

**ARIZONA JUDICIAL COUNCIL'S
COMMITTEE ON SUPERIOR COURT
MINUTES
For Meeting held Friday, January 10, 2003
State Courts Building, Conference Rooms 345 A & B
Phoenix, AZ**

MEMBERS PRESENT:

Hon. Fred Newton, Chair
Hon. Silvia Arellano
Hon. James Chavez
Hon. Norman Davis
Ms. Deborah Dyson
Hon. Patricia Escher
Hon. Charles Harrington
Hon. Douglas Holt
Hon. Brian Ishikawa
Hon. Michael Jeanes
Hon. Gloria Kindig
Mr. Gary Krcmarik

Hon. Kirby Kongable
Mr. Marty Krizay
Hon. Kenneth Lee
Hon. Denis Lundin
Hon. Margaret Maxwell
Hon. Stephen McCarville
Hon. Leslie Miller
Hon. Barbara Mundell
Mr. Marcus Reinkensmeyer
Hon. Nanette Warner
Hon. Raymond Weaver

MEMBERS ABSENT:

Hon. Bethany Hicks

Mr. Charles W. Wirken, Esq.

GUESTS:

Hon. Jeffrey Coker
Mr. George Diaz, Jr.
Mr. Mike DiMarco
Ms. Jennifer Greene
Ms. Patience T. Huntwork
Mr. Bob James
Mr. Phil Knox
Ms. Karen Kretschman

Ms. Sandi Markham
Ms. Susan Pickard
Mr. David Sands
Ms. Ellen Seaborne
Ms. Nancy Swetnam
Ms. Kathy Waters
Mr. David Withey

STAFF:

Ms. Theresa Barrett

Ms. Chris Claxton

REGULAR BUSINESS

Welcome and Opening Remarks Hon. Fred Newton

Judge Fred Newton, Chair, called the meeting to order at 10:10 a.m. He welcomed everyone and acknowledged new members, Judges Norman J. Davis and Barbara R. Mundell. All in attendance introduced themselves.

Approval of Minutes - September 27, 2002 Hon. Fred Newton

The minutes from the September 27, 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 this meeting.

MOTION: Judge Arellano moved to approve the minutes for the September 27, 2002 meeting as revised. Seconded and passed unanimously. COSC-03-001

BUSINESS ITEMS/POTENTIAL ACTION ITEMS

Pending & Proposed Rules Update Ms. Patience T. Huntwork

Ms. Huntwork, Chief Staff Attorney, Arizona Supreme Court, reviewed the Rules Agenda for January 14, 2003.

Final Adoption

- < Omnibus rewrite of the Superior Court Rule of Appellate Procedure, Criminal
- < Rule change regarding unauthorized practice of law
- < Total re-write of the Arizona Tax Court Rule of Practice
- < Rule regarding destruction and retention of Justice and Municipal Court records
- < Streamlining of the criminal complaint filing processes
- < Rule regarding victims rights and the posting and notification of victims rights
- < Rule change regarding judicial free speech
- < Rule regarding initial appearance masters in Superior Court
- < Rule change regarding complex cases in Maricopa County Superior Court

Going out for Comment

- < Rule Petition regarding omnibus rewrite of the attorney discipline rules
- < Rule Petition to allow video taping of depositions as a matter of right
- < Rule Petition regarding change regarding the Commission on Appellate and Trial Court Appointments
- < Rule Petition regarding omnibus rule change regarding attorney ethics
- < Rule Petition regarding change requiring all CLE to be certified

A new service to e-mail all judges, clerks of court and court administrators notification of the publication of rule actions to the web site at <http://www.supreme.state.az.us/rules> has been established.

Notification of Comment Period for Rule 28 Petitions Ms. Jennifer Greene

Ms. Greene, Administrative Office of the Courts (AOC), presented the proposed provision of rule petition notification to AJC standing commissions, committees, and subcommittees by the Court Services Division. She requested a committee contact to receive the periodic reports.

ACTION ITEM: Judge Ishikawa will serve as contact. If necessary, a subcommittee will be established by the Chair.

Minute Entry Reform Workgroup Hon. Denise Lundin & Hon. Jeffrey Coker

Judge Coker and Ms. Lundin, Workgroup Co-Chairs, presented a draft proposed Supreme Court Rule Petition to standardize and define minute entries, noting that it is still being refined.

Discussion points:

- < Allocation of, and cooperation regarding, responsibility for minute entries.
- < Implementation in various counties.
- < Use of minute entries for under advisement/out of court rulings.
- < Cooperation between elected officials.

MOTION: Michael Jeanes moved to approve the Minute Entry Reform Workgroup proposal and support its continuing efforts.

AMENDED MOTION: Michael Jeanes moved to support the continuing efforts of the Minute Entry Reform Workgroup. Seconded and passed, 21-1-0, Judge Warner opposed. COSC-03-002

Integrated Family Court Committee: Update and Q & A Mr. Phil Knox

Mr. Knox reminded the members that the Integrated Family Court Committee presented their plan hoping for a vote of support at this committee's September meeting. Needing further time on the proposal, the committee asked Mr. Knox to return to today's meeting. In light of the current actions being taken by the Domestic Relations Committee and the AJC, a vote of support was not being requested. Instead, Mr. Knox provided the members with an updated status of the Integrated Family Court.

The Arizona Judicial Council (AJC) met on December 12, 2002. Ellen Seaborne, Chair of the Integrated Family Court Workshop, provided background information on the Workgroup and its plan and then outlined and presented each of the ten recommendations and the proposed bill. The AJC, recognizing many favorable and useful elements within the plan, determined to withhold any recommendation at this time in order to complete further analysis of parts of the plan that can be implemented and parts that cannot. As part of the Court's current Strategic Plan, adopted in January 2002, the Supreme Court will establish pilot family court programs in at least two counties, one large and one small, to experiment with various components of the proposal. The Court will report its progress to the Council and it is anticipated the Court will formulate wider and more substantial implementation in the future.

On January 10, 2003, the Domestic Relations Committee met. Representative Johnson, noting the results of the AJC meeting and a meeting with the Chief Justice and Terry Goddard, announced the decision not to take the Plan forward with legislation at this time. This would give the courts the opportunity to pilot the plan in two counties as proposed by AJC.

Also, on January 10, 2003, AOC staff held preliminary discussions with Judges Campbell, Armstrong and Newton regarding the pilot projects stemming from the AJC meeting.

Discussion Item:

- < Funding for either the establishment of IFC statewide and/or pilot programs.

Domestic Violence Forms Revisions Mr. Bob James

Mr. James, Committee on Domestic Violence and the Courts - Domestic Violence Forms Workgroup Chair, provided the committee with an update on the recommended revisions to the domestic violence forms and AZTEC module. Revisions were made under the workgroup's charge to streamline the mandated forms for the benefit of judicial officers, judicial staff, and litigants; and to conform to the technologies which produce Protective Orders.

Discussion Items:

- < Forms should comply with Rule 10 margin specifications for Superior Court.
- < Specific inquiries and wording suggestions.
- < PCO Codes.

ACTION ITEM: Mr. James requested a representative, preferably a judicial officer, from this committee to participate in the revision process. Judge Warner will serve as a COSC representative on the Domestic Violence Forms Workgroup.

MOTION: Judge Arellano moved to support CIDVC's direction in revising the Domestic Violence forms and recommendations to change aspects of AZTEC. Seconded and passed unanimously. COSC-03-003

Judicial Ethics Advisory Opinion 01-01: Update Hon. Patricia Escher

At the Committee's September meeting, Judge Escher agreed to take members concerns back to the Judicial Ethics Advisory Committee (JEAC) to determine if Opinion #01-01 could be revised. Judge Escher provided the members with some background information and addressed the concerns expressed in the September 27, 2002, meeting.

