



MARVIN BAXTER: "We have a profession that for all intents and purposes was closed to women and to members of ethnic and minority communities."

Appointments Secretary Has Inside Track to Appeal Bench

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SACRAMENTO — Marvin Baxter has no experience as a trial court judge, but he wants to be a state appellate court justice in Fresno.

He figures his experience in the last five years has been just as valuable as time on the bench, and few would argue the point with him. Baxter is Gov. George Deukmejian's appointments secretary, the man who screens all candidates for gubernatorial appointments.

Whether or not he's named to the Fifth District Court of Appeal, the 48-year-old, soft-spoken Baxter says he will return to his hometown at the end of this year, leaving vacant one of the most influential positions in the state's

legal community.

When the former civil litigator quits his post in December, he will have presided over the evaluation and appointment of nearly 900 judges since Deukmejian became governor in 1983. Deukmejian Legal Affairs Secretary Vance Raye is handling Baxter's evaluation.

By next January, the Republican governor will have made appointments to more than half of the trial and appellate court positions in the state, including a majority of the California Supreme Court justices.

About 300 appointments, including 109 newly created positions provided by the Trial Court Funding Act of 1987, will be made this year alone — more than double the average 120 a year in

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Baxter Has Inside Track for Judgeship

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Baxter's six-year tenure. As of Feb. 18, he had recommended 570 appointments to appellate and trial courts in California in the past five years.

Gleaned from 2,528 applicants, the 570 survived an arduous process that many observers say Baxter has honed to a precise science, introducing computers to keep track of all the paperwork, working long hours poring over documents, meeting with interested bar groups and personally conducting hundreds of interviews before the appointee is considered by the governor. Deukmejian makes the final decision and takes an active role in the process.

Of the 570 appointments, 488 have been men and 82 women. Hispanic appointments have numbered 26, Asians 18 and blacks 17.

Two women have been named to the appellate courts. Margaret Lillie of the Second District Court of Appeal in Los Angeles was elevated from the Superior Court, and Patricia Benke was named to the Fourth District in San Diego.

Two appellate judges appointed by Deukmejian are members of minority groups — Supreme Court Associate Justice John Arguelles, who was elevated from the Second District Court of Appeal, and Morio L. Fukuto, who was appointed to the Second District.

Attorney General John Van de Kamp, who sits on the Judicial Appointments Commission that rules on all appellate appointments, praises Baxter as "very careful and prudent," and says the governor is going to be "hard-pressed to find someone to replace him." But the attorney general is highly critical of the governor's record on appointments of minorities and women to the appellate courts.

"It has been very monochromatic," Van de Kamp said. "If you look at the entire bar, you'll find a much higher percentage of women and minorities."

But Baxter adamantly defends the process, saying the improved representation of women and minorities in the judiciary is "probably the greatest challenge of this position."

And he is praised, sometimes begrudgingly, by many minority and women's bar groups whose leaders say Baxter has made genuine efforts to encourage judicial applications by women and minorities.

"We have a profession that for all intents and purposes was closed to women and to members of ethnic and minority communities until recently," Baxter says.

"When I was in law school 20 years ago at Hastings College of the Law in San Francisco, we had in that first year a class of 550 students, and we had fewer than 10 women, one or two blacks, one or two Hispanics. There was absolutely no diversity. This revolution — and I use that term in the best sense of the word — is in the process of changing the profession," he adds.

"It's been my experience that over a period of time the percentages will remain fairly constant, as well they should if a single standard is being applied in the process."

"The challenge is to increase the pool of female and minority applicants through aggressively reaching out to those groups, encouraging their applications, answering questions they might have about the process, and to remove as much mystery as you can about the process — and in that way to compensate for the disproportionate numbers in the profession. That's really what we've been trying to do," he says.

Baxter notes that of 354 female applicants, 23 percent of the pool were appointed (compared to 22 percent of the male pool), 27 percent of the Hispanic pool, 31 percent of the Asian pool, 20 percent of the black pool.

"He's been dutiful about getting around" to meet with female and minority bar groups, Van de Kamp conceded. Still, the results have not been stellar, the attorney general said.

And Van de Kamp took exception to the Deukmejian administration's use of "pool" calculations.

"That's not a very fair way of judging it," Van de Kamp said.

Representatives of minority and women's bar groups say Baxter's open-door policy and active solicitation of applicants from those groups is a positive step. But they say finding an individual



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among their ranks with the proper "philosophy" is not always possible.

"He's been very fair with us," says Pauline Weaver, an assistant Alameda County public defender who is president of California Women Lawyers. "We've always had access to his office."

Janice Kamenir-Reznik, a Los Angeles real estate and business lawyer who is co-chairwoman of California Women Lawyers' judicial appointments evaluation committee, said Baxter has offered "a very responsive ear" to the organization's concerns.

Hoyt Zia, a Motorola Inc. counsel in Cupertino, who is president of the Asian-Pacific Bar Association of California, agrees that Baxter initiates outreach into minority bar communities to attract judicial applicants. But he says the governor's office "appoints who they want — they don't always respond to the suggestions we make, perhaps because of the philosophical quotient."

"I don't think any administration does as much as it can [to attract minority applicants]," Zia said, "and this administration is no different."

Robert Harris, a San Francisco attorney with Pacific Gas & Electric Co. and a member of the judicial selection committee of the California Association of Black Lawyers (CABL), said black lawyers remain skeptical about the Deukmejian administration's commitment to appointing black judges. He said CABL leaders recently met with Deukmejian.

