

ARIZONA JUDICIAL COUNCIL

Judicial Education Center
541 East Van Buren
Phoenix, AZ 85003

Minutes of the
March 19, 2009, Meeting

Council Members Present:

Chief Justice Ruth V. McGregor
Jim Bruner
Judge Robert Brutinel
David Byers
Jose A. Cardenas, Esq.
Judge Rachel Torres Carrillo
Judge B. Robert Dorfman
Susan Edwards
Beverly Frame
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 Ann A. Scott Timmer
Judge David Widmaier

Council Members Absent:

Karen D. Ferrara
Athia Hardt

Judge James Soto

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
Kitty Boots
Chad Campbell
Mike DiMarco
Laura Freer
Linda Grau
Karl Heckart
Paul Julien
Kevin Kluge
Jerry Landau
Amy Love

Jenny Lubben
Alex Navarro
Katy Proctor
Janet Scheiderer
Lorraine Smith
Alan Swallow
Nancy Swetnam
Kathy Waters
Henrietta Williams
David Withey

Guests Present:

Vice Chief Justice Rebecca White Berch
Heather Bull
Diana Clark
Roger Coventry

Mario S. Martinez
John Phelps
Lisa Price
Deborah Primock

Chief Justice Ruth V. McGregor, Chair, called the meeting to order at 9:00 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.

Approval of Minutes

The Chair called for any omissions or corrections to the minutes from the December 2, 2008, meeting of the Arizona Judicial Council; there were none. The minutes were approved as written.

MOTION: To approve the minutes from the December 2, 2008, meeting of the Arizona Judicial Council, as written. Motion was seconded and passed. AJC 2009-01.

Approval of Executive Session Minutes

The Chair called for any corrections or additions to the Executive Session minutes from the December 2, 2008, meeting of the Arizona Judicial Council; there were none. A motion was made to approve the Executive Session minutes as written.

MOTION: To approve the Executive Session minutes from the December 2, 2008, meeting of the Arizona Judicial Council as written. Motion was seconded and passed. AJC 2009-02.

Legislation Affecting the Judicial Branch

Mr. Jerry Landau, Director of Government Affairs for the AOC, Ms. Katy Proctor Legislative Officer, and Ms. Amy Love, Legislative Specialist, presented the following legislative updates and request for Council action:

Council Proposals Update:

HB2006; Schools; juvenile probation officers
HB2315; Criminal code sentencing
HB2316; Sentencing; second degree murder
HB2317; Fiduciaries

Discussion and Action:

HB2236; County offices; business periods

Discussion: Does not apply to the courts.

HB2628; Parent's rights; education; health; discipline

Discussion: Both the presiding judges and juvenile court judges opposed. Children would not have constitutional rights under this legislation. Note: The Council will take no position if courts are eliminated from this bill.

MOTION: To oppose HB2628; Parent's rights; education; health; discipline, as presented. Motion was seconded and passed. AJC 2009-03.

SB1332; Supreme Court; attorney licensing

Discussion: Yearly license requirement; use of captive insurance plan in other states without a State Bar. The presiding judges voted to oppose this bill.

MOTION: To oppose SB1332; Supreme Court; attorney licensing, in concept, as presented. Motion was seconded and passed. AJC 2009-04.

SB1333; Administrative orders; applicability; judges

Discussion: Judge shopping issue, concern with impact to the judges' administrative ability and process, and judges' knowledge-base limitations (wire taps).

MOTION: To oppose SB1333; Administrative orders; applicability; judges, as presented. Motion was seconded and passed. AJC 2009-05.

SB1378; Judicial appointment commissions; electronic broadcast

Discussion: The presiding judges will support if funding is provided.

MOTION: To oppose SB1378; Judicial appointment commissions; electronic broadcast, as presented, unless complete funding is included. Motion was seconded and passed. AJC 2009-06.

SB1434; Publicity pamphlet; judicial performance; comment

Discussion: No Judicial Performance Review data is requested. Information requested would be the size of a telephone book. The bill makes no sense from a practical or cost standpoint.

MOTION: To oppose SB1434; Publicity pamphlet; judicial performance; comment, as presented. Motion was seconded and passed. AJC 2009-07.

