

**Commission for Impartial Courts  
Steering Committee Meeting**

**Administrative Office of the Courts  
Judicial Council Conference Center  
San Francisco, California  
February 25, 2008**

**Minutes**

**Steering Committee Members Present:** Hon. Ming W. Chin (*Chair*); Mr. Joseph W. Cotchett, Jr.; Mr. Bruce B. Darling; Hon. Peter Paul Espinoza; Hon. Brad R. Hill; Ms. Janis Hirohama; Hon. William A. MacLaughlin; Hon. Judith D. McConnell; Hon. Douglas P. Miller; Hon. Dennis E. Murray; Hon. William J. Murray, Jr.; Hon. Ronald B. Robie; Hon. Karen L. Robinson; Mr. Michael M. Roddy; Ms. Patricia P. White

**Steering Committee Members Not Present:** Mr. John Hancock; Hon. Barbara J. Miller, Mr. Charles B. Reed

**Steering Committee and Task Force Staff:** Ms. Christine Patton, (*Project Director*), Hon. Roger K. Warren, Ret. (*Scholar-in-Residence*), Mr. Peter Allen, Mr. Chad Finke, Mr. Michael A. Fischer, Mr. Mark Jacobson, Ms. Althea Lowe-Thomas, Ms. Susan Reeves

**Guests and additional attendees:** Mr. William C. Vickrey, Administrative Director of the Courts; Mr. Ronald G. Overholt, Chief Deputy Director; Ms. Robyn Hill, Administrative Director of the Queensland Supreme Court, Australia

**Item 1            Welcome and Overview of the Meeting**

Associate Justice Ming Chin called the meeting of the Commission for Impartial Courts Steering Committee to order at 10:09 a.m. Justice Chin introduced and welcomed the newest member of the Steering Committee, Mr. Bruce Darling, Executive Vice President, University Affairs, University of California. Additional guests and attendees were welcomed.

Justice Chin provided some background information related to past commission meetings and the formation of the executive committee and public hearings sub-committee. He mentioned that the commission's work is open and transparent to the public and the press, and that several news articles have been written about some of the topics shared at recent task force meetings. In studying areas related to their subject and charge, task force members are to continue thinking outside the box and taking into account all associated avenues to ultimately achieve best recommendations.

Copies of an article from the February 25th Parade magazine, written by Justice Sandra Day O'Connor (ret.) entitled "*How To Save Our Courts*", was distributed to meeting attendees. The related article speaks to a number of issues that the task forces are considering. Justice Chin announced that he will be addressing the League of Women's Voters group on Saturday, February 29, 2008.

**Item 2            Public Comments Related to Commission or Steering Committee Issues  
(Subject to requests)**

There were no requests for public comment received and no members of the public were present.

**Item 3            Report from Task Force Chairs**

All four Task Force Chairs provided a report to the Steering Committee.

**Judicial Campaign Finance**

Judge William MacLaughlin reported that the Judicial Campaign Finance task force met in person on February 4, 2008.

- Working Group 1, chaired by Judge Heather Morse, is looking at campaign spending. Some areas being explored include campaign contribution limits, funding related to candidate mailers, and the timing of contributions.
- Working Group 2, chaired by Judge Gail Andler, continued discussion on both sides of the issues related to campaign financial disclosure. The working group examined many issues and sub-issues connected with percentage based disclosure policies and requirements/non-requirements of e-filing disclosure of judicial campaign contributions.

Judge MacLaughlin noted that in a survey sponsored by the Campaign Disclosure Project, a collaboration of the UCLA School of Law, the Center for Governmental Studies, and the California Voter Foundation, California was ranked second overall (after Washington State which had more user friendly Web access) in terms of disclosure of campaign finance information. Significantly, California ranked first overall in terms of the substance of the law itself, e.g., what must be disclosed, when, etc. California lost points in the technical usability of the Secretary of State's online Cal-Access database. The Secretary of State is currently in the process of making Web enhancements to its Cal-Access program which would raise California's overall access.

Additional issues and topics explored at the February 4 meeting of the task force included those related to independent expenditures,, campaign contributor limits; judicial candidate agreement on voluntary spending limits, how to address campaigning against a wealthy, self-funded opponent; the possibility of a system of full or partial funding of judicial elections; and regulation of judicial campaign advertising, including ad disclosure information. Discussion was also held on recent campaign experiences around the state.

The task force continues to identify issues for further exploration without endorsing any particular course of action. Neither the Working Group nor Task Force has any recommendations or tentative recommendations for the Steering Committee at this time.

The task force will meet next in Burbank on April 28, 2008.

