

ARIZONA JUDICIAL COUNCIL
Judicial Education Center
541 E. Van Buren Street
Phoenix, AZ 85004

D R A F T

Minutes of the
December 16, 2009, Meeting

Council Members Present:

Chief Justice Rebecca White Berch
Jim Bruner
Judge Robert Brutinel
David Byers
Jose A. Cardenas, Esq.
Judge Rachel Torres Carrillo
Susan Edwards
Karen D. Ferrara
Beverly Frame
Ray Hannah
Mike Hellon

Judge Douglas Holt
Judge Joseph Howard
Emily Johnston
Judge Jan Kearney
William J. Mangold, M.D., J.D.
Judge Norm Davis *for*
 Judge Barbara Mundell
Janet Regner
Judge James Soto
Judge Ann A. Scott Timmer
Judge David Widmaier

Council Members Absent:

Judge Louraine Arkfeld
Athia Hardt

Yvonne R. Hunter
Judge Antonio Riojas, Jr

Administrative Office of the Courts (AOC) Staff Present:

Theresa Barrett
Mike Baumstark
Stewart Bruner
Julee Bruno
Kandace French
Gabe Goltz
Jennifer Greene
Melinda Hardman
Kevin Kluge
Jerry Landau
Jennifer Liewer

Mark Meltzer
Katy Proctor
Janet Scheiderer
Jeff Schrade
Kathy Sekardi
Lorraine Smith
Nancy Swetnam
Kathy Waters
Henrietta Williams
David Withey

Presenters and Guests Present:

Judge Bruce R. Cohen
David Horowitz
Vice Chief Justice Andrew Hurwitz
Michael Jeanes

Gordon Mulleneaux
John Phelps
Justice Michael Ryan

Chief Justice Rebecca White Berch, Chair, called the meeting to order at 9:05 a.m., at the Judicial Education Center, 541 E. Van Buren, Phoenix, Arizona. The Chair welcomed those in attendance. She noted Judge Norman Davis, Associate Presiding Judge in Maricopa County, was in attendance, serving as proxy for Presiding Judge Barbara Mundell.

Approval of Minutes

The Chair called for any omissions or corrections to the minutes from the October 21, 2009, meeting of the Arizona Judicial Council; there were none. The minutes were approved as written.

MOTION: To approve the minutes from the October 21, 2009, meeting of the Arizona Judicial Council, as written. Motion was seconded and passed. AJC 2009-46.

Capital Case Oversight Committee Update

Justice Michael Ryan, Chair of the Capital Case Oversight Committee, updated the Council members on the reduction in the capital case inventory in the Superior Court in Maricopa County during the current calendar year. He noted there have been increases in the number of direct appeals to the Arizona Supreme Court and in the number of defendants with capital case petitions for post-conviction relief who lack appointed counsel.

Justice Ryan outlined the two recommendations made by the November 2009 Oversight Committee report: 1) that the speedy trial time limit under Rule 8.2(a)(4) of the Rules of Criminal Procedure, which is currently eighteen months from the date of arraignment, be extended to twenty-four months from the date the State files a notice of intent to seek the death penalty and 2) that the term of the Oversight Committee be extended until December 31, 2010. Justice Ryan asked the Council for approval of the two recommendations.

A motion was moved and seconded to approve the two recommendations as presented.

MOTION: To approve the two recommendations as presented. Motion was seconded and passed. AJC 2009-47.

Judicial Branch Budget Update

Mr. Dave Byers, Administrative Director for the AOC, updated the Council members on the status of the judicial branch budget. He reported on current status since the last report in October, what other states with similar financial circumstances are doing within their court systems, and specifics on Arizona's situation (\$2B deficit and a \$3.5B structural/actual deficit for this fiscal year). Mr. Byers reported there will be additional general fund cuts and fund sweeps, a proposal to securitize the state's lottery, and upcoming special sessions to deal with the deficit. He noted the possibility of a sales tax increase and changes to Proposition 105 (freeing up voter-protected money for a specific time period) being included on the ballot for the voters to decide.

