

## Arizona Code of Judicial Administration

### Q & A

#### Preparation, Review and Approval

*Do all code section proposals (CSPs) have to be reviewed by court committees and AJC?*

All CSPs except emergency sections and technical changes must be reviewed by the committees and presented to AJC. Technical changes and emergency sections may be adopted by the chief justice on the recommendation of the administrative director. Emergency provisions must be circulated after they are adopted.

*How do I know which groups and committees should review a CSP?* CSPs should be circulated to AJC committees, other boards, commissions and committees, members of the court community and other persons or organizations that may have an interest in or might be affected by the proposal.

*Who determines the appropriate distribution?* The division responsible for the CSP.

*Do committee and other comments have to be shown on a separate table attached to the cover sheet?* No, the comments can be summarized and included as part of the cover sheet. You may find it easier to use a separate document, however, if there are many comments and some have been incorporated and some have not.

*How can I complete the section of the cover sheet dealing with comments before the CSP has gone to all the committees?* You can't. That section will need to be updated following each committee's review. The rest of the cover sheet should be completed to acquaint the committees with the substance of the proposal.

*How do I get comments on a CSP if the committee doesn't meet before the AJC meeting?* You have three alternatives: 1) you can distribute the proposal to the committee members and ask for their individual comments; 2) you can delay the proposal to the next AJC meeting; or 3) if it qualifies, you can recommend emergency adoption of the code section.

*The new Preparation and Approval Process chart is very detailed. What if I can't comply with the deadlines for submitting and approving a code section proposal (CSP)?* The time frames were established as general guidelines to ensure there is adequate time for all the review and approval steps prior to the AJC meetings. If deadlines aren't met and a finished code section can't be delivered in time to get on the AJC meeting agenda, it will have to be delayed to the next meeting.

*What documents have to be included for final routing and signing?* An ACJA routing slip, cover sheet with comments and the code section text or amendment. You should also deliver e-copies of these documents to Legal Services.

*Why does the new routing slip require two signatures for the division director and Legal Services?* The first signatures show that the CSP has been reviewed and authorized by the division director and Legal Services has reviewed and commented on the proposal. The second signatures show approval of the final version for submission for Exec. approval and the AJC agenda.

*Who is responsible for delivering the CSP to the Executive Office for review?* Legal Services. At this point, Legal Services becomes the “caretaker” of the proposal and will assume responsibility for the original e-version of the CSP and final revisions or amendments. If the proposal is approved by AJC, Legal will prepare the adopting AO.

*Why does the court adopt both a code section and an administrative order at the same time?* This is the process approved by the court. The administrative order shows the court’s approval of the code section and allows for implementation instructions (like a delayed effective date) that can’t be included in the body of the code section.

*Can the proposed code section include a delayed effective date?* Yes. The code section should be written as if it is effective upon adoption. The adopting administrative order may include a delayed effective date or implementation date and Legal Services will include a note to that effect on the published version of the section.

*For an amendment, should I adopt a whole new section or include only the amended language?* In most cases, amendments should include only the revised language in legislative format, with enough of the surrounding text to show the context. If the amendments are numerous and/or affect multiple subsections, and the legislative format version is difficult to read, it may be necessary to readopt the whole section.

*Is the process for preparing, reviewing and adopting code section amendments different than for an original code section?* No. The same documents, committee review and approvals are required. The only difference is the format of the CSP (legislative format showing amended language only).

*How do I know if an amendment can be adopted as an emergency or technical change?* Technical changes are “non-substantive” -- the best examples are statutory updates or changes that don’t affect the meaning of the text. Legal Services can advise you regarding technical changes. Emergency code sections must be authorized by the Administrative Director.

*Are the forms referred to in the manual available electronically somewhere?* Yes, all the forms are available in the ACJA folder on the “X” drive.

## Content and Organization

*How do I know to propose a code section instead of a rule, statute or a “regular” administrative order?* The answer’s not always obvious. The code is reserved for permanent administrative requirements and applies only to the courts and those programs administered by the courts. Court rules generally govern the responsibilities of those involved in court cases, although some rules deal with administrative requirements as well. An administrative order is used by the chief justice to exercise the supreme court’s administrative authority, such as adoption of code sections or other administrative actions of limited duration or specific effect. Statutes establish requirements that apply outside the judiciary and are much more difficult to change.

