recommendation. The commission considered whether to recommend varying the disqualification threshold in different jurisdictions based on, e.g., county size. However, the commission concluded that statewide uniformity is important. Further, the recommendation is tied to the Code of Civil Procedure, which uses a uniform amount statewide.
121.	Superior Court of California,	Disagree.	The commission's general intent was for

37. Each trial court judge should be subject to mandatory disqualification from hearing any matter involving a party, counsel, party affiliate, or other interested party who has made a monetary contribution of a certain amount to the judge's campaign, directly or indirectly, subject to the following:

- The contribution level at which disqualification shall be mandatory shall be the same as the level, set forth in Code of Civil Procedure section 170.5(b), at which a judge is considered to have a "financial interest" in a party requiring disqualification;
- Notwithstanding the above mandatory disqualification amount, trial court judges shall continue to disqualify themselves based on contributions of lesser amounts where doing so would be required by Code of Civil Procedure section 170.1(a)(6)(A);
- The Judicial Council should recommend that the amount set forth in Code of Civil Procedure section 170.5(b)—which, as of the date of this tentative recommendation, is $1,500—be periodically reviewed and adjusted as appropriate;
- The mandatory disqualification described above shall be waivable by those parties to the matter who were not involved in making the contribution in question; and
- The obligation to disqualify shall begin immediately upon receipt of the contribution in question and shall run for two years from the date that the candidate assumes office or from the date the contribution was received, whichever is later.

No.	Commentator	Full Comments	Commission Response
	County of Los Angeles	This recommendation should not be adopted in its current form. The Report recommends mandatory disqualification in matters involving a party or attorney who has contributed $1,500 or more to the judge. We believe that this provision should be refined to clarify a number of issues. • Will it cover matters in which the party or attorney has raised funds from others? Or hosted a party in which funds were raised? Or cosigned a letter or invitation soliciting contributions? • Is disqualification required when the total contributions from employees of a party, law firm or public law office exceed $1,500? There are, for instance, more than 1,000 prosecutors in the Los Angeles District Attorney's office. This is not unique. Consider the County of Los Angeles, the University of California, Wells Fargo, and so forth. • While it is laudatory to establish a flat dollar amount to give judges some certainty regarding when disqualification is required, certain of our judges believe that $1,500 is too low. Campaigns in Los Angeles County and other urban areas are very expensive.	the recommended mandatory disqualification to arise from those "contributions" that would be reported to the FPPC. Many of the particular questions posed may, however, warrant additional consideration upon implementation of this recommendation. The questions may also be answered in part by reference to Code of Civil Procedure section 170.1(a)(6)(A), which is the guiding baseline legal authority on a judge's obligation to self-disqualify; this recommendation was meant to establish additional parameters to enhance section 170.1(a)(6)(A). In terms of statewide uniformity in the

37. Each trial court judge should be subject to mandatory disqualification from hearing any matter involving a party, counsel, party affiliate, or other interested party who has made a monetary contribution of a certain amount to the judge's campaign, directly or indirectly, subject to the following:

- The contribution level at which disqualification shall be mandatory shall be the same as the level, set forth in Code of Civil Procedure section 170.5(b), at which a judge is considered to have a "financial interest" in a party requiring disqualification;
- Notwithstanding the above mandatory disqualification amount, trial court judges shall continue to disqualify themselves based on contributions of lesser amounts where doing so would be required by Code of Civil Procedure section 170.1(a)(6)(A);
- The Judicial Council should recommend that the amount set forth in Code of Civil Procedure section 170.5(b)—which, as of the date of this tentative recommendation, is $1,500—be periodically reviewed and adjusted as appropriate;
- The mandatory disqualification described above shall be waivable by those parties to the matter who were not involved in making the contribution in question; and
- The obligation to disqualify shall begin immediately upon receipt of the contribution in question and shall run for two years from the date that the candidate assumes office or from the date the contribution was received, whichever is later.

No.	Commentator	Full Comments	Commission Response
			recommended $1,500 disqualification threshold, see the response above to the comment #120 by Hon. Mary E. Wiss, President of the California Judges Association. Also, the commission notes that data from recent election cycles in four representative counties show that even in a large county like Los Angeles, there are relatively few contributions of more than $1,500.
122.	Barbara Kauffman Attorney at Law San Rafael, California	See comment under 36.	See response to comment #117 above.

38. Appellate courts should be required to send to the parties—with both the first notice from the court and with the notice of oral argument—information on how they may learn of campaign contributions if there is an upcoming retention election or there was a recent election.

No.	Commentator	Full Comments	Commission Response
123.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented to make sure that: (1) judicial candidates are not overly influenced by political organizations or political candidates, and (2) large donors cannot influence a judicial campaign.	No response required.
124.	Barbara Kauffman Attorney at Law San Rafael, California	See comment under 36.	See response to comment #117 above.

39. Appellate justices' disclosures should be maintained electronically and should be accessible via the Web and possibly through a link to the California Secretary of State's Web site.

No.	Commentator	Full Comments	Commission Response
125.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented to make sure that: (1) judicial candidates are not overly influenced by political organizations or political candidates, and (2) large donors cannot influence a judicial campaign.	No response required.
126.	Barbara Kauffman Attorney at Law San Rafael, California	See comment under 36.	See response to comment #117 above.

40. Each appellate justice should be subject to mandatory disqualification from hearing any matter involving a party, counsel, party affiliate, or other interested party who has made a monetary contribution of a certain amount to the justice's campaign, directly or indirectly, subject to the following:

- For justices of the Courts of Appeal, the contribution level at which disqualification shall be mandatory shall be the same as the level, set forth in canon 3E(5)(d) of the Code of Judicial Ethics, at which a justice is considered to have a "financial interest" in a party requiring disqualification;
- For justices of the Supreme Court, the contribution level at which disqualification shall be mandatory shall be the same as the contribution limit, set forth in Government Code section 85301(c) and Administrative Code title 2, section 18545, in effect for candidates for governor;
- Notwithstanding the above mandatory disqualification amounts, appellate justices shall continue to disqualify themselves based on contributions of lesser amounts where doing so would be required by canon 3E(4) of the Code of Judicial Ethics;
- The mandatory disqualification described above shall be waivable by those parties to the matter who were not involved in making the contribution in question; and
- The obligation to disqualify shall begin immediately upon receipt of the contribution in question and shall run for two years from the date that the candidate assumes office or from the date the contribution was received, whichever is later.

No.	Commentator	Full Comments	Commission Response
127.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented to make sure that: (1) judicial candidates are not overly influenced by political organizations or political candidates, and (2) large donors cannot influence a judicial campaign.	No response required.
128.	Hon. Barbara A. Kronlund Presiding Judge of the Juvenile Court Superior Court of California, County of San Joaquin	Agree, if modified. Page 36, at the end of the full paragraph on the top of the page, I would add as the last part of the sentence, "or CCP 170.1(a)(6)A). Page 37, second full paragraph, judges can always reject or return a campaign contribution to avoid "gaming" by attorneys attempting to force a fabricated disqualification.	Because this recommendation affects appellate justices but not trial court judges, the commission believes that the reference to the Code of Judicial Ethics is sufficient and that no reference to the Code of Civil Procedure is necessary.
129.	Barbara Kauffman Attorney at Law San Rafael, California	See comment under 36.	See response to comment #117 above.

41. Legislation should be sponsored prohibiting corporations and unions from using treasury funds on contributions directly to judicial candidates or to groups making independent expenditures in connection with campaigns for judicial office.

No.	Commentator	Full Comments	Commission Response
130.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented to make sure that: (1) judicial candidates are not overly influenced by political organizations or political candidates, and (2) large donors cannot influence a judicial campaign.	No response required.
131.	Los Angeles County Democratic Party Eric C. Bauman, Chair	Disagree. See also general comments and comments regarding recommendations 25, 28, 43 and 44. This recommendation implicates political questions far outside the expertise or proper realm of the Judicial Council. It would preclude unions and corporations from using general treasury funds to contribute to political candidates and to groups that make independent expenditures in connection with judicial office. LACDP believes that any decision about whether corporate and union treasury funds may be expended for political purposes or if it is better to require such expenditures be made through a political action committee is a much larger policy question beyond the expertise of the Judicial Council. For that reason, LACDP believes that this recommendation should not be part of the CIC report. Leaving aside the question of whether the Judicial Council should involve itself in such a fundamental political question, and any constitutional concerns raised by equating independent expenditures, contributions to political parties and other political organizations and direct candidate contributions (see *Buckley v. Valeo*, (1976), 424 U.S. 1), recommendation 41 as applied to political party organizations, places a restriction on political party fundraising that is inconsistent with public policy of the state of California to strengthen political parties as a means of combating corruption (California Secretary of State, Election 2000, Text of Proposed Law, http://vote2000.sos.ca.gov/ VoterGuide/text/text_proposed_law_34.htm). In light of this, LACDP urges	The commission is only recommending that legislation be sponsored. The issues raised in the comment appear to be more appropriately directed at the Legislature once legislation has been introduced. Because the recommendation is limited to judicial races, the commission feels that it is within the commission's scope and appropriate for inclusion here. The recommendation applies to corporations and unions, not to political parties. And because judges are non-partisan, and given the limitation of the recommendation to judicial candidates, it is not readily apparent what the impact of the recommendation would be on political parties.

41. Legislation should be sponsored prohibiting corporations and unions from using treasury funds on contributions directly to judicial candidates or to groups making independent expenditures in connection with campaigns for judicial office.

No.	Commentator	Full Comments	Commission Response
		CIC not to move forward with this proposal.	
132.	Barbara Kauffman Attorney at Law San Rafael, California	See comment under 36.	See response to comment #117 above.

42. Legislation should be sponsored to require that all candidates for judicial office—regardless of their total dollar amount of contributions received or expenditures made—be required to file, in some electronic format with the California Secretary of State's Office, all campaign disclosure documents that they would also be required to file in paper form.

No.	Commentator	Full Comments	Commission Response
133.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented to make sure that: (1) judicial candidates are not overly influenced by political organizations or political candidates, and (2) large donors cannot influence a judicial campaign.	No response needed.
134.	Barbara Kauffman Attorney at Law San Rafael, California	See comment under 36.	See response to comment #117 above.

43. Amendments should be sponsored to appropriate California statutes and regulations so that California's definition of an independent expenditure—subject to, e.g., disclosure laws—is as broad as possible under current case law, including *McConnell, United States Senator, et al. v. Federal Election Commission* (2003) 540 U.S. 93, and *Federal Election Commission v. Wisconsin Right to Life, Inc.* (2007) 127 S. Ct. 2652 ("*WRTL II*").

No.	Commentator	Full Comments	Commission Response
135.	Los Angeles County Democratic Party Eric C. Bauman, Chair	Disagree. See also general comments and comments regarding recommendations 25, 28, 41, and 44. This recommendation is far outside the proper realm of the Judicial Council's areas of expertise and would improperly interfere with the ability of political parties to communicate with their own members. It calls for a wholesale revamping of the definition of independent expenditures even through judicial candidates are just one subpart of the universe of candidates for public office and ballot measures encompassed by California's definition of independent expenditures. Recommendation 43 is similar to 24 and 41 in that it would constitute a reach by the Judicial Council beyond traditional notions of the Judicial Council's purview by injecting the Judicial Council into a debate about the definition of independent expenditures for the purpose of all elections. Moreover, because of a policy choice of the people reflected in Proposition 34, California law contains a significant exemption from the definition of "independent expenditures"— the right of an organization, including a political party organization, to communicate with its own members. (See Government Code section 85312.) This proposal would inappropriately eliminate that exemption and, especially if coupled with a restriction on the source of funds for independent expenditures, could actually harm the public good by depriving both political parties and their members of important information about candidates for office and ballot measures. Because the scope of California's definition of core campaign finance terms is a matter better entrusted to the Legislative and Executive branches of government (or the electorate), LACDP respectfully suggests CIC not go forward with this recommendation.	The commission agrees that the recommendation could have unintended consequences outside of the context of judicial elections. Accordingly, the recommendation has been withdrawn.

43. Amendments should be sponsored to appropriate California statutes and regulations so that California's definition of an independent expenditure—subject to, e.g., disclosure laws—is as broad as possible under current case law, including *McConnell, United States Senator, et al. v. Federal Election Commission* (2003) 540 U.S. 93, and *Federal Election Commission v. Wisconsin Right to Life, Inc.* (2007) 127 S. Ct. 2652 ("*WRTL II*").

No.	Commentator	Full Comments	Commission Response
136.	California Judges Association Hon. Mary E. Wiss, President	See comments under 44.	See response to comment #139 below.
137.	Barbara Kauffman Attorney at Law San Rafael, California	See comment under 36.	See response to comment #117 above.

44. Amendments to appropriate California statutes and/or regulations should be sponsored to require that disclosures pertaining to advertising in connection with judicial elections—whether funded independently or by a candidate—be made at the time that any person or entity makes a contract for that advertising.

No.	Commentator	Full Comments	Commission Response
138.	Eric C. Bauman, Chair Los Angeles County Democratic Party	Disagree. See also general comments and comments regarding recommendations 25, 28, 41, and 43. This recommendation ignores the realities of political advertising and is likely to cause confusion. It requires that disclosures pertaining to advertisements in connections with judicial elections be made when a contract for that advertising is entered into rather than when payment is made or the advertisement aired. This proposal relates not just to judicial candidates themselves, but to any political actor involved in advertising in connection with a judicial race. Notably, however, for many political organizations, advertising time or space is purchased or reserved early in an election cycle before all candidates are fully known and before it is clear which races will, or will not, be competitive. In such circumstances, the	The commission agrees that the recommendation could have unintended consequences outside of the context of judicial elections. Further, the commission agrees that implementation could prove impracticable. Accordingly, the recommendation has been withdrawn.

44. Amendments to appropriate California statutes and/or regulations should be sponsored to require that disclosures pertaining to advertising in connection with judicial elections—whether funded independently or by a candidate—be made at the time that any person or entity makes a contract for that advertising.

No.	Commentator	Full Comments	Commission Response
		political organization would not be able to make these disclosures because it would not yet know on whose behalf the advertisements will run. Further, where advertising space or time is contracted for far in advance, reporting the expenditure at that time, rather than in closer proximity to the advertising itself, provides the public with less, not more, information. There is, moreover, no material difference in terms of the actual value of the information to the public between making a disclosure when a contract is formed and when an advertisement is actually broadcast—yet, having an earlier deadline for advertisements relating to judicial candidates than for advertising related to other candidates does raise a significant risk that political actors will inadvertently violate the law because they fail to recognize that different rules apply.	
139.	California Judges Association Hon. Mary E. Wiss, President	Agree, if modified. The earliest possible disclosure of the source of IE advertising is beneficial, but the triggering event should not be the making of a "contract for advertising because it will be too easily circumvented. The sources of IE advertising (and funding) should be required to be disclosed in the advertisements, whether print or other media. Consideration should be given to proposing additional regulations that would require separate reporting for out-of-county and out-of-state contributions.	The recommendation has been withdrawn given concerns about unintended consequences outside of the context of judicial elections and that implementation could prove impracticable.
140.	Barbara Kauffman Attorney at Law San Rafael, California	See comment under 36.	See response to comment #117 above.

45. Spending in connection with judicial elections should be closely observed for developing trends that would indicate a need to reconsider whether to sponsor legislation to create a system of public financing at the trial court or appellate court level, but such legislation should not be sponsored at this time.

No.	Commentator	Full Comments	Commission Response
141.	Barbara Kauffman Attorney at Law San Rafael, California	See comment under 36.	See response to comment #117 above.

PUBLIC INFORMATION AND EDUCATION

46. A leadership advisory group should be appointed to oversee, identify, and coordinate public outreach programs and opportunities; to establish benchmarks of good practice; and to promote the assembly of local teams to assist courts with local outreach programs.

No.	Commentator	Full Comments	Commission Response
142.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented as community outreach better educates the public about the judicial branch, increasing confidence in the judicial system.	No response required.
143.	Hon. Brenda F. Harbin-Forte Judge of the Superior Court of California, County of Alameda	Agree with recommendations 46, 47, 48, and 50. The goal of the recommendations could be enhanced if it is mentioned that the educational materials are published in, and programming is conducted in, languages in addition to English.	The commission agrees that whenever possible, educational materials and programs should be provided in languages in addition to English. The language in the report will be revised accordingly; however, no resources are currently available to translate these materials. Since the need to have a general repository of these materials is so great, the need for translating them should be a secondary, longer-term goal.
144.	Carol Ebbinghouse Law Librarian Court of Appeal, Second District	Agree, if modified. The leadership advisory group should include public law library representatives who are used to identifying and coordinating public outreach programs—locally and on a statewide basis.	The commission agrees that public and law libraries should be included in public outreach efforts, and will revise the language in the report accordingly.
145.	Barbara Kauffman Attorney at Law San Rafael, California	General comments relating to recommendations 46 through 84. It is one thing for the judicial branch to engage in positive activities like mock trials, or the creation of a videos explaining the purpose of the judiciary, and explaining the way it works, that can be accessed on the	See response to comment #13 above. In addition, the report and recommendations now reflect solicitation of feedback from the public about issues such as

46. A leadership advisory group should be appointed to oversee, identify, and coordinate public outreach programs and opportunities; to establish benchmarks of good practice; and to promote the assembly of local teams to assist courts with local outreach programs.

No.	Commentator	Full Comments	Commission Response
		California Courts website, local websites, at libraries, and the like. Videos have already been created for schools (these were unveiled at a recent Judicial Council meeting), and endeavors by the Judicial Branch to improve civics instruction of our youngsters is laudable. But I fear this section is really aimed at something else. This section's mission is clearly stated—it focused on ways to "respond to unfair criticism, personal attacks on judges, and institutional attacks on the judiciary; inappropriate judicial campaign conduct; and challenges to judicial impartiality arising from unpopular judicial decisions". I attended the November 2006 Summit at which the creation and purposes of the Commission for Impartial Courts was discussed. There was a distinct emphasis on ways to protect the judiciary from court critics, and ways to defeat challengers to sitting judges during retention elections. There was a lot of discussion about the use of public relations experts, and lawyers, to "talk tough" about court critics. Judges should be focused on good judging, not public relations and propaganda designed to silence critics. The commission admits that the California bench has not seen an influx of giant third-party special interest money, so the measures discussed do not appear to be really aimed at those giant special interests. Instead, the measures discussed appeared aimed at squelching dissent about judicial conduct – perhaps most particularly at the trial court level. In other words, I have observed that when the CA Judicial Council has talked about "the importance of an impartial judiciary" it has focused on the importance of being free from any meaningful oversight by the legislative and executive branch, or criticism by the public, rather than the importance of being free from outside political influence such as campaign contributions made to judges. The irony is this: the Judicial Council and Commission for Impartial Courts are not suggesting that judges decline campaign contributions from those who appear before them, although the Council and Commission know	judicial performance, satisfaction with the courts, and the like. Systems are in place to deal with judicial performance issues in fair and effective ways as discussed in the report: elections, appellate review, judicial education, media coverage, the Commission on Judicial Performance, the State Bar's JNE Commission, and local bar associations. Unfortunately, the general public is mostly unaware of these accountability measures and the commission recommends greater judicial participation to inform the public of these systems.

46. A leadership advisory group should be appointed to oversee, identify, and coordinate public outreach programs and opportunities; to establish benchmarks of good practice; and to promote the assembly of local teams to assist courts with local outreach programs.

No.	Commentator	Full Comments	Commission Response
		that the public does not like or trust its judges to receive campaign contributions from those who appear before them. In addition, Trust and Confidence studies commissioned by our Judicial Council revealed that 73% of the public believes that politics influence the outcome of judicial decisions. So, as long as judges engage in behavior that inspires mistrust, there will be public criticism and mistrust of the judiciary. (See prior comments on this subject under recommendations 10 and 36.) It would be unethical for the judiciary to provide false assurances to the public that there is presently in place adequate oversight of judges. The Commission on Judicial Performance is a tiny, underfunded agency with a $4 million budget that cannot hope to effectively police the current $4 billion empire that is the California judiciary (the largest judiciary in the western world). Further, the CJP is reactionary rather than proactive, and it operates behind a cloak of secrecy. It rarely takes actions against judges—even those who are notoriously problematic in their own communities. With respect to elections, usually the sitting judge easily garners the endorsement and financial backing of other sitting judges, and multiple politically-minded individuals who want to stay in the judge's good graces. It is the challengers who face hurdles—first, for having the nerve to run against a sitting judge, and second, gathering supporters who will endorse a challenger—thereby likely angering the sitting judge. Appellate review is usually beyond the financial reach of litigants, and litigants face a daunting deferential standard of review if they make it to the court of appeal. In addition, with respect to writ procedures, the Court of Appeal may deny relief, without consideration of the facts or law, with a one-line sentence: "The petition is denied." The legislature has enacted Code Civ.Proc. section 170.1, to allow litigants to seek disqualification of a judge they believe cannot be impartial. However, the challenged judge often denies the disqualification request himself or herself, and has the challenge stricken from the record so no one can see it; or, if it is assigned out for determination, it may be assigned out to a	

46. A leadership advisory group should be appointed to oversee, identify, and coordinate public outreach programs and opportunities; to establish benchmarks of good practice; and to promote the assembly of local teams to assist courts with local outreach programs.

No.	Commentator	Full Comments	Commission Response
		colleague of the challenged judge, or even a judge who has been sanctioned by the Commission on Judicial Performance! (I have seen both of these things happen). There presently is no real oversight of our judiciary, or way to measure a judge's performance for retention election purposes. Right now, the only way the public learns about, or can take action against, corrupt or otherwise problematic judges is by litigants, attorneys, experts and others, speaking out publicly about what is happening in the courts. The judiciary isn't supposed to inhibit constitutionally protected speech, or eliminate our system of checks and balances, is it? Judicial Performance Evaluations should be implemented forthwith. The ABA, Justice at Stake, and the Judicial Council's own Trust and Confidence reports support them.	
146.	State Bar of California Council on Access and Fairness	Agree in Concept with recommendations 46-48, 50. In general, the Council on Access and Fairness supports the public outreach goals in the report to better inform the public about the rule of law and the importance of an independent judiciary, but notes that with the stated goals for public outreach to all segments and communities in the state, mention should be made regarding the need to create materials and programming in languages in addition to English. This appears to be a significant oversight in these identified recommendations. There should be translations of basic educational materials and efforts to conduct appropriate educational programs in other languages by judges, court personnel, bar staff, etc. Agree with recommendation 46, if modified as follows: A leadership advisory group should be appointed to oversee, identify, and coordinate public outreach programs and opportunities; to establish benchmarks of good practice, including the provision of materials and speakers accessible to populations with limited English proficiency; and to	See response to comment #143 above. The comment suggesting that materials collected, summarized, and evaluated should also be translated is an admirable goal and perhaps should be listed as a long-term one. However, no resources are currently available to translate these materials. Since the need to have a general repository of these materials is so great, the need for translating them should perhaps be listed as a secondary, longer-term goal. Some of the outreach participants (judges) are bilingual. Identifying additional speakers is noteworthy and

46. A leadership advisory group should be appointed to oversee, identify, and coordinate public outreach programs and opportunities; to establish benchmarks of good practice; and to promote the assembly of local teams to assist courts with local outreach programs.

No.	Commentator	Full Comments	Commission Response
		promote the assembly of local teams to assist courts with local outreach programs.	will be included at the implementation phase.

47. The AOC should collect, summarize, and evaluate public outreach resources currently available for judges and court administrators and should also collect, summarize, and evaluate educational materials for K–12 teachers and for judges and court administrators making classroom visits. These efforts should include the following:

- Creating a repository of all public outreach resources;
- Assigning AOC staff to coordinate outreach, education, and voter education efforts at the state and local level;
- Cultivating leaders who would make use of the repository in local courts;
- Creating a standing advisory group on public outreach that would help the judicial branch maintain a focus on outreach efforts;
- Maintaining a menu of public outreach options for local courts;
- Establishing benchmarks of good practice and promoting the assembly of local teams to assist courts with local outreach programs; and
- Encouraging bench-bar coalitions to reach out to key stakeholders and interest groups, including political parties, in order to increase awareness and understanding of the judicial branch.

No.	Commentator	Full Comments	Commission Response
147.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree This recommendation needs to be implemented as community outreach better educates the public about the judicial branch, increasing confidence in the judicial system.	No response required.
148.	Hon. Brenda F. Harbin-Forte Judge of the Superior Court of California, County of Alameda	Agree with recommendations 46, 47, 48, and 50. See comment under 46.	No response required.

47. The AOC should collect, summarize, and evaluate public outreach resources currently available for judges and court administrators and should also collect, summarize, and evaluate educational materials for K–12 teachers and for judges and court administrators making classroom visits. These efforts should include the following:

- Creating a repository of all public outreach resources;
- Assigning AOC staff to coordinate outreach, education, and voter education efforts at the state and local level;
- Cultivating leaders who would make use of the repository in local courts;
- Creating a standing advisory group on public outreach that would help the judicial branch maintain a focus on outreach efforts;
- Maintaining a menu of public outreach options for local courts;
- Establishing benchmarks of good practice and promoting the assembly of local teams to assist courts with local outreach programs; and
- Encouraging bench-bar coalitions to reach out to key stakeholders and interest groups, including political parties, in order to increase awareness and understanding of the judicial branch.

