

ARIZONA JUDICIAL COUNCIL

Camelback Inn Scottsdale
5402 East Lincoln Drive
Scottsdale, AZ 85253

Minutes of the
June 20, 2005, Meeting

Council Members Present:

Chief Justice Ruth V. McGregor
David Byers
Judge B. Robert Dorfman
Susan Edwards
Judge Douglas Holt
Christine C. Iijima Hall, PhD.
Chris Herstam
Emily Johnston
Judge John S. Leonardo
Sue Lynch
William J. Mangold, M.D., J.D.
Miguel Montiel

Judge Barbara Mundell for Judge
Colin Campbell
Sheri Newman
Judge Fred Newton
Judge William J. O'Neil
Jones Osborn
Judge John Pelander
Helen Perry-Grimwood
Jose de J. Rivera
Deborah Schaefer
Judge William B. Sutton, Jr.
Judge R. Michael Traynor
Judge Sheldon Weisberg

Council Members Absent:

Judge Fred Peterson

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
David Benton
Katherine Boots
Stewart Bruner
Eric Carlson
Mike DiMarco
Greg Eades
Agnes Felton
Cari Gerchick

Jennifer Greene
Beth Hall
Kevin Kluge
Jerry Landau
Konnice Neal
J.R. Rittenhouse
Janet Scheiderer
Lorraine Smith
Nancy Swetnam
David Withey

Guests Present:

Vice Chief Justice Rebecca White Berch
Kurt Davis
Kathy Dolge
Professor Bob Dauber
Judge Elizabeth Finn
Wes Gullett
Art Hamilton
Mark Kalish

Marna Murray
Steve Roman
George Schade, Jr.
Teresa Schmid
Melanie Sturgeon
Christine Thompson
Dr. Roselle Wissler

The Chair, Chief Justice Ruth V. McGregor, called the meeting to order at 10:00 AM, at the Camelback Inn, 5402 East Lincoln Drive, Scottsdale, Arizona in the Peace Pipe Room. The Chair welcomed those in attendance and acknowledged Vice Chief Justice Rebecca White Berch, who will attend future Council meetings, and new members: Helen Perry Grimwood, President of the State Bar, replacing Chaz Wirken and Emily Johnston, public member, replacing Karen Duffy. Introductions were then made around the room.

Approval of Minutes

The Chair called for any corrections or additions to the minutes from the March 30, 2005 meeting of the Arizona Judicial Council. Judge Traynor noted on Page 9 of the minutes under the "FARE Program Update," that Judge Sutton's name was listed as responding for the Chandler Municipal Court when it should be his name (Judge Traynor). A motion was made to approve the minutes with that correction.

MOTION: To approve the minutes from the March 30, 2005 meeting of the Arizona Judicial Council with the substitution of Judge Traynor's name for Judge Sutton's on Page 9 of the minutes. Motion was seconded and passed. AJC 2005-13.

Arbitration Study

Professor Bob Dauber and Dr. Roselle Wissler from the Lodestar Dispute Resolution Program at Arizona State University College of Law presented the key findings regarding court-connected arbitration in Arizona.

Discussion ensued regarding what to do with cases under \$50,000: 1) modify court-connected arbitration; 2) replace mandatory arbitration with mandatory early settlement conference; 3) replace mandatory arbitration with choice among mandatory processes; or 4) replace mandatory arbitration with voluntary court-connected processes.

Judge Mundell, on behalf of Judge Campbell, expressed concerns regarding the accuracy of the data. Discussion then ensued, and it was suggested that we go to a settlement conference system, which is not as adversarial.

Professor Dauber recommended that the Council create an ad hoc committee to look at what should be changed about the arbitration program and explore options. The Chair stated that she would like to see the appointment of a task force to take the information from the study, get the stakeholders and researchers together, and come back to the Council in October with suggestions as to where we should go from here. Susan Edwards made a motion to create an ad hoc committee to help develop potential alternatives to the current arbitration process.

MOTION: To create an ad hoc committee/task force to help develop potential alternatives to the current arbitration process and look at other programs that the county may have already in place in terms of settlement to see how they would be affected. Motion was seconded and passed. AJC 2005-14.

The Chair noted that the following people have already agreed to serve on the task force: Judge Newton, Coconino County; attorney Mark Kalish; Judge Carmine Cornelio, Pima County; Judge Campbell, Maricopa County; and Mike Baumstark, AOC, who will chair the task force. The Chair asked that members forward additional suggestions for members to her.

