

ARIZONA JUDICIAL COUNCIL

Camelback Inn
5402 East Lincoln Drive
Scottsdale, AZ 85253

Minutes of the
June 17, 2009, 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
Athia Hardt
Mike Hellon
Judge Douglas Holt

Yvonne R. Hunter
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
Judge David Widmaier

Council Members Absent:

Jim Bruner
Beverly Frame

Emily Johnston

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
Stewart Bruner
Karl Heckart
Paul Julien
Kevin Kluge
Jerry Landau
Anne MacKenzie
Mark Meltzer
Carol Mitchell

Kay Radwanski
Janet Scheiderer
Justin Scorza
Kathy Sekardi
Lorraine Smith
Kathy Waters
Henrietta Williams
David Withey
Amy Wood

Guests Present:

Laurie Adams
Hon. Louraine Arkfeld
Vice Chief Justice Rebecca White Berch
Hon. Bruce Cohen

Hon. Stephen F. McCarville
Hon. Joseph Howard
Jeremy Mussman
Mr. John Phelps

Amelia Cramer Hon. Ron Reinstein
Hon. Elaine Fridlund-Horne
Justice Andrew Hurwitz

Mr. Amador Rodriguez
Mr. David Sanders

Chief Justice Ruth V. McGregor, Chair, called the meeting to order at 10:30 a.m., at the Camelback Inn, 5402 E. Lincoln Drive, Scottsdale, Arizona. The Chair welcomed those in attendance to include Judge Louraine Arkfeld (municipal court representative) and Judge Joseph Howard (Chief Judge, Court of Appeals, Division II), new Council members effective July 1. The Chair acknowledged Justice Andrew Hurwitz, new Vice Chief Justice effective July 1, who was also in attendance.

The Chair noted that agenda item number 8 would be taken out of order to allow the presenter time to present at the Navajo Nation Judicial Conference.

Pre-Sentence Report (taken out of order)

Ms. Kathy Waters, Director of the Adult Probation Services Division for the AOC, provided background information on Administrative Order No. 2009-01 *Budget Reductions in the Judicial Branch of Arizona*. Ms. Waters reported the Committee on Probation (COP), working with AOC staff, was charged with developing a plan to use evidence-based criminogenic factors in all felony pre-sentence reports.

Mr. David Sanders, Chief Probation Officer in Pima County, explained the pre-sentence report was designed and drafted by a work group consisting of probation staff and judges from around the state. He stated the report has incorporated the domains of the Offender Screening Tool (OST), which is the standardized risk/needs assessment required by adult probation, and now gives the court information on the conditions and supervision strategies that are required for each individual offender. He noted the focus is on changing the behavior necessary to improve the outcomes of supervision and success of the offender.

Mr. Sanders asked the Council to approve the standardized pre-sentence report as presented.

MOTION: To approve the standardized pre-sentence report as presented. Motion was seconded and passed. AJC 2009-24.

Budget Update

Mr. Kevin Kluge, Chief Financial Officer for the AOC, briefed the Council members on the budget approved by both houses of the legislature several weeks ago, the Governor's proposed budget plan, and the differences between the two budget plans. He explained the proposed cuts to the budget and the impacts. Mr. Kluge noted that reductions from FY '2008 through FY '2010 total \$34,078M for the judiciary from the state side and that a total of 115.8 FTE's were cut.

Mr. Kluge stated that staff is preparing for further cuts, and it is projected that the earliest Arizona can expect an economic recovery is 2012. He stated another budget reduction plan would be coming in September/October.

Judge Barbara Mundell updated the Council on the Maricopa County budget. She noted that in FY 2008-2009, their budget was reduced by \$8.2M and 104 vacant positions were eliminated, and in FY 2009-2010, their budget was reduced by \$22.5M budget, and they will need to eliminate 300 vacant positions, along with a reduction in force of 80 staff (administrative and probation). Judge Mundell reported on issues with furlough days and coordination of work, delays, reductions in services to the seriously mentally ill, and impacts to other funding sources. She stated that further cuts will be coming, and revenues are not coming in as expected.

Judge Jan Kearney updated the Council on the Pima County budget, explaining the budget process and funding streams. Judge Kearney reported on a 9.1% decrease in the upcoming budget from the previous year, resulting in deep cuts in staff and programs, and the need to draw down funds (which are quickly diminishing) to maintain existing programs. She stated they have slowed down hiring over the past two years and have only been filling critical positions. Judge Kearney expressed concern with property tax assessments going down (projected through 2013) and the impact to their county which is heavily based on property taxes.

