

Critic of Governor's Judicial Picks Pushes for Changes to Ensure More Diversity

WEB EXCLUSIVE

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SACRAMENTO - A leading critic of Gov. Arnold Schwarzenegger's judicial appointments acknowledged Wednesday that new data shows improvements in diversity but said there were still barriers that haven't been addressed.

Fredericka McGee, general counsel to Assembly Speaker Fabian Núñez D-Los Angeles, urged the governor to identify members of local committees who screen judicial applicants, saying they are an impediment to diversifying the bench.

"There has been some progress since the speaker highlighted this issue," McGee said. "However, the process still is not transparent. We encourage a more-transparent process that will allow us to move beyond these first steps to ensure that the California bench will look more like California."

Dave Jones, D-Sacramento, chairman of the Assembly Judiciary Committee, said the governor could do a better job.

"I continue to be very disappointed about the lack of progress on judicial diversity," Jones said. "The governor's report indicates that about 70 percent of his appointments are Anglo, and that is the same percentage that we have in the courts currently. So at best, all the governor is doing is treading water on diversity."

Data released by the State Bar on Wednesday compared with data provided by the governor late Tuesday sheds some light on where minorities are being screened out of the process.

Although 46 percent of the applications the governor received in 2007 were Caucasian, 51 percent of the applicants he sent to the Judicial Nominees Evaluation Committee, were Caucasian, indicating 5 percent more got past the screening process.

On the other hand, 13 percent of the applications his judicial appointments secretary reviewed came from Hispanics, and of those, 12 percent passed initial screening, a 1 percent decrease compared with the 5 percent increase in Caucasians. Similarly, the screeners blocked 1 percent of black applicants from the committee but let in less than 1 percent more Asians.

The committee gave qualified or well-qualified ratings to 53 percent of male applicants compared with 25 percent of female applicants, increasing the chances of a male being appointed over a female.

Data provided by the governor late Tuesday focused on the diversity of those applying for judgeships. It did not compare the diversity of the governor's appointments in 2006 with those in 2007.

However, Christopher Arriola, chairman of the judicial committee of La Raza Lawyers of California, who used State Bar data to make those comparisons, said it reflects a tremendous improvement in the governor's appointments in the past year.

The governor's first judicial appointments secretary, John Davies, resigned in 2006, and Schwarzenegger replaced him last February with Sharon Majors-Lewis.

Of the 95 lawyers whom the governor has appointed with the aid of Majors-Lewis, 12.5 percent were Latino compared with 6.2 percent of all of the appointments since 2004, according to Arriola's figures.

"La Raza lawyers are very impressed with efforts of Majors-Lewis to recruit and appoint a diverse bench," Arriola said. "We're pleased with the trend, and we're going to continue to do what we can to support her to increase the applicant pool to reflect the diversity of California."

State Bar figures provided by Arriola show that, of last year's judicial appointments, 11.36 percent were black compared with 4.3 percent under Davies, 6.82 percent were Asian compared with 5.4 percent under Davies and 37.5 percent were women compared with 31.6 percent under Davies.

The data released by the governor indicate that significantly more women began applying for judgeships last year. The data indicated that 37.5 percent of his judicial applicants in 2007

were women, an increase of 4.5 percent from the previous year.

The same data showed 11.4 percent of applicants were black compared with 10.5 percent the previous year, 12.5 percent were Latino compared with 13.5 percent in 2006 and 6.9 percent were Asian compared with 4.9 percent in 2006. Nearly 65 percent of all judicial applicants were white.

"To me, that is very, very encouraging," Majors-Lewis said. "I'm happy about that, and it encourages me to do more outreach, not less. As time goes on and we have bigger and bigger pools, we will see more diverse people being appointed to bench."

The governor was required to keep track of the figures and report the data by March 1, in response to a bill, SB56, by former Sen. Joe Dunn, that was signed into law in 2006 and created 50 new vacancies on the bench.

The data was based on voluntary disclosures by the applicants because employers are prohibited by law from demanding to know the racial or ethnic background of prospective employees, Majors-Lewis said.

McGee and Jones said the governor could speed diversity by identifying the members of local committees that screen judges. Jones carried a bill last year that would have required the governor to disclose those members' identities, but the provision was dropped.

"We were advised the governor would be releasing these names, and it's my hope he will do so," Jones said.

A representative of the governor's office said last year Schwarzenegger was expected to make a decision on the issue by January. Majors-Lewis said the governor is weighing the factors.

She said she personally opposes it for a number of reasons, only some of which she was willing to discuss. Disclosing the identities of local screeners would subject them to lobbying by applicants and their friends and would alert them to be careful what they say. With their identities veiled, applicants sometimes are heard making remarks that indicate bias, she said.

Besides, Majors-Lewis said, the committees are merely advisory, and she and the governor are the ones who decide which names to submit to the committee that rates the judges on their quality before a final decision is made.

Jones disagreed, noting the federal process is much more transparent.

"There is widespread agreement among those familiar with the process that insiders know who is on these committees, leaving outsiders at a disadvantage when they seek judicial appointments," he said.

McGee said she understands, but has not confirmed, that only one black is on the screening committee in Los Angeles, and he is an investigator, not a judge, who may not be taken as seriously as the white judges on the panel.

Edwin Prather, of Clarence & Dyer of San Francisco, and president of the Asian American Bar Association of the Greater Bay Area, said Majors-Lewis is in a tough position, especially with budget cuts that delayed the appointment of another 50 judges.

"I, more than anyone else, think she's going to be hamstrung," Prather said. "The only way to add diversity is to add more judgeships or wait until some people retire. Incremental change is better than no change."
