

ARIZONA JUDICIAL COUNCIL

Request for Council Action

**Date Action
Requested:**

December 13, 2018

**Type of Action
Requested:**

Formal Action/Request

Information Only

Other

Subject:

Approval of Minutes

FROM:

Lorraine Smith, Staff to the Arizona Judicial Council

DISCUSSION:

The minutes from the October 25, 2018, meeting of the Arizona Judicial Council are attached for your review.

RECOMMENDED COUNCIL ACTION:

Approve the minutes as written.

ARIZONA JUDICIAL COUNCIL

Little America Hotel
Ponderosa Meeting Room
2515 E. Butler Ave.
Flagstaff, AZ 86004

October 25, 2018

Draft Meeting Minutes

Council Members Present:

Chief Justice Scott Bales	Eric Silverberg
Judge Janet Barton	Judge Dorothy Little
Ken Bennett	Judge David Mackey
Judge Kyle Bryson	Steve Pierce
David Byers	Steve Peru
Judge Louis F. Dominguez	Judge Antonio Riojas, Jr.
Judge Peter Eckerstrom	Judge Keith E. Russell
Victor Flores	Judge Monica Stauffer
Judge Charles Gurtler	Judge Samuel Thumma
Clerk of Court Juan Pablo Guzman	Jeffrey Willis
Mike Hellon	George Weisz

Council Members Absent (excused):

Athia Hardt	Lisa Urias
Lea Márquez Peterson	

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark	Michelle Martinez
Danny Cordova	Alicia Moffatt
Susan Hunt	Aaron Nash
Don Jacobson	Lorraine Smith
Paul Julien	Kathy Waters
Joe Kelroy	Mark Wilson
Jerry Landau	David Withey
Amy Love	

Presenters and Guests Present:

Vice Chief Justice Robert Brutinel	Martin Lynch
Anthony Coulson	William Riedel
Lori Ford	Melinda Sherwyn

Welcome/Meeting Called to Order

Chief Justice Scott Bales, Chair, called the meeting to order at 12:30 p.m. and welcomed the Council's newest members: Mr. Jeff Willis, State Bar President member; Mr. Eric Silverberg, Court Administrator member; and Mr. Steve Pierce, Public member. The Chair also welcomed Mr. Aaron Nash, new Communications Director for the Arizona Supreme Court.

Approval of Minutes

The Chair called for any corrections to the minutes from the Council's June 18, 2018, meeting.

MOTION: To approve the minutes from the June 18, 2018, meeting of the Arizona Judicial Council, as presented. The motion was seconded and passed. AJC 2018-19.

Approval of 2019 Meeting Dates

The Chair called for any changes to the proposed 2019 meeting dates.

MOTION: To approve the 2019 meeting dates of March 28, June 17, October 24, and December 12, as presented. The motion was seconded and passed. AJC 2018-20.

Juvenile Information in NICS (taken out of order)

Mr. Joe Kelroy, Director of the Juvenile Justice Services Division of the AOC presented information on the National Instant Criminal Background Check System (NICS) as it relates to adjudicated delinquent felonies. He asked for Council approval for the following questions: 1. Should the AOC report juvenile delinquency data to NICS; 2. Should policy be developed for statewide consistency; and 3. Should an online application process be developed for persons to apply to have their rights restored?

Mr. Ken Bennett suggested the following edits to the statutes provided: In A.R.S. § 13-912.01(A)(B), the words "may have the right to carry or possess a gun or firearm restored by the judge ..." need to be clarified as to whether it is at the discretion of the judge or if they shall get that right back. He also questioned the wording of A.R.S. § 13-912.01(C) "the person may not file for the restoration of the right to possess or carry a gun or firearm until the person attains thirty years of age." Mr. Bennet stated that the use of the words "may not" seems to take away discretion, and the use of the word "may" becomes more like a "shall not." He suggested that the use of the word "may" should be interpreted more as a "shall" when a person has had a constitutional right taken away, they have done what was asked of them, and they have correctly applied to have their rights restored.

It was noted that the statutes are not well written and should be reviewed by Legislative staff to flag problems and fix inconsistencies, and that advocates on all sides of this issue need be involved.

