

ARIZONA JUDICIAL COUNCIL
State Courts Building
1501 W. Washington, Suite 119 A/B
Phoenix, AZ 85007

Minutes of the
October 24, 2007, Meeting

Council Members Present:

Chief Justice Ruth V. McGregor
Judge James Angiulo
Jim Bruner
Judge Robert Brutinel
David Byers
Jose A. Cardenas, Esq.
Judge B. Robert Dorfman
Susan Edwards
Karen D. Ferrara
Beverly Frame
Judge John Gemmill
Chris Herstam

Athia Hardt
Judge Douglas Holt
Yvonne R. Hunter
Emily Johnston
Judge Jan Kearney
Daniel J. McAuliffe, Esq,
Judge Barbara Mundell
Judge John Pelander
Judge James Soto
Judge R. Michael Traynor
Judge David Widmaier

Council Members Absent:

William J. Mangold, M.D., J.D.

Jones Osborn

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
Julie Dybas
Kandace French
Linda Grau
Jennifer Greene
Melinda Hardman
Nicole Hinson
Deborah King
Jerry Landau
Amy Love
Rob Lubitz
Michael Malone
Pat McGrath

Marna Murray
Susan Pickard
Nina Preston
Katy Proctor
JR Rittenhouse
Janet Scheiderer
Lorraine Smith
Nancy Swetnam
Kathy Waters
Christi Weigand
David Withey
Amy Wood

Guests Present:

Vice Chief Justice Rebecca White Berch
Bill Hart
John MacDonald

Diane Sikokis
Theresa Schmid
Dr. Richard Toon

Chief Justice Ruth V. McGregor, Chair, called the meeting to order at 10:00 a.m., at the State Courts Building, 1501 W. Washington, Suite 119, Phoenix, Arizona. The Chair welcomed those in attendance and asked the Council's newest members to introduce themselves:

- Daniel McAuliffe, Esq. – State Bar President
- Yvonne Hunter – Public Member, Pinnacle West Capital Group
- Jose Cardenas, Esq. – Public Member, Lewis and Roca
- Athia Hardt, Public Member, Hardt & Associates Public Affairs
- Karen Ferrara, Court Administrator, Cochise County

Introductions of the Council members were then made around the room.

Approval of Minutes

The Chair called for any corrections or additions to the minutes from the June 18, 2007, meeting of the Arizona Judicial Council. It was noted on Page 3 that the minutes did not reflect a motion to return the Council to Public Session following Executive Session. A motion was made to approve the minutes as corrected.

MOTION: To approve the minutes from the June 18, 2007, meeting of the Arizona Judicial Council as corrected to include the motion to return to Public Session. Motion was seconded and passed. AJC 2007-27.

Approval of Executive Session Minutes

The Chair called for any corrections or additions to the Executive Session minutes from the June 18, 2007, meeting of the Arizona Judicial Council; there were none. A motion was made to approve the Executive Session minutes as written.

MOTION: To approve the Executive Session minutes from the June 18, 2007, meeting of the Arizona Judicial Council as written. Motion was seconded and passed. AJC 2007-28.

Approval of 2008 Meeting Dates

The Chair called for any changes to the proposed meeting dates for 2008: Thursday, March 27; Thursday, June 19; Thursday, October 23; and Wednesday, December 3; there were none. A motion was made to approve the proposed meeting dates as presented.

MOTION: To approve the proposed meeting dates for the year 2008 as presented. Motion was seconded and passed. AJC 2007-29.

Morrison Report Re: Arizona's Criminal Justice Response to Domestic Violence

Mr. Bill Hart and Dr. Richard Toon, Morrison Institute for Public Policy at Arizona State University, presented the survey results. Mr. Hart noted that data was gathered statewide from more than 800 surveys completed by prosecutors, judges, probation officers, victim advocates, and victims. In addition, 71 in-depth individual interviews were held asking what they thought on how we're doing with domestic violence within the current system. Mr. Hart stated that views varied by court level, location, and gender.

Mr. Hart noted the next steps are to implement procedural improvements, i.e., early services, enhanced screening, probation supervision for misdemeanants, improved data collection/sharing, and training. Mr. Hart also noted that we could supplement our traditional punitive approach to domestic violence cases through the drug court, family court, and restorative justice models.

