



COMMISSION ON JUDICIAL NOMINEES EVALUATION

THE STATE BAR OF CALIFORNIA

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June 10, 2016

BY EMAIL

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

Re: Activities and Statistical Report 2015-2016 Commission on Judicial Nominees
Evaluation

Dear Board of Trustees and Members of the Stakeholder Committee:

As the 2015-2016 Chair of the Commission on Judicial Nominees Evaluation (JNE), I write to submit our Activities and Statistical Report.

Our Work, Our Commissioners, and the Governor's Appointments

I want to begin by thanking you for the privilege of serving this past year as Chair of the JNE Commission. Few volunteer positions rival the professional satisfaction and personal reward I have received while serving this body. The work of the commission is critical to the governor's efforts to appoint an exceptional and diverse judiciary. We all take that work very seriously and strive to uphold the strictest confidentiality and professionalism in every investigation we undertake. The fellow professionals I worked with are inspiring and dedicated. It has been a marvelous experience. This never would have been possible without the impressive dedication of Heidi Schwab-Wilhelmi, Esq., Senior Administrative Specialist, and State Bar staff members Diane Blackmon, Michelle Pierce, and Anne Baxter. Each is a valuable and respected asset, and their historical knowledge of the commission assisted me throughout my service on the commission and particularly while serving as Chair.

During my term as Chair, our commission consisted of 30 attorneys and four public members from Los Angeles, Orange, Alameda, San Francisco, San Diego, San Mateo, San Bernardino, Santa Clara, Riverside, Kern, and Sacramento Counties. Not included in the above totals are three commissioners who resigned this year in the midst of their first term of service – Zaida Hackett, O.G. Magno, and Tammy Warren. These resignations created the need to regularly utilize pro tem commissioners. We owe a great deal of thanks to former commissioners Jason Lee, Todd Thompson, Robert Brody, Jason de Bretteville, David George, and Leisa Biggers, for returning to serve as pro tem commissioners. The presence of these seasoned former commissioners added unparalleled depth and experience to the training of newer commissioners. We met for 12 days (six two-day meetings approximately every 60 days) and investigated 145 candidates while conducting 173 evaluations at the governor's request.

In 2015-2016, Governor Edmund G. Brown, Jr. appointed a total of 56 candidates:

- 14 were rated Exceptionally Well Qualified – or 25%
- 22 were rated Well Qualified – or 40%
- 20 were rated Qualified – 35%
- 0 were rated Not Qualified – 0%

Of the above appointments, 50 were to superior courts. When an appellate court candidate is appointed, the Chair is asked to personally appear before the Commission on Judicial Appointments (CJA) to offer testimony on the JNE Commission's rating of the candidate. Governor Brown appointed six appellate court candidates during my term as Chair, and I appeared at all the CJA hearings as the JNE Commission representative.

Outreach to the Legal Community

We strongly believe in outreach to the legal and at-large communities. In this spirit, at the beginning of my term, I sent letters to hundreds of Bar Associations and Inns of Court chapters throughout California offering my and the commission's resources to the members of these organizations. Experience has shown those contemplating judicial appointment, and the communities they represent, are better prepared when they possess a thorough understanding of our investigation process and the statutory basis for our assessments, before an application is submitted. Even though the specifics of a candidate's investigation are strictly confidential, the process we utilize should be transparent. We offered our availability to help explain how to navigate that process and what to expect from JNE if the governor requests an evaluation. We also invited members to consider service on the JNE Commission, noting the State of California and its judiciary are best served by commissioners who reflect diversity in geography, practice area, practice environment, gender, race, ethnicity, and sexual orientation.

As a result of this outreach, I'm pleased to report we sent the following JNE commissioners to make personal appearance presentations (usually accompanied by a PowerPoint presentation and written handout materials) at the following events:

- September, 2015 meeting of the Warren J. Ferguson Inn of Court in Orange County (Chair)
- October, 2015 meeting of the Hispanic Bar Association in Orange County (Chair)
- October, 2015 meeting of the Wiley Manuel Bar Association, with a joint presentation by the State Bar Council on Access & Fairness (COAF), in Sacramento County (Commissioner Kathleen Ryals)
- November, 2015 meeting of the Contra Costa County Bar Association, with a joint presentation by COAF, in Contra Costa County (Chair)
- November, 2015 meeting of the William L. Gordon Inn of Court, in Santa Barbara County (Commissioner David Axelrad)
- November, 2015 joint meeting of the Benjamin Aranda III Inn of Court and the South Bay Bar Association in Los Angeles County (Chair)

- January, 2016 meeting of the Joseph B. Campbell Inn of Court in San Bernardino County (Chair)
- January, 2016 meeting of the Asian Pacific American Bar Association in Los Angeles County (Chair)

Additionally, I was asked by the Orange County chapter of the American Business Trial Lawyers to author an article on the judicial selection process. The article was published in the April issue of the ABTL Newsletter. A copy of the newsletter is enclosed. A similar article will be published in an upcoming edition of the Los Angeles Lawyer; it is presently scheduled for publication in August or September, 2016.

