



MINUTES

**City of Scottsdale
JUDICIAL APPOINTMENTS ADVISORY BOARD
Regular Meeting
6:00 p.m., Thursday, June 8, 2017
North Corp Yard, Wrangler Conference Room
9191 E. San Salvador Drive
Scottsdale, Arizona 85258**

PRESENT: Judge Bruce Cohen, Chair
Judge Bradley Astrowsky, Vice Chair
Donald Alvarez, Board Member
James Padish, Board Member
Sandra Schenkat, Board Member
Stanley Morganstern, Board Member
Brian Adamovich, Board Member

STAFF: Lorelei Oien, Management Analyst
Sherry Scott, City Attorney's Office

GUESTS: Joseph Olcavage
James Blake
Orest Jejna
Mark Brammer
Julie Dybas
Catherine Gaudreau
Patty Badenoch
James Austin Woods
Susan Wheeler
Statia Hendrix

CALL TO ORDER

The meeting was called to order at 6:00 p.m.

ROLL CALL

A formal roll call confirmed the presence of Board Members as noted above. Chair Cohen asked that all those in attendance introduce themselves. Judge Bradley Astrowsky introduced himself as the Vice Chair. Board Member Padish introduced himself as the Scottsdale Bar representative. Board Member Morganstern introduced himself as a representative of the general public. Board Member Schenkat stated that this was her second term on the Board.

Board Member Adamovich introduced himself as a representative of the public. Board Member Alvarez introduced himself as a representative of the State Bar.

1. APPROVAL OF MINUTES OF PUBLIC MEETING CONDUCTED ON MARCH 7, 2017

Chair Cohen called for a motion to approve the minutes.

BOARD MEMBER MORGANSTERN MOVED TO APPROVE THE MINUTES OF PUBLIC MEETING CONDUCTED MARCH 7, 2017. BOARD MEMBER ADAMOVICH SECONDED THE MOTION. THE MOTION CARRIED BY A VOTE OF SIX (6) TO ZERO (0). BOARD MEMBER SCHENKAT ABSTAINED.

2. TERM EXPIRATION OF BOARD MEMBER

Chair Cohen stated that this meeting was Board Member Alvarez' last meeting and thanked him for his six years of service. Lorelei Oien presented Board Member Alvarez with a gift on behalf of the City.

3. PUBLIC COMMENT

Chair Cohen invited Mark Brammer to provide his comments, which were recorded as follows:

"My name is Mark Brammer. I have lived here in Scottsdale since about '91. My wife has a business here called Janet Brooks Design. Pretty well known. I think most people do know her. I'm really here because I'm pretty upset about some things. My wife came home today. She's – she'll kill me for saying this, but she's 68. And she got beat-up hard today in court. Apparently my attorney got a last minute emergency, needed to postpone. My wife, probably five days ago got a restraining order against our neighbor. And the subject matter I'm going to bring up is I think not taken seriously or a lot of people just don't recognize it for what it is. But it's a real way of cyberbullying people. And because of technology, I think we gotta realize that the shit's out of the horse on this thing. There's people that use it for good reasons. There's people that use it for bad reasons. I unfortunately have a neighbor that used it for bad reasons. We signed a petition two years ago, along with all the other neighbors to get – to have this dog – we paid for a collar or a bark collar. Wouldn't do it. Anyway, didn't happen. He had to have his dog removed.

Well, my wife is – like I said, she just got a restraining order from a judge in City Court today. It was denied. She came home in tears. She's very, very frustrated. I don't even know what to do. I'm going to show you this. I'm not good at that. I'm not an attorney. But this is our backyard, okay? And you can pass this around. But what I'm going to talk about is revenge porn. This is something that – you're probably starting to read about it, because of drones, because of sophistication. But it's a problem, especially in the hands of somebody that wants to get back at you, because you got their dog out of the backyard, or now, the neighborhood. This is our backyard. This is our Jacuzzi. And again, I just turned 64, which can't believe. But even at our age, we do like some quiet time together. Here's our Jacuzzi. Here's the neighbor's camera. You can pass that around and look at it. This is the camera that is set looking right into our backyard at all times. I mean, it's creepy. I can't – I don't have kids coming over. It has audio and it has video.

