

ARIZONA JUDICIAL COUNCIL
Judicial Education Center
541 E. Van Buren, Silver/Turquoise Rooms
Phoenix, AZ 85004

Minutes of the
March 30, 2005, Meeting

Council Members Present:

Chief Justice Charles Jones
David Byers
Judge Colin Campbell
Judge B. Robert Dorfman
Susan Edwards
Judge Douglas Holt
Christine C. Iijima Hall, PhD.
Chris Herstam
Judge John S. Leonardo
Sue Lynch

Sheri Newman
Judge Fred Newton
Judge William J. O'Neil
Judge John Pelander
Jose de J. Rivera
Deborah Schaefer
Judge William B. Sutton, Jr.
Judge R. Michael Traynor
Judge Sheldon Weisberg
Charles Wirken

Council Members Absent:

William J. Mangold, M.D., J.D.
Miguel Montiel

Jones Osborn
Judge Fred Peterson

Administrative Office of the Courts (AOC) Staff Present:

Tom Augherton
Mike Baumstark
David Benton
Ellen Crowley
Linda Grau
Greg Eades
Jennifer Greene
Beth Hall
Melinda Hardman
Jerry Landau

Rob Lubitz
Annette Mariani
Konnie Neal
Nina Preston
Janet Scheiderer
Lorraine Smith
Nancy Swetnam
Kathy Waters
Ted Wilson
David Withey
David Stone

Guests Present:

Judge Mark Armstrong
Justice Rebecca Berch
Edna Gomez
Brian D. Karth
Meg Kleinman
Richard Lubetzky
Judge Barbara Mundell

Vice Chief Justice McGregor
Allen Merrill
Lisa Perez-Leon
Teresa Schmid
Jason Searns
Allan Sobol
Virlynn Tinnell

The Chair, Chief Justice Charles Jones, called the meeting to order at 8:35 a.m., at the Judicial Education Center, 541 East Van Buren, Phoenix, Arizona. The Chair welcomed those in attendance and acknowledged Vice Chief Justice Ruth McGregor (incoming Chief Justice) and Justice Rebecca Berch (incoming Vice Chief Justice) who were in attendance.

Approval of Minutes

The Chair called for any corrections or additions to the minutes from the December 10, 2004, meeting of the Arizona Judicial Council; there were none other than grammatical changes. A motion was made to approve the minutes.

MOTION: To approve the minutes from the December 10, 2004, meeting of the Arizona Judicial Council with grammatical revisions included. Motion was seconded and passed. AJC 2005-01.

The Chair then called for any corrections or additions to the minutes from the March 9, 2005, Teleconference of the Arizona Judicial Council; there were none. A motion was made to approve the minutes.

MOTION: To approve the minutes from the March 9, 2005, Teleconference of the Arizona Judicial Council. Motion was seconded and passed. AJC 2005-02.

The Chair then called for any corrections or additions to the confidential minutes from the December 10, 2004, Executive Session of the Arizona Judicial Council; there were none other than grammatical changes. A motion was made to approve the minutes.

MOTION: To approve the minutes from the December 10, 2004, Executive Session of the Arizona Judicial Council, with grammatical changes included. Motion was seconded and passed. AJC 2005-03.

Arizona Code of Judicial Administration (ACJA)

Greg Eades, AOC Legal Services Officer, announced two amended code sections for the Council's review and approval: § 6-106: Personnel Practices (amendment) and § 7-208 Legal Document Preparer (amendment). Mr. Eades then thanked the members of the Council's code section review team: Sheri Newman, Susan Edwards, and Deborah Schaefer.

Rob Lubitz, Director of the Juvenile Justices Services Division for the AOC, then presented the proposed amendments to the personnel code dealing with random drug testing. Mr. Lubitz noted that at the last meeting, the Council adopted Option #3 to limit random drug testing to employees performing safety sensitive duties including pre-trial supervision, with the provision for approval of additional testing in exceptional circumstances. Mr. Lubitz reported that the Committee on Superior Court, the Committee on Juvenile Court, and the presiding judges have all recommended to the Council that Option #3 be amended to include juvenile detention officers in the statewide pool of employees performing safety-sensitive duties, and thus be subject to random drug testing. Mr. Lubitz noted that the juvenile probation chiefs were split on including juvenile detention officers with concerns regarding costs, logistics, and coverage (testing at a separate site and being away from their job for a number of hours).

Judge O'Neil noted that the presiding judges have suggested a clarification to develop a protocol. Mr. Byers noted this protocol would allow detention officers to be tested on-site in addition to identifying types of testing.

Judge Campbell stated his concerns regarding the cost/benefit of random drug testing of juvenile probation officers, the need for a protocol, and lack of funding. Judge Campbell asked who would pay for the cost if on-site services were made available.

