

ARIZONA JUDICIAL COUNCIL
Judicial Education Center
541 East Van Buren
Phoenix, AZ 85004

D R A F T

Minutes of the
October 12, 2006, Meeting

Council Members Present:

Chief Justice Ruth V. McGregor
Judge James Angiulo
Jim Bruner
David Byers
Judge B. Robert Dorfman
Susan Edwards
Beverly Frame
Judge John Gemmill
Christine C. Iijima Hall, PhD.
Chris Herstam
Judge Douglas Holt

Emily Johnston
Judge John S. Leonardo
Miguel Montiel
Judge Barbara Mundell
Jones Osborn
Judge John Pelander
Jose de J. Rivera, Esq.
Deborah Schaefer
Jim Smith, Esq.
Judge David Widmaier

Council Members Absent:

Judge Robert Brutinel
William J. Mangold, M.D., J.D.

Judge James Soto
Judge R. Michael Traynor

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
Kitty Boots
Eric Carlson
Linda Grau
Jennifer Greene
Nicole Hinson
Kevin Kluge
Jerry Landau
Jeanie Lynch
Lu McLendon
Carmen Orduno

Nina Preston
J.R. Rittenhouse
Janet Scheiderer
Patrick Scott
Lorraine Smith
Nancy Swetnam
Paula Taylor
Kathy Waters
David Withey
Konnie Young

Guests Present:

Barbara Broderick
Alvaro Flores
John MacDonald
Barbara Nathan

Kevin S. Ruegg, Ph.D.
Teresa Schmid
Jeffrey Schrade

Chief Justice Ruth V. McGregor, Chair, called the meeting to order at 9:30 a.m., at the Judicial Education Center, 541 E. Van Buren, Phoenix, Arizona. The Chair welcomed those in attendance and introductions were made around the room. The Chair welcomed a new member to the Council: The Honorable John Gemmill, Chief Judge of the Court of Appeals, Division One. The Chair announced that the DUI Summit, sponsored by the Council, would be held on Monday, December 4 at the Black Canyon Conference Center in Phoenix. The Chair also announced that Council member Susan Edwards was notified by Morgan Stanley Community Affairs that she is one of the top ten volunteers in the Corporation for the second year.

Approval of Minutes

The Chair called for any corrections or additions to the minutes from the March 9, 2006, meeting of the Arizona Judicial Council. The following corrections were suggested: the addition of Judge Weisberg's name to the "Council Members Present" listing and removal of the title "Judge" from Peter Collins name on Page 9.

MOTION: To approve the minutes from the June 19, 2006, meeting of the Arizona Judicial Council, with the addition of Judge Weisberg's name to the "Council Members Present" listing and removal of the title "Judge" from Peter Collins name on Page 9. Motion was seconded and passed. AJC 2006-48.

Approval of 2007 Meeting Dates

The Chair called for any changes to the proposed meeting dates for 2007: Thursday, March 8; Monday, June 18; Wednesday, October 17; and Thursday, December 6; there were none. A motion was made to approve the proposed meeting dates as presented:

MOTION: To approve the proposed meeting dates for the year 2007 as presented. Motion was seconded and passed. AJC 2006-49.

Judicial Performance Review (JPR) Website Demo

Mr. Eric Carlson, Director of the Administrative Services Division for the Administrative Office of the Courts (AOC), briefed the Council members on the new JPR website and walked them through the actual website pages. The Chair asked that members encourage others to go to the website (www.azjudges.info) and use the information it provides.

Seniors' Initiative

Ms. Nancy Swetnam, Director of the Certification and Licensing Division for the AOC, provided background information on the "Law for Seniors" website and brochure.

Dr. Kevin S. Ruegg, Executive Director for the Arizona Foundation for Legal Services and Education, presented recognition plaques to Dave Byers, Nancy Swetnam, and Kitty Boots for their tireless efforts on this project.

Ms. Swetnam noted that there would be a press conference in Youngtown on Friday, October 13, and brochures would be distributed to all courts in the state, Area Agencies on Aging, and drug stores.

Ms. Swetnam also provided a brief update on the other projects involved in the Seniors' Initiative, including the training that will be provided to court leadership at the December 2006 Judicial Leadership Conference and the training scheduled for the June 2007 Judicial Conference. Ms. Swetnam reported that the Probate Rules Committee, chaired by Vice Chief Justice Berch, will hold its first statewide meeting next week in an effort to develop standard probate rules for the state. Ms. Swetnam noted that an interim report will be presented to the Council in June 2007 and a final report in October 2007, along with proposed rules for consideration.

