

**ARIZONA JUDICIAL COUNCIL
COMMITTEE ON SUPERIOR COURT**

MINUTES

**Meeting held Friday, March 9, 2001
Wells Fargo Conference Center, Phoenix, AZ**

MEMBERS PRESENT:

Hon. Roger Kaufman, Chair
Hon. Monica Stauffer
Hon. Mark Armstrong
Hon. Edward Dawson
Hon. R. Douglas Holt
Hon. Brian Ishikawa
Hon. Michael Jeanes
Hon. Cindy Jorgenson
Hon. Kirby Kongable
Hon. James Chavez
Hon. Gloria Kindig
Hon. Nanette Warner
Hon. John Leonardo
Hon. Nancy Lewis
Hon. Denise Lundin
Hon. Fred Newton
Hon. Raymond W. Weaver, Jr.
Mr. Marcus Reinkensmeyer
Mr. Gary Kremerik
Mr. Oren D. Thompson
Mr. Don Stiles
Mr. Charles W. Wirken, Esq.

MEMBERS ABSENT:

Hon. Silvia Arellano
Hon. William J. O'Neil
Hon. Kenneth Lee
Hon. Leslie Miller

GUESTS:

Dennis Metrick
Paula Davey
Ted Wilson
Christine Powell
Nancy Swetnam
Deborah Marshall
Megan Hunter
David Sands
George Diaz, Jr.
Judith Connell
Pam Griffin
Sandra Markham

STAFF:

Theresa Barrett
Helen Tallent

I. WELCOME AND OPENING REMARKS

Judge Roger Kaufman, Chair, called the meeting to order at 10:05 a.m. He welcomed everyone and acknowledged new members and guests. All those present introduced themselves.

II. APPROVAL OF MINUTES - December 8, 2000

The minutes from the December 8, 2000 meeting were previously mailed out. Revised minutes were included in the mailing for the current meeting.

MOTION: To approve the revised minutes for the December 8, 2000 meeting as distributed. Seconded and passed. COSC-01-001

III. NEW BUSINESS ITEMS

A. Legislative Updates

David Sands and George Diaz, Jr., Legislative Officers from the Administrative Office of the Courts (AOC), prepared a summary sheet of AJC's 2001 Legislative Package. A handout was provided to members.

David advised the Committee that the 45th Legislature was in the 61st day of the 1st regular session and, to date, seven bills have passed. David informed members that this was the last week to hear bills which originated in the house. Consequently, if the committee chair to which a bill is assigned chooses not to hear the bill then it will "die." David warned this is the time when a number of strikeout bills are introduced and the courts should remain vigilant in their tracking efforts to ensure the judicial department's interests are protected.

David and George provided information on the following legislative issues:

Drug Court; Appropriation (SB 1083 / HB 2270) - George explained there were two identical bills for this legislative proposal. The senate version moved through the Judiciary Committee unanimously. Unfortunately, it was "stonewalled" when it went before the senate appropriation committee.

Alternatively, while the house version passed through its judiciary committee unanimously, unlike the senate version, it also passed through the House Appropriations Committee. George explained this would not have occurred without the assistance of Representative Voss who amended the appropriation in order to garner support needed. If passed, this bill would appropriate \$5.3 million from the state general fund for fiscal years 2002 and 2003 to fund drug court and DUI programs and to provide drug treatment services to participants statewide.

The question was raised whether or not any changes had been made to original legislative proposal to include counties without drug courts. George indicated that counties interested in implementing drug courts had been included in the second year of funding.

Adult Criminal Interstate Supervision (SB1008) - George explained this bill would repeal the 1937 Interstate Compact for Supervision of Parolees and Probationers and replace it with the newly promulgated Interstate Compact for the Supervision of Adult Offenders. George advised Committee members there are those in the legislative community that feel the rule and bylaw contradicts our state constitution and subsequently effects state rights. Ultimately, this debate may kill the bill.

Chief Stiles asked for clarification regarding how many states must adopt the compact. George informed the group that thirteen states had adopted the Compact to date, however, thirty-five states need to adopt it before the end of the year for the rules to become effective and binding.

Time Payment Fee Extension (SB 1007) - This bill continues in effect the twenty-dollar fee presently assessed against each person who pays a court ordered penalty, fine, or sanction on a time payment basis. David indicated the bill is ready for a third reading in the House and that he was confident it would be passed. It will then be sent to the Governor for signature. Alternatively,

although David advised committee members this bill will pass, it is time limited and the fee is continued in effect only until December 31, 2003.

Probation Officer Pay (HB 2271) - Proposed a supplemental appropriation of \$5,828,100 from the state general fund to offset a budget shortfall for the state-funded share of probation officer salaries. George explained to the Committee that when Chief Probation Officers realized their financial situations, in order to have a contingency plan, they went into “survival mode.” Due to the Chief’s successful efforts, after the bill was introduced, it was discovered there was no longer a crisis and the money requested was no longer needed. Accordingly, the bill was withdrawn. George did express concern that this could have a long term negative effect on future judiciary funding requests made to the legislature. Ultimately, if we were able to solve our financial situation before we should be able to do so again.

Children’s Mental Health Services (SB 1041; HB 2246) - David explained this bill makes improvements to comprehensive legislation enacted in 2000 as part of the judicial branch’s legislative package. It includes revised procedures for ordering residential treatment services for a child exhibiting behavior indicating mental disorder and specifies placement must be supported by a written evaluation. David indicated that duplicate bills had been opened for this legislation and that the Senate version had passed. Additionally, David reported that although the House version had been held up temporarily, it was also moving again.

Authorized Bail Payment (SB 1002; HB 2274) - David indicated this bill was submitted by the Clerk’s Association. The bill clarifies statutes that in addition to bondsmen, sheriffs and/or jail keepers must accept appropriate bail funds from any person. The House bill was substituted for the identical Senate version and passed 28-2. The bill has been signed by the Governor. (Chapter 2, laws of 2001)

Adult Adoption (HB 2276) - Relocates the statute pertaining to adult adoption (A.R.S. §8-132) from title 8 (Children) to title 14 (Trusts, Estates, and Protective Proceedings). David advised the Committee this bill was also put forward by the Clerk’s. The Senate passed the bill 30-0 and was signed by the Governor on March 6. (Chapter 6, laws of 2001)

Write-off of Uncollectible Debts (HB2275) - The clerk of the superior court is now authorized to remove a debt from its accounting system if the debtor has been billed at least four times, the debt has been submitted to a collection agency, the Revenue Department has been notified (it can withhold tax refunds to satisfy such debt) and other conditions are met. David indicated this bill passed the Senate 30-0 and was signed by the Governor earlier in the week. (Chapter 5, laws of 2001)

Juror Pay (SB 1009; HB 2276) - If passed would increase the daily pay for jurors in the superior court and limited jurisdiction courts. George pointed out to the Committee similar proposals have been submitted a number of times in the past without much success. For instance, last year the proposal did not get a hearing. Alternatively, this year the bill is continuing to move through the process.

George reported SB1009 went through the Senate Judiciary Committee unamended at \$50, however, when it went to the Committee of the Whole (COW) it was amended to stipulate that \$12 will be the minimum amount that counties and cities must pay jurors. George explained this gives counties and cities permission to increase juror pay in their jurisdiction if they so choose. The

bill is now in the house and awaiting a hearing. George indicated the AOC has requested this version be put on hold until a decision is made on the House versions pending review.

Alternatively, although HB2276 failed in its original form it was sent back for review in hope of working out a compromise with the County Board of Supervisors. George further explained that when it was brought back, it was passed with two different amendments.

The House County and Municipalities Committee Compromise

- Payment of \$45 to only those not paid by their employer or those who would lose wages (excluding homemakers, students, and retirees);
- No pay for the first day; and,
- Everyone would receive reimbursement for mileage (also includes permissive language allowing for reimbursement for miscellaneous expenses such as parking and lunch).

House Judiciary Committee Compromise

- Increased juror pay to no less than \$20.

According to George, the two House versions are scheduled to go before COW. At this time legislators will select one choice and then vote. The approved version then will move to the Senate where there will be yet another opportunity to amend the bill on the floor. George advised the Committee that the AOC was endorsing the proposal made by the House County and Municipalities Committee.

