

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

Minutes of the
March 6, 2007, 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
Judge John Gemmill
Christine C. Iijima Hall, PhD.
Chris Herstam
Judge Douglas Holt

Emily Johnston
Judge Jan Kearney
William J. Mangold, M.D., J.D.
Judge Barbara Mundell
Jones Osborn
Jose de J. Rivera, Esq.
Deborah Schaefer
Jim Smith, Esq.
Judge James Soto
Judge R. Michael Traynor
Judge David Widmaier

Council Members Absent:

Miguel Montiel

Judge John Pelander

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
Greg Eades
Leila Gholam
Jennifer Greene
Melinda Hardman
Nicole Hinson
Fran Johansen
Jerry Landau

Rob Lubitz
Marna Murray
Angela Martinez
Christi Weigand
Janet Scheiderer
Lorraine Smith
David Withey
Amy Wood

Guests Present:

Vice Chief Justice Rebecca Berch
Professor Dan Strouse

Theresa Schmid

Chief Justice Ruth V. McGregor, Chair, called the meeting to order at 9:00 a.m., at the Arizona State Courts Building, 1501 W. Washington, Suite 119, Phoenix, Arizona. The Chair welcomed the Council's newest member: Judge Jan Kearney, Presiding Judge of the Superior Court in Pima County.

Approval of Minutes

The Chair called for any corrections or additions to the minutes from the December 7, 2006, meeting of the Arizona Judicial Council; there were none. The minutes were approved as written.

MOTION: To approve the minutes from the December 7, 2006, meeting of the Arizona Judicial Council, as written. Motion was seconded and passed. AJC 2007-01.

Public Health Law: A Judicial Reference Guide for Arizona Courts

Professor Dan Strouse, Professor of Law at the Sandra Day O'Connor School of Law, ASU, presented the final version of the guide and provided commentary on additional appendices in the handout provided. Professor Strouse also presented each member with a copy of the guide on CD.

MOTION: To approve the *Public Health Law: A Judicial Reference Guide for Arizona Courts*, as written. Motion was seconded and passed. AJC 2007-02.

Ms. Marna Murray, Director of the Education Services Division of the Administrative Office of the Courts (AOC), briefed the Council on plans for educational sessions to include: publishing the document, making it available on CD and on Wendell (Arizona Judicial Reference Site on the Arizona Supreme Court's Intranet), and an initial training session to be held at the June Judicial Conference.

The Chair encouraged judges to attend the training session offered at the June Judicial Conference.

CourTools Measure One: "Access and Fairness"

Ms. Christi Weigand, Court Performance Improvement Specialist for the Court Services Division of the AOC, briefed the Council on CourTools in general, the plan for Arizona courts, and the future of performance measures within the courts. The plan included administering the Access and Fairness survey in all general jurisdiction courts statewide.

Ms. Beverly Frame (Yuma) and Judge Barbara Mundell (Maricopa) shared their experiences with the CourTools survey in their respective counties. Judge Mundell stated it has been a very successful experience. Ms. Frame noted it was well received by the public.

Discussion ensued regarding the use of volunteers, the inclusion of represented and non-represented litigants, the availability of the survey in Spanish, using interpreters, obtaining comparable data from court systems across the state, identifying one scale for the survey, and the need to keep statistics on the return rate (acceptance) for filling out the surveys. Mr. Byers noted we need to get agreement from everyone on all the points listed above.

Mr. Byers stated the results of the surveys administered in the general jurisdiction courts would come back to the Council at the June or October meeting for review.

MOTION: To approve the plan to administer the CourTools Measure One “Access and Fairness,” as presented. Motion was seconded and passed. AJC 2007-03.

