

ARIZONA JUDICIAL COUNCIL

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

December 11, 2014

Meeting Minutes

Council Members Present:

Chief Justice Scott Bales
David Byers
Judge Peter Cahill
Judge Rachel Torres Carrillo
Judge Norman Davis
Athia Hardt
Mike Hellon
Yvonne R. Hunter, J.D.
Michael Jeanes
Jack Jewett
Judge Diane Johnsen

Gary Krcmarik
Judge David Mackey
William J. Mangold, M.D., J.D.
Judge John Nelson
Richard Platt
Janet K. Regner
Judge Antonio Riojas, Jr.
Judge Sally Simmons
Judge Roxanne Song Ong
George Weisz
Judge David Widmaier

Council Members Absent (excused):

Jim Bruner
Judge Peter Eckerstrom

Victor Flores

Administrative Office of the Courts (AOC) Staff Present:

Theresa Barrett
Mike Baumstark
Stewart Bruner
Susan Hunt
Jerry Landau
Amy Love
Mark Meltzer
Alicia Moffatt
Heather Murphy

Nick Olm
Susan Pickard
Kay Radwanski
Marcus Reinkensmeyer
Jeff Schrade
Kathy Sekardi
Lorraine Smith
Kathy Waters
David Withey

Presenters and Guests Present:

Lt. Tom Boelts
Barbara Broderick

Judge Eric Jeffery
Vice Chief Justice John Pelander

Luis Ebratt
Michael Espinoza
Judge Pamela Gates
Lisa S. Hyche
Darla Hyche

John Phelps
Judge Ron Reinstein
David Rosenbaum
Saul Schoon

Approval of Minutes

Chief Justice Scott Bales, Chair, called the meeting to order at 9:05 a.m. in Room 119 at the Arizona State Courts Building, 1501 W. Washington Street, Phoenix, Arizona. The Chair welcomed those in attendance.

Approval of Minutes

The Chair called for any omissions or corrections to the minutes from the October 23, 2014, meeting of the Arizona Judicial Council. There were none.

MOTION: To approve the minutes from the October 23, 2014, meeting of the Arizona Judicial Council, as presented. The motion was seconded and passed. AJC 2014-32.

Capital Case Oversight Committee

Judge Ron Reinstein (ret.) updated the Council members on the Committee. He provided background information and presented the Committee's interim report as directed by Administrative Order No. 2013-115. Judge Reinstein noted that the Committee members will continue to monitor the capital caseloads and assist the counties.

Child Support Guidelines

Ms. Theresa Barrett, Manager and Kathy Sekardi, Senior Court Policy Analyst of the Court Services Division of the AOC, presented recommendations regarding Arizona's quadrennial review of the child support guidelines.

Ms. Barrett explained the process to date and provided background information. Ms. Sekardi presented information regarding the high-level overview of comments received during the comment period. She walked the Council members through the monthly support obligations as compared to the proposed schedule being presented. Ms. Sekardi noted there were 2 substantive proposals. She stated that one of them came from the Attorney Generals' Office and would provide the court with discretion to deviate down from a minimum wage order for a very limited period of time, and only when appropriate, to allow an obligor to seek employment without incurring a large amount of child support arrears in the interim. Ms. Sekardi reported that the other substantive proposal involves the Affordable Health Care Act, which may require further vetting with varied input and feedback. She stated that Arizona is one of the few states which may have to rethink

their allocation of income tax and how that is allocated to each of the parents pertaining to child support.

MOTION: To adopt the updated BR3 schedule for Arizona using economic data and the self-support reserve amount of \$1,115. Additionally, recommend that AOC staff compile all substantive proposals received during this technical review until further study on these issues can be undertaken, as presented. The motion was seconded and passed. AJC 2014-33.

Proposed Rule Petitions

Rule 74 of the Arizona Rules of Family Law Procedure Re: Parenting Coordinators

Mr. Jerry Landau, Government Affairs Director for the AOC, presented background information and laid out the issues that were raised, including the changes proposed by Judge Norm Davis at the Superior Court Presiding Judges meeting.