Paperless CCFs to the Supreme Court and Courts of Appeal

JNE's primary means of investigating judicial candidates is the solicitation of comments regarding the candidate from members of the bar and the judiciary, and until recently, we did so by mailing written Confidential Comment Forms (CCFs). Our rules require us to send a CCF on every candidate to each Supreme Court justice and to each Court of Appeal justice and Superior Court judge (except Los Angeles County which allows a smaller mailing) in the county where any judicial applicant has applied. During past terms, we were able to secure the cooperation of several Superior Courts to send individual CCFs by email, and this practice continues.

One of our goals during my term was to streamline the process of sending CCFs to the Supreme Court and Court of Appeal justices. Ms. Schwab-Wilhelmi and I worked closely with Supreme Court staff and developed a new protocol, which is succinct and efficient. Rather than send a separate paper copy CCF or electronic CCF to each justice, we draft one email for each investigation cycle, and it contains the names of all candidates, along with the judicial office each seeks, and a hyperlink to each candidate's CCF that can be accessed from the email. This protocol allows each justice to receive one email from the JNE Commission approximately every 60 days, and to quickly peruse the list to efficiently determine whether he or she wishes to offer feedback on a candidate. The new method for seeking input from the Supreme Court justices has been well-received.

Building on that success, we then endeavored to expand the same protocol to the Courts of Appeal. As a result of our outreach, I'm pleased to report the First, Second, Third, Fourth, and Fifth District Courts of Appeal have granted approval for the JNE Commission to send CCFs through email using a similar protocol. We are still waiting on the Sixth District to grant approval.

Our New Technology

Over the past year, Ms. Schwab-Wilhelmi, State Bar IT staff, and the JNE Commission's Technology Committee have worked tirelessly to implement a new software system for handling the massive task of sending electronic CCFs to each candidate's lists of individuals with whom the candidate has worked or listed as a personal reference, as well as to attorneys at random. We now have the capability to manage this process as individual commissioners, which has shifted many of the tasks from State Bar staff to

commissioners. I'd like to acknowledge the many additional volunteer hours devoted to this effort by Vice Chair Jody Nuñez, former commissioner Todd Thompson, and commissioners David Fu, Richard Gilbert, Kalpana Srinivasan, Shay Gilmore, and Tim Laske. They, along with Ms. Schwab-Wilhelmi, worked to troubleshoot and test beta versions of the software, and participated in numerous conference calls to help address bugs and kinks along the way.

Best Practices for Handling Not Qualified Ratings

While it is never pleasant to rate a candidate Not Qualified, we all take very seriously the effect this rating has on the candidate's future. We want to ensure that our Not Qualified ratings are well-supported and only given in cases where the rating will be upheld. During Jason Lee's term as Chair, we were able to implement a feedback system from RJNE that allows us to receive a short report each time one of our Not Qualified ratings is rescinded by RJNE. During my term, we had only three rescissions of a Not Qualified rating. Conversely, four Not Qualified ratings were affirmed by RJNE. On each occasion resulting in a rescission, RJNE provided us with its reasons, and I was able to share with the entire commission best practices moving forward to avoid any further rescissions under similar circumstances. It has been helpful to us as a body and an excellent learning opportunity for our newer commissioners.

The State of the JNE Commission

Our mission is to assist the governor in the judicial selection process and thereby promote a California judiciary of quality and integrity by providing independent, comprehensive, accurate and fair evaluations of candidates for judicial appointment and nomination. I stand in awe of the dedication and commitment shown by the professionals that serve in furtherance of fulfilling this mission. The responsibility is sobering, and our efforts will shape the future of the State's judiciary for generations to come. As a result, each commissioner volunteers hundreds of hours each year. We endeavor to maximize the experience of seasoned commissioners by pairing them on investigations with newer commissioners. The institutional knowledge builds upon itself, and in this way, the commission becomes stronger over time.

I have complete confidence that incoming Chair, Jody Nuñez, and incoming Vice Chair, David Fu, will continue the outstanding work of the commission. During my term, they were always at the ready, responsive, professional, enthusiastic, and extremely competent. The commission is in good hands. I look forward to following its progress in the years to come.

Cordially,

Kimberly A. Knill

Kimberly A. Knill
Chair
Commission on Judicial Nominees and Evaluation

Enc. (ABTL Newsletter)

cc: Heidi Schwab-Wilhelmi, Esq., Jody Nuñez, David Fu