Capital Case Task Force (taken out of order)

Chief Justice McGregor briefed the Council on the establishment of the task force chaired by Justice Michael Ryan, providing information on the scope of the problem and what the task force and the working groups within Maricopa County are looking at. Chief Justice McGregor noted that the task force was established to examine the issues relevant to ensuring the availability of adequate resources for processing capital cases in Maricopa County and in the appellate courts of Arizona and to make recommendations for rule and statutory amendments. Chief Justice McGregor reported that the Task Force will report its recommendations to the Council at the October meeting.

Ms. Susan Edwards raised concern with a possible delay to civil cases. Judge Mundell noted that Maricopa County is trying to limit the impact to civil cases, but factors and resources do play into it.

Task Force on Legal Advice – Legal Information Guidelines

Ms. Fran Johansen, Court Specialist and staff to the Task Force, thanked all those involved for helping to develop the guidelines. Ms. Johansen reported that the Task Force has completed its charge, and the next step is the statewide broadcast which is scheduled for March 27 (500 people have registered at this time).

Discussion ensued regarding signage which may be posted in Spanish, at the discretion of the individual courts. Ms. Johansen noted they are requesting that an administrative order be issued from the Supreme Court stating the signage be placed in the appropriate location in each court.

Ms. Johansen reported that the final report requested that the guidelines be incorporated into the code of conduct for judicial employees. Ms. Johansen noted this was approved in concept by the Committee on Limited Jurisdiction Courts, but tabled by the Committee on Superior Court, due to language concerns. Ms. Johansen stated

the incorporation of the code of judicial conduct is not a necessary component at this time in order to move forward. Ms. Johansen noted staff will take their time to bring this into play and work out the details and concerns before bringing the code section back to the Council for review and approval.

Ms. Johansen added that following the broadcast (available on CD), the next step in implementing the guidelines will be the offering of two sessions at the judicial staff conferences in April and July and a follow-up with courts not able to participate initially to determine how to best get the materials to them. At that time, staff will continue to build the remainder of the program.

Ms. Edwards suggested that the words “can” and cannot” be bolded on the signage.

MOTION: To approve the adoption of the training manual and implementation plan, to include an AO being issued for signage, as presented. Motion was seconded and passed. AJC 2007-04.

Ms. Johansen added that they are also working with the State Bar and the Foundation, as well as the Certified Legal Document Preparer Program.

Arizona Code of Judicial Administration

The Chair noted that code section 6-114: Committee on Probation has been pulled from the agenda, as more work needs to be done on this issue, to include working with a professional/expert with specific experience in dealing with professional organizations.

Mr. Greg Eades, Legal Counsel for the Arizona Supreme Court, presented the following code sections (consent) for review and adoption: § 1-402: Procurement; 1-801: State, Tribal and Federal Court Forum; and § 5-109: Lengthy Trials. Mr. Eades noted there is a correction to the cover sheet for § 1-402: Procurement, to correct the language that reads “this code does not replace AO No. 2000-71, it just implements the procurement code.”

Discussion ensued regarding the need to educate judges to alert jurors of the 30-day window to submit for reimbursement (also stated on the form).

A motion was made to approve the matters on the consent agenda as presented.

MOTION: To approve the following code sections on the consent agenda: § 1-402: Procurement; 1-801: State, Tribal and Federal Court Forum; and § 5-109: Lengthy Trials. Motion was seconded and passed. AJC 2007-05.

Correctional Officers Retirement Plan (CORP)

Mr. Jim Bruner provided an update on the CORP plan. Mr. Bruner provided background information and noted that a Board has been established to administer the program, and the Board has met twice. Mr. Bruner added that \$100 million will transfer over, and the Arizona State Retirement System (ASRS) and AOC staffs are working diligently on this plan and everything appears to be under control.

Mr. Byers added that the joinder agreement was signed effective July 1. Mr. Byers noted there may be short-term problems regarding officers who are eligible to retire (20 years = 50% salary and 32 years/max out = 80% salary) who may elect to retire on July 1.