Fee Deferral and Waiver (HB 2085) - Amends the statute (A.R.S. §12-302) regarding waiver and deferral of court fees and costs to clarify terminology, conform to court procedures and address constitutional concerns. David advised the Committee they were not experiencing any problems with this bill and it was ready for the Senate.

Judges and Elected Officials Salaries (HR2003) - Disapproves all the governor's salary recommendations for judges, court clerks and state executive officers. The recommendations (current salaries in parentheses) are: chief justice \$133,025 (\$129,150), associate justice \$130,321 (\$126,525), court of appeals judge \$127,617 (\$123,900), superior court judge \$124,373 (\$120,750), governor \$107,350 (\$95,000), treasurer \$79,100 (\$70,000), superintendent of public instruction \$96,050 (\$85,000), mine inspector \$56,500 (\$50,000), Maricopa and Pima court clerk \$67,800 (\$60,000) and other county clerk \$56,500 (\$50,000).

David advised members that the bill was moving through the House, however, may not get to the floor.

Supreme Court Jurisdiction; Victim Rights (HCR 2013) - Refers to the voters on the general election ballot of 2002 a state constitutional amendment that: allows the Legislature or by the people via initiative or referendum to repeal or amend procedural and evidentiary rules adopted by the Supreme Court; and, provides that the Supreme Court may not infringe on the authority of the Legislature or the people to enact laws that protect the rights of crime victims or carry out any other matter under the constitution.

George informed the Committee that this effort by legislature to usurp the Supreme Court's rule making authority was successfully defeated.

Probation Officers; Firearms (HB 2399) - Allows adult probation officers or surveillance officers who supervise an active caseload to carry a firearm on duty for protecting the officer from death or serious bodily harm while on duty. Bill includes training requirements, as well as procedures for management to deny an officer the right to be armed on duty. Establishes the probation system task force to research the relationship between probation departments and various court offices, and to examine probation department responsibility and accountability, pay and benefits, and firearms issues.

George indicated that it was unlikely this bill would meet the deadline of being heard by the committee to which it was assigned. This is necessary in order for the bill to move through the process in its original form. Judge Kaufman indicated it was his understanding what was being proposed has been done in Pima county for years. Don Stiles, Chief Probation Officer for Pima County, responded indicating officers do carry arms but not in the manner provided for in the proposed legislation. Don explained that the main difference between the legislation and Pima county's practices is the current bill allows the officer to make the decision whether or not to carry a firearm, not administration or the presiding judge. Alternatively, in Tucson, all requests to carry a firearm must go through Don. In addition, more extensive training is required by Pima county than what has been put forward in the bill.

Judge Dawson inquired what the position of the AOC was regarding this matter. George indicated the authority for this matter lies with the counties, however, he suggested to members that the judiciary needs to come up with their own version to address issue in the future as it is not likely to go away.

DNA Testing; Felony Offenders (SB1171) - Provision in the code on prisons and prisoners for DNA testing is repealed. List of offenses for which an individual is subject to DNA testing provided in the criminal code is expanded to include persons who have violated or attempted to violate any of a list of felony offenses, sexual exploitation of minors, assault, robbery, burglary, criminal trespass, arson, kidnaping and homicide. This proposal further specifies that persons required to be tested must pay \$150 for the testing; blood samples may only be used for specified court and law enforcement purposes; extends the time limit for jails or the correction's department to secure a blood sample; and, if a conviction is overturned, the court must order the DNA profile to be expunged.

George and David are both working closely with Don Stiles and Pima County on addressing issues raised by this legislation. As DNA testing would not be permissive, George asked members what they thought the impact of supporting this bill would have on the judiciary. Specifically, will the court have problems enforcing the fine.

It was discussed briefly whether this would be self-defeating legislation since courts already have problems enforcing payment of surcharges and fines ordered. It was determined that the Committee should discuss this issue more in depth.

B. Administrative Code Review/Comment/Approval

Nancy Swetnam, Director, Certification and Licensing Division, AOC, presented the Arizona Judicial Code of Administration (AJCA) for Standard Court Reporters. Nancy indicated the proposed code section for standard certification incorporates the statutory requirement for testing and demonstration of proficiency, however, at the request of Chief Justice Zlaket and Vice Chief Justice Jones no grand fathering clause was included. Nancy reported the Board of Certified Court Reporters had considered and heard several options for proficiency requirements and rejected them offering instead their own recommendations. For example, although not unanimous, the majority of the Board felt three years experience and three letters of recommendation were sufficient to satisfy the proficiency requirement.

Judith Connell, Arizona Court Reporters Association, testified that Association members support the rule change with the inclusion of a provision allowing three years experience and three letters of recommendation to serve as an alternate means of demonstrating proficiency. Judith however did indicate the Association is open to compromise and suggested allowing court reporters three to five years to pass the Registered Professional Reporter (RPR) test; arguing one year simply was not adequate to obtain certification since the test is only offered two times a year.

Although members concurred with the recommendation to extend the requirement of passing RPR to three years, there were concerns voiced that the three recommendation letters suggested by the Association may not sufficiently reflect a reporter's abilities. Some members also voiced concern that the shortage of court reporters in rural counties could be adversely impacted by lack of a grand fathering clause in the code. Moreover, others felt interim steps for passing the test should be included in the code to hold court reporters accountable for meeting any proposed extension offered by the Committee.

Judge Cindy Jorgenson requested input from Sandra Markham, Board of Certified Court Reporters, regarding whether a competent court reporter should be able to pass the RPR, especially if given in legs. Additionally, Judge Jorgenson wanted to know if the Committee would be eliminating qualified court reporters from working in the system if they could not pass the RPR.

Sandra informed the Committee in October she sent out a letter to all court reporters encouraging them to take the RPR. However, because a certain segment of Arizona court reporters simply will not take the RPR unless it is deemed the standard, she implored members to make sure any motion made by the Committee have specificity regarding time limits.

Copies of testimonial letters from five different court reporters in favor of including some type of grandfather clause in the code were provided to members by Judge Kirby Kongable. Judge Kongable requested members review the letters and subsequently shared examples of the possible impact of the code section on court reporters in Yuma County. Finally, he suggested working on a compromise incorporating a certain number of years experience counting for the proficiency requirement blended with the suggested three years to pass the RPR for others.

Next, Judith Connell provided a brief history of the legislative process. Judith stated at the beginning of the process, prior to defining "alternative means of proficiency," there were legislators who were prepared to present amendments which would have specifically added a grandfather clause to the proposed legislation. As Nancy Swetnam indicated that the court would not support

any type of grandfather clause, Judith met with several legislators in order to get the legislation to pass. She went on to explain she assured these legislators that the alternative demonstration of proficiency clause included in the bill would allow the Board to come up with a reasonable alternative and, therefore, would not put people out of work. Judith again encouraged members to consider establishing some type of grandfather clause for those with a predetermined number of years of experience blended with a specified time requirement in which to pass the RPR.

A discussion followed around the issue of extending time to obtain RPR certification. There were a few attempts at making a motion on this issue that resulted in the following:

MOTION: Recommend, due to Arizona’s current shortage of Court Reporters, a blanket finding be made that the state has extenuating circumstances meriting an extension of the standard certification deadline. Following, the committee supports adoption of the proposed Court Reporter Standard Certification Code, Part 7, Chapter 2, Section 7-206, of the Arizona Code of Judicial Administration, with an amendment to provide a three-year extension for those court reporters who have practiced actively for at least three years. This extension will be computed from the date of the Administrative Order approving the code section. Those who qualify for an extension of the statutory deadline will have three years in which to obtain registered professional reporter (RPR) certification with the stipulation they pass one leg of skills portion of the test by December 31, 2002. Motion seconded. Motion passed. 22-1-0. COSC-01-002

Nancy Swetnam next presented the ACJA for Temporary Court Reporters. Nancy indicated changes that were made were technical in nature and reflected statutory amendments made during the 2000 legislative session. Additionally, there were changes made to conform to formatting guidelines of Arizona Judicial Code of Administration.

