



MINUTES

**City of Scottsdale
JUDICIAL APPOINTMENTS ADVISORY BOARD
Regular Meeting
Monday, December 14, 2021**

Virtual Public Hearing

PRESENT

Board Members:

Susan Galpin-Tyree, Chair (Vice Chair)
Tricia Schafer, Vice Chair
Brian Adamovich
John Gilbert
Laura Ingegneri
Joseph Kiefer
Suzanne Marwil

Staff:

Stephanie Heizer, Assistant City Attorney
Donna Brown, Human Resources Executive Director
Autumn Asmus, Staff Coordinator

CALL TO ORDER

Vice-Chair Galpin-Tyree called the meeting to order at 5:33 p.m.

ROLL CALL

Members present as listed above.

Possible Executive Session

Vice-Chair Galpin-Tyree noted that the Board has the ability to go into executive session with regard to item 6, if necessary.

1. INTRODUCTION OF NEW BOARD MEMBER

Vice-Chair Galpin-Tyree welcomed John Gilbert to the Board.

2. ELECTION OF CHAIRPERSON

Vice-Chair Galpin said that the election of Chairperson would be for the remainder of 2021. Another election will be held during the first meeting in 2022.

SUSAN GALPIN-TYREE NOMINATED HERSELF FOR THE POSITION OF CHAIRPERSON OF THE JUDICIAL APPOINTMENTS ADVISORY BOARD. BOARD MEMBER ADAMOVICH SECONDED THE NOMINATION, WHICH CARRIED SEVEN (7) TO ZERO (0) BY ROLL CALL VOTE. VICE-CHAIR GALPIN TYREE, BOARD MEMBERS ADAMOVICH, GILBERT, INGEGNERI, KIEFER, MARWIL, AND SCHAFFER VOTED IN THE AFFIRMATIVE. THERE WERE NO DISSENTING VOTES.

SUSAN GALPIN-TYREE NOMINATED TRICIA SCHAFFER FOR THE POSITION OF VICE CHAIR OF THE JUDICIAL APPOINTMENTS ADVISORY BOARD. BOARD MEMBER GILBERT SECONDED THE MOTION, WHICH CARRIED SEVEN (7) TO ZERO (0) BY ROLL CALL VOTE. VICE-CHAIR GALPIN TYREE, BOARD MEMBERS ADAMOVICH, GILBERT, INGEGNERI, KIEFER, MARWIL, AND SCHAFFER VOTED IN THE AFFIRMATIVE. THERE WERE NO DISSENTING VOTES.

Chair Galpin-Tyree and Vice-Chair Schaffer acted in their new roles for the remainder of the meeting.

3. APPROVAL OF OCTOBER 4, 2021 JUDICIAL APPOINTMENTS ADVISORY BOARD MEETING MINUTES

Chair Galpin-Tyree called for a motion to approve the minutes.

BOARD MEMBER ADAMOVICH MOVED TO APPROVE THE OCTOBER 4, 2021 JUDICIAL APPOINTMENTS ADVISORY BOARD MEETING MINUTES. CHAIR GALPIN-TYREE SECONDED THE MOTION WHICH CARRIED SEVEN (7) TO ZERO (0) BY ROLL CALL VOTE. VICE-CHAIR GALPIN TYREE, BOARD MEMBERS ADAMOVICH, GILBERT, INGEGNERI, KIEFER, MARWIL, AND SCHAFFER VOTED IN THE AFFIRMATIVE. THERE WERE NO DISSENTING VOTES.

4. PUBLIC COMMENT

There were no comments submitted from members of the public.

5. DISCUSSION OF JUDICIAL SURVEY RESULTS ON ASSOCIATE CITY JUDGE STATIA HENDRIX

Chair Galpin-Tyree asked whether everyone had read the survey information and whether anyone would like to comment. She reminded the board of their obligation to maintain confidentiality regarding the survey results.

Board Member Marwil said that she did not see anything out of the ordinary with the scores. She felt that that having one or two low scores was not uncommon.

Board Member Kiefer took note of the fact that there was a difference between the mean scores under the attorney column for Judge Hendrix compared to those under the “all judges” report. He noted that the numbers are consistently lower down the attorney column. Scores under the witness column are similar for Judge Hendrix as compared to the “all judges” scoring. He said that when he saw the survey results he wondered how long she had been on the bench, and wondered if she was a new judge. When he reviewed the application, he saw that she has been serving since 2012. He did not see anything alarming, just made note of the difference.

