

AGENDA

ARIZONA JUDICIAL COUNCIL
Arizona State Courts Building
1501 West Washington, Room 119
Phoenix, AZ 85007

October 25, 2012

9:30 a.m. Welcome Chief Justice Rebecca White Berch

Tab No.

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

(2) Approval of 2013 Meeting Chief Justice Rebecca White Berch
Dates

Study / Update Session: (Possible Adoption/Action of Various Reports)

9:40 a.m. Strategic Agenda and Other
Initiatives Update..... Chief Justice Rebecca White Berch

10:00 a.m. (3) Probate Initiatives Update Ms. Nancy Swetnam
Guardian Review Program Ms. Star Felty

10:20 a.m. Automation 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.

Action Items:

10:35 a.m. (4) Judicial Branch Legislative Package Mr. Jerry Landau
..... Ms. Amy Love
Elected Officials Retirement Plan (EORP) Mr. Pete Dunn

11:30 a.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

**Date Action
Requested:**

October 25, 2012

**Type of Action
Requested:**

Formal Action/Request

Information Only

Other

Subject:

Approval of Minutes

FROM:

Lorraine Smith, Staff to the Arizona Judicial Council

DISCUSSION:

The minutes from the June 18, 2012 meeting of the Arizona Judicial Council are attached for your review.

RECOMMENDED COUNCIL ACTION:

Approve the minutes as written.

ARIZONA JUDICIAL COUNCIL
JW Marriott Starr Pass Resort
3800 W. Starr Pass Blvd., Tucson H-J
Tucson, AZ 85745

June 18, 2012

DRAFT Meeting Minutes

Council Members Present:

Chief Justice Rebecca White Berch
Judge Louraine Arkfeld (*retired*)
Jim Bruner
David Byers
Judge Norman Davis
Mike Hellon
Judge Douglas Holt
Judge Joseph Howard
Michael Jeanes
Emily Johnston

Joe Kanefield
Gary Krcmarik
Judge David Mackey
William J. Mangold, M.D., J.D.
Judge Robert Carter Olson
Judge Antonio Riojas, Jr.
Judge Sally Simmons
George Weisz
Judge David Widmaier
Judge Lawrence Winthrop

Council Members Absent:

Jose A. Cardenas, Esq.
Judge Rachel Torres Carrillo
Athia Hardt

Yvonne R. Hunter
Janet K. Regner

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
Ashley Dammen
Karl Heckart
Paul Julien
Kevin Kluge
Jerry Landau
Jennifer Liewer
Amy Love

Alicia Moffatt
Nina Preston
Jodi Rogers
Jeff Schrade
Lorraine Smith
Nancy Swetnam
Cindy Trimble
David Withey

Presenters and Guests Present:

Justice Scott Bales
Bob Beecher
Jeanette S. Bloss
Julie Borgna

Margaret McKenna
John Phelps
Tom Peterson
Lisa M. Price

Judge Peter Cahill
Roger Coventry
Amelia Craig Cramer
Tom Curti
Robert Fleming
Gwen Gorbette
Phil Grant
Amy Hubbell
Yolanda Kennedy
Elizabeth Koch
Teresa Lancaster

Judge Jay Polk
J.R. Rittenhouse
Evelyn Saunders
Dannette Schultz
Bob Sears
Denice Shepherd
Judge Roxanne Song Ong
Sylvia A. Stevenson
Beverly Tencza
Peggy Van Norman
Theresa Whitfield

Chief Justice Rebecca White Berch, Chair, called the meeting to order at 1:30 p.m., at the JW Marriott Starr Pass Resort, 3800 W. Starr Pass Blvd, Tucson, Arizona. The Chair welcomed those in attendance and recognized Mr. Gary Krcmarik, the Council's newest member, replacing Ms. Karen Ferrara as the Court Administrator member. The Chair noted Vice Chief Justice Andrew Hurwitz has been appointed and confirmed to the Ninth Circuit Court of Appeals. She welcomed Justice Scott Bales to the meeting.

Approval of Minutes

The Chair called for any omissions or corrections to the minutes from the March 29, 2012, meeting of the Arizona Judicial Council. There were no other substantive changes.

MOTION: To approve the minutes from the March 29, 2012, meeting of the Arizona Judicial Council, with minor stylistic edits. The motion was seconded and passed. AJC 2012-08.

Committee on Improving Judicial Oversight and Processing of Probate Court Matters Update

Mr. Mike Baumstark, Deputy Director of the AOC, provided introductory remarks on the history and process of the Committee. He presented an overview on four parts being recommended for approval: training; Arizona Code of Judicial Administration (ACJA) § 7-202: Fiduciaries; probate forms; and statewide fee guidelines. Mr. Baumstark noted the proposals represent a starting point for implementing the Committee's recommendations, not the end. He stated the overall recommendation is to stay the course as recommended by the Probate Committee.

Mr. Jeff Schrade, Director, and Mr. Paul Julien, Judicial Education Officer with the Education Services Division of the AOC, presented information and an outline on the proposed training for judicial officers, court appointed attorneys, and unlicensed fiduciaries serving as guardians, conservators, and personal representatives. Mr. Julien noted that the programs will be taped and made available for future use beyond the initial trainings.

Mr. George Weisz suggested the training include the catalysts that got us to this point, as highlighted in the *Arizona Republic* articles. He suggested that the training show those abuses and what can happen as a result.

Mr. Mike Hellon stated his primary concern is the potential conflict of a family member guardian looking out for their inheritance, rather than the well being of the ward. He asked for some assurance that the training program includes a strong recommendation to the Probate Court to put an ongoing mechanism in place to try to identify when such a situation occurs and how to deal with it.

Ms. Nancy Swetnam, Director of the Certification and Licensing Division for the AOC, presented information on the proposed training and curriculum outline for court-appointed investigators. Ms. Swetnam noted that staff has not received any objections to the proposed outline.

MOTION: To approve the training outlines for both probate and court investigators, as presented. The motion was seconded and passed.
AJC 2012-09.

Ms. Swetnam presented proposed code changes to ACJA § 7-202: Fiduciaries. She noted public comment was received and a public forum for stakeholders was held, and based on feedback received, changes were incorporated. Ms. Swetnam stated the most significant issue concerns the services a licensed fiduciary may perform in uncontested cases without the assistance of an attorney. She noted the majority of fiduciaries would recommend an attorney review the account and prepare the petition for the filing of the account. Ms. Swetnam reported an informational session for fiduciaries will be offered over the summer.

Ms. Cindy Trimble and Ms. Ashley Dammen, AOC Probate Project Coordinators assigned to oversee implementation of the probate report recommendations, presented information on ACJA § 3-302: Probate Forms to include forms 1-4 (preferred original forms) and forms 5-9 (conservator account forms) and their instructions. Ms. Trimble provided additional handouts on the forms. She noted court authorization is needed for Form 9: Simplified Conservator's Account. Ms. Trimble stated they have received and reviewed stakeholder comments and tried to incorporate where possible.

Judge Olson expressed concern regarding assets not denominated in dollars. He noted if investments are moved down below in the form, this could result in reporting errors.

Ms. Swetnam presented ACJA § 3-303: Fee Guidelines. Mr. Gary Krcmarik provided comments regarding competitive bidding. He noted that Coconino currently pays \$55 an hour.

The Chair called for public comment on the three code sections presented and limited public comment to five minutes per person.

Ms. Lisa M. Price, Principal Fiduciary for Entrust Fiduciary Services, provided comment on ACJA 7-202. She expressed concern with fiduciaries being allowed to prepare certain legal documents and stated the petition and approval of the accounting should be done by counsel. Ms. Price noted this could lead to fee disputes. She expressed concern regarding fee guidelines and the outlining of timeframes to complete certain tasks. Ms. Price noted that putting in restrictions will lead to more court time and more administrative costs, and she would like to see them removed from the guidelines. Ms. Price stated that as a professional, she still doesn't understand the forms and was not sure if a non professional would be able to figure them out. She noted they are extraordinarily complicated, and she doesn't see a benefit to the courts, clients, or interested parties. Ms. Price commented that she didn't think the other schedules (inventory and sustainability calculation) are necessary.

Ms. Price suggested that if the forms are approved, a data collection should be done to see what the increased administrative and court costs are

Mr. Hellon expressed his concern with the new forms not capturing unrealized gain or loss of an asset, i.e., change in market value of a home or stock portfolio. He noted the old forms capture this information, but the new forms go in the wrong direction

Mr. Robert Fleming, attorney in Tucson, provided public comment. He stated the fee guidelines are wrongheaded, enshrine the hourly fee, and punish innovation and efficiency. Mr. Fleming spoke on the fiduciary filing issue. He noted that as an attorney of record, as an ethical matter, he would continue to offer the same services unless he withdraws, then he is unrepresented for "all" purposes.

Mr. Fleming referenced the "Fickett" case regarding a malpractice issue for a lawyer not supervising work being done by his client. He noted that Arizona was one of the first states to adopt National Guardianship standards, and these new forms will jettison all of this work to save costs. Mr. Fleming stated that attempting to simplify this for pro pers won't happen unless it is permissive and not mandatory. He added that the process will not be more transparent if it doesn't have account information. Mr. Fleming suggested the solution is to make the use of the forms permissive and allow judges in individual cases to mandate them.

Mr. Michael Jeanes asked about a possible solution for the guidelines. Mr. Fleming suggested using a simple rule that no fiduciary or attorney is permitted to charge a fee of more than a designated dollar amount for a year without prior court approval.

Ms. Denice R. Shepherd, attorney and fiduciary, provided public comment. She noted that having an attorney review is not a duplication of effort if it deals with a legal review. Ms. Shepherd stated she reviews to make sure it has been done according to the rules, that it makes sense, and will save court time, which is a benefit to the ward. She noted that fiduciaries should not be asking for affirmative relief.

