

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:

October 24, 2007

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 June 18, 2007, meeting of the Arizona Judicial Council are attached for your review.

RECOMMENDED COUNCIL ACTION:

Approve the minutes as written.

ARIZONA JUDICIAL COUNCIL
Carefree Resort
37220 Mule Train Road, Saguaro II and II
Carefree, AZ 85377

D R A F T

Minutes of the
June 18, 2007, Meeting

Council Members Present:

Chief Justice Ruth V. McGregor	Judge Jan Kearney
Judge James Angiulo	William J. Mangold, M.D., J.D.
Judge David Mackey for Judge Robert Brutinel	Miguel Montiel
David Byers	Jones Osborn
Judge B. Robert Dorfman	Judge John Pelander
Susan Edwards	Jose de J. Rivera, Esq.
Beverly Frame	Deborah Schaefer
Judge John Gemmill	Jim Smith, Esq.
Christine C. Iijima Hall, PhD.	Judge James Soto
Judge Douglas Holt	Judge R. Michael Traynor
Emily Johnston	Judge David Widmaier

Council Members Absent:

Jim Bruner	
Chris Herstam	Judge Barbara Mundell

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark	Kevin Kluge
Stewart Bruner	Jerry Landau
Mike DiMarco	Janet Scheiderer
Julie Dybas	Lorraine Smith
Jennifer Greene	Michael Valenzuela
Karl Heckart	Christi Weigand
Nicole Hinson	David Withey
Rania Khoury	Amy Wood

Guests Present:

Vice Chief Justice Rebecca Berch
Judge Norman Davis
Karen Ferrara

Athia Hardt
Dan McCullough
Theresa Schmid

Chief Justice Ruth V. McGregor, Chair, called the meeting to order at 10:00 a.m., at the Carefree Resort, 37220 Mule Train Road, Saguaro II and III, Carefree, Arizona. The Chair welcomed those in attendance and introduced Ms. Athia Hardt, the Council's newest public member, effective July 1, 2007.

Approval of Minutes

The Chair called for any corrections or additions to the minutes from the March 6, 2007, meeting of the Arizona Judicial Council; there were none. The minutes were approved as written.

MOTION: To approve the minutes from the March 6, 2007, meeting of the Arizona Judicial Council, as written. Motion was seconded and passed. AJC 2007-011.

Arizona Rules of Family Law Procedure (ARFLP)

The Honorable Norman Davis, Chair of the Family Law Rules Review Committee, provided an update on the recommendations and findings from a review of the Arizona Rules of Family Law Procedure and outlined the proposed revisions. Judge Davis then asked for the Council's approval and adoption of the proposed rule changes as presented.

MOTION: To approve the adoption of the proposed rule changes as presented. Motion was seconded and passed. AJC 2007-12.

Commission on Technology

Vice Chief Justice Rebecca White Berch briefed the Council on the recommendations from the Commission on Technology's (COT) June 7-8 annual planning meeting, specifically the recommendation regarding the direction for the next-generation case-management system (CMS) in general jurisdiction courts. Justice Berch reported the COT voted to pursue the vendor option as the statewide CMS, and then introduced Karl Heckart, Director of Information Technology for the AOC, who provided additional information on the COT's process and decision regarding the CMS.

Mr. Heckart reported on the three options for the Council's consideration: approve contracting with a vendor to supply and maintain the selected third-party CMS,

adopt the Pima County AGAVE system after it is implemented, or modifying the Maricopa County iCIS system to meet the state's architecture/supportability requirements. Mr. Heckart provided additional information on the RFP process, evaluation team, proposal evaluation, and the COT's recommendation.

A motion was made to convene the Council into Executive Session to hear specific details on negotiations regarding contracting for services. It was noted that the details of an open procurement are protected by law from public release, and because the Council's meetings are open to the public, an executive session is necessary to prevent breaching confidentiality. Therefore, only Council members and members of the core evaluation team will be included in the Executive Session. Mr. Byers noted that anything discussed in Executive Session cannot be discussed outside of the Executive Session.

MOTION: To convene into Executive Session. Motion was seconded and passed. AJC 2007-13.

A motion was made to approve the COT's recommendation to approve contracting with a vendor.

MOTION: To approve the COT's recommendation to approve contracting with a vendor to supply and maintain the selected third-party case management system. Motion was seconded and passed. AJC 2007-14.

Mr. Heckart then presented an overview of other technology projects, to include ongoing commitments, requesting State Judicial Collection Enhancement (JCEF) funding in light of the CMS recommendation.

Mr. Kevin Kluge, Chief Financial Officer for the AOC, presented the 2008 JCEF and Traffic Case Processing Fund (TCPF) budget request of \$10.2 million, both base operating and project related. Mr. Kluge provided information on the current fiscal-year revenue and expenses. Mr. Kluge explained that per Arizona Code of Judicial Administration § 1-109, the Council approves the amount of JCEF monies to be spent each year.

