

ARIZONA JUDICIAL COUNCIL
Camelback Inn
5402 E. Lincoln Drive
Scottsdale, Arizona 85253

June 20, 2011

Meeting Minutes

Council Members Present:

Chief Justice Rebecca White Berch
Jim Bruner
David Byers
Jose A. Cardenas, Esq.
Judge Rachel Torres Carrillo
Judge Norman Davis
Athia Hardt
Mike Hellon
Judge Douglas Holt
Judge Joseph Howard
Yvonne R. Hunter
Emily Johnston

Michael Jeanes
Joe Kanefield
William J. Mangold, M.D., J.D.
Judge Robert Carter Olson
Janet Regner
Judge Antonio Riojas, Jr.
Judge Sally Simmons
Judge James Soto
Judge Ann A. Scott Timmer
George Weisz
Judge David Widmaier

Council Members Absent:

Judge Louraine Arkfeld (*retired*)

Karen D. Ferrara

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
Stewart Bruner
Chad Campbell
Jennifer Greene
Melinda Hardman
Janet Johnson
Kevin Kluge
Jerry Landau

Jennifer Liewer
Amy Love
Lorraine Smith
Nancy Swetnam
Henrietta Williams
David Withey

Presenters and Guests Present:

Heather Bull
John Harris
Vice Chief Justice Andrew Hurwitz
L.M. Kiesel
Peter S. Kozinets

John Phelps
Jay M. Polk
Lisa M. Price
Deborah Primock
Dawn Savattore

Kelly McDonald
Callie Parkinson

Sally Simpson

Chief Justice Rebecca White Berch, Chair, called the meeting to order at 12:30 p.m., at the Camelback Inn, 5402 E. Lincoln Drive, Scottsdale, Arizona. The Chair welcomed those in attendance and introduced new Council members Judge Sally Simmons and Joe Kanefield.

Approval of Minutes

The Chair called for any omissions or corrections to the minutes from the March 24, 2011 and April 7, 2011, meetings of the Arizona Judicial Council; there were none. A motion was made to approve the minutes, as presented.

MOTION: To approve the minutes from the March 24, 2011 and April 7, 2011, meetings of the Arizona Judicial Council, as presented. Motion was seconded and passed. AJC 2011-16.

Arizona Code of Judicial Administration (ACJA)

Ms. Melinda Hardman, Policy Analyst for the AOC, presented ACJA 1-605: "Requests for Bulk or Compiled Data" and 1-606: "Providing Case Record Access to Public Agencies" for the Council's consideration. Ms. Hardman provided background information on the code sections.

Mr. Peter Kozinets from the law firm of Steptoe & Johnson, representing Phoenix Newspapers, Inc. and KPNX Broadcasting Company, provided public comment in support of the proposed revisions to ACJA 1-605 and 1-606.

Mr. Weisz asked if there were sanctions for any entity or individual violating any of the data agreements. Ms. Hardman noted that legal counsel would need to be consulted regarding this question.

A motion was made and seconded to approve ACJA 1-605, as presented.

MOTION: To approve ACJA 1-605: Requests for Bulk or Compiled Data, as presented. Motion was seconded and passed. AJC 2011-17.

Mr. Michael Jeanes offered an amendment to ACJA 1-606 from the Superior Court Clerks to change paragraph D. Court Order. A handout outlining the proposed revisions was distributed.

The Chair noted she would like to reword the proposed language of the amendment without changing the intent.

A motion was made and seconded to approve ACJA 1-606 with the concept of the amendment proposed by Mr. Jeanes.

MOTION: To approve ACJA 1-606: Providing Case Record Access to Public Agencies and the concept of the proposed amendment presented by Mr. Jeanes in the handout. Motion was seconded and passed. AJC 2011-18.

Commission on Technology (COT)

Vice Chief Justice Andrew Hurwitz, Chair of the Commission on Technology, provided information on the project prioritization contained in the Judicial Collections Enhancement Fund (JCEF) budget request.

Mr. Kevin Kluge, Chief Financial Officer for the AOC, updated the Council on the JCEF revenues, on-going commitments, comparison of revenue to expense, and the projected fund balances in out years, subject to action of the Legislature. He also provided estimated costs of individual automation enhancement requests recommended by the COT.

Justice Hurwitz asked for the Council's approval of the JCEF operating budget amount and technology-related project spending as recommended by the Commission on Technology, the JCEF probation budget, and authorization for the AOC to request legislative modifications to spending authority levels (appropriations) for FY 2013.