Ms. Shepherd stated that bonding companies do not want to issue bonds for fiduciaries not represented by an attorney, and a bond is only way the estate stays whole. She noted that if someone wants her as their attorney, she must review their account, and she will tell them this up front, which is the only way to ensure the ward is protected.

Ms. Shepherd stated that lawyers and fiduciaries need time to understand these new changes, and she asked that we allow a period of time for these rules to take effect, if approved.

Ms. J.R. Rittenhouse, licensed professional fiduciary, provided public comment. She noted she supports the three previous speakers. Ms. Rittenhouse stated she knows what she is doing, but she is not an attorney, and if she misses something, she will be held accountable for it. She expressed concern with equating expense with justice, and urged that we not lose sight of what is most important in terms of providing safety for vulnerable adults and making sure they are being taken care of.

Judge Jay Polk, speaking on his own behalf, provided public comment and suggested changes to code section 7-202, Page 19, c.(4) to remove the word “client” and replace with the words “ward or protected person.”

Judge Polk stated that lawyers do lend value, and it would be penny-wise and pound-foolish to allow fiduciaries to file the petition. He expressed concern with the sentence that says “this authority does not include the preparation of the filing of documents in contested probate proceedings pursuant to Rule 27 when an objection is made to the petition for approval of the conservator account.” He stated a person won’t know when there is an objection until the accounting has been filed, and the sentence does not make sense.

Judge Polk suggested extra time be allowed for people to get used to using the forms and implement them, but in long the run, we will be better off having them.

Judge Polk expressed concern with the fee guidelines. He stated the fee guidelines do not recognize that Arizona statute currently says that a fiduciary, attorney, and accountant are entitled to a reasonable fee. He noted that when the Committee drafted these guidelines, the intent was to provide guidelines to help the court determine whether the fees in question were reasonable, and these guidelines don’t express that, and that could lead to some confusion. Judge Polk referenced B.2., which refers to the “fee guidelines applying to the compensation of the following individuals” and uses the word “estate.” Judge Polk noted he has talked with other judges who share a concern whether that means in an uncontested decedent’s estate that is being administered informally. He stated that if so, under our statutes, the court needs to be hands-off, and cannot inject itself into every personal representative fee. Judge Polk stated this was not their intent at the committee level, and it needs to be clarified. Judge Polk then suggested that a “valid POA” be added to the list in B.2.b.

Judge Polk referenced Page 4, 3.c. regarding “list of proposed hours.” He suggested striking the words “upon request” in 3.c., and suggested if the fiduciary exceeds the amount of time, that they automatically give an explanation when they request approval.

Judge Polk referenced Page 6, F.2., regarding “competitive bids.” He stated this will cause problems in Maricopa County because of the way they operate, and this area needs to be fleshed out.

Mr. Dave Byers noted the idea regarding competitive bidding in Maricopa County was that it would be done up front. He explained that if you were a lawyer wanting to do this business, you would get a specified percent fee, plus now be competitive on your hourly rate. Mr. Byers added that if the lawyer was competent, and had a lower rate, he/she would be more likely to be on the list. He noted the question is whether you can have good lawyers and still have a reasonable cost for the wards.

Discussion took place regarding changing the effective date of the fee guidelines and ACJA 7-202 to January 1, 2013.

Judge Polk suggested the need for an office for protected persons (similar to Office of Public Defender). He stated it could be funded by having a rate set by the Board of Supervisors, and if the estate has money, the county would get reimbursed from the estate at a set rate.

Mr. Roger T. Coventry, Childers & Berg, provided public comment. He spoke on A.R.S. § 14-5651, which requires a cost-benefit analysis by the fiduciary before undertaking civil action litigation. Mr. Coventry stated this will have unintended consequences if there is nothing to be gained from the estate. He added that the problem with these regulations is the one-size-fits-all type of solution used in counties that are very different. Mr. Coventry stated the market should drive the rates. He added that regarding the sustainability analysis, the size of estate has no relation to the needs of the person. He noted the proposal provides a superficial analysis.

The Chair opened up the floor for discussion, asking whether the proposals before the Council do some good and are worth trying out.

Mr. Hellon stated that anything new is going to have to be tweaked. He moved that the Council approve all of the recommendations, with the understanding that they will evolve and be adjusted as we go forward. The motion was seconded with the addition of including the suggested amendments provided by Judge Polk. Mr. Hellon agreed to the amendment to the motion.

Judge Norm Davis stated he did not agree with the motion. He added the proposed fee schedule and ACJA § 3-303 takes us backwards, and a fee schedule that caps fees for the size of the estate is the only reasonable solution. Judge Davis noted he would vote against ACJA § 3-303, and he is not in favor of fiduciaries preparing their own petitions, which removes professional responsibility and checking for client abuses.

Judge Davis noted that the proposed forms took a great deal of work, and they are close to something that works. He stated the forms should be permissive, and forms 5-9 should not be made mandatory at this time. Judge Davis noted there are many unresolved issues, i.e., the transaction log adds to the confusion, accounting issues, etc., and we would be going backwards to adopt them now for the pro se world until the issues are worked out.

Mr. Jim Bruner stated he appreciates the work of the Committee, but some of the forms seem overly complicated. He suggested the concerns raised by the public speakers be vetted by Committee staff, and the September 1 implementation date be extended. Mr. Bruner stated he would vote against the motion.

Judge Carter Olson stated the questions raised have already been substantially vetted. He noted the fee guidelines and forms were never intended as a silver bullet or as a stand-alone, holistic solution. He added that the rule and statutory changes were part of the mix of recommendations to try to improve transparency and efficiency, and the workgroup anguished over the process of developing the forms and instructions. Judge Olson noted the budget is the only new thing being introduced.

Judge Olson suggested the following friendly amendments be made to the motion: (1) in the forms, go back to investments being in the general assets, and (2) address the concerns regarding competitive bidding. The motion maker and second agreed to the amendments.

Judge David Mackey noted that we are nearly there with the forms. He suggested making them preferred and not exclusive until we deal with the concerns raised and work out the issues that may arise once the forms are in use.

Judge Mackey stated with respect to ACJA § 7-202 regarding allowing licensed fiduciaries to file without attorney review, it makes sense to allow it (family members can do it now), but he does understand the concern. He noted he does not favor the fee guidelines because he believes we already have the framework in place.

Judge Sally Simmons agreed with Judge Davis' position of not filing petitions without an attorney, and stated she would vote against that portion of the motion.

Mr. Hellon noted there are lots of reasons not to do something, but we need to take something and move forward. He stated we can then learn from implementation and make adjustments as we move forward.

Mr. Bruner suggested waiting until January, review the issues, and then tweak them.

Mr. Byers stated the need to accomplish something that is beneficial to the wards.

Judge Olson noted the September 1, 2012 effective date essentially means the forms would not be used theoretically until September 2013, as the forms will only apply to the new cases that come through the door September 1 going forward, and current cases won't be required to use the new forms until a year out (with the exception of form 5).

MOTION: To approve the ACJA §§ 7-202: Fiduciaries, 3-302: Probate Forms and 3-303: Fee Guidelines with the amendments provided by Judge Jay Polk and Judge Robert Carter Olson. The motion was seconded and passed. AJC 2012-10 (11 approved; 8 opposed)

ACJA 1-307: Judge Pro Tempore Financial Disclosure

Mr. David Withey, Chief Legal Counsel for the AOC, presented ACJA § 1-307: Judge Pro Tempore Financial Disclosure, which he noted is a consent item.

MOTION: To approve the ACJA § 1-307: Judge Pro Tempore Financial Disclosure, as presented. The motion was seconded and passed. AJC 2012-11.

Rule 123 Discipline Records Amendment

Mr. Withey presented the pending rule petition. He noted that under current Rule 123(e)(1), discipline records should be closed because they are not among the listed exceptions to closure. Mr. Withey stated the pending change would clarify the rule by expressly stating discipline records are closed and provide a means to open them for good cause. He noted the committees that reviewed the amendment wanted to leave it closed with no exceptions

The Chair noted the issue is whether to keep the rule as it is, entirely closed with no exceptions, or to allow good cause exceptions.

MOTION: To approve the alternative proposed amendment closing all records concerning employee misconduct and discipline except on a showing of good cause. The motion was seconded and passed. AJC 2012-12. (2 opposed).

Commission on Technology (COT) Update

Mr. Karl Heckart, Chief Information Officer and Mr. Kevin Kluge, Chief Financial Officer for the AOC, presented the COT update, proposed Judicial Collection Enhancement Fund (JCEF) operating budget amount, and technology-related project spending as recommended by the Commission on Technology for the Council's consideration and approval.

MOTION: To approve the Judicial Collection Enhancement Fund (JCEF) operating budget amount and technology-related project spending, as presented. The motion was seconded and passed. AJC 2012-13.

Technology-Related RFPs

Mr. Heckart provided an update on the three RFP's currently in process: Fine/Fees and Restitution Enforcement (FARE) Program, Remote Access to Court Documents and Bulk Data System (eAccess), and eFiling.

Judicial Branch Budget Update

Mr. Kluge briefed the Council members on cuts to the Judiciary, with overall cuts of \$55.7 million. He noted the 2013 budget has been appropriated at our baseline budget, but excludes the Judiciary from receiving any appropriation increases to cover retirement increases (ASRS) and EORP), which is a cut for our budget. Mr. Kluge added that they continue to not fund the health and dental costs for our superior court judges, and there is more than \$800,000 in general fund cuts.

Mr. Kluge reported on the big issue of the fund sweeps of \$6 million for 2013 and 2014 and the funding sources used to cover these sweeps.

Judicial Branch Legislative Update

Due to time constraints, no presentation was made. Members were referred to the information under Tab 6 of their meeting materials.

Call to the Public/Adjourn

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

The Chair acknowledged the following Council members with terms expiring June 30, 2012: Mr. Joe Kanefield, President of the State Bar of Arizona; Judge Douglas Holt; and Judge Louraine Arkfeld (retired). The Chair thanked the members for their service on the Council.

