

**ARIZONA JUDICIAL COUNCIL**  
Loews Ventana Canyon Resort  
7000 North Resort Drive  
Tucson, AZ 85750

Minutes of the  
June 19, 2006, Meeting

**Council Members Present:**

Chief Justice Ruth V. McGregor  
Judge James Angiulo  
Jim Bruner  
Judge Robert Brutinel  
David Byers  
Judge B. Robert Dorfman  
Susan Edwards  
Beverly Frame  
Christine C. Iijima Hall, PhD.  
Judge Douglas Holt  
Emily Johnston  
Judge John S. Leonardo

William J. Mangold, M.D., J.D.  
Miguel Montiel  
Judge Barbara Mundell  
Jones Osborn  
Judge John Pelander  
Jose de J. Rivera  
Deborah Schaefer  
Jim Smith, Esq.  
Judge James Soto  
Judge R. Michael Traynor  
Judge David Widmaier  
Judge Sheldon Weisberg

**Council Members Absent:**

Chris Herstam

**Administrative Office of the Courts (AOC) Staff Present:**

Mike Baumstark  
Kitty Boots  
Stewart Bruner  
Eric Carlson  
Greg Eades  
Linda Grau  
Jennifer Greene  
Beth Hall  
Karl Heckart  
Mike Hise  
Kevin Kluge  
Jerry Landau

Konnie Young Neal  
Nina Preston  
J.R. Rittenhouse  
Janet Scheiderer  
Rhonda Simmons  
Lorraine Smith  
Nancy Swetnam  
Alice Tan  
Kathy Waters  
David Withey

**Guests Present:**

Judie Agee  
Kate Baumgarth  
Vice Chief Justice Rebecca White Berch  
Dick Billimack  
John Bouley  
Adam Gage  
Maria Geare  
Greg Harris  
Sarah Hooper  
Linda Hrionimus  
Karen Inccavo  
Carole Jerred

Vivian Lafard  
Vivian McClaris  
Allen Merrill  
Joan Moreaux  
Joseph P. Notera  
Judge William O'Neil  
Helen Perry-Grimwood  
Denise Style  
Dawn Walters  
Candy Wheeler-Ruby  
Carole Whipple

Chief Justice Ruth V. McGregor, Chair, called the meeting to order at 10:00 a.m., at the Loews Ventana Canyon Resort, 7000 North Resort Drive, Tucson, Arizona. The Chair welcomed those in attendance. The Chair then welcomed the following new members to the Council: Judge Doug Holt, Presiding Judge in Graham County; Judge James Soto, Presiding Judge in Santa Cruz County; and Jim Smith, the new State Bar President, replacing Helen Perry Grimwood. The Chair then recognized Ms. Grimwood for her service on the Council and presented her with a certificate of appreciation.

**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; there were none. The minutes were approved as written.

**MOTION: To approve the minutes from the March 9, 2006, meeting of the Arizona Judicial Council, as written.** Motion was seconded and passed. AJC 2006-16.

**Arizona Code of Judicial Administration: Consent Agenda**

Mr. Greg Eades, Legal Counsel for the Arizona Supreme Court, then presented the following code sections for review and adoption: § 1-602: Digital Recording Standards (*amendment*); § 3-403: Public Records Confidentiality (*amendment*); § 6-107: Safety Training (*amendment*); and § 6-113: Firearms Standards (*amendment*).

The Chair called for any discussion. Judge Traynor made a motion to move § 1-602 from the Consent Agenda.

**MOTION: To move § 1-602 from the Consent Agenda.** Motion was seconded and passed. AJC 2006-17.

Judge Traynor referred the members to Page 3, Paragraph D.5.a. regarding transcription. Judge Traynor noted that at the Limited Jurisdiction Courts Committee meeting, there was a request to amend this code section to include the words “or a court employee.” A motion was made to include this amendment.

**MOTION: To amend § 1-602, Page 3, Paragraph D.5.a. to include the words “or a court employee.”** Motion was seconded and passed. AJC 2006-18.

**MOTION: To approve the code sections on the Consent Agenda as amended and submitted.** Motion was seconded and passed. AJC 2006-19.

### **Arizona Code of Judicial Administration: Non-Consent Agenda**

Ms. Nancy Swetnam, Director of the Certification and Licensing Division for the Administrative Office of the Courts, presented the remaining code sections (non-consent):

Ms. Swetnam provided an overview of § 7-201: General Requirements (*amendment*) and outlined the issues. The Chair called for public comment, noting that speakers must sign up on the speaker sheet in the back of the room and that their comment time would be limited to 3 minutes.

