COMMISSION ON MINORITIES IN THE JUDICIARY
AGENDA

Thursday, May 5, 2016
1:00 – 3:00 p.m.

State Courts Building ◊ 1501 W. Washington St. ◊ Phoenix, Arizona ◊ Conference Room 230

Conference Call Number: **602.452.3288** or **520.388.4330** Access Code: **0574**
https://arizonacourts.webex.com

TIME		PRESENTER
REGULAR BUSINESS		
1:00	**Welcome and Announcements**	**Judge Maurice Portley**, *Chair*
1:10	**Approval of February 4, 2016 Minutes** *Action Item*	**Judge Portley**
BUSINESS ITEMS/POTENTIAL ACTION ITEMS		
1:15	**Disproportionate Minority Contact (DMC) Overview and Future Efforts**	**David Redpath**, *Manager* **Deborah Kurth**, *Research Manager* *Juvenile Justice Services Division* *Administrative Office of the Courts*
1:45	**Arizona Law's Diversity Efforts**	**Aaron Gbewonyo**, *Recent Grad.* *James E. Rogers College of Law*
1:55	**Bench Diversity Project**	**Briar Martin**, *Student* *James E. Rogers College of Law*
	Next Steps	**All**
OTHER BUSINESS		
3:00	**Next Meeting –** September 8, 2016	Judge Portley
	Good of the Order/Call to the Public	Judge Portley
	Adjourn	

COMMISSION ON MINORITIES IN THE JUDICIARY
Draft Minutes
Thursday, February 4, 2016
1:00 – 3:00 p.m.
Conference Room 230
1501 West Washington Street
Phoenix, AZ 85007

Present: Dr. Joanne Basta, Professor Paul Bennett, Professor Patricia Ferguson-Bohnee, Domingo Flores, Jr., Judge Anna Huberman, Catharina Johnson, Frankie Jones, Judge Maurice Portley, Dr. John Vivian, Judge Joan Wagener

Telephonic: Mike Baumstark, Judge Roxanne Song Ong (Ret.)

Absent/Excused: Judge Maria Avilez, Diandra Benally, Judge Gilberto Figueroa, Judge Dan Slayton, Judge Alma Vildosola

Presenters/Guests: Barry Wong, Governor's Office of Equal Opportunity, David Redpath and Kathy Gillmore, AOC Juvenile Justice Services Division

Administrative Office of the Courts (AOC) Staff: Susan Pickard, Sabrina Nash, Theresa Barrett

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REGULAR BUSINESS

Welcome, Announcements, Introduction of New members – After introductions, Judge Maurice Portley wished Dr. John Vivian a Happy Birthday.

Approval of November 5, 2015 Minutes

Motion: Judge Huberman moved to approve minutes from November 5, 2015. S**econded by:** Dr. John Vivian **Vote:** unanimous

BUSINESS ITEMS/POTENTIAL ACTION ITEMS

Arizona Black Bar/Arizona Collaborative Bar – (taken out of order) Frankie Jones, Maricopa County Attorney's Office, informed COM members that the sister bars are hosting joint quarterly CLE events for their members. She stated that with the various judicial openings forthcoming, the first CLE will focus on the judicial appointment process. The session is titled "Changing the Game: Lifting the Judicial Appointment Fog." Ms. Jones mentioned that Chief Justice Bales will address attendees along with a wide array of notable panelists. Panelists include: Justice Ann Scott Timmer; Judges Lawrence Winthrop, Carol Scott Berry, George Foster, and Chuck Whitehead; Federal Judge Wendell Hollis; Michael Liburdi, General Counsel, Arizona Governor Doug Ducey; and Lonnie Williams, former Maricopa County Trial Court Judicial Nominating

Commission member. The CLE has 50 participants registered and will be held at Jennings Strauss on Friday, February 5, 2016.

State Board and Committee Appointments – (taken out of order) Barry Wong, Governor's Office of Equal Opportunity, explained that he was recently appointed to assist the Governor in achieving diversity in all areas of state government. He shared with the members that the governor is committed to increasing the diversity of the applicant pool and is focusing his efforts on increasing the talent pool for appointees for the governor and other state agencies by:

- ensuring that agency heads target their advertisements to more diverse communities;
- creating greater supplier diversity in the procurement process; and
- acquiring a larger number of candidates for boards, commissions, and panels by soliciting applicants from various sister bar associations and community groups.

