



Approved March 7, 2017

Approved Minutes

**City of Scottsdale
JUDICIAL APPOINTMENTS ADVISORY BOARD
Regular Meeting
6:00 p.m., Tuesday, December 10, 2013
Human Resources Pinnacle Training Room
7575 E. Main Street**

- PRESENT:** Donald Alvarez, Chair
Judge Bruce Cohen, Vice Chair
Judge Thomas LeClaire, Board Member
James Padish, Board Member
Francis Scanlon, Board Member
Sandra Schenkat, Board Member
Kenneth Weingarten, Board Member
- STAFF:** Valerie Wegner
Bernadette La Mazza
Bill Hysten
Bruce Davis
- GUESTS:** Presiding City Judge Joseph Olcavage
Associate City Judge James Blake
Associate City Judge Statia Hendrix
Associate City Judge Orest Jejna

CALL TO ORDER

The meeting was called to order at 6:03 p.m.

ROLL CALL

A formal roll call confirmed the presence of Board Members as noted above.

1. REAPPOINTMENT OF BOARD MEMBER

Chair Alvarez announced that Board Member Weingarten has just been reappointed for another term on the Board.

2. APPOINTMENT OF NEW BOARD MEMBER

Chair Alvarez announced the appointment of Ms. Sandra Schenkat as a new citizen Board Member and welcomed her to the Board.

**3. APPROVAL OF MINUTES OF PUBLIC MEETING CONDUCTED ON
June 11, 2013**

BOARD MEMBER WEINGARTEN MOVED TO APPROVE THE MINUTES OF THE JUNE 11, 2013 PUBLIC MEETING AS PRESENTED. JUDGE LECLAIRE SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

4. PUBLIC COMMENT

Chair Alvarez announced that they would first hear public comment regarding the reappointment of Associate City Judge Statia Hendrix.

Presiding City Judge Joseph Olcavage spoke in support of the reappointment of Judge Hendrix for a second term. He stated that she has brought great knowledge but more importantly great enthusiasm and energy to the job. Her most important desire is to make the right decision. She asks the other judges for their perspectives on a daily basis. When free, Judge Hendrix often helps out the other judges by either covering jail court or other divisions. Judge Hendrix cares about the judicial system and has volunteered on a number of committees including the Case Flow Committee and the committee looking at implementing a fileless court system. Judge Hendrix volunteered to be in Phase One of the Fileless Test Project. The Arizona Supreme Court just appointed Judge Hendrix to a committee on how the courts handle domestic violence cases for a three-year term. This committee looks at better alerting victims to the community resources available and how to get law enforcement to better enforce court orders, how to enhance the safety of the victim. Judge Hendrix is involved in a jury blitz. Because Scottsdale has a backlog of DUI trials. Courtroom 5 has been opened with a judge pro tem to deal with this. DUI trials are also being run out of Judge Hendrix's and Judge Blake's courtrooms. Judge Olcavage summarized that she has had a very busy and productive first year and he fully supports her reappointment for a second term.

Judge Orest Jejna spoke in support of the reappointment of Judge Hendrix. He has found her to be very supportive and a breath of fresh air. They work together on a daily basis. She sits on several committees dealing with court efficiency. He explained that they instituted the jury blitz to deal with the backlog of cases. Judge Hendrix is the point person and has done a stellar job in this difficult position.

Judge James Blake spoke in support of the reappointment of Judge Hendrix. He has known her for over 12 years, when she was a prosecutor. He concurred with the other judges' accolades. Judge Hendrix has already demonstrated the highest ethics and knowledge of law. Her demeanor on the bench shows her pleasant personality. She shows good judicial temperament. Judge Hendrix is a hard worker. Speaking from his personal experience with the jury blitz, Judge Blake said this is a very difficult position. Judge Hendrix is able to say no to people in a very nice way. He believes she has made a very successful transition from prosecutor to judge. She is a great asset to the City of Scottsdale.

Judge Jejna addressed the Board in support of the reappointment of Presiding City Judge Olcavage. He said all the judges are involved in the process of the courthouse. Judge Olcavage has given them additional rein over participation in committees. He added that the judges' transition to a paperless system is transitioning quite rapidly. Much of this is due to Judge Olcavage's efforts. He has been a wonderful manager and a great chief to work for. Judge Olcavage continues to maintain much of his calendar while taking care of all his

administrative duties. Judge Jejna appreciates that Judge Olcavage has integrated the judiciary into the processing of what takes place in the courthouse. When appropriate, the judges are involved in staff issues. They are involved in management, providing input for Judge Olcavage's decision making. He has given the other judges a voice and listens to them.

Board Member Scanlon asked Judge Jejna how many pro tem judges they have. Judge Jejna replied there are quite a number of pro tem judges. However, they do not all preside over jury trials. They use the pro tem judges quite often in order to keep work flowing smoothly. Board Member Scanlon asked who makes the decision to call in a pro tem. Judge Jejna said if there is a need to cover for a judge who is absent or because of a large calendar, Judge Olcavage makes the decision. His understanding of the process is that every few years they issue an RFP for the appointment of pro tems. The applications are screened and reviewed and City Council has the ultimate approval. Board Member Scanlon commented that the calendars are really full. Judge Jejna agreed, adding that now there are just four City judges. The DUI calendar never stops, as the court handles an estimated 200 to 250 cases every month.

Judge Blake spoke in support of reappointing Judge Olcavage. He concurred with Judge Jejna's remark that he has been a breath of fresh air in the system. Judge Olcavage holds frequent, productive meetings and has established a collegial atmosphere. He commented that the paperless courthouse will be great once it is fully implemented, adding that he was finally convinced to get his first ever cell phone recently. The paperless system will save time, money, and resources. Judge Blake added that he and Judge Jejna come from the criminal court system. Judge Olcavage comes from the city system and his familiarity with civil law is a useful asset.

