

ARIZONA JUDICIAL COUNCIL'S
COMMITTEE ON SUPERIOR COURT

MINUTES

For Meeting held Friday, January 25, 2002
Superior Court in Pima County
110 West Congress, Conference Room 945
Tucson, AZ

MEMBERS PRESENT:

Hon. Roger Kaufman, Chair
Hon. Silvia Arellano
Hon. James E. Chavez
Hon. Bethany Hicks
Hon. Douglas Holt
Hon. Brian Ishikawa
Hon. Gloria Kindig
Hon. Cindy Jorgenson
Hon. Kirby Kongable
Mr. Gary Krcmarik
Hon. Kenneth Lee
Hon. John Leonardo
Hon. Nancy Lewis
Hon. Denise Lundin
Hon. Leslie Miller
Hon. Fred Newton
Mr. Marcus Reinkensmeyer
Mr. Don Stiles
Hon. Nanette Warner
Hon. Raymond W. Weaver, Jr.

MEMBERS ABSENT:

Hon. Mark Armstrong
Hon. Michael Jeanes
Hon. Monica Stauffer
Mr. Charles W. Wirken, Esq.

GUESTS:

Hon. George T. Anagnost
Hon. Jeffrey Coker
Hon. John Kennedy
Hon. Patricia Noland
Mr. Jeffrey Fine
Ms. Debby Finkel
Ms. Jennifer Greene
Mr. Dennis Metrick
Ms. Christine Powell
Mr. Patrick Scott
Ms. Kathy Waters
Ms. Amy Wood
Ms. Judy Bushong

STAFF:

Theresa Barrett
Helen Tallent

I. WELCOME AND OPENING REMARKS

Judge Roger Kaufman, Chair, called the meeting to order at 10:00 a.m. He welcomed everyone and thanked the Superior Court in Pima County for providing the Committee with meeting accommodations for their Tucson meeting. Judge Kaufman then acknowledged guests. All those present introduced themselves.

II. APPROVAL OF MINUTES - September 14, 2001

The minutes from the September 14, 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 September 14, 2001 meeting as distributed. Seconded and passed.
COSC-02-001

III. NEW BUSINESS

A. Committee to Study Probation Officer Safety and Training: Final Report on Officer Safety

Ms. Kathy Waters, Director of the Adult Probation Services Division for the Administrative Office of the Courts (AOC), presented the final report on the Ad Hoc Committee on Officer Safety and Training. Ms. Waters provided a brief overview of the history leading up to the formation of the Ad Hoc Committee, established by Administrative Order #2001-32. She explained the Committee's purpose was to develop and make recommendations to insure the standardization of officer safety training, equipment and policies and procedures for probation departments statewide.

The Committee consisted of 27 voting members and was broad based in its representation. There were numerous Chief Probation Officers, Juvenile Court Directors, Judges, Managers, Trainers, Legislators, Probation/Surveillance Officers (both juvenile and adult) as well as Law Enforcement included in the membership. All meetings were open to the public and participation was encouraged and received.

To prepare the final report, Ms. Waters informed members research information was gathered from resources across the country, including but not limited to, The National Institute of Corrections, the American Probation and Parole Association and the National Association of Probation Executives. However, after completing their national research it was clear more information was needed on the demographic, training and equipment information for Arizona departments, as well as, the opinions of probation staff statewide. Accordingly, a survey was drafted by the Committee to collect this information. Approximately 4,200 surveys were sent to staff. 2,086 surveys were returned and analyzed.

Ms. Waters noted the survey information proved to be very beneficial to the Committee as it began the process of developing its recommendations. The following is a summary of the Committee's findings:

Safety Issues

- For the most part, respondents felt safe in their offices. The place they felt the least safe was going out into the field.
- Some respondents felt there were inadequate weapons checks at their building entrances.
- Some juvenile officers were concerned with inadequate locking systems on office equipment (i.e., file cabinets).
- Regarding community safety issues most respondents were concerned about contacting offenders in high risk areas (i.e., out of the office). Generally, officers were not concerned about public places or even satellite offices as a lot of these offices are in police stations or court houses where security is in place.

Training Issues

- Results indicated the need for more training in regards to recognizing and diffusing dangerous situations. Although most respondents felt they could "recognize" a dangerous situation, a lot less felt they had the skills to "diffuse" those situations.
- Adult and Juvenile Officers both felt that all of the training listed was inadequate, in particular training on Firearms, Unarmed Self Defense, and Impact Weapons. Ms. Waters pointed out that Pima is the only county that arms its officers. Accordingly it is the only county which currently offers firearms training.
- Both Adult and Juvenile Officers felt additional training would be most useful in the following areas: High Risk Offender, Unarmed Self-Defense and Control, Safety Considerations for the Field, and Verbal Skills and De-escalation Techniques.

Equipment Concerns

- Less than half of all respondents felt they have adequate equipment.
- Equipment most important to officer safety included: radios, dispatch and cell phones. Ms. Waters suggested this finding indicates when officer's are out in the field they want some sort of contact with the home office.
- Juvenile Officers included rubber gloves and first aid supplies as equipment important to officer safety.

Arming Findings

- 77% of respondents felt that Adult Officers should be allowed to carry handguns or have the option.
- 68% of respondents felt that Juvenile Officers should be allowed the option to carry handguns.
- 40% of all respondents felt the need to be armed.
- In particular, respondents felt that officers should be armed when working with Warrants, Absconder Tracking and High Risk Caseloads.

Next, members were referred to the handouts included in their meeting materials delineating AJC's actions related to the Committee's report. Following a review of the Council's recommendations, Ms. Waters reported the Committee's "next steps." She indicated the first step would be the submission of the code sections addressing Firearms Standards and Training to AJC in March. In June, the Personnel Policy code section and changes to Code Section 6-105: Duties and Responsibilities of Probation Officers will be presented to AJC and recommended for adoption.

Ms. Waters noted there is still work that needs to be done. This work falls under one of two areas: Policies and Procedures or Training. Policies and procedures issues will be addressed in code sections. Alternatively, the Committee has recommended establishing an advisory committee under the Committee on Probation (COP) to handle the training component. The advisory committee will be the working group that will make subsequent recommendations and continue the implementation of the Committee's recommendations. The advisory committee will also work in conjunction with the curriculum subcommittee of the Committee on Probation Education (COPE) to further develop standardized training, equipment and policies. Following the presentation, Judge Kaufman opened the floor to questions.

Gary Krcmarik asked whether the cost impact for the proposed training had been determined. Ms. Waters indicated a gap analysis had been conducted taking into consideration existing equipment. The figure arrived at to implement the equipment component ranged from \$900,000 to 1 million dollars. The training component was harder to put a dollar amount on. Based on Pima County's costs, preliminary estimates are between 2-3 million dollars. This amount is proposed to be spread out over the next two years. Ms. Waters indicated monies had been put aside in the adult probation services budget to get started however, she cautioned members the state budget crisis could impact this reserve.

Judge Kaufman thanked Ms. Waters for her succinct and helpful report.

B. Minute Entry Workgroup Report and Recommendations

Following a brief introduction by Judge Kaufman, Co-Chairs, Hon. Denise Lundin, Clerk of the Court for Cochise County and Hon. Jeffrey Coker, Superior Court Judge, Coconino County presented the Minute Entry Workgroup's Report and recommendations.

Ms. Lundin began by explaining that the Clerk's Association spent a year examining statewide minute entry practices, and this effort culminated in the creation of the Minute Entry Reform Work Group under the umbrella of the Committee on Superior Court. She described the membership of the work group, that it met five times in the last year to examine current practices relating to minute entries, identify problems and suggest reforms. Chief Justice Zlaket had asked the group to examine whether minute entries could be eliminated.

Problems identified by the work group include: lack of shorthand skills, over-reliance on minute entries when other documents would be more appropriate, redundancy and lack of uniformity among divisions. Solutions identified include: distinguish minute entries from orders or notices, develop and use more forms in lieu of customized minute entries, change the culture at the courthouse to move away from reliance on minute entries, ask parties to provide their own notices and utilize technology where appropriate.

Among the committee members, consensus was strong that not all minute entries can be eliminated and that they are needed at the appellate level and elsewhere. Moreover, Chief Justice Jones's new strategic agenda includes processing civil cases in a more efficient manner, therefore, the time has come to get this accomplished.

Judge Coker then spoke on the judge's perspective on these issues. He introduced his remarks by reference to a common definition of insanity, "Doing the same thing over and over again and expecting a different result." This evokes the topic of minute entries, because what led to the creation of the reform work group was the recognition that things cannot continue as they have when it comes to minute entries, despite reluctance from the bench to see changes made in this area. He recalled that until a few years ago, the delays caused by minute entry practices in Coconino led to a situation where some minute entries were being sent out after the hearing date which was noticed in the minute entry. Judge Coker also stated that he opposes asking judges to fill out forms while on the bench, but he thinks there are other acceptable ways in which minute entries can be reformed to meet current needs.

In order to address these concerns, the reform work group looked at the purposes served by minute entries, and asked whether those goals can be met in a better way. It was suggested the recommendations will require changes in some courts, for example, the proposal that shifts the responsibility for drafting a judge's orders made under advisement to a judicial assistant. It was noted while the proposals will seem like baby steps to some, to others they may seem impossible to accomplish. Nevertheless, it was reiterated that these reforms need to be made because the clerks no longer have sufficient resources to continue doing business in the same fashion.

Jennifer Greene, Court Specialist, Court Services Division, AOC, added that the work group also was following the minute entry reforms in Maricopa Superior Court, where the civil, criminal, juvenile and family courts have been experimenting with various alternatives. Ms. Greene indicated it is hoped that at least some of these reforms can be adopted in other counties or be made part of a statewide reform initiative.

Ms. Lundin then asked the committee for comments on the specific proposals. She stated that the work group's proposals are broadly worded to permit elimination of paper records where possible, and to accommodate remote populations and their technological limitations. Ms. Greene noted some clerks were concerned about losing control over their record of the proceedings when a judge would transform a minute entry into an order, and in the process, add language that was not reflective of what happened during the proceeding. Accordingly, the first proposal is aimed in part at preventing this misuse of minute entries by creating a rule that draws a formal distinction between a minute entry and an order or notice. This new rule could be used to train judges to respect this distinction.

Judge Sylvia Arellano asked whether the work group was proposing that clerks would only draft minute entries and judicial assistants (J.A.'s) would draft orders. She explained that in her court, the juvenile judges sign every minute entry, because they are also serving the purpose of an order. The clerks prepare them, and if the J.A. had to be in the courtroom to take down her orders, that would be a burden. Judge Coker responded that the proposed rule is drafted in an intentionally flexible manner to accommodate the needs of individual divisions in terms of who prepares what. The minutes need to reflect an order or ruling announced during a proceeding, and a minute entry may or may not be signed by the judge. The distinction drawn by the proposed rule is not dependent upon who prepares the order or notice or whether the judge signs it, but when and where the order or notice was arrived at and under what circumstances (under advisement, in chambers versus announced during a hearing).

Judge Kaufman suggested that the proposed definitional rule be reworded to state that a minute entry will sometimes include orders and notices of hearings announced during a proceeding. In almost every case in which he sets a trial date, Judge Kaufman will have a minute entry drafted that includes the discussion he has had with counsel, it will give them notice of future dates and may include orders about what needs to be done.

Judge Coker agreed that he follows a similar practice. However, he explained, the reform work group is trying to help clerks get away from the practice in which a judge dictates a 5 page under-advisement ruling to a clerk and entitles it a minute entry. Ms. Lundin urged that if a judge decides out of court to change the date of a hearing, that should be a notice from the court and not a minute entry prepared by the clerk. Another process the committee hopes to foster is similar to the federal trial court system in which the lawyers submit notices or orders with copies. This is admittedly shifting the work to other parties, but it is also a necessary change.

Judge Gloria Kindig expressed concern about the amount of work her J.A. is already required to accomplish. Judge Coker acknowledged that in some courts J.A.'s should not be asked to draft notices or under-advisement rulings, and the cooperation of the clerk's office will be needed. It is a question of the local culture of the court. Judge Kindig stated that the Clerk in her court has already taken the position that certain work will not be performed by the Clerk's office, putting more onus on the judicial assistants. Judge Kindig expressed reluctance to give the clerk more ammunition in the form of the proposed definitional rule.

Hon. Patricia Noland, Clerk of the Court in Pima County, suggested that the situation with the Clerk in Navajo County would not necessarily be replicated in other counties if the

proposals are adopted. In Pima, the clerks do what needs doing, as do other clerks' offices in other counties. The problem of minute entries stems from the fact that in the past, clerks were the people in the courthouse with shorthand skills, so they were enlisted to draft a lot of documents that do not fall within the definition of "minute entries." Clerks do not have these skills any longer; people just simply aren't learning shorthand any longer.

Judge Kaufman noted that an awful lot of what is included in a daily trial minute entry seems to be surplus and asked whether the work group had studied this phenomenon in particular. Ms. Lundin explained that the reform work group was aware of this, and is working on developing a curriculum for training judges not to expect this much detail in trial minutes in the future. Judge Coker stated that some judges rely on these detailed minute entries to remind them of what happened the day before or at the last hearing. Judges may have to start taking their own notes.

MOTION: The Minute Entry Workgroup continue its current efforts until reform goals are accomplished. Motion seconded and unanimously approved. COSC-02-002

Following the vote, Ms. Lundin requested clarification as to whether the Committee's motion granted the work group the approval to move forward with the proposed recommendations. No objections were made.

