



Santa Clara County Bar Association

Judicial Assessment Policy and Procedures

Adopted by the Board of Trustees, September 26, 2013

I. Background

We are fortunate in Santa Clara County to have an involved and responsive Judiciary. The Santa Clara County Bar Association (“SCCBA”) has long enjoyed a close and productive relationship with our local state and federal judges. Steve Haley, 2013 SCCBA President, at the direction of the Board of Trustees appointed an Ad Hoc Judicial Evaluation Committee (“Committee”), chaired by Immediate Past President Mindy Morton with members of the SCCBA and the bench, including Steve Haley, Presiding Judge Brian Walsh, Judge James Towery, Judge Tom Kuhnle, Kevin Hammon, Nicole Isgar, John Mlnarik, Carlos Orellana, Dianne Sweeney and staffed by SCCBA CEO & General Counsel, Chris Burdick. The Committee was charged with providing: 1) a meaningful assessment mechanism for attorneys in a useful format; and 2) a confidential and widely-available method of delivering attorney concerns to the Judiciary that does not interfere with the first goal.

As a result of the Committee’s efforts, the Board of Trustees at their regular meeting on September 26, 2013, unanimously adopted the following policy and procedures for providing a means by which attorneys can provide feedback and concerns regarding the judiciary as a whole in Santa Clara County as well as individual judges.

II. Judicial Assessment Policy

A Judicial Assessment Committee (“JAC”) shall be established with the express mission of encouraging and strengthening the close historical working relationship between the SCCBA and the local state and federal judiciary. The purpose of the JAC shall be to oversee the solicitation of attorney feedback regarding the local federal and state courts, and to address attorneys’ concerns related to individual judges.

III. Assessment Mechanisms

The JAC shall conduct an annual Assessment Poll and implement a Judicial Assessment Form process.

IV. Assessment Procedures

- A. *Appointment & Composition of JAC.* The then-current President of the SCCBA shall be the chair of the JAC. The JAC shall consist of the President of the SCCBA, the Presiding Judge of the Superior Court and the Assistant Presiding Judge or another Judicial Officer appointed at the discretion of the Presiding Judge, the SCCBA's Chief Executive Officer and four attorney members to be appointed by the SCCBA President in consultation with the Presiding Judge. The appointed attorney members of the JAC shall serve for staggered two year terms; i.e., two appointed positions to expire in even-numbered years, and two appointed positions to expire in odd-numbered years. Two attorneys appointed to the initial JAC shall serve a one year term only and two shall serve a two year term.

Candidates for appointment to the Judicial Advisory Committee ("JAC") must:

- Be California-licensed attorneys;
- In practice for at least the last 10 consecutive years, with the exception that one member may have 7 consecutive years in practice;
- With at least the 5 most recent years involving in-court work in the Superior Court in Santa Clara County.

Candidates must not have any public record of discipline or any public record of administrative actions with the California State Bar or any other similar body governing the practice of law.

Furthermore, the appointment of a candidate to the JAC must not create any actual or apparent conflict of interest as defined in the Operating Rules of the Association's Judiciary Committee (a "Conflict"). * Any JAC member whose participation in the review of information concerning a particular judicial officer would create an actual or apparent Conflict must recuse himself or herself from such review. Any JAC member whose continued service on the JAC would create an actual or apparent Conflict must resign from the JAC.

In addition to ensuring candidates for the JAC meet the minimum requirements stated above, the President of the Association should consider the following:

- The candidate's standing in the legal community and the community at large;
- The candidate's primary area of practice vis-à-vis existing members of the JAC or other candidates for the JAC;
- The candidate's past service to the Association or to similar organizations providing connections between the bench and the bar;

- The candidate's reputation in the legal community for integrity and honesty;
- The candidate's ability to maintain confidentiality;
- The diversity of backgrounds among existing JAC members and other candidates for the JAC;
- Whether the candidate has expressed an intention to seek appointment or election to a judicial post; and
- Given the sensitivity of the JAC's work, the President is expected to appoint candidates whose very presence will lend credibility to the JAC.

B. *Judiciary Assessment Poll Procedures.* An annual Judiciary Assessment Poll ("Poll") shall be conducted for the purpose of providing general attorney feedback to the bench regarding the overall performance of the Judiciary in Santa Clara County, both state and federal. The Poll shall consist of five to seven questions about the attorneys' court experience. The Poll questions should not solicit responses related to any individual judge. In the event that an attorney desires to provide a comment regarding a particular judicial officer, the attorney will be directed to submit a Judicial Assessment Form, as described below. The Poll shall be disseminated electronically with results tabulated electronically. Poll responders shall be anonymous. The results of the Poll will be provided to the Clerk of the Federal Court for dissemination to the federal district, magistrate and bankruptcy judges, to the Presiding Judge of the Superior Court for dissemination to the superior court judges and shall be made publicly available on the SCCBA's website.

