

JUDICIAL ADVISORY BOARD MINUTES

September 8, 1999

The Judicial Advisory Board of the City of Mesa met in the lower level meeting room of the Council Chambers, 57 East 1st Street, on September 8, 1999, at 8:11 a.m.

COMMITTEE PRESENT

Chairman Marilyn Wilson
James R. Hart, II
John Kerr
Judith O'Neill
Joe Shipley

COMMITTEE ABSENT

James Keppel
Cecil Patterson

STAFF PRESENT

Denise Bleyle
Linda Crocker
Barbara Jones
Kathleen Ozbun
Ellen Pence
Walter Switzer
Kelly Walsh
Others

OTHERS PRESENT

None listed

Chairman Wilson excused Boardmembers Keppel and Patterson from the meeting.

In response to a request from Chairman Wilson, Assistant to the City Manager Ellen Pence informed the Committee that Boardmember Patterson's schedule will not accommodate Wednesday morning meetings over the next four months. Ms. Pence recommended that the proposed Wednesday, October 6, 1999 Board meeting at 8:00 a.m. be rescheduled to the same time on Tuesday, October 5, 1999. Ms. Pence added that at the current time it does not appear that Board meetings will be required for the months of November and December but said that should they become necessary, dates other than Wednesday mornings will be selected to accommodate Boardmember Patterson's schedule.

Chairman Wilson and the members of the Board concurred with Ms. Pence's recommendations.

1. Approve minutes of the meetings of March 17 and May 5, 1999.

It was moved by Vice Chairman Hart, seconded by Boardmember O'Neill, that the minutes of March 17, 1999 be approved.

Chairman Wilson declared the motion carried unanimously by those present.

It was moved by Boardmember Shipley, seconded by Vice Chairman Hart, that the minutes of May 5, 1999 be approved.

Chairman Wilson declared the motion carried unanimously by those present.

2. Hear a presentation from City Attorney Neal Beets regarding ethics for citizen advisory board members.

Chairman Wilson welcomed City Attorney Neal Beets to the meeting.

Mr. Beets introduced Deputy City Attorney Joe Padilla to the members of the Board and referred to materials that were distributed to the members, including copies of the Ethics Code and Handbook for City of Mesa Elected Officials and Advisory Board Members. Mr. Beets added that copies of legal opinions issued by Mr. Beets in response to questions received from Councilmember Hawker regarding this issue have also been distributed to the Board for their information and review. Mr. Beets noted that he is also the author of a list of "Ethical Sayings" that was included in the materials.

Mr. Beets highlighted a brief presentation on this agenda item and discussed the fact that the ethics code was developed by an ad hoc citizens' committee which was formed in response to Council direction. Mr. Beets added that the ad hoc ethics team was chaired by Councilmember Kavanaugh.

Discussion ensued relative to the diverse composition of the ad hoc committee; Resolution No. 7313, approved by the Council, which formally adopted the handbook; the fact that public service is a public trust; the fact that the Ethics Code and Handbook have been adopted as "recommended" rather than "mandatory" guidelines for conduct by elected officials and advisory board members and the lack of penalties for non-compliance at this time; and Councilmember Kavanaugh's intention to propose recommended changes to the City Charter which would stipulate that should the Mayor, a Councilmember, or a member of an advisory board violate any of the provisions of the Ethics Code and Handbook, penalties and repercussions, including the issuance of letters of censure/and or reprimand and the ultimate possibility of dismissal from office, may result.

Mr. Beets outlined the contents of the handout and discussed the goals of the code, the importance of encouraging conduct that is beyond reproach and avoids even the appearance of impropriety, the importance of public trust, code compliance, compliance with the policy of gifts and/or favors, conflict of interest laws including provisions that apply specifically to the Judicial Advisory Boardmembers, and the importance of enhanced ethical awareness.

(Chairman Wilson excused Boardmember O'Neill from the meeting at 8:45 a.m.)

Mr. Beets responded to brief questions from the Board and encouraged the members to contact him or Mr. Padilla directly should they have any questions and/or comments regarding the Ethics Code and Handbook.

Chairman Wilson thanked Mr. Beets for his presentation.

3. Election of a Chairman and a Vice Chairman.

Chairman Wilson informed those present that in accordance with criteria that was established to govern the operations of the Judicial Advisory Board, the terms of office for the elected positions of Chairman and Vice Chairman are limited to a maximum of two years. Chairman Wilson noted that she and Vice Chairman Hart have served in the respective capacities of Chairman and Vice Chairman for the past two years and commented that she has enjoyed the challenges of the position. Chairman Wilson thanked the members of the Board for allowing her to serve in the position of Chairman.