HCR2016; Retirement age; justices and judges

Discussion: Mr. Pete Dunn, Lobbyist for the Arizona Judges Association (AJA), noted the AJA is supporting this bill and provided public comment asking for the Council's support. Judges in Pima County are split (more opposed); judges in Maricopa are

generally in support. The Council should not take a position on this legislation, as they have remained neutral in the past.

A motion was made to support HCR2016. The motion was seconded. A substitute motion was made to take no position. The substitute motion was seconded.

MOTION: To take no position (substitute motion) on HCR2016; Retirement age; justices and judges. Motion was seconded and failed (8 approved; 8 opposed). AJC 2009-08.

MOTION: To support HCR2016; Retirement age; justices and judges as presented. Motion was seconded and passed (11 approved; 7 opposed). AJC 2009-09.

Mr. Byers suggested that additional discussion take place at the June Judicial Conference, to include input from the rural counties.

SCR1007; Justices and judges; senate confirmation
SCR1020; Senate confirmation; justices and judges
Discussion: None.

MOTION: To oppose SCR1007; Justices and judges; senate confirmation and SCR1020; Senate confirmation; justices and judges, as presented. Motion was seconded and passed. AJC 2009-10.

SCR1040; Judges; merit selection; population
Discussion: Opposed in the past.

MOTION: To oppose SCR1040; Judges; merit selection; population, as presented. Motion was seconded and passed. AJC 2009-11.

HB2061; CORP; probation officers; customary employment
Discussion: None.

MOTION: To support HB2061; CORP; probation officers; customary employment, as presented. Motion was seconded and passed (Mr. Jim Bruner abstained). AJC 2009-12.

SB1338; Law enforcement officers; good cause
Discussion: The presiding judges took no position and suggested law enforcement carry it.

MOTION: To take no position on SB 1338; Law enforcement officers; good cause, as presented. Motion was seconded and passed. AJC 2009-13.

SB1401; Juvenile adjudications; probation; disposition

Discussion: Juvenile judges had concerns and opposed this legislation. The presiding judges also opposed the legislation. The Juvenile Court Committee opposed the legislation in its present form and the concept in general. Legislative staff should work with the Chair of the Juvenile Court Committee and the sponsor (using moderate voices).

MOTION: To oppose SB1401; Juvenile adjudications; probation; disposition, as presented, but continue to work with the sponsor.
Motion was seconded and passed. AJC 2009-14.

Budget: Defensive Driving Shift. Ms. Proctor noted this bill is no longer an issue.

Budget Update

Mr. Kevin Kluge, Chief Financial Officer for the AOC, briefed the Council members on the state fiscal crisis and impacts to the court. He reported on the projected \$3B deficit for Fiscal Year (FY) 2010 and Governor Brewer's five-point budget plan to 1) Reform the budget process; 2) Improve Proposition 105; 3) Make further spending cuts of \$1B; 4) Provide tax reform; and 5) Increase taxes temporarily to raise \$1B, in addition to the \$1B from the stimulus.

Mr. Kluge noted that total cuts in FY '08 and FY '09 for the judiciary totaled \$28.4M and explained the impact to superior courts and probation with the FY '09 cuts. Mr. Kluge reported that the Court's plan for FY 2010 will result in \$3M in permanent cuts and \$3.1M in cost savings; total cuts through special session and into 2010 add up to \$7.4M in permanent cuts. He noted that the Joint Legislative Budget Committee is looking for an additional \$4M in cuts, and the Governor's Office is looking at up to a 20% scenario which could increase our cuts another \$20M above our current plan, resulting in the possible elimination of programs. Mr. Kluge also reported on revenue enhancements and strategies to backfill some of the budget cuts.

Mr. Byers stated the deficit is so large that there will be cuts that ripple through the system seriously affecting government services.

Ms. Janet Regner suggested that the general public be made aware of the proposed cuts to the Judiciary and their impact to the local communities. Judge Dorfman added it is critical that the courts be linked to public safety.

The Chair noted that she would be presenting the State of the Judiciary speech to the Legislature on Monday, March 23 at 1:00 p.m.

Arizona Code of Judicial Administration

Mr. Mike DiMarco, Consolidated Collections Manager for the AOC, presented the following code section for the Council's review and approval: § 5-205: Collections. Mr. DiMarco noted the FARE Advisory Committee identified an ambiguity in the proposal

regarding whether a court can submit delinquent case fees and costs to the FARE program.