Mr. Byers presented two budget options for the Council's consideration: Plan A which includes a civil processing surcharge of \$60 at the superior court level and \$10 at the justice court level and criminal processing surcharge of \$250 at the superior court level and \$60 at the municipal and justice court level. He reported that Plan A would also include a proposed amnesty program for traffic tickets, expansion of the Fines, Fees, and Restitution Enforcement (FARE) program, and flexibility regarding jury per diem. Mr. Byers explained that Plan B would include the same fees as Plan A, but the fees would be sent directly to a judicial stabilization fund from which judicial salaries and ERE would be paid. Mr. Byers noted that Plan B was preferred by the presiding judges because it eliminates risk to the counties, avoids Proposition 108, and also avoids individual county deficits. He added the only other option available would be a Plan C, where the Legislature and Governor would just cut our budgets and eliminate programs.

Discussion took place and the consensus was that Plan B is a better route politically, and the Council supported this plan. Mr. Byers noted drafting is done, and the plan is now ready to advocate to the Governor and Legislature. Mr. Byers confirmed the judges' salary shift, at this time, is limited to two years and to superior court judges.

A motion was made to approve Plan B and was subsequently amended to approve the scope presented in Plan B, without being bound to the specifics. The amended motion was seconded.

MOTION: To approve the scope of Plan B without being bound to the specifics. Motion was seconded and passed. AJC 2009-48.

Legislation Affecting the Judicial Branch

Mr. Jerry Landau, Director of Governmental Affairs for the AOC, briefed the Council on the following legislation impacting the Judicial Branch:

- *Superior Court Hours* – (proposed by the AOC): Authorizes the presiding superior court judge of a county to designate the Friday after Thanksgiving a non-judicial day and designate Columbus Day as open for transaction of business if the Board of Supervisors of the county has designated the Friday after Thanksgiving as a legal holiday in place of Columbus Day.

Mr. Landau noted this proposal would only apply to the counties, not to the state. A motion was made and seconded to support this legislative proposal.

MOTION: To approve the Superior court hours legislative proposal as presented. Motion was seconded and passed. AJC 2009-49.

- *Criminal Code sentencing* – technical correction (proposed by the AOC): to reinstate the November 1, 2006 date, as well as correct a statutory reference in one of the sentencing provisions.

A motion was made and seconded to support this legislative proposal.

MOTION: To approve the Criminal Code sentencing; technical correction legislative proposal as presented. Motion was seconded and passed. AJC 2009-50.

- *SCR 1002: Judicial Appointment; Senate Confirmation* (sponsored by Sen. Harper): Repeals merit selection for appellate justices and judges and for tribal court judges in counties with a population of 250,000 or more.

The question was asked if interim appointments in counties other than Maricopa and Pima would be affected. Mr. Landau said he would check on this and report back.

A motion was made and seconded to oppose this legislative proposal.

MOTION: To oppose SCR 1002: Judicial Appointment; Senate Confirmation as presented. Motion was seconded and passed. AJC 2009-51.

- *Other potential judicial-related bills* (various sponsors): merit selection combined with senate confirmation/reconfirmation, election of judges; clean elections; powers and duties of the presiding judges; selection of the presiding judge; and State Bar membership; powers and duties.

Mr. Landau asked for direction on how to handle these bills. A motion was made and seconded to oppose these judicial-related bills as they come up.

MOTION: To oppose potential judicial-related bills as they come up. Motion was seconded and passed. AJC 2009-52.

- *Appointment of Experts -- competency exam* (sponsored by Maricopa County): Legislative proposal that would change the requirement from mandatory to permissive that one of the two mental health experts appointed by the court to conduct a competency examination be a psychiatrist.

