

**Continuing a Legacy of Excellence:
A Summit on Achieving Diversity in the Judiciary**

September 7, 2011

Administrative Office of the Courts
Milton Marks Conference Center

Cosponsored by
The Judicial Council of California and
The State Bar of California

Final Report and Recommendations

Executive Summary

June 1, 2012

The recommendations made in this report are the product of dialogue and collaboration among the attendees at the summit and the members of the Judicial Diversity Summit Planning Committee. These are not the recommendations of the Judicial Council of California. As of the date of distribution of this report, the report and recommendations had been approved by the State Bar of California Board of Trustees. This report and its recommendations will be presented to the Judicial Council of California in October 2012.

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Executive Summary and Final Recommendations

In June 2006, the State Bar of California, in collaboration with the Judicial Council's Access and Fairness Advisory Committee, convened a statewide summit on diversity in the judiciary. Five years later, in September 2011, the State Bar and the Judicial Council held a second summit on judicial diversity, *Continuing a Legacy of Excellence: A Summit on Achieving Diversity in the Judiciary*, to assess progress made toward achieving the goal of having a judiciary that reflects the rich diversity of California's population.

The September 7, 2011 summit was held at the Administrative Office of the Courts (AOC), Milton Marks Conference Center in San Francisco at the invitation of the Chief Justice of California, Tani G. Cantil-Sakauye and State Bar President William Hebert (see invitation letter attached as Appendix 1). The invitation explained:

As California's demographics change, it is important that our judiciary reflect the state's growing diversity and that the bench and bar participate in the dialogue that may contribute to achieving greater judicial diversity and increased public trust and confidence in the judicial system.

Therefore, five years after our first summit, the Judicial Council and the State Bar are convening a follow-up summit to:

- *Evaluate achievements since the 2006 summit;*
- *Focus on the current status of judicial diversity in California;*
- *Identify best practices for increasing diversity on the bench;*
- *Develop additional initiatives for achieving greater judicial diversity; and*
- *Create a five-year action plan for further accomplishments.*

In response to this invitation, more than 75 justices, judges, other judicial branch leaders, bar leaders, and law school deans or their designees gathered at the summit. They received a status report on the current level of diversity in California's trial and appellate courts, reviewed accomplishments since the 2006 summit, examined ongoing challenges to achieving a diverse judiciary, and made recommendations on how to further the goal of a more diverse bench.

The recommendations fall into six categories: the judicial appointments and elections process; the leaky pipeline resulting from low numbers of ethnic minorities in law schools; judicial diversity data collection and accessibility; the level and types of outreach and education needed to encourage more persons to enter the legal field and seek appointment to the bench; issues with the online judicial application; and finally, the perceived glass ceiling for women and ethnic minorities when it comes to judicial assignments.

Some recommendations made by participants are not included in this final report because events following the summit demonstrate that the issues have been adequately addressed and no future action is needed. For example, summit participants recommended that the Governor appoint a Judicial Appointments Secretary. It was not necessary to include such a recommendation in this final report because the Governor has already assigned to one of his senior advisors all of the tasks that past judicial appointments secretaries performed, such as evaluating and recommending candidates for judicial appointment and presenting statewide programs on the Governor's judicial appointments process.

Similarly, summit participants recommended that the AOC, the State Bar, and the Governor compile and report information on applicants, appointees, and sitting judges who choose to self-identify as lesbian, gay, bisexual, or transgender. After the summit, Senate Bill 182 (Corbett) was enacted, amending Government Code section 12011.5(n) to provide that the Governor, the State Bar, and the AOC must collect and release demographic data "relative to ethnicity, race, gender, *gender identity, and sexual orientation.*" (Emphasis added.) The legislation was effective on January 1, 2012.

