

ARIZONA JUDICIAL COUNCIL
Arizona State Courts Building
1501 W. Washington Street, Suite 101
Phoenix, Arizona 85007

October 21, 2010

Meeting Minutes

Council Members Present:

Chief Justice Rebecca White Berch
Judge Louraine Arkfeld
Alan Bayham
Jim Bruner
Judge Robert Brutinel
David Byers
Judge Rachel Torres Carrillo
Judge Norm Davis
Judge Peter Eckerstrom *proxy for*
**Judge Joseph Howard*
Karen D. Ferrara (*telephonically*)

Athia Hardt
Mike Hellon
Judge Douglas Holt
Emily Johnston
Michael Jeanes
Judge Jan Kearney
Judge Antonio Riojas, Jr.
Judge James Soto
Judge Ann A. Scott Timmer
George Weisz
Judge David Widmaier

Council Members Absent:

Jose A. Cardenas, Esq.
*Judge Joseph Howard
Yvonne R. Hunter

Janet Regner
William J. Mangold, M.D., J.D.

Administrative Office of the Courts (AOC) Staff Present:

Theresa Barrett
Mike Baumstark
Jennifer Greene
Jerry Landau
Caroline Lutt-Owens
Jennifer Liewer
Lorraine Nevarez
Pamela Peet

Katy Proctor
Tama Reily
Janet Scheiderer
Kathy Sekardi
Lorraine Smith
Nancy Swetnam
Henrietta Williams
David Withey

Presenters and Guests Present:

David Alger
Aaron Barnes
Keith Berkshire
Harold Brister
Heather Bull
Sheila Clemons
Judge Bruce R. Cohen
Terry Decker
Jeff Deiley
George Duckworth
Karen Duckworth
Susan Edwards
Richard Franco
Timothy Frank
Bruce Friedrich
David Hamu
Carey Snyder Hyatt
Chris Isaac
William Joehlin
Robert Kim
Lee Lafolette
Frederick Larsen
Kendra Leiby

John MacDonald
Mark Madden
Victor Martinez
Brent Miller
Dr. Vicki Murray
Robert Nolan
Callie Parkensen
John Phelps
Bray Pike
Lisa Price
J.R. Rittenhouse
Rena Selden
Janet Sell
Denise Shepherd
James Smith
Chrystal Stapley
Ed Stokes
Clinton Thomas
Don Vert
Kevin Wasson
Damian White
Jarrett Williams

Chief Justice Rebecca White Berch, Chair, called the meeting to order at 10:00 a.m., at the State Courts Building, 1501 W. Washington, Suite 101, Phoenix, Arizona. The Chair welcomed those in attendance.

Approval of Minutes

The Chair called for any omissions or corrections to the minutes from the June 24, 2010, meeting of the Arizona Judicial Council; there were none.

MOTION: To approve the minutes from the June 24, 2010, meeting of the Arizona Judicial Council, as written. Motion was seconded and passed. AJC 2010-11.

Approval of 2011 Meeting Dates

The Chair called for any changes to the proposed meeting dates for 2011. A motion was made and seconded to approve the proposed meeting dates: Thursday, March 24, Monday, June 20, Thursday, October 27, and Thursday, December 15.

MOTION: To approve the proposed meeting dates for the year 2011 as presented. Motion was seconded and passed. AJC 2010-12.

Judicial Branch Legislative Package

Mr. Jerry Landau, Director of Governmental Affairs, and Ms. Katy Proctor, Legislative Liaison, for the AOC, presented the legislative proposals for 2011 for the Council's approval. Council members were asked to vote to determine whether to include each proposal in its legislative package.

2011-01: Probation funding; counties with population of two million or more persons

- Discussion: A motion was made to include in the criminal code clean-up bill.

MOTION: To include 2011-01 in the criminal code clean-up bill. Motion was seconded and passed. AJC 2010-13.

2011-02: Restoration of right to possess firearm

- Discussion: Appreciate being consulted, but the Court should support the Arizona Criminal Justice Committee (ACJC) carrying this forward. A motion was made to refer the bill to the ACJC to carry forward.