C. Procedure for Review/Approval of Forms

Patrick Scott, Public Access Specialist, Court Services Division, AOC, informed members for the last four years numerous forms have been created for use by the court community and the public by the AOC Ad Hoc Self Service Center Forms Committee. This Ad Hoc Committee has 25 representatives from 14 counties and is comprised of judicial officers, attorneys, court administrators, and clerks of court. A copy of the membership list was provided in the meeting materials.

In addition to the AOC ad hoc committee, Mr. Scott indicated many counties also have their own initiatives. For instance, Coconino has a collaborative effort with their Legal Aid Society to work on forms. At the same time, Maricopa has put together an extensive library of over 900 forms.

Currently, there is no official review by AJC standing committees of many of the forms used by Arizona courts. To address this issue it was suggested the procedure for approval of all forms needs to be formalized. This will ensure adequate input is being provided and that the needs of the court and public are being met. Moreover, if there are problems with a particular form, a formalized review process will assure issues are addressed and the revised form is routed back to the AOC for statewide dissemination.

Mr. Scott referred members to the proposed motion provided in their meeting materials. He explained this motion basically recommended all forms created by the AOC Self Service Center

Forms Committee be presented to the appropriate AJC standing committees prior to being placed on the web or distributed to the public. Furthermore, this recommendation suggests the Committee on Superior Court create a subcommittee to review all superior court forms developed by the AOC Self Service Center Forms Committee before presentation to the full committee.

Following Mr. Scott's overview the floor was opened for discussion. Comments and questions included:

- It was noted the AOC Self Service Center Forms Committee already includes a sizeable number of judges which review the proposed forms. There appears to be sufficient judicial review with current process.
- To clarify the potential volume of forms the Committee would be reviewing, Mr. Scott reported ninety-four forms had been approved by the Ad Hoc Committee to date. Another eighty-nine forms are pending review.
- Judy Bushong, Chair, Self Service Center Forms Committee, indicated the Committee has made revisions and modifications to previously approved forms which were deemed confusing in order to make them more "user friendly." Ms. Bushong provided several examples of the Committee's work in this area.

Following discussion, Judge Kaufman sought a second to the recommended motion. There was no second. Judge Kindig then offered an alternative motion for consideration.

MOTION: All superior court forms developed by the AOC Self Service Forms Committee come to the full Committee on Superior Court for approval prior to the forms being submitted to AJC. Motion seconded. Motion failed by a vote of 5-14-0. COSC-02-003

Following the vote, no further action was taken on this report

D. Post Trial Judge/Jury Contact

Judge Kaufman shared with members that for 8 ½ years he had conducted his own personal research on juries. He did this by giving each juror in a civil trial a written questionnaire which asked various open ended questions regarding the trial proceedings. Additionally, he indicated he often spoke with jurors after trials who had questions. He received invaluable information from these questionnaires and from the jurors. In turn he shared a lot of this information, without attribution, with lawyers in the course of trial management conferences. However, this all changed with the issuance of the Arizona Supreme Court Judicial Ethics Advisory Opinion 01-01 which prompted him to discontinue the aforementioned jury contacts altogether. Following his personal account, Judge Kaufman turned over facilitation to Judge Fred Newton.

Judge Newton began by providing a brief history on how the issue of whether talking to juries following a trial was appropriate arose. He followed by sharing the general practice found in rural counties prior to the October opinion. He explained that in rural counties, for the practical reason that rural judges are elected and jurors are their constituents, most rural judges would meet with the jury to thank them. Out of a growing concern that a judge would be charged with inappropriate ex parte communications, a request to review of the issue of post trial judge/jury contact was made to the Judicial Ethics Advisory Committee.

Judge Newton stressed the importance of members discussing this opinion with their fellow judges to ensure their bench is aware of the findings. Judge Newton then provided a summary of the two issues addressed in the opinion, beginning with a review of the conditions that must be met before a judge meets with a jury after a trial. The three limitations cited included:

- (1) **Notice must be given.** Specifically, counsel for all parties should be informed of the judge's intention to meet with the jurors and given an opportunity to be present, or to request that the meeting be on the record, or both.
- (2) **Judges must indicate what can and cannot be talked about up front with jurors.** This means the judge must admonish the jurors before the meeting specifying what is appropriate to talk about.
- (3) **Judges must discourage discussion of deliberations.** Basically, what jurors have talked about in the jury room needs to stay there. Specifically, the judge must expressly and firmly prohibit any discussion of the jury's deliberations.

Regarding the second issue of whether the court may issue a certificate to jurors in recognition of their service, the opinion does allow a judge to continue this practice as long as the letter/certificate is limited strictly to an expression of appreciation for jury service. Furthermore, it must also be routinely sent as a matter of general court policy. Judge Newton suggested that if only one or two judges are providing letters/certificates and others on the bench are not, the ones that do may be deemed in violation of the advisory opinion.

Judge Newton indicated, like Judge Kaufman, he no longer speaks to jurors after a case as a result of the restrictions delineated in the recent advisory opinion. Although the opinion may not be binding, he reiterated the need to exercise caution when speaking to jurors after a trial. He also expressed his strong reservations regarding sending out jury questionnaires as he is concerned they could be perceived in violation of the opinion as well.

To avoid any appearance of impropriety, Judge Newton recommended the Court Administrator's Office send out all jury exit surveys. This would remove the judge from the information gathering process. Additionally, he suggested that the AOC design a standard jury exit questionnaire to be used by all courts.

The following is a summary of the comments made by Committee members.

- It was pointed out that the opinion does not differentiate between civil and criminal juries. However, drawing a distinction between the two would be problematic since post trial motions occur in civil cases as well as criminal. Judges need to be careful when speaking with both types of juries.
- Jurors often want to have their verdict validated. They want you to tell them they "did the right thing." This is prohibited.
- Members were informed there is a standing statewide jury committee under AJC which is currently looking into various jury issues including jury appreciation and/or jury exit questionnaires. It was suggested that questions and/or comments should be directed to Theresa Barrett to forward to the Chair. Judge Kaufman, Judge Newton and Judge Arellano volunteered to review any juror exit surveys proposed for statewide use by this committee.
- Disappointment was voiced regarding the limitations posed by the advisory opinion. Judges should be encouraged to continue to communicate with jurors to foster public understanding of their role in the jury system.
- It was argued letters/certificates of appreciation do not need to be court-wide policy. Rather, to ensure compliance with the opinion, they simply need to be the general policy of the judge that sends them.
- The opinion's guidelines hinder interaction between judges and jurors. Communication between the judge and jury is valuable. It enhances the jury experience for citizens and educates them about the jury process.
- The best ambassadors for jury service are those who have served and had a positive experience. Cutting the process off after the verdict removes an opportunity to contribute a greater understanding of the functions of the judiciary.
- Jurors are intimidated when the judge addresses them "on the record." This procedure makes jurors feel the judge is mad at them which in turn makes them feel bad about their jury experience.

The discussion of this topic concluded with members contemplating what action could be taken by the Committee that would address the need to balance ethical concerns while still providing room to acknowledge and validate juror's service.

ACTION ITEM: Judge Leonardo will draft a letter to the Judicial Ethics Advisory Committee addressing the concerns of the Committee regarding limitations of Opinion 01-01. Judge Newton and Judge Kindig will review the draft. Consideration of the draft by

the full committee will be placed on the April agenda.

Prior to the break, Judge Kaufman announced that the Superior Court in Pima County had graciously agreed to cover the Committee's lunch expenses. He thanked Court Administration for their hospitality.

Break for lunch

E. ACJA Fee Deferral and Waiver Code Section Review/Approval

Following the lunch break, AOC Court Revenue Specialist, Debby Finkel, presented the Arizona Judicial Code of Administration (ACJA) for Fee Deferral and Waiver. Ms. Finkel explained the proposed code was primarily a reformatting of the Administrative Order 2001-89 and the procedures adopted by the AO. Although there were no significant changes to the original order, Ms. Finkel indicated forms had been eliminated from the packet and will be adopted separately. She informed members this change would allow for speedier revision of forms.

MOTION: Motion was made and seconded that the code be adopted as changed. Motion passed unanimously. COSC-02-004

F. Complex Litigation Committee

Next, Amy Wood, Court Services Division, AOC, announced the establishment of the Committee to Study Complex Litigation. Ms. Wood referred members to the copy of Administrative Order No. 2001-122, included in the meeting materials, which delineated the Chief Justice's charges.

Ms. Wood reported the Committee's first meeting was held the day before (January 24) following the Annual Meeting of Chief Justices. Members heard presentations from Chief Judge Kaye, New York, regarding their commercial division and Chief Justice George, California, on their complex litigation program. Roger Warren, National Center for State Courts, also attended and provided information from a national perspective on the issue.

Based on the time line established by AO #2001-122, the Committee is scheduled to submit their final recommendations to AJC in June. Therefore, to generate feedback the complex litigation committee anticipates presenting a subsequent report to members at their April meeting. Alternatively, if time does not permit a formal presentation, recommendations may be routed either electronically or in hardcopy for comments.

G. Proposed Rule Changes for Civil Traffic Violation Appeals and Criminal Appeals

Following a brief introduction by Judge Kaufman, Honorable George Anagnost, Chair, Rules Subcommittee, Committee on Limited Jurisdiction Courts presented the proposed rule changes prepared and submitted by the Rules Subcommittee.

Judge Anagnost explained the Subcommittee's primary goal was to make the processing of cases under the Superior Court Rules of Appellate Procedure- Criminal and the Rules of Procedure in Civil Traffic Violations less cumbersome and more efficient. Specifically, efforts were aimed at simplifying the process for court staff and appellants. The Subcommittee worked for approximately one year on the revisions submitted for review.

Ultimately, Judge Anagnost indicated the changes would save time and money for both Limited Jurisdiction and Superior Courts by creating common definitions and generating standardized forms. He explained this was achieved by backing away the record preparation of an appeal case until it is fully perfected at the Limited Jurisdiction Court level which is consistent with the existing statute stating the method will be determined by the Rules of Procedure.

Judge Anagnost indicated that over the last six months in Maricopa County alone there were approximately 900 civil traffic appeals. Of these cases, over 50% were eventually dismissed and remanded because the appellant failed to pay for the transcripts at the trial court level or did not file the required paperwork. Therefore, the time and costs incurred for preparing the record are wasted.

Judge Anagnost argued the Superior Court would benefit directly by approving the proposed changes as judges and staff would be assured that when a case enters the system it is indeed a real case in controversy. The changes promote a more efficient use of court time and resources. Moreover, they simplify the process for the appellant as they only need to deal with one court at a time in perfecting their appeal.

MOTION: Motion was made that the proposed rule changes be approved as submitted. Motion seconded. Motion passed unanimously.
COSC-02-005

H. Committee to Study Public Access to Electronic Court Records Report and Recommendations

Honorable Patricia Noland, Clerk of the Court, Pima County, presented the Report and Recommendations of the Ad Hoc Committee to Study Public Access to Electronic Court Records. Ms. Noland indicated the Committee's task was outlined by the Chief Justice as being to examine and recommend whether and to what extent the Court should provide Internet access to court records.

The Committee was a very diverse group. It consisted of members from the bench, court administration, the media as well as representatives from the Executive and Legislative branches. The Committee was structured into four working groups: Potentially Sensitive Information, Rights and Liabilities, Practices and Procedures and Technology. These working groups each produced reports on their topic areas for consideration by the full committee. In addition to the members' own presentations, the Committee also heard from a variety of others

who use court records and need to have access to them (i.e., the Arizona Civil Liberties Union, private investigators, attorneys, businessmen etc).

Ms. Noland explained the Committee focused on not only data dissemination policies in Arizona (i.e., Supreme Court Rule 123) but other states as well. They also looked at current data gathering practices in Arizona courts and evaluated the public's expectations of privacy. For instance, what is the responsibility of the Court as the keeper of public records in providing access to the public? How does the Court balance the right of the public to access its records against the individual's right to privacy?

Ms. Noland began her review of the Committee's report by clarifying that their recommendations were based on the underlying assumption that court records would continue to be available to the public at the courthouse as they had always been. The Committee also wanted to make it clear their recommendations did not mandate that a court must provide Internet access to its records. Rather, they took the position that websites were to remain optional.

The following is a summary by topic of the recommendations offered as reasonable guidelines to consider if a court has a website and offers court records to the public via the Internet.

Judicial Data Gathering Practices

The court should work towards protecting disclosure of the types of sensitive data (i.e., social security numbers, credit/debit card numbers, and financial account numbers) from case files. Specifically, the court needs to consider what it is asking for and whether it really is necessary. The Committee felt it was the Court's responsibility to develop a sensitive data form and require its use where applicable to protect sensitive data. Finally, the Court needs to educate the public regarding access to court records. Currently, the public does not understand that all case files are considered public information and accessible to everyone (Note: The exception being those that are sealed or deemed confidential).

Limitations on Internet Access

In this area, the Committee felt information should be "phased-in" by case type. Initially allowing access to civil cases (not dissolution) and criminal cases, followed by family, juvenile and probate cases that are not confidential. Ms. Noland noted one exception for criminal cases would be that presentence reports should not be accessible. Again, the Committee felt that the Court was obligated to ensure that sensitive data stored in their case management databases was also blocked from public access. The Court should also prevent bulk data downloading by providing access to case information on a case-by-case basis only.