Judge Janet Barton, Associate Presiding Judge for the Superior Court in Maricopa County and Chair of the Ad Hoc Parenting Coordinator Workgroup, provided information on the workgroup's charge, membership, and proposed rule petition. She explained what a parenting coordinator is and does and laid out each of the proposed rule changes.

Discussion took place regarding parents who cannot afford a parenting coordinator and the issue of equal access to justice. Mr. Gary Krcmarik stated that parenting coordinators are invaluable to their Court. He asked that a review of forms, including Form 11, take place. Ms. Yvonne Hunter asked how parenting coordinators are solicited and if diversity or cultural concerns are taken into account. Judge Barton noted that individuals who would like to be considered for appointment and meet certain minimal qualifications are put on a list.

The Chair stated the Council is being asked to approve the filing of a rule petition that would then go through the cycle of public notice and a modified comment period and ultimately come to the Supreme Court next year.

Mr. Landau provided closing comments and presented information on 2 proposed amendments to the petition affecting F.1. Ability to Pay and F.3. Time of Payment.

The Chair called for members of the public to provide public comment on the proposed rule petition.

Ms. Lisa Hyche provided public comment. She stated her daughter is involved in a family court case. Ms. Hyche noted her daughter cannot afford a parenting coordinator or a lawyer, and the judge won't see her, and this is not right or fair. She noted that the proposed changes sound good. Ms. Hyche stated that indigent parents need help and suggested grants or funding be made available to them.

Ms. Darla Hyche provided public comment. She stated that her case was issued a parenting coordinator, and she is unable to pay for it. Ms. Hyche noted that her children have been withheld from her, and she has not seen them in more than a year. She stated she is fighting for her children, but does not have the money to do it. Ms. Hyche asked that rules are put in place to help parents in her situation.

Mr. Michael Espinoza provided public comment. He noted there has been a positive impact on families with reforms made in family court. Mr. Espinoza stated that the proposal is a good step in the right direction. Mr. Espinoza asked about the process for bringing a complaint against a parenting coordinator. He spoke on the retainer fee and only one parent being able to afford it. Mr. Espinoza suggested that each case should be treating individually to take this situation into account, and noted that currently the retainer gets paid before child support. He stated that we are falling short in the judiciary by not having specific decrees in the parenting plans, and there is a need for a detailed plan that covers many areas.

Mr. Mike Hellon went on record and noted that we should not allow civil matters to become an economic contest. The Chair added that the proposed rules provide that a parenting coordinator should not be appointed in a situation where a party could not afford it, and the court would have discretion to allocate the cost based on the respective abilities to pay.

Judge Barton stated that Ms. Hunter's comments regarding individuals who are not officially parenting coordinators, but are selected by the parents, should also have quick access to a judge to have their decisions addressed and taken into consideration. She stated this issue would be looked into further.

MOTION: To approve the 2 proposed amendments to the proposed rule petition, as presented. The motion was seconded and passed. AJC 2014-34.

MOTION: To approve the filing of the rule petition. The motion was seconded and passed. AJC 2014-35.

Limited Jurisdiction Court Traffic and Boating Rules

Judge Eric Jeffery, Acting Presiding Judge for the Phoenix Municipal Court and member of the Committee on Limited Jurisdiction Courts, presented the petition to modify traffic rules. He stated the rule petition would modify the traffic rules to repeal the Rules of Procedure in traffic and boating cases in their entirety, would retain relevant civil portions of the repealed rules as amendments to the Rules of Procedure in Civil Traffic and Civil Boating cases, and would retain relevant criminal portions of the repealed rules as amendments to the Arizona Rules of Criminal Procedure.

MOTION: To authorize the Committee on Limited Jurisdiction Courts to file the proposed rule petition, as presented. The motion was seconded and passed. AJC 2014-36.

Committee on the Impact of Domestic Violence in the Courts (CIDVC) – Arizona Rules of Protective Order Procedure Workgroup

Ms. Kay Radwanski, Domestic Violence Specialist at the AOC and staff to CIDVC, asked for the Council's support to file a Rule 28 petition to restyle, clarify, and simplify the Arizona Rules of Protective Order Procedure (ARPOP). She explained each of the proposed changes.