*ACTION – Staff and consultants to look at and gather information on what is happening here in California in regards to campaign finance spending in trial court elections and report findings back to the committee.*

### **Judicial Candidate Campaign Conduct**

Justice Douglas P. Miller reported that the Judicial Candidate Campaign Conduct Task Force met again on January 31, 2008.

The *White* Working Group, arising out of *Republican Party of Minnesota v. White* (2002) 536 U.S. 765, chaired by Justice Richard Fybel, discussed the definition in the California Code on judicial accountability and the California Code of Judicial Ethics Canon 5b.

The Best Practices Working Group, chaired by Justice Maria Rivera, formed six new sub-groups:

- Judicial Candidate Questionnaires – exploring information related to the candidate model questionnaires and responses to questionnaires containing inappropriate questions;
- Campaign Contributions: Personal Solicitation/Disclosure/Disqualification – looking into judicial compliance with campaign disclosures and whether clarification is needed in Canon 3E(2);
- Slates/Endorsements/Misrepresentations – considering the adequacy or need to strengthen Government Code §84305.5(a)(2) related to slate mailers, Canon 5 relative to judicial candidates identifying political organization affiliations, and campaign oversight issues among others.
- Voluntary Judicial Campaign Oversight Committees –giving consideration to working closely with the State Bar to encourage ideas on voluntary conduct codes, oversight committees, and statewide campaign conduct codes;
- Public Comment on Pending Cases – looking into the applicability of current canons;
- Candidate Training and Advisory Opinions – exploring what ethical advice is provided to judicial candidates, campaign conduct training considerations, and candidate educational material on the role of the judiciary and the media.

The task force continues to identify issues for further exploration without endorsing any particular course of action. Neither the Working Group nor Task Force has any recommendations or tentative recommendations for the Steering Committee at this time.

The next meeting of the Judicial Candidate Campaign Conduct Task Force is scheduled for April 30, 2008.

### **Judicial Selection and Retention**

Justice Ronald Robie reported that the task force met February 4, 2008, and formed two working groups:

- Judicial Selection Work Group, headed by Ms. Victoria B. Henley, is focusing on how California differs from other states in how judicial selection is made. The group will look at the Commission on Judicial Nominees Evaluation (JNE) process of review.. Through research conducted by the American Judicature Society, findings related to California’s merit selection processes indicate that California has substantial merit process built in to our system.
- Retentions and Evaluation Work Group, headed by Justice Walter Croskey, is focusing on these two areas. The group will review nationwide information related to the 21 states that currently have a performance review process with multiple elements and other non-review states. The working group will also explore the issues related to contested trial court elections and the current methods of retention.

There was some discussion regarding information on the judicial evaluation methods practiced in Utah and in Colorado, which have different methods for evaluations.

The task force continues to identify issues for further exploration without endorsing any particular course of action. Neither the Working Group nor Task Force has any recommendations or tentative recommendations for the Steering Committee at this time.

The next meeting of the Judicial Selection and Retention Task Force is currently scheduled for April 28, 2008 in Sacramento.

### **Public Information and Education**

Justice Judith McConnell reported that on February 8, 2008, the task force met in San Francisco and the four working groups continued to meet and discuss various multi-dimensional concepts.

- The Education Working Group
- The Public Outreach and Response to Criticism Working Group,
- The Voter Education Working Group,
- The Accountability/Judicial Performance and Evaluations Working Group

Three of the working groups—education, public outreach, and voter education, have overlapping discussions on a number of ideas to evaluate public outreach and educational resources currently available for judges, court administrators, and K-12 teachers. In addition, the working groups are considering methods of educating the public through creative means, such as “influence leaders” and advisory groups, to help the judicial branch maintain a focus on outreach efforts.

The education working group has identified some specific priority areas to explore related to coordinating civics courses in our schools, quality up-to-date materials, teacher training and the inclusion of the judicial branch civics in educational programs. It was noted that the State Department of Education and the State Board of Education is scheduled to review the History & Social Science K-12 curriculum framework and evaluation criteria in 2009 and move to adoption of a new curriculum framework in 2011. The mechanics associated with getting this area of classroom study included was discussed.

The public outreach and response to criticism work group continues to research ideas to collaborate existing programs with educating the public in order to foster an informed citizenry. Various ways to impart information about the accountability of the judiciary through partnerships and educational materials were discussed.

The voter education workgroup continues to look at ways to enhance the voter educational system. Some enhancements discussed include partnering with nonpartisan groups that provide voter information such as the League of Women Voters and bar associations, and producing judicial candidate toolkits or other education materials.

