

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

Minutes of the
October 22, 2008, Meeting

Council Members Present:

Chief Justice Ruth V. McGregor
Jim Bruner
Judge Robert Brutinel
David Byers
Jose A. Cardenas, Esq.
Judge Rachel Torres Carrillo
Susan Edwards
Karen D. Ferrara
Beverly Frame
Athia Hardt
Mike Hellon
Judge Douglas Holt

Yvonne R. Hunter
Emily Johnston
Judge Jan Kearney
William J. Mangold, M.D., J.D.
Judge Barbara Mundell
Ed Novak
Judge John Pelander
Janet Regner
Judge Antonio Riojas, Jr.
Judge James Soto
Judge Ann A. Scott Timmer
Judge David Widmaier

Council Members Absent:

Judge B. Robert Dorfman

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
Kitty Boots
Stewart Bruner
Tracey Gardner
Linda Grau
Karl Heckart
Kevin Kluge
Jerry Landau
Nina Preston

Katy Proctor
Janet Scheiderer
Lorraine Smith
Nancy Swetnam
Kathy Waters
David Withey
Amy Wood

Guests Present:

Laurie Adams
Vice Chief Justice Rebecca White Berch
Richard Bohan
Hon. Dean Fink
Peter Frenette

Anton Janik
John MacDonald
Aaron Nash
Gary Noviello
Lisa Price

Joan Harphant
Elizabeth Hegedos-Berthold
Pamela K. Najera

Diane Sikokis
Cathy Yoshida-Corelle

Chief Justice Ruth V. McGregor, Chair, called the meeting to order at 9:30 a.m., at the Arizona State Courts Building, Suite 119, Phoenix, AZ 85007. The Chair welcomed those in attendance and introductions were made around the room. The Chair introduced the Council's newest members: Mike Hellon and Janet Regner, public members; Judge Antonio Riojas, Jr., Chair of the Limited Jurisdiction Courts Committee; Judge Ann A. Scott Timmer, Chief Judge, Courts of Appeals, Division One; and Ed Novak, State Bar President.

Approval of Minutes

The Chair called for any corrections or additions to the minutes from the June 19, 2008, meeting of the Arizona Judicial Council; there were none. The minutes were approved as written.

MOTION: To approve the minutes from the June 19, 2008, meeting of the Arizona Judicial Council, as written. Motion was seconded and passed. AJC 2008-11.

Approval of 2009 Meeting Dates

The Chair called for any changes to the proposed meeting dates for 2009: Thursday, March 19; Monday, June 15; Wednesday, October 21; and Thursday, December 3; 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 2009 as presented. Motion was seconded and passed. AJC 2008-12.

Statewide Case Management System

Mr. Karl Heckart, ITD Director/CIO for the AOC, briefed the Council members on the history of court automation projects in Arizona. Mr. Heckart reported on the Commission on Technology's (COT's) selection of a statewide case management system (CMS) for limited jurisdiction (LJ) courts. Mr. Heckart explained that a team was formed to assess available data and recommend the "best-fit" candidate CMS for LJ courts statewide. Mr. Heckart reported on the options (Tempe CMS and AmCad), the assessment process, and the results. Mr. Heckart described a hybrid system blending both options (AmCad base application, Tempe favored functionality, and large-volume court specialized processes). Mr. Heckart noted the COT recommends construction and adoption of a new, hybrid, statewide CMS for use in LJ courts and requested the Council to authorize funding for the analysis activities and development of the system.

A motion was made to approve the COT's recommendation as presented.

MOTION: To approve the recommendation of the COT for construction and adoption of a new, statewide case management system for use in limited jurisdiction courts, authorizing funds for the analysis activities and development of the system, as presented. Motion was seconded and passed. AJC 2008-13.

Chief Justice McGregor asked Mr. Heckart to provide a briefing prior to an upcoming Council meeting for new Council members, if there is interest, on technology projects in general and “all moving pieces” that were adopted by this Council over the years.

