

# AGENDA

ARIZONA JUDICIAL COUNCIL  
Arizona State Courts Building  
1501 W. Washington St., Suite 119  
Phoenix, AZ 85007

**AMENDED March 28, 2013**

**March 28, 2013**

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*Please note: the length of presentation time needed for several agenda items is difficult to predict. Therefore, some items may run longer or shorter depending on the amount of discussion.*

10:30 a.m. Welcome/Opening Remarks..... Chief Justice Rebecca White Berch

Tab No.

(1) Approval of Minutes..... Chief Justice Rebecca White Berch

**Action Items:**

10:35 a.m. (4) Arizona Code of Judicial Administration (ACJA).... Mr. David Withey  
- 1-602: Digital Recording of Court Proceedings  
- 7-208: Document Preparers Authority .....Mr. Mark Wilson

10:55 a.m. (3) Order of Protection Form Modification..... Ms. Kay Radwanski

11:25 a.m. Law Day Activity .....Ms. Jennifer Liewer

11:30 a.m. (2) Judicial Branch Legislative Update.....Mr. Jerry Landau  
.....Ms. Amy Love

12:00 p.m. Lunch

12:30 p.m. ACJA continued (if needed)..... Mr. David Withey

**Study / Update Sessions:** *Possible Adoption of Various Reports/Forms*

1:00 p.m. eFiling Update .....Mr. Karl Heckart

*Note: The Council may vote to go into Executive Session for discussion or consideration of records or matters made confidential or privileged by statute, court rule or this code, pursuant to the Arizona Code of Judicial Administration, Code Section 1-202(C)(5). Attendance is limited to members and others whose presence is necessary for the purpose of the executive session.*

2:00 p.m.

Call to the Public/Adjourn

*Please call Lorraine Smith  
Staff to the Arizona Judicial Council  
with any questions concerning this Agenda  
(602)452-3301*

**ARIZONA JUDICIAL COUNCIL**

Request for Council Action

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**Date Action  
Requested:**

March 28, 2013

**Type of Action  
Requested:**

Formal Action/Request

Information Only

Other

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**Subject:**

Approval of Minutes

**FROM:**

Lorraine Smith, Staff to the Arizona Judicial Council

**DISCUSSION:**

The minutes from the December 13, 2012 meeting of the Arizona Judicial Council are attached for your review.

**RECOMMENDED COUNCIL ACTION:**

Approve the minutes as written.

**ARIZONA JUDICIAL COUNCIL**  
Arizona State Courts Building  
1501 W. Washington, Suite 119  
Phoenix, AZ 85007

December 13, 2012

DRAFT Meeting Minutes

**Council Members Present:**

Chief Justice Rebecca White Berch  
Jim Bruner  
David Byers  
Judge Peter Cahill  
José A. Cárdenas  
Amelia Craig Cramer  
*Krcmarik*  
Judge Norman Davis  
Athia Hardt  
Mike Hellon  
Judge Joseph Howard (*telephonically*)  
Yvonne R. Hunter

Michael Jeanes  
Emily Johnston  
Judge David Mackey  
William J. Mangold, M.D., J.D.  
Judge Antonio Riojas, Jr.  
Eric Silverberg, *proxy for Gary*  
  
Judge Sally Simmons  
Judge Roxanne Song Ong  
George Weisz  
Judge David Widmaier  
Judge Lawrence Winthrop

**Council Members Absent:**

Judge Rachel Torres Carrillo  
Judge Robert Carter Olson

Janet K. Regner

**Administrative Office of the Courts (AOC) Staff Present:**

Alden Anderson  
Mike Baumstark  
Chad Campbell  
Bert Cisneros  
Marisol Cortez  
Brenda Lee Dominguez  
Melinda Hardman  
Karl Heckart  
Anne Hunter  
Paul Julien  
Jerry Landau  
Kym Lopez  
Amy Love

Mark Meltzer  
Alicia Moffatt  
Nina Preston  
Kay Radwanski  
Marcus Reinkensmeyer  
Judge Ron Reinstein  
Jeff Schrade  
Lorraine Smith  
Cindy Trimble  
Kathy Waters  
Mark Wilson  
David Withey  
Brandon Urness

## **Presenters and Guests Present:**

Vice Chief Justice Scott Bales  
Carlos Bialec  
Justice Robert Brutinel  
John A. Burns  
Samantha DuMond  
Ron Ezell  
Barry R. Goldman  
Bud Hart

Tom LaVance  
Kim MacEachern  
John Osborn  
John Phelps  
Jodi Rogers  
Judge Anne Segal  
Matthew Umbower  
Thayer Verschoor

Chief Justice Rebecca White Berch, Chair, called the meeting to order at 10:00 a.m. at the State Courts Building, 1501 W. Washington, Suite 119 in Phoenix, Arizona. The Chair welcomed those in attendance.

## **Approval of Minutes**

The Chair called for any omissions or corrections to the minutes from the October 25, 2012, meeting of the Arizona Judicial Council. There were none.

**MOTION: To approve the minutes from the October 25, 2012, meeting of the Arizona Judicial Council, as presented.** The motion was seconded and passed. AJC 2012-20.

## **Appointment of Strategic Planning Subcommittee**

The Chair reported on the Strategic Planning Subcommittee and noted the statutory requirement for a new strategic plan every 5 years. The Chair introduced Vice Chief Justice Bales who will be chairing the subcommittee. Vice Justice Bales thanked the following Council members who volunteered to serve on the subcommittee as members of his planning team: Mike Hellon, Judge Norm Davis, Judge Sally Simmons, Michael Jeanes, Gary Krcmarik, Athia Hardt, Yvonne Hunter, Judge Antonio Riojas, Jr., Judge Lawrence Winthrop, Judge David Mackey, and Judge Rachel Carrillo. Justice Bales encouraged all Council members to provide feedback to either him or any subcommittee member. He reported the draft plan will come back to the Council for review next year and final approval in the spring of 2014.

## **Judicial Branch Legislative Package**

Mr. Jerry Landau, Director of Governmental Affairs for the AOC, and Ms. Amy Love, Legislative Liaison, provided a legislative update on the Council's proposals regarding post-conviction relief and the probate omnibus.

Mr. Landau asked for the Council's consideration of the *Criminal Code; conforming changes* bill.

**MOTION: To support the *Criminal Code; conforming changes bill*, as presented.** The motion was seconded and passed. AJC 2012-21.

Mr. Landau asked for the Council's consideration of the *Carrying of firearms by Peace Officers* bill.

**MOTION: To oppose the *Carrying of firearms by Peace Officers bill*, as presented.** The motion was seconded and passed (1 opposed). AJC 2012-22.

Mr. Landau reported the bail bond industry is proposing a series of bills this session. He noted that the first 2 bills do not affect the judicial branch.

Mr. Landau reported on bail bond bill #3. The Council agreed to discuss each provision of the bill separately. Ms. Cramer raised concern with the loitering offense not complying with the first amendment's requirement to be content neutral. Ms. Cramer noted her opposition and moved to oppose. Discussion took place on this issue. Mr. Byers questioned if this is the Judiciary's issue. It was suggested the Council could consider an alternative to include any solicitation rather than just loitering.

Mr. John A. Burns, Arizona Bail Bondsmen Association, provided public comment. He explained that the need for the loitering provision came about when the Sheriff's Department in Maricopa County approached him regarding bail bond agents hanging out in the lobby, on the sidewalk, and in front of the jail and asked for his assistance in cleaning up their own industry. Mr. Burns reported a list is currently posted behind glass in the lobby which states the loitering offense, but this bill provision would put some teeth in the statute.

**MOTION: To oppose the provision of bail bond bill #3 which "Establishes an additional "Loitering" offense, a bail bondsmen soliciting bail bond business in a courthouse or at or near a county jail," as presented.** The motion was seconded and failed. AJC 2012-23.

**MOTION: To remain neutral on the provision of bail bond bill #3 which "Establishes an additional "Loitering" offense, a bail bondsmen soliciting bail bond business in a courthouse or at or near a county jail," as presented and ask Legislative staff to work with Legislative Council to point out the Council's concerns.** The motion was seconded and passed. AJC 2012-24.

The Council discussed the next provision regarding updating the list of bail bondsmen.

Mr. Michael Jeanes noted he didn't believe the Clerks have an issue with this, and it may be better to update the list monthly as a benefit to the customers. Mr. Jeanes moved to support this provision.

**MOTION: To support the provision of bail bond bill #3 which “Requires the clerk of the court to update the bail bond list monthly and forward it to the county and city jail,” as presented.** The motion was seconded and passed. AJC 2012-25.

Mr. Landau presented the *Appearance bonds; exoneration* bill.

Judge Mackey stated he does not see a need for this change because judges should be making this decision. Judge Cahill asked if the language would tie the judge’s hands.

Mr. Burns provided additional public comment and explained the “shall” language is procedural in that if the bond gets reopened at the Sheriff’s department, and they want to get out of custody, they have to start the process of reposting another bond. He explained the grace period allows time to coordinate with local law enforcement when needed, but bail bond agents will need to prove this was done in a timely manner.

The Chair raised concern with the need to tighten the language “10% of the bond or \$1,000.” Mr. Landau noted the intent is for the court to use or not use this section.

Mr. Burns provided additional public comment on the non-release issue. He explained that there are bonds being issued for defendants known to be in the country illegally, but the sheriff’s office is not disclosing the hold and is sending the individuals to ICE. Mr. Burns stated the bondsman will then lose control and custody of the defendant, and he questioned if they never had control and custody, should they be responsible for getting them into court.

The Chair noted the bill is a work in progress and much of it doesn’t concern the court itself, but are policy choices for the Legislature to make. The Chair suggested asking Legislative staff to monitor the bill, keep the Council updated, and ask for further direction, if needed. The Council members agreed.

Mr. Landau presented the *Release conditions; bond schedule* bill.

Mr. Burns provided public comment on this bill. He stated the bill will bring consistency to the bonding industry and will be solely for repeat offenders. Mr. Burns added the language still gives discretion to judges, but does use a bail scale. He noted the intent is to slow down the recidivism rate and the revolving door for offenders.

The Chair raised concern with the broad range of felony offenses that would apply. She noted that whether a defendant might be released would not be based on seriousness of the crime, but on whether that individual has money. The Chair stated that currently the trial judge can take a look at any resource issue.

Judge Riojas noted he shares the Chair’s concerns. He stated that discretion is very important to the judge, and a bond schedule is the wrong way to go, as it takes away the judge’s discretion.

Mr. Byers stated this bill is inconsistent with research that is coming out on recidivism, and he moved to oppose the bill. The motion was seconded.

**MOTION: To oppose the *Release conditions; bond schedule bill, as presented.*** The motion was seconded and passed (one abstained). AJC 2012-26.

Mr. Landau presented the *Postconviction conditional early release bond* bill. The Chair noted the Council voted to remain neutral on similar legislation last session because of the concern that it would allow a person of means to get out early.

Mr. Burns provided public comment and noted stakeholders will be meeting to discuss this specific issue with legislators. He reported on an idea not currently in the bill that would require an inmate in the program who violates terms to go before a five-person board run by the Department of Corrections (DOC). Mr. Burns stated if there is a fine imposed for this individual, i.e., failing a drug test, the fine would go into a general fund at DOC for the early release bond program, and the fund could be used for indigent people that qualify. He stated the idea is there, but the details need to be fleshed out and added to the bill.

Judge Mackey stated that in looking at truth in sentencing, evidence-based practices, etc., this bill seems to be moving us backwards. Judge Mackey moved to oppose the bill.

The Chair suggested legislative staff monitor the bill and wait for the final language. The Chair asked if staff have checked with probation officers regarding their position. Ms. Yvonne Hunter noted that, administratively, this provision seems cumbersome and possibly expensive. She suggested we wait for the Governor's interest and further discussion and offered a friendly amendment to the motion to monitor the legislation until more details are worked out with various stakeholders and consider further action at that time. The motion maker accepted the friendly amendment, and the motion was seconded.

**MOTION: To monitor the *Postconviction conditional early release bond bill.*** The motion was seconded and passed. AJC 2012-27.

Mr. Burns was asked to provide information to Legislative staff on other state's methods of reviewing low-level offenders who are performing well in a successfully-run program.

### **Filing Fee Adjustment**

Mr. Marcus Reinkensmeyer, Director of the Court Services Division for the AOC, explained the issue and presented information on the background and considerations. He reported on where the revenue goes, filings (justice and superior courts), proposed civil filing fee increases (mid-range) in both justice and superior courts, revenue projections based on increases at 3, 4, and 5 percent, and planning for the future. Mr. Reinkensmeyer pointed out that there were no changes in these fees from 1993-2007, and the CPI has increased

8.49% over the past five years. He noted that at least 30-days lead time will be needed to make a change.