Mr. Landau reported the Superior Court Presiding Judges voted to table this proposal until additional information is provided. Ms. Johnston asked what other states are

doing. Mr. Landau stated he wasn't sure how other states handle this issue, but added this proposal would not affect the appellate process in Arizona. Judge Kearney stated the Presiding Judges noted the prior opposition came from health care professionals involved in the system, who felt the expertise between the two experts is quite different. She added one judge noted that, in dealing with people with serious mental health problems in the health care system, pharmaceutical treatment of these kinds of disorders can be very important, and a psychiatrist would have the primary expertise. Dr. Mangold agreed, stating there is a big difference between the two experts in terms of training and experience, as well as the ability to prescribe medication.

A motion was made and seconded to monitor the legislation.

MOTION: To monitor the Appointment of Experts; competency exam legislative proposal. Motion was seconded and passed. AJC 2009-53.

- *Defensive Driving School* (sponsored by Rep. Crump): Legislative proposal that imposes a number of additional and, in AOC's opinion, unnecessary duties on the Supreme Court (AOC) in regards to the defensive driving school program.

A motion was made and seconded to oppose this legislation as presented.

MOTION: To oppose the Defensive Driving School legislative proposal as presented. Motion was seconded and passed. AJC 2009-54.

- *Photo Enforcement Procedures – Justice Court* (sponsored by Sen. Pearce): Legislative proposal that makes changes to the current procedures for photo enforcement.

A motion was made and seconded to authorize staff to work with the Justices of the Peace and not take a position on having photo enforcement or not. The motion was further clarified to state that, if this proposal moves forward, staff should take steps to ensure it works for the courts in an efficient manner.

MOTION: To authorize staff to work with the Justices of the Peace and not take a position on having photo enforcement or not. The motion was further clarified to state, if this proposal moves forward; staff should take steps to ensure it works for the courts in an efficient manner. Motion was seconded and passed. AJC 2009-55.

Mr. Landau presented HR 1956: Federal Tax Offset (congress) for the Council's information that provides federal authorization for the U.S. Department of the Treasury to intercept tax refunds to pay overdue court-ordered financial obligations.

The Chair encouraged Council members to support this legislation by asking their Congressional representatives to pledge their support and be co-sponsors to the House and eventual Senate bill.

Arizona Code of Judicial Administration

Mr. David Withey, Chief Legal Counsel for the AOC, announced the presentation of the proposed code sections of the Arizona Code of Judicial Administration (ACJA).

Mr. Withey presented ACJA § 5-204: Administration of Victims' Rights (amendment) for the Council's consideration as a consent agenda item.

A motion was made and seconded to approve 5-204: Administration of Victims' Rights as presented.

MOTION: To approve ACJA § 5-204: Administration of Victims' Rights as presented. Motion was seconded and passed. AJC 2009-56.

Ms. Melinda Hardman, Court Services Division of the AOC, presented the following non-consent code sections for the Council's consideration: ACJA § 1-604: Remote Electronic Access to Case Records, ACJA § 1-605: Requests for Bulk Data, and ACJA § 1-606: Providing Case Record Access to Public Agencies and Public Purpose Organizations. Ms. Hardman stated there were no controversial issues or concerns with any of these new, proposed code sections.

Ms. Frame confirmed the Association of Superior Court Clerks supports these code sections as presented.

A motion was made and seconded to approve 1-604: Remote Electronic Access to Case Records as presented.

MOTION: To approve ACJA § 1-604: Remote Electronic Access to Case Records as presented. Motion was seconded and passed. AJC 2009-57.

A motion was made and seconded to approve 1-605: Requests for Bulk Data as presented.

MOTION: To approve ACJA § 1-605: Requests for Bulk Data as presented. Motion was seconded and passed. AJC 2009-58.

Mr. Byers noted that an amendment to ACJA § 1-606 is being presented to change the words "memorandum of understanding" to "record access agreement." A motion was made to approve the proposed amendment to 1-606 as presented. A motion was then made to approve 1-606 as amended. The Chair asked that both motions be considered together.

MOTION: To approve the amendment to replace the words "memorandum of understanding" with "record access agreement" and

approve ACJA § 6-106: Providing Case Record Access to Public Agencies and Public Purpose Organizations as amended. Motion was seconded and passed. AJC 2009-59.