Chairman Wilson commented that she contacted Vice Chairman Hart to inquire whether he would be interested in serving in the position of Chairman, should that be the intent of the Board. Chairman Wilson asked Vice Chairman Hart to relay his comments regarding this matter.

Vice Chairman Hart discussed a possible conflict of interest issue that may ultimately result in his resignation from the Board and said in view of the pending situation, he would regrettably be forced to decline the position of Chairman, should that position be offered to him by the members of the Board. Vice Chairman Hart thanked Chairman Wilson for considering him as a possible candidate for the position of Chairman.

Chairman Wilson thanked Vice Chairman Hart for his input. Chairman Wilson also advised that before Boardmember O'Neill was excused from the remainder of the meeting, Chairman Wilson inquired whether Boardmember O'Neill would accept the position of Chairman or Vice Chairman, should that be the intent of the Board. Chairman Wilson reported that Boardmember O'Neill indicated her willingness to serve in either position should that be the desire of the Board.

Chairman Wilson requested nominations from the members of the Board for the positions of Chairman and Vice Chairman.

It was moved by Vice Chairman Hart, seconded by Boardmember Shipley, that John Kerr be appointed to the position of Chairman and Judith O'Neill be appointed to the position of Vice Chairman.

In response to comments from Chairman Wilson, Boardmember Kerr indicated that he would accept the position of Chairman.

Boardmember Wilson declared the motion carried unanimously by those present and congratulated Chairman Kerr on his appointment.

4. Discuss and consider a plan to streamline the process for reappointment of magistrates:

A. Application for reappointment

Assistant to the City Manager Ellen Pence informed the Board that staff has attempted to incorporate all of the input received from various sources in an effort to develop a streamlined reappointment process for magistrates.

In response to a question from Boardmember Wilson relative to whether the Board will receive copies of original applications in addition to the applications for reappointment, Ms. Pence indicated that original applications will also be provided for the Board's review.

Chairman Kerr recommended the following changes to the proposal submitted by staff: 1) No. 3 on page 1: the text reads "how long have you continuously resided." Remove the words "how long;" and 2) No. 34 on page 8: the text reads "list the names of two persons" – all the other sections use the word "references" instead of "persons." Revise the text to read "list the names of two references."

Boardmember Shipley commented on recommendations he developed relative to this issue which were forwarded to Ms. Pence on 9/6/99. Boardmember Shipley suggested that under the Business and Financial Information, a question be added inquiring as to the indebtedness of the applicants.

Boardmember Wilson questioned the appropriateness of requiring that type of information and requested additional comments from the other members of the Board.

Presiding City Magistrate Walter Switzer stated that he concurs with Boardmember Wilson's comments and indicated that he did not support soliciting information relative to the applicants' indebtedness.

Boardmember Hart concurred with Boardmember Wilson and Judge Switzer's remarks.

Chairman Kerr suggested that Boardmember Shipley's recommendations be listed and commented on in order: 1) change the submission date from 2/22/99 to an appropriate date – Board Concurs; 2) revise the opening paragraph to state that if insufficient space is provided for answers, answers may be submitted on additional pages – Board Concurs; 3) include a question relative to the applicant's indebtedness (discussed above) – Board Disagrees; 4) Question 19: limit the request for litigation information to those cases which have not been resolved since the applicants' last application for initial hiring or reappointment – Board Disagrees; 5) Question 28: delete the words "legal or non-legal" and add the words "since your application for initial hiring or last application for reappointment" – Board Concurs; and 6) include a fax number and telephone number on the application for applicants to contact the City should they have any questions – Board Concurs.

Chairman Kerr requested that the Board review the recommendations submitted by Senior Human Resource Analyst Kelly Walsh: 1) use the actual City title in the heading and use formal City titles of City Magistrate or Presiding City Magistrate – Board Concurs; and 2) in Section G, Health, on page 8, remove the title word "Health" and replace with either "Duties" or "Essential Functions" and reword Question 32 by eliminating the words "Are you physically and mentally able to perform the essential duties of a judge?" and instead refer to the job description and ask "Is there any reason why you could not fulfill the duties listed in the class specification?" – Board Concurs.

Boardmember Wilson expressed concern relative to the fact that that Question 2 on page one requests the applicant's home address. Ms. Pence indicated that this item will be eliminated from the cover sheet since the same information is requested on the background check authorization form.