Gary Krcmarik asked whether or not the Code of Ethics for Temporary Court Reporters (i.e., Standard #5) was adopted unanimously. Sandra Markham indicated “yes, it was.” Nancy added that the Board planned to recommend to AJC the following clarifying language be adopted under this section, “an official court reporter may engage in freelance reporting *only if* the following criteria are met . . .” Judge Weaver requested that the language under Standard 5a(2) read “*must have approval.*” Nancy suggested changing it to read “*shall have*” and Judge Weaver agreed this would be acceptable.

MOTION: Motion made and seconded that the code be adopted with suggested changes. Motion passed unanimously. COSC-01-21

Due to time constraints, at approximately 11:45 a.m., Judge Kaufman called for a reassessment of agenda items. Following a brief discussion, it was determined Judge Armstrong should present his information to group before lunch break rather than continue with remaining scheduled Administrative Code Reviews.

C. Revision to Child Support Guidelines (Uninsured Medical Section)

Judge Armstrong provided briefing on the recent technical change to guidelines recommended by the Child Support Coordinating Council Subcommittee. Judge Armstrong explained the revision does not effect child support calculations rather it deals with the assignment of responsibility for uninsured dental and medical expenses. Specifically, the Council recommends that responsibility for non-covered medical and dental costs be assigned to the parents as done under the previous guidelines (i.e., determined by % of income), without regard or reference to the first \$250 per year, per child.

Judge Armstrong explained the reason for the revision is that the guideline formula and example adopted in 2000 for apportioning responsibility for the \$250 are confusing and subject to multiple interpretations. This clarification is intended to provide guidance to the courts and the parties. Judge Armstrong indicated most judges that have studied the revision support it.

MOTION: Recommend revise Guidelines 8.a. as soon as practicable by deleting all language in the fourth paragraph of Guideline 8.a. after “Publication 502,” together with the example that compromises all of the fifth paragraph of Guideline 8.a. Motion seconded and unanimously passed. COSC-01-003

Judge Armstrong left the meeting following the vote.

Break for Lunch

During the luncheon break, Judge Kaufman, Chair, requested members review the excerpt of minutes from September 14 Strategic Planning meeting, December 8th minutes regarding Role and Function of the Court and, in addition, the comments from members regarding the Role of the Court discussion.

Next, Judge Kaufman announced that Committee member, Judge Bill O’Neil, had been involved in a serious accident. He informed the group he had been released from the hospital and was currently in a step down facility. Judge Kaufman indicated he had his contact number or members could contact his Judicial Assistant, Charlene for more information. He encouraged members to offer support and, if inclined, assistance with Judge O’Neil’s calendar.

Administrative Code Review/Comment/Approval (B. continued)

Following the lunch break, Paula Davey, Court Specialist, Court Services Division, AOC, presented the ACJA for Judicial Collection Enhancement. Paula explained the proposed code is primarily a reformatting of Administrative Order 90-19, merely changing the language from passive to active voice. Although there were no significant changes to the original order, Paula indicated sections D3 and 4 are new to the code. She informed members these changes are standard components of the funding agreements signed by courts that receive Judicial Collection Enhancement Funds (JCEF).

MOTION: Motion made and seconded that the code be adopted as changed. Motion passed unanimously. COSC-01-004

Next, Dennis Metrick, AOC Court Projects Unit Program Manager, presented the ACJA Section 3-301: Standards. Dennis indicated this proposed code section was simply a straight codification of Administrative Order 95-4 which adopted the National Probate Court Standards to govern probate cases in the Superior Court. The Standards were first published in 1993 and were intended to serve as a useful aid to probate judges, probate practitioners, probate court staff and others interested in probate law and probate court practice and procedures.

Dennis informed members the National Probate Standards had been revised since the first edition was published in 1993, however, according to Dennis the only change was fairly innocuous involving the expansion of one area related to Interstate Guardianship. Specifically, Standard 3.1.8 (Interstate Compacts and Cooperation) which urges probate courts to share relevant information when parties subject to guardianship leave the original jurisdiction. Dennis explained, the publication date would be revised in the final version of the code to accurately reflect this change.

Dennis explained to members the difference between a code section and an administrative order is based on the level of importance of the content. Code sections are designated for permanent policy or procedural matters. Administrative orders are utilized for appointments or temporary matters. Dennis encouraged the group to discuss briefly whether or not the Court is really using these standards before taking a vote to include, or not include, the proposed code in the ACJA. Judge Warner recommended the proposed section be included in the code as it would be easier to locate the information and would provide better notice to interested parties.

MOTION: Motion made and seconded that the code be adopted. Motion passed unanimously. COSC-01-005

D. Post Trial Judge/Jury Contact

Judge Kaufman briefly covered some of the pros and cons of the practice post trial judge/jury contact and the associated ethical concerns utilizing this practice in criminal cases. Judge Kaufman pointed out that there are many judges who have given this topic a great deal of thought and feel the practice should be encouraged whereas there are others who have raised questions about the practice. Following his overview, Judge Kaufman turned over facilitation of the discussion to Judge Fred Newton.

Judge Newton began by referring members to the recent article on the subject included in the pre-meeting mailing. Judge Newton indicated he felt the issue of appropriateness of post trial judge/jury contact may be of more significance to judges in rural counties because of the practical reason that rural judges are elected and, consequently, jurors are also their constituents. Judge Newton expressed concern that unless the Court receives an ethical opinion regarding what type of contact, if any, is appropriate during post trial judge/jury contact inevitably a case in which a judge is charged with inappropriate ex parte communications will be brought before the Court for review.

Judge Kaufman indicated Maricopa's practice, referenced in the article provided in the pre-meeting mailing, predated Judge Dann's jury service improvement movement. He explained the intent of Maricopa's practice was to improve public relations, express appreciation to jurors and/or, in some extreme circumstances, offer a type of psychological counseling to jurors.

Furthermore, Judge Kaufman clarified although the practice of post trial judge/jury contact was not the policy of the Court, as suggested in the article, its use was encouraged.

Judge Warner indicated she felt the issue was important and recommended the agenda item be set for another meeting in order to carry out a more in-depth discussion. Accordingly, Judge Kaufman requested Theresa Barrett allocate a minimum of 45 minutes for the subject of post trial/jury on the winter meeting agenda. In the interim, Judge Kaufman suggested several different approaches for members to consider:

- Don't talk,
- Talk only in civil cases,
- Talk only in presence of a court reporter, or;
- Talk only in presence of a court reporter and all counsel.

Dennis Metrick announced that recently, as a result of Jury Summit 2001, Chief Justice Zlaket called for a meeting to look at ways to improve jury service in Arizona. He suggested if a committee/workgroup was developed at this upcoming meeting perhaps this issue could be presented to it for further review and recommendations. Judge Kaufman, Judge Newton, Judge Holt, Judge Leonardo and Judge Warner all volunteered to serve on such a committee/workgroup. Dennis indicated he would keep the Committee posted on the results of the meeting and encouraged members to continue to think about the issue.

Judge Warner left the meeting following the discussion.

E. Minute Entry Reform Workgroup Report

Denise Lundin, Clerk of the Court for Cochise County, indicated that although the workgroup formed to address reforming minute entries does have diverse representation (i.e., clerks, judicial assistants, attorneys, judges, as well as appellate representation), the judges who are members of the workgroup are worried that their opinions/experiences may not be representative of all judges. Therefore, in order to ensure all issues and eventual outcomes receive the widest distribution possible the group would be counting on Committee members for feedback. As a fellow workgroup member, Judge Dawson, also expressed his desire to get more input from those outside the workgroup when establishing future protocols.

Next, Ted Wilson, AOC staff to the Minute Entry Reform Workgroup presented the results of the workgroup's electronic survey sent out in December of 2000. Ted indicated the survey was sent to superior court clerks, judges, administrators, staff attorneys (Supreme and Court of Appeals) and others identified as being interested in the process.

