

PROBATE JUDGE ADVISORY COMMISSION

A meeting of the Probate Judge Advisory Commission was held on Tuesday, December 20, 2022 in the Council Chambers, City Hall, Cranston, Rhode Island.

The meeting was called to order at 6:00 P.M. by the Acting City Clerk.

Present: Ann Marie Maccarone, Esq.
Joseph Manera, Esq.
Erica Laros, Esq.
Fred White, Jr.
Henry Palazzo

Also Present: Rosalba Zanni, Acting City Clerk

- **CONSIDERATION OF NOMINEES FOR RECOMMENDATION TO CITY COUNCIL FOR PROBATE JUDGE**

Attorney Laros nominated Attorney Manera to Chair the meeting. Attorney Maccarone seconded the nomination.

No other nominations were made. Attorney Manera was appointed to serve as Chair. Motion passed unanimously.

Chair stated that there are three Candidates and each one will speak first and then the Commission Members will ask questions.

Chair asked Judge George Cappello address the Commission.

Probate George M. Cappello appeared to speak and stated that he is the present Probate Judge. He stated that there will be one more session this coming Thursday. He applied for this position four years ago and is asking to be re-appointed. He gave his background experience. He stated that he thinks that what helped him most was serving as Auxiliary Judge under former Probate Judge John DiBona. He attended every Court session and reviewed every case with him and he allowed him to do a few calendars. Some of the cases that have come before him are Administrations, Custodianships, Guardianships, Adult Adoptions, among others. In his career, as an attorney, he has never been disciplined for any ethics violations. The problem with the Probate Judge is you are not just Probate Judge, but you are also Law Clerk.

Attorney Maccarone stated that even though Judge Cappello stated that he is in good standing, candidates are required to give a Certificate of Good Standing as a requirement for applying for this position. She asked Judge Cappello if he is willing to provide this Certificate. Judge Cappello stated that he has no problem providing the Certificate. Attorney Maccarone asked Judge Cappello if he receives help from one of the Auxiliary Judges. Judge Cappello stated, not at the present time, he does not. He stated that Attorney Ragosta was helpful to him at the beginning. Attorney Maccarone asked Judge Cappello what he sees as a major challenge that he would identify. Judge Cappello stated that most of the time he sees Guardianships usually are the issue over many. Attorney Maccarone asked Judge Cappello how much time or percentage he devotes to this job. Judge Cappello stated too much time. He is in the Clerk's Office every day two or three hours and even on weekends. The time he spends the most is with the Attorneys requesting continuance.

Mr. Palazzo asked what the waiting process is when a case is filed before it is heard and once heard, how long before it is closed. Judge Cappello stated that some cases require advertising in the newspaper and some do not. The ones that do not require advertising will be heard right away.

Attorney Laros asked how many cases are filed per year. Judge Cappello stated 25-30 per session or up to 40 per session.

Attorney Manera stated that he has been before Providence, North Providence, Warwick Probate, among others, and Warwick meets once a week and Cranston meets twice a month. He asked Judge Cappello if Cranston should look into meeting once a week. Maybe that would help with the caseload. Judge Cappello stated that he would be willing to give it a try, but the salary of this job has not been changed in 25 years. If session were to be held once a week, maybe there should be more than one Probate Judge. Attorney Manera asked Judge Cappello what type of case he thinks takes most of his time. Judge Cappello stated Adult Guardianships and Juvenile Guardianships are increasing and there are many more Guardianships than he has seen and they are more complicated.

Chair asked Attorney Cindy Fogarty address the Commission.

Attorney Fogarty gave some of her background and stated that she has experience in most of the Probate Courts in Rhode Island. She likes the idea of two Judges and possibly have sessions on alternate weeks.

Mr. White stated that he is from a business sector and not an Attorney and feels that the chosen Candidate should be based on their qualifications and performance as Probate Judge or Probate experience.

