ARIZONA JUDICIAL COUNCIL
Arizona State Courts Building
1501 W. Washington, Suite 119
Phoenix, AZ 85007

March 28, 2013

Meeting Minutes

Council Members Present:

Chief Justice Rebecca White Berch
Jim Bruner
David Byers
Judge Peter Cahill
José A. Cárdenas
Judge Rachel Torres Carrillo
Amelia Craig Cramer
Judge Norman Davis
Athia Hardt
Mike Hellon
Judge Joseph Howard
Yvonne R. Hunter
Michael Jeanes
Emily Johnston
Gary Krcmarik
Judge David Mackey
William J. Mangold, M.D., J.D.
Janet K. Regner
Judge Antonio Riojas, Jr.
Judge Sally Simmons
Judge Roxanne Song Ong
George Weisz
Judge David Widmaier
Judge Lawrence Winthrop

Council Members Absent:

Judge Robert Carter Olson
Marilyn R. Seymann, Ph.D.

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
Theresa Barrett
Karl Heckart
Susan Hunt
Janet Johnson
Jerry Landau
Jennifer Liewer
Amy Love
Kay Radwanski
Marcus Reinkensmeyer
Lorraine Smith
Mark Wilson
David Withey
Amy Wood

Presenters and Guests Present:

Vice Chief Justice Scott Bales
Allie Bones
Whitney Cunningham
Leah Meyers
Wendy Million
John Osborn
John Phelps
Colleen Reider
Scott Rodgers
Jodi Rogers

Chief Justice Rebecca White Berch, Chair, called the meeting to order at 10:30 a.m. at the State Courts Building, 1501 W. Washington, Suite 119 in Phoenix, Arizona. The Chair welcomed those in attendance.

Approval of Minutes

The Chair called for any omissions or corrections to the minutes from the December 13, 2012, meeting of the Arizona Judicial Council. Judge Winthrop noted that the minutes refer to Judge Anne Segal as providing public comment in her capacity as a doctor. Judge Winthrop asked that the minutes clarify that Judge Segal has a doctorate in education.

> **MOTION: To approve the minutes from the December 13, 2012, meeting of the Arizona Judicial Council, with the clarification that Judge Anne Segal has a doctorate in education.** The motion was seconded and passed. AJC 2013-01.

Arizona Code of Judicial Administration (ACJA) § 1-602: Digital Recording of Court Proceedings

Mr. David Withey, Chief Legal Counsel for the AOC, presented ACJA § 1-602: Digital Recording of Court Proceedings. Mr. Withey noted the code section was previously put on the consent agenda, but was moved off to allow additional discussion. Mr. Byers moved an amendment to the code section to remove the requirement for the format of audio recordings.

> **MOTION: To approve ACJA § 1-602: Digital Recording of Court Proceedings with the proposed amendment, as presented.** The motion was seconded and passed. AJC 2013-02.

Mr. Mark Wilson, Director of the Certification and Licensing Division for the AOC, presented ACJA § 7-208: Legal Document Preparer**.** Mr. Wilson provided background information. He noted that a comment was received from the law firm of Osborn Maledon suggesting an additional change to the second sentence of ACJA § 7-208(F)(1)(3) to add the word "such" between the words "any" and "document," i.e., "A certified legal document preparer may not sign any such document he or she prepares for or provides to a person or entity …." Mr. Wilson noted that his staff does not favor of this change, as they are not sure what the effect of this change would be.

Mr. Scott Rodgers of Osborn Maledon, PA, representing AAM LLC, provided public comment regarding the inclusion of the word "such." He noted his concern is that when you have an entity that is certified as a certified legal document preparer, this language could be interpreted literally to prohibit the president of the company from signing paychecks because someone is preparing that document to be signed by the president. He noted their proposed language to add the word "such" will make it clearer that the second sentence refers to the first sentence.

Judge Howard asked about the issue of demand letters. Mr. Rodgers suggested the Court and this Council look at how the entity definition of a certified legal document preparer is

dealt with in the rules. Mr. Rodgers clarified that their position is that certified legal document preparers should be allowed to sign documents that non-certified legal document preparers may sign.

Discussion took place regarding the addition of the word “such” and its interpretation. Ms. Amelia Craig Cramer noted the State Bar supports the exception for the 20-day notices. She suggested, in her own capacity, that rather than adding the word “such,” that we add language to the fourth line to read “A certified legal document preparer may not sign any document he or she prepares for or provides to a person or entity in his or her capacity as a document preparer.” She noted this will limit it to the documents that are prepared in the capacity as a document preparer, not paychecks, etc., and will allow the expansion we want without being over broadened. Mr. Rodgers noted this amendment still does not address entities that employ individual legal document preparers. Ms. Cramer clarified that the intent of the language is that it would be in their capacity as a statutory agent that they would be able to sign for a document rather than as a document preparer.

Judge Simmons suggested amended language to read “or any document which he/she could otherwise sign in a capacity other than as a certified document preparer.”