A motion was made to adjourn the meeting at 5:05 p.m.

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
October 25, 2012	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Approval of Minutes Public Session

FROM:

Lorraine Smith, Staff to the Arizona Judicial Council

DISCUSSION:

The Public Session minutes from the August 6, 2012 "special" meeting of the Arizona Judicial Council are attached for your review.

RECOMMENDED COUNCIL ACTION:

Approve the minutes as written.

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

August 6, 2012

SPECIAL MEETING MINUTES – PUBLIC SESSION

Council Members Present:

Chief Justice Rebecca White Berch
*Jim Bruner
David Byers
*Judge Peter Cahill
*Jose A. Cardenas, Esq.
*Amelia Cramer
Judge Norman Davis
*Athia Hardt
Mike Hellon
Judge Joseph Howard
*Yvonne R. Hunter

Michael Jeanes
* Emily Johnston
*Judge David Mackey
*William J. Mangold, M.D., J.D.
Janet K. Regner
*Judge Antonio Riojas, Jr.
*Judge Sally Simmons
Judge Roxanne Song Ong
George Weisz
*Judge David Widmaier
Judge Lawrence Winthrop

**Participated via Conference Call/WebEx*

Council Members Absent:

Judge Rachel Torres Carrillo
Gary Krcmarik

Judge Robert Carter Olson

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
Jennifer Greene
Karl Heckart
Kevin Kluge

Alicia Moffatt
Jodi Rogers
Lorraine Smith
David Withey

Presenters and Guests Present:

The Chair called the meeting to order at 1:00 p.m. Staff took roll-call for those members participating in person and by conference call.

Review and Approve RFP and Funding Recommendations

Mr. Karl Heckart, Chief Information Officer for the AOC, showed a PowerPoint presentation on strategic procurements designed to digitize the courts. He provided information on the

context, overview, timeline, and competition for the E-Filing, E-Access, and E-Bench projects.

Ms. Yvonne Hunter asked why judges were not ready to accommodate electronic filings. Mr. Heckart noted this is predominately a technological issue.

Judge Joseph Howard asked for clarification on E-Access and what the vendors would be doing differently than what we have been working on for the past 1.5 years. Mr. Heckart noted we have been working on getting the information coalesced into a place that could be accessed. He noted we have built the back-end plumbing, and now someone needs to put the store front on our supply train. Mr. Heckart stated we are not able to do this project internally due to the time commitment, resources, and priorities with other projects.

Judge Sally Simmons asked if the end result is to build a statewide system so a member of the public sitting in Miami, Arizona could call up and find out what is going on with a case in Kingman, Arizona. Mr. Heckart agreed and clarified that it means full access to data, status of cases, and disposition of charges, but also access to certain documents types that were approved by the Court through Rule 123.

The Chair noted the issue on the agenda is a discussion of some of the responses to RFPs we have received and that some information is shielded by statute, code provisions, etc. The Chair entertained a motion to go into executive session.

MOTION: To go into executive session for the purpose of discussing the RFP and funding recommendations. The motion was seconded and passed. AJC 2012-14.

Mr. Mike Hellon made a motion to authorize the AOC to negotiate final contracts for E-Filing and E-Access and to approve the use of “excess FARE revenues” to continue digitizing courts through E-Filing, E-Access, and E-Bench.

MOTION: To authorize the AOC to negotiate final contracts for E-Filing and E-Access and to approve the use of “excess FARE revenues” to continue digitizing courts through E-Filing, E-Access, and E-Bench. The motion was seconded and passed unanimously. AJC 2012-15.

The Chair welcomed the Council’s newest members: Judge Roxanne Song Ong; Judge Peter Cahill; and Amelia Cramer, new State Bar President.

The Chair noted that anything discussed in executive session is by law confidential. Mr. Byers reminded members that any notes taken could be discoverable in the event of a protest during the procurement process.

MOTION: To adjourn the meeting. The motion was seconded and passed. AJC 2012-16.

The meeting was adjourned at 3:15 p.m.

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
October 25, 2012	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Approval of Arizona Judicial Council Meeting Dates for the Year 2013

FROM:

Lorraine Smith, Staff

DISCUSSION:

The following are proposed meeting dates for the Arizona Judicial Council in 2013. The Council will be asked to approve the meeting schedule for the months of March, June, October, and December, as follows:

- Thursday, March 28, 2013 State Courts Building, Phoenix, Ste. 119
- Monday, June 24, 2013 Camelback Inn – in conjunction with the
Judicial Conference in Phoenix
- Thursday, October 24, 2013 Phoenix – location to be determined
- Thursday, December 5, 2013 State Courts Building, Phoenix, Ste. 119

RECOMMENDED COUNCIL ACTION:

Approve the proposed Arizona Judicial Council meeting dates for the year 2013.

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
October 25, 2012	<input type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input checked="" type="checkbox"/> Other	Probate Initiatives Update

FROM:

Nancy Swetnam
Court Services Division, Administrative Office of the Courts (AOC)

DISCUSSION:

At the June 2012 meeting, the Council reviewed and took action on a number of the key recommendations from the Committee on Improving Judicial Oversight and Processing of Probate Court Matters ("Probate Court Committee"). These recommendations included:

1. Training for judicial officers, court appointed attorneys, guardians ad litem, non-licensed fiduciaries, and court appointed investigators;
2. Statewide probate forms; and
3. Fee guidelines and competitive bids for professional services.

AOC staff will update the Council on implementation of these probate initiatives and will provide a tour of the new Probate website located at www.azcourts.gov/probate.

RECOMMENDED COUNCIL ACTION:

None, information only.



Guardian Review Program Project Overview Statement

Project Name: Guardian Review Program
Department: Probate Court, Superior Court of Arizona, Maricopa County
Presenter: Star Felty, Guardian Review Program Coordinator

Project Overview

History
<p>Started in 1992 with grants from AARP and other funding sources</p> <ul style="list-style-type: none">• One of the only programs of its kind in the Nation• Nationally recognized as a model program• American Bar Association grant recipient• Historically a 20-30 volunteer program
Primary Objectives
<p>Guardian Review Program (GRP) Volunteers, Court Visitors, assist the Probate Court by reviewing guardianship appointments</p> <ul style="list-style-type: none">• Reduce the potential for the abuse of vulnerable elderly and disabled wards• Educate fiduciaries about their responsibilities• Increase community awareness of the guardianship system and the problems faced by incapacitated persons
Volunteer Numbers
<p>Increase volunteer numbers through the use of social media and other online and print resources</p> <ul style="list-style-type: none">• 20 Volunteer Court Visitors currently active or in training• 10+ potential volunteers pending application process
Volunteer Application Process
<p>Volunteers must complete the application process to qualify</p> <ul style="list-style-type: none">• Submit volunteer application and security clearance form• Volunteer Interview• Reference Checks• Pass criminal history background check <p>Only then will the potential volunteer be invited to the Initial Training</p>

Volunteer Training

Volunteers receive comprehensive training

- **Initial Training Session (Review of Probate Court and Guardianships, Guardian Review Program History and Mission, Case Processing, Skills Training)**
- **Ride Along Training Session (with GRP Coordinator, minimum of 2 cases and 2 different settings)**
- **Interactive Review of Guardianship Site Visit Report (GRP Coordinator and Volunteer dialogue about Visit Report and impressions)**
- **Badge and Introduction Letters are issued**

Only when all requirements are completed and the volunteer feels ready will the volunteer be assigned individual cases

Processing a Case & Reports to the Court

GRP Volunteers are asked to commit to 12 hours a month (3 cases)

- **Assigned cases at the beginning of each month (email or hard copy distribution)**
*4 GRP Office locations (OCH, 3 Regional Court Centers)
- **Contact parties in a case (guardian, ward, care providers, etc.)**
- **Visit ward in-person**
- **Complete Guardianship Site Visit Report (GSVR)**
* **Notify GRP Coordinator within 1 business day if there are “Issues of Concern” on a case**
- **Submit completed GSVRs on assigned cases by the end of the month**
- **All GSVRs are reviewed for content and format**
- **Completed GSVRs are filed with the Court**

If there is an Issue of Concern on a case the assigned Judicial Officer is notified formally through the filing of an “Intake” (request for review). The determination regarding the need for an Intake is made by the GRP Coordinator.

Recruitment Strategies

Use diverse recruitment strategies to access volunteers of all ages, ethnicities and backgrounds

- **Online Media (Facebook, VolunteerMatch.com, Craigslist, AllForGood.com, Idealist.com, Createthegood.com)**
- **Community Partnerships (AAPR, Area Agency on Aging, Senior Centers)**
- **Partnerships with Colleges and Universities (ASU Student Volunteer Center, ASU Criminal Justice Program, Phoenix School of Law)**
- **Print Media (Newspapers, Community Magazines)**
- **75% increase in volunteer numbers in past 6 months**
- **Additional 10+ volunteers pending application process**
- **Diverse Volunteers (ages, backgrounds, ethnicities, significantly more women)**

Program Information:

GRP email: GRP@superiorcourt.maricopa.gov

GRP Phone: 602-506-8200

Facebook: Guardian Review Program, Volunteers

Website:

<http://www.superiorcourt.maricopa.gov/SuperiorCourt/ProbateAndMentalHealth/GuardianReviewProgram/guardianReviewProg2.asp>

Volunteers Wanted



Volunteers with the Guardian Review Program (GRP) serve as Court Visitors, assisting the Probate Court by making post-appointment visits to vulnerable adults who have been deemed to need a guardian by the court. GRP Volunteers are skilled trained observers, who act as the “eyes and ears” of the court. They are objective, adaptable, polite, and perceptive. If this sounds like you, contact us, we would love to have you as part of our team. Initial training and continuing education are provided. Find out more information on the Court webpage, or on Facebook.