A motion was made and seconded to adopt the proposed amendment to (H) FARE Collection Fees and the code section as presented.

MOTION: To approve the amendment to § 5-205: Collections (H) FARE Collection Fees, as presented. Motion was seconded and passed. AJC 2009-15.

MOTION: To approve § 5-205: Collections, as amended. Motion was seconded and passed. AJC 2009-16.

Ms. Kathy Waters, Director of the Adult Probation Services Division for the AOC, presented the following code section for the Council's review and approval: § 6-204.01: Evidence-Based Practices Interstate Compact Probation.

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

MOTION: To adopt § 6-204.01: Evidence-Based Practices Interstate Compact Probation, as presented. Motion was seconded and passed. AJC 2009-17.

Ms. Waters presented the following code section for the Council's review and approval: § 6-106: Personnel Practices (amendment).

A motion was made and seconded to adopt the proposed amendment as presented.

MOTION: To adopt the amendment to § 6-106: Personnel Practices, as presented. Motion was seconded and passed. AJC 2009-18.

Ms. Waters presented the following code section for the Council's review and approval: § 6-204: Interstate Compact Probation (amendment).

A motion was made and seconded to adopt the proposed amendment as presented.

MOTION: To adopt the amendment to § 6-204: Interstate Compact Probation, as presented. Motion was seconded and passed. AJC 2009-19.

Ms. Waters presented the following code section for the Council's review and approval: § 6-205: Drug Treatment and Education (amendment).

A motion was made and seconded to adopt the proposed amendment as presented.

MOTION: To adopt the amendment to § 6-205: Drug Treatment and Education, as presented. Motion was seconded and passed. AJC 2009-20.

Ms. Nancy Swetnam, Director of the Certification and Licensing Division for the AOC, presented the following code section for the Council's review and approval: § 7-202: Fiduciary. Ms. Swetnam provided background information on the proposed code section and the Fiduciary Program in general. She explained that the proposed changes to 7-202 were the result of the June 2006 Council meeting where the Council asked staff to develop a list of duties that could not be delegated by a certified fiduciary. Ms. Swetnam stated the proposed changes were the result of many months of work by the Fiduciary Board, staff, and fiduciaries, and that amendments were made in response to identified concerns.

Ms. Swetnam addressed the issues and concerns expressed by the Arizona Fiduciaries Association, some of which go to the issue of non-certified staff performing duties that belong within the authority and responsibility of the certified fiduciary and provided some specific examples. She noted that due to the objections raised by the fiduciary community, a staff person does not need to be registered as a trainee (optional), a trainee can obtain the experience working one year under an experienced fiduciary and having a high school education; having a college degree will allow a trainee to qualify earlier in the process. Ms. Swetnam explained this change was made in part to address the needs of the rural community.

Ms. Swetnam suggested the Council consider the key provisions of the code as four separate issues to include: 1) active/direct supervision, 2) trainees, 3) certification requirements, and 4) the examination. Ms. Swetnam noted that provisions 1 and 2 are controversial, but provisions 3 and 4 appear to be non-controversial.

The Chair called for public comment.

Ms. Diana Clark, Superior Court in Maricopa County and member of the Fiduciary Board, provided public comment in support of the proposed code section. She stated there is no profession in this state that is responsible for the healthcare or the financials of other persons that is not regulated and regulated closely. Ms. Clark noted the Board has worked very diligently over the past year to enact the needed provisions to strike a balance between the business concerns of the certified fiduciaries and the protection of the vulnerable persons whose welfare is at stake. She urged the Council to approve the code section, which includes modest changes, but still advances the needs of creating better protections for vulnerable persons.

Ms. Lisa Price, President of the Arizona Fiduciaries Association and a private fiduciary, provided public comment in opposition to the proposed code section. Ms. Price reported the crux of the Association's concern lies with the active and direct supervision language. Ms. Price clarified there are a number of private fiduciary practices that employ certified fiduciaries who are not business entities and therefore do not have a principal fiduciary. Ms. Price explained that if she, as a principal fiduciary,

implements policies and procedures within her office and takes all reasonable steps to ensure her staff are aware of them, and if her staff commits wrongdoing, then she, as the principal, under this proposed code would be responsible for that wrongdoing. Ms. Price stated that in that specific situation the certified fiduciary committing the wrongdoing should be held responsible, not the principal. Ms. Price offered a specific example with respect to the case in Maricopa County, where the complaint and the wrongdoing conducted was actually done by a certified fiduciary within the Maricopa County Public Fiduciary's Office, but the sanction was only against the principal fiduciary. Ms. Price stated the program, as it currently stands today, works very well.

