



## Judicial Council of California . Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 14, 2010

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**Title**

Commission for Impartial Courts:  
Recommendations 51 and 52

**Agenda Item Type**

Action Required

**Effective Date**

December 14, 2010

**Rules, Forms, Standards, or Statutes Affected**

Gov. Code, § 12011.5

**Date of Report**

November 16, 2010

**Recommended by**

Commission for Impartial Courts  
Implementation Committee  
Hon. Ming W. Chin, Chair

**Contact**

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### Executive Summary

The Implementation Committee of the Commission for Impartial Courts is presenting two recommendations from the commission's final report, both concerning the judicial appointment process, for Judicial Council action and referral to the State Bar of California for further action. These recommendations are consistent with the prioritization plan accepted by the council at its February 26, 2010, meeting.

### Recommendation

The Commission for Impartial Courts (CIC) Implementation Committee recommends that, effective December 14, 2010, the Judicial Council endorse recommendations 51 and 52 related to Judicial Nominees Evaluation (JNE) and refer them to the State Bar for consideration, as follows:

1. 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.<sup>1</sup>

2. Recommendation 52: Legislation should be sponsored to make the current practice of releasing the JNE rating for a prospective appellate justice mandatory and permanent.<sup>2</sup>

### **Previous Council Action**

On December 15, 2009, the CIC presented its final report and recommendations to the Judicial Council. At the request of Associate Justice Ming W. Chin, chair of the CIC, the council received and accepted the report, which contained 71 recommendations.<sup>3</sup> The council directed the Administrative Director of the Courts to provide an implementation plan for and prioritization of the recommendations for consideration at the February 2010 Judicial Council business meeting.<sup>4</sup> Chief Justice Ronald M. George appointed Justice Chin chair of the implementation committee.

As directed, the committee submitted a report to the council in February 2010 with a proposed prioritization plan and report timeline, along with three of the commission's recommendations (29, 30, and 33) relating to disclosure of, and disqualification resulting from, campaign contributions for judicial candidates. The council endorsed the three recommendations, referring them on to the California Supreme Court Advisory Committee on the Code of Judicial Ethics, and also accepted the prioritization plan and timeline.

The committee presented 22 recommendations relating to judicial campaign conduct at the council's April and June 2010 meetings. The council endorsed 19 recommendations, referring recommendations 1–6, 14, 15, 24, and 27 to the California Supreme Court Advisory Committee on the Code of Judicial Ethics; recommendations 7–9, 16, and 28 to the State Bar of California; recommendations 18 and 19 to the Policy Coordination and Liaison Committee; and recommendations 31 and 32 to the Administrative Presiding Justices Advisory Committee and the Appellate Advisory Committee for consideration. The council voted disapproval of recommendations 10 and 22 and referred them, with the council's disapproval, to the California Supreme Court for further consideration. The council took no position on recommendation 25 and referred it also to the Supreme Court.

In August 2010, the council approved two recommendations that address judicial outreach, public information, and civics education, providing for (1) the appointment of the Leadership Group on Civics Education and Public Outreach and (2) focused and coordinated judicial branch

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<sup>1</sup> Proposed legislative language (Gov. Code, § 12011.5(g)) is in Attachment C.

<sup>2</sup> Proposed legislative language (Gov. Code, § 12011.5(h)) is in Attachment C.

<sup>3</sup> The CIC's final report is available at [www.courtinfo.ca.gov/jc/tflists/commimpart.htm](http://www.courtinfo.ca.gov/jc/tflists/commimpart.htm). For ease of reference, a consolidated list of the CIC's final recommendations is in Attachment A; some recommendations in Attachment A have multiple subparts, identified by lowercase letters.

<sup>4</sup> The council further directed the Administrative Director of the Courts to report to the council by December 2010 on progress in implementing the CIC's recommendations.

advocacy for improving civics education in K–12 curricula. The council also endorsed five recommendations regarding the judicial appointment process in October 2010.

## **Rationale for Recommendation**

### **Recommendation 51**

For trial court judge appointees, the State Bar Board of Governors has full discretionary authority, after providing notice to the applicant,<sup>5</sup> on whether to release “not qualified” ratings. The CIC believes that disclosure of all “not qualified” ratings, particularly if automatic, would increase the public’s confidence in the judicial selection process. Although release of all JNE ratings could dissuade some potential applicants, if the change in procedures were well publicized, all potential appointees would have fair notice that evaluation results are public.

Because the distinctions between the three qualified ratings are relatively subtle and an applicant is qualified in all cases, the disclosure of specific ratings of “exceptionally well qualified,” “well qualified,” or “qualified” is not vital 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.

### **Recommendation 52**

Currently, Government Code section 12011.5(h) gives discretionary authority to the Commission on Judicial Appointments to request, and the State Bar Board of Governors to release, JNE ratings of prospective appellate justices. In practice, these ratings are always released at the time of the Commission on Judicial Appointments hearing, though there is no requirement to do so. This recommendation will simply align the statute with current practice.

In the CIC’s opinion, making the changes proposed in Recommendations 51 and 52 by statutes rather than rules will ensure greater permanency of the requirement.

Because the operation and regulation of the JNE Commission is within the purview of the State Bar, the recommendations for proposed legislation should be referred to the bar for its consideration rather than being directly sponsored by the council.

## **Comments, Alternatives Considered, and Policy Implications**

As with all of the CIC’s recommendations, those discussed in this report were distributed for public comment. The comments received and the CIC’s responses are in Attachment C.

### **Comments on Recommendation 51**

Of three comments received on recommendation 51, one was in agreement with the proposal. Another commentator disagreed, noting that a “not qualified” rating attacked the reputation of the candidate and that disclosure serves no purpose other than tearing down a person’s reputation. The commentator also expressed disapproval of the entire JNE process, calling the

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<sup>5</sup> JNE Rules and Procedures, rule III, § 2(b)(4).