Mr. Wong indicated that when he speaks to a community or business he asks them to identify their ten best people and to encourage them to apply for openings on state government boards and panels as they become available.

Bench Diversity Research Project Update and Next Steps – Professor Paul Bennett, University of Arizona, James E. Rogers College of Law, updated the Commission on the Bench Diversity Survey. The survey was sent out to all Arizona judges asking each judge to anonymously self-identify race, ethnicity, and age group. He acknowledged that Mike Baumstark and Susan Pickard were instrumental in helping with the survey. Five hundred email surveys were sent out and 412 valid response surveys were received. Professor Bennett stated that survey results show that people think of their identifying categories differently from those used by the federal government. Below are a few notable highlights from a statistical standpoint.

- 37.6 percent of the judges surveyed were Superior Court judges which was the largest category
- 9 out of 10 respondents who declined to answer the diversity question were male
- The state of Arizona is approximately divided 50-50 male versus female, with females having a slight lead (2010 census)
- The Arizona State Bar's ratio is 2-1 male versus female
- Arizona's Judiciary is slightly over 60% male versus female
- Locally appointed judges are equally split 50-50

Professor Bennett explained that it is difficult to determine if courts in Arizona reflect their communities as there is no reliable comparative data for him to use. He stated that he is planning to have a full statistical report of the survey for the Commission at the May meeting.

Pima County Disproportionate Minority Contact (DMC) Project – Joanne Basta, Manager, Research and Evaluation Unit, noted that the Pima County Juvenile Court Center (PCJCC) has been working on reducing the juvenile court population for some time. She explained that the county received a three-year grant to develop a model to address DMC in the PCJCC and to evaluate the results. Ms. Basta outlined the five phases of the project model, briefly addressing each one: Identification, Assessment and Diagnosis, Intervention, Evaluation, and Monitoring. She noted that Pima County came up with the following recommendations regarding DMC:

- commit to maintaining clear shared expectations;
- establish well-defined leadership/management structures and roles;
- value, respect, and support diversity;

DRAFT

- use data to guide and focus work;
- dedicate resources to measuring outcomes; and
- foster buy-in from community and courts continuously.

Ms. Basta also shared that the PCJCC and its partners developed a set of documents titled *"The Guidelines for Schools in Contacting Law Enforcement"* in an effort to address the school to prison pipeline and disparate outcomes for youth of color. These guidelines provide school administrators with detailed information about when law enforcement should, or should not be contacted. The goals of the guidelines are:

- to eliminate discrepancies between school administrators;
- define "gray areas" and uncommon situations;
- remind administrators to be consistent and fair and to consider the violation rather than the student;
- assist in explaining decision-making to parents and other stakeholders; and
- educate new school administrators.

Fifth Statewide Report Card Update – Dr. John Vivian, Arizona Department of Juvenile Corrections, and David Redpath, AOC Juvenile Justice Services, reported highlights of recent presentations in which they shared data from the report card. The stakeholder groups included:

- the Arizona Prosecuting Attorney's Advisory Council (APAAC),
- Presiding Judges, and
- the Arizona Judicial Council (AJC).

He stated that Dave Byers, AOC Administrative Director, and the AJC have requested additional information and an update at a future AJC meeting.

OTHER BUSINESS

Good of the Order/Call to the Public

The Arizona Minority Bar is hosting its Annual Fundraiser on Friday, March 4, 2016.

Next Meeting – May 5, 2016

Meeting adjourned at 2:54 p.m.

DRAFT

Arizona's Racial & Ethnic Diversity on the Bench

Briar Martin

1

Goals of Examination

- Determine percentage of minorities on the bench and compare to the Arizona population (U.S. Census 2010 = 30% minority + Hispanic)
- Does the judiciary reflect the community?
- At what level is there a change in % of minorities? When is the community no longer reflected?
- Has minority representation changed over time?
- What are some factors which may cause a change in the %

2

American Judicature Society and Commission Comparison

- 2009 AJS Study
  - Racial Categories: White, African American, Hispanic, Native American, & Asian/Pacific Islander
  - 10% splice of Arizona Judiciary
- 2015 Arizona Supreme Court Commission on Minorities in the Judiciary
  - Racial Categories same as U.S. Census: White, African American, Hispanic, *American Indian/Native Alaskan*, Asian/Pacific Islander, *Two or More*, & *Decline/Unknown*
  - 81% response rate of AZ judges