Attorney Maccarone asked Attorney Fogarty if she her having any conflicts because of her active practice in those areas. Attorney Fogarty stated that she does not see a conflict between family and Probate. Attorney Maccarone stated that she is speaking about in terms of litigants coming before her. Attorney Fogarty stated that she does not see any conflict. Attorney Maccarone asked Attorney Fogarty how much time she can realistically devote to this job and how much she wants to devote to it. Attorney Fogarty stated that she thinks she can devote what is necessary. She has managed to multi-task. Attorney Maccarone asked Attorney Fogarty, if she had a situation where if she had a friend who was Attorney and the Inventory the Attorney submits is a mess, how would she handle something like that? Attorney Fogarty stated that it would have to be done appropriately. What goes on beforehand is preparation. It probably would be easier if it was a friend of hers to address the issue. Attorney Maccarone asked Attorney Fogarty why she feels that she would do better to serve the City rather than have Judge Cappello continue to serve. Attorney Fogarty stated that she is not saying that she is better than Judge Cappello. She applied to show what se can bring to the position.

Mr. Palazzo asked Attorney Fogarty for a breakdown of different types of cases she deals with on a daily basis. Attorney Fogarty stated that 25-30% is family law, divorce, adoptions, child adoptions and some criminal. Mr. Palazzo asked Attorney Fogarty how often she teaches at Johnson and Wales. Attorney Fogarty stated approximately two days a week.

Attorney Manera asked Attorney Fogarty if she has been before any Probate Courts in the State. Attorney Fogarty stated that she has appeared before the Providence, Johnston, West Warwick and Cranston Probate Courts. Attorney Manera asked Attorney Fogarty if she has ever had contested cases. Attorney Fogarty stated, yes. Attorney Manera asked Attorney Fogarty if has ever handled Guardianships. Attorney Fogarty stated, yes, for children and adults.

Chair asked Attorney Robert Ragosta address the Commission.

Attorney Ragosta gave some of his background and stated that he has had the pleasure to serve for five years as Municipal Court Judge in Cranston.

Attorney Maccarone asked Attorney Ragosta how much time he realistically can devote to this job. Attorney Ragosta stated that he has always devoted as much time to get the job done. He would work out schedules to make sure he is prepared. Attorney Maccarone asked Attorney Ragosta if he belongs to the RI Probate Judge Association. Attorney Ragosta stated that he does not. Attorney Maccarone asked Attorney Ragosta if he has handled any contested Probate matters or appeals to Superior Court.

Attorney Ragosta stated that he has handled contested matters, but not in the last several years and he has not handled appeals in Superior Court. Attorney Maccarone asked Attorney Ragosta why he feels he can do a better job than Judge Cappello. Attorney Ragosta stated that he would look at different methods that would lessen the amount of cases. He has very high energy and would look into newer technology to make the Court run more efficient.

Mr. Palazzo asked Attorney Ragosta what he has done for Probate Court in Cranston right now as Auxiliary Judge. Attorney Ragosta stated that in the beginning, he was hearing some cases via Zoom. It would have been easier if he handled calendars and he was not able to contribute as much as he would have liked to.

Attorney Laros asked Attorney Ragosta to speak on balancing two Judge practices with his private Law practice. Attorney Ragosta stated that he has the ability to schedule the closings and he can use other Attorneys and Paralegals for the closings. The Clerk of Municipal Court and the Probate Clerk are very efficient and make his schedule a lot easier.

Attorney Manera indicated that Attorney Ragosta had previously stated that he would look into different methods than Judge Cappello's. He asked what those methods are. Attorney Ragosta stated: calling Attorneys on the phone and getting things resolved on the phone; special calendar for cases on Waiver; possible more hearings; taking advantage of technology to streamline the process. Attorney Manera asked Attorney Ragosta how often he sat as Auxiliary Judge in 2022. Attorney Ragosta stated not more than five or six times. Attorney Manera asked Attorney Ragosta if he has tried any contested matters in Superior Court. Attorney Ragosta state, no. Attorney Manera asked Attorney Ragosta what percentage of his practice is Probate. Attorney Ragosta stated approximately 20%. Attorney Manera asked Attorney Ragosta if he has handled any Guardianships and, if so, how many in the last year. Attorney Ragosta stated, yes. He does think he had any in the last year. Attorney Manera asked Attorney Ragosta if he has appeared before any Probate Courts before. Attorney Ragosta stated yes, North Providence, Providence, Johnston and Scituate.

Chair suggested that the Commission speak about each applicant one at a time separately.

The following discussion was held of each applicant:

Judge Cappello

Chair stated that Judge Cappello has been Probate Judge for four years, knows what he does and answers all the questions. He was very impressed with his presentation.

