### **ARIZONA JUDICIAL COUNCIL**

Westward Look Resort 245 East Ina Road, Cholla Room Tucson, AZ 85704

Minutes of the December 5, 2007, Meeting

### **Council Members Present:**

Chief Justice Ruth V. McGregor Judge Douglas Holt Jim Bruner **Emily Johnston** Judge Robert Brutinel Judge Jan Kearney William J. Mangold, M.D., J.D. **David Byers** Jose A. Cardenas, Esq. Daniel J. McAuliffe, Esq. Judge B. Robert Dorfman Judge Margaret Downie for Judge Barbara Mundell Susan Edwards Judge John Pelander Karen D. Ferrara Jones Osborn **Beverly Frame** Judge John Gemmill Judge James Soto Athia Hardt Judge David Widmaier

### **Council Members Absent:**

Judge James Angiulo Yvonne R. Hunter
Chris Herstam Judge R. Michael Traynor

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

Theresa Barrett Carol Mitchell Mike Baumstark Katy Proctor Julie Dybas Judge Ronald Reinstein Melinda Hardman Janet Scheiderer Karl Heckart Lorraine Smith Nicole Hinson Nancy Swetnam Kathy Waters Jerry Landau David Withey Rob Lubitz Jeanie Lynch Amy Wood

#### **Guests Present:**

John MacDonald Dale Chapman

Chief Justice Ruth V. McGregor, Chair, called the meeting to order at 9:00 a.m., at the Westward Look Resort, 245 East Ina Road, Cholla Room, Tucson, Arizona. The Chair welcomed those in attendance.

## **Approval of Minutes**

The Chair called for any corrections or additions to the minutes from the October 24, 2007, meeting of the Arizona Judicial Council; there were none. The minutes were approved as presented.

MOTION: To approve the minutes from the October 24, 2007, meeting of the Arizona Judicial Council, as presented. Motion was seconded and passed. AJC 2007-50.

### **Judicial Branch Legislative Package**

Mr. Jerry Landau, Director of Government Affairs for the AOC, updated the Council on the status of the approved legislative proposals for 2008: 2008-02: Time Payment Fee; 2008-10: Interstate Compact; 2008-11: CORP; 2008-01: Criminal Code Sentencing Reorganization; and 2008-03: Capital Case Task Force Proposals. Mr. Landau noted the hot topics this legislative session will be budget and immigration.

Mr. Landau reported on legislative proposal 2008-12: Certified Court Reporters; Renewal; Continuation which removes the statutory requirement for certificates issued by the Board of Certified Court Reporters. It was noted that staff from the Auditor's General Office has advised that the Legislature will not automatically initiate the sunset process; it will require affirmative action from an outside entity. In addition, the proposal also suggests removing the renewal date and cycle from statute and addressing this issue through administrative rule. Mr. Landau asked the Council for a formal motion to support the legislative proposal; either as part of the Council's legislative packet, or for the Court Reporters Association to take the lead, with the support of the Council.

MOTION: To include this legislation as part of the Judicial Branch Legislative Package. Motion was seconded and passed. AJC 2007-51.

#### **Center for Evidence-Based Sentencing**

Judge Ron Reinstein and Ms. Jeanie Lynch from the Adult Probation Services Division of the AOC briefed the Council on the Center to include: background, description, goals, application of evidence-based practices, focus, guiding principles, tentative implementation goal, ongoing strategies, and trends in adult sentencing corrections reform.

Ms. Lynch noted there are grant opportunities available in the form of technical assistance grants from the National Institute of Corrections (JEHT Foundation of the Justice Division). Staff is currently putting a plan/proposal together to apply for this funding, which may be more than \$1 million.

The Chair thanked Judge Reinstein and Ms. Lynch, noting they would be reporting back at a future meeting.

# **Budget Plan**

Mr. Dave Byers, Director of the AOC, reported on the status of the budget, revenue projections, budget shortfall, how to balance the deficit, and possible budget cuts/reductions. Mr. Byers provided members with a copy of the letter he sent to Mr. Richard Stavneak, Director of the Joint Legislative Budget Committee, where Mr. Byers responded to the Appropriation Chairmen's request to submit a plan describing ways that the Judicial Branch can participate in budget reductions during the current fiscal year.