Mr. Allen Merrill, Director of the Association of Independent Paralegals, provided public comment, noting that he has concern with § 7-201(H) with regards to dismissed complaints becoming public record.

Ms. Judie Agee, Confidential Intermediary, raised concerns with anonymous complaints and asked if there will be a process for receipt and review of these complaints. In addition, she expressed concern with the potential for abuse.

Judge Dorfman suggested that the complaints not be anonymous, but remain confidential instead. Judge Weisberg added that if complaints were found invalid, there should be a process for the certificate holder to expunge their record. Mr. Rivera stated certificate holders need to be held to the same standard as State Bar members, and the protection should be to the public not the certificate holder.

A motion was made to approve § 7-201(H)(1)(f) Confidentiality of Complaints as submitted.

**MOTION: To approve § 7-201(H)(1)(f) Confidentiality of Complaints as submitted in the notebook.** Motion was seconded and passed (two opposed). AJC 2006-20.

Discussion ensued regarding § 7-201(H)(1)(b) Anonymous Complaints. The Chair stressed the need to approach this issue very carefully. It was suggested that it be limited to confidential complaints.

The Chair asked Certification and Licensing Division staff to prepare proposed language for confidential complainants and come back to the Council later in the meeting with an amendment for their review and consideration.

Discussion ensued regarding § 7-201(D)(2)(a)(5) Credit Reports. Mr. Bruner suggested that people handling the money should be bonded rather than undergoing a credit review.

Discussion then turned to § 7-201 Examinations. A motion was made to amend § 7-201(E)(1)(f)(2)(b) as indicated on Page 1 of the amendment sheet.

**MOTION: To approve the amendment of § 7-201(E)(1)(f)(2)(b) as set out on Page 1 of the amendment sheet.** Motion was seconded and passed. AJC 2006-21.

Discussion ensued regarding § 7-201(6) Reinstatement Hearings. A motion was made to approve the amendment of § 7-201(E)(9)(b) with the change of the words “any requested timeframe” to “the requested timeframe,” and the amendment to § 7-201(H)(12) as presented on Page 1 of the amendment sheet.

**MOTION: To approve § 7-201(E)(9)(b) with the change of the words “any” to “the” and § 7-201(H)(12) as presented on Page 1 of the amendment sheet.** Motion was seconded and passed. AJC 2006-22.

Discussion ensued regarding § 7-201 Standing of Complainant. A motion was made to approve § 7-201(H)(1)(d) as presented on Page 2 of the amendment sheet.

**MOTION: To approve § 7-201(H)(1)(d) as presented on Page 2 of the amendment sheet.** Motion was seconded and passed. AJC 2006-23.

Discussion ensued regarding § 7-201 Board Proxies. A motion was made to approve 7-201(I)(9) as presented on page 2 of the amendment sheet.

**MOTION: To approve § 7-201(I)(9) as presented on Page 2 of the amendment sheet.** Motion was seconded and passed. AJC 2006-24.

A motion was made to approve the adoption of § 7-201 as amended, with the provision that staff draft a substantive change that disallows anonymous complaints. The motion was withdrawn and changed to adopt § 7-201 as amended with the exception of the section on anonymous complaints.

**MOTION: To approve § 7-201 as amended with the exception of the section on anonymous complaints.** Motion was seconded and passed. AJC 2006-25.

Ms. Swetnam provided an overview of § 7-202: Fiduciaries (*amendment*) and outlined the issues. The Chair called for public comment.

Ms. Dawn Walters, Entrust Fiduciary Services in Yuma, raised concern regarding the issue of trainees in terms of anyone who was doing any type of job under the supervision of a fiduciary would then be required to be classified as a trainee. Ms. Walters stated that as a business owner, this is simply not practical, and they would not be able to effectively staff their office. Ms. Walters noted that she hires “case managers” who work for her full-time who are not seeking certification as a certified fiduciary or working as a trainee, but would be considered a trainee under this amendment.

Ms. Candy Wheeler-Ruby, Yuma County Public Fiduciary, also raised concerns regarding trainees and the three-year requirement in terms of case managers.

Ms. Swetnam noted the intent of this amendment regarding trainees is for those who are seeking certification and want to become a certified fiduciary. Ms. Swetnam added that administrative support staff who are going to stay in that role and do not wish to pursue certification, would not be required to be called a trainee.

Discussion then ensued regarding the need for separate definitions for support functions versus certified fiduciary functions, and specifically the role of a case manager and the definition of a trainee.

