



MINUTES

**City of Scottsdale
JUDICIAL APPOINTMENTS ADVISORY BOARD
Regular Meeting
Wednesday, February 17, 2021**

Virtual Public Hearing

PRESENT

Board Members:

Robert Gruler, Chair
Susan Galpin-Tyree, Vice Chair
Brian Adamovich
Joseph Kiefer
Suzanne Marwil
Stanley Morganstern
Tricia Schafer

Staff:

Stephanie Heizer, Assistant City Attorney
Autumn Asmus, Staff Coordinator

CALL TO ORDER

Chair Gruler called the meeting to order at 6:00 p.m.

ROLL CALL

Members present as listed above.

Possible Executive Session

1. **APPROVAL OF JANUARY 11, 2021 JUDICIAL APPOINTMENTS ADVISORY BOARD MEETING MINUTES**

Chair Gruler called for a motion to approve the minutes.

BOARD MEMBER MARWIL MOVED TO APPROVE THE JANUARY 11, 2021 JUDICIAL APPOINTMENTS ADVISORY BOARD MEETING MINUTES. BOARD MEMBER MORGANSTERN SECONDED THE MOTION, WHICH CARRIED SEVEN (7) TO ZERO (0). CHAIR GRULER, VICE-CHAIR GALPIN-TYREE, BOARD MEMBERS ADAMOVICH, KIEFER, MARWIL, MORGANSTERN, AND SCHAFFER VOTED IN THE AFFIRMATIVE. THERE WERE NO DISSENTING VOTES.

2. TERM EXPIRATION OF BOARD MEMBER

Chair Gruler thanked Board Member Morganstern for his years of service on the Judicial Appointments Advisory Board.

3. PUBLIC COMMENT

There were no comments submitted from members of the public.

Chair Gruler called for a motion to close public comment.

BOARD MEMBER MORGANSTERN MOVED TO CLOSE PUBLIC COMMENT. VICE-CHAIR GALPIN-TYREE SECONDED THE MOTION, WHICH CARRIED SEVEN (7) TO ZERO (0). CHAIR GRULER, VICE-CHAIR GALPIN-TYREE, BOARD MEMBERS ADAMOVICH, KIEFER, MARWIL, MORGANSTERN, AND SCHAFFER VOTED IN THE AFFIRMATIVE. THERE WERE NO DISSENTING VOTES.

4. DISCUSSION OF JUDICIAL SURVEY RESULTS ON ASSOCIATE CITY JUDGE OREST JEJNA

Chair Gruler asked whether everyone had read the survey information and whether anyone would like to comment.

Vice-Chair Galpin-Tyree said that upon her review she noticed that the main scores were three and four points. Judge Jejna's scoring according to the statistical data would suggest that he is hovering at very good and superior.

Board Member Morganstern added that the results are similar to the survey taken during Judge Jejna's 2017 appointment process.

Chair Gruler noted that the two reports were dated with different time periods, one from May through October of 2020 and the other from January 2021. One has percentages and the other has raw scores. The only mean number that dipped below three was a 2.9 score under the defendants and plaintiffs' section. He said that the one statistical data report says that it was distributed to individuals who appeared in court between May 1 and October 31, 2020, and the other says it is a summary of the data reports as of January 2021. He said that what Board Member Morganstern was saying was that everything preceding May 1, 2020 is in alignment with the current scores.

Board Member Marwil clarified that Board Member Morganstern was saying that the results were not materially different the last time Judge Jejna was up for reappointment and the surveys were the same. She speculated that both reports are from the same time frames, one was just

generated in January of 2021, covering a six-month period. Surveys are done by third party survey collectors, so there is a lag time between when surveys are collected and the results are distributed.

Ms. Asmus confirmed that both of the reports cover the same time period. She received the information from the survey company in January.

Board Member Kiefer asked whether one report is a reflection of all the judges and one is specifically for Judge Jejna. He noted that one of the reports has a much higher number of survey responses and there is no name on that report. The other report has a lower number of responses with higher numbers.

Chair Gruler agreed, noting that the report from May 1 to October 31, 2020 had 176 total surveys and the one generated in January shows 4,228 responses.

Board Member Kiefer suggested that the larger report could be intended as a tool to compare Judge Jejna's scores to that of other judges.

Ms. Asmus indicated that she can call the company that generated the survey results for clarification.

Vice-Chair Galpin-Tyree said that paragraph 2 of the cover letter accompanying the surveys says 1,115 surveys were distributed for the current report period. Of those the post office returned 101 as undeliverable and 146 usable surveys were received for an effective response of 14.4 percent.

Ms. Heizer said that additional clarification on the summary sheet and what it contains was provided on page 2 of the cover letter.

