

OPEN SESSION AGENDA ITEM

**54-111 JULY 2018
EX COMM ITEM III.A.**

DATE: July 20, 2018

TO: **Members, Board Executive Committee
Members, Board of Trustees**

FROM: Todd Stevens, Board Executive Committee Appointments Liaison
Brandon Stallings, Board Executive Committee Appointments Liaison

SUBJECT: Commission on Judicial Nominees Evaluation (JNE), Annual Reappointment of Members, Appointment of New Members and Alternates, and Selection of Officers for the 2019 JNE Commission

EXECUTIVE SUMMARY

The Commission on Judicial Nominees Evaluation (JNE) is an agency of the State Bar created by Government Code section 12011.5¹ to evaluate judicial candidates who are under consideration for appointment by the Governor. Pursuant to statute, prior to exercising judicial appointment authority, the governor is required to submit the names of candidates to the JNE Commission for an investigation and evaluation of the candidates' judicial qualifications. The JNE Commission must report back to the governor within 90 days of the date of submission its rating of the candidate as exceptionally well qualified, well qualified, qualified or not qualified and the reasons for its rating. The JNE Commission is composed of both public (non-lawyer) and lawyer members, up to a maximum of 38 members. This report places before the Board Executive Committee and the Board of Trustees the annual JNE Commission appointments matters: (1) reappointment of members; (2) appointment of new members and alternates; and (3) selection of the Chair and Vice Chair.

BACKGROUND

The JNE Commission meets approximately six times per year on a calendar that begins in June and ends in April (the JNE year). The first meeting of the new 2019 JNE Commission will be in June 2019, and the final meeting will be in April 2020. Each meeting is two days long. In 2017,

¹ See Attachment A, Government Code section 12011.5.

the JNE Commission completed and transmitted to Governor Edmund G. Brown 189 judicial candidate evaluations.²

Commissioners serve three consecutive one-year terms, pending satisfactory annual evaluations from the JNE Commission Chair. Only the Chair may serve a fourth year. Each year, commissioners must reapply and confirm that they will be able to keep up with the demands of the JNE Commission workload. (See Attachment B, Excerpts of State Bar Rules Governing JNE Commission Membership and Commissioner Duties.) Commissioners seeking reappointment have preference over new applicants because of the steep learning curve involved in mastering the JNE software and developing a firm understanding of the investigation and evaluation process.

The new commissioners are required to participate in a two-day orientation in January 2019, “shadow” the April 2019 (the final meeting of the 2018 JNE Commission) and attend their first meeting as full-fledged commissioners at the June 2019 meeting. Twice per year, JNE commissioners are given anti-bias training.

DISCUSSION

The appointment process for the 2019 JNE Commission began with a comprehensive review of the application materials by current JNE Commission Chair David Fermino and Vice Chair Diane Bellas. In considering applications for appointment to the 2019 JNE Commission, the JNE Commission leadership looked for candidates who have expertise in their respective areas of practice or employment, and represent a diversity of background and experience. The criteria used to consider the lawyer applicants included length of time in practice, type of practice and area of specialty. In evaluating all candidates, the officers considered letters of recommendation, particularly from members of the judiciary and current and former commissioners. Historically, the JNE Commission leadership strives to include one former member of the judiciary in each class, a goal achieved in the recommended slate for the 2019 JNE Commission. (See Attachment C, Procedures for Appointment to the JNE Commission.)

The Board Executive Committee’s Appointments Liaisons reviewed the JNE Commission leadership’s recommendations for reappointment of members and appointment of new members and alternates, and concur in their recommendations, as presented below.

Reappointment of Members to the 2019 JNE Commission

Twenty-five members of the 2018 JNE Commission (including the current Vice Chair) have applied for reappointment: eleven members of the first year class, thirteen members of the second year class and one member of the third year class, current Vice Chair and Chair candidate Diane Bellas. (See Attachment D, 2018 JNE Commission.) All twenty-five commissioners who applied for reappointment received a performance evaluation from the JNE Chair recommending their reappointment. The Appointments Liaisons concur in the Chair’s recommendation.