Mr. Hart directed members to their website to view the entire report: www.morrisoninstitute.org. Mr. Hart noted that hard copies were also available by request.

Judge Dorfman inquired about misdemeanor warrants. Susan Edwards asked for cross tabulation results between the male/female and superior court/lower court questions.

CourTools Measure One in General Jurisdiction Courts

Ms. Christi Weigand, Court Performance Improvement Specialist for the Court Services Division of the AOC, briefed the Council on the survey results from the CourTools Access and Fairness Survey in general jurisdiction courts. Ms. Weigand noted that the survey was successfully administered in all 15 general jurisdiction courts. Fourteen of the general jurisdiction courts used a standardized survey with the same questions and answer options, with the exception of Pima County. It was further noted that the results were generally consistent among counties, favorable statewide, and seven JP courts were surveyed simultaneously. Ms. Weigand then presented the highlights of the survey results to include cross tabulation.

Ms. Weigand recommended the following for future survey administrations: the use of a standard set of questions and standard answer options to ensure comparable results, that AOC tabulate survey results, and that multi-county discussions be held regarding improvement strategies.

Discussion ensued regarding the courthouse security question. Ms. Weigand was asked to cross tabulate the courthouse safety question with the courthouse location

question to determine which locations may be of concern. Mr. Byers inquired if a comparison of the survey results to other states has been made.

Court Leadership Conference

Ms. Marna Murray, Director of the Education Services Division for the AOC, reported that the 3rd Annual Judicial Leadership Conference will take place on December 3-4, 2007 at the Westward Look Resort in Tucson. Ms. Murray noted that sessions will include a plenary session on the future of recruitment, retention, and engagement, with specific sessions on court recruitment and retention, employment law, and leadership impact on retention.

Justice McGregor stated that Council members are encouraged to attend, and public members should contact Deborah King at dking@courts.az.gov for assistance with registering.

Correctional Officers Retirement Plan (CORP)

Mr. Jim Bruner provided an update on the CORP program noting that 3,000 Arizona State Retirement System members have transferred into CORP to date, along with \$185 million dollars. Mr. Bruner noted that three members of the five-member Board have been selected, and they are currently in the process of filling the last two openings.

Judicial Branch Legislative Package

Mr. Jerry Landau, Director of Government Affairs for the AOC, presented the legislative proposals for 2008 for the Council's approval. Council members were asked to vote to determine whether to include the proposal in its legislative package

Mr. Landau introduced and welcomed Amy Love, Legislative Analyst, and Katy Proctor, Legislative Officer, for the AOC.

Mr. Landau noted the possibility of attack legislation next session intended to change the structure of the judiciary.

2008-01: Criminal Code Sentencing Reorganization

Discussion: None.

MOTION: To include 2008-01 in the judicial branch legislative package. Motion was seconded and passed. AJC 2007-30.

2008-02: Time Payment Fee

Discussion: General discussion regarding the two alternatives offered and the high priority of this proposal.

MOTION: To include 2008-02 in the judicial branch legislative package. Motion was seconded and passed. AJC 2007-31.

2008-03: Capital Case Task Force Proposals

Discussion: Part of the increase uses state funds. This will be a cost savings if the cost of prison is included in the calculation, versus a \$25/hour increase. Note: the proposal only includes the increase in the hourly rate to \$125.00 and the 200 hour cap.

MOTION: To include 2008-03 in the judicial branch legislative package. Motion was seconded and passed. AJC 2007-32.

2008-04: Court Reporter; Transcript Fees

Discussion: This should be carried by the Court Reporters Association. Mr. MacDonald, lobbyist for the Court Reporters Association, noted the Association would like the courts to support this proposal, as it would be better and more carefully addressed if carried by the court system. Mr. MacDonald added if the Council did not vote to include, the Association may go forward with the proposal and would then request the AOC's support and assistance. Judge Angiulo expressed concern with copying costs. Karen Ferrara suggested that additional financial analysis be done to assess the impact to local court budgets.

MOTION: Not to include 2008-04 in the judicial branch legislative package and let the Court Reporters Association take the lead and work with the AOC to gather information. Motion was seconded and passed. AJC 2007-33.

2008-05: Change of Name; Fingerprinting

Discussion: Concern for women wanting to change back to their maiden name and for domestic violence victims wanting to hide from their abuser.

