

# JUDICIAL ADVISORY BOARD MINUTES

August 12, 1997

The Judicial Advisory Board of the City of Mesa met in the lower level meeting room of the City Council Chambers, 57 East 1st Street, on August 12, 1997 at 8:00 a.m.

## COMMITTEE PRESENT

Robert D. Myers  
Judith C.R. O'Neill  
Marilyn Wilson  
John Kerr  
Sylvia Garcia-Suttle  
James R. Hart II

## STAFF PRESENT

Neal Beets  
Linda Crocker  
Mike Hutchinson  
Barbara Jones  
Ellen Pence  
Denise Samuel  
Kelly Walsh

## OTHERS PRESENT

Chris Moeser  
Dan Nowicki  
Marilynn Wennerstrom

## COMMITTEE ABSENT

Ruth V. McGregor

## COUNCIL PRESENT

Mayor Wayne Brown

### 1. Welcome and introductions (Mayor Wayne Brown).

Mayor Brown welcomed the members of the Judicial Advisory Board to the meeting and expressed appreciation to the Boardmembers for their willingness to serve the City of Mesa.

Mayor Brown informed the Boardmembers that the City of Mesa has been the subject of controversy surrounding the appointment of new City magistrates, contract renewals, and judicial job performance. Mayor Brown noted that historically the appointments were the responsibility of the City Council but stated the opinion that members of the Council do not possess the expertise required to properly evaluate the performance of judicial appointees.

In response to a request from Mayor Brown, the members of the Board introduced themselves and provided brief background information. (Boardmembers: Robert D. Myers, Presiding Judge, Maricopa County Superior Court of Arizona; Judith C.R. O'Neill, Maricopa County Attorney's Office; Marilyn Wilson; John

Kerr, M.D.; Sylvia Garcia-Suttle, Maricopa Managed Care Systems, and James R. Hart II, attorney, Martin, Hart & Fullerton.)

Mayor Brown advised that due to a scheduling conflict, Boardmember Ruth V. McGregor, Judge, Arizona Court of Appeals Division One, was unable to attend the meeting.

2. Review purpose of Board (City Attorney Neal Beets).

- A. Overview of ordinance.
- B. Open Meeting Law.
- C. Mesa City Charter requirements.
- D. Job description of Magistrates.

City Attorney Neal Beets referred to copies of Ordinance No. 3340 which was distributed to the members of the Board and noted that the recently adopted ordinance is similar to an ordinance adopted by the City of Phoenix. Mr. Beets stated that the City's former judicial review/appointment process was informal and that no specific criteria was established. Mr. Beets stressed the importance of developing an improved judicial review/appointment process and encouraged the members of the Board to recommend revisions to the current ordinance.

Discussion ensued relative to sample guidelines provided by Chief Justice Feldman, the importance of ensuring that the members of the Judicial Advisory Board reflect the members of the community in which they serve, and the fact that the courts are servants of the public and reflect the personalities of the judges serving in those courts.

Mr. Beets noted that a responsibility of the Board will be to participate in a selection process and provide candidate recommendations relative to judicial vacancies which occur. Mr. Beets reported that the City currently has six permanent, full-time judges and added that budgetary authorization has been received for the creation of a seventh position.

Discussion ensued relative to various types of cases that fall under the jurisdiction of the City Court, the fact that felony cases are heard by the County Superior Court; the fact that the City of Mesa Courts process 10,000 cases on an annual basis, and juvenile curfew violations.

Mr. Beets stated that Ordinance No. 3340 establishes a public process under which the Board will carry out their responsibilities. Mr. Beets briefly discussed the Open Meeting Law and noted that final Board action must occur at a public meeting by a public vote. Mr. Beets informed the members of the Board that discussion of personnel issues are exempt from the requirements of the Open Meeting Law. Mr. Beets also advised that the ordinance requires public hearings to solicit public input for all judicial reappointments.

Mr. Beets commented on the Public Records Law and reported that the Supreme Court has ruled that the confidentiality of candidates for public appointments may be protected up until the point in time that the applicants are selected for interviews. Mr. Beets advised that at that time, all information is governed by the Public Records Law and must be made available to the public.

Mr. Beets briefly highlighted the current reappointment process as outlined in the ordinance and reported that the Board shall be responsible for publishing notices of the potential judicial reappointments in a daily newspaper of general circulation in Mesa once a week for two successive weeks.

Discussion ensued relative to the development of an application to be provided to applicants; the fact that the State Bar Association may be requested to provide input relative to applicants; the importance of public participation; the possibility of soliciting information from litigants when considering reappointments; preparation of a questionnaire, and the Board's primary goal of developing and implementing a thorough, competent, fair and respected judicial appointment/reappointment process.

Boardmember Myers briefly discussed applicant surveys and questionnaires utilized by the Superior and Supreme Court judicial appointment boards and stressed the importance of determining the scope of the process to be developed and consistency in the review process.