- < The requirement that you give the attorneys the opportunity to object to post-verdict contact of the jurors outside their presence. JEAC revisited the issue and concluded that post-verdict contact of jurors by the judge does have an appearance of impropriety if there is an objection by an attorney.
- < Criminal and civil cases should be treated differently. No reason for change was indicated so no change was made to the opinion.
- < How is the judge supposed to notify the parties if there has been an improper communication after the trial? The opinion will be clarified noting the parties must be notified of the communication and its substance on the record.
- < Expressions of gratitude to the jurors. The opinion will be changed to include a sentence that indicates a generic expression of appreciation for jury service may be sent to jurors, if the judge routinely sends letters to all jurors.
- < It was not the intent of the opinion to prohibit the use of generic juror questionnaires meant to improve the jury experience. The opinion will be changed to indicate that juror questionnaires are permissible.

The revised opinion will be issued upon JEAC approval which is expected within two weeks and will be forwarded to the members by staff.

2003 AJC Legislative Package Mr. David Sands & Mr. George Diaz, Jr.

Mr. Sands, Mr. Diaz, and Mr. Adkins, AOC Legislative Officers and Specialist presented the 2003 Legislative Package for information purposes. The proposals include:

- < Conciliation Services Revenue Enhancement
- < Protection of Judges' Personal Information
- < Parent Education Program Support
- < Age for use of Confidential Intermediary
- < Parental Responsibility for Juvenile Costs
- < Deferred Retirement Option Plan
- < Administrative Assessment

On January 17, 2003, David Sands will resume the Friday Legislative Teleconference Calls to discuss and garner your feedback on bills that important to the court. The teleconference number is (602) 542-9015. Discussion will begin at 12:00 for legislation that affects Limited Jurisdiction Courts with the Superior Court discussion beginning at 1:00.

Budget Briefing Mr. Mike DiMarco

Mr. DiMarco presented the FY 2003 Budget Update for informational purposes as requested by Judge Newton. The last eighteen months have seen a number budget cuts for the Judiciary, totaling \$21.7M. The Judiciary's portion of the FY 2004, \$1B+ shortfall has not yet been determined.

Mr. DiMarco also enumerated the revenue replacement plan, Penalty Enforcement Plan (PEP), and reviewed Administrative Order 2002-113 as issued by the Chief Justice declaring a fiscal emergency in the Judiciary.

Budget Impact Update & Officer Safety Update Ms. Kathy Waters

Ms. Waters provided updated materials to the members and explained the impact of budget cuts on Adult Probation as follows:

- < 50% Accrued Vacancy Savings (\$546K)
- < Administrative Reductions (\$212K)
- < Reduction in CPP (\$1.5M)
- < Elimination of IPS Committed Reserve (\$196K)
- < Elimination of Rural Growth (\$130K)
- < Elimination of IPS Teams (\$306K)
- < Elimination of IS Non-Case Carrying FTE (\$28K)
- < Elimination of Report Only Supervision (\$875K)
- < IPS Program Reduction (\$957K)

Next, Ms. Waters went over proposed changes to Arizona Code of Judicial Administration § 6-107, Safety Training and § 6-112, Use of Force.

MOTION: Judge Escher moved to approve the revisions to Arizona Code of Judicial Administration § 6-107 Safety Training and § 6-112 Use of Force. Seconded and passed unanimously. COSC-03-004

Arizona Code of Judicial Administration Project Mr. David Withey

Mr. Withey stated he was in attendance to explain, encourage and ensure the committee's participation in the code review and comment process. This committee meeting only three times a year has proven problematic to this process and the limited comment time frame. Mr. Withey noted the possible options available as solutions.

- < Create and delegate authority for reviewing proposed code sections and drafting comments to a subcommittee.
- < Create an additional meeting each year to be in keeping with AJC meeting schedules.
- < Schedule telephonic conferences as needed.
- < Develop an electronic process for code review and approval.

MOTION: Judge Arellano moved to delegate the committee's authority to speak for the group regarding code comment and review to Judge Newton with Judge Newton creating ad hoc subcommittees as needed. Proposed comments would then be circulated to all members prior to submission. Seconded and passed unanimously. COSC-03-005

OTHER BUSINESS - Presented out of agenda order - awaiting the next speaker

Information Items Ms. Theresa Barrett

Ms. Barrett updated the members on the budget cut impact to committees, committee staff and staff support and requested that documents that need to be distributed be given to committee staff as early as possible.

Ms. Susan Pickard demonstrated two web-based options for distribution of meeting agendas, minutes, and handouts and requested that the members select an option for COSC. The table format was selected. For their convenience, members will be sent an e-mail reminder with the website link.

BUSINESS ITEMS/POTENTIAL ACTION ITEMS - Presented out of agenda order - the speaker arrived.

Court Reporter E-Notes Ms. Nancy Swetnam

Ms. Swetnam explained court reporter record retention requirements and methods. New technology methods are available to maintain the records electronically. To ensure full discussion of the implications, Ms. Swetnam requested representation (judges and clerks of court) from this committee to work on this issue.

ACTION ITEM: Ms. Carol Shriver, Mr. Ken Krenshaw and Judge Kearny were recommended for consideration. Judge Warner will serve as back-up in the event that Judge Kearny is unable to participate.

FUTURE AGENDA ITEM: Judge Weaver suggested that a future meeting the committee entertain rules of criminal procedure regarding retention time requirements of court report notes. Judge Newton agreed, citing recent changes in California regarding the issue.

OTHER BUSINESS

Recognition of Service Hon. Fred Newton

In honor of their dedicated service and in appreciation for their commitment to the Committee on Superior Court members recognized: Judge Roger Kaufman (10/95-9/02) and Judge Mark Armstrong (6/00-12/02). Judge Newton requested the minutes reflect the Committee's appreciation. There were no objections.

Next Meeting Date/Place Hon. Fred Newton

The next meeting will be held on Friday, June 6, 2003, at 10:00 a.m. The meeting location is the State Courts Building, 1501 W. Washington, Conference Rooms 119 A & B.

Good of the Order/Call to the Public Hon. Fred Newton

No respondents.

ADJOURNMENT

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

**ARIZONA JUDICIAL COUNCIL'S
Committee on Superior Court**

MINUTES

For Meeting held Friday, June 6, 2003
State Courts Building, Conference Room 119A & B
Phoenix, AZ

Members Present:

Honorable Fred Newton (Chair)	Honorable Gloria J. Kindig
Honorable Silvia Arellano	Mr. Gary Krcmarik
Honorable James E. Chavez	Mr. Marty Krizay
Honorable Norman J. Davis	Honorable Kenneth Lee
Ms. Deborah R. Dyson	Honorable Denise I. Lundin
Honorable Pat Escher	Honorable Margaret Maxwell
Honorable Charles V. Harrington	Honorable Leslie Miller
Honorable Bethany G. Hicks	Honorable Barbara Mundell
Honorable R. Douglas Holt	Honorable Nanette Warner
Honorable Brian Ishikawa	Honorable Raymond W. Weaver, Jr.
Honorable Michael K. Jeanes	

Members Absent:

Honorable Kirby Kongable	Mr. Marcus Reinkensmeyer
Honorable Stephen F. McCarville	Mr. Charles W. Wirken

Guests:

Ms. Theresa Barrett, AOC	Mr. Robert Roll, AOC
Mr. Mike DiMarco	Nancy Swetnam, AOC
Mr. Dan Levey, Office of the Governor	Ms. Linda Grau, AOC
Mr. Robert Ellman, Office of the Attorney General	Ms. Lorraine Brown, MVD
Honorable H. Jeffrey Coker	Ms. Rose Slusser, MVD
Bob James, CIDVC-DV Forms Workgroup	Ms. Kathy Waters, AOC
Ms. Amy Wood, AOC	Mr. Todd Adkins, AOC

Staff:

Ms. Susan Pickard	Ms. Isabel Gillett
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Regular Business

Welcome and Opening Remarks **Hon. Fred Newton**
Judge Fred Newton, Chair, called the meeting to order at 10:10 a.m. He welcomed everyone. All in attendance introduced themselves.

Judge Newton advised the committee that a quorum was present to constitute the Committee's actions.

