

COMMISSION ON APPELLATE COURT APPOINTMENTS

MINUTES

August 20, 2012

PRESENT: Chief Justice Rebecca White Berch, Chair; Joseph Cuffari; Carey Dobson; William Ekstrom, Jr.; J.W. Harris; Jill Harrison; Linda Martin; Michael Rusing; Paul Senseman; Ted Schmidt; Tom Taylor; Phillip Townsend, and, Charie Wallace

ABSENT: Douglas Cole and James Hartdegen

Chief Justice Berch called the meeting to order at 8:30 a.m. to interview candidates for the vacancy created on the Arizona Supreme Court when Justice Andrew Hurwitz was appointed to the Ninth Circuit Court of Appeals. She then reviewed the procedures of the Appellate Nominating Commission for the benefit of the public.

Public Comment

Chief Justice Berch called for comment from the public on the applicants. She asked speakers to limit their comments to three minutes.

Tony Palumbo spoke on behalf of Lawrence Winthrop.
David Tenney spoke on behalf of Michael Brown.
John Tuchi spoke on behalf of Christina Cabanillas.
Jon Sands spoke on behalf of Christina Cabanillas.
J.R. Blackburn spoke on behalf of Kent Cattani.
Chad Sampson spoke on behalf of Kent Cattani.
Steve Twist spoke on behalf of John Gemmill.
Phil Gutt spoke on behalf of Philip Hall.
Jim Schleiger spoke on behalf of Philip Hall.
John Nelson spoke on behalf of Philip Hall.
Daisy Flores spoke on behalf of Douglas Rayes.
Bill O'Neil spoke on behalf of Ann Timmer.
Bill French spoke on behalf of Ann Timmer.
John Bouma spoke on behalf of Lawrence Winthrop.
Patrick Irvine spoke on behalf of Lawrence Winthrop.

Selection of Interview Questions

At 9:20 a.m., it was moved that the commission go into executive session to select the questions to be asked of all candidates. The motion was seconded and passed unanimously.

At 9:50 a.m., the commission returned to public session. Chief Justice Berch asked

audience members not to reveal the questions being asked of candidates to candidates interviewing later in the schedule, in fairness to all candidates.

Approval of July 31 Minutes

It was moved that the minutes from the July 31 screening meeting be approved as submitted. The motion was seconded and passed unanimously.

Disqualifications and Disclosures

Mick Rusing disclosed that he practiced law with Lawrence Winthrop.

Linda Martin disclosed that she is acquainted with Michael Brown's brother and father.

Carey Dobson explained that because he works with Michael Brown's brother and knows the family very well, he recused himself from voting on Michael Brown.

Joseph Cuffari disclosed that he is acquainted with Philip Hall.

Philip Townsend disclosed that he was Philip Hall's campaign manager in Yuma County twice, but has not had contact with him in several years.

Jill Harrison disclosed that she practiced law with Diane Johnsen at Osborn Maledon.

Ted Schimidt disclosed that he knows Lawrence Winthrop and John Gemmill professionally.

Chief Justice Berch disclosed that she has met all of the candidates. She further explained that while serving on Division One of the Arizona Court of Appeals, she worked with Ann Scott Timmer, John Gemmill, Philip Hall and, Lawrence Winthrop. Chief Justice Berch then disclosed that Michael Brown was once a student of hers and that Douglas Rayes is a former law partner. Finally, Chief Justice Berch added that she knows Christina Cabanillas and Kent Cattani professionally.

Investigation Reports

Chief Justice Berch reminded members that sensitive information can be discussed in executive session upon motion and approval by two-thirds of the members in attendance, but encouraged the commission to conduct as much of its discussion in public session as possible and to hold any items for executive session until the end of the discussion in public session. The commission then discussed the results of its due diligence investigations of the candidates.

Interviews of Applicants

From 10:20 a.m. to 12:26 p.m., the commission interviewed John Gemmill, Kent

Cattani, Douglas Rayes, Michael Brown and Diane Johnsen.

The meeting was recessed for lunch from 12:30 p.m. to 1:30 p.m.