MOTION: To refer 2011-02 to the ACJC to carry forward. Motion was seconded and passed. AJC 2010-14.

2011-03: Unlawful sexual conduct; probation employees

- Discussion: Why a separate category for Class 3. If a person is a minor, why not anyone 17 and under a Class 2 felony? Ms. Proctor noted it mirrors existing statute. A motion was made to approve 2011-03 and grant authority to clean-up the language consistent with concerns expressed by the Superior Court Presiding Judges. Mr. Byers noted the proposal would come back to the Council at their December meeting for final review and approval.

MOTION: To include 2011-03 in the judicial branch legislative package and grant authority to clean-up the language consistent with concerns expressed by the Superior Court Presiding Judges. Motion was seconded and passed. AJC 2010-15.

2011-04: Waiver of standards; IPS; JIPS

- Discussion: Why not just change the standards rather than ask for waivers? Ms. Proctor noted the problem is both process orientated and political and bringing this before the Legislature opens us up to the possibility of having adverse results; easier to do the waiver. A motion was made to approve.

MOTION: To include 2011-04 in the judicial branch legislative package. Motion was seconded and passed. AJC 2010-16.

2011-05: Unlawful transporting, moving, concealing, harboring or shielding of unlawful aliens

- Discussion: No need to waste our political capital carrying this legislation forward. A motion was made to monitor the related legislation, and if there is movement, to insert 2011-05 at that point.

MOTION: To not include 2011-05 at this time in the judicial branch legislative package, but to monitor related legislation and insert 2011-05 if there is movement. Motion was seconded and passed. AJC 2010-17.

2011-06: Pretrial services; arrests

- Discussion: The proposal was submitted by Maricopa County but has not been through the committee review process. There have been numerous discussions, and there is a clear direction in terms of drafting, but some concerns do need to be addressed before proceeding forward. Great idea for public safety. A motion was made to refer back to the Committee on Probation and return to the Council in December for review and consideration

MOTION: To refer 2011-06 back to the Committee on Probation and return to the Council in December for review and consideration. Motion was seconded and passed. AJC 2010-18.

2011-07; Qualifications

- Discussion: This proposal was approved two years ago. Judge Kearney noted she supports the proposal. Judge Davis noted the proposal has broad-based support from Maricopa County. A motion was made to include.

MOTION: To include 2011-07 in the judicial branch legislative package. Motion was seconded and passed. AJC 2010-19.

2011-08: Court reporters

- Discussion: Withdrawn

2011-09: Grand jury

- Discussion: Judge Davis noted this proposal has tremendous cost savings for the counties. Concern was expressed with providing a DVD to defense counsel. Mr. Weisz expressed concern that this proposal was not vetted to stakeholders for input and through the committee process. Judge Timmer expressed her support for the proposal as there are not enough court reporters to timely transcribe the record. Mr. Bayham expressed concern that Defense Counsel has not thoroughly reviewed and commented on this proposal. He noted he would like to hear from them before voting on this proposal.
- Public Comment: John MacDonald, Lobbyist for the Arizona Court Reporters Association spoke on behalf of the Association expressing their opposition. He noted the Association does not believe this proposal would pass the Legislature and could open up avenues of discussion that would not be beneficial to the court system. Mr. MacDonald stated the Association understands and appreciates the very dire budget circumstances that court systems are facing and are hopeful the costs savings could be further discussed and include input from all sides. He added this proposal will result in certified licensed court reporters no longer being used in grand jury proceedings, which will result in non-certified, non-trained professionals monitoring the electronic recording.

- A motion was made to refer the proposal back to the appropriate committees for further vetting, obtain input from the stakeholders, and reconsider at the December Council meeting.

MOTION: To refer 2011-09 back to the appropriate committees for further vetting, obtain input from the stakeholders, and reconsider at the December Council meeting. Motion was seconded and passed (1 opposed). AJC 2010-20.

2011-10: Intensive probation

- Discussion: A motion was made to approve the concept and move forward, but allow further wording adjustments and combine with proposal 2011-04.

MOTION: To include 2011-04 in the judicial branch legislative package by approving the concept and allowing further wording adjustments and combine with proposal 2011-04. Motion was seconded and passed. AJC 2010-21.

