

MEMORANDUM

DATE: April 14, 2008

TO: Board of Governors of the State Bar of California

FROM: William J. Kopeny, 2007 Chair, Commission on Judicial Nominees Evaluation

SUBJECT: Commission on Judicial Nominees Evaluation Activities and Statistical Report for 2007

The 2007 Activities and Statistical Report of the Commission on Judicial Nominees Evaluation, which follows this statement contains numerical information about the workload and output of the JNE Commission, but it does not describe the essence of the function this critical State Bar agency performs.

Every year the State Bar Board of Governors appoints between fifteen and twenty new commissioners to the Commission on Judicial Nominees Evaluation from the attorneys and public members that apply.¹ The full commission now stands at 38 members.

Pursuant to Government Code Section 12011.5, the State Bar Board of Governors created the JNE Commission in order to fulfill the statutory command to provide an independent, non-partisan, objective, fair and impartial partner to the Governor's process of vetting candidates for appointment to the Supreme Court, Courts of Appeal and trial courts of the State of California.

By law the specific work of the commission is confidential, however, the process the commission employs is 100% transparent. The Governor's Judicial Appointments Secretary submits the names of potential judicial appointees to the commission. The JNE Chair assigns each candidate to a team of commissioners. The investigation, conducted under the JNE Rules, enacted by the Board of Governors, begins with the solicitation of written input from those most likely to know the candidate, drawn from the relevant legal community. Commissioners mail thousands of rating forms to raters, catalogue the returns, follow up by telephone to evaluate the credibility of the raters, and evaluate the negative matters reported. Only "substantial and credible" criticisms, or "negatives" are reported to the candidate. To be reportable, the commission must conclude that if true, the negative matter would relate to the performance of the duties of a bench officer, and must conclude that the report is preliminarily credible. This

¹ The 2008 deadline for applications is June 1, 2008. Applications are available on the JNE website at http://calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10111&id=1056.

usually means the information must come from at least two independent sources, or from the candidate himself or herself. These negatives are reported, confidentially, to the candidate, the commission, and the Judicial Appointments Secretary.

The candidate is given an opportunity to refute the negative matters reported at a live interview, which is recorded by the investigating commissioners. Following the interview, a written report is prepared summarizing the candidate's background, professional experience, the negatives reported, the candidate's responses, the investigating commissioner's resolution of them, and a recommended rating of the candidate.

Under the JNE rules, a candidate may be rated Exceptionally Well Qualified ("EWQ"), Well Qualified ("WQ"), Qualified ("Q"), or Not Qualified ("NQ").

During 2007 approximately 4% of the 261 candidates rated received an EWQ rating, while 13% were rated NQ. The remainder were rated Q or WQ. After a thorough discussion of the report by the investigating commissioners, the full 38-member commission votes on the rating, and the rating with the majority vote becomes the JNE rating reported to the Governor.

The Governor's appointments generally, and in 2007, were predominantly made up of EWQ and WQ candidates, which is a vindication of the validity of the work the commission does, and endorsement of its judgment.

California judicial appointments have been positively impacted by the JNE process. The Legislature provided that process as an independent check on the Governor's power to appoint any legally qualified candidate to be a judge. Under California law, to be legally qualified, a person need only have been an attorney in good standing for 10 consecutive years prior to appointment. Regardless of temperament, bias, honesty, intellectual ability, or judgment, such a person *could* legally be appointed to the bench.

Governors are by nature political. They are popularly elected in partisan political races. They often run on promises to impact the way the Court's interpret or apply the law in conformity with the political philosophy of the Governor or the electorate. This is precisely appropriate under our law because our Government is primarily democratic and the will of the People is of critical importance in government.

Nevertheless, there has always been an anti-majoritarian, aspect to the checks and balances written into the United States Constitution and the charters of the several states. As a People, we recognize that popularity is a prerequisite for action by the executive, but not always a sufficient basis for that action. When an executive is pressured, or tempted, or otherwise motivated to act solely for political ends, without regard to the merit or consequences of the action, checks and balances are in place to either prevent the action, or to exact a measure of political capital.

