ARIZONA JUDICIAL COUNCIL

Arizona State Courts Building
1501 W. Washington Street
Conference Room 101
Phoenix, AZ 85007

March 20, 2014

Meeting Minutes

Council Members Present:

Chief Justice Rebecca White Berch
Jim Bruner, J.D.
David Byers
Judge Peter Cahill
Judge Rachel Torres Carrillo
Whitney Cunningham, J.D.
Judge Norman Davis
Victor Flores
Athia Hardt
Mike Hellon
Michael Jeanes
Jack Jewett
Judge Diane Johnsen
Emily Johnston
Gary Krcmarik
Judge David Mackey
William J. Mangold, M.D., J.D.
Judge John Nelson
Janet K. Regner
Judge Antonio Riojas, Jr.
Judge Sally Simmons
Judge Roxanne Song Ong
George Weisz
Judge David Widmaier

Council Members Absent (excused):

Judge Joseph Howard
Yvonne R. Hunter, J.D.

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
Theresa Barrett
Chad Campbell
Jennifer Greene
Susan Hunt
Jerry Landau
Amy Love
Heather Murphy
Marcus Reinkensmeyer
Lorraine Smith
Patrick Scott
Chelsea Stacey
Cindy Trimble
Kathy Waters
Mark Wilson
David Withey

Presenters and Guests Present:

Vice Chief Justice Scott Bales
Kathy Fink
Chris Green
Marty Herder
Tim LaSota
John MacDonald
Dan Maynard
Mary Meyer
Julie Ottmar
John Phelps
Jodi Rogers
Jill Smith

Chief Justice Rebecca White Berch, Chair, called the meeting to order at 10:00 a.m. in Conference Room 101 at the Arizona State Courts Building, 1501 W. Washington Street, Phoenix, Arizona. The Chair welcomed those in attendance including new Council members Judge John Nelson, Presiding Judge in Yuma County, and public members Victor Flores and Jack Jewett.

Approval of Minutes

The Chair called for any omissions or corrections to the minutes from the December 12, 2013, meeting of the Arizona Judicial Council. There were none.

> **MOTION: To approve the minutes from the December 12, 2013, meeting of the Arizona Judicial Council, as presented.** The motion was seconded and passed. AJC 2014-01.

Arizona Code of Judicial Administration (ACJA) § 6-204.01: Interstate Compact Supervision Evidence-Based Practices (amendment)

Ms. Kathy Waters, Director of the Adult Probation Services Division for the AOC, presented the code section for the Council's review. She explained that the changes to the code section are technical in nature and include definition changes to conform to other ACJA sections, statutory language and citation clean-up, and adding Arizona State Council Policy 1.1 regarding the elimination of dual-supervision cases.

> **MOTION: To approve the amendments to ACJA § 6-204.01: Interstate Compact Supervision Evidence-Based Practices (amendment), as presented.** The motion was seconded and passed. AJC 2014-02.

ACJA § 6-208: Use of Conducted Electrical Weapons (new)

Ms. Waters presented the code section for the Council's review. She explained that this new code establishes the protocol for the use of conducted electrical weapons (CEW) and governs the administration and authority of an officer to use a CEW for purposes of arrest and officer safety while on duty.

MOTION: To approve ACJA § 6-208: Use of Conducted Electrical Weapons (new), as presented. The motion was seconded and passed. AJC 2014-03.

ACJA § 6-307: Uniform Conditions of Juvenile Probation (new)

Mr. Chad Campbell, Director of the Juvenile Justice Services Division of the AOC, presented the code section for the Council's review. He noted that the effect of the proposal is to introduce and instill evidence-based principles, as outlined in Justice 2020.

MOTION: To approve ACJA § 6-307: Uniform Conditions of Juvenile Probation (new), as presented. The motion was seconded and passed. AJC 2014-04.

ACJA § 5-206: Fee Deferrals and Waivers

Mr. Patrick Scott, Court Management Specialist for the Court Services Division of the AOC, presented the code section and explained that most of the proposed changes were based on recommendations of a workgroup charged to discuss the various practices used by the courts in considering applications for fee deferrals and waivers.