Discussion took place regarding the percentage of the adjustment. Mr. Byers stated the Legislature noted they would prefer incremental adjustments rather than a big adjustment down the road, as has been done in the past. Mr. Jeanes recommended allowing 90 days to implement.

Judge Simmons moved to increase filing fees by 5%.

**MOTION: To approve a 5% filing fee adjustment.** The motion was seconded and passed (one opposed). AJC 2012-28.

### **Advisory Committee on Supreme Court Rules 123 & 125 – Proposed Rule Petition**

Mr. Mike Baumstark, Deputy Director of the AOC, provided background information, committee charge, issues examined, analysis, and committee recommendations.

Ms. Hunter moved approval of the changes to Rule 123 and 125 as presented by the Committee. The motion was seconded. The Chair asked for an amendment to the motion to approve the filing of the petition and appendix by January 10, 2013. Ms. Hunter accepted the amendment. Mr. Baumstark reported the Supreme Court has been asked to do a two-step comment period to allow time to address outstanding issues such as juvenile victim's names appearing in the docket before finalizing and sending to the Court.

**MOTION: To approve the filing of the rule petition and appendix on or before January 10, 2013, as presented.** The motion was seconded and passed. AJC 2012-29.

### **Report from the Capital Case Oversight Committee**

Judge (ret.) Ron Reinstein, Chair of the Committee, presented the Committee's fourth annual report to the Council. Judge Reinstein presented background information and reported on the Committee's 4 recommendations: #1: Support an amendment to A.R.S. § 13-4041; #2: Establish a process to evaluate applications for appointment on capital PCR petitions; #3: Encourage continuing training and education for judges, prosecutors, defense attorneys, and others who handle capital cases; and #4: Extend the term of the Oversight Committee. Judge Reinstein noted Recommendation #4 is recommending the Committee be extended for a year or suspended, but allowed to reconvene as issues arise, or simply to remain as an ongoing committee.

Ms. Athia Hardt asked if the Committee members considered putting someone from the Public Defender's Office on this Committee. Mr. Bruner asked about ongoing staff time and costs if the Committee continues. Ms. Hunter suggested the Committee could operate on an ad hoc basis, provide an annual report, and bring back issues for the Council's consideration, as needed. Mr. Byers noted this Committee has been extended several

times, and if we want to keep it as a permanent committee, we need to look at stopping something else due to cost and staffing issues.

Mr. Weisz and Judge Mackey noted that it would be important to keep the committee members as an ad hoc committee or at least on hold rather than disbanding. Justice Bales suggested reformulating the mission of the Committee and focus and think about formalized membership outside of Maricopa County. He noted the need to increase the hourly rate on the higher side, but recognized the fiscal impact for counties.

Justice Bales stated it would be premature to set up an informal Supreme Court Committee given the drop in capital cases. He suggested we use existing staff or wait to see what happens in Maricopa County with their committee.

**MOTION: To approve Recommendation #4 to extend the Committee for one year.** The motion was seconded and passed. AJC 2012-30.

Ms. Hunter moved tabling Recommendation #1 until further information can be gathered from legislative staff and the Council receives their recommendation for possible legislation. The motion was seconded.

The Chair noted that if we need movement on this bill, tabling won't allow this during the upcoming legislative session.

Ms. Hunter stated she would like to leave the motion as presented. Ms. Hardt noted her opposition to tabling it and suggested allowing legislative staff to move forward while looking at options.

Mr. Byers suggested allowing legislative staff to work on and explore this issue for possible introduction next year. Ms. Hunter agreed to this suggestion and noted there could still be a possibility of introducing this during the upcoming session. Judge Simmons stated the need to talk to county officials since this would affect their budgets.

**MOTION: To table Recommendation #1 to support an amendment to A.R.S. § 13-4041, as presented.** The motion was seconded and passed (4 opposed). AJC 2012-31.

Judge Mackey moved to adopt Recommendation #3. The motion was seconded.

**MOTION: To approve Recommendation #3 to encourage continuing training and education for judges, prosecutors, defense attorneys, and others who handle capital cases, as presented.** The motion was seconded and passed. AJC 2012-32.

Judge Simmons moved that Recommendation #2 be tabled. The motion was seconded.

Judge Reinstein noted he would be happy to continue to help with this work informally.

**MOTION: To table Recommendation #2 to establish a process to evaluate applications for appointment on capital PCR petitions, as presented.** The motion was seconded and passed. AJC 2012-33.

### **Report from the Committee on the Impact of Wireless Mobile Technologies and Social Media on Court Proceedings**

Justice Robert Brutinel presented the Committee's report, and noted the Committee is proposing a new Supreme Court Rule 122.1. Justice Brutinel shared information regarding jury admonition, witness testimony, jury selection, and judicial ethics.

Justice Brutinel requested that the Council approve the report and authorize the Committee to proceed to file rule petitions, submit recommendations to the State Bar, submit recommendations to the Judicial College of Arizona, submit a "smart juror" card to Court Services, and submit a request to Judicial Ethics Advisory Committee for an opinion.

Ms. Cramer noted the State Bar will also take a look at the rules. She asked about Rule 22 regarding the receipt for request of audio recording and why the court is not asked to notify the victim directly. Justice Brutinel explained the court would not always know who the proposed witnesses and victims were, but the lawyers involved would.

The Chair stated that Arizona tends to follow in the ABA model rules path, and although Arizona uses the Judicial Ethics Advisory Committee, their ethics opinions do not control us, they only provide guidance.

**MOTION: To approve the report and recommendations, as presented.**

The motion was seconded and passed. AJC 2012-34.

### **Arizona Code of Judicial Administrator (ACJA)**

Ms. Kathy Waters presented the proposed amendment to ACJA § 6-202.01: Adult Intensive Probation Evidence-Based Practice and requested the Council's approval. Mr. Hellon moved approval of the code section. The Chair asked for the ability to make non-substantive edits to the code, if approved. Mr. Hellon agreed to this amendment. The motion was seconded.

Judge Davis noted that on Page 3, 2(e), the requirement that says the probation department shall accept a probationer's admission, takes away the ability to continue to test. He suggested the word "shall" be changed to a "may" to allow discretion. Judge Davis noted that on Page 6, subparagraph u, which requires the probation officer to seek a criminal restitution order upon the expiration of 90 days pursuant to statute, he suggested the words "unless one has previously been entered" be added. Judge Davis noted that on page 16, paragraph 5, "When a probationer is in jail, the probation department shall establish minimum intensive probation requirements," he was not sure what this means since they are in jail. Judge Davis suggested paragraph 5 be eliminated. Ms. Waters

noted we are limited because of the statutory language, and the minimum does not excuse if they are in jail. Judge Davis suggested the need for a standard protocol which states “if they are in jail, the minimum supervision requirements shall be x and y.” He noted that without this protocol, we would be putting the burden on probation officers to do something they have no ability to do. The Chair stated the need to take a look at this issue further.

**MOTION: To approve ACJA 202.01: Adult Intensive Probation EPB, with the ability to make non-substantive edits, as needed.** The motion was seconded and passed. AJC 2012-35.

Ms. Anne Hunter, Manager with the Certification and Licensing Division of the AOC, presented the proposed changes to ACJA § 7-204: Private Process Server. She noted that the proposed changes will bring the program more in line and consistent with other licensing programs.

Mr. Ron Ezell, Arizona Process Servers Association, provided public comment on the code section. He expressed concern that the new private process server card uses the American flag instead of the Arizona state flag. He also expressed concern with the new section “k,” and added that process servers serve the papers they are given, and suggested this provision should be directed toward the attorneys not the process servers. Mr. Ezell stated he is against felons being allowed to become process servers. He also expressed concern with the continuing education changes.

Mr. Tom LaVance, President of the Arizona Process Servers Association, provided public comment. He requested the changes be tabled until his industry has adequate opportunity to review and provide comment on the proposed changes. He expressed concern with the new residency requirement allowing process servers who are not a resident of Arizona. Mr. LaVance explained that, although they would pass a test, they won’t know Arizona rules or have experience in Arizona. He expressed concern with the Committee’s ability to provide oversight throughout the country. Mr. LaVance asked that the name of the Association be corrected in the code section to take out the word “private” (Arizona ~~Private~~ Process Servers Association).

Mr. Matthew Umbower, President of the Association of Certified Process Servers, provided public comment. He stated the issue with the residency requirement is the accountability factor. He questioned what resources the courts will have to produce to hold them accountable for non-serves, bad checks, etc.

Mr. Byers stated that process servers with complaints who live outside of Arizona would have to come back to Arizona to deal with that complaint. It was noted this process is no different than many other professions.

Mr. Jeanes noted the Committee members that drafted this code could not find a reason to limit participation to Arizona residents only.

Mr. Umbower raised concern with the use of a quarterly official list of process servers on the Supreme Court website. He explained that if a process server is suspended or revoked during the 4-month period, there is no process in place to indicate this on the list until the next quarter. He suggested changing the code to go to monthly list rather than quarterly and adding a requirement that when a server is revoked or suspended, that this information be provided within a certain timeframe to the Supreme Court so that person is taken off the list.

Mr. Umbower expressed concern with continuing education and the requirement that a synopsis is provided if 8 or more hours of continuing education is given on a specific day. He noted this is an undue burden on both instructors and process servers. He stated the certificates of service that are filed with the court under the penalty of perjury are true and correct, and the continuing education that servers are taking (10 hours) is also true and correct. Mr. Umbower noted there is no reason for this provision and asked that it be removed from the code. Mr. Umbower stated he has concerns with the issue of omitting of references. He explained the Association feels it is creating a burden for them not to have references, as it is removing key character traits as prerequisite for certification.

Mr. Umbower spoke on the convicted felon issue and asked the Council “who do you want to represent the court?” He stated that having and allowing felons to be certified officers of the court makes no sense at all. The Chair noted the trial judge would have discretion on who serves process based on the type of felony.

Mr. Umbower spoke on the issue of pre-exam training. He noted the way the code currently reads, servers are required to take 10 hours of continuing education on a three-year cycle, but they don’t have to take the first 10 hours until day 364 of the first year.

Mr. Jeanes noted that on Page 8, Section 4(a)(7)(b), the new rule provides that the Clerk report within 5 days, and the Supreme Court updates the list when they receive the information. Mr. Jeanes asked if this addition to the code addresses his concern regarding the official list, and Mr. Umbower indicated it did.

Mr. Umbower raised concern that process servers are not considered a program.

Mr. Hellon moved approval of the code section with the ability to make non-substantive edits and revisit outstanding issues in the future, as needed.

**MOTION: To approve ACJA 7-204: Private Process Server, with the ability to make non substantive edits and revisit issues in the future, as needed.** The motion was seconded and passed. AJC 2012-36.

Ms. Anne Hunter presented ACJA § 7-205: Defensive Driving and noted the proposed changes.

Judge Anne Segal provided public comment in her capacity as a doctor. She asked that the Council reconsider an amendment to endorse a pilot study for a teenager driver class

for ages 16-20. She explained that this age group learns differently than adult learners and suggested a one-hour class with specific curriculum. Judge Riojas asked about other groups such as older drivers.

Mr. Byers explained the defensive driving classes are run by the schools, and he doesn't know if there is a market for this type of program. He stated that although it sounds like a good idea, it may be problematic to implement it given the tactical problems, i.e., smaller counties where only 1-2 kids would be taking the class. Mr. Byers suggested additional discussion regarding this idea with the Defensive Driving Board.

The Chair asked that the Defensive Driving Committee take a look at this issue further and thanked Judge Segal for her comments.

Mr. Hellon moved approval of the code section. The motion was seconded.

**MOTION: To approve ACJA 7-205: Defensive Driving, as presented.**

The motion was seconded and passed. AJC 2012-37.

### **Call to the Public/Adjourn**

The Chair made a call to the public; there was none.

A motion was made to adjourn the meeting at 2:17 p.m.

**ARIZONA JUDICIAL COUNCIL**

Request for Council Action

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<b>Date Action Requested:</b>	<b>Type of Action Requested:</b>	<b>Subject:</b>
March 28, 2013	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Arizona Code of Judicial Administration

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**FROM:**

AOC Legal Services

**DISCUSSION:**

We continue to expand and amend the Arizona Code of Judicial Administration (ACJA) to provide administrative direction to judicial officers and employees throughout the state.

A proposed amendment to **§ 1-602**: Digital Recording of Court Proceedings, is presented as a consent item.

A proposed amendment to **§ 7-208**: Legal Document Preparer, will be presented separately by Mark Wilson, Certification and Licensing Division Director.

