

ARIZONA JUDICIAL COUNCIL

Phoenix Marriott Mesa
200 N. Centennial Way
Mesa, Arizona 85201

October 23, 2014

Meeting Minutes

Council Members Present:

Chief Justice Scott Bales
Jim Bruner
David Byers
Judge Peter Cahill
Judge Norman Davis
Judge Peter Eckerstrom
Victor Flores
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):

Judge Rachel Torres Carrillo
Athia Hardt

Mike Hellon

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
Cindy Cook
Melinda Hardman
Susan Hunt
Jerry Landau
Amy Love

Alicia Moffatt
Brittany Reed
Marcus Reinkensmeyer
Lorraine Smith
Kathy Waters
David Withey

Presenters and Guests Present:

Brian Armbruster
Barbara Broderick
Pete Dunn
Judge Pamela Gates
Marcie Kanefield

Lance Nickell
Vice Chief Justice John Pelander
John Phelps
Terry Stewart
Judge Larry Winthrop

Chief Justice Scott Bales, Chair, called the meeting to order at 9:05 a.m. in the Starlight Room at the Phoenix Marriott Mesa, 200 N. Centennial Way, Mesa, Arizona. The Chair welcomed those in attendance.

Approval of Minutes

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

MOTION: To approve the minutes from the June 23, 2014, meeting of the Arizona Judicial Council, as presented. The motion was seconded and passed. AJC 2014-20.

Approval of 2015 Meeting Dates

The Chair asked for the Council members' approval of the proposed meeting dates for 2015: Thursday, March 26; Monday, June 15; Thursday, October 22; and Thursday, December 10.

MOTION: To approve the proposed 2015 meeting dates, as presented. The motion was seconded and passed. AJC 2014-21.

Arizona Commission on Access to Justice

Judge Lawrence Winthrop, Chair of the Arizona Commission on Access to Justice, reported on the Commission's first meeting, mission, workgroups, and related events. Judge Winthrop shared an informational video from the Arizona State Bar Foundation regarding the availability of the state tax credit for donations to qualifying non-profit groups that provide legal services to the working poor. He noted this is a true tax credit and not a donation and can reduce taxes by \$200 for an individual and \$400 for a couple. Judge Winthrop asked that the Council members share this information with court staff, employees, family, friends, etc. and ask them to take advantage of this great program. Judge Winthrop noted that he, as well as Chief Justice Bales, is available to make presentations to courts, communities, businesses, etc.

Ms. Janet Regner stated there is an effort underway to double this tax credit by increasing the donation levels. She noted that currently only 5% of the people who are using tax credits are using this one. Ms. Yvonne Hunter raised concern that the more than \$6 return on every \$1 investment be Arizona specific and that the numbers are verified when it comes to defending it to the Legislature. Judge Winthrop stated the report referenced is Arizona specific, and he offered to provide a fact sheet explaining how the return on investment is calculated.

Judicial Branch Legislative Package

Mr. Jerry Landau, Director of Governmental Affairs and Ms. Amy Love, Legislative Liaison for the AOC, presented the Judicial Branch legislative package for 2015 and provided an update on the upcoming session.

2015-01, 2015-10: Courts; transaction of business (swapping Columbus Day for the day after Thanksgiving)

MOTION: To approve 2015-01 and 2015-10: Courts; transaction of business, as presented. The motion was seconded and passed. AJC 2014-22.

2015-02, 2015-03: Court ordered treatment; veterans

MOTION: To approve 2015-02 and 2015-03: Court ordered treatment; veterans, as presented. The motion was seconded and passed. AJC 2014-23.

2015-04, 2015-09: Aggravated assault, judicial officers

Discussion: Mr. Landau noted that the Committee on Superior Court and Superior Court Presiding Judges asked that court personnel also be included. Additionally, the Superior Court Presiding Judges asked that paid pro tem judges be included. Mr. Landau clarified that it would be in the scope of or as a result of judicial duties. Ms. Hunter raised concern with the scope of duties being the trigger that caused the assault. She suggested reviewing criteria for other individuals such as prosecutors and public defenders. Judge Diane Johnsen asked that part-time, paid and other court personnel be included and noted if they are performing their professional duties, it should not be limited to full-time or just because they are judicial officers. Mr. Michael Jeanes stated a possible scenario where a judge is at home and receives a death threat and questioned at what time is a judicial officer not performing their judicial duties. Mr. Byers suggested wording to the effect of "because you are a judicial officer or court employee or in the scope of their duties." Mr. Landau noted that he would rewrite the proposal to include these amendments and write it broad enough to capture the discussion today, but narrow enough to cover other circumstances.

MOTION: To approve 2015-04 and 2015-09: Aggravated assault; judicial officers with the drafting decisions discussed today. The motion was seconded and passed. AJC 2014-24.

