



The State Bar of California

OPEN SESSION AGENDA ITEM 50-2 APRIL 2020

DATE: April 16, 2020

TO: Members, Board of Trustees

FROM: Sarah L. Cohen, Attorney, Office of the Secretariat

SUBJECT: Commission on Judicial Nominees Evaluation - Approval of Extension of Terms of Third Year Commissioners and Officers

EXECUTIVE SUMMARY

The final meeting of the 2019 Commission on Judicial Nominees Evaluation (JNE) was scheduled to occur on April 24-25, 2020. In consultation with the Governor's Judicial Appointments Unit, that meeting was postponed in light of the restrictions on travel and large group gatherings arising out of COVID-19. JNE commissioners serve three consecutive one-year terms. JNE officers, the Chair and the Vice-Chair, serve one-year terms. By action taken by the Board at its July 2019 meeting, the current third year commissioners and the current officers will term out this month. Given the postponement of the April meeting, it is therefore requested that the Board of Trustees extend the terms of the third year commissioners and current officers so they can complete their service at the conclusion of the next meeting of the JNE Commission.

BACKGROUND

The JNE Commission is a statutorily-created body within the State Bar of California, which serves and reports directly to the Governor's Judicial Appointments Office. (Gov. Code § 12011.5.) The JNE Commission is tasked with the responsibility for confidentially evaluating the qualifications of candidates for judicial office in California. The JNE Commission operates on a "90-day cycle." (Gov. Code § 12011.5(c).) Pursuant to a schedule mutually agreed to between the Governor's Judicial Appointments Office and the JNE Commission, the JNE Commission receives six Assignment Letters per year. The Assignment Letter contains the names of the judicial candidates being considered by the Governor for appointment. The number of candidates on each Assignment letter ranges from 25 to 40. By statute, the JNE Commission has 90 days within which to report to the Governor on the candidates' qualifications to serve.

The first JNE Commission meeting of the committee year occurs in June and the last meeting occurs the following April. The last April meeting serves as the “shadow” meeting for the incoming first-year commissioners sworn in at their orientation meeting in January.

Each commission typically serves three consecutive one-year terms, except the Chair who serves a total of four years, the third year as Vice-Chair and the fourth year as Chair. The officers of the JNE Commission are the Chair and the Vice-Chair. Each year, the third-year commissioners and the officers term off at the April meeting.

DISCUSSION

The final meeting of the 2019 JNE Commission was set to occur on April 24-25, 2020. This meeting was timed to evaluate the judicial candidates included on the January 2020 Assignment Letter within the 90-day cycle.

In consultation with the Governor’s Judicial Appointments Office, the April 24-25 meeting to evaluate the candidates on the January 2020 Assignment Letter was moved to June 12-13, 2020, a time block originally calendared for the first meeting of the 2020 JNE Commission. Given that the June meeting time block is beyond the 90-day period for reporting on the candidates from the January 2020 Assignment Letter, the Governor included as part of Executive Order N-35-20 a provision extending the 90-day deadline by 60 days.

This agenda item requests that the terms of the third year commissioners and officers, currently set to expire at the conclusion of the now-postponed April meeting, be extended until such time as the final meeting of the 2019 JNE Commission to evaluate the candidates on the January 2020 Assignment Letter can occur. Although the April meeting was moved to the June meeting block, it was done so tentatively, with the understanding that it could be moved again depending on developments surrounding the spread of COVID-19 and the government’s response. JNE Commission leadership and staff have been in regular communication to assess the situation. For this reason, the proposed resolution is worded broadly enough to avoid returning to the Board for approval of another extension in the event the meeting is moved again.

With approval of the proposed resolution, the officer and member terms for the following commissioners will be extended:

Officers

- Chair Diane Bellas
- Vice-Chair Aminder Singh

Members

- Albracht, Kathryn
- Block, Randall G.

- Crosby, James D.
- D’Orazio, Elizabeth
- Hastings, James G.
- Ibarra, Crisostomo G.
- Lempel, Barbara M.
- Okcu, Niki B.
- Onyeagbako, Maureen C.
- Pritt, Maxwell V.
- Quinn, Linda B.
- Stewart, Virginia E.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES OF THE STATE BAR

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - core business operations

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees approves extension of the terms of the third year commissioners on the Commission of Judicial Nominees Evaluation (JNE) until such time as the final meeting of the 2019 JNE Commission can be held; and it is

FURTHER RESOLVED, that the Board of Trustees approves extension of the Chair and Vice-Chair of the JNE Commission until such time as the final meeting of the 2019 JNE Commission can be held.