No.	Commentator	Full Comments	Commission Response
149	Carol Ebbinghouse Law Librarian Court of Appeal, Second District	Agree, if modified. County law librarians should be among the key stakeholders and interest groups encouraged to participate in bench-bar coalitions.	See response to comment #144 above.
150.	State Bar of California Council on Access and Fairness	Agree with proposed recommendation 46, if modified as follows: The AOC should collect, summarize, and evaluate public outreach resources currently available for judges and court administrators and should also collect, summarize, and evaluate educational materials for K–12 teachers and for judges and court administrators making classroom visits. These efforts should include the following: • Creating a repository of all public outreach resources; • Translating key materials and identifying bilingual speakers for outreach to populations with limited English proficiency statewide; • Assigning AOC staff to coordinate outreach, education, and voter education efforts at the state and local level; • Cultivating leaders who would make use of the repository in local courts;	See response to comment #143 above.

47. The AOC should collect, summarize, and evaluate public outreach resources currently available for judges and court administrators and should also collect, summarize, and evaluate educational materials for K–12 teachers and for judges and court administrators making classroom visits. These efforts should include the following:

- Creating a repository of all public outreach resources;
- Assigning AOC staff to coordinate outreach, education, and voter education efforts at the state and local level;
- Cultivating leaders who would make use of the repository in local courts;
- Creating a standing advisory group on public outreach that would help the judicial branch maintain a focus on outreach efforts;
- Maintaining a menu of public outreach options for local courts;
- Establishing benchmarks of good practice and promoting the assembly of local teams to assist courts with local outreach programs; and
- Encouraging bench-bar coalitions to reach out to key stakeholders and interest groups, including political parties, in order to increase awareness and understanding of the judicial branch.

No.	Commentator	Full Comments	Commission Response
		• Creating a standing advisory group on public outreach that would help the judicial branch maintain a focus on outreach efforts; • Maintaining a menu of public outreach options for local courts; • Establishing benchmarks of good practice and promoting the assembly of local teams to assist courts with local outreach programs; and • Encouraging bench-bar coalitions to reach out to key stakeholders and interest groups, including political parties, in order to increase awareness and understanding of the judicial branch.	
151.	John van Doorn Encinitas, California	Agree if modified. As this affects K-12 education, the influence of parent groups represents more relevant issues than political parties. Please reword the last bullet point to reflect this interest group of greater importance. Do not limit media outreach programs to span ethnic boundaries only. Consider outreach efforts via media outlets to all diverse groups. Note the unintended consequence of poorly administered Title IV-D programs and other federally mandated programs by the courts and local government and the particularly horrific impact these mismanaged programs have on the alienation and diminishment of fathers in minority populations.	It has been proven that many K-12 outreach programs also educate the parents. The commission supports efforts through all types of media outlets to diverse groups and remains open to suggestions.

48. The AOC should maintain a menu of public outreach options for local courts that will:

- Reflect the diversity of the state's demographic and geographic differences and include descriptions of the programs, the targeted audiences, and where they can be used; and
- Explore ethnic media outlets to reach more audiences and investigate multimedia outreach opportunities, such as the California Courts Web site, local court Web sites, radio, podcasts, public service announcements (PSAs), public video hosting sites, instant messaging, and the California Channel.

To.	Commentator	Full Comments	Commission Response
152.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented as community outreach better educates the public about the judicial branch, increasing confidence in the judicial system.	No response required.
153.	Hon. Brenda F. Harbin-Forte Judge of the Superior Court of California, County of Alameda	Agree with recommendations 46, 47, 48, and 50. See comment under 46.	See response to comment #143 above.
154.	Carol Ebbinghouse Law Librarian Court of Appeal, Second District	Agree, if modified. County law libraries should be among the public outreach options for local courts seeking diverse, ethnic and multimedia outlets, especially since they have demonstrated multi-lingual success with the www.publiclawlibrary.org Web site.	See response to comment #144 above.
155.	State Bar of California Council on Access and Fairness	Agree in Concept as follows: The tone and focus in Recommendation 48 refer to the creation of public outreach options reflecting the State's diversity, *with the proper denominator of the demographics of the state, and not the bench*. All Public Outreach Recommendations should be reviewed to ensure that *reaching all populations statewide, including non-English speaking people*, is properly incorporated.	See response comment #146 above.
156.	John van Doorn Encinitas, California	Agree if modified. See comments under #47.	No response required.

48. The AOC should maintain a menu of public outreach options for local courts that will:

- Reflect the diversity of the state's demographic and geographic differences and include descriptions of the programs, the targeted audiences, and where they can be used; and
- Explore ethnic media outlets to reach more audiences and investigate multimedia outreach opportunities, such as the California Courts Web site, local court Web sites, radio, podcasts, public service announcements (PSAs), public video hosting sites, instant messaging, and the California Channel.

To.	Commentator	Full Comments	Commission Response

49. The judicial branch should more fully embrace community outreach activities.

No.	Commentator	Full Comments	Commission Response
157.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented as community outreach better educates the public about the judicial branch, increasing confidence in the judicial system.	No response required.
158.	Center for Judicial Excellence San Rafael, California Stephen Burdo	Agree.	No response required.

50. The standing advisory group mentioned above in recommendation 46 should partner with local courts, bar associations, the CJA, the NCSC, the State Bar, and others to offer outreach and public information programs and media guidelines to courts or regional areas.

No.	Commentator	Full Comments	Commission Response

50. The standing advisory group mentioned above in recommendation 46 should partner with local courts, bar associations, the CJA, the NCSC, the State Bar, and others to offer outreach and public information programs and media guidelines to courts or regional areas.

No.	Commentator	Full Comments	Commission Response
159.	Hon. Brenda F. Harbin-Forte Judge of the Superior Court of California, County of Alameda	Agree with recommendations 46, 47, 48, and 50. See comment under 46.	No response required.
160.	Carol Ebbinghouse Law Librarian Court of Appeal, Second District	Agree, if modified. California Public Law libraries should be among the partners mentioned in recommendation 46.	See response to comment #144.
161.	State Bar of California Council on Access and Fairness	Agree with proposed recommendation if modified as follows: The standing advisory group mentioned should partner with local courts, bar associations, the CJA, the NCSC, the State Bar, and others to offer outreach and public information programs and media guidelines to courts or regional areas, taking advantage of ongoing outreach to diverse communities and existing translated materials in languages other than English.	See response to comment #146 above.

51. Web sites should be enhanced to include the role of the judicial branch and explain how judges are elected, and information concerning how judges are elected should be placed prominently on the California Courts Web site.

No.	Commentator	Full Comments	Commission Response
162.	Carol Ebbinghouse Law Librarian Court of Appeal, Second District	Agree with recommendations 51, 61, 73, 74, 89 and 90, if modified. The proposed Web sites and video on the function and importance of the courts, the role of the judicial branch, and which explains how judges are elected should be offered to law library Websites so they can link to them from the already-popular law library information sites.	See response to comment #144 above.

51. Web sites should be enhanced to include the role of the judicial branch and explain how judges are elected, and information concerning how judges are elected should be placed prominently on the California Courts Web site.

No.	Commentator	Full Comments	Commission Response

52. A compelling video on the role of the judicial branch should be created for use in various venues.

No.	Commentator	Full Comments	Commission Response
163.	David J. Pasternak Attorney, Los Angeles County	Agree if modified. See also recommendation #60 The creation of a video on the role of the judicial branch is a worthy recommendation, and while it would be valuable to create such a video specifically for California courts, the current budgetary situation may delay the fruition of this recommendation. I suggest for now making use of a similar video which was generated through the American Bar Assoc-iation Standing Committee on Independence of the Judiciary. I am certain that this Committee would be glad to supply the California courts with DVDs.	The commission agrees and will add the American Bar Association film to the repository of public outreach materials. Assuming that adequate funds in the future, the commission continues to recommend retaining a documentary filmmaker to create a brief and compelling video for various audiences.
164.	Carol Ebbinghouse Law Librarian Court of Appeal, Second District	Agree with recommendations 52, 60, 73, 74, 83 and 96, if modified. The judicial branch should consider distributing the materials described in these recommendations to public and county law libraries as well as the other educational organizations to improve public understanding of the role of the court, the nature of judicial decision making,	See response comment #144.

53. A model for responding to unfair criticism should be adopted, as should tips for judges to use when responding to press inquiries. (See Appendix I, Rapid Response Plan: A Model Guideline for Responding to Unfair Criticism of the Judicial Branch, and Appendix J, Responding to Press Inquiries: A Tip Sheet for Judges.)

	Commentator	Full Comments	Commission Response
165.	Santa Clara County Bar Association Jil Dalesandro, President	Disagree. See Recommendation 7.	See response to comment #40. The recommendation has been revised to explain the purpose “to improve transparency and be responsive to public comments and constructive criticism of the judicial branch”.
166.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	Disagree. See recommendation 10.	The commission has withdrawn Recommendation 10.
167.	Bonnie Russell Del Mar, California	Specifically in that regard, and in a speech before the American Trial Lawyers Regional District meeting a few years ago, an appellate court justice said I was correct when I advised the judges to avoid the media relations officer and speak to the public directly. This is as much for the credibility of a particular jurist, (except referencing a specific case) as for the court to hit the brakes on deliberate misinformation to attorneys reading California legal publications. Specifically, the court simply must stop the current practice of public relations officers penning puff pieces under the by-line, "Staff Writer" for legal publications. The most egregious being Diane Curtis' gush a few years ago regarding Judge Aviva Bobb accepting the Benjamin Aranda Award for Access to Justice...at the recommendation of yet another, "Blue Ribbon Panel. "Not mentioned by "Staff Writer" Curtis? Judge Bobb's earlier refused to access to her court when Jeanene Bonner wanted desperately to tell Judge Bobb she was afraid of her father. Making matters slight worse, after the little girl was denied access to Bobb’s court room, she wrote a letter. The Court Spokesman said the letter the child wrote seemed "contrived." Essentially the Court Spokesperson blamed the murdered eleven year old for not writing a better letter. Public confidence in the Courts can only begin when the court takes a good look at the lack of information and misinformation its legal publications are releasing upon unsuspecting attorneys, and the public, alike.	The commission has reviewed and considered your remarks. Judicial officers speaking to the public directly (or educating the public about the judicial branch) has been a major topic of study by one of the task forces of the commission. The report and recommendations now reflect the opportunity for public feedback on issues such as judicial performance, satisfaction with the courts, and the like. As to the above recommendation, The commission has considered comments such as yours and has revised the report and recommendation to reflect that the intent is to improve transparency and be responsive to public comments and constructive criticism of the judicial branch.

53. A model for responding to unfair criticism should be adopted, as should tips for judges to use when responding to press inquiries. (See Appendix I, Rapid Response Plan: A Model Guideline for Responding to Unfair Criticism of the Judicial Branch, and Appendix J, Responding to Press Inquiries: A Tip Sheet for Judges.)

	Commentator	Full Comments	Commission Response
		The jig should by now, be up. Specifically this means the court must ceases allowing public information officers to write under by-lines, as "Staff writer." Regarding “impartial judges” an ongoing, glaring situation which has existed since 2002, festers. But first a little background. I am the source credited by Frank Mickadeit, columnist for the Orange County Register, who said, regarding former attorney Ron Lais: "Runs a business helping attorneys get publicity. Mostly good publicity, but in the case of her arch-enemy, disgraced former lawyer Ron Lais, she was as responsible as anyone for getting him sent to prison." I attached some of Frank's columns on the criminal trial of former family law attorney Ron Lais, not because they're funny, although they are in fact, very funny, but because even attorneys had a hard time following the abject failure of the State Bar to alert DA's to his criminal activities. As such Lais was free to scam so many so often for so long....including after the appellate process. Also of note? Lais will be released next year, and he's already re-registered, "LaisLaw.com," seemingly preparing to return to his one skill; ripping people off. I mention this because a couple of friendly, Riverside County judges (Indio Branch) for the past several years - have on their own motions, kept Lais' civil suit against a former victim "client" alive. Lais' daughter shows up at each court hearing for the suit Lais filed n behalf of his company, Child Custody Legal Network, which the Secretary of State had long before suspended. In addressing “impartial courts” surely what must be addressed are not one, but two Riverside judges who seem to have no issue with a non-attorney representing the interests of an incarcerated felon, suing a former client, but incarcerated for the unauthorized practice of law. Neither do these so called, “impartial” judges seem to have a problem with a non-attorney representing the interests of a suspended corporation. Practicing law sans	

53. A model for responding to unfair criticism should be adopted, as should tips for judges to use when responding to press inquiries. (See Appendix I, Rapid Response Plan: A Model Guideline for Responding to Unfair Criticism of the Judicial Branch, and Appendix J, Responding to Press Inquiries: A Tip Sheet for Judges.)

	Commentator	Full Comments	Commission Response
		license appears to be a Lais family trait. Another issue about impartial courts involves my success in exposing fake therapists. It was a true learning experience, in that so called "impartial" judges continued ordering litigants to her supervised visitation agency after the State fined a woman for practicing therapy without a license. I would offer media training service as in that one San Diego Judge chirped to a television reporter, "San Diego judges are doing an excellent job" after a pedophile was arrested. His ex-wife had been trying to warn the court for Six Years of his actions. The ex-wife was demonized. (It took two little girls to do the job of the police, CPS, the therapist and minor's counsel.) Last, I created www.ElkinsTaskForce.org which demonstrates many times over, the abject failure of the Courts. Although Chief Justice Ronald George's request for task force and for the public to apply resulted in the public applying; the public was again rejected by the State. Am thinking there's not much chance any effort towards impartial judges – when the public is denied their voice. Things are so bad in San Diego, it has its own page as judges continue using so called, "mental" health experts after; yes, After they've been exposed as frauds in magazines and news reports.	

54. A leadership group should be created to provide ongoing direction and oversight of the response plan recommended in recommendation 53 and to ensure that the services it proposes are provided in an enduring manner. The proposed group should also consider creating a model plan that can serve both as a plan to respond to unfair criticism and as a campaign oversight plan.

No.	Commentator	Full Comments	Commission Response
168.	Hon. Steven C. Bailey	Disagree. See recommendation 10.	The commission has withdrawn

54. A leadership group should be created to provide ongoing direction and oversight of the response plan recommended in recommendation 53 and to ensure that the services it proposes are provided in an enduring manner. The proposed group should also consider creating a model plan that can serve both as a plan to respond to unfair criticism and as a campaign oversight plan.

No.	Commentator	Full Comments	Commission Response
	Judge of the Superior Court of California, County of El Dorado		Recommendation 10. Also, see response comment #165 above.

57. Training should be developed for judges and justices on how to present clearly the meaning or substance of court decisions in a way that can be easily grasped by the media.

No.	Commentator	Full Comments	Commission Response
169	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree.	No response required.
170.	Center for Judicial Excellence San Rafael, California Stephen Burdo	Disagree.	The commission continues to support the training of judicial officers on how to clearly present the meaning of court decisions and has revised the recommendation so that it explains the benefits to litigants, their attorneys, and the public.

58. Local and statewide elected officials should be educated on the importance of the judicial branch.

To.	Commentator	Full Comments	Commission Response
171.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented as community outreach better educates the public about the judicial branch, increasing confidence in the judicial system.	No response required.

59. Leaders should be encouraged to inspire others to engage in outreach efforts.

No.	Commentator	Full Comments	Commission Response
172	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented as community outreach better educates the public about the judicial branch, increasing confidence in the judicial system.	No response required

60. Groups in public settings should be educated about the importance of the judiciary.

No.	Commentator	Full Comments	Commission Response
173	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented as community outreach better educates the public about the judicial branch, increasing confidence in the judicial system.	No response required
174.	David J. Pasternak Attorney, Los Angeles County	Agree. See also recommendation #52. Suggest showing the video which was generated through the American Bar Association Standing Committee on Independence of the Judiciary to prospective jurors in jury assembly rooms. I am certain that this Committee	The commission agrees with the suggestion to promote use of the video created by the American Bar Association Standing Committee on

60. Groups in public settings should be educated about the importance of the judiciary.

No.	Commentator	Full Comments	Commission Response
		would be glad to supply the California courts with DVDs.	Independence of the Judiciary by including it in the repository of public outreach resources. The AOC has already started collecting materials to be included in the outreach repository and this will be included. On recommendation of the Blue Ribbon Commission on Jury System Improvement, a 14-minute juror orientation video ,"Ideals Made Real" was produced. This is played in jury assembly rooms throughout the state and is accessible on the California Courts website.
175.	Carol Ebbinghouse Law Librarian Court of Appeal, Second District	Agree with recommendations 52, 60, 73, 74, 83 and 96, if modified. See comment under 52.	See response to comment #144.

61. A video on the function and importance of the courts should be created for local court Web sites.

No.	Commentator	Full Comments	Commission Response
176.	Carol Ebbinghouse Law Librarian Court of Appeal, Second District	Agree with recommendations 51, 61, 73, 74, 89 and 90, if modified. See comment under 51.	See response to comment #144.

63. Courts should be identified to pilot programs dealing with community outreach and education.

No.	Commentator	Full Comments	Commission Response
177.	Center for Civic Education Calabasas, California Thomas A. Craven, President of the Board of Directors	Agree with recommendations 63 through 67, if modified. We wholly agree with the general findings of the Commission on the subject of Civic Education. We support the development and implementation of a Strategic Plan to Improve Civic Education (Appendix L) and would be pleased to contribute to a concerted effort by a wide range of educators, scholars, and educational institutions and organizations to assist in that effort. The Center for Civic Education is a non-profit, non-partisan organization with civic education programs in all 50 states, including "We the People: The Citizen and the Constitution" – the largest civic education program in California. The Center has been involved in curriculum development and teacher training in civics education since 1965, and has programs throughout the U.S. and in 80 other countries, all focused on civic education. In several recommendations, the report singles out only a few organizations that promote the necessary kind of civics instruction, and therefore shortchanges many other worthy civic education programs and organizations that also promote the Judicial Council goals, including the Center for Civic Education. In the interest of balance and impartiality, we suggest that references to specific organizations and programs promoting civic and law-related education be removed from the main body of the text of the report. Instead, an appendix could be created consisting of information about specific exemplary organizations and programs promoting civic and law-related education in California. Reference could be made to the appendix in the report, wherever relevant. The wording of recommendation 63 is unclear. "Courts should explore existing educational programs that invite or would benefit from participation by judges." would be better phrasing. We also question the "pilot" feature. There are many existing programs that involve judges in education – there	The commission welcomes participation by the Center for Civic Education in the development of a strategic plan to improve civics education. The commission agrees with the suggestion to include a description of the Center for Civic Education with a listing of examples in an appendix. The report has been revised accordingly. Specific references to civic education programs have been moved from the main body of the report to Appendix L. Though there are many existing programs involving judges in education, the commission concludes that there are courts that would be interested in piloting a combination of different outreach and education approaches. This would include fostering local contacts, reviewing outreach opportunities, and connecting court contacts with appropriate outreach and education programs.

63. Courts should be identified to pilot programs dealing with community outreach and education.

No.	Commentator	Full Comments	Commission Response
		may not be a need for another "pilot" program. That element might be deferred until a fuller exploration of the scope and quality of existing programs is completed. In addition, the first four paragraphs under the "Education" heading are appropriate and accurate assessments of the problem. It is not appropriate to cite the programs of only a few specific organizations, since this implies an endorsement and omit organizations like the Center for Civic Education and others who have decades of relevant experience and success in the civic education field. We recommend you delete the next three paragraphs that deal with Constitutional Rights Foundation (CRF) programs and the San Francisco Bar Association program and move that information with a fuller and more balanced recitation of quality curricula and training assistance already available, to an Appendix. The Center is willing to assist in the assemblage of such an Appendix with the Constitutional Rights Foundation and others. The Task Force may want to address the subject matter in the last paragraph since it addresses the existing programs developed by the AOC and courts in this state. We urge that it be refined to be more useful to the reader or better moved to the suggested Appendix.	
178.	Hon. Brenda F. Harbin-Forte Judge of the Superior Court of California, County of Alameda	Agree with recommendations 63 through 71.	No response required.
179.	State Bar of California Council on Access and Fairness	Agree with Proposed Recommendations 63-71. The Council generally supports the concept of improved civics education in grades K-12 as proposed in these CIC Recommendations and finds a number of the proposals consistent with many of the Council's early pipeline initiatives designed to increase full participation of our diverse population in the legal profession. Courts partnering with the bar to bring civics education	No response required.

63. Courts should be identified to pilot programs dealing with community outreach and education.

No.	Commentator	Full Comments	Commission Response
		to youth, furthers the goals of an informed electorate, respect for the rule of law, and public trust and confidence in our courts, as well as increasing diversity in our profession and our courts. To the extent such proposals might affect how MCLE credit is awarded, the Council does not take a position and defers to the appropriate State Bar entities on these issues.	

64. Strategies for meaningful changes to civics education in California should be supported.

No.	Commentator	Full Comments	Commission Response
180.	Center for Civic Education Calabasas, California Thomas A. Craven, President of the Board of Directors	Agree with recommendations 63 through 67, if modified. See comments under recommendation 65.	See response to comment #177 above.
181.	Hon. Brenda F. Harbin-Forte Judge of the Superior Court of California, County of Alameda	Agree with recommendations 63 through 71.	No response required.
182.	State Bar of California Council on Access and Fairness	Agree with recommendations 63 through 71. See comment under 63.	No response required.

65. A strategic plan for judicial branch support for civics education should be developed. (See Appendix L, Proposed Strategic Plan to Improve Civics Education.)

No.	Commentator	Full Comments	Commission Response
183.	Center for Civic Education Calabasas, California Thomas A. Craven, President of the Board of Directors	Agree with recommendations 63 through 67, if modified. The first two paragraphs of the Discussion on recommendations 64 and 65 are appropriate. We recommend that the third paragraph be deleted or rewritten to incorporate only the first bullet point which could be useful. The second bullet point in that third paragraph merely gives an example of CRF programs, which could go in the suggested Appendix. (See comments under recommendation 63.) The third bullet suggests an activity that will likely have little impact on the students' understanding of the role of the courts and leaves the impression that viewing museum sites would be sufficient to address the cited goals. The good idea behind the suggestion could be developed in the suggested appendix with some curricular materials to support such a site visit.	The commission supports the stated examples of additional actions in support of recommendations 64 and 65. Encouraging courts and bar associations to participate in Law Day etc can be promoted and facilitated by the AOC. Students viewing appropriate museum sites and national archives were suggested by a commission member as ways to enhance a general appreciation of government.
184.	Hon. Brenda F. Harbin-Forte Judge of the Superior Court of California, County of Alameda	Agree with recommendations 63 through 71.	No response required.
185.	Carol Ebbinghouse Law Librarian Court of Appeal, Second District	Agree, if modified. Law libraries should be added to the list of associations that participate in Law Day, Constitution Day, and Bill of Rights Day' and also added to this list including the National Archives, California museums, etc.	See response to comment #144.
186.	State Bar of California Council on Access and Fairness	Agree with recommendations 63 through 71. See comment under 63.	No response required.

66. Political support should be sought from leaders in the Legislature, State Bar, law enforcement community, and other interested entities to improve civics education.

No.	Commentator	Full Comments	Commission Response
187.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented as better public education about the judicial branch will result in increased confidence in the judicial system overall.	No response required.
188.	Center for Civic Education Calabasas, California Thomas A. Craven, President of the Board of Directors	Agree with recommendations 63 through 67, if modified. The first sentence of the discussion paragraph under recommendation 66 should be corrected to reflect that the California campaign for the Civic Mission of Schools should be described (as on its website) as "A project of the Constitutional Rights Foundation in collaboration with the Center for Civic Education and the Alliance for Representative Democracy." The purposes of that organization meld very closely to this recommendation and a reference to it belongs in this report. We recommend that this first sentence read "The steering committee agrees that one way to improve civics education is for the Judicial Council to partner with influential groups such as the Governor's Office, the Legislature, the Department of Education and the California Campaign for the Civic Mission of Schools – a project of the Constitutional Rights Foundation in collaboration with the Center for Civic Education and the Alliance for Representative Democracy."	The commission agrees. The discussion section has been revised to state commentator's proposed language.
189.	Hon. Brenda F. Harbin-Forte Judge of the Superior Court of California, County of Alameda	Agree with recommendations 63 through 71.	No response required.
190.	State Bar of California Council on Access and Fairness	Agree with recommendations 63 through 71. See comment under 63.	No response required.

67. Teacher training programs, curriculum development, and education programs on civics should all be expanded to include the courts.

