



JUDICIAL ADVISORY BOARD MINUTES

October 3, 2016

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 October 3, 2016 at 7:47 a.m.

BOARD PRESENT

David P. Brooks, Chairman
Margaret Downie
Pat Esparza
Robin Harris
Peter Lesar
Teresa Sanders
Wade Swanson

BOARD ABSENT

None

STAFF PRESENT

Michael Claspell
Nicole Fazzio
Kelly Gregan
Holly Moseley
Matt Tafoya
Paul Thomas

1. Introduce new Board member.

Chairman Brooks welcomed newly appointed Boardmember Wade Swanson to the Judicial Advisory Board. Mr. Swanson provided a brief synopsis of his professional background.

2. Elect Chair and Vice Chair.

It was moved by Boardmember Esparza, seconded by Boardmember Lesar, that Boardmember Brooks be appointed as Chairman of the Judicial Advisory Board.

Chairman Brooks declared the motion carried unanimously.

It was moved by Chairman Brooks, seconded by Boardmember Esparza, that Boardmember Harris be appointed as Vice Chairman of the Judicial Advisory Board.

Chairman Brooks declared the motion carried unanimously.

3. Approve minutes from the June 29, 2016 Board meeting.

It was moved by Boardmember Lesar, seconded by Boardmember Esparza, that the minutes from the June 29, 2016 Board meeting be approved.

Chairman Brooks declared the motion carried unanimously.

4. Items from citizens present.

There were no items from citizens present.

5. Hear an update on the Mesa City Court from Presiding Magistrate Matt Tafoya.

Presiding Magistrate Matt Tafoya noted that newly appointed City Magistrate, John Tatz began his employment with the Mesa City Court on September 19, 2016. He stated that Mr. Tatz has been a great addition to the Court and is running the arraignment court very efficiently.

Presiding Magistrate Matt Tafoya briefly reviewed the process governing Rule 11 competency hearings, which is under the jurisdiction of the Superior Court. He noted that the Mesa City Court initiated the idea of holding the hearings at the municipal court level and that the Mesa City Court was granted jurisdiction and appointed three Superior Court Commissioners who have the authority to perform mental health evaluations. He explained that the process, which originally took as long as nine months to a year, has been reduced to approximately 43 days.

Presiding Magistrate Matt Tafoya stated that the structure within the Mesa City Court changed when Judge Allen retired in July 2016. He reported that Judge Allen's courtroom was closed and the associated resources were transferred to the arraignment court, which has significantly enhanced the process for those appearing in court. He noted that the other judges were impressed to find that their pretrial conference caseloads significantly decreased. He added that warrants have decreased, resources for judges are better utilized, and attorneys are no longer rushed.

In response to a question from Boardmember Lesar, Presiding Magistrate Matt Tafoya explained that approximately 90% of those appearing in court plead guilty. He stated that the previous court structure required those individuals to wait until a future court date, which could extend the process by as much as a year. He concluded by saying that a prosecutor and a defense attorney (advisory council) are now present at every arraignment hearing to answer questions and enable case resolution the same day.

Responding to a question from Boardmember Harris, Presiding Magistrate Matt Tafoya stated that it has been beneficial to the Court overall to have a full-time judge dedicated to the arraignment court.

6. Discuss the future use of credit checks by the Board in the evaluation of candidate for City Magistrate appointment and reappointment.

Chairman Brooks noted that there are legal requirements based on federal law the City must comply with related to gathering credit information. He reported that the Judicial Advisory Board has always gathered credit information on both initial appointment and reappointment candidates and is currently the only City board or commission that does so.

Human Resources Director Gary Manning explained that the Fair Credit Reporting Act requires that individuals be notified if their credit information is used in an employment decision and that those individuals must be provided an opportunity to dispute any inaccurate information. He noted that in 2015, the Federal Trade Commission revealed that the information provided on 23% of credit reports is inaccurate.

In response to questions posed by boardmembers, Mr. Manning stated that he would look into less invasive options available for researching bankruptcies or judgments against an applicant and that staff would ensure compliance with federal regulations.

Chairman Brooks stated that the responsibility of the Board is to evaluate the candidates thoroughly and make the best possible recommendation to the City Council. He suggested that it may reflect poorly on the Board and the City Council if they do not “vet” a candidate who is later found to have significant financial issues.

Boardmember Downie suggested that the Board consider adding questions to the application related to bankruptcy or judgment issues. She added that the Board should revisit the current application question on prior judicial misconduct, complaints and actions, due to a potential loophole.

In response to a question from Boardmember Lesar, Mr. Manning replied that, to his knowledge, the City has never used a credit reporting process as consideration in hiring for any other City positions.