Finally, summit participants recommended that the Governor's Office reevaluate the online judicial application process to eliminate barriers faced by persons with disabilities. Since the summit, the Governor's Office (1) reduced to one the number of required fields that need to contain exact information on law school graduation and bar admission dates (the month and day now no longer have to be exact; only the exact year is required), (2) lengthened the allowable time to complete the application to three hours per page before the system times out, and (3) implemented a process that permits applicants with disabilities who request an accommodation to submit their applications in hard copy, rather than online. This extraordinary level of responsiveness by the Governor's Office eliminates the need to include recommendations for future action in these areas.

The final recommendations, listed below, are based upon input from judicial branch leaders, the Governor's Office, State Bar leaders, summit participants, and the summit planning committee.

JUDICIAL APPOINTMENTS AND ELECTIONS

1. Judges and lawyers should reach out to law schools to educate students on how to become a judge, so that law students can begin at that early stage of their careers to lay the groundwork for serving as a judge. Where possible, judges should employ law students in the courtroom and should establish or participate in programs designed to bring high school students into the courts.
2. So that applicants can better appreciate the level of commitment involved in the application process, judges should serve as mentors to coach potential applicants through the details of, and emotional barriers to, completing the application process.
3. Mentor judges should encourage potential applicants to work in their communities and to be involved with local bar associations.
4. Judges should be proactive and identify the most viable candidates for appointment. Once these candidates are identified, judges should not only mentor these individuals through the application process, but should also offer practical advice on how to be a good judge, manage a courtroom, and avoid the pitfalls that many new judges encounter.
5. To lend more credibility to their recommendations, minority and specialty bar associations should establish a formal application and evaluation process that is equivalent to the process used by the metropolitan bars.
6. The Governor should continue to provide his Judicial Selection Advisory Committee (JSAC) members with educational materials on the status of ethnic and gender diversity on the bench as compared to the state's population, and on the ways implicit bias may impact evaluations of applicants for judicial appointment. JSAC members should also be educated on how the judicial assignments process works at the superior court level, so they understand that the presiding judge has sole authority to make judicial assignments (see rule 10.603(c)(1), Cal. Rules of Court). To assist the Governor in educating JSAC members, the AOC and the State Bar Council on Access & Fairness should, to the extent funding permits, provide training in the areas of judicial diversity and implicit bias, if such training is requested by the Governor's Office.

THE LEAKY PIPELINE

1. The legal profession must undertake a concerted effort to educate the public about the value and benefits of a legal education, while at the same time acknowledging the reality that such an education is quite expensive. Part of this education process must include outreach to ethnic minorities to communicate the value to the minority community that being a lawyer brings.
2. Law schools and the legal profession should seek funding to implement innovative studies, such as the recommendations contained in Schultz and Zedeck's effective lawyering study, which developed race-neutral tools for identifying 26 factors that are predictors of attorney competence (see <http://www.law.berkeley.edu/files/LSACREPORTfinal-12.pdf>). These tools could be used as a supplement to the LSAT (Law School Admissions Test). Note that the

same tools are being considered for application in the legal employment area through focus groups and symposia being conducted by the State Bar Council on Access & Fairness.

3. The legal profession should seek private sector funding to provide financial assistance for economically challenged students to take LSAT preparation courses.

4. Law schools should be encouraged to create a culture of inclusion on campus. Law students of color should be exposed to more role models in the judiciary, and law schools should place greater emphasis on community-oriented or public sector employment as desirable career options.

DATA COLLECTION AND ACCESSIBILITY

1. The Governor's Office should be encouraged to provide more transparency in the application and appointment process, so that the success of efforts to increase judicial diversity can be more readily assessed.

2. In reporting annual demographic information, the Governor's Office should continue to do what it historically has done and use the same ethnic and racial categories specified in Government Code section 12011.5(n)(C)(3). (Please note that, after the summit, SB 126 (Davis) was enacted, which amended Government Code section 12011.5 so that it now provides, in subdivision (n)(C)(3), that the State Bar and the Administrative Office of the Courts shall use specified ethnic and racial categories in the annual demographic reports. The legislation does not impose such a mandate on the Governor's Office. The original bill language required the State Bar and the AOC to use the same categories as the Governor already was using, but language referencing the Governor's categories was amended out. Consequently, the ability to track the progress of judicial diversity by comparing apples to apples may yet remain elusive, unless the Governor's Office voluntarily continues to use the specified categories, or unless new legislation addresses this apparent oversight. (A copy of Government Code section 12011.5, as amended, is attached as Appendix 11.)