To.	Commentator	Full Comments	Commission Response
191.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented as community outreach better educates the public about the judicial branch, increasing confidence in the judicial system.	No response required.
192.	Center for Civic Education Calabasas, California Thomas A. Craven, President of the Board of Directors	Agree with recommendations 63 through 67, if modified. The first two paragraphs of the discussion for recommendation 67 should confine their content to programs of the AOC and the State Bar which are not proprietary programs. Other programmatic references are more appropriately included in the suggested Appendix (see comments under recommendation 63.)	The commission agrees and has revised the report accordingly.
193.	Hon. Brenda F. Harbin-Forte Judge of the Superior Court of California, County of Alameda	Agree with recommendations 63 through 71.	No response required.
194.	State Bar of California Council on Access and Fairness	Agree with recommendations 63 through 71. See comment under 63.	No response required.

68. Presiding judges should be encouraged to grant CLE credits to judicial officers and court executive officers conducting K–12 civics and law-related education.

No.	Commentator	Full Comments	Commission Response
195.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented as better public education about the judicial branch will result in increased confidence in the judicial system overall.	No response required.

68. Presiding judges should be encouraged to grant CLE credits to judicial officers and court executive officers conducting K–12 civics and law-related education.

No.	Commentator	Full Comments	Commission Response
196.	Center for Civic Education Calabasas, California Thomas A. Craven, President of the Board of Directors	Agree with recommendations 68 through 71.	No response required.
197.	Superior Court of California, County of Los Angeles	The commentary to this recommendation should be corrected to accurately state the law. Under the Rules of Court, trial judges are "expected," not "required," to earn 30 hours of education every three years.	The commission agrees and has revised the report to state that judges are "expected" to earn 30 hours of education every three years.
198.	Hon. Brenda F. Harbin-Forte Judge of the Superior Court of California, County of Alameda	Agree with recommendations 63 through 71.	No response required.
199.	State Bar of California Council on Access and Fairness	Agree with recommendations 63 through 71. See comment under 63.	No response required.

69. The State Bar Board of Governors should be asked to grant Minimum Continuing Legal Education (MCLE) credits to attorneys conducting K–12 civics and law-related education programs.

No.	Commentator	Full Comments	Commission Response
200.	Center for Civic Education Calabasas, California Thomas A. Craven, President of the Board of Directors	Agree with recommendations 68 through 71.	No response required.

69. The State Bar Board of Governors should be asked to grant Minimum Continuing Legal Education (MCLE) credits to attorneys conducting K–12 civics and law-related education programs.

No.	Commentator	Full Comments	Commission Response
201.	Hon. Brenda F. Harbin-Forte Judge of the Superior Court of California, County of Alameda	Agree with recommendations 63 through 71.	No response required.
202.	State Bar of California Council on Access and Fairness	Agree with recommendations 63 through 71. See comment under 63.	No response required.

70. The AOC should be directed to help pilot extensive civics-related outreach in three jurisdictions.

No.	Commentator	Full Comments	Commission Response
203.	Center for Civic Education Calabasas, California Thomas A. Craven, President of the Board of Directors	Agree with recommendations 68 through 71.	No response required.
204.	Hon. Brenda F. Harbin-Forte Judge of the Superior Court of California, County of Alameda	Agree with recommendations 63 through 71.	No response required.
205.	State Bar of California Council on Access and Fairness	Agree with recommendations 63 through 71. See comment under 63.	No response required.

71. Recognition programs that bring attention to teachers, judges, and court administrators who advance civics education should be promoted.

No.	Commentator	Full Comments	Commission Response
206.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented as better public education about the judicial branch will result in increased confidence in the judicial system overall.	No response required.
207.	Center for Civic Education Calabasas, California Thomas A. Craven, President of the Board of Directors	Agree with recommendations 68 through 71.	No response required.
208.	Hon. Brenda F. Harbin-Forte Judge of the Superior Court of California, County of Alameda	Agree with recommendations 63 through 71.	No response required.
209.	State Bar of California Council on Access and Fairness	Agree with recommendations 63 through 71. See comment under 63.	No response required.

73. Information about how judges are elected should be incorporated into outreach efforts and communications with the media.

No.	Commentator	Full Comments	Commission Response
210.	Carol Ebbinghouse Law Librarian Court of Appeal, Second District	Agree with recommendations 52, 60, 73, 74, 83 and 96, if modified. See comments under 52. Agree with recommendations 51, 61, 73, 74, 89 and 90, if modified. See comment under 51.	See response to comment #144 above.

74. Web traffic to existing nonpartisan sources of information should be increased by partnering with other groups, such as bar associations.

No.	Commentator	Full Comments	Commission Response
211.	Carol Ebbinghouse Law Librarian Court of Appeal, Second District	Agree with recommendations 52, 60, 73, 74, 83 and 96, if modified. See comment under 52. Agree with recommendations 51, 61, 73, 74, 89 and 90, if modified. See comment under 51.	See response to comment #144 above.

75. Collaboration should be established between the Judicial Council, the League of Women Voters, the California Channel, and other groups to inform voters.

No.	Commentator	Full Comments	Commission Response
212.	Carol Ebbinghouse Law Librarian Court of Appeal, Second District	Agree, if modified. Law Libraries and public libraries should be included with the League of Women Voters, the California Channel and other groups which inform voters.	See response to comment #144 above.

80. Statements that educate voters about judicial candidates and the state's court system should be placed in sample ballot statements or other voter education guides. (See Appendix K, Judicial Elections: Proposed Language for Voter Pamphlets.)

No.	Commentator	Full Comments	Commission Response
213.	Thomas Keiser Attorney Arcadia, California	Disagree There is no way there should be any editorial comments or however disguised recommendations on the ballot or included with voter information. The number of judicial elections where an apparently less qualified person is	The commission has revised the language of the recommendation to state that voter education materials should inform voters about the constitutional duties and

80. Statements that educate voters about judicial candidates and the state's court system should be placed in sample ballot statements or other voter education guides. (See Appendix K, Judicial Elections: Proposed Language for Voter Pamphlets.)

No.	Commentator	Full Comments	Commission Response
		elected is so rare that no action is required. There is no need for the recommended solution because, simply, there is no problem.	responsibilities of a judicial officer and the role of the state court system. The proposed language for voter pamphlets was deleted. The intent of this recommendation is to educate voters on the process of judicial elections, not to make editorial comments. The recommendation stems from public surveys that reveal widespread ignorance about how the judicial system works.
214.	California Judges Association Hon. Mary E. Wiss, President	CJA believes the CIC should recommend the inclusion of judicial candidates' website information in the sample ballots distributed to voters. Ballot statements have become very expensive, especially in the larger counties. Including information about a candidate's website would give each candidate a free opportunity to communicate important information to voters without reliance on mailers from political organizations or special interest groups, and would reduce the need for campaign financing.	The commission generally agrees with this comment and believes providing more sources of information to voters—especially in judicial elections—is highly desirable. The commission is concerned, however, about possible abuses that may occur if this recommendation is adopted without providing reasonable parameters for what could or should belong on a website cited in a voter pamphlet. The CJA recommendation could be adopted pending further study in the implementation process.

82. A study should be undertaken and recommendations made regarding confidential self-improvement evaluations (optional or otherwise) for judges.

No.	Commentator	Full Comments	Commission Response
215.	Hon. Maria P. Rivera Associate Justice of the Court of Appeal, First Appellate District, and Member of the Commission for Impartial Courts Task Force on Judicial Candidate Campaign Conduct	Agree with Recommendations 82, 83, and 84, and suggest additional recommendations. The CIC Report provides a very important opportunity to clarify the meaning of "judicial accountability" within the necessary context of judicial impartiality, *viz.*, that judges must be accountable *to the law* for their decisions and *to the people* for their judicial behavior and for the orderly, fair and accessible administration of justice. Such a clarification, coupled with recommendations for the development and institutionalization of meaningful evaluative tools that include public input, would strengthen the report's legitimacy. Under the heading "Accountability," the Report states: "The judicial branch must work to enhance trust and confidence in the courts through access, procedural fairness… and judicial accountability…. [¶] The second goal of the judicial branch's long-term strategic plan is 'independence and accountability.' Consultant Bert Brandenburg related that independence and accountability are equal in the eyes of the public and that the road to independence is through accountability." Having thus recognized the enormous importance of accountability in the eyes of the public, the report nevertheless does not contain any recommendations that judges, courts or the judicial branch develop mechanisms for measuring and ensuring accountability to the public or to court users. In my view, this omission calls into question the depth of our commitment to enhance judicial impartiality through accountability. As the Chief noted at the outset of his remarks to the CIC: "First and foremost, of course, [our goal] is ensuring that the public's interest is served —the focus is not on saving judges from defeat at the polls, but on preserving and enhancing the administration of justice and the rule of law. Without public confidence and trust, the courts cannot function effectively. If the public becomes cynical about the fairness of the justice system, a crucial foundation of our republic is at risk." We all agree that judges should be neither swayed nor deterred by public	Two task forces considered various forms of judicial evaluation. Establishing a confidential program that could be useful for judges was discussed. The problem with such a system is that, under current public records law, there is no assurance that the results of the evaluations and feedback would remain confidential. The commission spent a considerable amount of time discussing your comments. It was agreed that the report should include language to clarify "judicial accountability" and the report has been modified. In addition, the report has been revised to include a new recommendation (#38 in the December 2009 report) to include solicitation of feedback from the public about issues such as judicial performance, satisfaction with the courts and the like.

82. A study should be undertaken and recommendations made regarding confidential self-improvement evaluations (optional or otherwise) for judges.

No.	Commentator	Full Comments	Commission Response
		opinion with respect to judicial rulings. For our decisions, we answer to the law, and to appellate courts. But we do owe accountability to the public for our court processes and practices—how courtrooms are run, how litigants and jurors are treated, whether the judicial process is *and* appears to be fair, whether the courts are accessible, how are we meeting (or not) the justice needs of the community, and whether we are doing it efficiently (and not wasting taxpayer money). The public often fails to draw the important distinction between accountability for judicial decisions and accountability for court operations. We should seize this opportunity to articulate this distinction by involving the public and the community in an accountability feedback loop that actively manifests that distinction. This will also help to counteract any perception of the courts as out-of-touch or indifferent to court users' experiences. I support recommendations 82-84. I recommend, additionally, that we create mechanisms for the public to communicate with us on its perceptions of the quality of justice being dispensed, and that we use that process to shape the public's realistic expectations. We should institutionalize ongoing assessments of how the courts are doing vis-à-vis the justice needs of the community. This can be done through regular discussions with a variety of community leaders, through surveys provided to court users, and through focus groups—just as we require partnership grant recipients to evaluate their programs. For example, we might provide a model procedure by which lawyers, litigants and the public can comment upon a judge's or commissioner's judicial temperament, efficiency, and appearance of fairness (whether favorably or unfavorably) at the local level. We know from surveys that confidence in the judicial branch arises in large part from the perception of the litigants. If they have an opportunity to state their case, if they feel they are being "heard," and if they are treated evenhandedly and with respect, litigants will believe in the system even when they have adverse outcomes. The information provided by court users, therefore, can be very helpful in	

82. A study should be undertaken and recommendations made regarding confidential self-improvement evaluations (optional or otherwise) for judges.

No.	Commentator	Full Comments	Commission Response
		improving public trust and confidence by improving judicial demeanors and attitudes. We all have legitimate apprehensions as to the fairness and confidentiality of any kind of performance review. But these concerns are hardly insurmountable, and will be best served if we, as a branch, develop the procedure. (See, e.g., ABA Guidelines for the Evaluation of Judicial Performance.) Given the caliber of our judiciary, I would expect judges to welcome any information that will speak to each judge's strengths and weaknesses so we can all learn to do our jobs better.	
216.	California Judges Association Hon. Mary E. Wiss, President	Disagree. It is not clear to CJA how Recommendation 82 would protect the impartiality of the judiciary. This proposal would implement a study of confidential self-improvement evaluations. They would be "optional or otherwise." In this context, the only possible meaning of "otherwise" would be "mandatory." The report provides no recommendations concerning who would conduct this study, how it would be used, how it promotes the goals of the CIC, and how confidentiality would be preserved in view of public policy and court decisions that strongly favor public access to court records. CJA has historically opposed such judicial evaluations and sees nothing in the CIC Report that warrants a different position.	See response to comment #215 above.
217.	Superior Court of California, County of Los Angeles	Disagree. This recommendation should not be adopted in its current form. Along with the California Judges Association, the Los Angeles Superior Court strongly opposes this recommendation. This recommendation has nothing to do with the impartiality of courts. Further, the recommendation is vague and euphemistic. This recommendation also conflicts with the first sentence of the supporting "Discussion." That discussion says there was <u>no agreement</u> about the benefit of further study of this issue. Yet the recommendation proposes a measure on which there was no agreement. This recommendation also conflicts with the Report's own finding. That	See response to comment #215 above.

82. A study should be undertaken and recommendations made regarding confidential self-improvement evaluations (optional or otherwise) for judges.

No.	Commentator	Full Comments	Commission Response
		finding (at page 9) is: "Based on detailed consideration of state-sponsored judicial evaluation programs in other states, formal, public judicial evaluation programs are uniquely suited to trial courts that hold retention elections; <u>any other form of judicial evaluation should be voluntary</u> and for the judge's own self-improvement." Despite this finding, the recommendation proposes study of "evaluations (optional or otherwise) for judges." The "otherwise" wording must mean the evaluation would be mandatory, not voluntary. The finding contradicts the recommendation.	
218.	Enrique Monteagudo, J.D. San Diego, California	Disagree with recommendations 82 through 84. These recommendations are misguided and will be ineffective. These recommendations are directed toward "Independence and Accountability of the Courts" and are intended to address the Public's "Trust and Confidence in the Courts". However, the problem with these recommendations is that they presume the premise that the Courts are already held accountable. In particular, these recommendations can be summarized as saying "the courts are already accountable; the Public just needs to be educated of this." Moreover, this approach negates the current beliefs of the Public that this is not in fact true, which can be seen in the work of the Survey. The reason "Accountability" is a very serious concern because (from the Public's perspective) it is a necessary prerequisite to earning its "Trust and Confidence", and (from the Court's perspective) it is a necessary prerequisite to get to achieving "Independence". However, when the Commission for Impartial Courts clearly presumes the ultimate fact, it not only diminishes trust, confidence, and independence, it also precludes the Commission from listening to the public and exploring workable options for satisfying the public's need for judicial accountability. Recommendations 82-84 should be replaced with the following recommendations: #82: Form a workgroup of court user representatives and judicial staff to	See response to comment #215 above.

82. A study should be undertaken and recommendations made regarding confidential self-improvement evaluations (optional or otherwise) for judges.

No.	Commentator	Full Comments	Commission Response
		define the meaning of "Accountability" (e.g., is this pre-appointment/post-appointment, what are proper metrics to measure, would this include review of judicial decision making on the bench, should a separate branch of government be involved, should Family Court be target first -being previously identified as the least trusted court). This workgroup should include diverse stakeholder members of the public, attorneys, and other users of the court. Preferably, the workgroup should be the precursor to a Legislative committee or Executive agency that will assume a "check and balance" function such that the Judiciary's budget can be based strictly on the Court's fiscal needs. The workgroup should document and publicize its own work in the spirit of transparency and accountability. #83: The courts should establish an ongoing user-critique program where the results are publicized periodically (no less than quarterly) in the spirit of transparency and account-ability. The Judicial Council or, preferably, an independent workgroup should review this ongoing feedback by court users and other stakeholder to continuously make recommendation for the improvement of the court. #84: The Commission should address the unique problems of the Family Court, as seen in the Judicial Council's creation of the Elkins Task Force, the Joint Legislative Audit Committee's creation of the Audit and Evaluation of Family Court System, and the Department of Child Support Service's Review of the Child Support Guideline and Child Support Collectability.	
219.	Center for Judicial Excellence San Rafael, California Stephen Burdo	Agree.	No response required.
220.	Hon. Runston G. Maino Judge of the Superior Court of California, County of San Diego	Disagree	See response to comment #215 above.

82. A study should be undertaken and recommendations made regarding confidential self-improvement evaluations (optional or otherwise) for judges.

No.	Commentator	Full Comments	Commission Response
221.	John van Doorn Encinitas, California	Agree. Confidentiality is appropriate for performance evaluations in at-will employment situations, however, in the public sector, those in official government positions (elected officials, the judiciary, etc.) owe their positions to the Will of the People to be governed, hence transparency is not only appropriate but mandatory. The people have an inherent right to review and become familiar with the competency of those individuals entrusted with the power to make decisions over their rights and lives.	No response required.

83. The public should be informed that systems are in place to deal with judicial performance issues in fair and effective ways, including elections, appellate review, judicial education, media coverage, the Commission on Judicial Performance, the State Bar's Commission on Judicial Nominees Evaluation, and local bar association surveys.

No.	Commentator	Full Comments	Commission Response
222.	Hon. Maria P. Rivera Associate Justice of the Court of Appeal, First Appellate District, and Member of the Commission for Impartial Courts Task Force on Judicial Candidate Campaign Conduct	Agree with Recommendations 82, 83, and 84. See comments under 82.	See response to comment #215 above.

83. The public should be informed that systems are in place to deal with judicial performance issues in fair and effective ways, including elections, appellate review, judicial education, media coverage, the Commission on Judicial Performance, the State Bar's Commission on Judicial Nominees Evaluation, and local bar association surveys.

No.	Commentator	Full Comments	Commission Response
223.	Enrique Monteagudo, J.D. San Diego, California	Disagree with recommendations 82 through 84. See comments under 82.	See response to comment #215 above.
224.	Carol Ebbinghouse Law Librarian Court of Appeal, Second District	Agree with recommendations 52, 60, 73, 74, 83 and 96, if modified. See comment under 52.	See response to comment #144 above.
225.	Center for Judicial Excellence San Rafael, California Stephen Burdo	Agree, if modified. CJE believes the courts would benefit from instituting a more accountable and transparent process for addressing judicial performance issues.	See response to comment #215 above.
226.	John van Doorn Encinitas, California	Agree. See comments under #82.	No response required.

84. More widespread participation by the courts and the AOC should be encouraged in CourTools or similar court performance measures and in the development of toolkits and mentoring programs for courts that wish to participate in such projects.

No.	Commentator	Full Comments	Commission Response
227.	Hon. Maria P. Rivera Associate Justice of the Court of Appeal, First Appellate District, and Member of the	Agree with Recommendations 82, 83, and 84. See comments under 82.	See response to comment #215 above.

84. More widespread participation by the courts and the AOC should be encouraged in CourTools or similar court performance measures and in the development of toolkits and mentoring programs for courts that wish to participate in such projects.

No.	Commentator	Full Comments	Commission Response
	Commission for Impartial Courts Task Force on Judicial Candidate Campaign Conduct		
228.	California Judges Association Hon. Mary E. Wiss, President	Disagree. CJA objects to the use of these statistical tools for evaluating individual judges. Many of the factors used in CourTools relate to the efficiency of the court as a whole rather than the fairness and impartiality of an individual judge. And many variables that affect court efficiency are beyond the power or control of the individual judge. Statistical analysis will be particularly misleading as California's ongoing budget crisis leads to significant reduction in court resources and a likely decrease in efficiency. CJA suggests that a more effective way of assessing fairness and impartiality would be to solicit input from former litigants and counsel concerning their own experiences of the impartiality of the court system and its effectiveness in meeting the needs of the community.	The commission considered your comments, yet continues to support evaluation measures such as CourTools. The Conference of Chief Judges and Conference of State Administrators urge the states to develop and test a balanced set of performance measures using CourTools as the model. The Judicial Council of California supports piloting the model in the trial courts. Fifteen courts are currently involved in pilots of some form and a number of them have found information that is helpful in running more efficient courts, but not for measuring or evaluating judges. The commission agrees that soliciting input from former litigants—as well as jurors—can be useful for judges and the court system. The report has been revised to include a new recommendation (#38 in the December 2009 report) to include solicitation of feedback from the public about issues such as judicial performance,

84. More widespread participation by the courts and the AOC should be encouraged in CourTools or similar court performance measures and in the development of toolkits and mentoring programs for courts that wish to participate in such projects.

No.	Commentator	Full Comments	Commission Response
			satisfaction with the courts and the like.
229.	Superior Court of California, County of Los Angeles	Disagree. The CourTools program includes surveys of the public about their experience with individual judges, on topics such as "The judge had the information necessary to make good decisions about my case." We repeat the comments we made about evaluations in response to Recommendation 82. More important, judges and justices are always accountable to the litigants, attorneys and the public through a number of mechanisms, including elections. In no other branch of government are rating forms given to the public after they appear before, for example, State Assembly members, Senators or the Governor. Nothing further should be required of the Judicial Branch.	See response to comment #228 above.
230.	Enrique Monteagudo, J.D. San Diego, California	Disagree with recommendations 82 through 84. See comments under 82.	See response to comment #228 above.
231.	Hon. Runston G. Maino Judge of the Superior Court of California, County of San Diego	Disagree	See response to comment #228 above.

JUDICIAL SELECTION AND RETENTION

85. The JNE process, a unique form of a merit-based screening and selection system that has served California well, should be retained in lieu of adopting another form of merit selection such as the Missouri Plan and expanded to apply to all contested judicial elections.

No.	Commentator	Full Comments	Commission Response
232.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree. This recommendation needs to be implemented to make sure that judicial candidates are qualified, after evaluation by the JNE.	No response required.
233.	Hon. Harry F. Brauer (Ret.) Associate Justice of the Court of Appeal, Sixth District	Disagree. I strongly disagree with injecting the JNE into the electoral process or with expanding its role in the appointing process. My reason is that I have no confidence in the integrity and impartiality of the commissioners and the reliability of its method. My view is based primarily on what I know of the "not qualified" rating given to Justice Brown for the Supreme Court and to Ariadne Symonds (now Judge Symonds by election) to the Superior Court of Santa Cruz County. The Commission has a strong left-wing bent. They will approve a conservative provided he is better than anybody else and a white male. The idea of a black female conservative is totally repugnant to them. Black females are their constituency. The reasons given for rejecting Justice Brown were totally fatuous. She expressed her personal opinion in dissents and concurrences? I seldom wrote a dissent or concurrence which didn't. Oliver Wendell Holmes' dissent in *Abrams* v. *U.S.*, which created the "clear and present" rule, the cornerstone of the 5th Amendment, would never have seen the light of day. Even if the Commission hadn't been biased, the members didn't have the sophistication to realize that lawyers and trial judges cannot evaluate appellate judges because they don't know what the work of the judge is and what of the research attorney. Only their cohorts know. Justice Brown was supported by every justice of the 3rd District, including three highly qualified democrats appointed by Jerry Brown. That should have	Arguments concerning the "bias" of the JNE Commission usually cite a small number of specific individual decisions of the JNE commission made many years ago, The overall reputation of the JNE Commission is very high and Governors of all political views continue to rely on it.

85. The JNE process, a unique form of a merit-based screening and selection system that has served California well, should be retained in lieu of adopting another form of merit selection such as the Missouri Plan and expanded to apply to all contested judicial elections.

No.	Commentator	Full Comments	Commission Response
		overridden everything. Justice [Nat A.] Agliano, our Presiding Justice, was next to me the brightest and most conscientious member of our court, but seldom opened his mouth in oral argument so that another justice, who couldn't hold a candle to Justice Agliano, was named my "intellectual successor" by the San Jose legal newspaper when I retired. Now to Ari Symonds. A towering intellect and hard worker who was undoubtedly the best trial attorney in the county. When she submitted her name, the speculation among that judges was whether she would be down-graded from EWQ [exceptionally well qualified] because of her limited civil experience, but she was abrasive and didn't suffer fools gladly, and therefore made lots of enemies. Those are the enemies a good judge should make. One of the problems with the JNE process is that the commission cannot determine whether a respondent is biased or how much contact he or she really had with the nominee. We were totally shocked when Ari was found unqualified. Incidentally, one sitting judge who went out of his way to write a highly favorable letter learned that it wasn't considered because he didn't use the form. My view is also influenced by my own experience when I was nominated for the Court of Appeal. I was at least as abrasive and critical as Ari but I received a high WQ [well qualified] rating (nine EWQ, eleven WQ and one Q according to Marvin Baxter). The reason was that one commissioner was from Santa Cruz. She and I were far apart ideologically, but she was a person of integrity and knew whom to consult and whose opinion to reject. But for her presence as lead investigator, I wouldn't be surprised if I had met Ari's fate.	
234.	Hon. Michele McKay McCoy Judge of the Superior Court of California, County of Santa Clara	Disagree The JNE commission is described as "merit based screening", and is now used to evaluate judicial candidates seeking to be appointed to the bench. The proposal to extend JNE evaluations to candidates seeking to be elected is, frankly, an insult to the voting public. The governor may not have time to	See response to comments #233 and #300.

85. The JNE process, a unique form of a merit-based screening and selection system that has served California well, should be retained in lieu of adopting another form of merit selection such as the Missouri Plan and expanded to apply to all contested judicial elections.