**RECOMMENDED COUNCIL ACTION:**

Recommend adoption of the proposed amendments to § 1-602 and § 7-208 as presented

ARIZONA CODE OF JUDICIAL ADMINISTRATION

**Proposal Cover Sheet**

**Part 1: Judicial Branch of Administration**

**Chapter 6: Records**

**Section 1-602: Digital Recording of Court Proceedings**

- 1. Effect of the proposal:** The initial issue of the document specifies an annual review by Commission on Technology. Changes are being proposed as a result of a recent review. Most changes are editorial in nature. Three areas of note include addition of a system check requirement, increased detail regarding responsibilities of the court’s transcript coordinator, and explicit statement that the audio record shall be the official source for a transcript in the absence of a certified court reporter.
- 2. Significant new or changed provisions:**

  - Adds system check requirements matching those used in ACJA 5-208 (Interactive Audiovisual Proceedings).
  - Adds “format” to the existing list of requirements elaborated in ACJA §§1-504 and 1-506. Digital recording technology used must be capable of outputting a non-proprietary format, according to ACJA § 1-506(D)(5)(b). All products reported in information technology strategic plans today meet the format requirement.
  - Alleviates any misunderstanding by explicitly stating the condition in which the electronic recording acts as the official record. This complements the Supreme Court Rule 30(b)(4) statement of when the court reporter records acts as the official record.
  - Specifies that the transcript coordinator in the court provides recordings to the authorized transcribers. Defines authorized transcribers as in SCR 30.
  - Changes the review frequency for the code section from “once a year” to “periodically” now that the technology and related practices have matured.
- 3. Committee actions and comments:** Staff performed the initial review, solicited changes from subject matter experts, and returned changes to COT. Members revised some language and authorized posting of the proposed revisions on the ACJA Web Forum for comments. Members of LJC, COSC, the Clerk’s Association, the Superior Court Administrators Association, and LJCAA were encouraged to comment on specific issues from November 24<sup>th</sup>, 2012 through February 4<sup>th</sup>, 2013 using the AJCA Web Forum. A total of three comments were received of which one was addressed by changes to the proposed language. One comment was a question about the meaning of text that was stricken and the other was a request to emphasize the scope of the requirements as being for official court records only.
- 4. Controversial issues:** None. The technology used for digital recording has proven to be very stable; updates provide best business practices that have evolved over the six years of the document’s existence.
- 5. Recommendation:** Recommend approval of the proposed changes to the document.

**Comments and Responses to ACJA Section 1-602: Digital Recording of Court Proceedings**

PARAGRAPH	COMMENT	RESPONSE
(E)(3)	What does “consideration to probable transcript volume” mean?	KTR could not predict the practical effect of its recommendations on courts 6 years ago, so struck a cautious tone. Time has proven that caution to be unwarranted.
(C)(2)(b)	Does the language indicate that AJACS “shall” now link to the audio record? It does not currently have that capability.	It previously read “shall allow for the ability to link.” To preclude confusion, wording changed to “may link with another internal court system”
General comment	It’s not immediately clear that these requirements apply only to recordings that get used as official court records. Clerks make recordings for other purposes, too.	Confirmed that paragraph (B) states application is only for recordings “created as the official record of a court proceeding.”

**ARIZONA CODE OF JUDICIAL ADMINISTRATION**  
**Part 1: Judicial Branch Administration**  
**Chapter 6: Records**  
**Section 1-602: Digital Recording of Court Proceedings**

**A. Definitions.** In this section, unless otherwise specified, the following definitions apply:

“Backward compatible” means that software can use files and data created with an older version of the same software program. Hardware is backward compatible if it can run the same software as the previous model.

“Confidence monitoring” means listening to the electronic verbatim recording as it is being made from the storage medium in real time by use of headphones or other device to ensure the system is operating properly.

“Migration” means the process of upgrading to new technologies while preserving accessibility to existing records. It also means the process of moving electronic data from one storage device or media to another.

“Refresh” means the copying of a recording or a whole storage medium for the purpose of preserving or enhancing the quality of the recording.

“System check” means a test recording made to confirm that all components of the recording and playback system are functioning properly.

**B. Purpose.** Digital recording in the courtroom, whether audio or video, shall meet the required standards listed below when created as the official record of a court proceeding. In addition to setting minimum standards for digital recordings, this section also contains storage requirements for electronically-maintained court reporters’ notes and recommendations intended to guide electronic recording operations. This section is not intended to mandate digital recording in the court.

**C. Technical Requirements.**

1. Equipment.

- a. Courts shall comply with the format, accessibility, migration, storage, and retention requirements contained in ACJA §§ 1-504(~~EF~~)&(FG) and -506(D)(45)(b) when procuring and using digital recording equipment.
- b. The recording system shall use equipment having industry standard connections.
- c. Peripheral devices used for transcription (e.g. foot pedals) shall connect with the system using standard interfaces.
- d. Toggling mute buttons shall not be used on microphones. Microphones that mute

only when a button is depressed are allowed. Microphones that visually indicate when they are on and off are recommended to increase the likelihood that confidential communications are not recorded unintentionally.

- e. The recording system shall employ be capable of confidence monitoring. ~~to confirm, at a minimum, that the channels are receiving a signal.~~

## 2. Annotation.

- a. The recording system shall include an interface that allows the user to create an index of the ~~event~~ proceeding being recorded, for use in identifying a desired portion of the hearing.
- b. The index ~~shall allow for the ability to~~ may link between, the verbatim audio record of a ~~hearing proceeding and with~~ another internal court management system.
- c. The recording system shall provide a search function to allow searching of a recording's annotations.

## 3. Playback.

- a. The recording system shall allow for channel isolation to aid in the identification of different parties for transcription purposes.
- b. The recording system shall include tools to allow users to clip portions of a proceeding to accommodate partial record requests on CD.
- c. The recording system shall allow for playback of recordings in the courtroom while simultaneously recording courtroom events.
- d. The recording system shall produce an audio or video record that can be placed on a standard CD-R with no licensing restrictions for playback, including no licensing restrictions on playback software.
- e. The system shall provide the ability to save files to an industry standard format such as AVI, MPG, or WAV playable by non-proprietary readers.

- 4. Storage and Backup of Recordings. Recordings shall have a file size/compression rate to allow, ~~at a minimum,~~ approximately six hours of recording to fit on a single CD or other non-rewriteable optical media.

## **D. Operational Requirements.**

### 1. Procurement.

- a. The court shall obtain a minimum one year warranty on all recording systems and

related equipment as part of the installation services.

- b. The court shall obtain a minimum of both staff training and train-the-trainer training as part of the installation services.

## 2. Operation of Equipment.

- a. Staff operating the recording system shall be adequately trained to proficiently operate the system.
- b. A system check shall be made sufficiently in advance of court proceedings to assure to guarantee proper operation of electronic recording equipment each day, prior to court beginning. ~~The system check shall, at a minimum, consist of a test recording that confirms all components of the recording and playback system are functioning properly.~~ The court shall establish a procedure for employees to follow in the event of an equipment malfunction. A system check shall also be performed prior to conducting the initial proceeding following any loss of power or recording system shutdown.
- c. Courts shall establish policies addressing when recording systems are to be turned on and off consistent with judicial necessity.
- d. Courts shall assign one or more staff members to act as the point-of-contact for operational and repair issues. The point-of-contact staff person shall be trained in operating the equipment, as specified in subsection ~~(DE)~~(32), and in procedures to be followed in resolving operational issues, including contacting vendors.

## 3. Security. The court shall establish procedures to limit access to recordings of sealed and confidential matters, such as use of appropriate labeling or segregating recordings of non-public hearings.

## 4. Official vs. Unofficial Recordings.

- a. When no certified court reporter is present in a court proceeding, the electronic recording shall be the official record, except as provided by Supreme Court Rule 123(d)(4), and any transcript thereof shall be prepared in accordance with Section 5 below.
- ~~a~~b. When a certified reporter records a proceeding in superior court that is simultaneously recorded by electronic recording equipment, the court reporter's record shall be the official record.
- ~~b~~c. When a certified reporter records a proceeding in a limited jurisdiction court that is simultaneously recorded by electronic recording equipment, the judicial officer shall determine which recording is the official record, and the judicial officer's decision shall be noted on the record.

5. Transcription.

- a. Official transcripts of court proceedings prepared from electronic recordings shall comply with the Arizona Manual of Transcript Procedures and shall be produced by either a certified reporter, a court employee or a transcriber under contract with a court.
- b. The court shall establish procedures to ensure that authorized transcribers notify the court when they encounter poor-quality recordings, and that these reports are investigated and any problems remedied.
- c. Courts shall assign an individual to act as a transcript coordinator to ensure timely ~~production~~ provision of electronic recordings of proceedings to authorized transcribers, as defined in Supreme Court Rule 30, when of transcripts required for appellate proceedings. ~~This~~ The person coordinator and authorized transcribers should be familiar with the rules and practices involved in transmitting the verbatim record to the appellate court.

6. Records Management.

- a. Courts shall identify equipment and establish procedures necessary for archiving and managing electronic records of court proceedings, for ensuring the timely production of transcripts required for appellate proceedings, and for providing public access to the records in compliance with Rule 123, Rules of the Supreme Court and ACJA §§ 1-504 and 1-506.
- b. Courts shall preserve electronic notes of proceedings generated by court reporters in a generic format that will permit them to be interpreted by other reporters in the event the author is not available to prepare a transcript. For example, the translated version of the notes may be stored in a “.pdf” format accompanied by an electronic copy of the author’s personal dictionary.
- c. Courts shall conduct an annual review of the readability of ~~all~~ digital recordings and migrate recordings to a non-proprietary format as necessary to ensure access throughout the applicable retention period.
- d. Courts shall ensure continued accessibility via a planned migration path so devices, media, and technologies used to store and retrieve official verbatim recordings are not allowed to become obsolete and are promptly replaced or upgraded.
- e. Courts shall ensure that any new equipment or software replacing that used in an existing digital recording system is backward compatible and shall obtain a vendor certification that the system will convert 100 percent of the audio or audio/video and index data to the new system so access to existing official records is never impeded.
- f. Courts shall periodically refresh audio files in order to ensure their accessibility for

as long as the applicable records retention schedule requires. These procedures may require recopying of files to new media.

7. Storage and Backup of Recordings.

- a. Backup shall be performed at least daily, and periodically reviewed for continuing viability as required by subsection (E)(6).
- b. Retention of electronic recordings shall be in compliance with applicable records retention schedules.

**E. Recommended Practices.** This subsection identifies best practices in procuring and operating digital recording systems.

1. Procurement. The court should procure only from vendors who possess necessary state contractor licenses required to perform the work of installing the electronic recording systems in courtrooms.

2. Operation of Equipment.

- a. An alternative recording system should be available for use in the case of primary equipment failure.
- b. To the extent possible, courts should have properly trained personnel dedicated to the operation of electronic recording equipment. Training should be tailored to the specific needs of the recording system and court operations. Training should include but not be limited to the following:

- Storing and copying of records including partial records.
- Special handling of sealed or confidential hearings.
- Creation and retrieval of annotation files.
- Troubleshooting of equipment and recording quality as appropriate for the system, vendor, and the resources of the courts.
- Creating backups of files.
- Playing back a recording.
- Confidence monitoring while a recording is being made.
- Adjusting microphone volume.
- Microphone operations, including muting techniques.

~~3. Transcription. When implementing electronic recording technology, consideration should be given to probable transcript volume.~~

43. Public Access Fees. Courts may charge reasonable fees for copies of audio or video recordings of court proceedings, consistent with the requirements of Rule 123, Rules of the Supreme Court. The court may waive or defer such fees as it deems appropriate or where

law requires such waiver or deferral.

54. Storage and Backup of Recordings.

- a. Where possible, an additional backup should be made for offsite storage purposes.
- b. Simultaneous storage to multiple devices is recommended, for example, recording to the local computer in the courtroom and simultaneously storing to a remote server. Simultaneous storage is not a substitute for the requirement for daily backup described in subsection (D)(7).
- c. Each recording should be annotated with the case number or numbers of the individual sessions included in the recording to allow the desired point in the recording to be referenced by a case management system or electronic docket.
- d. Caution should be exercised when labeling recordings stored on a CD or DVD to ensure the labeling method employed will not expose the disc to damaging ink or adhesive-borne solvents and will not impair the disc's balance during playback. The label should identify the hearing date, location, and hearing officer.

**F. Periodic Review.** Due to the changing nature of technology, these standards shall be reviewed ~~once a year~~ periodically by the Commission on Technology to identify areas requiring updating or revision.

