

ARIZONA JUDICIAL COUNCIL
Loews Ventana Canyon Resort
7000 N. Resort Drive, Salon B
Tucson, AZ 85750

Minutes of the
June 19, 2008, 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
Yvonne R. Hunter
Judge Douglas Holt
Emily Johnston

Judge Jan Kearney
William J. Mangold, M.D., J.D.
Judge Barbara Mundell
Sheri Newman proxy for Beverly Frame
Ed Novak for Daniel J. McAuliffe
Jones Osborn
Judge John Pelander
Judge James Soto
Judge Ann A. Scott Timmer proxy
for Judge John Gemmill
Judge David Widmaier

Council Members Absent:

Jim Bruner
Athia Hardt

Chris Herstam
Judge R. Michael Traynor

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
Stewart Bruner
Tracey Gardner
Melinda Hardman
Karl Heckart
Jerry Landau

Terri McHaney
Carol Mitchell
Janet Scheiderer
Lorraine Smith
Kathy Waters
David Withey

Guests Present:

Vice Chief Justice Rebecca White Berch
Mike Hellon
Judge Boyd Johnson
Paul O'Connell

Marcus Reinkensmeyer
Janet Regner
H. Michael Wright

Chief Justice Ruth V. McGregor, Chair, called the meeting to order at 9:00 a.m., at Loews Ventana Canyon Resort, Salon B, Tucson, AZ 85750. The Chair welcomed those in attendance and introductions were made around the room. The Chair introduced the Council's newest member: Judge Rachel Torres Carrillo, Justice of the Peace member, replacing Judge James Angiulo. The Chair acknowledged two of the Council's future public members who were attending as guests: Mike Hellon and Janet Regner, new Council members, effective July 1, 2008.

Approval of Minutes

The Chair called for any corrections or additions to the minutes from the March 27, 2008, meeting of the Arizona Judicial Council; there were none. The minutes were approved as written.

MOTION: To approve the minutes from the March 27, 2008, meeting of the Arizona Judicial Council, as written. Motion was seconded and passed. AJC 2008-05.

Commission on Technology Update

Vice Chief Justice Rebecca White Berch, Chair of the Commission on Technology, updated the Council members on the recent Commission on Technology meeting, leading up to the Judicial Collections Enhancement Fund (JCEF) budget request and the electronic filing initiative agenda items.

JCEF Allocations

Ms. Terri McHaney, AOC Budget Manager, briefed the Council on the 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 action of the Legislature.

Judge Dorfman asked for a clarification regarding revenue growth projections and how the Governor's photo radar plan would reduce surcharges. Mr. David Byers explained the proposal would set one statewide fine amount, and there would be no surcharges, as the entire amount would go to the state general fund. Mr. Byers added the problem is that when you put out 100 new photo radar vans on the state highways, you have to determine what will happen to the police who are currently writing traditional tickets. Some officers at the supervisory level say they will be reduced by 50% because these officers will be deployed to other duties; others at the Department of Public Safety (DPS) say it will stay the same. This is a big "unknown" in terms of the budget.

A motion was made to approve the JCEF operating budget amount and technology-related project spending, as recommended by the COT, and to allow the COT to allocate the project monies within the approved overall limit.

MOTION: To approve the JCEF operating budget amount and technology-related project spending, as recommended by the COT, and to allow the COT to allocate the project monies within the approved overall limit. Motion was seconded and passed. AJC 2008-06.

E-Filing Strategic Plan

Chief Justice Ruth V. McGregor provided a business overview on the e-filing initiative, stating the need to move e-filing beyond the pilot stage in Arizona, and outlining the four main directives: 1) We must all work together to benefit all statewide; we cannot create a fragmented system that leaves some courts behind due to their location or volume. Whatever system is adopted must be a statewide system; 2) e-Filing must apply to all types of cases, including those for which no filing fees exist; 3) Arizona must use a court-powered and court-managed system; no vendor must own or control court documents; and 4) Whatever solution we choose must be a first-class system, capable of supplying all the services that court users need, including case initiation and service of process.

Chief Justice McGregor noted the Commission on Technology has recommended and approved the proposed statewide initiative for e-filing. Chief Justice McGregor stated the need for the Council to approve this plan and take the next step to develop an RFP.

Mr. Karl Heckart, Information Technology Director and CIO for the AOC, presented a PowerPoint outlining the proposed statewide initiative for e-filing as recommended and approved by the Commission on Technology and provided background information on benefits, case process, scope, filings, architecture, functionality, issues, and current eFile models.

Mr. Heckart noted the following funding options: general fund appropriation, local technology fees, and an e-filing fee (best option). Mr. Heckart added that the e-filing fee could be per case, per filing, or volume based.