Appointment of New Members to the 2019 JNE Commission

² Two to four JNE commissioners are assigned to each investigation, depending on whether the candidate is a superior or appellate court candidate. For 2017, the 189 judicial evaluations were a product of 405 individual assignments, an average of approximately 12 investigations per commissioner.

Assuming approval of the twenty-five members recommended for reappointment, there are thirteen open positions on the 2019 JNE Commission. Thirty-three applications were received, two from public (non-lawyer) applicants, and the remainder from lawyer applicants. To fill the thirteen open positions, the recommendation is to appoint one public (non-lawyer) applicant (to replace a public member departing at the end of the 2018 JNE year) and twelve lawyer applicants, including one former judicial officer.

Appointment of Alternates to the 2019 JNE Commission³

Eight applicants were selected as alternates. In the event a commissioner resigns during the 2019 JNE Commission year, an alternate (starting at the top of the list) may be asked to step in. An alternate can be seated without going through a new appointments process. Also, should a newly appointed first-year commissioner decline the appointment or resign prior to the new member orientation in January 2019, an alternate who is available to attend the new member orientation may be asked to step in.

Selection of Officers

JNE Commission Chair

Historically, the JNE Commission Vice Chair position has been used to prepare a member of the Commission to serve as the Chair. The Vice Chair has substantial responsibilities and serving in that position provides a hands-on opportunity to develop the expertise necessary to perform the functions of the Chair. (See Attachment E, JNE Officer Duties – Chair.) Historically, the Vice Chair year is considering a training year for the Chair position and there is every expectation that the Vice Chair will serve as Chair the following year. The Chair is the only member of the JNE Commission that may serve a fourth year. Typically, there is only one candidate for Chair, the current Vice Chair. That is the case in this appointments cycle. Diane Bellas, the current Vice Chair, is the only candidate for Chair.

The Appointments Liaisons interviewed Ms. Bellas in person on Wednesday, June 27, 2018, and unanimously and enthusiastically recommend that she serve as Chair of the 2019 JNE Commission.

JNE Commission Vice Chair

As previously stated, the JNE Commission Vice Chair has substantial responsibilities. (See Attachment F, JNE Officer Duties – Vice Chair.) The following second year commissioners applied for the Vice Chair position: Randall G. Block; Elizabeth D'Orazio; Maureen C. Onyeagbako; Maxwell V. Pritt; and Aminder Singh. The Appointments Liaisons interviewed all five commissioners in person on Wednesday, June 27, 2018, and were uniformly impressed with the level of interest and commitment shown by each of the candidates. Although a difficult

³ No applicants were found unqualified. The applications of those not selected as new members or alternates of the 2019 JNE Commission will remain on file for future outreach. They are: Elizabeth Brown; Robert Burns; Robin Chand; Marcie Gardner; Robert Harris; Kate Iwanami; Bob Niccum [*public (non-lawyer)*]; Robert Oliver [*former judicial officer*]; Richard Rodriguez; Suzanne Sherinian; Jennifer Waier; Alan Yochelson.

choice given the high caliber of the candidates, the Appointments Liaisons unanimously recommend Aminder Singh to serve as Vice Chair of the 2019 JNE Commission.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - core business operations

RECOMMENDATION

It is recommended that the Board Executive Committee and the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approve reappointment of the following members and officers to the 2019 Commission on Judicial Nominees Evaluation (JNE); each for a one-year term commencing on February 1, 2019, and expiring in 2020 at the close of the last business meeting of the 2019 JNE Commission, or until further order of the Board of Trustees, whichever occurs earlier;;

2019 JNE Commission – Recommended Second-Year Class		
REAPPOINTED PUBLIC (non-lawyer) MEMBERS		CITY
1.	Cody, Lisa	Claremont
2.	Conn, Carole	San Francisco
REAPPOINTED LAWYER MEMBERS		CITY
3.	Alexander, Daniel L.	Los Angeles
4.	Carrillo, Sarah J.	Sonora
5.	El-Amamy, Reema M.	Los Angeles
6.	Hammon, Patrick M.	Palo Alto
7.	Michalski, James W.	La Mirada
8.	Ngai, Stella J.	Oakland
9.	Traicoff, Kristin A.	Sacramento
10.	Triano, Martin F.	Berkeley
11.	Tsai, Jeffrey E.	San Francisco