Note: This was the first meeting where the members downloaded the agenda, previous meeting minutes and meeting handouts from the Arizona Judicial Branch (AJB) web site.

Approval of Minutes from January 10, 2003 Meeting **Hon. Fred Newton**
Gary Krcmarik was added to the list of those in attendance. The spelling of Michael Jeanes' name was corrected in two places on page 3.

Motion: Approve minutes for the January 10, 2003 meeting as revised. Seconded and passed unanimously. COSC-03-006

Business Items/Potential Action Items

Information Dissemination **Ms. Theresa Barrett**
This agenda item, originally scheduled for 2:15 was taken out of order to permit Mr. DiMarco's return from another meeting.

Ms. Barrett described the current methods used by the Supreme Court and the AOC to disseminate information to the Superior Court. The methods include live broadcasts, e-mail, the various committee structures and the notification system used for Administrative Orders and new Opinions. She asked the committee for ideas for improving the current system. Members readily agreed that e-mail notification and web page accessibility were among their favorite ways to receive information and suggested the following additions:

1. Subscription-based, e-mail notification of minute availability for AJC and its advisory committees.
2. An AOC topic-based phone listing.
3. Expansion of presiding judge e-mails to all superior court judges.

The members in turn disseminate information to other associations and committees in which they participate. The public member provides updates to law enforcement at department meetings.

Budget Update **Mr. Mike DiMarco**
Mr. DiMarco provided the Committee with a brief update on the most current information regarding the FY 2004 budget and answered questions and concerns.

Among the proposals being considered in the House bill were the following:

1. Transferring the Defensive Driving Program along with its funding to MVD. The program with its funding will remain with the AOC for the next year.
A study committee consisting of four members each from the House of Representatives and Senate, which would include the two Judiciary Committee chairs and the two Appropriations Committee chairs has been established to examine where the Defensive Driving Program should be.
2. Reinstated the 418,000 in Fill the Gap Funding that went to the outlying counties.
3. Will not be taking \$1M surcharge Fill the Gap monies to be utilized to pay Superior Court judges salaries.
4. Eliminated the 1/30,000 judge/population ratio leaving decisions regarding judicial resource increases/decreases to the County Boards of Supervisors, who would in turn petition the Governor for approval.

With the bill moving to the Senate

1. Senator Meade was a no vote, but 16 votes were still available for passage.
2. Senator Binder objected to including policy issues in the bill. The Senate no longer had the 16 votes for passage.

A Senate committee including three democrats and four republicans was established to hammer out a negotiated budget. They reached an agreement on June 15. Final amendments are now being placed into the bill. Among the amendments that are possible:

- \$5.4M in for non-Maricopa County Probation.
- Maricopa County will now be paying for their Adult Probation Services and the Board of Supervisors gains administrative supervision.
- Fine increases
- \$45M from penalty enhancement to General Fund to offset employee retirement program contribution increases.
- The suspension of probation officer caseload requirements.
- Fee increases

Judge Newton noted that he will be discussing the renewal of the previously established Budget Workgroup to develop and recommend best practices, alternate funding sources and innovative budgeting ideas with select members in the interim before the Committee's next meeting.

The members were interested in having a dedicated position within the AOC to seek out various funds for courts.

**Petition to Amend Rule 39, Arizona Rules of Criminal Procedure . . Mr. Dan Levey
Mr. Robert Ellman
Hon. Brian Ishikawa**

Mr. Dan Levey, Advisor to Governor Janet Napolitano for Victims, and Mr. Robert Ellman, Assistant Attorney General, presented the petition to amend Rule 39. Although the rule provides for written notice to victims of their rights, it does not require the court to expressly advise victims of these rights. The proposed amendments to Rule 39 would require:

1. the court to provide an oral advisory to the victim of their rights if they are present at the initial appearance, status conference or change of plea hearing in all felony and misdemeanor cases involving physical injury to a victim, and
2. the prominent display of a victim's rights advisory.

The purpose of this petition is threefold:

1. providing equal status for victims' rights with the rights of the defendant in the courtroom,
2. having those rights acknowledged by the court, and
3. educating the community.

The meeting materials distributed on the AJB web site included the petition and comments from the National Organization of Parent of Murdered Children, Inc., the National Center for Victims of Crime, Maricopa County Attorney and the Limited Jurisdiction Committee.

The Committee members expressed the following concerns and comments:

1. reading the victims' rights in court seems very redundant when the victim should have been advised of their rights by the prosecutor, victim advocate and/or law enforcement
2. reading the victims' rights in court does not provide meaningful contact/dialogue.
3. the victims' rights, as written to be read in court, may not be understood by all victims which places the burden of ensuring understanding upon the judicial officer
4. possible revictimization of victims who do not wish to be recognized by the court.
5. impact on the court related to the time available when reading the advisory several times throughout the day either due to a "cattle call" where parties arrive at different times or court policy requiring the cases to be call separately
6. impact on the court related to the additional time needed when translation is required.
7. political implications given the support the courts have received from the Governor.

The Committee members suggested testing the requirements of the petition prior to them being finalized. Judges Holt, Kindig and Escher offered their courts as a test ground.

Judge Newton established a subcommittee to draft comment on or before August 15, which will be disseminated to the membership via e-mail when complete. Members of this subcommittee are Judges Holt, Ishikawa, Miller and Escher and Martin Krizay, with Judge Ishikawa as Chair.

**Minute Entry Reform Workgroup Ms. Denise Lundin
Hon. Jeffrey Coker**

Ms. Lundin and Judge Coker presented the rule change petition as proposed by the Minute Entry Reform Workgroup which would establish a new supreme court rule defining the term “minute entry” to distinguish it from an order or notice. The definitional rule is intended to further the goal of eliminating inappropriate use of minute entries.

The rule change also proposes statewide adoption of Maricopa Local Rule 3.2(i), which will reduce the number of minute entries by requiring parties to file proposed orders on stipulations and motions. The rule states that “no minute entry shall issue” if the proposed form of order is signed.

Two points were emphasized: 1) this proposal allows for local culture and 2) it is anticipated that the presiding judge and the clerk will work together to come to agreement on implementation.

During discussion, the proposed rule provided by the Workgroup was amended as follows:

“(1) All written stipulations shall be accompanied by a proposed form of order. The party submitting the stipulation shall include with it copies to be conformed, together with envelopes stamped and addressed to each party who has entered an ~~appearing~~ appearance in the case unless otherwise provided for by the presiding judge. If the proposed form or order is signed, no minute entry shall issue.

(2) Any motion that is accompanied by a proposed form of order shall also include with it copies to be conformed, together with envelopes stamped and addressed to each party who has entered an appearance in the case unless otherwise provided for by the presiding judge. If the proposed form of order is signed, no minute entry shall issue.”

Motion: Approve the petition as amended for submission. Seconded and passed unanimously. COSC-03-007

Tracking Jury Anonymity at Polling Hon. Jeffrey Coker

Judge Coker is presenting this topic on behalf of Honorable Sheri Newman. The Jury Practices Committee recommendations approved by the Arizona Judicial Council in March 2003, require that judges and court staff refrain from referring to jurors by their name during polling at verdict. This recommendation was recently codified as section 5-203(D)(3) of the Arizona Code of Judicial Administration.

Justice Ruth McGregor asked Ms. Newman to monitor this for the next year and report back to assist in the determination on taking the next step, which would be to keep the juror anonymous through the jury selection process. The monitoring method has not been selected yet.

The concern over the inclusion of jurors' names in the Minute Entry was expressed. Discussion on this issue is anticipated, if the next step is taken. At Judge Colin Campbell's request, the Superior Court in Maricopa County is no longer including juror information in the Minute Entry, because the Minute Entry is posted on the internet. This information is tracked elsewhere.

