

**MINUTES OF THE
JUDICIAL RETENTION ELECTION TASK FORCE**

Tuesday, November 20, 2007 – 2:00 p.m. – Room W130 House Building

Members Present:

Sen. D. Chris Buttars, Senate Chair
Rep. Curtis Oda, House Chair
Sen. Lyle W. Hillyard
Sen. Ross I. Romero
Rep. Jackie Biskupski
Rep. DeMar Bud Bowman
Rep. Glenn A. Donnelson
Rep. Lorie D. Fowlke
Judge Hans Q. Chamberlain
Chief Justice Christine M. Durham
Judge Gary D. Stott

Members Absent:

Sen. Gregory S. Bell
Rep. Eric K. Hutchings
Rep. Rosalind J. McGee

Staff Present:

Mr. Jerry D. Howe, Policy Analyst
Ms. Esther Chelsea-McCarty, Associate General Counsel
Mr. Christopher R. Parker, Associate General Counsel
Ms. Amanda K. Majers, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Buttars called the meeting to order at 2:13 p.m.

MOTION: Rep. Bowman moved to approve the minutes of the November 7, 2007 meeting. The motion passed unanimously with Sen. Hillyard absent for the vote.

Chair Buttars brought to the attention of the Task Force that Chief Justice Durham had recently been awarded the 2007 William H. Rehnquist Award for Judicial Excellence by the National Center for State Courts, which was presented by United States Chief Justice John Roberts.

2. Draft Legislation, "Judicial Performance Evaluation Commission"

Mr. Parker distributed "Minimum Performance Standards for Survey Scores" and "Alternative Standard for Evaluating Judges."

Sen. Buttars distributed and discussed a letter he and Rep. Oda received from Chief Justice Durham.

Mr. Howe distributed and discussed "Arizona Commission on Judicial Performance Review: Judicial Performance Review Process." Mr. Howe informed the Task Force that Arizona's judicial performance review uses a scale of zero to four where if a judge has an average score of 2.0 or less on any of the categories from any group of respondents then that judge would not meet the threshold standard. Mr. Howe also explained that under Arizona's system a judge receiving unacceptable or poor in any category of 25 percent or more of any group of respondents would not meet the standard. He then outlined Colorado's new judicial performance review process, which adopts a recommendation of do not retain for any judge who receives less than an average on all questions of three on a four point scale. Mr. Howe explained how these systems compare to Utah's current system.

Sen. Buttars stated that Utah's current minimum performance standard could cause a very good judge to fail and a poor performing judge to pass, and contended that Arizona's model eliminates these ambiguities.

Chief Justice Durham asserted that the Task Force does not have enough information on the implementation of the minimum performance standards outlined in the draft legislation to determine its effectiveness. She maintained that the Judicial Performance Evaluation Commission needs to have discretion over the minimum performance standards. Chief Justice Durham reiterated the judiciary's preference for the Institute for the Advancement of the American Legal System's proposal.

Sen. Buttars announced that this is the Task Force's last meeting, and stated that the Task Force will not be able to come to a conclusion on the minimum performance standard today. He decided not to call a vote on the issue.

Judge Stott observed that the goal of the Task Force was to help the public better understand who the judges were that they were voting for and eliminate confusion that exists in the voter information pamphlet, so that poor performing judges could be eliminated. He stated his belief the Task Force left this goal. Judge Stott maintained that Utah does not have a nonfunctional system in its current minimum performance standard, and inquired as to why the Task Force feels it needs to change the current system to one where the ramifications are not known. He also suggested changing "shall" to "may" on line 638 of 2008 General Session draft legislation, "Judicial Performance Evaluation Commission." Judge Stott expressed concern with surveying litigants and witnesses because they cannot be dispassionate and neutral in their observations.

Mr. Howe pointed out that the Institute for the Advancement of the American Legal System recommends surveying litigants and witness about whether they were treated with dignity and respect, and not about the outcome of their case.

Mr. Parker added that the Institute recommends that the survey responses not be used to calculate the minimum performance standard.

MOTION: Rep. Fowlke moved to delete lines 642 and 643 of 2008 General Session draft legislation, "Judicial Performance Evaluation Commission." The motion passed unanimously with Sen. Hillyard absent for the vote.

Sen. Buttars recommend that the judicial members of the Task Force meet with the chairs to informally confer with each other as to what will be included in the 2008 General Session draft legislation, "Judicial Performance Evaluation Commission."

3. Other Business / Adjourn

Sen. Romero stated that he expects the members of the Task Force to participate in the upcoming decision making process.

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Chief Justice Durham expressed gratitude to the chairs for creating the opportunity to discuss these substantive issues.

Judge Stott stated his conviction that the concerns of the judiciary have been listened to fairly and dealt with appropriately.

Sen. Romero expressed his appreciation to the chairs for adequately addressing the concerns of the public.

Rep. Bowman gave accolades to the Task Force staff.

MOTION: Rep. Donnelson moved to adjourn the meeting. The motion passed unanimously with Sen. Hillyard absent for the vote.

Chair Buttars adjourned the meeting at 3:01 p.m.