2011-11: County prisoner work and home detention program

- Discussion: Proponents feel the proposal needs some additional work. A motion was made to table the proposal until the December Council meeting. It was suggested the proposal go through the committee review process.

MOTION: To table 2011-11 until the December Council meeting. Motion was seconded and passed. AJC 2010-22.

Committee on Improving Judicial Oversight & Processing of Probate Court Matters

Judge Ann A. Scott Timmer, Chief Judge of the Court of Appeals Division One and Chair of the Committee on Improving Judicial Oversight and Processing of Probate Court Matters, presented the Committee's interim report.

The Chair called for public comment.

Ms. Denise Shepherd, attorney in private practice in Pima County, provided public comment as a member of the Committee. She stated she supports the report presented to the AJC and voted for the legislative proposal, but she urged caution. She noted the Committee has moved with lightening speed and, in her opinion, has not had the opportunity to properly vet everything being proposed. Ms. Shepherd stated the Committee has received many requests from stakeholders asking there be a careful review before proceeding and that more input from the counties is needed. She added the Committee is basing their recommendations on anecdotal evidence and pointed out there is a need for broad-based support for any legislation.

Ms. Lisa Price, Private Fiduciary in Yuma County, provided public comment. Ms. Price concurred with what Ms. Shepherd shared. She stated many issues are a result of lack of public education, and the community needs to be educated on what takes place in a probate court and understand their roles and responsibilities. Ms. Price added that most

of the 11 recommendations are right on target. She asked the Committee take more time with proposal #10 and consider the informal probate process, which doesn't seem to be addressed in this recommendation. She noted these are difficult subjects, and we need to take a good look at why we are considering them, as they could result in overburdening the courts, the fiduciary, and the ward, as well as costing more money.

Mr. James L Smith, Bond Services of Arizona, provided public comment. Mr. Smith noted that many of the recommendations weren't considered from a bonding standpoint. He noted, for example, #6 talks about a 90 minute training program, but 90 minutes worth of training won't be beneficial and is a waste of time and resources. Mr. Smith stated that in response to #8, companies will not bond fiduciaries that are not represented by counsel. He reported that 95% of claims on estates for theft, improprieties, etc. occur with individuals acting pro per. He added that nothing prevents someone from getting appointed, getting bonded, firing their counsel, and then serving pro per. He noted this is a big problem that needs to be addressed. Mr. Smith asked if it was reasonable in #9 for a private fiduciary to have counsel in a matter.

Judge Timmer provided background information on the Committee, its membership and charge. Judge Timmer reviewed the 12 recommendations and pending issues.

Judge Davis suggested the Committee consider looking at other programs that have dealt with the problems throughout the country, i.e., Broward County and the National Center for State Courts (NCSC) who is currently doing a comprehensive analysis and study of the Maricopa County probate system. He noted the NCSC will make some empirical assessments and provide information on the problems and the scope of the issues which would add to the best practices analysis. Judge Davis encouraged the Committee to look at others who have done it well and find out scope of the problems and solutions that are cost effective.

Judge Kearney stated the most critical area to concentrate on is a mechanism for determining how many cases really require significant oversight. She noted a fee schedule would not be very useful because of the differences in fees that are customary in our various communities. She added there are huge pluses and minuses to a public defender type of model. Mike Hellon concurred stating common triggers will evolve which will produce a high likelihood of a case requiring additional monitoring.

The consensus was the Committee should obtain input from many sources/stakeholders before taking action, identify a better way to provide services in a cost-effective manner, and find alternatives that will control the amount of legal fees (attorneys and fiduciaries) taken out of estates. Mr. Weisz cautioned, with regards to changes to law and rules, the Committee needs to look at the extreme ramifications it could cause any party.

Recommendation 1: The supreme court should advocate for the legislature to expand the statutory "standby" guardianship provisions in the probate code.

- Discussion: Concern was expressed with the reference to "any party interested" on pages 18-19 being an overly broad reference.