Judge Widmaier asked about the transfer form under the active legal decision making order and how the notice gets to the defendant so he knows where to go to ask for a hearing. He stated the need to update the transfer form. Ms. Radwanski noted that she would have CIDVC take a look at this issue to see if language should be added to the transfer form.

The Chair called for public comment on the proposed rule petition.

Mr. Mike Espinoza provided public comment. He spoke on the issue of false allegations of domestic violence and the need to take a second look at the language that is being provided by CIDVC. Mr. Espinoza stated that more scrutiny is needed when granting orders of protection.

MOTION: To recommend that CIDVC file a Rule 28 petition in the 2015 rules cycle to restyle, simplify, and clarify the Arizona Rules of Protective Order Procedure, as presented. The motion was seconded and passed. AJC 2014-37.

Rule 7.5: Review of Conditions; Revocation of Release

Ms. Kathy Waters, Director of the Adult Probation Services for the AOC, asked for the Council's support of the proposed rule amendment to add the option of the judge issuing a warrant or summons on the written report from pretrial services staff to the existing option of issuing a warrant or summons on the petition of a prosecutor. She noted the proposed amendment will require that a copy of the report is provided to the prosecutor and served with the warrant or summons.

MOTION: To approve the filing of a rule petition to amend Rule 7.5: Review of Conditions; Revocation of Release, as presented. The motion was seconded and passed. AJC 2014-38.

The Chair stated that Vice Chief Justice Pelander, Chief Judge Johnston, and he would be leaving the meeting to attend another event and would return around the lunch hour.

Arizona Code of Judicial Administration (ACJA)

Mr. Jeff Schrade, Director of the Education Services Division for the AOC and staff to the Committee on Judicial Education and Training (COJET), presented information on the amendment which proposes an additional annual training requirement for computer security and network security that will apply to all judges and judicial branch personnel. He added the proposed amendment also clarifies language regarding pro-rated requirements for new and part-time court personnel and applicability of faculty credit toward the live training requirements. Mr. Schrade noted the options are to provide 30 minutes as presented or amend to provide 1 hour of combined ethics and computer security training.

Judge Mackey noted the Committee on Superior Court voted to support the change. He stated that concern was raised about imposing this requirement, as some judges don't use their computers. Judge Mackey expressed concern that we are imposing the training before a program or process is in place for training. He suggested that we get training in place, see who will participate, and then see whether it needs to go to the level of a requirement. Judge Mackey also expressed concern with the amendment to elevate this training to the level of ethics.

Ms. Hunter stated she would generally support Judge Mackey's position, but raised concern with justice in the courtroom when judges don't know how to use a computer. She noted she is in favor of the more stringent requirement. Judge Simmons stated that this training is needed, but should not be on the same level as ethics. She also raised concern that the requirements affect all staff, even those who change light bulbs. Judge Simmons suggested having internal requirements from their own court staff. She stated she did not think this training should rise to the level of mandatory training. Mr. Jeanes supported Ms. Hunter's comments and noted that computer security is an emerging crisis that needs to be taken seriously, and he fully supports training for everyone involved. Judge Norm Davis agreed with Mr. Jeanes and stated that we need mandatory training that can be easily adapted as new viruses/threats are developed.

Mr. George Weisz asked if we incorporate computer security training into an integrity block, does it take away from the integrity training, and if so, then it needs to be put somewhere else. Judge Simmons suggested 1 hour of ethics training and 30 minutes of computer security training, but with ethics on the top level.

MOTION: To approve the original proposal where we keep one half hour of ethics training and add a mandatory one-half hour of computer security training. The motion was seconded and passed (2 opposed).
AJC 2014-39.

Ms. Kathy Waters presented ACJA 6-113: Firearms Standards (amendment) to allow fugitive apprehension officers to be issued AR 15 long guns, to include provisions of issuance and qualifications.

MOTION: To approve ACJA 6-113: Firearms Standards (amendment), as presented. The motion was seconded and passed. AJC 2014-40.

Judicial Branch Budget Update

Mr. Kevin Kluge, Chief Financial Officer for the AOC, presented a PowerPoint explaining the budget situation to include overview of the FY 2015 general fund budget, restricted and non-restricted funds, total budget cuts, declining revenues, and the judicial budget crises. He stated that the Judiciary is in a much worse position than we were going into the last fiscal crisis.

