

ARIZONA JUDICIAL COUNCIL

Sedona Hilton Resort
90 Ridge Trail Drive
Sedona, AZ 86351

D R A F T

Minutes of the
December 7, 2006, Meeting

Council Members Present:

Chief Justice Ruth V. McGregor
Judge James Angiulo
Judge Robert Brutinel
David Byers
Judge B. Robert Dorfman
Susan Edwards
Beverly Frame
Judge John Gemmill
Christine C. Iijima Hall, PhD.
Judge Douglas Holt
Emily Johnston

Judge John S. Leonardo
William J. Mangold, M.D., J.D.
Miguel Montiel
Judge Barbara Mundell
Jones Osborn
Judge John Pelander
Deborah Schaefer
Jim Smith, Esq.
Judge James Soto
Judge R. Michael Traynor
Judge David Widmaier

Council Members Absent:

Jim Bruner
Chris Herstam

Jose de J. Rivera, Esq.

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
Leila Gholam
Jennifer Greene
Melinda Hardman
Nicole Hinson
Fran Johansen
Jerry Landau

Rob Lubitz
Niki O'Keeffe
Susan Pickard
Janet Scheiderer
Lorraine Smith
David Withey

Guests Present:

Andrew Federhar
Judge Kevin Kane
Judge Jan Kearney

Vice Chief Justice Rebecca Berch
Judge Roxanne Song Ong
Professor Dan Strouse

Chief Justice Ruth V. McGregor, Chair, called the meeting to order at 8:30 a.m., at the Sedona Hilton Resort, 90 Ridge Trail Drive, Sedona, Arizona. The Chair acknowledged that this would be Judge John Leonardo's last Council meeting, as he will be stepping down as Presiding Judge in Pima County. The Chair noted that Judge Jan Kearney will be the new Presiding Judge in Pima County effective January 28, 2007, and she will become a member of the Council at its March 2007 meeting.

Approval of Minutes

The Chair called for any corrections or additions to the minutes from the October 12, 2006, meeting of the Arizona Judicial Council; there were none. The minutes were approved as written.

MOTION: To approve the minutes from the October 12, 2006, meeting of the Arizona Judicial Council, as written. Motion was seconded and passed. AJC 2006-71.

Judicial Branch Legislative Package

Mr. Jerry Landau, Director of Government Affairs for the AOC, and Ms. Leila Gholam, Legislative Officer for the AOC, updated the Council members on the status of the 2007 legislative proposals. Ms. Gholam provided an update on the status of the Legislature and elections.

Ms. Gholam presented the updated juror selection proposal draft. A motion was then made to approve the proposal as presented.

Mr. Byers noted for the record that there is opposition from the State Bar, and that the Council voted to oppose this concept in the past (about ten years ago). Judge Mundell added that circumstances have changed since this was opposed by the Council. At that time, only Maricopa County was affected; now there are 5-6 counties with more than one court location.

Mr. Landau noted that once the Council takes a position in support, staff will then obtain the completed draft from Legislative Council and distribute to the State Bar (civil and defense) for their input and comment.

MOTION: To approve the jury legislation proposal as presented. Motion was seconded and passed. AJC 2006-72.

Mr. Landau then briefed the Council members on the Maricopa County Attorney's Office proposed legislation dealing with capital case litigation. Mr. Landau noted that the legislation is asking for a legislatively-enacted court rule to deal with the following areas: trial court discovery delays (Rule 15 and Rule 8), post-conviction delays, and other additional proposed changes to the criminal justice system. Mr. Landau noted the proposed statutory created rule would do the following: 1) the Chief Justice must rule on all continuances that would take the case past 18 months from arraignment for whatever reason; 2) death penalty cases will have priority over all other cases; 3)

creation of disclosure rules for post conviction relief -- statutorily created disclosure rules that would in essence limit the ability of disclosure in post conviction relief (PCR) cases; 4) limit successive PCR petitions --ability to file excessive petitions is being abused; 5) creation of a death penalty special assignment calendar and non-transferability of cases; and 6) rule requiring that in capital cases the defense file be transferred immediately upon appeal and stored with the Supreme Court under seal until the PCR begins.

Judge Mundell introduced Ms. Jessica Funkhauser, Special Counsel to the Superior Court in Maricopa County, who provided a handout with statistics in Maricopa County detailing felony filings, age of pending and terminated capital cases, and the court's perspective on the efforts and resources it will take to enact this proposed legislation (capital case backlog reduction program).

