

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

Minutes of the
March 25, 2010, Meeting

Council Members Present:

Chief Justice Rebecca White Berch
Judge Louraine Arkfeld
Jim Bruner
Judge Robert Brutinel
David Byers
Jose A. Cardenas, Esq.
Judge Rachel Torres Carrillo
Susan Edwards
Athia Hardt
Joe Kanefield *for Ray Hannah*
Mike Hellon
Judge Douglas Holt
Judge Joseph Howard

Yvonne R. Hunter
Emily Johnston
Michael Jeanes
Judge Jan Kearney
William J. Mangold, M.D., J.D.
Judge Norm Davis *for*
Judge Barbara Mundell
Janet Regner
Judge Antonio Riojas, Jr.
Judge James Soto
Judge Ann A. Scott Timmer
Judge David Widmaier

Council Members Absent:

Karen D. Ferrara

Administrative Office of the Courts (AOC) Staff Present:

Theresa Barrett
Mike Baumstark
Stewart Bruner
Chad Campbell
Jennifer Greene
Karl Heckart
Jerry Landau
Jennifer Liewer
Katy Proctor

Kay Radwanski
Janet Scheiderer
Jeff Schrade
Kathy Sekardi
Lorraine Smith
Kathy Waters
Henrietta Williams
David Withey

Presenters and Guests Present:

Judge Bruce R. Cohen
David Horowitz
Vice Chief Justice Andrew Hurwitz
Judge Wendy Million

John Phelps
Judge Ron Reinstein
Rena Selden

Chief Justice Rebecca White Berch, Chair, called the meeting to order at 9:05 a.m., at the State Courts Building, 1501 W. Washington, Suite 119, 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, and Joe Kanefield was serving as proxy for Ray Hannah.

Approval of Minutes

The Chair called for any omissions or corrections to the minutes from the December 16, 2009, meeting of the Arizona Judicial Council. The Chair asked that on Page 4, the words “judicial-related bills” be changed to read “merit-selection-related bills.” The minutes were approved as written with the suggested amendment.

MOTION: To approve the minutes from the December 16, 2009, meeting of the Arizona Judicial Council and the amendment to change the words “judicial-related bills” to read “merit-selection-related bills.” Motion was seconded and passed. AJC 2010-01.

New Strategic Agenda

Chief Justice Rebecca White Berch briefed the Council members on the new Strategic Agenda entitled “Justice 2020” to include an overview of each of the five goals: 1) Strengthening the Administration of Justice; 2) Maintaining a Professional Workforce and Improving Operational Efficiencies; 3) Improving Communications; 4) Protecting Children, Families, and Communities; and 5) Improving the Legal Profession.

Chief Justice Berch asked that members review the agenda, see where goals can be incorporated in their court and communities, and work with constituents to move the strategic agenda forward.

Chief Justice Berch reported on future initiatives to include the recently established Rules of Evidence Committee, chaired by Vice Chief Justice Andrew Hurwitz, that will compare the Arizona Rules of Evidence to the proposed restyled Federal Rules of Evidence, identify differences, and provide input to the Supreme Court regarding conforming changes; the establishment of a committee to develop rules for civil cases in justice courts in an effort to develop a uniform policy; and the establishment of a committee to review guardianships, fiduciaries, and conservatorships, chaired by Judge Ann Scott Timmer. The Chair noted this committee will perform a wide-ranging review of our licensure programs and the audits to determine if new rules are necessary. She stated the charge and membership of the committees are being determined and encouraged council members to provide input on these committees as well as interest in serving.

Website Redesign Project

Mr. Jeff Schrade, Director of the Education Services Division for the AOC, provided an online demonstration of the new website redesign. He explained the improvements made to the front page to make it more user-friendly, especially for the public, and showcased highlights of the new site and navigation. Mr. Schrade noted the website has a new address (www.azcourts.org) and includes a new content management system which is an open source, free software called DotNetNuke and a revamped search engine providing custom search functionality.

Law Day Project

Chief Justice Berch reported the Arizona Supreme Court and the State Bar of Arizona are hosting a special web-based seminar entitled, "*Law, Justice, and the Holocaust: What You Do Matters.*" She stated the broadcast will be offered at multiple sites throughout the state, and members of the community are invited to attend to include presiding judges, law firms, county bar, prosecutors, defense bar, public defenders, legal defenders, students, and members of the Arizona Judicial Council.

