

ARIZONA JUDICIAL COUNCIL
Hyatt Gainey Ranch
7500 E. Double Tree Ranch Road
Scottsdale, AZ 85258

Minutes of the
December 2, 2008, Meeting

Council Members Present:

Chief Justice Ruth V. McGregor
Judge Robert Brutinel
David Byers
Jose A. Cardenas, Esq.
Judge Rachel Torres Carrillo
Judge B. Robert Dorfman
Susan Edwards
Karen D. Ferrara
Beverly Frame
Athia Hardt
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 James Soto
Judge Ann A. Scott Timmer

Council Members Absent:

Jim Bruner
Mike Hellon

Judge David Widmaier

Administrative Office of the Courts (AOC) Staff Present:

Theresa Barrett
Mike Baumstark
Stewart Bruner
Jennifer Greene
Melinda Hardman
Karl Heckart
Kevin Kluge
Jerry Landau

Carol Mitchell
Jim Price
Janet Scheiderer
Lorraine Smith
Henrietta Williams
David Withey
Amy Wood

Guests Present:

Vice Chief Justice Rebecca White Berch
Sonya Dean
Michael Jeanes

Justice Michael Ryan
William Owsley, Esq.

Chief Justice Ruth V. McGregor, Chair, called the meeting to order at 1:30 p.m., at the Hyatt Gainey Ranch, Scottsdale, Arizona. The Chair welcomed those in attendance. The Chair congratulated Council member, Jose A. Cardenas, who recently accepted the position of Vice President and General Counsel at Arizona State University.

Approval of Minutes

The Chair called for any omissions or corrections to the minutes from the October 22, 2008, meeting of the Arizona Judicial Council; there were none. The minutes were approved as written.

MOTION: To approve the minutes from the October 22, 2008, meeting of the Arizona Judicial Council, as written. Motion was seconded and passed. AJC 2008-34.

The Chair reported on the Council's legislative package, noting the proposal from the Clerks of the Superior Court involving the Arizona Association of Counties, which the Council voted to oppose strenuously, has subsequently been withdrawn. The Chair thanked Michael Jeanes, Clerk of the Superior Court in Maricopa County, for his assistance in this matter.

Capital Case Oversight Committee

Justice Michael Ryan, Chairman of the Capital Case Oversight Committee, briefed the members on the joint report of the Committee and the Maricopa County Superior Court. Justice Ryan provided an executive summary of the report and outlined the subsequent Task Force and Oversight Committee recommendations. Justice Ryan requested the Council approve the recommendations set out in the report.

MOTION: To approve the recommendations set out in the report of the Capital Case Oversight Committee. Motion was seconded and passed. AJC 2008-35.

Judge Mundell noted that Judge Baca, Presiding Criminal Judge in Maricopa County, will be retiring at the end of January and asked that the judge replacing Judge Baca be appointed to the Committee. The Chair agreed.

Advisory Committee on Supreme Court Rule 123 and Data Dissemination Report

The Honorable Michael K. Jeanes, Clerk of the Superior Court of Maricopa County and Chair of the Advisory Committee, briefed the members on the history of the Committee. He also explained their charge to examine and make recommendations with regard to Rule 123, Rules of the Supreme Court of Arizona, governing access to records maintained by the judiciary. Mr. Jeanes then outlined the findings and recommendations of the Committee. Mr. Jeanes noted the Committee will continue its work on a new Arizona Code of Judicial Administration (ACJA) public records section to compliment the rule petition, if approved.

Mr. Jeanes requested the Council authorize the filing of a petition by January 9, 2009 to amend various rules related to access to court records and also approve the proposed comment period process.

A motion was made and seconded to authorize the filing of a petition by January 9, 2009.

Judge Pelander raised concern with the use of the "passive voice" and suggested the wording on Page 28, (B)(i) be changed from "may be provided" to "will be provided." Judge Pelander also suggested the rule apply to only those cases filed after the amended rule takes effect (prospective).

