COMMITTEE ON SUPERIOR COURT
MINUTES
Friday, September 9, 2011
Arizona State Courts Building
Conference Room 345 A/B
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable James A. Soto, Chair	William G. Klain, Esq.
Honorable Eddward Ballinger – *telephonic*	Honorable Kenneth Lee – *telephonic*
Honorable Michael J. Burke	Honorable Joseph J. Lodge
Honorable James Conlogue	Honorable David Mackey
Honorable David Cunanan	Honorable Colleen McNally – *telephonic*
Honorable Robert Duber II	Honorable Patricia Noland
Honorable Sue Hall	Mr. Marcus Reinkensmeyer
Mr. Joshua Halversen	Honorable Michala Ruechel
Honorable Celé Hancock	Honorable Monica Stauffer
Honorable Charles V. Harrington	Honorable Randall Warner
Honorable Carey S. Hyatt – *telephonic*	Ms. Susan Wilson

MEMBERS ABSENT:
Mr. Tim Hardy

PRESENTERS/GUESTS:

Mr. Stewart Bruner, AOC	Ms. Amy Love, AOC
Ms. J.L. Doyle, AOC	Mr. John MacDonald, Court Reporters Association
Ms. Jennifer Greene, AOC	Mr. Mark Meltzer, AOC
Ms. Melinda Hardman, AOC	Mr. Brett Watson, AOC

STAFF:

Ms. Kay Radwanski, AOC	Ms. Tama Reily, AOC

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the September 9, 2011, meeting of the Committee on Superior Court (COSC) was called to order by Honorable James A. Soto, chair, at 10:05 a.m.

Judge Soto welcomed current members and then introduced new members Judge Joseph Lodge from Coconino County, Judge Celé Hancock from Yavapai County, and

Commissioner David Cunanan from Maricopa County. The Chair welcomed back re-appointed member Judge Charles Harrington from Pima County and expressed thanks to departing members, Judge Michael J. Cruikshank, Judge Stephen F. McCarville and Commissioner Margaret Maxwell, for their contributions.

Judge Soto reviewed the remaining 2011 COSC meeting dates:

- Friday, November 4, 2011

B. Approval of Minutes

The draft minutes from the May 20, 2011, meeting of the COSC were presented for approval.

MOTION: To approve the May 20, 2011, COSC meeting minutes as presented. Motion seconded. Approved unanimously. COSC-11-020

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Legislative Update

Ms. Amy Love, AOC legislative liaison, provided summaries of six legislative proposals for the next legislative session:

2012-1, Criminal Code; Law Enforcement; Probation Officer Correction Bill: Annual clean-up bill.

2012-2, Probate Omnibus: Implements recommendations from the Committee on Improving Probate Matters (Probate Committee) to provide further protections to the vulnerable adult through increased court oversight by allowing judges to enter support/access orders; to order ADR throughout the proceedings; and by creating a statewide post-appointment visitor program. Delayed effective date of 1/1/13.

Some members had concerns about the funding of the visitor program and questioned its purpose and organization. Judge Mackey, also member of the Probate Committee, explained that the program was devised to resolve problems with court-appointed fiduciaries and perhaps be integrated in the CASA program; however, CASA voiced concerns about merging programs with diverging purposes.

2012-3, Termination of Parental Rights: Clarifies a timing question in the statute about when the court is to consider the age of the child in the cases of children under three who have been in an out-of-home placement. May be subject to change.

2012-4, Grand Jury Electronic Recording: Authorizes the superior court to use electronic recording in grand jury, subject to amendments to the Rules of Criminal Procedure. An identical measure was introduced last year but failed to advance out of the House Judiciary Committee.

Both Judge Ballinger and Judge Davis supported this proposal and emphasized that it would be voluntary for each county. Mr. Reinkensmeyer also called attention to the construction project going on at Maricopa County Superior Court that requires electronic recording systems to be built in the hearing rooms, and he believed that a proposal should be in place for this. Mr. John MacDonald, representing the Court Reporters Association (CRA), opposes the proposal, saying it would compromise the integrity of grand jury records. On the other hand, he supported modifying the statute so grand jury transcripts would be produced upon request and welcomed the opportunity to discuss cost-cutting measures for transcript production.

2012-5, Homeless Court: Allows the superior court to create a consolidated homeless court and for justice of the peace and municipal courts to participate. The proposal is modeled after the San Diego homeless court.

Judge Duber questioned the need to establish these specialty courts through legislation. A member explained the purpose of the proposal as consolidating jurisdictions so a city judge may have the authority to hear cases from another city or justice court. Judge Mackey reported that he has received several requests for veterans' courts and asked if that court type was considered in the proposal. Ms. Love was unaware whether veterans' courts were or would be considered in the proposal.

2012-6, Juvenile Probation Records: Allows juvenile probation departments to share information and records with each other, which follows a computer system change.

Judge Soto recommended the Committee wait until the November meeting to vote on these proposals so members may have time to review the details. The full legislative packet will be forwarded to the members for further review.