Recommendation 2: *The supreme court should advocate for the legislature to include a statutory provision in the probate code that exclusively applies to incapacitated minors approaching adulthood.*

- Discussion: Judge Timmer asked that Recommendations 1 and 2 be considered together. A motion was made to adopt Recommendations 1 and 2 and include in our legislative package. Judge Davis asked that the Council approve the recommendations with the understanding there could be further supplementation and that it doesn't prohibit the Committee from making further refinements as new ideas and better ways of doing things come forward.

MOTION: To adopt Recommendations 1 and 2 and include in our legislative package. Motion was seconded and passed. AJC 2010-23.

Recommendation 3: *The Committee recommends the supreme court add a rule to the Probate rules that requires funded, ongoing, unannounced post-appointment visitation of wards and protected persons. Until promulgation of the rule, the supreme court should issue an administrative order immediately requiring such visitation.*

- Discussion: Mr. Byers noted the need to key in on types of cases where a visit is necessary. He suggested there is a need to look at other alternatives, i.e., Broward County, Florida. A motion was made to do further study in development and consideration of funding options.

MOTION: To ask the Committee to do further study on Recommendation 3 in development and consideration of funding options. Motion was seconded and passed. AJC 2010-24.

Recommendation 4: *The supreme court should add a Probate Rule directing the superior court to create and conduct a funded program for random audits of conservatorship accountings to validate the accuracy of annual or biennial accountings currently required in all adult conservatorship matters. Until promulgation of the rule, the supreme court should issue an administrative order immediately requiring such audits.*

- Discussion: A motion was made to do further study in development and consideration of funding options. Chief Justice Berch added that the recommendation be brought back to the Council for reconsideration at their December meeting.

MOTION: To ask the Committee to do further study on Recommendation 4 in development and consideration of funding options. Motion was seconded and passed. AJC 2010-25.

Recommendation 5: *The Committee recommends exploration of funding sources for conducting periodic visitations, reporting, training, and random audits.*

- Discussion: A motion was made to explore further funding for all of the proposals.
- **MOTION: To ask the Committee to explore further funding for all of the proposals in Recommendation 5.** Motion was seconded and passed. AJC 2010-26.

Recommendation 6: *The supreme court should develop statewide uniform training requirements for major participants in guardianship and conservatorship cases . . .*

- Discussion: A motion was made to approve in concept and refer to the Committee on Judicial Education and Training (COJET) for further discussion and the development of a proposed program.

MOTION: To approve Recommendation 6 in concept and refer to the Committee on Judicial Education and Training (COJET) for further discussion and the development of a proposed program. Motion was seconded and passed. AJC 2010-27.

Recommendation 7: *The supreme court should give priority to the development of automated case management systems that will substantially improve probate case monitoring and oversight by an efficient and cost-effective means.*

- Discussion: A motion was made to consider Recommendation 7 and 8 together and refer to the Commission on Technology (COT) for determination of priorities and simultaneously create a subcommittee to determine triggers. It was suggested the subcommittee should include people with expertise in the probate area. Judge Davis added it would be wise to develop paper forms (pre-computerization) and explore Supreme Court Rules for a pilot project to work out issues before automating. Mr. Byers asked for an amendment to the motion to ask the Chief Justice to appoint Judge Robert Carter Olson to the subcommittee. The amendment was accepted. Chief Justice Berch noted IT staff would not be used to determine the triggers, but would put together a comprehensive statewide task force in conjunction with the existing Committee, with particular emphasis on the prioritization of phasing in TurboCourt probate matters. Mr. Jeanes stated the need to be specific with details when working with IT and have a clear plan and clear triggers first.

Recommendation 8: *The supreme court should develop uniform, interactive and dynamic electronic probate forms through AZTurboCourt or another online website that will allow documents to be electronically generated and filed. The court should prioritize phasing in AZTurboCourt for probate matters.*

- Discussion: Judge Davis suggested starting with a manual process first that can be automated. He stated the need for forms that order approval of expenditures of limited amounts of money on the front end within the same categories that occur on the back end that can be easily compared. Judge Brutinel encouraged the Committee to work with the COT regarding automation priorities.
- A motion was made to refer Recommendations 7 and 8 to the COT for determination of priorities in the development of automated case management systems that will substantially improve probate case monitoring and oversight by an efficient and cost-effective means and to simultaneously ask the COT to form a committee to work on the development of uniform, interactive and dynamic electronic probate forms in conjunction with people who have experience in this area, i.e., Judge Robert Carter-Olson.