Mr. Roger Coventry, Maricopa County Public Fiduciary's Office, provided public comment in opposition to the proposed code section. Mr. Coventry stated his first point of concern was to be consistent with the issue of non-delegable tasks and the fact a fiduciary can be certified but unable to properly delegate tasks or duties. He talked about trainee status and noted his office requires a bachelor's degree and stated that, in his opinion, the optional trainee status is not worth the efforts. Mr. Coventry questioned how the proposed changes will make a difference when it comes to public protection and suggested the use of the word "ensure" is too high a standard. He did agree with striking some of the elements for certification and approve them in part. Mr. Coventry stated increased regulations will increase costs and could end up harming the fiduciary profession in general. He expressed his concerns with the language proposed under direct supervision and routine and regular control, and asked what the standard would be. Finally, Mr. Coventry stated his concerns with regards to the responsibility of the principal, and noted the principal should not be held responsible or sanctioned for their employee's actions.

Ms. Susan Edwards asked Mr. Coventry to list the tasks that should be delegable and explain what his specific objections were. Mr. Coventry stated that additional regulation is unnecessary.

Ms. Price addressed Ms. Edwards' question noting the code of conduct already deals with this issue. Ms. Price explained their issue is not if they should or should not delegate tasks or whether they should be responsible for improperly delegating tasks, their concern is the language that is being proposed, specifically under the active and direct supervision which makes them become personally and professionally responsible. Ms. Price added that as principal fiduciaries, they have to ensure they are providing routine and regular control, but none of these issues are defined or addressed. She questioned what routine and regular control means, what that standard is, and how that standard is met. Ms. Price stated the Code of Conduct works now and already holds them responsible, and she has concern with the fiduciary's ability to defend themselves under this new wording. Ms. Price suggested they should be held to the same standards as attorneys.

The Chair asked why fiduciaries should be treated differently than any other profession. The Chair stated the Council and staff have worked hard over the past three years, and it seems unfair to suggest something at today's meeting that has not been brought forward during the past three years.

Mr. Byers stated the Association has consistently objected to the proposals without providing any alternate proposals for the Council to consider. Mr. Byers asked if the Association had an alternate proposal to present today. Ms. Price acknowledged they did not.

Ms. Swetnam clarified some of the concerns Ms. Price had raised earlier. Ms. Swetnam explained, with regards to the issue of the responsibility of the principal, that when a complaint is filed, if there were adequate policies and procedures in place and the principal supervised the individual appropriately, in those instances the principal is not held accountable. She explained the code currently allows them to bring a complaint against the fiduciary who committed the wrongdoing rather than the principal, based on the facts.

Ms. Regner raised concern with the public comment presented and principal fiduciaries not being responsible for their employees' actions. She stated she is having a hard time, given the current economic times, accepting their objections to rules and regulations that will simply keep their industry intact.

Judge Dorfman asked if Mr. Coventry's position was the official position of the Maricopa County Fiduciaries Office. Mr. Coventry acknowledged it was not.

Judge Mundell stated that she presided over the Maricopa County case in question. She recalled that the Maricopa County Public Fiduciary felt he had absolutely no responsibility whatsoever for what took place in his office. Judge Mundell added that by regulating and holding the principal accountable, that person/entity has some incentive to start setting some policies and oversight in place, which is absolutely necessary.

Ms. Swetnam added they looked at the rules for attorneys in terms of the supervision requirements over paralegals and other lawyers and clarified that in an audit there are no sanctions. She stated that sanctions are only brought if there is a complaint filed and a finding of misdoing.

Ms. Price stated that she is not standing her ground saying they shouldn't be held responsible. She explained that the Code of Conduct, as it is currently written, works exactly as it should. She reiterated their issue is with wording of active and direct supervision, their ability to understand the standards they are being held to, and how to ensure they are complying with that standard. She asked again what regular and routine control means and expressed concerns with fiduciary's ability to defend themselves under this definition.

A motion was made and seconded to adopt the code in its entirety.

MOTION: To adopt § 7-202: Fiduciary, as presented. Motion was seconded and passed. AJC 2009-21.