No.	Commentator	Full Comments	Commission Response
		evaluate all judicial candidates statewide, but surely the voters in each county can be trusted to read the nominee's ballot statement, review the "Smart Voter" website of the League of Women Voters, and attend candidate nights to make a decision. Adding the two cents of the JNE commission is not helpful, and could easily mislead the public into thinking the good opinion of the JNE is in fact a prerequisite to running for judicial office.	
235.	An anonymous elected female judge	Disagree I am a judge. I am female. I broke the glass ceiling by running against one of the "old boys". He was a terrible judge. He was slovenly in his work habits. He was a tyrant. He was ignorant of the law. He was the worst kind of judge. But he was an old boy, and the old boys protected him. I had the guts to stand up and say that he had to go. I was threatened by the judges. I was vilified by them. And ever since I beat one of them there has been hell to pay. Some judges will not speak to me, but others take their revenge in more blatant ways. I will spare you the details of those ways, but trust me when I tell you that I have had to endure conduct unbecoming from many of my older male colleagues whose vicious tongues are constantly spinning new tales. Before I ran for judge I went through JNE. I only had a 4 negative comments, all of which I thought were fair. But after I won an election my name later came down for a position on the court of appeal and the fight was on. I am not kidding you when I tell you that I received the following comments: "She painted her courtroom hot pink." "She wears a mink coat on the bench." "She brandished a gun from the bench." On and on the comments went, page after page. They were ridiculous and humiliating. Of course, in keeping with JNE protocol, the comments were anonymous. But a sympathetic person on the bench told me that the comments came from my colleagues who wished to destroy me for having the audacity not just to run,	See response to comment #233 above and also note that the commission has modified recommendation #94 as discussed under new recommendation #58 in the final report of December 2009.

85. The JNE process, a unique form of a merit-based screening and selection system that has served California well, should be retained in lieu of adopting another form of merit selection such as the Missouri Plan and expanded to apply to all contested judicial elections.

No.	Commentator	Full Comments	Commission Response
		but to win. I am horrified by the suggestion that you want to take power away from the people of this state and put it in the hands of a small group of people who have their own political agendas. What purpose does that serve? If the claim is to keep incompetent people from the bench then I must ask why we do not have a secret panel that ranks the legislators, the Governor or other elected officials. I fear that the result of adopting such a proposal will be to keep the old boy network which has held its grip on the judiciary intact. JNE can be easily manipulated by a cabal as I have witnessed over and over in my county. The voters can make intelligent choices, Why can they not be trusted to decide these matters for themselves? In my race I had people come out of the woodwork against this judge. The average person on the street had heard about how awful he was. I shudder when I think that the bench could have weighed in on JNE to find him qualified and me not - just to protect one their own. That is what it really is about - protecting their own. They protect themselves because they do not want anyone to ever run against them. They protect against incompetency, abusiveness and unethical behavior. They reward their friends and punish anyone who dares to stand up to them. Is that what you really want to see??? I hope you will reconsider this recommendation. Let the people decide who will make their decisions. They do not have to be so directly influenced by a secretive, anonymous process wherein people get trashed if they are not in the right crowd and promoted even if they are incompetent so long as they are friends with the "right" people.	
236.	Diane Goldman Attorney at Law Woodland Hills, California	To the extent that this recommendation encompasses the addition of judicial evaluations of public election judicial candidates, please refer to the comments regarding recommendation 94 below.	See response under comment #334.

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No.	Commentator	Full Comments	Commission Response
237.	Los Angeles County Bar Association Don Mike Anthony, President Danette E. Meyers, Immediate Past President	Disagree with recommendations 85-98. On June 24, 2009 the Los Angeles County Bar Association (LACBA) voted to recommend the majority of the Commission for Impartial Courts recommendations in its draft final report be approved except for recommendations 85 through 98. Recommendations requiring all judicial candidates in contested elections, including sitting judges running for re-election, to go through a JNE process is not in our view workable nor appropriate. The JNE process is helpful for the Governor in evaluating potential appointees, however there is no vehicle in place to conduct such evaluations on re-election cycles, nor is it clear that the NJE process could be conducted in the time frames controlling the election process. LACBA has a Judicial Elections Evaluation Committee which serves this function.	See response to comment #233 above.
238.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	*Statement providing background on JNE Commission Procedure:* The Judicial Nominees Evaluation Commission (JNE) currently operates as a check on the Governor's power to appoint judges. The original reason for the Commission's formation was to prevent Lieutenant Governors from making appointments to the bench when the Governor was absent from the state for short periods of time. JNE is provided 90 days to evaluate judicial nominees whose names are submitted to it by the Governor. Within those 90 days, JNE conducts its investigation and makes a recommendation to the Governor. The recommendation is Extremely Well Qualified (EWQ), Well Qualified (WQ), Qualified (Q) and Not Qualified (NQ). Regardless of the rating by JNE, once the recommendation is made and conveyed to the Governor, the Governor is free to appoint the candidate to an open judicial position. The process begins with the Chairperson of JNE appointing two (2) commissioners for trial courts and three (3) commissioners for appellate	See response to comment #233 above.

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No.	Commentator	Full Comments	Commission Response
		courts to begin an investigation into the background and qualifications of each candidate. Each candidate is afforded his or her own personal investigatory team. Questionnaires are uniform. The list of names to whom the questionnaires are mailed are selected by the investigating commissioners, with the exception of 50 names selected by the candidate and the names of all the judges and attorneys listed in the candidate's application form sent to the Governor. Generally, the list contains approximately 250 names in larger jurisdictions and somewhat less in the smaller counties. Investigating commissioners count the positive returns but focus primarily on the negative returns. All the negative responses warrant a call by the investigating commissioners. The negative responses are probed and the "complainers" are asked to fill in the details to the negative comments. These responses are then reported to the candidate several days before the candidate's interview date. Little attention is spent reviewing the candidate's honesty, integrity, or qualifications to be a judge. Most of the attention is focused on the negative comments by perhaps one or two individuals. Depending on what the negative comments are and the philosophical bent of the investigating commissioners, a candidate might easily receive a "not qualified" recommendation by the entire Commission. The JNE Commission meets as a full body near the end of the 90 day period. At this meeting the Commission receives a one page summary on each judicial nominee. The lead investigating commissioner reads the joint report to the Commission. Next, each of the investigating commissioners presents their personal comments on the candidate's qualifications, bias, and conduct in the interview. With miraculous ease, an otherwise qualified individual could be found unqualified based mostly on the person's personal, religious or interviewing skills. Being overly religious or having formerly been associated with the Boy Scouts has at times been the "kiss of death."	

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No.	Commentator	Full Comments	Commission Response
		While a candidate receiving a "NQ" received an opportunity to appeal the decision, a far more insidious means of sidetracking a candidate was to simply find the candidate qualified. A qualified candidate would appear to be only marginally able to handle the duties of a judge. Moreover, a candidate rated "qualified" could not appeal the decision because it was never conveyed to the candidate. Therefore, the qualified rating left the impression that the candidate was marginal, when compared to the higher ratings of "Well Qualified or Extremely Well Qualified." *Statement providing background on selection of the JNE Commission membership.* Annually, the State Bar solicits applications for membership on the Commission. Members serve one (1) year terms and can be reappointed up to two (2) additional times. The Commission Chair and Vice Chair, as well as the membership of JNE, are selected by the Board of Governors with the exception of several public members who are selected by the Governor and the legislative leadership of both houses. While claiming to represent the "diversity of the bar/population" as a whole, in reality the Commission is populated by the "elite" of the State Bar. The JNE commission represents the interests of the Board of Governors not the membership of the State Bar as a whole. While an attempt is made to select at least one Commissioner from each State Bar district, the balance of the membership of the Commission is selected from specialty bar associations and other "special interests." No attempt to apologize for the Commission make-up is made. This Commission is politically and philosophically oriented to the bias and desires of the Board of Governors and the political elites. Disagree with recommendation 85. This proposal is ill-considered and will politicalize the judicial election	

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		process. With all the recommendations taken as a whole (i.e. the removal of union and political party involvement in the election process) this intrusion of the JNE process into elections will substitute the "political" for the "quasi-political" intrusion by the elites. JNE will suddenly be called upon to certify and "sanitize" candidates. EWQ and WQ candidates will meet new standards established by mysterious "legal" elites. More troubling is this "new" JNE process will suddenly have San Francisco meddling in Orange County elections or Los Angeles elites meddling in Northern California elections. Given the nature of the Commission's make-up, why should these outsiders be given the power to meddle in local elections? What sort of judiciary would be created if the local interests are prohibited from participation in the election, yet an "outside" body is permitted to influence the local election?	
239	California Judges Association Hon. Mary E. Wiss, President	Disagree with recommendation 85 and 94. The JNE process was specifically designed to advise the Governor on a confidential basis concerning statewide judicial appointments. In addition to the simple ratings, supporting evidence for the committee's conclusions can be included. JNE is a quasi-governmental agency – an arm of the State Bar which is statutorily authorized to license attorneys, evaluate judicial applicants, etc., funded by fees set by the legislature. This requirement is unfair to sitting judges. No other incumbents serving in a public office are required to be evaluated in a reelection campaign. CJA agrees that evaluations of candidates in local elections can provide valuable information for the electorate, but such evaluations are better conducted by county bar associations most familiar with the candidates. Introducing the JNE process into judicial elections would also be logistically cumbersome and unworkable. Although the CIC Report states that there are a sufficient number of former JNE members to handle the additional workload,	See response to comment #233 above.

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		election deadlines do not share the flexibility of the gubernatorial selection process. A 90-day lead time is generally required for a thorough JNE evaluation, assuming no appeals. It may be difficult to conduct a JNE evaluation in time to have the results included in the ballot information that is mailed to voters. Recommendations 85 and 94 would also be unfair to sitting judges whose names appear on the ballot solely due to a write-in campaign. In the most recent election in Los Angeles, a group targeted for write-in every judicial incumbent who had an Hispanic surname. If enacted, recommendations 85 and 94 would provide an easy opportunity for any special interest organization to force a category of judges it disfavors to submit to JNE evaluations. CJA recognizes that the "exceptionally well qualified" or "well qualified" ratings that the vast majority of California judges would deservedly receive would be advantageous in a contested election, especially against a well financed opponent who receives an "unqualified rating." However, we believe the risks created by expanding the role of the JNE commission as proposed outweigh the potential improvements in the judicial election system.	
240.	Superior Court of California, County of Los Angeles	Disagree with recommendations 85 and 94. These recommendations should not be adopted in their current form. We have grave concerns about these JNE Commission proposals. We agree JNE generally has worked well within its existing domain. We foresee problems, however, with these proposed expansions. We agree with the observation contained in the Report at footnote 68 that a rule that would compel non-incumbent candidates to submit to JNE evaluation "could possibly be unconstitutional." We are reluctant to endorse	See response to comment #233 above.

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No.	Commentator	Full Comments	Commission Response
		any proposal that is "possibly" unconstitutional. At a minimum, further careful study of the constitutionality of such a requirement must be undertaken before the recommendation goes forward. Constitutional analysis aside, the central concept here is disconcerting. The core of these JNE proposals would essentially allow the government to advise voters about electoral candidates. On the ballot form, a governmental body would grade candidates. The grades would range from good to bad. The government would compel candidates to submit to the grading. We are unaware of any precedent for a government giving voters such information regarding the exercise of their franchise. Further, we are skeptical that there is any reliably apolitical way in which to do it. By putting the JNE evaluation on the ballot, this recommendation would seem to rest considerable, and unwarranted, power in the JNE Commission. The JNE Commission currently works in the context of a partisan political process. The existing process is confidential and opaque. The ratings are not public, and JNE does not explain or justify its decisions. The JNE evaluations reach Governors through a fulltime Judicial Appointments Secretary, who weighs the JNE evaluations together with a mass of other information about judicial candidates. Our Governors themselves remain accountable to voters. The current role for JNE, in short, is vastly more limited than the role the report proposes. These JNE recommendations would dramatically change the process. They would concentrate power in an unelected and unaccountable body that gives no reasons or justifications for its actions. Apart from these questions about the concept, there are also serious practical problems. First, JNE must complete its evaluation within 90 days. Additional time is needed if the rating is appealed. Given the pace of elections, we question whether the results of the JNE investigation would be available in time for ballot printing.	

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		Electoral dynamics worsen this workload problem. Governors carefully strive to stagger the number of applicants they submit for JNE evaluation in order to modulate the workload for JNE commissioners. But elections require all the candidates to go on the ballot at once. From JNE's perspective, then, electoral candidates will come in massive statewide lumps, in contrast to the gubernatorial submissions that flow in a managed and manageable stream. In the last election, for instance, there were more than 30 judicial candidates in Los Angeles County alone. Statewide, of course, there would be more. The timing for the next election gives candidates until February 10, 2010 to file their declaration of intention. Yet the last day to submit written materials for the ballot is April 1, 2010 – only seven weeks later. It is inconceivable that 38 JNE commissioners would be able to review all the candidates running for judgeships throughout the State in time for the ballot printing. Page 81 of the report concedes that JNE's work "is not fully scalable, so merely adding additional members for election periods would not be a solution." Yet the report offers no other solution, apart from increasing the time between the notice of intent to seek judicial office and the filing date. Any recommendation about adding resources risks becoming yet another unfunded mandate. Any JNE recommendations must consider the timing issue more carefully. Reform must not create an unworkable mess. Second, if the JNE Commission erred or conducted an investigation based on incorrect information, would a candidate have the time and opportunity for rehearing or appeal? How could a candidate who actually received an erroneous rating effectively challenge an unexplained decision? Third, these recommendations could be abused by a citizen intent on abusing the judicial election process. Last year, for instance, one individual ran a write-in campaign against several judges on the Los Angeles Superior Court – all of whom had Hispanic surnames. In the end, these judges faced	

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		no real challenger at all. Under these recommendations, however, the judges would have been forced to undergo the substantial effort of a JNE review. While these reforms are proposed with the highest minded purposes, they may be misused by some in the world of electoral politics. Finally, the proposal is unnecessary. A number of local bar associations have developed sophisticated and successful rating programs to inform the public about judicial candidates. For example, the Los Angeles Country Bar Association conducts an extensive evaluation program and disseminates its results widely. The program works well, is entirely voluntary and readily accessible to voters. Given the good experience that we have in Los Angeles with our existing institutions, we conclude that these JNE recommendations are unnecessary.	
241.	Barbara Kauffman Attorney at Law San Rafael, California	Overall comments on recommendations 85 through 109. I believe the decision about whether or not to adopt a form of merit selection warrants its own study, in far more depth, and with the opportunity for multiple public forums at which law professors, oversight entities, best practices entities (like Justice at Stake, and the American Judicature Society, etc.), present alternative judicial selection processes for consideration. <u>After</u> that discussion, expansion of JNE duties etc. and the other suggested changes in this section, should be taken up. Presently, sitting judges already have an immense advantage over challengers. They are already "entrenched" so to speak. Term limits should not be extended, and dates of scheduled elections should not be extended to allow a newly appointed judge to sit for a minimum period of time before a retention election. Extending scheduled election dates would encourage the practice of judges resigning near the end of their term, so a replacement can be appointed, a new incumbent seated, and the public election process delayed. No additional obstacles should be placed on removal of judges via	The commission considered the issues raised here and rejected them.

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		increased signatures for recalls. Write-ins should continue to be allowed at general elections. A change that should be made, is that every judge, unopposed or not, should be placed on the ballot at the time of his or her scheduled retention election.	
242.	Mark A. Arnold Kern County Public Defender	I write to encourage Judicial Council acceptance of the report and recommendations of the Commission for Impartial Courts. Judicial campaign reforms are long overdue. The Commission's recommendations appropriately address these necessary reforms. The specific recommendation of vetting candidates through the JNE Commission is essential to preserving the integrity of the bench. Why should it be possible for an unqualified candidate to run and win a judgeship? Presently, unqualified candidates can run for judge. It should be impossible for an unqualified attorney to become a judge. Large campaign chests do not ensure the public against political or philosophical ideologues. The JNE commission was designed to protect the public from the appointment of an unqualified judge and yet not have the same electoral protection. To argue that the campaign process will allow the voters to get candidates themselves is to believe in fairytales. Campaigns are often funded by interest groups with political or ideological concerns. Wealthy candidates can win regardless of qualification.	See response to comment #233 above.
243.	Hon. Runston G. Maino Judge of the Superior Court of California, County of San Diego	Disagree	No response required.

86. The background and diversity of the JNE members should be given more publicity, including by placing photographs of the members on the JNE Web site and making that site more accessible on the State Bar's home page.

No.	Commentator	Full Comments	Commission Response
244.	Diane Goldman Attorney at Law Woodland Hills, California	Agree, if modified. It is generally a laudable idea and goal to increase the diversity of the JNE Commission, as well as the public information about the Commission members who devote their uncompensated time and energy to the efforts to achieve a quality bench. However, it is not clear from the recommendation whether additional background information regarding the JNE Commissioners will be sought and disclosed. If the background information now available on the State Bar website is the extent of the information to be published, there is no objection to this proposal. If, however, some additional information will be sought and published about JNE Commissioners, the type of such additional information should be described, as well as the method of additional publication of "background" that will be implemented.	Whether and to what extent additional background information will be sought and disclosed will be addressed in the implementation process.
245.	Los Angeles County Bar Association Don Mike Anthony, President Danette E. Meyers, Immediate Past President	Disagree with recommendations 85-98. See comments under 85.	See responses to comments #237 and #335.
246.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	Disagree. Fundamentally, publicizing the background and diversity of the JNE Commissioners is a good and admirable suggestion. However, how does that provide any additional confidence to the local public in the recommendations of the Commission? The decision making of the Commission is secret and not open to public observation. Would it be better to make the Commissions investigations and proceeding transparent? Recommendations made in judicial elections will be suspect and public	Disagree

86. The background and diversity of the JNE members should be given more publicity, including by placing photographs of the members on the JNE Web site and making that site more accessible on the State Bar's home page.

No.	Commentator	Full Comments	Commission Response
		confidence will be lost. As the real make-up of the Commission becomes known, the public's confidence in the integrity of the Commission's decisions will be shaken and demeaned.	

87. Legislation should be sponsored to require that a JNE rating of "not qualified" (and thus, by the absence of announcement, a rating of at least "qualified" or better) for a trial court judge be made public automatically at the time of appointment of a person with that rating.

No.	Commentator	Full Comments	Commission Response
247.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree.	No response required.
248.	Los Angeles County Bar Association Don Mike Anthony, President Danette E. Meyers, Immediate Past President	Disagree with recommendations 85-98. See comments under 85.	See response to comments #237 and #335.
249.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	Disagree. NQ ratings directly attack the reputation of a candidate for judicial office. Other than to tear down a person's reputation, what is the purpose of this public disclosure? How does this recommendation inspire the public's confidence in the bench? The fact that the "legal elite" does not believe a	The public should be given this information as part of greater transparency to the system.

87. Legislation should be sponsored to require that a JNE rating of "not qualified" (and thus, by the absence of announcement, a rating of at least "qualified" or better) for a trial court judge be made public automatically at the time of appointment of a person with that rating.

No.	Commentator	Full Comments	Commission Response
		person to be qualified for a bench assignment should not provide license to harm the reputation of a judicial officer appointed or elected to the bench.	

88. Legislation should be sponsored to make the current practice of releasing the JNE rating for an appellate justice mandatory and permanent.

No.	Commentator	Full Comments	Commission Response
250.	Diane Goldman Attorney at Law Woodland Hills, California	Disagree. A retention election of an appellate justice is "contested" as prior appellate elections have shown. It is unclear how the electorate would be any more informed regarding the specific JNE rating for an appellate justice than for a trial judge. The considerations that argue against disclosing the specific rating for a trial judge apply with equal force to an appellate justice.	This recommendation would only make permanent that current practice.
251.	Los Angeles County Bar Association Don Mike Anthony, President Danette E. Meyers, Immediate Past President	Disagree with recommendations 85-98. See comments under 85.	Disagree. Comments do not really address this recommendation

89. The judicial branch's California Courts Web site should explain the judicial appointment process and link to both the State Bar's JNE Web site and the Governor's Judicial Application Web site with appropriate information about JNE procedures and the rating system.

No.	Commentator	Full Comments	Commission Response

89. The judicial branch's California Courts Web site should explain the judicial appointment process and link to both the State Bar's JNE Web site and the Governor's Judicial Application Web site with appropriate information about JNE procedures and the rating system.

No.	Commentator	Full Comments	Commission Response
252.	Los Angeles County Bar Association Don Mike Anthony, President Danette E. Meyers, Immediate Past President	Disagree with recommendations 85-98. See comments under 85.	Disagree. Comments do not really address this recommendation
253.	Carol Ebbinghouse Law Librarian Court of Appeal, Second District	Agree with recommendations 51, 61, 73, 74, 89 and 90, if modified. See comment under 51.	No response required.

90. The JNE's and the Governor's Web sites should be more accessible and should contain videos explaining the judicial appointment process.

No.	Commentator	Full Comments	Commission Response
254.	Los Angeles County Bar Association Don Mike Anthony, President Danette E. Meyers, Immediate Past President	Disagree with recommendations 85-98. See comments under 85.	Disagree. Comments do not really address this recommendation
255.	Carol Ebbinghouse Law Librarian Court of Appeal, Second District	Agree with recommendations 51, 61, 73, 74, 89 and 90, if modified. See comment under 51.	Agree.

91. Law schools should be encouraged to provide information about the judicial appointment process to law students by, for example, encouraging qualified JNE members, both past and present, to give presentations at law schools.

No.	Commentator	Full Comments	Commission Response
256.	Los Angeles County Bar Association Don Mike Anthony, President Danette E. Meyers, Immediate Past President	Disagree with recommendations 85-98. See comments under 85.	Disagree. Comments do not really address this recommendation

92. JNE should be encouraged to provide greater publicity by having its members capitalize on opportunities to speak to local and specialty bar associations, service organizations, and other civic groups.

To.	Commentator	Full Comments	Commission Response
257.	Los Angeles County Bar Association Don Mike Anthony, President Danette E. Meyers, Immediate Past President	Disagree with recommendations 85-98. See comments under 85.	Disagree. Comments do not really address this recommendation

93. The State Bar should amend the JNE rules to require that any member of the State Bar Board of Governors who attends a JNE meeting comply with the JNE conflict of interest rules.

No.	Commentator	Full Comments	Commission Response

93. The State Bar should amend the JNE rules to require that any member of the State Bar Board of Governors who attends a JNE meeting comply with the JNE conflict of interest rules.

No.	Commentator	Full Comments	Commission Response
258.	Los Angeles County Bar Association Don Mike Anthony, President Danette E. Meyers, Immediate Past President	Disagree with recommendations 85-98. See comments under 85.	Disagree. Comments do not really address this recommendation

94. All candidates in contested and open elections should be required to participate in a JNE form of evaluation, and the results of that evaluation should be published in the ballot materials together with a description of the JNE process, including the identity of those making the rating and what the ratings mean.

No.	Commentator	Full Comments	Commission Response
259.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree with recommendations 94 and 95, if modified. I have specific disagreements with recommendations 94 and 95 as they pertain to contested elections involving sitting judges, after review of additional documentation. In particular, recommendation 95 notes that "the JNE level of rating might be a helpful method of looking at the entire record of a judge, not just one controversial decision." However, in the 2003 amendments to JNE rules, the State Bar noted the following as to Rule II, Section 9: "The percentage breakdown reporting requirement should be eliminated for two reasons; a percentage breakdown of the responses could violate confidentiality and could also be misleading to the Governor's office. A candidate could have 50 evaluations rating him/her as 'well qualified.' However, that same candidate could receive one evaluation of 'not qualified,' based on that rater's information regarding the candidate (which information was not known to the other raters). If a sufficiently serious allegation, found to be true by the commission, is	The commission has modified these proposals as discussed under recommendation #58 in the final report of December 2009.

94. All candidates in contested and open elections should be required to participate in a JNE form of evaluation, and the results of that evaluation should be published in the ballot materials together with a description of the JNE process, including the identity of those making the rating and what the ratings mean.