Ted quickly went over survey questions and referred members to meeting handouts. Ted informed the group after reviewing the 43 responses the workgroup observed the following:

- Definition of a minute entry/minute order: Basically interchangeable terms with the exception that a minute order is endorsed or "signed" by a judicial officer.
- General purposes for which minute entries required: Minute entries are used for everything from hearing notices to recording of proceedings. Examples of general purposes include: serves as a reminder of a prior proceeding and reflects the reason for issued orders; used as

a formal order by attorneys; created when a proposed order is submitted with a motion; and, in one court, a minute entry is created for every event scheduled.

- Preparation of minute entries are handled by: The most common response was the court room clerk or clerk's office. However, some minute entries are prepared by judicial assistants and in a few cases by court administration.
- Suggestions for change: A number of comments indicated the need for developing uniform minute entries. Equally important to survey participants was the greater use of forms and requiring attorneys to prepare a proposed order when filing motions. This would negate the need for a minute entry. Additionally, other suggestions included using the register of actions to docket courtroom case log and preparing a minute entry only for open court or in chambers hearings and rulings. Alternatively, some respondents suggested no change was necessary.
- Types of documents currently titled minute entry which could be titled something else: Notice, notice of hearing or scheduled proceeding; an order; a decision; and, a ruling.
- Negative consequences of eliminating minute entries: Some respondents indicated minute entries assist them in case management. Therefore, to the degree they are utilized in a court's case management efforts their elimination would remove this resource. Reduction of institutional memory was also cited as a negative consequence of eliminating minute entries. Additionally, some respondents felt elimination of minute entries would cause confusion between counsel and the court about what was said and done.
- Benefits to eliminating minute entries: The most common response was that if minute entries were eliminated it would allow more time for staff to do other work. Others indicated it would result in less paperwork, staff savings, and lower duplicating and postage costs. Additionally, it was noted that case files would be less cumbersome if minute entries were eliminated.
- Processes suggested to replace minute entries: Preprinted forms, formal orders prepared by attorneys, judges take notes, and greater use of computer databases or video/audio recordings.

Denise Lundin indicated the workgroup still had a lot of work to do prior to making any recommendations. First, they plan to review Maricopa's work in this area in order to identify changes implemented in Maricopa which could be recommended for implementation on a statewide basis. Additionally, the workgroup has compiled all the rules in which minute entries are referenced and plans to review each rule to assess how it fits into the current court process and then discuss how it would fit into the workgroup's recommendations for reform.

Judge Dawson indicated the workgroup is scheduled to meet again on April 6 and probably one more time before the Committee's next meeting. Judge Kaufman thanked the workgroup for their hard work.

F. Reaffirm Strategic Priorities & Role of the Court Follow-up Discussion

In preparation for the strategic planning session which AJC will be conducting in early June, Christine Powell, AOC Strategic Planner, requested that members identify 2-3 important issues which they felt should be considered when developing the strategic plan for 2003 and beyond. As there are many important issues facing the courts in coming years, Christine advised members she felt that the judicial committees/commissions were in the best position to articulate those issues to AJC. Finally, she emphasized this was the Committee's opportunity to sell its proposals to AJC as those issues of the greatest importance by delineating the impact of the issues on the courts and subsequent consequences if they are not addressed.

Judge Kaufman interjected at this point in order to address a misinterpretation made when rephrasing the Committee's priorities. Specifically, the Committee's top strategic planning priority was not focused on developing a plan for drug courts exclusively, but rather the discussion had focused on how to formulate a comprehensive plan for all substance abusers in court (i.e., alcohol and drugs).

Next, Dennis Metrick, AOC Court Projects Unit Program Manager, acknowledged Judge Kaufman's comments and set the stage for the group's discussion. Dennis achieved this by comparing and contrasting the outcome of the Committee's strategic planning session in September with their discussion about the role of the court conducted at the December 8th meeting. Dennis suggested that while the Committee had spent a considerable amount of time debating the notion of therapeutic courts versus the traditional role of the courts, ultimately, the consensus appeared to be a balanced viewpoint. Ultimately, members did not reject therapeutic courts, however, they also recognized we cannot put all our emphasis on these approaches.

Judge Kaufman facilitated further discussion by soliciting input from new members with different views and posing additional questions to generate group participation. The following is a summary of the comments made by members regarding each priority.

PRIORITY: Need to develop a coherent, comprehensive plan for dealing with drug/alcohol dependent and mentally ill defendants.

- Concern was voiced about concentrating too much on getting budgets for drug courts. It was argued if, in an attempt to give the perception we are dealing with the drug problem, we cut out funds from our budget and get the legislature and public to focus just on drug courts as the solution, we simply are not being honest. In reality only a small number of defendants which come through the criminal courts are actually enrolled in drug court. Consequently, most individuals in the system with drug/alcohol problems are being denied the same level of treatment as drug court participants. Ultimately, the problem is larger than what we can deal within the drug court forum. Therefore, it would be more forthright than our current posture to simply provide funds to all individuals in need of drug or mental health treatment.
- Although drug courts are effective programs we must also acknowledge we can not be the treatment modality for the community. Since we only have the hammer in criminal court, our problem is how to touch individuals with substance abuse problems in civil and domestic relations cases.

- Frustration was voiced about what the Committee could do about the drug problem. As a result, many members questioned whether or not this should be the Committee's top priority.
- Whether or not there is a solution to the drug problem, it was pointed out the Courts still need to contribute their perspective to the public debate on the issue. It is important for the judiciary to make the public aware of the impact substance abuse is having on court system so they can adjust their expectations of the court.
- It was argued there is not a solution to the problem within the court system alone. Consequently, the suggestion was made that the court partner with other public and private agencies to develop solutions to drug, alcohol and mental illness problems in our society.

Approximately 2:10 p.m., Charles Wirken left the meeting. Prior to his departure, Charles indicated his top priority would be to combine strategic items D. and K.

Marcus Reinkensmeyer asked for clarification whether or not the Committee was required to prioritize their issues or if they could just give the top three. Christine Powell indicated for her purposes she only required the group's top three issues. Judge Kaufman called for a vote on whether this issue was one of the Committee's top three priorities. The Committee voted unanimously to include.

PRIORITY: Need to simplify and expedite court processes throughout the system, with special emphasis on Family Law cases.

- On the national level the issues of access, equal and fair justice and simplifying processes continue to be top priorities. Therefore, attention to this issue is necessary to promote public trust and confidence.
- This is the central purpose of the court and an issue we can do something about.
- Courts should seek innovative ways to expedite cases while balancing the rights of the litigants to have their day in court.
- We need to make sure to keep a focus on children. The two main indicators for children who will commit crimes in the future and which evoke a poor prognosis are: high conflict parents or difficult economic circumstances. Therefore, the court needs to respond to these cases quickly.

Judge Kaufman polled members to see if the Committee wanted to forward this issue as one of it's top priorities. The Committee voted unanimously to include.

Approximately 2:20 p.m., Judge Armstrong returned. Judge Leonardo, Judge Jorgenson and Judge Lewis departed.

PRIORITY: Need to recruit and retain quality court staff and provide comprehensive training and education for staff and judges.

- This is a very important issue. If we cannot compensate people properly then we are not going to be able to recruit and retain staff.

- While it was agreed we need to focus on recruiting highly qualified staff, there is also the need to have a greater use of technology in the courts.
- We need to build the capacity to deal with our growing workload.
- Training is critical. No matter what technology is employed, unless staff are properly trained and know how to use that technology it is not cost effective and will not improve efficiency of operations.

Prior to a vote being taken Don Stiles departed.

Members still present voted unanimously to include this issue as a top priority.

In closing, Dennis Metrick suggested at the Committee's winter meeting members take a look at the new strategic plan and identify any items they could adopt as goals and provide recommendations to affect change. Dennis also provided the following suggestions for further discussion: juror treatment, fee-based funding and state funding, expansion of merit selection judges, putting probation under the executive branch and the role and function of the court from a societal perspective.

Judge Kaufman requested members send issues and topics for discussion at the winter meeting to him for consideration. Additionally, he asked that a draft of the Strategic Planning Initiatives report be circulated to members for comment prior to the final submission to AJC.

V. INFORMATION ITEMS

Theresa Barrett, Court Specialist, AOC, prepared a handout for the committee regarding the Committee on Superior Court website that recently "went live" thanks to the hard work of Helen Tallent. Theresa explained briefly how to access the website to members; first via the supreme court site and then via the intranet. Theresa encouraged members to check out the site and provide feedback.

