

Changes in Application Reflect Worries About Judicial Diversity

By Amy Yarbrough

Daily Journal Staff Writer

SAN FRANCISCO - Roughly a decade ago, McGeorge School of Law professor J. Clark Kelso heard stories of attorneys with judicial aspirations doing pro bono work or volunteering with district attorney's offices just so they could say they had been in front of a jury.

"People were told, 'We'd love to appoint you, but you don't have any trial experience,'" Kelso recalled.

But that may no longer be a problem, depending on Gov. Arnold Schwarzenegger's actions in the coming weeks.

After a political dustup last summer over a lack of diversity in his judicial picks that nearly cost funding for 25 new judgeships, Schwarzenegger is considering whether to change the application form for Superior Court appointments to put less emphasis on trial experience.

Just how that might affect appointments is a matter of debate.

Some court watchers believe that putting more weight on other types of experience would encourage more ethnic minorities to apply. Others disagree on that point, but say the change would benefit the judiciary simply by creating a bigger pool of experience among candidates.

According to Kelso, changing the form "would have to help" in encouraging more minority candidates to apply.

"I think it's a good thing," he said, adding that there are a number of other ways for attorneys who aren't prosecutors or public defenders to gain the type of experience they would need on the bench. "There is so much judicial education."

A large volume of work that lawyers do doesn't involve getting in front of a jury, Kelso said.

"You can teach someone how to handle a courtroom," he said. "What is important is that you have the right temperament, and the ability to control proceedings, that you be bright and quick."

With the approval of SB 56 - legislation signed last year that granted California 50 new judges - Schwarzenegger must now disclose the voluntary ethnicity and gender information that prospective judges put on their applications. The Commission on Judicial Nominees Evaluation, which vets candidates for the governor's office, would also have to make available demographic data provided by applicants and a summary of its recommendations to the governor by ethnicity and gender.

The information - from the governor and the evaluation commission - would have to be made available by March 1, and annually thereafter.

The concessions were in response to Assembly Speaker Fabian Núñez slashing - in an

attempt to force the governor to open up the appointments process - funding for 25 of the judge slots. Nuñez restored that money days later, because Schwarzenegger agreed to consider changes to the application form, which many believe favors lawyers with trial experience.

Mike Belote, a lobbyist for the California Judges Association, said he considered the maneuver a "reasonably thoughtful way for the Legislature to express its views."

"There was fear that the Legislature would really start impinging on the governor's ability to make appointments," Belote said. "On the other hand, responsible efforts to increase diversity are important. I thought they reached a good compromise."

Among the changes to the application form that Nuñez has recommended to the governor's office is that candidates be given the option of including more information about their race and ethnicity and be able to list their years of experience in juvenile delinquency in addition to what it currently asks for: criminal practice.

The recommendations would move another question, which asks applicants to list the number of cases they have tried to verdict or judgment, the types of cases and what role the applicant played, down the questionnaire after new questions about administrative or legislative work and experience in alternative dispute resolution.

Applicants would be asked early in the questionnaire to "describe the experiences or special skills you possess which you believe qualify you for a judicial position."

While trial experience is an important consideration, there are other key factors that should be looked at, according to Judy Johnson, the State Bar's executive director.

"There are people who turn out to be fine jurists that didn't have the breadth of experience a district attorney or public defender would have," said Johnson, who served on the evaluation commission in the 1980s. "We don't have (just) one body of law, and there are different skill sets that may be involved depending on the matter before them."

According to Sabrina Lockhart, a spokeswoman for Schwarzenegger's office, the governor is still considering the recommendations and the form has not been changed.

On Jan. 10, the governor unveiled a proposal to fund 100 more judges, 50 in each of the next two years. He can begin to appoint the 50 judges approved last year as early as April, but the funding for them won't be made available until June.

Efrain Aceves, president of the Mexican American Bar Association of Los Angeles County, said he is pleased with some of Schwarzenegger's recent appointments, such as Michael Villalobos. A longtime deputy district attorney and Latino, Villalobos was appointed in December to Los Angeles Superior Court.

But Aceves said he wonders what affect changing the form will have on creating more diversity, pointing out that there are plenty of Latino judges who have a lot of trial experience who still don't get appointed.

"I'm not sure, really, trial experience has been a determining factor in the past, Aceves said.

"The bottom line is we haven't been a group that's received a lot of appointments. At the end of the day, regardless of what people say, it's a political process. It often relates back to who you know, rather than what you've done."

Gary A. Farwell, president of the California Association of Black Lawyers, said he supports changing the application form, but not because he thinks it will make the state's judiciary any more ethnically diverse.

What it would do, Farwell said, is bring in people with different legal backgrounds.

"Obviously, their learning curve is high but they would be, you'd hope, very intelligent and hard working," he said.

Farwell said if the governor were to establish a pattern of appointing lawyers of color, that would be more effective and get more minorities interested in applying for judgeships.

"I think the situation is that some people who (would) apply don't feel they would be appointed," he said.

Since taking office in November 2003, Schwarzenegger has made 209 judicial appointments, 7.2 percent of which identified as Latino, 4.3 percent as black and 7.2 percent as Asian, Lockhart said.

Lockhart points out that the ethnic data is provided voluntarily and that the appointments are more diverse than the makeup of the State Bar, whose membership is 3.8 percent Latino, 1.7 percent black and 5.3 Asian.

Christopher Arriola, chairman of the judicial committee of La Raza Lawyers of California, said he considers putting more weight on other experience a more "holistic approach," one that might encourage more people who are on the fence - including minorities - to apply.

Ultimately, though, it's all about recruitment, and minority applicants need to feel like they stand a chance of being selected, Arriola said.

"They don't want to be the one to stick their neck out and apply to a governor who doesn't appear friendly to their appointment," he said. "It's all about perception."

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