ATTACHMENT(S) LIST

- A. Executive Order N-35-20

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-35-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS despite sustained efforts, COVID-19 continues to spread and is impacting nearly all sectors of California; and

WHEREAS it is imperative that clinics, hospice, mobile healthcare units, and adult day health care facilities maximize the number of capable healthcare workers to ensure that Californians impacted by COVID-19 are able to access medical treatment; and

WHEREAS governmental entities must have sufficient staffing to adequately address the impacts of COVID-19, and state and local governing bodies must have critical and timely information relating to COVID-19; and

WHEREAS given the impacts of COVID-19 on governmental entities, certain statutory deadlines would be impractical or impossible to adhere to; and

WHEREAS on March 17, 2020, I issued Executive Order N-31-20, in which I implemented measures to ensure the expeditious restoration of the supply chain, and further action is needed to ensure the purpose of this action is effectuated; and

WHEREAS state institutions housing vulnerable populations, such as those operated by the Department of State Hospitals and the Department of Developmental Services, require special measures to protect those populations from COVID-19 and ensure continuity of care; and

WHEREAS under the provisions of Government Code sections 8571 and 8627.5, I find that strict compliance with various statutes, regulations, and certain local ordinances specified or referenced herein would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8571, and 8627.5, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

- 1) In order to assist in the care or to protect the health of individuals not in a hospital or health facility, as defined in Health and Safety Code section 1250, and due to the COVID-19 outbreak, the director of the State Department of Public Health may, for the duration of the declared

emergency, waive any of the licensing and staffing requirements of chapters 1, 3.3, 8.5, and 9 of division 2 of the Health and Safety Code and any accompanying regulations with respect to any clinic, adult day health care, hospice, or mobile health care unit. Any waiver shall include alternative measures that, under the circumstances, will allow the clinic, adult day health care, hospice, or mobile health care unit to assist in the care or protect the health of individuals while protecting public health and safety. Any waivers granted pursuant to this paragraph shall be posted on the Department's website.

- 2) Notwithstanding Government Code section 54952.2, subdivision (b)(1), or Government Code section 11122.5, subdivision (b)(1), or any other provision of the Brown Act or the Bagley-Keene Act, as applicable, all members of a local legislative body or state body may receive updates (including, but not limited to, simultaneous updates) relevant to the declared emergency (including, but not limited to, updates concerning the impacts of COVID-19, the government response to COVID-19, and other aspects relevant to the declared emergency) from federal, state, and local officials, and may ask questions of those federal, state, and local officials, in order for members of the legislative body to stay apprised of emergency operations and the impact of the emergency on their constituents. Nothing in this Order permits the members of a local legislative body or state body to take action on, or to discuss amongst themselves, any item of business that is within the subject matter jurisdiction of the legislative body without complying with otherwise-applicable requirements of the Brown Act or the Bagley-Keene Act, respectively. Nothing in this section shall impact Paragraph 3 of Executive Order N-29-20.
- 3) The suspension of statutes identified in Paragraph 7 of Executive Order E-25-20, issued on March 12, 2020, shall also apply to local governments, as applicable, to ensure adequate staffing to appropriately respond to the COVID-19 pandemic.
- 4) Any local ordinance, including those relating to noise limitations, is suspended to the extent it restricts, delays, or otherwise inhibits the delivery of food products, pharmaceuticals, and other emergency necessities distributed through grocery stores and other retail or institutional channels, including, but not limited to, hospitals, jails, restaurants, and schools.
- 5) To ensure that patients with mental or behavioral health conditions continue to receive the services and support they need, notwithstanding disruptions caused by COVID-19; and to protect the health, safety and welfare of patients with mental or behavioral health conditions committed to the State Department of State Hospitals facilities, as defined by Welfare and Institutions Code Sections 4100 and 7200; the Director of the State Department of State Hospitals may issue directives waiving any provision or requirement of the Welfare and Institutions Code; any provision or requirement of the Penal Code that affects the execution of laws relating to care, custody, and treatment of persons with mental illness committed to or in the custody of the State Department State Hospitals; and the accompanying regulations of Title 9, Division 1 of the California Code of Regulations. The Director shall describe the need for the waiver

