

ALAMEDA COUNTY BAR ASSOCIATION  
JUDICIAL APPOINTMENTS EVALUATION COMMITTEE  
RULES OF PROCEDURE  
(Amended April 4, 2017)

I. Definitions:

- A. The term "Association" means Alameda County Bar Association.
- B. The term "Board" means Board of Directors of the Alameda County Bar Association.
- C. The term "Committee" means the Judicial Appointments Evaluation Committee.

II. Purpose:

- A. The purpose of the Committee shall be to evaluate the qualifications of all candidates seeking appointment to the office of Judge of the Alameda County Superior, to the office of Justice of the Court of Appeal of the State of California, First Appellate District, to the office of Justice of the Supreme Court of the State of California, and to the office of Judge of any other court connected with the administration of justice affecting Alameda County as the Committee deems appropriate.

III. Organization

A. Membership

- 1. The membership of the Committee shall consist of up to twenty-one (21) voting persons to be appointed by the President-Elect of the Association, plus those ex officio members provided for in paragraph III D. The members of the Committee shall be Attorneys who are members in good standing of the Association. The President-Elect shall solicit suggestions for membership on the Committee from the Board, the Committee Chair and from members of the Association but the President-Elect shall be the final decision-maker as to membership. Absent unusual circumstances, no more than two voting members of the Committee shall also be Board Members.
- 2. A quorum of eleven (11) voting members of the Committee must be present to conduct all evaluation meetings. No evaluation of a candidate may take place if attendance falls below nine voting members for that candidate.
- 3. It is desirable that a broad cross section of the men and women of the Association be represented and that the members be persons of recognized standing, good judgment and independence. Members should

reflect a diversity of experience including a balance of racial and ethnic minorities, gender, and sexual orientation. A balance of government attorneys, sole practitioners, attorneys in small, medium and large firms, subject matter of practice, and geographic location will also be considered.

4. The President-Elect shall appoint as members of the Committee only those attorneys who are willing to make the time commitment essential for adequate evaluation.

5. Political considerations shall not play a part in the appointment of members.

6. No person who is currently seeking appointment or election to any judicial office shall be eligible for membership on this Committee. If any member seeks such appointment or election, he or she shall resign, or be removed from membership.

#### B. Term of Office

The term of office of the members shall be two calendar years. No member shall serve more than two consecutive terms except that this time may be extended if the member is serving as a Committee officer.

##### 1. Vacancies

Any vacancy in the Committee membership during a committee member's term shall be filled by appointment of the President of the Association. Committee membership to fill a vacancy occurring during a term shall be considered as a term for purposes of counting how many terms a member has served if the member is appointed to a vacant term with more than six months remaining.

##### 2. Absence from Meetings

Any voting member of the Committee who is absent from two consecutive meetings of the Committee, without his or her absence being excused by the Chair of the Committee, automatically forfeits his or her office and said member shall be deemed to have resigned as a member of the Committee, thereby creating a vacancy in the Committee membership. The President shall notify the member in writing of such forfeiture.

Voting members also may be removed from the Committee if they miss an unreasonable number of meetings, fail to fulfill their duties as a member of an investigative team, or for a serious violation of Committee rules. Prior to removal, such a member will be given appropriate warning and an opportunity to improve his/her attendance. The President shall decide upon removal of a member after consultation with the Committee Chair.

C. Committee Officers

The President of the Association shall appoint the Chair, Vice-Chair and Secretary of the Committee who shall serve for one year officer terms. The President may appoint the immediate past chair to serve an additional one year officer term.

D. Ex Officio Members

The President and President-Elect of the Association shall serve as Board Liaisons to the Committee and shall serve as ex officio non-voting members of the Committee. Notice of all Committee meetings will be given to all ex officio members.

IV. Responsibilities of Committee Members

A. Confidentiality

1. While membership on the Committee is not confidential, all investigations and proceedings of the Committee and investigating teams shall be treated as confidential. Disclosure is prohibited, even of the name of a candidate or the fact that the Committee is considering a candidate. All inquiries concerning the Committee's proceedings shall be referred to the Chair of the Committee or to the President of the Association. Names of persons submitting information to members of the Committee shall not be reported to the Committee if the person so requests.

2. No member of the Committee shall discuss outside any meetings of the Committee any information or data received during the investigation procedures or at any deliberations of the Committee except to the Committee members. No evaluations shall be disclosed to any non-committee members, including the candidates for office.

3. The voting records of the Committee and the final report shall be destroyed at the end of the year subsequent to the year in which the records and the report were created.

