

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

D R A F T

Minutes of the
October 21, 2009, Meeting

Council Members Present:

Chief Justice Rebecca White Berch	Athia Hardt
Judge Louraine Arkfeld	Judge Joseph Howard
Jim Bruner	Yvonne R. Hunter
Judge Robert Brutinel	Judge Jan Kearney (<i>telephonically</i>)
David Byers	William J. Mangold, M.D., J.D.
Jose A. Cardenas, Esq.	Judge Barbara Mundell
Judge Rachel Torres Carrillo	Janet Regner
Susan Edwards	Judge Antonio Riojas, Jr.
Karen D. Ferrara (<i>telephonically</i>)	Judge James Soto
Beverly Frame	Judge Ann A. Scott Timmer
Ray Hannah	Judge David Widmaier

Council Members Absent:

Mike Hellon	Judge Douglas Holt
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Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark	Niki O'Keeffe
Stewart Bruner	Kay Radwanski
JL Doyle	Janet Scheiderer
Dori Ege	Kathy Sekardi
Karl Heckart	Lorraine Smith
Paul Julien	Henrietta Williams
Kevin Kluge	David Withey
Jerry Landau	

Presenters and Guests Present:

Judge Bruce R. Cohen	Judge Judy Harris Kluger
David Horowitz	Judge Colleen McNally
Vice Chief Justice Andrew Hurwitz	John Phelps
Judge John Kennedy	Richard Stavneak

Chief Justice Rebecca White Berch, Chair, called the meeting to order at 10:05 a.m., at the Arizona State Courts Building, 1501 W. Washington Street, Phoenix, Arizona. The Chair welcomed those in attendance to include the following new Council members: Judge Louraine Arkfeld (Presiding Judge, Tempe Municipal Court), Judge Joseph Howard (Chief Judge, Court of Appeals, Division II), and Ray Hannah (Arizona State Bar President). Chief Justice Berch introduced Judge Judy Harris Kluger, Chief of Policy and Planning for the New York State Court, who was attending the meeting to learn more about the Council in hopes of replicating the Council in her state.

Chief Justice Berch noted she received a letter from Beverly Frame, Council member, announcing her retirement.

Approval of Minutes

The Chair called for any omissions or corrections to the minutes from the June 17, 2009, meeting of the Arizona Judicial Council; there were none. The minutes were approved as written.

MOTION: To approve the minutes from the June 17, 2009, meeting of the Arizona Judicial Council, as written. Motion was seconded and passed. AJC 2009-38.

Approval of 2010 Meeting Dates

The Chair called for any changes to the proposed meeting dates for 2010 as listed below. A motion was made and seconded to approve the proposed meeting dates as presented. It was noted the March meeting date may conflict with Spring Break week. The Chair stated staff would look at the March date and will notify members if there is a change in date.

- Thursday, March 18, 2010 State Courts Building, Phoenix, Ste. 119
- Wednesday, June 16, 2010 Phoenix (location to be determined)
- Thursday, October 21, 2010 State Courts Building, Phoenix, Ste. 119
- Wednesday, December 8, 2010 State Courts Building, Phoenix, Ste. 119

MOTION: To approve the proposed meeting dates for the year 2010 as presented. Motion was seconded and passed. AJC 2009-39.

Child Support Guidelines Review Committee Update

Judge Bruce R. Cohen, Chairperson of the Guidelines Review Committee, and Mr. David N. Horowitz, attorney and member of the Guidelines Review Committee and Spreadsheet Study Task Group, recapped the information presented at the June meeting. Judge Cohen reported that since the last meeting the workgroup has taken the actual sections of the guidelines and reworked them to make them more user friendly and flow more naturally.

Mr. Horowitz presented a detailed anatomy of the measurements and benchmarks used to construct the Child-Outcomes Based Support method, along with the timeline and process for vetting the proposed guidelines and calculator. Judge Cohen stated the Committee will meet in January to finalize the guidelines and will return to the Council in March for final approval. Judge Cohen noted the Committee is inviting comments and suggestions.

Mr. Byers asked if there is data compiled on the rate of change with the new guidelines. Judge Cohen stated they would provide this information at the March meeting. Justice Hurwitz and Ms. Athia Hardt suggested the chart title distinguish between custodial and non-custodial parenting time. Judge Cohen agreed, stating they would identify the 365 days, i.e., 265 days with the custodial parent and 100 days with the non-custodial parent, and they will update their charts to reflect this clarification.

The Chair commended the Committee members for their tremendous efforts and thanked the presenters for explaining the changes in a clear and understandable way.

Revised Code of Conduct for Judicial Employees

Mr. David Withey, Chief Legal Counsel for the AOC, presented Code Section 1-303: Code of Conduct for Judicial Employees for the Council's consideration.