The Legislature created the check inherent in the JNE Commission's role to be more

like a break to slow intemperate executive action, rather than a veto to prevent it. The two "checks" contained in the statute creating JNE are a 90-day waiting period, and the possibility of publication of the fact that the Governor has appointed a "Not Qualified" candidate.

During 2007 the rare event of the appointment of a not qualified superior court candidate occurred, and this event created a test of the resolve of the State Bar to vigilantly carry out the intent of the Legislature, which appears to have been to provide a political price to pay when the Governor appoints a candidate who is not minimally qualified under the criteria JNE considers.² The system worked in this case. The candidate took his seat on the superior court, but the State Bar Board of Governors voted to make public the JNE "NQ" rating, and the Governor was questioned on the matter by the press. The genius of the JNE system is confirmed by the very few cases in which this has happened, and the fact that whenever it does, the State Bar rises to the occasion and gives the Fourth Estate enough information to inquire into the matter.

On a personal note, it has been a supreme honor to be associated with the Judicial Nominees Evaluation Commission these past four years, and especially to have the opportunity to work with the extraordinary professional state bar staff that keeps the JNE ship afloat, and its remarkable and dedicated Executive Director, Biljanna Sivanov.

² These criteria include: Experience, Legal Ability, Judicial Temperament, Reputation, Work Ethic and Bias.

COMMISSION ON JUDICIAL NOMINEES EVALUATION

Statistical Report

2005 – 2007

Presented in this report are the ratings of the Commission on Judicial Nominees Evaluation (JNE Commission) and the appointments by the Governor in response to those ratings for the years 2005 through 2007. The data for the years 2005 and 2006 are included for the purpose of comparison and to demonstrate a greater overview of ratings and appointments. Please be advised that the data comparing the three years may provide an inaccurate picture of appointments due to candidates who are evaluated in one year and may be appointed to the bench in a later year. The numbers also reflect persons appointed to the bench after election without formal JNE evaluation, pursuant to rule II, section 13 [Appointment by Governor Following Election to Judicial Office]. The numbers should be analyzed with that caveat in mind.

The JNE Commission rates candidates for judicial appointment as Exceptionally Well Qualified (EWQ), Well Qualified (WQ), Qualified (Q), and Not Qualified (NQ).

Table 1:	Total Judicial Evaluations: Judicial evaluations by JNE rating for all courts made in each of the three comparison years
Table 2:	Judicial Appointments by Rating (All Courts) for the three years
Table 3:	Evaluations by County, 2005 – 2007
Table 4:	Comparison of Evaluations to Commissioners: Total JNE evaluations and commissioners by district
Table 5	Commissioner Workload
Table 6:	Budget Statistics 2005 – 2007

Total Judicial Evaluations 2005 -- 2007

Year	EWQ	Percent	WQ	Percent	Q	Percent	NQ	Percent	Not Rated	Percent	Withdrawn	Percent	Total*
2005	21	7%	120	38%	129	41%	39	12%	0	0%	7	2%	316
2006	8	4%	75	33%	104	46%	29	13%	5	2%	4	2%	225
2007	10	4%	85	33%	121	46%	33	13%	2	1%	10	4%	261
Total	39	5%	280	35%	354	44%	101	13%	7	1%	21	3%	802