Discussion ensued regarding the proposed \$45 assessment to the defensive driving course fee as a way to increase state revenues. Judge Dorfman asked that the limited jurisdiction court judges be able to weigh in on this issue. Concern was raised that the \$45 assessment may cause fewer people to attend defensive driving classes. There was additional discussion concerning the 120 photo radar vans that the Department of Public Safety will be deploying soon.

# **Case Management System Update**

Mr. Karl Heckart, Director of Information Technology for the AOC, presented an update on the case management system (CMS). He provided information on integrated functionality, progress to date, and status. Mr. Heckart reported that the project is on schedule. He noted that enhancements will be taking place in January 2008; testing, training, and conversions will take place January – March, 2008; and the pilots will be launched in Yuma County in April 2008 and in La Paz County in May 2008. Mr. Heckart reported that the current issue on the table is the document management piece and whether to go with "AmCad" or "On Base." He said that a decision needs to be made by June 2008 regarding the limited jurisdiction court "AZTEC" replacement for 150 courts. He noted the two options are the Tempe system or "AmCad." Mr. Heckart added that once a decision is made, the pilot is projected to take place in late 2008 and the roll-out in 2011/2012.

Mr. Heckart reported on form-based e-filing and the different options available, such as "Legal-Aide," "TurboCourt," and home-grown options. Discussion ensued regarding e-citations. It was noted that Coconino County had an 80% reduction in workload following implementation. Mr. Heckart reported that his department is also working on having all defensive driving schools on a standard format.

# Access to Recovery (ATR) Grant

Ms. Kathy Waters, Director of the Adult Probation Services Division for the AOC, provided background information on the grant from the Substance Abuse & Mental Health Services Administration to create a treatment and recovery voucher program

targeting Methamphetamine users in Drug Courts. She noted that the Adult Probation Services Division had applied for and received this federal funding in September.

Ms. Waters reported that funding will flow out to the counties for services, totaling \$8.3 million over a three-year period, and the funding will initially go to Maricopa, Pima, and Yavapai counties. She added that staff is currently working on the creation of an automated voucher system (electronic voucher to go to the provider for services), which is a requirement of the grant. Ms. Waters noted they hope to expand the funding to other counties with existing drug court programs after the first year. She stated that money will also be used to fund positions within the AOC, Governor's Office, and the participating counties. Their first meeting will take place on December 14.

#### **Arizona Code of Judicial Administration (ACJA)**

Mr. David Withey, Chief Legal Counsel for the Arizona Supreme Court, presented the following code sections for the Council's review and adoption: § 1-105: Committee on Superior Court; § 1-106: Committee on Limited Jurisdiction Courts; § 1-306: Tax Court Judges Pro Tempore and Commissioners; § 5-203: Trial Jury Management; § 5-204: Administration of Victims' Rights; § 6-103: Victims' Rights Requirements for Probation Personnel; and § 6-114: Committee on Probation.

The Chair noted that all sections were put on a consent agenda for blanket approval. The Chair called for any motions to remove a code section from the consent agenda.

MOTION: To remove 5-203: Trial Jury Management from the consent agenda. Motion was seconded and passed. AJC 2007-52.

MOTION: To remove 6-103: Victims' Rights Requirements for Probation Personnel from the consent agenda. Motion was seconded and passed. AJC 2007-53.

MOTION: To table 6-114: Committee on Probation until the next Council meeting. Motion was seconded and passed. AJC 2007-54.

MOTION: To remove 1-106: Committee on Limited Jurisdiction Courts from the consent agenda. Motion was seconded and passed. AJC 2007-55.

MOTION: To approve 1-105: Committee on Superior Court, 1-306: Tax Court Judges Pro Tempore and Commissioners, and § 5-204: Administration of Victims' Rights as presented on the consent agenda. Motion was seconded and passed. AJC 2007-56.