Commission on Technology Update

Vice Chief Justice Rebecca White Berch, newly appointed Chair of the Commission on Technology (COT), then presented an update on the COT. Vice Chief Justice Berch provided information on the outcome of discussions at COT's annual planning meeting, including the revised initiatives and project priorities that align with the revisions made by the Arizona Judicial Council to the Branch Strategic Plan, in addition to new initiatives resulting from that meeting.

Kevin Kluge, the Chief Financial Officer for the AOC, then presented the Judicial Collection Enhancement Fund (JCEF) and Traffic Case Processing Fund (TCPF) budget request for FY 2006. Mr. Kluge reviewed the financial reports with the Council and laid out the recommendation for the FY 2006 budget request for their approval.

Judge O'Neil made a motion to approve the budget request as attached to the funding report. The motion was seconded.

MOTION: To approve the JCEF/TCPF FY 2006 budget request as presented. Motion was seconded and passed. AJC 2005-15.

Dave Byers noted that the COT is asking to move ahead and roll out the case management systems currently under development even though we do not have the

money to implement them throughout the state. Mr. Byers stated this would accelerate out-year deficits, but if we do not roll them out, JCEF would be solvent until 2009. Mr. Byers noted the system is archaic and the code is very old. The Chair stated that we cannot keep patching the current case management system, and the COT put the money that they needed into developing the case management systems. The Chair added that hopefully, during the next legislative session, we would be able to get the money swept from JCEF back to allow us to pay for the future rollouts.

Judge O'Neil then made a motion that the Council approve the COT rolling out the case management systems with the recognition of the potential for acceleration of debt. The motion was then seconded.

MOTION: To approve the COT's determination to move ahead with the case management system despite the lack of funds to roll them out. Motion was seconded and passed. AJC 2005-16.

Communication Plan/Strategic Agenda

Wes Gullett, partner with the strategic communications firm of Hamilton, Gullett, Davis, and Roman (HGDR), then provided information on HGDR and introduced the remaining partners: Art Hamilton, Kurt Davis, Steve Roman, and Barry Dill, providing background information on each of them.

Mr. Gullett summarized that HGDR was contracted by the Arizona Supreme Court to help the courts with better communication in a more strategic and focused manner so that the public at large and those making decisions on the court system have more information and are better informed about what is going to happen.

Mr. Gullett provided a PowerPoint presentation outlining the three phases of their plan: Phase I: Passing of the Gavel; Phase II: Outreach/Listening Tour using the Supreme Court Justices as presenters; and Phase III: Unveil Key Initiatives of Strategic Vision. Mr. Gullett noted that the ultimate goal is for the Court to be better understood by the public and public policy makers. Mr. Gullett stated that HGDR would survey the community in the public meetings, asking participants what they see as high priority court issues. HGDR will then compile the information into an analyzable format.

Jones Osborn suggested that the effort to make the public better understand the vital importance of our court system should start early on and include the public school system. Mr. Osborn asked about direct damage control and inquired if a mechanism or organized system in Arizona is in place to counter judicial attacks. Discussion ensued regarding the need to have an educational function for both the school system and adults in general regarding the function of courts, the constitutional role in this three-branch government, and taking a step back and getting back to basic principles about what our court system is all about and what judges do.

Mr. Byers asked that Council members let staff know about any events or important community group meetings during the summer and into the fall so a justice can participate and have this kind of dialogue. Mr. Byers noted that all five justices have agreed to be available. The Chair then introduced Cari Gerchick, the new AOC Director of Communications, who will be staffing this outreach program.

Commission on Judicial Performance Review (JPR)

Eric Carlson, Director of the Administrative Services Division of the AOC, provided background information on the Commission. Mr. Carlson noted that some members of the public, legislature, Arizona State Bar, and the judiciary have expressed concerns that standards the Commission uses to determine whether a judge or justice “meets” judicial performance standards may not be high enough. Mr. Carlson noted that in response to those concerns, the Commission has examined its practices and two petitions have been filed with the Supreme Court to modify the JPR rules.

Judge Pelander spoke in favor of the second petition. Judge Mundell noted there are 93 superior court judges in Maricopa County, and many of them have concerns about several of these proposed changes and are looking at forming their own judges’ association. The Chair noted that the information presented today is purely informational, and that any member of the Council or the general public can file a comment for this proposed rule or any proposed rule. The Chair noted the comments for these proposed rules would be due on August 22.

Project Passport and Proposed Protective Order Forms

Konnie Neal, staff to the Committee on the Impact of Domestic Violence and the Courts (CIDVC) Domestic Violence Forms Workgroup, presented a brief overview of what the project entails, the goals, and how they arrived at the Order of Protection form.