MOTION: Not to include 2008-05 in the judicial branch legislative package. Motion was seconded and passed. AJC 2007-34.

2008-06: Guardianship; Persistently or Acutely Disabled

Discussion: Concern with additional expense to the county. Judge Mundell added that this is a good law, but not the right time to bring it forward due to the expense to the county, as well as resource issues to the state.

MOTION: Not to include 2008-06 in the judicial branch legislative package. Motion was seconded and passed. AJC 2007-35.

2008-07: Juvenile Court; Contracting Authority

Withdrawn

2008-08: Redaction of Personal Information

Withdrawn

2008-09: Guardianship of Foreign National Minors

Discussion: Judge Mundell stated the intent was to help minors such as the “Lost Boys” from Sudan, but the Legislature may think this would pertain to children of illegal aliens who have been deported. It was noted due to the political situation, this would not be the right time to go forward, and Catholic Charities may move forward with the proposal. Judge Kearney noted the courts need to clarify existing language.

MOTION: Not to include 2008-09 in the judicial branch legislative package. Motion was seconded and passed. AJC 2007-36.

2008-10: Interstate Compact; Finance

Discussion: None.

MOTION: To include 2008-10 in the judicial branch legislative package. Motion was seconded and passed. AJC 2007-37.

2008-11: Deputy Probation Officers; Appointment

Discussion: Need to pursue the alternative proposal to permit positions themselves to be deemed CORP eligible.

MOTION: To include 2008-11 in the judicial branch legislative package using the alterative proposal. Motion was seconded and passed. AJC 2007-38.

Capital Case Task Force Report and Recommendations

The Honorable Michael Ryan, Chair of the Capital Case Task Force and Justice of the Arizona Supreme Court, briefed the Council on the Task Force’s report and recommendations to include addressing pre-trial proceedings, appeals, post-conviction relief proceedings, habeas corpus proceedings, and other recommendations as outlined in the report. Justice Ryan asked the Council to accept the report and recommendations as presented for further action within the Court, and the Council accepted.

Proposed Rule Change Petition

The Honorable R. Michael Traynor, Chair of the Committee on Limited Jurisdiction Courts, presented the proposed rule change petition to enable limited jurisdiction courts that have confirmed compliance with ACJA § 1-504 to recognize electronically-filed documents and scanned images of documents filed in paper form as the original document of record and allow the destruction of any corresponding paper document.

Judge Traynor asked the Council, on behalf of the Committee on Limited Jurisdiction Courts, to authorize the Committee to file the draft Rule 28 petition with the Court.

The Chair noted that the process would include the filing of the rule petition, posting on the website, a public comment period (comments would be posted on the website), and a Supreme Court decision next June.

MOTION: To authorize the Committee on Limited Jurisdiction Courts to file the draft Rule 28 petition with the Court. Motion was seconded and passed. AJC 2007-39.

Foreign-Born Probationers and A.R.S. § 23-212

Ms. Kathy Waters, Director of the Adult Probation Services Division for the AOC, presented proposed modifications to the following sections of the Arizona Code of Judicial Administration: 6-207: Uniform Conditions of Supervised Probation; 6-202: Adult Intensive Probation; 6-105: Powers and Duties of Officers; 6-201: Standard Probation; 6-204: Interstate Compact Probation; 6-301: Juvenile Standard Probation; and 6-302: Juvenile Intensive Probation Supervision, dealing with employment issues.

General discussion ensued regarding 5th amendment rights, legal status, and defendant inquiry. Ms. Waters added that Immigration and Customs Enforcement (ICE) will verify the legal and employment status of foreign-born probationers currently under direct supervision, not the probation officer. It was noted that if the employer sanction law stalls and does not go into effect on January 1, 2008, these modifications will be revisited.

Jose Cardenas suggested alternative wording for 6-207 “uniform conditions of supervised probation” form, #11 under “the defendant shall” to match the tone of the other changes: replacement of the underlined words to read “if legally permitted to do so.” A motion was made to approve that change.

MOTION: To approve the amendment to replace the underlined modification under 6-207 “uniform conditions of supervised

probation” form, #11, to read “if legally permitted to do so.” Motion was seconded and passed. AJC 2007-40.

A motion was made to accept all the code sections as amended.

MOTION: To approve all the code sections as presented and amended. Motion was seconded and passed. AJC 2007-41.