Judicial Branch Budget Update

Mr. Kevin Kluge, Chief Financial Officer for the AOC, briefed the Council on the current state budget situation, in addition to fiscal year 2008-2009 budget cuts and sweeps totaling \$17.1 million. Mr. Kluge reported the Legislature is predicting a \$1.4 billion deficit for the current fiscal year and a \$3 billion deficit for fiscal year 2010. Mr. Kluge noted the Supreme Court is preparing a plan to submit to the Governor by the first week of November to try to minimize the impact. The plan will include 5-10% cuts this fiscal year and an additional 5-10% cuts next fiscal year, as well as revenue enhancements. Mr. Byers stated that the situation is bleak, and he will keep the Council updated on the budget situation as it unfolds.

Judicial Branch Legislative Proposals

Mr. Jerry Landau, Director of Government Affairs, and Ms. Katy Proctor, Legislative Officer (budget) for the AOC, presented the legislative proposals for 2009 for the Council’s approval. Council members were asked to vote to determine whether to include each proposal in its legislative package.

2009-01: Domestic violence; designation

Discussion: None.

MOTION: Not to include 2009-01 in the judicial branch legislative package. Motion was seconded and passed. AJC 2008-14.

2009-02: Decriminalization of petty offenses (Withdrawn)

2009-03: Restitution; orders (Withdrawn)

2009-04: Juvenile court; IGAs; contracts; authority

Discussion: Mr. Byers noted that staff may have to come back to talk with Council members, depending on how this proposal is received during this catastrophic budget situation.

MOTION: To include 2009-04 as revised in the judicial branch legislative package. Motion was seconded and passed. AJC 2008-15.

2009-05: Fiduciaries; power of attorney; trustee; representative payee

Discussion: The Chair noted there were members of the public present who would like to speak on this proposal.

Ms. Lisa Price, President of the Arizona Fiduciaries Association, provided public comment. Ms. Price noted the Arizona Fiduciaries Association as a whole opposes this legislation. Ms. Price explained their concern is in cases where they are hired as fiduciaries to work for competent individuals. Ms. Price stated the Association has concerns with a third-party state agency having the opportunity and access to their clients' personal financial and health records. Ms. Price also raised concern with the current budget situation and the additional staff time and resources that will be needed to investigate these additional complaints. Ms. Price noted the oversight authority is not necessary and explained that if an agent under power of attorney (POA) or trust commits wrongdoing, and that issue has been brought to the court, and there have been civil sanctions or some kind of criminal prosecution, they must notify their certifying entity of the situation immediately. The certifying entity can then take action as to whether or not to revoke or suspend their certification. The Chair clarified this would not affect a person's ability to hold a POA, and stated that disciplinary procedures are already in place for this.

Judge Dean Fink, Superior Court in Maricopa Court, member of the Supreme Court's Fiduciary Board, and Chair of the subcommittee making this proposal, spoke in support of the proposal. Judge Fink noted there is no law in Arizona that prevents anyone from acting in a business capacity and charging money and getting POA's or trustee appointments from individuals outside the court appointment. Judge Fink stated they have seen a number of certified fiduciaries who have become certified so they can, perhaps, get a court appointment, or perhaps not, but then use that certification to also practice in a private appointment capacity. Judge Fink explained there are few fiduciaries for whom that is the majority of their practice, i.e., outside of a court appointment. When the Fiduciary Board gets these complaints, and if the fiduciary has done something wrong, they have to dismiss the complaint under the current law. Judge Fink explained that even if a POA is criminally convicted, they don't have jurisdiction under Ms. Price's scenario to revoke their license immediately. Judge Fink stated if we don't make this change, not only will the bad impact on the public continue, it will look bad for the court. Judge Fink urged the Council to approve or the Fiduciary Board will be forced to continue to dismiss complaints alleging misconduct by certified fiduciaries when serving as an agent under a POA. Judge Fink suggested that the issue about competent clients could be addressed through separate changes in the code of conduct.

Discussion ensued regarding access to financial and medical records of competent clients and random audits. Concern was raised regarding the confidentiality

issue. It was noted that the potential harm to clients is much greater without the opportunity to remove certification.