4. None of the following constitutes a breach of confidentiality under these rules:

- a) Confidential inquiries made in the course of the investigation;
- b) Information committee members share or discuss to discharge their responsibilities under these rules, such as information about interviews with raters, comments of individual committee members, and votes;

- c) Information required by the Review Committee appointed to review commission ratings of not qualified;
- d) Information required to investigate and determine a claim of breach of confidentiality;
- e) Attendance at Committee meetings or inspection of Committee records at the office of the Association by members of the Board of Directors.
- f) Information that the Chair authorizes individual Committee members to provide to the members of the Board of Directors
- g) Presentations or recommendations, supported with reasons, made by the Chair or the Chair's designee to the Governor, to his or her Judicial Appointments Secretary, or to such other recommending or appointing authority as is appropriate.;
- h) Disclosure by the Chair or staff to a candidate of a not qualified rating;
- i) Any discussion regarding law, rules, or procedures applicable to the Committee.

#### B. Conflict of Interest

1. If any member of the Committee perceives a potential, direct, or indirect conflict of interest between the member and a candidate being evaluated (such as family relationship, past or present membership in the same firm, financial relationship, or any other professional, business, social, political, or other relationship likely to keep the member from being objective), the member shall inform the Committee Chair.
2. The Chair shall rule on whether such a member shall be eligible to serve on any investigation team or to vote. The Chair shall consider whether the member's relationship with a candidate would unduly influence or appear to influence the Committee member's consideration of a candidate's qualifications. Factors to consider include: date of relationship, its duration, and whether it is more than casual or incidental.
3. If the Chair rules that a conflict precludes a member from serving on an investigation team for a candidate, the Committee member must refrain from attempting to influence the evaluation of any other committee member.
4. If the Chair finds that a conflict precludes a member from voting, such member may address the Committee concerning the candidate but shall not be present during any discussion or voting on the candidate.

### C. Additional Committee Member Duties

Each Committee Member must:

1. Not endorse, provide funds in any capacity, attend any fundraising events, or otherwise actively participate in a judicial candidate's campaign for office. This does not include attendance at informational, campaign-related events open to the public;
2. Not vote on a candidate if absent for any time from the meeting at which the Committee votes on the candidate;
3. Not accept a State of California Judicial appointment within one year of the end of his or her term of service or resignation from this committee. This rule is effective January 1, 2012.
4. Not apply for or permit his or her name to be submitted for evaluation as a candidate for such an appointment within one year of the end of his or her term of service or resignation from this committee. This rule is effective January 1, 2012.
5. Report to the Chair or Vice-Chair of the Committee for appropriate action any concern that a fellow Committee member has breached these rules;
6. Comply with these rules.

Failure to comply with these rules will subject the member to sanctions, including removal from the Committee imposed by the Chair of the Committee and the President of the Association.

### D. Committee Records

1. Upon completion of his or her service or term, a committee member must forward to the Association for retention for two years any completed Committee Worksheets and other records related to a committee investigation or activity. Copies of records stored electronically must be transferred to the Association and deleted from all electronic devices. After two years, all forms and other documents related to an investigation or activity must be destroyed, unless the Board of Directors, the President, or Committee Chair instructs otherwise.

2. Records related to a Review Committee decision must be destroyed three years after the decision.

V. Standards of Committee

In evaluating the qualifications of judicial candidates, the Committee must consider the extent to which candidates possess the following qualities, the absence of any one of which is not intended to be disqualifying: impartiality, freedom from bias, industry, integrity, honesty, legal experience broadly, professional skills, intellectual capacity, judgment, community respect, commitment to equal justice, judicial temperament, communication skills, and job-related health.

A. Regarding judicial candidates for the State of California Superior Courts, the Committee shall evaluate the candidates as follows:

1. Exceptionally Well Qualified

Possessing qualities and attributes considered to be of remarkable or extraordinary superiority, such that the candidate is deemed to be fit to perform the judicial function with distinction.

2. Well Qualified

Possessing qualities and attributes considered to be of superior fitness to perform the judicial function with a high degree of skill and effectiveness.

3. Qualified

Possessing qualities and attributes considered to be sufficient to perform the judicial function adequately and satisfactorily.

4. Not Qualified

Possessing less than the minimum qualities and attributes considered necessary to perform the judicial function adequately and satisfactorily. In the event the Committee makes this recommendation, it may add any explanation statement it deems advisable.