MOTION: To approve the FY 2012 JCEF operating budget amount and technology-related project spending as recommended by the Commission on Technology, the JCEF probation budget, and the authority for the AOC to request legislative modifications to spending authority levels (appropriations) for FY 2013, as presented. Motion was seconded and passed. AJC 2011-19.

Mr. Jeanes expressed concern with the project prioritization list. He stated that he voted not to approve at the recent COT meeting. Mr. Jeanes explained he believes there was not sufficient study and data, and there was a lack of concern regarding the budget. Justice Hurwitz stated this is a moving target for the COT, and the COT can move the project priorities as needed, if circumstances change. He explained the COT will need to revisit these project priorities on a regular basis.

Revisions to Rule 124, Rules of the Supreme Court

Mr. Stewart Bruner, Manager of Strategic Planning, Information Technology Division for the AOC, and Melinda Hardman provided a progress update of the proposed revisions to Rule 124, Electronic Filing, Delivery and Service of Documents. They noted the rule petition (R-11-0012) was filed on January 7, 2011, the Court ordered a two-part review period, and comments will be accepted through June 20, 2011. Mr. Bruner added the goal is to have the rule changes effective January 1, 2012.

Judge Timmer asked about mandatory bookmarking in documents, specifically in the superior court, which she did not see included in the proposed revisions to Rule 124. Mr. Bruner stated this issue is being considered. Justice Hurwitz and Judge Howard noted this issue needs to be addressed.

Committee on Improving Judicial Oversight and Processing of Probate Court Matters

Judge Ann A. Scott Timmer, Committee Chair and Chief Judge of the Court of Appeals, Division One, presented the final report on the work of the Committee. She provided an update on SB 1499 and HB 2424 and walked the Council members through the proposed recommendations.

Discussion took place regarding estimates and budgets.

Ms. Sally Simpson, National Academy of Elder Law Attorneys, Inc., provided public comment on the issue of petitioner and estate costs. She expressed concern whether a contest over attorney's fees is knowable, as the petitioner does not generally confer with other family members before filing the petition. Ms. Simpson added that often there is an ongoing dispute among family members between preserving the inheritance and the best interest of the ward, which may not be relieved through ADR. She noted the subjectivity involved with necessary expenses versus unnecessary expenses and expressed concern with the number of times a judge will have to touch each case. Ms. Simpson added, with these changes, pro se litigants will need to be English majors, and it may be difficult to locate all the interested parties.

Justice Hurwitz asked Ms. Simpson how she would do things differently. Ms. Simpson suggested collecting statistics in order to have a benchmark to work from, so if a pilot project is put in place, you can tell whether you have made progress. She also suggested Beta testing and including educators when creating forms.

Mr. Kelly McDonald, National Academy of Elder Law Attorneys, Inc., provided public comment on reporting estimates and budgets. Mr. McDonald noted, with respect to estimates, a pilot project using contested matters is the way to go. He suggested the first consideration should be to determine if there is a need for a conservator, and secondly, who is appropriate to do it. Mr. McDonald stated there is some recognition that sometimes early ADR can be problematic rather than helpful, and some discovery will be very beneficial for a meaningful discussion in mediation and a reason for settlement to be reached. He added that court-appointed counsel training is a fabulous idea and suggested it be offered every 5 years, or whenever the contracts are assigned, whichever comes earlier, so there is some uniformity among all court-appointed counsel. Mr. McDonald noted, with respect to budgets and life expectancy, most life-expectancy estimates are based on all-comers, and we may need leeway or guidance from the courts. He explained he does not believe the estimate process is necessary, as the budget process will accomplish that, based on need and appropriate person to serve. Mr. McDonald added that, if doing estimates, he is in favor of statistical compilations.

Ms. Hunter expressed concern with a layperson providing realistic numbers, in terms of estimates and budgeting.

Judge Timmer noted the Committee is recommending a pilot project for estimates.

Discussion ensued regarding fee guidelines. Mr. Byers suggested that in all cases “when a court uses its power to appoint an attorney,” the Court should reach out and appoint an attorney using set rates. He suggested the use of a contract list of attorneys and hourly rate chart. Judge Timmer noted the Committee decided to let the market set the rate, as it would become problematic to apply a particular rate among the counties, as well as the issues of different levels of experience and rural vs. urban.

Discussion took place regarding the visitation budget. Judge Timmer noted the budget amount was underestimated, and the Task Force needs to work out the details.

