

## COMMISSION ON APPELLATE COURT APPOINTMENTS

### MINUTES

September 1, 2016

**PRESENT:** Chief Justice Scott Bales, Chair; Krista Carman; Joseph Cuffari; Buchanan Davis; Joshua Hall; Harry Hengl; Monica Klapper; Tracy Munsil; Jonathan Paton; Phillip Townsend; and, Charie Wallace

**ABSENT:** William Ekstrom, Jr.; Phillip Masciola; Benjamin Reeves and Mick Rusing

Chief Justice Bales called the meeting to order at 8:31 a.m. to screen applications for the two new positions on the Arizona Supreme Court. He welcomed the public and asked for all members of the Commission to introduce themselves.

Mike Liburdi, Governor's General Counsel, addressed the Commission regarding what the Governor looks for in judicial candidates.

Chief Justice Bales explained the constitutional responsibilities of the Commission to the public.

#### **Public Comment**

Chief Justice Bales called for comment from the public on the applicants. He reminded the speakers that they are limited to five minutes per candidate and asked them not to repeat comments by previous speakers about the same candidate.

Paul Julien spoke on behalf of Peter Swann.  
Scott McCoy spoke on behalf of Pamela Frasher Gates.  
Dawn Grove spoke on behalf of Pamela Frasher Gates.  
Howard Sukenic spoke on behalf of John Lopez.  
Lynda Shely spoke on behalf of Samuel Thumma.  
Terry Decker spoke on behalf of Peter Swann.  
Dawn Northup spoke on behalf of Kent Cattani.  
Nick Acedo spoke on behalf of Randall Howe.  
Paul Watkins spoke on behalf of Jennifer Perkins.  
Michael Kielsky spoke on behalf of Jennifer Perkins.

#### **Approval of Minutes**

Chief Justice Bales asked if any member wished to submit changes or additions to the draft minutes of the August 26, 2016 meeting. It was moved that the minutes be approved as amended. The motion was seconded and passed unanimously.

#### **Disqualifications and Disclosures**

Chief Justice Bales asked the Commission members if there were any disqualifications and/or disclosures. He explained the conflict of interest portion of the Rules of Procedure (Rule #4) and reminded the members that he does not vote unless there is a tie.

He then disclosed that he knows all the applicants. He has worked with Kent Cattani, Thomas Gilson, Randall Howe, John Lopez, Robert McWhirter, Robert Schaffer and Samuel Thumma. He knows Pamela Frasher Gates and Andrew Gould professionally. He knows Jennifer Perkins and Peter Swann professionally and socially. He also disclosed that he has encouraged Kent Cattani, Andrew Gould and Samuel Thumma to apply in the past, and encouraged Pamela Frasher Gates, John Lopez, Robert Schaffer, Peter Swann and Samuel Thumma to apply for these positions.

Joe Cuffari disclosed that he knows Kent Cattani, John Lopez and Randall Howe professionally, he has known Andrew Gould for over 15 years and encouraged him to apply. He also disclosed that he has met Samuel Thumma from previous vacancies.

Phil Townsend disclosed that he has met Kent Cattani and Samuel Thumma from previous vacancies, he knows Pamela Frasher Gates' husband and Andrew Gould has been a friend for about 25 years.

Jonathan Paton disclosed that his wife worked for Kent Cattani and has met Pamela Frasher Gates and Jennifer Perkins socially.

Monica Klapper disclosed that she has worked with Kent Cattani, Randall Howe and John Lopez. Also, Robert McWhirter listed her as opposing counsel on his application.

Tracey Munsil disclosed that she is distantly related to Jennifer Perkins and met with Pamela Frasher Gates to discuss the application process.

Krista Carman disclosed that she has met Andrew Gould professionally and is currently serving on a Committee with Peter Swann.

### **Discussion of Applicants and Interviews**

The Commission discussed the applicants.

A motion to complete the work on the Supreme Court interviews and Judge Portley's vacancy screening meeting in one day was made and seconded.

After further discussion, the motion was amended to hold the screening meeting for Judge Portley's vacancy on the afternoon of September 29<sup>th</sup> and interview the Supreme Court candidates on September 30<sup>th</sup>. The motion was seconded and passed unanimously.

A motion to only send one list of nominees to the Governor from the two Supreme Court positions was made and seconded. The motion was deferred until after applicant discussion.

Chief Justice Bales opened the floor to nominations to a tentative interview list.

Joe Cuffari moved to add Peter Swann to the tentative interview list. The motion was seconded and passed by a vote of 10-0-1 with Chief Justice Bales abstaining.

Harry Hengl moved to add Andrew Gould to the tentative interview list. The motion was seconded and passed by a vote of 10-0-1 with Chief Justice Bales abstaining.

Jonathan Paton moved to add Thomas Gilson to the tentative interview list. The motion was seconded and passed by a vote of 6-5 with Chief Justice Bales' vote.

Buchanan Davis moved to add John Lopez to the tentative interview list. The motion was seconded and passed by a vote of 10-0-1 with Chief Justice Bales abstaining.

Krista Carman moved to add Pamela Frasher Gates to the tentative interview list. The motion was seconded and passed by a vote of 10-0-1 with Chief Justice Bales abstaining.

Josh Hall moved to add Samuel Thumma to the tentative interview list. The motion was seconded and passed by a vote of 10-0-1 with Chief Justice Bales abstaining.

Jonathan Paton moved to add Robert McWhirter to the tentative interview list. The motion was seconded and passed by a vote of 10-0-1 with Chief Justice Bales abstaining.

Tracy Munsil moved to add Kent Cattani to the tentative interview list. The motion was seconded and passed by a vote of 10-0-1 with Chief Justice Bales abstaining.

Joe Cuffari moved to add Jennifer Perkins to the tentative interview list. The motion was seconded and passed by a vote of 6-5 with Chief Justice Bales' vote.

Tracy Munsil moved to add Randall Howe to the tentative interview list. The motion failed by a vote of 3-7-1 with Chief Justice Bales abstaining.

A motion to close nominations and finalize the tentative list was made. The motion was seconded and passed by a vote of 9-1-1 with Chief Justice Bales abstaining.

The interview list consisting of **Kent Cattani, Pamela Frasher Gates, Thomas Gilson, Andrew Gould, John Lopez, Jennifer Perkins, Robert McWhirter, Peter Swann and Samuel Thumma** was finalized.

The Commission decided that the meeting to conduct interviews on September 30, 2016 would begin at 7:30 a.m. and that interviews would be scheduled at 30 minute intervals. Chief Justice Bales explained that each Commission member would be placed on a team to conduct due diligence on the interviewees and that they are to report their findings on the interviews on September 30<sup>th</sup>.

The commission also decided that the meeting to select candidates for Judge Portley's vacancy on September 29, 2016 would begin at 1:00 p.m.

The previous motion to submit only one list of nominees for the two Supreme Court positions passed by a vote of 6-4-1 with Chief Justice Bales abstaining.

Chief Justice Bales iterated the Commission's historic responsibility and thanked members for their work

At 10:30 a.m., it was moved that the meeting be adjourned. The motion was seconded and passed unanimously.

Respectfully Submitted,

Charie Wallace  
Commission Secretary