Judge O’Neil noted that the goal of Project Passport is to improve recognition for law enforcement and then recognition of the form itself to allow for better enforcement. Judge O’Neil asked for approval of the four proposed forms as presented: Order of Protection and ancillary protective order forms. In addition, Judge O’Neil noted that there were committees that recommended minor modifications that the Council will also be asked to approve.

Susan Edwards made a motion to approve adoption of the forms with the requirement that all courts in Arizona would use this form. The motion was then seconded.

MOTION: To approve the Order of Protection and ancillary protective order forms to be used in all courts in Arizona. Motion was seconded and passed. AJC 2005-17.

Judge Elizabeth Finn, Workgroup member and Presiding Judge for Glendale City Court, briefed the Council on the proposed modifications.

Discussion ensued regarding dynamically produced documents. It was noted this would be an authorization, not a mandate. A motion was made to approve this modification as presented. The motion was then seconded.

MOTION: To approve the modification to allow for dynamically produced documents and only print the provisions that apply. Motion was seconded and passed. AJC 2005-18.

Judge Finn noted the next issue is to allow the margins of the form to be adjusted. A motion was made to allow the margins to be dynamically changed. The motion was then seconded.

MOTION: To allow the margins of the form to be dynamically changed. Motion was seconded and passed. AJC 2005-19.

Judge Finn reported that the Committee on Limited Jurisdiction Courts wanted permission to change the font size to allow the form to be on one page, but Project Passport members expressed concern that the form be legible. No motion was made to approve this change.

Judge Finn presented additional information on the suggested modifications. Judge Finn noted the “NO CRIMES” language guarantees the Order will be eligible for entry into the National Criminal Information Center (NCIC) database, and the language on the model template is not a crime enforceable in Arizona and could not be used on the Arizona form.

Judge Finn noted law enforcement was concerned that if the language were limited to domestic violence crimes, it would give the defendant the impression that they can commit a crime against a plaintiff as long as it is not a domestic violence crime. Judge Leonardo expressed his concern with expansive, non-domestic violence language.

Judge Leonardo made a motion that the “NO CRIMES” language be changed to read, “any act of domestic violence against plaintiff or protected persons.” The motion was then seconded. Judge O’Neil spoke against the motion, stating the need for a strong, bold statement. Judge Finn stated that it provided greater protection to victims and more tools to law enforcement.

MOTION: To replace the “NO CRIMES” language to read, “Defendant shall not commit any act of domestic violence against Plaintiff or Protected Persons.” Motion was seconded and failed to pass. AJC 2005-20.

Discussion ensued regarding the "SOCIAL SECURITY #" box on the form. It was suggested that the two cells be joined (line removed) and the words "SOCIAL SECURITY #" be removed and the words "(AZ Prohibits Release of SSN) remain.

Judge Traynor expressed concern regarding implementation of this new form and having enough time to program for it. Concern was also raised regarding courts on other systems. Ms. Scheiderer, Director of the Court Services Division for the AOC, stated implementation is a year away, and they will take this concern and others into consideration. It was noted that Project Passport would require changes to AZTEC, the courts case management system, resulting in 44 weeks of programming time.

Additions to the Superior Court Records Retention Schedule

Jennifer Greene, Policy Analyst for the Court Services Division of the AOC, presented additions to the Superior Court Records Retention Schedule. Ms. Greene noted the Council approved the proposal in December 2004, and since then, two new provisions have been proposed for inclusion with the schedule: 1) an updated schedule for records maintained by the Special Master of the Arizona General Stream Adjudication aka "Water Master" (previously a separate schedule) and 2) a definition and procedure for designating "landmark" cases.

Ms. Greene then acknowledged Dr. Melanie Sturgeon, Director of the Division of Arizona History and Archives at the Arizona State Library, Archives and Public Records and George A. Schade, Jr., Special Master, and his assistant Kathy Dolge, Arizona General Stream Adjudication, who were available to speak and answer questions.

Ms. Greene drew the Council's attention to Page 19 "Designation of Landmark Cases" and acknowledged the assistance of Judge Weisberg who suggested this as their model.

Ms. Green asked that the Council approve the additional provisions to the Superior Court Records Retention Schedule as presented.

MOTION: To approve the additional provisions to the Superior Court Records Retention Schedule as presented. Motion was seconded and passed. AJC 2005-21.

George A. Schade, Jr., presented information on the updated schedule for records that he maintains. Ms. Greene noted that there would be some further clarifications made to the language. Ms. Greene stated the Clerk of the Superior Court in Maricopa County has agreed in concept with the language, but needs additional clarification regarding what is being held at their office versus the Water Master's office. Ms. Greene asked that this schedule be approved. Ms. Greene noted there is a pending rule change petition to which they will file a comment that will clarify the wording further.