Chair Alvarez closed the public comments.

5. DISCUSSION OF JUDICIAL SURVEY RESULTS ON ASSOCIATE CITY JUDGE STATIA HENDRIX

Board Member Weingarten recalled that a year ago he and his wife renewed their vows and asked Judge Hendrix to officiate as the newest appointee. Assistant City Attorney Sherry Scott advised him that when Judge Hendrix came up for reappointment he should disclose this. No money or gifts were exchanged.

Chair Alvarez stated that the reappointment process should be as transparent as possible and it is preferable to have discussion in open public meeting. In the past, when Board Members wanted to share something that they were told in confidence, they relayed the information without identifying who had told them. He reminded them that an audio recording of the meeting was being made for the record. Mr. Bill Hysten of the City Attorney's Office concurred. He added that if relating the information alone could suffice to identify the person, that could be a possible reason to go into executive session.

Ms. Valerie Wegner advised that the provision to go into executive session for confidential information or to obtain legal advice is included in the agenda. If there is a need to recess into executive session it can be done by passing a motion. She described how the surveys were conducted. Staff sent postcards to all the defendants and witnesses on the contact list letting them know that the survey would be coming and that the Board Members would appreciate their taking the time to complete and return it. They also sent cards to the police witnesses. These efforts led to better response rates and staff plans to continue doing this going forward.

The Board Members reviewed the survey results for Judge Hendrix.

Vice Chair Cohen commented that many of Judge Hendrix's scores are in fact lower than the average for the court as a whole. He felt they should compare her scores to the court average. She does very well with jurors, being personable and engaging. She is a good face for the court.

Chair Alvarez said the averages do not appear to compute properly and in fact it appears that what is labeled as the average is really Judge Hendrix's scores. He reminded everyone that the other judges have all been on the bench in Scottsdale for many years. Judge Jejna in particular is so highly respected that he raises the standard.

Chair Alvarez noted that compared to the other judges in 2013 Judge Hendrix had significantly more appeals than the other City judges. He asked the other Board Members what that might indicate. Board Member Padish said in criminal cases the predominant appellant is the defendant who is found guilty. In Scottsdale he noted there is an ongoing issue regarding the validity of the crime lab's work. That case is now before the Court of Appeals because the Superior Court reversed the Scottsdale City Court's decisions and found that the crime lab's work is not trustworthy. He opined that this will ultimately find its way to the Supreme Court. He suggested that some of Judge Hendrix's high appeal rate is probably related to other people jumping on the bandwagon and questioning the work of the crime lab. Chair Alvarez commented that some attorneys have filed appeals in multiple cases.

Judge LeClaire recalled that at previous Board meetings they had noted that defense attorneys were incensed about the crime lab issue and that carried over into the comments about judges. He opined that people have strong feelings and the survey does not reflect the kind of objective analysis one would normally expect. The crime lab issue is a hot button issue in the city. Other Board Members confirmed similar findings. Board Member Schenkat said the survey results may likely reflect the same effect.

6. DISCUSSION OF JUDICIAL SURVEY RESULTS ON PRESIDING CITY JUDGE JOSEPH OLCAVAGE

The Board discussed the survey results for Presiding City Judge Joseph Olcavage.

Chair Alvarez noted the same error in the reporting of the averages. Ms. Wegner explained that there was a staff error and the judges' peer reviews had in fact been completed twice by the same people. However she double-checked and did not find any wide discrepancies between the results.

7. DISCUSSION OF CONFIDENTIAL RECORDS AND CONFIDENTIAL INFORMATION RELATED TO JUDGE HENDRIX'S PERFORMANCE OR REAPPOINTMENT

BOARD MEMBER PADISH MADE A MOTION TO GO INTO EXECUTIVE SESSION. BOARD MEMBER WEINGARTEN SECONDED THE MOTION.

Board Member Padish said the identity of many of the people he was tasked to speak with would become obvious in any discussion, and they asked to remain anonymous because they

will be appearing in front of her in future. Board Member Schenkat shared that one person she spoke with requested to remain anonymous.

THE MOTION CARRIED BY A VOTE OF SIX (6) TO ONE (1), WITH CHAIR ALVAREZ DISSENTING.

The executive session lasted from 6:47 to 7:04 p.m.

Chair Alvarez said that in the executive session they had discussed comments by people who were identifiable. They would now hold a general discussion about the interviews.

Judge LeClaire said his interviews did not reveal anything not contained in the rest of the information. On the positive side, people praise Judge Hendrix's demeanor. On the negative side, people mention the appearance that she is pro prosecution.

Board Member Padish said all but one of the people he interviewed were very complimentary about Judge Hendrix's professionalism, calendar management skills, how her staff treats the public and lawyers. However there was a recurring theme from the defense attorneys he spoke with, all but one of whom perceived her as being actively pro prosecution. They expressed a recurring concern about her ability to impartially judge the issue of the validity of the crime lab's blood alcohol analysis. Despite having defended the crime lab while a prosecutor, she is now judging the same issue and there was consensus among the people with whom he spoke that there is an appearance of partiality in favor of the prosecution and the crime lab in regard to that issue. Two of the lawyers he spoke with expressed that her bias in favor of the prosecution went beyond the crime lab issue. He was personally surprised; in his experience former prosecutors tend to become pro defense as judges and vice versa.