Other information items presented to members include: alternate parking available to visitors at the State Courts Building during DOA construction, Notice of Erratum- Criminal Processing Rule 4.2(a) and the state mileage rate increase.

VI. SCHEDULE NEXT MEETING DATE/PLACE

The next meeting will be held in Phoenix on Friday, September 14, 2001 at 9:30 A.M.

Theresa Barrett will provide the Committee with information on the location and hotel accommodations once the location is determined.

ADJOURNMENT

The meeting was adjourned at 2:50 p.m.

ARIZONA JUDICIAL COUNCIL'S COMMITTEE ON SUPERIOR COURT

MINUTES

For Meeting held Friday, September 14, 2001
A.S.U. Downtown Center - Building C
Phoenix, AZ

MEMBERS PRESENT:

Hon. Raymond W. Weaver, Jr. (Acting
Chair)
Hon. Silvia Arellano
Hon. Kenneth Lee
Hon. Leslie Miller
Hon. Mark Armstrong
Hon. Edward Dawson
Hon. Brian Ishikawa
Hon. Michael Jeanes
Hon. Gloria Kindig
Hon. Nanette Warner
Hon. John Leonardo
Hon. Nancy Lewis
Hon. Denise Lundin
Hon. Fred Newton
Mr. Gary Krcmarik

STAFF:

Theresa Barrett
Helen Tallent

MEMBERS ABSENT:

Hon. Roger Kaufman, Chair
Hon. Monica Stauffer
Hon. R. Douglas Holt
Hon. Cindy Jorgenson
Hon. Kirby Kongable
Hon. James Chavez
Mr. Marcus Reinkensmeyer
Mr. Oren D. Thompson
Mr. Don Stiles
Mr. Charles W. Wirken, Esq.

GUESTS:

David Sands
George Diaz, Jr.
Theresa Gonzales
Nancy Swetnam
J.R. Rittenhouse
Gordon Mulleneaux
Cari Gerchick

I. WELCOME AND OPENING REMARKS

Judge Roger Kaufman, Chair, was unable to attend the meeting because he had a jury trial that was delayed as a result of the terrorist attacks. Judge Raymond W. Weaver, Jr. agreed to facilitate the meeting in his absence and called the meeting to order at 9:45 a.m. He welcomed everyone and acknowledged new members and guests. All those present introduced themselves.

Judge Weaver announced that prior to the meetings scheduled start time, the Superior Court in Maricopa County experienced a bomb threat and the building had been evacuated. He suggested this could be the reason several Maricopa members were missing. However, due to a full agenda he opted to begin the meeting without all members present. Judge Weaver informed members he was sympathetic to their individual agendas, therefore, those who wanted to attend any of the memorial services scheduled for later in the day should feel free to do so. Committee members agreed this was appropriate.

II. APPROVAL OF MINUTES - March 9, 2001

The minutes from the March 9, 2001 meeting were previously distributed electronically. Revisions and corrections received from members prior to the meeting were incorporated by staff. Copies of the revised minutes were provided for review at the meeting.

MOTION: To approve the revised minutes for the March 9, 2001 meeting as distributed. Seconded and passed. COSC-01-006

Following the vote Judge Warner arrived. Approximately 10:00 a.m. Judge Hicks joined the group.

III. NEW BUSINESS

A. Presentation and Discussion of Legislative Proposals

David Sands, Legislative Officer for the Administrative Office of the Courts (AOC), described the procedures that would be followed for review of the legislative proposals before the Committee and the voting options. Those options include: 1) To include the proposal in the judiciary's legislative package, 2) NOT to include the proposal in the legislative package, and 3) Include the proposal in the legislative package with amendments.

Like last year, Committee members were provided with a voting device for use in conjunction with the Options Technology voting program. The votes were automatically tallied and the results displayed on a screen.

For each proposal, either David Sands or George Diaz, Jr. provided a brief overview of the proposal, highlighted major issues, reported the position taken by other committees that had reviewed the proposal and then opened the floor for discussion. David and George prepared cover sheets for all proposals submitted to them for the upcoming legislative session. These handouts were provided to members at the meeting.

David informed members that three unsuccessful proposals from last year's legislative package had already been approved by the Arizona Judicial Council (AJC) in June. The proposals forwarded for inclusion in this year's package include: Juror Pay, Drug Court Funding and the Interstate State Compact for Adult Offenders.

David and George provided information on the following legislative proposals:

02-01 Fiduciary Omnibus Legislation: Protects the assets of vulnerable persons by enhancing oversight of public and private fiduciaries registered by the Arizona Supreme Court. The proposals are part of a comprehensive series of recommendations offered by the Fiduciary Advisory Committee in a report approved by AJC. Statutory changes enhance sentencing for crimes against incapacitated or vulnerable persons; clarify the jurisdiction of the Program and the qualifications for certification; authorize issuance of criminal, rather than civil, "fiduciary arrest warrants" to enforce court orders in probate proceedings; increase funding for the Program for implementation of a statewide audit program; and, allow disclosure of information among governmental agencies for investigation of civil or criminal complaints against fiduciaries.

David indicated this legislative proposal was the result of statutory recommendations contained in the final report of the Fiduciary Advisory Committee established by the Chief Justice in June of 2000. This committee was formed in response to recent incidents of financial exploitation of incapacitated and vulnerable individuals. The Committees' charge

was to examine and make recommendations on required changes to statute, rules and procedures to ensure adequate protection of the public.

Following David's overview of the proposal, Nancy Swetnam, Director, Certification and Licensing Division, AOC, joined by J.R. Rittenhouse, Program Coordinator, Private Fiduciary Program, AOC, facilitated discussion of the changes included in the proposal. Questions and comments include the following:

Element 1: Enhanced Sentencing

- < It was suggested Arizona's present sentencing scheme gives parameters that fit most adult abuse cases. Concern was voiced regarding passing more legislation which would carve out exceptions for a particular group when current sentencing guidelines are broad enough to take in these factors already.
- < The Fiduciary Advisory Committee felt prosecutors were not giving adult abuse cases enough attention. After researching other states' statutes the Committee recommended amending the sentencing structure in the criminal code versus establishing breach of fiduciary duty as a criminal offense.

MOTION: Amend aggravating circumstances language proposed under A.R.S. § 13-702(C)(14) to read as follows: If the defendant was in a position of trust and confidence to a victim who is an incapacitated or vulnerable adult or a minor as defined in Titles 14 and 46 and the offense and the events involved conduct of the defendant directly related to the defendant's position of trust and confidence to the victim. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-007

Element 2: Fiduciary Program

- < Language should be changed in the appropriate statutes to enhance oversight of public and private fiduciaries and support AOC contention that program is a certification program versus a registration program.

MOTION: Amend language proposed under A.R.S. § 14-5641(A) by striking "registered with" and replacing it with "certified by." Make conforming changes throughout the statute. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-008

- < Judge Miller was uneasy with clarifying changes offered in the proposal (i.e., replacing professional in lieu of private). Specifically, she was concerned the proposed language suggests that public fiduciaries are not professional. Judge Miller recommended that selected adjectives for categories of fiduciaries be changed.

Element 2 (cont)

MOTION: Strike term "private" throughout A.R.S. § 14-5641 and do not replace with proposed identifier "professional." Additionally, in order to incorporate public fiduciaries, add new section under A.R.S. § 14-5641(K)(2) which would include a reference to A.R.S. § 14-5602. Finally, in A.R.S. § 14-5602 add a corresponding reference that public fiduciaries must be certified pursuant to A.R.S. § 14-5641. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-009

Element 3: Fiduciary Arrest Warrants

- < Several Arizona Superior Court judges informed the Fiduciary Advisory Committee they had problems enforcing court orders against fiduciaries. For example, in one case, a judge issued six bench warrants for a fiduciary. All remain outstanding. Under current law these orders are civil, not criminal bench warrants, are not entered into criminal history data banks and, therefore, have limited enforcement capabilities. The proposed legislation provides for criminal arrest warrants in probate matters, similar to those enacted by the Arizona legislature in recent years for child support cases.
- < Nancy Swetnam clarified that this type of arrest warrant would need to be used in only a handful of cases. Furthermore, this approach would be applied to only those individuals who are deliberately and continually violating court orders and would be used after a judge had exhausted all other options.
- < Judge Armstrong suggested fiduciary arrest warrants are different from child support arrest warrants. Child support arrest warrants are typically treated as a civil contempt order and can be purged by payment of child support owed. Alternatively, although fiduciary arrest warrants address orders where there is money owed they also could be attached to other orders such as producing documents.
- < Judge Armstrong pointed out the language proposed in A.R.S. § 14-5656 was modeled after the child support arrest warrant statute. This section was included in the child support legislation to serve as a retroactive component and ensure all outstanding child support warrants were captured. He suggested it was not necessary to make the proposal retroactive in the fiduciary legislation.