"The record in terms of numbers is not good," Harris said. "We're certainly hopeful he'll improve. We were very skeptical before. We are now hopeful." Harris said many black lawyers who may be interested in judicial appointments simply have not applied because "they didn't believe they had a chance."

"You have a governor who campaigned on a law-and-order theme, and there is no question that he prefers a prosecution background," Harris said. "We have been able to impart to him that there are a lot of black lawyers who are prosecutors and conservative, especially concerning crime in urban areas."

Baxter says his effectiveness in affirmative-action appointments improves over time: "The longer you're in a posi-

tion like this, the more contacts you will have made within the various communities, and the more effective you can become. Once the members of these various communities see the appointments that are being made, that they have equal opportunities, that in itself would encourage those to apply who otherwise might not have applied."

He insists there is no prosecutorial bias in the governor's appointments, nor any philosophical litmus test that an applicant must pass. But he says political and philosophical considerations are obviously involved, and "anyone who would suggest that political considerations are not a factor in judicial or any other appointments I think is deceitful."

"Governor Deukmejian, of course, said on many occasions that the primary reason he ran for governor was to have the responsibility for judicial appointments. That was at the top of his list. As a result, he insists on an extremely thorough briefing. He takes a very hands-on approach."

He said most appellate appointments come from "a civil trial practice background, served on the Superior Court, and then were appointed to the court of appeal."

He cited a mix of experience at the superior court level, and a strong prosecution emphasis in the municipal court appointments.

"And I think there are reasons for that [emphasis]," he said. "The workload is predominantly criminal in nature, and many individuals in civil practice just don't have an interest and don't apply. There is certainly the issue of compensation — a successful civil practitioner certainly in the metropolitan areas, earns considerably more money [than a judge]."

The reserved, mild-mannered Baxter bristles at any suggestion that interview standards are predictably, philosophically framed.

"I don't use a list of questions," he said. "If I don't have the answers to 90 percent of my questions before I do the interview, I haven't done my homework."

"The questions depend on the situation. If there is a particular area of concern during the course of the evaluation process, and everything else looks positive, then 75 percent of the interview may focus on that

aspect.

"Let's assume that the individual had a problem with alcohol, say 10 years ago, and [the applicant] hasn't had a drop in 10 years. I think we'd want to spend a lot of time on that subject and feel absolutely certain that this is something that is in the person's history."

After an application is received and reviewed in the governor's office, an applicant must pass several significant hurdles. In four counties with high numbers of judicial appointments — Los Angeles, Orange, San Diego and Fresno — Deukmejian has named his own judicial selection advisory boards comprised of judges, lawyers and law enforcement officials.

They recruit and evaluate applicants and recommend applicants for subsequent State Bar evaluation. Baxter also solicits input from other bar groups, including organizations representing women and minorities.

After the initial screening, a decision is made as to whether to submit applications to the State Bar for formal evaluation. "Ideally, evaluations should be done on all applicants," Baxter said, "but that would be a tremendous undertaking."

Riverside attorney James D. Ward, outgoing chairman of the State Bar's Commission on Judicial Nominees Evaluation and a former member of the Bar's board of governors, has high praise for Baxter.

"He brought a lot of credibility to the office," Ward said. "When he came into the job there was great fear, particularly among elements that opposed Deukmejian, that he would impact unfavorably on the courts. But he's been very, very fair and followed very proper policies."

Associate Justice Donald King, who was appointed by former Gov. Edmund G. "Jerry" Brown Jr. to the First District Court of Appeal in San Francisco and served with Baxter on a gubernatorial commission on child support enforcement, says Baxter is "like a sponge that absorbs everything."

"He's a terribly hard worker," King added. "He really is the perfect person for the role — carrying out not what he thinks the governor wants but what he knows the governor wants. It's too easy to look at that kind of position as a hack job, but nothing could be further from the truth. They're going to have a terrible time replacing him."

Also responsible for the hundreds of other executive appointments made by the governor each year, Baxter came to one of the most powerful posts in the Deukmejian administration through the route of local and State Bar politics as well as through the influential Armenian community in Fresno County — where Baxter's Armenian immigrant grandparents settled.

For more than five years, he has made the long weekly commute between Fresno and Sacramento. He goes home to his wife Jane, an elementary school teacher, and two college-age children on weekends. He has breakfast every Saturday morning with his 75-year-old mother, who lives on the family farm in Fowler, the small community near Fresno where Baxter was raised.

When Deukmejian was elected to the state Assembly in 1962, Baxter remembers the awe in the Armenian community at "the thought of someone of Armenian ethnicity being elected to public office."

"I was a senior in college [at Fresno State University, where he received an economics degree in 1962], and my initial reaction was that it was an historic event," Baxter recalls.

A 1966 graduate of Hastings, he was a Fresno County deputy district attorney from 1966 to 1968 and then became a partner in Fresno's Andrews, Andrews, Thaxter, Jones & Baxter, where he remained until his appointment by Deukmejian in 1983.

Appellate court appointment or no, Baxter is definite about his return to Fresno.

If he does receive the appellate court appointment, he would be the first Deukmejian appointee who has not come up through the trial courts.

"I've gone through the evaluation process," Baxter says, "and right now all I can focus on is the judicial positions that have to be filled. That's all I can really think about."