Board Member Schenkat was assigned to speak with seven private attorneys and one prosecutor. She spoke with all but one who did not respond to her three messages. One person felt Judge Hendrix has favorites and felt she should recuse herself from the DUI cases which she was involved with as a prosecutor. That person said Hendrix is moody and shows bias towards certain attorneys. Five other people made wonderful comments such as "she should be appointed to the Supreme Court," "an outstanding judicial officer, fair and impartial." One person commented "have observed her with a pro per and she is patient and respectful."

Board Member Padish added that he spoke with Tara Egita, who said that he could attribute her comments in public. She said Judge Hendrix does a wonderful job. She is also a very good friend.

Board Member Scanlon said one person commented that when Judge Hendrix was a prosecutor she was much easier to deal with. That person felt she is unfair and was extremely disappointed in her, that "she has let everybody down." One person declined to comment and two of the people assigned to him did not respond to his messages. Other people gave great reviews, "very professional," "Conducts a good courtroom." He was really concerned about the attorney who did not want to make a comment and one whose secretary told him "If he wanted to talk with you, he would have called you back."

Board Member Weingarten was assigned six interviewees. One he could not contact. The other five all had strong feelings and he spoke at length with them. The first person said "Would not retain, there's more talent out there. She's trying real hard, has a good demeanor but she is

not completely up on all the issues, not sure if she gets it or wants to get it. On motions she is quick to deny the motions to question officer's motive for a stop. It seems like they want to get some more information and she won't let them make that motion. Is biased for the prosecution." The next one said that she should not be appointed, hasn't separated herself from being a prosecutor, demeanor varies. She can get mad. She shuts people down, won't let them make a point." The next person: "Hesitant to reappoint. Knows the law but interprets it from a viewpoint of a prosecutor, which affects rulings. She has the core ability to be a good judge but not in DUI cases." This individual also said that "She has to be an independent umpire of the law on a case by case basis." The next person said they would not reappoint, "unprofessional, has trouble with grasping technical and legal issues. Lets staff chit-chat in front of the public. She's a nice person and nice with pro pers. Treats everyone equal, patient," but says "the other judges in Scottsdale are on a different level." The next person would not retain. "Handles cases like a prosecutor, not an umpire of the law. Wouldn't let explain facts that is important to the case. Polite in court, good temperament." The interviewees also brought up the crime lab issue and the perception that Judge Hendrix is pro prosecutor.

Vice Chair Cohen said this really troubles him. It would be easy to discount some of things that were said because some people who feel she is biased are probably not prosecutors. However, the interviewees are the people who come to court. If the defense attorneys have this impression one could assume that pro se defendants have the same impressions. If this does in fact extend beyond members of the defense bar it is even more difficult to discount. He is concerned that there is such a pervasive view of Judge Hendrix. He interviewed people who spoke very highly of Judge Hendrix until he asked them about negative perceptions he had heard from others. At that point he said they opened up. One person was very complimentary but when pressed said he would never try a case in front of her. He would never hesitate to take a plea in front of her. He quoted from several interviewees who were not complimentary. One said "She's got to go. She's a rubber stamp for the prosecution. She doesn't know the law." Another said "They just routinely notice her." That person's perception was that "lots of people do that." Another person said verbatim "If you were going to screw someone, at least act like you were being fair." He said that "she doesn't even do that." Vice Chair Cohen said this is a verbatim quote and he checked with the speaker to be sure he got it right. Another one said "You might want to settle your motions or cases before her rather than appearing in front of her." Another person told him she is "the worst judge he's ever appeared in front of, is rude, contemptuous, and her legal reasoning is non-existent."

Vice Chair Cohen said he was shocked. When they interviewed her, Judge Hendrix appeared to be one of the most pleasant, engaging people he has ever had the privilege of meeting. When he heard these comments from more than two people he could not discount these remarks. He had insisted on being the last Board Member to share his impressions, feeling that perhaps the group of people he interviewed was skewed. Unfortunately it seems that other people heard similar remarks. Board Member Padish's comments about perception being as important as the result are apposite. He plans to speak with Judge Hendrix about this. Surveys have shown that people who feel as if they have been heard by the Court are often more satisfied with the result than people who are successful in court but do not feel that they have been heard. He said that the State already has such great power. If the judge does not appear to be an impartial umpire, it would be like having former Yankees All Stars being the umpire in the World Series if the Yankees were playing at Yankees Stadium. He is a firm believer in the humility judges must have. He is not vilifying Judge Hendrix, but they have to speak with her about it.

Chair Alvarez said he interviewed eight people. Two individuals who had lost cases in front of Judge Hendrix were not in favor of retention. One said "I really like her. I think she's a great judge but she appears to be pro prosecution." The other said "She's pro prosecution and she shouldn't be kept." The other six were favorable. He recalled that when they were considering Judge Blake for reappointment there were quite a few complaints about his demeanor and his appearing to favor the prosecution. Chair Alvarez summarized the positive comments people had shared with him: fair, pleasant demeanor, good legal knowledge, flexible, bright, handles her courtroom well, hard worker, doing a good job, renders rulings. One person who did not recommend reappointment said she is a very fair sentencer.

Chair Alvarez said he believes the Board has a duty to let Judge Hendrix know about the appearance of fairness and giving the person the ability to feel they have had their day in court and been listened to. Judge Hendrix was a prosecutor for 12 years who was thrown into one of the busiest courts. She has learned. When he listened to everything that people said, although some argued that she is a bad judge, many said the opposite. He pointed out that people who have lost cases are likely to be unhappy with the judge. When the Board did its due diligence prior to appointing her, she received tremendous accolades from both defense lawyers and prosecutors. He said when they are speaking with Judge Hendrix they need to let her know how people perceive her. She may be pro prosecution and unaware of her own bias. Judge Blake was a prosecutor and is seen as pro prosecution, while people see Judge Jejna as pro defense, having been a defense attorney.