MOTION: Eliminate A.R.S. § 14-5655 in its entirety from the proposal. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-010

Element 4: Funding

- < Nancy Swetnam indicated the Fiduciary Advisory Committee was not wedded to any particular dollar amount increase. Rather, their strategy was to propose a number of different funding sources.
- < As it is unlikely there will be any general fund monies available for an appropriation, Denise Lundin recommended that the reference to this source of funding be removed from the proposal.

MOTION: Strike appropriation language and leave to the discretion of legislative lobbyists to determine increases necessary to generate projected budget figures. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-011

Element 5: Confidential Information

- < In conducting investigations of civil and criminal complaints against fiduciaries, problems have been encountered regarding the authority of government agencies to appropriately share information. Moreover, current law prohibits some government agencies from communicating with other agencies regarding a pending investigation, even if both agencies are examining the activities of the same fiduciary.

- < Nancy Swetnam indicated this element of the proposal was very important and implored Committee members to vote in favor of the suggested language.

MOTION: Approve this element of the proposal “as is.” Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-012

***FINAL VOTE ON 02-01: THE COMMITTEE VOTED 14-2 TO APPROVE AS AMENDED.**

02-02 Court Filing Fees: Integrates and clarifies certain filing fees and other charges required by statute to be collected by the superior court and limited jurisdiction courts. Among the most notable changes are: 1) An increase in case filing fees to support additional staff, training and case processing needs resulting from legislation in 2000 that increased the jurisdictional authority of justice courts; 2) adding a specific \$50 fee for filing an injunction against workplace harassment pursuant to A.R.S. § 12-1810; 3) increasing by one dollar the minimum clerk fee charged in justice and municipal courts; and, 4) adding federal and tribal agencies to the list of governmental entities that are exempt from payment of court fees.

Michael Jeanes offered the following comments for consideration:

- < Raising the filing fee for an injunction against harassment to \$50 would not create consistency statewide. This is only true for Limited Jurisdiction Courts. Actually, this would create a different type of fee. This is something they worked on eliminating last year by taking the five dollar fee away for these types of filings.
- < The effective dates for all fee proposals should be consistent. Otherwise, filing fees will change at the Superior Court multiple times as each bill takes effect. Courts need sufficient time for programming their automation systems.
- < The rationale behind A.R.S. § 12-304 is to ensure that Arizona taxpayers are not paying for operations or work related to items requested by other political subdivisions within the state. If the proposed legislation is passed, it would exempt federal and tribal agencies but not other states. If the intent was to blanket all government agencies, this was not achieved.

Denise Lundin, Clerk of the Court, Cochise County, informed members that her office changed their procedures and now charge the Federal government for all their requests. She indicated since implementing this policy her office has found that instead of being asked for copies of whole files they now receive requests for only the particular document required.

The Committee considered excluding the federal government and those tribal governments located within Arizona from the proposal. After discussion it was recommended that only state agencies should be exempted from paying for their requests.

MOTION: Recommend to leave the statute “as is.” Specifically, if a request is not from a state agency, then they will be charged. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-013

The Committee then proceeded to discuss the proposed increase to the Stop Payment Fee. It was argued that this fee increase had the potential of financially impacting an individual who may not be at fault. For example, an individual whose restitution check was lost in the mail would be assessed a larger fee by the court to reissue their payment check. This fee

would be reduced from the original amount owed to the victim. Although it was pointed out that \$25 is a “commercially reasonable” charge, since there are only a small number of requests for this type of customer service, it was recommended the fee be left at \$10.

MOTION: Recommend the Stop Payment Fee under A.R.S. § 12-284 remain \$10. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-014

The Committee then discussed other fee increases in the proposed legislation and made the following motions:

MOTION: Recommend that necessary changes be made to make effective dates for all proposed fee increases consistent. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-015

MOTION: Recommend January 1, 2003 as the consistent effective date for all fee increases. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-016

MOTION: Move the proposed Faxing of Documents fee to section (F) and change the charge to .50 per page. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-017

MOTION: Delete the \$18 Retrieval Of Files From Off-Site Locations fee from the proposal. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-018

MOTION: Recommend reducing proposed \$50 Filing Petition Against Workplace Harassment fee to \$25. Motion seconded. Motion failed by a vote of 5-11-0. COSC-01-019

After additional discussion of the intent of recent domestic violence legislation which removed the filing fees associated with Petition Against Harassment and Orders of Protection the following motion was made:

MOTION: Delete \$50 filing fee for Injunction Against Workplace Harassment from the proposal. No fee should be charged. Motion unanimously approved. 16-0-0. COSC-01-020

***FINAL VOTE ON 02-02: THE COMMITTEE VOTED 15-1 TO APPROVE AS AMENDED.**

02-03 Scan/Image Fee: Creates a fee for SCAN/IMAGE documents presented to the Clerk of the Court. The funds would be dedicated to purchasing technology that support SCAN/IMAGE documents.

Michael Jeanes indicated last year a study funded by the Commission on Technology (COT) recommended the Supreme Court move forward with the implementation of electronic document management systems (EDMS) technology. Accordingly, COT has endorsed the use of this technology, however, ongoing statewide technology projects tie up the state funds available for implementation.

To avoid confusion related to funding sources used for technology, George Diaz, Jr. clarified that court automation projects are not, and never have been, funded by the state (i.e., the judicial department's general fund). Rather, court automation projects are funded by counties or by fees and/or surcharges.

Michael indicated although the Maricopa County Board of Supervisor's had provided seed money to his office to assist with project implementation costs, this proposal was an attempt to establish a fund to pay for the ongoing costs, funded by the users of the system. Members were provided with a copy of the Document Retrieval Fund statute (A.R.S. § 12-284.01). It was suggested the existing statute could serve as a model for the proposed new fund. Michael explained that the proposed SCAN/IMAGE fee would be in addition to the filing fee charged for a new complaint or answer and would be applied to every case.

Discussion followed. Comments and issues mentioned include the following:

- < Michael Jeanes reported that a study done in Maricopa county shows that once a system is in place it is very cost effective. This proposal will assist counties to implement these projects.
- < Judge Dawson suggested proposed language which requires that the court have approval from the county board of supervisors to use monies in the fund could prove problematic for several counties. It was suggested the Board should be removed from the decision making process to avoid conflicts in administration of the fund.

MOTION: Recommend amend proposal by deleting "subject to approval by the county board of supervisors" from proposed language. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-021.

- < Judge Warner suggested the phrase "The clerk, in coordination with the presiding judge" is too vague. Specifically, she questioned what constitutes "coordination." Therefore, to ensure the clerk of the superior court meets with the presiding judge before expending funds, it was recommended that the proposed language be changed.

MOTION: Recommend deleting "in coordination with the presiding judge" and substitute with the phrase "with the approval of the presiding judge." Motion seconded.

Denise Lundin suggested that the Clerk's Association would oppose this recommended language if approved. Before taking a vote, Judge Weaver opened the floor for further discussion. In an attempt to satisfy both judges and clerks the following motion was made:

MOTION: Recommend leave proposed language "as is" (i.e., "in coordination with the presiding judge" vs. "with the approval of the presiding judge"). Motion seconded. Motion approved. 13-3-0. COSC-01-022.