Chair Galpin-Tyree said she noticed the same things as Board Members Marwil and Kiefer. She reminded the Board that domestic violence cases can be volatile and emotional. She is thrilled that by the plans and programs Judge Hendrix started in Scottsdale and appreciates her request for reappointment.

6. DISCUSSION OF CONFIDENTIAL RECORDS AND CONFIDENTIAL INFORMATION RELATED TO JUDGE HENDRIX’S PERFORMANCE OR REAPPOINTMENT

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 Kiefer said that the due diligence he conducted was mostly favorable. He said that there were a couple of comments about some leaning from Judge Hendrix in terms of rulings towards the prosecution. He opined that those numbers could be skewed based on the low number of survey respondents.

Board Member Marwil echoed Board Member Kiefer’s comments. She noted that she had one particular respondent that followed up twice to make sure that she received her message. The respondent felt strongly that in one particular case, Judge Hendrix had been biased in favor of the prosecution. Board Member Marwil said that she takes those comments with a grain of salt, because judges make mistakes and there is nothing wrong with that as long as they conduct themselves in a manner befitting their position. She added that this particular respondent had strong feelings, but that was just one person.

Board Member Schafer said that the majority of his responses were favorable, but there was one person who gave examples of bias toward the prosecution.

Board Member Ingegneri said that most comments were favorable or neutral, but there were a couple that indicated that Judge Hendrix showed bias towards the prosecution. One person gave specific examples where Judge Hendrix was not consistent with her rulings.

Board Member Adamovich said that more of his responses were unfavorable than favorable. He also takes the comments with a grain of salt, given that Judge Hendrix works in Domestic Violence Court. He noted that some of the comments were surprising, such as “temperament is very emotional, overreacts, doesn’t make appropriate rulings based on emotions,” behavior was inappropriate and she changed her opinion,” “has a personal take on domestic violence. It’s very harsh,” “on her phone and not listening,” “dread having her as a judge.” One person had extensive commentary regarding her personal opinion of Judge Hendrix and that she should not be reappointed. Board Member Adamovich said that this is the first time that he has experienced receiving more than one negative comment during a due diligence process.

Board Member Gilbert said he interviewed 13 attorneys, four of whom were highly critical, saying Judge Hendrix is unprepared and rules in favor of the state 100 percent of the time. One person said that they dislike going into Judge Hendrix's courtroom, that she needs to be more polite and considerate of attorneys; that she is smart and knows the law, but that her demeanor is the complaint. Another person was critical of the demeanor and towards the bench style.

BOARD MEMBER KIEFER MOVED TO RECESS INTO EXECUTIVE SESSION. BOARD MEMBER GILBERT SECONDED THE MOTION, WHICH CARRIED SEVEN (7) TO ZERO (0) BY ROLL CALL VOTE. CHAIR GALPIN TYREE, VICE-CHAIR SCHAFER, BOARD MEMBERS ADAMOVICH, GILBERT, INGEGNERI, KIEFER, AND MARWIL VOTED IN THE AFFIRMATIVE; THERE WERE NO DISSENTING VOTES

THE BOARD WAS IN EXECUTIVE SESSION FROM 5:55 P.M. TO 6:25 P.M.

7. DISCUSS QUESTIONS FOR INTERVIEW OF JUDGE HENDRIX

Board members made suggestions and discussed questions that would be asked.

8. INTERVIEW OF JUDGE HENDRIX

Chair Galpin-Tyree invited Judge Hendrix to make a statement. Judge Hendrix declined to make an opening statement.

Board Member Marwil asked Judge Hendrix to describe her own demeanor and what persona she tries to emulate from the bench.

Judge Hendrix said that she starts each day with the intent to get on the bench and represent what is fair and just. She always intends to have the appropriate judicial demeanor, which includes listening to questions and creating an environment that is balanced. She added that she is human and sometimes falters, but that every day her intent is to be the best version of fairness and equality that she can.

Board Member Schafer asked Judge Hendrix to discuss her prosecutorial background and how that may affect her decisions on the bench.

Judge Hendrix said that she was a prosecutor for 16 years in various jurisdictions. She understands that people believe her to be biased towards the prosecution based on her past experience as a prosecutor. She feels that after approximately ten years on the bench, having spent the majority of her time with defendants and post adjudication, she is still unable to shake that assumption. She said that it might help her if she could be provide with examples of instances where people felt that she bent towards the prosecution. She said that she doesn't find much connection to her experience as a prosecutor and does not know how to respond to the question. She noted that the same question comes to her each time she comes for review. She commented that she presents a culture of accountability, because Domestic Violence Court is a treatment court and everyone is accountable, including herself, the court staff, litigants and counsel. She has a high expectation of herself and others in the courtroom and some people do not care for that, but it is necessary. She felt that some people may think that lends to being "pro-prosecution", but she feels it lends towards helping people be a better version of

themselves, and that the rules that surround what the court does support the idea of helping people.