Board Member Scanlon said he can only make a comparison with what attorneys have said in the past about other judges. No one had a bad word to say about Judge Morgan, Judge Olcavage or Judge Jejna. People felt they were treated fairly.

Judge LeClaire said the sense of disappointment was troubling, because people had very high expectations when Judge Hendrix was appointed.

Vice Chair Cohen expressed his appreciation for the current system of reappointment terms. With a newer judge, the Board has the opportunity to address issues earlier on. The Board has three choices: to say that the judge has met or exceeded expectations; that the judge has some areas of concern; or that the judge should not be a judge. The comments do not necessarily reflect that Judge Hendrix should not be a judge. At this point he would not vote against her appointment. That said, the Board could make recommendations both to Judge Hendrix and to City Council.

Board Member Schenkat said the meeting is public record and could be a learning experience for Judge Hendrix. Chair Alvarez said part of the Board's duties are to amass and assess the information and be constructively critical with it. Being a judge is difficult, especially in criminal cases and when dealing with pro pers. He always asks the lawyers he interviews how they view the Scottsdale City Court. It is highly rated as one of the best in the Valley, which is a testament to not only the judges, but also the staff.

Board Member Weingarten said that when he was working on the interviews for this review he found all the negative comments stressful, because when Judge Hendrix was appointed she had assured the Board she could make the transition from prosecutor to judge. He was afraid he was the only Board Member receiving these types of comments. He agreed that the Board has the responsibility to critique Judge Hendrix's work.

Board Member Scanlon argued that she has been in and out of the City Court for years. He understands the difference between being an advocate and being a judge. In his 40-year teaching career, he stated that he modeled himself on the best teachers he had. Judge Hendrix could have learned something from the judges she appeared before as a prosecutor.

Board Member Weingarten said the other three judges have been serving for a number of years and one would think that a new judge would understand that she has to be neutral and apply the law on a case by case basis.

Board Member Padish said people do not realize how insulated judges are from everybody else, including other judges. This may be the Board's opportunity to show Judge Hendrix how others are perceiving her.

Board Member Schenkat said the problem is that now Judge Hendrix is up for reappointment for a four-year term. If these issues continue or get worse over the next four years they would have a challenge.

8. DISCUSSION OF CONFIDENTIAL RECORDS AND CONFIDENTIAL INFORMATION RELATED TO JUDGE OLCAVAGE'S PERFORMANCE OR REAPPOINTMENT

Vice Chair Cohen asked whether anyone had received feedback that was anything other than very positive, suggesting that one Board Member could share their research and if anyone had anything very different to report they could then speak.

Board Member Padish said one person commented that Judge Olcavage employs judges pro tem more regularly than the other judges. However if this is to enable him to keep abreast of his administrative responsibilities this is not really a criticism. Other Board Members shared similar comments.

Board Member Schenkat said she watched Judge Olcavage meet with seven pro pers in 30 minutes. She said he was so kind, she was astounded at how reasonable he was and how he explained everything so thoroughly to everyone.

Vice Chair Cohen recalled how many highly qualified applicants they had to choose from when appointing the Presiding City Judge. He feels the Board made a great decision. The most important thing he has heard was what Judge Blake and Judge Jejna said about how Judge Olcavage makes everyone feel involved. This is an incredible leadership skill. He has worked on unrelated projects with Judge Olcavage and this experience left him even more impressed than he already had been.

9. DISCUSS QUESTIONS FOR INTERVIEWS OF JUDGE HENDRIX AND JUDGE OLCAVAGE

In response to a question by Vice Chair Cohen, Mr. Hylan confirmed that they are not obliged to ask the same questions of both judges. Chair Alvarez said this only applies when the Board is interviewing candidates for a new appointment.

Judge LeClaire suggested asking Judge Olcavage what reforms and administrative actions are left undone to be accomplished during his next term.

Board Member Weingarten said that because of the backlog of DUI cases, the court has increased its use of pro tem judges. People have told him that the quality of the pro tems dilutes the judicial quality. Board Member Padish said people have said this to him and he has personal experience with pro tem judges with little experience in criminal cases.

Directing the Board's attention to questions for Judge Hendrix, Chair Alvarez said he wants to talk to her about the appearance that she is pro prosecution. Board Members debated how to broach the issue of impartiality with regard to the crime lab issue in the DUI cases in a non-accusatory way. Chair Alvarez said these are the two areas where the Board needs to be frank with her and let Judge Hendrix know that while there were many great comments, there were also a number of comments that were not complimentary because of the perception that she is biased in favor of the prosecution.

The Board Members agreed to interview Judge Olcavage first and then invite him to stay during Judge Hendrix's interview so that he will be in a position to offer her feedback later.

11. INTERVIEW OF JUDGE OLCAVAGE

Judge Olcavage said when he was appointed as Presiding City Judge he tried to focus on taking a forward looking attitude similar to a corporation and give the employees and judges an opportunity to have input into what they do in the courtroom. Staff are the court's most valuable asset and they know better than he what is going on in various areas. He started holding judges meetings every six weeks. They discuss current issues that may be coming up in the courtroom. Judge Blake gives an overview of case law or statutory law changes.

He started a number of focus groups for employees to have the opportunity to have input on different issues affecting the functioning of the court. One example is a focus group on case flow. He met with about ten defense attorneys, the prosecutor and two people from the police department to analyze why cases are not processed more quickly.

