

COMMISSION ON MINORITIES IN THE JUDICIARY

Minutes

Thursday, May 7, 2015

1:00 p.m. – 3:00 p.m.

Conference Room 230

1501 West Washington Street

Phoenix, AZ 85007

Present: Mike Baumstark, Catharina Johnson, Frankie Jones, Judge Maurice Portley, Judge Roxanne Song Ong (Ret.), Dr. John Vivian

Telephonic: Professor Paul Bennett, Judge Alma Vildosola, Judge Maria Avilez, Professor Patricia Ferguson Bohnee

Absent/Excused: Judge Dan Slayton, Judge Penny Willrich (Ret.)

Presenters/Guests: Mike Martinez

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

I. REGULAR BUSINESS

A. Welcome and Announcements meeting began at 1:05 pm

B. Approval of Minutes

The draft minutes from the February 6, 2015, meeting were presented for approval.

Motion: To approve the February 6, 2015 meeting minutes as presented.

Moved by: Mike Baumstark **Seconded by:** Judge Song Ong

The draft minutes from the March 4, 2015, telephonic meeting were presented for approval.

Motion: To approve the March 4, 2015 meeting minutes as presented.

Moved by: Mike Baumstark **Seconded by:** John Vivian **Vote:** unanimous.

II. BUSINESS AND POTENTIAL ACTION ITEMS

A. The Pursuit of Inclusion: An In-Depth Exploration of the Experiences and Perspectives of Native American Attorneys in the Legal Profession – Professor Patricia Ferguson Bohnee announced the publication of *The Pursuit of Inclusion: An In-Depth Exploration of the Experiences and Perspectives of Native American Attorneys in the Legal Profession*. The executive summary of which was included in the meeting materials. For the past few years the National Native American Bar (NNAB) has focused on conducting a study on Native American attorneys and the legal profession. She acknowledged that numerous studies have been conducted about attorneys, but noted that Native Americans were not significantly included in these studies. She reported that the NNAB goals for this study were to raise the visibility of Native Americans, identify issues, increase access to the pipeline, and ensure that Native Americans are fully included in the legal profession.

The research shows that there are 2,640 practicing Native American attorneys nationwide and approximately 20% (527) responded to the survey. Fifty attorneys participated in one-on-one interviews.

The survey identified the following challenges:

- LSTAT scores haven't increased among Native American applicants over the past few years.
- Lack of access or guidance to the pipeline.
- Lack of job opportunities outside of the council, reservation, or tribe.
- Feelings of isolation.
- Discrimination and demeaning comments.

Professor Ferguson Bohnee stated that NNAB will focus on solutions to the identified challenges.

Mr. John Vivian asked if statistics regarding the age, gender, and the number of years practicing law are available for the survey respondents. Professor Bohnee stated that she would follow up to see if that statistical information was available.

B. School to Prison Pipeline in Indian Country Town Hall (taken out of order) – Professor Patricia Ferguson Bohnee thanked commission members for their sponsorship of the March 27, 2015, Town Hall held at Arizona State University's Sandra Day O'Connor College of Law. She reported that there were 125 participants consisting of representatives from tribes, county and state government employees, educators, lawyers, and law enforcement personnel. One hundred forty-six attendees participated by webcast, and an additional 230 watched the webcast after the Town Hall was over.

Professor Ferguson Bohnee discussed some interesting facts regarding the most recent state budget:

- The Prison budget increased by \$32 million.
- Four-year higher education budgets were reduced by \$99 million.
- Community College budgets were reduced by \$15.6 million.
- K-12 education funding was reduced by \$123 million.
- Prison funding averages \$23,000 per prisoner annually, while K-12 funding averages \$7500 per student annually.

She reported there was discussion among participants and speakers at the Town Hall regarding how to change funding to increase education and other budgets to provide incentives and support. She also noted that the ASU Law School Journal will publish a symposium issue sometime in 2016.

- C. Two Justices Resist Revealing Reasons for Recusals** – Judge Maurice Portley included a link to an article about two U.S. Supreme Court justices, who firmly rejected proposals that would increase court transparency. Judge Portley suggested that members might be interested in reviewing the article.
- D. Overview for United Nations Development Programme Participants** – Judge Song Ong spoke about the Nepali delegation's visit. She described the visit as a wonderful diplomatic exchange among the Nepali court leadership, and representatives from Arizona's Supreme Court, Court of Appeals, Superior Court, AOC, and Federal Court. The group discussed programs and approaches that may be adaptable to the Nepalese culture, and legal and legislative systems.
- E. State Bar of Arizona Spring Training for Lawyers Chris Nakamura Judicial Appointment Workshop Update** – Frankie Jones reported that the Chris Nakamura Judicial Appointment Workshop was well attended with good discussions between participants and presenters.

Ms. Jones noted that overall conference attendance was down from past years. Many believe that the new name for the Minority Bar Convention, *Spring Training for Lawyers*, may be causing confusion. Efforts are underway to increase awareness of the convention's rebranding.

- F. Pathways to Success, Summit Law School** – Judge Portley reported that he and Judge Song Ong were invited and presented at *Pathways to Success*, a program for students of Summit Law School.

Member discussion ensued about the drop in law school students, the lack of minority applicants in the pipeline, the need to encourage judicial applicants to keep applying as it is a slow process, and the necessity of continued outreach to minority lawyers about the judicial hiring process.

- G. New Requests/ Project Brainstorming**, Judge Portley stated that this reoccurring agenda item is an opportunity to share information and present ideas for the Commission's consideration regarding projects, research, or information sharing.