Mr. Peter Frenette, the Sun Valley Group, Inc., expressed opposition to the proposal. Mr. Frenette explained that the statute was created in 1994 to give the AOC authority to regulate fiduciaries for duties that are court-appointed, and purposely omitted other practice areas that they perform. Mr. Frenette added that to go beyond that would be reaching for further power, which at this time is not prudent and is a duplication of what already exists. Mr. Frenette noted the intent of the proposal could be achieved through other methods, using the laws that currently exist on exploitation, by changes in the code that regulates them, by disclosure statements, etc. Mr. Frenette expressed concern with the privacy issue, and noted there is a duty of confidentiality upon the auditing staff and an obligation of confidentiality. Mr. Frenette asked for additional study on this matter.

The Chair stated staff should go forward and develop the legislation with some protection of confidentiality interests of those people who have given a POA. The Chair added that confidentiality should be assured to the extent necessary through the legislation itself or through our judicial code which governs the fiduciaries and clients affected.

MOTION: To move forward with the concept and include 2009-05 in the judicial branch legislative package, allowing staff to the authority to make appropriate amendments to take care of issues raised by the Council. Motion was seconded and passed. AJC 2008-16.

2009-06: Criminal code sentencing reorganization, cleanup

Discussion: None.

MOTION: To include 2009-06 in the judicial branch legislative package. Motion was seconded and passed. AJC 2008-17.

Department of Public Safety (DPS) Proposal: Unlawful Assembly

Discussion: The Chair noted the Presiding Judges' position is that this has worked since 1901, so they were not sure if this was something they wanted to be actively involved in.

MOTION: Not to include the proposal in the judicial branch legislative package. Motion was seconded and passed. AJC 2008-18.

AZ Association of Counties (on behalf of Superior Court Clerks): Custody of Records

Discussion: Mr. Byers noted this proposal would make the creation of a statewide e-filing system, which the Council approved, impossible.

MOTION: To actively oppose this proposal. Motion was seconded and passed (one opposed). AJC 2008-19.

Arizona Code of Judicial Administration

Mr. David Withey, Chief Legal Counsel for the Arizona Supreme Court, presented the following code section for the Council's review and approval: § 4-302: Limited Jurisdiction Records Retention Schedule (consent).

A motion was made to adopt the code section as presented.

MOTION: To adopt § 4-302: Limited Jurisdiction Records Retention Schedule as presented. Motion was seconded and passed. AJC 2008-20.

Ms. Kathy Waters, Director of the Adult Probation Services Division for the AOC, briefed the Council on Section 6-105.1: Powers and Duties of Officers and Section 6-201.1: Standard Probation. Ms. Waters provided an explanation and overview of evidence-based practice.

Judge Kearney recommended that the words "unemployment and lack of education" be added to the definition of criminogenic need and made a motion to that effect.

MOTION: To amend § 6-105.1: Powers and Duties of Officers and § 6-201.1: Standard Probation to include the words "unemployment and lack of education" to the definition of criminogenic need. Motion was seconded and passed. AJC 2008-21.

Mr. Byers called the Council members' attention to the handout which listed proposed amendments to the two codes as recommended for adoption by the Presiding Judges at their October 21, 2008 meeting.

Mr. Byers made a motion to amend 6-201.1 to change the language with reference to timeframes and recommend either a definition of month or change to 30 days.

MOTION: To approve the motion to amend Section 6-201.1 to allow staff to either include a definition that month means 30 days or go through the code and change all the references from month to 30 days. Motion was seconded and passed. AJC 2008-22.

Mr. Byers made a motion to Section 6-105.1, page 7, g. (3) and (4), to amend the language to read "The supervising officer shall file the petition to revoke sooner, when required by local departmental policies, the circumstances surrounding the case or the need for community protection."

MOTION: To approve the motion to amend the language in § 6-105.1, page 7, g. (3) and (4), to read “The supervising officer shall file the petition to revoke sooner, when required by local departmental policies, the circumstances surrounding the case or the need for community protection.” Motion was seconded and passed. AJC 2008-23.

Mr. Byers made a motion to approve the amendment suggested by our legal department that the titles of 6-105.1 and 6-201.1 include the words “Evidence-Based Practice.”