Sheri Newman moved the adoption of the Office of the Special Master, General Stream Adjudication Records Retention and Disposition Schedule as proposed. The motion was then seconded.

MOTION: To approve the adoption of the Office of the Special Master, General Stream Adjudication Records Retention and Disposition Schedule as proposed. Motion was seconded and passed.
AJC 2005-22.

Changes to Public Access to Court Records and Data Gathering Practices

Jennifer Greene, Policy Analyst for the AOC, provided background information on Supreme Court Rule 123, noting the Supreme Court recently approved amendments to this rule governing public access to court records that will eliminate unnecessary reference to sensitive data and provide courts with guidelines on offering online access to case information and case documents.

Judge Dorfman expressed concern with a field on the traffic ticket and complaint form that asks for a social security number, asking if the police will be required to file a separate sensitive document form for every one of these traffic tickets. Judge Dorfman noted that this issue needs to be resolved and suggested the field could be removed as one option.

Judge Traynor noted another time when the social security number is needed by the Court is when a defendant fails to appear on their civil traffic citation and is then reportable as a default judgment.

Ms. Gerchick, Director of Communications for the AOC, noted that this proposal will allow a county to scan the document in and destroy the sensitive data sheet (would need to be microfilmed to comply with Records and Archives) or, if another county wants to have a separate file with a hard copy of the form, they would be able to do that. Ms. Gerchick noted that both parts of the information, the pleading as well as the sensitive data sheet, will be available to court users as required, and it allows for different modifications depending on their use and needs.

Ms. Gerchick added that this is a big change in the way people will do business in the legal community statewide, and it will affect our attorneys and pro per's. Ms. Gerchick reported that she will be communicating with the state bar, county bar, defense attorneys, prosecutors, legal services, pro bono, etc. over the next six months to get the word out that parties need to protect themselves and attorneys need to protect the parties they represent.

The Chair acknowledged the Committee members, staff, and Clerks of Court for their hard work on this rule.

Judicial Branch Legislative Update

Jerry Landau, Director of Government Affairs for the AOC, presented an update on the past legislative session and what to expect for the next session. Mr. Landau drew the Council's attention to SB 1420: Motor Vehicles; Uninsured Drivers, noting it has the potential to cause an extremely large increase on the work of the limited jurisdiction courts and the Motor Vehicle Division (MVD). Mr. Landau stated that they would be meeting to discuss requesting a technical fix to the statute concerning SB 1420 in special session.

David Benton, Legislative Officer for the AOC, presented an update on the Council's legislative package, noting that all three bills passed. Mr. Benton reported that HB 2620: Drug Courts received \$1 million in funding for next fiscal year thanks to Rep. Konopnicki. Mr. Benton noted we were not successful in getting additional funding for the fiduciary program.

Judge Sutton noted there seems to be a trend for the courts to become a collection mechanism for non-court systems/programs throughout the state, i.e., a \$500 additional assessment on DUI charges for the prison construction fund in the past three years. Judge Sutton raised concern that now we are raising money through the courts for DPS to get safety equipment for their officers, and this is a dangerous trend.

The Chair thanked both Mr. Landau and Mr. Benton for all their hard work during the legislative session.

Fiduciary Advisory Commission Report and Fiduciary Complaints and Audits

Nancy Swetnam, Director of the Certification and Licensing Division for the AOC, presented an update on the following: Fiduciary Commission, case processing of fiduciary complaints, and Fiduciary Audit Program. Ms. Swetnam noted there has been considerable progress made with the process of fiduciary complaints in "knocking out the backlog," and the number of complaints they are currently receiving is going down. Ms. Swetnam reported that Fiduciary Audit Program is operating, and although there were no horrendous problems in the audit, they have discovered some consistent themes in terms of information that fiduciaries are not providing to the courts or not providing in a timely manner.

Fines/Fees and Restitution Enforcement (FARE) Program Update

Mike DiMarco, FARE Fiscal Manager for the AOC, provided background information on FARE. Mr. DiMarco reported on the list of accomplishments and provided a FARE fast facts overview in terms of collections, current FARE courts, and future sites. Mr. DiMarco noted the Phoenix Municipal Court will be going live with "full FARE" in July, and the first superior court pilot could take place in Navajo County.

Call to the Public/Adjourn

The Chair made a call to the public. The Chair then recognized Sue Lynch, public member, whose term will expire on June 30, 2005, for her service on the Council.

Dave Byers then noted that Agnes Felton, Director of the Education Services Division for the AOC, would be retiring on June 24, 2005. Dave then introduced Marna Murray, the Director of Education for the Washington State AOC, who will take Agnes' place effective August 1, 2005.

The meeting adjourned at 4:20 p.m.