

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, February 25, 2005
10:00 a.m. to 3:30 p.m.
State Courts Building
Conference Room 345 A&B
Phoenix, Arizona 85007

MEMBERS PRESENT:

Honorable Silvia Arellano
Mr. K. Kent Batty
Ms. Sylvia Brandfon, Ph.D.
Honorable Robert Duber, II
Honorable Pat Escher
Honorable Richard S. Fields
Honorable Bethany G. Hicks
Honorable Cathy Holt
Honorable Michael K. Jeanes
Honorable William T. Kiger
Honorable Kirby Kongable

Mr. Gary Krcmarik
Honorable Kenneth Lee
Honorable Denise I. Lundin
Honorable Margaret Maxwell
Honorable Barbara Mundell
Honorable Fred Newton, Chair
Honorable Emmet J. Ronan
Honorable James A. Soto
Honorable Nanette Warner

MEMBERS ABSENT:

Honorable Norman J. Davis
Honorable James E. Chavez
Honorable Margaret H. Downie
Honorable Charles V. Harrington
Mr. Rod Marquardt
Honorable Stephen F. McCarville
Ms. JoJene Mills
Honorable Dale Nielson

GUESTS:

Ms. Nancy Swetnam, AOC
Honorable Mark Armstrong

Ms. Konnie Neal, AOC
Mr. Allen Merrill, AZ Assoc. of Independent
Paralegals

STAFF:

Ms. Susan Pickard
Mr. Bryan DesRoches

WELCOME AND OPENING REMARKS

With a quorum present, the February 25, 2005, meeting of the Committee on Superior Court was called to order by Judge Fred Newton, Chair, at 10:08 a.m.

APPROVAL OF MINUTES FROM November 19, 2004

The minutes for the November 19, 2004, meeting of the Committee on Superior Court were previously distributed electronically. It was stated that Denise Rubin's name was misspelled.

MOTION: To approve the minutes of November 19, 2004, as corrected. Second. Passed unanimously. **COSC-05-001**

BUSINESS ITEMS/POTENTIAL ACTION ITEMS

LEGISLATIVE UPDATE

Mr. David Benton

Mr. Jerry Landau

Victims' Rights

HB2109 VICTIMS' RIGHTS; LEGAL STANDING (Rep. Tully) 1/12 - referred to House Judiciary

HB2234 RESTITUTION; ECONOMIC LOSS (Rep. Farnsworth) 2/16 - referred to Senate Judiciary

HB2337 VICTIM'S RIGHTS (Rep. Smith) this bill will be rolled into the Victims' Rights Omnibus bill. 2/14 - passed House 41-19; ready for Senate

SB1149 VICTIMS' RIGHTS; CRIMINAL OFFENSE DEFINITION (Sen. Brotherton) 2/1 - further referred to Senate Judiciary

SB1150 VICTIMS' RIGHTS; POSTCONVICTION NOTICE (Sen. Brotherton) 2/7 - Senate Judiciary held.

SB1151 CRIMINAL RESTITUTION ORDERS (Sen. Brotherton) 2/7 - Senate Judiciary held.

SB1152 RESTITUTION ORDERS; JUVENILES (Sen. Brotherton) 2/15 - from Senate Rules with a technical amendment.

SB1175 VICTIMS' RIGHTS; SENTENCING (Sen. Brotherton) 2/7 - Senate Judiciary held.

SB1267 JUVENILE VICTIMS' RIGHTS; STATEMENT (Sen. Brotherton) 2/15 - from Senate Rules okay.

SB1421 RESTITUTION; ECONOMIC LOSS DEFINITION (Sen. Huppenthal) 2/21 - Senate Judiciary held.

SB1430 VICTIMS' RIGHTS; STANDING TO INVOKE (Sen. Huppenthal) 2/21 - Senate Judiciary held.

SB1431 VICTIMS' RIGHTS; STATEMENT OF RIGHTS (Sen. Huppenthal) 2/21 - Senate Judiciary held.

SB1432 VICTIMS' RIGHTS; APPELLATE PROCEEDINGS (Sen. Huppenthal) 2/21 - Senate Judiciary held.

SB1433 VICTIMS' RIGHTS OMNIBUS (Sen. Huppenthal) 2/22 - from Senate Judiciary DO PASS.

Superior Court

HB2231 INDIGENT DEFENSE; FEES (Rep. Farnsworth) 2/10 - referred to Senate Judiciary.