Ms. Susan Edwards suggested future presentations include the Arizona ID, in addition to the Arizona driver's license. Ms. Edwards raised concerns with identity theft and bulk data requests and the possibility of someone being able to call the phone company and change an individual's service. Ms. Edwards suggested additional research should be done in this area. Mr. Dave Byers noted the groups requesting bulk data would have to enter into an agreement that limits who gets this information. Mr. Byers added there are legitimate reasons to allow bulk data requests, i.e., to ensure the right judgment is tied to the right person, etc.

MOTION: To authorize the filing of the rule petition, taking into consideration the issues raised. Motion was seconded and passed. AJC 2008-36.

Selection of Statewide Electronic Filing Approach and Vendor

Mr. Karl Heckart, ITD Director/CIO for the AOC, briefed the Council members on the background of the project and the evaluation process. Mr. Heckart noted an evaluation team was brought together, representing a good cross section of the court community, to evaluate the five vendor proposals. He reported the Commission on Technology reviewed the evaluation team's recommendation on November 7 and approved taking it forward to the Council for their review and approval. Mr. Heckart stated that additional details of the evaluations would need to be presented during an executive session.

A motion was made to move into executive session for the purpose of discussing the procurement issue and, in addition to the Council members, the Chair of the COT, AOC E-filing staff, and the vendor would remain in attendance.

MOTION: To move into executive session for the purpose of discussing the procurement issue and, in addition to the Council members, the Chair of the COT, AOC E-filing staff, and the vendor would remain in attendance. Motion was seconded and passed. AJC 2008-37.

Chief Justice McGregor reconvened the public meeting.

A motion was made to approve the recommendation of the COT and authorize the AOC to pursue negotiations with the selected bidder as the next step in the process of constructing the statewide e-filing system.

MOTION: To approve the recommendation of the COT and authorize the AOC to pursue negotiations with the selected bidder as the next step in the process of constructing the statewide e-filing system.

Motion was seconded and passed (one opposed). AJC 2008-38.

Judicial Branch Budget Situation

Mr. Kevin Kluge, Chief Financial Officer for the AOC, briefed the Council on the current state budget situation. Mr. Kluge provided details on the current budget plan submitted to the Governor containing \$10 million in cuts. He reported the courts' funding is 1.2% of the overall state general fund budget and is comprised of 80% probation funding, 12% court of appeals/supreme court funding, and 8% AOC/other funding. Mr. Kluge provided details on the impact to full-time employees (FTE's) which would possibly eliminate 139.3 positions (9% reduction in force).

Arizona Code of Judicial Administration (ACJA)

Mr. David Withey, Chief Legal Counsel for the Arizona Supreme Court, presented the following code section for the Council's review and approval: § 1-507: Protecting Electronic Case Records in Paperless Court Operations (consent).

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

MOTION: To adopt § 1-507: Protecting Electronic Case Records in Paperless Court Operations, as presented. Motion was seconded and passed. AJC 2008-39.

Appellate CourTools Committee Report

Chief Justice Ruth V. McGregor, Chair of the Appellate CourTools Committee, presented an overview of the recent work of the Committee and reviewed the survey tools planned to assess the performance of the appellate courts. Justice McGregor provided additional information on the Committee's charge, membership, and funding which was provided by the State Justice Institute. She stated the final report would be completed by next March.

Chief Justice McGregor asked for the Council's approval to proceed with the State Bar, trial bench, and employee surveys and allow the Committee to move ahead with the Appellate CourTools.

MOTION: To approve the surveys for use in early 2009, as presented. Motion was seconded and passed. AJC 2008-40.

Commission on Victims in the Courts (COVIC)

Ms. Carol Mitchell, staff to the Commission on Victims in the Courts, presented the Commission's petition to amend rules related to disbursing criminal restitution. Ms. Mitchell added the rule change proposal would iron out differences that would strike a balance between the defendant's due process rights and the victim's constitutional right to proper restitution. Ms. Mitchell stated that COVIC is seeking the Council's approval to file this rule petition.

