



CITY MAGISTRATE MERIT SELECTION COMMISSION

Report and Recommendation on the Reappointment of City Magistrate Geraldine Hale

February 11, 2021

Dear Mayor Romero and Council,

Please find the City Magistrate Merit Selection Commission's ("Commission") report and recommendation regarding the reappointment of City Magistrate Geraldine Hale. Based upon the information presented to us, including letters, emails, audio recordings of proceedings in front of Judge Hale, Judge Hale's interview before the Commission, and oral comments from the community, it is our unanimous and considered opinion that the Mayor and Council should vote against reappointing Judge Hale. The Commission's extensive investigation revealed that she does not possess the temperament or legal acumen required of judicial officers.

1. Criteria for Judicial Selection and Reappointment

The Commission considers a number of factors in deciding whether to recommend a judge for reappointment. They include the judge's legal knowledge and ability, professional experience, knowledge about the administrative business of the court, integrity, work ethic, judicial temperament, health, financial responsibility, communication skills, and commitment to public service. No single criterion is dispositive; rather, they are to be applied holistically and within the bounds of reason and common sense. Many of these qualities are not easily quantifiable, but their absence is readily apparent.

2. Materials Reviewed

The Commission reviewed the following in formulating its recommendation:

- Letters and emails from members of the public
- Audio recordings from proceedings in front of Judge Hale
- Judge Hale's reappointment interview
- Oral comments from members of the public

Commenters included more than three dozen sworn officers of the court, comprising prosecutors (both from the City of Tucson and the Pima County Attorney's Office), public defenders (both from the City of Tucson and the Pima County Public Defender's Office), private defense attorneys, and judges. These commenters had firsthand knowledge of Judge Hale and her conduct in court.

We would note that many of the comments were given to us in confidence, i.e., with the understanding that while the source is known to one or more Commissioners, the identity of the person will not be made public.¹ This is to ensure candid feedback and prevent retaliation. The professional risk that a lawyer takes in coming forward with unfavorable information about a judge cannot be overstated, particularly when their practice requires them to be in that judge's courtroom regularly. Regardless of where their court falls in the legal hierarchy, judges wield immense power over the people who appear in their courtrooms. That includes the direct power to harm a lawyer's case, but it also includes the power to harm that lawyer's reputation and damage their standing in the legal community. Many lawyers who spoke with us explicitly cited a fear of retaliation from Judge Hale in their requests to remain anonymous to all but the Commission. This fear was not a generalized concern of retaliation by the bench; it was specific to Judge Hale.

It is appropriate that the Mayor and Council consider these comments, as the lawyers and community leaders who comprise the Commission are competent to judge the credibility of the information we receive. The currently sitting members have extensive experience on this and other commissions interviewing and investigating judicial officers for appointment and retention. The lawyer members of the Commission have more than 80 years of collective experience practicing law. Not one

¹ No anonymous comments were considered.

comment, written or oral, was viewed uncritically; all were carefully and impartially scrutinized. The issues identified in the comments we received about Judge Hale were so voluminous and came from such a wide cross-section of the community that we could not ignore them. We found the comments overwhelmingly credible.

3. Summary of Materials

It is our understanding that the City Clerk's Office will provide you with the written letters and comments it received in response to Judge Hale's reappointment.

The comments came from prosecutors, criminal defense attorneys (public and private), and judges. They included the following, which are representative of the dozens we received. Many comments were delivered orally:

- Judge Hale is known to bully certain attorneys that she doesn't like. She berates and insults them publicly, and there is no rhyme or reason to it. Her targets include public defenders and prosecutors alike. No one wants to say anything because we are scared of her, and we are afraid she will retaliate against us.²
- Judge Hale frequently leaves the bench early. During one such incident, she instructed the assigned prosecutor to issue bench warrants for all the remaining defendants on the calendar for failing to appear, yet several were present in the courtroom. The prosecutor informed the judge of this, but she ignored him and left the bench anyway.
- Judge Hale rushes through initial appearances at the jail and often leaves the bench while there are still pending motions from prosecutors as well as defense attorneys, and before the clients can be asked if they are invoking their Fifth Amendment right to remain silent and Sixth Amendment right to have counsel present during questioning by law enforcement. No other magistrate does this.

² We received numerous comments from attorneys who themselves were not the subject of bullying but nonetheless felt compelled to report that Judge Hale bullied other attorneys in open court.