ARIZONA CODE OF JUDICIAL ADMINISTRATION

**Proposal Cover Sheet**

**Part 7: Administrative Office of the Courts**

**Chapter 2: Certification and Licensing Programs**

**Section 7-208: Legal Document Preparer**

- 1. Effect of Proposal.** The proposal would clarify that a certified legal document preparer (“CLDP”) has the authority to execute 20-Day Notices, mechanic liens, HOA notices of liens (condominium and planned community) and health care liens,
- 2. Significant new and changed provisions.** The proposed amendment to ACJA makes certain minor wording clarifications, provides CLDPs with the authority to “record” documents on behalf of a customer (CLDPs already have authority to file and arrange for service) and resolves whether a CLDP has the authority to execute 20-Day Notices, mechanics liens, HOA liens (condominium or planned community) or health care liens on behalf of a customer.
- 3. Committee actions and comments.** None
- 4. Controversial/Historical Issues.** On May 24, 2012, the Board of Legal Document Preparers of the Supreme Court (“LDP Board”) entered an order in an administrative proceeding involving a property management company (sometimes referred to as a “community association management company” (“CAM”)) for, among other things, violating the administrative code by signing notices of lien on behalf of its HOA customers. The CAM applied for special action relief in Superior Court.

The Superior Court entered the final judgment finding that the CAM “does not exceed the scope and authority of a CLDP or violate Rule 31 or the Arizona Code of Judicial Administration (“ACJA”) when it directs its CLDP employees to sign notices of lien as the authorized representative of the ... homeowner associations for which (the CAM) serves as the managing agent.” The LDP Board opted not to appeal that judgment.

In an effort to resolve issues related to a CLDP’s authority to execute certain lien documents, on November 21, 2012, Administrative Order No. 2012-85 was entered on an emergency basis adopting several changes to ACJA § 7-208(F)(1). The pertinent part of the amendment to § 7-208 was: “A certified legal document preparer may not sign any document on behalf of or as an agent or authorized representative of a person or entity.”

A subsequent Administrative Order No. 2012-94, was entered on December 6, 2012, retroactively rescinding Administrative Order No. 2012-85. Further, the Court directed the Certification and Licensing Division (“CLD”) to solicit public comment regarding whether certified legal document preparers “(a) should continue to be allowed to draft, execute, or serve 20-Day Notices, and (b) should be allowed to execute liens.”

After a review of the public comments and Administrative Order No. 2013-25, CLD

prepared the proposed amendments to ACJA 7-208(F).

**5. Recommendation.** Approval of the proposed changes to ACJA 7-201(F).

# COMMENTS

## A. Background

Administrative Order 2012-94 directed the Certification and Licensing Division (“CLD”) to solicit public comment regarding whether certified legal document preparers (“LDP”) “(a) should continue to be allowed to draft, execute, or serve 20-Day Notices, and (b) should be allowed to execute liens.” CLD reviewed the numerous comments regarding these issues and the history and comments are generally discussed below.

In 2011, a proposed amendment to Rule 31 was filed. See Supreme Court No. R-11-0001. This proposed amendment, requested in part to modify Rule 31 to allow LDPs to execute homeowner liens. The Supreme Court did not amend Rule 31.

Two different Superior Court Judges have addressed the issue of LDP executing documents that are in the nature of those addressed in the comments discussed below. In *Board of Legal Document Preparers v. Janet Summers et. al.*, CV2009-010336, it was held that the preparation of a 20-Day Notice constitutes the practice of law. In *AAM, LLC v. Board of Legal Document Preparers et. al.*, LC2012-000317DT, it was held that the execution of a HOA lien did not constitute the unauthorized practice of law or violate the ACJA.

In addition, while not exactly on point, the State Bar’s Unauthorized Practice of Law Committee has addressed related issues in Advisory Opinions UPL 04-01 and 12-01. UPL 04-01 found that the preparation of a mechanics lien was the practice of law. UPL 12-01 found that association management

companies could prepare notices of liens if the association management company used an LDP but the LDP could not sign the lien.

Finally, the LDP Board has long held (and acted accordingly) that LDPs signing documents on behalf of their customers under the authority of a contract or POA is prohibitive and contrary to the Board's mandate to protect the public because the acting of signing in a representative capacity exceeds the present authority of an LDP.

Pursuant to Rule 31(d)(24), LDPs have been authorized to practice law in a limited manner as allowed by the ACJA. It is important to note that the entities/individuals (construction, medical and HOA) retaining LDPs to prepare and execute the 20-Day Notices and the liens are "sophisticated" consumers utilizing these documents in the ordinary course of their business and should understand the risk of utilizing documents that are not properly prepared. Through their comments to the proposed changes, these sophisticated consumers have supported the concept of LDPs performing these activities and further asserted that allowing this activity is necessary for the proper functioning of their respective industries. With that background, the 20-Day Notices and liens are more specifically discussed below:

20-Day Notices. The comments were almost unanimously in favor of allowing LDPs to prepare and execute 20-Day Notices. The comments assert that the LDPs practice of preparing and executing 20-Day Notices has been ongoing for a number of years. Given the number of 20-Day Notices filed

annually, there have been no significant disciplinary issues raised as a result of the LDPs performing services related to the 20-Day Notices.

HOA Liens. By statute, HOA liens for condominium and planned communities are created as a matter of law and there is no statutory notice or execution requirement to create or perfect the lien. The comments suggest that the recording of a notice or lien with regards to HOA liens is a proactive approach assuring that the title insurance companies is placed on notice so that the lien is paid/removed at the time of sale. Therefore, while allowing LDPs to sign HOA condominium and planned community liens diverges from the current practice of generally prohibiting LDPs from executing documents, the executing and recording of these liens creates no additional rights in favor of the HOA. The comments were almost uniformly in favor of allowing LDPs to execute these documents.

Mechanic's liens. While generally speaking the comments were in favor of allowing the execution of mechanic's liens, the comments did not voice as strong an opposition to regulating an LDP's ability to execute a mechanic's lien. Unlike HOA liens, mechanic's liens are not automatically created by statute and a mechanic's lien creation requires the proactive efforts of an individual. Generally, the comments recognized that mechanic's liens do create rights against third parties and further recognize that there are far fewer mechanic's liens than 20-Day Notices. Thus prohibiting an LDP from executing a mechanic's lien would not have the same consequences as prohibiting execution of a 20-Day Notice on the construction industry. As with

medical liens discussed below, the statutes authorize an owner's agent to execute mechanic's liens.

Medical liens. There were fewer comments with regards to medical liens. As with mechanic's liens, medical liens are not automatically created by statute and require the proactive efforts of an individual. The comments, however pointed out that the medical liens statutes specifically allow agents to execute medical liens on behalf of the principal. The comments point out that if an LDP's ability to execute a medical lien is regulated by the Court, LDPs will be unable to perform a function specifically authorized by statute.

The comments, as to all liens, appear to be framing the issue as to whether the public is harmed if an LDP executes these documents on behalf of the LPDs' customer. The customers have asserted that the true harm to the industry will result in the inability of the LDPs to perform or continue to perform these functions. These harms will be evidenced by both increased cost and a loss of efficiencies. Staff notes that the 20-Day Notices and liens discussed in the comments are prepared for sophisticate consumers who should be able to judge the risk of electing whether to utilize an LDP to prepare and execute the document.

#### **B. Administrative Order No. 2013-25**

Administrative Order No. 2013-25 directed CLD to solicit comments to the proposed ACJA § 7-208 language presently being considered by the Arizona Judicial Council. There were far fewer comments to Administrative Order No.

2013-25 than to Administrative Order No. 2012-94 and all comments were in favor of the proposed language.

One comment suggested an additional change:

“The concern focuses on the phrase “any document” in the second sentence of ACJA § 7-208(F)(1)(e) (as it is proposed to be amended). It appears clear that the phrase “any document” in the second sentence is meant to refer to the “legal forms and documents” discussed in the first sentence. To make that more clear, we suggest adding the word “such” between the words “any” and “document”, i.e., “A certified legal document preparer may not sign any such document he or she prepares for or provides to a person or entity....”

**ARIZONA CODE OF JUDICIAL ADMINISTRATION**  
**Part 7: Administrative Office of the Courts**  
**Chapter 2: Certification and Licensing Programs**  
**Section 7-208: Legal Document Preparer**

**Sections A through E – No changes.**

**F. Role and Responsibilities of Certificate Holders. In addition to the requirements of ACJA § 7-201(F) the following requirements apply:**

1. Authorized Services. A certified legal document preparer is authorized to:
  - a. Prepare or provide legal documents, without the supervision of an attorney, for an person or entity ~~or a member of the public~~ in any legal matter when that person or entity ~~or person~~ is not represented by an attorney;
  - b. Provide general legal information, but may not provide any kind of specific advice, opinion, or recommendation to a ~~consumer~~ person or entity about possible legal rights, remedies, defenses, options, or strategies;
  - c. Provide general factual information pertaining to legal rights, procedures, or options available to a person or entity in a legal matter when that person or entity is not represented by an attorney;
  - d. Make legal forms and documents available to a person or entity who is not represented by an attorney; and
  - e. File, record, and arrange for service of legal forms and documents for a person or entity in a legal matter when that person or entity is not represented by an attorney. A certified legal document preparer may not sign any document he or she prepares for or provides to a person or entity, but this provision does not prohibit the signing of (i) 20-Day Notices prepared pursuant to A.R.S. § 33-992.01, (ii) notices related to condominium or planned community association liens that are created pursuant to A.R.S. § 33-1256 (condominiums) and § 33-1807 (planned communities); (iii) health care provider liens that are created pursuant to A.R.S. § 33-932, or (iv) mechanic's liens created pursuant to A.R.S. § 33-993.

**Section F (2-8) – No changes.**

**Sections G through L – No changes.**

## ARIZONA JUDICIAL COUNCIL

### Request for Council Action

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<b>Date Action Requested:</b>	<b>Type of Action Requested:</b>	<b>Subject:</b>
March 28, 2013	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Modifications to the Order of Protection Form

---

#### **FROM:**

Kay Radwanski, staff to the Committee on the Impact of Domestic Violence and the Courts (CIDVC)

#### **DISCUSSION:**

The Committee on the Impact of Domestic Violence and the Courts (CIDVC) recently recommended modification of the Order of Protection (OP) in response to opinions from the 9<sup>th</sup> Circuit (U.S. v. Sanchez) and the Arizona Court of Appeals, Div. II (Mahar v. Acuna). Ms. Radwanski will provide background on current and past policy regarding the Order of Protection form and the effect of the federal Gun Control Act (specifically Brady prohibited possessor criteria) on it. She also will explain the modifications proposed by CIDVC and the reasoning for CIDVC's recommendations.

All Arizona courts are required to use only those protective order forms adopted by the Arizona Supreme Court. (ARPOP Rule 10) Changes to the mandated forms can be authorized by the AOC administrative director. (ACJA § 5-207) As the changes proposed by CIDVC affect previously adopted AJC policy, CIDVC is seeking confirmation by AJC that currently policy should remain in effect.

#### **RECOMMENDED COUNCIL ACTION:**

Recommend adoption of modifications to the Order of Protection form as proposed by CIDVC.

Case No. \_\_\_\_\_

ALL COURTS IN ARIZONA ADDRESS CITY, AZ ZIP CODE TELEPHONE NUMBER

# ORDER OF PROTECTION

Amended Order

Case No.

Court ORI No. \_\_\_\_\_

County  State

Former Case No. \_\_\_\_\_

## PLAINTIFF

First Middle Last

## PLAINTIFF IDENTIFIERS

Date of Birth of Plaintiff

And/or on behalf of minor family member(s) and other Protected Person(s): (List name and DOB.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**V.**

## DEFENDANT

First Middle Last

Defendant/Plaintiff Relationship: \_\_\_\_\_

Defendant's Address : \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## DEFENDANT IDENTIFIERS

SEX	RACE	DOB	HT	WT
EYES	HAIR	<b>Arizona Prohibits Release of Social Security Numbers</b>		
DRIVER LICENSE #		STATE	EXP DATE	

**CAUTION:**  Weapon Alleged in Petition

Estimated Date of Birth

**WARNINGS TO DEFENDANT:** This Order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U.S. Territory, and may be enforced by Tribal Lands (18 U.S.C. § 2265). Crossing state, territorial, or tribal boundaries to violate this Order may result in federal imprisonment (18 U.S.C. § 2262).

**As a result of this order, it may be unlawful for you to possess or purchase a firearm or ammunition pursuant to federal law under 18 U.S.C. § 922(g)(8) and/or state, tribal, territorial, or local law. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.**

**Only the Court, in writing, can change this Order.**

**This Order is effective for one year from date of service. VERIFY VALIDITY (call Holder of Record):**

\_\_\_\_\_

## THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter.

Defendant received actual notice of this Hearing and had an opportunity to participate.

**Additional findings of this Order and warnings are set forth on the next page(s).**

**THE COURT**, finding reasonable cause **to believe that Defendant may commit an act of domestic violence or has committed an act of domestic violence within the past year (or good cause exists to consider a longer period), HEREBY ORDERS:**

**NO CRIMES.** Defendant shall not commit any crimes, including but not limited to harassment, stalking, or conduct involving the use, attempted use, or threatened use of physical force that would reasonably be expected to cause bodily injury, against Plaintiff or Protected Persons.