2019 JNE Commission – Recommended Third-Year Class		
REAPPOINTED PUBLIC (non-lawyer) MEMBERS		CITY
1.	Lempel, Barbara M.	Los Angeles
REAPPOINTED LAWYER MEMBERS		CITY
2.	Albracht, Kathryn B.	Pasadena
3.	Block, Randall G.	San Francisco
4.	Crosby, James D.	San Diego
5.	D’Orazio, Elizabeth K.	San Francisco
6.	Hastings, James G. [former judicial officer]	Redondo Beach
7.	Ibarra, Crisostomo G.	San Francisco
8.	Okcu, Niki B.	San Ramon
9.	Onyeagbako, Maureen C.	Sacramento
10.	Pritt, Maxwell V.	Oakland
11.	Quinn, Linda B. [former judicial officer]	San Diego
12.	Stewart, Virginia E.	Bonita

2019 JNE Commission – Recommended Third-Year Member and New Vice Chair		
REAPPOINTED LAWYER MEMBER		CITY
1.	Singh, Aminder	Oakland

2019 JNE Commission – Recommended Fourth-Year Member and New Chair		
REAPPOINTED LAWYER MEMBER		CITY
1.	Bellas, Diane	San Rafael

and it is

FURTHER RESOLVED, that the Board of Trustees approve appointment of the following new members and alternates to the 2019 Commission on Judicial Nominees Evaluation (JNE); each for a one-year term commencing February 1, 2019, and expiring in 2020 at the close of the last business meeting of the 2019 JNE Commission, or until further order of the Board of Trustees, whichever occurs earlier.

2019 JNE Commission – Recommended First-Year Class		
NEW PUBLIC (non-lawyer) MEMBER		CITY
1.	Kalian, Susan	Carlsbad
NEW LAWYER MEMBERS		CITY
2.	Brandt, Robert C.	Los Angeles

3.	Chirlin, Judith C. [former judicial officer]	Pasadena
4.	Danitz, Brian	Burlingame
5.	Diallo, Souleymane P.	Riverside
6.	Hofmann, Adam W.	San Francisco
7.	Johnson, Arwen R.	Pasadena
8.	Kristovich, Bethany W.	Los Angeles
9.	Matthews, Alana	Sacramento
10.	Sapozniklow, Michael	Sacramento
11.	Seastrom, Brian	Newport Beach
12.	Sheik, Martin	San Francisco
13	Yuen, Tammy M.	Oakland
NEW ALTERNATES		CITY
1.	Yoo, Donald W.	Los Angeles
2.	Fleming, Michael J.	Vista
3.	Wolf, Marc Price	San Francisco
4.	Schulte, Mary Fingal [former judicial officer]	Irvine
5.	Hirsch, David H.	San Luis Obispo
6.	Goldman, James L.	Los Angeles
7.	McCall, Christina M.	Oakland
8.	Beals, Bruce M.	San Diego

ATTACHMENT(S) LIST

- A. Government Code section 12011.5
- B. Excerpts of State Bar Rules Governing JNE Commission Membership and Commissioner Duties
- C. Procedures for Appointment to the JNE Commission
- D. 2018 JNE Commission
- E. JNE Officer Duties – Chair
- F. JNE Officer Duties – Vice Chair

Statutory Provisions

Government Code Sections

12011.5 (b) The membership of the designated agency of the State Bar responsible for evaluation of judicial candidates shall consist of attorney members and public members with the ratio of public members to attorney members determined, to the extent practical, by the ratio established in Section 6013.5 of the Business and Professions Code. It is the intent of this subdivision that the designated agency of the State Bar responsible for evaluation of judicial candidates shall be broadly representative of the ethnic, gender, and racial diversity of the population of California and composed in accordance with Sections 11140 and 11141. The further intent of this subdivision is to establish a selection process for membership on the designated agency of the State Bar responsible for evaluation of judicial candidates under which no member of that agency shall provide inappropriate, multiple representation for purposes of this subdivision. Each member of the designated agency of the State Bar responsible for evaluation of judicial candidates shall complete a minimum of 60 minutes of training in the areas of fairness and bias in the judicial appointments process at an orientation for new members. If the member serves more than one term, the member shall complete an additional 60 minutes of that training during the member's service on the designated agency of the State Bar responsible for evaluation of judicial candidates.