A suggestion was made to strike trainee status and have staff come back to the Council with specific details regarding certified fiduciary duties which cannot be delegated and duties of employees who work for them, including significant disciplinary consequences for non-compliance. Dr. Hall asked if there is a formal process to become a trainee. Judge Mundell suggested the need for a list of duties that only a certified fiduciary performs that cannot be delegated, rather than the use of trainees or a specific length of time. Judge Angiulo asked about the use of ratios of certified fiduciaries who supervise trainees. Ms. Swetnam noted that this information is not available.

The Chair summarized that the Council is not concerned with the length of time a person can be a trainee, but rather the areas where a certified fiduciary should be making decisions. The Chair asked that a list of duties be developed that only a certified fiduciary can perform that cannot be delegated.

Discussion ensued regarding § 7-202(J)(2)(h) Certification as a Legal Document Preparer.

**MOTION: To approve § 7-202(J)(2)(h) as presented on Page 2 of the amendment sheet.** Motion was seconded and passed. AJC 2006-26.

Discussion ensued regarding visits by wards on a quarterly basis (located on Page 18 in the notebook). It was suggested that language be added regarding the ability to send a representative for out-of-state or out-of-county ward visits if the fiduciary would incur considerable expense. A motion was made to approve the amendment that a fiduciary or fiduciary's representative shall visit the ward no less than quarterly. The amendment was then amended to specify that if the client is out of the state or county, the fiduciary is allowed to send a representative to visit the ward.

**MOTION: To approve the amended amendment to allow a fiduciary representative to visit the ward if they are out of state or county.** Motion was seconded and passed. AJC 2006-27.

Discussion ensued regarding bond payment. Mr. Byers suggested that Paragraph 5 on pages 14-15 of the notebook be struck.

**MOTION: To amend § 7-202 (F)(5) to strike Paragraph 5 on Page 14, except for the last phrase "a certified fiduciary may supervise . . ." and also strike § 7-202(F)(5)(d) on Page 15.** Motion was seconded and passed. AJC 2006-28.

**MOTION: To approve the code section § 7-202 as amended.** Motion was seconded and passed. AJC 2006-29.

Ms. Swetnam provided an overview of § 7-203: Confidential Intermediaries (*amendment*) and outlined the issues. The Chair called for public comment.

Ms. Joan Moreaux, Confidential Intermediary (CI), asked that a CI be included as a Triad member.

**MOTION: To approve § 7-203 as presented.** Motion was seconded and passed. AJC 2006-30.

**MOTION: To approve § 7-203(F)(6) as presented on Page 3 of the amendment sheet.** Motion was seconded and passed. AJC 2006-31.

**MOTION: To approve § 7-203 as amended.** Motion was seconded and passed. AJC 2006-32.

Ms. Swetnam provided an overview of § 7-205: Defensive Driving (*amendment*) and outlined the issues. The Chair called for public comment; there was none. A motion was made to move adoption of § 7-205 and amendments 1-6 as proposed.

**MOTION: To approve § 7-205 as proposed.** Motion was seconded and passed. AJC 2006-33.

**MOTION: To approve amendments 1-6 as presented on Page 3 of the amendment sheet for § 7-205.** Motion was seconded and passed. AJC 2006-34.

**MOTION: To approve § 7-205 as amended.** Motion was seconded and passed. AJC 2006-35.

Ms. Swetnam provided an overview of § 7-206: Certified Reporters (*amendment*) and outlined the issues. The Chair called for public comment.

Mr. Greg Harris expressed his appreciation, on behalf of Joe Notaro and his company VoiceWriters of America, for the Council's consideration of proposed changes to § 7-206.

Mr. John Bouley, Court Reporter, urged adoption of the code section with amendments to allow an extension without a deadline.

Mr. Adam Gage, Yuma County Court Reporter, asked that court reporters be allowed to continue to take the test, with provisional certification, as long as it takes to successfully pass.

Ms. Vivien Lafard, President of the Court Reporters Association in Kingman, asked that there be one more extension until the Keeping the Record recommendations are in place.

Discussion ensued regarding provisional certification. It was suggested that the amendment to strike subsection (3)(b) be approved. A motion was made to approve § 7-206 as presented. Another motion was made to amend the prior motion to approve § 7-206 as presented with the deletion of subparagraph (c). Mr. Byers noted that the statute actually allows three methods, the third of which can be adopted by the Supreme Court. Mr. Byers suggested that a third testing method could be developed for approval.

