

**ARIZONA JUDICIAL COUNCIL**  
Judicial Education Center  
541 E. Van Buren, Suite B-4  
Phoenix, AZ 85004

December 15, 2011

Meeting Minutes

**Council Members Present:**

Chief Justice Rebecca White Berch  
Judge Louraine Arkfeld (*retired*)  
Jim Bruner  
Jose A. Cardenas, Esq.  
Karen D. Ferrara  
Athia Hardt  
Mike Hellon  
Judge Douglas Holt  
Judge Joseph Howard  
Yvonne R. Hunter  
Emily Johnston

Michael Jeanes  
Joe Kanefield  
William J. Mangold, M.D., J.D.  
Judge Norman Davis  
Judge Robert Carter Olson  
Janet K. Regner  
Judge Sally Simmons  
Judge James Soto  
George Weisz  
Judge David Widmaier  
Judge Lawrence Winthrop

**Council Members Absent:**

David Byers  
Judge Rachel Torres Carrillo

Judge Antonio Riojas, Jr.

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

Theresa Barrett  
Mike Baumstark  
Stewart Bruner  
Jennifer Greene  
Melinda Hardman  
Janet Johnson  
Paul Julien  
Jerry Landau  
Caroline Lauth-Owens  
Jennifer Liewer

Amy Love  
Alicia Moffatt  
Kay Radwanski  
Jodi Rogers  
Lorraine Smith  
Nancy Swetnam  
Cindy Trimble  
Kathy Waters  
David Withey

**Presenters and Guests Present:**

Justice Scott Bales  
John Burns  
Vice Chief Justice Andrew Hurwitz

Chris Moeser  
Judge Ron Reinstein  
JR Rittenhouse

Chief Justice Rebecca White Berch, Chair, called the meeting to order at 9:30 a.m., at the Judicial Education Center, 541 E. Van Buren, Suite B-4, Phoenix, Arizona. The Chair welcomed those in attendance.

The Chair recognized Judge James Soto for his service on the Council. She noted this would be Judge Soto's last Council meeting, as he will no longer be serving as Chair of the Committee on Superior Court. The Chair thanked Judge Soto and presented him with a certificate of appreciation.

### **Approval of Minutes**

The Chair called for any omissions or corrections to the minutes from the October 28, 2011, meeting of the Arizona Judicial Council; there were none.

**MOTION: To approve the minutes from the October 28, 2011, meeting of the Arizona Judicial Council, as presented.** Motion was seconded and passed. AJC 2011-58.

### **Legislative Update**

Mr. Jerry Landau, Director of Governmental Affairs for the AOC, briefed the Council members on legislative proposals and asked for their vote to support, oppose, remain neutral, or identify another option.

#### Clerk's Proposal #1: Civil arbitration bonds

Mr. Landau noted this proposal, along with Clerk's Proposal #2, cannot be managed by rule or code. A motion was moved and seconded to support this proposal and continue to work on issues. An amendment was suggested for subsection J that upon motion by the appellant, the language "made prior to the disposition of the funds" is added. The motion maker agreed to this amendment.

**MOTION: To support the Clerk's Proposal #1: Civil arbitration bonds with the amendment for subsection J that upon motion by the appellant, the language "made prior to the disposition of the funds" is added and continue to work on any outstanding issues.** Motion was seconded and passed. AJC 2011-59.

#### Clerk's Proposal #2: Entry on records, wrongful arrest

**MOTION: To support the Clerk's Proposal #2: Entry on records; wrongful arrest, as presented.** Motion was seconded and passed. AJC 2011-60.

## Arizona Bail Bondsman Association Proposal: Prisoners; conditional early release bond

Discussion took place regarding what problem are we trying to solve, what is the court's interest, has anyone talked with victims about the effect of this proposal on them, and why are judges opposed? Judge Simmons noted this proposal would only benefit those who could afford to pay for it.

Mr. John Burns, Arizona Bail Bondsman Association, provided public comment. Mr. Burns noted this proposal gives an incentive to prisoners to complete programs while incarcerated and become rehabilitated. He added the proposal would give the courts more discretion. Mr. Burns explained that this is a performance bond and could save Arizona \$200-\$250M per year.

Judge Howard asked about the burden on superior court judges' workloads. Judge Soto noted that once a prisoner is sent to the Department of Corrections (DOC), the judge loses control, and this would result in added cost and workload to the DOC. Concern was raised regarding who will supervise prisoners who are conditionally released.

Judge Howard suggested leaving this issue to the Legislature. Dr. Bill Mangold asked if the 30-day limit is a reasonable limit. Mr. Burns stated he is willing to remove the timeframes.

A motion was moved and seconded to take no position on this proposal. Mr. Weisz asked that Mr. Landau and staff continue to stay involved to find out if there will be any impact to the judiciary. The motion maker agreed to include this amendment in the motion.

**MOTION: To take no position on the Bail Bondsman Proposal: Prisoners; conditional early release bond, as presented, and ask Legislative staff to continue to track this proposal to identify any impact to the judiciary and answer questions.** Motion was seconded and passed. AJC 2011-61.