I've brought this up to Scottsdale PD. What happens. The individual takes that camera, turns it down to the ground. When the PD leaves, he puts it right back up where it was. And I really think – I have another person in Paradise Valley that said she looked up the other day and here was a drone. She was topless out by the pool. And there was a drone filming her. Now, I don't know if I'm the first one that's brought this up, but it real – it is killing my personal life at home, because she says, 'I get a restraining order. Then it gets kicked out of court.' I don't know what to do. The only good experience – I mean this. I have no political – I have nothing. It was a Judge Jejna or Janna (phonetic), something like that. That's the only gentleman that we've ever been in front of that listened to us. I actually kind of got slapped around a little bit by him. But it was a good judge and he was honest. And he takes these things seriously. And I don't know what format. I – I'm not, you know, involved in City Councils. But I really think that this type of infringement is something you guys probably ought to spend a little bit of time seeing if – what's on the books.

What is your – you know, what guides – what guidelines do you guys have? Because technology is coming at us fast. And I don't think any – I mean, I feel bad enough when I go in front of the mirror and I see myself. This is guy is a – he's a computer expert from – he's got a computer degree. And he said he's put these pictures up on the internet. And he's filming my wife. He's going to send it to you know, this that, porn sites, whatever it may be. I have no idea, because I have – I barely have a chance to get my emails, I'll be honest with you. But I think it's something that everybody, especially women, I think more – if a guy wants to film me, I really don't care sometimes. But it is very, very – I guess it's just the infringement. It really could really hurt people. And I'd like to see if this Council – if I'm at the right format could maybe –“

Chair Cohen asked Mr. Brammer if his comments relate to Judge Blake in terms of his service. Mr. Brammer said he did not know who his wife appeared before. Chair Cohen explained that the Advisory Board's charter is to review and make recommendations to the City Council regarding retention or appointment of judicial officers to the Scottsdale City Court. It is recommended that Mr. Brammer contact City Council or the Legislature. He noted that Mr. Brammer has addressed an important issue in terms of advancing technology being used by those with nefarious intentions. Mr. Brammer reiterated his frustration that his wife was not able to obtain a continuance. Board Member Alvarez offered to take Mr. Brammer's business card and post a message on the Arizona Trial Lawyers List Service as there are attorneys who handle this type of case who may be interested in talking to Mr. Brammer. Chair Cohen expressed sympathy for the difficult situation.

Chair Cohen invited Julie Dybas, Scottsdale City Court Court Administrator to speak. Her comments were captured as follows:

“Good evening, everyone. Good evening, Chair Cohen and members of the Advisory Board. So thank you for you for giving me an opportunity to make a couple of comments. I think the first thing I want to do is clarify the last thing, that Judge Blake did not hear that case earlier today, that he – so I – Judge Blake is not the individual that he doesn't like. Although Judge Jejna is, so that's lovely. I don't know who your – it may be a pro tem, so I just wanted to kind of set the record straight on that. But I'm here just to offer my support for Judge Blake and to maybe answer any questions. And we frankly have a wonderful bench. We just do. I'm just so proud to work for and with all of them.

Judge Blake, a couple of key points I kind of wanted to bring out. Staff really, really adore Judge Blake. And one of the reasons is because Judge Blake is one of those judges that has an incredible work ethic. If we needed somebody in Jail Court, he's there. If there's – he needs to stay late or take extra cases, he'll do that. So he is somebody that really does a lot of work at the court. He's really foundational in that.

He also has a really strong legal mind. If we have any questions regarding the law, we will definitely go to him and ask any questions. Judge Blake will give his time in terms of lunch hours or whatever for trainings for court staff or anybody else on the law, on legislation, on anything like that. He is – runs a really tight court. And he keeps things moving forward. And he will deny continuances and make people unhappy. He has a great calendar management. And I will say regardless of his style or approach, he really treats everybody fairly and consistently across the board. So it doesn't matter if you're frankly from a really high price defense bar or if you're a self-represented litigant, Judge Blake really does treat everybody the same and with respect. And I don't want to take up a lot of time, but I just wanted to really be here, offer my support. And he's a really important part of our bench and we're very proud to have him on there.

Chair Cohen invited Judge Olcavage to speak. His comments were recorded as follows:

“Judge Olcavage, Presiding Judge of Scottsdale City Court. Mr. Chairman and members of the JAAB Committee, I'm here to support Judge Blake. I'm not going to go over a lot of things that you already have. I just want to point out a few things you may not be aware of. Judge Blake is extremely efficient. He probably does more jury trials than any other judge in our court. As Ms. Dybas said, he's extremely helpful. He's always willing to come in and help out other courts, if they are busy doing something else. We have Veterans Court. We're part of the regional Veterans Court in Scottsdale, where veterans that have been charged with a criminal violation that have emotional issues or anger management or substance abuse can go to Veterans Court. I conduct that every other Wednesday, when we present to them what is required of them, what they would have to do if they are interested. If they are interested, they would be transferred to Tempe City Court, where the regional court is run out of. And that's run by Judge Maxim. And there they have the staffing with the Veteran's Administration, providers of services. And they come up with a treatment plan, which they gotta follow through. The judge holds them accountable. Judge Blake is my backup for Veterans Court at our court. He's also the backup for our court for Judge Maxim, which means if Judge Maxim is out, Judge Blake has to go to Tempe City Court and actually run the regional Veterans Court there.