Judge Mackey suggested the need to vet the alternatives proposed. He moved that we adopt the proposed amendments as written in the materials.

Ms. Coleen Reider from Ballard Spahr LLP, representing City Property Management Company, provided public comment noting that she supports adding the word “such.” She raised another example of signing cover letters for HOAs. Ms. Reider noted their suggestion was to use the same language as is in Rule 31(b) to read “a certified legal document preparer may not sign any legal form or legal document he or she prepares for or provides to a person or entity for use in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process …”, but this provision does not prohibit the signing of the 20-day notices, HOA liens, or mechanic’s liens.

Mr. Byers noted this needs to be done correctly, as it affects millions of documents. He stated the question for the Council is if they want to allow document preparers to sign documents in different capacities than other people can sign or not. Judge Howard stated this depends on which document we are talking about. He noted he approves of Ms. Cramer’s language and suggested some additional work can be done on this issue.

The Chair suggested that we put some language in place for the time being, but continue to work on the language, and come back at the next meeting with new, compromise language. She noted that in the meantime, it’s a good idea to have a rule in place to provide guidance.

Ms. Hunter raised concern with staff being able to provide a level of assurance that we will get to the place we need to go to manage this issue. She suggested the stakeholders work together to develop new language.

Judge Howard offered a friendly amendment to the motion on the floor to include the language proposed by Ms. Cramer.

Judge Mackey, the motion maker, did not accept the friendly amendment.

> **MOTION: To approve ACJA § 7-208: Legal Document Preparer, as presented, without any proposed amendments as discussed today.** The motion was seconded and passed (16 approved; 4 opposed). AJC 2013-03.

Order of Protection Form Modification

Ms. Kay Radwanski, staff to the Committee on the Impact of Domestic Violence and the Courts (CIDVC) and Domestic Violence Specialist with the Court Services Division of the AOC, presented the issue regarding Brady Bill compliance.

Ms. Radwanski noted that three members of CIDVC were present: Judge Wendy Million, Ms. Allison Bones, and Ms. Leah Meyers.

Ms. Radwanski stated they are asking for approval of proposed modifications to the Order of Protection form, as proposed by CIDVC. She provided background information and explained the proposed revisions. Ms. Radwanski reported that CIDVC is asking that Arizona courts continue to facilitate enforcement of orders of protection by crafting them so they meet the Brady criteria.

Mr. George Weisz inquired about the "No Crimes" section and asked if we did not change that part, would it affect funding or cause legal ramifications. Ms. Radwanski noted it would not affect money coming to this state, but it would affect whether the order met the Brady criteria.

Mr. Jim Bruner asked what happens if we don't follow the Brady rule. Ms. Radwanski noted that nothing would happen, but we do need to follow the warning and a few other requirements that affect the STOP grants, but there would be no financial effects on the state if we don't have explicit language.

Mr. Byers noted if a person does possess, they could be charged with a federal crime.

Judge Riojas stated the need to include the Brady material and the importance of adopting these recommendations, which he strongly supports.

Mr. Michael Jeanes commented on the format and the need to allow sufficient space for file stamps, and that margins are adequate to avoid losing language with digitizing.

Ms. Allison Bones, Executive Director of the Arizona Coalition Against Domestic Violence, provided public comment. She provided a fact sheet on firearms and domestic violence. She reiterated what was said by Ms. Radwanski.

A motion was moved and seconded to adopt the proposed recommendations offered by CIDVC to restore language detailing the legal standard for issuance of an Order of Protection (The statutory language in A.R.S. § 13-3602 had been removed from the form to save space when the form was revised to fit the Project Passport model.), to include a limited list of some of the 29 acts of domestic violence specified in A.R.S. § 13-3601 in the

"No Crimes" section (The full list had been removed in the Project Passport revision.), and add a statutory reference to A.R.S. § 13-3602(G)(4) to the "Firearms" section to make it clear that this section refers to a firearms prohibition under Arizona law, not federal law. The Council also adopted a staff recommendation to include enhanced warning language regarding 18 U.S.C. § 922(g)(8), recommending that the defendant consult an attorney if the defendant has questions about whether the Order of Protection results in a firearms prohibition. It was noted that states receiving federal funding under the Violence Against Women Act (VAWA) must certify that their courts provide notice to offenders of laws that may limit possession or use of firearms.

Judge Mackey asked about the authority to approve these changes. Mr. Byers stated he has the authority to approve, but given the seriousness, he thought it would be appropriate for the Council to vote before he adopted the recommendations.

> **MOTION: To approve the adoption of modifications to the Order of Protection form as proposed by CIDVC, as presented.** The motion was seconded and passed. AJC 2013-04.

Law Day Activity

Ms. Jennifer Liewer, Chief Communication Officer for the AOC, briefed the Council members on the Supreme Court's Law Day activity scheduled for May 1. She noted this annual event gives us the opportunity to tell our story of what we do in the courts and celebrate our system of justice in this country. Ms. Liewer reported that this year, we will celebrate Law Day by honoring volunteers within the Judiciary and thanking them for their time and service. She stated the lunch-time event will be held in the State Courts building and public members of the many committees of the Supreme Court and AOC staff will be invited. Ms. Liewer noted that invitations will be sent out, and we will take this opportunity to share with the Press what volunteers do within the court system.