They held a focus group for new employees. The group consisted of employees who had been working for about 90 days to see how their training was going and what they needed more of, what they needed less of. A second employee focus group was formed for long-term employees. Judge Olcavage noted that most court employees are cross-trained. The focus groups gave valuable insights into how training needs to be changed for new and long-term employees. Employees and judges have to get 16 hours of COJET credit each year. Both judges and employees are encouraged to earn credit by teaching classes. He gave a lecture on Juvenile Court. His bailiff participated and talked about the forms used in Juvenile Court and how they should be completed. Judge Blake gave a lecture on legal advice versus informational advice. A front counter employee participated with him, providing examples of questions they are asked.

Judge Olcavage said they are trying to give more information to the public and want to make it easier for people to go through the court process. The website has a "You Be the Judge" feature which is actually a survey. He said they have tried to get public input on the court but it is very difficult. A few months ago staff made an all-out effort to get feedback by handing people the survey cards and requesting verbally that they fill it in. This resulted in 300 responses, whereas normally they receive about five per month. They have implemented several improvements to service to the public. DDC can be extended online now. People who make payments online can print their receipts. Case information is now available online.

Judge Olcavage explained that in conjunction with City TV, court staff is working on informational videos to be available through the court website. Board Members agreed this is a great idea. Board Member Weingarten suggested also screening the videos in the lobby, mentioning that he has worked on similar projects in the past and can share information. Judge Olcavage said he is very big on technology and urged staff to think outside the box. Because the majority of people who come to court do not have a lawyer representing them, anything that helps them understand how the process works is to everyone's advantage.

Staff has set up an auto-call program that sends a voice message reminder to anyone on a contract to pay their fine, just before they go into default. They are sending reminder voice messages for criminal arraignments, with the result that more defendants are appearing.

Judge Olcavage said they have twice changed the photo enforcement tickets to make them less confusing. This involved getting approval from the Arizona Supreme Court. They now find fewer people are missing their court dates.

The seating for jurors has been reconfigured and jurors are now allowed to bring in food and water, which is not permitted in Maricopa County Superior Court.

Turning to the ongoing project to become fileless, Judge Olcavage said after Judge Hendrix piloted the program in her courtroom, they went fileless in Juvenile Court, and a couple of months ago he himself went totally fileless. They are exploring e-filing and sending notices to attorneys via email.

In Jail Court, the prosecutors are involved in all settings and liaise with victims of domestic violence. The City Court has opted into the Homeless Court and Veterans Court, which gives these people an opportunity to do community service in lieu of paying fines.

Vice Chair Cohen inquired how the hearing officer is working out. Judge Olcavage said she is outstanding and attorneys have praised her. In response to a further question by Vice Chair Cohen about opening a fifth division, Judge Olcavage said for budget reasons, it cannot be added this year. The biggest problem currently is the volume of DUI cases.

Chair Alvarez asked Judge Olcavage whether he has heard comments that the pro tem judges do not have the experience to handle the DUI cases. Judge Olcavage said they typically use the pro tems who have prior jury experience. Next time they are looking for pro tems in spring of 2014, they will focus on jury experience.

Vice Chair Cohen asked whether they have considered using the pro tems to take care of more administrative work and using the associate judges and the hearing officer to handle trials in the DUI blitz. Judge Olcavage said they often do that when 10.2 notices are involved.

Board Member Padish said people have said they were disappointed to appear before a pro tem instead of Judge Olcavage. There is a perceived lack of quality in some of the pro tems. Judge Olcavage said this is of concern to the court. This is why next time they are hiring pro tems they will be focusing on trial experience and criminal experience.

Chair Alvarez said that the high regard enjoyed by Scottsdale City Court is a testament not only to Judge Olcavage and the associate city judges but also to staff. Everyone is proud of that.

Vice Chair Cohen recalled what a difficult decision the Board had to make when deciding on the appointment of the Presiding City Judge because of the high quality of the applicants. He told Judge Olcavage that he makes the JAAB members look wise. The feedback they each received from all sides were things in which they can all take pride. Judge Olcavage's leadership has made a difference and the Board Members think he is heading in the right direction. They are excited about the direction of the court under his leadership.

10. INTERVIEW OF JUDGE HENDRIX

Judge Hendrix said she is grateful to be here and to have an opportunity to extend her time on the bench. Two years ago she felt she had a contribution to make and she hopes she is able to make that contribution. Certainly she is learning every day and acknowledges that she has made mistakes. She works hard every day and tries to do the best job possible.

Chair Alvarez said many defense attorneys said Judge Hendrix gives the appearance of being pro prosecution, a rubber stamp for the prosecution. Although she received many more favorable comments, there were enough comments along these lines that the Board needed to pass these along to her.

Vice Chair Cohen asked Judge Hendrix what she would hope people would think of her or say about her. She replied that she would hope they would not say rubber stamp. She does listen and takes seriously that she needs to apply the law and be fair. The court has faced major evidentiary issues in her time on the bench, which are currently before the Court of Appeals. The defense bar is very angry about these issues and she became somewhat of a target, being a brand-new judge from the prosecutor's office. Early on she had to make decisions and evidentiary rulings that were not popular. There were 10.1 hearings about bias. She hoped that the Board would take these criticisms in context.

Chair Alvarez told staff that he had wanted Judge Olcavage to sit in on this interview.

Vice Chair Cohen told Judge Hendrix that when the Board appointed her, there was some concern about conflicts of interest at the beginning of her tenure. However the Board recognized that because of the high turnover rate of cases they should not preclude her as a candidate. He asked her whether she gave any thought about recusing herself from cases where she had advocated in favor of the Scottsdale crime lab.