Guardian Review Program Locations

GRP Main Office
Old Courthouse (OCH)
 125 W. Washington
 Phoenix, AZ. 85003

GRP Satellite Locations

Northeast Regional Court Center (NE)
 18380 N. 40th Street
 Phoenix, AZ. 85032

Northwest Regional Court Center (NW)
 14264 W. Tierra Buena Lane
 Surprise, AZ. 85374

Southeast Regional Court Center (SE)
 222 E. Javelina Ave.
 Mesa, AZ. 85210

Superior Court of Arizona
Maricopa County
Probate Court
125 West Washington
Phoenix, Arizona 85003
Phone: 602-506-8200
GRP@superiorcourt.maricopa.gov
Find us on Facebook: Guardian Review Program, Volunteers



Guardian Review Program

Volunteers Making a Difference



Superior Court of Arizona
Maricopa County
Probate Court

Phone: 602-506-8200
Find us on Facebook:
Guardian Review Program, Volunteers

What it's like to be a GRP Volunteer

The Probate Process



In Maricopa County the Probate Court is charged with the responsibility of appointing guardians and conservators for vulnerable adults who, due to serious physical or mental disabilities, require help making decisions about their daily lives and/or finances. These vulnerable adults become wards of the court.

To ensure that wards are protected the Probate Court reviews guardianship and conservatorship appointments on a regular basis. This important monitoring function

allows the court to have first-hand knowledge about the care each ward is receiving and ensure they remain safeguarded.

The Guardian Review Program (GRP) was established to assist with this protection. GRP Volunteers, also known as Court Visitors, are objective observers who serve as the “eyes and ears” of the court. They visit wards to see whether they appear to be receiving appropriate care, and file reports with the court about their findings.



Those who can, do. Those who can do more, volunteer.

~Author Unknown

- GRP Volunteers receive initial training and continuing education
- GRP Volunteers review assigned guardianship cases, contact guardians, visit wards, and review records & information
- GRP Volunteers complete and submit case reports in compliance with court procedures
- GRP Volunteers notify the GRP staff of any problems and concerns
- GRP Volunteers complete monthly time sheets and mileage forms (for reimbursement)
- GRP Volunteers dedicate a minimum of 12 hours each month to the GRP
- GRP Volunteers receive recognition for their hard work and dedication

ARIZONA JUDICIAL COUNCIL

Request for Council Action

**Date Action
Requested:**

October 25, 2012

**Type of Action
Requested:**

Formal Action/Request
 Information Only
 Other

Subject:
Legislative Proposals

FROM:

Jerry Landau and Amy Love

DISCUSSION:

Legislative Proposals – Cause/Effect and Implementations

RECOMMENDED COUNCIL ACTION:

Council may vote to include or not include in the Legislature a Judicial Branch proposal or to support, oppose or take no action on proposals from other entities presented to the Council.

Arizona Judicial Council Legislative Proposals – 2013

Summary of Proposals

2013-1: Post conviction relief (Maricopa County Superior Court)

Increases from two hundred to five hundred the number of hours appointed counsel may bill for post-conviction relief representation in capital cases. The court or, per the proposal, a designee may upon a showing of good cause then order additional compensation.

Title affected: 13

2013-2 -3

Withdrawn

2013-3: Criminal code; conforming changes

Withdrawn

2013-4: Probate omnibus (Administrative Office of the Courts)

In a guardianship or conservatorship case, permits the Superior Court to order Alternative Dispute Resolution (ADR) or arbitration prior to the appointment of a fiduciary. Current law allows ADR or arbitration only after the appointment of a fiduciary. Issues related to the capacity or vulnerability of the person are not subject to ADR or arbitration.

Removes the statutory requirement that the conservator's annual accounting be filed with the court on the anniversary of the date the person qualified as conservator. It is the intent that time periods regarding the accounting, including the initial 90 day inventory period would be established by court rule.

Permits the court to order fingerprints and background checks of proposed guardians and conservators and sets forth the necessary process.

Title affected: 14

Arizona Judicial Council Legislative Proposals – 2013
Summary of Proposals

**2013-05: Elected officials retirement plan; superior court commissioners
(Administrative Office of the Courts)**

Repeals the provision of Laws, 2011, Chapter 357, SB 1609 that placed a Superior Court Commissioner into the Arizona State Retirement System if the commissioner was appointed on or after July 1 of the first fiscal year after the Social Security Administration approves the inclusion of superior court commissioners.

Arizona Judicial Council Legislative Proposals – 2013

Summary of Proposals

Additional Proposals:

Criminal code; conforming changes (Criminal Justice System)

Adds a definition of “criminal offense” to include all felonies, misdemeanors and violations of a local criminal ordinance to the victim’s rights provisions of Title 8 (juveniles) to conform to the changes in the Title 13 victim’s rights definition enacted last session.

In the criminal code definition of “Historical prior felony conviction” referring to out of state convictions, changes the language “use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of death or serious injury” to the term “dangerous offense” in order to conform to other provisions of the criminal code.

Rounds two criminal code sentencing provisions in the category one repetitive conviction subsection, Class 6 mitigated (.3 years to .25 years), Class 6 maximum (1.8 years to 2 years) and rounds one sentencing provision in the category two repetitive offender subsection, Class 3 mitigated (3.3 years to 3.25 years) in order to conform to other portions of the sentencing code where the sentencing ranges are in full, half or quarter years.

Titles affected: 8 and 13

October 10, 2012

ARIZONA JUDICIAL COUNCIL
Legislative Request for Proposal
2013 Legislative Session

- *Submit electronically to Susan Hunt at shunt@courts.az.gov*
- *For questions contact Jerry Landau or Amy Love: 602-452-3361*

SUBJECT MATTER OF PROPOSAL: Criminal/Probation Cleanup **DATE:** August 17, 2012

PROPOSAL REQUESTED BY: Superior Court in Maricopa County

Name: Hon. Norman J. Davis

Title: Presiding Judge

Address: Old Courthouse, 5th Floor, 125 W. Washington, Phoenix, AZ 85003

Telephone: 602-506-5262

E-mail: davisn001@superiorcourt.maricopa.gov

SECTION I: PROPOSAL

A. Please summarize the proposal.

In the past year, two issues have surfaced that could be alleviated through legislative changes. The first relates to post-conviction relief proceedings (PCRs) in capital cases. When the statutes relating to capital PCRs were enacted, PCRs were less complex. In the past several years, capital PCRs take a significant amount of time. Petitions cannot be filed within sixty, or even 120, days or with close to 200 hours of counsel time. On average, it takes more than a year to complete petition for post-conviction relief. The Superior Court seeks to amend the timeline, as well as the number of hours for counsel, to be closer to the reality of the capital PCR process. The second relates to probation services fees for municipal court cases for which our adult probation department provides the supervision. Currently, statute requires probation services fees be paid to the municipal court, which then transfers the fees to the county treasurer. However, probationers are more apt to pay fees when they see their probation officers. If probationers are forced to go to another location to pay fees, fewer fees will be collected. The Superior Court would like to have alternatives that would allow the fees to be paid when the probationers are at the probation offices.

- B. Why this proposal is being requested? Provide supporting information, e.g., benefit to court operations, budget, statistics on increased caseloads, reports, etc.**

At this point, the Criminal Department has to grant extensions of time in all capital PCRs. Costs are increased for the county/state because counsel bills for each of these motions. In addition, the Criminal Department has to review motions and billings for all hours over 200 hours, and no PCR is completed within 200 hours. Making these changes would reduce the workload for the Criminal Department. Regarding the probation services fee from municipal court cases, this change would allow the Superior Court to explore options that increase the number of these probationers who pay their monthly probation services fee.

- C. Provide the contact information of any individuals with relevant expert knowledge on this subject.**

Capital PCRs: Honorable Douglas Rayes, Criminal Presiding Judge: 602.506.0816
Probation Services Fees: Barbara Broderick, Chief Probation Officer: 602.506.7244

- D. Attach the recommended language of the legislation to this form. Please include the entire section of law, use UPPER CASE to designate new language and ~~strikethrough~~ to designate stricken language. (The Government Affairs group will assist in final drafting as the proposal moves forward).**

13-901. Probation

A. If a person who has been convicted of an offense is eligible for probation, the court may suspend the imposition or execution of sentence and, if so, shall without delay place the person on intensive probation supervision pursuant to section 13-913 or supervised or unsupervised probation on such terms and conditions as the law requires and the court deems appropriate, including participation in any programs authorized in title 12, chapter 2, article 11. If a person is not eligible for probation, imposition or execution of sentence shall not be suspended or delayed. If the court imposes probation, it may also impose a fine as authorized by chapter 8 of this title. If probation is granted the court shall impose a condition that the person waive extradition for any probation revocation procedures and it shall order restitution pursuant to section 13-603, subsection C where there is a victim who has suffered economic loss. When granting probation to an adult the court, as a condition of probation, shall assess a monthly fee of not less than sixty-five dollars unless, after determining the inability of the probationer to pay the fee, the court assesses a lesser fee. This fee is not subject to any surcharge. In justice and municipal courts the fee shall only be assessed when the person is placed on supervised probation. For persons placed on probation in the superior court, the fee shall be paid to the clerk of the superior court and the clerk of the court shall pay all monies collected from this fee to the county treasurer for deposit in the adult probation services fund established by section 12-267. For persons placed on supervised probation in the justice court, the fee shall be paid to the justice court and the justice court shall transmit all of the monies to the county treasurer for deposit in the adult probation services fund established by section 12-267. For persons placed on supervised probation in the municipal court, the fee shall be paid

to the municipal court **UNLESS OTHERWISE ORDERED BY THE PRESIDING JUDGE OF THE SUPERIOR COURT FOR THE MUNICIPAL COURTS IN THAT COUNTY**. The municipal court shall transmit all of the monies to the city treasurer who shall transmit the monies to the county treasurer for deposit in the adult probation services fund established by section 12-267. Any amount assessed pursuant to this subsection shall be used to supplement monies used for the salaries of adult probation and surveillance officers and for support of programs and services of the superior court adult probation departments.

