

JUDICIAL ADVISORY BOARD MINUTES

May 5, 2004

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 May 5, 2004 at 8:03 a.m.

COMMITTEE PRESENT

Chairman Joan Ruffennach
Marlon E. Branham
Barbara Jarrett
Linda Rottman
Joe Shipley

COMMITTEE ABSENT

Joan C. Herzog
Murray G. Snow

STAFF PRESENT

Denise Bleyle
Kathleen Broman
Pat Granillo
Michelle Lue Sang
Victor Ortiz
Matt Tafoya

1. Approve minutes of February 11 and March 3, 2004 meetings.

Boardmember Rottman identified a typographical error in the February 11, 2004 minutes and requested that the minutes be amended.

It was moved by Boardmember Shipley, seconded by Boardmember Jarrett, that the minutes of the February 11, 2004 meeting be approved as amended.

Chairman Ruffennach declared the motion carried unanimously by those present.

It was moved by Boardmember Rottman, seconded by Boardmember Shipley, that the minutes of the March 3, 2004 meeting be approved.

Chairman Ruffennach declared the motion carried unanimously by those present.

2. Discuss the Board's options to communicate additional information during judicial reappointments.

City Attorney Debbie Spinner reported that staff advised her that the Boardmembers are seeking direction relative to the manner in which they could convey their comments and concerns to the City Council during the judicial reappointment process. She explained that Mesa City Code Section 2-3-8 (D) 2 states: "As soon as possible after the vote of the Board, the

Board shall also deliver its written recommendation concerning reappointment of a City Magistrate to the Mayor and City Council. The Board shall state that the Board does or does not recommend reappointment of the Magistrate, summarizing the reasons therefore.”

Ms. Spinner indicated that the City Code contemplates that any communication between the Board and the Council would be in written form and that such communication would not only be a record of the Board’s comments, but also an appropriate mechanism if a magistrate wanted to address a specific issue. Ms. Spinner further noted that because the Board is entitled to review confidential information regarding a magistrate’s reappointment, if it is determined that the information should not be disclosed to the public, such concerns should be communicated in written form to the Council, at which time staff would notify the Council that the information must be safeguarded and not discussed in an open meeting.

Chairman Ruffennach inquired whether there was a mechanism available to the Boardmembers whereby they could offer constructive criticism to a magistrate regarding his or her job performance, or if there was a rating process already in place that provided the Presiding City Magistrate with the opportunity to assess such a performance.

In response to Chairman Ruffennach’s comment, Ms. Spinner clarified that although the City Code does not specifically address such a mechanism, Presiding City Magistrate Matt Tafoya would address the matter in his upcoming presentation to the Board. She stressed that the purpose of the Board is to make recommendations to the Council regarding judicial appointments and reappointments. Ms. Spinner also stated that with regard to the Board’s ability to communicate its concerns to the Presiding City Magistrate, she would recommend that the matter be presented to the Council so that it could assess whether, in fact, that is one of the duties and responsibilities of the Board. She added that if a citizen had a particular concern regarding a magistrate or, for that matter, any City employee, she would assume the individual could address such concerns to the City Manager’s Office or a specific Department Manager.

3. Discuss possible changes to the judicial reappointment process.

Chairman Ruffennach commented that the Board has been provided with a variety of materials relative to this agenda item and stated that she anticipates it will require more time than is available today to thoroughly discuss and consider the judicial reappointment process. She suggested that because Magistrate Tafoya and several magistrates are present in the audience, that they be given the opportunity to address the Board and that the Boardmembers could consider those comments and concerns at their next meeting.

Magistrate Tafoya expressed appreciation to the Boardmembers for their willingness to consider improvements to Mesa’s current judicial reappointment process. He stated, among other things, that he and his fellow magistrates have reviewed the City’s current Application for Reappointment on a question-by-question basis in an effort to streamline the process; that concerns have been raised relative to the necessity to include family information as part of the reappointment application; that he would like to establish superior due process within the court and intends to meet with the magistrates to review their performance on the bench in that regard; and that he invited Maricopa County Presiding Judge Colin Campbell to address the Boardmembers to offer insight relative to possible improvements to the judicial reappointment process.

Judge Campbell reported that among his many duties as Presiding Judge, he is charged with overseeing the municipal and Justice of the Peace courts throughout Maricopa County and explained that over the years, he has become increasingly concerned with the judicial selection and retention process. He commented that he has worked diligently to encourage Valley municipalities to establish a Judicial Advisory Board like Mesa's and, in fact, has used the City's model to assist in that effort.

Judge Campbell provided the Board with a brief overview of the current Judicial Performance Review process for the retention of Superior Court judges and stated that he would like to see the municipal courts consider the implementation of a similar process. He also expressed support for Magistrate Tafoya and his fellow magistrates' recommendations regarding Mesa's current judicial retention process, including a more streamlined Application for Reappointment, the establishment of a Judicial Peer Review process, and that Magistrate Tafoya be permitted to offer input to the Board, especially concerning the administrative performance of the magistrates. Judge Campbell also stressed the importance of periodic evaluations of the Presiding Magistrate.

In response to a question from Chairman Ruffennach regarding the type of input that the Presiding Magistrate should be entitled to provide to the Boardmembers, Magistrate Tafoya clarified that he would like the opportunity to attend Board meetings in the role of a nonvoting member. He commented, however, that the matter is currently being held in abeyance, per Council direction, so that staff can research the matter further. Magistrate Tafoya requested, if possible, that the Boardmembers consider changing its meeting schedule to accommodate the magistrates' court calendars so they are able to attend meetings wherein they could be directly impacted by the decision of the Board.

