Commission on Minorities in the Judiciary

DRAFT MINUTES
Thursday, September 8, 2016
Conference Room 230, Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Judge Maurice Portley, Chair, Mike Baumstark, Professor Paul Bennett, Professor Patricia Ferguson-Bohnee, Domingo Flores, Jr., Catharina Johnson, Frankie Jones, Judge Roxanne Song Ong (retired), Dr. John Vivian

Absent/Excused: Judge Maria Avilez, Dr. Joanne Basta, Judge Anna Huberman, Judge Alma Vildosola, Judge Joan Wagener, Judge Penny Willrich (ret)

Guest: Maria Zapata-Rossa

Administrative Office of the Courts (AOC): Theresa Barrett, Kathy Sekardi

AOC Staff: Susan Pickard, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The September 8, 2016, meeting of Commission on Minorities in the Judiciary (COM) was called to order at 1:03 p.m. by Judge Portley, Chair.

Approval of Minutes from May 5, 2016
The draft minutes from the May 5, 2016, meeting of the COM were presented for approval.

> **Motion:** Mike Baumstark moved to approve the May 5, 2016 minutes as presented. **Seconded:** Judge Song Ong. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Report of the Task Force on Fair Justice for All

Mike Baumstark provided a brief history on the Task Force on Fair Justice for All (Task Force) beginning with the Michael Brown case in Ferguson, Missouri, and the resulting U.S. Department of Justice's (DOJ) call to action letter which was sent out to chief justices across the country. The DOJ asked courts to review their operations and culture regarding failure to appear and failure to pay processes and warrants. The Task Force was given the charge of reviewing and recommending changes. Noting the two parts of the report, Justice for All and Eliminate Money for Freedom, Mike Baumstark highlighted the principles upon which the Task Force based its recommendations, and summarized some of the recommendations for post-trial justice for all:

Principle One: Judges need discretion to set reasonable penalties.

> Recommendation: Support legislative changes to allow judges to mitigate mandatory minimum fines, fees, surcharges, and penalties for those upon whom they would cause undue economic hardship.

Principle Two: Provide convenient payment options and reasonable time payment plans.

Recommendation: Test techniques that make it easier for defendants to make payments.

Principle Three: Provide alternatives to paying a fine.

Recommendation: Allow judges additional discretion to convert fines into restitution hours and apply to sentences imposed by superior courts.

Principle Four: Employ practices that promote voluntary appearance.

Recommendation: Implement an interactive messaging system that reminds defendants of court dates and missed payments.

Principle Five: Suspension of a driver's license should be a last resort.

Recommendation: The first offense of driving on a suspended license should be a civil violation rather than a criminal offense.

Principle Six: Non-jail enforcement alternatives should be available.

Recommendation: Restitution court and the FARE program provide non-jail and less costly compliance alternatives.

Principle Seven: Special needs offenders should be addressed appropriately.

Recommendation: People suffering from mental illness or drug addiction should be handled differently.

The pretrial portion of the report includes recommendations based upon the following principles regarding the elimination of money for freedom to the greatest extent possible and shifting from the bail and bond system to risk-based release criteria. Again, a summary of some of the recommendations was included.

Principle Eight: Detaining low- and moderate-risk defendants causes harm and higher rates of new criminal activity.

Recommendation: Eliminate the use of non-traffic criminal bond schedules.

Principle Nine: Only defendants who present a high risk to the community or individuals who repeatedly fail to appear in court should be held in custody.

Recommendation: Amend the Arizona Constitution to expand the use of detention without the requirement for money bail.

Principle Ten: Money bond is not required to secure appearance of defendants.

Recommendation: The bond should be actual cash with the amount paid returned to the defendant if charges are not filed, the person is found innocent, or if no violations of the release conditions occur.

Principle Eleven: Release decisions must be individualized and based on a defendant's level of risk.

Recommendation: Expand the use of the Public Safety Assessment (PSA), a validated pretrial risk assessment tool, to limited jurisdiction courts.

Motion: Judge Song Ong moved to support the recommendations of the Fair Justice for All Task Force. **Seconded:** Domingo Flores, Jr. **Vote:** Unanimous.

B. State Bar of Arizona Spring Training Conference

Judge Song Ong provided an update on the Spring Training for Lawyers Conference, formerly known as the Minority Bar Convention. On March 30, 2016, the Chris Nakamura Judicial Appointment Workshop (Workshop) will be presented. The planning committee has met twice and is requesting assistance from COM to help with the Workshop which will feature three one-hour segments which are as follows:

1. **"Why Do You Want To Be A Judge?"** – discussing the "gavel gap," the difference between Arizona's population diversity and our bench diversity.
2. **A Judicial Perspective** – a panel discussion on the trials and tribulations in becoming and being a judge.
3. **Judicial Application** –a review and critique of the judicial application to assist interested attorneys with the application process.

Conference Timeline:
October 17, 2016 – Finalization of topics, agenda and potential faculty/panel member
November 28, 2016 - Faculty identified and bios due
March 13, 2017 – Submission of print materials and PowerPoint presentations

Professor Paul Bennett offered to present the data from the Arizona Judicial Diversity Survey. Judge Portley suggested that the planning committee reach out to newer judges to serve as panel members.

C. Arizona Black Bar (ABA) Update

Frankie Jones shared the following news from the ABA:

- New Executive Board Members: Genene Dyer, president, Nicole Harris, vice president, Frankie Jones, secretary, Clarence Matheson, treasurer and Pearletta Ramos, member at large.
- Held the first quarterly forum on "*Building Community Trust in Justice: We All Have a Role.*" Among the panelists were representatives from the Phoenix Police Department and the County Attorney's Office. There were approximately 100 participants in the forum and the ABA has been asked to replicate the successful forum.
- The 45th Annual Hayzel B. Daniels Scholarship Dinner is scheduled for, Thursday, October 20, 2016, at the Phoenix Art Museum. The keynote speaker is Ray Anderson, ASU athletic director.
- New programs being implemented include:
  - A partnership with South Mountain High School to mentor high school students and encourage them to attend college and to possibly consider law as a career.
  - A subcommittee on judicial applications to meet with potential judicial applicants and review application and provide insight and direction on the judicial process.
- In closing, Frankie noted that a Judicial Writing Seminar is under consideration as part of the next Collaborative Bar CLE Seminar.

D. Bench Diversity Project/Next Steps

Professor Paul Bennett announced that the formal report on the Arizona Judicial Diversity Survey will be presented to the members at the November meeting. He noted that he would like to repeat the survey every other year with additional and better-phrased questions to capture more detail regarding the path to the judiciary. Further, Professor Bennett

commented that he would like to explore what judicial diversity means to litigants and perceptions of fairness.

III. OTHER BUSINESS

Good of the Order/Call to the Public: No one from the public was present.

Adjournment: The meeting adjourned at 3:11 p.m.

Next Meeting: Thursday, November 3, 2016; 1:00 p.m.
Arizona State Courts Building, Conference Room 230