granted in each directive and articulate how the waiver is necessary to protect the public health or safety (including, but not limited to, the health or safety of the individuals served at any Department-operated facility or the staff serving such individuals) from the threat of COVID-19, or how the waiver is necessary to ensure that services to individuals with mental or behavioral health conditions are not disrupted. Any waiver granted by a directive shall expire 30 days from the date of its issuance, except that the Director may grant one or more 30-day extensions if the waiver continues to be necessary to protect health or safety or to ensure delivery of services. The Director shall rescind a waiver once it is no longer necessary to protect public health or safety or ensure delivery of services. Any waivers and extensions granted pursuant to this paragraph shall be posted on the Department's website.

- 6) As needed to safeguard health of persons already admitted, committed, or ordered to the facilities described in this paragraph and notwithstanding the Penal Code, the Welfare and Institutions Code, or any other statute or regulation, the Director of the Department of Developmental Disabilities is authorized to deny admission or delay discharge of all individuals judicially or otherwise admitted, committed or ordered to the Porterville Developmental Center; the Canyon Springs Community Facility; a Stabilization, Training Assistance, and Reintegration (STAR) home; or any other facility under the jurisdiction or control of the Department for 30 days after the issuance of this Order. The Director may grant one or more 30-day extensions if such action is necessary to protect the public health or safety (including, but not limited to, the health or safety of the individuals served at any Department-operated facility or the staff serving such individuals) from the threat of COVID-19. The Director of the Department shall describe the need justifying the closure of admissions to and delay in discharges from the Department-operated facility. The Director shall authorize admissions and discharges once the actions described in this paragraph are no longer necessary to protect the public health or safety (including, but not limited to, the health or safety of the individuals served at any Department-operated facility or the staff serving such individuals). The Director shall post the notice of closure of admissions and discharges and the extension of closure to the Department facility on the Department's website.
- 7) The deadlines specified in Education Code section 44242.7(a), and California Code of Regulations, title 5, section 80306, related to the presentation of disciplinary cases to the Committee of Credentials for initial review; Education Code section 44244(b)(1), related to the formal review of disciplinary cases and determination of any adverse action by the Committee of Credentials; Education Code section 44343.5, related to the processing of military spouse or partner applications; and Education Code section 44350, related to processing educator applications, are extended for a period of 60 days.
- 8) The deadline specified in Government Code section 11517(c)(2), related to an agency's action on an administrative law judge's proposed decision, is extended for a period of 60 days.
- 9) The deadlines specified in Government Code section 1774(a), related to the Governor's reappointment of an incumbent to an office, and

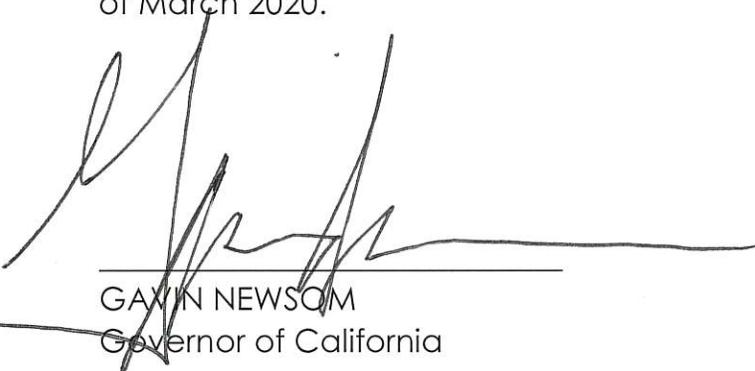
Government Code section 1774(b), related to transmittal of the required information about reappointment of an incumbent to the Secretary of the Senate, are extended for a period of 60 days.

- 10) The deadline specified in Government Code section 12011.5(c), related to State Bar's transmittal of its report to the Governor of its evaluation of all judicial candidates referred by the Governor, is extended for a period of 60 days.
- 11) The time for presenting a claim pursuant to Government Code section 911, et seq., is hereby extended by 60 days. The time within which the Department of General Services may act upon such claim is extended by 60 days.
- 12) The time limitation set forth in Penal Code section 4750(j) for any jurisdiction submitting a claim for reimbursement is delayed for a period of 60 days. The State Controller shall have the discretion to provide the additional time extension, as appropriate.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 21st day of March 2020.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State