Administrative Appeal

The Court needs to have a mechanism in place that facilitates the correction of data errors. The Committee recommended following the current administrative process for appealing the denial of access to court records. Basically, the process for correcting errors would mirror the administrative review of other public access related complaints.

Website Management

The Court needs to offer a disclaimer notifying viewers that they are not responsible for the accuracy, timeliness, completeness, interpretation, or misuse of their records. Courts with websites should also offer some type of glossary or other resource that will assist viewers to understand the terminology used and/or case information they are reading. Moreover, the Committee recommended the development of a single portal access. This is already occurring for some courts through the AOC website.

Jennifer Greene, AOC staff to the Committee, added that the aforementioned recommendations had been presented to AJC in March. She indicated AJC directed the Committee to circulate these recommendations to the appropriate standing committees and the community for comments. The Committee will also be looking at some specific areas in further detail, such as orders of protection and bulk data.

Ms. Greene noted that the Federal government had made the decision not to make criminal records available on the Internet. Nationwide courts are grappling with the same issues addressed in the Committee's report and struggling with adopting electronic access policies. As public reaction is not easy to assess Ms. Greene suggested the Supreme Court wants to take time to gauge how the Committee's recommendations will be received. Arguably, the savings realized from an operational standpoint by making court records available via the Internet may not be worth the potential damage to public trust and confidence in the judiciary if individuals perceive access as a violation of their privacy.

Ms. Greene concluded by informing members they could expect to be provided with a revised version of the Committee's recommendations in the next year.

To illustrate the application of the recommended guidelines, following the overview of the Committee's recommendations, Ms. Noland provided a brief demonstration of her office's website.

I. Recognition of Service

In honor of their dedicated service and in appreciation for their commitment to the Committee on Superior Courts members recognized: Judge Dawson (a founding member who gave 11 ½ years of service before retiring from the bench), Judge Jorgenson (who served for one year before becoming ineligible due to her

appointment to the Federal bench) and Oren Thompson (for serving three years with distinction before resigning due to his wife's terminal illness).

Judge Kaufman then announced he had learned Oren Thompson recently lost his wife. He requested the minutes reflect the Committee's condolences and that members were thinking of him in his time of sorrow. There were no objections.

J. Strategic Planning Update

Ms. Christine Powell, Strategic Planner, AOC, drew the Committee's attention to Chief Justice Jones strategic plan entitled "Justice for a Better Arizona." Ms. Powell indicated this document will form the backbone of where the Chief would like the Court to go in the next three years.

Ms. Powell began her update by providing a brief overview of how the document was developed. She explained that during the process, the court reached out to a wide variety of individuals using the court system in an effort to identify what the main issues Arizona courts should be focusing on to improve public trust and confidence. Numerous focus groups were conducted as well as meeting with all the AJC standing committees. The information gathered was brought to AJC in June, at which time the tedious process of prioritizing which issues would be included in the Court's strategic plan was undertaken.

Ms. Powell noted while the plan included a number of ongoing initiatives carried forward from "Justice 2002" it also includes several new projects. Ms. Powell then reviewed the plan with the Committee paying particular attention to the new projects contained in the plan and those areas which the Chief is particularly interested in giving attention to in coming years.

The topics included: Probate, Officer Safety, Self Represented Litigants, Court Interpreters, Limited Jurisdiction Reform, Centralized Collections, Family Courts, Re-engineering Civil Case Processing and Improving the Legal Profession by working closely with the State and County Bar Associations.

Ms. Powell informed members the document is still a "work in progress" and the Chief is still fleshing out his priorities.

Accordingly the Committee's input would be welcomed. She encouraged members to look over the plan and identify issues they might want to address in future meetings.

The following is a summary of member's comments and the issues identified for further discussion.

- Judge Arellano would like to address lack of uniformity in the use of interpreters. She informed members the Arizona Minority Judges Caucus embarked on studying the issue of access to the court last year and has drafted a report addressing the need for qualified interpreters. Judge Arellano offered to present this report to the Committee for consideration. Judge Kindig added she would like to see less common languages, such as Native American and sign language, included in this discussion as well. Judge Kindig informed members she is working to have a 1½ hour session addressing interpreter issues faced by the court included at next judicial conference. It was also noted that Jennifer Greene,

AOC, is currently working on a telephonic court interpreter project as a possible alternative to having interpreters in the court. Additionally, Dennis Metrick, AOC, indicated the Court Services Division is also researching different types of interpreter testing and certification programs and has put together a tentative plan for statewide implementation.

ACTION ITEM: Christine Powell agreed to meet with AOC staff to put together background information for the Committee to study on interpreter problems and possible solutions.

- Judge Warner informed members the Children's Action Alliance is currently looking at the recent changes occurring in Juvenile Justice System. She suggested that the Committee should wait on addressing juvenile issues until their research has been completed.

ACTION ITEM: Judge Warner will keep the Committee apprized of the Children's Action Alliance efforts.

- Judge Weaver would like to work on simplifying child support calculations.

ACTION ITEM: Information on how Arizona's current child support calculations were established will be compiled. Megan Hunter, Family Law Unit, AOC, will be invited to present alternatives to Arizona's current process.

- Judge Leonardo indicated he would like to address the Court's responsibility for increasing attorney competence. Specifically, what is a judge's responsibility for addressing attorneys' actions in court? Judge Kindig suggested the Committee should also discuss paralegal competence (i.e., unauthorized practice of law). Is it the Court's responsibility to protect the public (i.e., pro se litigants) from paralegals who are charging for unuseable work products?

ACTION ITEM: The issue of the court's responsibility regarding attorneys' actions in court and paralegal's competence will be placed on the Committee's next agenda for further discussion.

- Judge Chavez suggested a discussion of Court financing and/or how to better finance courts.

- Judge Holt requested the Committee conduct a brainstorming session to identify solutions to problem faced by rural counties regarding lack of judges available to handle conflict cases.

ACTION ITEM: Options used by other states will be compiled for members consideration. This issue will be placed on the next agenda for further discussion.

PLAN OF ACTION: Approximately two hours will be set aside for strategic planning at the Committee's next meeting. Copies of the minutes from prior strategic planning sessions will be distributed to all members. Members should contact either Theresa Barrett or Judge Kaufman with any additional issues they wish to have included in the proposed strategic planning session.

IV INFORMATION ITEMS

Theresa Barrett, Court Specialist, AOC, advised members they should have received an email from Karl Heckart, Chief Information Officer, AOC, regarding the judicial department's new public access web site. Ms. Barrett encouraged Committee members to view the test site at <http://supreme7/publicaccess> and direct comments to the AOC Support Center via email or phone. She referred the Committee to a copy of the original email provided in their meeting materials for specific contact information. Ms. Barrett informed the Committee the new web site was scheduled to go live on January 31, 2002. Therefore, comments should be submitted as soon as possible to allow time for consideration and/or incorporation.

Next, Ms. Barrett reminded members that every Friday until the legislative session ends, two conference calls will take place between the Administrative Office of the Courts and court personnel statewide to solicit comments on pending legislation and how it may affect the courts. Like the prior year, calls will be divided between the limited jurisdiction courts at noon and superior and appellate courts at 1:00 p.m. On the morning of each Friday, a list of bills to be discussed will be emailed to each participant. Ms. Barrett indicated that all committee members will be included on this distribution. The number to call to participate is (602)542-9000.

Ms. Barrett concluded with the announcement that Helen Tallent had received a promotion since the Committee's last meeting and would no longer be the primary contact for Committee business matters. Although she would still be serving as support staff at meetings, all questions regarding future meetings should be directed to Pat Hernandez either by email at phernandez@supreme.sp.state.az.us or phone at (602)542-9585.

V. SCHEDULE NEXT MEETING DATE/PLACE

The next meeting will be held on Friday, April 26, 2002 at 10:00 a.m. The meeting location is the State Courts Building, 1501 W. Washington, Conference Rooms 345 A & B.

VI. CALL TO THE PUBLIC

No respondents.

ADJOURNMENT

The meeting was adjourned at 1:50 p.m.

ARIZONA JUDICIAL COUNCIL'S
COMMITTEE ON SUPERIOR COURT

MINUTES

For Meeting held Friday, April 26, 2002
State Courts Building
1501 West Washington, Conference Room 345 A & B
Phoenix, AZ

MEMBERS PRESENT:

Hon. Roger Kaufman, Chair
Hon. Silvia Arellano
Hon. Mark Armstrong
Hon. James E. Chavez
Hon. Bethany Hicks
Hon. Brian Ishikawa
Hon. Michael Jeanes
Hon. Gloria Kindig
Hon. Kirby Kongable
Mr. Gary Krcmarik
Hon. Kenneth Lee
Hon. Nancy Lewis
Hon. Denise Lundin
Hon. Fred Newton
Mr. Marcus Reinkensmeyer
Mr. Don Stiles
Hon. Nanette Warner
Hon. Raymond W. Weaver, Jr.
Mr. Charles W. Wirken, Esq

MEMBERS ABSENT:

Hon. Douglas Holt
Hon. Leslie Miller
Hon. Monica Stauffer

GUESTS:

Hon. Edward Burke
Mr. Andy Federhar
Ms. Debby Finkel
Mr. Jeremy Geigle
Ms. Jennifer Greene
Ms. Megan Hunter
Ms. Karen Kretschman
Mr. Dennis Metrick
Ms. Christine Powell
Ms. Nina Preston
Mr. Patrick Scott
Ms. Nancy Swetnam
Mr. Ted Wilson
Ms. Amy Wood

STAFF:

Theresa Barrett
Helen Tallent

I. WELCOME AND OPENING REMARKS

As Judge Kaufman, Chair, was unavoidably detained, at staff's request Judge Fred Newton called the meeting to order at 10:12 a.m. He welcomed everyone then acknowledged guests. All those present introduced themselves.

II. APPROVAL OF MINUTES - January 25, 2002

The minutes from the January 25, 2002 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 January 25, 2002 meeting as distributed. Seconded and passed. COSC-02-006

Note: Approximately 10:15 a.m. Judge Kaufman arrived and assumed facilitation of the meeting.

III. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Review and Discussion of Proposed Code Section for Private Process Servers

Via conference call, Ms. Nancy Swetnam, Director of the Certification and Licensing Division for the Administrative Office of the Courts (AOC), presented the Arizona Judicial Code of Administration (ACJA) Section 7-204: Private Process Servers.

Ms. Nina Preston, AOC Legal Services, attended the meeting to assist in addressing members' questions.

Ms. Swetnam explained the proposed code section contained both technical and substantive changes to the existing administrative rules governing registration of private process servers adopted by Administrative Order 94-20. The technical changes were made to conform to formatting guidelines of Arizona Judicial Code of Administration. In addition, the provisions of General Rule 1 were placed within the body of the proposed code section in order to create a comprehensive document. Ms. Swetnam noted General Rule 1 is the rule adopted by the Court to apply to various certification programs and includes the complaint and disciplinary process.

Changes were also made to clarify that process servers would not be required to take an exam to renew their certification. This was done to remain consistent with other certification programs. Furthermore, Ms. Swetnam explained that writing and validating examinations are expensive processes. Currently, the Supreme Court has no funding for exams nor their development. Certification fees are kept by the counties.

The substantial changes cited by Ms. Swetnam included increased responsibilities for clerks of the superior court, additional provisions regarding the disciplinary process, a code of conduct and language regarding service of process in a hospital.

Members were directed to Appendix A, Standard 3(i) regarding the issue of service of process in a hospital. Ms. Swetnam informed members Representative Linda Binder had initially requested language be added to specify process servers should not serve process on a patient receiving treatment "in any kind of medical facility, under any conditions." The proposed language offered was deemed a compromise. Private process servers do not feel the language is necessary. However, if required to move forward, they will likely accept it.

Ms. Swetnam indicated she plans to take the code section forward for adoption to the Arizona Judicial Council in June. Currently, the proposed code is out for public comment. The floor was then opened for questions and comments.

Mr. Krcmarik reported that in Coconino County the bailiff administers the test. The bailiff is not part of the clerk of court's office, but is considered part of the Court's staff. Accordingly, Mr. Gary Krcmarik requested clarification under section D(3)(a). Specifically, does the code require the designee be a part of

the clerk's office? Ms. Swetnam presumed Coconino's arrangement would be prohibited as the code is currently drafted.

CONSENSUS: Language allowing delegation should be included in the code.

Judge Armstrong, who performs the presiding judge function for the presiding judge in Maricopa County, offered the following observations:

- Page 8, E(5)(a)(3): Language is vague and ambiguous. Specifically, what does "source of injury or loss to the public" mean? Judge Armstrong suggested language should use an objective rather than a subjective standard.

Ms. Swetnam reported this language comes from the existing rule and has been used in complaints for other types of certificate holders.

- Page 8, E(5)(a)(5) Allowing discretion to deny certification based on the conviction of a misdemeanor may lead to inconsistent application statewide.

No other members indicated concern.

- Most complaints are related to process servers referring to themselves as "officers of the court." This is misleading to the public.

Ms. Swetnam reported there had been prior attempts to introduce legislation to strike reference to process servers being "officers of the court." However, to date, the private process servers' lobby has been successful in defeating all proposals.

- A definition for formal and informal discipline should be included in the code. This clarification is necessary as classification of "formal" triggers specific due process requirements.

- Page 14, H(11): To keep language consistent, should change "applicant" to "certificate holder."