Judge O'Neil then made a motion to approve the code section amendments with an additional amendment to add the words "or custodial" after the word "community" in the definitions section of Page 1 of the code section and Page 1 of Appendix A, with the understanding that some protocol could be modified and amended.

Discussion ensued regarding not moving ahead with a vote until a protocol is developed for on-site services and funding is identified, the need for an efficient testing system, and taking a stand and moving ahead by including an amendment to do on-site testing, if feasible.

MOTION: To adopt the code section amendments with an additional amendment to add the words "or custodial" after the word "community" on Page 1, Section A. Definitions of the code

section and on Page 1, Section I. Definitions of Appendix A. Motion was seconded and passed (3 opposed). AJC 2005-04.

Discussion continued regarding on-site testing. A motion was made that drug testing, whenever feasible, shall be conducted on site for detention officers. The motion was seconded. Concern was raised that the motion was meaningless. The motion was opposed and amended to make it a directive to the AOC to put on-site testing in place.

MOTION: To direct AOC staff to move forward as expeditiously as possible to on-site testing for detention officers. Motion was seconded and passed. AJC 2005-05.

Judge O'Neil then made a motion to remove the word "and" in both page 1's of the safety sensitive duties definition section ". . . and/or that involve authorization . . ." and leave just the word "or."

MOTION: To remove the word "and" from the words "and/or" on Page 1, Section A. Definitions of the code section and on Page 1, Section I. Definitions of Appendix A. Motion was seconded and passed. AJC 2005-06.

Legal Document Preparer Examination and § 7-208: Legal Document Preparer

Nancy Swetnam, Director of the Certification and Licensing Division for the AOC, then presented information on proposed amendments to the Legal Document Preparer (LDP) code section and the proposed examination. Ms. Swetnam asked the Council to support the proposed amendments to § 7-208 so the AOC can move forward with publishing the study guide and administering the examination.

A motion was made to approve the proposed amendments to § 7-208 as provided in the document handed out during the meeting (replacing the materials mailed out in the notebook). The motion was seconded.

Allen Merrill, representing the Association of Independent Paralegals, then provided public comment. Mr. Merrill noted that his association supports the examination, but has concerns with the direction of the proposed examination. Mr. Merrill noted the Board of Certified Document Preparers has shown no compelling reason for changing the nature of the examination, and the proposed examination would not protect/assure the public as far as competency is concerned. Mr. Merrill stated that the risk of a document preparer losing their certification is assurance to the public, not testing, and questioned the validity of the study guide and examination. He also expressed concerns that the proposed limit of three attempts to pass the examination is more restrictive than that of the bar examination for attorneys.

Mr. Merrill suggested that if the examination is approved today, that three additional amendments be added to compensate for a faulty approach to the examination: 1) Remove the limit of 2.5 years on trainees, 2) require that 70% of the examination be questions on the code and code of conduct, and 3) remove the limitation on the number of times the test can be taken (currently three times).

Mr. Merrill asked that the Council either reject the proposal or include his three amendments above if approved.

Discussion then ensued regarding the proposed examination. Chas Wirken noted that the State Bar would favor the concept of an examination to test the minimum competency, and that the Bar Exam is limited to three tries.

Dr. Hall suggested the use of a pilot test for the LDP leaders, and if they pass, they would automatically receive certification.

Jason Searns, General Counsel for We the People USA, provided public comment. Mr. Searns noted his primary concern is that LDP's taking and passing the examination will cross the line and think they are the same as a lawyer, noting too much testing in substantive/procedural law will give them the belief they can act as a lawyer.

Richard Lubetzky, California attorney responsible for the California LDP law and member of the ad hoc committee that drafted the original version of § 7-208, provided public comment. Mr. Lubetzky noted that California elected not to have a test to avoid having "mini lawyers" and giving the public the impression of certain qualifications and skills. Mr. Lubetzky noted that complaints in California have come from attorneys not customers, and he did not see widespread abuse without the use of a certified licensing procedure.

Mr. Lubetzky suggested that input be received from people familiar with the paralegal profession (paralegal schools, paralegal professors, people with backgrounds in paralegal studies, etc.), that multiple choice questions have only one correct answer, that adequate time be offered to take the examination, and that the tools be given to LDP's to give them a fair shot at passing the examination.

Ms. Swetnam then noted the proposed language regarding the three attempts on the examination was modeled after the rules regarding the bar examination, and that the proposed changes to § 7-208 allow an applicant who fails the examination three times to ask permission to take the examination an additional time. Ms. Swetnam informed the Council that paralegals and other subject matter experts were included in creating the exam, and the study guide is specific when used with § 7-208 and the applicable rules and statutes which are identified in the study guide. Ms. Swetnam also noted that LDP's are required to complete 10 hours of continuing education per year, the multiple choice test questions will only have one correct

answer, and sufficient time will be allowed for individuals to take the examination (3 hours).