Mr. Heckart stated the plan is to explore a vendor partnership using an RFP, plus key components. Mr. Heckart added the next steps would be approval by this Council, the issuance of an RFP, the establishment of a review team to meet in June-July, the establishment of an evaluation team to meet in September-October, and a recommendation to the COT and this Council in the Fall of 2008. If approved in the Fall of 2008, the construction and pilot would be scheduled for Spring 2009. The final outcome would be an interconnected judicial system.

Mr. Jones Osborn asked about training for court personnel and if this had been taken into consideration. Mr. Heckart noted there would be minimal training needed for court personnel, as they are already familiar with the case and document management technologies used by the proposed system.

Judge Dorfman asked about the impact on limited jurisdiction courts having existing proprietary case management systems. Mr. Heckart noted the proposed new system would be standards-based, enabling existing systems to interact with it.

Judge Mundell asked about the impact to existing systems such as ICIS in Maricopa County. Mr. Heckart noted that what is proposed involves a new interface for court customers, not so much for court workers; therefore, existing systems such as ICIS in Maricopa County won't have to be fundamentally replaced.

Judge Pelander stated the Court of Appeals, Division II, has an established e-filing system which is a no-vendor, no-fee approach. Judge Pelander noted the customers love it and strongly suggested that his IT staff member, Mohyeddin Abdulaziz, be included as a member of the RFP review team, as his insight, input and experience could be invaluable to the process. Judge Pelander added that their system has not been explored and leveraged, and he believes their "no vendor," court-owned and operated system is best. Judge Pelander added that Division II is strongly opposed to an e-filing fee.

Judge Soto asked about non-e-filers and if paper-based filing will still continue. Mr. Heckart noted that paper-based filing would continue, but that e-filing would be encouraged. Mr. Heckart added that policy issues must be addressed in addition to technology issues.

Other discussion items included: the need for continued assistance for self-represented litigants; the need for multiple back-up systems for data; the recommendation that the average cost for filing paper documents be identified as a comparison to e-filing to show, hopefully, the lower cost of serving the public; the need for the system to allow access to those with disabilities, e.g., sight; input from the users during the review process; and the suggestion that we pursue and use the current education system for training and to manage the new system, i.e., internships in rural and urban areas.

Judge Kearney added that, as we proceed with the RFP, we don't forget we are here to serve the people. Judge Kearney stated we must provide access to justice at least comparable with what we currently have, and security, liability, and cost must be taken into account as well.

Ms. Sheri Newman noted the RFP should be written in such a way to be open to other options, in addition to the vendor approach proposed, as well as the concerns expressed today. Ms. Newman cautioned that we take a good, hard look at what has already been developed in Pima and Maricopa counties as we proceed.

Judge Mundell stated that she has concern with attaching a cost to the filing, because Maricopa and Pima filers, as the largest volume courts for civil filings, will be paying. Judge Mundell stated the need to explore a way to do this with no fee.

A motion was made to approve the direction for statewide e-filing and roadmap, as recommended by the COT, as presented, with the inclusion of the comments and suggestions made today.

MOTION: To approve the direction for statewide e-filing and roadmap, as recommended by the COT, with the inclusion of the comments and suggestions made today. Motion was seconded and passed. AJC 2008-07.

Implementing Evidence-Based Practices in Adult Probation

Ms. Kathy Waters, Director of the Adult Probation Services Division for the AOC, presented a PowerPoint on the plan for the implementation of evidence-based practices in adult probation supervision. In addition, Ms. Waters provided a preview of changes to the Arizona Code of Judicial Administration.

A motion was made to support the plan for the implementation of evidence-based practices in adult probation supervision as presented.

MOTION: To support the plan for the implementation of evidence-based practices in adult probation supervision as presented. Motion was seconded and passed. AJC 2008-08.

Arizona Code of Judicial Administration

Mr. David Withey, Chief Legal Counsel for the Arizona Supreme Court, presented the following code section for the Council's review and approval: § 6-114: Committee on Probation (consent).

A motion was made to adopt the code section as presented.

MOTION: To adopt § 6-114: Committee on Probation as presented. Motion was seconded and passed. AJC 2008-09.

Good to Great Strategic Agenda

Mr. Mike Baumstark, Deputy Director of the AOC, briefed the Council on the Judicial Branch strategic agenda entitled "Good to Great" and provided a highlight of strategic initiatives that have been completed during the past year and a preview of the many initiatives planned for the next 18 months.

Judicial Branch Budget Update

Mr. Dave Byers, Director of the AOC, briefed the Council on the current state budget situation, covering the state deficit, one-time fund sweeps, permanent cuts, budget reduction plan, filing fee increase plan, and the impact to the judiciary. Mr. Byers noted the state deficit is currently \$1.7 billion, and the Legislature has until June

30, 2008 to agree on a budget for the next fiscal year (July 1, 2008 – June 30, 2009). Mr. Byers reported if a budget is not approved, state government may stop. Mr. Byers stated that he will keep the Council updated on the budget situation as it unfolds.