HB2233 CAPITAL CASES; AGGRAVATING FACTORS (Now: SENTENCING; AGGRAVATING FACTORS) (Rep. Farnsworth) 2/22 - referred to Senate Judiciary.

HB2235 DUI; SENTENCES (Rep. Farnsworth) Calendar: House Consent (objection deadline: 2/25 11am)

HB2243 MATERNITY AND PATERNITY PROCEEDINGS (Rep. Hershberger) 2/3 - from House Human Services with amendment.

HB2248 PATERNITY REGISTRY (Rep. Hershberger) 2/10 - from House Human Services DO PASS.

HB2304 SEX OFFENDER REGISTRATION; PROBATION (Rep. Nelson) 1/31 - from House Public Institutions and Retirement DO PASS.

HB2305 JURIES; EXCUSE FROM SERVICE (Rep. Nelson) 2/10 - referred to Senate Judiciary.
HB2310 SENTENCING; HATE CRIME (Rep. Lopez) 1/13 - referred to House Judiciary.
HB2315 DEATH PENALTY; JURIES (Rep. Sinema) 2/8 - from House Public Institutions and Retirement DO PASS.
HB2318 ERRONEOUS CONVICTIONS; COMPENSATION (Rep. Sinema) 1/13 - referred to House Judiciary, Public Institutions and Retirement, Appropriations-P.
HB2327 PROSTITUTION; SENTENCING (Rep. Gray) 1/18 - Referred to House Counties, Municipalities and Military Affairs, Judiciary.
HB2342 CONFIDENTIALITY IN ALJ PROCEEDINGS (Rep. McClure) 1/31 - from House Public Institutions and Retirement DO PASS.
HB2388 FOREIGN CONVICTIONS (Rep. Pearce) 2/17 - House Judiciary held.
HB2389 ILLEGAL ALIENS; VIOLENT CRIMES; BAIL (Rep. Pearce) 2/22 - referred to Senate Judiciary.
HB2404 CAPITOL POLICE; TRANSFER (Rep. Pearce) 2/22 - referred to Senate Government, Appropriations.
HB2408 CLASS 6 FELONIES; RECLASSIFICATION (Rep. Pearce) 1/20 - referred to House Judiciary.
HB2440 STATE LOTTERY (Rep. McComish) 2/17 - from House Government with amendment.
HB2480 STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION (SLAPP) (Rep. Tully) 1/20 - referred to House Judiciary.
HB2522 CRIMINAL SENTENCING; AGGRAVATING FACTORS (Rep. Farnsworth) Calendar: 2/24 House COW #6
HB2548 APPROPRIATION; WEB-BASED CALCULATOR (Rep. Hershberger) 2/10 - from House Human Services DO PASS.
HB2551 DRUG TREATMENT ALTERNATIVE TO PRISON (Rep. McClure) this bill will not be heard.
HB2564 DRUG TESTING; URINE SAMPLES (Rep. Barnes) Calendar: 2/24 House COW #4
HB2569 SAFETY PRODUCTS CERTIFICATION (Rep. Robson) Calendar: House Consent (objection deadline: 2/25 11am)
HB2573 PEACE OFFICERS; CONCEALED WEAPONS (Rep. Murphy) 2/3 - referred to House Judiciary.
HB2610 PROBATION & SURVEILLANCE OFFICERS; RIGHTS (Rep. Smith) 2/15 - from House Public Institutions and Retirement DO PASS.
HB2614 JUVENILES; INTERROGATIONS (Rep. Downing) 2/9 - referred to House Judiciary, Human Services.
HB2677 SEX OFFENDERS; RESIDENCE ADDRESS (Rep. Paton) Calendar: 2/24 House COW #6
HB2700 PUBLIC PARTICIPATION IN GOVERNMENT (Rep. Lopes) Hearing: House Government ref (Wed 2/23 at 1:30pm, House Rm. 3)
HCR2028 ILLEGAL ALIENS; VIOLENT CRIMES; DETAINING (Rep. Pearce) 2/9 - withdrawn from House Federal Mandates and Property Rights.
SB1003 JURY REFORM (Sen. Harper) 2/16 - referred to House Judiciary.
SB1036 MEDICAL MALPRACTICE (Sen. Allen) 2/22 - passed Senate 19-10; ready for House.
SB1045 CHILD CUSTODY; RECODIFICATION (Sen. Johnson) 2/16 - referred to House Human Services, Judiciary.
SB1047 COMMUNITY RESTITUTION (Sen. Johnson) 2/16 - referred to House Judiciary.
SB1086 RECORDS REDACTION; VICTIMS OF VIOLENCE (Sen. Waring) 2/7 - passed Senate 29-0; ready for House.
SB1093 CRIMINAL SENTENCING; AGGRAVATING FACTORS (Sen. Huppenthal) 1/25 - from Senate Judiciary DO PASS.
SB1114 (PEACE OFFICER; IMPERSONATING; TECHNICAL CORRECTION) RELATING TO DESTRUCTION OF RECORDS (Sen. Huppenthal) 2/16 - from Senate Judiciary with strike everything amendment.
SB1143 COMPETENCY EVALUATION; COSTS (Sen. Huppenthal) 2/17 - passed Senate 21-9; ready for House.