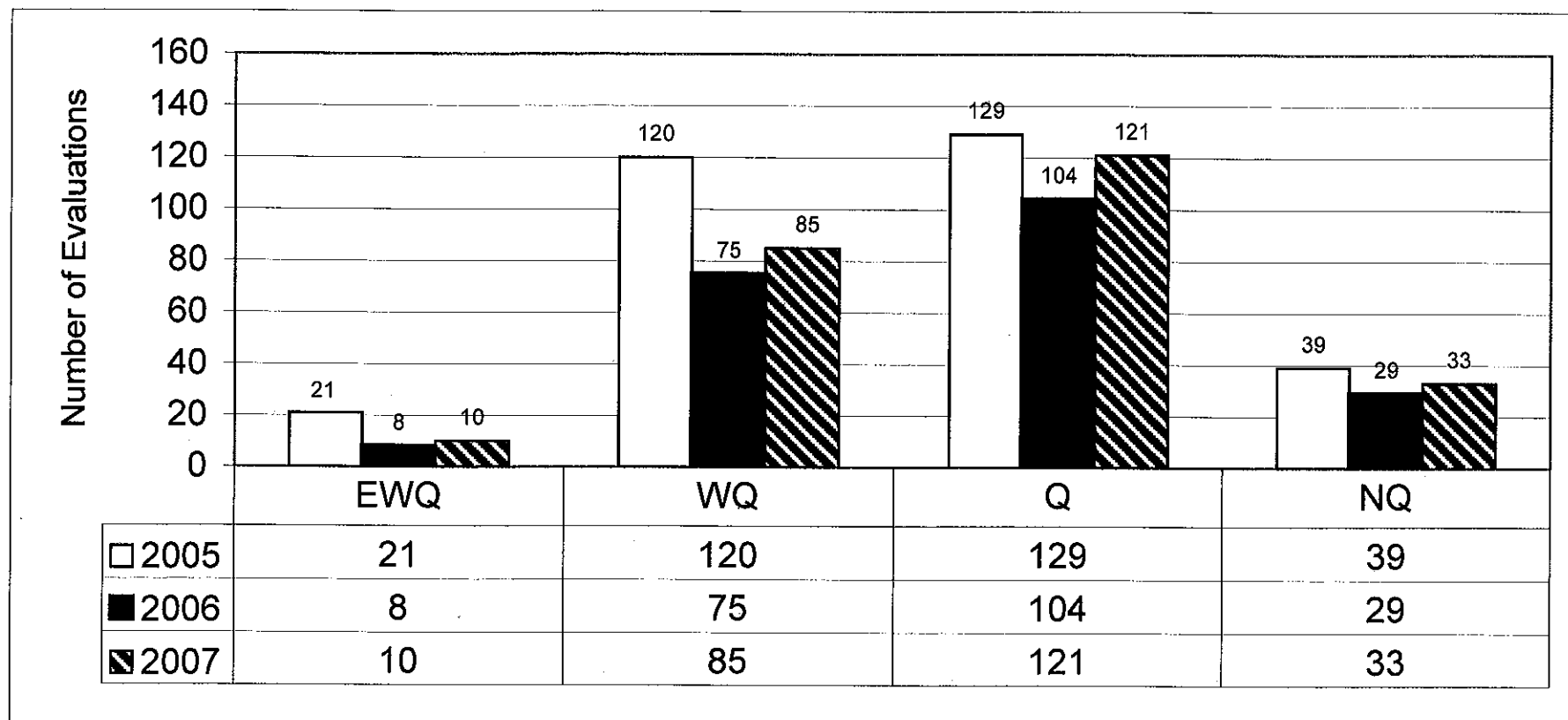


Table 1

Judicial Appointments by Rating (All Courts) 2005 -- 2007

Year	EWQ	Percent	WQ	Percent	Q	Percent	NQ	Percent	Elected*	Percent	Total
2005	20	19%	68	64%	18	17%	0		0	0%	106
2006	11	13%	41	50%	25	30%	0		5	6%	82
2007	7	7%	40	42%	45	47%	1	1%	2	2%	95
Total	38	13%	149	53%	88	31%	1	0%	7	2%	283

*Appointed after election pursuant to Rule II, §13, Rules and Procedures of the Commission on Judicial Nominees Evaluation