Mr. Byers noted this will be the most modern public access to records policy/code section in the country, and he commended the Committee members on a job well done. The Chair thanked the Committee members and Mr. Michael Jeanes for his leadership.

Mr. Mark Meltzer, Court Services Division of the AOC, presented ACJA § 5-208: Operational Standards for Interactive Audiovisual Proceedings in Criminal Cases for the Council's approval. Mr. Meltzer asked that the Council approve adoption of "Version B – Revised" as outlined in the handout provided. He reported both the Court and Presiding Judges agree unanimously with Version B.

A motion was made and seconded to approve 5-208, Version B, as amended.

MOTION: To approve ACJA § 5-208: Operational Standards for Interactive Audiovisual Proceedings in Criminal Cases, Version B, as amended. Motion was seconded and passed. AJC 2009-60.

Mr. Withey presented ACJA § 1-303: Code of Conduct for Judicial Employees for the Council's consideration, providing information on the activity since the last review.

Mr. Withey addressed each of the major issues that have emerged requiring resolution by the Council.

- Rule 2.6 Assistance to Litigants: Mr. Withey reported the Presiding Judges approved the amendment that was provided in the handout for Rule 2.6 addressing the question as to whether a judicial employee should be required ("shall") or just permitted ("may") to provide the authorized assistance listed in paragraphs A through I. It was noted the amendment that was handed out was missing the last sentence in the draft Rule 2.6 (Page 12) and this should be added: "Employees are authorized to provide the following assistance . . . "

A motion was made and seconded to amend the code with the new proposed language (opening paragraph) provided by the Presiding Judges to include the addition of the last sentence and subsequent list (A-I) to read:

A judicial employee shall assist litigants to access the courts by providing prompt and courteous customer services and accurate information consistent with the employee's responsibilities and knowledge and the court's resources and procedures while remaining neutral and impartial and avoiding the unauthorized practice of law. Employees are authorized to provide the following assistance . . . "

MOTION: To amend the code with the new proposed language

provided by the Presiding Judges in the handout with the addition of the last sentence and subsequent list (A-I) in the draft code under Rule 2.6. Motion was seconded and passed. AJC 2009-61.

- Rule 4.3 Elected Judicial Department Office and whether judicial employees should be permitted to continue their employment while campaigning for elected judicial department office.

Mr. Hellon suggested the Council leave the issue alone and use the existing rule. Discussion took place regarding a statewide uniform standard versus a statewide standard with deference to local personnel rules. The Chair clarified the decision as either having a uniform, statewide rule that gives maximum permission to employees to run for judicial offices without having to resign (level, statewide playing field) or maintaining uniformity within a county. The Chair reported the Presiding Judges were split down the middle on this issue. A motion was made and seconded to approve the uniform statewide rule.

MOTION: To approve the uniform, statewide rule as presented under Rule 4.3. Motion was seconded and passed (17-3). AJC 2009-62.

- Rule 4.5 Workplace Activity in terms of a personal vehicle parked in a space or a parking lot reserved for court employees displaying political materials.

Judge Kearney suggested that clarifying language (*italics*) be included in the proposed comment to read “a personal vehicle parked in a space or a parking lot reserved *and identified* for court employees . . .” A motion was made and seconded to approve the proposed comment, including the appropriate language offered by Judge Kearney.

MOTION: To approve the proposed comment to Rule 4.5 including the words “and identified.” Motion was seconded and passed. AJC 2009-63.

A motion was moved and seconded to approve 1-303: Code of Conduct for Judicial Employees as amended.

MOTION: To approve ACJA § 1-303: Code of Conduct for Judicial Employees as amended. Motion was seconded and passed. AJC 2009-64.

Chief Justice Berch took a few minutes to honor Council member, Beverly Frame, who announced her retirement effective December 31, 2009. Chief Justice Berch thanked Ms. Frame for her service on the Council and presented her with a certificate of appreciation. Chief Justice Berch also thanked Ms. Frame for her years of service to the Judiciary as Clerk of Court for Yuma County, as well as her service on other committees and workgroups.