No.	Commentator	Full Comments	Commission Response
		contained within that individual's form, it could potentially be enough for the commission to give a candidate a not-qualified rating, even if the other 50 raters viewed the candidate as well qualified. A report to the Governor showing a 50-1 response ratio would be misleading. Moreover, if this percentage breakdown is subsequently revealed to the candidate, the confidentiality of the rater could be compromised because the candidate would know that the rater was the only person who could have provided the information."(http://calbar.ca.gov/calbar/pdfs/public-comment/2004/JNERules-Summ2-03.pdf) My concern is that "one controversial decision", which can be sufficient under the JNE rules, to find a sitting judge "not qualified." Judges make controversial decisions on a daily basis, and the JNE's interpretation of their rules, as set forth above, can lead to many a sitting judge being rated "not qualified", while his/her opponent is rated "qualified" due to a lack of any controversy during his/her legal career (i.e., the "stealth candidate."). There may be 100 raters that find the sitting judge "well qualified", but one or two motivated and disgruntled raters can effectively provide sufficient evidence for a "not qualified" rating that may not accurately reflect the sitting judge's true judicial abilities. This is especially true in small counties, where "controversial decisions" are often magnified in the local community. JNE evaluations may be very useful in opne elections, but I do have concerns about the use of these evaluations where sitting judges are challenged.	
260.	Hon. James K. Hahn Judge of the Superior Court of California, County of Los Angeles	Disagree with 94, 95, 96 The JNE process should not be applied to elections. It is simply undemocratic and as acknowledged in the report, probably unconstitutional under the California Constitution. The people in this country have the right to decide who fills important offices in the Legislative and Executive Branches. Would anyone seriously suggest that a "commission" review	The commission has modified #94/95 as discussed under recommendation #58 in the final report of December 2009.

94. All candidates in contested and open elections should be required to participate in a JNE form of evaluation, and the results of that evaluation should be published in the ballot materials together with a description of the JNE process, including the identity of those making the rating and what the ratings mean.

No.	Commentator	Full Comments	Commission Response
		candidates for those offices? Of course not. It should be no different for the third branch of government. Under the California Constitution, judges are to be elected by the people. Vacancies in judicial offices are allowed to be filled by the Governor, as are County Supervisors,for that matter, but ultimately the voters must ratify those decisions if the incumbents wish to remain in those positions. It seems odd that in a system where we allow ordinary citizens to sit on juries that can decide life and death issues as well as lawsuits with hundreds of millions of dollars at stake, we don't trust ordinary citizens to be able to vote in judicial elections without a commission's help. I know that the JNE commission was "supposed" to take politics out of the appointment process, but actually it only introduced another form of politics into the process. I went through that process because I sought to be appointed, but I could very well have run for judge as well. If I had, I would have vigorously objected to an official state commission rating my qualifications to hold office. Trying to get around constitutional hurdles by making the process "voluntary" is just as insidious. Since so far, only New York has intoduced a form of this proposal, and their process is voluntary, it does not suggest an urgent need for California to jump in and fix what isn't broken. As someone who has been elected to three different citywide offices in the City of Los Angeles, I find it abhorrent that the committee feels that the electoral process should be tampered with in this fashion. Although unspoken, it seems to be implied that the candidates directly elected by the voters are somehow inferior to those who have gone through the JNE process. That is unwarranted, untrue and disrespectful. Have there been persons elected to office who have defeated more qualified candidates? Sure. That is part of the story of democracy in our great	

94. All candidates in contested and open elections should be required to participate in a JNE form of evaluation, and the results of that evaluation should be published in the ballot materials together with a description of the JNE process, including the identity of those making the rating and what the ratings mean.

No.	Commentator	Full Comments	Commission Response
		country. But that is no reason to change a system that has served our state and our nation so well all these years. I urge the committee to drop these propsals from the final report.	
261.	Hon. Gerardo C. Sandoval Judge of the Superior Court of California, County of San Francisco	Disagree I disagree in the strongest possible terms to recommendations 94 & 95, i.e. that non-incumbent candidates submit to the JNE process. The electoral process is an ALTERNATIVE to a broken and dysfunctional JNE process that is hostage to bar politics and that has historically undervalued women, minorities and members of the LGBT community. Injecting the JNE process into the electoral system is a deliberate and transparent attempt to sabotage the only recourse that we have to achieving a balanced judiciary.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
262.	Hon. Arthur A. Harrison Judge of the Superior Court of California, County of San Bernardino	Disagree with recommendations 94 and 95. I wish to register my complete disagreement with the proposal that individuals running in a judicial election be vetted by the JNE commission. This rule change carries the likelihood of increased politicizing of judicial elections. The JNE commission itself is a political entity, with individuals participating by appointment, who then impose their subjective opinions. Regarding those individuals previously appointed by the governor with a favorable nod from JNE, there are a number who perhaps in retrospect should never have been appointed. There are others who have received an adverse rating from the JNE commission who have turned out to be fine bench officers. If someone decides to run for an office against a seated judicial officer, are we to have both subjected to vetting by the JNE commission? As fine as our bench is as a whole, there are some, who should be run against, and should not have the benefit of a pass by the Commission while a non judge	The commission has modified these proposals as discussed under recommendation #58 in the final report of December 2009.

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No.	Commentator	Full Comments	Commission Response
		contender is put through an arbitrary subjective rating process by a political entity. As for knowledgeable voters, there are many other ways to make sure that judicial elections are decided by the intelligent exercise of the publics vote; Individual candidates undertake that task, as do their supporters. Local Bar organizations frequently publicize member polls, evaluations etc. regarding judicial races in their county. Newspapers frequently provide a forum to get information to the electorate. I'll use my own particular background and experience to illustrate why I believe these proposals should be rejected: My own entry into the legal profession was perhaps through a non-traditional gate. I had been a law enforcement officer for a number of years before starting law school in a part time curriculum and an unaccredited California law school. I passed the First Year Law Student's Exam and subsequently the General Bar Exam, both successes on first attempts. After a ten year law enforcement career, and subsequent to passing the bar, I decided to apply with the local prosecutor's office and was fortunate to matriculate into a 14-1/2 year career prosecuting criminal cases. The later 4-1/2 years I supervised a small outlying office. In 1999 I determined to run against an incumbent judge who happened to have CJP hearings scheduled to commence against him the same day the filing period for office opened. That judge subsequently negotiated with the commission for a retirement in lieu of removal. Four other local lawyers threw their hats into the election ring for the same office. To have any one of us have the favor of a JNE Commission preference would have been unfair to the participants in the election as well as to the electorate. My significant concern would be of a bias against my particular legal education and perhaps experience by various memmbers of the JNE commission. I have observed many times, not as to me personally, what	

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		amounts to be an elitist bias against those from nonaccredited law schools, by those who attended for lack of a better descriptor, a "higher dollar law school". As applied to the present proposals, that simply amounts to economic bias or prejudice. My choice of law school was certainly in part because I could afford to attend a lesser expensive part time program. I think it would be a shame for these proposed rule changes to effectively preclude someone from taking the same path as I did to the bench. The law school I attended matched what I needed and does allow a viable relatively economical avenue to pursue a law degree. A significant number of other judges, prosecutors and practitioners in other areas of the law have had the same educational roots so to speak. During that same 1999/2000 election cycle there was another seat for which a local attorney with superb credentials ran unopposed for an open seat. He would have without question gained a favorable vetting under the now proposed scheme. Within a few months of taking the bench, conduct problems were evident, eventually culminating in a negotiated departure from the bench just short of the five year point. I think it would have been very questionable whether I would have gained a favorable vetting. I now have 8-1/2 years on the bench, no CJP actions, am involved in the administration of the local courts via various committees by appointment by our presiding judge, and supervise the nine criminal courts in the very busy Rancho Cucamonga courthouse. I am not bragging, but am extraordinarily appreciative of the doors which were open to me in getting to my present position. I would zealously seek protect that right for others.	
263.	Hon. Peggy Fulton Hora (Ret.) Judge of the Superior Court of	Disagree with recommendations 94 and 95. The proposed rule implies elected judges are somehow not as trustworthy	The commission has modified these

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	California, County of Alameda	as appointed ones or that there is a lack of politics in the appointment of judges. Both premises are nonsense. Why should judges be the only elected officials in the state to be pre-screened? JNE is not an elected body and the process by which members are chosen is totally political. This proposed rule would also unfairly give incumbents an advantage because it would be next to impossible to "compare" an attorney with no judicial experience to an experienced bench officer. There are many schemes throughout the US for judicial selection but none, I think, like this proposal. Let's make it consistent and have the direct election of appellate courts or retention elections of trial courts if you want to make a change. Meanwhile as a judge who would have been unlikely to have been appointed (very active in the Democratic Party and Legal Aid lawyer during Deukmejian's administration) I think as a former Dean of the Judicial College and an international expert on problem-solving courts I've done pretty well for myself.	proposals as discussed under recommendation #58 in the final report of December 2009.
264.	Hon. John H. Tiernan Judge of the Superior Court of California, County of Colusa	Disagree with recommendations #94 and 95. As stated by Justice Robie in the video clip on your web page, "If it's not broke, then don't fix it." JNE has no place in the elections process. An attorney who is extremely competent, yet not popular with his or her peers, may stand very little chance of obtaining a positive evaluation when compared with an extremely social but less competent attorney. I personally feel that it is insulting to the voting public to believe that they are somehow smart enough to elect their governor and legistative representatives but somehow lacking the intelligence to to elect the judges in their commumity. I obtained my office through a contested election. In Colusa County the electorate made their decision after speaking to me and my opponent and	The commission has modified these proposals as discussed under recommendation #58 in the final report of December 2009.

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No.	Commentator	Full Comments	Commission Response
		determing our qualifications and our character. I realize that I exist in a county with a small population and that judicial candidates in the large counties may not have the ability to deal with the citizenary in the same manner as I. However, that does not mean that the system should be changed. The fact that an attorney who ran a bagel shop was elected to the Superior Court over a sitting judge does not mean that the voters made a bad decision. It only means that the electorate was heard. I have no idea how the judge who was elected is doing, but I have not read about her appearing before the Commission for Judicial Performance due to her lack of ability to properly perform her duties. In my experience, both the Governor and the electorate have made good and bad choices. I strongly believe that having JNE evaluate those involved in judicial elections would serve no good purpose. When the Governor considers the JNE evaluations he/she does so with a full understanding of the JNE process and has a great deal of other information available. The public might very well see the "evaluation" of the JNE panel as determinative and might base their decision on the evaluation only; believing this quasi-government group is in the strongest position to determine who would be the best candidate. I strongly believe that the electorate is qualified to exercise their individual votes and that the system which currently exists is not broken. As such, any change would be taken purely for the sake of change.	
265.	Hon. Mark Tansil Judge of the Superior Court of California, County of Sonoma	Agree, if modified. The JNE component of these reforms is unnecessary and unwise. Today, the judiciary suffers from a trait of sameness. The appointment process, while sound, tends to create a very conservative, cookie-cutter judiciary. The election process is a check on this tendency. It promotes greater balance.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.

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		Like many elected judges, I am confident that I would not have made it through the JNE political filter. I am a free spirit who would not have easily garnered establishment support. Yet I believe that I have been a good judge for almost twenty-three years. We do not need protection from the judgment of California voters; instead, we need to be insulated from some egregious forms of political chicanery. Giving a committee of politically connected lawyers the power to unduly influence electoral choice is not the help we need. Free, unscripted elections as a means of selecting judges, are a strength-not a weakness. More judicial diversity is desirable, and strong dissent is invaluable. Vigorous elections involving a wide range of candidates are in the public interest. The appointive and elective processes are different and should remain so. Please eliminate the undemocratic JNE proposal from an otherwise reasonable effort to strengthen the fairness of judicial elections.	
266.	Hon. Faye D'Opal Judge of the Superior Court of California, County of Marin	Do not agree with recommendations 94 & 95 Justice Chin, in commenting on how to approach the task of ensuring an independent judiciary, wrote "we also would do well to follow the lead of our founders by retaining a common and constant focus on achieving the *public* good. I submit that our goal should be to find solutions that serve the long term and common interests of *all* Californians." The JNE process has its place in terms of recommending to the Governor specific appointees for judicial vacancies due to retiring/resigning/death of a judge. The Governor may also appoint individuals recommended to the Governor by sources other than JNE to serve as trial court judges. The recommending and the appointment processes are a "behind the scenes" process, "a closed process". Concepts of transparency and democracy support, if not require, a statewide judicial selection system that includes selection of local trial court	The commission has modified these proposals as discussed under recommendation #58 in the final report of December 2009.

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No.	Commentator	Full Comments	Commission Response
		judges by popular election. Local trial court judges and the work of the court are intricately linked with and matter a great deal to the lives of people in each of our communities. The right to elect local trial court judges formally recognizes the voices of all Californians. While acknowledging a perfect process or system for appointing or electing a trial court judge may not yet exist and recognizing that the JNE Commission did not originate the idea, the idea that JNE should run interference as to who should be able campaign in each county for a trial court judicial position is inappropriate. The public good of *all* Californians will not be served by the implementation of this idea. Recommendation 94 commences its "Discussion" with the statement: **"***There is no process for evaluation of candidates for judicial office who are seeking a judgeship by either opposing a sitting judge in an election or seeking election to an open position."* This statement is incorrect, given that election of local trial court judges by the voters in any given county results in open, direct, rigorous and informed evaluation of the judicial candidates. This process is further strengthened by the county bar association, community organizations and local media who have long established processes for evaluating and recommending judicial candidates to the community for its consideration at election time. Election of a trial court judge is a powerful experience, not just for the candidates but also for the community. It is the judicial candidates - out and about at wide variety of community and legal forums, answering hundreds of questions in public, discussing legal issues of the county, traveling to all areas of the voter community, appearing in the media – who obtain a priceless preparation for moving onto the local trial court bench with a much deeper understanding of the community and insight to the public's limitless curiosity about the court and legal issues in the community. It is	

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		the community that benefits from the judicial office campaign - becoming more informed about the work of the court through the public forums, the media, and meetings in the homes, schools and organizations of the community. Nothing about the present selection of trial court judges by public election warrants interfering with a voter's right to directly elect local trial court judges. Requiring qualified candidates interested in running for election as a trial court judge to be diverted for JNE/ Sacramento evaluation and approval prior to being placed on the ballot would be an unwarranted interference in the open election process. The community's evaluation of *all* candidates who choose to run for a trial court judge position should not be screened or preempted in any way by JNE. Such a requirement would not be in the long term and common interests of all Californians.	
267.	Hon. Jeffrey S. Bostwick Judge of the Superior Court of California, County of San Diego	Disagree I was elected to the California Superior Court, San Diego County, in 2002. I sought and won an open seat created by the incumbent's retirement in a contested election. I am therefore knowledgeable about judicial elections. I have reviewed the recommenation to require judicial candidates to undergo a JNE review process. This recommendation is problematic for several reasons. First, the timing of election and ballot requirements is likely incompatible with a JNE review process. Second, as the commission recognizes, the constitutionality of the recommendation is unclear. Further, it is unnecessary. Successful judicial elections require much more than money. A well endorsed candidate has been subjected to numerous interviews and reviews by local community and professional groups, including law enforcement organizations, firefighters, community	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.

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		leaders, labor groups, various bar associations and the local bench. I was endorsed by many people and groups I did not know previously because I applied for endorsements, attended panel interviews as well as individual meetings, and presented my qualifications. I would argue since most respected community leaders and groups will not risk their reputations by endorsing unqualified candidates, this local review process effectively blocks unqualified candidates from the bench. The local review process presents advantages to a JNE review. Since it is a local, it is conducted by those who live and vote in the community for which the candidate seeks the seat. It is more exhaustive and diverse than any review handled by a comparatively small panel of people who base their decision on an interview and a review of written, form evaluations. A JNE review will add little to the base of knowledge the public has about the candidate. The recommendation is prejudicial because it uses a review process that, while accomplishing little, will limit access to public office, thereby threatening an open democratic process. Moreover, the recommendation is based on the incorrect premise that the public does not know judicial candiates. However, the local vetting process for endorsements and the candidate's campaign efforts provide the electorate significant opportunities to learn about the candidate from local sources, such as locally reported recommendations of local bar associations and events at which the public can meet and listen to the candidate. Finally, the most disburbing aspect of this proposal is the idea that the electorate needs to be guided by a small, insular group of people in their election decision-making. That notion devalues the people of our communities and suggests that an open democratic process does not work, or at least it does not work for one of the three branches of government. This recommendation assumes the public will not take the time to attend events at which they can meet the candidate, listen to candidate forums and	

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		debates, review the candidate's website and/or written material or even read the ballot statement in the local voter guide. In short, it assumes the public does not care enough about the election to inform themselves about the candidate's qualification. If true, this recommendation cannot solve that problem because it will too be ignored. If not, the JNE evaluation will add nothing to the other local recommendations. If the argument is that the JNE recommendation is more persuasive than the local recommendations, that argument assumes, incorrectly, the JNE evaluators know more about the good of the community than the local bar associations, community groups, community leaders and those who live and work in the community. That assumption cannot be what this recommendation intends or even wishes to communicate. In any case, this recommendation empowers a small group of appointees over whom the public has no control to tell the public, by a closed process, who is qualified to be their judges. I submit this is an unwise governmental restriction on access to public office.	
268.	Hon. John D. Conley Judge of the Superior Court of California, County of Orange	Disagree I was elected in March of 2000. I would like to express my disapproval of Recommendation #94 which provides that those in contested elections should be required to participate in a JNE form of evaluation and the results of that evaluation to be published. I have just received perhaps 30-40 emotional emails from judges throughout the state expressing their disapproval, which I would like to join in. I would refer the Commission to the Memorandum from the informal Committee to Review Report of Commission for Impartial Courts from Los Angeles County Superior Court. Its analysis on p 10--11 is excellent. Such JNE evaluation is unnecessary, unwise and probably not even	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.

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		feasible given the short time framework between filing to run and the time for the preparation of the ballot statement.	
269.	Hon. Elliot Lee Daum Judge of the Superior Court of California, County of Sonoma	Disagree I was elected to the bench in Sonoma County in 2000 in a bitterly contested race against an incumbent. I have had many friends go through the JNE process on both the local and state levels. The appointment process is a very different animal from the election process, and I strongly oppose any JNE review for judicial candidates. Since an incumbent judge has already presumably run the JNE gauntlet, such a judge who ought to be the subject of a challenge might enjoy an unfair advantage over a challenger. I think we must recognize the significant difference in elections versus appointments. The winnowing process is handled by the people that really matter, i.e. the citizenry in the former case, and by an elite (but admittedly often astute) committee in the latter case. Both are valid ways to select good judges, but there is no need to have a spillover from the appointment process to the election process. It is ironic that the pejorative use of the term “political” would apply far more to the JNE process than to an open and fair election.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
270.	Hon. W. Kent Hamlin Judge of the Superior Court of California, County of Fresno	Disagree with Recommendations 94, 95, 96 JNE Commission review of candidates in a contested judicial race, in whatever form, is a bad idea. For one, the completion of the review process on a timeline that would permit the inclusion of the rating in the voter pamphlet would be difficult, at best. Time constraints would ensure the process will be rushed and incomplete. More importantly, it would add a level of secretive, back-room politics to a process that should be entirely transparent. It would likely make it almost impossible for a candidate who didn't fit the "JNE mold" to gain a seat	The commission has modified #94/95 as discussed under recommendation #58 in the final report of December 2009.

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		through the election process. Through email communications with more than two dozen judges who obtained their seats through the election process, I have found that all of them oppose this recommendation. The recommendation is based on the cynical view that the voting public is unfit to make such an important decision and it is really based upon the underlying premise that elected judges are somehow less qualified, as a rule, than their appointed colleagues. That is simply not accurate. There is currently a fair balance between judges appointed through the "insider" political process and those elected by the public at large. As a general rule, the candidate who can raise more money and obtain the most important endorsements is usually the better-qualified candidate. Local bar associations should be encouraged to continue or, where no procedure now exists, to implement a local process of evaluating judicial candidates. We do not need an unidentified group of political insiders, many with no direct familiarity with the candidates and some with a partisan political agenda, to give ratings of candidates where the information on which they base their decisions is not subject to public scrutiny. One final comment: what would the JNE commissioners do if they gave a candidate a positive rating and the candidate then committed some huge gaffe or said something absolutely shameful in the campaign? Would they have time to withdraw their recommendation? Given that their rating would have already been included in the ballot pamphlet; would the commissioners take some public action to try to distance themselves from this now disfavored candidate? Given some of the disgraceful campaign tactics that have been employed by some recent judicial candidates, the commissioners assume the risk that their rating of a candidate's qualifications may disgrace the entire JNE process.	

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No.	Commentator	Full Comments	Commission Response
271.	Hon. Michael M. Dest Judge of the Superior Court of California, County of San Bernardino	Disagree with recommendations 94, 95 and 96 Here are some of the flaws of the recommendations. If there are **un**qualified candidates for a judicial *appointment* position, the Governor has the option not to select them. In the election of a judge, the Commission assumes that notifying the public of the JNE results will educate and inform the voters of the qualifications of the candidates, and thus, strengthen the public's perception and confidence of the judiciary. It assumes that voters will select the qualified candidate over the unqualified candidate. However, that further assumes that the judicial candidates for election have *different* levels of qualifications. If all the candidates in the judicial election are rated UNQUALIFED (it has happened in our county), the public will be forced to knowingly elect an unqualified judge which weakens the public confidence of the judiciary and forever invites a contested election for that judge regardless of how well that judge does on the Bench. Furthermore, the JNE evaluation is based upon a committee vote. Not all evaluations are unanimous. Thus many evaluations may be (and are currently) decided by one swing vote. And since JNE members are volunteers, it is not unreasonable to expect that on a certain vote, a member may be overburdened with their own work and not have the time needed to fully consider all the factors for a proper qualification determination. Finally, JNE would be comparing a person who has been an advocate and has no history of not being a judge with a person who has been both in the advocate position and has to assume the unique position of being a judge also. It strikes at the very independence of the judiciary. I was elected in 1988 in a 4-candadiate race against an incumbent. I join in opposing recommendations Number 94, 95 and 96 as proposed in the Commission for Impartial Courts.	The commission has modified #94/95 as discussed under recommendation #58 in the final report of December 2009.

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272.	Hon. Eleanor Provost Judge of the Superior Court of California, County of Tuolumne	Disagree with recommendations 94, 95, and 96 This is a terrible group of recommendations. I have run in three contested elections in over 27 years and was evaluated by the JNE commission in 1989 for an open seat. An evaluation by the JNE commission is by its very nature secretive and therefore will be seen by the public as the very opposite of an open and free election. A contested election allows more information to be available to the public than they would ever get from a simple statement that someone is extremely well-qualified, well-qualified, qualified, or not qualified. That means absolutely nothing to someone trying to vote. In a small county like Tuolumne the voters know much more about the candidates than the JNE commission could ever know. In addition, no matter how many members you add to the panel to expedite the process, the commission will not have time to do a really good evaluation. I know mine took over 6 months. Primary elections are held within 3 months of a declaration of candidacy. I hope you will not adopt this ill-conceived group of recommendations.	The commission has modified #94/95 as discussed under recommendation #58 in the final report of December 2009.
273.	Sara Clarenbach Attorney, Santa Cruz County	Disagree with recommendations #94, 95, 96 Recommendation 94 is ill-conceived and should not be adopted by the Judicial Council because the JNE system is itself deeply flawed. I have been in Santa Cruz County since 1974, and practiced law here for almost the entire period from 1974 through December 31, 2008 when I left law practice and changed careers. I have been very active in the legal profession and also in political campaigns, including judicial races. Over the years I have watched countless attorneys apply for judicial appointments, and have completed innumerable JNE Commission evaluation forms. I have also frequently observed the unfortunate and unfair consequences of the JNE evaluation process.	The commission has modified #94/95 as discussed under recommendation #58 in the final report of December 2009.

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		My experience is that the JNE evaluation system is oftentimes a travesty and a farce in this community. It is a chance for attorneys who dislike an applicant to excoriate that person, to impugn the applicant's abilities and character in order to obtain a "Not Qualified" rating. Many, many fine applicants, some of whom have later been elected to the bench, have been unfairly criticized and ripped apart in the JNE process by "critics" who are protected by the cloak of anonymity. This is wrong and does not elevate the legal profession, nor lead to better selection of appointed judges. Requiring candidates for judicial office to undergo a JNE evaluation and requiring publication of the results in ballot materials would not enlighten the general public one whit about the qualifications of the candidate. It would simply give disgruntled detractors a "public forum" for venting their dislike for a particular electoral judicial candidate who is forced to be evaluated by JNE. I believe that judicial candidates themselves, in the ordinary course of an electoral campaign, can fully inform the public about their qualifications to serve as judges without use of the JNE ratings which are oftentimes—at least in our county—unfair and inaccurate. Requiring the JNE evaluation for candidates, and publication of the ratings, would only result in misinformation to the public, and would by no means lead to greater impartiality in the judicial system. The judiciary is of course a correlative branch of government, and, except when a judicial vacancy occurs mid-term or a new seat is created, California state judges are elected, as are those who serve in the executive and legislative branches. The political process for the executive and legislative branches does not mandate "vetting" by any process akin to the JNE proposal put forth in this recommendation. Elected judges should not be singled out and be subjected to such a process.	