He also runs the Restitution Court. Restitution – if a victim is out financial amounts, due to criminal activity that is assessed, if we hear from the victim that they're not paying or they believe the Defendant has the ability to pay more, we'll set through the Restitution Court, which is a specialty court in Judge Blake's courtroom. He'll bring them in. They have to fill out a financial affidavit. We'll do a credit check. He may require income tax returns. Then he's going to set them up on a payment plan. He may bring them back every week. He may bring them back once a month. Once they're established on the plan, if they meet expectations, like pay \$200 a month, they actually don't have to show up in court. If they miss a payment or they're unemployed or they can't make the amount, then they are going to have to show up. And this court is meant to help the victims, who are entitled to get their restitution. Judge Blake also gives us the legal updates. So if there's any changes in the law through the Court of Appeals or Supreme Court, he's going to let us know how they impact our court. And also at the end of each legislative session, there's numerous changes that would affect the City Court. He brings us up to date on that, because he tracks the legislative changes throughout the year.

And the last thing I want to point out is he's very involved in judicial education throughout the State of Arizona. We have COJET classes internally for staff and for judges. He participates and puts programs together for that. He talks to the Arizona Magistrates Association, which is made up of city judges around the State. He also speaks and teaches Justice of the Peace at their association. In fact, he was teaching downtown for the justices this morning. He had a group of people he was teaching – or this afternoon, rather. He teaches at the Governor's Office of Highway Safety once a year. And he is a regular speaker at the annual judicial conference for the Supreme Court. So these are a few things that probably don't jump out at you, but I think are very important. And I want you to know about that.”

Chair Cohen thanked Judge Olcavage for his comments. He invited Judge Jejna to speak. His comments were captured as follows:

“Good evening, Judge Cohen, members of the board, members of our community. I probably won't sit, because that means I'll stay longer. I've probably known Judge Blake longer than anybody here in this room. Judge Blake and I go back to the mid 80's. Judge Blake was a prosecutor. I was a defense lawyer on the criminal side of things. And so that's where our beginnings began. Judge Blake has always been honest. His integrity is of utmost, highest integrity. He's been a true friend. Anytime we have issues in the court, he's actually our go-to guy. A lot of times he likes to joke with me. He says, 'You know,' – he says, 'I've heard people say Judge Jejna's the nice judge, but Judge Blake is the smart judge.' And quite frankly, he is the smart judge. I rely many times on his expertise, his legal acumen. He's on top of the law, as Judge Olcavage has told us. He speaks before the state and judicial conferences as well as other conferences. And as I say, he is the go-to guy for us at the court. And if there's an issue that is of touchy interest, he's always the guy that you can sit down with and have an honest discussion regarding the issues. And so I'm here in support of Judge Blake, having known him for well over 30 years. And I highly support him in his position. I think he can do a wonderful job for the city. So thank you for this opportunity.”

Chair Cohen thanked Judge Jejna for his comments. He invited Judge Catherine Gaudreau to speak, introducing her as the newest member of the judiciary in the State of Arizona, City of Surprise. Her comments were recorded as follows:

“Catherine Gaudreau. And I have lived in Scottsdale since 2002. We moved here. Started in Florida, then California, then Wisconsin and here. But I have had the honor of recently being appointed as the Associate Judge in the City of Surprise. Prior to that, I spent 11 years, up until the month that I left, as a prosecutor in the City of Scottsdale. And for many of those years, close to 11 years, I was assigned to Judge Blake's court. I've been in front of all of the judges in Scottsdale and we're fortunate to have such an outstanding bench here. But – and I think that I've learned something invaluable for each one of them. Their styles, their knowledge. But as to Judge Blake, I tell people – people would be nervous prosecutors, if they're knew about getting assigned to Judge Blake's court. And I would say, 'You are going to be a better attorney for having served in that court.' And people have told me after, 'You're so right. And I feel – I'm so happy to have had that experience there.' And mostly prosecutors, because there were people from our office being rotated through that court.

