

**Commission for Impartial Courts
Steering Committee Meeting**

**Administrative Office of the Courts
Judicial Council Conference Center
San Francisco, California
May 20, 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; Mr. John Hancock; Ms. Janis Hirohama; Hon. William A. MacLaughlin; Hon. Judith D. McConnell; Hon. Barbara J. Miller; 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 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

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 10:15 a.m.

Justice Chin mentioned that the Public Policy Institute of California (PPIC) is interested in conducting public surveys to assist the Commission on Impartial Courts in finding out what the public is actually aware of regarding issues such as judicial campaign conduct, campaign finance, etc. He asked committee members to think about and collect questions from each task force on important areas of concern for the public to receive information on. The task forces are to send those questions in raw forms to Chris Patton, Project Director, to be put together in a packet for the PPIC.

Copies of the American Bar Association Winter 2008 publication *The Brief*, highlighting “Fair and Impartial Courts” was given to members in attendance. A pending judicial race postcard mailer sent to voters in San Francisco was also circulated.

**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 Discussion of Interim Reports from Task Forces

All four Task Force Chairs provided a summary of their interim reports to the Steering Committee.

Public Information and Education

Justice Judith McConnell reported on the task force's preliminary findings and some important and immediate recommendations. Highlights from discussions among the working groups on Education, Public Outreach and Response to Criticism, Voter Education and Accountability/Judicial Performance and Evaluations include:

- The need to collect, summarize and evaluate educational materials for teachers, judges and administrators involved in classroom visits;
- The need to support a model ethics educational program which the Judicial Council and the Policy Coordination and Liaison Committee has endorsed through AB2544 (Mullin);
- Seek development of a public outreach plan including a documentary film on the importance of fair, impartial and accountable courts;
- Statements in voter guides;
- Study judicial branch accountability measures.

Additional discussion included seeking funding and public outreach methods to bring the community information about the judicial branch. Producing a variety of films, reaching out to the community newspapers, working with the State Superintendent of Public Instruction and bringing legislative attention to the mission of maintaining fair and impartial courts were mentioned.

Judicial Selection and Retention

Justice Ronald Robie reported that the task force and the two working groups on Judicial Selection and Judicial Retention held discussions on a variety of topics related to their charges. Some of the focused areas discussed include:

- Review of the Commission on Judicial Nominees Evaluation (JNE) and merit system selection processes;
- Issues related to a diverse judiciary;
- The electoral and term retention process
- Evaluation processes

Discussions included how the public currently obtains information about the judicial branch and judges. Subjective information can be obtained by various means including special interest groups and web site searches. Options may involve getting information out via the Voters Guides on both current and opponent candidates.

Judicial Candidate Campaign Conduct

Justice Douglas P. Miller briefed members on the task force interim discussions from the two working groups, the *White Working Group*, arising out of *Republican Party of Minnesota v.*

White (2002) 536 U.S. 765, and the Best Practices working group. Some discussion areas included:

- Defining “impartiality” in the code;
- Judicial participation in activities that promote public understanding and confidence in the courts;
- How to respond to attacks;
- Judicial candidate training opportunities;
- Judicial questionnaires;
- Candidate communication links such as hotlines and brochures;
- Disclosure of contributions.

Further discussions were held related to slate mailers, codes of conduct, campaign solicitation and disclosure thresholds.

Judicial Campaign Finance

Judge William MacLaughlin provided an overview of the areas that this task force has discussed and considered including:

- Differences between the types of judicial elections (Trial Court, Supreme Court, Appellate);
- Evolution of contribution processes;
- Relationship of disclosures, independent expenditures and recusals;
- Education opportunities that provide information on campaign financing processes;

Additional topics explored included retention elections and term limits.

Item 4 Update on Recent Activities in Other States

Hon. Roger Warren presented current updates related to judicial elections in other states.

Wisconsin – A contested Supreme Court Justice election between incumbent Justice Louis Butler and challenger Attorney Michael Gableman resulted in Butler’s defeat. The voters were influenced by television ads that were 93 % funded by public interest groups. These third parties provided funding for unauthorized advertising. The oversight committee commentary did not address the third party advertising and third parties do not have to disclose where money comes from.

West Virginia – In 2004 there was \$3 million invested to defeat a seated justice in order that cases would turn in favor of big business. The Massey Energy Company (coal manufacturing) was involved in financing and providing vacations to a current justice which surfaced in the media. There was a series of recusals; however, the justice that vacationed with the president of the energy corporation sat on a \$78 million dollar case which was ruled in favor of the company. The case is going to the U.S. Supreme Court with questions as to why the justice didn’t recuse himself from the case. Attorney Ted Olson will litigate on behalf of the plaintiffs.

There is a movement underway for tougher recusal motions as a way of diffusing the incentive for big businesses to provide large contributions.

Colorado – The state is looking at term limits but they have not gathered enough signatures to place on ballot.

There was an inquiry regarding what California might expect in the way of initiatives and how best to address them. The task force on Judicial Selection and Retention or Public Information and Education as a statewide response to criticism might best address the mechanics that are in place for initiatives to get on the ballots in California

Item 5 Report from Subcommittee on Public Hearings

Mr. Joseph Cotchett presented current information on the pending public forum set for July 14 during 2 hours in the morning in Sacramento. The Secretary of State Auditorium will be used and there are a number of speakers that have been confirmed. Cal-Channel will cover the event live. Further information being sent electronically includes hotel, venue location, and speakers list. The Capitol press will be notified as well as other media and interest groups. A save the date flyer will be distributed.

Item 6 Discussion of Potential February/March 2009 Final Plenary Session

Justice Ming Chin lead discussion related to what the final reports from task forces will include. Discussion continued with suggestions on various ways to capture and illustrate in the final report to the Judicial Council and how the task force information and recommendations could be presented.

Ms. Chris Patton recommended a final plenary session in February or March 2009 with the Steering Committee and all task forces to go over the final reports and recommendations. The date of Monday February 23, 2009, or possibly February 24, was recommended.

Item 7 Report on May 19 Meeting with Public Policy Institute of California

Justice Ming Chin provided further information on the PPIC meeting with Mr. Mark Baldassare. Justice Chin asked task forces to consider areas of interest for polling citizens. A sub committee was formed to consider the objectives of a survey, look at polling questions that would result in data useful to the commission. Surveys that have already been conducted and those materials would be gathered and provided to the PPIC as reference. The survey sub committee will be chaired by Hon. Barbara Miller and include Mr. Bruce B. Darling and Mr. John Hancock working with Ms. Christine Patton and staff. A meeting of the sub committee and Mr. Mark Baldassare will be scheduled to review potential questions and discuss outcomes and objectives.

Item 8 Other business

There being no other business – meeting adjourned at approximately 3:00 p.m.

Minutes approved as of August 6, 2008 by quorum of voting members of the Commission for Impartial Courts Steering Committee