Board Member Ingegneri asked if Judge Hendrix feels that she projects a image of fairness and balance in her rulings and in the treatment of prosecutors and defense lawyers.

Judge Hendrix said that she strives to project an image of fairness and balance towards prosecutors and defense lawyers. She noted that the court is about “the people” and not about “the lawyers”. She understands that every lawyer does not love her and she does not need that. Her priority is about the people in the court that it serves, including defendants, victims, jurors, witnesses, and citizens. She has an obligation to the lawyers and tries to appear fair, but her ultimate goal is not to make them happy.

Board Member Gilbert asked what Judge Hendrix thinks is her greatest weakness and what she does to compensate that weakness in the courtroom.

Judge Hendrix said that one weakness is that she expects attorneys to practice law and sometimes they do not necessarily want to do that. She said there are times that she could be more flexible. She gave examples of requiring adhering to the rules, such as requiring that motions be filed 20 days prior to trial. She said that she is a rule follower and she expects that those in her courtroom follow the rules. She tries to be flexible in some instances.

Chair Galpin-Tyree offered Judge Hendrix an opportunity to present concluding comments.

Judge Hendrix said that the job of Domestic Violence Court judge is a great job that she loves and works hard at. She noted that there is increased compliance with treatment and that more people are completing the domestic non-violence program, which is the mandatory program in Arizona for people who have been convicted of domestic violence. The City offers a domestic violence work group; many attorneys were invited to participate, but there is little representation from private counsel. There are two private counsel attorneys, public defenders, prosecutors, advocates, and probation officers who participate in making the domestic violence specialty court the success that it is.

Judge Hendrix said that Judge Olcavage has been supportive. She noted that she currently serves on two Supreme Court committees, including the Ethics Advisory Committee. She has participated with the Center for Court Innovation and has worked to build her court into what the City court wants in terms of a specialty court.

Judge Hendrix encouraged the Judicial Advisory Board to urge for changes to the survey that will give more actionable feedback. She welcomes specifics in terms of what she can do to change the perception that she is more pro-prosecution. She welcomes any opportunity to be a better judge, no matter where it comes from.

Judge Hendrix was excused from the meeting.

9. DISCUSSION OF AND REAPPOINTMENT RECOMMENDATION REGARDING JUDGE HENDRIX

Chair Galpin-Tyree asked if there was any further discussion regarding the recommendation for reappointment of Judge Statia Hendrix.

Board Member Marwil said that what struck her was that Judge Hendrix seemed very aware of the presumption that ran through comments, yet was at a loss as to how to deal with it. She said that she understands that it's hard to hear things about yourself as a recipient of the surveys. What struck her was the answers Judge Hendrix gave regarding the "perception." She felt that if you understand the "perception" it is incumbent upon you to begin working on ways to address the perception. One thing Board Member Marwil found frustrating was Judge Hendrix's response that she does not know what to do unless she is provided with specific examples.

Board Member Marwil said that if reappointment is recommended, she would support adding a recommendation that Judge Hendrix be given specific comments, perhaps with names and other identifying features removed for confidentiality purposes. She said that she would like to have asked a follow-up question: What training would you like for the City to give you to combat that perception? Board Member Marwil opined that judges have an obligation as public servants to continue bettering themselves. It is obvious that Judge Hendrix has heard the same comments before and has not been able to articulate actions that she is taking or wants the board to recommend be taken to combat it.

Board Member Marwil said that she understands the difficulties, but it did strike her that Judge Hendrix seemed either unwilling or unable to figure out where to go from here. She suggested that if the Judicial Advisory Appointments Board recommended reappointment, they make suggestions based on her comments and recommend that the City offer training to help with the perception. She added that she feels Judge Hendrix is a gifted jurist in a lot of ways and would not like to see the perception stand in the way of her being a good public servant.

Board Member Gilbert said that Judge Hendrix made one comment that he took umbrage with. She said that it is about the people, not the lawyers. Her goal is not to make the lawyers happy. He agrees with that, but felt that she needs to be respectful to lawyers as well as the "people". He opined that the Board could ask questions that have been mentioned, but suspected that Judge Hendrix would not come up with answers. He asked how is it that you change an attitude, particularly when she has been on the bench for nine years. He said it is a tough call, that she is sincere, and has probably done a great job with the Domestic Violence Court. He is torn between two directions.