Judicial Branch Legislative Package

Mr. Jerry Landau, Director of Government Affairs, and Ms. Leila Gholam, Legislative Officer, for the AOC, updated the Council members on the status of the 2007 legislative proposals.

Ms. Gholam provided an update on the status of the Arizona Judicial Council Legislative package. Ms. Gholam noted that everything the Council asked for is alive, with the exception of the criminal code omnibus bill, which is not moving. Ms. Gholam stated the time-payment fee bill is in limbo at this time, but there is a commitment to find a home for it.

Discussion ensued regarding **SB1054: Arbitration; Claim Limit and Compensation.** Ms. Gholam noted the amendments made to the bill, to include lowering the disincentive for a Trial de Novo from 25% to 23%. The Council had no opposition to this amendment.

SB1434: Jury; Commissioner Duties; Juror Selection. A handout of the engrossed copy of the bill was passed out. Members were asked to review and let Jerry or Leila know if they have any questions or concerns (red flags).

Mr. Landau provided additional information on judiciary issues and other bills impacting the judiciary.

SB1286: Victims' Rights Omnibus – Discussion ensued regarding the following issues:

- *“Requires the clerk of the court to notify the prosecutor within ten days of a defendant defaulting on restitution.”* Ms. Frame noted this would be a problem as probationers pay through their probation offices or directly to the courts, and if they run 4-5 days late, the notice may pass in the mail. Ms. Frame, on behalf of the clerks, stated they would like to see the 10 days changed to 20, so they have the first ten days of the month to reconcile. Ms. Frame added that if she could send a report to the prosecutor, rather than sending out a notice to be placed in the file, this would help. Dave stated it would be helpful to hear from the JP courts,

limited jurisdiction courts, and clerks on this issue, since it is a live bill. Additional discussion ensued regarding the question of whether this: would extend the duty to probation departments to monitor restitution for people who aren't even on probation or may be on probation, but not supervised probation in the justice courts. It was noted we would need to look at that language. It was suggested that the language be changed to get the prosecutors to use the tools that are currently available to collect the money. It was noted that a clear process needs to be developed between the two offices.

- *Re: Opt-in provision for the victim (holding of restitution).* The following issues were raised: the need to put in time limits; what is the court's responsibility once money has been turned over; and the need for additional clarification between the victim and the defendant at that time.
- *Re: responsibility for notifying victims.* It was noted it will take additional resources to give notice from the Court of Appeals (COA) of any memorandum decision/opinion. The Chair stated this information is not available until it is filed, and we need to know what it is they really want. It was noted this is a hardship for the COA since it doesn't contact the parties on all the memo decisions. It was agreed that Jerry Landau will work with Judge Reinstein and Judge Gemmill on this issue during a stakeholders meeting. Judge Angiulo added that the word "received" should be changed to "shall issue," at the very least.
- Another question was raised re: continuances and the use of the word "received" on page 14, paragraph B: "*If the victim is not represented by counsel (most frequently in the limited jurisdiction courts) the prosecutor shall ensure the victim receives notice of the motion (most motions are made at the time of a pre-trial conference when the victim is not there).*" Does that mean the judge can't rule on the motion?
- Also, in paragraph D, stating that the court can't rule on a motion for continuance without considering the victims' views. How can the court know the victims' views if they're not present? It was noted this could bring case processing to a halt.
- Additional discussion ensued regarding continuances to include the provision for a continuance in writing will also slow it down, and the victims' rights proceeding has a no-cost provision, but the continuance does not, and it should be the same for both. It was suggested that prosecutors and defense counsel be notified of these and any other potential problems.

Mr. Landau asked for direction from the Counsel, noting he will continue to work on the bill to resolve the issues listed above, and if not successful, to oppose it. The Council was in general consensus with no vote taken.