C. *Judicial Assessment Form Procedures.* A Judicial Assessment Form ("Form") shall be made available to attorneys to provide them with a confidential means of submitting to the JAC a specific concern/s related to an individual judge and/or to provide positive, constructive feedback regarding an individual judge. The Form will only be available to attorneys who practice in Santa Clara County. In order to submit the Form, attorneys must provide their names, contact information, and State Bar numbers. Information provided on the Form shall be confidential between the submitting attorney ("Submitting Attorney") and JAC members. Such information will not be communicated to persons outside of the JAC without the consent of the Submitting Attorney. Participation in this process does not create an attorney-client relationship with either the JAC or the SCCBA. The Form shall be available on the SCCBA's website and the availability of this process shall be communicated on a regular basis to the SCCBA membership. The Submitting Attorney shall designate on the Form whether the submission is an "Informational Submission" or a "Request for Action." Initial review

(“Initial Review”) of the information submitted through the Form shall be limited to the Chair and the SCCBA CEO.

a. Following the Initial Review of an Informational Submission, the substance of such submission may be reviewed by the JAC. In the case of an Informational Submission, i.e., information submitted for informational purposes only, the Submitting Attorney will be contacted by the JAC only if the JAC determines that further follow up is necessary. The identification of the Submitting Attorney will be withheld, absent the consent of the Submitting Attorney to disclosure of his/her identity.

b. Following the Initial Review of a “Request for Action,” the JAC Chair and/or the SCCBA CEO will contact the Submitting Attorney within two weeks to arrange a meeting of the Submitting Attorney with the JAC absent the judicial members of JAC. After meeting with the Submitting Attorney, the attorney members of the JAC will determine whether any action is warranted or whether the Submitting Attorney’s concern will be received for informational purposes only. The JAC Chair and/or SCCBA CEO will explain any contemplated action to the Submitting Attorney. No action will be taken by the JAC without the Submitting Attorney’s consent. The JAC will not be obligated to take action unless the majority of the JAC agrees to take action with the Submitting Attorney’s consent.

c. Only the attorney members of JAC will decide whether the Submitting Attorney’s “Request for Action” warrants action by the JAC. This decision is not a legal opinion or a determination as to the merits of the attorney’s concern, and is within the sole discretion of the attorney members of JAC.

d. If the attorney members of the JAC determine that action is warranted, the proposed action will be tailored to the needs of the particular case. The JAC will employ an informal process for resolving attorney concerns. Beyond the guidelines discussed above, there is no specific process or set of rules that the JAC must adhere to in addressing attorney matters submitted through the Form.

e. Possible actions by the JAC may include, but are not limited to, the following: 1) providing counseling/mentoring to the Submitting Attorney about how to address the concerns without discussions with the involved judge or Presiding Judge; 2) discussing the matter with the Presiding Judge by an attorney member/s of the JAC with consent of the Submitting Attorney but without the Presiding Judge discussing the matter with the involved judge; or 3) discussing the matter by the full JAC with the Presiding Judge with the consent of the Submitting Attorney that the matter be discussed with the Presiding Judge and/or with the involved judge.

D. Annual Report. The JAC shall prepare an annual report related to the confidential Judicial Assessment Form. The report will include: 1) the number of Forms received as “Informational Submissions”; 2) the number of Forms received as

“Requests for Action”; and 3) the outcomes of Forms received as “Requests for Action.” The report should indicate whether any action was taken, and, if appropriate, provide a brief description of any action taken. The report shall not include any personal or identifying information pertaining to any participating attorney or judge.

- E. *Other Processes.* Attorneys are welcome, at all times, to present their concerns to their own legal counsel, to the judge involved, to the Presiding Judge, to the Commission on Judicial Performance, to the California Judges’ Association Ethics Hotline, or to any other person or entity. (Attorneys presenting their concern to the judge involved should be mindful of rules regarding *ex parte* communications.) The Form is not a substitute for any other established forum for submitting formal or informal complaints. The Form is not intended to toll any statute of limitations.

- F. *Review of Policy & Procedures.* The Judicial Assessment Poll and the Judiciary Assessment Form and process shall be reviewed no later than two years after implementation to determine whether these measures should be continued, changed and/or abandoned.

*The Judiciary Committee conflict of interest rule is as follows:

“A conflict of interest occurs when any Committee member's spouse, parent, child, sibling or domestic partner becomes a candidate for judicial office. This conflict prohibits a Committee member from attending any evaluation interview which is for the same judicial position sought by the Committee member's spouse, parent, child, sibling or domestic partner. In addition, there may be other circumstances where it would be preferable for the member not to participate in a review of a candidate to avoid the appearance of impropriety or conflict. In those cases, the member should recuse him or herself or should discuss the issue with the Committee Chair in advance of the meeting.”

Rule 5, SCCBA Judiciary Committee Operating Rules