Discussion ensued among the members of the Board relative to confidentiality; the receipt of anonymous comments relative to candidates; private versus public interviews, and personally observing the performance of candidates for reappointment.

In response to comments relative to the receipt of unsolicited input regarding applicants, Boardmember Wilson stressed the importance of the Boardmembers reaching an agreement on a process for input; for example, all input be submitted in written form and that verbal comments not be accepted.

Boardmember Myers presented Mr. Beets with a copy of the Handbook for Judicial Nominating Commissioners prepared by the Judicial Performance Review Commission for review and future consideration. Boardmember Myers recommended that the Handbook be used as a reference guide in developing review criteria.

(Mayor Brown and Assistant City Manager Mike Hutchinson left the meeting at 8:54 a.m.)

Mr. Beets informed the Board that significant staff support is available and recommended that future meeting agendas stipulate the approximate length of the meetings.

### 3. Discuss status of terms of Magistrates (Neal Beets)

Mr. Beets informed the Board that in addition to participating in the appointment of new judges, the members will also be asked to consider whether current City judges, who are appointed for two-year terms, should be reappointed. Mr. Beets advised that Presiding City Magistrate Harold Reeb and City Magistrate George Forster's terms expired on June 30, 1997. Mr. Beets noted that both reappointments have been delayed pending the formation of the Judicial Review Board and the development/implementation of reappointment criteria.

4. Election of Chairman and Vice Chairman

Mr. Beets advised that a Chairman and Vice Chairman are elected from the Board's membership and added that four votes constitutes a majority. Mr. Beets stated that both positions serve for a one-year period of time.

It was moved by Boardmember Myers, seconded by Boardmember O'Neill, that Boardmember Wilson be appointed Chairman of the Judicial Advisory Board.

The vote was carried unanimously by those present.

It was moved by Boardmember O'Neill, seconded by Boardmember Garcia-Suttle, that Boardmember Hart be appointed Vice Chairman of the Judicial Advisory Board.

Chairman Wilson declared the motion carried unanimously by those present.

Mr. Beets congratulated Chairman Wilson and Vice Chairman Hart on their appointments.

5. Discussion and consideration of agenda items for next meeting.

In response to Board input, Mr. Beets recommended that the following issues be included as part of the agenda for discussion at the next Judicial Advisory Board meeting: (1) development of a review policy/rules/guidelines; (2) unsolicited applicant input; (3) anonymous correspondence relative to applicants; (4) discussion of the Arizona Supreme Court's Rules of Procedure for Judicial Performance Review in Arizona; (5) materials provided to candidates selected to be interviewed and (6) whether candidates should be made aware of the receipt of an anonymous letter relative to their appointment.

Mr. Beets indicated that all input provided by the Board will be reviewed and that an agenda will be prepared for the next meeting based on Board discussion and recommendations.

(The next meeting of the Judicial Advisory Board was scheduled for Tuesday, August 26, 1997 at 8:00 a.m. in the lower Council Chambers. The Board determined that the meeting should last approximately one and a half hours.)

Co-Secretary to the Board Barbara Jones advised that minutes of today's meeting will be forwarded to the Boardmembers in advance of the August 26, 1997 meeting to enable the Board to consider the approval of those minutes at that meeting.

Mr. Beets informed the Board that the current ordinance stipulates that the Boardmembers must refrain from voting on or otherwise participating in discussion of any applicant the Boardmembers attempted to recruit as a candidate for appointment.

Chairman Wilson and Boardmembers Kerr and Myers indicated opposition to the ordinance stipulation.

In response to a question from Boardmember Myers, Mr. Beets advised that the Arizona Supreme Court's Rules of Procedure require recruitment disclosure but allows the members to cast their votes.

Boardmember Myers noted that the Rules of Procedure emphasize that vigorous recruitment is the key to a successful process but stressed the importance of communicating to the applicants that solicitation does not guarantee appointment.

It was moved by Boardmember Myers, seconded by Vice Chairman Hart, to recommend to the Council that Ordinance No. 3340 be amended to reflect that although Boardmembers are required to disclose to all members of the Board all efforts to recruit a specific applicant, following such disclosure, Boardmembers may participate in voting or otherwise participating in discussion of the applicant.

City Attorney Neal Beets advised that he will prepare a draft of the proposed amendment and present it to the Board for review at the next meeting.

Chairman Wilson declared the motion carried unanimously by those present.

Discussion ensued relative to the preparation of an applicant questionnaire, (Vice Chairman Hart and Boardmembers Myers and O'Neill offered assistance in this regard); the importance of scheduling both public and private meetings with the applicants, developing a schedule for disseminating information to the public, and the issue of confidentiality as it relates to those persons providing input regarding the applicants.

6. Adjournment.

It was moved by Boardmember O'Neill, seconded by Boardmember Myers, that the meeting adjourn at 9:26 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 12th day of August 1997. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 26<sup>th</sup> day of August 1997

BARBARA JONES, CITY CLERK