

**Commission for Impartial Courts
Steering Committee Meeting**

**Administrative Office of the Courts
Redwood Room
455 Golden Gate Avenue
San Francisco, California
October 2, 2008**

Minutes

Steering Committee Members: Hon. Ming W. Chin (*Chair*); *Mr. Joseph W. Cotchett, Jr.; Mr. Bruce B. Darling; Hon. Peter Paul Espinoza; Mr. John Hancock; Hon. Brad R. Hill; 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

* Unable to attend

** Attended by conference call

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 10:12 a.m.

Justice Chin noted that interest in the work of the commission is being discussed outside California. On November 7, he will be speaking at a program on judicial independence at Brigham Young University in Utah before the Distinguished Trial Lawyers panel.

Jesse Choper has organized a panel at U.C. Berkeley's Boalt Hall to address judicial elections and impartiality on November 14. Tom Phillips, retired Chief Justice of the Supreme Court of Texas, and Justice Thomas Moyer, Chief Justice of Ohio, will be on the panel.

Justice Chin noted that the work of the commission is proceeding. People have shown interest and excitement, also some have voiced concerns. He reiterated the need to make sure we consider seriously any concerns presented and that they be recorded and assigned to the appropriate task force. This was the process that occurred after the public forum as remarks were captured and assigned to a task force.

Public Correspondence Subcommittee: Chair Justice Brad Hill reported that he and the other two members, Patricia White and Janis Hirohama, with assistance from Susan Reeves, are reviewing e-mail correspondence received from the public. Justice Hill will provide a full report on any concerns arising from this correspondence that merit attention of the Commission.

Item 2 Public Comment Related to Commission or Steering Committee Issues

There was no public comment.

Item 3 Updates from Task Forces

A. Task Force on Judicial Campaign Finance – Judge William MacLaughlin.

Judge William MacLaughlin presented a number of issues to the committee. The recommendations are all tentative at this time as the task force recognizes that they may have to go back and review them as comments and additional questions arise.

Discussion topics:

Statutory or other contribution limits by individuals:

- No limits on campaign contributions are being recommended.

Independent expenditures:

- The task force will be looking at information on this topic from other judicial jurisdictions within and outside the state and any special interest activity concerning judicial campaigns. This is a difficult issue due to the nature of these types of contributions and ways to circumvent regulation.

Contributions to campaigns:

- Possible recommendations include mandatory enhanced disclosure and mandatory disqualification to limit the potential of influence on decisions made and the perception of improper influence.
- Code of Civil Procedure §170.5(b) requires disqualification if a judge has an ownership interest related to a party of over \$1,500. A similar amount could be tied to disqualification for campaign contributions. The amount would be periodically reviewed to account for inflation, and the disqualification would be waivable.
- No recommendation was made as to the form or manner of disclosure or mandatory disqualification regarding appellate justices. This will be the subject of further discussion.

Reporting Requirements:

- Currently, trial court judges, although required to report contributions to the Secretary of State's Office, are not required to file electronically. The provided

software is difficult to use so most do not use it. There is better software, however, it is expensive.

- Tentative recommendation: Trial court judges should be required to e-file their reports with the Secretary of State, and an inexpensive but adequate software program should be provided for this purpose

Bruce Darling provided information regarding increased California population and media costs. He noted there was a \$16 million campaign for an unopposed statewide ballot measure.

B. Task Force on Judicial Candidate Campaign Conduct – Justice Douglas Miller.

Discussion topics:

The task force is considering the following recommendations:

- Amending the ABA Model Code of Judicial Conduct to define “impartiality”.
- Modifying the commentary to canon 4B by adding hortatory language that helps educate the public on the meaning and importance of an impartial judiciary.
- Modifying the commentary to canon 5B by adding hortatory language that helps educate the electorate as to candidate qualifications and the meaning and importance of an impartial judiciary.
- Amending canon 3E to add a disqualification provision similar to the rule in the ABA Model Code of Judicial Conduct.
- Amendment of the code to add the definition of the term “commitment” to include “pledges” and “promises” making it consistent with the ABA Model Code.
- Requiring disclosure of contributions of \$100 or more, and keeping a record in the clerk’s office, and/or on a Web page.

Slate Mailers:

- Requiring that there should be a notice on the mailer that the judge has endorsed the mailer information or that if the candidate was not notified of the material on the mailer that he/she has not agreed to the contents.

C. Task Force on Judicial Selection and Retention – Justice Ronald Robie.

Discussion topics:

- Lifetime appointments for Appellate and Supreme Court justices were not recommended.
- The Governor’s judicial election advisory committees were discussed and it was recommended to leave them as is.
- The American Bar Association Commission on Judicial Independence proposed

that the Bar association, in conjunction with courts and judges, offer classes to lawyers on judicial decision making and ethical issues. This would be a good collaborative effort and might be helpful for lawyers that would be considering judgeships.

Evaluations – Self-Improvement

- The task force is looking at the JNE evaluation process and disclosure of the evaluations during election, in addition to before appointment.
- Amendment should be considered that if a judicial candidate gets 100 signatures when running unopposed in June that candidate does not have to get another 100 signatures in order to be on the November ballot.
- A question arose regarding using original JNE evaluations for subsequent judicial elections. However, evaluations are only good for one year. This needs further study and discussion.
- The evaluation, or notification to decline to participate, would be on the ballot.