Judicial Branch Legislative Update

Mr. Jerry Landau presented the following 2015 legislative proposals with regard to cause, effect, and implementation:

2015-A: Judgment of guilt; document (Arizona Criminal Justice Commission)
Discussion: None

MOTION: To support 2015-A: Judgment of guilt; document, as presented. The motion was seconded and passed. AJC 2014-41.

2015-B: Law enforcement courts; fingerprinting (Arizona Criminal Justice Commission)
Discussion: None

MOTION: To support 2015-B: Law enforcement courts; fingerprinting, as presented. The motion was seconded and passed. AJC 2014-42.

2015-C: NICS; prohibited possessor; criminal offenses (Arizona Criminal Justice Commission)
Discussion: Mr. Landau stated this proposal would be considered in 2 parts.

Part 1: To allow Arizona to send persons indicted or information for a serious offense to NICS.

MOTION: To support 2015-C, Part 1: NICS; prohibited possessor; criminal offenses, as presented. The motion was seconded and passed. AJC 2014-43.

Part 2: Adds a person under indictment or information for a serious offense to the definition of "prohibited possessor." He noted the Presiding Judges voted to remain neutral and believed this is a policy decision for the Legislature.

MOTION: To remain neutral on 2015-C, Part 2: NICS; prohibited possessor; criminal offenses, as presented. The motion was seconded and passed. AJC 2014-44.

2015-D: Prohibited possessor (Arizona Criminal Justice Commission)

Discussion: Mr. Landau stated this proposal would be considered in 2 parts.

Part 1: Requires the clerk of court to transmit case information to the Supreme Court and the Supreme Court to transmit the case information to the Department of Public Safety (DPS) if the defendant is placed under a guardianship, except for a physical disability. Requires the DPS to transmit the case information to NICS. If the guardianship is subsequently lifted, the clerk of court is required to transmit the dismissal or change in the condition of release to the Supreme Court, who shall transmit the dismissal to DPS, who then enters the information into NICS.

Judge Nelson noted he is opposed to this legislation because of its impact on the constitutional right to bear arms.

MOTION: To support 2015-D, Part 1: Prohibited possessor, as presented. The motion was seconded and passed (7 opposed). AJC 2014-45

Part 2: Adds a person under a guardianship to the definition of “prohibited possessor.”

Discussion: None

MOTION: To remain neutral on 2015-D, Part 2: Prohibited possessor, as presented. The motion was seconded and passed. AJC 2014-46.

2015-E: Probationer; search (Arizona Association of Counties)

Discussion: Public comment was received.

Lt. Tom Boelts, on behalf of the Arizona Sheriff’s Association, provided public comment. He noted this is a tremendous officer safety issue, but there is room for negotiation, and they would like to continue to negotiate to find some common ground.

Mr. Lou Ebratt, Executive Director of the Combined Law Enforcement Associations of Arizona, representing 14,000 members inclusive of probation officers, provided public comment. He stated they oppose this legislation because it places their officers at risk and is disruptive. Mr. Ebratt stated there have not been any issues for the members he represents.

Ms. Barbara Broderick, Chief Adult Probation Officer in Maricopa County, representing the Arizona Chief Probation Officers’ Association, provided public comment and provided a handout listing their concerns. She stated the legislation blurs the line between police and probation. Ms. Broderick noted that she is supportive, but she does not see the system as broken, and stated there is a need for all parties to communicate better. She reported that all 15 Chief Probation Officers in the state are opposed to the legislation.

Mr. Landau stated that he and his staff are committed to working with law enforcement. He noted that he is looking for direction regarding this legislation. Judge Mackey stated that he is willing to continue the discussion, but on the basic principle that probation is a court function, and the courts need to be in control and set our terms of probation. He made a motion to oppose this legislation. The motion was seconded. Mr. Byers suggested an amendment to the motion that our probation staff and AOC staff continue to work with Lt. Boelts on the areas of making probation data available and along the lines of special conditions, individual cases, etc., to see if there is not some resolution. Judge Mackey accepted the amendment.