**Domestic Violence Forms Mr. Bob James
Ms. Amy Wood
Mr. Robert Roll**

The Domestic Violence Forms Workgroup of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) has redrafted and revised the Petition, Order of Protection, Injunctions Against Harassment and developed a Guide Sheet. Mr. James, Chair, Domestic Violence Forms Workgroup, brought them to the committee for review and approval "in concept." These forms have been revised, in part, to ensure order enforcement by law enforcement. The forms contain a major change in logic and will have an impact on automation, both at the AOC and local court levels.

The Guide Sheet is an attempt to set-forth valuable information for the petitioner/plaintiff that diverse approaches and processes throughout the state have led to be omitted. It allows the collection of the petitioner/plaintiff's address and phone number on a form that is not available to the public. This same information gives staff the information necessary for case initiation in their case management system.

The Petition is a single document consolidating the petitions for Order of Protection, Injunction Against Harassment or Injunction Against Workplace Harassment. Margin rules for the Superior Court will be adhered to for those courts. The defendant description is no longer included on this form, but has been moved to the Guide Sheet.

The Order of Protection illustrates the logic change, which is in the section headed "**No Contact.**" What was once a statement that listed prohibited contact, is now a statement that prohibits all contact except those ordered therein. This same design strategy has been included in the Injunctions Against Harassment.

The Committee offered suggested language changes and voiced concern regarding protective orders that are issued in a Limited Jurisdiction Court and are later transferred to the Superior Court and the margin conflicts that arise due to the differing margin standards in those courts. Mr. James will take all of the comments and concerns back to the Workgroup.

The timeline involved to full implementation of the new forms would be one year after AJC approval due to automation system updates and preprinted and/or multi-part forms.

The Workgroup's intent was to provide documents that enable judges and staff to do their job in the most effective and efficient manner, to protect victims, give defendants an opportunity to be heard and to make general improvements to the system.

Mr. Robert Roll, Data Warehouse Manager, Administrative Office of the Courts, took the members through the systems (AZTEC and non-AZTEC), processes, training issues (court staff and law enforcement) and costs (reprogramming, testing, implementation, printing, etc.) involved in updating automation systems to conform with the new logic and order of the forms.

**Motion: Recommend adoption of the forms. Seconded and passed unanimously.
COSC-03-008**

**Legal Document Preparer Program Ms. Nancy Swetnam
Ms. Linda Grau**

Earlier this year the Supreme Court adopted amendments to Rule 31, Rules of the Supreme Court and enacted a new section of the Arizona Code of Judicial Administration, §7-208: Legal Document Preparer. The new certification requirements take effect on July 1, 2003.

Chief Justice Jones has appointed the Board of Legal Document Preparers (“Board”). The Board will make recommendations to the Supreme Court on rules, policies and procedures to implement the new provisions, and will make all decisions regarding certification and discipline of certified legal document preparers. Judge Roland Steinle III, of the Superior Court in Maricopa County, is the chair of the Board.

Applications for certifications must be received by the program by Thursday, June 5, 2003 in order to be considered for certification by July 1, 2003.

Pursuant to §7-208(H)(2), all judicial officers or their designees and all certified legal document preparers shall, and any person may notify the program if they believe a certified legal document preparer has violated §7-208.

The Board will be reviewing in excess of 350 applications for certification in the upcoming months.

Responses to the concerns expressed by the members are summarized as follows:

1. If a document preparer does not apply for or receive certification and continues to prepare documents. A complaint can be brought to the Board, cease and desist orders made, sanctions imposed, etc.
2. The rule prohibits disbarred attorneys from becoming document preparers. Additionally it prohibits them from holding interest in business entities who are seeking certification.
3. Attorneys who have been suspended are not prohibited, but it is a factor that will be considered in the application process.

Informational only.

Arizona Code of Judicial Administration § 7-201 and 7-202 . . . Ms. Nancy Swetnam
Arizona Code of Judicial Administration §7-201: Certification Programs, sets forth general certification procedures and the disciplinary process for the following programs: Confidential Intermediary Program, Defensive Driving Program and the Fiduciary Program. These provisions are currently contained in Rule 1. The new §7-201 makes both technical and substantive changes to Rule 1, essentially resulting in a complete rewrite of the procedures.

Both §7-201 and §7-202 are being circulated for a public comment period from June 1st to August 15, 2003. Following the public comment period, the revised code sections will be forwarded to the Arizona Judicial Council for consideration at its October meeting. The code sections will then be sent to the Chief Justice for review and adoption.

Members of the Committee on Superior Court are asked to review the proposed code sections during the public comment period and provide feedback. Staff provided copies of the proposed code sections, as they have been distributed for public comment, and will brief the members on the significant changes. Following the public comment period, the Committee will be asked to vote on the proposed changes.

Informational only at this time.

**Reporting Civil Judgments to MVD Ms. Lorraine Brown
Ms. Rose Slusser**

This legislative session, amendments were proposed to expand the types of judgments that, under A.R.S. § 28-4072, may result in a suspension of a vehicle registration and driving privileges until a judgment is satisfied. As a result of negotiations, the amendment was not offered but in exchange MVD agreed to change its policies in ways that should be brought to the attention of the courts.

The issue arose out of a constituent complaint from a financing company frustrated in its attempt to utilize the statutory suspension because of MVD's policy "requirement" that an accident report be furnished by the judgment creditor. The financing company had obtained the judgment for damages to an automobile that had been abandoned by the owner after defaulting on the automobile loan. (It is not clear whether the judgment was limited to vehicle damages or also included other charges related to the loan.) Although the vehicle was damaged when recovered, it was not evident that an automobile accident had occurred. Without submission of an accident report, MVD refused to suspend.

A.R.S. § 28-4071 requires a court, at the request of a judgment creditor, to forward to MVD a judgment that remains unpaid for more than 60 days. Pursuant to A.R.S. § 28-4072, on receipt of the judgment, MVD must suspend the license and registration of the debtor. Subsection C of that section allows the debtor to be relieved from the suspension by filing certain information including an affidavit stating that "at the time of the accident" the vehicle was insured and the insurer, not the owner, is responsible for payment of the judgment.

Based on the quoted language, MVD has interpreted this statute to apply only when the judgment is for damage to a vehicle as a consequence of an accident and, as a matter of policy, has required that an accident report be submitted by the judgment creditor before the suspension is imposed.

The amendment would have opened the statute to judgments other than those resulting from accident damage. Proponents argued that the definition of "judgment" in A.R.S. § 28- 4001 is broader than interpreted by MVD under A.R.S. § 28-4072. Because the amendments were offered late in the legislative session, MVD had no opportunity to evaluate programming and workload ramifications that might result from an expansion of the statute.

Ultimately, the amendment was not offered and, in exchange, MVD agreed to change its policy by no longer requiring an accident report before suspending the registration and license. However, they now will suspend only if the underlying judgment (or perhaps a transmittal document that accompanies the certified copy sent to MVD) specifies it qualifies under A.R.S. § 28-4701.

After complimenting the form's design, the committee narrowed the impact of the policy change to the Clerk's Office, in that after a judgment is awarded and not satisfied in 60 days, the attorney on record forwards the default judgment and a copy of the accident report with instructions to the Clerk to prepare the document(s) forwarded to MVD. Ms. Denise Lundin will take this issue forward to the Clerk's Association.

Informational only.

Arizona Code of Judicial Administration § 6-113, Firearms Standards and § 6-106, Personnel Practices Kathy Waters
Listed as separate items on the agenda Arizona Code of Judicial Administration § 6-113, Firearms Standards and § 6-106, Personnel Practices were presented together.

The Personnel Practices code section has been delayed for fine tuning due to the changes in the way adult and juvenile probation offices conduct business. This code is proposed to standardize probation officer hiring practices. It covers hiring practices, minimum and medical qualifications for officers, background investigations, disqualifiers for officer and safety sensitive position applicants, continuing employment requirements, psychological evaluation standards, drug testing and conditional employment offers. Ms. Waters highlighted the notable inclusions and exclusions, the Model Policy for Drug Testing, and addressed comments and concerns.

Ms. Waters noted that the Firearms Standards code was amended to be made consistent with Personnel Practices.