Chief Justice Berch stated this would be a live broadcast in the State Courts building and is accredited for both COJET and CLE credit.

New Institute for Court Management (ICM) Certification Program

Mr. Dave Byers, Director of the Administrative Office of the Courts, briefed the members on the Court Management and ICM Fellow Programs being offered in Arizona. Mr. Byers provided a handout listing details on the programs, as well as an overview explaining the consortium which consists of Arizona, Arkansas, California, Maryland, Minnesota, Ohio, and the Institute for Court Management. He noted the National Association of Court Management serves as the advisor.

Mr. Byers reported the Court Leadership Institute of Arizona (CLIA) is an additional program which provides a clear track to train and educate our work force to be highly qualified, certified court managers and executives. He noted the final step in the process will be to look at probation to determine what additional classes can be built into these programs for probation management. Mr. Byers stated the goal is to establish high-quality, consistent, and interactive curriculum with testing components. He noted these programs are a great strategic improvement on how we educate our judicial workforce.

E-Filing Update

Mr. Karl Heckart, Director of the Information Technology Division of the AOC, briefed the Council members on the current status of the eFiling project in Arizona.

He reported on the accomplishments to date: the fill and print form capability is up for limited jurisdiction courts; civil subsequent filing is up in Maricopa County Superior Court; and staff are coming to the end with test cycles to include an early April

pre-production test and a soft launch, and are also working with the Clerk of Court Michael Jeanes to identify law firms and work out the process. Mr. Heckart stated the goal is a full announcement of a mandatory filing model in Maricopa County for those civil subsequent filings and eventually to fully initiate cases. He stated that staffs are working through the business requirements for eFiling in Pima County, and technical staff is working on the infrastructure pieces. Mr. Heckart noted a soft launch is targeted in the late summer of 2010 for Pima County, followed by a move into a statewide model for the remaining superior courts. He added that the Appellate eFiling project is low volume, and the appellate design is underway and teams are meeting.

Project Hope – Adult and Juvenile Probation

Ms. Kathy Waters, Director of the Adult Probation Services Division of the AOC, briefed the Council members on Project Hope (Hawaii's Opportunity for Probation with Enforcement) which was collaborative effort between the courts, probation, prosecutors, defense bar, sheriff's office, and treatment providers to implement a program to ensure there was swift and certain response to violations. She explained the program targeted certain offenders (high risk populations) who were reoffending, violating, or failing regular probation. These offenders would be brought before the court, given one more chance, and placed in Project Hope, and if the offender violated in any way, they spent immediate time in jail. Ms. Waters noted the program is highly successful, and we are currently replicating the program in Arizona to be called Project SAFE (Swift, Accountable, and Fair Enforcement of Probation). Ms. Waters reported a workgroup comprised of AOC staff; Judge Reinstein; and representatives from all the counties, probation, judges, prosecutors, and the defense bar are meeting and working out the details and are all in favor of moving forward with this program.

Mr. Chad Campbell, Director of the Juvenile Justice Services Division of the AOC, presented information on the JUST Program (Juveniles under Supervision with Treatment) which is being piloted in Yavapai County. Mr. Campbell reported the project was the impetus out of the passage of SB 1420 regarding relationship with kids to drugs and alcohol. He noted the sponsor of the bill thought kids needed to have quicker consequences and immediate time in detention, and Project JUST will address the issue of the swift and immediate sanction. Mr. Campbell noted that both standard and intensive probation will be included in the Yavapai County pilot that began 17 days ago, and the pilot will run 6-12 months to obtain a sample size. Mr. Campbell added that if the program is successful, it will be implemented statewide. He stated Arizona is the first state in the nation to pursue the Project Hope concept on the juvenile side.

Ms. Hunter expressed concern with all juveniles not being able to participate in the test group and being offered the same options. She felt that a juvenile not being able to take advantage of the JUST program could possibly be at risk. Mr. Byers stated this pilot is an experiment to see if the program results in an improvement before implementing it statewide. Mr. Campbell noted that juveniles will still get services and intervention outside of the Yavapai County pilot program, and because this program has not been offered before in another location, there is no data to compare to our state. Judge Brutinel added there is a substantial expenditure of resources in this pilot

program in Yavapai County, and if it is successful, staff will spread the program anywhere they can.

Arizona Code of Judicial Administration (ACJA)

Ms. Kathy Waters presented ACJA § 6-207: Uniform Conditions of Supervised Probation for the Council's consideration.

