



## **Judicial Election Evaluation Committee Rules**

### **1. Preamble**

The election of qualified judges to the Superior Court, State of California, and County of San Diego is fundamental to the effective, local administration of justice. Article 6, Section 16 of the California Constitution outlines the election process for Superior Court Judges in California; however, information regarding judicial candidates is not readily available to the voting public.

In 1978, the San Diego County Bar Association (SDCBA) created the Judicial Election Evaluation Committee (JEEC) to evaluate candidates running in a judicial election and publicize those evaluations as a public service to the San Diego community at large. The JEEC process is similar to the process utilized by the state's Judicial Nomination Evaluation (JNE) Commission that reviews applicants who have submitted an application for a judicial appointment by the Governor. The JEEC process is educational in nature and is not an endorsement of any kind for any candidate that is evaluated.

### **2. Committee Membership and Selection**

#### **2.1 Committee Membership**

The Committee is comprised of 21 voting members, including the Committee Chair, who represent a cross-section of San Diego's diverse legal community and who shall each serve four year terms. No current member of the SDCBA Board of Directors may serve as a member of the JEEC.

Prior to participating in any JEEC meetings, Committee members are required to sign confidentiality forms and are prohibited from disseminating any information to the public or the media.

#### **2.2 Selection of the Committee Members and Officers**

The Committee Chair and members are appointed by the SDCBA President and confirmed by the SDCBA Board of Directors ("Board").

#### **2.3 Removal of Committee Members**

On a showing of good cause, the Board of Directors may remove a member from the Committee before the expiration of the member's term. Good cause shall include, but is not limited to: (1) the unexcused failure to attend Committee meetings or perform Committee work, or (2) a breach of the duties of confidentiality.

## **2.4 Committee Member Resigns**

If a Committee member resigns prior to their term expiring, a new member shall be appointed to fulfill the remainder of the term.

## **3. Confidentiality**

### **3.1 General Duties of Confidentiality**

Strict adherence to rules of confidentiality is essential to enable the Committee to perform its assigned function. All investigations, questionnaire responses, interview records, discussions and proceedings of the Committee shall be absolutely confidential. No member of the Committee shall disclose to anyone not a member of the Committee any actions taken by the Committee or any matters discussed at a Committee meeting pertaining to the evaluation of any candidate. The votes or comments of individual Committee members shall not be disclosed, nor shall the numerical votes of the Committee as a whole be disclosed.

Nothing in this section precludes the SDCBA from disclosing the procedural steps taken during this process.

### **3.2 Confidentiality as Part of the Investigative Process**

Committee members shall not discuss information received about any candidate with any person outside the Committee except for the purpose of confidential inquiry during the investigation process. Sources of specific information shall not be disclosed to any candidate, and Committee members shall take all reasonable precautions to ensure that any information disclosed to a candidate does not inadvertently reveal a confidential source.

### **3.3 Pledge of Confidentiality**

Before accepting his or her appointment, each member of the Committee must sign a pledge to adhere to the obligations of confidentiality imposed by these rules.

In addition, all candidates who agree to participate in the proceedings shall sign a pledge to maintain the confidentiality of the proceedings and not attack the integrity of the process.

### **3.4 Breaches of Confidentiality**

The Chair of the Committee shall recommend to the Board of Directors the immediate removal of any Committee member who breaches the duties of confidentiality.

## **4. Conflicts of Interest and Disqualification**

### **4.1 Conflicts of Interest of Committee Members**

In order to avoid conflicts of interest that may interfere or appear to interfere with the Committee's ability to impartially assess the qualifications of a candidate for judicial office, any member must immediately disclose to the Chair the nature of any significant present or past familial, professional, business, social, political, or other relationship with a candidate, whether direct or indirect.

