

ARIZONA JUDICIAL COUNCIL

Arizona State Courts Building
1501 W. Washington Street
Conference Room 119
Phoenix, AZ 85007

December 12, 2013

Meeting Minutes

Council Members Present:

Chief Justice Rebecca White Berch
Jim Bruner
David Byers
Judge Peter Cahill
Judge Rachel Torres Carrillo
Judge Norman Davis
Athia Hardt
Mike Hellon
Judge Joseph Howard
Yvonne R. Hunter, J.D.
Michael Jeanes
Judge Diane Johnsen

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.
Judge Sally Simmons
Judge Roxanne Song Ong
George Weisz
Judge David Widmaier

Council Members Absent (excused):

Whitney Cunningham, J.D.

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
Stewart Bruner
Amy Champeau
Melinda Hardman
Jerry Landau
Amy Love
General Greg Richard Maxon
Carol Mitchell
Alicia Moffatt

Heather Murphy
Nina Preston
Kay Radwanski
Marcus Reinkensmeyer
Lorraine Smith
Cindy Trimble
Kathy Waters
David Withey
Amy Wood

Presenters and Guests Present:

Vice Chief Justice Scott Bales
Thomas S. Boelts
Marty Herder

John MacDonald
Jodi Rogers
Trey Williams

Chief Justice Rebecca White Berch, Chair, called the meeting to order at 9:30 a.m. in Conference Room 119 at the Arizona State Courts Building, 1501 W. Washington, 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 17, 2013, meeting of the Arizona Judicial Council. There were none.

MOTION: To approve the minutes from the October 17, 2013, meeting of the Arizona Judicial Council, as presented. The motion was seconded and passed. AJC 2013-33.

Arizona Code of Judicial Administration (ACJA) (taken out of order)

Mr. David Withey, Chief Legal Counsel for the AOC, presented ACJA § 1-110: Committee on the Impact of Domestic Violence and the Courts (*amendment*). He noted this was a consent item.

Ms. Kay Radwanski, Sr. Policy Analyst for the Court Services Division of the AOC, summarized the proposed amendments to the code.

MOTION: To approve ACJA § 1-110: Committee on the Impact of Domestic Violence and the Courts (*amendment*), as presented. The motion was seconded and passed. AJC 2013-34.

Approval of the 2014-2019 Strategic Agenda

Mr. Mike Baumstark, Deputy Director of the AOC, presented the FY 2014-2019 Judicial Branch Strategic Agenda. He stated the goal today is to finalize the agenda, and he asked for the Council's approval. Mr. Baumstark noted that once approved, staff would begin working on graphic design, layout, and fine tuning, and will launch the final plan to the Judicial Branch and the public in the spring.

Arizona Code of Judicial Administration (continued)

Ms. Kathy Waters, Director for the Adult Probation Services of the AOC, presented ACJA § 5-201: Evidence Based Pretrial Services (*new*). She presented the governing documents needed to launch evidence-based pretrial services for the courts in Arizona. Ms. Waters shared information on the John and Laura Arnold Foundation that is

embarking on a process of developing a national model for pretrial risk assessment. She noted we will be partnering with them in this effort.

Ms. Waters asked the Council for approval and adoption of § 5-201: Evidence Based Pretrial Services.

MOTION: To approve ACJA § 5-201: Evidence Based Pretrial Services (new), as presented. The motion was seconded and passed. AJC 2013-35.

Ms. Waters asked the Council for approval to allow Maricopa, Pima, and Coconino counties to continue to use their validated pretrial risk assessments per ACJA.

MOTION: To allow Maricopa, Pima, and Coconino counties to continue to use their validated pretrial risk assessments per ACJA, as presented. The motion was seconded and passed. AJC 2013-36.

Ms. Waters asked for approval of the four sites (Pinal, Yuma, Gila, and Mesa Municipal) for the pilot project with the John and Laura Arnold Foundation.

MOTION: To approve the four sites (Pinal, Yuma, Gila, and Mesa Municipal) for the pilot project with the John and Laura Arnold Foundation, as presented. The motion was seconded and passed. AJC 2013-37.