2015-05: Justice of the Peace; residency

Discussion: Judge David Widmaier stated that as much as this is an election bill, it is really a qualification bill. He noted that he would like to see the Council support the bill. Mr. Byers asked about new precincts and changing boundaries and how that would work. Discussion took place regarding the Justice of the Peace Association taking the lead on this bill and if the wording should be a year or at the time of election.

Mr. Jim Bruner stated that he thought the Justice of the Peace Association should handle it. Ms. Hunter expressed concern with the one-year requirement and noted the process does not seem appropriate.

MOTION: To take no position on 2015-05: Justice of the Peace; residency, as presented. The motion was seconded and passed. AJC 2014-25.

2015-08: Juvenile court; hearings

Discussion: Mr. Landau reported the Superior Court Presiding Judges supported the first part of the proposal, but took no action on the second part. Judge Cahill spoke on behalf of the Committee on Juvenile Courts regarding the second part of the proposal which shifts the burden of notification to the Attorney General's Office. He stated that the Department of Child Safety is in the best position to notify the foster parents. Judge Cahill noted the Committee feels strongly that the Council should support this legislative change. Judge Mackey stated this is just not a Maricopa County problem. He spoke to the second part of the proposal and noted he voted to take no action at the Superior Court Presiding Judges meeting because he is not sure who is the most appropriate and best party to provide notice to the foster parents. Judge Mackey stated the need to get the ball rolling with discussion on the second part.

MOTION: To approve 2015-08: Juvenile court; hearings, as presented.
The motion was seconded and passed (one opposed). AJC 2014-26.

Mr. Landau noted that budget, structure of the judiciary, judicial selection, and retirement will all be issues on the table for the upcoming Legislative session.

Arizona Code of Judicial Administration

Judge Pamela Gates, Superior Court in Maricopa County, presented code section 3-402: *Superior Court Records Retention and Disposition (Amendment)* for the Council members' consideration. She addressed a few outstanding issues raised during the Superior Court Presiding Judges meeting to include Mr. Michael Jeanes' concern regarding the logistical problems with keeping exhibits for landmark cases or historically significant cases for an extended period of time. Judge Gates noted that based on comments received during the Superior Court Presiding Judges meeting, Item 24 has been amended to read: "Upon dismissal, disposition, or final appellate ruling, whichever comes later, and then 30 days after mailing notice to responsible parties to claim the evidence, all unless otherwise ordered by the court." She stated that the following language was added to the remarks section under Item 24: "Clerks are encouraged to identify historically significant and landmark cases prior to the expiration of the retention period for exhibits." Judge Gates reported that additional changes were made based on some of the recommendations contained in a memorandum from Maricopa County to include the appropriateness of the retention period, a missing word, and grammar and spelling changes.

Mr. George Weisz thanked the Committee for doing a great job. He noted that in a perfect world and as a voice for investigators, they would like to be able to keep all records indefinitely.

Ms. Hunter stated the need for financial resources to be available for the Department of Library and Archives to handle the documents listed under this schedule.

MOTION: To approve Code Section 3-402: *Superior Court Records Retention and Disposition (Amendment)*, with the amendments offered by Judge Gates. The motion was seconded and passed (one opposed). AJC 2014-27.

Ms. Melinda Hardman, Staff to the Court Services Division of the AOC, presented code section 4-302: *[Limited Jurisdiction Court] Records Retention and Disposition (Amendment)* for the Council members' consideration. She reported on the vetting process and revisions made to the code section.

MOTION: To approve Code Section 4-302: *[Limited Jurisdiction Court] Records Retention and Disposition (Amendment)*, as presented. The motion was seconded and passed (one opposed). AJC 2014-28.

Ms. Kathy Waters, Director of the Adult Probation Services Division of the AOC, presented code section 6-105.01: *Powers and Duties of Officers Evidence-Based Practices (Amendment)* for the Council members' consideration.

MOTION: To approve Code Section 6-105.01: *Powers and Duties of Officers Evidence-Based Practices (Amendment)*, as presented. The motion was seconded and passed. AJC 2014-29.

“Our Courts Arizona” Update

Vice Chief Justice John Pelander reported on a statewide initiative called “Our Courts Arizona.” He noted that the plan is to use judges to go out into their communities, focus on adult audiences, and talk about the courts, rule of law, etc. Justice Pelander stated that the programs are interactive in nature and include the following subjects: how judges in Arizona are appointed, selected, retained, and held accountable; branches of government; how judges make decisions; rule of law; and the bill of rights. Justice Pelander stated they will be doing dry run presentations in the near future, training in early 2015 for judges who have signed up, and will launch this program statewide in the spring of 2015.

Chief Justice Bales encouraged the Council member to let Justice Pelander know if they have thoughts on what adult groups or community organizations around the state they could present to or if they just want to help.

