ARIZONA JUDICIAL COUNCIL

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

June 24, 2010

Meeting Minutes

Council Members Present:

Chief Justice Rebecca White Berch Athia Hardt (telephonically)

Judge Louraine Arkfeld Mike Hellon

Alan Bayham Judge Joseph Howard

Jim Bruner Yvonne R. Hunter (telephonically)

Judge Robert Brutinel Emily Johnston
David Byers Michael Jeanes
Jose A. Cardenas, Esq. Judge Jan Kearne

Jose A. Cardenas, Esq. Judge Jan Kearney
Judge Rachel Torres Carrillo Janet Regner

Judge Norm Davis Judge Antonio Riojas, Jr. Susan Edwards Judge James Soto

Karen D. Ferrara Judge Ann A. Scott Timmer

Council Members Absent:

Judge Douglas Holt William J. Mangold, M.D., J.D. Judge David Widmaier

Administrative Office of the Courts (AOC) Staff Present:

Theresa Barrett Elise Oviedo Mike Baumstark Pamela Peet Mike Poulton Stewart Bruner Jennifer Greene Katy Proctor Karl Heckart Janet Scheiderer Kathy Sekardi Paul Julien Kevin Kluge **Lorraine Smith** Jerry Landau Henrietta Williams Jennifer Liewer **David Withey**

Presenters and Guests Present:

Keith Berkshire
Harold Brister
Judge Bruce R. Cohen
Terry Decker
Jeff Deiley
Karen Duckworth
Timothy Frank
David Hamu
David Horowitz

Vice Chief Justice Andrew Hurwitz Emily Jo Mark Madden Brent Miller John Phelps Rena Selden Kevin Wasson

Chief Justice Rebecca White Berch, Chair, called the meeting to order at 8:30 a.m., at the State Courts Building, 1501 W. Washington, Suite 119, Phoenix, AZ. The Chair welcomed those in attendance and announced the Council was established on June 1, 1990 and was celebrating its 20th anniversary. The Chair introduced two new Council members: George Weisz, Public Member, whose term begins July 1, 2010 and Alan

George Weisz

Approval of Minutes

The Chair called for any omissions or corrections to the minutes from the March 25, 2010, meeting of the Arizona Judicial Council. A correction was requested on Page 5 to change the spelling of the name "Rona" to "Ronan." A motion was made and seconded to approve the minutes as written with the correction to change the spelling of the name Rona to Ronan.

Bayham, State Bar President, attending his first Council meeting.

MOTION: To approve the minutes from the March 25, 2010, meeting of the Arizona Judicial Council with the correction to change the spelling of the name Rona to Ronan. Motion was seconded and passed. AJC 2010-07.

Child Support Guidelines Review Committee

Judge Bruce R. Cohen, Chairperson of the Guidelines Review Committee (GRC) reported on the current status of the guidelines, to include all public comments and issues identified since the last Council meeting (including public comments articulated at the public hearing held on June 4, 2010 with Fathers' Rights Group representatives and other members of the public); changes made to the proposed guidelines; and changes proposed but not accepted by the GRC. Judge Cohen noted more than 25 hours of direct contact was made with Fathers' Rights Group representatives to work through issues of concerns, many of which have led to some of the proposed changes to the guidelines presented at this meeting. Judge Cohen walked the Council members through each of the supplemental recommendations.

Judge Cohen stated COBS is the right system and achieves goals set out five years ago. He added the current model is unfair to the non-custodial parent, and unlike COBS,

does not address high-disparity cases. Judge Cohen stated there is a need for a fair and reasonable child support system where children do not fall below a certain income, and the COBS model accomplishes this. He added the proposed guidelines have received positive feedback from the State Bar of Arizona. Judge Cohen confirmed that income equalization is not a premise of the COBS model.

The Chair opened up the floor for public comment for members of the public who had completed and submitted a public comment form. She stated public comment would be limited to three minutes per person and asked speakers to not repeat what had already been said.