Ms. Waters asked for the Council's approval for Pinal and Yuma counties to continue to use the Virginia pretrial assessment until the beginning of the pilot.

MOTION: To approve Pinal and Yuma counties to continue to use the Virginia pretrial assessment until the beginning of the pilot, as presented. The motion was seconded and passed. AJC 2013-38.

Ms. Waters reported that ACJA § 6-106: Personnel Practices (*amendment*) is being held for further discussion, and she hopes to bring the code section back to the March meeting.

Ms. Waters presented ACJA § 6-112: Use of Force (*amendment*). She explained the amendments being proposed and asked for the Council's approval. Mr. George Weisz asked if the Peace Officers Standards and Training Board has been involved, and Ms. Waters noted that they had.

MOTION: To approve ACJA § 6-112: Use of Force (amendment), as presented. The motion was seconded and passed. AJC 2013-39.

Ms. Waters presented ACJA § 6-113: Firearms Standards (*amendment*) and explained the changes included in the code. Discussion ensued regarding the ability of officers to carry a weapon once they are trained.

MOTION: To approve ACJA § 6-113: Firearms Standards (amendment), as presented. The motion was seconded and passed. AJC 2013-40.

Judicial Branch Legislative Package

Mr. Jerry Landau, AOC Director of Government Affairs, and Legislative Liaison Amy Love updated the Council on the upcoming session and the following legislative proposals presented at the October Council meeting:

2014-2: Veterans' court establishment; eligibility for referral. Mr. Landau reported there is discussion at the Legislature to include mental health courts in the ability to regionalize. He stated he is talking with staff and members at this time and will provide updates.

2014-5: Issuance of Warrants; Authority. Mr. Landau provided an update and spoke on issues and concerns raised by the Clerks of Court. He noted that the Presiding Judges recommended accomplishing this in rule rather than statute.

MOTION: To pull 2014-5: Issuance of warrants; authority and accomplish in-house and work out in the rules. The motion was seconded and passed. AJC 2013-41.

2014-7: Dependency cases; court program. Ms. Amy Love provided an update and clarification.

Mr. Landau and Ms. Love presented the following bills of interest:

2014-A: National Instant Criminal Background Check System (NICS). Jerry Landau provided an update. Mr. Byers noted that the Arizona Criminal Justice Commission voted to support this bill.

MOTION: To approve the basic expansion of the NICS system, as presented. The motion was seconded and passed. AJC 2013-42.

2014-D: Peace officers bill of rights; probation officers. Mr. Landau explained the updates to the proposal.

2014-E: Criminal Restitution Orders. Mr. Landau and Mr. Michael Jeanes provided an update on the proposal.

2014-H: Searching of probationers and parolees. Mr. Landau provided an update on the proposal that would require a person who was convicted of a felony offense and is eligible for probation or parole to agree in writing as a condition of the probation or parole to be subject to search or seizure at any time if a peace officer has reasonable suspicion. He noted that 2 members of the public were present and wished to provide public comment.

Lt. Thomas S. Boelts from the Yavapai County Sheriff's Office provided public comment. He shared background information on the issue, and stated that California has been using this process successfully for almost 17 years. Lt. Boelts noted this is a way to enhance community safety without having to hire more officers.

Chief Justice Berch expressed concern over the limitations on this right and asked what the proposed language will be, i.e., will it impact someone with a DUI. Mr. Weisz questioned how they would verify that a person is actually on probation. Mr. Byers echoed this concern, especially for urban areas. Ms. Yvonne Hunter asked if there is a remedy if a person is stopped for reasonable suspicion, but it turns out they are no longer on probation. Lt. Boelts noted a person could file a civil suit. Ms. Hunter expressed concern with the elimination of safeguards if this moves forward, and stated she would have a hard time supporting this bill.

Judge Mackey expressed concern with separation of powers and extended an offer to work with his law enforcement staff to identify any problems with his county's probation response for a legitimate probation search and fix them. He noted he does not think a statewide solution is needed, and he is not in favor of this bill.