Ms. Waters explained the suggested changes incorporate the principles of evidence-based practice into the uniform conditions of probation and reflect the language included in other code sections. She stated the primary change to the appendix reorganizes specific categories, brings clarity to probationers, links to behavior rather than just a list of rules, and assists the probation officers in their case planning.

Ms. Waters explained the three amendments being presented, in addition to the two amendments suggested by the Superior Court Presiding Judges, to Appendix A: 1) include the language "I agree to the following as conditions of the suspension, imposition or execution of sentence;" 2) amend No. 1 to read "I will maintain a crime-free lifestyle by obeying all laws, and not engaging or participating in any criminal activity;" 3) add the sentence "I will provide a sample for DNA testing if required by law." to the end of No. 6; 4) amend the first part of the form to replace the word "CONTINUING" with "REINSTATING" and to strike the checkbox "for a modified term" and the checkbox for "with credit for _____ days with a revised expiration date of . . ."; and 5) add the words "or as required by law" following the words "as determined by APD."

A motion was made and seconded to approve § 6-207: Uniform Conditions of Supervised Probation as presented to include the five proposed amendments.

MOTION: To approve ACJA § 6-207: Uniform Conditions of Supervised Probation as presented to include the five proposed amendments. Motion was seconded and passed. AJC 2010-02.

Report from the CIDVC Best Practices Workgroup

Judge Wendy Million, Tucson City Court, on behalf of the Committee on the Impact of Domestic Violence and the Courts and its chairperson, the Honorable Emmet Ronan, presented the CIDVC *Best Practices in Domestic Violence Cases Guide* as developed by the Best Practices Workgroup in response to the Morrison Institute's "System Alert" (2007) and "Layers of Meaning" (2005) reports on domestic violence and Arizona's criminal justice system. Judge Million noted the guide is a compilation of state and national resources that may provide guidance, ideas, and support in establishing best practices for law enforcement and prosecutors, victim advocates, and the courts. She stated the report also includes information regarding offender treatment and domestic violence resources. Judge Million asked that the report be made available on Wendell and included in New Judge Orientation. She also asked that the workgroup remains active to keep the guide updated.

Discussion took place about next steps and the need to provide training and make this information readily available. It was noted that domestic violence (DV) courts are effective, but are not available everywhere because of the costs and resources required. Ideas for training included contacting the presiding municipal court judges and include this training as part of their in-court education/COJET and educating the entire bench, including commissioners. Judge Kearney suggested that judges from all courts countywide get together for training at the same time, where possible. Mr. Byers suggested the next step should be for the workgroup to do some vetting on these innovative practices to see if they do work with positive results.

Ms. Kay Radwanski, Court Services Division Specialist for the AOC, provided information regarding judicial training opportunities using grant funding. She reported that staffs have been hired to develop distance-learning training for judges and court staff, and a 2nd Annual DV Summit (multi-disciplinary training event) is tentatively scheduled for March 2011. Ms. Radwanski stated staff is applying for additional federal grants to fund a third annual DV summit, as well as other trainings.

A motion was made to approve the report.

MOTION: To accept the report of CIDVC's Best Practices Workgroup as presented. Motion was seconded and passed. AJC 2010-03.

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:

- *HB 2109: Superior court holiday hours* - The bill is moving and has passed unanimously out of the Senate Government Committee.
- *HB 2435: Repetitive offenders; probation; marijuana offenses (criminal code cleanup)* – The bill is moving along through the process with no issues.

Merit-Selection-Related Legislation:

- *SCR 1002: Judicial appointments; senate confirmation* – Pending Committee of the Whole, but it looks like the votes are not there at this time.
- *SCR 1049: Judges; merit selection; population threshold* – The bill failed in the Senate and also failed on reconsideration.
- *SB 1081: Trial court appointments; nonattorney member* – The problem is that nonattorney members were not being appointed in a timely manner, especially in Pima County. The bill has passed the Senate unanimously and will be coming to the House Judiciary soon. The Chair reported the Judiciary is fighting SCR 1002, and this legislation/statute was introduced to fix the problem and eliminate the need for SCR 1002 which abolishes merit selection. The Chair stated she authorized and supports this bill.

A motion was moved and seconded to support this legislation.

MOTION: To support SB 1081 as presented. Motion was seconded and passed. AJC 2010-04.