**NO CONTACT.** Defendant shall have no contact with **Plaintiff** except through attorneys, legal process, court hearings, and as checked:  Phone  Email/Fax  Mail  Other: \_\_\_\_\_

**NO CONTACT.** Defendant shall have no contact with **Protected Persons** except through attorneys, legal process, court hearings and as checked:  Phone  Email/Fax  Mail  Other: \_\_\_\_\_

VAWA warning

AZ legal standard

Restraint on conduct

**THE COURT FURTHER ORDERS:**

**RESIDENCE.** Plaintiff is granted exclusive use and possession of the residence listed below.

**LAW ENFORCEMENT STANDBY.** Defendant may return once with a law enforcement officer to obtain necessary personal belongings. Neither law enforcement nor this protective order can resolve conflicts over property, title, furniture, finances, real estate, or other ownership issues.

**PROTECTED LOCATIONS.** Defendant shall not go to or near the Plaintiff's or other Protected Person's:

Residence (leave blank if confidential): \_\_\_\_\_

Workplace (leave blank if confidential): \_\_\_\_\_

School / Other: \_\_\_\_\_

AZ law

**FIREARMS.** Pursuant to A.R.S. § 13-3602(G)(4), the Court finds that Defendant poses a credible threat to the physical safety of the Plaintiff or Protected Persons. Therefore, Defendant shall not possess, receive, or purchase firearms and shall surrender same within 24 hours of service to: \_\_\_\_\_

**OTHER ORDERS:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judicial Officer

\_\_\_\_\_  
Printed Name

**WARNING**

This is an official Court Order. If you disobey this Order, you will be subject to arrest and prosecution for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this Order.

**ADDITIONAL WARNINGS TO DEFENDANT:** Violations of this Order should be reported to a law enforcement agency, not the Court. Both parties must notify this Court if an action for dissolution (divorce), separation, annulment or paternity/maternity is filed. This is NOT a parenting time (visitation) or custody order. You must file those requests separately in Superior Court. If you disagree with this Order, you have the right to request a hearing, which will be held within 5 to 10 business days after your written request has been filed in the Court that issued this Order. Nothing the Plaintiff does can stop, change, or undo this Order without the Court's written approval. You must appear in Court to ask a judge to modify (change) or quash (dismiss) this Order. **Even if the Plaintiff initiates contact, you could be arrested and prosecuted for violating this protective order. If you do not want the Plaintiff to contact you, you have the right to request a protective order against the Plaintiff. However, orders are not automatically granted upon request. Legal requirements must be met.**

## ORDER OF PROTECTION

[ ] Amended Order

Case No.

Court ORI No. \_\_\_\_\_

County  State

Former Case No. \_\_\_\_\_

**PLAINTIFF**

First Middle Last

**PLAINTIFF IDENTIFIERS**

Date of Birth of Plaintiff

And/or on behalf of minor family member(s) and other Protected Person(s): (List name and DOB.)

\_\_\_\_\_

\_\_\_\_\_

V.

**DEFENDANT**

First Middle Last

Defendant/Plaintiff Relationship: \_\_\_\_\_

Defendant's Address : \_\_\_\_\_

\_\_\_\_\_

**CAUTION:** [ ] Weapon Alleged in Petition

[ ] Estimated Date of Birth

**DEFENDANT IDENTIFIERS**

SEX	RACE	DOB	HT	WT
EYES	HAIR	<i>Arizona Prohibits Release of Social Security Numbers</i>		
DRIVER'S LICENSE #		STATE	EXP DATE	

Distinguishing Features/Alias \_\_\_\_\_

**WARNINGS TO DEFENDANT:** This Order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U.S. Territory, and may be enforced by Tribal Lands (18 U.S.C. § 2265). Crossing state, territorial, or tribal boundaries to violate this Order may result in federal imprisonment (18 U.S.C. § 2262). Federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. § 922(g)(8)). **Only the Court, in writing, can change this Order.**

**This Order is effective for one year from date of service. VERIFY VALIDITY (call Holder of Record):**

**THE COURT HEREBY FINDS:**

That it has jurisdiction over the parties and subject matter.

[ ] Defendant received actual notice of this Hearing and had an opportunity to participate.

**Additional findings of this Order and warnings are set forth on the next page(s).**

**THE COURT, FINDING REASONABLE CAUSE, HEREBY ORDERS:**

**NO CRIMES.** Defendant shall not commit any crimes against Plaintiff or Protected Person(s).

[ ] **NO CONTACT.** Defendant shall have no contact with **Plaintiff** except through attorneys, legal process, court hearings, and as checked: [ ] Phone [ ] Email/Fax [ ] Mail [ ] Other: \_\_\_\_\_

[ ] **NO CONTACT.** Defendant shall have no contact with **Protected Person(s)** except through attorneys, legal process, court hearings and as checked: [ ] Phone [ ] Email/Fax [ ] Mail [ ] Other: \_\_\_\_\_

**THE COURT FURTHER ORDERS:**

- RESIDENCE.** Plaintiff is granted exclusive use and possession of the residence listed below.
- LAW ENFORCEMENT STANDBY.** Defendant may return once with a law enforcement officer to obtain necessary personal belongings. Neither law enforcement nor this protective order can resolve conflicts over property, title, furniture, finances, real estate, or other ownership issues.

**PROTECTED LOCATIONS.** Defendant shall not go to or near the Plaintiff's or other Protected Person's:

- Residence (leave blank if confidential): \_\_\_\_\_
- Workplace (leave blank if confidential): \_\_\_\_\_
- School / Other: \_\_\_\_\_

- FIREARMS.** Because Defendant poses a credible threat of bodily injury to Plaintiff or Protected Person(s), Defendant shall not possess, receive, or purchase firearms or ammunition and shall surrender same within 24 hours of service to: \_\_\_\_\_

**OTHER ORDERS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date	Judicial Officer	Printed Name

**WARNING**

This is an official Court Order. If you disobey this Order, you will be subject to arrest and prosecution for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this Order.

**ADDITIONAL WARNINGS TO DEFENDANT:** Violations of this Order should be reported to a law enforcement agency, not the Court. Both parties must notify this Court if an action for dissolution (divorce), separation, annulment or paternity/maternity is filed. This is NOT a parenting time (visitation) or custody order. You must file those requests separately in Superior Court. If you disagree with this Order, you have the right to request a hearing which will be held within 5 to 10 business days after your written request has been filed in the Court that issued this Order. Nothing the Plaintiff does can stop, change, or undo this Order without the Court's written approval. You must appear in Court to ask a judge to modify (change) or quash (dismiss) this Order. **Even if the Plaintiff initiates contact, you could be arrested and prosecuted for violating this protective order. If you do not want the Plaintiff to contact you, you have the right to request a protective order against the Plaintiff.**

COURTS OF ARIZONA - NAME OF Court      Street Address      City, Arizona Zip Code      Phone Number

Plaintiff	Court Case No.	<b>ORDER OF PROTECTION</b>  <input type="checkbox"/> MODIFIED
Date of Birth -vs-	Court No., NCIC	
Defendant	Court No., DPS	

**WARNING TO DEFENDANT**

This is an official Court Order. If you disobey this Order, you may also be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this Order.

NOTICE: Only the Court can change this Order. Nothing the Plaintiff does can stop, change, or undo this Order without the Court's approval. You must return to Court to modify (change) or quash (stop) this Order. If you disagree with this Order, you may ask for a hearing by filing a written request for hearing with the Court named above. This Order is effective for one year after original service on you and is valid nationwide.

**NOTICE TO PARTIES**

This is not a custody or visitation Order. You can only file for custody or visitation as a Title 25 action in Superior Court. All violations of this Order should be reported to a law enforcement agency, not the Court. Either party should notify this Court if an action for dissolution (divorce), separation, annulment or paternity/maternity is filed.

The Court finds reasonable cause to believe that the Defendant may commit an act of domestic violence or has committed an act of domestic violence within the past year (or good cause exists to consider a longer period

1. **IT IS THEREFORE ORDERED** that the Defendant not: commit a dangerous crime against children defined in A.R.S. 13-604.01 or custodial interference, or engage in conduct that would place the Plaintiff in reasonable fear of bodily injury; or threaten, intimidate, endanger, assault, unlawfully imprison, kidnap, harass, stalk, trespass upon or damage the property of, or commit any other disorderly conduct upon the Plaintiff and (Names and Dates of Birth):

- 
- Check if any person listed is a member of Plaintiff's household/family.
  - 2.  The Defendant shall not contact Plaintiff:  in person;  by phone;  in writing;  
 Other \_\_\_\_\_  
 The Defendant may contact the Plaintiff through legal counsel, legal process or with permission of the Court.
  - 3.  The Defendant shall not contact persons listed above:  in person;  by phone;  in writing;  
 Other \_\_\_\_\_  
 You can file an action for custody or visitation separately in Superior Court.
  - 4.  The Court finds that physical harm may otherwise result and, therefore, the Plaintiff is granted the exclusive use and possession of the residence at: \_\_\_\_\_  

(Address)

Effective: July 2004

Order of Protection: A.R.S. §§ 13-3602(D)-(J)

Case No. \_\_\_\_\_

The Defendant may return once with a law enforcement officer to obtain belongings.

5.  Defendant shall not go on or near where Plaintiff and/or \_\_\_\_\_  
 Reside(s) (Leave blank if protected): \_\_\_\_\_  
 Place of employment (Leave blank if protected): \_\_\_\_\_  
 School (Name or Address): \_\_\_\_\_  
 Other Locations: \_\_\_\_\_

6.  The Court finds that the Defendant represents a credible threat to the physical safety of the Plaintiff or other protected person and/or may inflict bodily injury or death on the Plaintiff. Upon service of this Order: The Defendant shall not possess, receive and/or purchase firearms or  ammunition. The Defendant shall transfer firearms immediately, but no later than 24 hours after service, to the following law enforcement agency: \_\_\_\_\_

7.  The Defendant received actual notice of this hearing and had an opportunity to participate. The Defendant shall complete  an approved domestic violence offender treatment program,  or a screening and any recommended program, at the following agency: \_\_\_\_\_ and provide the Court with written proof of completion no later than \_\_\_\_\_.

8.  Other Orders necessary for the protection of the Plaintiff and other designated persons: \_\_\_\_\_

9.  The Defendant shall appear for a hearing: Date and Time: \_\_\_\_\_

Address of Court: Street Address, City, Office/Room/Floor (Put individual court information here)  
**WARNING: IF YOU FAIL TO APPEAR, AN ORDER MAY BE ISSUED WITHOUT YOUR INPUT.**

10.  The Defendant received actual notice of this hearing and had an opportunity to participate. The Plaintiff or other protected person(s) is an intimate partner, as defined by 18 U.S.C. 921(a), or a child of an intimate partner or of the Defendant.

**BRADY applies**

\_\_\_\_\_  
 Judicial Officer

\_\_\_\_\_  
 Date

**CERTIFICATION**

I hereby certify that this is a true copy of the Order on file in this Court.

Judicial Officer or Clerk of the Court by: \_\_\_\_\_

**DESCRIPTION OF DEFENDANT**

SEX	RACE	DATE OF BIRTH	HEIGHT	WEIGHT	EYES	HAIR	SOC. SEC. NO.