The accountability/judicial performance and evaluations work group referred the judicial performance evaluation issues to the Judicial Selection and Retention Task Force. This group will now focus its attention on all the other ways accountability is secured within the judicial system, such as through appellate review, the Commission for Judicial Performance, judicial ethics, and other accountability tools.

Discussions included the lack of civics education courses in K through 12 and civics curriculum textbooks. Mr. Bruce Darling mentioned that the Public Policy Institute of California (PPIC) has conducted extensive surveys about Californians' views of state government. He suggested that PPIC might be willing to conduct public opinion survey research about Californians' perceptions of the threats to the impartiality of California's courts. Such information could help guide the plans and actions of the Commission and its Public Information and Education Task Force., including how much effort should be devoted to K-12 education as well as civic education and information for adults.

The group "California Forward", a foundation that currently is raising money from four organizations to support placing four initiatives on the California ballot as non political entities, may be another source of information to check into. Janis Hirohama mentioned that California Forward is focusing on redistricting and redistricting reform as well as infrastructure change.

*ACTION – Steering Committee Staff to set up a meeting with Public Policy Institute of California.*

*ACTION – Janis Hirohama to research information related to California Forward and report back at the next Steering Committee meeting.*

#### **Item 4            Review of Commission charges**

Justice Chin reviewed the Commission charges. Discussion was held concerning the best ways to inform the media, the judiciary, and the public about the commission's charges and ways to address their inquiries. Suggestions included having the task force chairs speak at in-person meetings to various groups such as California Judges Association (CJA) functions (mid and yearly events), California AOC TV and/or California Court News, and all three May Regional Office meetings.

*ACTION – Executive Committee to contact CJA regarding scheduling time on the mid year and annual board conference agendas.*

Justice Douglas Miller is on the committee for the CJA annual meeting held in Monterey in September and will bring this issue to the committee's attention.

Mr. Peter Allen is working on a communiqué through the AOC web similar to Court News Update that brings information related to the commission to the courts. As a proactive step towards educating the media, the Office of Communications is also working to develop a web link report to media with positive and accurate information about the commissions work. Placing the 4-1/2 minute videos of adversarial campaign ads and links to the Justice at Stake Web site were also ideas brought forth.

#### **Item 5            Use of messaging documents and accountability discussion**

Judge Roger Warren offered some changes to the "Importance of Accountability" document distributed to members. The newly revised version was approved as amended with none opposed.

<i>ACTION – Staff to re-send the newly adopted "Importance of Accountability" document to all members.</i>
--

#### **Item 6            Report from Subcommittee on Public Hearings**

Mr. Joseph Cotchett presented an update to the Steering Committee on the public hearings sub-group meeting held February 8th in a partial joint meeting with the Public Information and Education Task Force. Many goals and ideas were discussed. It was decided that the initial hearings (now forums) should concentrate on educating the public regarding the purpose of the Commission and why threats to impartial courts in other states is important to citizens in California. Members discussed inviting well known subject matter keynote speakers.

Consideration was given to partial day forums lasting from 2 to 2 1/2 hours with the key speakers at the same events. Tentative dates for the informational forums are April 30, 2008 in Sacramento and May 14, 2008 in Los Angeles although these dates may be changed due to availability of the key speakers.

Subsequent forums/hearings would involve speakers that are close to the issues and each task force chair should consider what additional information they would need to meet their task force charges. For example, the Task Force on Public Information and Education might consider how civics curriculum is set up for children to learn about the judicial branch and how new citizens learn about the system. Media releases and television/news coverage were suggested as methods to get the word out about all the events.

The subcommittee on public hearings will be meeting again on February 28, 2008.

#### **Item 7            Task Force reports to Steering Committee – discussion, deadlines, format**

Task Force Interim Reports to the Steering Committee are due in late April/early May so the Steering Committee can produce an Interim Report to the Judicial Council. Anticipated presentation is at the August 15, 2008 meeting.

*ACTION – Staff to discuss with the Editing and Graphics Unit, any modifications concerning the Interim Report Template, and distribute to the task forces as soon as feasible.*

Dates for the commission to go over the Interim report prior to the August 15th deadline discussed. One suggested date to meet is on the May 14th date in Los Angeles or after the public forum.

**Item 8            Law Day activities/programs - discussion**

Justice McConnell noted that this year there is not enough time plan Law Day activities/programs with any specificity and suggests consideration of a law day event program next May. Those asked to speak at Law Day events locally can consider the informational messaging document or ask for assistance.

**Item 9            Other business**

There being no other business – meeting adjourned at 2:04 p.m.

*Minutes approved as of March 28, 2008 by a quorum of voting members of the Commission for Impartial Courts Steering Committee.*