B. Regarding judicial candidates for the Court of Appeal or the Supreme Court, the Committee shall evaluate the candidates as follows:

1. Exceptionally Well Qualified

Possessing qualities and attributes considered to be of remarkable or extraordinary superiority such that the candidate is deemed to be fit to perform the judicial function with distinction.

2. Well Qualified

Possessing qualities and attributes considered to be of superior fitness to perform the judicial function with a high degree of skill, effectiveness, and distinction.

3. Qualified

Possessing qualities and attributes considered to be indicative of sufficient fitness to perform the judicial function with a high degree of skill and effectiveness.

4. Not Qualified

Possessing less than the minimum qualities and attributes considered necessary to perform the judicial function adequately and satisfactorily. In the event the Committee makes this recommendation, it may add any explanation statement it deems advisable.

C. Evaluation Procedure and Investigation

1. Persons to be Evaluated

The Committee shall evaluate those candidates whose Application for Appointment has been sent to the Committee by the Governor of the State of California .

2. Investigation Teams

The Chair shall designate four-member teams, or subcommittees, to conduct an investigation of the qualifications of each candidate for appointment, and shall assign one team for each candidate for appointment. In conducting its investigation, the team shall inquire, among other matters, into the following attributes of the candidates:

a. Integrity and character.

b. Judgment and intellectual capacity.

- c. Experience including, but not limited to, trial experience.
- d. Industry and diligence.
- e. Judicial temperament, including whether the candidate would be courteous, considerate of counsel, parties, witnesses and jurors and whether the candidate is even-tempered.
- f. Professional ability and knowledge of the law.
- g. General reputation in the community
- h. Civic and community affairs.
- i. Commitment to diversity and the absence of bias, particularly with regard to sex, race, ethnicity and sexual orientation.
- j. Any other relevant matters of concern.

### 3. Supplemental Information

In order to obtain information to supplement that contained in the Application for Appointment given to the Committee by the Governor, members of the investigating team shall confer with at least twenty (20) persons including judges, attorneys and others having knowledge of the candidate's aforementioned attributes and may take other reasonable steps to obtain information.

Efforts shall be made to verify all information, and special efforts shall be made to verify information from sources who decline to have their names disclosed to the Committee.

No committee member other than the investigating team or the Committee Chair shall obtain information directly from the candidate with regard to his or her candidacy.

### D. Other Action by Committee

The Committee may take other reasonable steps in furthering the evaluation of a candidate.

### E. Candidate Interviews

#### 1. Pre-Interview Notification

If any candidate's investigating team has received substantial and credible adverse allegations regarding the candidate's health, physical or mental condition, moral turpitude or other information which, unless rebutted, would be a significant factor in determining the candidate's unsuitability for



judicial office, the chair of the investigating team, or subcommittee, shall disclose such information to the candidate as specifically as possible without any breach of confidentiality, not less than forty-eight (48) hours before the interview.

## 2. Interview

At the interview, the investigating team members should discuss with the candidate, among other factors, his or her industry, judicial temperament, honesty, objectivity, community respect, integrity, health, ability and legal experience. The discussion should be as specific as possible without any breach of confidentiality and without disclosing information from which the candidate may infer the source and should include both positive and negative information.

The purpose of an interview is to provide a candidate with a reasonable opportunity to respond to adverse information and to present any additional information which may support his or her qualifications.

## F. Evaluation Meetings

1. The Committee shall hold such meetings as the Chair may call on not less than 24 hours' notice. Notice may be given by telephone or by electronic mail.
2. The Committee shall meet to evaluate the candidates. At such meeting, each team or sub-committee shall present a detailed oral report of its candidate to the other Committee members. This report should include a suggested evaluation.
3. Pertinent information obtained by other members of the Committee shall also be presented.
4. Following due deliberation, each member shall indicate his or her evaluation category for the candidate. The Committee shall not rank candidates evaluated by the Committee for any one judicial office in any order of preference.
5. An evaluation vote of a candidate may be postponed at the discretion of the Chair only if a significant number of members believe more information on the candidate is necessary to complete the evaluation.

## G. Non-Cooperating Candidates

The Committee shall evaluate a candidate even if the candidate refuses to participate in an interview.