MOTION: To refer Recommendations 7 and 8 to the Commission on Technology (COT) for determination of priorities in the development of

automated case management systems that will substantially improve probate case monitoring and oversight by an efficient and cost-effective means and to simultaneously ask the COT to form a committee to work on the development of uniform, interactive and dynamic electronic probate forms in conjunction with people who have experience in this area, i.e., Judge Robert Carter-Olson. Motion was seconded and passed. AJC 2010-28.

Recommendation 9: The supreme court should adopt statewide fee guidelines for attorneys and fiduciaries paid from an estate.

- Discussion: No action needed. The Committee will put together timelines and come back to the Council.

Recommendation 10: The supreme court should add a Probate Rule or advocate for the legislature to include a statutory provision in the probate code that requires attorneys, fiduciaries, and others seeking fees from an estate in guardianship or conservatorship cases to do so within a specific time frame or be barred from doing so, absent good cause.

- Discussion: A motion was made to continue moving forward with developing time limits. Chief Justice Berch stated she preferred to have this covered in rules rather than statute. A motion was made to recommend the Committee move forward with developing Recommendation 10 and come back to the Council with a recommendation in December. Mr. Byers noted the Committee should look at what is already being done in our current system in terms of rules in vendor contracts.

MOTION: To recommend the Committee move forward with developing Recommendation 10 and come back to the Council with a recommendation in December. Motion was seconded and passed. AJC 2010-29.

Recommendation 11: The supreme court should advocate for the legislature to adopt a fee-shifting statute specifically applicable to probate matters. The court should also promulgate a corresponding Probate Rule.

- Discussion: Judge Davis offered suggestions for the Committee's consideration: include more language about ability to withhold payment of fees from the estate, as opposed to reimbursement or payment once the fees are expended; rewrite the language in subsection C to ensure abusive conduct can be punished; require notice up front to the parties (costs on an estimated basis for a private fiduciary, i.e., how much for care, legal services, etc.), and give the judge the chance to limit those fees on the front end -- no more than a certain amount of dollars should be expended in several key categories; ensure orders dovetail into accountings to ensure numbers and categories easily match up; and look further at restricted accounts -- if the court approves an annual budget, they should move from a restricted account to an unrestricted account, based upon the needs for the year.
- Mr. Byers noted it would be useful to receive any guidance and thoughts in the fee area at the March 2011 Council meeting to allow staff to weigh in if the Legislature takes action. Chief Justice Berch asked that the Committee consider some rules that deal with some of the vexatious behavior in terms of sanctions that don't

necessarily involve payment of attorney's fees. Judge Timmer stated the Committee will provide a cafeteria plan of some options to the Council.

MOTION: To recommend the Committee defer consideration of Recommendation 11 and come back to the Council with a recommendation at a later date. Motion was seconded and passed. AJC 2010-30.

Recommendation 12: The supreme court should advocate for the legislature to adopt a statute mandating arbitration for disputes concerning the reasonableness of fees of fiduciaries and all attorneys paid from the estate. Need to look very hard at rules of early intervention, limited hearings, resolution management conferences – quick hearings and reduce the scope and the time of hearings being held and subsequently reduce the fees.

- Discussion: Mr. Byers asked why the Committee is recommending the fee dispute be sent to another party who has not been involved. Why doesn't the judge resolve the fee dispute since they are the arbitrator? What was the Committee thinking? Judge Davis expressed concern with mandatory fee arbitration in situations with a hotly contested probate case. He stated, at the end, attorneys are locked in difficult litigation and it only moves into a fee arbitration which adds expense to the estate.

MOTION: To recommend the Committee defer consideration of Recommendation 12 and come back to the Council with a recommendation at a later date. Motion was seconded and passed. AJC 2010-31.