Mr. Withey presented the history of this code section and the need to convert and adopt the Code as a section of the Arizona Code of Judicial Administration (ACJA). He reviewed the proposed amendments and issues that needed to be addressed to include Rule 2.6 Assistance to Litigants and Rule 4.3 Elected Judicial Department Office.

Discussion took place regarding exceptions to the inclusion of volunteers (Canon 3, Page 17). Mr. Withey noted that exceptions to volunteers apply only to B.1. and 2. It was suggested that the heading on Cannon 3 be reworded to make it clear as to which provisions apply to employees and or volunteers or some combination thereof. In addition, it was suggested that the language in subparagraph C. distinguish between part-time employees and volunteers and that the language be reworded to clarify that the approval is to the activity not to the volunteer.

Ms. Susan Edwards asked that Power of Attorney be added to the definition of Fiduciary on Page 2. Mr. Withey noted that would be inconsistent with the Code of Judicial Conduct, but he would take a look at it.

Ms. Athia Hardt asked that the approval to continue to serve as a member of a committee rather than run for public office be clarified on Page 24.

The Chair asked Mr. Withey to make changes to the code section as discussed and repost for comment. Mr. Withey stated the code section will go to the Superior Court and Limited Jurisdiction Courts Committees for review and comment and would come back to the Council for final review and approval in December.

Mr. Withey reported on a new ACJA forum that will be launched for the December meeting where members can provide comments on pending code sections. Mr. Withey encouraged the members to provide additional comments on the proposed code section and noted that comments can be submitted online until November 27.

Health Emergency Planning

Ms. Niki O’Keeffe, Director of the Administrative Services Division for the AOC, briefed the Council on running juvenile detention centers during a health emergency as discussed in the Presiding Judges’ meeting on October 20. Ms. O’Keeffe reminded members to wash their hands, cover their cough, practice social distancing, get seasonal flu shots, seek treatment, send staff home when they come to work sick, and encourage people to establish a medical provider. Ms. O’Keeffe stated it would be a long flu season projected to last through May.

Judge Timmer asked about providing sick leave to employees who have exhausted their leave. The Chair stated the gift clause in the Constitution prohibits giving sick time to employees. The Chair suggested pooling time; having employees work from home, if applicable; and requiring employees to conserve their leave time.

Automation Update

Mr. Heckart, Director of the Information Technology Division for the AOC, provided an update on the automation components that need to be put in place to move the courts into the digital age. He provided information on the basic infrastructure, basic document management system, case-management system, and interaction points providing the ability to integrate information with other judicial entities and the public.

Mr. Heckart touched on the status of the AZ Judicial Automated Case System (AJACS) general jurisdiction system in terms of rollout, conversion, enhancements, and reintegration with the Fine, Fees and Restitution Enforcement (FARE) collections process and criminal-history reporting. Mr. Heckart provided an update on the limited jurisdiction courts’ case-management system project, outlining key issues and timelines.

Mr. Heckart reported on the e-filing project, noting the new portal page (www.azturbocourt.gov) will provide electronic services to the public, including electronic filing, FARE fee processing, case lookup, and eventually document access points. He reported that staff are working on the forms process and standardization; document formatting, security, and training issues; and studying how to automate judges on the bench.

Budget Update

Mr. Richard Stavneak, Director of the Joint Legislative Budget Committee (JLBC), provided a PowerPoint presentation on the budget process and issues for the state from the perspective of Legislative staff.

Mr. Stavneak touched on the state's economy with regards to jobs and housing and provided general fund revenue and breakdown by agency. He noted the general fund share is down from 39% in 2008. Mr. Stavneak stated there are three measures of the state's fiscal condition: general fund budget balance, general fund structural balance, and the operating fund balance. He reported there is a \$1.5 billion deficit in 2010, and projected revenue information will be updated on October 22, and the deficit will be higher. Mr. Stavneak noted the Moody's Corporation recently shifted the rating outlook for Arizona to negative.

Judicial Branch Legislative Package

Mr. Jerry Landau, Director of Government Affairs for the AOC, reported there are no legislative proposals this year for the Council's consideration. He stated the budget will be the overriding factor at the Legislature, and we are expecting bills affecting the selection of the judiciary. Mr. Landau noted there is talk of a special session being held in November to address funding for the Department of Revenue and the Corporation Commission, and well as the deficit.

Ms. Janet Scheiderer, Director of the Court Services Division for the AOC, presented information on mandatory DUI fines and assessments. She noted the issue came about this summer when we learned a number of courts are using alternative sanctions in lieu of mandatory fines and sanctions. She explained the current statutory provision (A.R.S. § 28-1389) states the court shall not waive a fine or assessment imposed as a result of a DUI case.