Board Member Kiefer noted that the document says "all of the responses we have received since beginning of work with the City of Scottsdale." He questioned whether or not that means all judges over the entire time. Ms. Heizer opined that his assessment is fair based on the language in the first paragraph.

Board members agreed that the May 1 through October 31, 2020 report with 176 responses is the relevant report.

Board Member Kiefer referenced the column with 2.9/3.2 score, commenting that while every survey result is important and considered, it would not be surprising to see a judicial officer who is doing a lot of criminal cases with lower scores.

Chair Gruler concurred with Board Member Kiefer's comment, noting that scores under the juror box section went up to 3.5, staff was 3.3, attorneys 3.1, which is in line with defendants generally speaking giving lower ratings just because of the nature of their circumstances.

5. DISCUSSION OF CONFIDENTIAL RECORDS AND CONFIDENTIAL INFORMATION RELATED TO JUDGE JEJNA'S PERFORMANCE OR REPAPPOINTMENT

The Board may discuss confidential records in a manner that does not reveal confidential information and did so in the public portion of the meeting as follows:

Board Member Marwil stated that she was impressed at how many lawyers indicated that Judge Jejna was fair, regardless of the result that was achieved. They also noted that he has good courtroom control and was able to adapt to COVID-related changes within the court with relative ease. Many people noted that he is able to de-escalate situations with some skill. Numerous respondents indicated that not only is Judge Jejna a good judge, but one of the finest to sit on the Scottsdale City Court bench.

Board Member Adamovich indicated that he too received extremely positive responses. People complimented his demeanor, professionalism, and fairness. He received no negative comments.

Board Member Morganstern said that he had the same results. Respondents that he spoke to said he is fair, equitable, courteous, and handles unrepresented defendants or litigants very well. One attorney went so far as to say that Judge Jejna is the best judge in the building.

Vice-Chair Galpin-Tyree said she received similar responses. She added that she received a comment that he trains his staff to be very professional and his court operates efficiently. Most of the respondents mentioned that his legal reasoning was sound, whether they agreed with him or not.

Board Member Kiefer had the same responses. He said that he did hear that not only is Judge Jejna the best judge in city court, but the best judge in the entire state. He received nothing but glowing comments.

Board Member Schafer said she received similar responses, all positive comments and glowing reviews.

Chair Gruler said that he had the same feedback. He noted that he received a comment complimenting Judge Jejna's virtual calendars and how he's running his virtual courtroom in light of COVID. That person said that his virtual courtroom is run extremely well, very timely, on point, and stands out from other courts.

6. DISCUSS QUESTIONS FOR INTERVIEW OF JUDGE JEJNA

Chair Gruler noted that Board members were provided with a list of potential questions. Board members made suggestions and discussed questions that would be asked. Ms. Heizer reminded the Board that they are not limited to asking the questions that were discussed, as long as questions are related to his merit as a judge. Follow-up questions can be asked as appropriate.

7. INTERVIEW OF JUDGE JEJNA

Chair Gruler invited Judge Jejna to make a statement. Judge Jejna welcomed new board members. He said that he looks forward to answering questions and will provide a summation at the end of the interview.

Chair Gruler invited questions from the Board.

Vice-Chair Galpin-Tyree asked what Judge Jejna has sensed over time in working with colleagues and other municipal judges to be one of the more perplexing ethical problems or troubles among judges. How does he make judges aware of the problems and does he offer mentorship in remedying issues? Judge Jejna said one of the things that's come about over the past eight to ten years is there's always an undertone that judges in municipalities are beholden to city council or the mayor, which does present an ethical issue if it happens. In his career, he has had a number of decisions that he's made that probably have been looked at by City Council and they allow the judges to do the decision making as deemed appropriate, so he does not see that problem. He has never been interfered with by anybody from government in his 20-year judiciary career with the city. He said he thinks it is public perception that judges are in the position of answering to government because judges are paid by the city and somehow that transcends into the perception that they are beholden. If that were true, then judges would not be following through with their constitutional duties. He said that he hasn't encountered a time where it was necessary to address issues with another judge.

Chair Gruler asked Judge Jejna to speak to how he handles critiques that come to the court regarding the perception that Scottsdale City Court operates uniformly without making an independent determination for a justifiable legal outcome. Judge Jejna said he does not normally hear that type of commentary. He noted that Judge Olcavage is the presiding judge and even before his tenure, there has been tremendous independence amongst the judges. He gave an example of the court's response to COVID. He was assigned as the remote judge starting in March as a result of the circumstance of making sure that someone in the judiciary would always be able to stay open to serve the community. No policies were handed down with regard to handling the COVID situation.