Ms. Katy Proctor, Legislative Officer for the AOC presented the following legislation:

- *HB 2501: Dependent children hearing; hearings; notice* – The problem is that due process needs to be inserted into the bill. The Presiding Judges agreed this legislation is a policy decision that the courts should not weigh in on, but staff should be authorized to continue to work with the sponsors.

A motion was made and seconded to have Katy Proctor continue to work with the sponsor of the bill to point out the problems with provision number three and encourage them to put the proper due process protections around that provision.

MOTION: To have Katy Proctor continue to work with the sponsor of the bill to point out the problems with provision number three and encourage them to put the proper due process protections around that provision. Motion was seconded and passed. AJC 2010-05.

- *HB 2650/SB 1199: Divorce; waiting period; educational programs* – The proposed floor amendment removes the waiting period extension and instead allows persons in conciliation court to extend the stay an additional 20 days.
- *SB 1035: Parental rights; termination; hearing* – This bill affects attorneys, but is also a concern to the courts with regards to Guardians ad Litem (GAL) not meeting with the clients. Dave Byers suggested the State Bar should take a look at this issue.
- *SB1314: Domestic relations* – The bill was significantly reworded and adopted as a floor amendment in the Senate and is moving.
- *SB1325: Polygraph examinations; interviews; law enforcement* – The bill addresses disciplinary actions for law enforcement officers, to include our probation and juvenile detention officers.

Mr. Jerry Landau presented the remaining Judicial Branch legislative updates:

- *HB2424: Defensive driving schools* – The Council voted to oppose. The bill is pending Committee of the Whole (COW) and there is talk of additional amendments, but the bill is not moving.
- *HB2471: Appointed mental health experts; requirements* – The Council voted to monitor this bill which passed out of Senate Health and is moving through the process.
- *SB1009: Juvenile prosecutions; adult court; age* – The bill was voted and passed in the Senate and is headed to the House.
- *SB1088: Juveniles; discretionary transfer; adult court* – The bill passed through a committee and then stopped.
- *SB1089 – Juveniles; chronic felony offender; definition* – The bill did not get a hearing.

- *SB1226: Jury service; military exemption* – The bill is important to our jury commissioners who felt we didn't need another exemption; hardship exemption already covers it. The bill is dead and will not be heard in the House. Mr. Byers stated the need for reasonableness. Jim Bruner stated there should be an automatic exemption for military personnel serving outside of their jurisdiction.
- *SB1309: Parents; rights* – Pending House Caucus.
- *SB 1018: Photo Enforcement* – The bill continues to move forward.
- *SCR1040 – Increase Retirement Age* – The bill cleared the Senate and passed House Judiciary and is moving along.

Judicial Branch Budget Update and the Arizona Department of Juvenile Corrections

Mr. Dave Byers updated the Council members on the status of the judicial branch budget in terms of permanent cuts, fund sweeps, other costs not covered, and impacts. He also reported on the impact to the Judiciary if Proposition 100 fails at the polls in May.

Mr. Byers reported that since the budget passed, a new set of problems has arisen regarding the new Federal legislation on healthcare. He stated the preliminary analysis indicates an additional impact of \$1.5B for next fiscal year. Mr. Byers noted the only thing left to cut in the state budget at this time is education and public safety.

Mr. Byers stated there will be a special session scheduled to deal with the “Kids Care” issue and the Governor’s authorization to sue on the healthcare legislation.

Mr. Byers noted that Plan B, as approved by the Council, was not included in the budget bill, but could be considered in the future for additional cuts (less the transfer of judges’ salaries to the counties).

Mr. Byers reported on the Department of Juvenile Corrections (ADJC). He noted the Governor recommended closing ADJC, transferring all juveniles in ADJC’s custody to the counties, and eliminating all funding effective July 1, 2010. Mr. Byers stated the counties strongly opposed the closure and transfer of responsibilities and costs. Mr. Byers added the Legislature and Governor agreed to fund ADJC through June 30, 2011, and created a Commission to study this issue during the interim and come up with a plan. He noted that Judge Brutinel and Judge Ballinger have been named to the Commission, and Judge Brutinel will engage a group, to include national experts, and take a look to determine what the options are and how best to proceed.