Commission on Technology Update

Vice Chief Justice Rebecca White Berch, Chair of the Commission on Technology, briefed the Council on COT activities for the past year, recognizing some of the major automation initiatives underway and projects completed. Justice Berch noted she would be stepping down as Chair effective July 1 and Justice Hurwitz (incoming Vice Chief Justice) will take over as Chair.

Mr. Kevin Kluge briefed the Council on the Judicial Collection Enhancement Fund (JCEF) and Traffic Case Processing Fund (TCPF) revenues, on-going commitments, comparison of revenue to expense, and the projected fund balances in out years, subject to legislative action. Mr. Kluge noted the new project list includes the limited jurisdiction courts case management system and e-filing projects.

Mr. Kluge stated the need to request additional spending authority in 2011.

Mr. Kluge asked for the Council's approval of the ongoing project budget of \$13.8M for both JCEF and TCPF, continuation of the automation projects of \$2.4M, new automation projects of \$3.8M, and the probation surcharge request.

MOTION: To approve the ongoing project budget of \$13.8M for both JCEF and TCPF, continuation of the automation projects of \$2.4M, new automation projects of \$3.8M, and the probation surcharge request as presented. Motion was seconded and passed. AJC 2009-25.

Mr. Heckart, Director of the Information Technology for the AOC, provided an update on the case management system project. He reported the general jurisdiction rollout is currently underway, with five counties implemented, and the remaining ten to be completed by the end of April 2010. Mr. Heckart noted the key issues are data conversion, minute entry production and distribution, support demand, and integration.

Mr. Heckart reported on the planned enhancements and development of the limited jurisdiction courts case management system. He noted the key issues for this project will be implementing 140 municipal and justice of the peace courts, developing a training model, data conversion issues, and ongoing support of the old system and its eventual phase out.

Mr. Mike Hellon stated the rollout of 140 courts (one court per week over three years) was very ambitious and suggested the need for a fall-back plan.

Approval of Minutes (taken out of order)

The Chair called for any omissions or corrections to the minutes from the March 19, 2009, meeting of the Arizona Judicial Council; there were none. The minutes were approved as written.

MOTION: To approve the minutes from the March 19, 2009, meeting of the Arizona Judicial Council, as written. Motion was seconded and passed. AJC 2009-26.

E-Filing Update/Proposed Fees (azturbocourt.gov)

Mr. Heckart provided an overview of the e-filing project and next steps to include general information on the proposed forms and options, selection of the pilot courts, key technical steps and issues, implementation schedule, and need for a payment process.

Ms. Amy Wood, Manager of the Caseflow Management Unit for the AOC, provided an update on the status of the e-filing project and key steps from the business side. Ms. Wood reported that forms are undergoing standardization and interactive interviews are being developed for litigants. She presented information on the forms being developed: simple attached, fillable, and intelligent.

Ms. Wood presented three different e-filing fee scenarios for the Council's approval: Option A: Usage Fees Only, Accept Credit Card Payments; Option B: Usage Fees Only, Do Not Accept Credit Cards; and Option C: Usage Fees and Increase Filing Fees, Accept Credit Card Payments. She noted the fee for dissolution cases in all three scenarios is higher because of the number and complexity of the forms involved.

Judge Dorfman suggested the intelligent fee be charged in every instance (charge the same regardless of the form). Ms. Wood noted the type of form used would depend on the type of action needed.

Discussion ensued regarding the impact to low-income people, the eventual elimination of paper filing, and policy decisions that need to be made in the future.

The Chief clarified the purpose of this discussion is to identify a fee structure and move forward. A motion was moved and seconded to approve Option A.

MOTION: To approve Option A. Motion was seconded and passed. AJC 2009-27.

Arizona Code of Judicial Administration

Mr. David Withey, Chief Legal Counsel for the AOC, presented the following code sections (consent agenda) for the Council's consideration: 1-107: Commission on Minorities in the Judiciary and 6-209: Probation in Limited Jurisdiction Courts.

The Chair asked if there were any motions to remove either of the proposals from the consent agenda. Ms. Yvonne Hunter asked that code section 1-107 be removed from the consent agenda and tabled until after the legislative session ends, in light of issues circulating at the capital associated with anti-affirmative action efforts.

MOTION: To remove 1-107: Commission on Minorities from the consent agenda. Motion was seconded and passed. AJC 2009-28.

MOTION: To table 1-107: Commission on Minorities until a later meeting. Motion was seconded and passed. AJC 2009-29.

MOTION: To approve 6-209: Probation in Limited Jurisdiction Courts. Motion was seconded and passed. AJC 2009-30.

Legislation Affecting the Judicial Branch

Mr. Jerry Landau, Director of Government Affairs for the AOC, updated the Council on the status of the Judicial Branch legislative package and proposals requiring Council discussion and action.

