

# Implementation Status of Recommendations by the Commission for Impartial Courts

(Revised as of December 13, 2012)

## **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.”
  - This recommendation was endorsed by the Judicial Council in April 2010 and referred to the California Supreme Court for consideration by its Advisory Committee on the Code of Judicial Ethics. The recommendation was adopted by the Supreme Court at a special administrative conference on October 30, 2012, and takes effect January 1, 2013.
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.
  - This recommendation was endorsed by the Judicial Council in June 2010 and referred to the California Supreme Court for consideration by its Advisory Committee on the Code of Judicial Ethics. The advisory committee did not approve the recommendation for presentation to the Supreme Court.
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.
  - See recommendation 2 above.
4. Canon 5 of the Code of Judicial Ethics should be reexamined for consistency in its use of the terms “judge” and “candidate.”
  - This recommendation was endorsed by the Judicial Council in April 2010 and referred to the California Supreme Court for consideration by its Advisory Committee on the Code of Judicial Ethics. The recommendation was adopted by the Supreme Court at a special administrative conference on October 30, 2012, and takes effect January 1, 2013 with amendments to the terminology section and throughout canon 5 of the code.
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.

- This recommendation was endorsed by the Judicial Council in June 2010 and referred to the California Supreme Court for consideration by its Advisory Committee on the Code of Judicial Ethics. The recommendation was adopted by the Supreme Court at a special administrative conference on October 30, 2012, and takes effect January 1, 2013. It was codified as new canon 3A(3)(a).
6. A definition of “commitment” that includes “pledges” and “promises” should be added to the Code of Judicial Ethics.
- See recommendation 2 above.
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.
- This recommendation was endorsed by the Judicial Council in June 2010 and referred to the State Bar of California for consideration. In January 2011, the State Bar’s Board of Governors discussed this recommendation, and will endeavor to raise the need for such a group at the appropriate times. At that point, the State Bar could contact local bar associations and their judicial committees and invite participation. An ad hoc statewide group could then be formed to address any appellate issues that arise, and also address issues covered under Recommendation 42 concerning unwarranted criticisms of the judiciary that need a coordinated response.
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.
- This recommendation was endorsed by the Judicial Council in June 2010 and referred to the State Bar of California for consideration. At this time, every elected attorney member of the Board of Governors has been asked to contact his or her local county bar association to encourage the formation of fair election committees. Most of the board members have reported back that they have done so or that their local bar already has such a committee. The Alameda, Contra Costa, and San Mateo County Bar Associations have expressed interest in forming such committees.

- As a follow up to these contacts, in March 2011 State Bar President William Hebert sent letters to leaders of local county bar associations encouraging them to consider ways to begin implementing both recommendations 8 and 16 in their counties by establishing new local committees to help ensure fair judicial elections and respond to unfounded attacks on the judiciary. If more appropriate for their needs, some local bars may prefer to integrate these tasks within an existing committee. Still other local bar associations may want to use their boards or another existing committee to develop campaign conduct code, relying on existing models, and then establish a protocol for addressing any issues that arise rather than form a standing committee. Models from the Santa Clara County Bar Association (see recommendation 9) and other resources were included with the correspondence.
9. A model campaign conduct code for use by the state and local oversight committees should be developed.
- This recommendation was endorsed by the Judicial Council in June 2010 and referred to the State Bar of California for consideration. In March 2011 State Bar President William Hebert distributed to leaders of local county bar associations the Judicial Election Campaign Code of Ethics and Fair Election Commission Practices Procedures that were developed by the Santa Clara County Bar Association.
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.
- The Judicial Council voted disapproval of this recommendation at its June 2010 meeting and referred the recommendation and the council's disapproval to the California Supreme Court's Advisory Committee on the Code of Judicial Ethics for further consideration. The recommendation was adopted by the Supreme Court at a special administrative conference on October 30, 2012, and takes effect January 1, 2013. It was codified as new canon 5B(3).
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.

➤ Submitted to the CJER Governing Committee for consideration and possible implementation.

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.

➤ The Supreme Court Committee on Judicial Ethics Opinions hotline is currently available by calling toll-free 1-855-854-5366. A corresponding web site should be operational by December 2012. The website URL will be [www.JudicialEthicsOpinions.ca.gov](http://www.JudicialEthicsOpinions.ca.gov).

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.

➤ For consideration at a future Judicial Council meeting.

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.