Discussion ensued regarding a possible delay/backlog of civil and criminal cases if death penalty cases are given priority. Judge Dorfman stated the Council should be in opposition on the basis this proposed legislation should be submitted to the Supreme Court and go through the rule process. It was noted that the proposal was informational only at this time.

Mr. Landau then covered other proposed legislation impacting the courts to include, DUI, youth sex offender, and superior court civil jurisdiction.

Arizona Code of Judicial Administration

Mr. David Withey, Chief Legal Counsel for the Arizona Supreme Court, presented the following code sections (consent) for review and adoption: § 1-108: Committee on Judicial Education and Training; § 1-302: Education and Training; § 1-401: Minimum Accounting Standards; and § 5-107: State Aid to Courts Fund. Mr. Withey noted that § 1-302: Education and Training has two proposed amendments for the Council's consideration (handout). Ms. Marna Murray, Director of Education Services for the AOC, presented the amendments to page 21 of the code: the addition under "10. Standards for chief probation officers," of "b. probation certification academy within first year of hire;" and the deletion of "10(c)(3) Eight hours of refresher defensive tactics annually per ACJA § 6-107(g)(10)." A motion was made to approve the amendments as presented.

MOTION: To approve the amendments to § 1-302: Education and Training as presented on the handout. Motion was seconded and passed. AJC 2006-73.

A motion was made to approve the Arizona Code of Judicial Administration code sections.

MOTION: To approve the following code sections: § 1-108: Committee on Judicial Education and Training; § 1-302: Education and Training; § 1-401: Minimum Accounting Standards; and § 5-107:

State Aid to Courts Fund. Motion was seconded and passed. AJC 2006-74.

Task Force on Legal Advice – Legal Information Guidelines

The Honorable Kevin Kane, Task Force Chair, and Fran Johansen, Court Specialist and Task Force staff, presented the proposed guidelines, question and response handbook, and training implementation methods to the Council members. Judge Kane asked for the Council's approval of the guidelines and to incorporate them in principle into the Court's Code of Conduct for Court Staff, in addition to the Task Force recommendations outlined in the handout provided. A motion was made to approve the guidelines in principle.

MOTION: To approve the guidelines in principle as presented. Motion was seconded and passed. AJC 2006-75.

Commission on Minorities (COM) in the Judiciary Strategic Plan

The Honorable Roxanne Song Ong, COM Chair, briefed the Council members on the COM strategic plan using a PowerPoint presentation outlining the goals and initiatives. Judge Song Ong noted that the plan serves to promote the COM to the public at large, legal community, and the judiciary, in addition to the development of projects that seek to enhance fairness and equity in the judiciary.

Judge Song Ong then asked for the Council to support the COM strategic plan as presented. A motion was made to support the COM's strategic plan.

MOTION: To approve the Commission on Minorities in the Judiciary strategic plan as presented. Motion was seconded and passed. AJC 2006-76.

Correctional Officers Retirement Plan (CORP)

Mr. Rob Lubitz, Director of the Juvenile Justice Services Division for the AOC, briefed the Council on the status of CORP, reporting that the statutorily-required actuarial valuation was received and the news was good. Mr. Lubitz noted that assuming no major issues are identified during its review, the AOC should be able to execute the joinder agreement in January and the transfer of officers to CORP should take place at the start of the next fiscal year (July 1, 2007).

Joint Report of the Complex Civil Litigation Court Evaluation Committee and the Superior Court in Maricopa County

Mr. Andy Federhar, Chair of the Complex Civil Litigation Court Evaluation Committee, briefed the Council on the joint report describing the program. Mr. Federhar asked that the program be continued for a few more years before a final decision is made to hopefully implement it fully beyond the pilot status.

Public Health Law Judicial Reference Guide for Arizona Courts

Professor Dan Strouse, Sandra Day O’Conner School of Law, Arizona State University, briefed the Council members on the draft public health law judicial reference guide and provided general background and history on the project. Discussion ensued regarding separation of powers issues, administering the plan for emergencies, how we keep the courts going to ensure access, etc. Professor Strouse volunteered his participation in this effort.

Mr. Byers noted that the draft guide will be routed through the committee process for further vetting and will be brought back to the Council for adoption at an upcoming meeting.

Judicial Branch Strategic Agenda *Good to Great*

Mr. Mike Baumstark, Deputy Director of the AOC, briefed the Council members on highlights of the “Good to Great” strategic plan initiatives that have been completed during the past 12 months and a preview of initiatives planned for the coming 12 months.

Call to the Public/Adjourn

The Chair made a call to the public; there was none.

The meeting adjourned at 12:45 p.m.