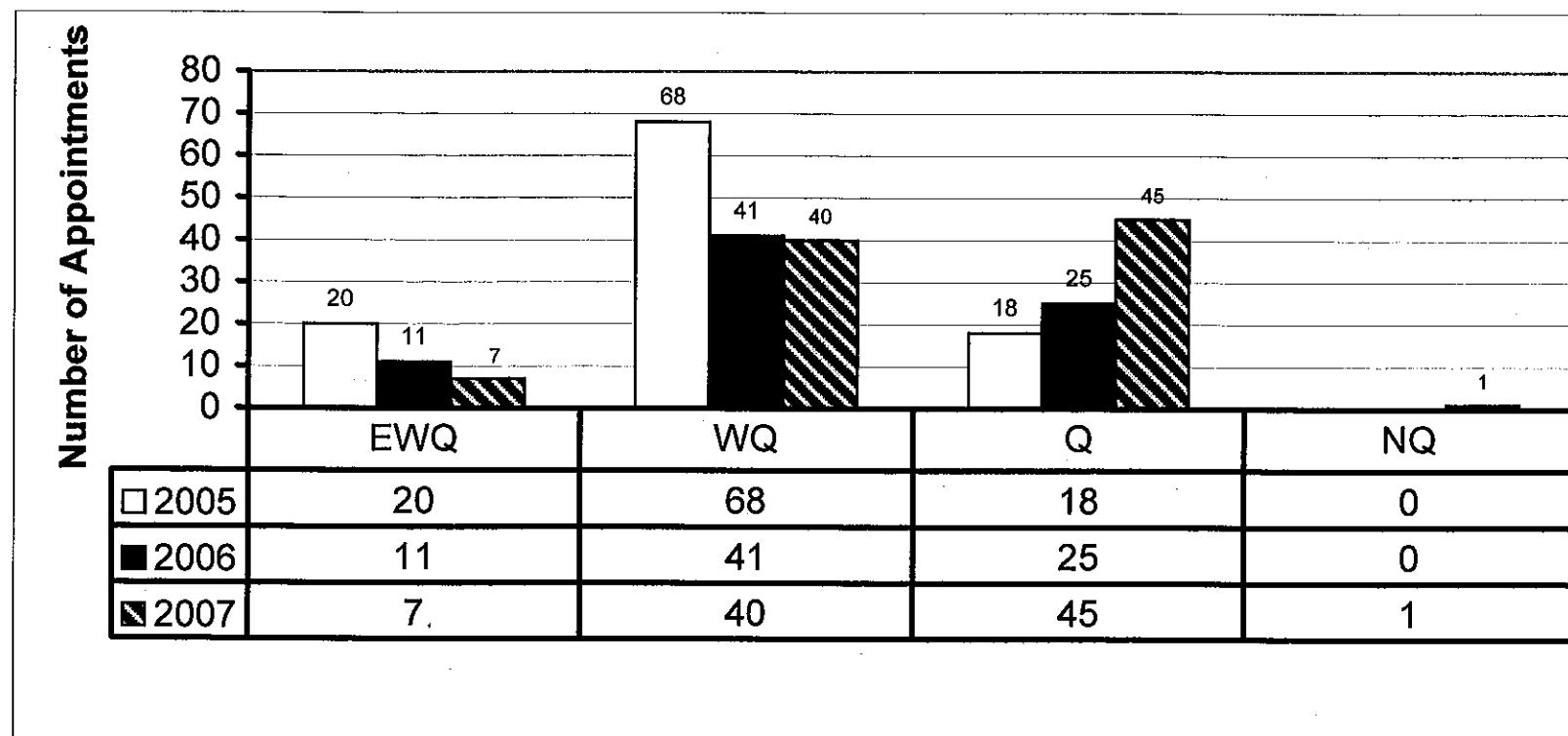


Table 2

Evaluations by County/District 2005 - 2007

County	District	2005	2006*	2007*	Total
Alameda	9	13	8	7	28
Alpine	2				0
Amador	2				0
Butte	1	5	1	4	10
Calaveras	2				0
Colusa	1				0
Contra Costa	3	9	3	2	14
Del Norte	1				0
El Dorado	2			3	3
Fresno	5	11	4	7	22
Glenn	1				0
Humboldt	1				0
Imperial	9	1	2		3
Inyo	5				0
Kern	5		4	11	15
Kings	5	2			2
Lake	1	2			2
Lassen	1				0
Los Angeles	7	74	82	51	207
Madera	5	1	1	3	5
Marin	4	1			1
Mariposa	5				0
Mendocino	1	1			1
Merced	5	1	2	1	4
Modoc	1				0
Mono	5				0
Monterey	5	5	1	5	11
Napa	2	3	3		6
Nevada	1	5		2	7
Orange	8	19	18	7	44