Ms. Scheiderer reported that some courts are modifying the manner of payment for those unable to pay due to disability or unemployment, etc., by allowing that person to do community service as restitution. She stated our legal staff has interpreted the statute does not give the judge the authority to modify the manner of payment, only to modify the actual payment by allowing them to pay at a later date, make payments, or be put into collections. It was noted the courts employing this method are making an effort to obtain the money first and verify ability to pay before offering these alternative sanctions, which can result in a 1% to 11% increase in collections.

Ms. Scheiderer asked if the Council is interested in moving forward with legislation that would more clearly specify the court's ability to use alternative sanctions in lieu of payment of a fine. She suggested the Council could work with the League of Cities and Towns or another body, take it through the Limited Jurisdiction Court Committee for their review and recommendation, or do nothing.

Discussion ensued and Ms. Susan Edwards encouraged the Council to move this issue forward. Judge Brutinel suggested it be deferred to the Limited Jurisdiction Courts Committee. Judge Widmaier agreed that this issue should be explored further. Judge Arkfeld also agreed in terms of being able to work with people with an inability to pay. Justice Hurwitz asked if there had been a court case yet on this issue, and if the current statute already gives judges this discretion. Mr. Byers reported there was not a

court case at this time and confirmed that legal staff says the current statute does not already give judges this discretion.

Justice Hurwitz stated that by suggesting to the Legislature that in some way this power doesn't already exist, it may cause a result we won't like, i.e., political consequences. Ms. Yvonne Hunter suggested partnering with a grass-roots organization (e.g., the League of Cities and Towns) that can be at the forefront of this issue and have them raise the question. Discussion ensued regarding disagreement over the legislative intent (payment of money versus other sanctions) and lack of consequences even if someone doesn't pay.

Judge John Kennedy stated in his court a judge can make findings on the record that the court will not take further action on a case. The case is still on the books and in collections, but no further action is taken in an effort to reserve judicial resources.

The Chair suggested that further discussion is needed, possibly a study committee, before moving forward with possible legislation. She asked that the issue be tabled and that staffs continue to work behind the scenes to gather more information and report back to the Council.

The Chair turned the Council's attention to the request from the Governor's Office to submit a budget that includes a 15% cut to the Judiciary.

Mr. Byers outlined the proposed plan to be submitted to the Governor by the end of the week. He noted the plan includes \$9.37 million in general fund cuts and sweeps, \$8.5 million in aid to counties and assistance to offset the general fund shift, and \$3.5 million in reductions to the state general fund cost, with a total state general fund savings of \$12.8 million in FY 2010 and \$22.2 million in FY 2011. Mr. Byers stated that we have nothing but bad alternatives to consider, but this plan does not impact probation and will avoid layoffs. He noted another option would have been to shut down the Court of Appeals (COA) and proceed with major layoffs in probation, COA, Supreme Court, and the AOC totaling 350-500 people.

Judge Mundell went on record stating that, with the plan being presented, half of the judicial salaries would be billed to Maricopa County, and Maricopa County would be taking on half the debt, but won't get half of the money back from the proposed increased fees. Mr. Byers noted there is \$94 million in the general fund with 81% going to the superior courts and the majority of that going to probation, with the exception of Maricopa County, whose probation funds come from the county. Judge Mundell stated that Maricopa County is being disproportionately hit, and the county may ask her to come up with the \$7 million in cuts.

Mr. Byers pointed out that if we focus all the cuts on probation (one option), Maricopa won't necessarily get hit as much, but probation in the remaining counties will be annihilated. Mr. Byers also noted that Maricopa County probation receives tens of millions of dollars in treatment money. He added the cuts can be sliced differently, but a \$14 million cut will be a hit no matter how we do it.

Mr. Byers reported the plan will be submitted, but not necessarily approved and executed. He added the JLBC has already asked about the judges' salary shift issue, and based on the questions asked, we are certain this shift is already on their list, but would not include fees to replace the lost revenue as outlined in our plan.

Mr. Byers stated the cost shift to the counties will potentially be cost neutral, avoids chaos in the criminal and juvenile justice systems, avoids lawsuits and equal protection challenges, does not increase prison and Arizona Department of Juvenile Corrections costs, has no impact to public safety, and has no direct staff layoffs.

Judge Mundell stated the Legislature is not fond of the words "amnesty program" and suggested using a different name in the plan. Mr. Byers pointed out the name "amnesty program" is written into the statutes. Judge Mundell asked about enhancing the use of electronic recording in lieu of using court reporters in an effort to use court reporters more effectively and keep costs down.

