

## COMMISSION ON APPELLATE COURT APPOINTMENTS

### MINUTES

October 19, 2015

**PRESENT:** Chief Justice Scott Bales, Chair; Krista Carman; Joseph Cuffari; William Ekstrom, Jr.; Joshua Hall; James Hartdegen; Joanne Keene; Monica Klapper; Tracy Munsil; Jonathan Paton; Benjamin Reeves; Michael Rusing; Phillip Townsend; and, Charie Wallace

**ABSENT:** J. W. Harris and Harry Hengl

Chief Justice Bales called the meeting to order at 9:31 a.m. to screen applications for a vacancy on the Arizona Supreme court created by the retirement of Justice Rebecca White Berch. He then welcomed new members Jonathan Paton and Joshua Hall.

#### Public Comment

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

Colleen McNally spoke on behalf of Samuel Thumma.

Chief Justice Bales called on Governor's General Counsel Mike Liburdi and Deputy General Counsel Kate King to address the Commission. Mr. Liburdi thanked the Commission members for the recent list of nominees related to the vacancy on Division II of the Court of Appeals. He then explained the Governor's process once the nominees are submitted: an extensive background check is done; nominee judicial skills are reviewed; an additional writing sample is requested; nominees are interviewed by a panel including Mr. Liburdi and Ms. King; and, nominees are interviewed by Governor Ducey. He assured the Commission that his staff is prepared for multiple nominees and encouraged them to submit as many as they feel is appropriate. Finally, he thanked the Commission members for their service.

Chief Justice Bales then continued the public comment portion of the meeting.

Paul Faith spoke on behalf of Thomas Schoaf.

Bill Montgomery spoke on behalf of Clint Bolick.

Michael Levault spoke on behalf of Thomas Schoaf.

Robert Duber spoke on behalf of Daisy Flores.

Mike Yates spoke on behalf of Thomas Schoaf.

Tim Berg spoke on behalf of Samuel Thumma.

Andrea Wech-Robertson spoke on behalf of Clint Bolick.

Janet Barton spoke on behalf of Lawrence Winthrop.

Dawn Northup spoke on behalf of Kent Cattani.

Rob Ellman spoke on behalf of Kent Cattani.

Anthony Young spoke on behalf of Lawrence Winthrop.

### **Approval of Minutes**

Chief Justice Bales asked if any member wished to submit changes or additions to the draft minutes of the August 25, 2015 meeting. It was moved that the minutes be approved as submitted. 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, in his capacity as Chief Justice, has worked with all of the candidates who are judges over the years and regards all of them as friends. He added that worked directly with Judge Cattani as an attorney and that Judge Brown once employed his son as a law clerk. Finally, he noted that he encouraged all of the applicants who are judges to apply.

Mick Rusing disclosed that he has worked with Lawrence Winthrop and Timothy Thomason.

Bill Ekstrom disclosed that he knows all of the applicants.

Monica Klapper disclosed that she once worked with Kent Cattani and that they have remained professional friends.

Jonathan Paton disclosed that he knows Clint Bolick professionally and socially and that his wife once worked with Kent Cattani.

James Hartdegen disclosed that he met Clint Bolick years ago and that his daughter once had an internship at the Goldwater Institute.

Ben Reeves disclosed that Samuel Thumma is the husband of his law partner and that he met with Lawrence Winthrop to discuss the application process.

Tracy Munsil disclosed that she knows Clint Bolick from her community and met with him regarding the process. Also, her son had an internship at the Goldwater Institute.

Phillip Townsend disclosed that Andrew Gould is a personal friend and that he discussed the application process with him.

Joe Cuffari disclosed that met with Clint Bolick and Andrew Gould to discuss the application process and that he is familiar with the other applicants from previous judicial vacancies.

Joshua Hall disclosed that he was once represented by Michael Brown before Judge Brown was appointed was appointed to Division I of the Court of Appeals.

Chief Justice Bales then explained the key differences between the Supreme Court and the Court of Appeals.

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

The Commission discussed the applicants' qualifications and Chief Justice Bales opened the floor to nominations to a tentative interview list.

Bill Ekstrom moved that Samuel Thumma be added to the tentative interview list. The motion was seconded and passed by a vote of 13-0-1 with Chief Justice Bales abstaining.

Phillip Townsend moved that Clint Bolick be added to the tentative interview list. The motion was seconded and passed by a vote of 10-3-1 with Chief Justice Bales abstaining.

Mick Rusing moved that Timothy Thomason be added to the tentative interview list. The motion was seconded and passed by a vote of 12-1-1 with Chief Justice Bales abstaining.

Monica Klapper moved that Kent Cattani be added to the tentative interview list. The motion was seconded and passed by a vote of 13-0-1 with Chief Justice Bales abstaining.

Krista Carman moved that Lawrence Winthrop be added to the tentative interview list. The motion was seconded and passed by a vote of 13-0-1 with Chief Justice Bales abstaining.

Joe Cuffari moved that Andrew Gould be added to the tentative interview list. The motion was seconded and passed by a vote of 13-0-1 with Chief Justice Bales abstaining.

James Hartdegen moved that Daisy Flores be added to the tentative interview list. The motion was seconded and passed by a vote of 9-4-1 with Chief Justice Bales abstaining.

Jonathan Paton moved that Bradley Carlyon be added to the tentative interview list. The motion was seconded but failed by a vote of 6-7-1 with Chief Justice Bales abstaining.

Charie Wallace moved that Michael Brown be added to the tentative interview list. The motion was seconded and approved by a vote of 13-0-1 with Chief Justice Bales abstaining.

Joe Cuffari moved that Maurice Portley be added to the tentative interview list. The motion was seconded and approved by a vote of 12-1-1 with Chief Justice Bales abstaining.

Mick Rusing moved to close the nominations and make final the interview list consisting of **Clint Bolick, Michael Brown, Kent Cattani, Daisy Flores, Andrew Gould, Maurice Portley, Timothy Thomason, Samuel Thumma and Lawrence Winthrop**. The motion was seconded and passed by a vote of 13-0-1 with Chief Justice Bales abstaining.

The Commission decided that the meeting to conduct interviews on November 20, 2015 would begin at 8:00 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 prior to the interviews on November 20.

At 11:06 a.m., it was moved that the meeting be adjourned. The motion was seconded and passed unanimously.

Respectfully Submitted,

Commission Secretary