Ms. Lisa M. Price, Entrust Fiduciary Services, provided public comment on estimates and sustainability. Ms. Price noted the work of the Committee over the past year has been impressive. Ms. Price talked about the forms which she felt were too complex for members of the public. She stated that details regarding inventories and accounting were missing from the forms, and the forms will lead to more fraud and potential for mismanagement. Ms. Price noted, regarding estimates, she would be unable to provide this information without knowing the details of a particular case, health issues, income, etc. She stated it is bad public policy to estimate life expectancy, and it is the wrong thing to do. Ms. Price noted her office only acts as a conservator, not a guardian, and she does not have access to a client’s medical information and will not be able to provide a reasonable estimate of life expectancy, as she has no legal authority. Ms. Price encouraged the Council to leave life expectancy out of the equation.

Ms. Price raised an issue with a proposal in Rule 10.C.1.b. where the fiduciary is to refrain from charging to attend hearings unless required to be there by law or court order or other justification. She explained, as a licensed fiduciary, her code of conduct is very clear, and she is 100% responsible for everything that happens in her cases, and it is important she participate at depositions and litigations.

Ms. Price noted the “proof of restricted account” form only addresses accounts held in FDIC insured institutions. She explained this completely negates brokerage accounts, and the form needs to be changed.

A motion was made and seconded to accept the Committee’s report and authorize staff to file the rule petitions already drafted for a special Rules Agenda in December and direct AOC staff to report back at the Council’s October meeting with a plan outlining which recommendations would need a budget, schedule, legislative action, etc.

Mr. Byers stated a structure needs to be put in place, with a project plan to say what gets implemented, under what timeframe, what counties, etc. He introduced AOC staff, Cindy Trimble and Ashley Dammen, Probate Projects Coordinators, assigned to oversee implementation of the probate report recommendations.

Dr. Mangold asked that the plan include a side-by-side comparison of the alternative approaches. Mr. Byers agreed to do so, where possible.

Judge Timmer expressed concern with a limited pilot project and the delayed use of the risk assessment form until October. She asked “if the recommendations are good ideas, why wait until October?” Judge Davis recognized that many courts have been engaged in self-improvement projects independent of the Committee, and ongoing work and pilot projects are currently in progress. Judge Davis added he supports the motion, and good ideas contained in the report are being picked up and used now.

The Chair noted she is supportive of the motion on the table, and she would be supportive of anyone coming to her to get any pilot projects up and running in the interim.

MOTION: To accept the Committee’s report and authorize staff to file the rule petitions as drafted for a special Rules Agenda in December and direct AOC staff to report back at the Council’s October meeting with a plan outlining each recommendations and what it would take to implement it, i.e., budget, schedule, legislative action, etc. Motion was seconded and passed (one opposed). AJC 2011-20.

The Chair expressed her appreciation to Judge Timmer, Committee members and staff, and stakeholders for their efforts.

The Chair presented Judge Timmer a certificate of appreciation for her service on the Arizona Judicial Council. She noted this would be Judge Timmer’s last meeting as she is stepping down as Chief Judge of the Court of Appeals, Division One.

Judicial Branch Legislative Update

Mr. Jerry Landau, Director of Governmental Affairs, and Ms. Amy Love, Legislative Liaison, for the AOC, updated the Council on the legislative session and legislation impacting the judiciary. Mr. Landau reported, with the exception of the Grand Jury Electronic Recording bill, all AJC proposals passed and were signed by the Governor.

Strategic Agenda Update

Mr. Chad Campbell, Director of the Juvenile Justice Services Division of the AOC, briefed the Council on three national juvenile initiatives: Juveniles Under Supervision and Treatment Program (JUST), Juvenile Detention Alternatives Initiative (JDAI), and Juvenile Justice System Improvement Project (JJSIP), which are included under Goal 4 of the Strategic Agenda: Protecting Children, Families, and Communities.

Ms. Nancy Swetnam, Director of the Certification and Licensing Division of the AOC, briefed the Council on progress made in Goal 5 of the strategic agenda: Improving the Legal Profession. She talked about the new attorney discipline system and the major components of the new system to include the Probable Cause Committee and Office of the

Presiding Disciplinary Judge. Ms. Swetnam spoke on other major initiatives to include the attorney admissions system (the admission and examination process), Admission on Motion process, Uniform Bar Exam, and the Attorney Regulation Advisory Committee.

Call to the Public/Adjourn

The Chair made a call to the public; there was none.

A motion was made to adjourn the meeting.

The meeting adjourned at 4:37 p.m.