Boardmember Shipley assured Magistrate Tafoya that former Presiding Magistrate Walter Switzer attended most Board meetings and was always available to respond to the members' questions or concerns. He assured Magistrate Tafoya that he could not foresee an occasion when either he or his staff would not be afforded the same opportunity to offer input to the Boardmembers.

Chairman Ruffennach invited the magistrates in attendance to address the audience if they so desired.

Magistrate Victor Ortiz urged the Board to consider Magistrate Tafoya's recommendations relative to streamlining the judicial reappointment process. He also expressed appreciation to Magistrate Tafoya for a new perspective that he has brought to Mesa since his appointment to the Court last year. Magistrate Ortiz added that on various occasions, the magistrates met to discuss and consider modifications to the current Application for Reappointment and noted that just this morning, they reviewed a copy of the City of Scottsdale's "Application For Reappointment As Associate City Judge," which is an even more concise document than Mesa's application that includes the magistrates' recommendations.

Magistrate Karl Eppich stated the opinion that the modifications to the current Application for Reappointment, as recommended by his fellow magistrates, are appropriate and noted that the concerns that the Boardmembers may have regarding an applicant's initial appointment would be somewhat different during the reappointment process. He stressed, however, that a more abbreviated form should not be misconstrued that the Board is merely acting as a "judiciary

rubber stamp.” He also stated that a shorter Application for Reappointment form, such as Scottsdale’s, would require more thoughtful responses from the applicant.

Magistrate Michelle Lue Sang concurred with the comments of her fellow magistrates. She expressed concerns relative to the disclosure of personal information regarding family members on the application and cited an incident wherein a defendant who appeared in her court was displeased with her ruling and sent a barrage of threatening e-mail letters to her. Magistrate Lue Sang questioned what could have happened if the individual had the ability to access her personal information as contained in her Application for Reappointment.

Chairman Ruffennach commended Magistrate Tafoya and his fellow magistrates for their efforts and hard work with regard to formulating modifications to the Application for Reappointment. She emphasized that the Boardmembers intend to review the application on a question-by-question basis at their next meeting. Chairman Ruffennach cautioned, however, that certain questions that are included in the original Application for Appointment to the Mesa City Court would probably remain in the reappointment application simply because newly appointed Boardmembers would not be familiar with the experience and expertise of a magistrate who is an applicant for reappointment.

Discussion ensued relative to the fact that the Board would convene on Wednesday, September 8, 2004 at 8:00 a.m. to continue its discussion and consideration of Mesa’s current judicial reappointment policy; and that staff be provided with sufficient time to incorporate any changes into the Application for Reappointment for the upcoming 2005 reappointment process.

Boardmember Rottman acknowledged Magistrate Lue Sang’s concerns relative to protecting her family members against undue harm.

4. Further discussion on amending the membership of the Judicial Advisory Board.

Boardmember Shipley commented that at the Board’s February 11, 2004 meeting, the members recommended that staff draft an ordinance to add the Presiding City Magistrate as a nonvoting member of the Judicial Advisory Board. He explained that at the February 26, 2004 Study Session, the City Council elected to table the issue and requested further research from staff regarding the matter. Boardmember Shipley stated that as a result of the above-referenced events, he has reevaluated his opinion concerning this issue and determined that in an effort to avoid any appearances of impropriety, he would prefer that the composition of the Judicial Advisory Board not be amended.

It was moved by Boardmember Shipley, seconded by Boardmember Jarrett, that the Board’s original recommendation to the Council (to draft an ordinance to add the Presiding City Magistrate as a nonvoting member of the Judicial Advisory Board) be revised and that the Board’s membership remain at seven members.

Upon tabulation of votes, it showed:

AYES - Jarrett-Ruffennach-Shipley
NAYS - Branham-Rottman

Chairman Ruffennach declared the motion carried by majority vote.

Ms. Bleyle reiterated Boardmember Shipley's comment that the matter has been tabled by the City Council and added that she would confer with Ms. Spinner relative to what legal steps, if any, need to be taken as a result of the Board's decision today.

5. Discuss the next set of magistrates eligible for reappointment.

Ms. Bleyle advised the Boardmembers that the following City Magistrates are slated for reappointment in 2005: Karl Eppich, eligible for his first four-year term, and Victor Ortiz, eligible for his second four-year term.

6. Discuss board membership for the upcoming term.

Ms. Bleyle explained that as of today, Boardmember Shipley has completed his second and final term on the Board and has been a valuable asset to the Board during his tenure. She thanked him, on behalf of the City Council and staff, for his efforts and hard work throughout the years. Ms. Bleyle added that it is anticipated that Mayor Hawker would submit the name of an individual to replace Boardmember Shipley to the City Council for approval in the near future and that the individual's service will commence in September when the Board reconvenes.

Chairman Ruffennach also voiced appreciation to Boardmember Shipley for his dedication to the City and invited him to attend future meetings and provide input whenever appropriate.

7. Scheduling of meetings and general information:

Chairman Ruffennach advised that the next meeting of the Judicial Advisory Board would be held on September 8, 2004 at 8:00 a.m., in the Lower Level Council Chambers, 57 E. 1st Street.

8. Adjournment.

Without objection, the meeting of the Judicial Advisory Board adjourned at 9:00 a.m.

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 5th day of May 2004. I further certify that the meeting was duly called and held and that a quorum was present.

BARBARA JONES, CITY CLERK