The Chair stated the need to work together to do the best we can, given a very bad situation. She reported the plan was vetted with all stakeholders, and although it is a terrible option, at least it avoids job cuts, and overall is the best option. The Chair added that the plan purports to take money from the counties, but does provide a mechanism to get that money back to them, which will hopefully be a wash. She stated that if we don't submit the shift in salaries option, it may happen anyway, with an additional 15% on top of that being requested.

Parenting Time Guide

Judge Coleen McNally, Co-Chair of the Parenting Plans Workgroup, presented the updated "Planning for Parenting Time: Arizona's Guide for Parents Living Apart" guide for the Council's adoption and approval to make it available to the public via the internet free of charge. Judge McNally provided background information on the guide and the Workgroup's efforts. Judge McNally thanked Judge Soto and the Workgroup members for their assistance.

The Chair thanked the Co-Chairs and Workgroup members for their hard work. Mr. Byers suggested the guide be included on the "Law for Kids" website.

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

MOTION: To adopt the parenting time guide, as presented. Motion was seconded and passed. AJC 2009-40.

Arizona Code of Judicial Administration

The following code sections were presented for the Council's consideration: 1-107: Commission on Minorities in the Judiciary (consent); 6-202.01: Evidence-Based Intensive Probation; and 6-211: Intercounty Courtesy Transfer.

The Chair asked if there was any discussion regarding 1-107. Mr. Byers moved the adoption of 1-107 as submitted. The motion was seconded with no discussion.

MOTION: To approve 1-107: Commission on Minorities in the Judiciary as presented. Motion was seconded and passed. AJC 2009-41.

The Chair introduced Ms. Dori Ege and Ms. JL Doyle, Adult Probation Services Division for the AOC, to present the remaining code sections.

Mr. Byers clarified that even though there was no controversy or objection to code sections 6-202.01 and 6-211, they were included on the non-consent agenda because of the substantive changes and need for further explanation.

Ms. Doyle presented 6-202.01 and provided a history and background regarding evidence-based practices and previously adopted code sections, as well as significant new or changed provisions incorporated into 6-202.01. A motion was made and seconded to approve 6-202.01 as presented.

MOTION: To approve 6-202.01: Evidence-Based Intensive Probation as presented. Motion was seconded and passed. AJC 2009-42.

Ms. Ege presented Code Section 6-211: Intercounty Courtesy Transfer for adoption. Ms. Ege provided background information and called the members attention to proposed changes to the code which were not included in their materials: Pages 3 and 4, Sections E. 1 and 2 to strike the words "In accordance with caseload capacities." A motion was made and seconded to adopt 6-211. Mr. Byers clarified the motion to approve the code section as amended with changes to E. 1. and 2.

MOTION: To approve 6-211: Intercounty Courtesy Transfer as amended. Motion was seconded and passed. AJC 2009-43.

Strategic Agenda Update

Ms. Janet Scheiderer, Director of the Court Services Division for the AOC, along with Judge Brutinel, Athia Hardt, Beverly Frame, Yvonne Hunter, and Karen Ferrara, Council members assisting with the strategic agenda process, presented information on the current status of the agenda, development process, and initiatives drafted to date.

Ms. Scheiderer asked for input on each of the initiatives and the following discussion ensued:

Goal 1: Strengthening the Administration of Justice

Comments: Judge Arkfeld asked why this goal would allow plea by mail or via the web for all Class 3 misdemeanors which could include domestic violence cases and assault cases (which could result in jail time). What was the reasoning for including these types of cases? The Chair agreed they should not

be included, and that the goal would need to be refined to ensure we don't suggest things that we don't intend to include.

Goal 2: Maintaining a Professional Workforce and Improving Operational Efficiencies

Comments: Ms. Yvonne Hunter, with regards to operational efficiencies, encouraged everyone to look at the issue of sustainability, but not necessarily focus on energy efficiency.

Goal 3: Improving Communications

Comments: Judge Arkfeld asked about the use of social networking tools with regards to ex-parte communications. The Chair stated the idea is to use some of the available internet and networking resources to get our message out. Mr. Byers suggested that this goal be further clarified and explored to address direct communications to the judges and other concerns.

Goal 4: Protecting Children, Families, and Communities

Comments: none

Goal 5: Improving the Legal Profession

Comments: none

A motion was made and seconded to approve posting the draft strategic agenda for comment.

MOTION: To approve posting the draft strategic agenda for comment. Motion was seconded and passed. AJC 2009-44.

The Chair thanked the workgroup for their assistance and encouraged further comments and suggestions.

Call to the Public/Adjourn

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

The Chair noted the next Council meeting will be held on Wednesday, December 16 at the Judicial Education Center at 5th Street and Van Buren in Phoenix.

A motion was made and seconded to adjourn the meeting.

MOTION: To adjourn the meeting. Motion was seconded and passed. AJC 2009-45.

The meeting adjourned at 3:34 p.m.