



## Is the bench the place for you?

NOT MANY TORT LAWYERS SERVE ON THE BENCH, BUT IT CAN BE A VERY SATISFYING EXPERIENCE FOR THOSE WHO DO. HERE'S A ROADMAP TO GETTING THERE

A lawyer devoutly prays twice daily that God let her win the lottery. (This is an old story, but I'll tie it up; really!) The lawyer prays fervently for years, beseeching God that she be allowed to win the lottery. These twice-daily prayers go on for more than a decade; still, the lawyer never wins the lottery. Finally, in anguish, the lawyer emotionally asks God why she has been forsaken and never allowed to win the lottery. An obviously frustrated voice from on high is heard by the lawyer, intoning, "You have to buy a ticket!"

Similarly, many in the tort bar, on either side, wonder why California Governors don't appoint more tort lawyers to the bench, or, for that matter, why more tort lawyers aren't elected to the bench. One important reason is that few tort lawyers, again, from either side of the bar, apply for appointment or run for election to the bench.

Having practiced law in Los Angeles for over thirty years exclusively as a plaintiffs' lawyer, I decided to apply for appointment by the Governor to the Los Angeles Superior Court ("LASC") bench,

and was appointed by Governor Brown at the end of 2015. Why did I seek appointment? How did I succeed in getting appointed? How has the transition from lawyer to judge been, and how is it accomplished?

### Why?

I greatly enjoyed my years as a lawyer; my relationships with clients, partners, co-workers, and even many adversaries were a source of pride and fulfillment for me. Nonetheless, by 2012

*Rosen, Next Page*

or so, I felt the time was coming soon for a change in my professional life. While I had told for years those closest to me, in my family and at my firm, that I didn't intend to practice law forever, I was surprised that the urge to do something different had become so strong.

I'd thought about trying to become a judge, but I wasn't sure if I really wanted to do so, nor how to actually get on the bench. I started to talk to the judges that I knew (this is not self-aggrandizement; if you appear at the same courthouses, for me mostly Mosk and CCW, at least a couple of times most every week for over thirty years, you're going to meet a few judges) about whether they enjoyed the work, and how they made it to the bench. To a person, they told me it was the best job they'd ever had, even after the Legislature and the Governor began to drastically slash the Court's budget about ten years ago. Ultimately, I decided to apply for appointment.

### How?

One who has practiced law in good standing in California for at least the last ten years can become a Superior Court Judge in California in one of two ways; apply for appointment by the Governor or run for election, either against a sitting judge, or for an open seat. By my very unscientific count, in excess of 90 percent of LASC Judges were initially appointed by the Governor. Even before I became a judge, I personally felt it was bad form to challenge a sitting judge for election, absent serious malfeasance or nonfeasance by that judge while in office. But, as they say, it's a free country.

It appears that there are a few; perhaps two to six on average, open seats on the ballot for LASC at election time every two years. I say "few," because there are over 500 seats on LASC, the largest trial court in the country and, it appears, in the world. Open seats are usually a function of the Governor not filling all open seats with appointments in time to avoid an open seat on the ballot. Of course, Governors endeavor to fill all the appointments they have, so there are usually not many open seats available to which to seek election.

Running for an open seat was not an attractive option to me, but a few of my colleagues successfully campaigned for election and were happy to do so. Know, however, that running for an open judgeship requires significant fundraising and active campaigning.

### The appointment process

The process varies with each gubernatorial administration. The trial court judicial appointment process for Governor Brown's current term appears to be as follows. I say "appears to be," as some of this is not set forth expressly in any source or website, but is how it appeared to be to me. As a citizen, I was impressed by the amount of work, much of it by volunteers, that is done to evaluate an applicant to the California bench. The commitment of the Governor's Judicial Appointments Office to fully examine and appoint qualified, diverse applicants is equally impressive.