Ms. Barbara Nathan asked that if anyone is authoring articles relating to seniors, to please include the Law for Seniors Website in their articles.

Court Leadership Conference

Ms. Marna Murray, Director of the Education Services Division for the AOC, briefed the Council on the upcoming Court Leadership Conference, providing information on the past conference, survey results, and upcoming speakers and sessions. Council members were encouraged to attend this event, which will take place on December 5-6, with a dinner for the Council the evening of December 6 and the Council meeting on December 7, all taking place at the Sedona Hilton. Council members requiring additional information should work with Lorraine Smith.

Correctional Officers Retirement System (CORP)

Mr. Rob Lubitz, Director of the Juvenile Justice Services Division for the AOC, briefed the Council on the CORP program, providing background information and an explanation of the resulting legislation to move our probation, surveillance and detention officers from the Arizona State Retirement System into CORP (2,800 people). Mr. Byers noted that the Council member Jim Bruner would serve as Chair of the initial Board, Kevin Kluge as Chief Financial Officer, and Phil Hanley, as the HR Board member. Mr. Lubitz reported that we are waiting for the actuarial study/figures to be submitted before the joinder agreement is signed, and if approved, the program will go forward in early 2007.

Concern was raised with the actuarial study and the possibility that the actuarial study would show a substantial increase in the employer contribution. Mr. Byers noted that if that were the case, another meeting of the Council would be called to work through that issue before going forward with the joinder agreement. Mr. Byers added that any shortfall would be paid by the employer over a 30-year period. A motion was then made to approve going forward with the CORP plan.

MOTION: To approve that the AOC move forward with the execution of a joinder agreement between AOC and CORP and the transfer of designated officers to CORP, contingent upon review of the actuarial valuation study. Motion was seconded and passed. AJC 2006-50.

Arizona Code of Judicial Administration (taken out of order)

Mr. David Withey, Chief Legal Counsel for the Arizona Supreme Court, presented the following code sections (consent) for review and adoption: § 1-603: Transcription Standards; 4-302: Limited Jurisdiction Records Retention and Disposition; 5-105: Public Defender Training Fund; 6-104: Probation Officer Certification and Training; 6-301: Juvenile Standard Probation (amendment); and 6-302: Juvenile Intensive Probation Supervision (amendment).

MOTION: To approve the following code sections from the Consent Agenda as presented: § 1-603: Transcription Standards; 4-302: Limited Jurisdiction Records Retention and Disposition; 5-105: Public Defender Training Fund; 6-104: Probation Officer Certification and Training; 6-301: Juvenile Standard Probation (amendment); and 6-302: Juvenile Intensive Probation Supervision (amendment). Motion was seconded and passed. AJC 2006-51.

Global Position System Monitoring Plan (GPS)

Ms. Kathy Waters, Director of the Adult Probation Services Division for the AOC, briefed the Council on GPS legislation (SB 1371); providing an overview of the statewide implementation plan.

Discussion ensued regarding requiring a probationer to pay a portion of the costs, liability concerns, caseload capacity, different levels of monitoring, and active versus passive monitoring.

Ms. Waters agreed to come back before the Council to provide an update at either the December or March meeting. A motion was made to approve the plan and administrative order.

MOTION: To approve the program plan and the Administrative Order authorizing the plan. Motion was seconded and passed. AJC 2006-52.

Committee on Compulsory Arbitration (taken out of order)

Mr. Mike Baumstark, Deputy Director of the AOC, briefed the Council on the final report from the Committee on Compulsory Arbitration; walking them through each of the Committee's 13 recommendations.

Judge Gemmill noted he was reluctant to raise the statutory limit on cases subject to arbitration to \$75,000, as litigants are entitled to a judge. Judge Gemmill also noted concern with the mandatory aspect of arbitration. Dr. Hall expressed concern with the need for citizen satisfaction. It was suggested that the arbitration research report be made available to the new Council members.

The Chair thanked the Committee members for their hard work. A motion was made to approve the recommendations as presented.

MOTION: To approve the recommendations of the Committee and proposed rules governing compulsory arbitration in the superior court as presented. Motion was seconded and passed. AJC 2006-53.