11140. It is the policy of the State of California that the composition of state boards and commissions shall be broadly reflective of the general public including ethnic minorities and women.

11141. In making appointments to state boards and commissions, the Governor and every other appointing authority shall be responsible for nominating a variety of persons of different backgrounds, abilities, interests, and opinions in compliance with the policy expressed in this article. It is not the intent of the Legislature that formulas or specific ratios be utilized in complying with this article.

Business & Professions Code Section

6013.5. Notwithstanding any other provision of law, six members of the board shall be members of the public who have never been members of the State Bar or admitted to practice before any court in the United States...

TITLE 7. MISCELLANEOUS PROVISIONS

Adopted July 2007

DIVISION 1. COMMISSION ON JUDICIAL NOMINEES EVALUATION

Chapter 1. General provisions

Rule 7.1 Commission on Judicial Nominees Evaluation

The Board of Trustees of the State Bar of California has established a Commission on Judicial Nominees Evaluation (“commission”) pursuant to statute¹ to confidentially investigate and evaluate the judicial qualifications of those identified by the Governor for appointment or nomination to a judicial office.

Rule 7.1 adopted effective July 17, 2009; amended effective January 1, 2012.

Rule 7.2 Membership and terms

The commission, its chair, and its vice-chair are appointed by the Board of Trustees and serve at the pleasure of the Board. To the extent feasible,

- (A) the commission is to consist of at least twenty-seven and no more than thirty-eight members, at least eighty percent of whom must be active members in good standing of the State Bar and the balance public members;
- (B) one of the State Bar members is to be a former judge, preferably of an appellate court; and
- (C) the membership is to consist of a variety of persons of different backgrounds, abilities, interests, and opinions who are broadly representative of the ethnic, sexual, and racial diversity of the population of California.²

Rule 7.2 adopted effective July 17, 2009; amended effective January 1, 2012.

Rule 7.3 Temporary commissioners

- (A) The chair may appoint a former member of the commission as a temporary commissioner to assist the commission with its workload. An appointee must recently have been commission chair or served three full terms on the commission or its review committee. A temporary commissioner may lead an investigation.

¹ Government Code § 12011.5.

² See Government Code §§ 11140, 11141, and 12011.5.

- (B) A temporary commissioner may participate only in the consideration of and vote on the candidate the chair has assigned the commissioner to investigate.

Rule 7.3 adopted effective July 17, 2009.

Rule 7.4 Removal of commissioners

The Board may remove from office any commissioner whom the commission chair has identified in a report to the President of the Board as failing to perform assigned duties or regularly attend scheduled meetings.

Rule 7.4 adopted effective July 17, 2009.

Rule 7.5 Duties of commissioners

Each commissioner must

- (A) not endorse or participate in a judicial candidate's campaign for office;
- (B) not vote on a candidate if absent for any time from the meeting at which the commission votes on the candidate;
- (C) not participate in any other judicial evaluation process;
- (D) not apply for or accept a State of California judicial appointment or permit his or her name to be submitted for evaluation as a candidate for such an appointment while a majority of the commission consists of members with whom he or she has served;
- (E) report to the chair or vice-chair of the commission for appropriate action any concern that a fellow commissioner has breached these rules or law applicable to the commission; and
- (F) comply with these rules after signing a declaration that he or she has read, understood, and agrees to comply with the rules, the declaration being made under oath upon taking office and then annually.

Rule 7.5 adopted effective July 17, 2009.

Rule 7.6 Time limit changes

For good cause and with the consent of a candidate for judicial office, unless otherwise provided by law, a time limit prescribed by these rules may be changed.

Rule 7.6 adopted effective July 17, 2009.

Rule 7.7 Information on candidates

***Commission on Judicial Nominees Evaluation
Procedures for Appointment***

*(Adopted by the Board of Governors October 1979; amended October 1985, June 1990,
January 1993, July 1997, September 1997, December 2004)*

The mission of the Commission on Judicial Nominees Evaluation is to assist the Governor in the judicial selection process and thereby to promote a California judiciary of quality and integrity by providing independent, comprehensive, accurate, and fair evaluations of candidates for judicial appointment and nomination.