SB1145 MARRIAGE DISSOLUTION; MISCONDUCT (Sen. Johnson) Calendar: 2/24 Senate COW #7

SB1158 UNCONSTITUTIONAL STATUTES; REPEAL (Sen. Tibshraeny) 2/22 - passed Senate 27-2; ready for House.

SB1160 DUI ASSESSMENTS; DPS EQUIPMENT; BONUSSES (Sen. Waring) 2/22 - Senate Appropriations amended; report awaited.

SB1217 CRIMINAL RESTORATION TO COMPETENCY (Sen. Jarrett) 2/17 - Senate COW approved with amendment.

SB1296 SEXUAL PREDATORS; CLUSTERS (Sen. Leff) 2/23 - from Senate Judiciary with amendment.

SB1301 EMANCIPATION OF MINORS (Sen. Huppenthal) Calendar: 2/24 Senate COW #3

SB1305 EMPLOYEE RIGHTS; PROBATION OFFICERS (Sen. Johnson) Calendar: 2/24 Senate COW #5

SB1311 CERTIFIED REPORTERS; VERBATIM RECORDS (Sen. Waring) Calendar: 2/24 Senate COW #4

SB1371 PRISONERS; EARLY RELEASE CREDITS (Sen. Garcia) 2/1 - referred to Senate Judiciary.

SB1382 SEX OFFENDERS; REGISTRATION (Sen. Martin) Calendar: 2/24 Senate COW #7

SB1384 SEX OFFENDERS; LIFETIME PROBATION (Sen. Martin) Calendar: 2/24 Senate COW #7

SB1418 LAW ENFORCEMENT OFFICERS; DUE PROCESS (Sen. Huppenthal) Calendar: 2/24 Senate COW #2

SB1423 DEATH PENALTY; MINORS (Sen. Aguirre) this bill will be heard but not voted upon.

SB1429 CAPITAL CASES; SENTENCING (Sen. Huppenthal) Calendar: 2/24 Senate COW #8

Judiciary Issues

HB2396 CLEAN ELECTIONS: JUDICIARYICIAL OFFICES (Rep. Pearce) 2/17 - referred to House Judiciary.

HB2403 JUDICIARYGES; AUTOMATIC INCREASE ELIMINATED (Rep. Pearce) 2/21 - passed House 33-26; ready for Senate.

HB2405 ADULT & JUVENILE PROBATION TO COUNTIES (Rep. Pearce) 1/20 - referred to House Counties, Municipalities and Military Affairs, Judiciary, Appropriations-P.

HB2411 RETIREMENT; ELECTED OFFICIALS (Rep. Pearce) 2/7 - House Public Institutions and Retirement failed 0-8.

HB2457 RETIREMENT: EORP: SURVIVING SPOUSE (Rep. Burns) 1/31 - House Public Institutions and Retirement DO PASS

HB2458 RETIREMENT: EORP: BUYBACKS (Rep. Burns) 2/15 - from House Public Institutions and Retirement DO PASS.

HB2500 PROPERTY RECORDS; REDACTION (Rep. Alvarez) 2/23 - from House Counties, Municipalities and Military Affairs with amendment.

HB2505 ELECTED OFFICIALS; OFFICEHOLDER EXPENSES (Rep. Cajero Bedford) 2/3 - Hearing: from House Government DO PASS

HB2676 ELECTION OF JUDICIARYGES; BALLOT ORDER (Rep. Paton) Hearing: House Judiciary (Thu 2/24 at 8:30am, House Rm. 4)

HCR2013 SUPERIOR COURT PRESIDING JUDICIARYGES (Rep. Gray) 2/3 - House Judiciary – Failed

HCR2014 SUPREME COURT JURISDICTION (Rep. Gray) 2/3 - House Judiciary – Held

HCR2026 SUPREME COURT ADMINISTRATIVE AUTHORITY (Rep. Gray) 2/3 - House Judiciary – Withdrawn from Hearing during testimony

HCR2031 JUDICIAL LAWMAKING (Rep. Pearce) 2/3 - House Judiciary – Passed

HCR2035 JUDICIARYICIAL CONDUCT: OPEN RECORDS (Rep. Paton) 1/24 - referred to House Judiciary.