➤ This recommendation was endorsed by the Judicial Council in June 2010 and referred to the California Supreme Court for consideration by its Advisory Committee on the Code of Judicial Ethics. A variation of the above recommended language was adopted by the Supreme Court at a special administrative conference on October 30, 2012, and takes effect January 1, 2013.

The commentary following canon 3B(9) now includes this sentence: “Although this canon does not prohibit a judge from commenting on cases that are not pending or impending in any court, a judge must be cognizant of the general prohibition in canon 2 against conduct involving impropriety or the appearance of impropriety.”

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.

- This recommendation was endorsed by the Judicial Council in April 2010 and referred to the California Supreme Court for consideration by its Advisory Committee on the Code of Judicial Ethics. The recommendation was adopted by the Supreme Court at a special administrative conference on October 30, 2012, and takes effect January 1, 2013. The commentary following canon 3B(9) now includes the following sentence: “ ‘Making statements in the course of their official duties’ and ‘explaining the procedures of the court’ include providing an official transcript or partial official transcript of a court proceeding open to the public and explaining the rules of court and procedures related to a decision rendered by a judge.”
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.
- This recommendation was endorsed by the Judicial Council in April 2010 and referred to the State Bar of California for consideration. It was discussed at the State Bar’s January 2011 Board of Governors meeting, and subsequently in March 2011 State Bar President William Hebert sent letters to leaders of local county bar associations encouraging them to consider ways to begin implementing both recommendations 8 and 16 in their counties by establishing new local committees to help ensure fair judicial elections and respond to unfounded attacks on the judiciary. If more appropriate for their needs, some local bars may prefer to integrate these tasks within an existing committee. Still other local bar associations may want to use their boards or another existing committee to develop campaign conduct code, relying on existing models, and then establish a protocol for addressing any issues that arise rather than form a standing committee. Models from the Santa Clara County Bar Association (see recommendation 9) and other resources were included with the correspondence.
17. The California Judges Association’s Response to Criticism Team and its network of contacts should be publicized.
- For consideration at a future Judicial Council meeting.
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.
- This recommendation was endorsed by the Judicial Council in April 2010 and referred to the Policy Coordination and Liaison Committee for consideration as a matter for council-sponsored legislation.

19. An amendment to Government Code section 84305.5 should be sponsored to apply to organizations that support or oppose judicial candidates.
  - See recommendation 18 above.
20. Judicial campaign instructional materials providing best practices regarding the use of slate mailers should be developed.
  - Submitted to the CJER Governing Committee for consideration and possible implementation.
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.
  - Submitted to the CJER Governing Committee for consideration and possible implementation.
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.
  - The Judicial Council voted disapproval of this recommendation at its June 2010 meeting and referred the recommendation and the council’s disapproval to the California Supreme Court’s Advisory Committee on the Code of Judicial Ethics for further consideration. The advisory committee did not approve the recommendation for presentation to the Supreme Court.
23. Instructional materials about the importance of truth in advertising should be developed.
  - For consideration at a future Judicial Council meeting.
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.
  - This recommendation was endorsed by the Judicial Council in June 2010 and referred to the California Supreme Court for consideration by its Advisory Committee on the Code of Judicial Ethics. The recommendation was adopted by

the Supreme Court at a special administrative conference on October 30, 2012, and takes effect January 1, 2013. It was codified as new canon 5B(2).

25. The Code of Judicial Ethics should be amended to add a list of prohibited campaign conduct.
  - The Judicial Council took no position on this recommendation at its June 2010 meeting and referred the recommendation to the Supreme Court Advisory Committee on the Code of Judicial Ethics for further consideration. The advisory committee did not approve the recommendation for presentation to the Supreme Court.
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.
  - For consideration at a future Judicial Council meeting.
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.
  - This recommendation was endorsed by the Judicial Council in April 2010 and referred to the California Supreme Court for consideration by its Advisory Committee on the Code of Judicial Ethics. The recommendation was adopted in part by the Supreme Court at a special administrative conference on October 30, 2012, and takes effect January 1, 2013. The advisory committee did not recommend any substantive amendment to canon 6D(8).
28. The State Bar should be encouraged to discipline attorney candidates who engage in campaign misconduct.
  - This recommendation was endorsed by the Judicial Council in June 2010 and referred to the State Bar of California for consideration. The State Bar’s Board of Governors and the Chief Trial Counsel support this recommendation and reaffirm their willingness to discipline attorneys 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).
- This recommendation was endorsed by the Judicial Council in February 2010 and referred to the California Supreme Court for consideration by its Advisory Committee on the Code of Judicial Ethics. The recommendation was adopted in canon 3E(2) by the Supreme Court at a special administrative conference on October 30, 2012, and takes effect January 1, 2013.
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.