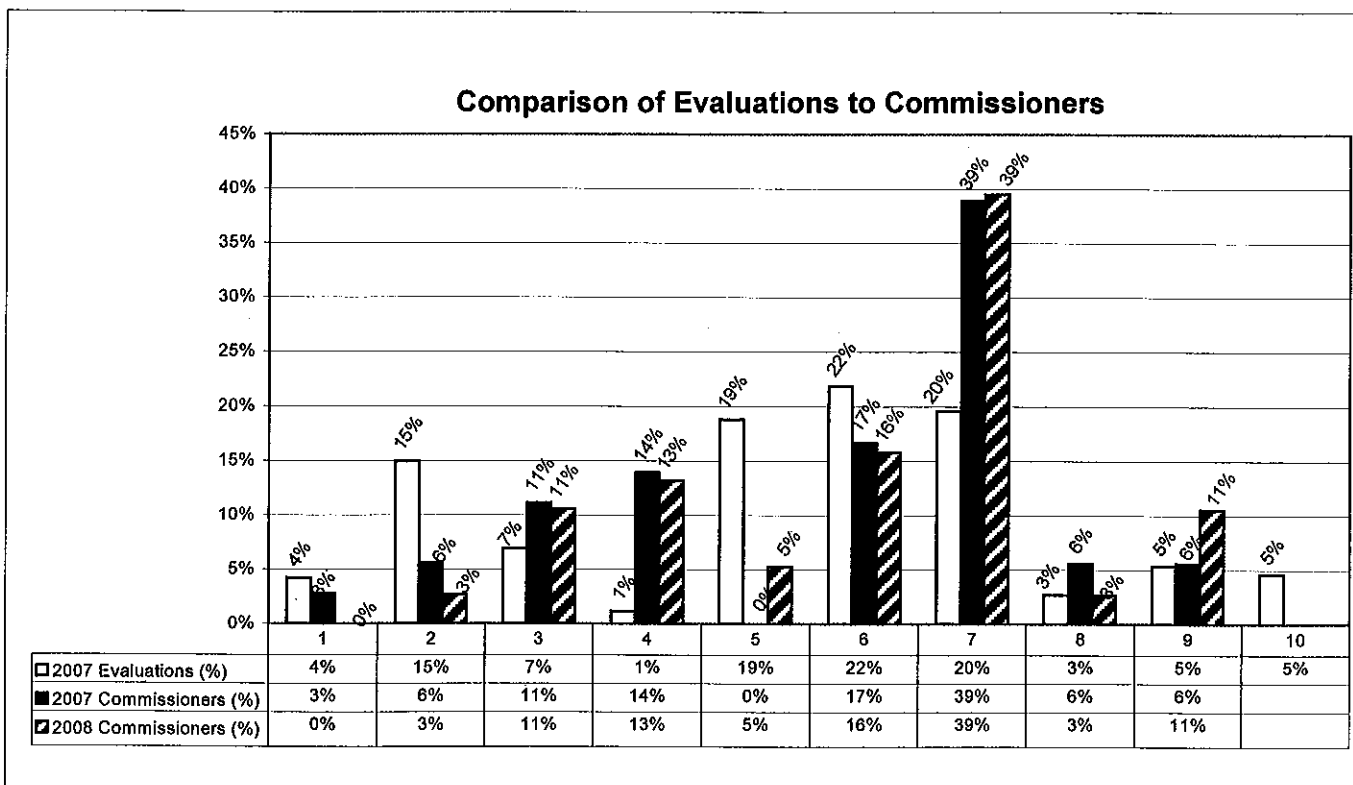
County	District	2005	2006*	2007*	Total
Placer	1	6		1	7
Plumas	1				0
Riverside	6	6	5	20	31
Sacramento	2	13	1	23	37
San Benito	5				0
San Bernardino	6	9	18	26	53
San Diego	9	7	34	14	55
San Francisco	4	10	1	3	14
San Joaquin	5	9	1	4	14
San Luis Obispo	6	5	1		6
San Mateo	3	11			11
Santa Barbara	6	1	1	3	5
Santa Clara	3	11	4	9	24
Santa Cruz	5	2	10	3	15
Shasta	1			4	4
Sierra	1	1			1
Siskiyou	1				0
Solano	2	2		4	6
Sonoma	2	9	2	4	15
Stanislaus	5	7	3	6	16
Sutter	1				0
Tehama	1				0
Trinity	1				0
Tulare	5	5		9	14
Tuolumne	2	3			3
Ventura	6	6	2	8	16
Yolo	2	5		5	10
Yuba	1	2			2
Supreme Court		3			3
Courts of Appeal		30	13	12	55
TOTAL		316	225	261	802