## **4.2 Disqualification from Participation**

If a Committee member or the Chair determines that a relationship would unduly influence or appear to influence the member's consideration of a candidate's qualifications, the Committee member shall refrain from the investigating or evaluating the candidate and from attempting to influence any other member of the Committee. Factors to be considered in making the determination include the date of the relationship, its duration, and whether it is more than casual or incidental. If the Committee member determines that the relationship does not require disqualification and the Chair disagrees, the determination of the Chair prevails.

## **4.3 Procedures for Disqualification Raised by Judicial Candidates**

The initial letter from the Committee Chair to all judicial candidates shall include a list of Committee members. In response to this letter, candidates may submit a written request within seven days seeking the disqualification of any Committee member they believe cannot conduct an impartial evaluation. Committee members may also disqualify themselves on the same basis.

The Committee Chair shall rule on all requests for disqualification and shall notify the candidate in writing of the decision.

## **4.4 Participation**

All candidates running in a judicial election are approached by the Committee Chair to participate in the JEEC process. Although the process is voluntary, the JEEC reserves the right to evaluate a candidate's ability to perform the judicial function even if the candidate chooses not to voluntarily participate, and base its evaluation on other information received during the investigation pursuant to Section 5 (below).

# **5. Basis for Evaluation**

## **5.1 Evaluation Results**

"Exceptionally Qualified": Presently possessing exceptional professional ability, experience, competence, integrity and/or temperament indicating an exceptional ability to perform the judicial function.

"Well Qualified": Presently possessing a high-level professional ability, experience, competence, integrity and/or temperament indicating high-level ability to perform the judicial function.

"Qualified": Presently possessing professional ability, experience, competence, integrity and/or temperament indicating ability to perform the judicial function.

"Lacking Qualifications": Presently not possessing professional ability, experience, competence, integrity and/or temperament indicating ability to perform the judicial function.

“Unable to Evaluate”: If the Committee does not receive sufficient information from persons who know a candidate to fairly and adequately evaluate a candidate's ability to perform the judicial function, the candidate may be deemed Unable to Evaluate.

## 5.2 Basis for Evaluation

The Committee shall evaluate candidates based on their qualifications to serve as judicial officers. Factors taken into consideration include the following:

- bias and tolerance (DEFINE each factor)
- caseload management
- compassion and understanding,
- courtesy and patience,
- decisiveness,
- fairness and objectivity
- integrity and honesty,
- intellect and ability,
- judgment and common sense,
- judicial temperament,
- knowledge of the law (or application of the law in their judicial assignment if currently a judge),
- professional reputation,
- trial experience,
- work ethic,
- writing and research skills
- and
- Any other factor that might affect the candidate's ability to serve as a judge. If a candidate has been evaluated by the Committee in a prior election, the Committee may consider the earlier evaluation in conjunction with its current evaluation.

The following factors shall not be taken into consideration:

- Race,
- gender,
- sexual orientation,
- religion,
- disability,
- political affiliation

If the candidate did not participate with the subcommittee investigation, the Committee should make best efforts to complete an objective rating, but the candidate's lack of cooperation may be considered.

If less than 20 persons who know the candidate respond to the Committee's inquiries, the candidate may be deemed "Unable to Evaluate". A candidate's refusal to participate in the process may be considered by the Committee in the evaluation process.

### 5.3 Numeric System

In order to make the JEEC's evaluation as objective as possible, the SDCBA has developed a numeric system to quantify both the confidential questionnaire and the candidate interview process. Both processes combined will provide each candidate with up to 100 points. Based on the points awarded, the candidate will receive the following evaluation:

Exceptionally Qualified:	90- 100 points
Well Qualified:	80-89 points
Qualified:	70-79 points
Lacking Qualifications:	Anything below 70 points

#### 5.3.1 Feedback from the Confidential Questionnaire

Factors taken into consideration include the following:

The Committee shall award up to 75 points based on feedback obtained from the Confidential Questionnaire pursuant to Section 6.2, below.