...

13-4041. Fee of counsel assigned in criminal proceeding or insanity hearing on appeal or in postconviction relief proceedings; reimbursement

...

F. Unless counsel is employed by a publicly funded office, counsel appointed to represent a capital defendant in state postconviction relief proceedings shall be paid an hourly rate of not to exceed one hundred dollars per hour for up to ~~two~~ **FIVE** hundred hours of work, whether or not a petition is filed. Monies shall not be paid to court appointed counsel unless either:

1. A petition is timely filed.
2. If a petition is not filed, a notice is timely filed stating that counsel has reviewed the record and found no meritorious claim.

G. On a showing of good cause, the trial court **OR DESIGNEE** shall compensate appointed counsel from county funds in addition to the amount of compensation prescribed by subsection F of this section by paying an hourly rate in an amount that does not exceed one hundred dollars per hour. The attorney may establish good cause for additional fees by demonstrating that the attorney spent over two hundred hours representing the defendant in the proceedings. The court shall review and approve additional reasonable fees and costs. If the attorney believes that the court has set an unreasonably low hourly rate or if the court finds that the hours the attorney spent over the two hundred hour threshold are unreasonable, the attorney may file a special action with the Arizona supreme court. If counsel is appointed in successive postconviction relief proceedings, compensation shall be paid pursuant to section 13-4013, subsection A.

...

13-4234. Commencement of proceedings; notice; appointment of counsel for capital defendants; assignment of judge; stay

...

D. In capital cases, on the issuance of a mandate affirming the defendant's conviction and sentence on direct appeal, the clerk of the supreme court expeditiously shall file a notice of postconviction relief with the trial court. On the first notice in capital cases, a defendant has sixty **18 MONTHS** days from the filing of the notice in which to file a petition. The supreme court shall appoint counsel pursuant to section 13-4041, subsection B. All indigent state prisoners under a capital sentence are entitled to the appointment of counsel to represent them in state postconviction proceedings. A competent indigent defendant may reject the offer of counsel with an understanding of its legal consequence. On successive notice in capital cases, the trial court shall appoint the previous postconviction relief counsel of the capital defendant unless counsel is waived pursuant to section 13-4041, subsection D or good cause exists to appoint another qualified attorney

pursuant to section 13-4041, subsection B. On the filing of a successive notice, a capital defendant or an appointed attorney has thirty days from the filing of the notice in which to file a petition.

...

E. Can the requested change be achieved by another method? How?

Court Rule Administrative Code

The change regarding length of time to file a petition for post-conviction relief in a capital case could be accomplished with a change to Rule 32.4 of the Criminal Rules. This rule already does not mirror the statute. The statute provides for 60 days to file a petition in capital case and the rule provides for 120 days.

F. If adopted by the Arizona Legislature, would the regular effective date (90 days after adjournment of the legislative session) be acceptable, or is there a reason for an emergency effective date (effective immediately upon signature of the Governor) or a delayed effective date? If a delayed effective date is requested, what date is recommended?

Regular effective date.

SECTION II: IMPACTS

A. Check ALL courts that could be affected.

Supreme Appellate Superior Limited Jurisdiction

B. List the Arizona Revised Statute(s), Court Rule(s) or Administrative Code(s) affected by the proposed legislation.

ARS 13-901, 13-4041, 13-4234
Rule 32 of the Rules of Criminal Procedure
ACJA 6-209

B. Describe anticipated impacts of proposed legislation on the administration of the courts, such as adoption or revision of court rule or code, shift of cases from one court level to another, added or revised reporting requirements, collection of statistics, automation requirements, etc.

Rule 32 of the Rules of Criminal Procedure would need to be amended to reflect the new timeframe. ACJA 6-209 would need to be amended to reflect the new statutory language.

D. Describe any anticipated fiscal impact of this legislation.

This should reduce the workload for the Criminal Department and result in reduced counsel costs in that counsel will not need to be filing countless motions to continue the petition due date.

E. Will this legislation impact other governmental agencies? How?

Yes. This will affect indigent defense with fewer motions to file. The probation services fee could impact the Clerk of the Court if the Presiding Judge orders the local Clerk of Court to accept the Probation Services Fees on the municipal court cases.

F. Describe the consequences if the proposed legislation is not pursued or passed this year.

Current practice will remain the same.

SECTION III: SUPPORT OR OPPOSITION

A. Identify any agencies, groups, or legislators, etc. who may support or have expressed an interest in the proposed legislation and the reasons for the support or interest.

Not aware of any.

B. Identify any agencies, groups, or legislators, etc. who may oppose the proposed legislation and the reasons for the opposition.

Not aware of any.

June 28, 2012

AJC Proposal #1 – Maricopa County Superior Court

13-4041. Fee of counsel assigned in criminal proceeding or insanity hearing on appeal or in postconviction relief proceedings; reimbursement

A. Except pursuant to subsection G of this section, if counsel is appointed by the court to represent the defendant in either a criminal proceeding or insanity hearing on appeal, the county in which the court from which the appeal is taken presides shall pay counsel, except that in those appeals where the defendant is represented by a public defender or other publicly funded office, compensation shall not be set or paid. Compensation for services rendered on appeal shall be in an amount as the supreme court in its discretion deems reasonable, considering the services performed.

B. After the supreme court has affirmed a defendant's conviction and sentence in a capital case, the supreme court or, if authorized by the supreme court, the presiding judge of the county from which the case originated shall appoint counsel to represent the capital defendant in the state postconviction relief proceeding.

C. The supreme court shall establish and maintain a list of persons who are qualified to represent capital defendants in postconviction proceedings. The supreme court may establish by rule more stringent standards of competency for the appointment of postconviction counsel in capital cases than are provided by this subsection. The supreme court may refuse to certify an attorney on the list who meets the qualifications established under this subsection or may remove an attorney from the list who meets the qualifications established under this subsection if the supreme court determines that the attorney is incapable or unable to adequately represent a capital defendant. The court shall appoint counsel from the list. Counsel who are appointed from the list shall meet the following qualifications:

- 1. Be a member in good standing of the state bar of Arizona for at least five years immediately preceding the appointment.**
- 2. Have practiced in the area of state criminal appeals or postconviction proceedings for at least three years immediately preceding the appointment.**
- 3. Not previously have represented the capital defendant in the case either in the trial court or in the direct appeal, unless the defendant and counsel expressly request continued representation and waive all potential issues that are foreclosed by continued representation.**

D. Before filing a petition, the capital defendant may personally appear before the trial court and waive counsel. If the trial court finds that the waiver is knowing and voluntary, appointed counsel may withdraw. The time limits in which to file a petition shall not be extended due solely to the change from appointed counsel to self-representation.

E. If at any time the trial court determines that the capital defendant is not indigent, appointed counsel shall no longer be compensated by public monies and may withdraw.

F. Unless counsel is employed by a publicly funded office, counsel appointed to represent a capital defendant in state postconviction relief proceedings shall be paid an hourly rate of not to exceed one hundred dollars per hour ~~for up to two hundred hours of work, whether or not a petition is filed.~~ Monies shall not be paid to court appointed counsel unless either:

1. A petition is timely filed.
2. If a petition is not filed, a notice is timely filed stating that counsel has reviewed the record and found no meritorious claim.

~~G. On a showing of good cause, the trial court shall compensate appointed counsel from county funds in addition to the amount of compensation prescribed by subsection F of this section by paying an hourly rate in an amount that does not exceed one hundred dollars per hour. The attorney may establish good cause for additional fees by demonstrating that the attorney spent over two hundred hours representing the defendant in the proceedings.~~ The court OR A DESIGNEE shall review, and approve additional ALL reasonable fees and costs. If the attorney believes that the court has set an unreasonably low hourly rate or if the court finds that the hours the attorney spent ~~over the two hundred hour threshold~~ are unreasonable, the attorney may file a special action with the Arizona Supreme Court. If counsel is appointed in successive postconviction relief proceedings, compensation shall be paid pursuant to section 13-4013, subsection A.

H. The county shall request reimbursement for fees it incurs pursuant to subsections F, G and I of this section arising out of the appointment of counsel to represent an indigent capital defendant in a state postconviction relief proceeding. The state shall pay fifty per cent of the fees incurred by the county out of monies appropriated to the supreme court for these purposes. The supreme court shall approve county requests for reimbursement after certification that the amount requested is owed.

I. The trial court may authorize additional monies to pay for investigative and expert services that are reasonably necessary to adequately litigate those claims that are not precluded by section 13-4232.

10/11/12

ARIZONA JUDICIAL COUNCIL
Legislative Request for Proposal
2013 Legislative Session
Proposal 2

- *Submit electronically to Susan Hunt (shunt@courts.az.gov)*

Short Title (to be completed by the Government Affairs group):

Subject Matter of Proposal:

Probate Omnibus

Date:

September 11, 2012

Proposal Requested By:

Name: Amy Love

Title: Legislative Liaison, Arizona Supreme Court

Address: 1501 W. Washington PHX 85007

Telephone: 602.452.3662

E-mail: alove@courts.az.gov

SECTION I: PROPOSAL

A. Please summarize the proposal.

As a follow up to legislation passed and rules proposed by the Committee on Improving Probate Matters, additional tools to help ensure more court oversight are requested.