Judge Hendrix said at the very beginning she did remove herself from a case. She added that they have to understand that 50 to 60 percent of the cases in the system are DUIs and this is an ongoing situation. Had she recused herself from all of these cases that would have impacted the effectiveness of the court as a whole. She does not believe herself to be biased. An outside judge presided over a hearing about bias and did not find her to be biased.

Vice Chair Cohen asked Judge Hendrix about confirmatory bias. People have a preconceived notion that she has a bias and will be looking for clues that confirm their idea. He asked her what she has done to make sure that she is making it clear to those who appear before her that she is neutral rather than an advocate.

Judge Hendrix said she went in with a tone and demeanor of giving equal opportunity to both sides always. She thinks she is sometimes more leaning towards the defense in terms of giving them an opportunity to be heard. Her fear is that they would expect her to always side with the

prosecutor. She noted that her decisions that are currently the subject of the litigation at the Court of Appeals are consistent with the decisions of the other judges. She has thought over her position and expanded it. She has allowed evidence to come in at trial that she was not sure about, but wanted to give benefit of the doubt to the defense. She knows the perception of being pro prosecution is there.

Vice Chair Cohen said some of the feedback is an offshoot of the DUI litigation, but much of it is unrelated. He said Board Member Padish, a former judge, had expressed earlier tonight the isolation judges experience. Everyone treats them with great deference and feedback is rarely given on a daily basis. He said he is actually pleased that these comments came up now as there are two ways to look at it. Either it is an offshoot of the very specific litigation, or it is tough to transition to being a judge. Judge Hendrix was appointed to one of the busiest courts straight from the prosecutor's office. The court system is understaffed and should have five or even six divisions. All of the foregoing is a recipe for encountering difficulties and the Board recognizes all these factors.

Vice Chair Cohen suggested that Judge Hendrix study Tom Tyler's work on procedural justice and reflect upon it. This requires a very honest self-assessment. This is critical to get the feedback to go to the next level. Tyler's research indicates that people are more influenced by how they were treated than what the result was.

Judge Hendrix asked whether the feedback is that she has treated a defendant unfairly. Chair Alvarez said the feedback is that she has the appearance of being pro prosecution. For the most part there were positive comments about her pleasant demeanor.

Vice Chair Cohen said it is hard to have this conversation. The Board Members have great respect for her. Most of them sat on the Board that unanimously recommended her for appointment as their top choice. The Board Members' respect for her has not changed. Her colleagues' respect for her has grown. They all said how she is the first to volunteer and help out the others.

Vice Chair Cohen said a judge may make well thought out rulings, but it is important to be able to explain the reasoning behind it. This can only be learned through experience. It probably comes as a shock that one person said "If we know you're going to rule against us, at least give us the appearance that you're actually listening."

Although the Board cannot fix an inability to come to right decisions, provide a basic understanding of the law, or impart wisdom, Vice Chair Cohen said how people perceive her is fixable. She cannot change her background as a former prosecutor, nor the fact that statistically speaking most of the defendants appearing before her are in fact guilty. If the defendant can feel he was seen as a person, a person who did something wrong, but not as a bad person, and if defense attorneys feel that she is at least open minded to listening to the argument, perceptions will change. He told her that this is undoubtedly hard to listen to, but is invaluable input. He appreciates that this must be painful to hear, given her dedication to the court. This is fixable; it is just perception. She is capable of being a superstar and not only listen to the person, but let the person know that she listened to them.

Board Member Padish said the Board are the founding members of her fan club and still are. They were all surprised at the feedback, as they feel they know her better than the interviewees do. However, what she thinks she is portraying is not what the public is perceiving. With regard to the DUI issue, he suggested that if there is a reasonable chance her impartiality could be

questioned she might consider that it is not worth subjecting the integrity of the court to this. He applauds her loyalty to the institution, but advised her not to give people the opportunity to take cheap shots at her. He has no doubt that in her heart she knows she can be fair on that issue. The Board trusts her. The power of the court is based on the trust given by the public. If there is a close call, the prudent thing to do is to step aside. He advised her that in a busy courtroom it is important to look people in the eye rather than making notes or looking at paperwork. Once she finds her pace these whispers will go away. The Board needs to tell her these things to help keep her from an untenable position.

Chair Alvarez said this is the first time they have considered the reappointment of a judge with less than two years' experience. They have nothing with which to compare it. He is sure most new judges would receive similar comments, whereas her colleagues have decades of experience on the bench. Tonight the Board Members wanted to let her know about this and share the information and understand that this could happen but she needs to know about it and work on it. She will make herself a better judge. As a prosecutor she received tremendous accolades. As a new prosecutor she would have learned from mentors and this will certainly happen again. This is a learning process with a learning curve.

Vice Chair Cohen said at Superior Court judges were videotaped by trainers. This was a humbling experience. He learned what he does well and what he does less well than he perceived. For example, he often types his notes but neglected to tell people that he is listening even while he is typing. Once he saw himself on video, he understood the need to explain this. He suggested bringing the trainers in to the court for all of the judges.

Judge LeClaire suggested that successful litigators tend to be very aggressive. When they become judges, they have a tendency to debate with attorneys. A more seasoned judge listens to what is being said, confirms that he understood what was said, and then invites the other side to state their position. This gives a very different perception of what happened. Avoiding the appearance of advocacy strengthens the impression that the judge is impartial. There is nothing wrong with a judge inquiring or pointing out a deficiency in an attorney's argument. But there is a difference in how others may perceive what one is doing.