You know no matter what, Judge Blake is going to make his decisions based on not who you are or how you sound or what you look like, but what are the facts that are proven in court and what is the law that applies to those facts. And that's what you want a judge to do. And to do it with humanity and compassion and explain the rulings. I can only echo the comments about his

integrity and his legal mind. I used to joke that he uses the statute book for his pillow. 'Well, I was reading the book last night and I found this. And what do you think about that?' He's fascinated by the law and by the changes in the law and really, truly enjoys discussing it. Much of what I learned and what allowed me to get the job that I have now that it's – I knew I would love it, but it's exceeded my wildest dreams. I'm so happy to be where I am. And I owe that to Judge Blake, as well as to the other judges in Scottsdale and all the judges I've ever practiced in front of. But in Arizona, I knew that I was ready to contribute more to this legal community.

And at my investiture, I said I was fortunate to have some of our judges here there. Judge Blake was not able to make it, but I said I still hear his voice in my head on a pretty regular basis. 'Well, what about this? And what about this?' I mean, you – he was the last court I was assigned to before I left Scottsdale – City of Scottsdale. But if I can analyze cases the way that he does and have the quick mind that he does, City of Surprise will be very lucky to have me, once I learn all of the ins and outs about my job. I absolutely support his reappointment. I'm looking forward to hearing him as well as Judge Cohen and Judge Hendrix. Other – Judge Olcavage at the judicial conference, my first judicial conference, which is coming up very soon. And everyone, I think, in the judiciary, I think in the judiciary that I've met knows that Judge Blake is an outstanding legal resource for everyone. So thank you for allowing me to speak."

Vice Chair Astrowsky made a public disclosure concerning his knowledge of Judge Blake. His comments were recorded as follows:

"In 1995 to 1996 time period for about a handful of months while at the Maricopa County Attorney's Office, Jim Blake was my supervisor at the – actually, he wasn't my direct supervisor. He was my supervisor's supervisor. And then also, in 2010 I served as a juror on a DUI trial in front of Judge Blake. I was the alternate, so I didn't get to make the decision. There's nothing about those two experiences that would impact my ability to be fair and impartial in the setting, but I felt the need to disclose it. And if anyone has any issues with that, feel free to ask questions."

There were no questions for Vice Chair Astrowsky.

4. DISCUSSION OF JUDICIAL SURVEY RESULTS ON ASSOCIATE CITY JUDGE JAMES BLAKE.

Ms. Oien stated for the record that Judge Blake has not seen his survey results. The normal practice is that the Judge would be sent the survey results at the same time as Advisory Board Members. Judge Blake has not had time to prepare anything in response. This was the result of an oversight. She spoke with the Court Administrator in terms of Judge Blake not wanting to delay the interview, but she would like to confirm this with Judge Blake as well.

Chair Cohen asked for any comments on the survey results. There were no comments.

5. DISCUSSION OF CONFIDENTIAL RECORDS AND CONFIDENTIAL INFORMATION RELATED TO JUDGE BLAKE'S PERFORMANCE OR REAPPOINTMENT

Chair Cohen asked that Board Members provide any comments related to the feedback received.

Sherry Scott noted for the record that this is the portion that can be discussed publicly and should not include any confidential or personally identifying information that those interviewed did not want publicly disclosed. Confidential portions would need to be reviewed in executive session, if necessary. Chair Cohen reminded everyone that all those spoken with were assured that they would not be identified and that anything attributable to them would remain confidential. Only the general information would be relayed. He asked whether anyone had information that might potentially violate this principle if discussed in open meeting.

Board Member Morgenstern said that what was told to him by various attorneys was on the basis that the comments would remain confidential. As such, he recommended convening into executive session. Board Member Alvarez asked whether the individuals requested that their names remain confidential or that the comments were confidential. Board Member Morganstern replied that the comments were understood to be confidential. Board Member Alvarez said that if the people are not being identified, there should be no issue with simply discussing the comments. Ms. Scott said that if there are comments from prosecutors or court staff, there are very few of those who interact with the judge. Just the general comment can lead to personal identifying information. This is a concern, even if the name stays confidential. Chair Cohen asked whether Board Members would be able to comment on the information provided without specificity. Board Member Morganstern said there are a couple of instances where the relationship of the person who spoke to the judge might give away their personal identification.