B. Please describe in detail why this proposal is being requested. Provide supporting information, e.g., statistics on increased caseloads, reports, etc:

During the most recent legislative session, several bills addressing guardianships and conservatorships were introduced in an effort to address the outpour of public concern about the treatment of wards, protected persons, and their respective estates. Members of both the House and Senate were prompted to sponsor legislation that aimed to balance the need for protecting this vulnerable population from abuse while also ensuring the costs of doing so did not do more harm than good. Governor Brewer signed into law a number of these pieces of legislation, including HB2424 creating a probate advisory panel, SB1081 relating to protected minors reaching adulthood, and SB1499, also known as the probate omnibus, which was included as part of the Senate Majority's comprehensive plan for the session.

At the same time the legislature was considering the appropriate action to take on each measure, the Committee on Improving Judicial Oversight and Processing of Probate Court Matters continued its ongoing discussion of possible ways to

improve court process and provide additional protections for those subject to these types of proceedings.

- C. Describe why the proposal is essential to maintain court operations, how the proposal positively impacts your budget or creates significant efficiencies.**

The proposed legislation aims to provide further protections for the vulnerable adult, which is included in the strategic agenda of Justice 20/20; further, it will help curb some of the costs incurred by the ward or protected person's estate throughout these proceedings.

- D. Provide the contact information of any individuals with relevant expert knowledge on this subject.**

*Jay Polk, judge and former member of probate committee 602.615.6514
John Thomas, Lobbyist for Arizona Fiduciaries Association 602.826.0678
Nancy Swetnam, former CLD Director 602.542.3362*

- E. Attach the recommended language of the legislation to this form. Please include the entire section of law, use UPPER CASE to designate new language and ~~strikethrough~~ to designate stricken language. (The Government Affairs group will assist in final drafting as the proposal moves forward).**

- F. Can the requested change be achieved by another method? How?**

While additional work will need to be done via court rule, statutory changes are necessary in order to implement.

Court Rule Administrative Order

- G. If adopted by the Arizona Legislature, would the regular effective date (90 days after adjournment of the legislative session) be acceptable, or is there a reason for an emergency effective date (effective immediately upon signature of the Governor) or a delayed effective date? If a delayed effective date is requested, what date is recommended?**

A delayed effective date will likely be needed in order to allow the court time to amend the Probate Rules.

SECTION II: IMPACTS

- A. Check ALL courts that could be affected.**

X Supreme Appellate X Superior Limited Jurisdiction

- B. List the Arizona Revised Statute(s), Court Rules or Administrative orders, etc. affected by the proposed legislation.**

- C. Describe anticipated impacts of proposed legislation on the administration of the courts, such as adoption or revision of court rules or procedures, shift of cases from one court level to another, added or revised reporting requirements, collection of statistics, automation requirements, etc.**

Changes to the Probate Rules will be necessary. The bill aims to decrease contested hearings in the court by allowing ADR to be ordered throughout the probate proceedings, so some time and costs savings could be realized at the superior court level.

- D. Describe any anticipated fiscal impact of this legislation.**

The Probate Committee has recommended that Supreme Court request funding, ongoing, for unannounced post-appointment visitation of all wards and protected persons. To minimize the cost of such a program, the Committee suggested using volunteers to conduct the visits. Depending on the number of guardianship/conservatorship cases in each county, courts will need to employ staff to recruit, train, and oversee program volunteers.

- E. Will this legislation impact other governmental agencies? How?**

It will be of interest to the Attorney General's office and possible Adult Protective Services, but will not necessarily impact their operations.

- F. Describe the consequences if the proposed legislation is not pursued or passed this year.**

The legislature will likely seek to build upon the laws passed last year as there continues to be public interest and support in reforming the probate system. Introduction of this proposal will help both branches support the continued mission of protecting vulnerable adults from exploitation and abuse.

SECTION III: SUPPORT OR OPPOSITION

- A. Identify any agencies, groups, or legislators, etc. who may support or have expressed an interest in the proposed legislation and the reasons for the support or interest.**

Arizona Fiduciary Association, State Bar, Attorney General's office, DES/Adult Protective Services will likely all have an interest and may support due to the nature of their work with this population.

Senators Driggs, Nelson and Biggs along with Representatives Smith and Farnsworth as they were all instrumental in the passage of last year's legislation.

- B. Identify any agencies, groups, or legislators, etc. who may oppose the proposed legislation and the reasons for the opposition.**

As drafted, no opposition is anticipated other than the potential for fiscal concerns to arise associated with the volunteer visitation program. It should also be noted that there were some controversial portions of last year's legislation that failed in the final days of session but could be amended onto this bill, thereby jeopardizing the entire proposal. Ideally members will be made aware of the need for these specific changes and the lack of opposition to them, and will hold any controversial policy discussions for a separate proposal.

AJC 2013-04: Probate; omnibus

Section 1. Section 14-1108, Arizona Revised Statutes, is amended to read:

14-1108. Arbitration of disputes; alternative dispute resolution; applicability

In a proceeding brought pursuant to this title, ~~after the initial appointment of a fiduciary,~~ the court may require arbitration of a dispute pursuant to the requirements of section 12-133, subsections B through K, or order alternative dispute resolution.

Sec. 2. Section 14-5304, Arizona Revised Statutes, is amended to read:

14-5304. Findings; order of appointment; limitations; filing; fingerprinting

A. In exercising its appointment authority pursuant to this chapter, the court shall encourage the development of maximum self-reliance and independence of the incapacitated person.

B. The court may appoint a general or limited guardian as requested if the court finds by clear and convincing evidence that:

1. The person for whom a guardian is sought is incapacitated.

2. The appointment is necessary to provide for the demonstrated needs of the incapacitated person.

3. The person's needs cannot be met by less restrictive means, including the use of appropriate technological assistance

C. In conformity with the evidence regarding the extent of the ward's incapacity, the court may appoint a limited guardian and specify time limits on the guardianship and limitations on the guardian's powers.

D. The guardian shall file an acceptance of appointment with the appointing court.

E. THE COURT MAY REQUIRE EACH PERSON WHO SEEKS APPOINTMENT AS A GUARDIAN TO FURNISH A FULL SET OF FINGERPRINTS TO ENABLE THE COURT TO CONDUCT A CRIMINAL BACKGROUND INVESTIGATION. THE COURT SHALL SUBMIT THE PERSON'S COMPLETED FINGERPRINT CARD TO THE DEPARTMENT OF PUBLIC SAFETY. THE PERSON SHALL BEAR THE COST OF OBTAINING THE PERSON'S CRIMINAL HISTORY RECORD INFORMATION. THE COST SHALL NOT EXCEED THE ACTUAL COST OF OBTAINING THE PERSON'S CRIMINAL HISTORY RECORD INFORMATION. CRIMINAL HISTORY RECORDS CHECKS SHALL BE CONDUCTED PURSUANT TO SECTION 41-1750 AND PUBLIC LAW 92-544. THE DEPARTMENT OF PUBLIC SAFETY MAY EXCHANGE THIS FINGERPRINT DATA WITH THE FEDERAL BUREAU OF INVESTIGATION. THIS SUBSECTION DOES NOT APPLY TO A FIDUCIARY WHO IS LICENSED PURSUANT TO SECTION 14-5651.

Sec. 3. Section 14-5315, Arizona Revised Statutes, is amended to read:

14-5315. Guardian reports; contents

A. A guardian shall submit a written report to the court ~~on each anniversary date of qualification as guardian~~ ANNUALLY PURSUANT TO RULES ADOPTED BY THE SUPREME COURT, on resignation or substitution as guardian and on termination of the ward's disability.

B. The guardian shall mail a copy of the report to:

1. The ward.
2. The ward's conservator.
3. The ward's spouse or the ward's parents if the ward is not married.
4. A court appointed attorney for the ward.
5. Any other interested person who has filed a demand for notice with the court.

C. The report shall include the following:

1. The type, name and address of the home or facility where the ward lives and the name of the person in charge of the home.
2. The number of times the guardian has seen the ward in the last twelve months.
3. The date the guardian last saw the ward.
4. The name and address of the ward's physician or registered nurse practitioner.
5. The date the ward was last seen by a physician or a registered nurse practitioner.
6. A copy of the ward's physician's or registered nurse practitioner's report to the guardian or, if none exists, a summary of the physician's or the registered nurse practitioner's observations on the ward's physical and mental condition.
7. Major changes in the ward's physical or mental condition observed by the guardian in the last year.
8. The guardian's opinion as to whether the guardianship should be continued.
9. A summary of the services provided to the ward by a governmental agency and the name of the individual responsible for the ward's affairs with that agency.

Sec. 4. Section 14-5401, Arizona Revised Statutes, is amended to read:

14-5401. Protective proceedings; fingerprinting

A. On petition and after notice and a hearing pursuant to this article, the court may appoint a conservator or make another protective order for cause as follows:

1. Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection that cannot otherwise be provided or has or may have affairs that may be jeopardized or prevented by minority or that funds are needed for the minor's support and education and that protection is necessary or desirable to obtain or provide funds.
2. Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court specifically finds on the record both of the following:

(a) The person is unable to manage the person's estate and affairs effectively for reasons such as mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power or disappearance.

(b) The person has property that will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by the person and that protection is necessary or desirable to obtain or provide funds.

B. On petition and after notice and a hearing pursuant to this article, the court may continue a conservatorship or other protective order entered pursuant to subsection A, paragraph 1 of this section beyond the minor's eighteenth birthday if the court determines that the order is appropriate pursuant to subsection A, paragraph 2 of this section. The petition shall comply with the requirements of section 14-5404, subsection B and must be filed after the minor's seventeenth birthday and before termination of the conservatorship by court order.