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		The Judicial Council would best expend its resources, time and energy on evaluating, overhauling or abolishing the JNE Commission, not in foisting JNE reviews on judicial candidates.	
274.	Hon. Evelio M. Grillo Judge of the Superior Court of California, County of Alameda	Disagree with recommendations 94 and 95 I disagree with recommendations 94 and 95 because I believe that these recommendations (1) are fundementally unsound, and (2) if adopted will politicize the JNE judicial evaluation process and judicial elections in a manner unforseen by the proponents of these recommendations. Preliminarily, I believe that these recommendations are unsound because publishing a JNE evaluation of a sitting judge along side of a JNE evaluation of a candidate who does not have a judicial track record raises issues of basic fairness and has the potential to mislead the public. Unless and until a candidate for judicial office assumes office and has a track record (whether by election or apointment) any evaluation of the candidate's judicial demeanor, fairness to both parties in a case, judgment and decisveness is speculative at best. Every sitting judge, and every lawyer who has appeared before judges with any regularity, can recite instances of a lawyer who for all practical purposes appeared to have all of the attributes of a great judge—judicial demeanor, fairness, intelligence and a good work ethic—who did not, for whatever reason, display these qualities once assuming office. No matter how high the JNE rating received by a candidate for judicial office, the fact of the matter is there is some degree of speculation inherent in comparing the qualifications of an indiviual who has judicial track record, with an individual who has no track record at all. This is comparing apples to oranges and in practice could result in less, not more, public protection. My second comment concerns the potential for these recommendaitons to	The commission has modified these proposals as discussed under recommendation #58 in the final report of December 2009.

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No.	Commentator	Full Comments	Commission Response
		have the unintended consequense of politicizing the judicial election process. One of the not-so-well kept secrets of of judging in today's political enviornment is the fact that there are large interest groups of organized lawyers. This has led to such things as blanket challenges of judges who have done nothing wrong and have faithfully executed their judicial duties, but who for whatever reason,are viewed as being not "friendly" to the plaintiffs' bar, or the defense bar, or the prosecution, or the defense, etc. Unless the JNE is willing to, and has the resources to be able to, evaluate the motivation of the author of each and every questionaire submitted for a sitting judge, or to critically evaluate whether an unusally large number of unfavorable questionaire responses for a sitting judge results from a concerted effort by particular interest group to lobby its members to submit unfavorable questionaire responses in anticipation of a contested judicial election in the near future, the JNE evaluation process will be subject to manipulation. Recommendations 94 and 95, if adopted, therefore stand to provide less (not more) public protection, provide the public with a false sense of security, and potentially damage the JNE's hard-earned and well deserved reputation as an impartial evaluator of judicial qualifications.	
275.	Thomas J. O'Keefe Attorney, Orange County, California	Disagree with recommendations 94 and 95. The appointment, election and re-election of judges and justices is governed by Section 16 of Article 6 of the California Constitution. That constitutional provision does not contain any language that would empower the Commission on Judicial Nominees Evaluation ("JNE Commission"), or any other board within the State Bar, to conduct any proceeding that a sitting judge or justice would be "required" to participate in for "evaluation" purposes. The California Constitution only permits the Commission on Judicial Performance to "make rules for the investigation of	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.

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No.	Commentator	Full Comments	Commission Response
		judges." (Cal.Const., art. VI, § 18, subd. (i)(1).) Furthermore, the JNE Commission's evaluation process uses confidentially-submitted information (see JNE Comm. Rule II, § 3, subd. (c)), meaning that the person evaluated has no ability to confront the person providing the information. On the other hand, when proceedings are instituted against a sitting judge by the Commission on Judicial Performance, the accused judge is entitled to have the examiner disclose a large amount of information that the JNE Commission would not be required disclosed in its proceedings (Rules of the Comm. on Jud. Perf., Rule 122.) Also, the Commission on Judicial Performance requires a "hearing" to be conducted where the examiner is required present evidence in support of the "case" against the accused judge. (Id., Rule 123, subd. (a).) In addition, the rule against hearsay applies in a proceeding before the Commission on Judicial Performance, because the Evidence Code must be observed at the hearing. (Id., Rule 125, subd. (a).) Furthermore, the accused judge has subpoena and cross-examination rights at the hearing. (Id., Rule 126, subd. (a).) Although the Commission on Judicial Performance may certainly receive anonymous complaints, such complaints are not substantially acted upon unless the accused is afforded the due process rights mentioned above. That is not the case with the JNE Commission, which does not conduct any "hearing," but may act upon anonymously received complaints by concluding and reporting that a nominee is "exceptionally well qualified," "well qualified," "qualified," or "<u>not</u> qualified." (JNE Comm. Rule I, §§ 9 and 10 [emphasis added].) Therefore, when the JNE Commission publishes the results of its evaluation in the ballot materials, those results could include untested statements such as "it has been reported that Judge ____ has made racist comments," or "it has been reported that Judge ____ has engaged in sexual harassment," etc. Such reports could clearly come from individuals with a	

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		political agenda, a retaliatory motive, or other malicious intent. Furthermore, although anonymously made comments usually do not carry much weight with the voters, the importance of such comments would be elevated to a high level because they have been given the JNE Commission's imprimatur. In addition, the prospect of having such destructive anonymous statements published to the electorate would clearly chill the impartiality of the Judiciary, to the great detriment of the People of the State of California.	
276.	Hon. Patricia J. Titus Judge of the Superior Court of California, County of Los Angeles	Disagree I was elected to the Los Angeles Superior Court in March 2000 by winning an open seat created by the incumbent's retirement in a contested election. I strongly oppose the Commission's recommendation to require that all candidates for judicial election undergo a JNE review process and base my objection on several grounds. First, the recommendation suggests that the electorate is incompetent to properly evaluate the qualifications of judicial candidates. Election results repeatedly demonstrate that the criteria the public uses and considers in evaluating their pick for judicial office is broader and weighted differently than those used by our profession. It is their unfettered right to make such judgments. Therefore, to impose the JNE review process into judicial elections effectively tells the public that, when it comes to voting for judges, without JNE's input, their process of evaluation is faulty and invalid. This premise is wrong and insulting. Second, the recommendation suggests that the JNE review process is perfect and without flaws. JNE's process is closed and secretive whereas the election process is open and transparent. JNE's process is subject to covert political pressure whereas the involvement of partisan politics in our bipartisan elections is overt. JNE has a reputation of consistently rating	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.

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No.	Commentator	Full Comments	Commission Response
		minority candidates lower than similarly qualified majority candidates. Moreover, the JNE has been criticized for inadequate diversity in its composition. Therefore, to impose the JNE review process into judicial elections when its own process could be improved is ill-advised. Third, the recommendation adds a process that is unnecessary. The recommendation suggests that without JNE's input, the public does not have sufficient information about the candidate's standing in the profession. This premise is simply untrue. In this information age, voters can find out everything they want to know about a candidate with the click of a mouse. Candidates frequently have personally sponsored websites and voter education groups set up independent websites that contain information about the candidate and the candidate's endorsements. State and local bar associations endorse candidates as well as individual judges and lawyers. Furthermore, elected and appointed politicians, other prominent members of the community, as well as newspapers endorse judicial candidates. Therefore, to unilaterally insert the JNE review process into the judicial elections effectively tells the public that, when it comes to voting for judges, without JNE's input, the information available to them upon which to base their vote is insufficient. This premise is false. Fourth, the constitutionality of the recommendation is at question. In footnote 68, the commission's report notes that the proposal to compel nonincumbent candidates to submit to the JNE evaluation "could possibly be unconstitutional." In light of that fact, it remains a mystery why the commission would choose to make such a recommendation especially when judges take an oath to uphold and defend the Constitution of the United States and the Constitution of the State of California upon assumption of office. Fifth, the cost associated with implementing this recommendation is unknown. In this present time of extreme budget cuts, it is unreasonable and	

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		poor fiscal management to propose any recommendation that will cost money to implement. Regarding this recommendation, it will clearly cost money to add the JNE evaluation results to the ballot materials. The potential costs of these additions to the counties and to the candidates are unknown. Sixth, the implementation of the recommendation is unworkable. The California Judges Association's opposition details numerous problems with the implementation of this recommendation which I adopt and incorporate by reference. Primarily, the recommendation fails to adequately consider the ramifications of a short election cycle on the JNE evaluation process. The California Superior Court can boast of its gender and ethnic diversity, in part, because many of its female judges and judges of color ran for election rather than, or in addition to, applied for appointment. To impose an additional requirement with no evidence that the requirement is remedy for any perceived or imagined deficiency and solely apply it to judicial elections is unwise, unfair, unnecessary, and unacceptable in a democratic society. The people's right to vote for the candidate of their choice must remain unabridged.	
277.	Hon. Lauren Weis Birnstein Judge of the Superior Court of Los Angeles County	Disagree I was elected to the California Superior Court in the primary election in 2002. I ran against three others. I was vetted and rated by the Los Angeles County Bar Association, interviewed with the Los Angeles Times, among numerous other newspapers, met with many other organizations, including bar associations and law enforcement groups, had a personal website, and participated on the League of Women Voters website. I was endorsed by many people across the board who knew me, and by many who didn't, based on my qualifications. I believe this process was extremely rigorous. I do not believe that JNE evaluators do a better job than local bar	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.

94. All candidates in contested and open elections should be required to participate in a JNE form of evaluation, and the results of that evaluation should be published in the ballot materials together with a description of the JNE process, including the identity of those making the rating and what the ratings mean.

No.	Commentator	Full Comments	Commission Response
		associations or make decisions or ratings that more accurately reflect those made by those in the local community. Although there may be the rare mistake made by the electorate in seating an unqualified candidate— that could be said of any office. The public should be trusted to learn information about a candidate before voting, just as we trust they will do on a complicated initiative or other ballot measure. If people do not do their research, a NJE recommendation would not make any difference. To add such a requirement only to judicial candidates would be an unconstitutional and undue restriction on the right to seek public office. I know of no such restrictions on any other type of political candidate. Many see the JNE process as a closed, anonymous and political process which results in many exceptionally qualified people not being considered. All of us have heard of the groups of "gate keepers" who have the political power to deny a qualified candidate a spot on the bench. Anonymous comments to the evaluators without the ability to respond to not foster a sense of fairness in the election process.	
278.	Deanna Musler Soquel, California	Disagree with recommendations 94 and 95 These recommendations, if implemented, will complicate and lengthen the election process and discourage candidates from running. A notation in the ballot materials that a candidate is found to be "Not Qualified" could be the death knell to an otherwise perfectly acceptable candidate. What is unfortunate is that most voters do not know how subjective JNE ratings are—that they are based on anonymous questionnaires that the candidate cannot respond to. Just because JNE rates a candidate as "Not Qualified" does not necessarily mean he or she isn't qualified. In my county there are judges, past and present, who were deemed "Not Qualified" who turned out to be excellent judges.	The commission has modified these proposals as discussed under recommendation #58 in the final report of December 2009.

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No.	Commentator	Full Comments	Commission Response
		Recommendations 94 and 95, if approved, would result in more state interference with local elections and will clutter up ballot materials that already contain plenty of non0essential information.	
279.	Santa Clara County Bar Association Jil Dalesandro, President	Disagree with recommendations 94 and 95 The Santa Clara County Bar Association has serious concerns about these two recommendations. The first concern is that Recommendation 94 is likely be done on a voluntary basis since it would be unconstitutional as a mandatory requirement. (See footnote 68, CIC Final Report.) However, the "voluntariness" may be illusory. Take for an example the situation where an attorney is challenging an incumbent judge. Once the public knows that the challenging attorney candidate has agreed to a JNE-type evaluation and the incumbent judge has not, the judge may feel she has not choice but to agree to the evaluation. The next concern is that the consequences and implications of Recommendation 95 have not been adequately analyzed and solutions to them given in enough detail. Some of these include: If JNE released its ratings given to the Governor on sitting judges and that rating is 12 or 15 years old at the time of a contested election, will that rating still be valid? Will JNE be required to complete a new evaluation that includes the judge's performance since being on the bench? Will a JNE-type evaluation include questions to the local bench and bar? This type of evaluation has some value for attorney candidates who are unknown to the electorate, but can pose serious difficulties for a sitting judge. Since JNE evaluators are usually out of county, attorneys who may not be familiar with the judge's performance would conduct the JNE-type evaluation. The JNE evaluation will likely be a deciding factor in most elections because there are no other independent evaluations of the judicial candidates. In the appointment process, the JNE evaluation is only one	The commission has modified these proposals as discussed under recommendation #58 in the final report of December 2009.

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No.	Commentator	Full Comments	Commission Response
		among several factors, including the local bar evaluation committee and the performance of the judicial candidate, used by the Governor. It is likely that even with a local bar evaluation, the JNE-type evaluation may be viewed as more independent by the electorate. If the local and JNE-type evaluations conflict, then the election will be more about how the evaluations were determined rather than about the candidates' qualifications. These recommendations attempt to address the inherent problems with electing judges, but in doing so only raise additional issues and problems that further complicate having judges elected. The real answer is to eliminate the election of judges. Until that occurs, the process of elections will always be at odds with choosing the most qualified judges who have the appropriate temperment and character for the bench.	
280.	Hon. Ariadne J. Symons Judge of the Superior Court of California, County of Santa Cruz	Disagree with recommendations 7, 28, 94, and 95. See comments under 7.	The commission has modified #94/95 as discussed under recommendation #58 in the final report of December 2009.
281.	Hon. David M. Rubin Judge of the Superior Court of California, County of San Diego	Disagree. County election filing deadlines must be considered. In San Diego county where I ran, it would not be possible to declare your candidacy and get through the NJE process in time. JNE evaluation is an unnecessary and impossible requirement in most judicial elections. We should force the AOC to defend their working assumption that JNE is less political and a more reliable and sound process for selecting judges. Judge Sautner is correct. Even now we have seen only two openly gay appointed judges under Governor Schwarzenegger. Shutting out the elections process is a mistake. We need to challenge strongly the premise that a secretive, anonymous	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.

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No.	Commentator	Full Comments	Commission Response
		system (JNE) is less political than an open, public one (elections). That doesn't make sense to me.	
282.	Hon. Elizabeth B. Krant Judge of the Superior Court of California, County of Tulare	Disagree. I was elected in 1994. I agree with Judge Daum and I believe any possibility of "politicizing" the Judicial Election process should be avoided. Whether we believe it or not, JNE does receive comments that are a result of persons' bias/comments based on their political affiliations. Just because we believe voters do not make informed decisions (whether voting for Judges or to the Legislative branch), does not mean that the lines between two distinct methods of "ascending" to the position should be crossed. Surely, I may feel differently if all other elected officials would be subject to the same standard of review!	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
283.	Hon. Kevin R. Culhane Judge of the Superior Court of California, County of Sacramento	Disagree. What if a judge was rated by JNE in the appointment process and then ran for election? Would that elected judge simply rely on his or her prior JNE ranking? If a sitting appointed judge could do that, wouldn't the same rationale apply to a subsequently elected judge? Would this require a sitting judge running for reelection every 6 years to "re-up" his or her JNE evaluation so that he or she is on the same playing field -- in terms of "currentness"—with his election opponent? I can conceive of no rational argument that the answer should be "no." But if the answer is "yes," aren't we politicizing the judiciary?	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
284.	Hon. Gail Dekreon Judge of the Superior Court of California, County of San Francisco	Disagree. It is a bad idea to have the JNE Commission involved in evaluating candidates in a contested judicial election. There is no reason to inject an additional level of "behind-the-scenes" politics into the public election	The commission has modified this proposal as discussed under recommendation #58 in the final report

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No.	Commentator	Full Comments	Commission Response
		process.	of December 2009.
285.	Hon. James A. Kelley, Jr. Judge of the Superior Court of California, County of Fresno	Disagree. The JNE Commission should stay off the ballot. I am new here, but I view the proposal to put JNE's stamp of approval on the ballot as an endorsement, not unlike those offered by other special-interest groups. In those other instances, however, candidates have the choice to seek or not seek endorsements from such groups. No such choice would exist with this proposal. As others have said, we trust the public with decisions such as death or LWOP and we trust them to choose our governor and our senators. Are judges such an obscure animal that the public, in the rare open election, cannot choose among candidates without being told how to do it by JNE?	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
286.	Hon. Thomas M. Anderson Judge of the Superior Court of California, County of Nevada	Disagree. Include me amongst the judges who oppose involving the JNE in the judicial selection process.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
287.	Hon. Deborah L. Sanchez Judge of the Superior Court of California, County of Los Angeles	Disagree. Maybe we should organize some speakers to directly address the Commission.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
288,	Hon. Garry G. Haehnle Judge of the Superior Court of California, County of San Diego	Disagree. I went through the election process in 2008 and input from a statewide commission such as JNE would be a mistake.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.

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No.	Commentator	Full Comments	Commission Response
289.	Hon. Janet Hilde Judge of the Superior Court of California, County of Plumas	Disagree. It's a bad idea to have the JNE Commission involved in evaluating candidates in a contested judicial election.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
290.	Hon. Robert F. O'Neill Judge of the Superior Court of California, County of San Diego	Disagree. Include me amongst the judges who oppose involving the JNE in the judicial selection process. I was elected to the San Diego Superior Court in November 1998, having been through JNE. JNE's value (if any) is in advising the Governor. JNE has no place in the election process. The San Diego County Bar Association has its own judicial evaluation process for election purposes. This process is open to the public and attorneys. This process serves the San Diego electorate.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
291.	Hon. Jeffrey G. Bennett Judge of the Superior Court of California, County of Ventura	Disagree. I am an elected judicial officer and concur with the responses and CJA's planned opposition to this recommendation.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
292.	Hon. Christian F. Thierbach Judge of the Superior Court of California, County of Riverside	Disagree. Ironic that something called "The Commission for Impartial Courts" would propose something that would eliminate the word "impartial" from the vocabulary. I oppose this proposal.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
293.	Hon. Cara Beatty Judge of the Superior Court of California, County of Shasta	Disagree. I was a commissioner for ten years and in 2006 ran for an open seat with all of my colleagues supporting me. I find it elitist and completely political for JNE to be considering such a move.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.

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No.	Commentator	Full Comments	Commission Response
294.	Hon. Marjorie Koller Judge of the Superior Court of California, County of Sacramento	Disagree. I oppose the JNE involvement in judicial elections.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
295.	Hon. John F. Vogt Judge of the Superior Court of California, County of Fresno	Disagree. JNE is there to assist the appointment process only.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
296.	Hon. Rodney Ward Shelton Judge of the Superior Court of California, County of San Diego	Disagree with recommendation 94.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
297.	Hon. Susan R. Bernardini Judge of the Superior Court of California, County of Santa Clara	Disagree. Judge Elliot Daum and I ran for election in the same year - 2000- both as public defenders in different counties when few believed that a public defender could win a judicial election. We both knew, however, we'd have less chance for an appointment from then-Governor Wilson, who made it clear that a criminal defense attorney could not get an appointment from him. JNE is very aware of who can get appointed by a given governor or what that governor's appointment secretary is looking for. The beauty of the election process is the diversity it provides the bench and the sense of community that those who put themselves in front their community, by running for election, bring with them to the bench. Involving JNE would destroy that process by changing the candidate's focus from the community to them. I oppose involving JNE in judicial elections.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.

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No.	Commentator	Full Comments	Commission Response
298.	Hon. Craig L. Parsons Judge of the Superior Court of California, County of San Mateo	Disagree with recommendation 94.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
299.	Hon. Paul Bacigalupo Judge of the Superior Court of California, County of Los Angeles	Disagree. I am a member of the CJA Elections Committee. I plan to add the many thoughtful comments that have been circulating to our Committee's attention. The Elections Committee, chaired by Justice Maria Rivera, is reviewing the Report and will be preparing recommendations that will be submitted to the CJA Board, which will then submit a response the CIC. Further, please see the attached Memorandum that was prepared by a Los Angeles Superior Court Committee regarding our draft proposed comments to the CIC. [Note – no attachment]	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
300.	Hon. Michele McKay McCoy Judge of the Superior Court of California, County of Santa Clara	Disagree. Judge Bernardini was endorsed by all of the major law enforcement groups in Santa Clara County. They respected her work as a public defender. Isn't that a more reliable and valuable recommendation to the voters than a committee of lawyers who don't know the candidate from Adam's ox? An evaluation by JNE for a judicial candidate in any election is an insult to the voters.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
301.	Hon. Michael K. Kirkman Judge of the Superior Court of California, County of San Diego	Disagree. JNE has no place in the judicial election process.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.

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No.	Commentator	Full Comments	Commission Response
302.	Hon. James G. Bertoli Judge of the Superior Court of California, County of Sonoma	Disagree. I, too, am on the CJA Judicial Elections Committee and have forwarded many of your comments to Justice Rivera as well as my personal analysis in opposition to the JNE proposal. I have expressed concerns about the perception of the judicial branch being seen as creating a closed system that only the well-connected can become a part of either through the electoral or appointment process. This is neither the image nor the role we should promote for our branch. Moreover, such a process may have the unfortunate consequence of either discouraging or negatively impacting otherwise viable minority candidates who may not have a more traditional resume. Ultimately, we, as constitutional officers have to have faith in the ability of the electorate to make appropriate choices. In fact, I believe we have a sacred obligation to do so. If we cannot believe in the ability of the voters to make the right choice, I do not want to begin to consider the implications of such a mindset.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
303.	Hon. Craig Phillips Judge of the Superior Court of California, County of Kern	Disagree. I concur with the general consensus. I specifically agree with the comments from smaller counties that our electorate knows us better than JNE. Judge Bernardini and I went through “new judge” training together, and her electron proved that it is the quality of your work, and your character that matter.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
304.	Hon. Jane Cardoza Judge of the Superior Court of California, County of Fresno	Disagree. It is a bad idea to have the JNE Commission involved in evaluating candidates in a contested judicial election. The public election process works without injecting a nonpublic evaluation.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.

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No.	Commentator	Full Comments	Commission Response
305.	Hon. Clayton L. Brennan Judge of the Superior Court of California, County of Mendocino	Disagree. I oppose mandatory JNE review in contested judicial elections. I found the comments in the Los Angeles Superior Court memorandum re: Draft Proposed Comments to CIC well reasoned and persuasive. (See attachment to Judge Bacigalupo's email). [Note not attached.] I serve in Mendocino County. We are a small rural county (population 80,000). The community is close-knit and well informed. In Mendocino county, the notion that JNE review would provide a more useful assessment of a candidate's qualifications than local community networking is grossly mistaken.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
306.	Hon. Michael T. Smyth Judge of the Superior Court of California, County of San Diego	Disagree. The AOC's animus toward both elections and elected judges is obvious from the first days of Judicial College. The fact is that the AOC, and many appointed judges, and presumably Chief Justice George, believe that elected judges are less qualified, and more prone to misconduct, than appointed judges. I can say that at least locally that has certainly proved to be untrue. We must oppose this effort to subject judges to the secret politics of the appointment process. The idea that JNE or the appointment process is less political or apolitical is laughable, as anyone who has gone through it knows well. We must oppose this. See also general comment at beginning of the comment chart.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
307.	Hon. Gerald C. Jessop Judge of the Superior Court of California, County of San Diego	Disagree.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.

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No.	Commentator	Full Comments	Commission Response
308	Hon. Stephanie Sautner Judge of the Superior Court of California, County of Los Angeles	Disagree. I was elected to the Los Angeles bench in 1992. I never applied for an appointment because for 10 years it had been made clear that no openly gay candidate would be appointed. Despite the fact that I was a prosecutor and former police detective, I knew that neither Gov. Deukmejian nor Gov. Wilson would consider me. I also have no reason to believe that any JNE committee would go against the governor's politics and rate a candidate highly, despite excellent qualifications. I went through the L.A. County Bar's committee and found their rating process to be very thorough, open and fair, and their ratings are made available to the voting public. I strongly oppose any JNE involvement in the judicial elections process.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
309	Hon. Linda A. McFadden Presiding Juvenile Court Judge of the Superior Court of California, County of Stanislaus	Disagree. I see a number of issues with the proposal. Although I've read the information about the proposal, I still wonder how the proposed JNE process would work and how long would it take for the process to be completed? Most of my colleagues who went through JNE found it took several months, often over a year, for the process to be completed. I was elected to a seat vacated by a retired judge. I was sworn into office soon after the election. Our court needed to have a replacement for the judge who retired. I fear introducing JNE to the process would have delayed the replacement. As a result, our court would have needed an assigned judge to fill the vacancy created by the retired judge until the JNE process was completed. Also, what if the JNE process isn't completed within the time requirements to appear in the voter information guide? Does this mean increased cost to our already financially strapped state for a special election? Even if the JNE	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.

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No.	Commentator	Full Comments	Commission Response
		process were completed prior to the election, I expect this proposal would mean an increased cost to the state. I understand and agree with the need for impartial courts, however I do not believe current proposal will effect this goal.	
310.	Hon. John D. Molloy Judge of the Superior Court of California, County of Riverside	Disagree. It seems rather off to me that JNE is proposing an impediment to the constitutional election process. Other than the minimum requirements set forth in the constitution for elected officials, I am not aware of any other constitutionally elected official that must undergo a vetting process of any kind prior to seeking election.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
311.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	Disagree. Contrary to this recommendation, candidates are "vetted" by the press and evaluated by the local electorate. Despite the assumption the local electorate lacks the discernment to select competent judges, the contrary is actually true. The public does have discernment to select their local judges through the current and long-standing election process. A judge, while an independent thinker, must be accountable to the people. Judges should follow the law and directions of appellate courts but are responsible to the communities they serve and accountable to the voters and people of the state. To pretend that judges should be divorced from the will and desires of the people presumes that judges should be the super legislature, above and separate from political realities of our communities. The recommendation permits a "legal elite" to control and meddle in the local election process. As previously stated, the recommendation taken as a whole attempts to eliminate "political involvement" by the public in the process and substitute the "outsiders" as the director in the process.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.