3. The Governor's Office should appreciate and recognize the contributions of lawyers with disabilities and endeavor to include more of such lawyers among the Governor's appointees. All agencies reporting annual demographic data should set a timetable for implementing a process that allows for the collection of information on applicants, appointees, and sitting judges who choose to disclose that they have a disability.

OUTREACH AND EDUCATION

1. To address the underrepresentation of minorities and communities of color in the judiciary, the bench and bar should, to the extent funding permits, develop outreach programs targeting youth in at-risk and underrepresented communities. In this regard, each court should have its own community outreach program or committee to develop a community-specific program. The AOC's Judicial Diversity Toolkit could be used as the foundation for such outreach programs. The membership of a court's outreach committee should include representatives from the education and business communities. In addition, courts should be

encouraged to establish programs similar to the First Impressions Program in Los Angeles and other programs that provide youth opportunities to learn how our court system works. Courts should be encouraged to collaborate with California Partnership Law Academies and other organizations such as AmeriCorps and Teach for America in presenting outreach and education programs. Finally, the Judicial Diversity Toolkit should be expanded to include model mock trials that teach young people about the court system (see e.g. the American Bar Association's mock trial, *The Big Bad Wolf v. The Three Little Pigs*).

2. The Judicial Council, the State Bar, and the Governor's Office should, to the extent funding permits, hold an annual judicial diversity summit. One focus of the summit should be to encourage lawyers from underrepresented groups to apply for judicial appointment. The summit should include a presentation from the Governor's Judicial Appointments Secretary, or equivalent staff person, to identify attributes the Governor is seeking in judicial applicants.

3. The Judicial Council, through the Education Division of the AOC, should develop mandatory judicial training on access, fairness, and bias in judicial decision-making that will provide judges a total of three hours of ethics credit every three years. This course will be designed to, among other things, assist justices and judges in addressing perceptions among communities of color that judges engage in biased decision-making.

4. Judges should mentor at-risk or underrepresented youth, law students, and lawyers and encourage them to consider a future on the bench.

THE ONLINE JUDICIAL APPLICATION

1. If there is an erroneous entry on the online application form, the error code should identify the specific error or highlight the problem entry so that the applicant can easily correct the entry. Currently, the applicant must review the entire page to attempt to identify any errors.

THE PERCEIVED GLASS CEILING

1. Presiding judges should educate the bar about how judicial assignments are made, so that there is more transparency about the process and the bar understands that assignments are governed by rule 10.603(c)(1), Cal. Rules of Court.

2. Judges who mentor judicial applicants should ensure the applicant understands that all of the work of the court is significant and important and that the first few years on the bench are devoted to training the new judge on how to manage a courtroom and make fair judicial decisions.

3. The bar should encourage diversity in judicial assignments, so that all court users see a variety of judges in all departments in the court.

4. Data should be collected on the level of diversity in the civil, felony trials, law and motion, and complex litigation assignments.

5. Work must be done to eliminate the perception that women and judges of color willingly avoid challenging assignments. The JNE Commission, the Governor's Judicial Selection Advisory Committees, the local and specialty bar association judicial evaluation committees, and

others who may participate in the evaluation of judicial applicants should be informed that the superior court presiding judges have exclusive authority to assign trial court judges to the various departments. (See rule 10.603(c)(1), Cal. Rules of Court.)

6. Courts should consider mandatory rotation of judges in assignments. This will serve to level the playing field in terms of judicial experience. Women and ethnic minority trial court judges who seek elevation have found that their judicial resumés are seen as less impressive than those of their Caucasian and male counterparts because they lack experience in what are deemed to be challenging and intellectually stimulating assignments.