There is no time-frame or schedule to this process from the Applicant's point of view. Applications may be submitted at any time during the sitting administration; there is no due date. Once the Application is in, there is no schedule or time-line for its consideration, or for any of the stages of the process set forth below. The Application remains "live" until one is appointed or withdraws their application, or until the Governor's term in office ends. The Administration makes judicial appointments when it chooses to do so; there is no schedule for when appointments are made nor how many appointments are made at any given point. So far as I can tell, an applicant is never expressly rejected; instead, if the applicant is not appointed and never withdraws their application, the application dies when a new Governor takes office. That is technically without prejudice, of course. One can re-apply to the new administration.

First, an on-line application, known as one's Personal Data Questionnaire ("PDQ") must be completed and submitted electronically. The application is extensive. Complete demographic or biographical information is sought. Further, there are several "essay" questions

which are not centered on substantive law, but which appear designed to uncover why the applicant wants to be a Judge; what the applicant's judicial, but not legal, philosophies might be, and, really, what kind of person the applicant is.

The PDQ requires identification and discussion of about 20 or more different matters the applicant has handled over their career; resolved cases, jury and court trials, appeals, etc. For each of these matters, the applicant must provide name and complete, current contact information for each judge, co-counsel, and adversarial counsel on the case.

There are questions about family, achievements, and, of course, educational and employment history. The applicant must also name and provide complete, current contact information for five references, or recommenders from the legal community – bench or bar.

Finally, along with the PDQ, the applicant must submit, also electronically or in hard copy by mail, a C.V., a legal writing sample; i.e., a brief, and samples of any published writings. The PDQ and attachments are confidential, as are the next few steps in the process, so, absent a leak from anyone involved in the process – which has been known to happen from time to time; the applicant can, if they wish, keep the fact that they've applied for the bench quiet for a while.

The PDQ and attachments are first reviewed by the Governor's Judicial Appointments Office, at their pace. If that Office so decides, the file is forwarded at some point to a small, diverse committee of accomplished California attorneys. One of the committee members is assigned to the applicant's file, and personally contacts at least some of the lawyers and judges identified in the PDQ, and otherwise further vets the applicant. That member reports back to the committee once the applicant is placed on the committee's meeting agenda, and a recommendation, yay or nay, is reported back to the Governor's Judicial Appointments Office, currently led by Joshua Groban, the Governor's Senior Advisor on Judicial Appointments. This can take weeks, months, or more.

*Rosen, Next Page*

If and as the Governor's team decides to do so, the applicant's PDQ file is forwarded to the State Bar Judicial Nominee Evaluation (JNE) Commission and, if applicable as it is here in Los Angeles, to a County Bar Association counterpart, for full vetting and further review. State JNE has about 38 members. Two are usually assigned to each applicant who makes it to this point in the process. Two or three from the County commission are separately assigned to the applicant. The two commissions try to appoint commissioners to the file who do not know the applicant at all.

Your appointed commissioners will contact you personally with the good news; and it is good news that your application has made it this far. It is at this point that two critical developments occur; first, within a few days of being notified by the two commissions that their application is now at JNE, State and county level review, the applicant must electronically provide to each commission a spreadsheet listing full contact information for about 75 personal references in the legal community. Depending upon your memory, records, preparation, and facility with Excel, among other things, providing such lists can itself be a daunting task, especially if you're starting this spreadsheet preparation from scratch with only a few days in which to do it (while, of course, you're still practicing law!).

The second development is that now, even if you've kept it quiet to this point, the fact that you've applied for appointment to the bench will, for all intents and purposes, become public, at least within the legal community, and probably beyond. Your colleagues, partners and adversaries will likely know, as will the judges before whom you appear and, perhaps, your clients. The fact that you've applied, but not your PDQ itself, realistically becomes public knowledge as judicial evaluation questionnaires from both JNE and its county parallel, are sent not only to each of the 75 references you've listed on the spreadsheets, but to each of the attorneys and judges you listed in your PDQ when discussing your most important cases, and most recent

cases, and also to hundreds more attorneys and judges in the County of the bench to which you've applied. Some overlap between your references and the lawyers and judges listed on your cases is allowed.