## H. Report

1. The report of the Committee shall be made as soon as practicable following the conclusion of the Committee's investigation and evaluation of the candidate.
2. The report shall be limited to the Committee's recommended rating based on the evaluation categories assigned the candidate by the members. The report shall also include the number of Committee members present during discussion, but abstaining from voting, and the number of Committee members not present during voting and not voting. The report may include the number of Committee members who voted for a specific evaluation category.
3. The Committee may, however, upon a separate vote of a majority in number (but at least 6) of the members present, include a narrative explanation of the rating, but such information shall not include the vote of any particular member, his or her comments, or the identity of the sources of information.
4. As to those candidates being considered for appointment by the Governor or other appointing authority, the Chair shall report the Committee's final evaluations in writing to the Governor, his or her Judicial Appointments Secretary, or to such other recommending or appointing authority as is appropriate. The Chair shall send a copy of any such written report to the Committee Secretary and the Association's Staff Liaison.
5. As to the names of candidates submitted to the Committee by the Board, the Chair shall report the Committee's final evaluation to the President in writing with a copy sent to the Committee Secretary and the Association's Staff Liaison.

## I. Appeal

In the event the candidate is rated "not qualified" by at least one-half of the voting members voting on the candidate, the candidate is entitled to appeal through the following procedures:

1. The Chair of the Committee shall notify the candidate in writing within three (3) calendar days of the vote. The written notification shall include notice of the right to appeal and an appeal form setting forth the appeal process and deadlines. The candidate shall not be informed of the actual vote of the committee but only that "at least one-half of the voting members voting on the candidate rated the candidate not qualified." The candidate shall have fifteen (15) calendar days to file an appeal from the date of the vote.

2. The President, with approval of the Board of Directors, shall appoint, as needed, a three-member Review Committee to review any appeals. The Review Committee shall consist of at least one member of the Board of Directors who is not currently a member of the Judicial Appointments Evaluation Committee, and two past members of the Judicial Appointments Evaluation Committee.
3. If a vacancy occurs on the Review Committee during an appeal because of an absence or because of a conflict of interest, the President shall appoint a replacement subject to Board ratification at the next Board meeting.
4. The Review Committee may rescind the opinion of the Committee only upon its good cause belief that any of the following has occurred and materially affected the processing of the evaluation:
  - a) Violation of the rules of procedures of the Committee that has materially affected the Committee's evaluation;
  - b) A conflict of interest or bias that has affected the evaluation;
  - c) Inadequate or biased reference or witness list used in the evaluation;
  - d) Additional evidence is available that the candidate had no reasonable opportunity to present, which evidence if presented, could have changed the result.
  - e) After review of the candidate's record, the Committee's evaluation of "not qualified" is not supported by substantial evidence.
5. In requesting an appeal, the candidate shall submit in writing a brief statement setting forth the basis for the appeal from among the bases set forth in paragraph I (4) above, and the facts that support it.
6. In carrying out its investigation, the Review Committee shall meet with the candidate if requested in writing by the candidate, and shall have access to all the Committee's records and procedures regarding the evaluation being appealed. The Review Committee shall be bound by the same confidentiality guidelines as apply to the Committee.
7. The decision of the Review Committee shall be final and shall be completed within thirty (30) days from receipt of the appeal request. The candidate shall be notified of the Review Committee's decision within three (3) days from the date the decision is made.

8. In the event the evaluation of the Committee is rescinded, the Chair of the Committee shall institute a new investigation with a new team. The candidate may not request a review from this subsequent investigation regardless of the vote.

ADOPTED BY THE ACBA BOARD OF DIRECTORS 9-6-83 AND AMENDED 11-7-95  
AND 5-7-96 AND 9-6-2011.

ALAMEDA COUNTY BAR ASSOCIATION  
JUDICIAL APPOINTMENTS EVALUATION COMMITTEE  
WORKSHEET

Name of Candidate: \_\_\_\_\_ Date: \_\_\_\_\_

Position Sought: \_\_\_\_\_ Interviewer: \_\_\_\_\_

Person Interviewed: \_\_\_\_\_ Disclose ID to Committee?  
Yes \_\_\_\_\_ No \_\_\_\_\_

Nature of Contact with Candidate? \_\_\_\_\_

1. Integrity/Character: \_\_\_\_\_
  2. Judgment/Intellectual Capacity: \_\_\_\_\_
  3. Legal Experience (Crim/Civil/Trials: \_\_\_\_\_
  4. Industry/Diligence: \_\_\_\_\_
  5. Judicial Temperament: \_\_\_\_\_
  6. Professional Ability/Knowledge of the Law: \_\_\_\_\_
  7. General Reputation in the Community: \_\_\_\_\_
  8. Civic/Community Affairs: \_\_\_\_\_
  9. Commitment to Diversity/Absence of Bias: \_\_\_\_\_
  10. Other Factors: \_\_\_\_\_
- 
- 

