Supreme Court of Nevada

ADMINISTRATIVE OFFICE OF THE COURTS

KATHERINE STOCKS
Director and State Court Administrator

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MEETING SUMMARY

Commission to Study the Rules Governing Judicial Discipline and Update, as Necessary, the Nevada Code of Judicial Conduct

September 23, 2022
2:00 PM
Summary prepared by: Jamie Gradick

Members Present
Chief Justice Ron Parraguirre, Chair
Justice James Hardesty, Vice-chair
Judge Samuel Bateman
Ms. Lyn Beggs
Judge Bert Brown
Judge Mark Denton
Judge Gene Drakulich
Judge Elana Graham
Judge David Hardy
Mr. Dennis Kennedy
Judge Tammy Riggs
Judge T. Arthur Ritchie, Jr.
Judge Tom Stockard
Judge Ann Zimmerman

AOC Staff Present
Jamie Gradick
Almeda Harper
John McCormick

Guests Present
Ms. Dominika Batten
Ms. Valerie Carter
Mr. Don Christensen
Director Paul Deyhle
Professor Keith Fisher
Mr. Joseph Sanford
Ms. Nancy Schreihans
Mr. Thomas Wilson

I. Call to Order
- Chief Justice Parraguirre called the meeting to order at 1:00 pm.
- Ms. Gradick called roll; a quorum was present.
- Opening Comments
  - Chief Justice Parraguirre welcomed attendees.

II. Public Comment
- No public comment was offered.

III. Review and Approval of Previous Meeting Summary
- The summary of the August 12, 2022 meeting was approved.

IV. Nevada Commission on Judicial Discipline Presentation *(Please see meeting material packet for additional information).*

- Mr. Paul Deyhle, Executive Director of the Nevada Commission on Judicial Discipline, provided a presentation on several topics addressed during previous ADKT Commission meetings.
  - Director Deyhle referenced the press photo addressed as part of Judge Riggs's presentation during the 8/12/22 Commission meeting and clarified that NCJD members, Mr. Karl Armstrong and Ms. Stefanie Humphrey, chose to sit in their respective locations during the depicted hearing.
    - Director Deyhle also explained that the hearing was held in that "small" location because no other venue was available and the NCJD does not have access to its own facility for hearings.
    - Director Deyhle explained that Judge Tobias was seated at the side of a table as directed by her counsel; the NCJD did not have input into that decision.
  - Director Deyhle commented on the unrealistic impacts of perception and cautioned against relying on perception when discussing these important issues.
  - Director Deyhle discussed proposed term limits and commented that this would be unconstitutional without a constitutional amendment.
    - Placing term limits on alternate members makes little sense since they, often, replace seated members when they retire. It's important that the NCJD operate with continuity and retain members with experience and historical knowledge.
    - It should be up to the appointing authorities to make these decisions, not the Legislature.
    - Director Deyhle informed attendees that the avererage length of service for NCJD members is 6.85 years. Mr. Karl Armsrong, who is, currently, the only person of color on the NCJD, could be forced to retire from the NCJD if term limts were imposed.
  - Director Deyhle addressed statistics and explained that only complaints filed with the NCJD are reflected in the annual reporting.
    - Complaints that are referred to the NCJD by judges are not counted as "filed" complaints. Many judges choose to refer reports of misconduct instead of filing complaints. Director Deyhle commented that, moving forward, the NCJD will track incidences of complaints (based on referrrals from judges) filed by himself in his role as Director.
  - Director Deyhle discussed the use of "letters of caution" in future disciplinary actions and explained that the NCJD decided to give judges an opportuity to request reconsideration instead of an opportunity to respond because the letters are confidential, responses would further delay the process, and would require additional staff and NCJD time and resources to process.
    - Letters of Caution are meant to be a "proactive" and "helpful" measure for the judge.
  - Director Deyhle provided an overview of the role of the NCJD Executive Director (*Portions of this presentation were inaudible).*
  - Director Deyhle provided suggestions regarding expediting election practice violation inquiries.