Mr. Byers presented Ms. Frame with the Distinguished Service Award for the Administration of Justice, and a cake was presented in her honor.

Ms. Kandace French, Certification and Licensing Division for the AOC, presented

ACJA § 7-205: Defensive Driving for the Council's approval.

The Chair made a call for public comment; there was none. A motion was moved and seconded to approve 7-205: Defensive Driving as presented.

MOTION: To approve 7-205: Defensive Driving as presented. Motion was seconded and passed. AJC 2009-65.

Retirement Systems Update (taken out of order)

Mr. Mike Baumstark, Deputy Director for the AOC, provided an update on the financial health of the Public Safety Personnel Retirement System (PSPRS), Elected Officials Retirement Program (EORP), and the Corrections Officer Retirement Plan (CORP). He stated EORP is 50% funded, and an employer rate increase will be effective July 1, 2010. Mr. Baumstark noted there are serious problems with retirement rates for CORP, and a substantial increase to the employer rate contribution could take effect on July 1, 2010. Mr. Byers added that unless the CORP plan is changed statutorily to increase the employee share or other changes are made to the plan, serious problems may result for our judges and employees. Mr. Baumstark reported that formal action has not been taken at this time to adopt the new employer contribution rates for any of the plans.

New Strategic Agenda

Ms. Janet Scheiderer, Director of the Court Services Division for the AOC, updated the Council on the status of the new strategic agenda following the comment period since the last Council meeting and changes made to the last draft. Ms. Scheiderer noted the agenda still needs a title and suggestions are still being taken.

Ms. Scheiderer asked the Council for approval of the agenda as presented and approval to continue to move forward. A motion was made and seconded to approve the agenda moving forward.

MOTION: To approve moving the new strategic agenda forward as presented. Motion was seconded and passed. AJC 2009-66.

Child Support Guidelines Review Committee

Mr. David N. Horowitz, attorney and member of the Guidelines Review Committee and Spreadsheet Study Task Group and Judge Bruce R. Cohen, Chairperson of the Guidelines Review Committee reported on the change in payment amounts by application of the proposed guidelines. Mr. Horowitz provided comparisons and analysis of the proposed guidelines to the updated and current guideline amounts (real-life impact). He discussed the negative support payments and how they are constructed and asked for suggestions to replace the term "negative" with another term.

Mr. Horowitz asked for the Council's feedback, prior to coming back to the Council in

March 2010 for final approval, on what was presented.

Judge Kearney asked that the child support booklet not fall through the cracks. Mr. Byers noted that *azturbocourt.gov* will be programmed for child support calculations. Vice Chief Justice Hurwitz suggested if the new guidelines are adopted, that increases triggering a specific amount be phased in over time.

The Chair and Council members commended Mr. Horowitz and Judge Cohen, along with members of the committee, for their work.

Situation in the Superior Court in Maricopa County

General discussion took place regarding the political situation in the Superior Court in Maricopa County with the filing of criminal charges and a civil RICO charge involving members of the judiciary. Justice Hurwitz and Judge Davis left the room prior to the discussion. Members were encouraged to not make derogatory remarks regarding the situation, but to share with others how good our court system is and that judges remain fair and impartial and continue to do the work they are charged with doing.

Call to the Public/Adjourn

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

The Chair announced the Honorable Michael Jeanes, Clerk of the Court in Maricopa County, will be filling the Clerk representative position vacated with the retirement of Beverly Frame. The Chair welcomed Mr. Jeanes to the Council.

The Chair introduced and welcomed the Supreme Court's new Communications/Legislative Officer, Jennifer Liewer, who was in attendance.

A motion was made and seconded to adjourn the meeting.

MOTION: To adjourn the meeting. Motion was seconded and passed.
AJC 2009-67.

The meeting adjourned at 2:40 p.m.