**ALIAS (if known):** \_\_\_\_\_  
 Defendant is:  Military  Law Enforcement

# A.R.S. § 13-3601: Domestic Violence Definition



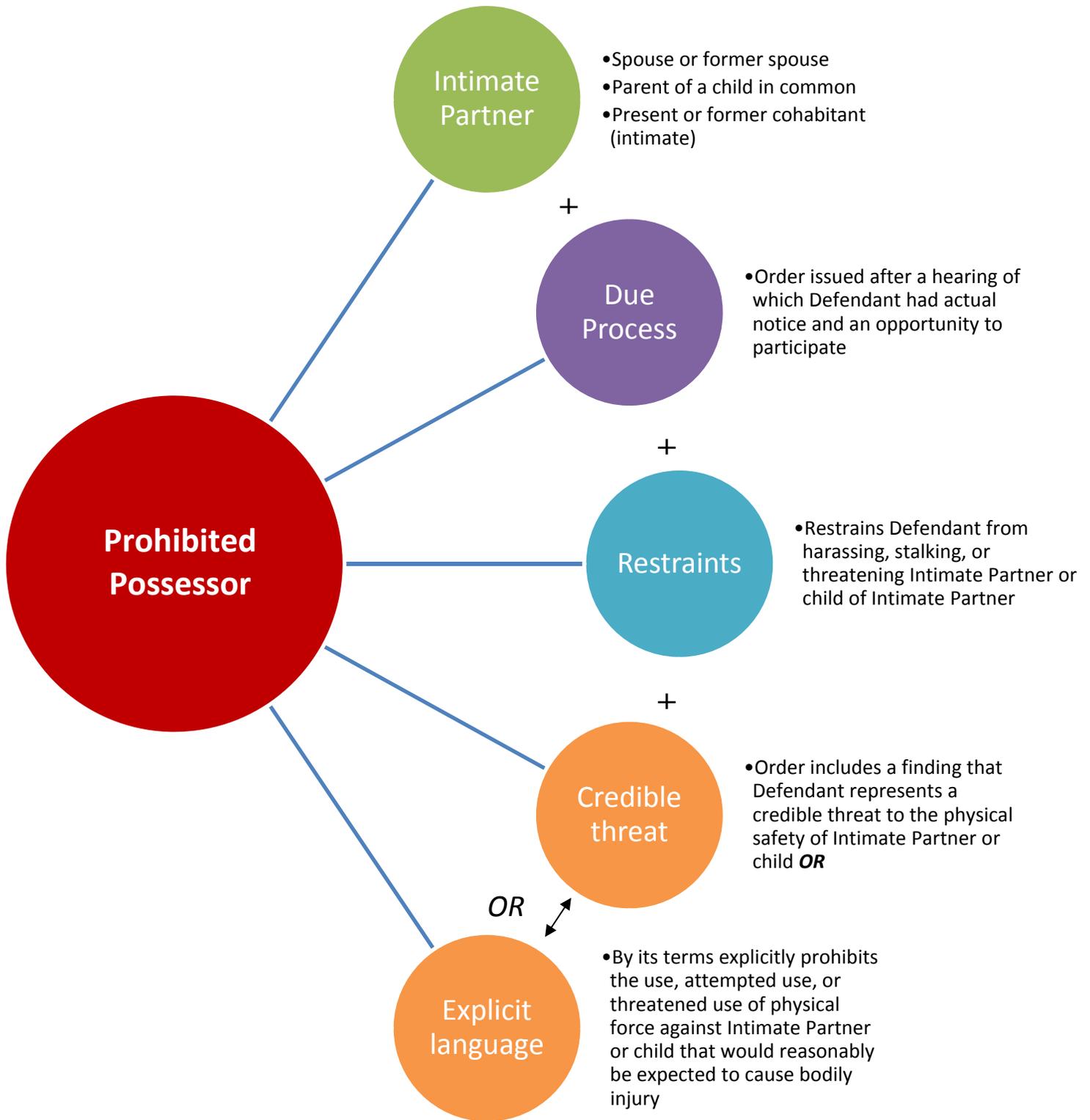
## Relationship

1. Married or formerly married
2. Residing or formerly residing in the same household
3. Parties have a child in common
4. One party is pregnant by the other
5. Victim and defendant are related (parent, grandparent, child, grandchild, brother, sister, parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law, sister-in-law)
6. Victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or who has resided in the same household as the defendant
7. Parties have a current or previous romantic or sexual relationship

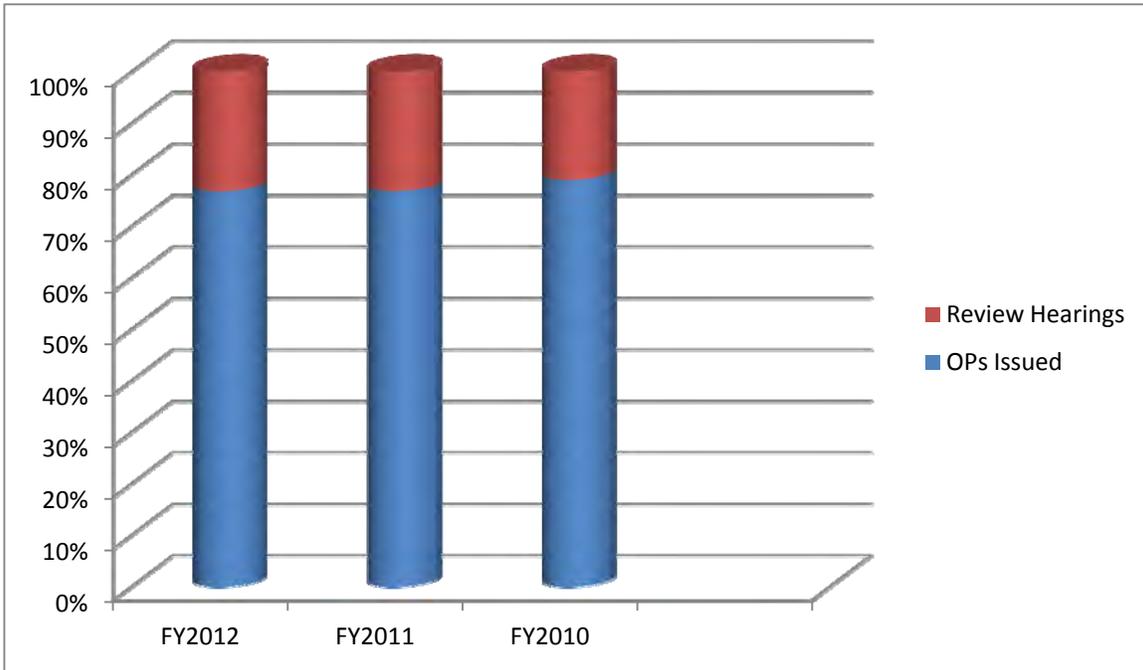
## Crime

- Dangerous crimes against children (13-705)
- Negligent homicide (13-1102)
- Manslaughter (13-1103)
- Murder, 2<sup>nd</sup> degree (13-1104)
- Murder, 1<sup>st</sup> degree (13-1105)
- Endangerment (13-1201)
- Threats/intimidation (13-1202)
- Assault (13-1203)
- Aggravated assault (13-1204)
- Custodial interference (13-1302)
- Unlawful imprisonment (13-1303)
- Kidnapping (13-1304)
- Sexual assault (13-1406)
- Criminal trespass, 3<sup>rd</sup> degree (13-1502)
- Criminal trespass, 2<sup>nd</sup> degree (13-1503)
- Criminal trespass, 1<sup>st</sup> degree (13-1504)
- Criminal damage (13-1602)
- Interfering with judicial proceedings (13-2810)
- Disorderly conduct (13-2904(A)(1), (2), (3), (6))
- Neglect, abandonment of animal (13-2910(A)(8))
- Cruel mistreatment of an animal (13-2910(A)(9))
- Preventing or interfering with use of a telephone in an emergency (13-2915(A)(3))
- Telephone harassment (13-2916)
- Harassment (13-2921)
- Aggravated harassment (13-2921.01)
- Stalking (13-2923)
- Surreptitious photographing (13-3019)
- Aggravated domestic violence (13-3601.02)
- Child/vulnerable adult abuse (13-3623)

# 18 U.S.C. § 922(g)(8)



## Review Hearings – Orders of Protection



### Review hearings may include:

- Uncontested cases in which the plaintiff is requesting dismissal of the order
- Cases that do not meet Brady “intimate partner” criteria

Year	OPs Issued	Review Hearings	%
FY2012	29,522	8,934	30
FY2011	28,997	8,754	30
FY2010	28,921	7,694	27

Note: Combined totals for general and limited jurisdiction courts

## ARIZONA JUDICIAL COUNCIL

### Request for Council Action

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<b>Date Action Requested:</b>	<b>Type of Action Requested:</b>	<b>Subject:</b>
March 28, 2013	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Legislative Branch Update

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#### **FROM:**

Jerry Landau, Government Affairs Director  
Amy Love, Legislative Liaison

#### **DISCUSSION:**

Mr. Landau and Ms. Love will update members on the 2013 Legislative Session.

#### **RECOMMENDED COUNCIL ACTION:**

Update and action on legislature.

**ARIZONA JUDICIAL COUNCIL**  
**LEGISLATIVE UPDATE**  
**MARCH 2013**

**AJC Proposals**

**HB2307: post-conviction relief; fees (Rep. Farnsworth)**

<http://www.azleg.gov/legtext/51leg/1r/bills/hb2307p.pdf>

In a capital post-conviction relief case the court is required to review for approval all submitted attorney fees and costs by appointed counsel. Permits the court to appoint a designee to review and approve the fees and costs. Current law is somewhat vague, it seems to require approval of attorney fees only for over 200 hours of work.

Title affected: 13

**HB2308: probate; omnibus (Rep. Farnsworth)**

<http://www.azleg.gov/legtext/51leg/1r/bills/hb2308h.pdf>

Permits the court to require arbitration of a dispute before the initial appointment of a fiduciary.

Allows the court to require anyone who seeks appointment as a guardian to furnish a full set of fingerprints for a criminal background check. Excludes employees of a financial institution and licensed fiduciaries. Requires the court submit the person's completed fingerprint card to the Department of Public Safety. Permits the Department of Public Safety to exchange this fingerprint data with the Federal Bureau of Investigation. A person seeking appointment as a guardian bears the cost of conducting the criminal background check. Prohibits the court from charging more than the actual cost of conducting the check.

Modifies the date by which guardians and conservators must submit their written reports to an annual deadline, pursuant to rules adopted by the Supreme Court.

Titles affected: 14, 41

**Bills of Interest**

**HB2240: small claims division; jurisdiction; limits (Rep. Stevens)**

<http://www.azleg.gov/legtext/51leg/1r/bills/hb2240h.pdf>

Increases the small claims court jurisdiction to \$3500.

Title affected: 22

**HB2459: justice of the peace courts (Rep. Boyer)**

<http://www.azleg.gov/legtext/51leg/1r/bills/hb2459p.pdf>

The “Title 22 Rewrite” bill from the Maricopa County Justice of the Peace bench. Modernizes language in title 22 and strives to make the language consistent throughout the title. Repeals antiquated sections and sections now or more properly addressed by court rule. However, the bill includes substantive changes to Title 22, as noted below.

- Page 6, Line 39. A.R.S § 22-201. Jurisdiction of civil actions  
Changes the term, “forcible entry and detainer” to “eviction”
- P. 6, line 40, §22-202. Venue of civil actions  
Rewrites the venue statute in civil cases to more closely conform to Superior Court.
- Page 8, Line 8, §22-204. Change of venue; grounds  
Rewrites the change of venue statute in civil cases to more closely conform to Superior Court change of venue statute.
- Page 11, Line 35, §22-261. Judgments that may be appealed.  
Any party to a civil action in a Justice of the Peace court may now appeal to the Superior Court a final judgment regardless of amount in controversy, current law the final judgment must exceed \$20.
- Page 15, Line 3, §22-314. Bail; preparation of schedule; collection; civil deposits  
Rewrites the “bond schedule” statute for Justice of Peace Courts to eliminate antiquated language.
- P. 15, line 23, §22-320. Trial by Jury  
Removes the requirement that a jury be demanded five days in advance in a criminal Justice Court Case.
- Page 17, Line 13. §22-424  
Rewrites the “bond schedule” statute for Municipal Courts to eliminate antiquated language. The bond schedule, pursuant to the bill is set by the Presiding Magistrate, not the individual judge as in current law.
- Page 19, Line 16. §22-515. Setting of trials; failure to appear; continuances  
In small claims court, the standard for granting continuances of hearings is changed from “most serious reasons” to good cause.

Delayed effective date: January 1, 2014

Title affected: 22

**HB2516: peace officers; firearms; court (Rep. Pierce)**

<http://www.azleg.gov/legtext/51leg/1r/bills/hb2516h.pdf>

Permits peace officers acting in their official capacity and carrying official peace officer identification, to possess a firearm in any court that is established pursuant to the Arizona constitution, any justice court, or municipal court.

Allows a presiding judge to establish rules or policies consistent with the law pertaining to the carrying of firearms by peace officers for the protection of the court.

Title affected: 38

**HB2600: judicial nominees; minimum requirements; records (Rep. Pierce)**

<http://www.azleg.gov/legtext/51leg/1r/bills/hb2600p.pdf>

Requires that the Commission on Appellate Court Appointments submit to the Governor the names of at least five persons to fill a vacancy in the office of a justice or judge of the Supreme Court or an intermediate appellate court. Not more than 60 percent of the nominees may be from the same political party. The Commission may reject an applicant by a 2/3 vote and submit fewer than five names with no more than 2 names from the same political party.

Requires that the Commission on Trial Court Appointments submit to the Governor the names of at least five persons to fill a vacancy in the office of a justice or judge of the Supreme Court or an intermediate appellate court. Not more than 60 percent of the nominees may be from the same political party. The Commission may reject an applicant by a 2/3 vote and submit fewer than five names with no more than 2 names from the same political party.

Requires that the Commission on Appellate Court Appointments and Trial Court Appointments record in the committee minutes how each member voted, and make the voting record public.

Contains a severability clause.