B. Joint Implementation Committee -- HB 2302

Ms. Love provided background information and updates about the Secretary of State (SOS)'s address confidentiality program, effective 1/1/13. She reported that assistance is being requested from the courts to address implementation issues and to offer suggestions and feedback. Ms Love asked members interested in participating in the implementation workgroup to contact her.

Ms. Patricia Noland recommended that electronic transfer of information be addressed because of its impact on caseflow management when it is not fast enough. She also called for clerks to be represented in this workgroup. Ms. Sue Hall added that clerks from both the rural and urban counties should be represented. Ms. Hall also sought process standardization regarding the administrative costs that the courts collect. Judge Soto suggested this item be put on the next Clerks' Association meeting agenda in order to find two volunteers (rural and urban) to work on these issues.

C. Update from Committee on Civil Rules of Procedure for Limited Jurisdiction Courts (RCiP)

Mr. Mark Meltzer, AOC court analyst, described the Committee's background and membership as well as its charge to simplify court processes and make the civil rules for limited jurisdiction courts more understandable to everyone. Mr. Meltzer explained their decision-making process and highlighted new features and tools that fulfill their charge.

- Rules were simplified, incorporated by reference or removed depending on whether the rules applied often, infrequently or did not apply. Medical malpractice rules were removed because they did not apply, but jury trial rules were incorporated by reference because of their infrequent use. Mr. Meltzer cited only 71 jury trial cases out of 126,000 non small-claims and non-eviction cases in 2010.
- Procedures were modified to make them more understandable to self-represented litigants (e.g., notice of service of discovery would require the addition of a warning about the consequences of failing to respond).
- Language was simplified by reducing legal jargon, removing redundancies, using the active voice and clarifying terms.
- Rules were also rearranged in a sequential order with a new numbering system to make the process more understandable.
- New reference and cross-reference tables were added to assist stakeholders in the transition period.

Mr. Meltzer reported that members discussed the downfalls of simplification and oversimplification, undercutting case law and precedents, and deviating from the intent of rules. Mr. William Klain, member of both committees, underscored, for example, the members' struggle to ensure that due process was not lost in the simplification process. Mr. Klain also illustrated the tensions between stakeholders: legal aid attorneys representing debtors sought extensive rule simplification while consumer debt attorneys preferred keeping the complexity of the superior court rules.

Mr. Meltzer advised that the Committee would submit recommendations to the AJC in December to file a rule petition to adopt a new set of rules of civil procedure for justice courts. In anticipation of the AJC meeting, Mr. Meltzer is seeking input and feedback from various stakeholders, including COSC, to bring back to their next meeting on 9/28/11 and make further revisions. Comments may be forwarded directly to mmeltzer@courts.az.gov. Mr. Meltzer plans to return to the November COSC meeting with an updated work product for members to review.

D. ACJA § 6-206 – Adult Probation Services Fund, Probation Fees Account

Ms. J.L. Doyle, AOC, presented proposed revisions to ACJA § 6-206, Adult Probation Services Fund, Probation Fees Account, and explained the reasons for the changes. The proposed changes would provide relief to adult probation departments by excluding GPS and risk management expenditures from the requirement that 60 percent of each department's Probation Services Fund must be used to pay probation employee salaries and related benefits. In addition, the changes would add a new section on "how to assess fees" to address inconsistencies among counties by having the probation departments make recommendations to the court on how and when probation service fees are assessed and distributed for offenders on Adult Probation Supervision. These proposed revisions have been approved by LJC and COP.

Judge Mackey disagreed with the proposal, saying that the authority falls on the judges to impose fees and start dates, not the probation departments. Furthermore, the probation departments do not always make a recommendation. He believed this to be an educational issue for judges more than a rule requirement for probation departments.

MOTION: To approve the proposed revisions to ACJA § 6-206 as presented. Motion seconded. Motion approved 20-1-0. COSC-11-021

E. ACJA § 6-111 – Vehicle Fleet Management

Mr. Brett Watson, AOC, presented proposed amendments to ACJA § 6-111, Vehicle Fleet Management, which were mostly cosmetic in nature in order to promote consistency with code requirements and other guidelines. Under the changes, the Motor Vehicle Department would have the ability to review employee records annually instead of biennially. These proposed amendments have been approved by LJC and COP.

MOTION: To approve the proposed revisions to ACJA § 6-111 as presented. Motion seconded. Approved unanimously. COSC-11-022

F. ACJA § 1-507 – Protection of Electronic Records in Paperless Court Operations *(Item taken out of order)*

Ms. Jennifer Greene, AOC assistant counsel, and Mr. Stewart Bruner, AOC ITD strategic planning manager, presented proposed amendments to ACJA § 1-507, Protection of Electronic Records in Paperless Court Operations, that would establish new technical standards for courts that want to destroy paper administrative and regulatory records after scanning into an electronic document management system (EDMS) or OnBase. Ms. Greene explained the changes are necessary because there is no mechanism in place to approve the destruction of these records. The proposed amendments would provide authority to the superior courts and the AOC to destroy administrative and regulatory records once they have been scanned into OnBase. Ms. Greene described administrative and regulatory records and identified superior courts' process service records as regulatory records. She clarified that courts that store their records on OnBase do not need prior authorization to destroy paper case records. These proposed changes have been approved by LJC and TAC and will be presented to AJC in October. Ms. Greene advised that the proposed amendments have been posted on the ACJA forum and encouraged members to visit the forum and submit their comments.