HCR2040 JUDICIARYGES; MERIT SELECTION; POPULATION (Rep. Rios) 1/31 – referred to House Judiciary.

HCR2056 JUSTICES & JUDICIARYGES APPOINTMENT & APPROVAL (Rep. Gray) Hearing: House Judiciary (Thu 2/24 at 8:30am, House Rm. 4)

HCR2057 COURT APPOINTMENT COMMISSIONS MEMBERS (Rep. Gray) Hearing: House Judiciary (Thu 2/24 at 8:30am, House Rm. 4)

SCR1013 JUSTICES & JUDICIARYGES RETIREMENT AGE (Sen. Brotherton) 1/20 - referred to Senate Judiciary.

SCR1023 JUDICIARYICIAL RETIREMENT AGE (Sen. Gray) 1/25 - referred to Senate Judiciary.

SCR1025 COURT JUDICIARYGMENTS; LEGISLATIVE APPROVAL (Sen. Blendu) 2/21 - Senate Judiciary failed 4-4.

SCR1032 SUPERIOR COURT JUDICIARYGES (Sen. Verschoor) 2/1 – referred to Senate Judiciary

SCR1038 JUSTICES AND JUDICIARYGES; SENATE CONFIRMATION (Sen. Tibshraeny) 2/22 - from Senate Judiciary DO PASS.

TRIBAL COURT INVOLUNTARY COMMITMENT ORDERS & SB1450

Mr. David Withey

Superior Court recognition and enforcement of Tribal Court involuntary commitment orders and a perceived delay in process has prompted SB1450.

Currently the Tribal Court issues an order, which is filed with the Clerk of Superior Court. The person filing the order then sends a Notice of Filing to the proposed patient or the patient's guardian or representative and the Attorney General. Proof of service is filed with the Clerk. If no responses are filed within 5 days of service of the notice, the Clerk issues a certification that no responses were filed and the tribal court order is enforced in the same manner as if issued by the Superior Court. If a response is filed, the court may set a time period for replies and/or set the matter for hearing and appoint counsel to represent the proposed patient in enforcement proceedings.

SB 1450 adds a new finding to A.R.S. § 12-136 that states "The State, through the Attorney General was given notice of the filing of the petition for commitment order and a copy of the petition before issuance of the order by the tribal court."

The bill also impacts the Rules of Procedure for Tribal Court Involuntary Commitment Order in that the order will, upon issuance by the Tribal Court, be enforceable in the same manner as if issued by the Superior Court, and the rules may address reopening, vacating or staying of the tribal order, but not recognition.

Comments/Concerns:

- Expedite the process by allowing the waiver of the five day response deadline period if the person being committed and Attorney General of Arizona, agree.
- Allow Notice to Party service by fax.
- In tribal courts the party is not necessarily represented by or provided an attorney, therefore the party should be appointed council, if they are not represented and a hearing held in the Superior Court to ensure the party's rights.
- Clerks are uncomfortable with issuing the certification that no responses were filed and the tribal court order being enforced without the minimum of a judicial review.

Should this bill pass, the next step is this process will be to begin meeting to amend the rules.

A.C.J.A. § 6-106: PERSONNEL AND APPENDIX: A MODEL DRUG POLICY

Ms. Kathy Waters

Mr. Rob Lubitz

Amendments submitted for the committee's approval

- 1) Redefine the term Safety Sensitive Duties to include: direct community supervision of probationers, defendants, or juveniles pending adjudication and/or that involve authorization to carry and use firearms in the performance of other assigned responsibilities.

- 2) Limit random sample drug testing to employees performing those safety sensitive duties. All employees who perform safety sensitive duties shall be included in the statewide pool for random drug testing at a frequency determined by the administrative director in consultation with the Committee on Probation (COP).
- 3) Allow a Chief or Director to request authorization to include an additional group or class of employees in the statewide pool for random drug testing.

Comments/Concerns

- Juvenile detention officers should be included the definition of Safety Sensitive Duties thereby adding them to the statewide pool for random drug testing.