Up to 60 points shall be awarded for the following factors using the scale of *yes*= 6 points, *sometimes* = 3 points and *no* = 0 points for each factor (responses of *I don't know* will not be assigned a point value):

- fairness and objectivity (DEFINE each factor)
- integrity and honesty,
- decisiveness,
- judgment and common sense,
- judicial temperament,
- knowledge of the law (or application of the law in their judicial assignment if currently a judge),
- professional reputation,
- trial experience,
- intellect and ability,
- tolerance

Up to 15 points shall be awarded for the following factors using the scale of *yes*= 3 points, *sometimes* = 1.5 points and *no* = 0 points for each factor (responses of *I don't know* will not be assigned a point value):

- compassion and understanding, (DEFINE each factor)
- work ethic,
- courtesy and patience,
- caseload management
- writing and research skills

All points awarded from the Confidential Questionnaire process will be based on an average of all responses received that meet the criteria in 6.3.2. If the Committee does not receive sufficient

information from persons who know a candidate to fairly and adequately evaluate a candidate's ability to perform the judicial function, the candidate may be deemed "Unable to Evaluate".

### **5.3.2 Feedback from the Candidate interview**

**The Committee will award up to 25 points based on the following:**

Up to 20 points based on the following factors during the interview:

Candidate presentation/demeanor; how candidate responds to any feedback/criticism; how the candidate plans to change in light of feedback or criticism; how effectively the candidate accepts responsibility re: feedback/criticism.

Up to 5 discretionary points re: any other factor that might affect the candidate's ability to serve as a judge. If a candidate has been evaluated by the Committee in a prior election, the Committee may consider the earlier evaluation in conjunction with its current evaluation.

## **6. Investigation Procedures**

### **6.1 Personal Data Questionnaires**

The Chair will send to each judicial candidate a letter explaining the Committee's evaluation process. This letter will include a copy of these Rules and a Personal Data Questionnaire (PDQ). The purpose of the PDQ is to solicit information from each candidate that will assist the Committee in evaluating the candidate.

### **6.2 Confidential Questionnaires**

#### **6.2.1 Nature of the Questionnaire**

A Confidential Questionnaire (CQ) is designed to solicit information about judicial candidates from persons other than the candidate. The CQ is a generic form that allows the respondent to designate the candidate about whom they are responding and provides an opportunity for the respondent to address any of the factors used in the evaluation, as noted in Section 5, above. Any names submitted in the candidate's PDQ will be asked to submit a CQ to aid in the evaluation process.

#### **6.2.2 Dissemination and Return**

The Committee will disseminate CQs to all members of the SDCBA; will provide a link to the CQ to other San Diego bar associations and the San Diego Superior Court bench for their dissemination; and may distribute the link to other groups and individuals as the Committee deems appropriate. A copy of the CQ will be included in the Chair's letter to all judicial candidates, and the candidates will be encouraged to make and distribute copies to persons who know them.

### **6.2.3 Contents**

The CQ will require respondents to provide their name, address and phone number so that the assigned subcommittee can follow up with the respondent in order to corroborate any negative information provided in the CQ. Any CQ not including contact information shall not be considered by the Committee. A respondent, however, may request that his or her identity not be disclosed to anyone other than the investigating subcommittee. The CQ will ask the respondent to identify other persons who may know the candidate well.

## **6.3 Subcommittee Investigations**

### **6.3.1 Organization of Subcommittees**

The Chair will organize the Committee into subcommittees of at least three persons each, and will assign candidates to each subcommittee for investigation. One member of each subcommittee will be designated as the subcommittee Chair. To the extent possible, candidates competing with each other in a single judicial race shall be assigned to different subcommittees for investigation.

### **6.3.2 Review of Questionnaires**

To help maintain confidentiality, the Chair will distribute completed CQs only to members of the subcommittee investigating the particular candidate. The investigating subcommittee should investigate all credible information received and make diligent efforts to contact a sufficient number of CQ respondents to assure itself that it has a comprehensive picture of the candidate. The subcommittee shall, at a minimum, attempt to contact all respondents who provided negative information about the candidate, even if the respondent felt the candidate was qualified overall. A CQ shall be used to capture any additional input received by the subcommittee during its investigation.