Council Proposals Update:

HB2006; Schools; juvenile probation officers
HB2315; Criminal code sentencing
HB2316; Sentencing; second degree murder
HB2317; Fiduciaries

Discussion and Action:

HB2612; Post Judgment Garnishment; Attorney's Writ
Discussion: Concern with the likelihood of abuse. A motion was made to oppose this legislation.

MOTION: To oppose HB2612; Post Judgment Garnishment; Attorney's Writ, as presented. Motion was seconded and passed. AJC 2009-31.

SB1052; Dissolution of Marriage; Disposition of Property

Discussion: A motion was made to oppose this bill. The Chair noted that courts do not take on issues unless they deal with the administration of justice. She cautioned the Council members to be careful when taking a position on matters of substantive law. The bill will lengthen the proceedings in family court significantly. The intent of the bill would be to make Arizona a "no-fault" state. Rather than oppose the bill, have legislative staff share the Council's concerns and take no position on the bill. A motion was made to reconsider.

MOTION: To oppose SB1052; Dissolution of Marriage; Disposition of Property, as presented. Motion was seconded and passed. AJC 2009-32.

MOTION: To reconsider the motion made to oppose SB1052; Dissolution of Marriage; Disposition of Property, as presented. Motion was seconded and failed. AJC 2009-33.

SB1246; CPS Information

Discussion: Mr. Landau noted concerns are actively being addressed. Judge Brutinel reported that the juvenile judges can live with the legislation being proposed.

SB1401; Juvenile Adjudications; Probation; Dispositions

Discussion: Judge Brutinel reported the concerns expressed on behalf of the juvenile judges to include: concern with provision that is a clear violation of Federal law and will cost Arizona Federal funding (Mr. Landau noted this provision has been removed from the revised bill). Another area of concern was: the bill does not provide a say to judges regarding diversion programs. Judge Brutinel added that he has not seen the latest version, but he suspects his colleagues will vote to oppose. The bill is still in a state of flux. A motion was made to oppose this bill. A motion was made to amend the motion to instruct staff to express the Council's concern and work with the legislators to change the legislation to address those concerns. The motion was seconded.

MOTION: To instruct staff to express the Council's concerns and work with the legislators to change SB1401: Juvenile Adjudications; Probation; Dispositions to address those concerns. Motion was seconded and passed. AJC 2009-34.

Additional discussion took place regarding the motion to oppose SB1052; Dissolution of Marriage; Disposition of Property. The Chair asked if the Council's intent when making the motion would be to no longer have a position (remain neutral) if the portion of the bill that removes the prohibition from considering marital misconduct disappears. The Council members agreed.

Appellate CourtTools Committee

Chief Justice Ruth V. McGregor, Chair of the Appellate CourtTools Committee, presented the final report and recommendations of the Committee and reviewed the results of Arizona appellate courts' performance surveys. Chief Justice McGregor asked for the Council approval of the 2009 Appellate Court Bench/Bar and employee survey results and the recommended performance measures for court integration beginning FY 2009-2010.

A motion was made and seconded to approve and move forward with the Committee's recommendations as presented.

MOTION: To approve the Appellate CourtTools Committee report and recommendations, as presented. Motion was seconded and passed. AJC 2009-35.

Report from the Criminal Rules Video-Conference Advisory Committee (taken out of order)

Judge Antonio Riojas, Jr., Chair of the Criminal Rules Video-Conference Advisory Committee, briefed the members on the Committee's written report and recommended amendments to Rule 1.6, noting that the Committee's recommendations are different than those proposed by R-06-0016. Judge Riojas noted the comment period for the rule is still open.

Ms. Amelia Cramer, Chief Deputy for the Pima County Attorney's Office and Committee member, spoke on the issue of Initial Appearances (IAs) being videotaped. She stated the Pima County attorney believes it should be the judges' decision rather than the defendant's decision whether videoconferencing is appropriate for IAs, as well as for arraignments and certain hearings where no testimony is taken. She noted she is speaking on behalf of the Pima County Attorney, as a Committee member, and as a representative of the State Bar of Arizona. She believes there is no constitutional impediment to the Committee's recommendations and shared her legal analysis with the Council.

Mr. Jeremy Mussman, Deputy Director for the Maricopa County Public Defender and Committee member, presented the minority report and proposal. He stated the only change in the entire rule they are asking for is to remove the words "initial appearance" from B.(d) on page 33 of the report. Mr. Mussman noted the public defenders in Maricopa County maintain that because IAs involve release conditions and determination of liberty interests, they should not be done by video unless the defendant has given consent. He added that this is a critical stage of a proceeding (not a housekeeping decision), and the defendant needs to be able to determine if he/she should be physically present. He asked that the Council approve the majority rule, with the one change they are recommending, to make it consistent with the remainder of the rule and allow it to be constitutionally sound.