From 1:30 p.m. to 3:30 p.m., the commission interviewed Christina Cabanillas, Lawrence Winthrop, Philip Hall and Ann Scott Timmer.

Discussion of Applicants and Interviews

The commission discussed the applicants' qualifications and the interviews in alphabetical order.

Voting on Nominations

The commission agreed to begin the process of nominating candidates to the tentative list. Chief Justice Berch noted that a nomination, second and majority vote are needed to place a candidate on the tentative list or to remove a candidate already placed on the tentative list. She also reminded members that she would not be voting.

Bill Ekstrom moved that Ann Scott Timmer be placed on the tentative nomination list. The motion was seconded and passed by a vote of 10-2-1 with Chief Justice Berch abstaining.

J.W. Harris moved that John Gemmill be placed on the tentative nomination list. The motion was seconded and passed by a vote of 7-5-1 with Chief Justice Berch abstaining.

Philip Townsend moved that Douglas Rayes be placed on the tentative nomination list. The motion was seconded and passed by a vote of 10-2-1 with Chief Justice Berch abstaining.

Tom Taylor moved that Diane Johnsen be placed on the tentative nomination list. The motion was seconded and passed by a vote of 12-0-1 with Chief Justice Berch abstaining.

Ted Schmidt moved that Lawrence Winthrop be placed on the tentative nomination list. The motion was seconded but failed by a vote of 6-6-1 with Chief Justice Berch abstaining.

Mick Rusing moved that Kent Cattani be placed on the tentative nomination list. The motion was seconded but failed by a vote of 3-9-1 with Chief Justice Berch abstaining.

Philip Townsend moved that Michael Brown be placed on the tentative nomination list. The motion was seconded and passed by a vote of 8-2-2 with Carey Dobson and Chief Justice Berch abstaining.

The commission then discussed the number of names it would send to the Governor and took a straw poll on the two Republican candidates who initially received the lowest number of votes. The results of the straw poll were:

John Gemmill – 7
Lawrence Winthrop – 6

The commission then voted on whether to send three or five names to the Governor. The results of that vote were:

Three names – 7
Five names – 4

Jill Harrison moved that a final nomination list including Diane Johnsen, Douglas Rayes and Ann Scott Timmer be forwarded to the Governor. The motion was seconded but failed by a vote of 6-6-1 with Chief Justice Berch abstaining.

After further discussion, the commission decided to re-open the floor to nominations to the tentative nomination list. Chief Justice Berch limited each member to five votes.

J.W. Harris moved that John Gemmill be placed on the tentative nomination list. The motion was seconded and passed by a vote of 8-4-1 with Chief Justice Berch abstaining.

Bill Ekstrom moved that Ann Scott Timmer be placed on the tentative nomination list. The motion was seconded and passed by a vote of 11-1-1 with Chief Justice Berch abstaining.

Mick Rusing moved that Douglas Rayes be placed on the tentative nomination list. The motion was seconded and passed by a vote of 10-2-1 with Chief Justice Berch abstaining.

Jill Harrison moved that Diane Johnsen be placed on the tentative nomination list. The motion was seconded and passed by a vote of 11-1-1 with Chief Justice Berch abstaining.

Ted Schmidt moved that Lawrence Winthrop be placed on the tentative nomination list. The motion was seconded and passed by a vote of 7-5-1 with Chief Justice Berch abstaining.

Philip Townsend moved that Michael Brown be placed on the tentative nomination list. The motion was seconded but failed by a vote of 6-5-2 with Carey Dobson and Chief Justice Berch abstaining.

Tom Taylor moved that a final nomination list including **Diane Johnsen, Douglas Rayes and Ann Scott Timmer** be forwarded to the Governor. The motion was

seconded and passed by a vote of 8-4-1 with Chief Justice Berch abstaining.

Chief Justice Berch announced that Judge Brammer of Division Two of the Arizona Court of Appeals would be retiring on September 14. She explained that staff would be contacting them directly with logistical information.

Chief Justice Berch then reminded the commission that the annual meeting would be held on November 27.

At 4:10, it was moved that the meeting be adjourned. The motion was seconded and passed unanimously.