

ARIZONA JUDICIAL COUNCIL

Camelback Inn
5402 E. Lincoln Drive
Town Hall Meeting Room
Scottsdale, AZ 85253

June 24, 2013

Meeting Minutes

Council Members Present:

Chief Justice Rebecca White Berch
David Byers
Judge Peter Cahill
José A. Cárdenas, J.D.
Judge Rachel Torres Carrillo
Whitney Cunningham, J.D.
Judge Norman Davis
Athia Hardt
Mike Hellon
Judge Joseph Howard
Yvonne R. Hunter, J.D.
Michael Jeanes
Emily Johnston

Gary Krcmarik
Judge David Mackey
William J. Mangold, M.D., J.D.
Judge Robert Carter Olson
Janet K. Regner
Judge Antonio Riojas, Jr.
Marilyn Seymann, Ph.D.
Judge Sally Simmons
Judge Roxanne Song Ong
George Weisz
Judge David Widmaier
Judge Lawrence Winthrop

Council Members Absent (excused):

Jim Bruner

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
Stewart Bruner
Eric Ciminski
Bert Cisneros
Karl Heckart
Kevin Kluge
Jerry Landau
Jennifer Liewer

Amy Love
Alicia Moffatt
Marcus Reinkensmeyer
Lorraine Smith
Kathy Waters
David Withey
Amy Wood

Presenters and Guests Present:

Vice Chief Justice Scott Bales
Anthony Coulson
John Furlong

Judge Diane Johnsen
Jodi Rogers

Chief Justice Rebecca White Berch, Chair, called the meeting to order at 1:00 p.m. in the Town Hall meeting room at the Camelback Inn, 5402 E. Lincoln Drive, Scottsdale, Arizona. The Chair welcomed those in attendance and recognized the newest Council members: Mr. Whitney Cunningham, State Bar President, and Dr. Marilyn Seymann, public member. The Chair also welcomed Judge Diane Johnsen, who will become the Chief Judge of the Court of Appeals, Division One on July 1, and so will replace Judge Lawrence Winthrop as the Division 1 representative.

Approval of Minutes

The Chair called for any omissions or corrections to the minutes from the March 28, 2013, meeting of the Arizona Judicial Council. Judge Olson asked that he be marked as excused for the March meeting. There were no other substantive changes.

MOTION: To approve the minutes from the March 28, 2013, meeting of the Arizona Judicial Council with Judge Olson being marked as excused. The motion was seconded and passed. AJC 2013-10.

eAccess

Mr. Marcus Reinkensmeyer, Director and Eric Ciminski, Project Director of eCourt Services, Court Services Division of the AOC, presented information on the eAccess project, a statewide public access web portal. Mr. Reinkensmeyer presented policy considerations in planning the direction for Phase 1 of eAccess to include a recommendation of a user fee schedule for online document access, per rule 123(g) and ACJA 1-604, and adoption of guiding program policies, e.g., certified copies and user authentication.

Mr. Reinkensmeyer explained that an administrative order would be needed to implement the project and noted there are issues with certified copies and user authentication and access. He asked that policy direction regarding these issues be addressed and included in the administrative order.

Discussion took place regarding sealed documents. Mr. Byers noted there is a difference between sealed documents and sensitive data that needs to be handled separately.

Mr. Whitney Cunningham noted this will be a tremendous service from a practitioner's standpoint, but raised concern that the fees are higher than the Federal PACER system. He noted this will impact small practitioners who may not be able to afford the fees. Mr. Cunningham suggested an additional tier in the \$100 range.

Judge Davis noted that his staff attorneys looked at this project and concluded a statute is needed to authorize the fees. He questioned how we would accomplish this without a legislative statute. Mr. David Withey, Chief Legal Counsel for the AOC, explained that a legislative statute would not be needed, as Rule 123 and particular provisions place us on solid ground.

Judge Carter Olson stated the proposed fees are way too high and will keep people from using the system. Mr. Byers noted that the proposed costs do not show fixed costs, and revenue needs to be coming in to pay for the system. Ms. Athia Hardt shared concern over not offering lower tiers. Judge Davis suggested doing a court analysis on what the court will save moving forward with this project. Mr. Mike Hellon asked if the schedule takes into account changing monthly needs for documents.

The Chair stated the need to approve moving forward without approving specific fees at this time. Judge Simmons noted she was not opposed to trying this and seeing how it goes. Mr. Byers suggested we could consider charging for name searches and then lower the other fees. Mr. Weisz added that a lot of good work went into this, but more tier(s) would provide a better balance.

Mr. Mike Hellon moved to proceed and authorize a fee structure. The motion was not seconded. A motion was made and seconded to approve the fee structure as proposed, subject to further discussion and additional amendments. Mr. Cunningham offered an amendment to the motion to ask that staff investigate offering a \$50-\$75 subscription level for solo and small practitioners. It was noted this would be taken into account with the existing motion. The amendment to the motion was withdrawn.