Emancipation Rule Petition

Eileen Bond, Esq., Chair, Emancipation Rules Committee briefed the Council on HB 2428, which was signed on April 18, 2005 and became effective on August 12, 2005, setting forth an emancipation process with requirements, factors, notice, mediation, and investigation of allegations of child abuse or neglect that comes to light in the petition. Ms. Bond explained that through the process, a minor who is at least sixteen years of age may file a petition for an emancipation order with the clerk of the court in the county where the minor resides. Ms. Bond noted a workgroup was created to review the need for procedural rules to address the emancipation process. The group met and drafted rules that were presented to, and approved by, the Committee on Juvenile Courts (COJC) during its September 22, 2006 meeting. Ms. Bond asked for the Council's support and approval of the petition.

The following grammatical corrections were suggested: Page 6, B.3. and Page 10 B. regarding the use of the word "petitioner" and the word "their" in the same sentence (singular versus plural) and use of the word "minor" and the words "he/she" (need to use one or the other). A motion was made to approve the rule petition as corrected.

MOTION: To approve the Emancipation Rule Petition as corrected. Motion was seconded and passed. AJC 2006-54.

Judicial Branch Legislative Package (taken out of order)

Mr. Jerry Landau, Director of Government Affairs for the AOC, and Ms. Leila Gholam, Legislative Officer for the AOC, presented the 2007 legislative proposals for the Council's approval. Council member were asked to vote using the following options: Include; Include with Modifications; Do Not Include; and No Action.

2007-01: Record Making

Discussion: The Chair stated that this proposal should be done by rule. It was agreed that the Board of Certified Reporter's request to increase the page rate provided to reporters for transcripts to \$3.25 per page should be a separate legislative proposal.

MOTION: Not to include 07-01 in the judicial branch legislative package. Motion was seconded and passed. AJC 2006-55. (94%)

2007-02: Social Security Numbers in Eviction Orders

Discussion: It was suggested that the proposal be amended to include the last four numbers of the social security number.

MOTION: To modify the proposal to include the last four numbers of the social security number. Motion was seconded and passed. AJC 2006-56.

MOTION: To include 07-02 in the judicial branch legislative package with the modification to include the last four numbers of the social security number. Motion was seconded and passed. AJC 2006-57. (89%)

2007-03: State Probation Funding Deficits

Discussion: Withdrawn

2007-04 FY 08 Funding for Problem-Solving Courts i.e., Drug Court, Family/Family Drug Courts, Driving Under Influence (DUI) Courts, Mental Health Courts

Discussion: Mr. Byers noted the Presiding Judges, at their meeting the previous day, felt that the proposal wasn't ready to go this year for many reasons. Barbara Broderick, Chief Probation Officer for Maricopa County, spoke on behalf of the Diane McGinnis, President of the Arizona Chief Probation Officers' Association, noting they were trying to expand existing ideas that they had regarding problem-solving courts.

MOTION: Not to include 07-04 in the judicial branch legislative package. Motion was seconded and passed. AJC 2006-58. (67%)

2007-05: Intensive Probation; Community Restitution (Diane McGinnis, President, Arizona Chief Probation Officers Association)

Discussion: Withdrawn

2007-06: Modifying A.R.S. 42-3106 to Reflect an Increase in Percentages of Monies Collected Pursuant to Section 42-3052 for Deposit in the Drug Treatment and Education Fund (DTEF).

Discussion: Withdrawn

2007-07: Funding the Implementation of Statewide Standards and Guidelines for Effective Management of Adult and Juvenile Sex Offenders on Probation in Arizona

Discussion: Withdrawn. Dave Byers noted that the guidelines were not adopted by the Arizona Judicial Council, and that the guidelines should be developed and adopted before funding is requested.

2007-08: Intensive Probation; Credit for Time Served (Diane McGinnis, President, Arizona Chief Probation Officers Association)

Discussion: Withdrawn

2007-9: Probation Absconders; Apprehension; Funding (Diane McGinnis, President, Arizona Chief Probation Officers Association)

Discussion: Mr. Byers noted that the absconders tend to remain in the communities, but we don't have the resources to get them. Chief Justice McGregor noted that this becomes a victims' issue when we don't know where the absconders are.

MOTION: To include 07-09 in the judicial branch legislative package.