Ms. Scott said that the process should rely on the Board Member who had done the due diligence. If they feel the comment itself requires confidentiality or would lead to personal identifying information, there can be an executive session. If some of the comments are not going to lead to potentially identifying a person, they can be repeated during the public meeting for the purposes of transparency. Vice Chair Astrowsky suggested that Board Members first share all information that is without personal identification issues and then after that, move to enter executive session. Chair Cohen said either sequence is fine. It may be that after public comment, it is not necessary to go through the confidential comments.

Vice Chair Astrowsky said that to a person, regardless of which side of the courtroom they sat on, the input was consistent. Overall, individuals indicated that they had nothing negative to say. Judge Blake uses thorough analysis of the law and makes fair rulings. He is good with lawyers. He is very smart and knowledgeable on the law. He does a better job than most in explaining his rulings and provides written clear rulings concerning the law. He is unbiased and rules right down the middle. Regardless of which side you are on, he will rule fairly, based upon the facts of the case and the applicable law. The only negative comment was that perhaps his, "bedside manner," could be improved a bit. However, overall everyone spoken to loves him, wants him to stay and loves appearing in front of him.

Board Member Padish said that much of what Vice Chair Astrowsky related is precisely what he learned from talking to both members of the Defense Bar and the Prosecutor's Office. The comments made by judges in support of Judge Blake were repeated by those spoken with from a totally different perspective. He is known to be bright, very competent and efficient. The most telling comments reflected that both the Defense Bar and the prosecutors described him in similar terms, which is probably the highest praise that a judge can have. He is smart, tough on both sides, very competent and fair. Board Member Padish said he has known Judge Blake for nearly as long as Judge Jejna. Early on, they had cases adverse to each other. Board Member Padish also tried cases before Judge Blake. Judge Blake is the same person he was 30 years ago.

Board Member Morganstern said he generally had the same experience in his discussions. Judge Blake was described as being very fair, highly qualified, that he treats everyone with respect. There were comments that he could be short at times, but short with those people who deserve it. One attorney described Judge Blake as Scottsdale's best judge, great judicial temperament, always well prepared. He was very helpful to a young attorney while, "getting through the minefield of what a courtroom can be." The Judge wants people to be accountable, but is very fair. Generally, even if there was a negative comment, the end result was that they would certainly support his reappointment.

Board Member Schenkat said she had 11 people on her contact list. One was a wrong number. One individual claimed he had never been in Judge Blake's courtroom. One individual wanted to politely decline from discussing Judge Blake. Two did not return calls after three times. There were six responses. She quoted the comments as follows:

"Hasn't appeared before Blake, but has heard he has reputation of being a fair judge. Blake always gives good rulings and he gives both sides equal time. He should be reappointed. Seems to be more prosecution oriented but also seems like he calls it like he sees it. Claimed he has not appeared before Blake in at least a year, but Blake is courteous and follows the law. Nothing bad to say about him. Has appeared before Blake many times and has only favorable comments to share. He listens well and is fair. Likes Blake's efficiency. He is very intelligent. Knows the law. Very fair. He even gives the defendants a chance to speak. Blake is the most efficient of the Scottsdale judges."

Board Member Adamovich said that many of his conversations resonated with what others have said. However, the comment that stood out was, "Judge Blake could be the best judge that they have over there, but he's a little bit too prickly." The bedside manner was a common theme.

Board Member Alvarez said that all of the people he spoke with, including both prosecution and defense said that he should be retained. Many similar comments were received, including, "Well prepared, diligent, gets decisions out quickly, very hard-working, fair and well reasoned opinions, competent, professional, wants you to be prepared, courteous, good with both prosecution and defense." As a follow-up, Board Member Alvarez asked interviewees what they think about the Scottsdale City Court. Everyone rated the court and judges in general highly.

Chair Cohen said he spoke to a number of people and that getting the calls returned is a challenge. Echoing what Judge Gaudreau said, one person indicated that they had appeared before Judge Blake countless times over the years. They commented that Judge Blake was incredibly patient during that attorney's learning curve. Other descriptions included, "Well respected with a brilliant legal mind." This was a common theme. People indicated fairness, that there was an understandable basis for decisions, that he was not afraid to rule in whatever way the circumstances dictated. Another notable comment was, "Decisions are fair but delivery at times is too direct." Similar comments were, "Too direct, could be abrasive, could be intimidating, could be abrupt, short with people." This was a common theme, according to attorneys both prosecution and defense, who noticed that the abruptness was more noticeable with self-represented litigants. This is a problem, if this is an accurate perception. Otherwise, across the board, everyone were absolutely recommending retention.