MOTION: To approve the motion to § 6-105.1: Powers and Duties of Officers and § 6-201.1: Standard Probation that the titles of 6-105.1 and 6-201.1 include the words “Evidence-Based Practice.” Motion was seconded and passed. AJC 2008-24.

Mr. Byers moved that § 6-105.1: Powers and Duties of Officers and § 6-201.1: Standard Probation be adopted as amended.

MOTION: To adopt § 6-105.1: Powers and Duties of Officers and § 6-201.1: Standard Probation as amended. Motion was seconded and passed. AJC 2008-25.

Ms. Nancy Swetnam, Director of the Certification and Licensing Division of the AOC, briefed the Council members on Section 7-205: Defensive Driving. Ms. Swetnam reported on the history of the program and the legislation resulting in the proposed changes presented today.

Ms. Joan Harphant, Chair of the Defensive Driving Subcommittee of the Limited Jurisdiction Courts Committee, briefed the Council members on the work of the subcommittee to try to reach collaboration and consensus.

Ms. Swetnam noted the code section and proposed amendments, for the most part, represent the consensus reached through this group, through the Defensive Driving Board, with the defensive driving schools, and with other groups. Ms. Swetnam noted a couple of exceptions in the materials provided to the Council (amendments #1, #3, and #7) and added that members of the public were present to voice their support for these amendments.

Mr. Byers made a motion to adopt 7-205 with the proposed amendments.

A motion was made to adopt amendment #1 to replace the definition of “court automation and reporting requirements” and discussion ensued.

Ms. Swetnam stated that they, as staff, are recommending against this amendment.

Ms. Pamela K. Najera, President, Arizona Chapter, National Safety Council, and member of the Defensive Driving Board, provided public comment in support of this amendment.

MOTION: To adopt the proposed amendment (#1) to § 7-205: Defensive Driving as presented. Motion was seconded and failed. AJC 2008-26.

Ms. Swetnam briefed the Council members on amendment #3 with regards to the Board's authority under statute to grant an exception to a court's reporting requirements. Ms. Swetnam noted that they, as staff, are recommending against this amendment.

Ms. Najera voiced her support of this amendment.

Mr. Byers made a motion to reject amendment #3 as presented.

MOTION: To reject the proposed amendment (#3) to § 7-205: Defensive Driving as presented. Motion was seconded and passed. AJC 2008-27.

Ms. Swetnam briefed the Council members on amendment #7 dealing with the Court's ability to stop using a defensive driving school if a court experiences problems with that school.

Mr. Byers made a motion to reject amendment #7 as presented.

Judge Kearney voiced her concern that a mechanism is needed to deal with this very valid problem. Ms. Harphant noted that due to the limited number of issues that have come up to date, the subcommittee believes there is not that big of a problem. Ms. Harphant added that each court will have a contact person identified at each court and school, and the AOC has a mechanism in place already in the form of a rapid response team.

MOTION: To reject the proposed amendment (#7) to § 7-205: Defensive Driving as presented. Motion was seconded and passed. AJC 2008-28.

Mr. Byers made a motion to adopt the remaining amendments as presented.

MOTION: To adopt the remaining amendments to § 7-205: Defensive Driving as presented. Motion was seconded and passed. AJC 2008-29.

Mr. Byers made a motion to approve adoption of 7-205 as amended.

MOTION: To adopt § 7-205: Defensive Driving as amended. Motion was seconded and passed. AJC 2008-30.

Ms. Swetnam briefed the Council members on Section 7-206: Certified Reporter, providing background information on the issue. Ms. Swetnam explained the proposed code section changes the renewal cycle from every year to every other year; occurring every even number year and moves the expiration date to February 28. Ms. Swetnam noted there are additional technical issues, but the controversial issue seems to be fees.

Mr. Byers moved adoption of § 7-206: Certified Reporter as presented. Mr. Byers then moved adoption of the amendment as presented.

