

To: Board of Trustees of the State Bar of California
Members of the Board Stakeholder Committee

From: Lara M. Krieger, Past Chair
Commission on Judicial Nominees Evaluation

Subject: Commission on Judicial Nominees Evaluation Activities and
Statistical Report for April 2013 through April 2014

I respectfully submit the 2013 Activities and Statistical Report for the Commission on Judicial Nominees Evaluation (JNE Commission or Commission). This Report provides comprehensive information about the JNE Commission's work during the period from April 2013 to April 2014.

As you know, under Government Code section 12011.5, the JNE Commission is tasked with confidentially investigating and evaluating the qualifications of those identified by the Governor for appointment or nomination to a judicial office. The JNE Commission's statutory mandate is to promote a California judiciary of quality and integrity by providing independent, comprehensive, accurate, and fair evaluations of judicial candidates.

During the past year, the JNE Commission evaluated 187 judicial candidates, comprised of 170 trial court candidates and 17 appellate court candidates. The Governor made 39 judicial appointments. Of those appointments, four were rated Exceptionally Well Qualified, 25 Well Qualified, and 13 Qualified. The Governor did not appoint any candidates rated Not Qualified. Of the 187 candidate evaluations, the overall ratings broke out to about 12.3% Exceptionally Well Qualified, 38% Well Qualified, 37% Qualified, and 10.7% Not Qualified. The percentage of Exceptionally Well Qualified overall ratings rose by about 3.5% from last year, and the percentage of Not Qualified overall ratings dropped by about 3%.

The JNE commissioners work hard to ensure that each candidate receives a thorough investigation and fair evaluation—all within the 90-day statutory turnaround period. (Gov't Code, § 12011.5, subd. (c).) The 90-day period is triggered when the Governor sends a list of names to JNE for evaluation. JNE has never missed the 90-day statutory deadline.

To conduct its investigations, the Commission met a total of 13 days over the past year. At least two commissioners investigate each judicial candidate. Accordingly, 427 assignments were made over the past year. Each commissioner *personally* performed an average of 12 judicial evaluations.

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In addition to the above statistics, the JNE Commission achieved some milestones over the past year:

- *Digital Recorders:* By way of background, each judicial candidate is personally interviewed by the assigned investigating commissioners. Since inception, these interviews were recorded on audio cassette tapes. The recorders sometimes stopped working during interviews, and the quality of the recording was almost universally very poor. The Board of Trustees recently approved and funded the use of digital recorders for purposes of recording the candidates' personal interviews. The upgrade to digital recorders is a boon to the investigative process.

- *Funding an Internet-Based Electronic Confidential Comment Form Program:* By way of background, a major component of JNE investigations is the mailing of Confidential Comment Forms to those likely to have knowledge of the candidate's qualifications for judicial office. (The parameters of the mailings are set out in the State Bar rules.) Thousands of Confidential Comment Forms (known as CCFs) are mailed each year. Up until 2010, all CCFs were mailed by hard copy. Hard-copy mailings generate huge expenses for the State Bar *each year*. The expenditures include paper, envelopes, and other supplies, plus postage, printing, and clerical assistance.

In 2010, JNE (with the extraordinary assistance of State Bar staff on every level) instituted a pilot program to determine the feasibility of distributing the CCFs electronically (via email). The pilot program was a huge success in several ways, including:

- JNE commissioners were freed up to focus on the substantive side of the candidate investigations, instead of the administrative logistics of distributing hard-copy CCFs (which entails photocopying, stuffing envelopes, and mailing the CCFs).

- The State Bar benefited by exponentially reduced expenses *each year*. In 2012, the pilot electronic program was ramping up; by this past year, the pilot program was more robustly used by the commissioners. In just one year, the CCF costs per candidate dropped by about 50%:
 - In 2012, the Bar spent about \$122 in postage *per candidate*, and about \$54 in printing and outside services *per candidate*.
 - During the past year, those amounts dropped to about \$74 in postage per candidate, and about \$22 in printing and outside services per candidate.
 - Put differently, the postage costs dropped about 40% per candidate, and costs for outside services dropped by about 59% per candidate.

Given the success of the pilot program, the previous Commission chair, the late John Collins, and I saw the tremendous potential of a robust electronic CCF program. Accordingly, in 2012, John and I contacted the State Bar's leadership to request the funding necessary for the development of a full-fledged internet-based electronic CCF program. The Bar has allocated the requested funding for this purpose, and the development of a multi-functional, internet-based electronic CCF program will begin this year.

The newly devised electronic CCF program will further the mission of the JNE Commission in many ways. One tangible benefit will be the promotion of greater diversity among those who apply for appointment to the JNE Commission. Many lawyers who would be assets to the Commission have shied away from applying for appointment because of the clerical burden of distributing the hard-copy CCFs. Eliminating this burden will induce a broader and more diverse pool of applicants for appointment to the Commission.

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The Commission continues as an energetic and collegial deliberative body. Its conscientious volunteers invest countless hours undertaking investigations, drafting reports, and attending meetings. I am extraordinarily proud to have been a member, vice chair, and chair of this group who all work tirelessly to ensure that evaluations are completed in a fair, accurate, comprehensive, timely, and confidential manner. I can say without reservation that my colleagues on

the Commission over the past four years have been the most committed, intelligent, and delightful group of people with whom I have had the pleasure to work on any bar committee during my 20 years of practice.

Additionally, the JNE Commission could not function without the exemplary work of its State Bar staff. The team includes Diane Blackmon, Michelle Pierce, and Anne Baxter, and is led by extraordinary Senior Administrative Specialist, Heidi Schwab-Wilhelmi. During my terms as vice chair and then chair, Heidi always provided sage advice, and timely and excellent assistance. The entire State Bar JNE staff deserves special recognition for their support of the commissioners in their endeavors.

I hope the State Bar Board of Trustees benefits from this report, and I trust it will continue its support of the JNE Commission and the vital service it performs.

Thank you for the opportunity to serve on and chair the JNE Commission.