94. All candidates in contested and open elections should be required to participate in a JNE form of evaluation, and the results of that evaluation should be published in the ballot materials together with a description of the JNE process, including the identity of those making the rating and what the ratings mean.

No.	Commentator	Full Comments	Commission Response
		Would the process be improved? On the contrary, "outsiders" would now attempt to control the judicial election process. The individual bias of the few would be substituted for the collective desires and aspirations of the people. Candidates, after being "required" to participate in the "evaluation" process, will have no means of countering the bias of the elite few who would pass judgment on the candidate's qualifications. Rather than making campaigns less vicious, candidates with lower rating would be required to campaign with increased intensity. Tearing down the opponent would be mandatory and would substantially weaken the public's view of the bench. Campaigns would become a circus, and the court offices would be no longer be viewed with great respect.	
312.	Hon. Richard James Henderson Judge of the Superior Court of California, County of Mendocino	Disagree. As a judge who survived a contested election for an open seat, I heartily endorse the opposition to the proposed JNE Commission review/evaluation. It smacks of backroom politics and would be but the first step on the "slippery slope" to the control of the judiciary by political appointment. The current (initial) appointment/election alternative provides a good balance and preserves the power of the electorate. It also ensures that the system will be available to candidates who may not fit the "mainstream" mold. We should not throw out the existing system because of one quirky result (the "bagel judge.) Judge Bailey, thank you for coming "clean" and sharing your first-hand JNE experience. It was an eye opener and worse than most of us thought.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
313.	Hon. Daniel J. Lowenthal Judge of the Superior Court of California, County of Los	Disagree. Recommendation #94 is misplaced. Instead of an additional vetting process, I think the focus should be on establishing more reasonable	The idea of requiring 10 years active bar membership to be eligible for judicial official was not considered by

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No.	Commentator	Full Comments	Commission Response
	Angeles	minimum qualifications for those seeking judicial office. Art. VI, §15 requires an applicant to have been a member of the State Bar for 10 years preceding an election. However, "member" includes both active and inactive members, including those on involuntary inactive status. In lieu of recommendation #94, I suggest a qualification change that would require applicants to have been on active status for 10 years, subject to continuing legal education requirements.	the Task Force on Judicial Selection and Retention.
314.	Hon. Cynda Riggins Unger Judge of the Superior Court of California, County of Solano	Disagree with recommendations 94 and 95. I oppose hybridizing the judicial election process with a mandatory JNE process and a mandatory inclusion of JNE's conclusion on the ballot.	The commission has modified these proposals as discussed under recommendation #58 in the final report of December 2009.
315.	Hon. Daniel E. Flynn Judge of the Superior Court of California, County of Shasta	Disagree. JNE involvement in elections is the wrong thing to do. I agree strongly that the public contact of the election process, and the public's decision making process, must not be interfered with. I ran last year at the same time I was also in the JNE process. I agree with the statement of Judge Bernardini.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
316.	Hon. Becky Lynn Dugan Judge of the Superior Court of California, County of Riverside	Disagree. I have enjoyed the many e-mails from my colleagues and join in opposition to this recommendation. However, I do not join in the rancor that is evident in e-mails such as Judge Smyth's. I am and have been involved in many AOC committees and working groups. All of us on these committees work hard for the courts of the State of California. Many of us are the same judges that have responded in these e-mails. I have never felt that I was treated "less than" as an elected judge. Please--well-reasoned debate is always helpful and enlightening; paranoia and generalization is	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.

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No.	Commentator	Full Comments	Commission Response
		not.	
317.	Hon. F. Dana Walton Presiding Judge of the Superior Court of California, County of Mariposa	Disagree. I was elected to the Superior Court of California, County of Mariposa in 2000 to an open seat due to retirement. As one of the three candidates for this seat, I and my fellow candidates appeared jointly at dozens of "candidate nights" throughout our county. We discussed our qualifications and goals in the presence of each other. We met with many groups asking for their endorsement. I personally took the time to knock on over 7,000 doors during the campaign and met thousands of my fellow citizens and heard their concerns and answered their insightful questions. Being from a small county made this all possible. However, in talking with many judges from larger courts it seems the same outreach is attainable in the same and other ways. In speaking with the "man on the street" about this recommendation the vast majority, in more colorful language, told me that it smacks of elitism and is an attempt by government to interfere in the election of "their" judges. After much thought, I believe the best way to resolve the issue is to put it on the ballot and let those who will be most affected, the voters, make this decision and NOT those who think they know better! Thank you for the opportunity to comment on this recommendation and I thank the Commission for their time and effort in this endeavor.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
318.	Hon. Steven R. Sanders Judge of the Superior Court of California, County of San Benito	Disagree. I oppose the proposal to involve the JNE Commission in the judicial elections, and concur with Judge Bernardini.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.

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No.	Commentator	Full Comments	Commission Response
319.	Hon. Lynn D. Olson Judge of the Superior Court of California, County of El Monte	Disagree. I oppose the JNE proposal.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
320.	Hon. Kay Tsenin Judge of the Superior Court of California, County of San Francisco	Disagree. I am particularly afraid that this is a slippery slope to an "appointments only" judiciary. I agree that there is on going animosity to judicial elections and wonder how much of it is out of fear of the prevailing fear of having to face the electorate. I was elected 12 years ago when no gay, or liberal judges or people from solo practices were being appointed in my very liberal San Francisco. I found the vetting process of the local electorate extremely stringent and ardent. Even more importantly the issues raised and questions posed presented concerns of importance to my community and not to hand picked insular and politically connected JNE members. Having served as a supervising judge for 3 years I saw absolutely no difference in the quality of work and performance of those judges vetted by JNE and those vetted by the electorate, there are great ones in both categories, regular hard working ones in both and then the other ones in both also. Going through the JNE commission does not vet for the ability to communicate with people, make decisions, work ethic and reflect the standards of your community.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
321.	Hon. James A. Kaddo Judge of the Superior Court of California, County of Los Angeles	Disagree with recommendation 94.	The commission has modified this proposal as discussed under recommendation #58 in the final report

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No.	Commentator	Full Comments	Commission Response
			of December 2009.
322.	Hon. Sheila Fell Judge of the Superior Court of California, County of Orange	Disagree with recommendation 94.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
323.	Hon. Mildred Escobedo Judge of the Superior Court of California, County of Los Angeles	Disagree. I too was elected in a very difficult election. Not only do we have to get the bar association approvals we have to secure endorsements from anyone to everyone that would be appropriate including newspapers, public newspapers especially the largest newspaper in each city as well as each individual city police agency or agencies not to mention all the political party clubs and some. The election process is hard work and requires a lot of transparency unlike JNE process which is secretive. Really it should be the opposite, everyone should go through the election road rather than the JNE path.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
324.	Hon. Caryl A. Lee Judge of the Superior Court of California, County of Orange	Disagree. The JNE has this political component that can certainly play in the evaluation process. Also the local bar associations do their evaluations which also weigh in politically and there is enough politics in the process that has no place and the struggles with all of the local forums that one attends to stay from the political component.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
325.	Hon. Michael G. Virga Judge of the Superior Court of California, County of Sacramento	Disagree with recommendation 94.	The commission has modified this proposal as discussed under recommendation #58 in the final report

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			of December 2009.
326.	Hon. Laura F. Priver Judge of the Superior Court of California, County of Los Angeles	Disagree. It is a bad idea to have judges running for election go through the JNE process. In Los Angeles, the county bar evaluated all individuals who run for election and rate them using similar criteria to JNE. This gives the voters information but it is voluntary on the part of the candidate. I see no reason for JNE to be involved. It would be cumbersome and onerous for both the candidates and the committee. I also don't believe it would give the voters any information they don't already have available to them.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
327.	Hon. James P. Woodward Judge of the Superior Court of California, County of Trinity	Disagree. The JNE Commission should not be involved in judicial elections. I've been involved in two highly contested elections, and can state without qualification that the voters, at least in the rural counties, know more about the candidates than members of the JNE Commission can ever hope to know.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
328.	Hon. Lloyd G.Connelly Judge of the Superior Court of California, County of Sacramento	Disagree. I oppose this ill conceived proposal.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
329.	Hon. Margaret R. Anderson Judge of the Superior Court of California, County of Orange	Disagree. As an elected judge who ran against an incumbent, I am really in favor of elections for judges. I am retiring next year (after 25 years on the bench). I strongly believe that the electorate should choose judges but that the choice should be made upon what the electorate believes to be the quality of the candidate and not what some secret commission/committee believes. I have strongly campaigned for judges running for election for open seats and I hope to continue to do so.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.

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330.	Hon. Nancy A. Pollard Judge of the Superior Court of California, County of Orange	Disagree. Having been elected in 1996, and being elected in my county as one of the first private attorneys who opposed a sitting (Muni) judge, I believe vetting by the JNE committee should be no more important than the opinions/decisions of the voters.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
331.	Hon. Bruce McPherson Former Member of the California State Senate, and Member of the Commission for Impartial Courts Task Force on Judicial Campaign Finance	Disagree. Although the recommendation states the JNE evaluation should be placed on the ballot and include the identity of those making the rating, it would put too much "campaign power" in the hands of a few JNE commissioners who the voters most likely don't know, who have few meaningful qualifications (the majority must be admitted to the Bar), and weaken the conventional campaign process in which the candidates debate the issues . . . and theoretically, provide more transparency. Currently the JNE commissioners serve for short periods of time, come to their conclusions from responses to a small number of questionnaires, and have no staff.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
332.	Jean Manipud-Robles	Disagree. Because, under JNE, all comments are completely anonymous and the candidate is given no opportunity to explain or given no information to assist him/her in mounting a defense, the proposal seems unfair.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
333.	Gary Lieberstein Napa County District Attorney President, California District Attorneys Association	Disagree with recommendations 94 and 95. It is not clear from the CIC Report whether the ratings discussed would be made by the JNE Commission itself, augmented by former members, or whether the ratings would be made by a separate but similar body made up of "JNE-type panels consisting of former members." (See page 81 of	The commission has modified these proposals as discussed under recommendation #58 in the final report of December 2009.

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No.	Commentator	Full Comments	Commission Response
		report.) The report does not address who would select these members, yet these individuals would have an unwarranted degree of influence on the election process. California's prosecutors understand the desire to provide voters with sufficient information to assist them in making decisions in judicial races. Voters are informed, in part, by evaluating the list of persons and organizations supporting each candidate. Unlike others who take a position regarding a judicial race, the JNE Commission would be represented to be unbiased official evaluators. While we appreciate the hard work and service the JNE Commission provides in the appointment process, we do not agree with elevating the Commission to the role of official evaluators of candidates for judicial election. Giving the Commission a role in both the appointment and election processes would amount to almost a veto power to block an individual it does not like from becoming a judge. We are not aware of any other elected office that provides for a public body to evaluate the candidate and rate the candidate on the ballot pamphlet. The CIC report notes that no other state has an official evaluation program to inform voters in contested elections (page 81 and footnote 70). The report also notes that requiring non-incumbent candidates to submit to the JNE process may be unconstitutional without amending the Constitution (page 81, footnote 68). Rather than assist the election process, we believe this proposal would have exactly the opposite effect. According to the JNE Commission's Web site, members "serve terms of approximately one year (beginning February 1) and may serve up to three consecutive terms." Presumably, the term limit is intended to prevent any one individual from having too much influence on the composition of the judiciary. Selection of former members would apparently allow the individuals to serve beyond their permissible terms, or would include members who left the Commission before they were required to do so for	

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		various reasons (e.g., insufficient time to perform their duties, did not get along with other members, etc.). A different context of evaluating applicants for appointment versus candidates for election represents a significant problem. Evaluations in the context of an election are likely to be less objective than those in the appointment context. When attorneys receive a questionnaire for an applicant under consideration by the JNE Commission, we know that there is a pool of applicants, and that the composition of the pool may change before an appointment is made. There may be more than one open position, or the applicant might be considered for a vacancy arising in the future. This context favors evaluating each applicant on his or her own merits rather than comparing one applicant against another. In an election context, however, there will typically be two or some other small number of candidates competing against each other for one seat. In completing the questionnaires, there may be a tendency, conscious or unconscious, to exaggerate the good traits of the candidate the rater prefers, and exaggerate the bad traits of the candidate the rater does not prefer. The Commission members may be similarly affected when they vote on their ratings, giving a higher rating to a candidate they prefer, even if based on factors other than qualifications. The California District Attorneys Association shares the desire of the CIC that judges be selected based on merit. However, we respectfully disagree that extending the JNE process to contested elections would further that goal.	
334.	Diane Goldman Attorney at Law Woodland Hills, California	Agree, if modified. This proposal is attractive in the abstract, but problematic in the practical. My initial reaction to the terms of the proposal: 1) What is a “JNE form of evaluation”?	The commission has modified this proposal as discussed under recommendation #58 in the final report

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		2) What protection would be afforded members of a committee providing such evaluations against litigation instituted by candidates who received a "not qualified" or [merely] "qualified" rating, who are unsuccessful in a judicial election; and who then contend that a less than optimal rating by the "volunteer committee" was responsible for the unsuccessful electoral result for such candidate? 3) Since the proposal seems to suggest that a JNE-like committee would provide the electoral judicial candidate evaluations, what provision is made for reimbursement of expenses to the members of a committee making such evaluations; how is the committee composed; how does it operate; and what body has oversight of it? This proposal would require that an entirely new body be created to conduct evaluations for judicial candidates running for election (new candidates and incumbents). As a consequence, an application similar to the appointment application would have to be provided by the candidate, which necessitates additional time for processing and verification. That imposes additional burdens on judicial candidates not imposed on candidates for other elective offices. In sum, this proposal in theory is attractive; however, the logistics of implementation are impossible.	of December 2009.
335.	Los Angeles County Bar Association Don Mike Anthony, President Danette E. Meyers, Immediate Past President	Disagree with recommendations 85-98. See comments under 85.	The commission has modified some of these proposal as discussed under recommendation #58 in the final report of December 2009.
336.	Mark A. Arnold	Agree.	

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	Public Defender Law Office of the Public Defender, County of Kern	I write to encourage your acceptance of the report and recommendations of the Commission for Impartial Courts. Judicial campaign reforms are long overdue. The Commission's recommendations appropriately address these necessary reforms. The specific recommendation of vetting candidates through the JNE Commission is essential to preserving the integrity of the bench. Why should it be possible for an unqualified candidate to run and win a judgeship? Presently, unqualified candidates can run for judge. It should be impossible for an unqualified attorney to become a judge. Large campaign chests do not ensure the public against political or philosophical ideologues. The JNE Commission was designed to protect the public from the appointment of unqualified judges. There is absolutely no reason the public should be protected from the appointment of an unqualified judge and yet not have the same electoral protection. To argue that the campaign process will allow the voters to do vet candidates themselves is to believe in fairytales. Campaigns are often funded by interest groups with political or ideological concerns. Wealthy candidates can win regardless of qualification. I respectfully encourage the Judicial Council to ratify these recommendations.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
337.	Hon. Burt Pines Judge of the Superior Court of California, County of Los Angeles	Disagree with recommendations 94 and 95. I assisted in the development of the comments you received from the Los Angeles Superior Court, including the comments in opposition to Recommendation 94. This will supplement those comments based on my experience as the Judicial Appointments Secretary in the Davis Administration. During my service in the Governor's office, we endeavored to limit the number of applications submitted to the JNE Commission to around 35 or	The commission has modified these proposals as discussed under recommendation #58 in the final report of December 2009.

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No.	Commentator	Full Comments	Commission Response
		40 each six to eight weeks. A greater number would place undue strain on the resources of the Commission. I question whether the State Bar would possess the necessary resources (e.g., current and former JNE members and staff) to thoroughly review, at the same time, all of the candidates running for judgeships throughout the State. Secondly, the Commission usually needs a 90-day lead time in order to complete a thorough evaluation. Candidates then have a right to appeal, which could take another 60 days before the appeal is decided. If the Commission's rating is overturned, the candidate then undergoes another 90-day evaluation process with different "lead" Commissioners assigned to the candidate. (This appellate process is fundamental. In a number of instances during my time in office, appeals were taken from "not qualified" ratings; the ratings were rescinded because of error; and the candidate received a rating of "qualified" or better.) Unless the election cycle were considerably lengthened, it would not be possible for the Commission to conclude its work in time for the printing of the ballots.	
338.	Richard Manning Attorney at Law Aptos, California	Disagree. The JNE process was not designed with elections in mind and cannot be modified to make it workable for elections. It is of questionable legality as noted in footnote 68. Most importantly, the public would be misled. The JNE process is far from infallible and the public has no way of knowing about the weaknesses of the JNE process, particularly that it heavily relies on anonymous comments or slanders that Commissioners do not have time of resources to truly investigate.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
339.	California Judges Association Hon. Mary E. Wiss, President	Disagree. See comments under 85.	The commission has modified this proposal as discussed under recommendation #58 in the final report

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No.	Commentator	Full Comments	Commission Response
			of December 2009.
340.	Superior Court of California, County of Los Angeles	Disagree. See comments under 85.	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.
341.	Hon. Brenda F. Harbin-Forte Judge of the Superior Court of California, County of Alameda	Disagree with recommendations 94, 95, and 96. The goal underlying the recommendations – specifically, that voters should be provided relevant information about a candidate for judicial office -- is a laudable one. I believe, however, that the process for achieving the desired goal should be reconsidered and modified. I therefore urge the members of the CIC to consider the following as they decide whether to adopt these recommendations. 1. Publish Only "Not Qualified" Ratings: The CIC, on page 76 of its report, recognizes a reality about releasing ratings of gubernatorial appointees that I believe should carry over into the decision whether to release ratings to voters in contested judicial elections. The CIC report states: "Because the distinctions between the various forms of qualified ratings are more subtle and the candidate is qualified in all cases, the disclosure of ratings of "exceptionally well qualified" (EWQ), "well qualified" (WQ), or "qualified"(Q) is not as important and may be undesirable for trial court judges who are subject to contestable elections. …" I agree with this general proposition. The public's understanding of a judicial candidate's qualifications to serve as a judge is not likely to be enhanced by providing gradations of ratings that have very little relevance to the ability of a judicial candidate to perform judicial duties. In my view, introduction of amorphous concepts such as EWQ and WQ would only serve to confuse voters. They need to know only whether a candidate is qualified or not qualified. For these reasons I believe that only a "not	The commission has modified #94/95 as discussed under recommendation #58 in the final report of December 2009.

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		qualified" rating should be reported in the voter pamphlet. As a final consideration, I believe that if the four ratings are released, they will unwittingly result in the view that the "mini-JNE" is ranking the candidates, a result the CIC asserts it wishes to avoid. More importantly, I believe that release of all ratings would have the unintended consequence of negatively impacting diversity on the bench. A review of the annual SB56 reports from the JNE Commission for the past three years reveals that women and ethnic minority candidates consistently receive ratings lower than EWQ and WQ. Chances are that such a pattern will carry over into ratings given during a contested election. A voter may believe that he or she is voting for the "best" judicial candidate by choosing the one with the EWQ rating and rejecting the one rated "only" a Q, when in reality, each candidate is qualified to serve as a judge. If the "Q"-rated judges are consistently women and ethnic minorities, the chance of creating and maintaining a diverse bench will be adversely impacted. Moreover, the reality is that a JNE-type rating only captures a snapshot of a judicial candidate at a particular point in time, and often has little correlation to that candidate's overall actual or potential contributions to our state's system of jurisprudence. Indeed, some candidates previously rated "only" qualified have emerged as strong leaders in our judicial system. In fact, candidates who at one point were found to be "not qualified" by JNE have gone on to serve on the highest courts of our state, without any damage being done to our judiciary. For all of these reasons, I believe that releasing only a "not qualified" rating would be the best way to educate jurors on whether to vote for one or more competing candidates. Finally, I would urge the CIC to consider whether it is seeking to fix a "98% problem," or a "2% problem." I would venture to guess that 98% (at least!) of the contested judicial elections in California result in the election of unquestionably qualified judges. Some of us may have preferred that	

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		another candidate had won, some of us may disagree with the elected judge's political views, but the reality is that it is difficult to say with any great degree of credibility that the 98% of the elected judges were not qualified to serve on the bench. If, then, we are talking about a 2% problem, we should give serious consideration to whether we want now to throw out a system that has served California well for decades. And again, as we look at diversity on the bench, we all must acknowledge that these elections have resulted in ethnically- and gender-diverse judges who have served our diverse population well. Most importantly, the ability to vote for these judges has made ethnic minorities and women feel that the playing field has been leveled, and that they have a true voice in the selection of individuals who will decide cases in their communities. 2. <u>In Contested Elections, the Reasons For A "Not Qualified" Rating And The Vote Count Should Be Released:</u> I agree that the reasons for a "not qualified" rating should not be released when the Governor appoints such an individual. I believe, however, that a different dynamic is at play when the voters have to make a choice between candidates. If indeed the goal is to place the voters in essentially the same position a governor is in when the selection decision is made, then it is only fair that both the candidate(s) and the public have a right to know why a candidate has been found to be not qualified. The reasons for such a finding can be rebutted by the candidate during the election period, and the candidate's ability to explain published concerns provides a level of fairness to the entire process. For this same reason, the vote count should be released and published in the voter pamphlet. A vote of, e.g., 12 to 1 for not qualified gives the voter a certain level of reassurance about the validity of the rating, and similarly, a report that the vote was 7 to 6 for not qualified adds an important dimension to the voter's ability to decide whether to take a chance on a candidate that the	

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		voter otherwise feels would be a good judge. Moreover, I believe that releasing a statement of reasons and the vote count would also assist in maintaining a diverse judiciary, because a level of accountability is inherent in such a requirement. Giving reasons that can be dissected and debated also reduces the likelihood that inappropriate or stereotypical factors were considered in arriving at the rating. 3. Have County Bar Associations Instead of "Mini-JNEs" Conduct Mandatory Evaluations, Using Uniform Evaluation Criteria: A proposal to establish another state bureaucracy, with attendant needs for staffing and oversight and rules and procedures, would not result in the best use of our state's scarce financial resources. County bar associations in most counties already evaluate and rate candidates in contested judicial elections. This type of local input on such an unquestionably local issue is a much more relevant measure of a candidate's qualifications to dispense justice fairly in a particular county. Accordingly, I believe the CIC should dispense with the idea of establishing another statewide entity, and instead consider establishing a statutory mechanism to mandate that county bar associations conduct a review of each candidate using uniform statewide criteria for evaluation. In counties that have no county bar association, an ad hoc "regional judicial evaluation" committee could be established. The regional committee would be comprised of the judicial evaluation committee members of the geographically closest county bar association, and a minimum of six (6) bar representatives from the affected county (for example, two representatives from the District Attorney's office, two representatives from the Public Defender's office or alternate defenders organization, and two representatives of the civil bar in the county). A county-bar driven evaluation and rating process accomplishes the same goal as a statewide "mini-JNE", provides local control and input on the critical	

94. All candidates in contested and open elections should be required to participate in a JNE form of evaluation, and the results of that evaluation should be published in the ballot materials together with a description of the JNE process, including the identity of those making the rating and what the ratings mean.

No.	Commentator	Full Comments	Commission Response
		issue of deciding who should dispense local justice, and serves to educate the local voters, as they will be most impacted by the decisions they make at the ballot box. In the case of an appointed judge facing a challenge within two years of his or her appointment who was not rated "not qualified" before appointment, the judge should be given two options. First, the judge should have the option of having the JNE commission release for publication in the voter's pamphlet a statement by the JNE Commission that the judge was found to be qualified before the Governor made the appointment. Alternatively, the judge could opt to undergo a new evaluation by the county bar evaluation committee. This would provide a measure of protection for judges who are unfairly targeted for reelection. However, if the judge was rated "not qualified" by the JNE Commission and received a gubernatorial appointment notwithstanding that rating, the public should be provided that information as a matter of course, even if the sitting judge elects to undergo a new evaluation by the county/regional bar association judicial evaluations committee.	
342.	James E. Lund Attorney at Law Escondido, California	I am in the second year of my term of service as a JNE Commissioner. I have found the work very rewarding, although at times it has been very time consuming. With the deadline of sending hundreds of Confidential Comment Forms to judges, attorneys, and legal professionals in regard to an applicant for judicial appointment, interviewing the raters that respond in writing, and interviewing the applicant in a face to face multi-hour interview within a 60-day time period, observing all statutory guidelines can be a difficult process. When the Governor announced his intention to appoint 50 new judges in several different counties, out workload increased substantially. If we had to also rate judges running contested elections, the Commission would probably need to expand.	The issues raised here are more appropriate to the implementation process and will be considered during the development of an implementation plan.