SB1365: Youthful Sex Offenders; Jurisdiction; Probation. Mr. Landau provided background information and asked the Council for their discussion/consideration. The Chair noted the bill is not going anywhere at the moment, but may be resurrected. The Chair added that the general approach has been, leaving aside the other provisions,

that it would grant additional discretion to our judges to determine whether somebody should be in the juvenile or adult system. In that case, we would support it in terms of giving judges greater discretion. Judge Brutinel noted that the majority of members of the Committee on Juvenile asked this body to take a position to support this legislation in terms of the transfer-back provision. A motion was made that the Council support the transfer-back provision.

MOTION: To support the transfer back provision of SB1365. Motion was seconded and passed. AJC 2007-06.

HB2344: Juvenile Graffiti; Monetary Assessment. Mr. Landau asked if there was any further direction from the Council or if we should just let those involved deal with it. It was noted that Committee on Juvenile Courts objected to the diminution of their discretion to look at individual cases and provide individual justice.

HB2209: Law Enforcement Officers; Misconduct Interviews -- requires an employer of a law enforcement or probation office to supply written notice containing the specific nature of an investigation before commencing an interview.

Mr. Landau noted that concerns regarding this legislation center on the word "specific." Mr. Byers provided some background on this issue, noting it is an ongoing struggle to determine how we are going to relate to our employee organizations. Mr. Byers noted that several years ago, the first measure from the probation officers' union was addressed: when an officer is called in for an interview, they are allowed to bring in anyone of their choosing with them. Chief Probation Officers were strongly opposed to this measure. Probation officers and Chiefs came to the meeting, and the Council voted to remain neutral. Note: it was supported and the legislation did pass. After the fact, some Chiefs said it turned out to be a beneficial thing.

Mr. Byers reported that the Committee on Probation is strongly against this legislation, and the Committee on Juvenile Courts voted to oppose it. Mr. Byers added that around the state there are different philosophies on how to deal with employees. The Chair added that probation management opposes this legislation, but the Probation Officers' Association members support it. The Chief noted that the opinions of both chiefs and line officers are important.

Judge Kearney stated three reasons for opposing this measure that were brought to her attention: 1) creates two classes of employees within a probation department for disciplinary purposes; 2) is an increasing intrusion by the Legislature into the management of probation employees; and 3) concern that the interviews that are being discussed in this bill take place at the outset of the disciplinary process which may harden positions in these matters immediately.

Judge Brutinel noted that the juvenile court directors voted to oppose this legislation and had concern with litigation resulting from the use of the word "specific" as well as the impact to the way they do investigations (formal process).

The Chair asked that the Council take a position to support, oppose or remain neutral on this legislation.

Judge Dorfman made a motion to take no position on this bill and remain neutral. There was no second. Judge Brutinel made a motion to oppose this bill, and the motion was seconded.

MOTION: To oppose SB2209. Motion was seconded and passed. AJC 2007-07.

Discussion ensued on what was expected from legislative staff to try to work through the problems with this legislation rather than opposing it.

Mr. Osborn made a motion to reconsider the motion to oppose SB2209.

MOTION: To reconsider the opposition of SB2209. Motion was seconded and passed (one opposed). AJC 2007-08.

Discussion continued on what the fix would need to be for this bill. It was suggested that an amendment could be made to remove probation from the bill. A motion was made to authorize Mr. Landau to get probation out of the bill and, if not successful, to oppose the bill.

MOTION: To authorize Mr. Landau to have probation taken out of the bill, and if not successful to oppose it. Motion was seconded and passed. AJC 2007-09.

SB1555: Residency Restrictions; Schools; Child Care. Concerns raised about this legislation included: the need for the language to read “any school,” not just “high school;” the 1500-foot requirement; and concern with schools and, with child care facilities being so numerous, it would really limit where these people could live. It was noted the dangerous crimes against children covers crimes that are not sex offenses. A motion was made to oppose this bill.

MOTION: To oppose SB1555. Motion was seconded and passed. AJC 2007-10.

Call to the Public/Adjourn

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

The meeting adjourned at 12:55 p.m.