MOTION: Approve the proposed amendments to A.C.J.A. § 6-106 with the amendment to include juvenile detention officers in the definition of Safety Sensitive Duties. Seconded. Passed unanimously. **COSC-05-002**

Proposed Amendments to ACJA § 7-208

Ms. Nancy Swetnam

Mr. Alan Merrill, Arizona Association of Independent Paralegals

Ms. Swetnam presented an overview of a pending proposal and public comments regarding revision of Arizona Code of Judicial Administration (“ACJA”) § 7-208 related to the certification examination requirement and the scheduled transition to “Standard” certification.

ACJA § 7-208 allows the program to be administered under “Initial” certification for the first two years. This phase of the program enables individuals and business entities to seek and maintain certification based on minimum eligibility requirements, completion of approved continuing education and compliance with the incorporated Code of Conduct. “Initial” certification is currently scheduled to end on June 30, 2005. ACJA § 7-208 also prescribes the onset of “Standard” certification effective July 1, 2005. In addition to meeting minimum eligibility and continuing education requirements, all applicants for “Standard” certification are required to successfully complete an examination. The Board’s proposed revision to ACJA § 7-208 seeks to modify the stated content of the examination to include basic, core competency knowledge, skill, and ability assessment, to extend the time period for an applicant to successfully complete the exam, and to enable active certificate holders to maintain their existing certificates while completing the examination process by delaying the implementation of “Standard” certification to July 1, 2006.

To derive the examination, the LDP Program contracted with HZ Assessments; a nationally recognized professional test vendor firm. The recommendations of HZ Assessments, input from active certificate holders (via survey and a focus group), program staff, members of the public, and the Board of Legal Document Preparers have resulted in the proposed revisions of ACJA § 7-208.

HZ Assessment has recommended the Board and the Supreme Court consider redefining the content of the exam from the rules of the supreme court relating to legal document preparers to include basic competencies; knowledge, skills, and abilities. HZ Assessments reports that an examination based solely on ACJA § 7-208 and Supreme Court Rule 31 will not accurately measure an applicant’s basic core competencies. The Board has forwarded recommended examination content specifications to the Supreme Court which include content areas intended to reveal basic core competencies and would not support the stated purpose of the Legal Document Preparer Program.

Public comments:

- Task specific test questions will challenge the applicant’s ability to be successful on the exam
- Applicants will need to substantially expand their level of familiarity with various court rules and laws
- Under the recommended content specifications, a high percentage of certificate holders and applicants will fail.

- Timeline for administration of the exam is too short and may potentially create a scenario where an existing certificate holder would be unable to maintain their active status in the event multiple attempts to pass the exam become necessary.
- Development of service specific exams (i.e. different exams for different service areas – domestic relations, estate planning, bankruptcy, liens, trusts, wills, etc.).
- Active certificate holders are confused by the proposal and are uncertain if the revision would still require them to take an exam.
- There will be no “grandfathering” of any LDP.

Mr. Merrill stated that the Arizona Association of Independent Paralegals opposes these amendments. Mr. Merrill noted that each LDP is very specialized and that the Board was aware of that. The AAIP suggested that an exam with the testing requirements listed in the revision to ACJA 7-208 would not be possible. He also challenged the job analysis stating it was not representative of the average LDP.

MOTION: To approve the proposed amendments to ACJA § 7-208. Seconded. Passed unanimously. **COSC-05-003**

Rules of Procedure for Domestic Relations Cases

Judge Mark Armstrong

Judge Armstrong presented an overview of the Rules of Procedure for Domestic Relations Cases and a synopsis of their development.

Need for Rules:

- To improve the time and manner in which courts process divorce and child custody cases
- To achieve fair, effective uniform and timely resolution of family disputes
- To better meet the needs of families and children
- To improve enforcement of civil rules
- To provide, swift, fair justice for self-represented litigants.
- Current rules are not a good fit for domestic relations cases and do not include provisions for temporary orders.

Section I – General Administration

- Relaxed Rules of Evidence, with Option to Invoke Arizona Rules of Evidence (Rule 2(B)) – Not abolishing, but must be invoked by a party.
- Definitions (Rule 3)
- Protected and Unpublished Addresses (Rule 7)
- Limited Scope Representation; Appearance and Withdrawal (Rule 9)
- Representation of Children (Rule 10) – Adopts ABA standards regarding child’s attorney or “Best Interest” attorney.
- Court Interviews of Children (Rule 12) – In chambers “on the record” which may be sealed.
- Public Access to Proceedings (Rule 13)
- Verification of Pleadings (Rules 14 and 31(B)) – Unsworn declarations.