C. THE COURT MAY REQUIRE EACH PERSON WHO SEEKS APPOINTMENT AS A CONSERVATOR TO FURNISH A FULL SET OF FINGERPRINTS TO ENABLE THE COURT TO CONDUCT A CRIMINAL BACKGROUND INVESTIGATION. THE COURT SHALL SUBMIT THE PERSON'S COMPLETED FINGERPRINT CARD TO THE DEPARTMENT OF PUBLIC SAFETY. THE PERSON SHALL BEAR THE COST OF OBTAINING THE PERSON'S CRIMINAL HISTORY RECORD INFORMATION. THE COST SHALL NOT EXCEED THE ACTUAL COST OF OBTAINING THE PERSON'S CRIMINAL HISTORY RECORD INFORMATION. CRIMINAL HISTORY RECORDS CHECKS SHALL BE CONDUCTED PURSUANT TO SECTION 41-1750 AND PUBLIC LAW 92-544. THE DEPARTMENT OF PUBLIC SAFETY MAY EXCHANGE THIS FINGERPRINT DATA WITH THE FEDERAL BUREAU OF INVESTIGATION. THIS SUBSECTION DOES NOT APPLY TO A FIDUCIARY WHO IS LICENSED PURSUANT TO SECTION 14-5651.

Sec. 5. Section 14-5419, Arizona Revised Statutes, is amended to read:

14-5419. Accounts; definition

A. Except as provided pursuant to subsection F of this section, every conservator must account to the court for the administration of the estate not less than annually ~~on the anniversary date of qualifying as conservator and also on resignation or substitution,~~ and on termination of the protected person's minority or disability, except that for good cause shown on the application of an interested person, the court may relieve the conservator of filing annual or other accounts by an order entered in the minutes.

B. The court may take any appropriate action on filing of annual or other accounts. In connection with any account, the court may require a conservator to submit to a physical

check of the estate in the conservator's control, to be made in any manner the court may specify.

C. An adjudication allowing an intermediate or final account can be made only on petition, notice and a hearing. Notice must be given to:

1. The protected person.
2. A guardian of the protected person if one has been appointed, unless the same person is serving as both guardian and conservator.
3. If no guardian has been appointed or the same person is serving as both guardian and conservator, a spouse or, if the spouse is the conservator, there is no spouse or the spouse is incapacitated, a parent or an adult child who is not serving as a conservator.
4. A representative appointed for the protected person, if the court determines in accordance with section 14-1408 that representation of the interest of the protected person would otherwise be inadequate.

D. An order, made on notice and a hearing, allowing an intermediate account of a conservator, adjudicates as to the conservator's liabilities concerning the matters considered in connection therewith. An order, made on notice and a hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the protected person's successors relating to the conservatorship.

E. In any case in which the estate consists, in whole or in part, of benefits paid by the ~~veterans administration~~ UNITED STATES DEPARTMENT OF VETERANS AFFAIRS to the conservator or the conservator's predecessor for the benefit of the protected person, the ~~veterans administration~~ UNITED STATES DEPARTMENT OF VETERANS AFFAIRS office that has jurisdiction over the area is entitled to a copy of any account filed under this article. Each year in which an account is not filed with the court, the conservator, if requested, shall submit an account to the appropriate ~~veterans administration~~ UNITED STATES DEPARTMENT OF VETERANS AFFAIRS office. If an account is not submitted as requested, or if it is found unsatisfactory by the ~~veterans administration~~ United States department of veterans affairs, the court on receipt of notice of the deficiency shall require the conservator to immediately file an account with the court promptly.

F. Unless prohibited by order of the court, the conservator may file with the court, in lieu of a final account, a verified statement stating that:

1. The protected person has died. The conservator shall attach a certified copy of the protected person's death certificate to the statement.
2. The protected person's successors have all waived in writing their right to have the conservator submit to the court a final account of the conservator's administration of the protected person's estate. The conservator shall attach the originals of the written waivers to the statement.
3. The conservator has delivered a copy of a closing statement to the protected person's successors. The conservator shall attach a copy of the closing statement to the statement.

G. The closing statement that is to be delivered to the protected person's successors shall be a verified statement stating the following:

- 1. The protected person has died and the date of the person's death.**
- 2. The persons receiving the closing statement have a right to have the conservator submit to the court a final account of the conservator's administration of the protected person's estate.**
- 3. If the person wishes to have the final accounting reviewed by the court, the person should not sign a waiver that waives this right.**
- 4. If all persons receiving the closing statement choose to waive the right to have the conservator submit to the court a final account, the final account will not be reviewed by the court.**
- 5. A list of the property owned by the protected person, as of the date of the protected person's death, is attached to the closing statement and that the list states the fair market value of the property as of the date of the protected person's death.**

6. The conservator, by the closing statement, shall inform the protected person's successors that if they waive court review of the conservator's final account, the conservatorship will be terminated, the conservator will be discharged from all liabilities relating to the conservatorship, the bond or other security posted by the conservator will be exonerated and any restrictions previously imposed on the assets of the conservatorship will be lifted.

H. The conservator shall file an affidavit with the court that states that the closing statement was sent or delivered to the protected person's successors on a date before the date that the protected person's successors signed the written waiver.

I. Unless proceedings are pending against the conservator, on the filing of the statement described in subsection F of this section and the affidavit described in subsection H of this section, the court shall enter an order terminating the conservatorship, discharging the conservator from all liabilities relating to the conservatorship, exonerating and releasing any bond or other security posted by the conservator and releasing any restrictions previously imposed on the assets of the conservatorship.

J. For the purposes of this section, "protected person's successors" means:

- 1. The personal representative of the protected person's estate if the personal representative and the conservator are not the same person.**
- 2. If the conservator and the personal representative of the protected person's estate are the same person and if the protected person died intestate, the protected person's heirs.**
- 3. If the conservator and the personal representative of the protected person's estate are the same person and if the protected person died testate, the devisees under the protected person's will that has been admitted to probate.**

10/10/12

ARIZONA JUDICIAL COUNCIL
Legislative Request for Proposal
2013 Legislative Session

- *Submit electronically to Susan Hunt at shunt@courts.az.gov*
- *For questions contact Jerry Landau or Amy Love: 602-452-3361*

SUBJECT MATTER OF PROPOSAL:

Elected Officials Retirement Plan Superior Court
Commissioners

DATE:

October 10, 2012

PROPOSAL REQUESTED BY:

Name: Jerry G. Landau

Title: Government Affairs Director, Arizona Supreme Court

Address: 1501 W. Washington Phoenix, AZ 85007

Telephone: (602) 452-3361

E-mail: jlandau@courts.az.gov

SECTION I: PROPOSAL

- A. Please summarize the proposal.
Repeals the provision of Laws, 2011, Chapter 357, SB 1609 that placed a Superior Court Commissioner into the Arizona State Retirement System if the commissioner was appointed on or after July 1 of the first fiscal year after the Social Security Administration approves the inclusion of superior court commissioners.
- B. Why this proposal is being requested? Provide supporting information, e.g., benefit to court operations, budget, statistics on increased caseloads, reports, etc.
It is our understanding that inclusion of Superior Court Commissioners as provided for by the legislation would require all superior court commissioners to be included in social security as the social security administration cannot split the class. This result was not intended by the legislation.

The 2013 legislature will be taking up the issue of EORP and its future. It is our recommendation that superior court commissioners be included in that discussion, wherein all ramifications may be considered.

- C. Provide the contact information of any individuals with relevant expert knowledge on this subject.

David Byers Director, AOC, 602-452-3301

Jerry Landau, Govt. Affairs Director, AOC, 602-452-3361

- D. Attach the recommended language of the legislation to this form. Please include the entire section of law, use UPPER CASE to designate new language and ~~striketrough~~ to designate stricken language. (The Government Affairs group will assist in final drafting as the proposal moves forward).
See attached

- E. Can the requested change be achieved by another method? No.
How?

Court Rule Administrative Code

- F. If adopted by the Arizona Legislature, would the regular effective date (90 days after adjournment of the legislative session) be acceptable, or is there a reason for an emergency effective date (effective immediately upon signature of the Governor) or a delayed effective date? If a delayed effective date is requested, what date is recommended?

Unknown at this time, depending on legislative discussions on retirement.

SECTION II: IMPACTS

- A. Check ALL courts that could be affected.

X Supreme X Appellate X Superior X Limited Jurisdiction

- B. List the Arizona Revised Statute(s), Court Rule(s) or Administrative Code(s) affected by the proposed legislation.

A.R.S. § 38-727, 38-801

- C. Describe anticipated impacts of proposed legislation on the administration of the courts, such as adoption or revision of court rule or code, shift of cases from one court level to another, added or revised reporting requirements, collection of statistics, automation requirements, etc.

None

- D. Describe any anticipated fiscal impact of this legislation.
Employer and employee contributions into EORP and ASRS.

- E. Will this legislation impact other governmental agencies? How?
Employer and employee contributions into EORP and ASRS.

- F. Describe the consequences if the proposed legislation is not pursued or passed this year.
Unintended consequences of previous legislation affecting superior court commissioners.

SECTION III: SUPPORT OR OPPOSITION

- A. Identify any agencies, groups, or legislators, etc. who may support or have expressed an interest in the proposed legislation and the reasons for the support or interest.
There is a strong sentiment at the legislature to implement significant changes to EORP or to close the plan and establish a new different plan.
- B. Identify any agencies, groups, or legislators, etc. who may oppose the proposed legislation and the reasons for the opposition.
See III A above.