Chair Cohen asked whether Board Member Morganstern was of the opinion that an executive session would be necessary to further discuss comments. Board Member Morganstern said in light of what has been said, he did not feel the need to address further the comments he was concerned about.

6. DISCUSS QUESTIONS FOR INTERVIEW OF JUDGE BLAKE

Chair Cohen said he would be asking Judge Blake about the comments that were made. He invited other Board Members to propose questions. Board Member Schenkat said that in 2013, there had been a discussion regarding Judge Blake's judicial temperament. She went and observed Judge Blake in his courtroom out of curiosity. Both times she observed him, she found him to very reasonable. However, the comparison between 2013 and 2017 shows that the scores on temperament remain about the same. In 2013, the Board did advise Judge Blake that he needed to be a bit more conscious of his temperament.

Board Member Padish asked whether Board Member Schenkat had had any other personal experience with Judge Blake. Board Member Schenkat said she did have a personal experience in 2012, which was very favorable. Board Member Padish asked whether she was a litigant in Judge Blake's courtroom and particularly a defendant. Chair Cohen advised that Board Member Schenkat should not feel compelled to go into the matters, if she was not comfortable. Board Member Schenkat stated that she did not feel it was relevant to address the matter further. Her observation was limited to the fact that the 2013 comments were similar to 2017 and that perhaps the Board could remind Judge Blake once again. All the other scores were significantly above expectations and this was his only negative. Chair Cohen noted that the 2013 statistical data reports do reflect what Board Member Schenkat stated.

Board Member Schenkat added that she and Board Member Morganstern visited the court and observed Judge Blake in the police section. He did, "great," at that time. Chair Cohen asked whether Board Member Schenkat had a line of inquiry she intended to question him about. Board Member Schenkat replied that her inquiry would be limited to the comments concerning his temperament. She views him as very stern, which is a positive for a Judge, however, there is a fine line from stern to rude.

Board Member Alvarez stated that every judge has their own personality. If there are four or five on a bench, there will be one that is more stern than others. In the comments he received, none noted rudeness or disrespectfulness. The comments were that he was respectful and to the point. This may be misinterpreted as being disrespectful. Depending upon the case and the litigants, a judge may become impatient when a litigant should know better than what their behavior or arguments imply. Sometimes they have to be cut off. He agreed that the Board should speak to him about this, if they feel it is of concern.

Vice Chair Astrowsky said that in comparing 2013 to the present, he would analyze the results in the same way that the Judicial Performance Review Committee would analyze when considering Superior Court Judges. If there is an unsatisfactory or poor performance in any category that is 25 percent or higher, a conversation to discuss this would be required. In 2013, he would have been called down, because of those numbers. In 2017, he would have been left alone. It should be noted that the numbers are better significantly from 2013 to 2017 in terms of percentages. None of them when added together would dictate a conversation or concern.

Board Member Padish said that one of the challenges in relying on statistics is the return rate. The return rate for 2017 for Judge Blake showed that 19 people returned a response. It is unfair and unwise to draw any meaningful conclusions from such a limited pool of responses. There was discussion that the total responses depends on the group of people being surveyed. There were 19 attorneys, but in the next column, there were 169 responses, when adding all respondents, such as witness, jurors, defendants and staff. There were 92 from witnesses, 14

from jurors and 42 from staff. Chair Cohen agreed, however, that the return rate is very low across the board. The statewide average is typically 13 to 15 percent.

Board Member Schenkat asked whether confidential comments should be discussed or whether executive session would be necessary for some demeaning comments. She referred to the page that lists respondent's comments. Chair Cohen said that the confidentiality relates to the fact that the people providing the comments should remain confidential, not that it requires the Board to address the issue itself confidentially. Ms. Scott agreed, stating that if the Board can address the comments publicly without it being able to be traced back reasonably to the author, Board members are free to comment generally.

Chair Cohen said that temperament is certainly a question to be posed, however he did not want that to be the primary focus, especially as the overwhelming nature of the comments have been exceptional.

Board Member Morganstern cited the notice of change of judge, which was listed a number of times. In 2016, the occurrence was substantially more than every other month. He questioned whether Judge Blake could be asked about this. Vice Chair Astrowsky said this might be a fair question. However, there were previous concerns that there may be entities or groups misusing the notice of change of judge. The idea was to determine if this was a pattern across the board. It is difficult to assess this by just looking at one judge. Board Member Alvarez pointed out a mistake on the average, noting that it says 10.2 and should be 4.3. Chair Cohen agreed that the original version was incorrect, however, it was subsequently corrected. He added that this is a very high volume court. This does seem to be an outlier and it is worth asking whether Judge Blake is aware of something that occurred in June of last year that would explain this.