### **6.3.3 Input by Committee Members**

In order to ensure that Committee member feedback and perspective is not unduly weighted during subcommittee and Committee deliberations, Committee members may only provide specific information about a candidate to a subcommittee by completing a CQ. Committee members who have submitted CQs but are not otherwise disqualified or recused pursuant to Section 4.2 or 4.3 above, may participate in the discussions and vote at both the subcommittee and Committee level. No member may use their position on the Committee to sway the subcommittee or Committee regarding the member's individual perspective about a candidate.

#### **6.3.4 Other Types of Input**

As part of its follow-up investigation on information obtained from the CQs and PDQs, the investigating subcommittee may accept information verbally or in writing from persons who wish their names to remain confidential. All information received shall be captured on a CQ during the subcommittee's investigation.

#### **6.3.5 Candidate Interviews**

When the subcommittee has completed its review of the PDQs and CQs, and its follow-up investigation, it shall offer each candidate the opportunity to meet with the members of the subcommittee to discuss the candidate's qualifications and to respond to any credible negative information that may have been presented to the subcommittee. All members of the subcommittee shall participate in this interview. Consistent with obligations of confidentiality, all credible adverse information received by the subcommittee shall be disclosed to the candidate before and during the interview. The source of any negative comments shall remain confidential.

### **7. Evaluation Procedures**

#### **7.1 Subcommittee Reports**

Each subcommittee shall submit a confidential written report to the Chair on each candidate it was assigned to investigate. The report shall be distributed to all Committee members, should summarize the results of the subcommittee investigation, and recommend whether the candidate is qualified or is lacking qualifications. If the candidate did not return a PDQ, and/or declined the invitation to meet with the subcommittee, and/or otherwise refused to participate in the subcommittee's investigation, such lack of cooperation may be considered by the subcommittee when recommending whether the candidate is qualified or is lacking qualifications.

Once a subcommittee report has been submitted, any Committee member may request to review a summary report of the CQs on any candidate. The summary report will exclude source and contact information for the respondents who submitted CQs.

#### **7.2 Committee Deliberations and Voting**

##### **7.2.1 Quorum**

At least sixteen members of the Committee must participate in person or telephonically to constitute a quorum to evaluate any candidate.

##### **7.2.2 Voting**

The Committee will vote whether to deem a candidate qualified or lacking qualifications

based on the process outlined in Section 5, above.

### **7.2.3 Appeals**

Any candidate that the Committee proposes to evaluate as "Lacking Qualifications" is invited to appear personally before the full Committee to contest the proposed evaluation. The Committee Chair shall make reasonable efforts to contact any such candidate at least two (2) business days before the time designated for personal appearances and inform them, consistent with the Committee's obligations of confidentiality, of the nature of the information on which the Committee has based its tentative "Lacking Qualifications" evaluation. The Chair shall encourage a candidate to address this information when he or she appears before the Committee. The Committee shall take a new vote on each candidate who exercises the right to appear personally before the Committee.

### **7.3 Board Action and Public Dissemination**

The Committee's final evaluation of each candidate shall be submitted to the SDCBA Board of Directors in a written report, and the SDCBA Board shall adopt or reject the Committee's report in total. A report may only be rejected if the Board concludes that there has been a procedural error affecting the fundamental fairness of the evaluation process.

### **7.4 Reconsideration after Primary**

As a general rule, the Committee will not reevaluate candidates participating in a runoff election. If, after the primary however, the Chair receives written, substantiated information that he/she believes may change the earlier evaluation, the Chair may call for reconsideration. Reconsideration shall be granted on the majority vote of the Committee. If reconsideration produces a different evaluation result for any candidate, that change will be reported to the Board in the same manner as the original evaluation, subject to the appeal procedures of Section 7.2.3.

## **8. Retention and Destruction of Committee Documents**

All subcommittee reports, PDQs and CQs shall be retained for 30 days after the Board accepts the Committee's report and adopts the final evaluation.