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American Judicature Society Study

AJS Study 2009	Total	White	Af. Amer.	Hispanic	Nat. Am.	Asian/Pac. Islander
Supreme Court	5	5 (100%)	0	0	0	0
Court of Appeals	22	19 (86.4%)	1 (4.5%)	1 (4.5%)	0	1 (4.5%)
Superior Court	193	182 (94%)	2 (1%)	7 (4%)	0	2 (1%)

- Information limited on how information obtained
- No people of Color on Supreme Court, the lower courts = higher % minorities
- Far ess than 30% minorities on any court

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Arizona Supreme Court Commission on Minorities in the Judiciary 2015 Diversity Survey

2015 Diversity Study	Total	White	Af. Am.	Hispanic	Am. Indian/Nat. Alaskan	Asian/Pac. Islander	Two or More	Decline/ Unknown
Court of Appeals	26	21 (84%)	1 (4%)	3 (12%)	0	0	0	1
Superior Court	156	124 (84.4%)	2 (1.4%)	12 (8.1%)	1 (.6%)	6 (4.1%)	2 (1.4%)	9

- All Arizona Judges
- 81% Responded
- Decline answers not counted in percentage calculation
- Still No People of Color on Supreme Court, approximately equal % minorities CoA & Superior

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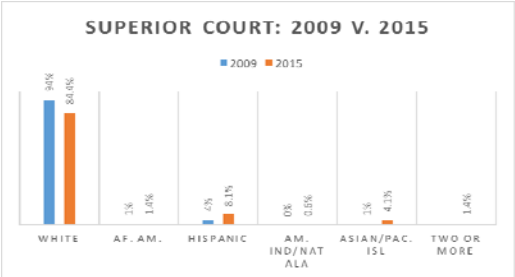

- Approx. 10% decrease White
- Increase in all racial categories categories since 2009

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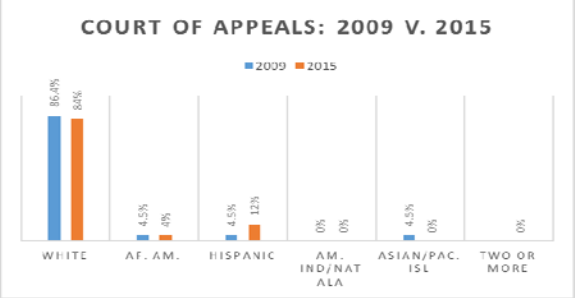

- 2.4% decrease in white, but # is same in Af. Am., more categories, 26 CoA judges responded (v. 22), shifts %
- Individual growth in Hispanic category only.

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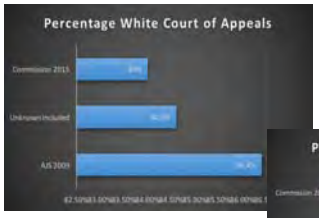
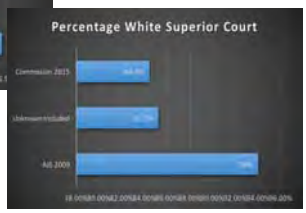


- With unknown answers included as white, decrease in white is negligible in Court of Appeals



- Approximately 10% increase in % of minorities in Superior Court in all categories

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How Does % Compare To Law Schools?

- Arizona State University: 74.5% white, 25.5% minority
- University of Arizona: 72.2% white, 27.8% minority
- Arizona Summit Law School: 52.0% white, 48% minority

- All law schools have larger % minorities than those reflected on the Court of Appeals or Superior Courts

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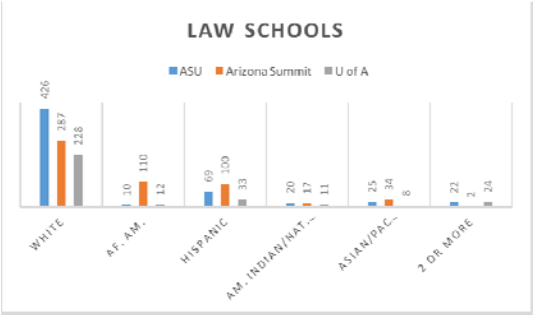

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Change in % Minorities in Law Schools Over Last Thirty Years

- Why more minorities in law schools than on bench?
  - Increase % since current judges went to law school?
  - Comparison of % in law school, 1986, 1996, 2006, & 2015
- Arizona Summit not counted in comparison
  - Established in 2005, not as much data
  - Inconsistent bar pass rate
- U of A & ASU pass rate consistently around 80-95%