Mr. Scott reported that the Superior Court Presiding Judges had approved revisions at their recent meeting to clarify the language on Page 3 (D.3.) that the application fee of $27 for the deferral of waiver applies to each action or each post adjudication proceeding and on Page 5 (E.3) that would add the language "unless the court finds good cause to postpone, defer, or waive the fee."

Mr. Michael Jeanes asked about Page 4 (E.2.a.) and suggested the need for consistency and to set an amount. He suggested that on Page 5 (F.1.) that we should state that it be either a current letter or a letter valid within the last 6 months.

Mr. Dave Byers moved that ACJA § 5-206: Fee Deferrals and Waivers be approved as presented. The motion was seconded.

MOTION: To approve ACJA § 5-206: Fee Deferrals and Waivers, as presented. The motion was seconded and passed. AJC 2014-05.

Mr. Byers moved approval of the amendments provided by the Superior Court Presiding Judges to Sections D.3. and E.3. The motion was seconded.

MOTION: To approve the amendments provided by the Superior Court Presiding Judges to Sections D.3. and E.3, as presented. The motion was seconded and passed. AJC 2014-06.

A motion was made to approve the code section with the approved amendments. The motion was seconded.

> **MOTION: To approve ACJA § 5-206: Fee Deferrals and Waivers with the amendments provided by the Superior Court Presiding Judges to Sections D.3. and E.3.** The motion was seconded and passed. AJC 2014-07.

Mr. Byers made a motion that AOC staff work with a task force of clerks, judges, and administrators to: 1) identify if the current affidavit needs to be modified to improve it and make it clearer, 2) identify best practices as to what documentation or evidence should be presented with the affidavit to enable decisions to be made to grant the waivers, and 3) once the first 2 steps are completed, that the AOC provide training to practitioners in the court system on the entire package. Chief Justice Berch clarified the motion to read "create a task force to work on implementing details and establishing best practices."

> **MOTION: To create a task force to work on implementing details and establishing best practices.** The motion was seconded and passed. AJC 2014-08.

<u>ACJA § 7-206: Certified Reporter</u>

Vice Chief Justice Scott Bales provided introductory remarks and background information on the Task Force that was charged with reviewing the regulatory needs of the profession, staff's proposed code revisions, and industry and interested party comments.

Mr. Mark Wilson, Director of the Certification and Licensing Division for the AOC, provided information on the proposed changes to the code. He explained that staff began noticing situations in which the code did not match industry practice, and industry practice made sense. Additionally, Mr. Wilson noted that a multi-state reporting firm sued the state in Federal District Court alleging that the code section is anti-competitive. He shared 7 general areas of concern from a regulatory perspective and noted that multi-case contracts are the most controversial.

Mr. John MacDonald, Lobbyist for the Arizona Court Reporters Association, provided public comment. He thanked the Task Force for taking on this complex issue. Mr. MacDonald stated that the court reporter's profession is rooted in the trust and confidence of the public. He noted the Association has focused on constructive dialogue, and they believe the work product contains parts that they disagree with and others that are great improvements.

Mr. MacDonald referred the Council members to the hyperlink document that was sent to them prior to the meeting, which outlined the Association's concerns, and asked each member to take the time to read through this document and the hyperlinks. He talked

about the area of the anti-contracting provision and noted the Association remains convinced that the current provisions should remain in place to continue to protect the public. Mr. MacDonald asked the Council to take more time to figure out how disclosure will work, so that it is meaningful and all parties have that full knowledge before proceeding forward.

Mr. Mike Hellon stated that if it is important for both sides to have cost equality, then we should believe that we have the practical ability to enforce that. He also asked if it is a problem if a court reporter works for one of the litigants (contractual obligation). The Chair noted there is a need to ensure court reporter neutrality and cost fairness to both sides.

Mr. Dan Maynard, representing 12 certified Arizona court reporter firms that have had complaints filed against them, provided public comment. He stated that controversy has arisen over the anti-contracting issue, and additional regulations will lead to additional problems. Mr. Maynard stated there is no evidence that court reporters in Arizona have done anything inappropriate. He reported that a court reporter does not generally get involved in the billing unless they own the firm, so to now require that court reporters have to certify that the bill is accurate is not fair to them and is not something they normally do.