- There is no constitutional way to bypass the due process protections. Director Deyhle suggested the Nevada State Bar be required to enforce it's Professional Rules of Conduct and the Secretary of State be required to enforce NRS Chapter 294A.

- Director Deyhle discussed NCJD budgetary constraints and informed attendees that the NCJD's current state is not one of "crisis". There are no backlogs but any additional duties or functions that may arise as a result of the ADKT Commission's work will likely require additional funds.

➢ Judge Riggs provided a brief response to Director Deyhle's presentation and clarified that, during her presentation on 8/12/22, she was very clear that she was not commenting on panelist behavior. Perception may not be accurate but it is the message that is being sent to the public; the perception in the community is that the the NCJD is a "boy's club".

V. Proposed Items for Commission Review

➢ Action Item Recommendations for Commission Approval as Proposed by Judge Tammy Riggs *(Please see meeting material packet for additional information).* Chief Justice Parraguirre clarified that he would prefer to gather all input and conduct a thorough review of these issues before the Commission moves forward with voting on action item recommendations.

- Recommendation 1: Director Deyhle commented that he does not believe that the NCJD would object but proposed that "where possible" be inserted following "…the Commission members…" in the third line as it may not always be possible for diversity to be fully and proportionately represented at all times.
- Recommendation 2: Director Deyhle expressed disagreement with Judge Riggs's assessment of the constitutionality of placing term limits on NCJD members.
- Recommendation 3: Director Deyhle informed attendees that the NCJD already follows this recommendation and commented that the second sentence, "The Executive Director may not advise, recommend, or request that the appointing authority appoint a specific person… to fill the expiring term/vacancy" is not necessary, is overreaching and is intrusive. It is appropriate for the Executive Director to offer input as it is, ultimately, up to the the appointing authorities to make all appointing decisions.
- Recommendation 4: Director Deyhle does not believe that the NCJD would object to this.
- Recommendation 5: Director Deyhle does not believe that the NCJD would object to this.

➢ Current Procedural Rules and Additional Proposed Topics for Discussion *(Please see meeting material packet for additional information).*

- Director Deyhle briefly addressed the proposed procedural rule changes and new rule suggestions as proposed by the ADKT Commission members.
  - In the interest of time, Director Deyhle referred attendees to his submitted memorandum and exhibits on the topic for additional details.
- Director Deyhle discussed a "consolidated" list of rule changes resulting from an August 18, 2022 meeting between himself, Judge Higgins, Judge Bateman, and Judge Riggs.This list was not submitted as part of the materials for this meeting.

- NCJD jurisdiction over judicial candidates: The group could not find a way around the necessity of amending the Constitution to give the NCJD jurisdiction over candidates who are not judges.
- Bifurcation and term limits: The NCJD doesn't see the propriety of seeking a constitutional amendment to bifurcate proceedings or impose term limits until key questions regarding timliness, effectiveness, resource, and tranparency questions can be answered. Until there is evidence to support that bifurcation and term limts would improve these areas, the NCJD believes the prudent approach is to reject these proposals.
- Change "Prosecuting Officer" to "Special Counsel": there is common ground on this issue and the NCJD would, likley, not object.
- Rule 6: the NCJD cannot post all documentation on its website due to functionality and capacity limitations.
- Rule 12: the NCJD provides a copy of the complaint and investigative documents to judges before the judge confidentiality answers the complaint. The NCJD will not agree to provide these docuemtns prior to an investigative interview.
- Rule 18: the NCJD is willing to include in its procedural rules, a strong preference that venue be located where the judge is located but cannot accommodate cities outside of Clark or Washoe counties and the NCJD will retain discretion to make venue decisions based upon considerations including time to disposition.
- Rule 26: the NCJD must retain discretion to make these determinations.
- Rule 27: the NCJD would likely be willing to post Orders of Dismissal, with appropriate context, on the website.
- Director Deyhle briefly discussed proposed new rules and referred attendees to his memorandum and exhibits, as provided in the meeting materials, for further details.