The Chair stated that Ms. Price or other fiduciaries are welcome to come back to the Council at a later date with proposed amendments.

Juvenile Detention Standards/Code

Mr. Chad Campbell, Director of Juvenile Justice Services Division for the AOC, briefed the Council members on the proposed juvenile detention standards as presented by the Juvenile Detention Task Force. Mr. Campbell stated the standards are in response to the Arizona Auditor General's performance audit and subsequent recommendations to establish statewide mandatory operational detention standards. He asked for the Council's approval of the detention standards and mandating the standards through the Arizona Code of Judicial Administration § 6-311: Detention Operations. Mr. Campbell noted that the standards, if adopted, will make Arizona one of only eight states in the nation to have juvenile detention standards.

A motion was made and seconded to approve and recommend adoption of the detention standards and § 6-311: Detention Operations.

MOTION: To adopt the juvenile detention operational standards, as presented. Motion was seconded and passed. AJC 2009-22.

MOTION: To adopt § 6-311: Detention Operations, as presented. Motion was seconded and passed. AJC 2009-23.

Mr. John Phelps, new Director for the State Bar of Arizona, addressed the Council and briefed them on his past work experience.

E-Filing Notification Project Report/Plan

Mr. Karl Heckart, Director and CIO of the Information Technology Division for the AOC, provided a PowerPoint presentation on the project to include the scope of e-notification, contract status, financial information, product features, governance overview, and current project status and next steps. Mr. Heckart reported the project would be completed in three phases: Phase One: Maricopa County Justice Court pilots for small claims, evictions, and general civil and Maricopa Superior Court pilots for general, civil, and family (Fall 2009); Phase Two: begin the statewide rollout and appellate filing (Fall 2009 – Spring 2010); and Phase Three: criminal, domestic violence, juvenile, mental health, etc. (Spring 2010 - Fall of 2010).

Ms. Hunter, with regards to e-notification, inquired about people appointed as arbitrators for mandatory arbitration of superior court cases and asked how they will receive communications if they have email addresses but have not initiated something with the court. Mr. Byers noted this question will need to be addressed.

Judge Pelander encouraged making e-filing mandatory in the future. Discussion took place regarding the cost savings and efficiencies that could be realized with e-filing. Mr. Byers noted that all government filings would be free.

Chief Justice McGregor announced that staff had passed out a handout on the status of the Appellate Court Tools project for the Council's information (interim report) and noted the final report will be presented at the June meeting.

Strategic Planning

Vice Chief Justice Rebecca White Berch (serving as Chair after Chief Justice McGregor left for another commitment) provided an overview of the strategic planning agenda process and general background information. She noted they are currently soliciting names for the new agenda. Justice Berch introduced Ms. Janet Scheiderer, Director of the Court Services Division for the AOC.

Ms. Scheiderer briefed the Council members on the specifics of the 2010-2015 strategic agenda planning process. She noted this session will officially kick-off the development of the new agenda. Ms. Scheiderer provided a status of initiatives completed and in progress under the current Arizona Judicial Branch Strategic Agenda entitled *Good to Great*, initiatives that will continue in the next five-year agenda, and data to consider in planning for the future.

Council members were then divided into two groups and brainstormed ideas for the new agenda for 2010-2015. The following proposed initiatives were identified: enhanced communication and coordination among the court family; public outreach and education (community forums, development of constituency groups, domestic violence education, and listening to the public); guaranteed, stable funding for the courts; continued automation efforts; independent security for municipal courts; system efficiencies via technology; reducing the number of juvenile referrals to the court and expediting juvenile appeals; speeding up appeals on mental health (fast track); court security; expediting civil cases; dual-track guardianship; and new minor traffic rules.

Ms. Scheiderer reported that Vice Chief Justice Berch will be forming and chairing a strategic agenda subcommittee to work on this project and will be asking Council members to serve. In addition, she reported that collaboration tools will be incorporated into the process to include a blog, forums, and calendar/timeline. Ms. Scheiderer noted they hope to finalize the agenda by December 2009 and begin implementation on July 1, 2010.

Call to the Public/Adjourn

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

A motion was made to adjourn.

The meeting adjourned at 3:15 p.m. Members participating in the tour of the Translational Genomics Research Institute (TGen) left for the tour immediately following the meeting.