Mr. Maynard referred the Council members to the handout provided which outlined comments concerning this code section. He expressed concern with who can and can't take depositions and stated it conflicts with Rule 29 of the Arizona Rules of Civil Procedure. Mr. Maynard expressed his concern with the language concerning contractual relationship. He asked what that means and if the language means written, oral, express, or implied contracts. He stated this language will cause problems. Mr. Maynard noted that there is nothing wrong with contracts between court reporting firms and the users of those services as long as the benefit is always passed on to both sides and the court reporter is certifying that the transcript is accurate.

Mr. George Weisz asked about the nature and disposition of the complaints filed against the 12 court reporters. Chief Justice Berch stated there was a lawsuit filed against the Supreme Court claiming that our prohibition on allowing these kinds of court reporter firms with contracts was a restraint on commerce. She stated she does not know about Mr. Maynard's clients' cases. Chief Justice Berch noted that the Court's concern is to have qualified court reporters who produce quality, independent, impartial, and accurate transcripts and treat people equally. Impartiality and professionalism are also paramount concerns. She noted these concerns resulted in the creation of the task force.

Ms. Mary Meyer, Arizona Court Reporters Association, provided public comment. She stated the Association agrees with many of the Task Force recommendations and appreciates their hard work. Ms. Meyer noted that much of Mr. Maynard's concerns will be answered by implementing firm registration and having that shared accountability for impartiality and fair treatment between the court reporters, the certified reporters, and

the firms. She addressed the issue of transparency and billing and stated the benefit is not always advanced to other parties. Ms. Meyer talked about the issue of "known evasions" and stated there are known evasions that need to be dealt with within this code. She asked that the State Bar be included in the discussion if there will be a waiver or disclosure by attorneys envisioned within this constructive presumptive prohibition.

Mr. Byers asked Ms. Meyer about court reporter neutrality and other relationships being problematic, i.e., court reporters married to law firm partners who use the court reporter. He asked if she would have us ban a firm from using a spouse because of the perception. Ms. Meyer said this is currently banned in the proposed amendments to the code section, but was allowed in the original code.

Vice Chief Justice Bales made a few observations regarding the Task Force. He noted that their objective was to improve the existing rules by preserving integrity and ensuring fairness to the parties. Vice Chief Justice Bales stated that a few comments/references were made regarding the Magna lawsuit, but the Task Force was aware of it, and did not address that lawsuit one way or the other when making recommendations. He noted that no instance involving a problem with the accuracy of the transcript was brought to the Task Force's attention, but there have been concerns raised by attorneys regarding fairness of treatment among the parties. Vice Chief Justice Bales stated that the vast number of these attorneys were in favor of the Task Force maintaining a fairly tight regulatory structure over the aspects of court reporting that don't go specifically to the accuracy of the transcript.

Mr. Whitney Cunningham noted the State Bar was approached early on regarding this issue. He stated the matter was referred to their Ethics Committee, and their conclusion was that the resolution of this dispute does not directly impact the rules of professional conduct governing attorney behavior. He noted the State Bar has not taken a position, and he will abstain from voting in his capacity as a representative of the State Bar.

Judge David Mackey stated that this is not an issue that will ever gain unanimity among the participants, and we are faced with whether we want to continue a regulatory scheme and bring it up to current times. He recommended adoption of the Task Force recommendations. The motion was seconded.

Discussion took place regarding flawed transcripts, the 60% rule, and discounts for depositions.

Mr. Hellon stated that the Task Force collectively believes that they have made significant progress in improving the regulatory scheme. He noted that nothing is carved in stone, and there will be opportunities down the road to make changes or clarifications. Mr. Hellon stated he is in support of the recommendations.

Judge Tony Riojas suggested taking out language in Section L which would allow an attorney to prohibit the use of a reporter because of a contractual relationship. Judge Mackey did not accept this amendment to the motion.

> **MOTION: To approve ACJA § 7-206: Certified Reporter, as presented.** The motion was seconded and passed (1 abstention). AJC 2014-09.