Vice Chief Justice McGregor expressed concern that we may be promising more than we can deliver and that the examination may be too easy. Ms. Swetnam noted that an analysis would be conducted after administration of the examination that will give the Board information on the difficulty of the examination and how well it is performing. The Board will utilize this information to determine if changes are needed. The Board will also be looking at whether there should be specific examinations on areas of specialization in the future, e.g. a specific exam for domestic relations.

MOTION: To adopt the proposed examination content and the proposed amendments to § 7-208: Legal Document Preparer as recommended by the Board of Legal Document Preparers and presented today. Motion was seconded and passed. AJC 2005-07.

The Chair noted that the concerns expressed today would be addressed.

Family Court Rules

Judge Mark Armstrong, Chair of the Domestic Relations Rules Committee, then presented the proposed Arizona Rules of Family Law Procedure asking for approval of the rules in concept for placement on the Supreme Court's Rules Agenda.

Judge Armstrong noted the two primary purposes for these rules: 1) to provide a set of uniform statewide comprehensive rules of procedure for family law cases (reducing the number of local court rules) and 2) enhance the status of family law and the family law courts in Arizona. Judge Armstrong then stated the three overall emphases of the rules: 1) early intervention in family law cases, 2) timely disposition of family law cases, and 3) problem solving approaches to family law.

Dave Byers referred Judge Armstrong to Page 12, B. *Limited Scope Representation: Appearance and Withdrawal*. Mr. Byers inquired if one year is enough time for this experimental provision if there is an emergency problem where it will expire unless the court takes action. Judge Armstrong agreed and noted this concern will be discussed and considered at their next meeting.

Judge Armstrong talked about Rule 14. *Unsworn Declarations Under Penalty of Perjury*. Sheri Newman expressed concern about unsworn declarations and suggested that they all be done the same way without exceptions.

Judge Armstrong noted that the order of protection process would not change with these rules.

Judge O'Neil referred Judge Armstrong to Rule 73. B. Judge Armstrong asked how we would enforce filing with the human resource department of the county.

Judge Armstrong noted they would clarify this section to add the human resource department of the court or court administration for those not employed by the county. Mr. Byers suggested that regardless of whom they are employed by, wouldn't it make more sense to have it on file with court administration.

Judge Armstrong referred to Section XII, noting they are entirely new and unique in family law and will require periodic hearings.

Judge Armstrong noted the rules are substantially complete, but the forms need additional work and will not be published by West.

Judge Armstrong stated that additional comments are welcome and should be provided to Konnie Neal, Committee staff, for discussion by the Committee.

MOTION: To approve the proposed *Arizona Rules of Family Law Procedure (ARFLP)* in concept for placement on the upcoming Supreme Court Rules Agenda. Motion was seconded and passed.
AJC 2005-08.

The Chair recognized and thanked the Committee and staff for all their hard work that was accomplished in a relatively short period of time.

Dave Byers referred Judge Armstrong to Page 15, Rule 13 . . . “court may exclude the public . . .” and asked what the intent of this was. Mr. Byers suggested it was not necessary and was overly broad. Judge Armstrong noted he would pass this on to the Committee for their consideration. Mr. Byers asked that the Committee also take a look at the two relevant constitutional provisions regarding openness of courts (Article 2 and Article 6).

Judicial Branch Legislative Update

Tom Augherton, Public Information/Intergovernmental Relations Officer for the AOC, presented general information on the legislative session and then introduced legislative staff, who then provided an update on legislation.

David Benton, Legislative Officer for the AOC, presented an update on the Council's legislative package noting that the bills are continuing to move along, and that fiduciary program funding request is sitting unfunded as part of our appropriations request.

Jerry Landau, Legislative Officer for the AOC, then presented other legislation affecting the judiciary to include SB1305 Employee Rights; Probation Officers. Discussion ensued and Barbara Broderick, Chief Adult Probation Officer for Maricopa County, provided comment noting her opposition and the unintended consequences, including monetary in terms of overtime pay. Ms. Broderick noted that attempts have been made to negotiate some of the concerns with the Probation Officers Association.

Judge Campbell stated this is a separation of powers issue and made a motion that the Council not take an official position on SB 1305: Employee Rights; Probation Officers.

MOTION: The AJC not take a position on SB 1305 Employee Rights; Probation Officers. Motion was seconded and passed. AJC 2005-09.