Rating:      Exceptionally Well-Qualified: \_\_\_\_\_  
                 Well-Qualified: \_\_\_\_\_  
                 Qualified: \_\_\_\_\_  
                 Not-Qualified: \_\_\_\_\_

*Note: Ratings are defined at Rule V. Standards of Committee.*

ALAMEDA COUNTY BAR ASSOCIATION  
JUDICIAL APPOINTMENTS EVALUATION COMMITTEE

**NOTICE OF RATING AND RIGHT TO APPEAL**

To: \_\_\_\_\_ (Name)  
\_\_\_\_\_ (Address)  
\_\_\_\_\_  
\_\_\_\_\_

From: \_\_\_\_\_  
Chair, Judicial Appointments Evaluation Committee (JAEC)

Date: \_\_\_\_\_

**1. Notice of Rating**

Pursuant to the Rules of Procedure of the ACBA Judicial Appointments Evaluation Committee,

**YOU ARE HEREBY ADVISED** you have been rated "Not Qualified" as a judicial candidate by at least one-half of the voting members of the JAEC. Please be further advised all investigations and proceedings of the JAEC are confidential. No further information concerning this rating or the reasons therefore shall be provided to you, other than the adverse comments previously disclosed prior to your interview. Please do not contact JAEC members, including the chair, concerning this rating. Information concerning the procedure for appeal is set forth below.

**2. Right to Appeal**

Judicial candidates who receive an initial rating of "Not Qualified" by at least one-half of the voting members of the JAEC may appeal the rating to an independent Review Committee appointed as needed by the ACBA President and Board of Directors. The Notice of Appeal must be filed within fifteen (15) calendar days after the JAEC vote, or by \_\_\_\_\_ (date).

The appeal must be filed on the approved Notice of Appeal form, a copy of which is attached, and received by the Chair of the Review Committee by 5:00 p.m. on the above specified date. Postmarks will not be accepted as proof of delivery. Late appeals will be automatically rejected. The grounds for appeal are strictly limited by the Rules of Procedure of the ACBA's Judicial Appointments Evaluation Committee, a copy of which is enclosed.

**DEADLINE:** Notice of Appeal of this rating must be filed by 5:00 p.m., \_\_\_\_\_ (date).  
**Submit the Notice to:**

\_\_\_\_\_ (name)

**Chair, JAEC Review Committee**

\_\_\_\_\_ (Address)

\_\_\_\_\_

ALAMEDA COUNTY BAR ASSOCIATION  
JUDICIAL APPOINTMENTS EVALUATION COMMITTEE

**NOTICE OF APPEAL**

To: \_\_\_\_\_ (Name)  
Chair, JAEC Review Committee  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (Address)

From: \_\_\_\_\_ (Candidate)  
\_\_\_\_\_  
\_\_\_\_\_ (Address)  
\_\_\_\_\_  
\_\_\_\_\_ (Phone/Email or Fax)

Date: \_\_\_\_\_

I, \_\_\_\_\_ (name), hereby appeal the "Not Qualified" rating rendered by at least one-half the voting members of the ACBA's Judicial Appointment Evaluation Committee, and request the Review Committee rescind said rating on the ground(s) that the following occurred and materially affected the processing of the evaluation:

(Please check the appropriate box(es))

- ☐ a. violation of the rules or procedures of the Committee;
- ☐ b. a conflict of interest or bias that affected the evaluation;
- ☐ c. inadequate or biased or witness list used in the evaluation;
- ☐ d. additional evidence is available that the candidate had no reasonable opportunity to present, which evidence if presented, could have changed the result;
- ☐ e. the Committee's evaluation of "not qualified" is not supported by substantial evidence.

A statement of no more than ten (10) pages in length setting forth facts in support of this appeal and the ground(s) stated above is attached hereto as Exhibit A and incorporated herein by reference.

- ☐ I request a personal interview with the Review Committee in furtherance of this appeal; or
- ☐ I waive a personal interview with the Review Committee.

I declare the foregoing to be true and correct under penalty of perjury this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ in \_\_\_\_\_, California.

\_\_\_\_\_  
Candidate's Signature

NOTICE: The decision of the Review Committee shall be **final** and shall be completed within thirty (30) days from receipt of this Notice of Appeal. The candidate shall be notified of the Review Committee's decision within three (3) days from the date the decision is made. In the event the evaluation of the Committee is rescinded, the JAEC Chair shall institute a new investigation with a new team. The candidate may not request a review from this subsequent investigation regardless of the vote.