Vice Chair Astrowsky said he did not know whether the Board should be looking for questions to ask just to fill time. With such positive responses, the Board may want to address a couple questions to the concerns and move on. Chair Cohen added that the discussion about temperament is very important, but should not skew the discussion. Board Member Alvarez commented that Judge Blake may just be tough judge. Chair Cohen commented that being on the bench is not a popularity contest.

Board Member Schenkat asked whether everyone has had an opportunity to read the confidential comments section. There was agreement that everyone had the opportunity to review them. Board Member Schenkat commented that some of the statements are pretty serious, which was the reason she brought up the temperament issues and that Judge Blake should be aware of these comments.

Board Member Alvarez said that the negative comments are by witnesses and not by the actual litigants themselves. Witnesses are generally in the courtroom only for a very short period of time before leaving. Board Member Schenkat commented that she was shocked at reading the last four comments. Board Member Adamovich said that an average person will be in the courtroom for a very limited period of time. The comments are a tagalong issue and not a qualifier. However, there should be a conversation about avoiding this issue. Board Member Padish stated that these are anonymous comments by individuals who were in court with a particular agenda and the disgruntled comments appear to come from those on the losing end of the dispute. He could not imagine an instance where Judge Blake or any other judge in Scottsdale threw a tantrum and stormed off the bench.

Board Member Padish said that he does not wish to give credibility to anonymous statements by grilling Judge Blake. Chair Cohen said that speaking from experience, there is a tremendous amount of perception involved. The point is well taken that there has been overwhelmingly positive feedback. However, this does not mean that Board Members should not address areas of concern.

7. INTERVIEW OF JUDGE BLAKE

Judge Blake was invited to join the meeting and welcomed any statements or comments. Judge Blake said he was present to seek support for reappointment. He has been a judge since 2001. He believes he has demonstrated the ability to be a good judge and is prepared to answer any questions.

Chair Cohen thanked Judge Blake for being present and invited questions from Board Members. Board Member Morganstern addressed the notice of change of judge and particularly the number of changes requested in June of 2016 and asked whether there was a particular circumstance behind the occurrences. Judge Blake did not recall the particular month, however, there were three main groups involved. The Law Firm of Craig Rosenstein raised the defense that the DPS machine had broken a year after the testing of the blood sample. They made the argument in opening statement. The State moved to preclude it. Judge Blake asked how showing that the machine broke a year later related to the case at hand. The response was that there was no basis, but they were going to argue it anyway. He informed the defense that he was granting the State's motion. The defense argued that he was destroying their defense argument. The defense objected, resulting in notices of change of judge.

The second group was David Cantor and he has no explanation for the occurrence. The third group was the State in reference to escort cases. They had an escort case Judge Blake tried as a bench trial. He did not believe their facts fit the City ordinance and he told the State he would not convict the defendant. The question was as to the fact that you have to accompany someone in order to do an escort service. The defendant went to a hotel room and did not accompany the individual anywhere. Because they believed the facts did fit the statute, the State then began to notice Judge Blake on the day of arraignment. As such, he could not complete the arraignment. In those instances, he would go to Judge Jejna and Judge Olcavage and ask if they would do the arraignment so that the person did not have to come back twice.

Chair Cohen said that there has been high praise for Judge Blake as a judge, including the following adjectives: Brilliant, and an incredible legal mind. The Board wanted to provide Judge Blake the opportunity to respond to comments regarding temperament in terms of abruptness. Attorneys noticed different treatment to self-represented litigants. Judge Blake said that he has the highest not guilty record of any judge on bench trials, with the last not guilty verdict just yesterday. He tries to treat self-represented litigants the same. They receive fair treatment.

Chair Cohen clarified that the comments were in regard to demeanor. Judge Blake acknowledged that he is a strict judge. He knows there are instances where litigants are interrupting him while he is also interrupting them, as both make efforts to get their point across. Under those circumstances, he addresses the situation, allows the person to say whatever they want and then asks for the same courtesy in return. If the situation is not going well, he will suggest they take a break, settle down and begin again when both are ready to resume. At

other times, litigants have difficulty thinking on their feet. In these instances, he will ask them to have a seat and think about what they want to say and then resume when they are prepared.

Board Member Padish said that one respondent said Judge Blake is “softening up.” Judge Blake said that unfortunately, sometimes people come before him who have been dealt a bad hand in life. It’s easier to be tough with someone who is, “bad,” doesn’t care or is committing crimes. It is another case when there is just a sad situation.