AzTurboCourt and eFiling Update

Ms. Janet Scheiderer, Director of the Court Services Division of the AOC, provided and update on the status of AzTurboCourt and eFiling. Ms. Scheiderer noted this is a multi-faceted project to bring statewide eFiling to state-level courts. She stated the AZTurboCourt application is now available for use statewide for those firms filing civil subsequent matters in Maricopa County Superior Court. Ms. Scheiderer reported work is underway to allow for eFiling of civil initiating documents initially in Pima County Superior Court and then statewide by May 2011 and simultaneously, programming is underway to develop eFiling capabilities in dissolution cases. She added AZTurboCourt will also be available for use in the Court of Appeals and the Supreme Court. Ms. Scheiderer noted pilot projects took place with three law firms in Maricopa County, and staff have provided training for law firms and the State Bar and will provide ongoing training to approximately 1200 law firms.

Child Support Guidelines Review

Judge Bruce R. Cohen, Chairperson of the Guidelines Review Committee (GRC) reported on the current status of the guidelines, to include all public comments and issues identified since the last Council meeting. Judge Cohen thanked the members of the committee for their hard work, stating it has been a privilege to serve with them.

The Chair called for public comment, limiting each speaker to two minutes. The following members of the public addressed the Council.

Mr. Clinton Thomas stated he was recently made aware of COBS, it will negatively affect more people than the Committee acknowledges, and it is alimony in disguise.

Mr. David Alger stated COBS will deeply affect mothers and fathers, has not been tested or vetted, and is not ready to be brought forward. Mr. Alger added that COBS will result in an increased workload on our court system.

Dr. Vicki Murray noted she is a researcher by profession and expressed concern with the analysis, the lack of empirical evidence, and lack of peer review and assumptions. Dr. Murray stated additional clarification and analysis is needed to determine the affect this will have on families, especially the children.

Mr. Lee Lafolette stated the current system works and is effective, and he does not believe the COBS system is a good substitute. Mr. Lafolette stated many people's lives have been set on the payments they are currently making, and this system will change people lives dramatically.

Mr. Victor Martinez stated COBS will create more problems and will be another tool to drive children from their parents.

Mr. Robert Kim stated COBS is complicated, lacks details, and makes assumptions with no data to back it up.

Mr. Jarrett Williams stated he is concerned that COBS constitutes a substantial change to Arizona family law, and the GRC should not have the ability to suggest such a change. Mr. Williams stated that change should only come after voters have a chance to look at the proposal or legislators debate it on the House and Senate floor. He asked that COBS be stopped until people's voice have been heard in this matter and input received.

Mr. Jeff Deiley stated he has spent hundreds of hours analyzing COBS and Income Shares, and the methodology does not make sense. He noted the COBS calculation is based upon a household standard of living, and a household considers every member of the household and the income. In COBS, the only income considered is the natural parents, and the only count of adults is the natural parent (one person). He noted a true household standard of living calculation would be two adults, full incomes, and household numbers would be correct. He stated COBS is mathematically flawed and does not work.

Mr. Robert Nolan stated COBS will benefit him, but would not be fair to others. He added that it will make it harder on parents trying to do what's best for their children.

Mr. Timothy Frank expressed his thanks to the AJC for recognizing that public participation is important and necessary.

Mr. Richard Franco stated COBS will affect a very small minority and those income disparity issues could be addressed on their own.

Mr. David Hamu noted only system stakeholders were included in this process, not moms and dads affected by this, and this is not acceptable. Mr. Hamu stated the completion of an independent review is absolutely vital.

Ms. Karen Duckworth addressed the Council. She stated not enough is being done to involve people in child support issues. She asked that the process be stopped and resumed with transparency, diversity of stakeholders, and public input and awareness. She stated COBS is fundamentally flawed and will affect thousands of people.

Mr. George Duckworth stated that based on the data he has reviewed, there is no sufficient supporting data or experience to adopt COBS as it stands at this time without further review, discussion, and public input.