Discussion ensued regarding 1-106: Committee on Limited Jurisdiction Courts. Dr. Mangold questioned the 75% attendance requirement, which is not consistent with

attendance requirements for other committees. Dr. Mangold stated if the 75% requirement remains, consequences and timeframes would need to be added.

A motion was made to amend D.1 of 1-106: Committee on Limited Jurisdiction Courts to read "shall attend 75% of the committee meetings per year." Additional discussion ensued, and the motion was withdrawn.

MOTION: To strike D.1. from 1-106: Committee on Limited Jurisdiction Courts and send D.1. back to the Committee on Limited Jurisdiction Courts with our concerns for additional work regarding the attendance policy requirement. Motion was seconded and passed. AJC 2007-57.

MOTION: To adopt 1-106: Committee on Limited Jurisdiction Courts as amended. Motion was seconded and passed. AJC 2007-58.

Discussion followed on 5-203: Trial Jury Management. Ms. Melinda Hardman of the Court Services Division of the AOC, presented additional information for the Council's consideration and provided a handout listing additional comments from the Committee on Superior Court. Ms. Hardman asked that E.1.c. be amended to read "from a fair cross section of the community."

MOTION: To amend E.1.c. of 5-203: Trial Jury Management to read "from a fair cross section of the community" rather than the "communities within the county." Motion was seconded and passed. AJC 2007-59.

Ms. Hardman noted the next issue is E.2a: to modify the language that the AOC should provide comments on the plan to the presiding judges within 30-45 days instead of 90 days. She added that staff would like to continue to allow 90 days for review of the plan. There was no motion to amend the present requirement of 90 days to 30 or 45 days.

Ms. Hardman presented the third issue under F: to send notice of the jury manager designation to the presiding judges of the superior court, as well as to the Court Services Division. Ms. Hardman noted that staff fully concurs with that change.

MOTION: To amend F. of 5-203: Trial Jury Management to send notice of the jury manager designation to the presiding judges of the superior court, as well as to the Court Services Division. Motion was seconded and passed. AJC 2007-60.

Ms. Hardman presented the last issue raised about paragraph G: that the terms "sex" and "gender" are identical, and one of the terms should be eliminated.

MOTION: To remove the word "sex" and keep the word "gender" in section G of 5-203: Trial Jury Management. Motion was seconded and passed. AJC 2007-61.

Judge Brutinel brought up an additional issue under paragraph D, which suggests adding a section "unless otherwise required by rule or statute." Judge Brutinel noted this would be a problem for trial court judges, i.e., in the case of a mistrial, where a judge may not want to wait another 10 days to call another jury, especially when there is nothing on the calendar. Discussion ensued that this will be a problem in high-profile criminal cases and in small, rural counties. Judge Brutinel suggested additional language be included to read "or upon order of the court for good cause shown."

MOTION: To amend and add the language ", or upon order of the court for good cause shown" to paragraph D of 5-203: Trial Jury Management. Motion was seconded and passed. AJC 2007-62.

A motion was made to approve 5-203: Trial Jury Management, as amended. After some discussion the motion was withdrawn.

Judge Downie asked that under paragraph C.2 the words "at least" be added before "seven days" to make it consistent with paragraph D.

MOTION: To amend paragraph C.2 to add the words "at least" before the words "seven days" in 5-203: Trial Jury Management. Motion was seconded and passed. AJC 2007-63.

Judge Downie noted that in paragraph N, the normal service on a state grand jury is three days, not two days, as it currently reads. Judge Downie suggested that it be amended to read "three" days not "two." The Chair suggested that the issues be separated to read that a "county grand juror shall not be asked to serve more than two days per week and a state grand juror shall not be asked to serve more than three days per week, unless approved by the presiding judge." Judge Downie accepted this proposed amendment.

MOTION: To amend paragraph N to read that a "county grand juror shall not be asked to serve more than two days per week and a state grand juror shall not be asked to serve more than three days per week, unless approved by the presiding judge" in 5-203: Trial Jury Management. Motion was seconded and passed. AJC 2007-64.

