

ARIZONA JUDICIAL COUNCIL
Arizona State Courts Building
1501 W. Washington Street, Suite 119
Phoenix, Arizona 85007

March 24, 2011

DRAFT Meeting Minutes

Council Members Present:

Chief Justice Rebecca White Berch
Judge Louraine Arkfeld (*retired*)
Alan Bayham
David Byers
Judge Rachel Torres Carrillo
Judge Norman Davis
Karen D. Ferrara
Athia Hardt
Mike Hellon
Judge Douglas Holt
Judge Joseph Howard
Yvonne R. Hunter

Emily Johnston
Michael Jeanes
Judge Jan Kearney
William J. Mangold, M.D., J.D.
Judge Robert Carter Olson
Janet Regner
Judge Antonio Riojas, Jr.
Judge James Soto
Judge Ann A. Scott Timmer
George Weisz
Judge David Widmaier

Council Members Absent:

Jim Bruner

Jose A. Cardenas, Esq.

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
Kitty Boots
Jennifer Greene
Karl Heckart
Janet Johnson
Kevin Kluge
Jerry Landau
Jennifer Liewer

Amy Love
Jeff Schrade
Lorraine Smith
Nancy Swetnam
Kathy Waters
Christi Weigand
Henrietta Williams
David Withey

Presenters and Guests Present:

Mary Cronch
Pete Dunn
Vice Chief Justice Andrew Hurwitz

Paul Liewer
John Phelps

Chief Justice Rebecca White Berch, Chair, called the meeting to order at 9:05 a.m., at the State Courts Building, 1501 W. Washington, Suite 119, Phoenix, Arizona. The Chair welcomed those in attendance.

Approval of Minutes

The Chair called for any omissions or corrections to the minutes from the December 7, 2010, meeting 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 December 7, 2010, meeting of the Arizona Judicial Council as presented. Motion was seconded and passed. AJC 2011-01.

Budget Update

Mr. Kevin Kluge, Chief Financial Officer for the AOC, updated the Council on the current budget status for both the state and the judiciary. Mr. Kluge noted the Judiciary has received \$54.3M in overall cuts from FY 2008 through FY 2011.

Automation Update

Mr. Karl Heckart, Director of the Information Technology Division for the AOC, updated the Council on the major technology initiatives with statewide impact to include the Arizona Court Automation Project (AZTEC); the Arizona Judicial Case Management System (AJACS), both general and limited jurisdiction; probation; and AZTurboCourt (e-filing).

Discussion took place regarding e-filing. Judge Timmer expressed concern with the need for best practices for the end user. Judge Kearney added that new automation will be a difficult transition for the “older” judges, and that she supports permitting local courts to solve problems in their own way. She asked that automation staff listen to both judges and staffs regarding their needs.

Mr. Jeanes shared the “Maricopa County” experience, where judges continue to print paper documents that are e-filed. He added this is a culture issue, and even through there are increased costs for printing documents, the cost savings overall far exceeds these additional costs.

Arizona Code of Judicial Administration

Mr. Jeff Schrade, Director of the Education Services Division for the AOC, presented the following consent code sections for the Council’s consideration: ACJA 1-108: Committee on Judicial Education and Training (COJET) and 1-302: Education and Training (amendment).

Mr. Schrade presented a handout listing proposed changes to both code sections that had been discussed at the recent meeting of Superior Court Presiding Judges.

Judge Timmer and Judge Arkfeld suggested that in ACJA 1-302, page 8, paragraph 3, the word “prior approval” be changed to read “approval.” Judge Arkfeld explained that many judges will attend the National Association for Court Management (NACM) or the National Center for State Courts (NCSC) sessions that will be approved for COJET training, but judges may not always ask for prior approval before attending the class. It was suggested that employees should be expected to check with their local training coordinators before attending sessions to ensure they are COJET approved.

Discussed ensued regarding the proposed amendments to ACJA 1-108 listed in the handout which included a definition in the code for the words urban and rural. The Chair stated the consensus was to eliminate the definition for both words to avoid any challenges. The Chair explained the reason behind not adding additional law school positions to COJET, noting it would result in more representation from that group than our limited jurisdiction court members.

A motion was made and seconded to approve ACJA 1-108 with the addition of the amendments as presented in the handout.

MOTION: To approve ACJA 1-108: Committee on Judicial Education and Training as presented with the addition of the amendments as presented in the handout.” Motion was seconded and passed. AJC 2011-02.

A motion was made and seconded to approve ACJA 1-302 with the addition of the amendments listed in the handout which included restoring part of the definition of “County training coordinator,” restoring the definitions of “Hearing officer, paid” and Hearing officer, volunteer” and deleting the term of “hearing officer from the definition of “Judge, and minor clean-up and technical corrections, as well as the suggestion from Judge Arkfeld to remove the word “prior” on page 8, paragraph 3.

MOTION: To approve ACJA 1-302: Education and Training with the addition of the amendments as presented in the handout and the removal of the word “prior” on page 8, paragraph 3. Motion was seconded and passed. AJC 2011-03.

