



# COMMISSION ON JUDICIAL NOMINEES EVALUATION

## THE STATE BAR OF CALIFORNIA

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1617 • (415) 538-2274

May 5, 2015

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Board of Trustees  
Stakeholder Committee  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105-1617

### **Re: Activities and Statistical Report 2014-2015 Commission on Judicial Nominees Evaluation**

Dear Board of Trustees and Members of the Stakeholder Committee:

I respectfully submit the 2014-2015 Activities and Statistical Report for the Commission on Judicial Nominees Evaluation (“JNE”).

### **JNE, its commissioners, and our work**

JNE is responsible for the confidential investigations and evaluations of all potential superior and appellate court appointments by the Governor. Our mandate is to ensure that only the qualified hold judicial office. JNE’s work is undertaken by 37 commissioners, 33 lawyers (two of which are retired judges) and four public members. Our lawyers practice dependency, family, civil, and criminal law at small, mid-sized, and national law firms, public companies, and city, state, and federal offices. Our public members have tremendous life and legal-related experience. Collectively, we live and work in many parts of this state, including Alameda, Fresno, Los Angeles, Riverside, Santa Clara, Sacramento, San Bernardino, and San Francisco counties.

During this term, JNE conducted 169 investigations of 151 Superior Court, 16 Court of Appeal, and two Supreme Court candidates. The Governor made 67 appointments.

We rated these appointments as follows:

| All Appointments             |        |       |
|------------------------------|--------|-------|
| Rating                       | Number | %     |
| Exceptionally Well Qualified | 11     | 16.4% |
| Well Qualified               | 37     | 55.2% |
| Qualified                    | 19     | 28.3% |
| Not Qualified                | 0      | 0%    |

The Governor did not appoint any candidates deemed by us as Not Qualified.

JNE rated Superior Court and Appellate Court appointments as follows:

| Appointments By Court       |     |    |    |    |
|-----------------------------|-----|----|----|----|
| Court                       | EWQ | WQ | Q  | NQ |
| Supreme Court of California | 2   | 0  | 0  | 0  |
| Court of Appeal             | 5   | 5  | 0  | 0  |
| Superior Court              | 4   | 32 | 19 | 0  |

We are committed to conducting thorough and fair evaluations of candidates within the 90-day statutory deadline. I believe our deliberations are thoughtful, respectful, and well-considered. The reports sent to the Governor offered detailed analyses of candidates' strengths, weaknesses, and our final conclusions and ratings.

### **JNE's Strategic Plan**

At the onset of my term, I, together with Vice Chair and incoming Chair, Kimberly Knill, and Senior Administrative Specialist, Heidi Schwab-Wilhelmi, formulated JNE's Strategic Plan reflecting certain objectives categorized under Logistics, Outreach and Education, and Policy. Logistics are operation-oriented objectives and include the development, deployment, and use of technology to facilitate JNE's statutory mission. Outreach and Education are efforts to contact, engage, and educate potential judicial candidates on our processes. Finally, Policy includes refinement of our internal processes, including discussion on legal issues pertaining to our work. I and Ms. Schwab-Wilhelmi presented the Strategic Plan to the Board of Trustees in May 2014.

During my term, we set in motion or fulfilled all of the Strategic Plan objectives. Some highlights:

- Community Outreach. I had observed that some underrepresented and minority candidates had a knowledge gap – how the JNE process works and the basis on which a candidate is evaluated – that adversely

impacted them during our investigations and evaluations. In order to address this gap, I sent over 300 hundred letters to Executive Directors and Presidents of specialty bar associations offering myself as a resource for their members applying to the bench. I also committed JNE to be present at judiciary-related events throughout the state by either having myself or another commissioner speak at these events. Consequently, JNE – as represented by myself, Ms. Knill, incoming Vice Chair Jody Nuñez, and commissioners John Beiers, Mark Cumba, Sally Elkington, Honorable Richard Gilbert, Jan Mulligan, and Kathleen Ryals – was present at over a dozen events held in, among other places, San Diego, Sacramento, San Jose, San Francisco, Oakland, and Los Angeles. These opportunities allowed JNE to pass important information about our process to members of California Women Lawyers, John M. Langston Bar Association, South Asian Bar Association of Southern California, Asian American Bar Association of the Greater Bay Area, among many others.

- Enhanced Investigations. JNE relies on Confidential Comment Forms as our primary means of investigating candidates. In 2010, we started using an electronic system to solicit such comments, which allows us to send an email that contains a link to a secure, online CCF. Prior to that, JNE was required to physically mail hundreds of hard-copy CCFs. We now use our electronic system almost exclusively. This year, we started work on developing a new electronic CCF system that would allow for maximum flexibility and reach to further facilitate our investigative process. In addition, I sent letters to all the Presiding Judges in every county that had not yet agreed to accept our CCFs through email. As a result, four additional counties agreed to participate in our electronic system. Judge Gilbert merits recognition for his contributions here as well as his leadership of JNE's Technology Committee.
  
- Training. Every year each incoming class receives training on implicit bias, a critical area that helps foster fair and impartial investigations. In addition, I continued a practice started two years ago by the Honorable Drew Steckler, former JNE Chair, by inviting the Council on Access and Fairness to conduct elimination of bias training at one

of our meetings. Finally, while we have at least three commissioners with substantial dependency and juvenile law experience, I invited the Honorable D. Zeke Zeidler, Los Angeles County Superior Court, to conduct training in these areas of law at another meeting.

- Not Qualified ratings. I, together with Ms. Knill and Ms. Schwab-Wilhelmi, continued to engage RJNE, our appellate body, and the State Bar General Counsel's office to further refine our practices at determining Not Qualified ratings. I and Ms. Knill tracked preliminary Not Qualified recommendations prior to discussion at our meetings, consulted with the investigating commissioners, and in instances where these ratings were rescinded, we counseled the assigned commissioners to enhance their and JNE's practices. On a policy level, I sought and received advice from the General Counsel's office concerning the bases of Not Qualified ratings pursuant to the applicable rules. Finally, at our request, RJNE will provide informal written guidance on the bases of any Not Qualified rescission. These developments will assist in further honing best practices in this area.

### **The State of JNE**

JNE continued its tradition of careful and considered evaluations of judicial candidates. Our commissioners invested countless volunteer hours in investigating candidates with the seriousness and dedication worthy of the trust we have been given. Our deliberations were robust and interwoven with a healthy exchange of ideas and positions. Finally, Ms. Knill made significant contributions in improving our reports to the Governor.

Ms. Knill and Ms. Nuñez will take JNE to new heights. Ms. Knill worked tirelessly this past term as Vice Chair and provided valuable advice and insight on difficult questions of law, fact, and policy. Ms. Nuñez, one of a handful of senior public defenders at the Alameda County Public Defender's Office, brings a wealth of experience and a pragmatic perspective.

Finally, I wanted to call special attention to the work of the State Bar staff, Ms. Schwab-Wilhelmi, Diane Blackmon, Michelle Pierce, and Anne Baxter. In particular, Ms. Schwab-Wilhelmi was instrumental to me and JNE. In many ways, she is the sole custodian of our traditions and practices. She keeps JNE grounded and has been exceptionally supportive in our evolution these past four years. JNE would not have achieved these strides but for her support, wisdom, and guidance.

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Thank you for the opportunity to serve as JNE Chair. It has been a highlight of my professional career. JNE and its commissioners have taught me much more than I've given them over these four years. For that, I am most grateful.

Very truly yours,

Jason P. Lee  
Chair  
Commission on Judicial Nominees Evaluation