Of course, the evaluation forms are sent, mostly electronically, with the admonition that the evaluation form and the fact that the evaluatee has applied to the bench are to be kept strictly confidential. However, if you believe that each of the hundreds of lawyers and bench officers who receive these evaluation forms on you will actually keep their mouths shut, you may be too naïve to sit as a judge!

The commissioners assigned to the file thus begin to fully vet the applicant. They personally speak to as many references and listed colleagues and judges as possible. They check the applicant's State Bar file. They read in full the PDQ and attachments, and they read, summarize, and tabulate all of the evaluation forms that are completed about the applicant. Then, if still viewed as a viable applicant, the assigned commissioners from State JNE and, separately, from the County group, will each schedule an in-person interview with the applicant. Often, these two interviews occur within a very few days of each other.

About 48 hours before each interview, one of the assigned commissioners will phone the applicant to indicate any matters of concern; such as statements or items in the PDQ, statements from references or from among the many folks who completed evaluation forms, or from the State Bar file. This is expressly done so that nothing is "sprung" on the applicant at either interview; they want substantive responses.

### The interviews

Each interview seems to run from about 45 to 90 minutes, or even a bit more. It's serious, but friendly; thorough, but not adversarial; and substantial, but generally not about the specifics of the law nor centering on bar exam type questions. Instead, the interviewers seem to want to know why the applicant wants to be a judge and what kind of person they

are. Hypothetical questions may be posed about situations that could occur in a courtroom to see how the applicant thinks they'd handle things. Commonly, there's no one correct answer to these questions. Instead, the interviewers want to see and hear if an applicant can think on their feet, as it were, how well they issue spot decisions, and what factors are important to the applicant. The interviewers will be very familiar with the PDQ and the rest of the file, and will likely ask specific questions about some of the responses to the PDQ, as well as some of the comments made in the evaluation forms.

The applicant is asked at the beginning of the JNE interview if they will agree to allow the commissioners to audio tape it. This isn't required, but if taping is not allowed and the applicant is rated unqualified by JNE (more about that later), the applicant has essentially waived the right to appeal the rating.

After the JNE and County Bar interviews, the assigned commissioners prepare presentations to their respective committees. These are presented both in writing and orally once the application is on the commission's agenda. A rating; exceptionally well qualified, well qualified, qualified, or not qualified, is recommended by the assigned commissioners, based upon the entirety of their workup. Each commission or committee votes on the rating, and the applicant is thus rated by State JNE and by the County committee. The applicant is never informed of their rating by either group, unless the rating is "not qualified," which, as noted above, may be appealed.

Each committee reports its conclusions in detail, and its rating, to the Governor's Judicial Nominations Office, whereupon the entire file is subsequently reviewed. At some point, the applicant may be summoned to an in-person interview with Mr. Groban himself. This appears to be a 30- to 60-minute meeting, in Southern or Northern California, depending upon the applicant's location. This interview focuses on the applicant's personal background and values. Substantive legal questions are generally not posed, but questions about how and

*Rosen, Next Page*

why the applicant might handle certain situations in the courtroom are likely, as well as questions about cases the applicant has handled as a lawyer or activities in which the applicant engaged.

Thereafter, the entire file is discussed by Mr. Groban and the Governor; whether and when this occurs appears to be based not only upon the results of all of the vetting, evaluations, interviews, recommendations, and ratings detailed above, but also timing with respect to appointments to be made.

If the Governor decides to make the appointment, applicant receives a personal call from Mr. Groban, perhaps 24 hours before the appointment becomes public.

### Upon appointment

Once the Governor's office announces your appointment, they pass you on to the Presiding Judge for the County in which you'll sit. You'll be contacted by that Presiding Judge very soon after the appointment is publically announced (in a press release of wide distribution, which notes, among other things, what your judicial salary will be; this is the first in a series of new experiences you'll have as a judge – most everyone congratulating you will also comment on your salary!).