- Page 15, H(14)(b): Using the term "parties" is confusing since in this proceeding it does not apply in the traditional sense. If the complainant is not a party, this should be specified.

- Page 16, H(16): Typographical error. Need to change "Preferring Conference" to "Prehearing Conference."

- Page 18, H(20): Recommended adding another subsection to read: (8) To order other such relief that the hearing officer deems appropriate.

- Page 19, H(21)(a): The Court should not be required to use certified mail. Other orders and/or judgments do not have this requirement. Language should be changed to fit the common practice. Typically the Court uses regular mail.

Mr. Michael Jeanes noted the following:

- Page 6, E(2)(c)(4)(ii): Currently, there are no criteria established for refusing to accept the applicant's application. The decision is made at the discretion of the court. It was suggested the intent appears to be "shall."

CONSENSUS: Language on page 6, E(2)(c)(4)(ii) should be changed to read: If the applicant is unable to provide this statement, the clerk of the superior court ~~may~~ SHALL refuse to accept the application.

- Page 6, E(2)(c)(7): To avoid varying requirements being imposed by each county, it was suggested language should be added to specify "how many" and "what kinds" of references are required.

CONSENSUS: To ensure consistency county to county, need to work on the language in section E(2)(c)(7).

- Page 9, F(2)(a): Clarify who issues the identification card. Current language is confusing. See also page 5, E(2)(b)(2) for reference to Court issuing card.

Ms. Denise Lundin, Clerk of the Court for Cochise County, indicated recently the Cochise County Sheriff's Department had begun to certify their administrative staff as private process servers. Since these staff members already have undergone background checks conducted by the FBI, Ms. Lundin, suggested adding language to the code that would provide a waiver eliminating the need for a subsequent check by the clerk of the superior court. Ms. Swetnam pointed out that Federal law prohibits the sharing of the results of the fingerprints as "secondary dissemination." Therefore, she presumed the only way to bypass a subsequent background check would be to have the applicant sign a statement under oath. The program would then rely on the verified statement made by the applicant. Judge Warner voiced concern about using Ms. Swetnam's suggested solution citing the fact there are a number of different court processes that require fingerprints with no exceptions. Judge Warner contended precluding individuals who work for law enforcement from a subsequent check under this scenario could ultimately impact other processes.

Finally, Charles Wirken noted that there is no requirement that the applicant make his/her application in the county of residence. Mr. Wirken indicated he was aware of at least one instance in which an individual did "county shopping" to get certified.

CONSENSUS: Application should be restricted to the county of residence.

MOTION: To approve the proposed Arizona Judicial Code of Administration Section 7-204 in principle, subject to further amendment. Seconded and unanimously passed. COSC-02-007

B. Simplification of Child Support Calculations

Following a brief introduction by Judge Kaufman, Ms. Megan Hunter, AOC, presented information to committee members regarding simplifying Arizona's child support guidelines. Ms. Hunter began her presentation by providing a brief history of the guidelines. She followed with an explanation of the advantages and disadvantages of the three existing guideline models, clarifying why Arizona uses the *Income Shares* model. Handouts defining the models, and which model is used by each state, were provided to members in their meeting materials.

Ms. Hunter indicated over the next year the AOC would be looking at the language used in the current guidelines in an attempt to provide insight regarding the purpose of each section and to make them easier to understand. Additionally, the AOC will be contemplating ways to simplify the support calculation worksheet and how to provide more and better training.

Ms. Hunter informed members the child support calculator is accessible through *Wendell* (Intranet) and the Supreme Court's webpage (Internet). In Tucson, judges and attorneys can use *CASSANDRA*, a for-profit child support calculator. A stand-alone calculator has also been developed for some counties. Ms. Hunter instructed members to contact her if they are interested in acquiring a stand-alone system for their court.

At the Committee's request, options for simplifying the guidelines were discussed. The following is a summary of members' comments:

- Judge Hicks does not like the potential for litigation that is created by all of the variables the guidelines try to take into account. Simple is better. Areas cited by Judge Hicks that are ripe for litigation and the inability to settle include the parenting time and pre-born children adjustments.
- Judge Weaver agreed with Judge Hicks. He proposed eliminating adjustment for computing parenting time.
- Judge Warner likes the flexibility provided by the guidelines because families today have so many issues (i.e., Multiple Custody, Split Custody etc.). In addition, she is impressed with pro se litigants' ability to complete the worksheet properly. Judge Warner expressed concern regarding eliminating the parenting time computation. She also suggested Ms. Hunter interview individuals who do IV-D processing.

Ms. Hunter informed members for this review process, rather than conducting public hearings, staff had designed a web-based survey for parties to complete on-line to provide input. The information gathered from this survey will be used by Ms. Hunter and the Guidelines Workgroup to identify problem areas. To date, mostly parents have completed the survey.

In closing, Ms. Hunter indicated all suggested revisions will be discussed and/or incorporated by the Guidelines Workgroup into the recommended new guidelines. Once their review is completed, the Workgroup's final work product will then be routed to the Committee for review.

C. Prioritization of Court Assessments

AOC Court Revenue Specialist, Debby Finkel, presented information on the proposed standardization for the priority of monthly payments by defendants. Ms. Finkel directed members' attention to the handouts provided to them in their meeting materials.

Ms. Finkel indicated the workgroup intended for the application of the standards to be mandatory statewide. The priorities were not meant to be imposed on limited jurisdiction courts. However, it was suggested there would be some instances in which they would. Mr. Michael Jeanes noted establishing a priority for payments was also necessary in order to program a financial module to allocate payments made to the Clerk's Office.

Ms. Finkel indicated since the time she prepared the materials she has received many comments. Some of the concerns cited included:

- The loss of local reimbursement such as attorney reimbursement fees. Smaller communities depend on the reimbursement of these fees.

- Local fees have less chance of being collected, as the effect of invoking penalties for *Failure to Pay* and *Failure to Comply* is diminished.

Ms. Finkel contended there were still issues that required further examination. Moreover, the workgroup needed additional time to assess the impact of their decisions. Ms. Finkel recommended the Committee vote against the proposed standards offered and send them back to the original workgroup for more in-depth study.

**MOTION: Refer standardization guidelines back to the Workgroup for further study.
Seconded and passed. COSC-02-008**

Note: Mr. Michael Jeanes requested the record reflect he opposed the motion. Mr. Jeanes clarified he felt compelled to express opposition to the vote as the Clerk's Association had already approved the recommended priorities.

D. Review of Draft Letter to Judicial Ethics Advisory Committee

Judge Newton facilitated discussion of this agenda item. He began by drawing members' attention to the letter to the Judicial Ethics Advisory Committee drafted by Judge John Leonardo included in the meeting materials. Both Judge Newton and Judge Kindig reviewed the draft letter prior to submission to the full committee.

Judge Newton provided a summary of the two issues addressed in the draft letter. He then reviewed the Committee's position. In summary, members felt the requirement of having attorneys present and on the record was too restrictive. Members contended a judge could effectively guard against the possibility of improper communications during post verdict meetings by opening them with an admonishment to the jurors in open court with the attorneys present, then proceeding with attorneys no longer present.

Judge Newton indicated clarification was also requested concerning judicial letters of appreciation. Specifically, do letters/certificates of appreciation need to be a court-wide policy to ensure compliance with the opinion, or do they simply need to be the general policy of the judge that sends them?

Following Judge Newton's review, Judge Kaufman took an informal vote to establish members' position regarding the letter. Members unanimously agreed it was appropriate for the Committee to comment on the opinion. The following is a summary of the comments made by Committee members regarding the draft letter.

- It was pointed out that the opinion does not differentiate between civil and criminal juries. Most members felt the Committee should request the Advisory Committee draw a distinction between the two.
- Rather than simply providing a comment/observation, it was suggested the Committee's letter should request the Advisory Committee reconsider their opinion regarding restrictions placed on judges.

- There was some concern regarding how the judge would notify counsel regarding any improper communication. Specifically, would this make the judge a witness in the case? It was suggested the letter should provide more detail on how the Committee would recommend this notice be given to counsel. (i.e., Phone call, minute entry, set a hearing etc.)

ACTION ITEM: By mid June, Judge Newton and Judge Kindig will redraft the letter to the Judicial Ethics Advisory Committee incorporating suggestions of the Committee regarding limitations of Opinion 01-01. Theresa Barrett will then route to the Committee for comment. Comments will be due by the end of July. Consideration of the revised letter by the full committee will be placed on the next meeting agenda.

In further discussion, Judge Weaver indicated he felt the Court should look at ways to promote professionalism within the legal profession. Accordingly, he questioned whether the Committee should address the conduct of lawyers talking to jurors after the verdict in their letter.

Judge Kindig indicated she advises jurors they do not have to talk to attorneys. She further informs them they can request the bailiff escort them to their vehicles if they are concerned about being approached by an attorney. Judge Kindig has admonished attorneys who have been reported to her for this practice.

Judge Warner indicated she has had problems in her court with prosecutors speaking to jurors after the trial regarding evidence that was not admitted. She suggested attorney conduct was an issue that the Committee should address in a future meeting.

Judge Kaufman suggested since Opinion 01-01 deals only with a judge's conduct and the Committee only provides advice regarding "judicial ethics" the bar may be a more appropriate venue to take this discussion.

Mr. Charles Wirken, State Bar representative, indicated he was not aware of any problems from the bar's perspective. Mr. Wirken is in favor of attorneys talking to jurors. However, he did acknowledge the need to deal with the abuse of this privilege as well.

E. Complex Litigation Study Committee Report and Recommendations

This agenda item was moved up to accommodate the presenters. There was no objection.

The Honorable Edward Burke, Maricopa Superior Court and Mr. Andrew Federhar, Fenimore-Craig Law Firm, were in attendance to present the initial recommendations of the Complex Litigation Study Committee. Judge Charles Harrington, Pima County Superior Court, participated via conference call.

Mr. Federhar began his presentation by acknowledging Ms. Jennifer Greene and Ms. Amy Wood for their excellent support. He then provided the history behind the formation of the Committee which he traced to an attorney general's round table conference held in the fall. At the round table, whether Arizona needs a

special way to deal with complex civil litigation was debated.

Mr. Federhar indicated many of the attorneys present at the conference were choosing not to utilize the Superior Court to resolve their disputes because they had lost faith in the system.

Instead, they were making use of Federal court whenever possible. Reasons for their decisions included: costs, lack of predictability, lack of case law, judges experience etc.

In response to this perceived problem the Complex Litigation Study Committee was established. The Committee was charged to examine whether Arizona should adopt a different way to deal with complex cases. Mr. Federhar indicated the committee was broadly representative and included diverse perspectives.

At the Committee's first meeting, advantages and disadvantages were discussed. Some of the advantages cited included:

- Increasing experience in civil litigation;
- Create a case body of more consistent rulings;
- Through the use of technology and other mechanisms could improve case processing;
- Reduce costs of litigation, and;
- Restore the business community's trust and confidence in the Courts.

Other issues examined by the Committee included: additional costs to the court system, the impact on the Court's rotation system, whether it would be necessary to remove pre-emptory challenges and whether this type of system would single out certain business cases for special or elite treatment.

To make their conclusions members looked at a number of state models. After their review it was determined the California model was the most suitable fit for Arizona because it targets procedurally complex cases, opposed to exclusively business cases.

Mr. Federhar indicated in order to complete their work, the committee divided into four sub-committees, each addressing one aspect of the new program.

1. Rotation/Selection proposed a means of designating a small panel of judges to hear eligible cases. The group also identified how those judges would be selected, and suggested they be taken out of the normal rotation schedule for at least five years.

Note: Judge Burke advocated a petition to eliminate pre-emptory challenges to judges (not juries) in the new division. His position was based on precedent set by the Tax Court which does not allow challenging the judge. In addition, he argued dedicating three judges to the new division could strain Maricopa's civil division which currently is short staffed.

2. Definition/Eligibility proposed a means of identifying and screening complex cases eligible for the program.

Note: It was estimated Maricopa County will have between 400-1000 cases that qualify as complex each year. Pima County projects a smaller case load of several hundred cases.

3. Rules/Procedures drafted an additional subsection for Rule 16 that would require an early case management conference at which the parties and the judge could choose from numerous management tools to fit their particular case. They also drafted a proposed rule 39.1 to guide judicial officers in expediting trials in complex cases where possible.
4. Administration/Infrastructure identified a list of enhancements to courthouse facilities, caseload and records management techniques, technology, staffing, judicial education and funding that would maximize the advantages that the program has to offer.

Mr. Federhar suggested this program would initially be a pilot project conducted in Maricopa and Pima Counties. There was also discussion regarding adopting rules by the court to allow transfer of cases to make use of the system. To fund the program, Mr. Federhar indicated the committee proposed a user fee be imposed on parties who choose to transfer their cases to complex civil litigation division. The fee proposed is \$500-750 per party per case.

In closing, Mr. Federhar indicated the Committee would be seeking comments and input from the legal and business community. In addition, proposed rule changes had been drafted and would be going through the normal processes for amendment. It was noted the proposed rule changes would likely be temporary and for the duration of the pilot project.

Judge Kaufman was very supportive of the proposed program. However, he questioned the number of cases projected in Maricopa.

Aside from the change of venue proposal, Judge Newton questioned whether there was any other attention given to the rural counties. Mr. Federhar indicated the plan was to pilot the program in the major urbanized counties and then assess the success of the project before considering application on a statewide basis.