Attorney Maccarone stated that she has appeared before Judge Cappello many times and he is very professional and does not seem to be on an ego trip. She finds he is always prepared. She does not see any issues with backlog of cases being heard. He is a very humble person and has taken this role on as a public servant.

Mr. Palazzo stated that he was very impressed with Judge Cappello's presentation. He contacted every one of his references today and he had glowing recommendations from everyone he worked with through his career and people within the City.

Attorney Laros stated that, as a Probate Attorney, she was very impressed with Judge Cappello's presentation. She has never heard anything negative said about Judge Cappello and she thanked him for his presentation.

Mr. White stated that he was very impressed with Judge Cappello's performance, qualifications and experience. Positive Positive Positive.

Attorney Fogarty

Attorney Laros stated that he has had dealing with Attorney Fogarty and has had excellent experience with her regarding Guardianship cases. She handles herself very professionally and very prepared in Court and very compassionate.

Chair stated that he was impressed with Attorney Fogarty's sincerity. He feels that that could grow into the role.

Attorney Maccarone stated that she is very appreciated of Attorney Fogarty's honesty and candor to the Commission and her dedication in her practice. She does not have transferable skills that could transfer into the Judgeship.

Mr. Palazzo stated that he was impressed with Attorney Fogarty's resume. In contacting her references, only one responded back to him and that person did not understand what was going on. He is a little concerned with the fact that he would not want the Court to interfere with her teaching or vice-versa even though she stated it would not.

Mr. White stated that Attorney Fogarty has legal experience and background in a lot of legal areas.

Attorney Ragosta

Attorney Laros stated that she was very impressed with Attorney Ragosta's presentation. His Real Estate experience is transferable into the Probate. She likes the idea of bringing in modern technology.

Mr. Palazzo stated that he was also very impressed with his dedication to law and with his idea of bringing technology. Attorney Ragosta did not have a list of references so, unfortunately, he was not able to speak to anyone else on his behalf.

Attorney Maccarone stated that she was impressed with Attorney Ragosta's presentation. She appreciates the fact that his career is very diverse over the years.

Mr. White stated that his concern would be, would Attorney Ragosta have sufficient time with his practice to fill the role effectively. He also stated that his presentation was very good.

Chair stated that he has known Attorney Ragosta since the 1970's. It pains him to say, but he was not very impressed with his presentation. The other two candidates answered the questions more directly.

Mr. Palazzo stated that the Ordinance needs to be changed by the City Council clarifying what the duties are. He questioned if this Commission is going to pick one person to recommend or is the Commission going to have a rating system.

Chairman suggested that votes be taken on each candidate separately.

On motion by Chairman Manera, seconded by Attorney Maccarone, it was voted to recommend Judge Cappello to be re-appointed as Probate Judge. Motion passed on a vote of 4-1. The following being recorded as voting "aye": Attorney Laros, Mr. Palazzo, Chairman Manera and Attorney Maccarone -4. The following being recorded as voting "nay": Mr. White -1.

On motion by Chairman Manera, seconded by Mr. White, it was voted to recommend Attorney Fogarty to be appointed as Probate Judge. Motion failed on a tie vote with one abstention. The following being recorded as voting "aye": Chairman Manera and Mr. White -2. The following being recorded as voting "nay": Attorney Laros and Attorney Maccarone -2. Mr. Palazzo abstained.

Chairman asked for vote to be taken on recommendation of Attorney Ragosta. No motions or second were made. The following votes were taken: Chairman Manera voted no; Attorney Maccarone voted no; Attorney Laros voted no; Mr. White voted no and Mr. Palazzo abstained.

By majority vote of the Commission, it was the recommendation of the Commission to re-appoint Judge George Cappello as Probate Judge for the term 2023-2025.

Mr. Palazzo stated that this Commission makes recommendations to the City Council to appoint a Committee to define duties and goals of this Commission. The Commission should meet quarterly and review Probate Court and makes recommendation to the City Council about the Court and work with the current Judge on any upgrades or changes to be made and report to the City Council and this should be placed on the Docket periodically. This Commission should be able to recommend an Auxiliary Judge or Associate Judge so if a candidate that did not have the qualifications could step into that position to work with the Judge.

The meeting adjourned at 8:45 P.M.

Respectfully submitted,

/s/ Rosalba Zanni
Acting City Clerk