Legislative Branch Update

Mr. Jerry Landau, Director of Government Affairs for the AOC, updated the Council on the status of the 2014 legislative session to include the Arizona Judicial Council legislative package. He reported that the following 5 bills have made it through the committee in the second house: *HB2310: criminal justice info; court reporting, HB2457: mental health; veterans courts; establishment, HB2461: probation officers; authority, SB1248: jury service; lengthy trial fund, and SB1309: court-ordered services; dependent children.*

Mr. Landau updated the Council on other bills affecting the Judiciary:

HB 2322: national instant criminal background checks: Mr. Landau reported the bill is moving forward. He noted the bill expands the definition of prohibited possessor to include persons found incompetent and those guilty except insane.

HB2339: firearms; permit holders; public places: Mr. Landau asked for the Council's recommendation to oppose this bill in its current form. He noted this bill would allow people carrying a concealed weapon (CCW holders) to enter a public building unless there is security and screening at each entrance. The Chair clarified that the Council has opposed a related bill, but given the additional language, the Council is being asked to take a position on this bill.

> **MOTION: To oppose *HB 2339: firearms; permit holders; public places*, as presented.** The motion was seconded and passed (2 opposed). AJC 2014-10.

HB2517: firearms; state preemption; penalties: Mr. Landau reported the bill contains convoluted language brought forward by the National Rifle Association. He noted the Presiding Judges have voted to remain neutral on this bill.

> **MOTION: To remain neutral on *HB2517: firearms; state preemption; penalties*, as presented.** The motion was seconded and passed. AJC 2014-11.

SB1266: misconduct involving weapons; judicial officers: Mr. Landau reported this bill comes from the Arizona Justice of the Peace Association and will allow full-time judicial

officers to bring weapons/carry firearms into a court building subject to polices or rules of the Presiding Judge of the county.

> **MOTION: To support *SB1266: misconduct involving weapons; judicial officers*, as presented.** The motion was seconded and passed. AJC 2014-12.

SB1284; public safety officers; omnibus: Mr. Landau noted that the media expressed concern regarding the breadth of this bill in terms of the public's right to know versus the safety of the officer. Mr. Landau stated that the clerks are comfortable with this bill since it is specific as to what piece of paper to redact. Mr. Landau noted the Superior Court Presiding Judges voted to recommend remaining neutral.

Judge Norm Davis stated this bill sets up a process that is already covered in several ways at this time and it is totally unnecessary.

Mr. Jeanes noted that the clerks did not take a position on this bill, but have questions about how to implement it if it moves forward.

Judge Davis expressed concern that this legislation creates a special situation for one group of litigants. He moved to express support of protection of law enforcement in obtaining orders for sealing records, when appropriate, but oppose the bill as written and instead use the current rule process and, if necessary, recommend that the Court adopt any supplemental rules necessary to address the areas other than domestic relations and family court cases in the future.

> **MOTION: To express support of protection of law enforcement in obtaining orders for sealing records, when appropriate, but oppose the bill as written.** The motion was seconded and passed (1 opposed). AJC 2014-13.

Budget Update

Ms. Amy Love, Legislative Liaison for the AOC, updated the Council on the budget. She reported that the Senate budget was introduced but did not include our budget requests for the Foster Care Review Board and Court of Appeals (COA). She explained that the Senate President believes the courts should be able absorb these costs. Ms. Love noted that staffs are reaching out to chambers at all levels, the business communities, and lobbyists to talk with members and get the message out that if the COA shortfall is not funded, the Court will not suffer, but the end users will. The Chair asked members to contact any friends they may have in the Legislature to ask for funding on our behalf.

Human Trafficking

Mr. Chad Campbell briefed the Council on the Court's human trafficking plan and provided a few national and local statistics and risk factors, with the number one risk factor being running away. He reported that we are identifying areas that are important to look at, i.e., currently there are no secure facilities to address the issue of human trafficking, and staffs are looking at locations and have identified a facility in Yavapai County as a possible site. He noted the new facility would specifically focus on girls at this time and would contain a pod holding 8-12 juveniles. Mr. Campbell stated we are looking at being more methodical in our approach and are looking at what the facility will look like; defining treatment intervention, triage, and stabilization; and finding national assessments, etc. He referred the Council member to the website: www.htcourts.org which is designed for courts and court interventions as a collaborative effort.

Chief Justice Berch added that staff will be looking for space in other counties in addition to Yavapai.

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

The Chair announced the next meeting is scheduled for Monday, June 23, at the Marriott Starr Pass in Tucson.

The meeting adjourned at 1:32 p.m.