*My program is established by state law and governed by a number of state statutes, but I need a code section to implement these requirements. How do I incorporate the statutory requirements?* If essential elements of your program are contained in statutes, they should be quoted at the appropriate places in the code section. Quotes are required rather than summaries to avoid altering the meaning.

*My program is covered adequately in the statutes. Do I still need to adopt a code section?* No. A code section is required only if necessary to implement or supplement the statutory requirements. Don’t propose a code section containing only references to statutes.

*How do I know which words or phrases need to be defined?* A good test is whether the words are unknown outside your program or specialized field or have a special meaning beyond the dictionary definitions. If the meaning is clear either from the words themselves or the context, you don’t need a definition. If the word or phrase is used only once or maybe twice, you can sometimes define it in the text.

*Should I define acronyms or abbreviations?* Usually not. Instead, write out the full name the first time it is used, place the acronym or abbreviation in parentheses after it, and use the acronym or abbreviation alone from then on.

*How do I know what headings and subheadings to use?* Similar code sections should be organized the same way. Look for an adopted section that is similar to your proposal and adapt the headings and other organizational details to fit your specific subject matter. Most programs can be described chronologically, although there may be other organizational techniques better suited to your topic.

*Do I have to include titles or headings for every subsection?* No, only the first level subsections require headings. However, if you use a heading in one subsection below the first level, you should add headings to all the subsections at that same level within that same subsection.

*Is it ever appropriate to use “may” or “will” instead of “shall” in a code section?* Yes, if you’re describing a discretionary responsibility (“may”) or a future event (“will”). However, most requirements should be described using “shall”.

*What are “objective standards” and how can I make sure that my section complies with this requirement?* Objective standards or requirements are clear and measurable. They are not susceptible to unequal enforcement depending on who is doing the evaluating. When you write a requirement, always ask yourself who is responsible for compliance and what measurable criteria are used to determine whether the requirement has been satisfied. Words like *satisfactory*, *required*, *reasonable*, and *appropriate* used without further clarification call for a subjective judgment and should be avoided.

*Can I attach a document to a code section?* No, unless it is a form or other supplemental “non-substantive” document. All substantive requirements should be included in the body of the section. If you need to attach a supplemental document, you should reference it in the text as an appendix (“\_\_\_\_\_ is attached as Appendix A”) and add a heading that includes the section number, the appendix number and the title of the document. Whenever possible, appendices should be formatted like the rest of the code section.

*I have a lengthy attachment that can’t easily be formatted to match the code, and it may need to be revised from time to time. Do I have to attach it as an appendix?* No. Large or frequently amended documents should not be attached. Instead, the section should include a description of the document, incorporate it by reference (“\_\_\_\_\_ is incorporated by reference”) and explain where it can be found.

### Word Processing Format

*The formatting requirements for code sections are very specific and unlike any other documents I work with. Is there a template I can use?* Yes, the template can be found in the ACJA folder on the “X” drive.

*The section numbers and titles of the model code section and model legislative amendment don’t match any numbers or titles on the ACJA outline. Aren’t these actual code sections?* No, these are “made up” sections designed to show the layout and formatting.

*How do I use the model code section and legislative format amendment?* These documents are included in the manual as examples of the proper organization and formatting of CSPs. While your document may not contain similar provisions or be organized the same way, it should be set up to look like the models and comply with all the formatting requirements.

*Full justification is hard to work with and sometimes results in strange spacing between words. Why is it used for code sections?* It was adopted to provide uniform looking

margins on both sides of the document. It's also used for administrative orders and other formal court documents.

*Why does the manual require double spacing between subsection levels one to four, but single spacing between levels four and lower?* The lower the level, the more indentation and the more white space is shown to the left. It just looks better to reduce the white space as much as possible and make more room for text at the lower levels.