Child Support Guidelines Review Committee

Judge Bruce R. Cohen, Chairperson of the Guidelines Review Committee (GRC) reported on the current status of the guidelines review to include a summary of recent feedback and comments; explanation of the thorough vetting process involved; how the GRC overcame parenting time adjustment challenges; and the final products consisting of reorganized guidelines with step-by-step instructions, addendums to the guidelines,

correlation table, corresponding child support calculator, and a manual instructions booklet.

Discussion took place regarding the phase-in method for support orders where significant increases in the child support award may occur. Judge Cohen noted if an award is set now, and the new guidelines go into effect, if the change in the support amount is a certain percentage, a new action would need to be filed. He noted the guidelines only trigger a significant change when there is a high disparity in income.

Judge Davis raised concern with paragraph 2.G. where the parenting time adjustment is referenced, but does not describe how it fits when it is a deduction to the child support amount. He suggested the need for a brief paragraph to reference what that is, how it is applied, and how it affects the preliminary support amount to get to the bottom-line figure. Judge Davis further stated that 2.G. mentions the calculation is done by reference to a calculator, but then says, if you want to do it manually to go to the instruction booklet which only describes how the calculation is made. Judge Davis asked that he be given a chance to work through these issues and ensure they are incorporated into 2.G. to adequately describe the process. Judge Cohen noted these suggested changes could be easily made.

Dave Byers suggested if the Council approves the guidelines today, that the motion includes language to allow adjustments to be made, if needed, and brought back to the June meeting for final approval. He noted if the Council adopts the guidelines, and the Supreme Court issues an order, additional changes cannot be made without an additional or amending order.

Judge Cohen suggested the Committee or a smaller workgroup of representatives be kept in place for future adjustments to the guidelines. A motion was made to approve the guidelines and the COB model as presented, including the addendums passed out today, and authorize the Committee to continue to make clarifying language, discuss clarifying changes, adjust the guidelines as necessary, and bring back for review at the June meeting.

Judge Kearney noted, on behalf of her family bench, she registered concerns that the guidelines and addendums as written will be very opaque to the pro per users who constitute a very large part of the population in Pima County. She added that on the other hand, they solve a problem with the income disparity issue. Judge Kearney asked the Committee to continue to simplify the documentation that is required. Judge Davis agreed and suggested the need for a manual worksheet for the entire guidelines.

MOTION: To approve the guidelines and the COB model as presented, including the addendums passed out today, and authorize the Committee to continue to make clarifying language, discuss clarifying changes, adjust the guidelines as necessary, and bring back for review at the June meeting. Motion was seconded and passed. AJC 2010-06.

The Chair reported on the status of the lawsuit against the Maricopa County Board of Supervisors and a few judges. She noted that since the last meeting, she appointed former Chief Justice Ruth McGregor to oversee the various lawsuits. The Chair added that she received a lot of assistance from judges in counties outside of Maricopa. She stated that Judge Leonardo in Pima County issued a very strong Order that led to the dismissal of the criminal suits against Supervisors Stapley and Wilcox and the RICO action involving Ed Novak, Tom Irvine, the Maricopa County Board of Supervisors, and four judges. She stated the view of the court system is if we have malfeasant judges, we need to know about it, and we want to get it in the hands of neutral judges and prosecutors to decide.

The Chair noted that ethical complaints have been brought against the Maricopa County Attorney, and she was asked by the State Bar to appoint a special investigator. She stated she originally appointed Scott Rhodes who withdrew himself over a conflict, and she subsequently appointed someone completely clear from conflict by asking the lawyer regulatory board from the State of Colorado to handle this investigation. The Chair noted they agreed to help, and an administrative order was issued and has been made public.

Call to the Public/Adjourn

The Chair made a call to the public.

Rena Selden, Attorney at Law, asked to provide public comment regarding the child support guidelines. Ms. Selden expressed concern that she found out about the guideline changes a few weeks ago and only recently learned about the way the guidelines are adopted under 25-320(D). She stated she has looked at the comments and talked to other attorneys and found that very few people are aware that this report is coming out and is at this stage of development. She asked if there had been a first or second reading and if the proposed process and changes were published in the paper. Ms. Selden expressed her concern with the process involved in the massive changes to the guidelines.

The Chair thanked Ms. Selden and noted the guidelines have been reviewed many times by this Council, the Committee has been meeting for more than 18 months, and it has been publicly circulated throughout the state. She encouraged Ms. Selden to work with Judge Cohen and members of the Committee regarding her concerns.

A motion was made to adjourn the meeting.

The meeting adjourned at 2:40 p.m.