Chair Gruler said that during one of his due diligence interviews concern was expressed about a blanket policy about difficulties obtaining Automatic Vehicle Location (AVL) data in criminal cases. Judge Jejna said that he is the judge that orders AVL data. He said that a few years ago he did deny a request for AVL data because at that point in time, it wasn't shown that it was relevant to that particular case. Since that time and every time an expert has been brought in, he has granted the defense motion. He mentioned that approximately a year ago there was a case where he granted an AVL data request and the data turned out to be very valuable for the defense, because it was contrary to the testimony of the police officer in the evidentiary hearing. Ultimately, that case ended up settling based on that data. In that particular case, he granted the defendant's motion for AVL data and also made additional commentary that he felt it was Brady-type material that should be given in all cases. The State took umbrage with that statement and the case is now in a special action setting in Superior Court.

Board Member Marwil commented that judicial officers have faced unprecedented challenges with COVID and rapid-fire changes for courts at all levels. She asked Judge Jejna to provide some insight into what he feels has been the most challenging aspect of making those changes

and also if there is something that he found he has enjoyed and intends to carry forward once COVID is a distant memory. Judge Jejna said that around the time he returned from hip replacement surgery in March 2020, Judge Olcavage made the decision to assign him as the remote judge. The idea was that in the event something were to happen to the other three judges he would be ready to proceed from a remote location back into the courtroom. He said that it was a tremendous challenge, because he was responsible for developing a cohesive program for remote processing of cases. He commended his staff for their work in developing the system. He noted that he has a steady calendar and the only type of cases that have not been handled remotely are jury trials.

Judge Jejna noted that he has a certain respect for the aura and special meaning of a courtroom. COVID has brought about an awareness that courts have the ability to adjust to the circumstances. He now believes that the remote process of courtroom processing and serving the citizenry may develop even further and continue. He hopes to be able to develop further proceedings and better the process. Currently, most courts are using Microsoft Teams; however, he feels certain aspects of that product could be enhanced. He said he expects that the process will be used into the future where remote proceedings would be helpful and is hoping to take the process to gather other technological ways of making the process a better one.

Board Member Marwil asked what he has done to ensure access to justice in the city court for cases where someone does not have access to a computer or a telephone. Judge Jejna said that when a situation arises that someone doesn't have access to a phone or computer the court provides the ability for them to come to the courthouse and staff will guide them through using equipment that the court provides for their use. In cases where individuals can't appear or don't appear, he typically resets the matter. He noted that occasionally attorneys don't appear for a variety of reasons and it is a simple process to reset the matter and send a new notice. The City of Scottsdale also has a Community Intervention Court headed by Judge Olcavage, that addresses particular needs of individuals having homeless, housing, food, or mental health issues.

Board Member Kiefer mentioned that there's discussion throughout various levels of government about possible term limits for judges. He asked what types of strategies Judge Jejna has after 20 years on the bench to maintain his passion for the law and passion for his duties. Judge Jejna said that throughout his tenure, he has kept in mind that each day is a learning experience and a gift. He strives to treat every litigant as though they are the only litigant for that day and to provide as much respect as he can to those individuals that appear before him. He tries to be as communicative as possible and give each litigant the personal care that they need. He feels fortunate to have the opportunity and the profession that he has chosen and he does not take it for granted. He said that not a day goes by that he doesn't learn something and he is challenged on a daily basis.

Judge Jejna said that when he practiced in Maricopa County Superior Court from 1981 to 2001, judges were not always the friendliest with litigants. At this point, customer service is paramount. He takes it as a challenge to make sure he meets those requirements that are expected from him as a member of the judiciary. He said that he does not have a problem staying passionate. He is looking forward to serving the community for at least one more term.

Chair Gruler indicated that the Board had no further questions.

Judge Jejna thanked the Board for the opportunity to appear and for their probing questions and the opportunity to express himself and offer a better understanding of who he is as a judge.

8. DISCUSSION OF AND REAPPOINTMENT RECOMMENDATION REGARDING JUDGE JEJNA

Chair Gruler commented that all of the feedback he received on the judge was good, his answers to questions were on point. He particularly appreciated his responses to the questions about COVID and transitioning and being more accommodating in this new era. He felt that his response to the question about AVL data was on point and reaffirmed his independence. He seems to be passionate about what he is doing. He noted his support for recommending reappointment.

Chair Gruler asked board members for further discussion with regard to Judge Jejna.

Board Member Marwil commented that what stood out most to her was that even with a high-volume calendar, Judge Jejna is committed to making each litigant feel as though they were the only litigant that day. She said it struck her because at the end of the day, people care less about the result that is reached than that they were treated with respect and as though they mattered. Of all of his answers that seemed to be one of the core visions that he had for his judgeship. She opined that Judge Jejna is an asset to the Scottsdale bench.