Committee on Improving Judicial Oversight and Processing of Probate Cases

Judge Ann A. Scott Timmer, Committee Chair and Chief Judge of the Court of Appeals, Division One, presented an update on the work of the Committee and asked for the Council’s vote on the proposed amendments to SB 1499, as drafted and supported by the Committee, and approval for SB 1081: Standby guardianships and minors approaching adulthood. She explained that SB 1081 has passed the Senate and is currently moving through the House. A motion was made to approve SB 1081 as presented.

MOTION: To support SB 1081 as presented. Motion was seconded and passed. AJC 2011-04.

Discussion took place regarding the competing bills SB 1499 and HB 2424. Mr. Weisz expressed concern with public fiduciaries being exempted from the legislation. Judge Timmer explained that a judge can request a budget from a public fiduciary.

The Chair asked for direction from the Council on which bill to support. Mr. Byers explained that although SB 1499 and HB 2424 are similar, HB 2424 does not go as far as the Judiciary would like.

A motion was made and seconded to approve the concept for SB 1499 and HB 2424 and allow court staff and Judge Timmer to continue work both bills and make the best judgment following the principles and basic concepts set forth to ensure the best legislation is passed.

MOTION: To approve the concept for SB 1499 and HB 2424 and allow court staff and Judge Timmer to work both bills and make the best judgment following the principles and basic concepts set forth to ensure the best legislation is passed. Motion was seconded and passed (one abstention). AJC 2011-05.

It was noted that some changes can be accomplished by court rule, with the exception of fee shifting.

The Chair reported that mandatory probate training will be offered at the June Judicial Conference, and that all judicial officers currently handling probate cases will be required to attend. She stated the Presiding Judges have been notified, and a memo will be sent out soon.

Judge Timmer noted the Committee has ongoing work to do regarding fee guidelines, court rules, visitation program, audit, smart forms, training, education, and funding sources.

Ms. Hunter encouraged Judge Timmer and the Committee to coordinate with the Office of Veteran's Administration for training and outreach to our veterans.

Judicial Branch Legislative Update

Mr. David K. Byers, Director of the AOC and Council member, announced that legislative staff was currently at the Legislature testifying, and that he would provide the legislative update in their place.

Mr. Byers provided an update on the Council's legislative package to include HB 2352: court commissioners; qualifications, HB 2353: Sentencing; dangerous offenders; probation; HB 2354: Grand jury proceedings; electronic recording; HB 2355: Court

surcharges; SB 1023: Enforcement of pretrial release conditions; SB 1054: Waiver, intensive probation standards; SB 1081: Minors; protective proceedings; and SB 1130: Unlawful sexual conduct; probation employees. He noted the only Council bill not moving forward is HB 2354.

A motion was made and seconded to support HB 2355: Court surcharges as presented.

MOTION: To support HB 2355: Court surcharges as presented. Motion was seconded and passed. AJC 2011-06.

Mr. Byers reported on SB 1023: Enforcement of pretrial release conditions; SB 1054: Waiver, intensive probation standards; SB 1081: Minors; protective proceedings; and SB 1130: Unlawful sexual conduct; probation employees.

Discussion ensued regarding SB 1472: Publicity pamphlets; judicial performance; comment. Concern was raised with people being able to file a statement against a judge for a fee on the Secretary of State's website. Ms. Hunter stated there is a hidden problem in terms of potential liability if a comment such as "a judge is in the pocket of APS" is posted. She suggested the business community might become our ally in dealing with this issue. Mr. Weisz commented that judges should not be treated any differently than others running for office. It was suggested there may be a better avenue to get information about judges out to the public, i.e., links to websites, without spending the amount of money it would cost to enact this legislation.

A motion was made and seconded to oppose SB 1472 as presented.

MOTION: To oppose SB 1472: Publicity pamphlets; judicial performance; comment as presented. Motion was seconded and passed. AJC 2011-07.

Mr. Byers presented SB 1482: Appellate judges; judicial performance reviews. It was noted there is no objection to the first 2 bullets, but for the 3rd bullet Mr. Hellon stated it becomes a matter of cost, and there are ways to publicize this information more efficiently. It was also noted this information is already on the COA websites and can be linked to Judicial Performance Review (JPR). Judge Timmer stated the cases for Division One are not segregated by authoring judge.

Ms. Hunter suggested the need for a study committee for Senate and House leadership or a legislative leadership conference to educate new legislators on the judicial process.

Mr. Hellon stated we should bend over backwards to be accommodating if what they are asking is doable and not harmful, especially in this political climate. Mr. Hellon moved to support SB 1482.

Mr. Byers confirmed the requested information would be day forward not retrospective.

The motion to support SB 1482 was seconded.

MOTION: To support SB 1482: Appellate judges; judicial performance reviews as presented. Motion was seconded and passed. AJC 2011-08.