Judge Kaufman thanked Judge Burke and Mr. Federhar for their report and commended them on their hard work.

E. Review & Discussion of Rules of Criminal & Civil Procedures Update on Status of Rules 8 & 15

On behalf of Ms. Patience Huntwork, Arizona Supreme Court Staff Attorney, Mr. Jeremy Geigle presented a progress report on the Rule 8 & 15 Committee. Mr. Geigle indicated the Committee came about as a result of two rule 28 petitions. One of these rule 28 petitions was filed by the Arizona Attorneys for Criminal Justice. They requested preclusion of undisclosed evidence be the presumptive sanction for failure to meet disclosure requirements under Criminal Rule 15.1 and 15.2. The second petition was filed by Judge Kaufman and Judge Campbell from Maricopa Superior Court. The purpose of the latter petition was to establish more consistent and realistic speedy trial dates by substituting a single triggering event for speedy trial limits within Criminal Rule 8.2. Mr. Geigle explained the two petitions

were subsequently combined and referred to the Committee. Since filing a combined petition in April of 2001, significant public comment from prosecutors, defenders, victim groups, judges and the state bar has been received. Accordingly, Mr. Geigle informed members this past year the Committee spent most of their time reviewing, debating and discussing the public comments and recommendations.

Next, Mr. Geigle directed members' attention to their meeting materials which included the Committee's combined petitions and the associated position papers. Mr. Geigle informed members while there was unanimity on many of the issues addressed by the Committee, there were also areas of disagreement. The position papers delineate the areas of disagreement regarding plea cut offs, disclosure of hand written notes and preclusion as an available sanction for discovery violations. Mr. Geigle indicated the reply would be ready next week. The rules would then be placed on the Court's main agenda for discussion.

Judge Kaufman indicated he feels strongly that the rules need to be amended. Members unanimously agreed. Judge Kaufman concluded by urging members to review the petitions and write to the Supreme Court and share their comments and concerns if so inclined. Judge Kaufman thanked Mr. Geigle for his update.

Break for lunch

Following the lunch break, Judge Kaufman resumed discussion of the Rules of Criminal and Civil procedure by asking members if there were any other rules that members felt were problematic. Specifically, were there any rules that the Committee should address or refer to the Bar's Rules Committee.

Judge Weaver anticipated having problems with Rule 16(g), Rules of Civil Procedure. He suggested the new rule may require changes or educational seminars. Judge Kaufman expressed concern regarding monitoring and enforcement.

No other areas of concern were offered.

G. Recognition of Service

In honor of their dedicated service and in appreciation for their commitment to the Committee on Superior Courts members recognized: Judge John Leonardo (10/95 to 2/02) and Mr. Don Stiles (a founding member who gave 12 years of service before his retirement).

Judge Kaufman also announced Judge Leslie Miller had been named Tucson Woman of the Year. He requested the minutes reflect the Committee's esteem. There were no objections.

H. Strategic Plan: Update and Discussion

1. Interpreter Services

Hon. Sylvia Arellano, Maricopa Superior Court presented the study and recommendations prepared by the Arizona Minority Judges Caucus, Interpreter Issues Subcommittee. Judge Arellano summarized the Subcommittee's findings regarding

interpreter services in Arizona and reported that the Arizona Judicial Council recommended the formation of a committee to study their recommendations further. She informed members the Council requested the interpreter committee report back in October with a plan for Arizona that addresses funding, legislative, and efficiency issues.

To prepare members for what they would be seeing in coming months, Judge Arellano informed members the Committee would be preparing both a one year and a three-year plan for their consideration. Additionally, members would likely be asked to review proposed legislation and rule changes related to the utilization of interpreters in Arizona courts as well as, a code of ethics and a proposed certification program. Judge Arellano asked members to filter their comments for the Committee through her.

2. Public Access to Electronic Court Records

Ms. Jennifer Greene, Court Specialist, Court Services Division, AOC, began by providing a brief history of the Committee to Study Public Access to Electronic Court Records. She explained to members, when originally formed, the Committee took their task to be to determine whether and to what extent case records should be posted to the Internet. This was with the understanding that they were not making any changes to the terms of access covered in Rule 123. Accordingly, the Committee focused on the extent to which the Court should maximize their use of new technology to offer easier access to docket information and case records.

Recently, Chief Justice Jones requested the Committee reconvene to examine specific issues relating to criminal records, orders of protection (and injunctions against harassment) and consistency of case information being offered on Arizona courts'. Ms. Greene indicated three subcommittees were formed to examine the issues. These subcommittees have begun to meet and additional meetings have been scheduled in the upcoming months. *The full Committee's final recommendations are due to AJC in October.*

Mr. Michael Jeanes informed members the comment period for the model policy drafted by the Conference of Chief Justices and the Conference of State Court Administrators (CCJ/COSCA) had been extended to April 30.

In addition, the committee developing the model policy would be holding a public meeting in Washington, D.C. on May 17th. As a member of the national committee, Mr. Jeanes offered to carry forward comments for members. Ms. Greene indicated the Public Access Committee was preparing a comment on the CCJ/COSCA model policy.

The Committee then proceeded to discuss their concerns regarding the balance between public access to information and the right to confidentiality. The following are highlights from the discussion:

- Concern was voiced regarding placing imaged documents on the Internet due to inability to alter these documents and redact confidential information.
- The majority felt criminal records should be accessible with narrow limitations and necessary security.
- A few members felt adult criminal records should be available via the Internet with no limitations.
- Members unanimously agreed there should not be electronic access to juvenile court records with an exception made for counsel.
- Members had mixed opinions regarding access to domestic relations/family court records.
- Members concurred that granting access to parties/attorneys to certain case types that would not be available on the Internet would be helpful to the legal community.
- Members argued there is a difference between information being available to the public and information that is publicly provided.

3. Unauthorized Practice of Law/Ethics 2000

Ms. Christine Powell, Strategic Planner, AOC, presented information on the unauthorized practice of law and Ethics 2000. Ms. Powell indicated these issues were under the new theme in the Chief's strategic plan - *Serving the Public by Improving the Legal Profession*. Members were directed to the handouts included in their meeting materials concerning both issues.

Ms. Powell noted the unauthorized practice of law (UPL) has been the subject of debate for years and, accordingly, efforts to provide oversight in this area have been met with resistance. In an attempt to define what constitutes the practice of law, the State Bar drafted rules for consideration. Ms. Powell indicated the proposed changes will not necessarily impact legal assistants that are operating under the supervision of an attorney. Also, they will not impact the Court's ability to create and distribute forms.

Ms. Powell indicated the changes offered by the State Bar endeavor to bring document preparation entities under their authority in order to regulate them and sanction them for misconduct. Currently, court rule narrowly defines the practice of law and does not allow recourse for those individuals who have had documents erroneously prepared by a document preparer.

Following Ms. Powell's UPL presentation, Judge Kaufman opened the floor to comments and questions. Comments and questions from members included:

- Mr. Gary Krmarik asked if there was a reason why the State Bar omitted justice courts and municipal courts in Rule 31 section 16.
- Mr. Wirken clarified a rule 28 petition had not been filed by the Bar. Rather, the proposal was being circulated internally within the legal community. Mr. Wirken directed members to send their comments to the Consumer Protection Committee of the State Bar.
- Mr. Wirken informed members the State Bar is also collecting data regarding UPL complaints. Judge Warner indicated Pima's bench is compiling UPL complaint information and forwarding it to the Bar. Judge Kaufman encouraged members to inform their colleagues this information is being collected by the Bar.
- Mr. Wirken noted the State Bar's Discipline Department had been authorized to proceed with prosecuting certain UPL cases even in the absence of the proposed rules. At this time, selective cases are being targeted.

Ms. Powell then shifted the discussion to proposed ethical changes. The full text of the proposed ethical rules (ER) and a summary of the rule changes prepared by the State Bar were provided to members in their meeting materials.

Ms. Powell indicated the most controversial change was to ER 8.4 regarding attorney misconduct. The rule now includes a provision that allows for a bar complaint based on the finding of a trial court that a pre-emptory challenge has been exercised on a discriminatory basis. Prosecutors have argued this change does not provide adequate opportunity to challenge the Court's finding.

Other changes noted by Ms. Powell included:

- Changes to ER 1.4 sets out with specificity what it means to keep the client "reasonably informed." It also requires disclosure by the attorney if they do not carry malpractice insurance.
- ER 1.5 will now mandate that fee agreements be put into writing. Current language merely suggests they be recorded.
- In ER 4.2 the term "parties" has been changed to "represented persons."

In closing, Ms. Powell informed members the proposed ER changes were also being circulated within the legal community like the UPL rule changes. She encouraged members to send their comments to the State Bar's website.

4. Fiduciary Program

Ms. Nancy Swetnam, Director of the Certification and Licensing Division, AOC, presented the status of the implementation of the Fiduciary Advisory Committee (FAC) final recommendations adopted by AJC in June 2001.

Ms. Swetnam indicated the implementation of the FAC recommendations fall under three categories: statutory changes, administrative rule changes and administrative changes. A summary on implementation of the FAC recommendations was included in the meeting materials. A brief update for each category was provided by Ms. Swetnam.

- Statutory Changes. House Bill 2351 was introduced this legislative session. It has passed the House of

Representatives and Senate. It is anticipated the bill will become law.

- Administrative Rule Changes. Changes to the administrative rules governing the Private Fiduciary Program were adopted in the ACJA: Code Section 7-202 in November 2001. These changes have been instrumental in identifying abuses made by fiduciaries earlier. Additionally, the Arizona Fiduciary's Association is addressing ways to increase training for fiduciaries. The AOC is working with the Association in this area.
- Administrative Changes. The rollout of PAM software to assist the court community with automated case processing and uniform case management of probate cases has been initiated. The software will be rolled out statewide in future months. The recommendations approved by AJC also recommended the Court adopt the Arizona Probate Code Manual. Ms. Swetnam anticipates Chief Justice Jones will sign an Administrative Order to effect this change.

Following Ms. Swetnam's presentation, the floor was opened for discussion. Judge Kaufman asked for clarification whether the code covers receivers (i.e., those individuals that handle accounts for businesses and corporations that are in receivership with the courts). Ms. Swetnam indicated it does not.

ACTION ITEM: Judge Kaufman requested Ms. Swetnam examine whether there are reported problems with receivers. Additionally, Judge Kaufman expressed his interest in learning if there were any concerns associated with health care powers of attorney.

5. Family Court/ Domestic Relations Reform

Ms. Karen Kretschman, Attorney, Family Law Unit, AOC, provided information on issues arising from the Strategic Plan related to Family Law. Ms. Kretschman began her presentation by reviewing the Domestic Relations Reform Study Subcommittee (DRRSS) membership, organization and goals. She noted if Senate Bill 1088 is passed, the Subcommittee would have four additional members: a representative from the family law section of the State Bar, a child advocate, a law enforcement agency representative and a rural judge/commissioner representative.

Ms. Kretschman indicated DRRSS recently formed a new workgroup- The Integrated Family Court (IFC) Workgroup. The IFC workgroup was formed in response to legislators' interest in the Family Court concept and to address the proposed language in SB1088 which specifically charges DRRSS to complete a statewide plan by December 31, 2002. Ms. Kretschman noted the workgroup plans to have their report and recommendations completed early to allow sufficient time to route for comments prior to submitting it to the legislature in December.

The IFC workgroup is co-chaired by Judge Mark Armstrong, Maricopa Superior Court and Ms. Ellen Seaborne, a Family Law Attorney from Flagstaff. Ms. Kretschman clarified the IFC workgroup

should not be confused with the task force referred to in section 2-E of the strategic agenda. The task force will likely be formed next year.

It was suggested an Integrated Family Court would absorb other departments of the Court. Ms. Kretschman directed members' attention to their meeting handouts which included a proposed list of types of cases to be considered for inclusion in an Integrated Family Court. She informed members the issue of jurisdiction was included on the Workgroup's May agenda.

The implementation problems created by a lack of co-location for the various departments included in an IFC was discussed. Ms. Kretschman informed members this issue is being addressed by the workgroup. Early drafts called for one facility to house the merger of cases.

Judge Chavez voiced concern regarding judge assignment in an IFC. Currently in Mohave County the Court uses a part-time juvenile judge that cannot hear domestic relations matters.

In response to members' concerns, Judge Armstrong directed members' attention to the handout delineating the proposed framework of the IFC (#8). He indicated the workgroup's intent is to provide enough flexibility, that each county can design an IFC to meet their own needs and concerns.

In closing, Judge Kaufman inquired whether the workgroup's plan included having more social service personnel attached to an IFC than used in current case processing. Ms. Kretschman indicated many of the models studied by the workgroup incorporate the use of more social service personnel. Likewise they also share a court design that is more "user friendly" which provides more space for families to have privacy.

There were no further comments or suggestions for Ms. Kretschman.

Following the conclusion of the strategic plan updates, members moved to a general discussion of matters members felt merited the Committee's attention. The following is a summary of the issues identified as potential agenda items for future meetings.

- How can the Committee help to make Arizona's Superior Courts more efficient during the current budget crisis?
- How can the Court reduce the cost of funding law libraries?

ACTION ITEM: At a future meeting the Committee shall explore the expanded use of electronic research resources rather than purchasing hard copies of texts.

- How can the Court better train their newly appointed court administrators and new administrative judges? How can the Court educate future court administrators?

ACTION ITEM: At a future meeting the Committee shall examine and make recommendations on educational resources available to educate prospective and new court administrators.