Judicial Branch Legislative Update

Mr. Jerry Landau, Director of Government Affairs for the AOC, presented an update on the status of the approved legislative package for 2008 to include the following proposals: CHAPTER 54/ SB1050: COURT REPORTER CERTIFICATION, CHAPTER 185/ SB1043: RETIREMENT; CORP; JUDICIARY; OTHER DESIGNATED POSITIONS, HB2109: INTERSTATE COMPACT (REP. YARBROUGH), HB2207: SENTENCING; REORGANIZATION, and SCM1004: FEDERAL TAX INTERCEPT PROPOSAL.

Mr. Landau then briefed the Council on others bills of interest to include: CHAPTER 39/ HB2488: DEFENSIVE DRIVING SCHOOLS, CHAPTER 152/HB2745: EMPLOYER SANCTIONS S/E SAME SUBJECT, CHAPTER 193/SB1339: LAW ENFORCEMENT; PROBATION; OFFICERS; INVESTIGATIONS, HB2159: STATE EMPLOYEE; PERSONNEL RECORDS, HB2321: IDENTITY THEFT; FACTUAL INNOCENCE S/E SAME SUBJECT, HB2453: CHILDREN; OPEN COURT PROCEEDINGS, SB1160: JUROR SUMMONS; QUESTIONNAIRE; RETURN POSTAGE, SB1265: PERSONNEL ADMINISTRATION; LAW ENFORCEMENT OFFICERS, SB1332: DNA TESTING; ARREST, and SB1476: PROBATION; FACILITIES; SAFE COMMUNITIES ACT.

Finally, Mr. Landau provided additional information on judiciary bills to include: CHAPTER 82/SB1186: JUDICIAL PERFORMANCE REVIEWS; COURT COMMISSIONERS, HCR2024: AIRCRAFT; LICENSE TAX; TECHNICAL CORRECTION S/E JUDGES; MERIT SELECTION; POPULATION THRESHOLD, and HCR2063: ACCOUNTABILITY; CLEAN ELECTIONS FOR JUDGES

Maricopa County Alternative Juror Summoning Plan

Ms. Melinda Hardman, Court Analyst for the AOC, presented the plan for alternative juror summoning procedures in Maricopa County pursuant to A.R.S. § 21-302(E), along with the addendum based on the review conducted by the National Center for State Courts and their proposed recommendations.

Ms. Hardman noted that upon approval by this Council, the plan would then be presented to the Chief Justice for final approval.

Mr. H. Michael Wright, on behalf of the Arizona Trial Lawyers Association, provided public comment on the proposed plan. Mr. Wright expressed concern with the plan weakening the constitutional protection and their belief that in order to satisfy the demands of the Constitution for a jury pool drawn from the County as a whole, and the new statutory requirements for a fair cross-section of the community, any demarcation of regions of the County from which juries are drawn must include a fair mix of both

“upper-class” as well as “lower-class” neighborhoods. Mr. Wright stated the quadrants identified based on the four regional courts in the proposed plan do not ensure a fair mix, and citizens may not get a fair trial in all regions because of this, which will invite Constitutional challenges.

Mr. Wright suggested that the plan be revised with the County being split in half on a north-south line or if the lines were drawn in a north-south line splitting the County in four regions.

It was noted that caselaw does not support socio economic status as a cognizable group under the fair cross-section standard.

Ms. Newman stated that some counties in Arizona without regions have the same issue.

Ms. Hardman noted that substantive modifications can only be made within the five-year period for which the plan is in effect if Maricopa County submits a new proposal to do so.

A motion was made to approve the plan and amendment as presented.

MOTION: To approve the plan and amendment as presented. Motion was seconded and passed (Chief Justice McGregor and Judge Timmer abstained) AJC 2008-10.

Mr. Dave Byers, on behalf of Chief Justice McGregor, Chair, encouraged Mr. Wright to monitor the plan once approved and to come back if there are problems.

Call to the Public/Adjourn

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

The Chair acknowledged Senator Jones Osborn whose appointment on the Council will end June 30, 2008. The Chair noted that Senator Osborn has served on the Council since October 1992. The Chair added that Senator Osborn has agreed to serve as a public member on the Appellate Court Tools Committee and, in the future, on the Judicial Performance Review Committee. The Chair thanked Senator Osborn for his years of invaluable service.

Senator Osborn thanked the Council members and staff for their assistance and collegiality over the years, noting it has been a pleasure to serve.

The Chair also acknowledged the following members, not in attendance, whose terms will expire June 30, 2008: Chris Herstam, Dan McAuliffe, Judge John Gemmill, and Judge R. Michael Traynor.

The meeting adjourned at 1:45 p.m.