*In 2006 five candidates and in 2007 two candidates were appointed after election pursuant to Rule II, §13, Rules and Procedures of the Commission on Judicial Nominees Evaluation

Comparison of Number of Evaluations to Commissioners

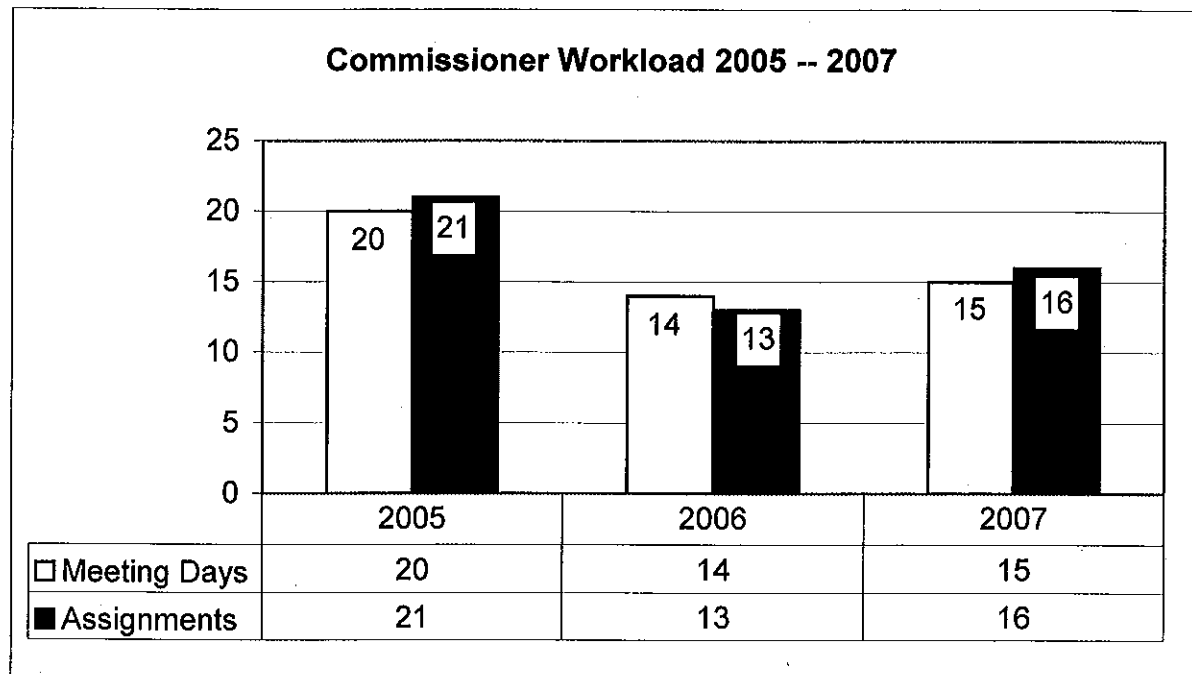
Evaluations/Number of Commissioners (By District)

	2006				2007				2008	
	Evaluations Number	%	Commissioners Number	%	Evaluations Number	%	Commissioners Number	%	Commissioners Number	%
District 1	1	0%	1	3%	11	4%	1	3%	0	0%
District 2	6	3%	2	5%	39	15%	2	6%	1	3%
District 3	15	7%	6	16%	18	7%	4	11%	4	11%
District 4	1	0%	3	8%	3	1%	5	14%	5	13%
District 5	26	12%	2	5%	49	19%	0	0%	2	5%
District 6	27	12%	2	5%	57	22%	6	17%	6	16%
District 7	82	36%	13	35%	51	20%	14	39%	15	39%
District 8	18	8%	4	11%	7	3%	2	6%	1	3%
District 9	36	16%	4	11%	14	5%	2	6%	4	11%
Appellate	13	6%			12	5%				
TOTAL	225		37		261		36		38	