MOTION: To oppose 2015-E: Probationer; search, with the amendment that probation and AOC staff continue to work with Lt. Boelts on a possible resolution. The motion was seconded and passed. AJC 2014-47.

Business Court Advisory Committee (taken out of order)

Mr. David Rosenbaum, Chair of the Business Court Advisory Committee, and Judge John Rea, Superior Court in Maricopa County, provided background information and presented the Committee's final report and recommendations.

Mr. Rosenbaum noted the Chief Justice established the Business Court Advisory Committee (BCAC) in May 2014 with Administrative Order No. 2014-48. He added that the recommendations include the establishment of a three-year pilot program.

The Chair noted that one recommendation relates to assigning judges to the court to allow them to continue in their assignment, and the Committee concluded that at some point, the Governor might appoint judges to serve on this particular court permanently. He stated he believes this issue warrants study at this point rather than enforcement.

The Chair noted that the report recommends that the Committee's existence continue for an additional 4 years if a pilot is adopted so it can monitor the ongoing success of the project, ultimately prepare a follow-up report, and expand the committee to include those judges assigned to the pilot project. He suggested contemplating some form of continuing review, but was not sure it should be same committee that put this together. The Chair added the charge should really be for the Supreme Court to work with leadership in the Superior Court in Maricopa County to come up with a pilot that is broadly consistent with the report and recommendations.

MOTION: To approve the Business Court Advisory Committee's report and recommendations, commend the Committee for their work, move forward to implement a pilot in Maricopa County, and direct that AOC staff come up with a method to help monitor and evaluate and report back to the Council. The motion was seconded and passed. AJC 2014-48.

Report Re: HB 2310: Mental Health Courts and Statewide Standards

Mr. Marcus Reinkensmeyer, Director of the Court Services Division and Chair of the Mental Health Court Advisory Committee, provided background information on the Committee and presented eight proposed mental health court standards. Mr. Reinkensmeyer noted that the report is recommending 6 of the 14 basic data elements.

Mr. Gary Krcmarik stated his concern with standard #6. He asked that the date of complaint and filing of complaint to referral to the mental health court be added. He noted this would allow us to see how the system as a whole is working, and more importantly, how the court is working once they receive the complaint.

MOTION: To approve the National Center for State Court's report and the Mental Health Court Advisory Committee's proposed mental health court standards with a July 1, 2015 delayed effective date to allow ample time for implementation. The motion was seconded and passed. AJC 2014-49.

Call to the Public

Mr. Anthony Sizer provided public comment about his concerns with discovery in the Superior Court in Pima County. Mr. Sizer provided a handout regarding his group conducting a policy and court procedure analysis in the Superior Court in Pima County. He stated he hopes to report back to the Council in 2015 with their findings in an effort to improve policies and identify failure of policies that were not followed in custody, visitation, and child support determinations. Mr. Sizer stated their goal is to protect the best interests of children and work with the court system to address issues and improve the justice system in Pima County.

The Chair stated the court system shares a concern for the best interest of children. He noted if the group prepares a study, he encourages Mr. Sizer to send the results to the Court for their consideration.

Mr. Yordy Purnomo, provided public comment. He spoke about a custody case involving his son, a United States citizen born in Tucson, Arizona, and the mother of his child who decided to relocate to a non-Hague convention country (Indonesia) in which a U.S. court decision is not enforceable.

Mr. Purnomo stated he was awarded joint legal decision making, but the mother did not get him involved in this decision regarding their son. He stated he is lucky if he can see or speak with his son uninterrupted for more than 40 minutes via Skype. Mr. Purnomo stated that although the judge ordered the mother to forward the U.S. court ruling to the court in Indonesia, she has not done so, and a case has been filed in Indonesia where she is seeking full custody of their son.

Mr. Purnomo stated that he is speaking today to ask for a clear-cut policy regarding child custody involving international U.S. citizens who are in a non-Hague convention country.

Chief Justice Bales suggested that the Committee on Superior Court may be able to take up this issue. He asked Judge Mackey's Committee to give some attention to this issue.

The meeting adjourned at 2:01 p.m.