Judge Song Ong mentioned that the State Bar's Bar Leadership Institute is currently recruiting for the next class and she asked members to encourage attorneys who would like to get into leadership with the State Bar or the courts to apply. She stated that it is a nine month program and that approximately 50 – 60 applicants from across the state are selected.

Dr. Vivian mentioned that he attended a training program designed for cross functional teams offered by the Center for Juvenile Justice Reform (CJJR) at Georgetown University last year. He participated in the Youth in Custody program and found it very beneficial. The specific program is known as "Reducing Racial and Ethnic Disparities in Juvenile Justice" and is described at: <http://cjjr.georgetown.edu/certificate-programs/reducing-racial-and-ethnic-disparities/>. Dr. Vivian suggested that it would be a good opportunity for the commission to participate and hear from other jurisdictions nationwide that have overcome disproportionate minority contact.

- H. 5th Statewide Equitable Treatment of Minority Youth Report Card**, David Redpath, formerly the Research Manager, announced the hiring of Dr. Deborah Kurth as his replacement.

Mr. Redpath discussed the history of the Report Card and its traditional presentation to local, state and community organizations, and explained the Relative Rate Index (RRI). This report looks at data from CY2010 and 2011, and FY 2012 and 2013. The shift from calendar years to fiscal years better aligns with other Juvenile Justice Services Division reporting requirements. A first for this report, is the addition of data for Asian youth which has been tracked since 2010.

Mr. Redpath discussed the expansion of Juvenile Detention Alternative Initiative (JDAI), now seven counties: Pima, Cochise, Gila, Pinal, Yuma, Santa Cruz and Maricopa, and its benefits. Eighty-five percent of Arizona's juvenile population live in these counties. The AOC Juvenile Justice Services Division intends to expand JDAI to all fifteen counties. He congratulated Pima County Juvenile Justice Centers' efforts in being the first to implement JDAI and the progress being made in that county.

He mentioned the report by Dr. Nancy Rodriguez that was funded by the Arizona Juvenile Justice Commission. The data for 2005 – 2010 was used for that report. Going deeper, Dr. Rodriguez conducted manual case file reviews in four counties, attempting to identify some of the causes for perceived disproportionate minority contact.

It was reported, during the years 2006 through 2013, Arizona experienced an unprecedented ten percent reduction in the number of youth referred to juvenile courts, and a 50% reduction in the number of juveniles in the probation population. This reflects the national trend of crime reduction.

Other noteworthy findings in the report include:

- **Referral** – African Americans rates of referral at roughly twice that of other groups in the state, which are clustered together and not a lot disparity exists at this decision point.
- **Petition** – The trend that all minority youth are more likely than a white youth to be petitioned. This RRI merits attention
- **Adjudicate** – The RRI indicated very small variants. Youth do not experience disparate outcomes in the courtroom.
- **Detain** –
Brought to detention – Minority youth are brought to detention by law enforcement and parents at a higher rate than white children.
Detained – Objective detention screening tools seem to indicate, the more structure in the screening process the less Disproportionate Minority Contact (DMC)
- **Divert** – Minority youth are given diversion less often than white youth.
- **Discussion:** Who determines which youth could be diverted? This is the county attorney's decision. This decision can be impacted by county policy.

Questions were also raised about what types of offenses factored into the decision for diversion and whether there were an equal number of programs available for minority and Caucasian youth. It was also noted that in the past, language was a barrier to some youth participating in diversion programs.

- **Arizona Department of Juvenile Corrections (ADJC) Committed** – African American and Hispanic youth are committed to ADJC at a greater rate than white youth. However, in 2006 200 Hispanic youth were committed to ADJC in 2006, which is reflected by a 1.6 RRI, while in 2013 the number of youth is reduced to 130. A good decrease, but only reflected by an RRI of 1.2.

Discussion: Sometimes the ADJC mental health programs are the only or best option for getting the youth the needed services.

- **Direct Filed** – Remembering that this data is not controlled for offenses. There are fewer African American youth being direct filed in adult court, in 2013 than in 2002. They are being direct filed at five times the rate of white youth. Hispanic youth are 4 times more likely to be direct filed than white youth.

Discussion: There is more discretion in direct files. It may be time to share and discuss this information with county attorneys' offices. Dr. Rodriguez's report did take offenses into account.

In conclusion, David Redpath stated that future goals are to: continue training court staff, law enforcement, and probation officers; and encourage counties to examine their own data, review policies for the cause of disproportionate minority contact and possible solutions, and provide technical assistance to counties to examine data.

Motion: To approve the 5th Statewide Equitable Treatment of Minority Youth Report Card with Mr. Vivian's minor edits. **Moved by:** Mike Baumstark **Seconded by:** John Vivian **Vote:** unanimous

Action Items: Staff was asked to contact the Arizona Prosecuting Attorneys' Advisory Council and the Governor's Office of Youth, Faith and Family to determine if the Report Card would be a good addition to each organization's next agenda.

Judge Portley thanked David Redpath for his years of service and data analysis for multiple Report Cards, and the COM Workgroup that included Judge Maria Montano-Aviles as chair, Dr. John Vivian, Professor Paul Bennett who worked diligently to enhance the summary of the data for this Report Card.

III. OTHER BUSINESS

A. Next Meeting – August 6, 2015

B. Good of the Order/Call to the Public

Meeting adjourned at 3:14 p.m.