Vice Chair Cohen said a judge asks questions to understand. He uses that as his personal guideline when deciding to ask questions. Questions can be couched to let the person know why they are being asked. He assured Judge Hendrix that he remains a strong supporter of her continued role on this bench without equivocation. Having a review after just two years allowed these things to come to the surface so the Board can be candid with her and share what people have said, although the Board Members were surprised by the comments. She would have had the same learning curve in the prosecutor's office and this is no different. The difference is the pressure on judges to always get it right. From day one their intent is in the right place. But this is not about intent, it is about perception.

They had hoped Judge Olcavage could stay for this interview to be sure that she understands that this situation can be repaired and is not something that will define her as a judicial officer. He assured her that she will be capable of fixing these issues. Her rulings will not be any better, nor will she be any wiser, but people will perceive her differently. He hopes that she can take this message away, as painful as it must be to hear. The Board is dedicated to the court and to her as a judge. He has to be candid about what feedback people gave, but has no hesitation in recommending her for reappointment by Council.

Board Member Scanlon recalled an experience where when he was arguing a motion and the judge asked him several times "Do you understand?" At the end of the hearing the judge took the motion under advisement and he had to wait for her ruling. However he felt that he had really been listened to. The key is to communicate with both sides so that people feel easy. He assured Judge Hendrix that she will be fine.

Board Member Weingarten said he teaches his salespeople to explain things so that a two-year-old can understand. Everyone wants to be heard. The judge is like an umpire or referee.

Board Member Schenkat shared a comment from someone she interviewed, "She is very smart and should be appointed to the Supreme Court."

Board Member Scanlon thanked Judge Hendrix for her service to the City of Scottsdale.

Judge Hendrix said she appreciates everyone's comments.

12. DISCUSSION OF AND REAPPOINTMENT RECOMMENDATION REGARDING JUDGE HENDRIX

Board Member Weingarten asked what the Board's options are. Staff confirmed that the two options are to either recommend that Judge Hendrix be appointed for a further four-year term or that she not be reappointed. There is a process whereby City Council can remove a judge for cause, but JAAB is not involved.

Judge LeClaire said he has been a judge for about four years. He said a lot of the comments derive from the DUI issue, if only indirectly. He pointed out that the comments do not indicate that Judge Hendrix is perceived as incompetent. With more experience she would probably handle things a little differently and the perception of being pro prosecution would go away. He said he and his fellow judges at the Superior Court think a lot about perception. At Superior Court they can network with as many as 50 other judges. He asked everyone, especially those who have served as judges, how to rate what they are hearing in terms of their assignment. They are certainly concerned about the perception issues, but as Vice Chair Cohen pointed out, these issues are correctable. They need to be corrected because the perception does not dovetail with the reality of what Judge Hendrix is doing from her own perspective.

Board Member Schenkat asked how many more DUI cases there will be that Judge Hendrix might have to consider recusing herself from. Board Member Padish explained that these were decisions that had to be made in the first six months to a year. At this point, the issue with the crime lab will not come up again. The conversation was more about letting her know that in the future there are times when she should consider recusing herself.

Chair Alvarez said reasons not to reappoint a judge would be misconduct, incompetence or dishonesty, not merely because the particular judge seems to favor the prosecution. In his opinion, every judge is perceived as favoring either the prosecution or the defense. Judge Hendrix made a decision on a very hot, difficult issue that affected a lot of cases. Had she decided in favor of the defense, Chair Alvarez pointed out that the prosecutors would be equally frustrated with her. He added that several defense attorneys told him they would prefer to take a deal before her because she is very fair in sentencing. This indicates that she is not, in fact, pro prosecution. He urged them not to lose sight of the reasons why they would not reappoint someone. He reminded the Board Members of the enthusiastic accolades her colleagues gave

her. Chair Alvarez added that if he were appointed as a judge people would probably perceive him as favoring the prosecution. He would be far more concerned if the comments were that Judge Hendrix lacks the ability to be a judge.

Board Member Scanlon said when Vice Chair Cohen asked Judge Hendrix how she would hope to be seen, rather than saying "as a fair person," she responded with a question of her own. Vice Chair Cohen said that it was not a trick question and there was no right or wrong answer to it. Because she is intent on doing the right work either she is not as introspective as she might be or the perceptions about her are wrong. Those two explanations are equally plausible. Vice Chair Cohen hoped he would not be subject to removal from the bench because people did not like him. This is not a popularity contest. He believes that before criticizing others one should look at oneself. It is critical for the integrity of the court system that they create the perception of fairness. If Judge Hendrix is failing in this regard that is a legitimate issue. The integrity of the entire process sits on that bedrock of people's perceptions. He does not believe that what people heard about her disqualifies her, because the problems are correctable. He asked whether they have a third option to recommend reappointment and also recommend curative actions.

Mr. Hylen said the City Code sets out that the vote is to reappoint or not reappoint. The Board is also to deliver written recommendations to City Council. In the recommendations, "The Board shall state that the Board does or does not recommend reappointment of the judge, summarizing the reasons for the recommendations."

Judge LeClaire said if they believe retention is appropriate they could deliver some helpful recommendations to the Presiding City Judge to implement. This is a nuanced issue. He does not believe Judge Hendrix is disqualified for retention. The Board needs to send a clear message about its position to City Council.

Chair Alvarez said that the Mayor and Councilmembers have told him that they do listen to the audio recording of JAAB meetings. They will understand what has come up. He added that they have not spent much time talking about the good things people said about Judge Hendrix. They focused on what could be perceived as negative. He suggested that they vote and send their recommendation to City Council. Written recommendations can be sent to Judge Olcavage.