Mr. John MacDonald, Husk Partners, representing the Arizona Court Reporters Association, provided public comment. Mr. MacDonald asked that the Council defer consideration of this particular amendment concerning fees to a later date. Mr. MacDonald suggested there are ways to build in some further efficiencies into the system to allow that modest increase in the fees, or look at other ways, so that the cost to the individual court reporters can be reduced, i.e., continuing education. Mr. MacDonald stated they are asking for a little bit of time to look at this issue, and legislation that they and the Council could support, to help relax a little bit of the legislative restrictions currently imposed and come up with ways to ease this burden on his clients.

MOTION: To adopt the amendment to § 7-206: Certified Reporter as presented. Motion was seconded and passed, with Ms. Janet Regner recused. AJC 2008-31.

MOTION: To adopt § 7-206: Certified Reporter as amended. Motion was seconded and passed, with Ms. Janet Regner recused. AJC 2008-32.

Auditor General's Recommendations Re: Juvenile Detention and Treatment

Mr. Rob Lubitz, Director of the Juvenile Justice Services Division for the AOC, briefed the Council members on the Auditor General's recommendations which were presented to the Council at its December 2007 meeting. Mr. Lubitz reported on the progress to date to implement the audit recommendations, including the checklist showing which current operational guidelines the Task Force has initially recommended to become mandatory standards. Mr. Lubitz noted the Task Force decided that a considerable rewrite of the standards was called for, and this effort is currently in process. Mr. Lubitz reported that, following review by the Juvenile Court Administrators and the Committee on Juvenile Courts, the Council will be asked to approve the mandatory detention standards (specific language) at the December 2008 meeting.

Child Support Guidelines Review Committee (taken out of order)

Judge Bruce Cohen, Associate Presiding Family Court Judge (Southeast) in Maricopa County, outlined the goals of the Guidelines Review Committee and the procedures that have been developed to meet those goals. Judge Cohen reported that

the Committee is reviewing the underlying financial data for economic changes (Phase I) and looking at a completely different way of calculating child support without changing the method that they use for calculating it (Phase II). Judge Cohen noted they would be reporting back to the Council with the final results.

Court Leadership Conference

Mr. Mike Baumstark, Deputy Director for the AOC, briefed the Council on the upcoming Court Leadership Conference scheduled for December 1-2, 2008. Mr. Baumstark noted this important Conference is designed to bring together top court management teams from across the state to deal with what we will be facing in terms of future budget cuts. Mr. Baumstark outlined the draft agenda, proposed speakers, and subject areas designed to address the budget situation and provide invaluable information on budget cut-back management, best practices that serve the state, and types of things we can do better following best practices.

Ms. Hunter suggested including a speaker from the business community, with a focus on sustainability commitments. Ms. Hunter stated her company, Pinnacle West Capital Group/APS, may have a key speaker available. The Chair asked that Ms. Hunter work with Mr. Baumstark to discuss further.

Interpreter Registry

Ms. Amy Wood, Manager for the Court Services Division of the AOC, provided an overview of the issue and the steps taken to resolve it. Ms. Wood walked the Council members through an Internet demo/overview of the Arizona Court Interpreter Registry. Ms. Wood noted the registry is in the final stages of development.

Mr. Bruner asked how competency is established and what happens when you can't find a specific interpreter. Ms. Wood noted these issues will be handled on an individual court policy basis, but acknowledged the issue of competency is a challenge. Ms. Wood stated that members of the court community can exchange information with each other about people they know are competent from previous dealings. With regards to the issue of finding a specific interpreter, Ms. Wood reported the initial goal is to reach out in Arizona to find as many interpreters as they can and have them in this registry. Ms. Wood added that preliminary discussion is taking place to try to broaden that reach across the nation to people who would be willing to travel to Arizona. The Chair noted there are also interpreters available by telephone.

Ms. Hardt expressed her concern with the interpreters who are on the registry and the fact that this implies that they have some level of competency. Ms. Hardt urged staff to look at this issue more closely and consider whether to use a statement on the website that states "we don't certify that these are competent interpreters," and/or develop some method to have people removed from the list if there are complaints.

Call to the Public/Adjourn

The Chair made a call to the public; there was no response.

A motion was made to adjourn the meeting.

MOTION: To adjourn the meeting. Motion was seconded and passed.
AJC 2008-33.

The meeting adjourned at 2:30 p.m.