- How can superior courts work most effectively with their funding authorities when developing their budget? How do you continue to fund resource intensive special programs in times of crisis? How can the Court be better prepared defensively to address legislative proposals that fiscally impact the judiciary?

ACTION ITEM: A subcommittee shall be established to develop ideas for the full committee's consideration at a future meeting. Subcommittee members include: Judge Newton (Chair), Mr. Marcus Reinkensmeyer, Mr. Gary Krcmarik, Judge Hicks and Ms. Denise Lundin.

- How should the Court address attorney behavior in the court? Should the Committee recommend that attorneys be required to complete a professionalism course in addition to ethics training?

ACTION ITEM: Judge Weaver will contact Mr. Wirken to discuss how to get the issue placed on the State Bar's agenda. Judge Weaver will report his findings to the Committee.

- How can the superior court work more collaboratively with the justice courts? How can we improve cross communication and avoid working at cross purposes?

ACTION ITEM: On behalf of the Committee, Theresa Barrett will invite the Limited Jurisdiction Court Committee to send a liaison to the next COSC meeting.

IV INFORMATION ITEMS

Theresa Barrett, Court Specialist, AOC, advised members as requested she had conducted research on other states programs for conflict cases and compiled her findings. Copies of Arizona's retired judge program were included in the meetings materials. If interested, Ms. Barrett indicated copies of her research were available upon request.

V. SCHEDULE NEXT MEETING DATE/PLACE

The legislative meeting scheduled for October 4th was changed due to scheduling conflicts. The next meeting will be held on Friday, September 27, 2002 at 10:00 a.m. The meeting location is the State Courts Building, 1501 W. Washington, Conference Rooms 345 A & B.

VI. CALL TO THE PUBLIC

No respondents.

ADJOURNMENT

The meeting was adjourned at 2:40 p.m.

VII. POST MEETING REQUEST

The members are requested to be prepared to discuss legislation concerning sentencing procedures in light of recent U.S. Supreme Court decisions concerning (1) Death Penalty sentences and (2) The existence of sentencing "enhancements" like being on probation in other cases.

**ARIZONA JUDICIAL COUNCIL'S
COMMITTEE ON SUPERIOR COURT**

MINUTES

**For Meeting held Friday, September 27, 2002
State Courts Building, Conference Rooms 345 A & B
Phoenix, AZ**

MEMBERS PRESENT:

Hon. Roger Kaufman, Chair
Hon. Silvia Arellano
Hon. Mark Armstrong
Hon. James Chavez
Ms. Deborah Dyson
Hon. Patricia Escher
Hon. Douglas Holt
Hon. Brian Ishikawa
Hon. Michael Jeanes
Hon. Gloria Kindig
Hon. Kirby Kongable
Mr. Marty Krizay
Hon. Kenneth Lee
Hon. Stephen McCarville
Hon. Margaret Maxwell
Hon. Leslie Miller
Hon. Fred Newton
Mr. Marcus Reinkensmeyer
Hon. Nanette Warner
Hon. Raymond Weaver

MEMBERS ABSENT:

Mr. Gary Krcmarik
Hon. Denise Lundin
Mr. Charles W. Wirken, Esq.

GUESTS:

Mr. David Sands
Mr. George Diaz, Jr.
Ms. Judith Connell
Ms. Susan Luebke
Ms. Nancy Swetnam
Mr. George Schade, Jr.
Mr. Ted Wilson
Ms. Susan Pickard
Ms. Karen Kretschman

STAFF:

Ms. Theresa Barrett
Ms. Deborah Orr

REGULAR BUSINESS

Welcome and Opening Remarks Hon. Roger Kaufman

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

In honor of their dedicated service and in appreciation for their commitment to the Committee on Superior Court members recognized: Judge Monica Stauffer (5/99 - 4/02) and Commissioner Nancy Lewis (7/96 - 4/02). Judge Kaufman requested the minutes reflect the Committee's appreciation. There were no objections.

Approval of Minutes - April 26, 2002 Hon. Roger Kaufman

The minutes from the April 26, 2002 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 minutes for the April 26, 2002 meeting as distributed. Seconded and passed unanimously. COSC-02-009

Note: Following approval of the minutes, Judge Kaufman announced a change to the meeting agenda. Specifically, to provide guidance to the legislative officers, the discussion of Senate Bill 1001 & Associated Rule Petitions would occur during lunch.

BUSINESS ITEMS/POTENTIAL ACTION ITEMS

Review of Legislative Proposals Mr. David Sands & Mr. George Diaz Jr.

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.

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 Mr. David Sands or Mr. 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. Mr. Sands and Mr. Diaz prepared cover sheets for all proposals submitted to them for the upcoming legislative session. Revised handouts were provided to members at the meeting.

Mr. Sands and Mr. Diaz provided information on the following legislative proposals:

03-12 Domestic Violence Definition: Mr. Bob James, Judicial Services Administrator, Maricopa Superior Court, and member of Committee on the Impact of Domestic Violence in the Courts (CIDVIC), facilitated discussion of the changes included in the proposal.

Mr. James indicated currently A.R.S. §12-1809 allows a judge to issue an Injunction Against Harassment (IAH) to persons in a “dating relationship.” However, the term “dating relationship” is not defined which can lead to inconsistent practices throughout the court system. Additionally, IAH orders that arise out of a “dating relationship” must be served by law enforcement at no charge per A.R.S. §11-445. Fees may be assessed for all other IAH orders. Orders of Protection issued under A.R.S. §13-3602 are all served at no charge by law enforcement. This proposed legislation would provide definition for “dating relationship” and remove “dating relationship” from the IAH statute (A.R.S. §12-1809) and place it in A.R.S. §13-3601. The advantages are: 1) a single definition of “dating relationship” and 2) place all orders which must be served at no cost by law enforcement under one statute with one set of guidelines.

Mr. James indicated that law enforcement had voiced concern regarding waiving service fees for injunctions against harassment. Therefore, the Committee felt it was necessary to be consistent and include the dating relationship under the same protections as other relationships identified in statute. Furthermore, CIDVIC contends the IAH has become a basic civil remedy. Therefore, when dealing with a couple involved in an intimate relationship this type of relationship should come under the protection afforded by an OOP.

CIDVIC's proposal will create a separation between statutes involving "family or intimate partner" abuse and abuse between persons with no family or intimate relationship. Consolidating all of the "family or intimate partner" definitions into one statute will provide a distinctive category of cases. It affirms that cases involving intimate partners are considered a separate category from cases strangers or persons with no family or intimate relationship. In others words, the "barking dog" or "noisy neighbor" cases will not be lumped together with the "spouse abuse" or "date assault" cases. Some reprogramming of data collection systems will need to be reprogrammed to separate IAH from "domestic violence" reporting.

Questions and comments included the following:

- < David Sands indicated the proposed language is being worked on by CIDVIC. Members should not focus on specific verbiage rather the concept.
- < Judge Warner questioned how the proposal pertains to a child victims. Specifically, will it impact jurisdictional issues? Mr. James indicated CIDVIC does not expect any impact on the Juvenile Court because they are not dealing with the child as a defendant.
- < Judge Armstrong questioned whether any thought had been given to changing language from present tense to past tense to cover the "break-up" or "recently separated" type of case. Mr. James indicated CIDVIC's original proposal did include both past and present language and was lifted from 42 USC 3796 GG-2. He stressed that it was CIDVIC's intent to mirror the Federal code.
- < Judge Weaver requested clarification whether the length and type of relationship was a subjective decision. Mr. James indicated the decision was at the discretion of the judicial officer.

MOTION: Judge Miller recommended that dating relationship be defined by VAWA as: "the term 'dating violence' means violence committed by a person-- (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship." Motion seconded. Motion unanimously approved. COSC-02-010

***FINAL VOTE ON 03-12:THE COMMITTEE VOTED 0-0-20 TO INCLUDE AS AMENDED.**

03-01 Conciliation Services Fee: Generates additional revenue to carry out the purposes of Superior Court conciliation services in counties that have established a conciliation court by adding maternity and paternity cases to the present types of family law cases in which, when filing initial pleadings, litigants pay a \$65 fee under A.R.S.§12-284(E) in addition to other statutory filing fees.

Following a brief overview of the proposal, the following comments were offered for consideration:

- < The money is needed to support conciliation services because much of the funds generated by the fee are used for mediation, visitation and custody disputes in paternity cases. Presently this group is not paying the fee to help support the services.
- < Mr. Michael Jeanes pointed out that the proposal does not increase the fee, rather expands the population to which the fee is applied. Accordingly, he questioned whether it would be subject to Prop 108. Mr. Sands indicated since the money is used exclusively to fund Conciliation Courts and does not flow into the General Fund it would **not** be a prop 108 bill.
- < Will this legislation propose a barrier to establishing paternity by increasing the fee to be paid? Current fee for a paternity case is a \$95 base fee with \$15 document storage and retrieval fee (\$106). Some counties also charge local fees. Accordingly, the total fee for Maricopa is \$166 (with the additional fee it would be \$231) and in most other counties the new total fee would be \$171.
- < Judge Armstrong indicated this proposal is important to Maricopa to ensure they can maintain the level of services they need in conciliation services. It was voted on by the entire bench to be included in the legislative package.
- < Judge Warner indicated that paternity cases comprise a large percentage of cases handled by Pima County's Conciliation Court.

***FINAL VOTE ON 03-01: THE COMMITTEE VOTED 20-2-0 TO INCLUDE.**

03-02 Protection of Judges' Personal Information: Adds Justices of the Supreme Court, Judges of the Court of Appeals, Judges and Commissioners of the Superior Court and Municipal Court Judges to the list of persons who may request redaction of records maintained by the county recorder, county assessor, county treasurer and the Department of Transportation. Public availability of personal information potentially exposes judges and their families to harm from disgruntled litigants and persons dissatisfied with court rulings.

Discussion followed. Comments and issues mentioned include the following:

- < This proposal has been submitted in the past and has been turned into a debate in Committee whether everyone's information should be sealed or redacted.
- < Should judges that run for election and justices of the peace be included in this proposal?
- < Judge Armstrong indicated this bill was 1 of 7 proposed by Maricopa County.
- < Last year this proposal died because Motor Vehicle attached a cost to implementation. It was suggested in tough economic times this approach would likely be taken again.
- < Judge Newton questioned how effective this proposal would be as those seeking to obtain this type of information have other ways to locate it.

***FINAL VOTE ON 03-02: THE COMMITTEE VOTED 7-14-0 TO NOT INCLUDE.**

03-03 Judges' Retirement Age: Extends from 70 to 75 years of age the present mandatory retirement age for justices and judges of courts of record prescribed by Article VI, sections 20 and 39 of the Arizona Constitution. Courts of record are the supreme court, the court of appeals and the superior court.

Mr. Sands noted that this bill was introduced last year. The Arizona Judicial Council voted to take no position on this proposal. The bill went forward without the judicial department's opinion and went through only one committee.

***FINAL VOTE ON 03-03: THE COMMITTEE VOTED 8-12-0 TO NOT INCLUDE.**

03-04 Property Tax Appeal Time Limit: Eliminates the 270-day time period set forth in A.R.S. §42-16212 within which the court must hear an appeal from a decision of the county assessor regarding valuation of classification of property. The Arizona Rules of Civil Procedure already control the expeditious processing of cases by establishing a time period after which a case may be dismissed if not prosecuted.

Comments on this proposal included:

- < Judge Kaufman pointed out this rule actually gives 60 extra days over the statute. Rule 38.1 allows 270 days in which to file a Motion to Set and Certificate of Readiness. If it is not filed then the case goes on the inactive calendar for dismissal at 330 days.
- < Judge Escher suggested this proposal could have ambush potential (i.e., used against the Court as another instance of where the Court wants to slow down processing).
- < Judge Armstrong indicated this proposal was submitted by Judge Katz, Tax Court. Judge Katz's argues since the appeal process is waived in 99% of cases, this proposal will enable the court to bring case processing times for tax cases in line with other civil cases.

***FINAL VOTE ON 03-04: THE COMMITTEE VOTED 9-12-0 TO NOT INCLUDE.**

03-05 Preparatory Release For Inmates Sentenced To Probation: Allows an inmate sentenced to probation in lieu of community supervision to be released at the discretion of the Director of the Department of Corrections (DOC) up to 90 days prior to the end of a prison sentence in the same manner as are inmates sentenced to imprisonment and community supervision.

Comments and issues mentioned include the following:

- < Mr. Diaz indicated DOC supports this proposal.
- < Judge Kaufman indicated this proposal addresses the lack of a mechanism to work around situations in which there is a period of little or no supervision following release from prison. This procedural problem becomes significant when you have pleas to multiple offenses. For instance, if a judge wants to put a person in a treatment program immediately following release, if community supervision is waived in order to get the individual put immediately on probation then that person is not eligible for early release. Typically the defendant will not agree to this arrangement.
- < Judge Miller asked for clarification whether this proposal would include aggravated DUI. The consensus was that this proposal would not apply to these individuals.

MOTION: Judge Miller recommended that the proposal include an amendment to specifically exclude DUI cases in which the individual is serving a term of incarceration in the DOC as a condition of probation for aggravated DUI. Motion seconded. Motion approved. COSC-02-011

***FINAL VOTE ON 03-05: THE COMMITTEE VOTED 13-0-9 TO INCLUDE AS PROPOSED WITH DISTINCTION TO BE MADE TO MINORITY VOTE.**

03-06 Parent Education Program Fee: Increases from \$30 to \$40 the maximum fee paid by a parent for attending the Domestic Relations Education on Children's Issues Program. Completion of this so-called parent education program is required of most parents with minor children involved in an action for dissolution of marriage, legal separation and annulment or

in a paternity case in which the court is requested to determine custody, parenting time or child support.