Ms. Liewer reported that Chief Justice Berch will be taping a message/statement to volunteers thanking them for their service and help celebrate the work that goes on every day in every town in Arizona. She added that this message can then be available for Volunteer Appreciation Week, which takes place the week prior.

Legislative Update

Mr. Jerry Landau, AOC Director of Government Affairs, and Legislative Liaison Amy Love, provided a legislative update on the status of Council bills.

Ms. Love presented information on other bills of interest:

<u>HB2240: Small Claims; Jurisdiction; Limits</u>

Discussion: Mr. Hellon noted that he is comfortable with the compromise of $3,500 and moved that the Council support the bill.

MOTION: To support HB2240: Small Claims; Jurisdiction; Limits, as presented. The motion was seconded and passed. AJC 2013-05.

HB2459: Justice of the Peace Courts

Discussion: Mr. Byers noted this is a modernization of language without substantive changes. He stated he is not aware of any controversy or objection.

MOTION: To approve HB2459: Justice of the Peace Courts, as presented. The motion was seconded and passed. AJC 2013-06.

HB2516: Peace Officers; Firearms; Court

Discussion: Judge Mackey noted the Presiding Judges agreed to remain neutral on this bill. Ms. Hunter moved to support the bill, given the political nature of the legislation. She stated it would send a better message and strengthen our legislative staff's position. The motion was seconded.

Judge Howard asked if the language "Presiding Judge" includes the Chief Judge of the Court of Appeals. Mr. Landau noted the language is subject to interpretation, but believes it would include any presiding judge of a court. It was noted it is too late to include specific language, but this could be fleshed out by rule or administrative order later.

MOTION: To support HB2516: Peace Officers; Firearms; Court, as presented. The motion was seconded and passed. AJC 2013-07.

HB2600: Judicial Nominees; Minimum Requirements; Records

Discussion: Ms. Love noted the Presiding Judges voted to oppose this bill. A motion was moved and seconded to oppose this bill. The Chief Justice stated she would call for a vote, but would not be voting on any legislative bills.

MOTION: To oppose HB2600: Judicial Nominees; Minimum Requirements; Records, as presented. The motion was seconded and passed. AJC 2013-08.

SB1072: Parenting Time; Relocation of Child

Discussion: Ms. Love noted staff continues to work on the language and issues, but no changes have been made to the original version provided in the materials. A motion was moved to oppose the bill in its current form and direct staff to continue to work with the sponsor to fix it and make it work, and if not, continue to oppose it.

Mr. Jeanes raised concern from the Clerks regarding a comment made by some legislators that they would specify there would not be a fee for this. He stated this creates a training issue for Clerks at the filing counter when you charge for some filings and not for others, and a filing fee should not be exempted.

Ms. Hunter asked if there were any consequences for a fiscal note. Ms. Love indicated she didn't know if this was necessary.

Judge Mackey expressed concern with judicial resources for rural counties, if this passes as written. Mr. Jeanes noted it's fairly proportional throughout the state in terms of workload and will have statewide impact.

> **MOTION: To oppose SB1072: Parenting Time; Relocation of Child, in its current form and direct staff to continue to work with the sponsor to fix it and make it work, and if not, continue to oppose it.** The motion was seconded and passed. AJC 2013-09.

Mr. Landau presented an update on the following retirement bill:

HB2608: EORP; closure; defined contribution which shuts down the Elected Official Retirement Plan (EORP) for all new officials effective July 1, 2013 and establishes a defined contribution plan with a 5% employer and 8% employee match. Mr. Landau stated he and legislative staff continue to have discussions with legislators on the judiciary's concerns regarding this bill.

eFiing Update

Mr. Karl Heckart, Chief Information Officer for the AOC, reported on the eFiling project. He stated that about 10 months ago, we were approaching the end of a 4-year contract with incumbent vendor Intresys. He noted we weren't pleased with the way the project was proceeding and issued an RFP. Mr. Heckart stated that over the summer, we evaluated and negotiated a new contract with a product called eUniversa, and in the fall, Intresys lodged a protest on that procurement process. He noted that after careful review, it was determined to uphold that protest, as there were procedural flaws on how the procurement process was conducted. Mr. Heckart stated we voided the contract with AmCad and subsequently signed a two-year contract extension with Intresys until May 2015 to continue to move forward with eFiling. He noted that the provisions of the extension are that we will finish up a number of enhancements, extend the service contract to bring electronic service into existence for attorneys, and prop up an area of concern regarding disaster recovery, as well as allow us to optionally continue to expand filing types or expand into more courts (optional services).

Mr. Heckart reported our long-term strategy over the next two years is to determine where to go with this project. He noted we will be moving away from a revenue-sharing model.

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

A motion was made to adjourn the meeting at 1:14 p.m.