Motion: Approve Arizona Code of Judicial Administration § 6-113, Firearms Standards and § 6-106, Personnel Practices. Seconded and passed unanimously. COSC-03-009

2003 Legislation **Mr. Todd Adkins**
In Mr. Tom Aughterton’s absence, Mr. Todd Adkins presented the various bills that have been introduced, signed or killed in this legislative session which may impact the Superior Court. Those discussed were:

HB2018 - CONCILIATION SERVICES; REVENUE ENHANCEMENT - Generates additional revenue used exclusively to carry out the purposes of conciliation services in the superior 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). LAWS 2003, CH. 163

HB2108 - JUDGES; PERSONAL RECORDS; CONFIDENTIALITY - Adds Supreme Court Justices, Court of Appeals Judges, Superior Court Judges and Commissioners, Municipal Court Judges, Federal Judges and magistrates, Justices of the Peace, Public Defenders, and Federal Prosecutors to the category of persons (now police officers and prosecutors) who may request confidentiality of personal information contained in records maintained by the county recorder, county assessor and county treasurer. The population cap was left in place. LAWS 2003, CH. 106

HB2017 - PARENT EDUCATION PROGRAM; FEE - Permits local jurisdictions to charge up to \$50 (\$30 presently) for attendance in a Domestic Relations Education on Children’s Issues Program. LAWS 2003, CH. 121

HB2109 - ADOPTION; CONFIDENTIAL INTERMEDIARIES; AGE REQUIREMENT - Restores to 21 the age at which a confidential intermediary (CI) may contact an adoptee and, as passed, lowers to 18 the age at which an adoptee may use the services of a CI. LAWS 2003, CH. 107

HB2020 - JUVENILE COURT COSTS; PARENTAL RESPONSIBILITY - Requires for any child referred to the juvenile court as incorrigible or delinquent and who is placed in foster care or who is ordered to comply with a treatment or education program that the court inquire into the ability of the child or the child’s parent to bear all or part of the expense of foster care, treatment services or education program. LAWS 2003, CH. 23

HB2110 - ADMINISTRATIVE ASSESSMENT; CRIMINAL PROCEEDINGS; TIMING - Broadens the period of time the court may impose on defendants in criminal cases and parents or guardians of juveniles in delinquency proceedings the \$25 administrative assessment allowable under present statute to offset the costs of a public defender. LAWS 2003, CH 15

HB2401 - DEFERRED RETIREMENT OPTION PLAN - No action taken due to cost associated with passage.

Topics for Future Discussion Susan Pickard

After reviewing the committee's minutes for the period of January 2002 through January 2003, Ms. Pickard noted that a number of topics for committee discussion/action had been noted, but no final outcome was addressed in the minutes. The topics and the committee's future intent for them are as follows:

1. Simplification of Child Support Calculations - The Committee's comments have been taken forward to the Child Support Guidelines Workgroup of the Legislature's Child Support Committee for consideration. The final outcome of the Workgroup's efforts will be presented to this committee for review and comment.
2. Judicial Ethics Advisory Committee (JEAC) - Opinion 2001-01, Contacting or Speaking with Members of a Discharged Jury - The Committee's comments and concerns were taken to and addressed by the JEAC. No further discussion/action is needed.
3. Attorney Conduct Regarding Juror Contact After Verdict - See Item 5 below, no further discussion/action is needed.
4. Attorney Competence and Extent of Judicial Responsibility for Parties - This falls under the purview of another committee. No further discussion/action is needed.
5. Attorney Behavior/Professionalism Training Requirement - Judge Weaver updated the committee on the training requirements set forth by the State Bar of Arizona. No further discussion/action is needed.
6. Paralegal Competence and Extent of Judicial Responsibility for Parties - No further discussion/action was requested.
7. Interpreter Services - This topic was taken up by the Committee to Study Court Interpreter Issues. After reporting back to the Arizona Judicial Council in October 2002, the Interpreter Funding Committee was established to define funding needs and develop funding resources. No further discussion/action is needed.
8. Explore the expanded use of electronic research resources rather than purchasing hard copies of texts. No further discussion/action was requested.
9. Examine and make recommendation on educational resources available to educate prospective and new court administrators. Resources have since been identified, and no further discussion/action is needed.

Next Meeting Hon. Fred Newton

October 3, 2003
Arizona State Courts Building
Conference Rooms 119 A&B

Good of the Order/Call to the Public **Hon. Fred Newton**
No public comment was made.

In having the committee meetings on Friday, those from out-of-town are encountering rush hour traffic. It was suggested that the meeting begin earlier. The members agreed that the next meeting would begin a half an hour earlier at 9:30 a.m. instead of at 10:00a.m. in the hopes of alleviating this situation.

Adjournment

The meeting adjourned at 2:45 p.m.

Respectfully Submitted,

Susan Pickard
COSC Staff

Committee on Superior Court

MINUTES

Friday, October 3, 2003 - 9:30 a.m. to 2:30 p.m.
State Courts Building
1501 W. Washington Conference Room 119A & B
Phoenix, AZ

MEMBERS PRESENT:

Honorable Silvia Arellano
Mr. K. Kent Batty
Honorable James E. Chavez
Ms. Deborah Dyson
Honorable Charles V. Harrington
Honorable Bethany G. Hicks
Honorable Cathy Holt
Honorable R. Douglas Holt
Honorable Michael K. Jeanes
Honorable Kirby Kongable

Honorable Kenneth Lee
Honorable Denise I. Lundin
Honorable Margaret Maxwell
Honorable Stephen F. McCarville
Honorable Leslie Miller
Honorable Fred Newton
Honorable Emmet J. Ronan
Honorable James A. Soto
Honorable Nanette Warner
Mr. Charles W. Wirken

MEMBERS ABSENT

Honorable Norman J. Davis
Honorable Pat Escher
Honorable Gloria J. Kindig
Mr. Gary Krcmarik

Mr. Marty Krizay
Honorable Barbara Mundell
Honorable Dale Nielson

GUESTS:

Mr. Bob James
Mr. David Benton
Ms. Page Gonzales
Mr. Todd Adkins
Honorable Paul Katz
Mr. Kenneth Law
Mr. Steven Partridge
Mr. Peter Keifer

Mr. Gene Guidas
Mr. Barry Brody
Ms. Joan Tobin
Mr. Robert Dauber
Ms. Nancy Swetnam
Ms. Jennifer Greene
Mr. Robert Roll
Mr. Eric Carlson

STAFF:

Ms. Susan Pickard

Ms. Isabel Gillett

REGULAR BUSINESS

Welcome and Opening Remarks Hon. Fred Newton

Judge Fred Newton, Chair, called the meeting to order at 9:42 a.m. He welcomed new and returning members and thanked former members for their dedication and valuable input. All in attendance introduced themselves.

New:

Presiding Judge Dale Nielson
Navajo County

Presiding Judge James Soto
Santa Cruz County

Judge Emmet Ronan
Maricopa County

Judge Cathy Holt
Maricopa County

Mr. Kent Batty
Court Administrator in Pima County

Returning:

Presiding Judge Kirby Kongable
Yuma County

Presiding Judge Nanette Warner
Pima County

Judge Silvia Arellano
Maricopa County

Judge James Chavez
Mohave County

Judge Kenneth Lee
Pima County

Former Members:

Presiding Judge Raymond W. Weaver
Judge Brian Ishikawa
Mr. Marcus Reinkensmeyer
(Each has received letters and certificates of appreciation from the Chief Justice)

Approval of Minutes from June 6, 2003 Meeting Hon. Fred Newton

The minutes for the June 6, 2003 meeting were previously distributed electronically. Revisions and corrections received from members prior to the meeting were incorporated by staff and redistributed.

MOTION: Judge Maxwell moved to approved the minutes for June 6, 2003 as redistributed. Seconded. Passed unanimously. COSC-03-010.