- This recommendation was endorsed by the Judicial Council in February 2010 and referred to the California Supreme Court for consideration by its Advisory Committee on the Code of Judicial Ethics. It has been implemented by statute—Code of Civil Procedure section 170.1(a)(9).
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.
- This recommendation was endorsed by the Judicial Council in April 2010 and referred to the Administrative Presiding Justices Advisory Committee and the Appellate Advisory Committee for consideration, and ultimate recommendation as to whether it should be codified in the Code of Judicial Ethics, the California Rules of Court, or statute. Both Advisory Committees reviewed this recommendation in May 2011, and notified the Commission for Impartial Courts Implementation Committee that they do not agree with this recommendation as it would place additional administrative burden on the courts.
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 website.
- This recommendation was endorsed by the Judicial Council in April 2010 and referred to the Administrative Presiding Justices Advisory Committee and the Appellate Advisory Committee for consideration, and ultimate recommendation as to whether it should be codified in the Code of Judicial Ethics, the California Rules of Court, or statute. Both Advisory Committees reviewed this recommendation in May 2011, and notified the Commission for Impartial Courts Implementation Committee that they basically endorse this recommendation. As a result, the appellate courts FAQ page of the California Courts website will be updated to include a link that points to the California Secretary of State’s “Cal-Access” (<http://cal-access.ss.ca.gov>) campaign finance website for information supplied by candidates for statewide office (including appellate justices), donors, lobbyists, and others.
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.

➤ This recommendation was endorsed by the Judicial Council in February 2010 and referred to the California Supreme Court for consideration by its Advisory Committee on the Code of Judicial Ethics. The recommendation was adopted in part by the Supreme Court at a special administrative conference on October 30, 2012. New canon 3E(5)(j) takes effect January 1, 2013.

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.

➤ This recommendation was made moot by the decision in *Citizens United v. Federal Election Commission*, where the U.S. Supreme Court ruled 5–4 that the government may not ban political spending by corporations in candidate elections. Though the decision does not specifically directly address them, this reasoning will also be applied to labor unions.

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.

➤ For consideration at a future Judicial Council meeting.

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.

➤ For further review and future consideration.

## **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.

➤ Subparts (a) and (b) of recommendation 37 were endorsed by the Judicial Council at its August 2010 meeting. The Administrative Director of the Courts

has appointed the Leadership Group on Civics Education and Public Outreach to implement these two items.

- Subparts (c) through (h) of recommendation 37 have been referred to the Leadership Group on Civics Education and Public Outreach.

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.

- For further review and future consideration.

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.

- This recommendation is being implemented internally by the AOC's Education Division/Center for Judicial Excellence and Research as an item to be covered as part of regular curriculum.

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

- This recommendation has been referred to the Leadership Group on Civics Education and Public Outreach.

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.

- For consideration at a future Judicial Council meeting.

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.

- For consideration at a future Judicial Council meeting. See also recommendation 42 above.

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.

- Subparts (a), (b), (c), and (g) of recommendation 43 were endorsed by the Judicial Council at its August 2010 meeting. The Administrative Director of the Courts has appointed the Leadership Group on Civics Education and Public Outreach to implement these four items.

- Subpart (d): The CJER Governing Committee is not recommending that the education rules be amended to allow education credit for public outreach work. California Rule of Court 10.462(d)(4) (and other parallel provisions) covers continuing education credit for faculty service to that provided for “a California court-based audience (i.e., justices, judges, subordinate judicial officers, temporary judges, or court personnel).” This limitation would exclude K-12 civics and law-related education for students. The Governing Committee did state that judges and others should be encouraged to conduct such education.

- Subpart (e) will be reviewed for future consideration.

- Subpart (f) has been referred to the Leadership Group on Civics Education and Public Outreach.
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.
- For further review and future consideration.
45. The State Bar should be asked to offer an educational course to potential judgeship applicants.
- This recommendation is being implemented by the State Bar in September 2011 at its annual conference in Long Beach.
46. A model self-improvement program should be developed for voluntary use by courts and individual judges.
- For further review and future consideration.
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.
- This recommendation has been referred to the Leadership Group on Civics Education and Public Outreach.