Judge Widmaier stated he has never experienced a problem with videotaping IA's, and if the rule were modified, his staff would be transporting defendants 60 miles each way to each of his six courts every day. He stated this is an important process, but he has never seen an attorney show up at an IA, nor does he believe he violated anyone rights in any way. Judge Widmaier stated there is no need to modify the rule, and added that defendants always have the right to have their release condition revisited.

A motion was made and seconded to adopt the majority report as presented.

MOTION: To adopt the majority report, as presented. Motion was seconded and passed (one opposed). AJC 2009-36.

Parenting Time Guide

Ms. Kay Radwanski, Court Programs Unit Specialist for the AOC, presented an update on the parenting time guide for the Council's approval in concept. She noted the final report will be presented for approval at the Council's October meeting. She asked that the Council approve the guide, "Planning for Parent Time: Arizona's Guide for Parents Living Apart," in concept to enable the Parenting Plans Workgroup to continue its work, while concurrently providing the AOC eFiling vendor and AOC staff with guidance to develop associated court forms and customized parenting plans for parties to submit to the court.

A motion was made and seconded to adopt the recommendation as presented.

MOTION: To adopt the recommendation, as presented. Motion was seconded and passed. AJC 2009-37.

The Chair noted that Judge Mundell would be available following the meeting to brief interested Council members and members of the public on the status of the Maricopa County criminal court tower.

Integrated Family Court (IFC) Final Evaluation and Executive Summary (Pinal and Coconino Counties)

Judge Stephen McCarville, Presiding Juvenile Court Judge for Pinal County, and Mr. Amador Rodriguez, a parent who has gone through the IFC program in Pinal County, presented information on the Pinal County IFC. Mr. Rodriguez spoke on the benefits he has received to include the vast improvement in efficiency, his ability to keep his job and still support his son, more focus and communication between departments, and the shorter but more comprehensive hearings. He stated the program was a real benefit to his family, and because of the resources provided, his son is now headed in the right direction and is back in college and doing well.

Judge McCarville provided additional information on the IFC pilot program in Pinal County which was funded in part by a grant award from the State Justice Institute

which expires in June 2009. He stated the Presiding Judge in Pinal County supports the program, and they will continue the program even without the funding.

Ms. Yvonne Hunter thanked the presenters for their positive message. She stated this is an efficient use of court resources and suggested the court deserves to get some statewide recognition for their achievements.

Judge Elaine Fridlund-Horne, Superior Court in Coconino County and Family Court Judge for the IFC, presented information on the Coconino County IFC. She provided pamphlets on the program. She reported on the services provided and success of the program in Coconino County. Judge Fridlund-Horne reported that when the grant period ended December 31, 2008, Coconino County picked it up for FY 2009 and asked them to reduce their services budget from \$77,000 to \$23,000. In response, 30 attorneys have volunteered to do one free case a year to maintain their program.

Mr. Ed Novak reported that attorneys in Arizona contributed more than 500,000 of pro bono services over the course of FY 2008-2009.

Child Support Guidelines Review Committee Report

Judge Bruce R. Cohen, Chair of the Guidelines Review Committee, presented the summary of proposed Child Support Guidelines to include current status of the committee's work and the process for vetting and collecting public comments prior to the next Council meeting on October 21 when the final report will be presented. He provided the history and background of the guidelines, comparison of other child support models to Arizona, changes to the current model, and how the proposed child support calculations will be based, as well as a comparison to the current system.

Council members asked for clarification and expressed their concern with the formula for the proposed system and how a judge would come to that determination, i.e., where did those principles of measurement come from. Judge Cohen stated that no specific basis was used; instead they found the point which did not result in a significant decline in the standard of living resulting from the income shares model they have now and when the number started to create similar results across the board for children. Judge Cohen noted the process is not formula driven, but focuses on the child's outcome and meeting the statutory polices that already exist. Judge Cohen described it as "making rolling judgments."

Judge Cohen asked for the Councils' additional feedback and input regarding the draft guidelines prior to the October meeting.

The Chair noted the intent of the presentation is to prepare the Council members to make a decision at their October meeting.

Call to the Public/Adjourn

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

The Chair acknowledged the following Council members with terms expiring June 30, 2009 and thanked them for their service:

- Judge John Pelander (July 2004-June 2009)
- Judge B. Robert Dorfman (July 2004 – June 2009)
- Ed Novak (July 2008 – June 2009)

The Chair noted this was her last meeting, and she would be retiring on June 30, 2009. She thanked the Council members to their contributions to the system and to her efforts as Chief Justice.

A motion was made to adjourn.

The meeting adjourned at 4:35 p.m.