A motion was made to authorize the Commission to file the proposed rule petition as to restitution.

MOTION: To authorize the Commission to file the proposed rule petition as to restitution, as presented. Motion was seconded and passed. AJC 2008-41.

Ms. Mitchell briefed the Council on the proposed petition to amend rules related to standards for lawyers who represent children, outlining the development and comment process.

Mr. Bill Owsley, Division Chief, Office of the Legal Advocate in Maricopa County, provided additional details regarding the proposed rule petition. Mr. Owsley explained he was asked to participate in this workgroup to assist in developing standards for attorneys who represent children as either an attorney or guardian ad litem.

Mr. Novak confirmed the rules will be part of the Supreme Court Rules and expressed concern with the precedential effect in adopting rules regarding standards and best practices within one area of the law and not others. Mr. Cardenas noted he also shared the same concerns.

Judge Brutinel, Chair of the Committee on Juvenile Courts (COJC), noted these rules only apply to the dependency court. Judge Brutinel stated the Committee did not have a chance to review the specific proposal. Judge Brutinel explained there is a real concern among juvenile judges in rural Arizona who feel we need to be careful with the standards, because it is already difficult to hire judges to do this work. Judge Brutinel suggested this could be accomplished in another way and noted the COJC is requesting that the Council approve the idea of standards for lawyers in juvenile cases, but not to go forward with a rule petition at this time until further review.

Judge Mundell stated the juvenile presiding court judge in Maricopa County feels the same way and has problems with the "gate keeping process" in terms of who is going to perform that function. Judge Mundell suggested there needs to be more vetting before the juvenile judges can feel comfortable with it.

Ms. Hunter inquired if the existing rules of professional conduct would already apply to some of the issues and concerns raised. Ms. Hunter suggested a different mechanism for reporting violations rather than the creation of a new set of standards.

A motion was made to support the concept of attorney standards in juvenile dependency cases, but not authorize the filing of the rule petition.

Mr. Brutinel clarified that members of COVIC should meet with the people that are doing this work and talk about the best way to accomplish this, i.e., administrative order, doing it on county-by-county basis, etc. Mr. Byers suggested the use of a pilot project to work through the issues and continue to make progress in the interim.

MOTION: To support the concept of attorney standards in juvenile dependency cases, but not authorize the filing of the rule petition.

Motion was seconded and passed. AJC 2008-42.

Judicial Branch Legislative Package

Mr. Jerry Landau, Director of Government Affairs for the AOC, reported a special session for the budget may take place either the week of December 8 or 15. Mr. Landau noted the three proposals as approved by the Council at its October meeting have been drafted, and two are in final form.

Mr. Landau briefed the Council on the makeup of the Senate Judiciary Committee: Chair: Sen.-elect Jonathan Paton, Vice Chair: Sen. John Huppenthal, and Members: Sen. Meg Burton-Cahill, Sen. Ken Chevront, Sen. Chuck Gray, Sen.-elect Russell Pearce, and Sen. Richard Miranda. Mr. Landau noted the House Judiciary Committee is still undecided, but the Chair has been announced: Rep. Adam Driggs.

Establishment of a Strategic Agenda Development Committee

The Chair stated it was time to begin the process of establishing a new strategic agenda for the incoming Chief Justice and stated Vice Chief Justice Berch would be contacting some Council members to ask them to serve on this Committee.

Call to the Public/Adjourn

The Chair made a call to the public. Ms. Sonya Dean, Arizona Bureau Chief, Courthouse News Service, asked to speak. Ms. Dean noted they are interested in the electronic case filing and access to court information online. Ms. Dean asked that the news media's ability to function not be curtailed by this rule. She asked if a reporter, based in Arizona, could access the case information through this proposed system for a national news medium based in another state. Mr. Byers stated the answer is "yes," and added there will be no more limitations for them than for anyone else.

A motion was made to adjourn the meeting.

MOTION: To adjourn the meeting. Motion was seconded and passed. AJC 2008-43.

The meeting adjourned at 4:40 p.m.