Ms. Swetnam noted that if the Council wishes to adopt the amendment for § 7-206 as presented in the amendment sheet, that subsection (3)(c) at the top of Page 6 should be struck because it is not applicable. A motion was made to approve § 7-206 as presented in the notebook. Another motion was made to amend § 7-206 as presented with the first amendment dealing with provisional certification on Pages 5-6 of the amendment sheet and the deletion of subparagraph (3)(c).

**MOTION: To approve § 7-206 (Provisional Certification) as presented on Page 5-6 of the amendment sheet with the December 2005 deadline.** Motion was seconded and passed (9 opposed; 15 approved). AJC 2006-36.

**MOTION: To approve § 7-206 (Additional Copies) as presented on Page 6 of the amendment sheet.** Motion was seconded and passed. AJC 2006-37.

**MOTION: To approve § 7-206 as amended.** Motion was seconded and passed (1 opposed). AJC 2006-38.

Ms. Swetnam provided an overview of § 7-208: Legal Document Preparers (*amendment*) and outlined the issues. The Chair called for public comment.

Mr. Allen Merrill provided public comment on behalf of the Association of Independent Paralegals and expressed concern regarding the issue of requiring legal document preparers to put their names and certificate numbers on all documents they prepare. Mr. Merrill stated this is an unnecessary requirement, which is not required for attorneys. Mr. Merrill's other concern was the issue of public members on the Board. Mr. Merrill stated we should not be biased one way or the other, and removal of the restriction seems pointless. Mr. Merrill suggested that the restriction not be removed, but rather be strengthened, so we do in fact have true public members on the Board.

Discussion ensued regarding § 7-208. A motion was made to approve § 7-208 as presented. A motion was then made to approve the amendment to § 7-208 on pages 6-8 of the amendment sheet.

**MOTION: To approve § 7-208 as amended.** Motion was seconded and passed. AJC 2006-39.

### **Judicial Branch Budget Update**

Mr. Kevin Kluge, Chief Financial Officer for the AOC, briefed the Council on the FY '07 budget request, providing specific information on truth in budgeting, employee pay, community safety, funding for the Court of Appeals, the supplemental request, and new program funding. Mr. Kluge noted the total increase to the General Fund is \$12,951,800 (11% increase).

### **Judicial Collection Enhancement Fund (JCEF) Allocations**

Mr. Kevin Kluge briefed the Council on the JCEF revenues, on-going commitments, comparison of revenue to expense, and the projected fund balance. Mr. Kluge asked that the Council approve the ongoing FY '07 budget projection and the continuation of the automation projects that were approved in June 2005.

**MOTION: To approve the JCEF/TCPF FY 2007 Budget Request as submitted.** Motion was seconded and passed. AJC 2006-40.

**MOTION: To approve the JCEF Probation FY 2007 Budget Request as submitted.** Motion was seconded and passed. AJC 2006-41.

## **Judicial Branch Legislative Update**

Mr. Jerry Landau, Director of Government Affairs for the AOC, briefed the Council on the Arizona Judicial Council bills, other legislation impacting the Judiciary, and major implementation issues.

The Chair and Council expressed their appreciation to Mr. Landau, AOC Legislative Staff, and all others involved for their tireless efforts during the Legislative session.

### **Keeping the Record Committee (Chief Justice McGregor and Vice Chief Justice Berch recused themselves from this agenda item and left the room until it was decided).**

Ms. Jennifer Greene, staff to the Committee on Keeping the Record, provided information on the comments to the proposed rule proposal. Mr. Dave Byers, acting Chair, called for public comment, noting that the Supreme Court would be acting on the proposed rule at their September Rules Agenda.

Mr. John Bouley noted that, in light of the Council's earlier vote to hold court reporters to such a high standard, they should also use great concern with the accountability of those who transcribe and the certification of the individuals running these electronic courtrooms.

It was noted that under the "Reporting Resources Proposal," the lettering was off, and should be changed to read "A, B, C, D" rather than "A, B, C, C."

Mr. Peter Collins noted that as a member of the Committee, he believed the membership was very balanced, the discussion was thorough and objective, and the Committee's final result was reasonable.

Judge Mundell noted she served on the Committee. She stated that as a judge she feels strongly that the record should be accurate, and that is the judge's responsibility. Judge Mundell further stated the need for a blending of court reporters and electronic recording. She noted that she hopes that we don't do anything that will prohibit us from expanding our use of electronic recording and bind our hands. Judge Mundell added there was a very important voice missing from the Commission, the people who pay for the courts in Maricopa County, specifically the County.