Mr. Byers stated the need for additional discussion and education, and he noted probation officers and chiefs oppose this bill.

Chief Justice Berch asked if there was any thought to limiting the definition of felony offense to serious crimes, violent felonies, or drug related charges. Judge Carter Olson noted the basic system/framework already exists to accomplish this, and we should be looking to identify simple steps that might achieve the same result within the current system. Lt. Boelts said he will take this idea back to the sheriffs to see if they would be open to it.

Mr. Mike Hellon asked why probation information is not generally available throughout the police community. Mr. Byers stated we would need a system in place for this with a link from their system to ours.

MOTION: To table 2014-H: Searching of probationers and parolees until the Council can see the language and actual proposal. The motion was seconded and passed. AJC 2013-43.

Capital Case Oversight Committee (taken out of order)

Judge Ron Reinstein provided background information on the Committee. He asked the Council to support an amendment to A.R.S. § 13-4041 and to extend the term of the Oversight Committee for an additional 2 years. Judge Reinstein stated the amendment to A.R.S. § 13-4041 would increase the hourly rate of PCR counsel from the current \$100 an hour to \$175 an hour. He noted this is comparable to the federal rate in a capital case and would further encourage qualified attorneys to apply for capital PCR appointments.

Mr. Hellon expressed concern with prospectively supporting something that does not yet exist. He suggested that we encourage legislation rather than approving something before it happens. Ms. Emily Johnson suggested having a conversation with State Bar staff and getting support from other entities. Ms. Hunter stated this is a county issue, and we do not have any control over it. She noted the county pays the bill, and a conversation with APAAC and the County Board of Supervisors Association is needed. She suggested our role could be to bring the parties together to have a frank discussion on moving this issue forward.

Mr. Weisz stated he served on the original Capital Case Commission and noted the need for adequate counsel was always agreed upon, but it always came down to the cost. Judge Olson asked why we would need to go the legislative route, and mentioned that although he hasn't looked at the statute in a while, he believes it is really a floor, and in Pinal County they pay more. He stated that the presiding judges should have flexibility on the compensation level. Judge Reinstein noted there is flexibility on compensation for trial, which has caused a huge impact on budgets in Maricopa County, but PCR is set by statute. Chief Justice Berch stated this issue needs further work and development, and although we are on board with the notion, more spade work needs to be done with the counties and other stakeholders.

MOTION: To approve the extension of the Oversight Committee for an additional 2 years. The motion was seconded and passed. AJC 2013-44.

Law for Veteran's Website (taken out of order)

General Gregg Maxon, Special Advisor to the AOC, reported on the website. He provided background information on how the website came about and presented statistics on the website since its launch.

Language Access Update (taken out of order).

Ms. Carol Mitchell, Court Access Specialist for the Courts Services Division of the AOC, provided an update on language access.

Certified Reporter Task Force Update

Vice Chief Justice Scott Bales provided an update on the Task Force. He reported that a committee has been formed and members named. Vice Chief Justice Bales stated that the Task Force has met once and has received input from the Arizona Reporters Association and Dan Maynard, attorney. He noted the Task Force is asking if the rules properly serve the role of protecting the record, etc. Vice Chief Justice Bales stated that the Task Force will meet after the first of the year, and they hope to have recommendations at the March meeting.

Report of the Electronic Records Retention and Destruction Advisory Committee

Mr. Marcus Reinkensmeyer, Director of the Courts Services Division of the AOC, briefed the Council on the Committee and provided background information including Committee charge, scope, and general policy direction.

Mr. Reinkensmeyer asked for approval of the Committee's recommendations and stated that detailed, redlined changes will be coming back to the Council for final approval. Mr. Weisz cautioned, on behalf of the small groups who solve crimes/cold cases, to be careful when destroying records.

MOTION: To approve the recommendations, as presented. The motion was seconded and passed (one opposed). AJC 2013-45.

Chief Justice Berch presented a certificate of appreciation to Judge Robert Carter Olson who announced his retirement at the end of December. She thanked him for his service on the Council.

The meeting adjourned at 1:14 p.m.