Board Member Scanlon said he would hesitate to impose any conditions upon Judge Hendrix. Chair Alvarez said they cannot impose conditions or give Council detailed instructions.

VICE CHAIR COHEN MADE A MOTION TO RECOMMEND THE RETENTION OF JUDGE HENDRIX. BOARD MEMBER SCANLON SECONDED THE MOTION, WHICH CARRIED BY A UNANIMOUS VOTE OF SEVEN (7) TO ZERO (0).

Vice Chair Cohen said he wanted to speak with Judge Hendrix as a colleague and would make it clear that he was not speaking on behalf of the Board in order to give her some guidance. He is invested in her success and believes she is a superstar in her abilities.

Judge LeClaire said they have spent a lot of time looking critically at the issues that have been raised by Judge Hendrix. It has been mentioned that there have been a lot of positive comments made. To balance the record he wanted to note that as attorneys who have appeared before her have evaluated her, they have commented on issues such as her excellent judicial demeanor and respectful treatment of everyone, which is a very important judicial trait.

Her work has been rated as superior by attorneys. She has been recommended for retention. Jurors have found her to be impressive and she has been considered professional by her peers. She is viewed as a great addition to the bench and an amazing judge. Staff view her as very efficient, and always assists when judicial support is needed with other calendar matters and manages her calendar very well. Staff view her as one of the best judges. One staff member said she is presiding judge material. She is regarded as a good communicator and a good collaborator.

Board Member Weingarten added that one person with who he spoke at great length said Judge Hendrix has the core ability to be a really good judge. Board Member Scanlon said others he interviewed concurred.

Vice Chair Cohen said if the Board makes a recommendation without having done the work they did, the integrity of this process is questionable. The fact that after getting the information they got, to then unanimously concur that Judge Hendrix should be reappointed speaks volumes about the vote, because the Board confronted all the issues. He agrees that the record should include the positives. However, the most important part of the record is that the criticisms were addressed and individually they all came to the same conclusion, that Judge Hendrix should be reappointed. Nobody should view what they did as ignoring the kinds of concerns that have been expressed. Nothing was left unsaid. He believes they covered everything that had to be covered and in spite of that came to this conclusion.

Board Member Padish said the standard by which he voted to retain Judge Hendrix. He disagrees with Chair Alvarez as to the standard to be utilized. He voted to retain her because he believes that she has the experience, intellect, temperament and capability to be an excellent judge. To him, the standard is not whether she has committed malfeasance or misfeasance. The bar is higher than that. For all the reasons why they recommended appointing her as a judge two years ago, he renews that today.

Board Member Weingarten said as a Scottsdale resident he is so proud of the Board and the process.

13. DISCUSSION OF AND REAPPOINTMENT RECOMMENDATION REGARDING JUDGE OLCAVAGE

VICE CHAIR COHEN MADE A MOTION TO RECOMMEND THE RETENTION OF PRESIDING CITY JUDGE OLCAVAGE, SECONDED BY BOARD MEMBER WEINGARTEN. THE MOTION CARRIED BY A UNANIMOUS VOTE OF SEVEN (7) TO ZERO (0).

Ms. Wegner said City Council will consider the recommendations at their January 14, 2014 meeting.

JUDGE LECLAIRE MADE A MOTION THAT CHAIR ALVAREZ ATTEND THE CITY COUNCIL MEETING ON JANUARY 14, 2014 AT WHICH COUNCIL WILL CONSIDER THE BOARD'S RECOMMENDATIONS. VICE CHAIR COHEN SECONDED THE MOTION, WHICH CARRIED BY A UNANIMOUS VOTE OF SEVEN (7) TO ZERO (0).

14. NEXT JUDICIAL APPOINTMENTS ADVISORY BOARD (JAAB) MEETING

Ms. Wegner said the Board will not need to reconvene for a judicial reappointment for about two and a half years. However in the past there has been some discussion about reviewing the survey process.

Chair Alvarez said the Board has also talked about appointing a fifth judge to the court. Ms. Wegner agreed that could be agendaized for the next meeting. Chair Alvarez said he may not be reappointed to JAAB next February. Board Members expressed hope that he would be able to remain on the Board.

Ms. Wegner said at the first JAAB meeting in 2014, they would cover the ethics training refresher and the personal interest disclosure form, and election of a chair and vice chair.

15. FUTURE AGENDA ITEMS

Chair Alvarez suggested that everyone email Ms. Wegner any future agenda items. This would determine whether they need to meet in 2014.

Chair Alvarez inquired about what influence the Board might have with City Council with regard to opening a fifth division. Ms. Wegner said her understanding is that they can make a recommendation but the final decision is up to Council. Vice Chair Cohen asked about the timing of budget decisions. Ms. Wegner said they start the budget process for the next fiscal year as early as September. A discussion ensued on when best to make such a recommendation, taking Council elections and the budget process into account. Ms. Wegner noted that as Judge Olcavage had mentioned, there is no funding available for FY 2014/2015. A year from now, the City will be seriously considering the budget for FY 2015/2016. Chair Alvarez suggested they could discuss with Judge Olcavage how best to help him. Board Member Weingarten pointed out that the pro tem judges are expensive.

Ms. Wegner undertook that before the next meeting of JAAB, staff will do research on electronic surveys and report on what that would entail.

ADJOURNMENT

With no further business to discuss, and being duly moved and seconded, the meeting of the Judicial Appointments Advisory Board adjourned at 9:53 p.m.

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Respectfully submitted,
Valerie Wegner
HR Management Analyst

Reviewed by,
Donald Alvarez
JAAB Chairperson