In order to assure that the Commission on Judicial Nominees Evaluation is "broadly representative of the ethnic, sexual and racial diversity of the population of California" as required by section 12011.5 of the Government Code and fulfills board policies on diversity and tenure, the board hereby establishes the following procedures to govern appointment of commissioners:

- a. Commissioners shall be appointed by the board upon recommendation of the board committee designated to review appointments to State Bar committees.
- b. All appropriate diversity considerations shall be taken into account in making recommendations and appointments, including, but not limited to, legally mandated criteria and board policies on diversity and criteria for membership on State Bar appointed entities from time to time in effect. Without limiting the generality of the foregoing, recommendations and appointments shall be made having in mind the desirability of appropriate geographical diversity of membership on the commission.
- c. Subject to the other provisions of this procedure statement, the pool of nominees to be considered by the board committee shall consist of all persons who have filed a written application form and requisite documents for appointment or reappointment by the predetermined deadline.

The designated board appointments committee, or its designee, shall interview selected applicants for appointment and shall interview persons wishing to serve as chair or vice chair. [In September 1997, due to cost controls in effect, the Board waived this provision for interviewing selected applicants and officer candidates.]

The board committee handling appointments, or its designee, shall solicit written feedback on the performance of commissioners seeking reappointment from the current chair, the commission staff, the JNE Review Committee, the members of the Board of Trustees, the Governor's Office, and the Board may deem other sources as appropriate. Commissioners seeking reappointment shall complete an application designated for that purpose.

d. The terms of office shall be determined by the Board of Trustees, upon consideration of appropriate deadlines and procedures affecting the commission's operation. Commissioners shall not serve for more than three consecutive one-year terms except they may serve a fourth year as chair. It shall not be assumed that a vice-chair will necessarily be appointed chair.

e. The application shall solicit information regarding the applicant, including but not limited to, his or her background, relevant qualifications to serve on the commission, legal, professional and/or volunteer experience, reasons for wishing to serve on the commission, ability to make the substantial time commitment required of commissioners, and availability and willingness to attend any scheduled interview and the Orientation-Training session.

At a time calculated to give reasonable notice to applicants that the board will make appointments and to give applicants the opportunity to apply for such appointments, the designated staff of the State Bar shall publish application information in State Bar publications and circulate notice to legal or other newspapers in California, to the Board of Trustees, to local, specialty and minority bars, and to law-related and other organizations. The board committee, or its designee, may solicit further applications from board members or other sources in order to attain the required diversity and/or quality in the pool of applicants.

f. Membership on the commission shall include the ratio of attorney members and public members, as required by section 12011.5(b) of the Government Code. The attorney members serving on the commission shall be active members in good standing. Particular consideration will be given to attorney applicants who have substantial litigation, trial and/or appellate experience. To the extent practical, it is preferred that the public members shall be persons who have never been members of the State Bar or admitted to practice before any court in the United States.

g. The commission membership may include one or more former members of the judiciary, with a preference for those with appellate backgrounds.

h. The commission shall consist of no more than 38 members. The exact number of commissioners shall be left to the discretion of the Board of Trustees.