BUSINESS ITEMS/POTENTIAL ACTION ITEMS

Domestic Violence Forms **Mr. Bob James**
Representing the DV Forms Workgroup of the Committee on the Impact of Domestic Violence and the Courts (CIDVC), Mr. James presented two redrafted domestic violence forms (the General Petition and the Guide Sheet) for COSC approval. Minor changes to the forms were suggested by the members.

MOTION: Mr. Jeanes moved to approved the forms with the DV Forms Workgroup taking into consideration the changes that were suggested by this committee. Seconded. Passed unanimously. COSC-03-011.

2004 Legislative Proposals **Mr. David Benton, Ms. Page Gonzales, Mr. Todd Adkins**
Votes indicated: Include - Not Include - Option A - Option B

04-03 Property Tax Appeal Time Limit (6th in order of importance)

- 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 regarding valuation of classification of property.
- On hand to comment and answer questions were Judge Paul Katz, the proposer, and proponents Mr. Kenneth Law, Office of the Attorney General and Steven Partridge, Fennemore Craig PC.
- Discussion: None.

The committee voted to include the proposal in the legislative package, 20-0-0-0

04-04 Orders of Assignment

- Grants authority to the superior and limited jurisdiction courts to issue orders of assignment that require an employer(s) of a person with a court-ordered payment to withhold a portion of the person’s wages and transmit the money to the issuing court or other specified agency.
- Mr. Bob James, on behalf of Judge Colin Campbell, the proposer, was on hand to comment and answer questions.
- Discussion: Multiple orders of assignment, possible conflicts with Federal Title IV-D, prioritization of payments, impact on the FARE Program implementation.

The committee voted to not include this proposal in the legislative package. 7-13-0-0

04-05 Mental Health Experts (1st in order of importance)

- Changes from mandatory to permissive the requirement that one of two mental health experts appointed by the court to conduct a competency examination be a psychiatrist.
- Mr. Peter Keifer, proposer, Mr. Gene Guidas and a representative of the Public Defender’s Office, were on hand to comment and answer questions.
- Discussion: Psychologists’ access to medical record if a person is being treated by a psychiatrist.

- Option A - If either party or their counsel requests a psychiatrist, the court would be obligated to make that appointment.
- Option B - This option was not defined.

The committee voted to include this proposal in the legislative package. 17-0-1-1

04-06 Preparatory Release of Inmates Sentenced to Probation (3rd in order of importance)

- Allows an inmate who the court sentenced to probation, in lieu of community supervision, to be released at the discretion of the Director of the Department of Corrections up to 90 days prior to the end of the prison sentence in the same manner as inmates who are sentenced to imprisonment and community supervision.
- Discussion: Prisoners retaining their right to early release credits in probation scenarios, equal treatment, loss of screening service of community supervision and possible cost issues.

The committee voted to include this proposal in the legislative package. 18-2-0-0

04-07 Judges' Retirement Age

- Extends from 70 to 75 years of age the mandatory retirement age for justices and judges of courts or record prescribed by Article VI.
- Discussion: DROP proposal, reaching full retirement if appointed at age 51.

The committee voted to not include this proposal in the legislative package. 8-11-0-0

04-08 Forcible Entry and Detainer (5th in order of importance)

- Changes from superior to justice court the location at which parties appealing a judgment in forcible entry and detainer cases (pursuant to A.R.S. § 12-1179) are required to file a supersedeas bond and make periodic rent payments during the appellate process.
- Discussion: None.

The committee voted to include the proposal in the legislative package. 20-0-0-0

04-10 Drug Court Appropriation (4th in order of importance)

- Appropriates an unspecified amount from the state general fund to the Administrative Office of the Courts in FY04 and FY05 for the purpose of funding juvenile and adult drug courts.
- Discussion: Federal funding limited or terminating, statistical data evaluating Pima County Drug Court, state budget constraints.

The committee voted to support the concept for inclusion in the legislative package. 17-3-0-0

04-11 MVD Registration Holds (7th in order of importance)

- Expand authority to refuse vehicle registrations for delinquencies in paying restitution, fines, surcharges, penalties or assessments.
- Discussion: Multiple parties on the registration, expanding to non-traffic, affect on revenue.

- Option A: Not include in the legislative package unless amended to address concerns regarding multiple parties on the registration.

The committee voted in support of Option A of the proposal. 4-4-10-0

04-12 TIP on Probation Absconder Location (2nd in order of importance)

- Utilizes the Tax Intercept Program (TIP) to assist probation departments locate absconders.
- Discussion: Impact on FARE Program implementation, resource allocations and cost impact.

The committee voted to include the proposal in the legislative package. 17-2-0-0

04-13 Deferred Retirement Option Plan (DROP)

- Creates a deferred retirement option plan (DROP) for members of the Arizona Retirement System, Correctional Officer Retirement Plan, and the Elected Official Retirement Plan.
- Discussion: Revenue/cost neutrality
- Option A: Include only if demonstrated to be revenue neutral.

The committee voted to not include the proposal in the legislative package. 3-9-7-0

Pro Tem Judges Domestic Relations

- If parties of a family law dispute select and agree to the appointment of a judge pro tem, the trial judge shall assign that action to the agreed upon pro tem. The pro tem shall be compensated by the parties in an amount approved by the court.
- Mr. Barry Brody was present to comment and answer questions.
- Discussion: Court reporter; clerk and facility responsibility; private judging; pilot program; experience; exhibits, minute entry and records for purposes of appeal; courtroom clerk resources; possible loss of attorneys willing to pro tem without payment; security issues holding hearings in attorney.

MOTION: Judge Arellano moved that we approve the proposal. Seconded.

AMENDED MOTION: Judge Arellano amended the motion to support the proposal as a pilot program in Maricopa County. Seconded. Passed unanimously. COSC-03-012.

Justice Court Case Amount Increase

- Amend the constitution to increase the dollar amount limit for the jurisdiction of the justice courts from \$10K to \$20K.
- Discussion: Judicial productivity credits, judicial officers training and caseload shift.

MOTION: Judge Arellano moved to table this discussion until proposed language is available. Seconded. Passed Unanimously. COSC-03-013.

Credentialing of Mediators Ms. Joan Tobin, Mr. Robert Dauber
Ms. Tobin and Mr. Dauber presented the Report on the Credentialing of Mediators as sent forth by the Committee on Alternative Dispute Resolution for comment. The report contains proposed guidelines for courts to credential qualified mediators. The two main areas of focus are training and experience requirements. Ms. Tobin highlighted the point that care was taken to build in flexibility for each of Arizona’s counties. Comments should be forwarded to Ms. Tobin within the next month. **Informational only.**

ACJA § 7-201 and 7-202 Ms. Nancy Swetnam
Section 7-201 sets forth the general certification procedures and disciplinary processes for the Confidential Intermediary Program, Defensive Driving Program and the Fiduciary Program.

Ms. Swetnam pointed out the following areas at issue: the use of the language “probable cause” versus “reasonable cause,” policies and procedures regarding compliance audit reviews and mandated complaint resolution time frames.

MOTION: Judge Arellano moved to approve ACJA § 7-201 with the amendments as recommended by staff. Seconded. Passed unanimously. COSC-03-014.

Section 7-202 sets forth the general requirements for certification and regulation of fiduciaries.

Ms. Swetnam pointed out the following areas of controversy between the Fiduciary Commission and staff: the definition and responsibilities of principal, denial of renewal of certification, pictorial inventory requirement.

Concern was expressed that a representative of the Fiduciary Commission was not present to present their side. Ms. Swetnam assured members that a representative planned to be available when this topic is presented at AJC on October 15.

MOTION: Judge Arellano moved to approve ACJA § 7-202 with the amendments as recommended by staff. Seconded. Passed 16-2-1 COSC-03-015.

FARE Program Update Ms. Nancy Swetnam
The primary goal of the FARE Program is enforcing court orders. The FARE Program is currently being rolled out across the state in seven limited jurisdiction “pioneer courts” in four communities. Local courts, AOC staff, MVD and representatives from Affiliated Compute Services, Inc. (ACS), the private vendor selected as the business partner in this endeavor, meet regularly to work through the process.