The PJ will promptly set up a meeting with you, to be attended by the Assistant PJ as well. At the meeting, usually within a week to ten days, you'll be told the nature and location of your first assignment; i.e., "criminal in Van Nuys," and you'll be asked when you plan to be sworn in and start on the bench. If you are leaving a practice which allows a quick transition, such as government work as a prosecutor or public defender, you can make the move within a few days or weeks. If you have a private practice to wind down, you may seek a longer period between appointment and swearing in. I sought, and received two months to finish up the work I was doing at my firm, as well as notifying clients, getting my colleagues up to speed, and cleaning out nearly 37 years' worth of accumulated papers and detritus.

The time you get from appointment to swearing in, like the nature and location of your assignment, is, of course, also a function of the Court's needs. Since there always seem to be about two dozen judicial openings in Los Angeles County, as soon as new judges are appointed or elected, invariably several more sitting judges retire or otherwise leave the bench, the Court needs your help right away. Even if all existing seats are filled (which I don't think has happened for many years, if ever), workload data shows that the Court is understaffed at the bench level, not to mention administratively. The PJ and APJ not only have this at the front of their minds when they determine your assignment, they also take into consideration the appropriate type of assignment given your background, and they do seem to try to consider where you live in assigning you to a courthouse.

During the interim between appointment and swearing in, you'll also be contacted by the wonderful folks who provide administrative support for the bench to set up a meeting during which compensation, benefits, equipment, continuing education requirements, and other support issues are explained in detail.

Once you're sworn in as a judge, either on your own with a judge or Justice who agrees to do so, or as part of the semi-annual County ceremony for new judges appointed or elected since the last ceremony, or both, you start your new position.

### The education of a new judge

The degree of support, help, and education you will receive from other bench officers, from the moment you are sworn in, cannot be over-emphasized. It is neither exaggeration nor metaphor to say that you are happily welcomed with open arms by every judge you see, those you knew from practice and those you did not. To a person, they offer and are truly committed to help with any issues or questions you may have; from legal issues to calendar management, from ethics to judicial demeanor, and to the more mundane, but important matters concerning your employment as a judge.

Starting just before your first day on the new job, and continuing as you develop as a judge, you will receive significant training, both formal and informal, in being a judge, in running a calendar, in judicial ethics and demeanor, and in the substantive issues and law applicable to your assignment. This training is ongoing and takes many forms; formal and informal meetings with other judges, sitting in on courtrooms, both in the gallery and in "ride-alongs," where you actually observe what the judge is doing and why as you are sitting just behind or next to the judge on the bench; to individual mentoring, to the many sources of judicial reading made available to you, to formal classroom training.

As this is written, it has been about 13 months since I was sworn in and I have attended, in the aggregate, over four weeks of full days of classroom courses. Some of this time has been spent at week-long courses in other parts of the state, some here in Los Angeles, and some in 60- or 90-minute seminars, either live or over the internet. By the time 2017 ends, I will have spent at least another three weeks of full-time, formal classroom judicial training. All of this coursework is provided to the members of the bench by State or County judicial programs. Of course, judges have mandatory continuing education requirements on an ongoing basis.

A great deal of time is spent on judicial ethics and conduct, both in and outside of the courtroom. To be sure, we give up some of our freedom of speech when we become a judge; the reasons why this is necessary and true, and how this works in real life are probed. We give extensive consideration to biases, express and implied, to working with self-represented litigants, and to understanding our role as judges.