Mr. Byers and Mr. Peter G. Dunn, Lobbyist for the Arizona Judges Association (AJA), presented merit-related legislation to include SCR 1001: Technical correction; state school fund and explained each of the provisions with impact to the Judiciary to include the number of qualified applicants sent to the Governor would change to 8 or those with the majority vote, whichever is greater; extending judges' terms to 8 years; eliminating the State Bar of Arizona from attorney vacancy nominations; joint House/Senate information hearing to hear recommendations from the Judicial Nominating Commission (JNC); and all opinions and orders from the courts have to be published.

Mr. Byers and Mr. Dunn asked for the Council's direction on whether to support this "watered-down" version of merit selection or risk waiting another year and having something go to the ballot to eliminate it all together. Extensive discussion took place regarding the proposed legislation to include the number of names sent to the Governor, the need for better marketing from the Judiciary on the nominating process to the public, and the question of whether the Judiciary should fight this or not. Mr. Alan Bayham, State Bar President, expressed the need for the State Bar or someone to vet the attorneys going forward, otherwise it becomes a political process.

Mr. Dunn stated he needs consensus from the State Bar, the Judiciary, and the AJA. He pointed out if the Council agrees to support the bill, they won't be able to oppose it at the polls. The Chair added we need to find a compromise that is comfortable for the State Bar. Mr. Weisz noted that the Council agreeing to remain neutral would really mean they are not opposed.

Mr. Byers pointed out the difficult road ahead in fighting this at the polls in terms of raising money. Ms. Hunter added that 2012 is a presidential election year, and it will be expensive to buy media time. Judge Olson stated he is not convinced we can stop this at the ballot box, given the current political climate.

A motion was made and seconded to authorize staff to negotiate the best solution possible that protects merit selection.

MOTION: To authorize staff to negotiate the best solution possible that protects merit selection. Motion was seconded and passed. AJC 2011-09.

Mr. Byers and Mr. Dunn provided an update on pension legislation and pointed out the proposed changes for new members versus active members, as well as the proposal to move new commissioners into the Arizona State Retirement System (ASRS) instead of the Elected Officials Retirement Plan (EORP).

A motion was made and seconded to oppose the provision of recently-elected officials.

MOTION: To oppose the provision of recently-elected officials in SB 1609: retirement systems; plans; plan design as presented. Motion was seconded and passed. AJC 2011-10.

A motion was made and seconded to continue to oppose moving existing commissioners out of EORP.

MOTION: To continue to oppose the provision moving existing commissioners out of EORP. Motion was seconded and passed. AJC 2011-11.

A motion was made and seconded to broker the best deal possible regarding contribution rates.

MOTION: To broker the best deal possible regarding contribution rates. Motion was seconded and passed. AJC 2011-12.

Judge Davis went on record to oppose the legislation moving future commissioners into ASRS. A motion was seconded and approved.

MOTION: To oppose the legislation moving future commissioners into ASRS. Motion was seconded and passed. AJC 2011-13. (2 opposed).

Judge Olson noted that, in terms of future commissioners, that is a policy decision that belongs to the Legislature.

Mr. Byers presented SCR 1047: Judicial conduct; open records; proceedings. A motion was made and seconded to oppose this bill.

MOTION: To oppose SCR 1047: Judicial conduct; open records; proceedings as presented. Motion was seconded and passed. AJC 2011-14.

The Chair, prior to her departure for a business trip, presented a certificate of appreciation to Judge Jan Kearney for her participation over the past 4 years on the Council.

Mr. Byers presented SB 1192: Child support model; review; report and noted the legislation provides that the Supreme Court shall not adopt the child outcome based support model (COBS) unless the Court selects a nationally-recognized, independent research organization to review COBS.

Mr. Byers presented information on HB 2645: Forfeited weapons; disposition and SB 1201: Firearms omnibus. He asked for the Council's position on SB 1201. A motion was made and seconded to oppose the bill unless it contains an exemption for the courts.

MOTION: To oppose SB 1201: Firearms omnibus unless it contains an exemption for the courts. Motion was seconded and passed (one opposed). AJC 2011-15.

Ms. Amy Love, Legislative Liaison for the AOC, returned from the Legislature and reported that HB 1499 had passed out of House Judiciary and that further discussion would take place to blend SB 1499 and HB 2424 together. She noted that both bills continue to move forward.

Fine Reduction Program and FARE Update

Ms. Christi Weigand, Consolidated Collections Unit Manager for the Court Services Division of the AOC, provided information on the Fines, Fees and Restitution Enforcement Program (FARE) and data on collections to date. Ms. Weigand presented information on the Fine Reduction Program that was piloted in Flagstaff. Ms. Weigand noted the results of the pilot program were that a small percentage of cases closed and paid, the cost of the program exceeds the benefit, and there were reduced amounts collected versus 100%. She added that additional enforcement efforts will include adding additional cases to FARE, skip-tracing with a focus on older backlog cases, and a Federal Tax Intercept Program.

Mr. Weisz asked how AOC staffs monitor complaints against vendors who contact people owing fines by phone to ask for payment. He noted he does not have any delinquent fines, but has been harassed by phone vendors. He stated the need for vendor accountability.

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 1:55 p.m.