Ms. Swetnam stressed that backlog processing services, a component of the FARE Program, are currently available to all courts, not just pioneer courts, and include: reminder notices, delinquency notices, pay by web, pay by Interactive Voice Response (IVR) system, credit card, debit card, installment payment programs, credit bureau checking, skip tracing, referral to the Traffic Ticket Enforcement Assistance Program and referral to the Tax Intercept Program (TIP). **Informational only.**

Revisions to Trial Jury Management Code Ms. Jennifer Greene

The Jury Patriotism Act of the last legislative session was aimed at improving representativeness of trial juries and making jury service more convenient, rewarding and difficult to avoid. ACJA § 5-203 has been amended to incorporate the Act. Additionally, requirements of Rules 18.3 and 18.6 of the Arizona Rules of Criminal Procedure concerning supreme court approval of juror biographical questionnaires and juror orientation handbooks, which are seen as more appropriate for inclusion in the Arizona Code of Judicial Administration than the Rules of Criminal Procedure, have been incorporated to allow for later removal from Rules.

MOTION: Mr. Batty moved to approve the proposed revision to ACJA § 5-203. Seconded. Passed unanimously. COSC-03-016.

Lengthy Trial Fund Implementation Ms. Jennifer Greene

The Lengthy Trial Fund is designed to pay extra compensation to those jurors who serve on trials lasting more than ten days. Implementation of the statutory scheme requires that the supreme court adopt rules for administration of the fund and establish a new superior court filing fee, the revenue from which would be used to reimburse counties as they pay jurors the extra compensation permitted by A.R.S. §§ 12-115 and 21-222.

The Lengthy Trial Fund Fees Workgroup recommends that the filing fee be set at \$8 and applied only to complaints, answers, counter-claims and motions to intervene filed in civil cases. Setting the fee at this level is expected to raise over \$451,968 annually.

The Lengthy Trial Fund Logistics Workgroup has drafted two forms; one for use by jurors who wish to be paid from the fund and the other for use by jury commissioners who seek reimbursement from the supreme court for the extra payments made to eligible jurors. Additionally guidelines for jury commissioners to use in notifying jurors about the availability of this money, determining juror eligibility and seeking reimbursement have been developed.

Concern was raised regarding fees collected in rural counties, which hear fewer lengthy trials, being used to subsidize jurors in Maricopa and Pima Counties.

MOTION: Judge Arellano moved to approved the proposed recommendations and forms. Seconded. Passed unanimously. COSC-03-017.

Rule 10.2 Ms. Jennifer Greene

Ms. Greene reviewed the history of Rule 10.2. While not going through the Report of Statistical Survey of Rule 10.2 Arizona Rules of Criminal Procedure Notice of Change of Judge, as provided to the committee, she did note in the superior court there was quite a bit of variation in looking at the courts; some reported increased filings while others reported a decreases. The Court will be considering the experimental rule on its January Rules Agenda, which means committee members have until December 1, 2003 to file comments on their court’s experience with Rule 10.2. **Information only.**

Holder of the Record Mr. Robert Roll

In evaluating the process of transferring data from the Court Protective Order Registry (CPOR) to the Law Enforcement Protective Order Registry (LPOR) data quality issues have been identified. In some cases, the hard copy sent to the Holder of Record does not match the electronic version transmitted from CPOR, in other cases events are occurring out of sequence (e.g. the order is shown as having been served, but information has not been entered indicating the order was issued by the court). The Holder of Record will only accept electronic versions that match the hard copies. If a record is not accepted it will not be sent to NCIC nor will it be available to local law enforcement. The Holder of Record would like additional access to LPOR to make the electronic copy reflect the hard copy.

MOTION: Ms. Lundin moved to recommend approval to allow the Holder of Record the ability to update protective order information which is sent to NCIC. Seconded. Passed unanimously. COSC-03-018

Court Protective Order Repository - CPOR Hon. William O’Neil

Judge O’Neil was unable to present this topic at this meeting. The topic will be placed on the agenda for the November meeting.

Report of the Court Security and Emergency Preparedness Committee . . Mr. Eric Carlson

The Committee on Court Security and Emergency Preparedness provided the committee with their distribution draft report which has two parts; 1. court emergency preparedness planning, including required basic elements and 2. recommendations/guidelines for court security. The committee is seeking comments on the report, suggestions on how to document that the planning has been accomplished and suggested timetables for meeting the guidelines. Comments may be sent to Mr. Carlson or Paul O’Connell, committee chair and Superior Administrator Court in Pinal Court. **Informational only.**

Next Meeting Hon. Fred Newton

November 21, 2003
10:00 a.m. - 3:00 p.m.
Arizona State Courts Building
Conference Rooms 119 A&B

Good of the Order/Call to the Public Hon. Fred Newton

A call for public comment was made. No comments were made

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

Respectfully submitted,
Susan Pickard
COSC Staff

Committee on Superior Court

MINUTES

Friday, November 21, 2003
10:00 a.m. to 3:00 p.m.
State Courts Building
1501 W. Washington Conference Room 119A & B
Phoenix, AZ

MEMBERS PRESENT

Honorable Silvia Arellano
Mr. K. Kent Batty
Honorable James E. Chavez
Honorable Norman J. Davis
Honorable Pat Escher
Honorable Charles V. Harrington
Honorable R. Douglas Holt
Honorable Michael K. Jeanes
Honorable Kirby Kongable

Mr. Gary Krcmarik
Mr. Marty Krizay
Honorable Denise I. Lundin
Honorable Stephen F. McCarville
Honorable Leslie Miller
Honorable Fred Newton, Chair
Honorable Emmet J. Ronan
Honorable James A. Soto

GUESTS

Mr. David Benton
Ms. Page Gonzales
Ms. Kathy Waters
Ms. Dori Ege
Mr. Ted Wilson
Dr. Melanie Sturgeon

Ms. Konnie Young
Mr. Robert Roll
Ms. Sue Latzko
Ms. Jennifer Green
Mr. Greg Eades

The November 21, 2003, meeting of the Committee on Superior Court was called to order by Judge Fred Newton, Chair, at 10:15 a.m. A quorum was present.

APPROVAL OF MINUTES FROM OCTOBER 3, 2003

MOTION: Judge Arellano moved to approve the minutes of October 3, 2003. Seconded. Passed unanimously. COSC-03-019

LEGISLATIVE UPDATE

Mr. David Benton and Ms. Page Gonzales presented an update on the judiciary's legislative package. The following proposals were adopted as presented by AJC, except as noted.

- Property Tax Appeal Time Limit.
- Mental Health Experts

Amended striking the language requiring a “psychiatrist”, and using “mental health expert”. Details to be hammered out by rule change petition being worked on by Judge Ballinger, Superior Court in Maricopa County, and Peter Kiefer, Criminal Court Administrator - Maricopa.

- Preparatory Release for Inmates Sentenced to Probation
Adding juvenile cases to the proposal is being explored.
- Forcible Entry and Detainer
- Small Claims Hearing Officers
- Drug Court Funding
With the strategy to look for alternatives to a general fund appropriation
- MVD Registration Holds
With a caveat that the proposal may need to be scaled back later in the legislative session. Note: This committee’s recommendation to not include the proposal in the legislative package unless amended to address concerns regarding multiple parties on registrations were considered, but not adopted by AJC.
- TIP on Probation Absconder Location

Ms. Gonzalez also presented a special session update. The special session convened October 20, 2003.

Judicial Collections

The bill repealing judicial collections on June 30, 2004 was signed by Governor on October 23, 2003.

Prison Overcrowding

- Creates a DUI assessment of \$1,000 on water craft, vehicle, air craft and DUI convictions. The assessment is excluded from surcharges.
- Directs the assessment monies into a prison overcrowding fund. The funds will be used pay for cost related to prison overcrowding and Department of Corrections (DOC) support and maintenance.
- Establishes a base fine for water craft DUI of no less than \$250 and a base fine for aggravated water craft DUI of no less than \$750.
- Amended to prohibit the waiver of the fines, surcharges and assessments for the DUI convictions listed in the bill.
- Amended to remove emergency clause.
- Amended to allow treatment at DOC.