CIC a “legal elite.” The CIC disagrees with this comment, believing that the process provides valuable information about appointees and should be released to enhance system transparency.

### **Comments on Recommendation 52**

Two comments were received on recommendation 52. One in opposition noted that a retention election for an appellate justice is often “contested,” and hence, the arguments for disclosing a rating for a trial judge apply with equal force to an appellate justice. The CIC disagrees with this comment, noting that the recommendation only makes permanent an existing practice that appears to have served the system well.

The other comment, while ostensibly stating opposition to this recommendation, actually presented reasons applicable only to another proposal that was ultimately not adopted by the CIC.

### **Alternatives considered and policy implications**

The CIC did not consider alternatives to this specific proposal but, rather, considered the entire group of proposals involving the JNE as part of a package of issues, examining whether it is preferable to (1) keep the present form of California merit selection as expressed in the JNE process and work to improve public trust and confidence in the process, (2) expand the present system to encompass the evaluation of all candidates for contested elective judicial positions, or (3) replace the present system with a system of formal “Missouri-style” merit selection.<sup>6</sup> Once the CIC decided on the overall approach of keeping the current system but improving its processes, the utility of these recommendations became clear. The only alternative was simply not to adopt the recommendation.

### **Implementation Requirements, Costs, and Operational Impacts**

The committee believes recommendations 51 and 52 can be accomplished at a reasonable cost. Initial resources required will include staff time—which should be minimal—to prepare referral documents to the State Bar. Required external resources will include the time and staff needed for the State Bar to receive, review, and act on the referred recommendations. Further resources, including AOC staff time, may be necessary as part of the legislative process.

### **Attachments**

1. Attachment A: Consolidated List of Final Recommendations
2. Attachment B: Public Comments Received and Responses on Recommendations 51 and 52
3. Attachment C: Proposed Legislative Language for Recommendations 51 and 52

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<sup>6</sup> The Missouri Plan, first adopted by the State of Missouri in 1940, is a system of “merit selection,” where a judicial nominating commission recommends a pool of typically three nominees from which the Governor selects. Judges face retention elections (without an opponent) after a brief initial term of office. In some cases, confirmation of an appointee is also required.

## 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:
  - (a) Identifying issues raised by judicial candidate questionnaires;
  - (b) Distributing a model letter and a model questionnaire that candidates can use in lieu of responding to an interest group questionnaire;
  - (c) Using the advisory memorandum on responding to questionnaires prepared by the National Ad Hoc Advisory Committee on Judicial Campaign Oversight;
  - (d) Encouraging candidates to give reasoned explanations for not responding to improper questionnaires rather than simply citing advisory opinions;
  - (e) Using candidate Web sites; and
  - (f) 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:
  - (a) 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;
  - (b) 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
  - (c) 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:
  - (a) 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;
  - (b) 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);
  - (c) 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;
  - (d) 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
  - (e) 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:
  - (a) 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;
  - (b) 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;
  - (c) 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;
  - (d) 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
  - (e) 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) 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;
  - (b) 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;
  - (c) The AOC should maintain a list of resources for local courts that will reflect the diversity of the state and explore ethnic media outlets;
  - (d) 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;
  - (e) 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;
  - (f) 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;
  - (g) Courts should be identified to pilot programs dealing with community outreach and education; and
  - (h) 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:
  - (a) 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;
  - (b) 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
  - (c) 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:
  - (a) 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;
  - (b) 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;
  - (c) Teacher training programs, curriculum development, and education programs on civics should all be expanded to include the courts;
  - (d) 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;

- (e) 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;
  - (f) The AOC should be directed to help pilot extensive civics-related outreach in three jurisdictions; and
  - (g) 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:
- (a) Voter focus groups should be conducted within California to determine what information to provide in education materials;
  - (b) 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;
  - (c) Judicial candidates should participate in candidate forums and respond to appropriate questionnaires;
  - (d) Efforts should be undertaken to determine the most effective uses of multimedia tools to promote voter education;
  - (e) 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
  - (f) 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:
  - (a) The judicial branch's California Courts Web site; and
  - (b) 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.



**Public Comments**

**RECOMMENDED PRACTICES FOR SAFEGUARDING JUDICIAL QUALITY, IMPARTIALITY AND ACCOUNTABILITY IN CALIFORNIA**

<b>RECOMMENDATION 51 (was numbered recommendation 87 during public comment period)</b>			
<b>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.</b>			
<b>No.</b>	<b>Commentator</b>	<b>Full Comments</b>	<b>Commission Response</b>
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. <i>[from comments under 85]</i> <i>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.</i>	See response to comments #237 and #335. <i>[from response under #237/233]</i> <i>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.</i>  <i>[from response under #335]</i> <i>The commission has modified some of these proposal as discussed under recommendation #58 in the final report of December 2009 (Attachment A)</i>
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	The public should be given this information as part of greater transparency to the system.

**Public Comments**

**RECOMMENDED PRACTICES FOR SAFEGUARDING JUDICIAL QUALITY, IMPARTIALITY AND ACCOUNTABILITY IN CALIFORNIA**

**RECOMMENDATION 51 (was numbered recommendation 87 during public comment period)**

**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
		confidence in the bench? The fact that the “legal elite” does not believe a 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.	

**RECOMMENDATION 52 (was numbered recommendation 88 during public comment period)**

**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 ( <i>Comment No. 248 above</i> ).	Disagree. Comments do not really address this recommendation

**Proposed Legislative Language  
for Recommendations 51 and 52**

Government Code section 12011.5 would be amended, effective December 14, 2010, 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) \*\*\*