Section II – Pleadings and Motions

- Pleadings and Motions tailored for Family Court (Rules 23-35)
- Signing of Pleadings (Rule 31) – was Rule 11

Section III – Parties

- Rules Tailored to Family Court (Rules 36-39) – Simplified third party process.
- Cross-Claims Eliminated

Section IV – Service of Process

- Based on Rules of Civil Procedure (Rules 40-43)
- Service of Process in Title IV-D Cases (Rule 40(E))

Section V – Defaults, Consent Decrees and Dismissals

- Rules Tailored to Family Court (Rules 44-46)
- Codified and Simplified Maricopa County's Consent Decree Process – No Hearing Required (Rule 45) – Requires only one form.
- Combines Voluntary and Involuntary Dismissals, including provision to dismiss a case with 60 days notice four months after service (Rule 46)

Section VI – Temporary Orders

- Rules Unique to Family Court (Rules 47 and 48)
- Requires Hearing within 60 days (Rule 47(D))
- Includes Provisions for Simplified and Summary Child Support; 150% Rule (Rule 47(I) and (J))
- Replaces Emergency Orders and TRO's with Accelerated Temporary Orders
- Replaces Return Hearings with Resolution Management Conferences

Section VII – Disclosure and Discovery

- Discovery Rules Tailored to Family Court (Rules 49-65)
- Option to use *ARCP* Disclosure Rules in Complex Cases (Rule 50) – Attorneys may also use Rule 26.1.
- Disclosure Rule Tailored to Family Court – Resolution Statement Required (Rule 49)

Section VIII – Settlement and ADR

- Comprehensive Rules Strongly Encouraging ADR in Appropriate Family Cases (Rules 66-76)
- Binding Agreements – In Writing, or Made or Confirmed in Court (Rule 69 – Based on Rule 80(d), *ARCP*)
- Family Court Masters (Rule 72) – Current Special Master and private judging.
- Family Court Conference Officers (Rule 73) – Includes expedited services and attorney case managers.
- Family Court Advisors (Rule 74)

Section IX – Pretrial and Trial Procedures

- Rules Tailored to Family Court (Rules 77 and 78)
- Rules Emphasize Early Intervention and Case Management, Relying Heavily on Resolution Management Conferences (RMCs) and Resolution Statements (Rule 77)
- RCM to Be Set Within 60 days of Request or on Court's Motion (Rule 77)
- Trials May Be Set at RCM, on Court's Motion or based on Motion to Set (Rule 78)

Section X – Judgments and Decrees

- Rules Tailored to Family Court (Rules 79-91)
- Clarifies That Orders and Judgments Prepared Originally by the Court Need Not Be Lodged for Objections (Rule 82(C)(3))

Section XI – Post-Judgment Proceedings

- Rule Unique to Family Court (Rule 92)
- Emphasizes Need for Compliance with ARS § 25-411 in Custody Cases

Section XII – Civil Contempt and Arrest Warrants

- Rules Tailored to Family Court (Rules 93-95)
- Includes Provision for Seizure of Person or Property (Rule 94 – Based on Rule 64, *ARCP*)
- Includes Procedures for Civil Contempt, Civil Arrest Warrants and Child Support Arrest Warrants (Rules 93 and 95) – Follows current law, but applies to domestic relations
- Requires Periodic Review Hearings for Incarcerated Contemnors and Limits Period of Incarceration to 6 Months at a Time (Rule 93(F) and (G))

Section XIII – Other Family Law Services and Resources; Domestic Violence Benchbooks

- Rules Unique to Family Court (Rules 96 and 97)
- Includes Provisions for:
 - Substance Abuse Screening and Testing
 - Parent Education
 - Supervised Parenting Time Exchanges
 - Private Mental Health Services
 - Supervised Parenting Time
 - Therapeutic Supervision of Parenting Time

- Family Violence Prevention Services
- Batterer Intervention and Prevention Programs
- Real Estate Special Commissioner
- Title IV-D Services
- Requires Family Courts to Follow the Supreme Court's DV Benchbook

MOTION: To approve the Rules of Procedure for Domestic Relations Cases as submitted.
Seconded.