- Judge Hale conducts initial appearances too quickly and does not give counsel enough time to make legal arguments. On two separate occasions within the past few months, I have had to interrupt Judge Hale because she was speaking too quickly for the Spanish interpreter to possibly translate what was being said. On each instance, the interpreter tried several times to get the court's attention without interrupting the proceedings, and Judge Hale either ignored them or was not paying enough attention. This is extraordinarily alienating, as the client was forced to listen to the Judge speak for some time without the benefit of knowing what was said. Judge Hale's efforts to rush through the proceedings come at the expense of the law and the clients who appear in front of her.
- Judge Hale is volatile. Sometimes she's nice and normal and other times she will lose it and rage at attorneys (prosecutors too). She's unpredictable. Usually when she is upset it's because of the age of the case. She doesn't care the reason, she just reacts inappropriately – yelling, acting verbally abusive, being demeaning. The City Public Defender's Office had to file a complaint against her with Judge Riojas. The other attorney assigned to her courtroom had to transfer out of her courtroom because of the way Judge Hale behaved – he thought it was negatively impacting his clients. One time Judge Hale was so abusive with me that when I left, a prosecutor came out and asked if I was okay and another attorney in the room who witnessed it went up and told my supervisor about it. She will abuse the attorneys in front of their clients too. One client fired me because he lost confidence in me after Judge Hale abused me in front of him, even though the issue was not my fault (lag in getting disclosure from prosecutor). One time, I had a client who wanted to take a plea, but it required 17 days jail and home detention after, but jail is hotspot for COVID and they suspended work release, so my client would lose his job, his house, and leave his family homeless if he did, and Judge Hale just said, "Well, he's just going to have to make a choice."
- Judge Hale is very interested in pushing cases to resolution quickly and can often cause difficult and unreasonable working conditions for attorneys in the process. Her legal rulings and verdicts can be very difficult to make sense of at times. While her demeanor with defendants can be good, her demeanor with attorneys is selectively abusive. I have seen particular attorneys singled out for mistreatment.

We also listened to audio recordings from Judge Hale's courtroom from multiple hearings. On one such occasion, she accepted a domestic violence plea without a factual basis. In criminal law, when a judge accepts a plea of guilty to an offense, they must establish a basis in fact for the crime, i.e., that the defendant's conduct actually constituted a crime under the law. During this change of plea hearing, not only did the defendant never admit to criminal conduct, she instead told Judge Hale many times that she did not commit a crime. Instead of explaining to the unrepresented defendant that she could not accept a guilty plea based on what the defendant was telling her, Judge Hale accepted the plea agreement, entering a judgment of guilt to the offenses. This is unconstitutional, and it is contrary to even basic notions of due process. It is made all the more serious in light of the grave collateral consequences that attend any domestic violence conviction. On another occasion, she berated a defense attorney in front of his client for raising a legitimate legal argument in a DUI case. Judge Hale not only incorrectly interpreted a basic point of criminal law, she also was openly rude to counsel and accused him of misleading the court.

We would note that while we did receive and consider several positive comments, they did not ultimately change our final recommendation for a few reasons. First, we expect to receive positive comments as a matter of course. All sitting City Magistrates are subject to this Commission's scrutiny before being appointed to the bench. It is routine that successful judicial applicants have community support. Second, in Judge Hale's case, the positive comments were substantially outweighed by the negative comments both in content and number. We would finally note that when it comes to matters of depriving members of our community of their fundamental liberties, the law of averages does not apply: 10 good interactions with a judge do not balance out the harms of 10 bad ones that never should have happened.

4. Judge Hale's Interview

The Commission interviewed Judge Hale and gave her an opportunity to be heard and to respond to these allegations. (We presented Judge Hale with a representative sample of the commentary several hours prior to the interview for her review and consideration, attached at Appendix 1.) We did not find her answers satisfactory. More troubling, we did not find Judge Hale credible.

In response to many of the negative comments, Judge Hale accused the commenters of being “mean-spirited” and told us that she suspected they were coming from the City Public Defender’s Office. We responded by telling her that the comments came from both sides of the courtroom and from public and private attorneys alike. We asked if she had any updates to her response based on that clarification. Judge Hale had no answer other than to say that none of the comments were true. We asked her if there was any feedback in the comments she felt was justified, but Judge Hale deflected and would not give us a direct answer. In pursuit of a direct answer, we had to ask her three times if there was any iota of truth to any of the comments, and Judge Hale finally said no, that nothing in any of them is true.

It is the considered opinion of the Commission that Judge Hale was not candid with us and that she was not credible. While it is understandable that defensiveness is a natural reaction to criticism, the interview went beyond mere defensiveness to flat denial. Judge Hale did not earnestly engage with our questioning, and she did not acknowledge or accept even a single criticism we presented her with.

5. Analysis

The currently sitting members have more than 25 years’ collective experience on this Commission and others like it. In spite of this longevity, not a single Commissioner could recall ever having seen comments of such an extreme nature or in so great a number as those we received in response to Judge Hale’s potential reappointment.

We found these comments overwhelmingly credible. They came in writing, and they came in phone calls. They came from the defense bar, prosecutors, and other judges. They came from people with no incentive to exaggerate or lie to us. Indeed, exactly the opposite is true: every lawyer who came forward risked their reputation and their practices to tell us these things. What is more is that the comments frequently recounted similar or identical conduct: Judge Hale rushes through hearings to the detriment of defendants, is abusive to parties and counsel who appear in front of her, does not understand basic principles of law, and does not afford due process to the accused. Any one of these is disqualifying for judicial office, but the overwhelming evidence before this Commission is that all of these apply to Judge Hale.