48. Courts should be encouraged to use CourTools or similar court performance measures.
- This recommendation has been implemented internally by the AOC's Education Division/Center for Judicial Excellence and Research with coverage of the topic as part of its Institute of Court Management classes.

### **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.
- No action required; recommend retaining present system.
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.
- This recommendation was endorsed by the Judicial Council at its October 2010 meeting and referred to the State Bar of California for consideration. It was discussed at the January 2011 Board of Governors meeting and then was referred to the JNE Review committee. The committee approved giving JNE a greater presence on the Bar website, but declined to place member photographs on the website for privacy reasons.
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.
- This recommendation was endorsed by the Judicial Council at its December 2010 meeting, and referred to the State Bar of California for consideration. Proposals to sponsor legislation to amend Government Code section 12011.5 will be placed on the Board of Governors Operations Committee agenda for action at the March 2011 Board meeting. At this time, no final action has been taken.
52. Legislation should be sponsored to make the current practice of releasing the JNE rating for a prospective appellate justice mandatory and permanent.
- See recommendation 51 above. Although no final action has been taken, it should be noted that the recommendation is already in effect as current practice.

53. The release of a rating by JNE should not be accompanied by a statement of reasons.
- No action required; recommend retaining present system.
54. The following websites should explain the judicial appointment process and link to each other:
- (a) The judicial branch's California Courts website; and
  - (b) The State Bar's JNE website and the Governor's Judicial Application website, 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.
- Subpart (a) of this recommendation has been referred to the Leadership Group on Civics Education and Public Outreach.
  - Subpart (b) was endorsed by the Judicial Council at its October 2010 meeting and referred to the State Bar of California for consideration. It was discussed at the January 2011 Board of Governors meeting and was referred to State Bar staff for implementation.
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.
- This recommendation was endorsed by the Judicial Council at its October 2010 meeting and referred to the State Bar of California for consideration. It was discussed at the January 2011 Board of Governors meeting and then was referred to the JNE Review Committee and to the Board Operations Committee for action. JNE and the State Bar will look for opportunities to encourage law schools to incorporate information about judicial appointment procedures with other judicial branch information provided to law students.
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.
- This recommendation was endorsed by the Judicial Council at its October 2010 meeting and referred to the State Bar of California for consideration. It was discussed at the January 2011 Board of Governors meeting and then was referred to the JNE Review Committee and to the Board Operations Committee for action. This recommendation has been implemented by the JNE Commission, and a significant level of outreach is already an ongoing priority.



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.
  - The State Bar has already made these changes through amendments to its rules 7.23 and 7.24(c) which apply the conflict of interest provisions for JNE commissioners also to members of the Board of Governors.
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.
  - For further review and future consideration.
59. The Judicial Council should encourage the courts 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.
  - For consideration at a future Judicial Council meeting.
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.
  - This recommendation was endorsed by the Judicial Council at its October 2010 meeting and referred to the State Bar of California for consideration. It was discussed at the January 2011 Board of Governors meeting and then was referred to the JNE Review Committee and to the Board Operations Committee for action. The Governor's application procedures now request information that is responsive to this recommendation, and JNE provides additional information to the Governor's office that is responsive to this 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.
  - For further review and future consideration.
62. The judicial branch's public outreach programs should encourage qualified members of the bar to consider applying for judicial office.

- This recommendation was endorsed by the Judicial Council at its October 2010 meeting and referred to the Executive Office Programs Division of the Administrative Office of the Courts for implementation/action. Subsequently, in January 2011, the Administrative Director of the Courts referred this recommendation to the State Bar of California for consideration.
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.
- For further review and future consideration.
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.
- For further review and future consideration.
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.
- The California Judges Association sponsored Assembly Bill 1335 (Lieu) which would have revised the number of qualified registered voter signatures required for a write-in campaign to 1 percent, except that the petition must have no fewer than 100 and does not need more than 1,000 signatures. The bill was passed by both Senate and Assembly in August 2010 but was vetoed by Governor Arnold Schwarzenegger on September 30, 2010.
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.
- For further review and future consideration.
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.
- For further review and future consideration.

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).
  - For further review and future consideration.
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.
  - For further review and future consideration
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.
  - For further review and future consideration.
71. Further study should be made of ways to help ensure that judicial vacancies are filled promptly.
  - For further review and future consideration.