MOTION: To approve the fee structure and direct staff to take a look at whether an additional tier below \$200 is appropriate subject to further discussion and additional amendments. The motion was seconded and passed. AJC 2013-11 (3 opposed).

Commission on Technology (COT) Update

Vice Chief Justice Bales provided a brief update on the Commission on Technology.

Mr. Karl Heckart, CIO of the AOC, talked about the project priorities for 2013. He provided COT recommended priorities for FY 2014.

Mr. Kevin Kluge, Director of the Administrative Services Division and Chief Financial Officer for the AOC, provided information on funding, updates on revenues and expenses, Legislative fund sweeps, fund balances, and JCEF allocations for FY 2014. He asked for the Council's approval of the budget requests, as presented.

MOTION: To approve the FY 2014 JCEF budget request and probation budget, including spending on previously-approved technology projects, as recommended by the Commission on Technology, as presented. The motion was seconded and passed. AJC 2013-12.

Vice Chief Justice Bales noted the eBench contract has been awarded to Mentis Technologies. He reported that representatives from Mentis Technologies and the AOC will be on site at the Judicial Conference to demo this dynamic new tool.

National Instant Criminal Background Check System (NICS) Presentation

Mr. Anthony J. Coulson, Consultant with NTH Consulting, Inc., presented information on the current NICS system and the 7 federally prohibited possessor categories, along with recommendations. He reported on the NICS Task Force that was formed in January 2011 to improve reporting on prohibited possessors. He explained that if a person is currently a federally prohibited possessor, they still may be able to purchase a weapon in Arizona.

Mr. Karl Heckart presented information on the Mental Health Repository. He explained that the goal is to provide access to mental health adjudications and orders, which will pave a path to deal with the issue of prohibited possessors. Mr. Heckart reported the repository is targeted to “go live” in 2014.

Mr. Jerry Landau, AOC Director of Government Affairs, explained his role in drafting statutes coming out of the Task Force beginning with the mental health category. He stated the goals regarding Title 36 commitments, Title 14 guardianships, and Rule 11 are to allow (a) DPS to enter the required case information into NICS; (b) the Clerk of Court to forward to DPS the case information; (c) the Court to enter data into the Mental Health Repository; (d) law enforcement to access the Repository only for enforcing a court order, investigating a case, or returning property; (e) the Court to provide certified copies of guardianship and commitment orders to law enforcement and prosecution in order to investigate the violations; (f) the purging of information in the database if the right to possess firearms is returned, pursuant to statute; and (g) revisions of the prohibited possessor, concealed weapon, and security guard statutes to comply with the state statutes.

Mr. Byers explained that information is currently not going into NICS that needs to be, and we must act quickly to get the information into NICS. He noted that staff will be gathering data and will come back to the Council with a proposed policy change in October.

Budget Update

Mr. Kevin Kluge provided a budget update that included the baseline general fund budgets; budget requests; fund sweeps; and the lack of funding for current-year health, dental, and retirement deficits.

Judicial Branch Legislative Update

Mr. Jerry Landau, AOC Director of Government Affairs, and Legislative Liaison Amy Love, presented an overview on the past 151-day legislative session. Mr. Landau and Ms. Love provided updates on the status of bills presented to the Council over session.

Veteran’s Court Initiative

Retired General Richard “Gregg” Maxon, AOC staff member, talked about Veteran’s treatment courts. He addressed the growing number of veteran courts in the Arizona judicial system and opportunities to expand these promising projects. General Maxon noted that, as a newly hired, part-time AOC staff member, he is available to assist with the development of veteran courts and coordination with the Department of Veterans

Affairs.

Case Filing Trends/Budget

Mr. Bert Cisneros, Senior Statistical Analyst for the Court Services Division of the AOC, provided an update on case filing trends in general and limited jurisdiction courts, including trends in the following case categories: civil, mental health, juvenile dependency, justice court civil, and civil traffic. He also reported on statewide revenue trends.

Evidence-Based Pre-Trial Services

Ms. Kathy Waters, Director of the Adult Probation Services Division of the AOC, presented information on evidence-based pre-trial services. She explained the mission is to promote the use of evidence-based assessments and professional judgment to determine pre-trial release conditions and, as a result, protecting public safety, reducing failures to appear, and avoiding unnecessary jails costs. Ms. Waters stated the project will advance the fair administration of justice by helping assure that individuals are not detained pre-trial merely because they cannot afford a monetary bond or appearance surety.

The Chair stated the need to obtain the authority to move forward with this project. Ms. Yvonne Hunter suggested partnering with an interested entity to add credibility to the messaging. She also suggested providing cost information by county and legislative district. Judge Simmons suggested the County Board of Supervisors as a possible partner.

Call to the Public, Acknowledgements of Service, and Adjournment

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

The Chair noted that the terms for Council members Jose Cárdenas and Judge Lawrence Winthrop have ended. She thanked them for their service and presented a certificate of appreciation to each of them.

A motion was made to adjourn the meeting at 4:35 p.m.