Ms. Noland and Ms. Hall expressed concerns about the seemingly archaic requirement that backup copies be stored on magnetic tapes. Ms. Hall further cautioned that the Clerks' Association might object to paragraph (G), as written, because it would require clerks to get approval from the county presiding judges before destroying any paper administrative or regulatory case records. Since the clerks are the elected officials and are responsible for their offices' operations, administrative records would fall under their purview. Mr. Bruner defended the use of magnetic tapes by calling attention to instances in which using disks is not favorable. In virus situations, if the primary disk is infected,

the secondary will be, too. The disk images only the most recent changes during a backup, which prevents the return to a prior point in the history when the disk was virus-free. Furthermore, disks are not mobile for restoration because they require identical infrastructure elsewhere. Mr. Bruner acknowledged possible issues with magnetic tapes; however, a safety net is needed and the costs must be balanced with the risks in a paperless environment.

MOTION: To approve the proposed amendments to ACJA § 1-507, with concerns raised by the clerks (P. Noland and S. Hall) about (1) the backup of records using magnetic tape; and (2) separation between the Clerk's Office (who is records custodian for some administrative case records) and the court, to be addressed and clarified, as discussed. Motion seconded. Approved unanimously. COSC-11-023

G. Proposed changes to technical standards relating to electronic filing

Mr. Bruner presented proposed changes to technical standards in ACJA §§ 1-501, 1-504 and 1-506 about electronic filing, electronic documents, document imaging and handling of digital documents. Mr. Bruner explained that these changes are necessary because Rule 124 was stricken following the Supreme Court's decision not to adopt the rule change petition to amend Rule 124. Furthermore, recent administrative orders have authorized the technical standards to conform to the current paradigm for statewide e-filing. As a result, rules and technical standards are changing to catch up with the times and to support AZTurboCourt. Mr. Bruner advised that the proposed amendments have been posted on the ACJA forum, and he encouraged members to visit the forum and submit their comments.

Mr. Bruner provided some background information and context for the technical standards. He explained that the new objective to conform the technical standards to the statewide e-filing reflects a shift toward more statewide and centralized efforts rather than on a "one jurisdiction, one filing system" strategy. He pointed to proposed changes to court automation standards in ACJA § 1-501 that support this new direction. AZTurboCourt would be added to the list of authorized systems and a central document repository added to the list of mandated initiatives.

Mr. Bruner encouraged proposed changes to ACJA § 1-504 about reproducing and imaging electronic court records that incorporate some lessons learned over the last few years. He called for additional requirements for metadata, indexing and quality assurance details in order for the EDMS to work appropriately. For example, a sealed record would include an indicator in the metadata that tells the EDMS to protect it; otherwise, the record could be found in an index search. Mr. Bruner proposed that public access to records would be provided through a portal managed by the AOC in keeping with the centralized statewide effort. Mr. Bruner also described a new section about disconnected scanning that would apply to limited jurisdictions so they could participate in an EDMS that complies with ACJA § 1-507 and supports the statewide initiative.

Mr. Bruner discussed proposed changes to ACJA § 1-506 on filing and management of electronic documents. He proposed updating current language to reflect OnBase as the EDMS product. Mr. Bruner outlined proposed EDMS requirements for courts transitioning to the statewide e-filing approach and advantages to using the AOC-controlled EDMS or disconnected scanning. He proposed allowing some new options and requiring some new standards for electronic document filing and management. For example, abstracts could be reproduced for form-based filings and sealed records could be filed with the appropriate metadata while bookmarks would be required for multiple appendices and a minimum number of keywords would be required in OnBase.

Ms. Noland had concerns about the requirement to scan documents using a disconnected EDMS. Mr. Bruner responded that this requirement is intended only for limited jurisdiction courts.

III. OTHER BUSINESS

A. Next Meeting Date

Friday, November 4, 2011
10:00 a.m. – 2:00 p.m.
Arizona State Courts Building
Conference Room 345 A/B

B. Good of the Order/Call to the Public

Ms. Hall requested that the committee explore social media topics relevant to the courts and possibly develop some standards to deal with this topic. Mr. Reinkensmeyer agreed that social media is a timely topic that warrants further research and discussion. While he thought this topic might not be appropriate for all case types, he proposed exploring ways to incorporate this topic with jury-related issues. Judge Soto suggested that this topic be presented at a future committee meeting.

Mr. Klain gave members notice of some upcoming draft rule changes that the State Bar's Civil Practice and Procedure Committee has approved.

Adjourned at 12:30 p.m.