Mr. Jeff Deiley addressed the Council. He stated the proposed changes to the guidelines are the biggest change in child support in the past 20 years nationwide. Mr. Deiley expressed concern with the lack of public outreach. He stated the GRC only reports on the positives of COBS model, but as outlined in Administrative Order No. 2008-22, both advantages and disadvantages should be identified. Mr. Deiley reported that experts in the field of child support have commented that the COBS model combines spousal and child support together, which violates what spousal support was originally intended to do. He asked that the entire household be taken into account, which COBS does not do. Mr. Deiley respectfully requested the Council look at the Center for Policy Research's recommendations and consider using the update to the income shares model. He asked the Council to employ an independent review of the proposed COBS model and that members of the public be included in the process.

Mr. Terry Decker addressed the Council. He referred the Council to Item #9 of the recommendations where it states "the goal is not to create equal results, but to consider factors of A.R.S. § 25-320(D)." Mr. Decker noted A.R.S. § 25-320(Q)(5) says "support has the same meaning prescribed in A.R.S. § 25-500" which reads "support means the provision of maintenance or subsistence and includes ... in a Title 4D case support includes spousal maintenance." He stated this means support in all other cases does not include spousal maintenance, and you are talking about spousal maintenance when you have any type of income-based child support.

Mr. Hamu addressed the Council. He noted the proposed guidelines are a radically different proposal. Mr. Hamu stated child support should provide for the needs of children, but COBS does not appear to do this. He expressed concern that there was no public representation on the Committee and no independent agency was employed to validate any of the work that was done. Mr. Hamu stated this will affect him and others who won't be able to get by after COBS, and his personal outcome will be that the family home will need to be sold because he can't afford to keep the house with the increase in child support.

The Chair stated she looked at the membership of the GRC and noted there was an effort to select independent members without "skin in the game." She added regardless of which model is selected, child support will go up, which is not an unexpected result.

Mr. Kevin Wasson (custodial parent) addressed the Council. He stated he would receive more money under the proposal, which he doesn't view as being fair. Mr. Wasson

stated the COBS model goes above and beyond the cost of raising a child, is a form of hidden alimony, and raises the standard of living. Mr. Wasson added the COBS model tries to narrow the gap, not equalize it, and case law currently exists to allow judges to go beyond the guidelines to address those types of income-disparity cases on an individual basis. He stated that more money without any type of oversight will not solve problems, and the proposal will significantly raise child support obligations way too high. Mr. Wasson stressed there is a need for public participation.

Mr. Brent Miller addressed the Council. Mr. Miller stated the COBS model has not been academically vetted or received extreme scrutiny or review from an outside source. He noted he asked for information on how to validate the numbers that are used, but could not get a valid answer. Mr. Miller asked the Council to have the COBS model reviewed by its strongest adversary in order to make the best decision in the interest of Arizona.

Ms. Rena Selden (family law attorney in private practice) addressed the Council and provided a handout. She stated she views the GRC with great respect, but noted the program and meetings were not publicized and were held privately, after hours, or during the workday when members of the public could not attend. Ms. Selden stated the COBS model does equalize household income, almost exactly in some cases. She expressed concern with child support payments going up 200 percent or more under this model and the fact that other support is prohibited, i.e., supporting elderly parents, church tithing, etc. Ms. Selden added the Council has a duty to the public for a fair and open debate as a quasi-legislative body to ensure the public is informed.

Justice Hurwitz asked about a prior analysis where the GRC thought there would be a substantive change in the child support allocation. He asked what percentage of cases would be impacted. Mr. Horowitz noted there would be a substantive change in 30% of the orders, and of those orders, half were going up and half were going down. Ms. Selden added that 50% of the cases would have different results than the income shares model, and that courts would become flooded as a result.

Mr. Horowitz reported on exact number of the orders that would change: 49.4% would be the same or less and 50.6% would be more. He stated that 2.9% of the cases would change by more than 200%, and 6.5% of the cases would have a 100% increase (also includes the very low orders).