Mr. Sands explained that these are programs administered by the presiding judge of each county. Although the Supreme Court sets minimum standards for the programs, the county determines how to implement the program (i.e., hire discrete vendors or hire in-house staff). The fee in each county is not necessarily set at the maximum. In Maricopa County the maximum is charged. However, due to no shows, instructor fees and meeting other program costs, the system is being taxed.

Questions and comments included the following:

- < Due to impending budget cuts, Judge Armstrong indicated this proposal is strongly supported by the Maricopa bench. He pointed out that the current maximum has been in place for at least five years and has not been increased to keep in step with inflation. Furthermore, a county is not required to increase their fee, rather the proposal simply places a maximum on the amount.
- < Judge Warner indicated she was not aware of a problem in Pima County. She pointed out that that many individuals going through a divorce already have strained finances and, accordingly, asked members to take this into consideration when making their decision.
- < It was noted that the fee could be waived.

***FINAL VOTE ON 03-06: THE COMMITTEE VOTED 18-3-0 TO INCLUDE.**

03-07 Juror Compensation Task Force: Establishes a juror compensation task force to review and recommend changes to the juror compensation statutes, rules and procedures and other related issues.

Discussion:

- < Ms. Barrett noted that the creation of a task force is part of the recommendations made by the Committee to Study Jury Practices and Procedures. The proposal offered mirrors the Committee's recommendation and therefore compliments their efforts.
- < Mr. Diaz pointed out this proposal keeps the issue of juror pay in the minds of legislators and provides the opportunity to educate the public.
- < Judge Newton was in favor of supporting the proposal with an amendment to place more public members and fewer court employees as task force members.

MOTION: Amend the proposal to reflect a task force composition with increased public membership. Motion seconded. Motion unanimously approved. COSC-02-012

***FINAL VOTE ON 03-07: THE COMMITTEE VOTED 1-2-19 TO INCLUDE AS AMENDED.**

03-08 Administration of Water Adjudication Fees: Memorializes in statute present practice regarding the administration and management of filing fees required by A.R.S. § 45-254 to be paid when filing a claimant's statement in a general adjudication of water rights. The proposed law clarifies that fees are administered by the clerk of the superior court in the county where the adjudication is maintained and that monies earned on invested fees are credited to the fee account to be used exclusively for expenses related to conduct of the adjudication, as approved by the court.

Mr. George Schade, Jr., Special Master for the Arizona General Stream Adjudication, addressed the Committee and noted that the proposal does not increase or impose any fees. Rather, it provides for the proper and correct management of the claimant's fees.

There was no discussion.

***FINAL VOTE ON 03-07: THE COMMITTEE VOTED 19-2-0 TO INCLUDE.**

03-09 Parental Responsibility for Juvenile Costs: Requires for any child who is referred to the juvenile court and is placed in foster care or requires shelter care or treatment that the juvenile court inquire into the financial ability of the child or the child's parent to pay for foster care, treatment or education and to order monthly payments if the ability exists.

MOTION: Commissioner Maxwell moved to exclude guardians from those ordered responsible. Motion seconded. Motion approved. COSC-02-013

Comments included the following:

- < Mr. Diaz informed members that this statute existed previously but was inadvertently removed.
- < Judge Warner indicated she was reluctant to remove guardians because they can be the recipients of benefits (i.e., social security on behalf of the child, TANF, etc.).

***FINAL VOTE ON 03-09: THE COMMITTEE VOTED 16-0-6 TO INCLUDE, WITH A NOTE TO AJC TO CONSIDER MINORITY POSITION.**

03-10 Drug Court; Appropriations: Appropriates an unspecified amount from the state general fund to the Administrative Office of the Court in FY04 and FY05 for the purpose of funding juvenile and adult drug courts. The funds would be limited in use to staff, contract services for treatment, equipment for programs that have entrance criteria agreed upon by the presiding judge and the prosecutor.

Mr. Marty Krizay informed members that many drug court programs are on the edge of becoming extinct due to lack of funding. He argued that there needs to be a dedicated funding source in order to keep drug courts in Arizona afloat.

Judge Miller echoed Mr. Krizay's comments. She suggested the benefit of this proposal would be to keep the drug court programs in the minds of legislators and remind them of the on-going need for funding.

***FINAL VOTE ON 03-10: THE COMMITTEE'S VOTE WAS SPLIT 11-11-0.**

Judge Escher requested that the Committee's vote include a comment supporting drug courts, indicating that the Committee's concern is by setting money for drug courts aside it would cut funding to another court program due to budgetary shortfall. There were no objections.

03-11 Modification of Probation Supervision: Authorizes the probation officer to modify the level of supervision for those juvenile and adult probationers placed on intensive probation under guidelines authorized by the Arizona Supreme Court. Currently the court holds this authority exclusively.

Comments included the following:

- < Judge Chavez would like to eliminate the paperwork but was concerned with giving discretion to the probation officer.
- < Mr. Marty Krizay indicated his fellow Chief Probation Officers could not recall ever having a modification denied. Furthermore, probation officers currently move within levels of standard supervision and this is basically what they are advocating for with intensive probation.
- < Judge Armstrong clarified that this proposal only deals with levels within intensive probation not changing a probationer's level from intensive to standard. This would still remain a judicial decision.

***FINAL VOTE ON 03-11: THE COMMITTEE VOTED 18-4-0 TO INCLUDE.**

Break for Lunch

Senate Bill 1001 & Associated Rule Petitions Hon. Roger Kaufman

Judge Kaufman began the discussion by providing a brief review the Supreme Court opinions that have forced Arizona lawmakers to change the state's death penalty sentencing system. He explained

the result of the legislature's efforts was seen in Senate Bill 1001, which now requires juries to determine all three parts of a capital punishment case: guilt, whether aggravating circumstances exist warranting a death sentence and whether to impose the death penalty.

Judge Kaufman informed members he was aware of at least five new bills that would be submitted this session to the legislature dealing with sentence enhancers in criminal cases that do not involve the death penalty. Currently, Arizona law says the judge decides it. Alternatively, in *Apprendi v. New Jersey* it was argued this is unconstitutional under the Sixth Amendment.

Judge Kaufman indicated although the committee could not comment on what is now law he did feel it would be beneficial to provide input regarding what the position of Arizona courts should be with respect to all other cases dealing with aggravating circumstances.

- < Judge Miller questioned, why Judge Kaufman felt the application of *Apprendi* would be so broad. Judge Kaufman suggested he was concerned with how the court should deal with issues such as whether someone was on probation/parole and the lack of a rationale basis for accepting priors. His concern is the sheer volume of other aggravators—specifically, are we going to have two trials in a substantial percentage of our criminal cases? Should the judge sentence or will the jury sentence?
- < Judge Warner indicated she felt the committee should take a position that other aggravators should **not** go to the jury. She argued that members should strongly discourage jury sentencing in all criminal cases.
- < Judge Kindig indicated she was concerned about impaneling jurors. Specifically, she felt there would be less individuals willing to serve thus potentially creating biased juries.

Judge Kaufman informed members that one proposal being floated is to have any factor that increases a sentence determined by the jury. There is also a move to have juries do all sentencing. Finally, there are those that feel jurors should be instructed on potential punishments before deciding guilt or innocence. Judge Kaufman cautioned members that since

Ring and *Apprendi* have revived the debate on the issues he anticipates that this will be an important criminal justice issue in the upcoming the legislature.

CONSENSUS: Members do not favor going to jury sentencing in all of cases where there are aggravators involved.

In closing, Judge Kaufman encouraged members to go back to their jurisdictions and discuss this with their colleagues and forward ideas or suggestions to the Committee.

Committee to Study Court Interpreter Issues Hon. Sylvia Arellano

Judge Arellano briefed members on the final report reviewing the four recommendations proposed by the Committee: Certification of Interpreters; Extensive Interpreter Training; Proposed Legislation and Court Rules that govern language interpreter use, conduct and professionalism; and the Establishment of a Judicial Interpreter’s Commission to develop operating policies and provide oversight management.

Judge Arellano noted that start up costs would be \$135,000 and ongoing costs would be \$110,000, to include AOC staff, training, testing, monitoring, etc. She informed members, because the pool of interpreters in Arizona was not very large, these monies could not come from a user fee alone. Judge Arellano acknowledged that this was not the best climate to request money for a new program, however, a funding source other than an appropriation had not yet been identified.

Judge Kaufman commended Judge Arellano and the Committee on their outstanding work on this very important issue. Although this agenda item was presented as information only, and approval was not required, Judge Arellano indicated a vote of support would be appreciated.

MOTION: Judge Miller moved to support the Committee to Study Court Interpreter Issues Report and recommend it be brought to legislative officers. Motion seconded. Motion unanimously approved. COSC-02-014

03-13 Age For Use of Confidential Intermediary: Makes consistent with a legislative amendment in 2002 the law applicable to use of confidential intermediaries (A.R.S. § 8-134) by lowering from 21 to 18 years the age at which an adoptee, the progeny of a deceased adoptee or a biological sibling of an adoptee may use the services of a confidential intermediary (CI) to help determine the person’s birth parent(s) and, if consent is given, to share identifying information or a personal contact. The 2002 amendment permits the adoptive parents of persons at least 18 to use these services and a CI may contact persons at least 18 years of age.

Mr. Sands indicated that this proposal was brought forward by Ms. Susan Luebke, Confidential Intermediary Program Coordinator, AOC. Ms. Nancy Swetnam noted that in the original passage of the legislation there was considerable debate regarding whether the age limit generally be 18 or 21. She noted the legislature at that time felt it should be 21 both for contact and initiation. However, this year the legislature decided to change part of the statute and not the other. Ms. Swetnam indicated she was advocating that there should be consistency in the statute.

There was no comments or suggestions.

***FINAL VOTE ON 03-13: THE COMMITTEE VOTED 18-1-0 TO INCLUDE.**

Rule 26(c) Hon. Barry Schneider

Judge Schneider, a member of the State Bar Civil Practice and Procedure Committee, indicated that a proposal had been submitted by Senator Scott Bundgaard to amend Rule 26(c), Arizona Rules of Civil Procedure. This amendment was initially proposed as legislation but failed.

Judge Schneider argued that the proposed amendment would radically change the workings of Rule 26(c). He suggested the proposed amendment was aimed at the practice of issuing protective orders by stipulation among the parties before the court. The advocates of this proposal are against this practice and feel the public is being victimized by keeping this information in the dark.

Judge Schneider indicated the State Bar Civil Practice and Procedure Committee drafted a comment in opposition to the proposed amendment. In addition, under short notice, the Civil Department of the Maricopa County Superior Court also filed a comment in opposition to the proposed amendment.

Judge Schneider indicated he brought this issue forward to the Committee because he hoped that there could be a judicial response to the concerns that are raised by the proposed amendment. Judge Schneider indicated he was concerned because comments to the proposed rule change were primarily from a lawyer and client point of view rather than on the effect of the proposed amendment on the judiciary.

Copies of Maricopa’s civil department judges comment were provided to members. Next, Judge Kaufman asked members if they felt they should express a view to AJC regarding this issue.

MOTION: Judge Armstrong moved that the Committee join the comment of the Civil Department of the Maricopa County Superior Court in the matter of the petition to amend Rule 26(c) of Civil Procedure. Motion seconded. Motion unanimously approved. COSC-02-015

03-14 Deferred Retirement Option Plan: Creates a Deferred Retirement Option Plan (DROP) for members of the Arizona State Retirement System, the Correctional Officer Retirement Plan and the Elected Official Retirement Plan.

Mr. Diaz indicated the final proposal came from Mr. Dave Byers, Administrative Director of the Courts. He then provided a brief overview of the plan. He informed members this plan is currently available to public safety retirement system employees.

Judge Miller indicated the Arizona Judges’ Association was going to go forward with this proposal individually. However, it was felt if they moved forward only on behalf of judges that legislators would not be very sympathetic. In order to be better received, it was decided to bring in correctional officers and other state employees.

Rather than tying approval to an association with other groups, Judge Miller recommended supporting the Deferred Retirement Option Plan for elected officials and leave it to the AOC lobbyists to determine whether or not it is beneficial to remain associated with the state retirement fund and the Correctional Officer Retirement Plan.

Mr. Diaz indicated that correctional officers were the greatest supporters of this proposal last year.

***FINAL VOTE ON 03-14: THE COMMITTEE VOTED 17-5-0 TO INCLUDE.**

Prioritization of Legislative Proposals Mr. David Sands & Mr. George Diaz Jr.

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 three votes, if they wished, all three votes could be placed on one proposal. Judge Arellano and Judge Warner departed before the vote. The results of the remaining 20 members are displayed in the following table.

PROPOSAL	Votes for Priority
03-01 03-05	13 votes
03-14	12 votes
03-07	10 votes
03-12	6 votes
03-11	4 votes
03-06	3 votes
03-09	1 votes
03-08 03-13	0 votes

Following discussion it was decided not to break the ties and to forward to the Arizona Judicial Council as priorities all ten of the proposals that were voted to include in the legislative package.