**MOTION:** To approve adoption of 5-203: Trial Jury Management as amended. Motion was seconded and passed. AJC 2007-65.

Discussion followed regarding 6-103: Victims' Rights Requirements for Probation Personnel. Mr. Withey suggested a technical amendment to add the word "current" before the word "address" in paragraph 3.A.

MOTION: To amend 6-103: Victims' Rights Requirements for Probation Personnel to include the word "current" under paragraph 3.A. Motion was seconded and passed. AJC 2007-66.

MOTION: To approve adoption of 6-103: Victims' Rights Requirements for Probation Personnel as amended. Motion was seconded and passed. AJC 2007-67.

#### **Auditor General Recommendations**

Mr. Rob Lubitz, Director of the Juvenile Justice Services Division of the AOC, briefed the Council on the two performance audits of the AOC related to juvenile detention and juvenile treatment recently completed by the Auditor General's Office.

The Chair stated the Council is not being asked to approve new procedures, but for the authority to move ahead and carry out responses to the audits.

Mr. Dale Chapman, Audit Manager for the Auditor General, walked the members through each of the findings and recommendations for the two audits.

Mr. Chapman presented the four findings from the detention audit, including: developing and implementing standards and compliance, exploring performance-based standards with counties where appropriate, screening procedures, and inspections of facilities.

Mr. Lubitz noted that the recommendations pertaining to finding #1 will be directed to the five counties, as indicated in the audit report.

Mr. Lubitz asked whether the Council approved of finding #2: "to identify and develop mandatory juvenile detention center operational standards." Mr. Lubitz noted that if approved, at a future date, staff would come back to the Council for approval to instigate performance-based standards for detention.

MOTION: To direct the AOC to move forward with identifying and developing mandatory juvenile detention center operational standards. Motion was seconded and passed. AJC 2007-68.

Mr. Lubitz asked whether the Council approved of finding #3: to seek the Council's direction regarding the need to develop statewide policies and procedures or standards for the application of AZ Court Rule 23 (D) to appropriately and consistently screen juveniles for detention.

Judge Kearney asked that the different concerns of the different county court systems be considered.

MOTION: To direct the AOC to move forward to work with county courts to develop statewide policies and procedures or standards for

the application of AZ Court Rule 23 (D) to appropriately and consistently screen juveniles for detention. Motion was seconded and passed. AJC 2007-69.

Mr. Lubitz asked whether the Council approved of finding #4: to recommend that the Legislature revise statute to replace the Department of Juvenile Corrections with the AOC as the entity responsible for inspecting juvenile detention centers. Mr. Lubitz added that, if enacted, the AOC would institute a thorough inspection and compliance process as recommended, contingent upon sufficient resources. The Chair noted this would be a contingent direction, based on the Legislature making that change.

MOTION: To direct the AOC to institute a thorough inspection and compliance process, contingent upon the Legislature revising statute to replace the Department of Juvenile Corrections with the AOC as the entity responsible for inspecting juvenile detention centers. Motion was seconded and passed. AJC 2007-70.

The Chair noted that if approved by the Legislature, staff would come back to the Council with a specific plan for approval.

Mr. Lubitz provided historical and background information regarding the second audit on juvenile treatment programs.

Mr. Dale Chapman outlined the Auditor General recommendations regarding Finding #1: steps to improve assessment, planning, and monitoring processes, and Finding #2: improvement of monitoring of treatment services vendors.

Mr. Lubitz asked whether the Council approved of finding #2: to direct the AOC to develop and implement policies and procedures regarding the risks and strengths/protective factors assessments, case planning, and monitoring the delivery of treatment services to juveniles as necessary. He noted that, if approved, the AOC will work with the local juvenile courts to develop policies and procedures as recommended in the audit report and submit these policies and procedures to the Council for review and approval.

MOTION: To direct the AOC to move forward to develop and implement policies and procedures regarding the risks and strengths/protective factors assessments, case planning, and monitoring the delivery of treatment services to juveniles as necessary. Motion was seconded and passed. AJC 2007-71.

#### Call to the Public/Adjourn

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

The meeting adjourned at 12:10 p.m.