Concerns were raised about pricing the offender out of being able to pay.

CPS

Initially two bills; one from the Governor and the other from Rick Romley, Maricopa County Attorney were dropped.

Differences

- The Governor’s bill asks for \$35M; \$27M to keep CPS running, \$8M for additional case workers, increased payments to foster parents and open hearings in a rural county as being piloted in Maricopa County.
- Rick Romley’s bill creates CPS as their own agency and opens all records.

Common Themes

- In-home intervention.
- Joint investigations.
- Definition of CPS and abuse and neglect.
- Jury trials for termination of parental rights.

Later the House and Senate dropped their own bills.

- The House (Children's Caucus) bill follows the Governor's bill more closely, but did not include any funding, and passed out of committee.
- The Senator Bennett's bill has passed out of the Appropriations Committee with \$7.5M in funding.
- The House and Senate bills have been amended to include penalties for false reporting.

Concern was raised about the severe and significant impact that any of these bills will have on the courts centering on in-home intervention and joint investigations.

Judge Newton pointed out the Juvenile Centers do not have "jury facilities."

Additionally, concern was raised regarding the envisioned process and the inherent delays in resolution and its impact on children and families.

ACJA § 6-207 - UNIFORM CONDITIONS OF PROBATION

In addition to the meeting materials distributed to the members via the COSC web site, Ms. Kathy Waters provided a version of ACJA § 6-207, dated 11/21/03.

Ms. Waters presented the revisions made to existing ACJA § 6-207 and the associated form.

Form updates include: (Standard conditions - left side, Special conditions - right side)

- Adds check box for "upon release from prison for felony DUI (___mo.___days credit)"
- Adds choice of 24, 48 or 72 hours to report to law enforcement in #8.
- Financial orders became a standard condition becoming #11.
- Employment/School became a special condition in #17.
- Modifies #12 to include a county/state selection.
- Adds a DUI Court check box.

Code updates include:

- Specifies the uniform conditions for Superior Court supervised cases.
- Specifies the uniform condition for limited jurisdiction court adult probationers referred to the Superior Court for supervision.
- Mandates use of the adopted form for Superior Court.
- Specifies use of the adopted form in limited jurisdiction courts.
- Addresses judicial discretion and allows for changes to be documented on the form.
- Eliminates subsection of the code requiring the code to be modified every year.

Comments:

- Make form compliant with Rule 10(d) regarding scanning process used in the clerk's office.
- Add "Form modified pursuant to 3.B." to the end of D.2.B. of the code section.
- Add "Form modified pursuant to 3.C." to the end of D.2.C. of the code section.
- Specify which forms should be duplicated in 3.B.
- Make #17 employment/school a standard condition and remove the check box and renumber as 16

MOTION: Judge Miller moved to accept ACJA § 6-207 as proposed with an amendment to the form to make #17 a standard condition and renumber as 16. Seconded.

AMENDED MOTION: To accept the ACJA § 6-207 with an amendment to the form to make #17 a standard condition and renumber as 16 and to comply with formatting requirements for Superior Court forms. Seconded. Passed unanimously. COSC-03-020

ACJA § 6-211 - INTERCOUNTY COURTESY TRANSFERS FOR ADULT PROBATIONERS

ACJA § 6-211, having been approved by COP and reviewed by the chief probation officers and LJC, was presented to the members by Ms. Dori (Littler) Ege.

Concerns:

- Point of clarification - Does "in accordance with caseload capacities" in 3.E.2. mean if County A is full, they don't have to accept a transfer from County B? Yes.
- In reference to G.4., the code does not specify that the written reply from the receiving county must indicate whether they are approving or refusing.
- Affect of proposed changed to Rule 27.1.

MOTION: Judge Arellano moved to approve ACJA § 6-211 as proposed. Seconded. Passed unanimously. COSC-03-021

RECORDS RETENTION SCHEDULE FOR SUPERIOR COURT

Mr. Ted Wilson distributed updated copies of the Records Retention Schedule for the Superior Court. The overall goal of the update was to not only conform them to changes in statute, but to change the general philosophy that "all Superior Court records are kept forever" to a more rational approach. He briefly reviewed the changes and asked for comments.

Comments:

- Retaining court reporter notes in a criminal (non-capital) case for 10 years, rather than permanently as was the standard, is not sufficient for Rule 32 petitions. Members suggested: 3-5 years after the appeal is perfected, otherwise 20 years.
- Members also suggested that schedule be sent to the Arizona Attorneys for Criminal Justice and Arizona Prosecuting Attorneys Advisory Council for review and comment.

Dr. Melanie Sturgeon, Director of the State Archives, indicated the importance of record retention sampling.

ACCESS TO UNSERVED ORDER INFORMATION IN CPOR

At the committee's last meeting, the members approved the proposal to enable Holders of Record to supplement electronic data in Law Enforcement Protective Order Repository (LPOR). Mr. Robert Roll and Ms. Konnie Young presented additional updates to the CPOR/LPOR process since the committee's approval. Mr. Roll presented the proposal approved by the Committee on the Impact of Domestic Violence and the Courts to enable Holders of Record to access unserved protective orders from LPOR.

MOTION: Ms. Lundin moved to approve the proposal as presented. Seconded. Passed unanimously. COSC-03-022

At this point the members took a 10 minute break.

JUDGES CONNECTING WITH CLASSROOMS

Ms. Sue Latzko demonstrated the speaking materials on the Arizona Judicial System for judges (and other court personnel) to use in classrooms and related venues. The materials are divided into Elementary, Middle and High School packets and include content information, speaking outlines, lesson plans, activities, resources and overheads. These materials are available for local county training coordinators, the Education Resources Library and from the Distance Learning Unit of the Administrative Office of the Courts, Education Services Division.

Members made laudatory comments.

RULE 123 REVISION

Mr. Greg Eades discussed A.R.S. § 13-2813, which makes it a Class 1 Misdemeanor to knowingly disclose "the fact that an indictment, information or complaint has been . . . filed before the accused person is in custody or has been served with a summons." The question has arisen whether court web sites violate the provisions of this statute by offering information on some misdemeanors and felonies prematurely. Similarly, automated case management systems may not alert court staff to the status of a criminal charge, resulting in premature information being provided to customers over the counter. A rule change petition to Rule 123 that clarified the statute only applied only felony cases, not misdemeanor cases, was considered. The Maricopa County Attorney's Office feels the statute is clear and applies to felony and misdemeanor cases.

A workgroup that includes county attorneys and prosecutors will be established to further examine this issue. Ms. Jennifer Greene asked for a volunteer from the committee for the workgroup. Hon. Michael Jeanes offered a representative from his office.

MINUTE ENTRY REFORM UPDATE

Hon. Fred Newton updated the members on the status of proposed rule regarding minute entry reform emphasizing that he would vigorously support the proposed rule approved by this committee when it is presented at AJC in December. The recently filed comment to the proposed rule from Judge Colin Campbell, brought to the meeting by a member, was discussed and copies distributed (after the meeting). Judge Newton expressed a willingness to work with Judge Campbell/Maricopa County to make any needed changes that are consistent with the rule to assure them that it will work well for them.

MEETING DATES FOR 2004

Ms. Susan Pickard presented the membership with three tentative meeting dates for 2004.

- Friday, February 13, 2004 - Judicial Education Center, Turquoise and Silver Conference Rooms
- Thursday, September 23 - Conference Rooms 119A/B
- Friday, November 19 - Conference Rooms 345 A/B

NEXT MEETING

February 13, 2004
Judicial Education Center
541 E. Van Buren, Suite B
Silver & Turquoise Rooms

GOOD OF THE ORDER/CALL TO THE PUBLIC

None made.

The meeting adjourned at 1:05 p.m.

Respectfully submitted,

Susan Pickard