- Judge Riggs provided a repsonse to Director Deyhle's comments.
  - The August 18 meeting with Director Deyhle, Judge Higgins, Judge Bateman, and Judge Riggs was productive. Judge Riggs commented that the group had agreed to continue to work on the issue of accountability for judicial candidate misconduct. This effort would likely need to expan to involve representatives from the State Bar.
  - Judge Riggs informed attendees that the "work group" needs to continue to meet to address these isssues. Judge Bateman seconded this.
  - Regarding imposing term limits on NCJD members, Judge Riggs commented that she disagrees with Director Deyhle's assertion that imposing term limits would be unconstitional. The Legislature has already moved in this area (NRS 1.440). Additionally, the NCJD doesn't have standing to object to the length of time members serve.
- Chief Justice Parraguirre commented that, perhaps, the easiest solution is to put these issues before the appointing bodies with the recommendations that perception and length of service be considerations when appointing bodies are making their appointments.
  - Professor Fisher commented that many states experience challenges finding members willing to serve on judicial discipline commisisons; it's not uncommon for members to serve several terms in those states without term limts.

- Judge Zimmerman asked the attorneys present for their input on these issues given their experiences before the NCJD.
  - Mr. Kennedy commented that he has never witnessed anything that indicates a problem with diveristy, inclusion, equity, or length of service. Length of service is often a benefit; the experience is valuable for the NCJD.
  - Ms. Beggs commented that the adminstrative agencies within Nevada, mostly, operate with term limits and, while the benefits of institutional knowledge and experience can be valuable, the lack of "new blood" and new input can also be detrimental.
- Justice Hardesty commented that there are comissions/boards with tasks and missions so unique that they don't lend themselves to term limts. The Board of Bar Examiners, for example, relies on the experience and long-term knowledge of its members to function. The NCJD may fall into this category but diversity needs to remain a priority.
- Judge Bateman informed attendees that he spoke with the State Bar regarding attorneys as judicial candidates; there were concerns regarding the Bar's expertise in the matter and complaint processing timelines.
  - Judge Bateman also spoke with a former Deputy Secretary of State; these specific issues don't appear to fall within that office's jurisdiction.
- Chief Justice Parraguirre suggested inviting a representative from the State Bar of Nevada to attend a meeting to discuss these issues.
  - He will reach out to Mr. Dan Hoege with an invite to attend a future meeting.
  - Attendees discussed nonlawyer judicial candidates; Justice Hardesty commented that it may be worth exploring the Secretary of State's role in ethic complaints against candidates. Brief discussion was held regarding required filing documentation.
- Chief Justice Parraguirre asked Director Deyhle, Judge Higgins, Judge Riggs, and Judge Zimmerman to provide Ms. Gradick with a reconciliation sheet covering the items listed under agenda items "V" for the next meeting.
  - The document should also identify what aspects have been agreed to, what haven't, and what impediments to resolution exist.

VI. 2023 Legislative Session – Proposed BDR

- Judge Riggs requested the Commission vote on the BDR draft at the next meeting.
  - Attendees discussed the BDR timeline and whether changes can be made to the submitted draft; the BDR has been submitted but the group needs to determine whether it will approve it.
    - Justice Hardesty commented that, it is his understanding, that the BDR has been submitted as a placeholder for the Commission's full recommendations.
  - Attendees briefly discussed resources for vetting constitutionality of the term limit issue; will LCB review the BDR for constitutionality?

VII. Other Items/Discussion

- Judge Stockard suggested the Governor's Office and the State Bar be invited to participate in a meeting to discuss the appointment issues.

VIII. Next Meeting Date

- Chief Justice Parraguirre commented that he would like to hold the next meeting in a month.
  - Ms. Gradick will survey the Commission membership for meeting availability.

IX. Public Comment

- No public comment was offered.

X. Adjournment

- The meeting was adjourned at 3:55 pm.