Judge David Mackey suggested that juvenile court directors and judges consider how to proactively identify these people, so they can be reported, as well at what the courts can do to fix this problem. Mr. Byers noted the need to explore this issue further and build the procedures and system, in addition to including adults in the future. Mr. Landau said that a legislative study group is working on statewide notification in all cases.

MOTION: To support moving forward with all 3 recommendations with an opportunity to review and provide additional input before implementation. The motion was seconded and passed. AJC 2018-21.

Judicial Branch Legislative Package

Mr. Jerry Landau, Director of Government Affairs and Ms. Amy Love, Deputy Director of Government Affairs for the AOC presented the following 2019 legislative proposals:

2019-01: court security officer; powers and duties

Discussion: Jerry Landau was asked to talk with AZPOST and get their position on this proposal. Judge Barton spoke in support of the proposal.

MOTION: To support legislative proposal 2019-01: court security officer; powers and duties, as presented. The motion was seconded and passed. AJC 2018-22.

2019-02: satisfaction of judgment – motion was withdrawn

2019-03: mental health report; expert - deferred to December

2019-04: moving violations; traffic survival school - withdrawn

2019-05: class 6 felony designation; juveniles; designation

MOTION: To support legislative proposal 2019-05: class 6 felony designation; juveniles; designation, as presented. The motion was seconded and passed. AJC 2018-23.

2019-06: setting aside adjudications – deferred to December

2019-07: juvenile court; sealing of records – deferred to December

2019-08: electronic wills; conforming changes

MOTION: To support legislative proposal 2019-08: electronic wills; conforming changes, as presented. The motion was seconded and passed. AJC 2018-24.

2019-09: wills; witnesses

MOTION: To support legislative proposal 2019-09: wills; witnesses, as presented. The motion was seconded and passed. AJC 2018-25.

2019-10: detention centers; dangerous offense – deferred to December

2019-11: juvenile; probation – deferred to December

Defensive Driving Code Changes

Mr. Mark Wilson, Director of the Certification and Licensing Division of the AOC presented information on amended language that would reduce the surety bond and provide the division director the authority to remove a school from the AOC website and IVR for non-payment. Mr. Wilson reported that AOC legal services staff expressed concern with due process rights to a hearing that will need to be addressed.

Judge Sam Thumma noted that the proposed language includes a school being added to the website and IVR twice (once when approved and a second time when pulled off and added back). He suggested that the sentence “the division director shall not add the school to the website or IVR ...” be amended to start with the words “If the school has been removed ...”.

Mr. William Riedel, Traffic School Management Services provided public comment to support the proposed changes.

MOTION: To approve the proposed changes to ACJA § 7-205 and such technical changes as necessary to conform the existing code to the proposed changes, in addition to the edits provided by Judge Sam Thumma and addressing the due process issues. The motion was seconded and passed. AJC 2018-26.

Fair Justice for Persons with Mental Illness: Improving the Courts Response

Mr. Don Jacobson, Senior Special Projects Consultant for the AOC reported on the Fair Justice Task Force recommendations and the work of the Committee on Mental Health in the Courts to develop a draft protocol guide. Mr. Jacobson noted that once finalized, the guide would ultimately be provided nationwide.

Mr. Jacobson reported on a summit scheduled for the spring using a team approach for each county, in addition to bringing in national experts. He noted that this is a nationwide issue, and Arizona is leading the way.

Mr. Ken Bennett suggested that elected official's names included in the list of interviewees in the draft guide include the word "honorable."

New Strategic Agenda Update

Vice Chief Justice Robert Brutinel and Mr. Mike Baumstark updated the Council members on the new strategic agenda to be launched next year at the annual Judicial Conference. Mr. Baumstark noted the final document would be presented at the December meeting for the Council's approval.

Call to the Public/Adjourn

The Chair made a call to the public.

Ms. Melinda Sherwin provided public comment regarding the Department of Child Safety (DCS), the judicial system, and family law and probate. She noted she has been a court watcher for 26 years.

Ms. Lori Ford, founding member of the DCS Oversight Group, provided public comment. She expressed concern with lack of oversight for DCS.

Mr. Martin Lynch provided public comment and spoke on the right to a jury.

The meeting adjourned at 3:52 p.m.