94. All candidates in contested and open elections should be required to participate in a JNE form of evaluation, and the results of that evaluation should be published in the ballot materials together with a description of the JNE process, including the identity of those making the rating and what the ratings mean.

No.	Commentator	Full Comments	Commission Response
		Under the current system, confidentiality is the key to an effective review of a judicial applicant. The raters, judges, attorneys, and others affiliated with the legal system will not give an honest rating if they know that their Confidential Comment Forms will be divulged. Similarly, the reports to the Governor from the JNE Commission are confidential, and although a candidate has written notice of any negative comments, the final report to the Governor may include a candid analysis of revelations or demeanor made by the candidate in the face to face interview. Nuances of why a candidate received a particular rating are included in the confidential report and if the report was not confidential, the candor and honesty of the report could substantially decrease. If a one word rating such as "well qualified, qualified, not qualified" was given to candidates running for contested elections, it could give voters some guidance but it certainly would not have the depth of research included in the current JNE Commission report to the Governor. I know nothing I have said in this letter is surprising, but I wanted to share my perspective on the value of the confidential aspects of the current surveys to raters, interview of the candidate, and report to the Governor.	
343.	Hon. Runston G. Maino Judge of the Superior Court of California, County of San Diego	Disagree	The commission has modified this proposal as discussed under recommendation #58 in the final report of December 2009.

95. All JNE ratings in contested elections—i.e., ratings of exceptionally well qualified, well qualified, qualified, and not qualified—should be reported as part of the voter information proposed as part of recommendation 94.

No.	Commentator	Full Comments	Commission Response
344.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree with recommendations 94 and 95, if modified. See comments under recommendation #94.	The commission has withdrawn this proposal as discussed in the final report of December 2009.
345.	Hon. James K. Hahn Judge of the Superior Court of California, County of Los Angeles	Disagree. See comments under #94.	The commission has withdrawn this proposal as discussed in the final report of December 2009.
346.	Hon. Gerardo C. Sandoval Judge of the Superior Court, County of San Francisco	Disagree. See comments under #94.	The commission has withdrawn this proposal as discussed in the final report of December 2009.
347.	Hon. Arthur A. Harrison Judge of the Superior Court of California, County of San Bernardino	Disagree. See comments under #94.	The commission has withdrawn this proposal as discussed in the final report of December 2009.
348.	Hon. Peggy Fulton Hora (Ret.) Judge of the Superior Court of California, County of Alameda	Disagree. See comments under #94.	The commission has withdrawn this proposal as discussed in the final report of December 2009.
349.	Hon. John H. Tiernan Judge of the Superior Court of California, County of Colusa	Disagree. See comments under #94.	The commission has withdrawn this proposal as discussed in the final report of December 2009.
350.	Hon. Faye D'Opal Judge of the Superior Court of California, County of Marin	Disagree. See comments under #94.	The commission has withdrawn this proposal as discussed in the final report of December 2009.

95. All JNE ratings in contested elections—i.e., ratings of exceptionally well qualified, well qualified, qualified, and not qualified—should be reported as part of the voter information proposed as part of recommendation 94.

No.	Commentator	Full Comments	Commission Response
351.	Hon. W. Kent Hamlin Judge of the Superior Court of California, County of Fresno	Disagree. See comments under #94.	The commission has withdrawn this proposal as discussed in the final report of December 2009.
352.	Hon. Michael M. Dest Judge of the Superior Court of California, County of San Bernardino	Disagree. See comments under #94.	The commission has withdrawn this proposal as discussed in the final report of December 2009.
353.	Sara Clarenbach Attorney, Santa Cruz County	Disagree. See comments under #94.	The commission has withdrawn this proposal as discussed in the final report of December 2009.
354.	Hon. Eleanor Provost Judge of the Superior Court of California, County of Tuolumne	Disagree. See comments under #94.	The commission has withdrawn this proposal as discussed in the final report of December 2009.
355.	Hon. Evelio M. Grillo Judge of the Superior Court of California, County of Alameda	Disagree. See comments under #94.	The commission has withdrawn this proposal as discussed in the final report of December 2009.
356.	Thomas J. O'Keefe Attorney, Orange County, California	Disagree with recommendations 95 and 94. In the case of a sitting judge who is in a contested election, the JNE ratings that were relied upon in connection with the initial appointment of that judge were already acted upon by the Governor when he or she fulfilled the constitutional duty of appointing that judge. (Cal.Const., art. VI, § 16, subd. (d)(2).). Therefore, since the Governor would have already acted upon past JNE ratings, those ratings would no longer have a purpose.	The commission has withdrawn this proposal as discussed in the final report of December 2009.

95. All JNE ratings in contested elections—i.e., ratings of exceptionally well qualified, well qualified, qualified, and not qualified—should be reported as part of the voter information proposed as part of recommendation 94.

No.	Commentator	Full Comments	Commission Response
		In addition, while a non-judge seeking judicial appointment is not unduly inconvenienced by having to answer to the Governor (i.e., one judge or a committee that he or she appoints) for statements made to the JNE Commission, the same is not true for a sitting judge having to answer to an electorate of perhaps millions of voters in re-defending against past ratings. A sitting judge would necessarily have to expend hundreds of hours and hundreds of thousands of dollars in the course of campaigning to the electorate against the information put in the ballot materials by the JNE Commission. That sort of campaigning is not necessary when the Governor is the decision-maker. Further, since judges and justices are already extremely overburdened with their normal duties, such a requirement puts them past the breaking point. Very recently I was at the Orange County Superior Court and noted that one particular judge had a list posted outside his courtroom showing approximately 40 cases set for trial just for that day. The mere threat of having old rumors exhumed and broadcast to the public will cause all sitting judges to feel that it is imperative to engage in extensive fundraising throughout their terms in a pre-emptive effort to defend against those rumors, thus further endangering the impartiality of the judiciary.	
357.	Deanna Musler Soquel, California	Disagree. See comments under 94.	The commission has withdrawn this proposal as discussed in the final report of December 2009.
358.	Santa Clara County Bar Association Jil Dalesandro, President	Disagree. See comments under 94.	The commission has withdrawn this proposal as discussed in the final report of December 2009.
359.	Hon. Ariadne J. Symons	Disagree with recommendations 7, 28, 94, and 95. See comments under 7.	The commission has withdrawn this

95. All JNE ratings in contested elections—i.e., ratings of exceptionally well qualified, well qualified, qualified, and not qualified—should be reported as part of the voter information proposed as part of recommendation 94.

No.	Commentator	Full Comments	Commission Response
	Judge of the Superior Court of California, County of Santa Cruz		proposal as discussed in the final report of December 2009.
360.	Hon. Cynda Riggins Unger Judge of the Superior Court of California, County of Solano	Disagree. See comments under 94.	The commission has withdrawn this proposal as discussed in the final report of December 2009.
361.	Gary Lieberstein Napa County District Attorney President, California District Attorneys Association	Disagree. See comments under 94.	The commission has withdrawn this proposal as discussed in the final report of December 2009.
362.	Diane Goldman Attorney at Law Woodland Hills, California	Agree, if modified. See comments under 94.	The commission has withdrawn this proposal as discussed in the final report of December 2009.
363.	Los Angeles County Bar Association Don Mike Anthony, President Danette E. Meyers, Immediate Past President	Disagree with recommendations 85-98. See comments under 85.	The commission has withdrawn this proposal as discussed in the final report of December 2009.
364.	Hon. Burt Pines Judge of the Superior Court of California, County of Los Angeles	Disagree. See comments under 94.	The commission has withdrawn this proposal as discussed in the final report of December 2009.
365.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	Disagree. Again, this recommendation will not strengthen or enhance the public's view of the JNE process. The public will not gain confidence through the investigative process but will instead, see the JNE proceedings as an	The commission has withdrawn this proposal as discussed in the final report of December 2009.

95. All JNE ratings in contested elections—i.e., ratings of exceptionally well qualified, well qualified, qualified, and not qualified—should be reported as part of the voter information proposed as part of recommendation 94.

No.	Commentator	Full Comments	Commission Response
		attempt by outsiders to direct who should be elected. The electorate will resent the meddling. Candidates will attack the outsiders for their meddling in the campaign and, rather than enhancing the image of the judiciary, this meddling will only tarnish the representation of the bench. Local elections should always be kept local. "Tampering" would be the word used to describe the uninvited intrusion of the JNE Commission.	
366.	Hon. Brenda F. Harbin-Forte Judge of the Superior Court of California, County of Alameda	Disagree with recommendations 94, 95, and 96. See comments under 94.	The commission has withdrawn this proposal as discussed in the final report of December 2009.
367.	James E. Lund Attorney at Law Escondido, California	See comments under 94.	The commission has withdrawn this proposal as discussed in the final report of December 2009.

96. The release of a rating by JNE should not be accompanied by a statement of reasons.

No.	Commentator	Full Comments	Commission Response
368.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree.	No response required.
369.	Hon. James K. Hahn Judge of the Superior Court of California, County of Los	Disagree. See comments under 94.	The commission contends that the release of reasons may compromise the confidentiality of the JNE process.

96. The release of a rating by JNE should not be accompanied by a statement of reasons.

No.	Commentator	Full Comments	Commission Response
	Angeles		
370.	Hon. W. Kent Hamlin Judge of the Superior Court of California, County of Fresno	Disagree. See comments under 94.	The commission contends that the release of reasons may compromise the confidentiality of the JNE process.
371.	Sara Clarenbach Attorney, Santa Cruz County	Disagree. See comments under 94.	The commission contends that the release of reasons may compromise the confidentiality of the JNE process.
372.	Hon. Eleanor Provost Judge of the Superior Court of California, County of Tuolumne	Disagree. See comments under 94.	The commission contends that the release of reasons may compromise the confidentiality of the JNE process.
373.	Hon. Michael M. Dest Judge of the Superior Court of California, County of San Bernardino	Disagree. See comments under 94.	The commission contends that the release of reasons may compromise the confidentiality of the JNE process.
374.	Los Angeles County Bar Association Don Mike Anthony, President Danette E. Meyers, Immediate Past President	Disagree with recommendations 85-98. See comments under 85.	The commission contends that the release of reasons may compromise the confidentiality of the JNE process.
375.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	Adopting this recommendation is a two-edged sword. Failing to release a statement of reasons for the recommendation will bring suspicion as to the motives for the recommendation. Supporters on all sides of the campaign will make up their own reasons for the recommendation. If the recommendation is positive for the candidate, the claims of real or imagined	The commission contends that the release of reasons may compromise the confidentiality of the JNE process.

96. The release of a rating by JNE should not be accompanied by a statement of reasons.

No.	Commentator	Full Comments	Commission Response
		bias will be raised if a statement is not released. If the recommendation is negative, the recommendation will surely damage the reputation of the candidate whether elected or defeated. Creating this "JNE" process is an all or nothing process which will polarize and politicize the process to the detriment of the judiciary. Judges currently are held in high esteem by the electorate. The public will no longer hold the judicial system in high esteem if it appears they are being dictated to by a process that is not 'local.'	
376.	Hon. Brenda F. Harbin-Forte Judge of the Superior Court of California, County of Alameda	Disagree with recommendations 94, 95, and 96. See comments under 94.	The commission contends that the release of reasons may compromise the confidentiality of the JNE process.

97. The courts should be directed to consider, when making appointments of subordinate judicial officers, both the diverse aspects of the appointees and the appointees' exposure to and experience with diverse populations and their related issues.

No.	Commentator	Full Comments	Commission Response
377.	Hon. Arleigh Maddox Woods (Ret.), Presiding Justice of the Court of Appeal, Second Appellate District	Agree, if modified In support of the Black Bar Association, suggest modification to "When making appointments of subordinate judicial officers, the courts are directed to consider both the diverse aspects of the appointees and the appointees' exposure and experience with diverse populations and their related issues."	Agree. The commission has modified the proposal. See discussion in report.
378.	Los Angeles County Bar	Disagree with recommendations 85-98.	No response required.

97. The courts should be directed to consider, when making appointments of subordinate judicial officers, both the diverse aspects of the appointees and the appointees' exposure to and experience with diverse populations and their related issues.

No.	Commentator	Full Comments	Commission Response
	Association Don Mike Anthony, President Danette E. Meyers, Immediate Past President	See comments under 85.	
379.	California Association of Black Lawyers Jennifer Madden, President	Agree with recommendations 97, 98, 99 On behalf of the California Association of Black Lawyers, I am writing to support the above recommendations. As an organization founded in part because of the lack of diversity on the bench in the late 1970's, we believe that these recommendations will increase diversity on the bench and allow for the consideration of factors that would lead to a fair and more representative bench overall. In addition to the factors that are already considered such as integrity, experience, honesty and work ethic, we believe that exposure to and experience with diverse populations allows a candidate to better relate to the individuals that appear before the court. I think that we can all agree, this would be a positive move in the right direction. We applaud the recommendations and hope that the full council will implement them.	Agree.
380.	Hon. Brenda F. Harbin-Forte Judge of the Superior Court of California, County of Alameda	Agree with recommendations 97 through 100. Adoption of recommendations 97, 98 and 99 will assist the courts in efforts to increase diversity on the bench. If adopted, they will also assist in the appointments of judges and subordinate judicial officers who are more culturally competent to handle disputes involving California's diverse population. Adoption of recommendation 100 will result in an even bigger pool of applicants from which the governor and the courts can select a broad range of judicial officers.	Agree

97. The courts should be directed to consider, when making appointments of subordinate judicial officers, both the diverse aspects of the appointees and the appointees' exposure to and experience with diverse populations and their related issues.

No.	Commentator	Full Comments	Commission Response
381.	State Bar of California Council on Access and Fairness	Agree with recommendations 97-100. The COAF agrees with the Commission on Impartial Courts that increasing judicial diversity is a critical component of the judicial selection process in California and supports these recommendations in concept. In particular, the COAF supports the recommendation for expanded public outreach and publicity programs to encourage all members of the bar to consider applying for judicial office. Also, the COAF urges the Judicial Council to work with the appropriate entities to ensure that evaluation of judicial applicants, decisions re: judicial appointments, as well as appointments of subordinate judicial officers incorporate the factors included in these recommendations, namely the candidate's exposure to and experience with diverse populations and issues related to these populations. The application of these criteria will help to ensure that appointments will take into consideration cultural competency, minimize the possibility of stereotyping of litigants by judicial officers, and increase diversity of those judicial officers with the greatest contact with the members of the public, thereby promoting public trust and confidence in the courts and legal system.	Agree
382.	John van Doorn Encinitas, California	Agree. When considering the breadth of diversity desired in the selection and retention of judicial candidates, please consider the importance of all diverse populations (gender, religion, race, sexual preference, etc.) and in proportion to their incidence in the general population.	Agree

98. One of the factors the JNE should consider is the candidate's exposure to and experience with diverse populations and issues related to those populations.

No.	Commentator	Full Comments	Commission Response
383.	Hon. Arleigh Maddox Woods (Ret.), Presiding Justice of the Court of Appeal, Second Appellate District	Agree, if modified In support of the Black Bar Association, the JNE Rules and Procedures, rule 11, section 6 should be amended to read: "Qualities for all judicial candidates: Impartiality, freedom from bias, industry, integrity, honesty, legal experience, professional skills, intellectual capacity, judgment, community respect, **exposure to and experience with diverse populations and issues related to those populations**, commitment to equal justice, judicial temperament, communications skills, and job-related health."	The commission has modified the proposal. See discussion in report.
384.	Diane Goldman Attorney at Law Woodland Hills, California	Disagree. This proposal implies a quota system incorporated into the JNE assessment process. As such, it would be unlawful and improper. In addition, to the extent that such a "diversity consideration" is to be applied, it is unlikely that there could be any consistency in the use of such a characteristic. This "suggested criterion" for assessing a judicial candidate's qualifications by evaluating the candidate's "exposure and experience" with persons from ethnic, racial, or other type groups that are different from the candidate is so vague as to be utterly impossible to even define, let alone quantify or qualify for the JNE Commission's use.	The commission has modified the proposal. See discussion in report.
385.	Los Angeles County Bar Association Don Mike Anthony, President Danette E. Meyers, Immediate Past President	Disagree with recommendations 85-98. See comments under 85.	No response required
386.	California Association of Black Lawyers Jennifer Madden, President	Agree. See comments under 97.	The commission has modified the proposal. See discussion in report.

98. One of the factors the JNE should consider is the candidate's exposure to and experience with diverse populations and issues related to those populations.

No.	Commentator	Full Comments	Commission Response
387.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	Disagree. What populations and issues related to those populations are to be considered? Is it proposed that certain beliefs and philosophies will be acceptable? Certainly, it is not suggested that "uniformity of belief" is now to be considered by the JNE? Unfortunately, uniformity of thought and belief seems to be what the Commission on Impartial Courts desires. Using the broad term of "experience with diverse populations and issues related to those populations" means that someone will make a subjective determination of acceptable "experience" and acceptable "issues" (i.e.: beliefs) for the recommendation by the JNE. How will this determination not inject politics into the judiciary?	The commission has modified the proposal. See discussion in report.
388.	Hon. Brenda F. Harbin-Forte Judge of the Superior Court of California, County of Alameda	Agree with recommendations 97 through 100. See comments under 97.	The commission has modified the proposal. See discussion in report.
389.	State Bar of California Council on Access and Fairness	Agree with recommendations 97 through 100. See comments under 97.	The commission has modified the proposal. See discussion in report.
390.	John van Doorn Encinitas, California	Agree. See comment under 97.	The commission has modified the proposal. See discussion in report.

99. The Governor should consider an appointee's exposure to and experience with diverse populations and issues related to those populations.

No.	Commentator	Full Comments	Commission Response

99. The Governor should consider an appointee's exposure to and experience with diverse populations and issues related to those populations.

No.	Commentator	Full Comments	Commission Response
391.	Hon. Arleigh Maddox Woods (Ret.), Presiding Justice of the Court of Appeal, Second Appellate District	Agree, if modified In support of the Black Bar Association, suggest modification to "The Governor should consider an appointee's exposure to and experience with diverse populations and issues related to those populations when selecting appointees to judicial office."	
392.	California Association of Black Lawyers Jennifer Madden, President	Agree. See comments under 97.	Agree
393.	Hon. Steven C. Bailey Judge of the Superior Court of California, County of El Dorado	Not necessary. Governors already consider the appointee's exposure to and experience with diverse populations and issues related to those populations when making their appointments. Is it suggested that the Governor must give his or her reasons for making a judicial appointment? What is to happen should the Governor ignore the appointee's exposure or experience or select an appointee who in some group's opinion possesses less than the required amount of exposure or experience? What is the remedy for an appointment where the candidate possesses insufficient exposure or experience? Why should the Governor be subject to second guessing by special interests with selfish motives? While the system can be tinkered with, what is broken in this system? Why do we need additional requirements and demands on the appointment process? Doesn't it take long enough to fill positions as it currently exists? What if new conditions or requirements are imposed, then how will the current system be improved? If the adjustments cannot be quantified or enforced, then all that happens with this "change" is meaningless words.	The Task Force on Selection and Retention considered the issues concerning quantification and definition and believes they are workable.
394.	Hon. Brenda F. Harbin-Forte Judge of the Superior Court of	Agree with recommendations 97 through 100. See comments under 97.	Agree

99. The Governor should consider an appointee's exposure to and experience with diverse populations and issues related to those populations.

No.	Commentator	Full Comments	Commission Response
	California, County of Alameda		
395.	State Bar of California Council on Access and Fairness	Agree with recommendations 97 through 100. See comments under 97.	Agree
396.	John van Doorn Encinitas, California	Agree. See comment under 97.	Agree

100. The judicial branch's public outreach and publicity programs should include one that encourages all members of the bar to consider applying for judicial office.

No.	Commentator	Full Comments	Commission Response
397.	Hon. Brenda F. Harbin-Forte Judge of the Superior Court of California, County of Alameda	Agree with recommendations 97 through 100. See comments under 97.	Agree
398.	State Bar of California Council on Access and Fairness	Agree with recommendations 97 through 100. See comments under 97.	Agree

101. An amendment should be sponsored to change the constitutional provision for the recall of a judge—which currently requires a petition with signatures of 20 percent of those voting for a judge in the most recent election—to require a petition with signatures of 20 percent of those voting for district attorney, the only county official elected in every county.

No.	Commentator	Full Comments	Commission Response
399.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree.	Agree.

102. A constitutional amendment should be sponsored to provide that a trial judge shall have served at least two years before his or her first election.

No.	Commentator	Full Comments	Commission Response
400.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree.	Agree.
401.	California Judges Association Hon. Mary E. Wiss, President	Agree. We strongly support this recommendation. Newly appointed judges should be given a reasonable opportunity to develop their judicial skills before being challenged and should have at least two years in which to learn how to carry out their judicial duties without the distraction of an election.	Agree.

103. Legislation should be sponsored to change the number of signatures needed for placing an unopposed judicial election on the ballot for a potential write-in contest from the current level of 100 signatures to 1 percent of the voters for district attorney in the last county election but not fewer than 100 signatures.

No.	Commentator	Full Comments	Commission Response
402.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree.	Agree.
403.	California Judges Association Hon. Mary E. Wiss, President	Agree with recommendations 103 and 104. We support these recommendations. CJA is currently sponsoring legislation to increase the number of signatures needed for judicial write-in campaigns.	Agree.
404.	Center for Judicial Excellence San Rafael, California Stephen Burdo	Disagree.	Disagree.
405.	Harry Crouch National Coalition for Men, San Diego Chapter San Diego, California	Disagree. I am concerned with judges running unopposed for re election. Well known is the fact the many judges run unopposed for re election because other attorneys fear that should they challenge a sitting judge that judge upon re election will be biased against any case brought by the challenger. Consequently, judges facing re election typically run unopposed. If they run unopposed their name is not placed on a ballot. If their name is not placed on a ballot the voters generally are unaware a sitting judge is up for re election. Hence, the judge is re elected by default. The current system allows a write in campaign to be mounted against an incumbent judge up for re election. 100 names of voters in the last election certified by the Registrar of Voters are sufficient to have placed on the ballot the	

103. Legislation should be sponsored to change the number of signatures needed for placing an unopposed judicial election on the ballot for a potential write-in contest from the current level of 100 signatures to 1 percent of the voters for district attorney in the last county election but not fewer than 100 signatures.

No.	Commentator	Full Comments	Commission Response
		name of a sitting judge up for re election. It is imperative that this system be protected if not encouraged. It is imperative that sitting judges when faced with re election be made available to the public for scrutiny and consideration. To do otherwise fosters an environment through which sitting judges are routinely re elected competent or not. The proposed change is transparent and clearly designed to make it more difficult to hold judges accountable. The proposed change will make Courts less impartial by re affirming that judges who choose not to follow established laws and rules may continue doing so.	
406.	John van Doorn Encinitas, California	Disagree. This country has an established principle of "one person-one vote". Each and every vote (and voice) must carry the same weight. The proposed change would clearly diminish the value of the "vote" of a citizen who happens to live in a more populated county and we would question the legality and/or constitutionality of such a proposal. In addition, the judiciary is no more or less important an office than that of elected officials in legislative or executive office. As such, the rules for initiating a write-in election at the local level (trial court judges) should be similar to that for the nomination of locally elected officials (generally 100 valid signatures).	

104. Legislation should be sponsored to amend current law, which provides that an unopposed judge may be challenged by write-ins at either or both the primary election and the general election, to permit only one challenge, which should be at the first (i.e., primary) election.

No.	Commentator	Full Comments	Commission Response
407.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree.	Agree.
408.	California Judges Association Hon. Mary E. Wiss, President	Agree. See comment under 103.	Agree.
409.	Center for Judicial Excellence San Rafael, California Stephen Burdo	Disagree.	Disagree.
410.	Harry Crouch National Coalition for Men, San Diego Chapter San Diego, California	Disagree. See comment under 103.	
411.	John van Doorn Encinitas, California	Disagree. Suggest that the law be changed to reflect that write-in challenges be limited to the general election, and limited to those judicial offices that were not formally challenged in the primary election.	

105. An amendment should be sponsored to article VI, section 16 of the California Constitution to reorder the subsections therein and make minor wording changes for the sake of clarity.

Public Comments
RECOMMENDED PRACTICES FOR SAFEGUARDING JUDICIAL QUALITY, IMPARTIALITY AND ACCOUNTABILITY IN CALIFORNIA

No.	Commentator	Full Comments	Commission Response
412.	Hon. Paul M. Marigonda Judge of the Superior Court of California, County of Santa Cruz	Agree.	Agree.
413.	Center for Judicial Excellence San Rafael, California Stephen Burdo	Disagree.	Disagree.

NOTE: No comments were received for recommendations 22-24, 26, 27, 55, 56, 62, 72, 76-79, 81, and 106-109.