Arizona Case Processing Time Standards

Mr. Marcus Reinkensmeyer, Director of the Court Services Division of the AOC, presented the Arizona Case Processing Standards Steering Committee's recommendation that the case processing time standards for the following three case types be adopted as final: juvenile dependency adjudication hearings; family law dissolution and allocation of parental responsibilities; and civil traffic. Mr. Reinkensmeyer recognized the Committee members in attendance. He reported on additional case types currently under review and noted the Committee will meet next April. Mr. Reinkensmeyer

provided information on the path to implementation and explained that no data will be requested from courts until 2016.

Chief Justice Bales noted that at the Superior Court Presiding Judges meeting, Judge Davis suggested the need to recognize where there are rules that might build in delay and make it difficult for us to achieve the identified standards. He noted we may need to identify and change rules as needed. Chief Justice Bales added that Judge David Mackey suggested that we need to look at courts that are reaching standards and think about best practices and training for other courts statewide. He stated staff would be working with the Education Services Division of the AOC on future training.

Judge Johnsen stated that her perception is that both the juvenile and family court are very busy and setting cases has become months out because of the caseloads. She asked what the Presiding Judges thought about this. Judge Sally Simmons stated that it will take some work, but Pima County can meet the standards. Judge Norman Davis stated there are heavy caseloads in juvenile, and he expressed concern with the guidelines being unattainable because of the current rules, and noted this may require a rule change. Judge Mackey stated they are currently not meeting standards, and until the standards are adopted, we won't know all the problems that we may run into, but the goals are reasonable and attainable, and it is all about improving our courts. Judge Simmons stated that particularly in family law cases (D or SP cases), measuring from the date the petition is filed is of concern because the case may get filed, but service may not get accomplished for some time. She noted this is an issue we can't resolve right now because we can't measure from the time of service, which is the better way to do it, but it would be nice if this could be figured out in the future. Judge Cahill reported that the Committee on Juvenile Courts strongly recommends adoption.

MOTION: To recommend that the Arizona Supreme Court adopt final case processing time standards for the following case types: juvenile dependency adjudication hearings, family law dissolution and allocation of parental responsibilities, and civil traffic, as presented.

The motion was seconded and passed. AJC 2014-30.

Long Guns for Fugitive Apprehension Units

Ms. Kathy Waters provided an overview of the issue and introduced the 2 presenters from the Maricopa County Fugitive Apprehension Unit: Mr. Brian Armbruster and Mr. Lance Nickell.

Mr. Armbruster presented information on the statement of need, statistics/what we know, best practices and standards, evolution, increased accuracy, and the fact that a rifle is a safer weapon. He noted the Unit's currently authorized firearm is a Glock .40 caliber pistol, and they are asking to replace it with an AR-15 rifle. Mr. Armbruster reported the use of the AR-15 rifle would be limited to only Pima, Maricopa, and Mohave counties because they have permanently assigned fugitive apprehension officers. He stated the use of the AR-15 rifle will not change how they currently do their job, but only serves to increase safety. He noted the AR-15 is the standard issue for law enforcement nationwide.

Mr. George Weisz stated he supports giving them the tools to do their job, assuming the training is there, as well as an escalation of use of force. It was noted the fugitive apprehension officers are not post certified because they are not police officers, however, they are certified by the Supreme Court.

Ms. Barbara Broderick, Maricopa County Chief Probation Officer, noted that policies to be put in place will be presented at the Council's December meeting. She welcomed any Council member to come to the shooting range to see the training.

Judge Simmons stated she has 2 officers who qualify, and that she supports moving forward. Judge Davis noted this will be safer for the officer and the public, and that he fully supports the proposal.

MOTION: To approve moving forward with the use of long guns for the fugitive apprehension units, as presented. The motion was seconded and passed. AJC 2014-31.

Call to the Public/Adjourn

Mr. Anthony Sizer, President of Father Rights Club in Pima County representing a support group for Raytheon employees, provided public comment. He expressed his concern with the disconnect between leadership in Pima Superior Court and the community. Mr. Sizer stated that he has addressed his concerns to the Presiding Judge in Pima County and has not received a response. He spoke about a specific custody case in Pima involving drugs and possible gender discrimination. Mr. Sizer noted that accountability should mean what is in the best interest of children.

The Chair thanked Mr. Sizer for his comments on how fathers are being treated in domestic cases. He explained a court cannot take action on a particular case as a result of a communication that comes by letter, and stated it needs to be done by a proper filing. He noted that Mr. Sizer is well within his rights to voice his concerns to the Presiding Judge or the Commission on Judicial Conduct. Mr. Sizer indicated he has vetted all those avenues already and was told that he had to go through the appellate court process, which most fathers cannot afford to do.

The Chair recognized Council member Judge Song Ong and noted that she would be retiring from the City of Phoenix at the end of the month.

Chief Justice Bales introduced Marcie Kanefield, his Judicial Assistant.

The meeting adjourned at 11:53 a.m.