

Judicial Nominating Board Public Meeting Minutes

Thursday, October 13, 2022, 12-2pm

Full meeting recording: <https://www.youtube.com/watch?v=5WpmAaRqO00>

Members present: Eleanor Spottswood - Chair; Alison Milbury Stone - Vice Chair; Sen. Cheryl Hooker – Secretary (remotely by zoom); Dennise Casey (remotely by zoom); Sen. Brian Collamore; Rep. Ken Goslant; Tim Hayward (remotely by phone); Rep. Kimberly Jessup; Rep. Barbara Rachelson; David Silver (remotely by zoom); Sen. Jeanette White

Also present: Erik Fitzpatrick – Attorney from Legislative Council (remotely by zoom)
Jay Greene – Policy and Research at the Office of Racial Equity
Mike Ferrant – Director of Legislative Operations

The purpose of the meeting was to offer changes to the Judicial Nominating Board rules that had been proposed by the subcommittee of the Board.

Chair Spottswood gave an introduction stating that the goal of the group was to consistently nominate as many well qualified and diverse candidates for judges in a process that is fair, transparent, effective and efficient.

Erik Fitzpatrick began walking the Board through the proposed rule changes. David Silver asked Mr. Fitzpatrick, in view of comments made by the Governor’s Counsel, to clarify that these proposed changes are consistent with the Board’s statutory authority. Chair Spottswood said we would consider that question as we discussed the rule changes.

Changes were proposed for Rule 5, 10, 11, 12 and 13.

Rule 5: Deals with conflict of interest. Current rule contains a definition of conflict of interest and the process followed when a member has a conflict. This past session the Legislature passed a State Code of Ethics which applies to all individuals appointed to serve on State Boards and Commissions, including the JNB, and contains a detailed definition and process for when an individual has a conflict of interest. The idea of the rule change is to make the JNB rule and the State Code of Ethics law consistent. The Code of Ethics, however, also allows an entity to have additional requirements that are not necessarily consistent.

Rule 10: States that a person must be interviewed by the Board every time they apply for a judicial position. The proposed rule would require that an applicant be interviewed only once in a biennium. If a person is determined to be well qualified, there is no need for another interview of that person if they apply again within the same biennium. If a person is determined to be not well qualified, they must wait for the next biennium to re-apply.

Rule 11: Addresses criteria for judges both generally and specifically. The new proposal would specify that candidates for Supreme Court “must possess superior legal writing skills.”

Rules 12 and 13: Address the general standard of “well qualified”. The proposal makes the rules consistent with statute passed in 2016 that candidates be “well qualified” instead of just “qualified” and provides a definition of “well qualified” adopted from the American Bar Association definition.

Following the walk through of the changes, the Board heard from one member of the public.

Jay Greene from the Office of Racial Equity commented on the use of the term “well qualified” and indicated that legislation that was introduced last session (H. 401) and will be re-introduced this session would remove the “well” from the term because there is concern that the term “well qualified” might “unfairly privilege people who are already privileged by an unfair system.” They are also concerned that race neutral language in the rules will “uphold the status quo of people already privileged” and asked the Board to specifically consider diversity and other recommendations that appear in H. 401.

No other members of the public stepped forward to testify and the Board began discussing each proposed rule change in turn.

Proposed changes to Rule 5: The conflict-of-interest policy that aligns the JNB Rules with the State Code of Ethics. Motion was made by Attorney Silver to amend the proposal to add “, but may participate in the deliberations” at the end of Rule 5(b)(3) to clarify that members of the Board to who were not present at the interview of an applicant and therefore not allowed to vote on the candidate (but are not recused) are allowed to participate in deliberations. Seconded by Sen. White. The motion passed unanimously by roll call vote.

Judicial Nominating Board Tally Sheet – amendment to proposed Rule 5

Member	Yes	No
Casey, Dennise	x	
Collamore, Brian	x	
Goslant, Ken	x	
Hayward, Tim	x	
Hooker, Cheryl	x	
Jessup, Kimberly	x	

Milbury Stone, Alison	x	
Rachelson, Barbara	x	
Silver, David	x	
Spottswood, Eleanor	x	
White, Jeanette	x	

Attorney Silver then moved to adopt the proposed rule change to Rule 5 as amended. Seconded by Sen Collamore. The motion passed unanimously by roll call vote.

Judicial Nominating Board Tally Sheet – Rule 5 as amended

Member	Yes	No
Casey, Dennise	x	
Collamore, Brian	x	
Goslant, Ken	x	
Hayward, Tim	x	
Hooker, Cheryl	x	
Jessup, Kimberly	x	
Milbury Stone, Alison	x	
Rachelson, Barbara	x	
Silver, David	x	
Spottswood, Eleanor	x	
White, Jeanette	x	

Rule 10 proposed changes regarding the interview process were discussed. There were questions about tying the timeline to the Legislative Biennium and other suggestions for when the name of an applicant who had been deemed “well qualified” could be sent to the Governor without the applicant being interviewed again by members of the Board. Those candidates deemed not well qualified would have to wait two years and a new Biennium to apply again with the intent of making the process more efficient and saving time for the Board and applicants and resources for the State. Senator White suggested a number of months; Attorney Silver recommended a hybrid policy of a year from the last application or the change of the Biennium. Denise Casey said we need to give people (deemed not well qualified) a chance as circumstances change and that the goal is to not limit the number of candidates sent to the Governor. As there seemed to be more questions that needed to be addressed, no action was taken on the proposals for Rule 10.

Rule 12 establishes a definition of “well qualified” as used by the ABA and Rule 13 adds “well qualified” to the descriptor of nominees sent to the Governor and changes the word “questionnaires” to “applications”. Making the Rule consistent with the 2016 statute requiring “well qualified” applicants be sent to the Governor, Sen. Collamore moved to accept the changes to rule 13 that are simple, technical changes and added that changes to Rule 12 (definition of “well qualified”) might need more discussion; Attorney Silver seconded the move to amend Rule 13. The roll call vote was unanimous, and the changes accepted.

Judicial Nominating Board Tally Sheet – Rule 13 as proposed

Member	Yes	No
Casey, Dennise	x	
Collamore, Brian	x	
Goslant, Ken	x	
Hayward, Tim	x	
Hooker, Cheryl	x	
Jessup, Kimberly	x	
Milbury Stone, Alison	x	

Rachelson, Barbara	x	
Silver, David	x	
Spottswood, Eleanor	x	
White, Jeanette	x	

Rule 11 proposed change says, “For Supreme Court, a candidate shall possess superior legal writing skills”. Rep. Jessup moved to accept the change. Rep. Rachelson seconded. Dennise was concerned that the Governor opposed the change. Mr. FitzPatrick said the Board has the authority to add specific, more restrictive criteria to the qualifications.

The Board voted 9-2 to accept the proposed change to Rule 11

Judicial Nominating Board Tally Sheet – Rule 11 as proposed

Member	Yes	No
Casey, Dennise		x
Collamore, Brian	x	
Goslant, Ken		x
Hayward, Tim	x	
Hooker, Cheryl	x	
Jessup, Kimberly	x	
Milbury Stone, Alison	x	
Rachelson, Barbara	x	
Silver, David	x	
Spottswood, Eleanor	x	

White, Jeanette

| x |

The Board discussed future meeting dates for interviewing candidates for four judicial openings and to continue to allow public comment on the proposed changes to the Rules that have not been voted on.

The suggested dates are Tuesday and Wednesday, Nov. 29 and 30 and Monday and Tuesday, Dec. 12 and 13.

Respectfully Submitted,
Cheryl Hooker