A motion was made to approve the 2008 JCEF budget request.

MOTION: To approve the 2008 JCEF budget request, as presented. Motion was seconded and passed. AJC 2007-15.

Discussion ensued regarding the COT's recommendation for new projects totaling \$7,457,183. A motion was made to approve the COT's recommendation for new projects, in addition to asking the Joint Legislative Budget Committee for an increase in the JCEF spending authority totaling \$6,043,327. It was noted that the minute entry and Pima AGAVE projects had funds reserved, but were not COT approved.

A motion was made to approve the JCEF Probation FY 2008 Budget Request, including the request for the additional spending authority.

MOTION: To approve the JCEF Probation FY 2008 budget request, including the request for the additional spending authority, as presented. Motion was seconded and passed. AJC 2007-16.

Mr. Kluge presented the COT recommendations for the new project budgets for FY 2008 totaling \$7.5 million. Mr. Kluge reported on the funding impact, to include a request to the Joint Legislative Budget Committee (JLBC) to increase our spending authority by \$6 million.

A motion was made to approve the budget request in total.

MOTION: To approve the budget request in total, including the request to JLBC to increase the JCEF spending authority, as presented. Motion was seconded and passed. AJC 2007-17.

Arizona Code of Judicial Administration (ACJA)

Ms. Julie Dybas, Manager for the Court Services Division of the AOC, briefed the Council on ACJA 3-401: Priority of Offender Payments (superior court). Ms. Dybas referred the members to the handout/memo from the Arizona Association of Superior Court Clerks indicating their support for the rewrite and providing some additional comments.

Discussion ensued regarding whether this should apply to the oldest cases or to current, active cases and if it should cover restitution as well as fines. A motion was made to apply this to the oldest, unidentified cases first, moving towards the new cases after that, to include restitution as well as fines. Concern was raised with a superior court judge revoking someone's probation on where the payment is applied rather than whether the payment was made. Additional discussion ensued regarding if there is a non-payment on an older case, why wouldn't there be a warrant out, and why should the defendant be able to determine which case the payment goes to? It was noted that probation's viewpoint is to go back to the current, active case.

A motion was made to apply the undirected payment (restitution as well as fines) to the oldest cases first.

MOTION: To apply to the oldest, undirected cases first, then moving towards the new cases, to include restitution as well as fines. Motion was seconded and passed (3 opposed). AJC 2007-18.

Additional discussion ensued regarding E.2.a. on page 4 of the code section regarding active before closed and how this should be applied. Mr. Byers moved that

the money be designated based on allocation of the instrument; the motion was seconded.

The Chair stated the motion on the floor is that designated payments should be made as designated, which is currently being done with 99% of the cases. It was noted that designated or undesignated money should always go towards restitution first. Ms. Frame stated the money needs to be applied towards restitution first based on the law, and the court will look bad if you come up with the conclusion that a court fine will take precedence over restitution that has been owed the defendant, especially if owed for a significant period of time. Discussion ensued on the need to do more research, to include the issue of credit card payments and where payment designation is made, and the need for a receipt which shows what they paid for and for which case. It was noted that if a defendant owes both a criminal and civil fine, and we allow the defendant to pay off his civil fine to get his license reinstated, this is seemingly ignoring a criminal warrant. It was suggested that a process is needed which doesn't allow the defendant to make a decision as to where the money goes, and that whatever is decided needs to be consistent.

The Chair stated that, based on the discussion, additional information and clarification is needed. A motion was made to table the motion previously made, form a workgroup of the Committee on Superior Court, including some limited jurisdiction court representation, to work through the issues and report back to the Council at their October meeting.

MOTION: To table the previous motion, form a workgroup to work through the issues addressed today, and report back to the Council at their October meeting. Motion was seconded and passed. AJC 2007-19.

Judicial Branch Budget Update

Ms. Kevin Kluge provided information on the 2008 budget request and a summary of the increases. Mr. Kluge noted the total judicial budget is \$166,994,800 with the summary of increases totaling \$6,725,800.

Statewide Global Positioning System (GPS) Policies and Procedures

Ms. Kathy Waters, Director of the Adult Probation Services Division for the AOC, presented information on the difference between active and passive monitoring and asked for the Council's decision regarding who determines the placement of a probationer on active or passive monitoring (provisions D and E of the draft GPS Policies and Procedures). Concern was raised regarding losing judicial immunity.

A motion was made that the "sentencing judge" should determine the placement.

MOTION: To approve the sentencing judge determining the placement of a probationer on active or passive monitoring. Motion was seconded and passed. AJC 2007-20.