Judge Cohen reported that calculations were run against five other states with both models. They found that under the income shares model, we were middle to middle lower end of the spectrum of child support of the national average, and across-the-board, Arizona was not the lowest nor the highest in the country based on both models. He noted there were no outliers in any calculation, and child support is going down for low earners. Judge Cohen stated the group being impacted is a small segment of this change.

Mr. Hamu stated there is a need to take the entire family into consideration, which COBS does not. He explained he is a joint custodial parent who retained the family home, and his support will go up 400% with COBS. He stated that COBS does not take into account that his ex-wife has remarried and has a higher standard of living than he does. Mr. Hamu added if his ex-wife files a modification after COBS goes into effect, he will need

to go to Court to challenge the number. He stated his standard of living will decline dramatically, and he does not agree with the statistics that the increase is only to a small percentage, because it excludes 50% of data which did not fit in the COBS quadrant, i.e., joint-custody cases. Mr. Hamu talked about the adjustment for the remarriage consideration and said he doubted it would hold up under legal review.

Judge Cohen quoted "Pacific" case law that says the court should look at the reduction of expenses created by contributions from the new spouse. He stated the proposed adjustment is constitutionally sound.

Ms. Karen Duckworth addressed the Council and provided a handout (charts of typical parenting times) showing a comparison between the two models. Ms. Duckworth stated her husband is currently paying \$75 and has equal parenting time, but under COBS, the payment will go up to \$300 (more than 3 times what they are currently paying). She expressed concern that the courts could handle the increase in modifications. She noted the change will be radically detrimental to many people. Ms. Duckworth expressed concern with the lack of public comment and asked the Council to consider using an outside auditor to review the COBS model.

Ms. Duckworth stated she looked at minutes from the Committee and noticed there was no public comment and several seats designated for custodial and noncustodial parents remained open. Judge Cohen pointed out the Committee with empty seats is a Legislative Child Support Committee and not the GRC which has no openings. He noted that information was provided to Fathers' Rights Group representatives so they could apply to be on the Legislative Committee.

Mr. Keith Berkshire (family law attorney) addressed the Council. He stated he ran his own numbers and identified clients whose support orders will go up 5 times the current amount. Mr. Berkshire stated he is not for or against the proposed guidelines. He expressed concern with the maintenance and the influx of cases brought into the court system. Mr. Berkshire stated that judges will be flooded with cases, and the impact will be to cases where there is no order in place.

Mr. Brian Callaway addressed the Council. He stated there have been many changes to the COBS model and questioned the reference to the standard of living, in terms of how do you measure this? Mr. Callaway noted he researched other systems (Cost Shares) which is based on what the cost of raising a child is. He stated there is a need to look at the cost of keeping a child out of the poverty line while still treating both parents equally. Mr. Callaway asked the Council to implement the income shares model, adjusted for inflation, and continue to look for an equitable solution for the future.

Judge Cohen asked for the Council to appoint a committee to follow the GRC to oversee the implementation and issues rather than waiting for the four-year review. He stated the committee would be the focal point and clearing house for any issues that come up and would provide an avenue back to the Council prior to the next four-year review. Judge Cohen suggested the committee also include members of the public.

Ms. Susan Edwards noted she has seen cases with huge disparities. She stated child support exists to help the child have a decent life and minimize the damage to the child from the divorce. She encouraged parents to work together in the best interest of the child. Ms. Edwards addressed the issue of the burden to the courts and suggested we contact our legislators and ask them to pay for the additional services needed.

Ms. Edwards moved to approve the six proposals with supplements as presented. Judge Kearney suggested the Council vote on the proposals individually. Ms. Edwards amended her motion to approve proposal 1 with supplements. The motion was seconded.

Members of the public providing comment requested a vetting process and the need to compare and contrast the systems. They asked how the GRC came up with the numbers and if they are real and valid and that statistical impacts be made available. Mr. Hamu stated the issues raised today need to be examined with reasonable detail. Ms. Selden expressed concern with the fundamental assumption. She stated the issues have not been properly vetted or communicated to the legal community.