Judge Hale represented to the Commission that she is always looking for ways to improve as a jurist. The Commission found this disingenuous. Judge Hale could not find a single kernel in the candid feedback of the community to guide her improvement—far from it, she flatly denied all of it and dismissed it as mean-spirited falsehoods. It strains this Commission’s credulity to argue that 30-plus sworn officers of the court would fabricate these complaints, and it is more fantastical still to suggest that they would conspire with one another in doing so. These are not isolated incidents or individual gripes from disgruntled lawyers upset by an adverse ruling. These also do not seem to us to be merely the result of an otherwise fit judge having a bad day or two. On the contrary, the quantity and content of the comments indicate a clear and pervasive pattern of conduct that is unacceptable in a court of law and works to undermine the public’s faith in our judiciary.

6. Recommendation

It is the unanimous and considered opinion of the Commission that the Mayor and Council should vote against reappointing Judge Hale.

We do not make this recommendation lightly. Quite the opposite, we do so with great reluctance and only after an extensive investigation spanning several months that included, among other things, an opportunity for Judge Hale to speak to us directly. One of the comments we received was from an attorney who eagerly supported Judge Hale’s application in 2012 and was heartened to see a Native woman on the bench. That same attorney contacted us and told us that they could no longer support Judge Hale’s continuance on the bench for many of the same reasons outlined above: she is abusive, demeaning, and does not have the temperament to be a judge. This attorney also told us that they feared professional retaliation from Judge Hale. We received nearly identical feedback from multiple commenters who were initially enthusiastic about Judge Hale’s appointment but have since withdrawn their support and urged against reappointment.

It is not lost on the Commission that we have a responsibility to ensure that the City Court bench reflect the diversity of our community. Indeed, the composition of this Commission reflects this commitment: we are multiracial and multigenerational; we have Commissioners from the immigrant and LGBTQ+ communities; we are one of few boards with a supermajority of women. We are mandated by law to have members from

diverse political backgrounds, and we do. Even among the lawyer members of the Commission, there is great diversity of experience: our members include former prosecutors, current and former public defenders, private defense attorneys, and civil practitioners. Across this wide spectrum of life and experience, we are unanimous in our recommendation.

It is also not lost on this Commission that we have an equally weighty responsibility to ensure that our courts afford people respect, dignity, and the benefit of law. These rights are not optional, and they are not things one need ask for nicely. They are fundamental rights that inhere in all of us: lawyers (prosecutors and defense counsel alike), clients, victims, staff, observers, and any person who may find herself in our courts of justice. They are rights that, in our estimation, Judge Hale is not inclined to take seriously. As such, Judge Hale should not be reappointed.

We make this recommendation in the strongest of terms and without any reservation. The evidence and our duty to the community require it of us.

Respectfully yours,

s/James W. Rappaport
James W. Rappaport
CHAIR

s/Dina M. Dieglio
Dina M. Dieglio
VICE CHAIR

s/Zaira E. Livier
Zaira E. Livier
COMMISSIONER

s/Dee-Dee Samet
Dee-Dee Samet
COMMISSIONER

s/Mariam K. Ferguson
Mariam K. Ferguson
COMMISSIONER

APPENDIX 1

The City Magistrate Merit Selection Commission solicited comments from the community in preparation for its discussion and recommendation on your retention. The comments below are representative examples of the several dozen that we received both orally and in writing from members of the community. They have been edited for clarity where needed, but they have not been substantively changed.

As you know, there is a rigorous selection process for City Magistrates. The remit of this Commission is to ensure that the bench is filled with exceptional jurists. As such, we receive and indeed expect positive comments as a matter of course. We do not regularly receive comments as those below, however, which is why they will be the subject of your retention interview rather than the positive comments we received.

Comment No. 1

Judge Hale has difficulty understanding legal arguments and gets angry and lashes out. She is not intellectually or temperamentally qualified to be a judge.

Comment No. 2

Judge Hale abruptly walked off the bench early one day while there were still matters pending. She said she had an appointment. She then instructed the assigned prosecutor to sign failure to appear warrants for people who were actually in the courtroom.

Comment No. 3

She is the least prepared, least considered, and least thoughtful judicial officer I have ever appeared in front of. Judge Hale does not take the time to prepare for initial appearances. She does not get there early to read the interim complaints or pretrial service reports. She does not talk to the officers. She does not ask them questions.

Comment No. 4

Judge Hale picks on certain attorneys and bullies them publicly. She frequently engages in personal and professional attacks on lawyers. No one wants to report this because they are scared and fear retaliation. People walk on eggshells in her courtroom. Judge Hale derides and belittles attorneys on a regular basis and in front of clients.

Comment No. 5

She frequently does not allow attorneys or parties to be heard. Judge Hale shuts them down without legal justification, and when they ask to be heard, she gets angry. For example, she once closed the courtroom to the public, and when an attorney raised the appropriate constitutional concern, Judge Hale snapped, "Don't tell me how to run my courtroom."

Comment No. 6

Judge Hale is obsessed with doing jury trials, even during COVID. She can be very difficult with schedules and dismissive when counsel asks to continue, even for valid reasons (e.g., health, COVID). She changes hearing dates frequently but expects everyone to do trials at her leisure.