Judicial Branch Strategic Agenda

Vice Chief Justice Ruth V. McGregor, Chair of the Strategic Agenda Ad Hoc Committee, provided background on the strategic agenda process and thanked the members of the committee for their assistance: Sue Lynch, Judge Pelander, Judge Dorfman, Sheri Newman, Deborah Schaefer, and Judge Campbell. Vice Chief Justice McGregor noted that only substantive changes will be accepted at this time, and they should be sent to Mike Baumstark. Justice McGregor then asked for formal approval of the strategic agenda.

A motion was made to approve the strategic agenda as presented.

MOTION: To approve the judicial branch strategic agenda as presented. Motion was seconded and passed. AJC 2005-10.

Amendment to Administrative Order No. 96-32 Re: Presiding Judges' Authority

The Chair noted that an amended version has been passed out based on feedback and approval from the presiding judges at their meeting the previous day and will replace the draft that was included in the notebook.

Judge Leonardo provided background on this issue and noted leadership inconsistencies in his juvenile court. Judge Leonardo reported that he has spoken with his presiding juvenile judge, Judge Campoy, about consolidating the following functions: training, human resources, and finance, and the need for one central administration. Judge Leonardo noted that Judge Campoy's position is that there is certain statutory authority that has been given to the presiding juvenile judge, which precludes the presiding judge of the superior court in each county from directly administering the juvenile court.

Judge Leonardo asked that we make it clear in the Administrative Rule that the presiding judge of the superior court has the ability to structure court administration in the way that they see fit and that is most appropriate and efficient (one superior court in each county, not two). Judge Leonardo asked that the Council approve the proposed changes to the Administrative Rule.

David Withey stated the need to look at this as an administrative issue not a legal issue in terms of whether the juvenile court should be administered separately or

consolidated. Mr. Withey noted the authority of the presiding judge is clearly spelled out in the Arizona Constitution that the presiding judge exercises administrative supervision over the superior court and the judges thereof. Mr. Withey noted the statutes are clear that the superior court includes the juvenile court as a division of the superior court.

Sheri Newman expressed concern that Judge Campoy was not available to expand on the letter that he had provided as a handout.

Susan Edwards then moved for adoption of the amendment.

MOTION: To adopt the amendment as presented. Motion was seconded and passed. AJC 2005-11.

Project Passport

Judge O'Neil then updated the Council on the status of the "Passport" project. Judge O'Neil reported that the recognizable first page of the order of protection form proposal would come to this Council at a later date. Judge O'Neil noted that is a nationwide effort. Judge O'Neil stated that our limited jurisdiction judges have asked that the form be one page, but it cannot be one page for the superior court, so there may be two proposals for the Council to consider.

Fines/Fees and Restitution Enforcement (FARE) Update

Janet Scheiderer, Director of the Court Services Division for the AOC, then presented an update on FARE. Ms. Scheiderer noted that the FARE is doing well and an additional \$250,000 was collected since the FARE Fast Fact Sheet was prepared. Judge Dorfman noted that the cases being collected in his court (Phoenix) date back to 1989 and Judge Sutton added that cases in his court (Chandler) date back to 1993. Judge Dorfman stated that his court was able to avoid budget cuts as a result of projected revenue from FARE, and the program has been very beneficial for them.

Ms. Scheiderer personally thanked Judges Dorfman and Traynor and their staff for their support.

Dave Byers stated he would check on the status of the Federal income tax intercept component.

Courts of Distinction

Brian D. Karth, Court Administrator for the Limited Jurisdiction Courts in and for Maricopa County, then presented the "Courts of Distinction" program. Mr. Karth noted the program is an attempt to accentuate the positive things happening in the courts that has been developed by the Limited Jurisdiction Oversight Council in Maricopa County.

Discussion ensued regarding making it statewide, expanding to superior court (probation, clerk, juvenile, court administration), and expanding the Blue Ribbon Panel to include additional members of the public and a legislator.

A motion was then made to implement a pilot in Maricopa County. The motion was then amended to include two additional members to the Blue Ribbon Panel.

MOTION: To approve the extension and continuation of the Courts of Distinction Program and pilot the program in Maricopa County with the addition of two members to the Blue Ribbon Panel, to include a legislator or designee and another public member. Motion was seconded and passed. AJC 2005-12.

The Chair noted that the Council is ahead of schedule on their agenda, and the "Arbitration Study Phase I Update" has been rescheduled for June.

Call to the Public/Adjourn

The Chair made a call to the public. Vice Chief Justice Ruth V. McGregor noted this would be the Chair's last meeting, and members joined her in showing their appreciation for Chief Justice Jones' leadership to the Council and for the great efforts he has made on behalf of the judicial system.

The Chair expressed his appreciation to the members and thanked them for their assistance and the opportunity to work with them over the past few years.

The meeting adjourned at 2:45 p.m.