

Judicial evaluation process assailed over rating of Brown

Critics, led by Gov. Wilson, cry foul on secrecy issue;
Towery sets review of process and probe of leaks

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The Commission on Judicial Nominees Evaluation (JNE), facing stinging criticism, will undergo a review of its rules and regulations, State Bar President Jim Towery announced.

A three-member panel also was appointed to investigate the possible leak about JNE's confidential evaluation of Supreme Court Justice Janice Rogers Brown.

Following the controversy surrounding Brown's nomination to the high court despite a "not qualified" rating by JNE, there were these other developments:

- Gov. Pete Wilson filed a complaint with the bar accusing the JNE chair of disclosing confidential information about Brown.
- Members of the commission voted unanimously to seek an investigation of the leak.
- The commission disclosed that it rated Brown not qualified by a margin of 20-3.
- Towery sent a letter to Wilson soliciting his suggestions about improving the way JNE operates.
- Retired Supreme Court Justice Armand Arabian and state Republican Party official Shawn Steel called for the abolition of JNE.

In announcing the bar's actions, Towery defended JNE (pronounced "Jenny") and called the recent criticism "unfortunate and unwarranted:."

"For 16 years, JNE has served the public well in evaluating judicial nominees," he said. "This is not a group with any political agenda. They are simply trying to make the best call as to whether a person is qualified to be a judge."

Towery acknowledged, however, that improvements always can be made. He said he will solicit suggestions on how to improve the commission from the Supreme Court, the California Judges Association and former commission members, as well as Gov. Wilson.

The three-member investigative panel includes retired Appellate Justice Harry Low of San Francisco, now a mediator for JAMS, as chairman, San Mateo County District Attorney Jim Fox, and Fresno County Municipal Court Judge Robert Oliver, a former member of both the bar board and JNE.

The uproar over JNE actually began when Wilson revealed Brown's "not qualified" rating at the same time he announced his nomination of the appellate justice to the Supreme Court. Wilson cited her work as his legal affairs secretary, her lengthy experience in the attorney general's office and her "life experience" as a sharecropper's daughter as proof enough of her qualifications.

Published report

When the Los Angeles Times subsequently published details of JNE's evaluation, the commission came under fire both for the contents of the report and for the purported leak.

JNE's work is done in secret, and its 27 members swear to keep their deliberations confidential. Under its rules, a "not qualified" rating need not be made public. However, if the governor decides to make a nomination to an appellate court despite a negative rating, the commission may make both the rating and its reasons known at the confirmation hearing only.

Created by statute in 1979, the commission's job is to evaluate judicial nominees. Although its members are appointed by the bar Board of Governors, JNE's recommendations go directly to the governor.

In making its recommendations, the commission considers a candidate's personal ability and experience, industry, judicial temperament, honesty, objectivity, community respect, integrity, work-related health and bias.

Limited experience

JNE found Brown "not qualified" because of her limited experience on the bench and her tendency to inject her political views into her appellate court rulings.

When Wilson nominated her to the Supreme Court, it marked the first time a governor ever has named a justice rated "not qualified" by JNE.

During the three-hour confirmation hearing, Attorney General Dan Lungren and Court of Appeal Justice Robert Puglia, two of the three members of the Commission on Judicial Appointments, grilled JNE chair Rita Gunasekaran and blasted the evaluation panel.

Governor complains

During the course of the questioning, Gunasekaran elaborated on the commission's evaluation, which already had been widely written about in the press.

The governor's complaint to the bar, signed by his judicial appointments secretary John Davies, states that in her testimony, Gunasekaran "gratuitously stated that Justice Brown had at a prior time been evaluated by JNE for appointment to the Supreme Court. She also revealed the result of that evaluation. Both of those facts were required to be kept confidential under Section 3 of Rule III of the Rules and Procedures of JNE."

Appalled chair

Gunasekaran said she was "appalled" by the complaint. She said her testimony was not gratuitous but a direct response to a question and suggested the resulting charge against her amounted to entrapment.

She also said the statute governing JNE gives her "absolute protection" against any such claim of breach of confidentiality.

The governor's complaint, Gunasekaran said, "is clearly wrong on the laws, but worse, is very unsavory. I think we can hold our heads up high. If other people play dirty pool, I don't think that should impact on what we do."

The investigation

Towery would not comment on the complaint but said the panel investigating the leak also will investigate Wilson's complaint.

He explained that under JNE rules, a charge of breaching confidentiality requires appointment of the three-member investigative panel.

It can subpoena witnesses and require them to testify under oath. If it can identify the source of the leak, it must report that information to the Board of Governors with a recommendation of whether the person should be removed from JNE.

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