Chair Cohen said that members of the bench reflect on other members of the bench. Comments describing Judge Blake include: Fairness, integrity, an incredible legal mind, treats people equally. He thanked Judge Blake for reflecting so favorably on the judiciary as a whole. Judge Blake thanked the Board for its comments and service.

Judge Blake left the meeting at 7:12 p.m.

8. DISCUSSION OF AND REAPPOINTMENT RECOMMENDATION REGARDING JUDGE BLAKE

Chair Cohen asked for the Board’s recommendations to City Council.

BOARD MEMBER ALVAREZ MOVED TO RECOMMEND REAPPOINTING JUDGE BLAKE TO THE CITY COUNCIL FOR ANOTHER FOUR YEAR TERM. VICE CHAIR ASTROWSKY SECONDED THE MOTION. THE MOTION CARRIED BY A UNANIMOUS VOTE OF SEVEN (7) TO ZERO (0).

There was discussion that Chair Cohen would sign a letter formally recommending Judge Blake’s reappointment to the City Council. He also agreed to appear before Council for formal presentation.

BOARD MEMBER ALVAREZ MOVED TO APPOINT CHAIR COHEN TO REPRESENT THE BOARD AND SPEAK TOWARDS THE REAPPOINTMENT RECOMMENDATION AT THE JULY 5, 2017 CITY COUNCIL MEETING. BOARD MEMBER ASTROWSKY SECONDED THE MOTION. THE MOTION CARRIED BY A UNANIMOUS VOTE OF SEVEN (7) TO ZERO (0).

9. TIMELINE FOR JUDGE JOSEPH OLCAVAGE’S AND JUDGE STATIA HENDRIX’S JUDICIAL REAPPOINTMENTS

Chair Cohen stated that Judge Olcavage and Judge Hendrix remain to be addressed for next March. As they have the same dates of reappointment, they could both be addressed during the same meeting. There was consensus to this approach. Ms. Oien suggested that JAAB meet the week of February 12th, however there is flexibility. The recommendation must go before Council by the end of February. The Board may choose to meet more quickly, such as in December, if desired. Chair Cohen stated his preference for not waiting for the last moment. He suggested meeting in December or beginning of January. There was consensus for the second or third week of January. He asked Ms. Oien to provide possible dates for the Board.

10. FUTURE AGENDA ITEMS

Board Member Schenkat said that at the last meeting, the Board discussed the possibility of a fifth judge and asked whether the Board would undertake further discussion. Vice Chair Astrowsky recalled that the previous discussion concluded that this is not necessarily the Board's role and would more likely be under the purview of City Council, depending upon population. Board Member Morganstern recalled that the discussion related to how the number of judges was determined and that an answer was to be forthcoming from the law department. Board Member Alvarez said this is something that has been discussed in the past as well. His recollection was that the Board was to receive information about the volume of cases. This is largely a budget issue. The court does have a healthy list of pro tems that they rely upon.

Ms. Scott said that the agenda item is for the purpose of identifying future agenda items and not for the purpose of holding the actual discussion. She proposed putting the item on the agenda in order to educate the Board regarding the process.

Chair Cohen said it is outside the scope of the Board's charge. The context in which there was some opinion that it would be appropriate to discuss was to the extent that the Board felt it affected the ability to make recommendations. If the court as a whole is overburdened, then the Board's recommendations could include comments regarding the strains that the court as a whole is experiencing.

Board Member Schenkat questioned the idea of budgeting for the court. Last year the court made \$19 million and their expenses were \$9 million. Chair Cohen said this would still be a City Council issue. Ms. Scott said that under the open meeting law, the Board needs to stick strictly to the agenda. This topic will be placed on the future agenda in order to have a full and complete discussion. Chair Cohen said the discussion should include the authority and mandate parameters of the Board.

Chair Cohen said that as a matter of disclosure and because of the items discussed at previous meetings, he has been invited to speak to the Scottsdale City Prosecutor's Office in June on the general subject of procedural justice. He is not appearing as a representative of the Board. He did have discussions with the City Attorney, who invited him to attend.

ADJOURNMENT

With no further business to discuss, and being duly moved and seconded, the meeting of the Judicial Appointments Advisory Board adjourned at 7:25 p.m.

SUBMITTED BY:

eScribers, LLC

Respectfully submitted,
Lorelei Oien
HR Management Analyst

Reviewed by,
Bruce Cohen
JAAB Chairperson