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Change in % White Students in Law School

% White	1986	1996	2006	2015
Arizona State Univ.	86%	75%	73%	77%
Univ. of Arizona	92%	74%	72%	76%

- Most judges in practice 15+ years
- No significant increase (slight decrease) since 2000s

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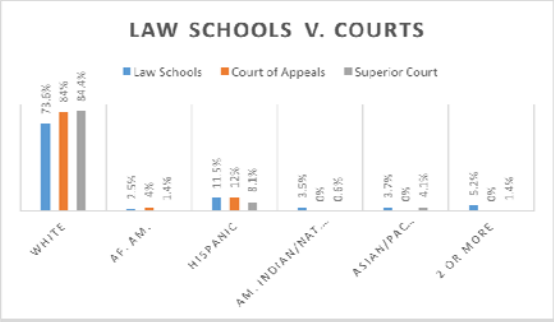

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Is AZ Bar Membership Closer to Law Schools' or Judiciary's Racial Makeup?

- 2015 Arizona Bar Association Statistics
  - 41% non-response
  - Unknown not calculated in racial percentage

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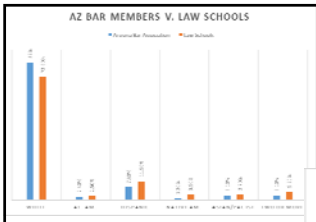
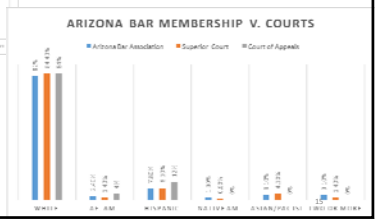


- Bar has larger percentage of whites than schools…



- …but lower percentage than courts.

At any level of judiciary does the bench reflect the community?

- 2015 Commission Survey included:
  - Supreme Court,
  - Court of Appeals,
  - Superior Court,
  - Commissioners,
  - Pro Tem,
  - Justice of the Peace, &
  - Municipal Court Judges.
- Comparing these percentages leads to an interesting result….

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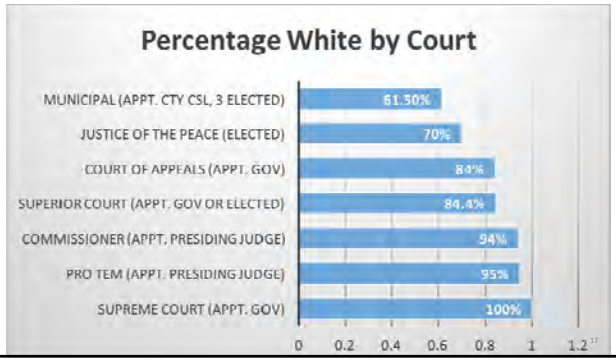

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Tentative Conclusions

- Judicial Positions requiring law degree or bar membership for certain period of time have lower % minority
  - Reflective of the % of bar membership minorities
- Positions appointed by a presiding judge have lowest percentage minorities with the exception of AZ Supreme Court
  - Factors: law degree, bar membership, one person selecting
- Positions appointed by City Council, or Elected result in highest percentage minorities
  - Finally surpassing 30% population
  - Factors: No bar membership or law degree requirement, group of people selecting
- Positions sent to governor by commission have mixed results:
  - Factors: law degree, bar member, but selected by both group and individual
  - Commission members required to be representative of community
  - In Supreme Court: only 5 selected, limited opportunity

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Remaining Questions…

- How can we increase the percentage of people of color in both AzBA membership and on the bench?
  - Tracking law school success & successful attorneys remaining in AZ
  - Evaluate methods of outreach to minorities for openings
- Future surveys:
  - Keep high level of response rate
  - Eliminate retired or mistaken Court of Appeals judges
  - Evaluate who is graduate of AZ law school, to determine where to place focus

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The Salt Lake Tribune
(http://www.sltrib.com)

Utah lawmaker wants to exclude diversity from consideration for state judges

By Robert Gehrke The Salt Lake Tribune
Published: April 21, 2016 09:58AM
Updated: April 21, 2016 07:34AM

Equal opportunity • The Legislature, not the courts, is meant to be the representative branch, says a Grantsville Republican.

(Trent Nelson | Tribune file photo) Rep. Merrill Nelson, Grantsville.