Motion was seconded and passed. AJC 2006-59. (89%)

2007-10: FY 08 Funding for Probation Services for Limited Jurisdiction Courts

Discussion: Withdrawn

2007-11: Reintegration/Re-entry of Youth Offenders Pilot Program

Discussion: Withdrawn

2007-12: Criminal Code Sentencing

Discussion: Concern was raised regarding possible changes by the Legislature on substantive sentencing. Judge Dorfman cautioned that renumbering existing provisions that are required to be contained within the charging document may have a financial impact on the prosecutorial agencies. It was noted this is simply a reorganization of what has already been adopted by the Legislature.

MOTION: To include 07-12 in the judicial branch legislative package.

Motion was seconded and passed. AJC 2006-60. (94%)

2007-14: Arbitration Limit and Compensation

Discussion: It was noted these are the corresponding statutory changes related to the Committee on Arbitration's recommendations.

MOTION: To include 07-14 in the judicial branch legislative package.

Motion was seconded and passed. AJC 2006-61. (84%)

2007-15: Time Payment Fee

Discussion: None

MOTION: To include 07-15 in the judicial branch legislative package.

Motion was seconded and passed. AJC 2006-62. (89%)

2007-16: Verbatim Record

Discussion: None

MOTION: Not to include 07-16 in the judicial branch legislative package. Motion was seconded and passed. AJC 2006-63. (71%)

Arizona Rules of Protective Order Procedure (ARPOP)

The Honorable William O'Neil, Chair of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) and Domestic Violence (DV) Rules Committee, and Ms. Konnie K. Young, Committee staff, updated the Council on the ARPOP and the Project Passport Protective Order Forms. Judge O'Neil thanked Judge Finn, Judge Traynor, and Judge Armstrong for their tireless work on and for the Committee. Judge O'Neil noted that a Benchbook will be developed in the near future.

MOTION: To approve the Arizona Rules of Protective Order Procedure as presented. Motion was seconded and passed. AJC 2006-64.

Arizona Rules of Family Law Procedure (ARFLP)

The Honorable Norman Davis, Chair of the Family Law Rules Review Committee, and Ms. Konnie K. Young, Committee staff, updated the Council on the progress of the Committee (first of two petitions) and the Committee's Strategic Plan for Phase 2. Judge Davis asked that the proposed rule petition be considered on an expedited basis.

MOTION: To approve the proposed rule changes to the Arizona Rules of Family Law Procedure as presented. Motion was seconded and passed. AJC 2006-65.

Judicial Branch Legislative Package (continued)

2007-17: Appeals from Justice Courts

Discussion: Discussion ensued regarding the proposal, and it was agreed that it would be voted on in sections.

MOTION: To include the requirement that in a case where a superior court judge finds the record insufficient, the case would be remanded to the lower court rather than having a superior court judge conduct a trial de novo. Motion was seconded and did not pass (6 approved; 12 opposed). AJC 2006-66.

MOTION: Not to include the change of transcript of record to verbatim record. Motion was seconded and passed. AJC 2006-67.

MOTION: Not to include the provision to extend the time for filing a transcript (22-265). Motion was seconded and passed. AJC 2006-68.

2007-18: Sibling Information Exchange Program (Judge Patricia Escher, Pima County Superior Court)

Discussion: Judge Mundell made a motion to modify 8-134(A) to read "8. Adults who were once adjudicated to be dependent children by order of the court and their biological siblings" and run the program through the Confidential Intermediary Program instead of having a separate statute. The motion was seconded.

MOTION: To include 07-18 in the Judicial Branch Legislative Package as modified. Motion was seconded and passed. (83%). AJC 2006-69.

2007-19: Municipal Court Clerks; Marriage Licenses

Discussion: Let the Clerks carry this legislation forward.

2007-13: Jury: Commissioner Duties; Juror Selection (taken out of order)

Discussion: Staff presented an overview of the broad topics and concepts and agreed to bring this proposal back at the December meeting with more specific details. A motion was made to continue to study this problem, as needed. The motion was then amended to take racial and socio economic factors into account, to consider regional courts (drawing regionally), and to bring this proposal back in December.

MOTION: To continue to study this problem further, taking into account racial and socio economic factors, to consider the use of regional courts, and to bring back to the Council at their December meeting. Motion was seconded and passed. AJC 2006-70.

Call to the Public/Adjourn

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

The meeting adjourned at 2:10 p.m.