D. Task Force on Public Information and Education – Justice Judith McConnell.

Discussion topics:

- Significant strides have been made related to information and education. There is a high level of judicial endorsement for civics education. The Judicial Council should establish an ongoing advisory group to work within the education environment to develop a strategic plan to bring civics education up to the level it deserves in California.
- A task force meeting is scheduled for November 7 to exclusively address this issue.
- Justice Fred Lewis, Chief Justice of the Florida Supreme Court, spoke at a task force meeting in late August and offered information regarding justice and community partnership and providing schools with information.
- Response to Criticism Committee – The Judicial Candidate Campaign Conduct task force partnered with this working group to address response to criticism strategies and develop model guidelines on the issues. A report was prepared and a “Tip Sheet” developed for judges to use when responding to criticism and dealing with the media. This will be part of the task force recommendations.
- Voter Pamphlets – A committee chaired by Janis Hirohama worked on proposed language to inform citizens how judicial elections are different from other candidate elections.

- Accountability – In the *CourTools* program, a set of ten performance measures offers trial courts perspective on operations such as evaluating how they are dealing with the public. It can also be a way of letting the public know we are accountable to them, spending public funds appropriately, etc. *CourTools* is a product of the National Center for State Courts.

It was suggested and agreed that task forces with overlapping issues stay in touch with each other and discuss possible resolutions when conflicts arise.

Item 4 Follow Up to Meeting with State Superintendent of Public Instruction Jack O’Connell

Justice McConnell reported on the status of the meeting held with State Superintendent of Public Instruction Jack O’Connell. We are waiting for results of our request to enhance civics education in the state framework, and membership on the standards committee. Bruce Darling also mentioned a national group that is looking at student standards. He has provided information about their efforts to Justice McConnell.

Item 5 Revised Timeline – Extension of Appointments, Final Report; Discussion of February Plenary Session

Chris Patton provided an update. November/December should be the last task force meetings. This would eliminate the need for a December and January Steering Committee meeting.

There will be a meeting February 22nd and 23rd, 2009, for the entire Commission. The Steering Committee will also meet on February 24th to go over all task force reports. Tentatively, the plenary meeting is scheduled as follows:

- Evening of February 22 – dinner
- Day of February 23 –task force chairs to present their reports
- February 23-24 – Steering Committee meeting afternoon of 23rd; continue to February 24.

Note: The final report will be presented at the August 2009 Judicial Council meeting.

Final reports from the Task Forces to the Steering Committee are due January 23, 2009.

The Bench Bar Biannual Conference is set for September 8, 9, and 10, 2009, in San Diego. Chris Patton, Justice Robie, and Justice Hill are on the oversight committee for the conference.

Typically, after the recommendations are made by task forces there are “Implementation Groups” that carry out the recommendations. Anyone interested in further serving on implementation groups should contact Chris Patton.

Item 6 Summary of Panel Discussions at State Bar and CJA Annual Meetings

Justice Chin provided a summary of the panel discussions at the State Bar and CJA annual meetings. Judges Heather Morse and Lynn Duryee were on the panel in addition to the other Chairs, and were well received. Justice Chin also spoke at the summer CJA meeting with Justices Brad Hill and Douglas Miller.

On December 11 there will be a forum held at the University of the Pacific in Stockton that includes Justice Chin, Justice Robie, and Roger Warren. This event will speak to topics similar to the Sacramento forum held in July by the Commission.

It was also suggested that judges advise juries of the role judges have and educate them while speaking about jury service.

Item 7 Update from Subcommittee on Public Policy Institute of California and Polling Project

Judge Barbara Miller, Chair, provided a report on the PPIC Polling Project including background, current status and issues with the PPIC undertaking a comprehensive survey at this time.

Options were presented to the Steering Committee including considering a broad survey as originally identified, setting the parameters, and identifying a number of organizations that would be able to conduct them.

The Subcommittee recommended going forward with the survey – even if the results are not available to be included in this commission’s work before the Final Report..

It was suggested to either (1) start the survey background now and if we have results they can be given to the implementation group, or (2) have survey recommendations in the final report to go to the implementation group.

Information from the survey could be useful for discussion with the Legislature, educators, etc.

Judge Miller expects to have results before the task force sunsets.

The Steering Committee voted to pursue a survey.

Item 8 Report from Justice O’Connor’s “Corporate Citizenship Conference” in D.C. and Update on Recent Activities in Other States

Roger Warren attended the Georgetown University conference with Justice Sandra Day O’Connor. Also in attendance were a number of speakers including Alan Greenspan who spoke to court and corporate issues, safety of savings, right to own property and the rule of law. Bradford L. Smith, Senior Vice President and General Counsel, Microsoft Corporation, talked about property protection laws worldwide.

Judicial salaries were discussed, including the Chief Justice's suit against New York for failure to raise salaries over the last 10 years.

Television ads were shown which related to judicial campaign conduct, and Associate Justice Stephen Breyer of the United States Supreme Court described how judicial independence is chipped away at "drip by drip" and how the gross effect over time is erosion.

Roger Warren asked Justice O'Connor to consider coming to our Bench Bar Biannual Conference in September. She was provided with the forum video to review.

There being no other business the meeting adjourned at 2:03 p.m.