2018 JNE COMMISSIONERS
(January 26, 2018 – April 2019)

<i>Commissioners (Officers)</i>	<i>City / Public Member/ Retired Judicial Officer</i>
<i>First Year</i>	
1. Alexander, Daniel	Los Angeles
2. Carrillo, Sarah J.	Sonora
3. Cody, Lisa	Claremont / Public Member
4. Conn, Carole	San Francisco / Public Member
5. El-Amany, Reema M.	Los Angeles
6. Hammon, Patrick M.	Palo Alto
7. Michalski, James W.	La Mirada
8. Ngai, Stella J.	Oakland
9. Rothschild-Boros, Monica	Irvine / Public Member / no re-ap for 2019
10. Traicoff, Kristin	Sacramento
11. Triano, Martin F.	Berkeley
12. Tsai, Jeffrey E.	San Francisco
<i>Second Year</i>	
13. Albracht, Kathryn	Pasadena
14. Anderson, Sotera L.	San Diego / no re-ap for 2019
15. Block, Randall G.	San Francisco / <i>Vice Chair candidate</i>
16. Crosby, James D.	San Diego
17. D'Orazio, Elizabeth	San Francisco / <i>Vice Chair candidate</i>
18. Hastings, James G.	Redondo Beach / Retired Justice
19. Ibarra, Crisostomo G.	San Francisco
20. Lempel, Barbara M.	Los Angeles / Public Member
21. Okcu, Niki B.	San Francisco
22. Onyeagbako, Maureen C.	Sacramento / <i>Vice Chair candidate</i>
23. Pritt, Maxwell V.	Oakland / <i>Vice Chair candidate</i>
24. Quinn, Linda B.	San Diego / Retired Judge
25. Singh, Aminder	Oakland / <i>Vice Chair candidate</i>
26. Stewart, Virginia E.	Bonita
<i>Third-Year</i>	
27. Fullerton, Ahtossa P.	San Francisco
28. Jenkins, Mack E.	Los Angeles
29. Kim, Eugene	Riverside
30. Salvas, Adam R.	San Francisco
31. Simpson, Thomas L.	Glendale
32. Yeh (Hong), Ann L.	Monterey Park
<i>Third-Year</i>	
33. Bellas, Diane A. (Vice Chair)	San Rafael / <i>Chair candidate</i>
<i>Fourth Year</i>	
34. Fermino, David W. (Chair)	San Francisco

JNE Officer Duties – Chair

Time Commitment and Responsibilities:

The time commitment for the chair is, at a minimum, double that of the commissioners. The chair spends a significant amount of time in telephonic conferences with JNE staff, commissioners and candidates. These conferences can occur on a daily basis, and are most frequent at the times assignments are made and prior to the interview of candidates. Additionally, the chair may be called upon to respond to proposed rule changes and legislation regarding JNE. The JNE Chair is responsible for alerting JNE staff of any press inquiries.

Assignments

1. Match candidates to commissioners, considering factors of geographical location, experience of commissioners, background and expense.
2. Attempt to vary assignments of commissioners as to lead vs. assisting commissioner and to vary pairings of commissioners.
3. Respond to all issues involving potential conflicts and recusal of commissioners from specific assignments. This may require telephone conferences with candidates, commissioners and State Bar staff.
4. Respond to commissioner and candidate questions regarding the rules and procedures of the commission
5. Periodically prepare written communications to the commission regarding changes in procedure and events which may have an impact on commission work.
6. Communicate with the Governor's Judicial Appointments Secretary regarding matters related to JNE.

Meetings

1. Conduct all JNE meetings, review draft reports during and at conclusion of meetings.
2. Plan orientation meeting for the new commissioners and help recruit speakers to address the full commission.
3. Periodically confer with JNE staff, the Executive Director, President of the State Bar, and members of the Board of Trustees on issues pertaining to JNE procedures, press releases and other matters related to the JNE process and governance.
4. Attend local bar association meetings throughout the state to describe the JNE process.
5. Attend State Bar appointments workshops aimed at recruiting candidates for the JNE Commission.

Attend Hearings of the Commission on Judicial Appointments

1. Assist in drafting reports to the Commission on Judicial Appointments.
2. Prepare presentation to the Commission.
3. Appear in person or assign appropriate commissioner to represent JNE at the Commission on Judicial Appointments hearing.

Appointments

1. Prepare performance evaluations of commissioners for use in the reappointment process.
2. When required, provide input on appointment process and assist JNE staff in reviewing the applicant pool.

JNE Officer Duties – Vice Chair

Time Commitment and Responsibilities:

Meetings

1. Prior to the JNE meeting, the Vice Chair assists the Chair in the review and edit of blurbs that are electronically received.
2. At the JNE meetings, the vice chair's main responsibility is to edit the language of the final evaluation reports (blurbs) which are sent to the Governor's office.
3. Preside at the JNE meetings in the absence of the chair.
4. Assist the chair at the orientation meeting for new commissioners.
5. Assist the chair with any in-house training pertaining to the entire commission.
6. Attend bar association events describing the JNE process.
7. Attend State Bar appointments workshops aimed at recruiting candidates for the JNE Commission
8. Appear before the Commission on Judicial Appointments if Chair is unavailable.

Appointments

When required, provide input on appointment process and assist JNE staff in reviewing the applicant pool.