Mr. Kevin Wasson noted COBS wrongly interprets ARS 25-320 because the legislative intent and plain English interpretation clearly denotes a child's standard of living is different and separate from that of the household. Mr. Wasson stated child support is for the care of the children, not the benefit of the parent or others within that parent's household. He suggested placing a wage assignment against both parents. The clearinghouse can then take both parent's child support contribution, issue an EBT card, and put some restrictions on what it can be used for, which provides an accounting of where and how the child support monies are spent.

Mr. Brent Miller stated the GRC excluded the public from having a voting input on COBS, which is a new and complex model that has never been independently tested.

Mr. Damian White stated there is no proof that COBS is the sufficient model, and it clearly redistributes income and has received zero public input.

Mr. Ed Stokes stated COBS is not the answer, and once implemented, lawyers will notify clients there is a problem and they can receive more money.

Mr. Frederick Larsen noted the proposed changes will have a profound financial and psychological impact on his family. He stated his support payment would go from \$1,700 to more than \$4,000. He added that COBS is nothing but a redistribution of money between divorced parents, which should be handled as spousal maintenance not under the guise of child support.

Ms. Chrystal Stapley spoke on behalf of her daughter and the affect COBS will have on her standard of living. Ms. Stapley noted she is currently a stay at home mom that will now be forced to go back to work to pay for the increase as a result of COBS. She questioned why her daughter should have to make the standard of living of an adult equal when that adult has the ability and go out and work for themselves. She added that COBS creates financial incentives for the disintegration of families.

Ms. Sheila Clemons stated COBS is potentially harmful to Arizona citizens.

Mr. Bray Pike stated COBS will increase his child support by \$5,000 a month. Mr. Bray noted his children are well provided for and questioned where the extra money will go. He suggested a cap on increases with COBS.

Ms. Susan Edwards stated she is supportive of making lives better and fairer for the children in Arizona. Ms. Edwards noted she has seen the other side where children live in poverty with one parent while the other parent vacations in Europe. She added change is difficult and hard, but children should not get the short end of the stick. Ms. Edwards stated COBS is a positive step, but needs to be fine tuned.

Mr. Byers noted the State Bar is split and cannot take a position on COBS. He added the Presiding Judges were asked to check with their respective benches, and the feedback from judges and commissioners is that the COBS model is too complicated to explain to citizens and would not result in less controversy and disagreement between the parties or fairer results. Judge Kearney reported the Pima County Bench is split.

Mr. Weisz expressed concern with timing and asked if the effective date could be after the legislative session (June/July), so we don't bring something into affect and then the Legislature takes action to possibly change it.

Judge Cohen addressed the Council. He stated the process involved significant public input, specifically over the past six months. Judge Cohen shared some of the flaws associated with the current income shares model and the process leading up to the development of the underlying theory for COBS. He stated the Legislature directed the GRC to review and update the Income Shares model and make recommendations about an alternative approach in an effort to deal with the income disparity issue. Judge Cohen noted COBS is not more complicated than many systems, including Income Shares. He stated COBS easily computes and is the most-user friendly system this state has ever had.

Judge Cohen reported the GRC recommends the Council adopt the guidelines in their most recent form as presented in the materials. He noted there are two minority reports which state the COBS system is too high on the high-end cases, too complicated, and the calculation itself is too complicated. Judge Cohen presented his own minority report with a recommendation to approve COBS with a one-year delay and refer the guidelines in their current form to the Legislature's Child Support Committee (CSC) and establish an advisory group, without his participation, consisting of members of the current GRC who understand the complexity and model on which COBS is based to work with the Child Support Committee as they look at this model and see if makes sense and provide an additional resource. Judge Cohen stated the CSC's charge will be to consider COBS, Income Shares, and any other model that is out there.

Judge Cohen noted if the Council does not vote in favor of COBS today, this system will be forgotten, as no one is complaining about the current model, and the Legislature has a full plate. He stated that COBS is the right system, but needs some tweaks to include the following: 1) include a cap in some of the higher income cases, i.e., \$15,000 month except under exceptional circumstances; and 2) apply an algorithm when it hits a certain point to start to curve the line so it doesn't continue with a straight line increase.

Judge Timmer suggested we send it back to the CSC with Judge Cohen's suggestions and bring it back to the Council in June.