The judicial work to which you are assigned tracks the foregoing, and typically starts with less complex issues. Usually, you are initially assigned as a new Judge to an area of law in which you did not practice. For example, I started in criminal; first in infraction arraignments, which are mostly, but not

*Rosen, Next Page*

exclusively traffic tickets. I was gradually moved to misdemeanor and occasional felony arraignments, and I have now presided over a misdemeanor trial courtroom for about five months. Here, we handle misdemeanor jury trials, a few civil jury trials, occasional probable cause or arraignment issues for various types of crimes, and a daily calendar of pre-trial and post-conviction misdemeanor matters. I have a judicial assistant, and, because it's a criminal courtroom, a bailiff and a court reporter. It is likely that my next assignment, whenever it will be, will be to another courthouse, perhaps in a different kind of law; perhaps not.

### Preparing to decide whether to apply

Talk to judges you know, or at least before whom you've appeared a number of times. Ask the questions you have on your mind. It's hard to say what makes an applicant successful. This Governor's appointments are very diverse; men and women of ages between 40 and 60+, and even under 40, have been appointed. People from many racial, ethnic, educational, and practice backgrounds have been appointed.

The PDQ is clearly of critical importance; the substance of your essay answers and the level and breadth of your professional background seem to be key. One's personal background and the way in which it caused one to apply for an appointment appear to be of interest to the Governor, as are the motives and goals one has for becoming a judge. Reputation in the legal community, as evidenced by the quality of your references and their comments to the various vetting bodies about you, as well as the

results of the hundreds of evaluation forms that are returned to the JNE committees, is very important. Finally, letters of recommendation may carry some weight, but I was told not to have more than two or three sent to the Governor and/or the Governor's Judicial Appointments office, that they should be from prominent individuals whose opinions the Governor specifically values, and that it should be detailed in each letter that the recommender actually knows the applicant well.

If you are uncertain about whether you really would like to be a judge, and, as I hope is clear, you don't want to start the application process unless you're sure about this, you should seriously consider volunteering as a Temporary Judge (sometimes known as a Judge Pro Tem). A much abbreviated application is required, as is participation in a couple of days of training. You will be performing a valuable service to the community and the budget-strapped court, you will be enhancing your background and experience, and you will get a real taste of trial court judging. While volunteering as a neutral in alternate dispute resolution, or doing the same for compensation, also provides important experience, the Temporary Judging experience is much more indicative of the day-to-day work of a newer trial court judge.

Also, a number of judges, or those applying for appointment to the bench, first apply, or even simultaneously apply to become a Commissioner on LASC. These applicants go through a separate vetting process and ultimately stand for election by the sitting Judges of LASC to the open Commissionerships that come

up from time to time. While there are some differences between the duties of a Commissioner versus those of a judge, the similarities predominate. Depending upon your timing, a Commissionership may be a great option.

I urge to you to seriously consider seeking appointment. I'm confident that you'll enjoy the work, and I know that, if appointed or elected, you'll be greatly helping the legal community and the community at large. In another year or so, I'll let you know about the six-year term and confirmation elections. (Judges Bird and Knill have written an excellent article, *The Path to the California Bench*, in *Law360*, 12/13/16; and in *Los Angeles Lawyer*, November 2016.)

*David A. Rosen was appointed to the Los Angeles Superior Court by Governor Jerry Brown at the end of 2015. Prior to his appointment, Rosen was a managing partner of Rose, Klein & Marias, LLP in Los Angeles. After graduating from UCLA in 1978, he received his J.D. cum laude from Loyola Law School in 1981. He is admitted to the California Bar (1981) and the Federal Courts (Central District, CA-1981, Southern District, CA-1999, Ninth Circuit-2003). His practice focused on toxic torts, asbestos exposure, and employment dispute cases. He acted as Liaison Counsel for Los Angeles County Asbestos Litigation from 1986 through 1996, and from 2005 through 2009, for In re: Coordinated Latex Glove Cases from 1998 through 2003, and for the Coordinated San Gabriel Valley Groundwater Litigation from 2003 through 2006.*

*Mr. Rosen served on the AAJ Board of Governors, the CAOC Board of Governors and the CAALA Board of Governors.*