***FINAL VOTE ON 02-03: THE COMMITTEE VOTED 13-3 TO APPROVE AS AMENDED.**

Due to time constraints, compounded by the fact that several members reported they would need to leave the meeting early due to other obligations, Judge Weaver recommended prioritizing the remaining proposals. After establishing a ranking, the Committee could then discuss those deemed most important out of their numbered sequence. Members agreed with the plan.

02-05 Employer Compensation of Jurors: Requires employers to pay regular wages for the first five days of jury duty that would otherwise be earned to jurors who appear for service or are selected for trial. The proposal applies to full-time, part-time, temporary and casual employment.

Theresa Gonzales, AOC Legislative Team Member, presented background information for this proposal. Theresa reported that Alabama, Connecticut, Colorado, Louisiana, Massachusetts, Nebraska, New York and Tennessee all have statutes requiring employers compensate their employees. Additionally, Theresa informed members that in 1998, the National Center for State Courts conducted a study in Arizona to examine juror fee provisions. The study indicated 37% of Arizona jurors were not being paid by their employers for jury service.

Discussion followed. Comments include the following:

- < All major employers in Gila county already pay their employees. This proposal may hurt the small businesses.
- < Judge Hicks voiced concern that the proposal could place a burden on single parents who have a nanny/babysitter who is called for jury duty. If this proposal is approved, that parent would have to pay the employee as well as find other child care. Judge Leonardo suggested there should be exceptions that cover this situation.
- < David Sands questioned whether it was the court's place to propose legislation that advocates employers bear a burden versus a public entity.

***FINAL VOTE ON 02-05: TO APPROVE (5), TO REJECT (8) AND AS AMENDED (2).**

02-06 Regional Jury Summoning: Enables jurors to be summoned to the most proximate courthouse to their residence by creating judicial districts in counties where the superior court has more than one location. Authorizes a jury commissioner to draw and summon a trial jury from a particular county pursuant to court rule.

Comments on this proposal include:

- < Language should be added to specify "in counties with a population larger than X."
- < Since the proposed language is permissive, this process would only be instituted in those areas where it made sense to do so.
- < George Diaz indicated this legislation was proposed last year by Senator Cirillo. It was opposed by both defense counsel and prosecutors.
- < Judge Weaver questioned whether the court should carve out statutes for a specific county?
- < Judge Miller did not feel the Committee should limit the ability of a county to implement this process if it could be done without harm to the system or juror diversity.

- < Judge Arellano suggested that appropriate language be included to ensure that judicial districts would be drawn so that they demonstrate a representative juror pool.
- < Judge Armstrong recommended that Supreme Court rule should govern the process to ensure representativeness.
- < To avoid confusion to jury districts already established by local court rule, it was suggested the areas be called jury summoning districts.

MOTION: Recommend proposed language in A.R.S. § 21-132 be amended to read “. . . may draw and summon a trial jury from any portion of the county designated by Supreme Court rule.” Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-023.

MOTION: Strike the term “judicial district” throughout A.R.S. § 21-132 and replace with “juror summoning district.” Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-024.

***FINAL VOTE ON 02-06: THE COMMITTEE VOTED 13-3 TO APPROVE AS AMENDED.**

02-09 Terms of Pro Tempore Judges: Amends statutes by extending the term of pro tempore judges from six to twelve months.

George informed members that the Limited Jurisdiction Committee (LJC) indicated they would like language added to include justice court pro tems in the proposal. The group did not choose to recommend language and referred it back to LJC for further action.

***FINAL VOTE ON 02-09: THE COMMITTEE VOTED 16-0 TO APPROVE.**

Following the vote on 02-09 Judge Newton departed.

Break for Lunch

02-11 Adoption Fee: Clarifies that the Attorney General is not obligated to pay the filing fee required by A.R.S. § 8-127 to be paid to the clerk of the superior court in adoption proceedings.

Judge Warner informed members it is the adopting parents, not the state, who are filing these types of actions. Furthermore, this is a fee that is currently reimbursed through adoption subsidies.

Michael Jeanes indicated in the past, these types of cases were handled by the County Attorney’s Office and the fee was paid. Alternatively, in 2000, the Attorney General’s Office began to represent DES wards (i.e., wards of state) and argued they are exempt from paying mandated statutory fees pursuant to A.R.S. § 12-304 since they are representing the parents. Michael explained this proposal was Maricopa’s attempt to gain clarification on who is exempt and specifically who should pay.

No proposed language was offered for consideration. Therefore, the Committee deemed a vote to reject would suggest that all agencies should pay.

***FINAL VOTE ON 02-11: THE COMMITTEE VOTED 12-1 TO REJECT.**

02-12 Mental Health Records: Allows the Department of Public Safety (DPS) access to court records to obtain the name, date of birth, social security number, date of treatment order and upon termination of treatment, the date of termination of those persons the court has found to constitute a danger to him/herself or others.

Those who have been found to constitute a danger to themselves or others, pursuant to court order, are prohibited from: possessing firearms, the issuance of a permit to carry concealed weapons, the issuance of a security guard registration certificate. DPS is statutorily responsible for the background checks that verify the qualifications for the above privileges. The proposer strongly believes that in order to effectively enforce the qualification of applicants, DPS needs access to the information generated by the court's action.

Judge Leonardo felt this was an important proposal but perceived it as a prosecutorial matter. He questioned whether the Committee was the appropriate body to deal with it.

George Diaz, Jr. revealed the proposal had been submitted by Barbara LaWall, Pima County Attorney, who had received special permission to have it considered for inclusion in the judicial package. George informed members this legislation was proposed last year and defeated.

Michael Jeanes indicated the clerks, along with the court, opposed the bill because of the short time line offered for implementation and lack of funding. Members agreed this is good public policy, however, there needs to be an implementation plan first. The Committee is supportive of the concept.

***FINAL VOTE ON 02-12: TO APPROVE (1), TO REJECT (13) AND AS AMENDED (1).**

02-16 Sealing/Redaction of Records: Seals and redacts the public records of judicial officers.

This proposal amends A.R.S. § 28-454, 11-483 and 11-484, regarding the Department of Transportation, County Recorder, and County Assessor and County Treasurer records respectively. The proposed amendments are based on the provisions of A.R.S. § 16-153 regarding voter registration records, which currently includes a means for prohibiting access to identifying information such as a judicial officer's address and telephone number.

Judge Armstrong pointed out that statutes currently exist for prohibiting access to identifying information for peace officers. This proposal will add justices of the Supreme Court, judges of the Court of Appeals, judges or commissioners of the Superior Court and municipal court judges to the statute. The proposal does not include justices of the peace.

Research conducted by Maricopa Superior Court Administration staff and the office of the Maricopa County Attorney indicates that there is currently insufficient legal authority to otherwise block access to such identifying information through, for example, a local administrative order.

Denise Lundin requested the proposal be amended to include the Clerk of the Court.

MOTION: Include the Clerk of the Superior Court in the proposal. Make appropriate changes throughout the statute. Motion seconded. Motion unanimously approved. 16-0-0. COSC-01-025.

***FINAL VOTE ON 02-16: TO APPROVE (2), TO REJECT (1) AND AS AMENDED (11).**

02-08 Conciliation Fees for Non-IV-D Paternity Cases: Adds paternity and maternity cases to other family law cases in which parties are currently required to pay a fee to carry out the purposes of the conciliation court. Title IV-D cases that are prosecuted by the state child support agency would not be subject to the fee.

If approved, this proposal's effective date would be January 1, 2003. There was no further discussion.

***FINAL VOTE ON 02-08: THE COMMITTEE VOTED 15-0 TO APPROVE.**

02-17 Probation Omnibus: Clarifies adult surveillance officers have peace officer status in the performance of their duties. Creates an offense for eluding or evading probation supervision. Creates an offense for probation staff having sex with probationers. Creates a Deferred Retirement Option Plan (DROP) for probation officers who are eligible for retirement.

There was no opposition to this proposal.

***FINAL VOTE ON 02-17: THE COMMITTEE VOTED 14-0 TO APPROVE.**

Following the vote on 02-17 Judge Lee, Judge Leonardo and Judge Miller departed. No quorum existed for votes on remaining proposals.