June 28, 2012

Elected officials Retirement Plan; Superior court commissioners

Section 1. 38-727. Eligibility; options

The following provisions apply to all employees hired on or after the effective date:

1. All employees and officers of this state and all officers and employees of political subdivisions establishing a retirement plan administered by the board pursuant to this article who as a result of state service or service for the political subdivision are included in agreements providing for their coverage under the federal old age and survivors insurance system are subject to this article, except that membership is not mandatory:
 - (a) On the part of any employee who is eligible and who elects to participate in the optional retirement programs established by the Arizona board of regents pursuant to the authority conferred by section 15-1628 or by a community college district board pursuant to authority conferred by section 15-1451.
 - (b) For a state elected official who is subject to term limits, who is eligible for participation in ASRS because the state elected official elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A and who elects not to participate in ASRS as provided in paragraph 7 of this section.
 - (c) On the part of any employee or officer who is eligible to participate and who participates in the elected officials' retirement plan pursuant to article 3 of this chapter, the public safety personnel retirement system pursuant to article 4 of this chapter or the corrections officer retirement plan pursuant to article 6 of this chapter.
2. All employees and officers of political subdivisions whose compensation is provided wholly or in part from state monies and who are declared to be state employees and officers by the legislature for retirement purposes are subject, on legislative enactment, to this article and are members of ASRS.
3. Any member whose service terminates other than by death or withdrawal from membership is deemed to be a member of ASRS until the member's death benefit is paid.
4. Employees and officers shall not become members of ASRS and, if they are members immediately before becoming employed as provided by this section, shall have their membership status suspended while they are employed by state departments paying the salaries of their officers and employees wholly or in part from monies received from sources other than appropriations from the state general fund for the period or periods payment of the employer contributions is not made by or on behalf of the departments.
5. Notwithstanding other provisions of this section, a temporary employee of the legislature whose projected term of employment is for not more than six months is ineligible for membership in ASRS. If the employment continues beyond six successive months, the employee may elect to either:
 - (a) Receive credit for service for the first six months of employment and establish membership in ASRS as of the beginning of the current term of employment if, within forty-five days after the first six months of employment, both the employer and the employee contribute to ASRS the amount that would have been required to be contributed to ASRS during the first six months of employment as if the employee had been a member of ASRS during those six months.

(b) Establish membership in ASRS as of the day following the completion of six months of employment.

6. A person who is employed in postgraduate training in an approved medical residency training program of an employer or a postdoctoral scholar who is employed by a university under the jurisdiction of the Arizona board of regents is ineligible for membership in ASRS.

7. A state elected official who is subject to term limits and who is eligible for participation in ASRS because the state elected official elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A may elect not to participate in ASRS. The election not to participate is specific for that term of office. The state elected official who is subject to term limits shall make the election in writing and file the election with ASRS within thirty days after the elected official's retirement plan mails the notice to the state elected official of the state elected official's eligibility to participate in ASRS. The election is effective on the first day of the state elected official's eligibility. If a state elected official who is subject to term limits fails to make an election as provided in this paragraph, the state elected official is deemed to have elected to participate in ASRS. The election not to participate in ASRS is irrevocable and constitutes a waiver of all benefits provided by ASRS for the state elected official's entire term, except for any benefits accrued by the state elected official in ASRS for periods of participation before being elected to an office subject to term limits or any benefits expressly provided by law.

~~8. Every full-time superior court commissioner who is appointed on or after July 1 of the first fiscal year after the social security administration approves the inclusion of superior court commissioners on this state's section 218 agreement is a member of ASRS and is subject to this article.~~

9. Before July 1, 2015, a person may elect not to participate in ASRS if the person becomes employed by an employer after the person has attained at least sixty-five years of age, is not an active member, inactive member, retired member or receiving benefits pursuant to article 2.1 of this chapter and does not have any credited service or prior service in ASRS. The employee shall make the election not to participate in writing and file the election with ASRS within thirty days of employment. The election not to participate is irrevocable for the remainder of the person's employment for which the person made the election and constitutes a waiver of all benefits provided by the Arizona state retirement system. The period the person works is not eligible for purchase under section 38-743 or 38-744.

Section 2. 38-801. Definitions

In this article, unless the context otherwise requires:

1. "Accumulated contributions" means the sum of all member contributions deducted from the member's salary pursuant to section 38-810, subsection A plus the amount transferred to the fund on behalf of the member plus the amount deposited in the fund pursuant to section 38-816.

2. "Actuarial equivalent" means equality in present value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest assumptions adopted by the board.

3. "Alternate payee" means the spouse or former spouse of a participant as designated in a domestic relations order.
4. "Alternate payee's portion" means benefits that are payable to an alternate payee pursuant to a plan approved domestic relations order.
5. "Average yearly salary" means the result obtained by dividing the total salary paid to an employee during a considered period by the number of years, including fractional years, in which the salary was received. The considered period shall be:
 - (a) For an elected official who becomes a member of the plan before January 1, 2012, the three consecutive years within the last ten completed years of credited service as an elected official that yield the highest average. If a member does not have three consecutive years of credited service as an elected official, the considered period is the member's last consecutive period of employment with a plan employer immediately before retirement.
 - (b) For an elected official who becomes a member of the plan on or after January 1, 2012, the five consecutive years within the last ten completed years of credited service as an elected official that yield the highest average. If a member does not have five consecutive years of credited service as an elected official, the considered period is the member's last consecutive period of employment with a plan employer immediately before retirement.
6. "Board" means the board of trustees of the system.
7. "Credited service" means the number of whole and fractional years of a member's service as an elected official after the elected official's effective date of participation for which member and employer contributions are on deposit with the fund, plus credited service transferred to the plan from another retirement system or plan for public employees of this state, plus service as an elected official before the elected official's effective date of participation that is being funded pursuant to a joinder agreement pursuant to section 38-810, subsection C and section 38-815 or service that was redeemed pursuant to section 38-816. Credited service does not include periods of service for which an active member is uncompensated by the employer and for which no contributions to the plan are made.
8. "Cure period" means the ninety-day period in which a participant or alternate payee may submit an amended domestic relations order and request a determination, calculated from the time the plan issues a determination finding that a previously submitted domestic relations order did not qualify as a plan approved domestic relations order.
9. "Determination" means a written document that indicates to a participant and alternate payee whether a domestic relations order qualifies as a plan approved domestic relations order.
10. "Determination period" means the ninety-day period in which the plan must review a domestic relations order that is submitted by a participant or alternate payee to determine whether the domestic relations order qualifies as a plan approved domestic relations order, calculated from the time the plan mails a notice of receipt to the participant and alternate payee.
11. "Direct rollover" means a payment by the plan to an eligible retirement plan that is specified by the distributee.

12. "Distributee" means a member, a member's surviving spouse or a member's spouse or former spouse who is the alternate payee under a plan approved domestic relations order.
13. "Domestic relations order" means an order of a court of this state that is made pursuant to the domestic relations laws of this state and that creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive a portion of the benefits payable to a participant.
14. "Effective date of participation" means August 7, 1985, except with respect to employers and their elected officials whose contributions to the plan commence after that date, in which case the effective date of their participation in the plan is specified in the applicable joinder agreement.
15. "Elected official" means:
- (a) Every elected official of this state.
 - (b) Every elected official of each county of this state.
 - (c) Every justice of the supreme court.
 - (d) Every judge of the court of appeals.
 - (e) Every judge of the superior court.
 - (f) Every full-time superior court commissioner ~~who is a member of the plan before July 1 of the first fiscal year after the social security administration approves the inclusion of superior court commissioners on this state's section 218 agreement,~~ except full-time superior court commissioners who failed to make a timely election of membership under the judges' retirement plan, repealed on August 7, 1985.
 - (g). The administrator of the board if the administrator is a natural person but only if the administrator is employed by the board before January 1, 2012.
 - (h) Each elected official of an incorporated city or town whose employer has executed a proper joinder agreement for coverage of its elected officials.
16. "Eligible child" means an unmarried child of a deceased active or retired member who meets one of the following qualifications:
- (a) Is under eighteen years of age.
 - (b) Is at least eighteen years of age and under twenty-three years of age only during any period that the child is a full-time student.
 - (c) Is under a disability that began before the child attained twenty-three years of age and remains a dependent of the surviving spouse or guardian.
17. "Eligible retirement plan" means any of the following that accepts a distributee's eligible rollover distribution:
- (a) An individual retirement account described in section 408(a) of the internal revenue code.
 - (b) An individual retirement annuity described in section 408(b) of the internal revenue code.
 - (c) An annuity plan described in section 403(a) of the internal revenue code.
 - (d) A qualified trust described in section 401(a) of the internal revenue code.
 - (e) An annuity contract described in section 403(b) of the internal revenue code.
 - (f) An eligible deferred compensation plan described in section 457(b) of the internal revenue code that is maintained by a state, a political subdivision of a state or any agency

or instrumentality of a state or a political subdivision of a state and that agrees to separately account for amounts transferred into the eligible deferred compensation plan from this plan.

18. "Eligible rollover distribution" means a payment to a distributee, but does not include any of the following:

(a) Any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the member or the joint lives or joint life expectancies of the member and the member's beneficiary or for a specified period of ten years or more.

(b) Any distribution to the extent the distribution is required under section 401(a)(9) of the internal revenue code.

(c) The portion of any distribution that is not includable in gross income.

19. "Employer" means a department, agency or political subdivision of this state that makes employer contributions to the plan pursuant to section 38-810 on behalf of an elected official who participates in the plan.

20. "Fund" means the elected officials' retirement plan fund.

21. "Notice of receipt" means a written document that is issued by the plan to a participant and alternate payee and that states that the plan has received a domestic relations order and a request for a determination that the domestic relations order is a plan approved domestic relations order.

22. "Participant" means a member who is subject to a domestic relations order.

23. "Participant's portion" means benefits that are payable to a participant pursuant to a plan approved domestic relations order.

24. "Pension" means a series of monthly payments to a person who is entitled to receive benefits under the plan.

25. "Personal representative" means the personal representative of a deceased alternate payee.

26. "Plan" means the elected officials' retirement plan.

27. "Plan approved domestic relations order" means a domestic relations order that the plan approves as meeting all the requirements for a plan approved domestic relations order as otherwise prescribed in this article.

28. "Retired member" means a person who is being paid a pension based on the person's credited service as a member of the plan.

29. "Segregated funds" means the amount of benefits that would currently be payable to an alternate payee pursuant to a domestic relations order under review by the plan, or a domestic relations order submitted to the plan that failed to qualify as a plan approved domestic relations order, if the domestic relations order were determined to be a plan approved domestic relations order.

30. "System" means the public safety personnel retirement system.