Mr. Horowitz noted the guidelines and the process have been presented at every continuing legal education seminar in family law offered by the State Bar for the past year. He stated the proposed guidelines have been acknowledged and well publicized among the Bar and practitioners, and stakeholders are aware there is a quadrennial review.

Mr. Byers stated there is no requirement that the guidelines be in place on January 1. He added this decision will affect hundreds of thousands of people, and if Council feels there should be some more vetting, they can vote to do that.

The Chair turned the Council's attention to proposal 1 "When a parent remarries." The Chair asked if the Council would approve proposals 1-6 as a package.

Judge Davis expressed the need to be clear on what the Council is voting on and the need for a comprehensive vetting in its totality. He stated he is not comfortable with all the amendments made throughout the process, which have made significant changes in the methodology. Judge Davis reported he has not had a chance to run comparative calculations and is not comfortable approving the proposal with all the amendments made.

Judge Cohen stated the basic model has not changed significantly in the past year, and recent changes will reduce the end child support numbers from the plan approved in March.

The Chair referred back to the proposal to consider proposals 1-6 as a block. A motion was made and seconded to adopt proposals 1-6.

MOTION: To approve proposals 1-6 as presented. Motion was seconded and passed. AJC 2010-08.

The Chair asked for discussion regarding Proposal 8 "Phase-in approach." Justice Hurwitz noted he is sympathetic to the members of the public who have provided very valuable ideas. He suggested another period of public comment to include any

modifications approved today. Justice Hurwitz stated there may be other improvements to be made or considered with the COBS model.

Judge Davis agreed with Justice Hurwitz's idea and suggested taking a step back to look at the fully completed set of the guidelines to determine if it all makes sense.

The Chair temporarily left the meeting for a prior commitment. Vice Chief Justice Hurwitz took over as Chair in her absence. Mr. Byers suggested the Council determine how to vote on the proposed changes, tentatively adopt them, finish the calculator, produce the calculations, make the comparison back to modify the current model, and report back to the Council in October following that vetting process.

Judge Cohen asked for additional direction as to what is being asked of the GRC. Mr. Byers stated the need for one more public meeting after the calculator is up so everyone can look at the data. He noted the Council needs to vet this before making a recommendation to the Court. Mr. Byers agreed to work with the GRC to flesh out the details, to include working with Fathers' Rights Group representatives to publicize.

Justice Hurwitz noted the Council tentatively adopted the proposed plan at the March meeting and has now tentatively adopted modifications 1-6 to the plan. He added the Council needs to decide whether to approve the tentative action and meet in October to review it again following additional public comment. Justice Hurwitz asked the GRC to continue to hear public comment, finalize the calculator, and provide data.

Judge Davis noted the GRC has put in a lot of work over a long period of time and it is appreciated. He stated there is a need to obtain input, make reasonable changes without starting from square one, and make an informed decision on what it will mean to the average person. Judge Davis added there needs to be a reasonable assumption for medical care, child care, etc.

Judge Cohen stated he would present scenarios run across the board from each end of the spectrum as compared to the current model and the COBS model, as well as comparisons to other states, at the October Council meeting. He stated he would present the big picture (economics) and the hard numbers. Judge Cohen added the GRC is a fine committee that is not interested in being right, but in getting it right.

Ms. Edwards suggested this process be done as soon as possible and information/data be sent well in advance of the next meeting so Council members have time to read it. Judge Timmer added that members of the public provide public comment materials in advance of the meeting and the process be publicized on the website.

Judge Davis suggested the Committee consider any changes and either vote to keep things as they are and update Income Shares Model or adopt the COBS at the next meeting. He also asked that public comment be designed to address that issue. Justice Hurwitz clarified the best use of the GRC is to have them continue the dialogue on whether things in the current plan need modification and that the Council address the policy issue of whether this plan is superior to another plan.