Title affected: 12

**SB1072: parenting time; relocation of child (Sen. Barto)**

<http://www.azleg.gov/legtext/51leg/1r/bills/sb1072s.pdf>

Requires a parent with joint or sole legal decision making authority, a person with third-party legal decision making authority or a child's legal guardian intending to change a child's physical residence provide any persons entitled to parenting time or court ordered visitation with at least sixty days written notice before a relocation takes place. Outlines requirements for the notice and provides for some exceptions. A served and filed notice of relocation must be accompanied by a proposed order permitting relocation as stated in the signed parenting plan accompanying the notice of relocation.

Allows the court to enter an appropriate order permitting relocation and approving the submitted parenting plan or set the matter for a hearing if the non-moving parent does not file a notice of objection within the specified twenty day time frame. If an objection is filed the moving party must file a petition requesting to move. The court may summarily rule on the petition unless adequate cause for hearing the matter is established by the pleadings, in which case it is required to set a date for a hearing on why the requested relief should or should not be granted. Authorizes the court to impose sanctions on any party who seeks relief without good cause.

## **RETIREMENT BILLS**

### **HB 2294: Retirement; EORP; superior court commissioners (Rep. Robson)**

<http://www.azleg.gov/legtext/51leg/1r/bills/hb2294p.pdf>

Repeals the provision of SB 1609 from two sessions ago placing Superior Court Commissioners appointed on or after July 1 of the first fiscal year after the social security administration approves this state's section 218 agreement in ASRS.

Title affected: 38

### **HB2608: EORP; closure; defined contribution (Rep. Lovas)**

<http://www.azleg.gov/legtext/51leg/1r/bills/hb2608h.pdf>

Members of the Elected Officials Retirement Plan (EORP) who are members on June 30, 2013, remain members of EORP. Elected officials who are elected or appointed on or after July 1, 2013 are placed in the newly created Elected Officials' Defined Contribution Plan (EODC) administered by the Arizona State Retirement System (ASRS). All elected members of EORP on June 30, 2013 may remain members of the plan under the terms and limitations in the law

Requires the EODC plan be a qualified government plan under § 401(a) of the IRC, and be exempt from taxation under § 501 of the IRC.

Defines *normal retirement date* for members of the EODC as 65 years of age.

Requires a member of the EODC to contribute 8% of gross compensation via salary reduction into the annuity account and the employer to contribute 5% of the member's gross compensation to be credited pro rata to the member's annuity account. Provides that member and employer contributions and earnings immediately vest.

Allows retired and disabled members of the EODC plan to participate in group health and accident coverage administered by the DOA or by the ASRS, but retired members of the EODC are ineligible for ASRS and EORP retiree health care subsidy benefits.

EODC members are ineligible for EORP disability pension benefits. Requires EODC employees and employers to contribute to the Long-Term Disability Plan.

Repeals the provision of SB 1609 from two sessions ago placing Superior Court Commissioners appointed on or after July 1 of the first fiscal year after the social security administration approves this state's section 218 agreement in ASRS.

Appropriates \$3,500,000 from the general fund in each FY 2013-14 through 2042-43 to the EORP Fund to supplement the normal cost and to amortize the unfunded accrued liability; monies may not be used to increase benefits.

Requires each employer, from July 1, 2013 through June 30, 2043, to contribute 23.5% of payroll for all employees who are members of EORP or EODC, such monies cover the normal cost of EORP, amortize the unfunded accrued liability of EORP, and contribute to each EODC member annuity account.

Title affected: 38

3/25/13

ARIZONA CODE OF JUDICIAL ADMINISTRATION

**Proposal Cover Sheet**

**Part 7: Administrative Office of the Courts**

**Chapter 2: Certification and Licensing Programs**

**Section 7-208: Legal Document Preparer**

- 1. Effect of Proposal.** The proposal would clarify that a certified legal document preparer (“CLDP”) has the authority to execute 20-Day Notices, mechanic liens, HOA notices of liens (condominium and planned community) and health care liens,
- 2. Significant new and changed provisions.** The proposed amendment to ACJA makes certain minor wording clarifications, provides CLDPs with the authority to “record” documents on behalf of a customer (CLDPs already have authority to file and arrange for service) and resolves whether a CLDP has the authority to execute 20-Day Notices, mechanics liens, HOA liens (condominium or planned community) or health care liens on behalf of a customer.
- 3. Committee actions and comments.** None
- 4. Controversial/Historical Issues.** On May 24, 2012, the Board of Legal Document Preparers of the Supreme Court (“LDP Board”) entered an order in an administrative proceeding involving a property management company (sometimes referred to as a “community association management company” (“CAM”)) for, among other things, violating the administrative code by signing notices of lien on behalf of its HOA customers. The CAM applied for special action relief in Superior Court.

The Superior Court entered the final judgment finding that the CAM “does not exceed the scope and authority of a CLDP or violate Rule 31 or the Arizona Code of Judicial Administration (“ACJA”) when it directs its CLDP employees to sign notices of lien as the authorized representative of the ... homeowner associations for which (the CAM) serves as the managing agent.” The LDP Board opted not to appeal that judgment.

In an effort to resolve issues related to a CLDP’s authority to execute certain lien documents, on November 21, 2012, Administrative Order No. 2012-85 was entered on an emergency basis adopting several changes to ACJA § 7-208(F)(1). The pertinent part of the amendment to § 7-208 was: “A certified legal document preparer may not sign any document on behalf of or as an agent or authorized representative of a person or entity.”

A subsequent Administrative Order No. 2012-94, was entered on December 6, 2012, retroactively rescinding Administrative Order No. 2012-85. Further, the Court directed the Certification and Licensing Division (“CLD”) to solicit public comment regarding whether certified legal document preparers “(a) should continue to be allowed to draft, execute, or serve 20-Day Notices, and (b) should be allowed to execute liens.”

After a review of the public comments and Administrative Order No. 2013-25, CLD

prepared the proposed amendments to ACJA 7-208(F).

**5. Recommendation.** Approval of the proposed changes to ACJA 7-201(F).

# COMMENTS

## A. Background

Administrative Order 2012-94 directed the Certification and Licensing Division (“CLD”) to solicit public comment regarding whether certified legal document preparers (“LDP”) “(a) should continue to be allowed to draft, execute, or serve 20-Day Notices, and (b) should be allowed to execute liens.” CLD reviewed the numerous comments regarding these issues and the history and comments are generally discussed below.

In 2011, a proposed amendment to Rule 31 was filed. See Supreme Court No. R-11-0001. This proposed amendment, requested in part to modify Rule 31 to allow LDPs to execute homeowner liens. The Supreme Court did not amend Rule 31.

Two different Superior Court Judges have addressed the issue of LDP executing documents that are in the nature of those addressed in the comments discussed below. In *Board of Legal Document Preparers v. Janet Summers et. al.*, CV2009-010336, it was held that the preparation of a 20-Day Notice constitutes the practice of law. In *AAM, LLC v. Board of Legal Document Preparers et. al.*, LC2012-000317DT, it was held that the execution of a HOA lien did not constitute the unauthorized practice of law or violate the ACJA.

In addition, while not exactly on point, the State Bar’s Unauthorized Practice of Law Committee has addressed related issues in Advisory Opinions UPL 04-01 and 12-01. UPL 04-01 found that the preparation of a mechanics lien was the practice of law. UPL 12-01 found that association management

companies could prepare notices of liens if the association management company used an LDP but the LDP could not sign the lien.

Finally, the LDP Board has long held (and acted accordingly) that LDPs signing documents on behalf of their customers under the authority of a contract or POA is prohibitive and contrary to the Board's mandate to protect the public because the acting of signing in a representative capacity exceeds the present authority of an LDP.

Pursuant to Rule 31(d)(24), LDPs have been authorized to practice law in a limited manner as allowed by the ACJA. It is important to note that the entities/individuals (construction, medical and HOA) retaining LDPs to prepare and execute the 20-Day Notices and the liens are "sophisticated" consumers utilizing these documents in the ordinary course of their business and should understand the risk of utilizing documents that are not properly prepared. Through their comments to the proposed changes, these sophisticated consumers have supported the concept of LDPs performing these activities and further asserted that allowing this activity is necessary for the proper functioning of their respective industries. With that background, the 20-Day Notices and liens are more specifically discussed below:

20-Day Notices. The comments were almost unanimously in favor of allowing LDPs to prepare and execute 20-Day Notices. The comments assert that the LDPs practice of preparing and executing 20-Day Notices has been ongoing for a number of years. Given the number of 20-Day Notices filed

annually, there have been no significant disciplinary issues raised as a result of the LDPs performing services related to the 20-Day Notices.

HOA Liens. By statute, HOA liens for condominium and planned communities are created as a matter of law and there is no statutory notice or execution requirement to create or perfect the lien. The comments suggest that the recording of a notice or lien with regards to HOA liens is a proactive approach assuring that the title insurance companies is placed on notice so that the lien is paid/removed at the time of sale. Therefore, while allowing LDPs to sign HOA condominium and planned community liens diverges from the current practice of generally prohibiting LDPs from executing documents, the executing and recording of these liens creates no additional rights in favor of the HOA. The comments were almost uniformly in favor of allowing LDPs to execute these documents.

Mechanic's liens. While generally speaking the comments were in favor of allowing the execution of mechanic's liens, the comments did not voice as strong an opposition to regulating an LDP's ability to execute a mechanic's lien. Unlike HOA liens, mechanic's liens are not automatically created by statute and a mechanic's lien creation requires the proactive efforts of an individual. Generally, the comments recognized that mechanic's liens do create rights against third parties and further recognize that there are far fewer mechanic's liens than 20-Day Notices. Thus prohibiting an LDP from executing a mechanic's lien would not have the same consequences as prohibiting execution of a 20-Day Notice on the construction industry. As with

medical liens discussed below, the statutes authorize an owner's agent to execute mechanic's liens.

Medical liens. There were fewer comments with regards to medical liens. As with mechanic's liens, medical liens are not automatically created by statute and require the proactive efforts of an individual. The comments, however pointed out that the medical liens statutes specifically allow agents to execute medical liens on behalf of the principal. The comments point out that if an LDP's ability to execute a medical lien is regulated by the Court, LDPs will be unable to perform a function specifically authorized by statute.

The comments, as to all liens, appear to be framing the issue as to whether the public is harmed if an LDP executes these documents on behalf of the LPDs' customer. The customers have asserted that the true harm to the industry will result in the inability of the LDPs to perform or continue to perform these functions. These harms will be evidenced by both increased cost and a loss of efficiencies. Staff notes that the 20-Day Notices and liens discussed in the comments are prepared for sophisticate consumers who should be able to judge the risk of electing whether to utilize an LDP to prepare and execute the document.

#### **B. Administrative Order No. 2013-25**

Administrative Order No. 2013-25 directed CLD to solicit comments to the proposed ACJA § 7-208 language presently being considered by the Arizona Judicial Council. There were far fewer comments to Administrative Order No.

2013-25 than to Administrative Order No. 2012-94 and all comments were in favor of the proposed language.

One comment suggested an additional change:

“The concern focuses on the phrase “any document” in the second sentence of ACJA § 7-208(F)(1)(e) (as it is proposed to be amended). It appears clear that the phrase “any document” in the second sentence is meant to refer to the “legal forms and documents” discussed in the first sentence. To make that more clear, we suggest adding the word “such” between the words “any” and “document”, i.e., “A certified legal document preparer may not sign any such document he or she prepares for or provides to a person or entity....”

**ARIZONA CODE OF JUDICIAL ADMINISTRATION**  
**Part 7: Administrative Office of the Courts**  
**Chapter 2: Certification and Licensing Programs**  
**Section 7-208: Legal Document Preparer**

**Sections A through E – No changes.**

**F. Role and Responsibilities of Certificate Holders. In addition to the requirements of ACJA § 7-201(F) the following requirements apply:**

1. Authorized Services. A certified legal document preparer is authorized to:
  - a. Prepare or provide legal documents, without the supervision of an attorney, for an person or entity ~~or a member of the public~~ in any legal matter when that person or entity ~~or person~~ is not represented by an attorney;
  - b. Provide general legal information, but may not provide any kind of specific advice, opinion, or recommendation to a ~~consumer~~ person or entity about possible legal rights, remedies, defenses, options, or strategies;
  - c. Provide general factual information pertaining to legal rights, procedures, or options available to a person or entity in a legal matter when that person or entity is not represented by an attorney;
  - d. Make legal forms and documents available to a person or entity who is not represented by an attorney; and
  - e. File, record, and arrange for service of legal forms and documents for a person or entity in a legal matter when that person or entity is not represented by an attorney. A certified legal document preparer may not sign any document he or she prepares for or provides to a person or entity, but this provision does not prohibit the signing of (i) 20-Day Notices prepared pursuant to A.R.S. § 33-992.01, (ii) notices related to condominium or planned community association liens that are created pursuant to A.R.S. § 33-1256 (condominiums) and § 33-1807 (planned communities); (iii) health care provider liens that are created pursuant to A.R.S. § 33-932, or (iv) mechanic's liens created pursuant to A.R.S. § 33-993.