## Fraternal Order of Police (FOP) Proposal #1: Discipline hearings

Judge Widmaier noted the vast amount of local ordinances are not criminal. Ms. Emily Johnston stated Pima County is set up to handle this type of thing, and she would support it.

**MOTION: To take no position on the Fraternal Order of Police Proposal: Discipline hearings, as presented.** Motion was seconded and passed. AJC 2011-62.

Arizona Prosecuting Attorneys' Advisory Council Proposal #1: Definition of criminal offense

**MOTION: To support the Arizona Prosecuting Attorneys' Advisory Council Proposal: Definition of criminal offense, as presented.** Motion was seconded and passed. AJC 2011-63.

Arizona Prosecuting Attorneys' Advisory Council Proposal #2: Term of grand jury

**MOTION: To support the Arizona Prosecuting Attorneys' Advisory Council Proposal: Term of grand jury, as presented.** Motion was seconded and passed. AJC 2011-64.

**Committee on Civil Rules of Procedure for Limited Jurisdiction Courts**

Mr. Paul Julien, Chair of the Committee, briefed the Council members on the work of the Committee. He noted the Committee reduced the number of rules from 108 to 48, reduced the number of pages from 167 to 38, and restyled and simplified the rules.

Mr. Julien added the proposed rules were vetted through the committee process. He provided a timetable, noted the rules would have a dual comment period, and added the rule petition, if approved for filing, would be considered at the Court's Rules Agenda in September 2012.

Ms. Hunter stated the need to ask for feedback from those who will be directly impacted by these rules, i.e., community legal services, paralegal organizations, Kiwanis Clubs, etc. Mr. Julien noted the Committee did not reach out beyond the legal community, but he would be happy to do so if that's what the Council wants.

Judge Davis moved to support the Committee in filing the petition as presented, as well as soliciting comments from as broad a base as possible.

Judge Widmaier stated the need for the rules to be looked at from a pro se litigant perspective. He noted people will need to go back to the original set of rules, requiring people to look at two sets of rules side by side to make them work. Judge Widmaier stated he found the new rules very difficult and identified 48 rules that were not included in the new rules. Mr. Julien reported the Committee made a conscious decision to not include the rules that would not be seen by the Justices of the Peace.

The Chair noted there would be two rounds of comments for this rule petition, and issues can be surfaced at that time.

**MOTION: To approve the filing of a rule petition seeking adoption of the Justice Court Rules of Civil Procedure, as presented.** Motion was seconded and passed. AJC 2011-65.

## **Rule Petition for Revisions to Rule 123, Rules of the Supreme Court and Rule 2.3, Rules of Criminal Procedure**

Ms. Melinda Hardman, Policy Analyst for the Court Services Division of the AOC, presented the proposed revisions to Rule 123.

Mr. David Withey, Chief Legal Counsel for the AOC, presented information on Rule 123 which sets a narrow allowance/interpretation for employee discipline records in the current rule. He referenced the handout entitled "Rule 123 discipline records amendment – statutory and proposed rule language."

Mr. Chris Moser, Phoenix Newspapers, provided public comment. Mr. Moser expressed appreciation for being able to review the petition and make comment. He stated the proposed amendment will help balance issues and concerns, and he will work with staff to craft the necessary language.

The Chair noted the Council is only being asked to allow staff to file the petition, and the comment period will work out the issues.

Judge Simmons moved that the rule petition be filed with original language. The motion was seconded.

Judge Howard suggested the words "chief judges of the court of appeals" be inserted in Section G(3) of the draft rule petition. The motion maker agreed to this amendment.

**MOTION: To approve the filing of a rule petition for revisions to Rule 123, Rules of the Supreme Court and Rule 2.3, Rules of Criminal Procedure, as presented, with the amendment to include the chief judges of the court of appeals in section G(3). Motion was seconded and passed. AJC 2011-66.**

## **Victim Identification Protection Rule Petition**

Judge Ron Reinstein, retired judge and Chair of the Commission on Victims in the Courts, presented the draft rule petition and asked for approval of the concept, with the need for additional work.

A motion was moved and seconded to approve the filing of the rule petition in concept.

Discussion ensued regarding the use of initials. Mr. Weisz noted that in small, rural areas, it will be obvious who the individuals are even when using just initials.

**MOTION: To approve the filing of the victim identification protection rule petition in concept, as presented.** Motion was seconded and passed. AJC 2011-67.

### **Proposed Rule Change to the Arizona Rules of Protective Order Procedure**

Ms. Kay Radwanski, Court Specialist for the Court Services Division of the AOC and staff to the Committee on the Impact of Domestic Violence and the Courts, presented the proposed rule change and provided a handout on draft language (Appendix A).

The Chair noted the Presiding Judges raised concerns regarding the end date for when the order becomes public.

