

Governor urged to diversify judiciary

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As early as this week, Gov. Arnold Schwarzenegger will appoint a new judge to one of the state's 58 trial courts – and begin seizing an unprecedented opportunity to leave a lasting mark on the state judiciary.

Legislation passed last year empowers Schwarzenegger to appoint 50 new judges beginning this month and 100 more in the coming years. These are positions the judiciary says are needed to meet growing demands on trial and appellate courts.

The seats are newly created, not replacements for retired or departed judges. Never before has a California governor been given such a chance to affect the composition of the state's bench.

The specter of all these appointments has provoked close scrutiny of the state judiciary, and increased pressure on the governor for his appointments to reflect more closely the population's racial and gender makeup.

“This is an opportunity for him to leave a legacy of diversity,” said Lilia Garcia, a lawyer who tracks judicial appointments for the San Diego La Raza Lawyers Association. “We would hope he won't miss that opportunity.”

California has the nation's largest court system and one of its most diverse populations.

But a recent report – one of three demographic surveys required as part of the legislation that authorized the additional judges – shows the judiciary is overwhelmingly white and male.

Of 1,598 judges on trial courts, appellate courts and the state Supreme Court who responded to a survey, 73 percent are men, according to the state Administrative Office of the Courts.

Seventy percent are white. Latinos make up 6 percent of the bench; Asians and African-Americans account for 4 percent.

By comparison, 43 percent of California residents are white, 35 percent Hispanic, 12 percent Asian and 6 percent African-American.

Data for San Diego County, which has the state's second-largest Superior Court after Los Angeles, with 128 judges, parallel state totals. However, those figures could be skewed by the 20.5 percent of judges who did not to respond to the survey.

The available data showed that 66 percent of local Superior Court judges are white, 5 percent Latino, 3.9 percent Asian and 3 percent African-American.

The county's population is 52 percent white, 30 percent Latino, 10 percent Asian and 5 percent African-American.

Selection debate

The need for new judges was pushed by state Supreme Court Chief Justice Ronald George, especially for the fast-growing areas of Riverside and San Bernardino counties. Democrats in the Legislature, led by Assembly Speaker Fabian Núñez, initially balked at funding the new slots because Schwarzenegger has appointed too few minorities to the bench. The agreement to collect demographic data on the courts in return for funding 50 slots was a first. The Legislature will have to approve funding for the 100 additional positions annually.

The agreement also required reports from the governor on the number of minority candidates who apply for judgeships. And the State Bar of California's Judicial Nominees Evaluation commission, which rates candidates' qualifications, was required to break down those ratings by gender and ethnicity.

A Schwarzenegger spokeswoman said that of the 213 appointments he has made since 2003, 41, or 19 percent, are minorities. Critics, such as the La Raza Lawyers, said that is not enough.

Schwarzenegger argues that his appointments are more diverse than the membership of the state bar, the pool from which judges are chosen. The bar's data show it is about 4 percent Latino, 5.4 percent Asian and 1.7 percent African-American.

The debate over the numbers is forcing a look at how judges are selected.

While some judges are initially elected, most are appointed by the governor in a lengthy process that is largely secret. (All state judges must stand for election after they are appointed.)

Playing a key role is the governor's judicial appointments secretary, former San Diego prosecutor Sharon Majors-Lewis, an African-American woman, whom Schwarzenegger appointed earlier this year in the wake of the controversy.

To be considered for the bench, candidates must fill out a detailed application. Then they are vetted by groups of local lawyers and judges, known as Judicial Selection Advisory Committees.

The committee membership is confidential, Majors-Lewis said, to shield members from attempts to influence their recommendations. They do not contact the candidate, but instead speak to people in the legal community about the candidate.

"The theory is the local committees know people who know people, and by talking to all those people, they can gain information on whether the candidate will be a good jurist," Majors-Lewis said.

But Fredericka McGee, legal counsel to Núñez, contends the secrecy is not needed. McGee was integral in crafting the compromise legislation that secured funding for the 50 new judges in exchange for the mandatory demographic reports on the judiciary.

The secret committees, she said, cater to insiders.

"These committees are people who have a lot of power to vet candidates. At some point they should be publicly accountable, and then the whole process would be more accountable," she said.

Value of diversity

If the local committee approves, the candidate is formally screened by the Judicial Nominees Evaluation Commission. That commission, which includes members from San Diego, forwards recommendations to the governor.

One judicial candidate, who declined to be named because of the political nature of the application process, complained that the local committees function as a kind of Star Chamber. Applicants know they are being researched and have no way to rebut what is being said about them, the lawyer said.

Garcia said the La Raza lawyers have pushed for more transparency. While many people who spend lots of time in the courthouses know who the power brokers are, equally qualified lawyers whose work does not take them to court as often are out of the loop and put at a disadvantage, she said.

Other critics complain that the selection process favors prosecutors. Applications for judicial appointments emphasize trial experience, Garcia said. The local review committees are also staffed with prosecutors and law enforcement officials, though defense lawyers are part of the process.

In San Diego, the trial bench is heavily salted with former prosecutors. An analysis of judicial biographies showed half of the 128 judges now serving are former prosecutors either in the state or federal system.

Robert Fellmeth, a law professor at the University of San Diego School of Law, said diversity for judges should include diversity of experience. "There are public defenders, civil lawyers, public interest lawyers who get overlooked," he said.

In an effort to address that, the application that candidates fill out is being revised, Majors-Lewis said. The new form, which has not been completed, is expected to include nontrial experience, such as mediation or arbitration, as well as other disciplines such as administrative law or family law.

Majors-Lewis said those changes could draw a broader array of applicants, which could mean a more diverse bench.

George, who as chief justice is also the chief executive of the court system, said diversity on the bench is important because it helps "reinforce the important message that ours is a system open to all, and that individuals drawn from any segment of society can preside fairly and objectively" in civil and criminal cases.

Lei-Chala Wilson, president of the Earl B. Gilliam Bar Association for African-American lawyers in San Diego, echoed that sentiment.

"It's not just justice, it's the appearance of justice," she said. "When people see people who look like them on the bench, it helps give them confidence in the civil justice system and criminal justice system."

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