AMENDED MOTION: To approve the Rules of Procedure for Domestic Relations Cases in concept and principle, allowing that further comment and revisions may be made.
Seconded. Amended motion accepted and seconded. Passed. 13-2-0-0 **COSC-05-004**

Rule 28 Petition R-04-0015

Judge Kenneth Lee

Mr. Steven Twist, Arizona Voice for Crime Victims

Mr. Tim La Sota, Maricopa County Attorney Office

Mr. Keli Luther, ASU Crime Victim Project

This Petition sought to change the typical disclosure requirement in criminal cases, that the State provide a copy of documentary evidence, including photographs and video images to the Defense. The Petition was in response to the recent case of *Cates V. Cervantes*, 206 Ariz. 178, 76 P.3rd 449 (App., 2003), that dealt with this issue in a sexual exploitation of a minor case. The Petition sought to completely bar the copying of any photographs, video images or computer images in any sexual exploitation of a minor case, leaving the defense only the opportunity to reasonably inspect the items. The Supreme Court adopted Rule 15.1 (j), which reverses the presumptive disclosure requirement only in a sexual exploitation of a minor case. In such cases no copying is allowed unless the defense can show a substantial need for the copy. If that showing is made, a copy will be allowed with numerous restrictions imposed by the Courts for its release. We are now in a post comment period.

Members were encouraged to comment individually.

GOOD OF THE ORDER/CALL TO THE PUBLIC

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

NEXT MEETING

The next committee meeting of the Committee on Superior Court is scheduled for:

Friday, June 03, 2005
State Courts Building
Conference Rooms 119 A & B

ADJOURN

The meeting was adjourned at 2:27 p.m.

Respectfully submitted,
Ms. Susan Pickard
Staff to the Committee on Superior Court

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, June 3, 2005
10:05 a.m. to 11:10 a.m.
State Courts Building
Conference Room 119 A&B
Phoenix, Arizona 85007

MEMBERS PRESENT:

Honorable Silvia Arellano, Telephonic
Dr. Sylvia Brandfon, Ph.D., Telephonic
Honorable James E. Chavez, Telephonic
Honorable Margaret H. Downie
Honorable Richard S. Fields, Telephonic
Honorable Bethany G. Hicks, Telephonic
Honorable Cathy Holt, Telephonic
Honorable William T. Kiger, Telephonic
Honorable Kirby Kongable, Telephonic

Honorable Kenneth Lee, Telephonic
Honorable Denise I. Lundin, Telephonic
Honorable Margaret Maxwell, Telephonic
Honorable Stephen F. McCarville
Ms. JoJene Mills
Honorable Fred Newton
Honorable Dale Nielson, Telephonic
Honorable Emmet J. Ronan, Telephonic

MEMBERS ABSENT:

Mr. K. Kent Batty
Honorable Norman J. Davis
Honorable Robert Duber, II
Honorable Pat Escher
Honorable Charles V. Harrington

Honorable Michael K. Jeanes
Mr. Gary Krcmarik
Mr. Rod Marquardt
Honorable James A. Soto
Honorable Nanette Warner

GUESTS:

Honorable Elizabeth Finn, Telephonic
Mr. Bob James

Ms. Konnie Neal, Telephonic

STAFF:

Ms. Susan Pickard

Ms. A. Teaunee Duran

WELCOME AND OPENING REMARKS

With a quorum present, the June 3, 2005, meeting of the Committee on Superior Court was called to order by Judge Fred Newton, Chair, at 10:05 a.m.

APPROVAL OF MINUTES FROM February 25, 2005

The minutes for the February 25, 2005, meeting of the Committee on Superior Court were previously distributed.

MOTION: To approve the minutes of February 25, 2005. Second. Passed unanimously. COSC-05-005

BUSINESS ITEMS/POTENTIAL ACTION ITEMS

ORDER OF PROTECTION AND ANCILLARY FORMS BASED ON PROJECT PASSPORT MODEL TEMPLATE

Honorable Elizabeth Finn, Mr. Bob James and Ms. Konnie Neal

Project Passport is a national effort to “improve recognition and enforcement of orders of protection within and between states and tribes by encouraging states to adopt a recognizable first page for orders of protection.”

The Domestic Violence Forms Workgroup (Workgroup), a workgroup of the Committee on the Impact of Domestic Violence and the Courts (CIDVC), has been working to develop an order of protection which parallels the Project Passport model template, incorporates Arizona law and conforms to A.R.C.P. 10(d). In the process of creating the order of protection, the Workgroup has consulted law enforcement, victim advocates, tribal courts and local courts for their input. The result of the workgroup’s efforts is an all inclusive order of protection and ancillary forms (Emergency Order of Protection, Injunction Against Harassment and Injunction Against Workplace Harassment).