Ms. Waters then presented the other issue for the Council consideration regarding response time for the adult probation department's designee to initiate an appropriate response upon receiving the information (provision 4.2.b of the draft GPS Policies and Procedures). Discussion ensued regarding what is a reasonable period of time. Judge Angiulo asked why one type of violation would be treated differently than another, as other violations do not have time restrictions. A motion was made to approve the language "immediately initiative an appropriate response."

MOTION: To approve the language to "shall immediately initiate an appropriate response." Motion was seconded and passed. AJC 2007-21.

Ms. Waters asked for the Council approval to move forward with the GPS Policies and Procedures as approved and presented today.

MOTION: To approve and move forward with the GPS Policies and Procedures as approved and presented. Motion was seconded and passed. AJC 2007-22.

Fines/Fees and Restitution Enforcement (FARE) Update and Funds Distribution

Mr. Mike DiMarco, Consolidated Collections Manager for the AOC, provided an overview on the FARE program's history, objective, statistics, and direction. Mr. DiMarco noted that the collections to date increased by more than \$70 million, excluding the tax intercept program. Mr. DiMarco then explained the FARE funds distribution methodology to disburse excess funds and asked for the Council's approval. A motion was made to approve the funds distribution methodology. Discussion ensued whether Council members working for the pioneer courts would need to abstain, it was decided there was no reason to abstain, as they did not personally benefit.

MOTION: To approve the FARE funds distribution methodology as presented. Motion was seconded and passed. AJC 2007-23.

Revised Garnishment Forms for Online Distribution

Ms. Jennifer Greene, Policy Analyst for the Court Services Division of the AOC, briefed the Council on the revised garnishment forms for online distribution. Ms. Greene noted that the new packet incorporates standards of self-service forms design that have emerged since the forms were originally created in 1990, and the forms have been reviewed and approved through the committee process and by other stakeholders and reflect comments and suggestions received from these reviewers. Ms. Greene stated the new packet will replace the existing packet, but asked that there be a delayed effective date so courts could exhaust their existing inventory of old forms.

A motion was made to approve adoption of the revised garnishment forms for online distribution.

MOTION: To approve adoption of the revised garnishment forms for online distribution as presented. Motion was seconded and passed. AJC 2007-24.

CourTools Measure 1 in Limited Jurisdiction Courts

Ms. Christi Weigand, Court Performance Improvement Specialist for the Court Services Division of the AOC, briefed the Council on the results from five of the seven general jurisdiction courts that have administered the Access and Fairness Survey to date. Ms. Weigand noted the final survey results from all the general jurisdiction courts will be presented at the Council's October meeting. Ms. Susan Edwards asked that a break down of the survey results by county also be presented in October to review the statistics for merit and non-merit courts.

Ms. Weigand presented an example implementation plan of the access and fairness survey in the limited jurisdiction courts and a two-tier process where the county would take a "train the trainer" approach to incorporate experience within the county. Concern was raised with asking courts to volunteer to train other courts. It was noted that implementation strategies will vary from county-to-county and will be made accordingly.

A motion was made to approve the plan to proceed with preparation for and implementation of the Access and Fairness Survey in limited jurisdiction courts.

MOTION: To approve the plan to proceed with preparation for and implementation of the Access and Fairness Survey in Limited Jurisdiction Courts. Motion was seconded and passed. AJC 2007-25.

Standardized Probate Rules

Vice Chief Justice Rebecca White Berch briefed the Council on the background and charge of the Probate Rules Committee, as well as their work to date to review all local probate rules in the state and produce a standard set of rules. Justice Berch noted the draft rules have been completed, and they are currently working on the forms. Justice Berch stated the Probate Rules Committee will return to the Council at their October meeting to request approval of recommendations to the Court of the probate rules. Justice Berch asked that the Council members take the time to review the rules and provide comment, if applicable.

Judicial Branch Legislative Update

Mr. Jerry Landau, Director of Government Affairs for the AOC, updated the members on the status of legislation proposed by and of interest to the Council to

include: HB2212, HB2209, SB1054, SB1628, SB1434, SB1555, HB2299, SB1286, SB1319, HB2077, and SB1265. Mr. Landau noted that Leila Gholam, Legislative Officer for the AOC, has resigned and accepted a position in California. Ms. Gholam's replacement will be Katy Proctor who is currently the House Judiciary Analyst.

The Chair thanked Jerry and his staff, as well as others in the court community, for their efforts during this legislative session.

Judicial Branch Strategic Agenda "Good to Great" Update

Mr. Mike Baumstark, Deputy Director of the AOC, updated the Council members on the initiatives that have been completed during the past year and provided a preview of the many initiatives planned for the coming year.

Call to the Public/Adjourn

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

The Chair then acknowledged Council members whose terms are completed and thanked them for their years of service. Certificates of appreciation were provided to Miguel Montiel, Deborah Schaefer, Jose de J. Rivera, Dr. Christine C. Iijima Hall, and Jim Smith.

A motion was made to adjourn.

The meeting adjourned at 4:15 p.m.