Discussion ensued regarding appellate courts and the possible effect on appellate proceedings in terms of electronic recording and the lack of ability to see a witnesses' demeanor and hear voice inflections.

A motion was made to strike subsection (C) of this rule with regards to carving out certain types of hearings where we're going to presumptively have court reporters, and keep the balance of the rule that requires courts give the parties a court reporter if they request one 72 hours before the proceeding.

**MOTION: To strike subsection (C) of the rule to carve out certain types of hearings and keep the balance of the rule to leave the process as it is now.** Motion was seconded and passed (11 approved; 8 opposed). AJC 2006-42.

**Good to Great Strategic Agenda** (update removed from the agenda due to time constraints).

### **Remote Court Reporter Project**

Ms. Jennifer Greene briefed the Council on the program plan and funding. Ms. Greene reported one or two pilot courts would be identified in the near future to pilot the project and determine funding requirements.

### **Oral Arguments on the Internet**

Mr. Eric Carlson, Director of Administrative Services for the AOC, briefed the Council on the ability to digitally record and provide streaming video of the Supreme Court's Oral Arguments. Mr. Carlson showed a diagram of the camera placement and noted the premier is scheduled for Tuesday, June 27 (Veto Case).

### **Arizona Rules of Family Law Procedure; Domestic Violence Rules Committee; and Project Passport Protective Order Forms**

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 Young Neal, Committee staff, updated the Council on the following:

Arizona Rules of Family Law Procedure (ARFLP): The Family Law Rules Review Committee will propose recommended revisions to ARFLP by filing a Rule 28 petition and revised draft of the ARFLP by the November 1 deadline.

Arizona Rules of Protective Order Procedures (ARPOP): The DV Rules Committee will request support from the Committee on Superior Court (COSC) and the Limited Jurisdiction Courts Committee (LJC) in September and will request approval of ARPOP from the Arizona Judicial Council at their October meeting.

Project Passport: The protective order forms have been finalized to comply with Project Passport and tweaked for automation purposes.

Defendant's Guide Sheet for Protective Orders: The Guide Sheet was approved by CIDVC, COSC, and LJC. Note: an updated Guide Sheet was passed out to the members for their review and consideration.

Judge O'Neil then asked the Council to approve adoption of the new Defendant Guide Sheet for Protective Orders. A motion was made to approve the form, proceed with the automation, and go forward with Project Passport.

Discussion then ensued regarding language on the form (1. INJUNCTION AGAINST HARASSMENT). It was suggested that the second sentence “Also, a ‘dating’ relationship without living together could be the basis for this injunction” be removed. A motion was made to amend the previous motion to include this change.

**MOTION: To amend the Defendant’s Guide Sheet to remove the second sentence under “INJUNCTION AGAINST HARASSMENT.** Motion was seconded and passed. AJC 2006-43.

**MOTION: To approve the Defendant’s Guide Sheet, received during the meeting, as amended.** Motion was seconded and passed. AJC 2006-44.

### **Arizona Code of Judicial Administration: Non-Consent Agenda (7-201 Anonymous Complaints - continued)**

Certification and Licensing staff returned with their proposed amendment (handout provided) to § 7-201 regarding anonymous complaints. The Chair suggested that in the proposed (H)(1)(b) “Director Initiated Complaints,” the language be changed to read “his or her identity” rather than “their identity.” It was suggested that a subparagraph “c” be added to read “anonymous complaints shall not be accepted.”

**MOTION: To approve the inclusion of a new subparagraph “c” to read that “anonymous complaints shall not be accepted.”** Motion was seconded and passed (1 opposed). AJC 2006-45.

Discussion ensued (H)(1)(b) “Director Initiated Complaints,” regarding the proposed language “This shall include instances where the source does not wish to disclose their identity.” A motion was made to approve this proposed revision.

**MOTION: To approve the revision in paragraph “b” as amended.** Motion was seconded and passed. AJC 2006-46.

**MOTION: To approve the amendments as amended under the revised § 7-201: General Requirements “2. Role and Responsibilities of the Director.”** Motion was seconded and passed. AJC 2006-47.

### **Call to the Public/Adjourn**

The Chair made a call to the public; there was none. The Chair then acknowledged Judge Sheldon Weisberg, Chief Presiding Judge of the Court of Appeals, Division One. The Chair noted that Judge Weisberg serves on the Council by virtue of his position, and that Judge John C. Gemmill will become the new Chief Judge effective July 1. The Chair thanked Judge Weisberg for his service on the Council.

The meeting adjourned at 4:25 p.m.