*Previously, new language in an amendment was shown in upper case. The new manual requires it to be shown underlined. Why was this changed?* It's easier to remove and revise underlining than upper case text. The use of underlining is consistent with the way rule changes and other court documents are prepared. Upper case text in amendments doesn't show which words or letters are intended to be upper case in the final code section. Finally, Word spell check doesn't automatically check upper case text.

*How do I do a "double indent" for quotations?* You can do this two ways (that we know of) by first selecting the text you want to indent. Select **Paragraph** from the **Format** menu. Adjust the indentation on both the left and right and click OK. Alternatively, you can use the horizontal ruler: click and drag the **Left Indent** marker to the point you want the text to start. Then click and drag the **Right Indent** marker to the point you want the text to end.

### Writing style

*If quotes shouldn't be edited or formatted like the rest of the code, and spell-checking automatically makes spelling corrections, shouldn't I avoid spell-checking altogether?* No, it's still the best way to catch spelling and grammar errors. Just don't use "autocorrect" and make sure you don't change quoted text.

*Why is passive voice a problem?* First, the sentence may not be clear about who is responsible for performing a particular function or duty. Most code sections assign responsibilities and include consequences for failure to perform. Second, passive structure sounds "wordy" and has less impact. Active sentences are usually shorter and more dynamic.

*How do I recognize passive voice?* Passive voice uses a form of the verb *to be* to show the subject of the sentence is being acted upon instead of acting. The real "actor" of the sentence is either absent or hiding in a phrase in the sentence beginning with *by*. Look for the verbs *be, is, are, was, were, has been, have been* and *had been*, followed by words that end in *-ed, -t, or -en*.

*How do I avoid using passive voice?* The best way is to focus on *people* and *duties* rather than on *things* and *requirements*. If you write from the standpoint of explaining *who* is responsible for what must be done, rather than just *what* has to be done, you're more likely to write in active voice. To correct a passive sentence, try to identify who is performing the action and make that person the subject of the sentence.

*Is passive voice ever acceptable in a code section?* Yes, in those limited situations where the “actor” is in fact unknown, or where you want to emphasize a particular word or phrase that isn’t the subject of the sentence.

*I’ve always been told to capitalize “presiding judge,” “superior court” and the names of programs and funds. Why aren’t they capitalized in code sections?* This is a style rule more than grammar. There are some proper names (AOC divisions, programs, funds and forms) that appear so frequently in the code that the use of capitalization would be a distraction to the reader. With other common words and phrases (*presiding judge, justice, supreme court, superior court*), it’s not always clear whether they are being used as proper names or generic terms. For both categories, we follow the rule of the Arizona Legislature and most publishers and don’t capitalize these. Remember, however, to capitalize *judge, presiding judge, and justice* when they are used with a name.

*Why can’t I use contractions?* While the perception is gradually changing, contractions are considered less formal and more conversational. For this reason, contractions should not be used in code sections (but are used here!).

*I don’t understand the prohibition on regulatory language in definitions. What does that mean?* Sometimes a drafter is tempted to discuss a particular requirement that’s related to a definition right away as part of the definition, often just because it’s convenient -- a sentence is added to a definition dealing with what should be done or how to do it. The sole purpose of a definition is to give the reader the meaning of a particular word or phrase when the meaning may not be clear from the text alone. Requirements and regulations should be discussed in later subsections, not in the definitions.

*Previously we were told to break up long paragraphs containing many requirements into a list. The new manual says not to make a vertical list if it can be avoided. Why the change?* It’s not really a change – a long paragraph that contains multiple dependent clauses or a “list” with items of one line or longer should be converted to a numbered list if that will make it easier to follow. But some drafters have begun using lists for short paragraphs with only a few items. It’s better to handle those with a paragraph.

*How do I know when to use bullets instead of a numbered list?* Use a bulleted list only where you have a short list, you want to emphasize the items listed by setting them apart and it isn’t likely that any item will be referred to individually.

*What’s a “widow”?* Widows are single (or sometimes double) lines of text from a longer paragraph or subsection that appear at the top or bottom of the page due to an arbitrary page break. You can eliminate them by editing the text on the page or combining the widowed text with the related paragraph, which may result in expanding the bottom margin on the previous page.