**Section F (2-8) – No changes.**

**Sections G through L – No changes.**

ARIZONA CODE OF JUDICIAL ADMINISTRATION

**Proposal Cover Sheet**

**Part 1: Judicial Branch of Administration**

**Chapter 6: Records**

**Section 1-602: Digital Recording of Court Proceedings**

- 1. Effect of the proposal:** The initial issue of the document specifies an annual review by Commission on Technology. Changes are being proposed as a result of a recent review. Most changes are editorial in nature. Three areas of note include addition of a system check requirement, increased detail regarding responsibilities of the court’s transcript coordinator, and explicit statement that the audio record shall be the official source for a transcript in the absence of a certified court reporter.
- 2. Significant new or changed provisions:**

  - Adds system check requirements matching those used in ACJA 5-208 (Interactive Audiovisual Proceedings).
  - Adds “format” to the existing list of requirements elaborated in ACJA §§1-504 and 1-506. Digital recording technology used must be capable of outputting a non-proprietary format, according to ACJA § 1-506(D)(5)(b). All products reported in information technology strategic plans today meet the format requirement.
  - Alleviates any misunderstanding by explicitly stating the condition in which the electronic recording acts as the official record. This complements the Supreme Court Rule 30(b)(4) statement of when the court reporter records acts as the official record.
  - Specifies that the transcript coordinator in the court provides recordings to the authorized transcribers. Defines authorized transcribers as in SCR 30.
  - Changes the review frequency for the code section from “once a year” to “periodically” now that the technology and related practices have matured.
- 3. Committee actions and comments:** Staff performed the initial review, solicited changes from subject matter experts, and returned changes to COT. Members revised some language and authorized posting of the proposed revisions on the ACJA Web Forum for comments. Members of LJC, COSC, the Clerk’s Association, the Superior Court Administrators Association, and LJCAA were encouraged to comment on specific issues from November 24<sup>th</sup>, 2012 through February 4<sup>th</sup>, 2013 using the AJCA Web Forum. A total of three comments were received of which one was addressed by changes to the proposed language. One comment was a question about the meaning of text that was stricken and the other was a request to emphasize the scope of the requirements as being for official court records only.
- 4. Controversial issues:** None. The technology used for digital recording has proven to be very stable; updates provide best business practices that have evolved over the six years of the document’s existence.
- 5. Recommendation:** Recommend approval of the proposed changes to the document.

**Comments and Responses to ACJA Section 1-602: Digital Recording of Court Proceedings**

PARAGRAPH	COMMENT	RESPONSE
(E)(3)	What does “consideration to probable transcript volume” mean?	KTR could not predict the practical effect of its recommendations on courts 6 years ago, so struck a cautious tone. Time has proven that caution to be unwarranted.
(C)(2)(b)	Does the language indicate that AJACS “shall” now link to the audio record? It does not currently have that capability.	It previously read “shall allow for the ability to link.” To preclude confusion, wording changed to “may link with another internal court system”
General comment	It’s not immediately clear that these requirements apply only to recordings that get used as official court records. Clerks make recordings for other purposes, too.	Confirmed that paragraph (B) states application is only for recordings “created as the official record of a court proceeding.”

**ARIZONA CODE OF JUDICIAL ADMINISTRATION**  
**Part 1: Judicial Branch Administration**  
**Chapter 6: Records**  
**Section 1-602: Digital Recording of Court Proceedings**

**A. Definitions.** In this section, unless otherwise specified, the following definitions apply:

“Backward compatible” means that software can use files and data created with an older version of the same software program. Hardware is backward compatible if it can run the same software as the previous model.

“Confidence monitoring” means listening to the electronic verbatim recording as it is being made from the storage medium in real time by use of headphones or other device to ensure the system is operating properly.

“Migration” means the process of upgrading to new technologies while preserving accessibility to existing records. It also means the process of moving electronic data from one storage device or media to another.

“Refresh” means the copying of a recording or a whole storage medium for the purpose of preserving or enhancing the quality of the recording.

“System check” means a test recording made to confirm that all components of the recording and playback system are functioning properly.

**B. Purpose.** Digital recording in the courtroom, whether audio or video, shall meet the required standards listed below when created as the official record of a court proceeding. In addition to setting minimum standards for digital recordings, this section also contains storage requirements for electronically-maintained court reporters’ notes and recommendations intended to guide electronic recording operations. This section is not intended to mandate digital recording in the court.

**C. Technical Requirements.**

1. Equipment.

- a. Courts shall comply with the format, accessibility, migration, storage, and retention requirements contained in ACJA §§ 1-504(~~EF~~)&(FG) and -506(D)(45)(b) when procuring and using digital recording equipment.
- b. The recording system shall use equipment having industry standard connections.
- c. Peripheral devices used for transcription (e.g. foot pedals) shall connect with the system using standard interfaces.
- d. Toggling mute buttons shall not be used on microphones. Microphones that mute

only when a button is depressed are allowed. Microphones that visually indicate when they are on and off are recommended to increase the likelihood that confidential communications are not recorded unintentionally.

- e. The recording system shall ~~employ be capable of~~ confidence monitoring. ~~to confirm, at a minimum, that the channels are receiving a signal.~~

## 2. Annotation.

- a. The recording system shall include an interface that allows the user to create an index of the ~~event~~ proceeding being recorded, for use in identifying a desired portion of the hearing.
- b. The index ~~shall allow for the ability to~~ may link between, the verbatim audio record of a ~~hearing proceeding and with~~ another internal court management system.
- c. The recording system shall provide a search function to allow searching of a recording's annotations.

## 3. Playback.

- a. The recording system shall allow for channel isolation to aid in the identification of different parties for transcription purposes.
- b. The recording system shall include tools to allow users to clip portions of a proceeding to accommodate partial record requests on CD.
- c. The recording system shall allow for playback of recordings in the courtroom while simultaneously recording courtroom events.
- d. The recording system shall produce an audio or video record that can be placed on a standard CD-R with no licensing restrictions for playback, including no licensing restrictions on playback software.
- e. The system shall provide the ability to save files to an industry standard format such as AVI, MPG, or WAV playable by non-proprietary readers.

- 4. Storage and Backup of Recordings. Recordings shall have a file size/compression rate to allow, ~~at a minimum,~~ approximately six hours of recording to fit on a single CD or other non-rewriteable optical media.

## **D. Operational Requirements.**

### 1. Procurement.

- a. The court shall obtain a minimum one year warranty on all recording systems and

related equipment as part of the installation services.

- b. The court shall obtain a minimum of both staff training and train-the-trainer training as part of the installation services.

## 2. Operation of Equipment.

- a. Staff operating the recording system shall be adequately trained to proficiently operate the system.
- b. A system check shall be made sufficiently in advance of court proceedings to assure to guarantee proper operation of electronic recording equipment each day, prior to court beginning. ~~The system check shall, at a minimum, consist of a test recording that confirms all components of the recording and playback system are functioning properly.~~ The court shall establish a procedure for employees to follow in the event of an equipment malfunction. A system check shall also be performed prior to conducting the initial proceeding following any loss of power or recording system shutdown.
- c. Courts shall establish policies addressing when recording systems are to be turned on and off consistent with judicial necessity.
- d. Courts shall assign one or more staff members to act as the point-of-contact for operational and repair issues. The point-of-contact staff person shall be trained in operating the equipment, as specified in subsection ~~(DE)~~(32), and in procedures to be followed in resolving operational issues, including contacting vendors.

## 3. Security. The court shall establish procedures to limit access to recordings of sealed and confidential matters, such as use of appropriate labeling or segregating recordings of non-public hearings.

## 4. Official vs. Unofficial Recordings.

- a. When no certified court reporter is present in a court proceeding, the electronic recording shall be the official record, except as provided by Supreme Court Rule 123(d)(4), and any transcript thereof shall be prepared in accordance with Section 5 below.
- ~~a~~b. When a certified reporter records a proceeding in superior court that is simultaneously recorded by electronic recording equipment, the court reporter's record shall be the official record.
- ~~b~~c. When a certified reporter records a proceeding in a limited jurisdiction court that is simultaneously recorded by electronic recording equipment, the judicial officer shall determine which recording is the official record, and the judicial officer's decision shall be noted on the record.

5. Transcription.

- a. Official transcripts of court proceedings prepared from electronic recordings shall comply with the Arizona Manual of Transcript Procedures and shall be produced by either a certified reporter, a court employee or a transcriber under contract with a court.
- b. The court shall establish procedures to ensure that authorized transcribers notify the court when they encounter poor-quality recordings, and that these reports are investigated and any problems remedied.
- c. Courts shall assign an individual to act as a transcript coordinator to ensure timely ~~production~~ provision of electronic recordings of proceedings to authorized transcribers, as defined in Supreme Court Rule 30, when of transcripts required for appellate proceedings. ~~This~~ The person coordinator and authorized transcribers should be familiar with the rules and practices involved in transmitting the verbatim record to the appellate court.

6. Records Management.

- a. Courts shall identify equipment and establish procedures necessary for archiving and managing electronic records of court proceedings, for ensuring the timely production of transcripts required for appellate proceedings, and for providing public access to the records in compliance with Rule 123, Rules of the Supreme Court and ACJA §§ 1-504 and 4-506.
- b. Courts shall preserve electronic notes of proceedings generated by court reporters in a generic format that will permit them to be interpreted by other reporters in the event the author is not available to prepare a transcript. For example, the translated version of the notes may be stored in a “.pdf” format accompanied by an electronic copy of the author’s personal dictionary.
- c. Courts shall conduct an annual review of the readability of ~~all~~ digital recordings and migrate recordings to a non-proprietary format as necessary to ensure access throughout the applicable retention period.
- d. Courts shall ensure continued accessibility via a planned migration path so devices, media, and technologies used to store and retrieve official verbatim recordings are not allowed to become obsolete and are promptly replaced or upgraded.
- e. Courts shall ensure that any new equipment or software replacing that used in an existing digital recording system is backward compatible and shall obtain a vendor certification that the system will convert 100 percent of the audio or audio/video and index data to the new system so access to existing official records is never impeded.
- f. Courts shall periodically refresh audio files in order to ensure their accessibility for

as long as the applicable records retention schedule requires. These procedures may require recopying of files to new media.

7. Storage and Backup of Recordings.

- a. Backup shall be performed at least daily, and periodically reviewed for continuing viability as required by subsection (E)(6).
- b. Retention of electronic recordings shall be in compliance with applicable records retention schedules.

**E. Recommended Practices.** This subsection identifies best practices in procuring and operating digital recording systems.

1. Procurement. The court should procure only from vendors who possess necessary state contractor licenses required to perform the work of installing the electronic recording systems in courtrooms.

2. Operation of Equipment.

- a. An alternative recording system should be available for use in the case of primary equipment failure.
- b. To the extent possible, courts should have properly trained personnel dedicated to the operation of electronic recording equipment. Training should be tailored to the specific needs of the recording system and court operations. Training should include but not be limited to the following:

- Storing and copying of records including partial records.
- Special handling of sealed or confidential hearings.
- Creation and retrieval of annotation files.
- Troubleshooting of equipment and recording quality as appropriate for the system, vendor, and the resources of the courts.
- Creating backups of files.
- Playing back a recording.
- Confidence monitoring while a recording is being made.
- Adjusting microphone volume.
- Microphone operations, including muting techniques.

~~3. Transcription. When implementing electronic recording technology, consideration should be given to probable transcript volume.~~

43. Public Access Fees. Courts may charge reasonable fees for copies of audio or video recordings of court proceedings, consistent with the requirements of Rule 123, Rules of the Supreme Court. The court may waive or defer such fees as it deems appropriate or where

law requires such waiver or deferral.

54. Storage and Backup of Recordings.

- a. Where possible, an additional backup should be made for offsite storage purposes.
- b. Simultaneous storage to multiple devices is recommended, for example, recording to the local computer in the courtroom and simultaneously storing to a remote server. Simultaneous storage is not a substitute for the requirement for daily backup described in subsection (D)(7).
- c. Each recording should be annotated with the case number or numbers of the individual sessions included in the recording to allow the desired point in the recording to be referenced by a case management system or electronic docket.
- d. Caution should be exercised when labeling recordings stored on a CD or DVD to ensure the labeling method employed will not expose the disc to damaging ink or adhesive-borne solvents and will not impair the disc's balance during playback. The label should identify the hearing date, location, and hearing officer.

**F. Periodic Review.** Due to the changing nature of technology, these standards shall be reviewed ~~once a year~~ periodically by the Commission on Technology to identify areas requiring updating or revision.