Boardmember Harris stated that he believes a judge is held to higher standards of credibility and integrity and for that reason, he supports the continuing use of credit checks.

Boardmember Sanders suggested that the credit information be gathered prior to conducting interviews in the future in order to prevent delays in the hiring process.

Boardmember Swanson noted that the use of background checks and credit reports are not uncommon in the private sector and that he supports continuing their use.

Boardmember Lesar expressed his support of continuing the credit reporting and review process.

In response to a question from Boardmember Downie, Human Resources Analyst Nicole Fazzio advised that City staff could request the signed authorization from candidates earlier in the process.

Chairman Brooks stated that the consensus of the Board was to add the authorization to run a credit report to the initial and reappointment application process, but to only pull the data for the candidates chosen to be interviewed. He added that any questions related to the credit information will be asked during an executive session to protect the privacy of the individual's financial information.

Boardmember Downie suggested that to maintain consistency, the timeframe should also be moved up for the Commission on Judicial Conduct and State Bar checks. She agreed with Chairman Brooks on pulling the credit reports only for candidates being interviewed, but recommended running the other two checks on all candidates.

Chairman Brooks directed staff to include the authorization for credit check in both the initial and reappointment applications and to complete the Commission on Judicial Conduct and State Bar review on all applicants.

7. Review and discuss policies, schedule and work plan for the Board related to the upcoming reappointment of three City Magistrates:

(1) Valerye Boyer-Wells, (2) Craig Fujii and (3) Lisa Johnson

Chairman Brooks noted that the reappointment schedule had been distributed to the Board. He acknowledged, for clarity, that City Magistrate Lisa Johnson was formerly Lisa Peters.

8. Scheduling of meetings and general information:

Next meeting:

February 6, 2017, 7:45 a.m.
Lower Level Council Chambers
57 E. First Street

In response to a question from Chairman Brooks, Boardmember Downie agreed to revise both the initial appointment application and reappointment application to correct a loophole related to the reporting of judicial misconduct.

Responding to a question from Boardmember Harris, Chairman Brooks noted that the contractor responsible for surveying and compiling the resulting statistics has changed.

Deputy City Clerk Michael Claspell explained that the new contractor has changed the format of the survey reports. He stated that when a judge is up for reappointment, and has prior survey material, that the Board could be provided with those survey results to compare the reports.

Chairman Brooks explained that the new report structure will reflect percentages in each category, rather than the point system that was provided in the past. He shared the opinion that the new report will be easier to read.

Boardmember Harris voiced some concern that a Magistrate's future employment could rely on such a small sampling. He suggested that it would be beneficial to enhance the sample size, or increase the number of people that reply to the survey.

Mr. Claspell stated that the response rate has been consistently low. He noted that the new contractor discussed ways of enhancing feedback, such as providing the survey information in both English and Spanish.

In response to a question from Boardmember Lesar, Mr. Claspell explained that the previous contractor sent the surveys quarterly by mail. He stated that the new contractor has asked for the flexibility of using email addresses in order to enhance feedback.

Chairman Brooks stated that when he goes to the Superior Court or Appellate Court he receives a survey from the Arizona Commission on Judicial Performance Review (JPR). He asked if that is part of the process for the Municipal Court judges as well.

In response to the question from Chairman Brooks, Presiding Magistrate Matt Tafoya replied that that the JPR surveys are not distributed at the Mesa City Court. He also stated that the anonymous narrative comments associated with the survey reports provided by the consultant are a sensitive issue. He noted that anyone, including staff members, can write whatever they choose about a judge and it becomes public record.

Boardmember Downie confirmed that under the JPR, the narrative comments are not made public record and only the judge receives them.

Mr. Claspell clarified that based on the advice from the City Attorney's office, Mesa does not consider the survey reports and associated anonymous comments to be public record. He stated that the survey reports, including the narrative comments, are provided to the Judicial Advisory Board for their use in evaluating the City Magistrates. He added that the same material is also provided to the Mayor and City Council as part of the packet they receive to evaluate the Judicial Advisory Board's reappointment recommendation.

Discussion ensued regarding anonymous comments becoming public record as they may be used to craft a question posed to the City Magistrates in the open meeting interview. Chairman Brooks concluded the discussion by stating that the Board has the authority to evaluate any material that will help them make a thoughtful and complete recommendation. He noted that the anonymous comments are an important part of the process and that such comments would be weighted appropriately.

9. Adjournment.

It was moved by Boardmember Sanders, seconded by Boardmember Swanson, that the meeting of the Judicial Advisory Board be adjourned at 9:04 a.m.

Chairman Brooks declared the motion 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 3rd day of October 2016. I further certify that the meeting was duly called and held and that a quorum was present.

DEE ANN MICKELSEN, CITY CLERK

mc