There are no black judges on the Utah bench, and there are only four Latinos, four Asians and one American Indian. Nearly three-fourths of the bench is male.

But a Utah lawmaker wants a commission that vets potential judges to stop giving any consideration to racial and gender diversity when it is recommending potential appointees to the governor.

Rep. Merrill Nelson points to the Utah Constitution and state law that he says prohibits the nominating commission from considering race or gender when it vets candidates.

The Grantsville Republican said those laws contradict language on the application for a judgeship that includes a section about “diversity on the bench,” which states that if candidates’ qualifications are equal, “it is relevant to consider the background and experience of the applicants in relation to the current composition of the bench.”

Nelson said that language points to considering race and gender diversity on the bench, which is outside the law.

“It’s outside the prescription of the law as provided by the constitution and the statute,” said Nelson, who is an attorney and vice chairman of the House Judiciary Committee. “It’s stated in our public policy, as reflected in the statute, that all judges should be selected on the basis of qualifications and fitness for office, and race and gender have nothing to do with fitness for office.”

But the language is not so clear.

Nelson points to a provision in the Utah Constitution that states that “selection of judges shall be based solely upon considerations of fitness for office,” but Nelson leaves out the rest of the sentence, which says, “without regard to any partisan political considerations.”

The statute about evaluating judges on their fitness for office lifts the same language from the constitution about politics.

Retired 3rd District Judge Tyrone Medley, the only black judge to serve on the state bench, said he reads that as attempting to preclude partisanship as a factor in evaluating judicial candidates.

“That language is clearly designed to exclude whether or not you are a Republican or Democrat or you were chair of the Democratic or Republican party,” Medley said. “It seems to be an attempt to take partisan political considerations out of the equation.”

And Medley said there is value in having diversity of all types on the bench.

“Our judicial system relies heavily on the public trust and confidence in the court system,” Medley said. If the population diversifies and the courts do not, the judiciary “runs the risk of challenging and eroding public confidence in the court system.”

“Along that same line, I think diversity, in fact, enhances the legitimacy of the court system and is consistent with our population following the rule of law,” Medley said. “Without it, you have a scenario where, at a minimum, you have a perceived bias in the decision-making process.”

Medley, who was appointed to the bench in 1984 by Gov. Norm Bangerter, is the only black person to ever hold a spot in the state court system. (Justice court appointments are controlled by local jurisdictions.) He retired from active-judge status in 2012.

Medley said he was aware of the significance of his position when he served on the bench.

“I wanted to try to do the best possible job I could do, so I could serve as a role model to minority students and other minority members of a population might find some inspiration from me having been successful enough to have a judgeship,” Medley said. “I always thought what the position did for me personally and for the community as a whole was emblematic of equal opportunity.”

But Nelson said the judiciary is not intended to reflect society, and that issues of racial and gender diversity will work themselves out over time.

“The judiciary was never intended to be representative of society in any way,” Nelson said. “The Legislature is the representative branch of government. The judiciary was never intended to be representative. Certainly, over time, the nature of the judiciary will reflect the makeup of society without artificial consideration of race and gender that have nothing to do with fitness for office.”

Nelson said that while litigants in a courtroom, whether it’s criminal or civil, might feel better having a judge who is their same race or gender, it’s impractical to have judges of each race or gender to hear cases involving litigants of the corresponding race or gender.

“Do we say then that all defendants, all litigants have a right to a judge of their own race or gender?” Nelson said. “That’s not practical. It’s an absurd question. Obviously the answer is no.”

Nelson will go to the Legislature's Administrative Rules Review Committee on Thursday to ask the panel to consider forcing the judicial nominating commission, which is under the Commission on Criminal and Juvenile Justice, to remove the diversity language from the judicial application.

"There will be two options, I think, for the committee. The first option will be to remove diversity consideration from the judicial application so that it will be consistent with the constitution and with the statute and with the rules," Nelson said. "Or the alternative would be to amend the constitution, the statutes and the rules to allow for consideration of diversity, and we're talking race and gender diversity."

According to statistics from the Utah Administrative Office of the Courts, there are 111 judges on the state bench, with three vacancies.

Twenty-nine judges are female, four are Latino, four are Asian, one is American Indian and none is black, according to the figures, which are self-reported by the judges and do not include justice courts, which are controlled by local jurisdictions.

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Pamela Manson contributed to this report

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