Chair Gruler called for a motion regarding the reappointment of Judge Jejna.

BOARD MEMBER MARWIL MOVED TO RECOMMEND REAPPOINTMENT OF JUDGE OREST JEJNA. BOARD MEMBER MORGANSTERN SECONDED THE MOTION, WHICH CARRIED SEVEN (7) TO ZERO (0). CHAIR GRULER, VICE-CHAIR GALPIN-TYREE, BOARD MEMBERS ADAMOVICH, KIEFER, MARWIL, MORGANSTERN, AND SCHAFFER VOTED IN THE AFFIRMATIVE. THERE WERE NO DISSENTING VOTES.

Brief discussion was held about drafting a letter to City Council. Typically, a representative would be present at the Council meeting to answer questions, but in light of COVID restrictions, City Council is not holding public meetings, so the Board representative should plan to be available to respond to questions as needed.

VICE-CHAIR GALPIN-TYREE MOVED TO APPOINT CHAIR GRULER TO DRAFT AND SIGN A RECOMMENDATION LETTER TO CITY COUNCIL AND TO BE AVAILABLE TO RESPOND TO QUESTIONS FROM THE MAYOR AND COUNCIL MEMBERS. BOARD MEMBER MORGANSTERN SECONDED THE MOTION, WHICH CARRIED SEVEN (7) TO ZERO (0). CHAIR GRULER, VICE-CHAIR GALPIN-TYREE, BOARD MEMBERS ADAMOVICH, KIEFER, MARWIL, MORGANSTERN, AND SCHAFFER VOTED IN THE AFFIRMATIVE. THERE WERE NO DISSENTING VOTES.

9. JUDGE JAMES BLAKE'S JUDICIAL REAPPOINTMENT TIMELINE

Ms. Asmus asked if any Board members had questions about the timeline for Judge James Blake's judicial reappointment. The final recommendation is scheduled to go before City Council on June 22, 2021. She will create a meeting schedule timeline by working backwards from that date. She noted that she has received a response to both the initial background

check and the Arizona Commission letter for judicial conduct. So she has the information to submit to RIS and will send it to Jim Riggs early next week.

Ms. Asmus confirmed that she anticipates the Judicial Appointments Advisory Board meeting to be virtual.

10. FUTURE AGENDA ITEMS

Board Member Marwil commented that Superior Court has had changes to its survey collection process, widening the opportunity for responses. She asked if any consideration has been given to changing the Scottsdale survey process going forward, taking into account that the survey response rate is expected to go down significantly due to the remote model. Ms. Heizer said staff can research and agendize discussion for a future meeting. Discussion cannot occur at this meeting, because it is not agendized.

Board Member Marwil clarified that her intent was to suggest that the Board discuss whether changes need to be made or additional information points are needed in order to help get the best data results or whether other things need to be done to broaden the survey pool. She noted that she is not judging the quality of the survey, just that if litigants, witnesses, and lawyers are handed a survey while in the courtroom, it is more likely that they will fill them out at that time. The ultimate concern is to make the survey collection process and data collection process as fair as possible to the judge, preventing one disgruntled person from affecting the Board's perception of a judge.

BOARD MEMBER MARWIL MOVED TO AGENDIZE A DISCUSSION OF COVID-RELATED IMPACTS ON SURVEY COLLECTION AND OVERALL PERFORMANCE RESULTS.

Chair Gruler asked if it would be possible to do a contingent motion based on the results of staff research and whether or not it is within the power of the Board. Board Member Kiefer suggested that the Judicial Appointments Advisory Board has the ability to make a recommendation to whatever body is responsible for making a decision about surveys.

BOARD MEMBER KIEFER SECONDED THE MOTION, WHICH CARRIED SEVEN (7) TO ZERO (0). CHAIR GRULER, VICE-CHAIR GALPIN-TYREE, BOARD MEMBERS ADAMOVICH, KIEFER, MARWIL, MORGANSTERN, AND SCHAFFER VOTED IN THE AFFIRMATIVE. THERE WERE NO DISSENTING VOTES.

ADJOURNMENT

VICE-CHAIR GALPIN-TYREE MOVED TO ADJOURN THE MEETING. BOARD MEMBER ADAMOVICH SECONDED THE MOTION, WHICH CARRIED SEVEN (7) TO ZERO (0). CHAIR GRULER, VICE-CHAIR GALPIN-TYREE, BOARD MEMBERS ADAMOVICH, KIEFER, MARWIL, MORGANSTERN, AND SCHAFFER VOTED IN THE AFFIRMATIVE. THERE WERE NO DISSENTING VOTES.

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 7:30 p.m.

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