Arizona Code of Judicial Administration

Mr. David Withey, Chief Legal Counsel for the Arizona Supreme Court, presented the following code sections for review and adoption: 1-702: Operational Review (new); 4-302: Limited Jurisdiction Courts Records Retention Schedule (amendment); 1-202: Public Meetings (amendment); 3-401: Priority of Offender Payments in Superior Court (amendment); 7-201: General Requirements (amendment); and 7-203: Confidential Intermediary (amendment).

MOTION: To approve 1-702 as presented. Motion was seconded and passed. AJC 2007-42.

MOTION: To approve 4-302 as presented. Motion was seconded and passed. AJC 2007-43.

MOTION: To approve 1-202 as presented. Motion was seconded and passed. AJC 2007-44.

MOTION: To approve 7-201 as presented. Motion was seconded and passed. AJC 2007-45.

MOTION: To approve 7-203 as presented. Motion was seconded and passed. AJC 2007-46.

Discussion ensued regarding 3-401. The Chair noted that following the June Council meeting, the workgroup convened to address the issues discussed during the June meeting. These changes were then sent back through the committee approval process, and input was received from victims, probation, courts, and other stakeholders.

Ms. Julie Dybas, Manager for the Court Services Division of the AOC, noted that the code section has been amended and the final, approved copy is before the Council today. A motion was made to approve 3-401 as presented.

MOTION: To approve 3-401 as presented. Motion was seconded and passed. AJC 2007-47.

Statewide Implementation of the DUI Case Processing Project

Mr. Michael Malone, Limited Jurisdiction Court Case Processing Specialist for the Court Services Division of the AOC, briefed the Council on the proposal, showing

the results of the pilot project. Mr. Malone noted that a second phase is being developed, and 40 courts representing 7 counties have volunteered to participate. Mr. Malone asked for the Council's approval to implement the project on a statewide level.

Discussion ensued regarding the need to make this mandatory, but the objection was subsequently withdrawn.

A motion was made to approve the implementation of this project statewide on a mandatory basis beginning July 1, 2008.

MOTION: To approve the implementation of this project statewide on a mandatory basis beginning July 1, 2008. Motion was seconded and passed. AJC 2007-48.

Standardized Probate Rules

The Honorable Rebecca White Berch, Chair of the Probate Rules Committee and Vice Chief Justice of the Arizona Supreme Court, briefed the Council on the status of the rules, noting the Committee has reviewed all Arizona local probate rules and the probate rules of several other states and has revised the rules based on the comments received from the Committee on Superior Court. Vice Chief Justice Berch, on behalf of the Probate Rules Committee, asked that the Council recommend approval of the Probate Rules and authorize the Committee to file a Rule 28 petition with the Court.

Staff provided a handout on proposed amendments to the proposed probate rules. Justice Berch noted that AOC staff is recommending amendments to *Rule 7: Confidential Documents and Information* to allow staff from the Administrative Office of the Courts to receive confidential documents and information for the purpose of conducting a compliance audit of a fiduciary or an investigation into alleged misconduct by a certified fiduciary, pursuant to the Arizona Code of Judicial Administration § 7-201. The other amendment would be to *Rule 20: Affidavit of Proposed Appointee* which would strike the language "Except as otherwise provided in this rule . . ." in Paragraph A and would amend the language in paragraph B to read "In addition to the provisions of paragraph A, a certified fiduciary shall file with the Arizona Supreme Court by June 30 for each year an additional affidavit that includes the information required by A.R.S. § 14-5106, and the following information: ..."

A motion was made to recommend approval of the Probate Rules and authorize the Committee to file a Rule 28 petition with the Court.

MOTION: To approve the Probate Rules as presented and authorize the Committee to file a Rule 28 petition with the Court. Motion was seconded and passed. AJC 2007-49.

Vice Chief Justice Berch noted the existing Committee will continue to work on a full set of rules.

Dan McAuliffe asked why the rules were not applicable to vulnerable adults under Title 46. Susan Edwards noted that the form used for freezing accounts by financial institutions, when not authorized by the appropriate person at a securities firm is often operationally worthless. The fact that the person signing the order from the court has a vice president or manager title does not mean that person has any power – or intention – to freeze the account.

Call to the Public/Adjourn

The Chair made a call to the public; there was no response.

A motion was made to adjourn.

The meeting adjourned at 2:00 p.m.