Judge Davis stated there is no opposition or concerns from the Superior Court bench in Maricopa County that he is aware of. He suggested we adopt COBS up to a certain income level, where the results are similar between the current model and COBS (test it), and above a certain income level, and replace with a direct reference to 25-320 that talks about everything above that level be determined by a deviation.

Judge Riojas noted his agreement with Judge Cohen to proceed with forcing the issue and adopting this recommendation.

Dave Byers reported the Chair and he met with Legislative leaders who stepped up and agreed to take a look at the policy issues around child support and reconstitute the CSC. Mr. Byers stated we should not adopt COBS at this time. He made a motion for the Council to recommend to the Supreme Court that they make adjustments to the current model for inflation effective in March and refer the COBS model and the broader issue of whether Arizona should look at a different way of doing child support, recognizing some of the flaws in the current model that have been pointed out, to the Legislature. He added that the Legislature could look at COBS and any other system they wish. Mr. Byers also suggested the creation of an advisory group, as recommended by Judge Cohen, to provide expertise to the CSC. In addition, he asked that this issue be placed back on the Council's agenda in October 2011 to allow the Council to recommend to the Court further action on any adjustments to the system based on any guidance provided by the Legislature through the CSC, if applicable, or through proposed legislation. Mr. Byers added the Legislature needs a chance to check in on this issue, and if the Council approves it today, and the Legislature does not agree, the Legislature will need to undo what the Supreme Court has approved.

Judge Kearny asked if the motion assumes an independent review of COBS. Mr. Byers stated the CSC could commission something or we could work with them.

Judge Davis suggested an amendment to add a sentence to the income shares updated guidelines in the deviation section that indicates in cases with significant disparity of income between the custodial and non-custodial parent, a deviation may be appropriate. Mr. Byers accepted the amendment.

MOTION: To recommend to the Supreme Court that they make inflationary adjustments to the current Income Shares model effective March 2011; refer the COBS model to Legislature's Child Support Committee (CSC) to determine if Arizona should look at a different way of doing child support, recognizing some of the flaws in the current model that have been pointed out, and looking at any other systems they wish; create an advisory group as recommended by Judge Cohen to provide expertise to the CSC; place the issue back on the Council's agenda in October 2011 with the idea that if in fact the Legislature does provide guidance to the Council through the CSC or legislation, or if they don't act, that the Council would be in a position to recommend to

the Court further action on any adjustments to the system; and that a sentence be added to the income shares updated guidelines in the deviation section that indicates in cases with significant disparity of income between the custodial and non-custodial parent, a deviation may be appropriate. Motion was seconded and passed (3 opposed). AJC 2010-32.

The Chair thanked the Committee members and Judge Cohen for their service.

Arizona Code of Judicial Administration

Mr. David Withey, Chief Legal Counsel for the AOC, presented the following code section for the Council's consideration: ACJA 1-401: Minimum Accounting Standards.

Mr. Michael Jeanes provided comment on Page 17, Section K. 3.c. He noted some county treasurer offices are only open 4 days a week, and the language states "The court shall ensure all cash, checks, and money orders are deposited to the local treasurer or bank by the next business day." Mr. Jeanes recommended language be added to read: "the next business day the local treasurer and the court are open." A motion was made to approve ACJA 1-401 as presented with the amendment suggested by Mr. Jeanes.

MOTION: To approve ACJA 1-401: Minimum Accounting Standards as presented with the amendment to include the language "the next business day the local treasurer and the court are open" to Section K. 3. c. Motion was seconded and passed. AJC 2010-33.

Mr. Withey presented ACJA 7-205: Defensive Driving.

Ms. Nancy Swetnam, Director of the Certification and Licensing Division for the AOC provided information on the fee increases being proposed. She noted, to her knowledge, fees have not been increased in the past 20 years. Ms. Swetnam stated there has been considerable debate and discussion by the schools, the court, and the public which resulted in a consensus for a graduated increase to fees over several years. A motion was made to approve ACJA 7-205 as presented.

MOTION: To approve ACJA 7-205: Defensive Driving as presented. Motion was seconded and passed. AJC 2010-34.

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 4:25 p.m.