Board Member Kiefer said he was troubled by a similar part of Judge Hendrix's answer. He felt there was an animosity towards attorneys, which probably shows through in her courtroom demeanor. He said he considered posing the question that if it were recommended that she take some type of training to improve on the perception of fairness and lack of bias, would she be open to that? He felt that by the end of the interview she answered that question, suggesting that she would be open to training. He said it is a little concerning that by the end of her interview she did acknowledge an awareness, but that it was not clear that improvement has been made over her tenure on the bench.

Board Member Ingegneri observed that it is clear that Judge Hendrix knows there are issues. She felt that providing specifics would not necessarily help. She suggested that training and/or peer coaching be recommended. She said that she appreciates that Judge Hendrix is aware of issues and wants to improve.

Board Member Schafer said that Judge Hendrix made some insightful comments targeted to the disconnect. She knows the issue and is unsure of how to address it. She agreed with the comment Judge Hendrix made regarding surveys being unactionable. Topics such as bias are not addressed in the surveys. She felt that when people fill out a survey it may be just a snapshot and that may be indicative of a need to take a fresh look at the process while simultaneously addressing the perception and the results of the surveys. Board Member Schafer said that she felt better at the end of the interview than at the beginning.

Board Member Adamovich said that Judge Hendrix seemed frustrated by the issue she faces. He got the impression that she wants to change and is taking steps. She talked about that she wished more people were a part of the work group. He appreciated her comment about the culture of accountability and that people need to follow the rules. The impression that he got was that she expects people to follow narrow lanes, but at the same time appreciates the frustrations that might have been felt about her in the past and wants to improve on those.

Board Member Marwil recalled that in the past, the Board expressed an interest in making changes to the surveys and the City Attorney made it clear that the JAAB was limited to making recommendations to City Council. She commented that the evaluation processes are frustrating to judges. She noted that there is a judicial observation program available that could be recommended to Judge Hendrix.

BOARD MEMBER MARWIL MOVED TO RECOMMEND REAPPOINTMENT OF JUDGE STATIA HENDRIX. BOARD MEMBER INGEGNERI SECONDED THE MOTION.

Board Member Kiefer requested that an amendment be made to the motion that a summary be included recommending that Judge Hendrix be offered or required training as part of her reappointment. He felt strongly that training should be recommended and noted that he would vote differently based on the recommendation.

BOARD MEMBER MARWIL MOVED TO AMEND THE MOTION TO RECOMMEND REAPPOINTMENT OF JUDGE STATIA HENDRIX WITH THE ADDITION OF A RECOMMENDATION THAT SHE BE OFFERED TRAINING TO ADDRESS ISSUES THAT HAVE BEEN DISCUSSED. VICE-CHAIR SCHAFFER SECONDED THE MOTION, WHICH CARRIED SEVEN (7) TO ZERO (0) BY ROLL CALL VOTE. CHAIR GALPIN-TYREE, VICE-CHAIR SCHAFFER, BOARD MEMBERS ADAMOVICH, GILBERT, INGEGNERI, KIEFER, AND MARWIL SECONDED THE MOTION. THERE WERE NO DISSENTING VOTES.

Ms. Heizer clarified that the recommendation would be forwarded to City Council.

Board Member Marwil offered language to be included with the recommendation, as follows:

"The Board recommends the appointment of Judge Hendrix, but the members of the Board had reservations and would highly recommend the following: That training be offered to Judge Hendrix, designed to address demeanor concerns."

She recommended that the statement include examples not drawing from specific comments, but concerns over a bias toward the prosecution and to give her skills to recognize that bias and how she conducts her proceedings, including, but not limited to, participating in judicial observation, mentorship opportunities, and the like. If there are trainings being offered by Arizona Judicial College the Board could recommend that she participate in those trainings.

Board member Schafer said that it is important to convey that this step is not taken routinely or often and the letter should reflect that Judge Hendrix seeks this input and that it is more of a mutual understanding that she desires actionable feedback.

Ms. Heizer suggested that the meeting minutes be attached to the recommendation. Board Members will be individually given an opportunity to review the draft letter prior to it being submitted by staff to City Council.

10. NEW PRESIDING JUDGE TIMELINE DISCUSSION

Board Members reviewed the tentative schedule for interviewing candidates for the new presiding judge.

Consensus of the Board was to schedule initial interviews virtually on January 11, 2022, starting at 5:30 p.m. and the formal interviews of a minimum of six candidates, possibly in person, on January 29, 2022 starting at 9:00 a.m.

11. FUTURE AGENDA ITEMS

No additional items were suggested.

ADJOURNMENT

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

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 7:20 p.m.

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