02-04 Excess Proceeds from Trustee Sales: Ensures that monies derived from a trustee's sale of property will be applied according to legislatively mandated priorities by establishing revised procedure for disposition of sale proceeds.

David Sands indicated the proposed statute will eliminate the problem of parallel actions by requiring the trustee to first file a civil action and to notify all potential claimants before depositing the funds with the County Treasurer. Thereafter, all claims for the funds will be made in that one case.

Judge Armstrong indicated this was a Maricopa proposal which originated in their Civil Study Committee. Members included the entire civil bench as well as a number of prominent local attorneys.

***FINAL VOTE ON 02-04: THE REMAINING MEMBERS' OPINION WAS 12-0 TO APPROVE.**

02-07 Probate Administration Compensation: Allows investigators, accountants or attorneys to be reasonably compensated for services rendered when ordered by the court in cases involving probate of wills or administration of a decedent's estate in the same manner as is presently authorized in guardianship and conservatorship cases.

This proposal is the result of recent recommendations by the Arizona Supreme Court's Fiduciary Advisory Committee regarding the need for increased monitoring and oversight of court-appointed fiduciaries. Arizona's probate courts are expected to realize a greater need for providing staff investigative and accounting resources in the administration of pending probate cases. The proposed legislation will allow probate courts to begin assessing fees for investigation services and accounting reviews conducted in the probate of decedents' estates consistent with similar fees presently being assessed pursuant to A.R.S. §§ 14-5314 and 14-5414 in pending guardianship and conservatorship cases.

***FINAL VOTE ON 02-07: THE REMAINING MEMBERS' OPINION WAS 12-0 TO APPROVE.**

02-10 Transmittal Fee and File Time Limit: Changes the due date for transmittal fees in change of venue orders from 20 days of the change of venue order to 20 days of the new court's receipt of the case. Also changes the due date for filing fees in change of venue cases from 30 days of the change of venue order to 30 days after the new court receives the case file.

Michael Jeanes indicated the proposed changes will help improve work flow in the Clerk's office.

***FINAL VOTE ON 02-10: THE REMAINING MEMBERS' OPINION WAS 12-0 TO APPROVE.**

02-13 Notification by Appellate Court: Requires appellate courts to transmit notification of their action to the Motor Vehicle Division (MVD) in certain criminal cases.

Michael Jeanes explained this proposal would apply to only those cases that go up to the Court of Appeals from the Superior Court. The intent behind suggested changes is to ensure whatever court renders the final decision it is that Clerk of Court who is then required to notify MVD/DPS.

No language was provided for review. Committee members indicated they would like to see where the proposed language would go in the statutes.

Michael Jeanes indicated he had not discussed this proposal with the Clerk at the Court of Appeals.

***FINAL VOTE ON 02-13: THE REMAINING MEMBERS' OPINION WAS TO APPROVE (7), TO REJECT (5) AND AS AMENDED (0).**

02-14 Interstate Compact Probation Fees: Clarifies that probationers accepted under the interstate compact pay the Clerk of the Court the cost of the deoxyribonucleic acid (DNA) testing within 30 days of arrival in the county where they are being supervised. Requires the Clerk of the Court distribute the funds via the county treasurer to the Arizona DNA Identification System Fund.

Gordon Mullenaeux informed members that current statutes do not indicate to whom or when the interstate compact probationer shall pay the fee. Consequently, the Arizona Association of Superior Court Clerks requests the law be made consistent with other statutes that require individuals to pay their fees to the Clerk of the Court for transmittal to the county treasurer to be distributed to the Arizona DNA Identification System Fund.

George Diaz, Jr. indicated the Committee on Probation (COP) approved this proposal.

***FINAL VOTE ON 02-14: THE REMAINING MEMBERS' OPINION WAS 11-0 TO APPROVE.**

02-15 Domestic Violence: Makes technical and substantive changes in laws regarding domestic violence.

David Sands suggested breaking the proposal into five separate pieces for discussion. Theresa Barrett directed members to materials included in the supplemental package

provided to members at the meeting. The following is a summary of the comments made by members regarding each piece.

(1) Make consistent presently conflicting provisions of law regarding the effective date of modifications to protection orders.

There was no objections to this component of the proposal.

(2) Include injunctions against harassment in the statute that elevates an assault to an aggravated assault if committed while the perpetrator is subject to a protection order.

MOTION: Recommend that suggested changes to A.R.S. § 13-1204 not be included in the final proposal. Motion seconded. Motion approved. 10-2-0. COSC-01-026

(3) Add the objective standard “reasonably should have known” to statutes that increase terms of sentencing when a felony domestic violence offense is committed against a pregnant victim.

David posed the question to members, “Should courts decide the standard of proof or is this a prosecutorial issue?” The group agreed this was an accepted legal standard and was reasonable.

(4) Make consistent the sentencing provisions of A.R.S. §§13-3602 (L) and 13-711 regarding domestic violence offenses committed against pregnant victims.

Parente v. New Jersey rationale would apply to this suggested change and a jury trial would be required. It was suggested this could be handled by an interrogatory and would not be a burden on the court.

(5) Include spousal rape within the definition of domestic violence.

The crime already exists. This suggestion will simply add it to domestic violence offenses.

***FINAL VOTE ON 02-15: THE REMAINING MEMBERS’ OPINION WAS TO APPROVE (2), TO REJECT (2) AND AS AMENDED (8).**

B. Prioritization of Legislative Proposals

Having completed the initial review of each assigned proposal, Committee members were asked to identify priorities from those proposals that the Committee voted to include in the judiciary’s legislative package. Each member was allowed four votes, if they wished, all four votes could be placed on one proposal. The results are displayed in the following table.

PROPOSAL	Votes for Priority
02-16 Sealing/Redaction of Records	10 out of 12
02-09 Terms of Pro Tempore Judges	9 out of 12
02-01 Fiduciary Omnibus Legislation	8 out of 12

02-08 Conciliation Fees for Non-IV-D Paternity Cases	7 out of 12
02-06 Regional Jury Summoning	6 out of 12
02-03 Scan/Image Fee 02-15 Domestic Violence	3 out of 12
02-02 Court Filing Fees 02-07 Probate Administration Compensation	1 out of 12

Following discussion it was decided not to break the ties and to forward to the Arizona Judicial Council as priorities all nine of the proposals that received votes.

IV POST TRIAL JUDGE/JURY CONTACT (Old Business)

In order to include discourse related to the pending advisory opinion of Judicial Conduct Commission, Committee members decided to table discussion of this issue until their winter meeting.

ACTION ITEM: When issued, Theresa Barrett will circulate a copy of the Judicial Conduct Commission’s advisory opinion to members via email.

XVI. INFORMATION ITEMS

Theresa Barrett, Court Specialist, AOC, referred members to the Fee Deferral and Waiver Charts provided by Steve Nelson, Program Manager, Judicial Enforcement Unit, Yuma County Superior Court. In December 1999 Yuma started using the definition approved by COSC and AJC and began assessing all but those that are permanently unable to pay. Steve felt the charts illustrated that the indigent can and will pay when they are given a compassionate payment plan. Theresa expressed Steve’s appreciation to the Committee for their support in securing the language that allows Yuma’s Judicial Enforcement Unit to continue their collection efforts in this area. Other information items presented to members include: Decision regarding Prop 200 eligible defendants and the link to the Administrative Order/Arizona Judicial Code of Administration website.

Theresa announced that in light of recent state budget cuts in the future hotel, per diem and mileage claims will need to be submitted to the member’s county for reimbursement. Furthermore, the Committee’s meals would no longer be paid for by the AOC. Theresa offered to make arrangements for catering and collecting money from members if the Committee wanted to continue to their practice of working through lunch. Other options discussed included bringing a sack lunch or breaking for lunch. If members have any questions on new policies, they should contact Theresa at (602)542-9364.

VI. SCHEDULE NEXT MEETING DATE/PLACE

The next meeting date was not scheduled.

ACTION ITEM: Theresa Barrett will compile members’ availability and provide the Committee with information on the location and hotel accommodations once a date is determined.

ADJOURNMENT

The meeting was adjourned at 2:45 p.m.