ACTION PLAN

A review of the pie charts and bar graph PowerPoint slides provided as Appendix 4 reveals that much work remains to be done if California is to achieve the goal of having a judiciary that reflects the state's richly diverse population. Although a seemingly daunting task, the impressive list of accomplishments since the 2006 summit should provide a level of confidence that we can attain our goal.

Key to any level of future success will be a formal commitment from the judicial branch and the State Bar to continue their historic collaborative efforts to increase diversity in the legal profession and the judiciary. To facilitate this ongoing endeavor, a joint informal collaborative working group will be established consisting of members of the State Bar's Council on Access & Fairness and the Judicial Council's Access and Fairness Advisory Committee. The informal working group will invite participation from the Governor's advisor on judicial appointments, legislative staffers as designated by members of the Legislature: representatives from the Administrative Office of the Courts' Office of Governmental Affairs: the presidents or chairs of the African-American, Asian-Pacific Islander, and Hispanic judges associations; ethnic and specialty bar association representatives: and other key stakeholders. The informal working group will prioritize the recommendations contained in this report and set goals and timetables for completion.

Anyone desiring additional information regarding the summit or the work of the joint informal collaborative working group may contact Donna Clay-Conti at donna.clay-conti@jud.ca.gov or Patricia Lee at patricia.lee@calbar.ca.gov.

Respectfully submitted,

Brenda Harbin-Forte

Hon. Brenda F. Harbin-Forte, Chair
2011 Judicial Summit Planning Committee

APPENDICES

- APPENDIX 1: Invitation to the 2011 Judicial Summit
- APPENDIX 2: 2011 Judicial Summit Agenda

PowerPoint Slides:

- APPENDIX 3: PowerPoint slides presented at the 2011 summit
- APPENDIX 4: Supplemental PowerPoint slides

Reports:

- APPENDIX 5: State Bar's Diversity Pipeline Task Force, Courts Working Group's Final Report and Recommendations (February 2007)
- APPENDIX 6: Summary: 2006 Judicial Diversity Summit
- APPENDIX 7: Link to Judicial Council of California 2005 Report, *Trust and Confidence in the California Courts, Phases I and II*
(http://www.courts.ca.gov/documents/4_37pubtrust1.pdf;
http://www.courts.ca.gov/documents/PTC_phase_II_web.pdf)

Year End 2010 SB 56 Demographic Reports¹:

- APPENDIX 8: Governor's Judicial Applicant Data Report
- APPENDIX 9: State Bar of California, Commission on Judicial Nominees Evaluation (JNE Commission) Statewide Demographic Report
- APPENDIX 10: Judicial Council of California/Administrative Office of the Courts' Report, Demographic Data Provided by Justices and Judges Relative to Gender and Race/Ethnicity

Legislation:

- APPENDIX 11: Government Code section 12011.5 (as amended, effective 1/1/2012)

Resource Materials:

- APPENDIX 12: State Bar's Council on Access & Fairness Tips/Checklist for Completing Online Application
- APPENDIX 13: State Bar's Council on Access & Fairness Report re JNE Commission Resource Materials [applying Govt. Code 12011.5(d)]
- APPENDIX 14: AOC's Judicial Diversity Toolkit, *Pathways to Achieving Judicial Diversity in the California Courts*, Cover Page and Table of Contents
- APPENDIX 15: Link to complete copy of AOC's Judicial Diversity Toolkit
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¹ Since the conclusion of the summit, the 2011 SB56 demographic reports were released. The links to those reports are at: <http://gov.ca.gov/news.php?id=17437>; <http://www.courts.ca.gov/documents/2011DemographicReport.pdf>; and http://www.calbar.ca.gov/Portals/0/documents/JNE/2012-02_JNE_FinalTotalCandidatesSubmittedforEvaluation_r.pdf.