Commissioner Workload 2005 - 2007

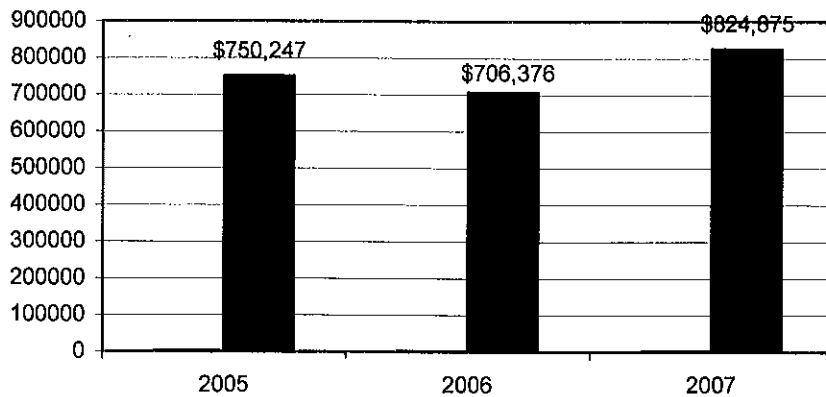
Year	Commissioners	Meeting Days	Evaluations	Total Assignments	Assignments Per Commissioner
2005	34	20	316	728	21
2006	37	14	225	476	13
2007	36	15	261	561	16



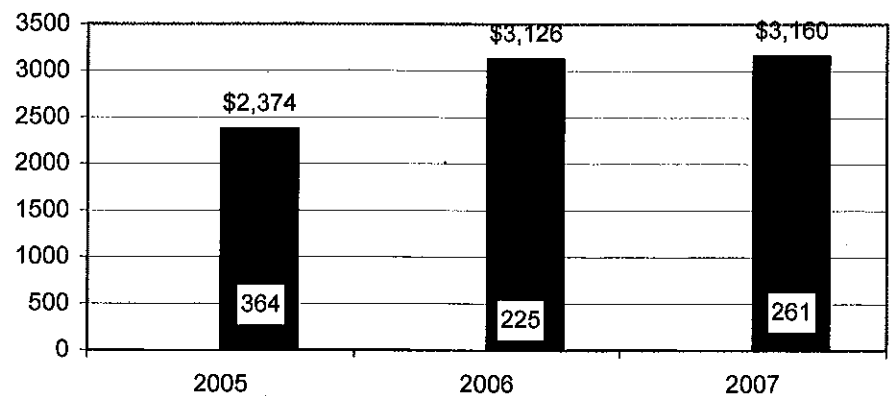
Budget Statistics 2005 - 2007

Year	Budget	Commissioners	Meeting Days	Evaluations	Cost per Evaluation
2005	\$750,247	34	20	364	\$2,374
2006	\$706,376	37	14	225	\$3,126
2007	\$824,875	36	15	261	\$3,160

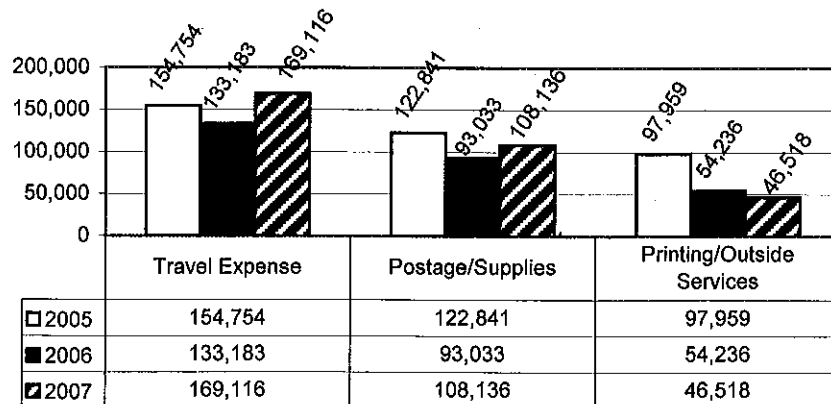
Budget 2005 -- 2007



Cost Per Evaluation 2005 -- 2007



**Travel, Postage/Supplies/Printing Expenses
2005 -- 2007**



**Travel/Postage/Supplies/Printing Expenses
2005 -- 2007**

Expense	2005	2006	2007
Travel Expense	154,754	133,183	169,116
Postage/Supplies	122,841	93,033	108,136
Printing/Outside Services	97,959	54,236	46,518