

NAVIGATING JUDICIAL APPOINTMENTS UNDER THE BROWN ADMINISTRATION

Yolanda Jackson

Josh Groban, senior advisor to the governor in the Judicial Appointments Unit, traveled to The Bar Association of San Francisco (BASF) from Sacramento on a Thursday evening in January to speak to a crowded room of aspiring judges and bar association representatives about how to get a judicial appointment in the Governor Jerry Brown administration. The evening was presented by BASF's Judicial Mentorship Program.

Groban, before joining the governor's office, served as legal counsel for Governor Brown's 2010 campaign and previously practiced law at Munger, Tolles & Olson in Los Angeles. Prior to that, he practiced at Paul, Weiss in New York and also clerked in the Southern District of New York.

Groban was extremely candid, factual, and well received. Here are the nuggets of information he had to share.

THE APPLICATION

The California Judicial Application can be found online at http://gov.ca.gov/s_judicialappointments.php.

Spend the necessary amount of time carefully completing your judicial application. This is an online process and the application is lengthy. Be sure to carefully catalog the major cases that you have worked on. It is recommended that you notify, in advance, those people that you have listed as references. Make sure there are no typos or grammatical errors in your application and be sure to read the instructions thoroughly and follow them closely.

Proofread and then proofread again and then let a trusted friend or colleague proofread your final application.

Letters of Recommendation: Be sure to include "thoughtful" letters of recommendation. The ideal number is two to six letters, definitely not thirty or forty letters. They should be from people who really know you, your work ethic, your skills, and your attributes. The reviewers are not impressed by politician or celebrity names if the letters from them don't convey that they "know" you and your professional values. Supplemental materials, such as letters of recommendation, can come in after you submit your packet and will be attached to your application. However, it is best if your letters are submitted early because this administration does its review and thorough vetting of applications *before* they go to the Commission on Judicial Nominees Evaluation (JNE).

Endorsements: Endorsements from bar associations are very helpful; however, the bar associations should clearly explain the vetting process they went through in recommending you. If the vetting process does not appear to be thorough, then the endorsement is not given much weight.

GOVERNOR BROWN'S PROCESS

Governor Brown appointed a Judicial Appointments Unit instead of a Judicial Appointments Secretary like past governors have done. One unique feature of the unit is that it heavily vets applicants before they go to the JNE Commission, not after, like the prior administration.

The governor's Judicial Appointments Unit pores through every application that it receives. The unit will make phone calls to the references listed by the applicant and others, and the governor himself will sometimes make phone calls on an applicant. But frankly, not much weight is put on the feedback from these references.

Regarding the infamous Judicial Selection Advisory Committees (JSAC), often referred to as the "secret committees," Groban emphasized that "yes" they are consulted, but that they are not kingmakers, and that under the Brown administration these committees do *not* keep applicants from getting through the process. The main role of these committees is to assist with vetting and reference phone calls.

The governor's office sends a batch of applicants' names to the JNE Commission every three to four months. It also sends names to various county bars for them to vet. Groban stated that the value of the JNE Commission in the process is that it is very thorough, its questionnaire is very helpful, it often has in-person interviews with applicants before the governor's office ever meets the candidates in person, and its feedback from these interviews is instructive and useful. However, Groban emphasized that the governor has the power to appoint judges, not the JNE Commission.

Once the JNE Commission, the JSAC, and county bar associations have vetted the applicants that were originally sent through the process by the governor's office, the governor's office then decides who it will interview.

{ GOVERNOR BROWN'S APPROACH }

Casting aside typical gatekeeper rules, this governor will appoint candidates who belong to other political parties. There is no candidate that is too young or too old. These criteria are no longer barriers to being appointed. There are certain types of past experience that are not barriers to appointment by this administration. An applicant's past experience can include in-house counsel, transactional work, public defender, or academia. The number of cases

an applicant has tried is not an issue with this governor. He will also consider candidates who were previously sent to the JNE Commission under a prior administration, but who were never appointed.

An applicant's ties to more than one county can be a plus, as that candidate will be considered for appointment to the bench in more than one county.

Governor Brown may appoint an applicant to the appellate court without that applicant having first served on the superior court.

{ WHAT THIS GOVERNOR IS LOOKING FOR IN TRAITS AND ATTRIBUTES }

Josh Groban was clear in stating that Governor Brown is looking for judicial candidates who have intellectual curiosity. Governor Brown is known to participate in some of the interviews of candidates so that he can personally explore the candidates' undergraduate studies, what the topic of their thesis was, who their favorite authors are, the subjects of scholarly articles they may have written, and what their personal focus was on law review in law school, for example.

He is interested in individuals who are well rounded, interesting, and who have rich life experiences. He learns this by asking questions such as how the candidate is engaged in his or her community and what books the candidate has read lately.

The governor has a "no jerks policy" in that he wants candidates who are known for having a good and judicial temperament. He wants judges who have good values and who are fair. He often views this through the lens of "whether their minds can be changed" on any given topic. On March 1, 2012, the Administrative Office of the Courts (AOC) released demographic data on the ethnicity, race, gender, gender identity, and sexual orientation of California state judges and justices.

The data show an increase in the percentage of female appellate court justices and trial court judges in 2011.

Women now represent 31.1 percent of the judiciary, compared to 27.1 percent in 2006, continuing a steady upward trend over the past six years.

Changes over the past six years in the percentage of justices and judges in race and ethnicity categories included Asian up 1.2 percent; Black up 1.3 percent; Hispanic up 1.9 percent; and White down 2.2 percent. These changes reflect judicial retirements and other departures from the bench, new judicial appointments, and an increase in the number of trial court judges who have provided race/ethnicity information.

Since the beginning of his term, Governor Brown has been very clear that he is interested in appointing a diverse group of judges. He is accomplishing this by casting aside the gatekeeper rules that have traditionally existed, in part by changing the ways the JNE Commission and JSAC are utilized in the vetting process. Look for future AOC demographic data to reflect the efforts of the Brown administration's work to diversify the California bench.

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