Discussion ensued relative to Question 9 on page 2 and the Board recommended that the question be revised to state: "Have you served in a fiduciary or any other adjudicatory capacity since your original appointment?"

Boardmember Wilson referred to Question 12 on page 3 and requested that items 1), the date or period of the proceedings; and 3), the names and addresses of all counsel involved and the party each represented, remain listed as part of the question.

Ms. Pence informed the Board that at the next Judicial Advisory Board meeting, staff will provide the Committee with copies of the original applications in addition to the revised streamlined application for their review and further consideration.

Judge Switzer addressed the Board and stated the opinion that phrases contained in the application ("during your term," "during your current term," "during your term as Judge," "as a magistrate in the municipal courts," "since your appointment," "since your last appointment," and "since your original appointment") all relate to two separate periods of time: 1) the amount of time that has elapsed since the applicants' original appointment, and 2) the time that has elapsed since the applicants' last appointment. Judge Switzer stressed the importance of consistency and suggested that the questions be limited to the two periods of time listed above.

Chairman Kerr stated that the Board concurs with Judge Switzer's recommendation and thanked him for his input.

B. Schedule for five reappointments

Ms. Pence advised that staff has prepared and submitted for the Board's review a proposed work plan for the upcoming year. Ms. Pence reiterated that at the October 5, 1999 meeting, staff will provide the Board copies of the original applications and the revised streamlined reappointment application. Ms. Pence said that the reappointment schedule would be finalized at that time.

In response to concerns from Boardmember Wilson relative to the fact that the proposed work plan covers a five-month period of time, Ms. Pence discussed the fact that the five interviews and public hearings will require a significant amount of time. Ms. Pence noted that staff is proposing that three interviews occur in April and two in May to allow the Board to provide recommendations to the City Council by mid-to-late May 2000. Ms. Pence added that should the Board prefer that the time period be condensed, the interviews and public hearings could be scheduled over a two-to-three week period and offered to provide alternative options to the Board.

Boardmember Wilson indicated that staff's proposed schedule appears necessary in order to accommodate the five reappointments and thanked Ms. Pence for her input.

C. Staggered terms

In response to a request for input from Chairman Kerr, Ms. Pence advised that City Manager Charles Luster has asked that the Board consider providing the City Council with a recommendation relative to revising the terms of office for City Magistrates from two to four years. Ms. Pence added that should the Board concur with the proposed change from two to four years, the Board should also consider staggering the initial terms of the five reappointments in order to avoid the expiration of a number of judges' terms at the same time.

Boardmember Hart expressed the opinion that Boardmembers/Judges Keppel, O'Neill and Patterson should be allowed an opportunity to provide input on the proposed term revision since they have first-hand experience in matters such as this. Boardmember Hart recommended that this item be continued to the next meeting to allow an opportunity for the Judges to comment on this issue.

Judge Switzer addressed the Board and stated the opinion that at this point the City Manager is soliciting input from the Board relative to whether the members would be willing to provide a recommendation regarding the proposed change to City Magistrates' terms of office. Judge Switzer referred to copies of a memorandum provided to the Board dated September 2, 1999, which contains a recommendation from Judge Switzer to the City Council that the Council adopt an ordinance amending the City Code to expand the terms of office for City Magistrates from the current two year terms to four year terms. Judge Switzer added that copies of two applicable court cases are attached to the memorandum and encouraged the Boardmembers to review the materials.

Boardmember Wilson commented that this issue has been the topic of previous discussion and indicated her willingness to further review the matter. Boardmember Wilson clarified that the Board will have the option of

recommending two year, three year or maximum four-year appointments and said that the added flexibility warrants Board consideration.

Boardmember Hart advised that he has consistently supported four-year terms for City Magistrates and stated the opinion that the current two-year terms provide the Judges with a minimal amount of job security.

Chairman Kerr commented that this issue will be a topic of discussion among all of the members of the Judicial Advisory Board at the next Board meeting.

Boardmember Shipley expressed appreciation to Boardmember Wilson for her leadership and the efforts she expended during her term as Chairman of the Judicial Advisory Board.

Boardmember Wilson thanked Boardmember Shipley for his comments.

5. Adjournment.

Without objection, the meeting of the Judicial Advisory Board adjourned at 9:28 a.m.

Carried unanimously.

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Judicial Advisory Board meeting of the City of Mesa, Arizona, held on the 8th day of September 1999. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____ 1999

BARBARA JONES, CITY CLERK