Judge Davis stated we have already been down this road before, and the Family Law Rules of Procedure already addressed this issue in the past. He noted that at that time, the courts experienced technical limitations in terms of being able to automate or identify when service occurs. Judge Davis stated this is a manpower issue and added that tagging to service date is very difficult. He explained that the compromise was to go to 45 days, which still created issues. Judge Davis reported that counties were then allowed to move forward with the rule if they decided to do so. He noted the Superior Court in Maricopa County did move forward, but rescinded the rule at the request of the domestic violence committee, as well as other groups to include law enforcement, media, adoption bar, etc.

Judge Arkfeld stated her only concern is with the ability to know proof of service. She noted she does not see this as a difficulty for the limited jurisdiction courts. Judge Arkfeld added that her experience with victims is that they would prefer the order to remain confidential until served. Judge Widmaier agreed, and noted he likes the idea of it being kept private, but raised concern with logistics.

Discussion took place regarding automation. Mr. Jeanes noted the computer can be coded with programming, but this could still result in training issues and human error. Judge Arkfeld stated it would be worth going forward with programming.

**MOTION: To approve the filing of a rule petition to the Arizona Rules of Protective Order Procedure in concept, as presented.** Motion was seconded and passed (one opposed). AJC 2011-68.

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

Mr. Stewart Bruner, Manager of Strategic Planning for the Information Technology Division of the AOC, provided a brief overview of Code Section 1-501: Court Automation Standards.

**MOTION: To approve ACJA § 1-501: Court Automation Standards, as presented.** Motion was seconded and passed. AJC 2011-69.

Mr. Bruner provided a brief overview of Code Section 1-504: Electronic Reproduction and Imaging of Court Records.

**MOTION: To approve ACJA § 1-504: Electronic Reproduction and Imaging of Court Records, as presented.** Motion was seconded and passed. AJC 2011-70.

Mr. Bruner provided a brief overview of Code Section 1-506: Filing and Management of Electronic Court Documents.

Mr. Jeanes provided clarification, as presented at the recent Commission on Technology (COT) meeting, on Section D(8) regarding documents being e-filed exclusively through the statewide system of AZTurboCourt. Mr. Jeanes noted that Maricopa County is currently accepting e-filings for certain case types through their local system.” He stated that he requested an exemption from the COT approving that Maricopa County can use their own system and also receiving an order from the Chief Justice with a timetable for transition.

Vice Chief Justice Hurwitz stated the easy way to handle this is to proceed with the rule and exempt Maricopa County through an order or letter that included a timetable. Judge Davis suggested adding the language “unless otherwise approved by the COT” and asking the COT to approve the exception. Judge Howard asked that the same exception be granted for the Court of Appeals, Division II.

Chief Justice Berch stated the Court will work out how to handle any exceptions to the rule prior to its adoption.

**MOTION: To approve ACJA § 1-506: Filing and Management of Electronic Court Documents, as presented.** Motion was seconded and passed. AJC 2011-71.

Ms. Jennifer Greene, AOC Assistant Counsel, Legal Services for the AOC, presented Code Section § 1-507: Protection of Electronic Records in Paperless Court Operations. The Chair summarized the concerns raised by the Presiding Judges at their meeting on Wednesday, December 14, 2011 in terms of the courts being the keeper of court records, and the judge being held responsible if the record is destroyed and is then needed. Judge Davis suggested the need for a check and balance.

Ms. Greene explained and clarified the Presiding Judges’ concerns noting that the proposal provides for destroying paper records for which an electronic equivalent has been created. She stated the concerns being discussed are a records-retention issue and are not covered by this code section. Mr. Jeanes noted the need to take a

new look at the records retention schedule and make changes if needed to address these concerns, i.e., case-related documents.

Judge Davis stated the need to add language to Section F(6)(7) “or another document repository approved by the COT or the AJC.”

A motion was moved and seconded to approve the code section and proposed amendment provided in the proposal cover sheet, as well as the recommended change to Section F(6)(7) to add the language “or another document repository approved by the COT or the AJC.”

**MOTION: To approve ACJA § 1-507: Protection of Electronic Records in Paperless Court Operations with the recommended change to Section F(6)(7) and the proposed amendment provided in the proposal cover sheet. Motion was seconded and passed. AJC 2011-72**

### **Update on the Probate Committee Recommendations**

Mr. Mike Baumstark, Deputy Director of the AOC, updated the Council members on the status of the Probate Committee’s recommendations approved at the Council’s October meeting.

Mr. Baumstark reported the Court considered the rule petition at their Rules Agenda meeting on Tuesday, December 13 and substantially approved the Rule Petition. He added the Staff Attorney’s Office is preparing the Order.

Mr. Baumstark noted that staff will be working on training components, seniors and probate website updates, a public information effort, forms, the role of the fiduciary, and fee guidelines and will be reporting back to the Council in 2012. He reported the counties are also moving forward with experimenting with risk assessment in their counties by pilot projects.

### **Judicial Branch Strategic Agenda *Justice 2020***

Mr. Baumstark updated the Council members on the Justice 2020 initiatives that have been completed during the past year and provided a preview of the many initiatives planned for the coming years.

### **Call to the Public/Adjourn**

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

A motion was made to adjourn the meeting at 12:55 p.m.