Judge Davis moved that the GRC undertake one more round of public comment prior to the next meeting with an appropriate cut-off date, take input that comes from that exercise into consideration, make any further recommendations the Committee feels appropriate, and provide comparative charts between the updated income shares highbred model and the COBS new methodology with the intent to vote on one or the other at the October Council meeting. Justice Hurwitz added that the motion recognize the Council has tentatively approved the basic model. Judge Davis agreed to modify the motion which was seconded and approved.

MOTION: To ask the Guidelines Review Committee to undertake one more round of public comment prior to next meeting with an appropriate cut-off date, take input that comes from that exercise into consideration, make any further recommendations the Committee feels appropriate, and provide comparative charts between the updated income shares highbred model and the COBS new methodology with the intent to vote on one or the other at the October Council meeting, recognizing the Council has tentatively approved the basic model. Motion was seconded and passed. AJC 2010-09.

Justice Hurwitz thanked everyone for their work on this difficult issue. He noted due to time constrains, the eFiling update will be dropped from the agenda.

Commission on Technology Update

Vice Chief Justice Hurwitz, Chair of the Commission on Technology (COT), noted the courts are hurtling into a digital court system. He stated the COT has voted on prioritization of projects, taking into account budget constraints, and this information is included in the materials.

Mr. Kevin Kluge, Chief Financial Officer for the AOC, presented information on the Judicial Collection Enhancement Fund (JCEF) allocations. He reported on the update from last year, allocations, continuation projects, spending authority issues, and the probation surcharge funding request. Mr. Kluge asked the Council to approve the FY 2011 JCEF budget request as presented.

A motion was made and seconded to approve the JCEF FY 2011 Budget request to include: \$14,009,300 JCEF budget; \$5,032,100 for JCEF Probation budget; and authorizing the AOC to request legislative modifications to spending authority levels.

MOTION: To approve the JCEF FY 2011 Budget request to include: \$14,009,300 JCEF Budget; \$5,032,100 for JCEF Probation budget; and authorizing the AOC to request legislative modifications to spending authority levels. Motion was seconded and passed. AJC 2010-10.

Judicial Branch Budget Update

Mr. Kluge provided an update on the current budget situation and the FY 2011 enacted budget. He stated the cuts to the Judiciary totaled \$53.4M and provided

additional details on where specific cuts were taken from. Mr. Kluge noted the AOC and Supreme Court have either frozen or eliminated 60 positions. He provided additional information on other budget issues to include the risk management premium, Maricopa County Superior Court Judges' salary shift, Prop. 100, and automation funding. Mr. Kluge noted the Judiciary's plan for further cuts is to refine the Judicial Budget Reduction Plan from last year which will create new fees to offset any additional cuts.

Legislation Affecting the Judicial Branch

Mr. Jerry Landau, Director of Governmental Affairs for the AOC, briefed the Council on the final legislation from the past session. Mr. Landau reported the three proposals authorized by the Council were passed: HB2109: Superior court; holiday hours; HB2435: Repetitive offenders; probation; marijuana offenses; and SB1081: Trial court appointments; nonattorney members.

Mr. Landau provided a brief overview of SB1070 and HB2162 which were passed by the Legislature. He reported a team at the AOC, working with the Chief Justice, have been reviewing and analyzing the bills for impact to the Branch which appears to be in the limited jurisdiction courts and juvenile detention operations. Mr. Landau noted the team has spoken with the Arizona Peace Officer Standards and Training Board (AZPOST), the Arizona Prosecuting Attorneys Advisory Council (APAAC), and legal advisors to get a handle on how law enforcement will be interpreting and enforcing the provisions of the bill and how prosecutors will handle the prosecution. He noted he will be talking with the Superior Court Presiding Judges during their meeting and providing additional details.

The Chair presented a certificate of appreciation to Council member Susan Edwards for her service on the Council as a public member since April 2000. The Chair thanked Susan for her years of service and stated she will be missed. Ms. Edwards thanked the Council members and expressed her appreciation for her time on the Council and her admiration for her fellow Council members.

Call to the Public/Adjourn

The Chair made a call to the public. There was none.

A motion was made to adjourn the meeting.

The meeting adjourned at 12:20 p.m.