Integrated Family Court Committee Mr. Phil Knox

Ms. Nancy Gray Eade, Conciliation Court Services Director, Yuma County, provided a brief overview of the history leading up to the formation of the Integrated Family Court Workgroup (IFCW), established by the Domestic Relations Committee. Ms.Gray Eade explained pursuant to SB1088, the Workgroup’s purpose was to prepare and submit a statewide plan for an Integrated Family Court to the legislature on or before December 31, 2002.

Ms. Gray Eades informed committee members that the IFC Workgroup consisted of 20 members and was broad based in its representation. There were judges, attorneys, psychologists, therapists, legislators, as well as juvenile and family court administrators from around the state included in the membership.

To prepare the final report, Ms. Gray Eade indicated research information was gathered from resources across the country. In addition to looking at programs outside the state, the Workgroup also looked at Maricopa’s pilot program when developing a statewide plan for Arizona. A copy of the IFC Workgroup’s report and recommendations were provided to members in their meeting materials. A revised draft was distributed to the committee at the meeting.

Following her overview, Ms. Gray Eade turned over the presentation to Mr. Phil Knox. Mr. Knox is the Family Court Administrator for Maricopa Superior Court. He is also a consultant for the state of California for their Integrated Family Court. In his presentation, Mr. Knox

focused members attention on the recommendations that came out of the IFC plan that would be moving forward as legislation for the state. In addition, he identified statutes that would be effected by any proposed legislation. Mr. Knox noted that in the workgroup's revised draft report the recommended implementation timelines had been extended to accommodate unanswered questions and afford time to explore potential funding sources. Members were informed to facilitate responses, the proposed plan, an executive summary and an opportunity to comment by means of a brief survey with a comment section, have been placed on the Internet at: http://www.supreme.state.az.us/courtserv/IFC/IFC_Plan.htm.

Judge Kaufman questioned how the new locations of Maricopa County's Superior Court would fit into the IFC plan? Specifically, in an ideal situation, did the workgroup envision an integrated family court with judges in each location? Mr. Knox indicated the satellite court sites in Maricopa would actually afford the opportunity to address the issues of integrating better than it would if in a large centralized facility.

Judge Arellano, one of the judges involved in Maricopa's Family Court Pilot Program, provided a testimonial. She informed the committee while her cases in the Integrated Family Court may have taken a little bit more work than her cases would have otherwise required, the trade off for the family's involved in the system showed tremendous results.

MOTION: Judge Arellano moved to support the recommendations of the IFC Workgroup. The motion was seconded.

Following the motion, the floor was opened for discussion. The following is a summary of members' comments:

- < Judge Patricia Escher, Pima County: Expressed concern that the IFC plan did not appreciate the differences between counties- specifically, the logistical and budgetary impact of the proposal. Moreover, Judge Escher questioned whether philosophical issues, such as the degree to which juvenile law issues intersect with domestic relations issues and how best to handle these types of cases, had been adequately debated. While Judge Escher supports the principles recognized by the IFC workgroup (i.e., the one-judge/one-family, making courts accessible and responsive, etc.), she is opposed to the approach of a statewide plan and felt it would be more appropriate to leave this type of project planning at a county level. She felt more information was necessary to make an educated decision whether to support the proposal. However, if the committee decided to support the proposal, she felt that there should be an accent on those parts of the report that emphasize the need for individualized plans for each county. In addition, the committee should address the fact that there is no way to achieve the goals unless the state is willing to provide the necessary resources.
- < Judge Charles Harrington, Pima County: Judge Harrington indicated historically in Pima county there has been a reluctance by those on the bench to become involved in juvenile and domestic relations cases. Accordingly, he questioned whether the workgroup had determined, through either Maricopa's pilot program or other sources, if this type of project was indeed more or less attractive assignment to judges? He contended that in his experience this assignment would be less attractive to judges. Judge Harrington felt it was too important of a proposition to make a recommendation on until all members had adequately reviewed the report. Judge Harrington suggested the committee should revisit the issue at a later time.
- < Judge Nanette Warner: Judge Warner indicated she was a recent member of the IFC Workgroup and a strong supporter of the IFCW report. After briefly recapping the history of the workgroup and their charge, she suggested to members whether or not to implement

an IFC was no longer up for debate. Therefore, Judge Warner felt it was important to understand that under the IFCW plan each county would have the power to design their own program.

- < Judge Fred Newton: Judge Newton assured members that the IFC Workgroup was well represented by rural counties. Judge Newton affirmed that the IFC plan would also allow plenty of room for ingenuity and relied on each county determining what would work best in their county. He contended the IFC would not be a “cookie cutter court” rather, under the plan each county can assess their own strengths and resources to determine how to implement the minimum standards to be developed in the future by the Supreme Court. Judge Newton noted that the Workgroup did discuss at length the need to improve the judicial appointment process by recruiting and considering domestic relations attorneys for appointment to the bench so their predisposed interests could continue as an IFC judge. Judge Newton argued a commitment to the IFC was a commitment to a change in priorities in the court system. He supports the IFCW report and recommendations and ensuring families and children get more attention than they have had in the past by better trained judges.
- < Judge James Chavez: Judge Chavez felt the IFC plan would be exceptionally difficult to implement in Mohave county because of the way juvenile cases are handled. Currently, there are three Superior Court locations and although juveniles are handled in each of the locations, it is a part-time judge pro-tem who handles a portion of the juvenile cases. In addition, once a juvenile is placed in detention they are handled in the Kingman location. This would make it difficult to ensure a one-judge/one-family assignment.
- < Judge Bethany Hicks: Judge Hicks expressed her support of the IFC plan.
- < Judge Gloria Kindig: Judge Kindig feels the plan is a good idea. However, in Navajo County they only have three elected judges, therefore, in order to ensure cases are heard in a timely manner, Judge Kindig indicated much of their domestic relations work is assigned to a pro-tem. Navajo is also exploring using a pro-tem to handle juvenile cases. Therefore, the requirement to have 50% of the IFC cases heard by an elected judge could be problematic in Navajo.
- < Mr. Michael Jeanes: Mr. Jeanes indicated that from the Clerk’s Office and an administrative standpoint, the IFC pilot program did pose some significant challenges initially. However, all the parties worked together to get through them and consequently, it is now working well in Maricopa. Mr. Jeanes indicated his experience in working with committees on this topic has enlightened him to the different definitions and different ways other states have developed Family Courts which exemplifies how an IFC can be set up differently to meet the individual counties’ needs.
- < Judge Leslie Miller: Judge Miller felt the plan philosophically sounds great. Judge Miller acknowledged that DR attorneys are often discounted or overlooked when applying for judicial appointments because they are not trial attorneys. She felt the plan could establish the basis for appointing these well trained and well suited individuals to the IFC bench.
- < Sgt. Deborah Dyson: Ms. Dyson indicated from a law enforcement point of view she agrees that an IFC would be beneficial to families and supported the concept.
- < Mr. Marcus Reinkensmeyer: Mr. Reinkensmeyer indicated his support of the effort. He pointed out that Arizona is actually well positioned with the state’s current management information systems. He explained although it was a complex project to set up and they are still working out details and dealing with process improvements related to the court’s

re-engineering efforts. Moreover, Mr. Reinkensmeyer is optimistic as the court moves toward imaging and electronic document management that the sharing of information will improve. He informed members all Maricopa's implementation information is available for review, including the automation work that has been done.

- < Judge Sylvia Arellano: Judge Arellano reiterated her strong support of the IFC program.
- < Judge Mark Armstrong: Judge Armstrong is the chair of the Maricopa County Integrated Family Court Taskforce that put together the pilot program and is on the current statewide workgroup. In addition, he was also a member of the prior statewide committee that looked at IFC issues. He strongly supports the IFCW report and the concept of an integrated family court. He agrees there are a lot of differences between counties and, accordingly believes that each county needs a great deal of autonomy in terms of how they structure their program. He indicated the Workgroup did recognize this point although it may not be clear from the documents presented to the committee. Judge Armstrong cited three manifest benefits that would come with the concept of the IFC: 1) Judges would be trained in the full range of family related issues, 2) overlap in cases would be identified early and cases would be consolidated when appropriate and, 3) judges with interest and expertise in family law would be appointed to the IFC bench.
- < Judge Stephen McCarville: Judge McCarville indicated in Pinal County, judges cover all calendars. As a result, he has personally witnessed the interconnection between juvenile, dependency and domestic relation cases before the court. While he acknowledged that there were many good things that would come from an IFC system, Judge McCarville expressed concern that attorneys appointed to a dependency case, if consolidated with a dissolution action, may not have the experience to argue the property issues and child support issues. He contended that attorneys would also need to be educated to assist them with working in an IFC system.
- < Judge Brian Ishikawa: Judge Ishikawa indicated he has been on the Family Court bench for 2 ½ years and while he initially was a reluctant participant, recently he volunteered to stay on another year because of the support he received from the bench. He endorsed the need to recruit individuals with an interest in family law for the IFC and contended by placing an emphasis on this area of law it will garner more support for judges and their staff. Judge Ishikawa is a strong supporter of the IFCW report.
- < Mr. Marty Krizay: Mr. Krizay indicated he felt the IFCW plan was “the right thing to do for families.” He felt if the proposal could be implemented it would be a step in the right direction.
- < Judge Doug Holt: Judge Holt endorses the report 100% in concept but indicated the rural counties face extraordinary difficulties when trying to come with the resources to implement such a proposal. He argued even a “bare bones” application of the IFC proposal will be a problem for Graham County as he does not have the staff and other resources necessary to implement the plan.
- < Judge Raymond Weaver: Judge Weaver indicated he wanted more information before making a decision whether to support the IFCW report. He indicated in Yavapai County there is one judge that does not support the recommendations. Judge Weaver supports doing whatever can be done to keep a family together and alleviating obstacles in the process but is concerned with implementation issues.
- < Judge Kirby Kongable: Judge Kongable feels the IFC concept has a lot to offer. However, he indicated he is slow to come into total acceptance because of logistical concerns. Judge Kongable, like Judge McCarville, expressed his concern regarding attorney knowledge

being adequate to deal with IFC consolidated cases. He also agreed with Judge Newton that if the Court wants to effect long term systemic and generational change the focus does need to be placed on children and their families.

- < Commissioner Margaret Maxwell: Commissioner Maxwell indicated practitioners in Pima County have resisted the IFC concept for some time. Although she agrees with Judge Warner regarding the inevitability of the plan, her experience with IFCs has been different from those experienced in Hawaii or other states. She has seen IFCs being viewed as the “ugly step sisters” and not a distinguished part of the legal system. Moreover, Commissioner Maxwell contended domestic relations is not always just about families with children , therefore, services offered do not fit every domestic relations case. She argued there are many good programs that can be adapted in a lot of the counties and there was no need for a separate system. Commissioner Maxwell would prefer to see the programs brought into the existing program rather than creating a separate bureaucracy.
- < Judge Ken Lee: Supports Judge Escher’s comments. Nothing to add.

MOTION: In order to allow members additional time to review the report and supporting materials, it was recommended that the committee revisit the IFC proposal at their January 10, 2003 meeting. The motion was seconded and unanimously approved. COSC-02-016.

New Rule 1.7 of the Arizona Criminal Rules of Procedures Mr. David Withey

Mr. Dave Withey, Chief Counsel, AOC, explained to members that, as written, the proposed new rule would authorize the appointment of masters with the authority to conduct initial appearances (IAs) in criminal cases. He indicated the intent was to use masters only when no other options exist. In addition, these masters are not intended to undermine the duties of a pro-tem.

Judge Kindig indicated Navajo would like to expand the authority to include advisory hearings and questioned when the proposed rule would be implemented. Mr. Withey informed members the proposed new rule would be addressed at the upcoming rules meeting.

MOTION: It was moved to support the petition to adopt the proposed new rule authorizing the appointment of initial proceedings masters. The motion was seconded and unanimously approved. COSC-02-017.

Review of Letter to Judicial Ethics Advisory Committee Hon. Fred Newton

Judge Newton indicated the main concern was that Opinion #2001-01 was very restrictive regarding judges’ contact with juries after a verdict is returned. Judge Newton explained that many judges like to go to the jury room and greet the jurors, thank them for their service and, in some instances, ask them how they liked their jury experience and how it could be improved in the future. It was suggested that mandating attorneys be present and/or requiring the meeting be on the record, will have a detrimental effect on the exchange.

ACTION ITEM: Judge Escher agreed to communicate the Committee’s concerns to the Judicial Ethics Advisory Committee for consideration of further action.

Judge Kaufman thanked Judge Escher for carrying this information forward.

OTHER BUSINESS

Information Items Ms. Theresa Barrett

Ms. Barrett, AOC Staff to the Committee, informed members due to time constraints, all proposed code sections were bumped from the meeting agenda. Accordingly, she reminded members to review the proposed sections included in their meeting materials and to jot down their comments for AOC staff use. She informed members they could provide all comments to her and she would route them to the appropriate AOC staff member. She indicated that members' attention to these code sections was very important as they all would be reviewed by the Arizona Judicial Council before the Committee's next meeting.

Next Meeting Date/Place Hon. Roger Kaufman

The next meeting will be held on Friday, January 10, 2003 at 10:00 a.m. The meeting location is the State Courts Building, 1501 W. Washington, Conference Rooms 345 A & B.

Good of the Order/Call to the Public Hon. Roger Kaufman

No respondents.

ADJOURNMENT

The meeting was adjourned at 3:05 p.m.