The forms were previously distributed via U.S. Mail for the committee to review. Judge Fred Newton asked the committee for their questions or comments regarding the forms.

Comments/Concerns

- Defendant Identifiers. This section requests the defendant’s Social Security Number, Drivers License Number and Date of Birth. Identity theft is the primary concern that needs to be addressed. Some possible solutions include omitting the Social Security Number, and Drivers License Number; however, would the elimination of this information affect enforceability or positive identification? Ms. Konnie Neal stated that she is consulting the Administrative Office of the Courts legal counsel regarding this issue.
- No Crimes. This section informs the defendant that that he/she “shall not commit any crimes against plaintiff or protected person(s).” Does this language make any crime the defendant may commit, either domestic violence or not, a violation of the order of protection? Yes. Is it necessary to inform the defendant that he/she is not to commit any crimes? It is PCO Code 1 and required for entry into NCIC.
- Rule 123. Under Rule 123, Arizona Rules of Supreme Court certain information must be redacted prior to making it available on the Internet. This process would require additional training and may further contribute to the elimination of certain defendant identifier information. Ms. Konnie Neal stated that she would confer with Ms. Jennifer Greene as well as the Administrative Office of the Courts legal counsel regarding this issue.
- Ex Parte Orders. Due to the fact that a majority of the orders of protection are issued *ex parte*, the Plaintiff may not have all of the information the Petition requests. The concern is that the Plaintiff is made aware that not having all of the information the Petition requests does not inhibit the Plaintiff from obtaining the relief requested. This is a training issue that needs to be addressed.

MOTION: Approve the proposed order of protection and ancillary forms, in concept, pending outcome of research regarding identity theft issues. Second. Passed Unanimously.
COSC-05-006.

Mr. Bob James presents two additional concepts that are related to the protective order forms.

- Dynamically produced forms. This concept is mostly for clarification purposes; it would eliminate areas of the Order which are not applicable and it would eliminate the possibility for Orders to be altered. For example, if the Order does not include other Protected Person(s), that area of the form would not be included on the final Order. The primary concern is that when areas such as this are printed but do not apply, it leads to confusion both for the parties involved as well as law enforcement agencies.

MOTION: Allow Courts flexibility to produce forms dynamically, deleting provision that do not apply. Second. Passed Unanimously.
COSC-05-007.

- Margins and font size. This concept would allow Courts to adjust the margins and font size to cater to their specific needs. The consensus of the discussion regarding margins was that the forms were acceptable with the margins as presented which conform to A.R.C.P. 10(d).

LEGESLATIVE IMPACT ON PROBATION FUNDING

Mr. Rob Lubitz

Legislative Requests:

Adult Probation

- Requested about \$2 million to cover probation/staff payroll.
- Requested about \$900,000 to add more probation officers.

Juvenile Probation

- Requested about \$2.4 million to cover probation/staff payroll
- Requested about \$2.6 million to cover projected juvenile treatment fund deficits (return to previous funding levels before legislative cuts in FY'04).

Both Adult and Juvenile Probation

- Requested funds to provide additional staff and equipment in support of the officer safety initiative.

Legislative Action

None of these requests were approved by the Legislature

IMPLICATIONS

Barely met payroll last year by squeezing administrative funds, keeping vacancies open, and utilizing JCEF probation surcharge funds to supplement personnel expenses. This will be unchanged in FY'06.

JCEF surcharge funds should continue in FY'06, except that Maricopa county will now retain funds generated by their Superior Court. This could result in a reduction of about \$500,000 in available surcharge funds.

Juvenile Services was forced to eliminate its statewide sex offender and substance abuse block bed purchases due to budget shortfalls. This equates to a \$2 million budget cut in available treatment dollars for the counties.

Drug Court

Legislation was enacted to provide \$1 million in drug court funding in FY'07. We are still discussing how these funds will be distributed.

Kathy Waters has indicated that adult probation may be able to roll out from \$1 to \$1.5 million in Drug Treatment Education Funds to support adult drug courts beginning in January 2006.

QUESTIONS:

Mr. Lubitz was asked about the status of the proposed bill to move probation from the Judicial Branch to the Counties. Mr. Lubitz indicated that the bill did not move during the legislative session, but the sponsor indicated it would be reintroduced next year.

GOOD OF THE ORDER/CALL TO THE PUBLIC

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

NEXT MEETING

The next committee meeting of the Committee on Superior Court is scheduled for:

Friday, September 23, 2005
State Courts Building
Conference Room 345 A/B

ADJOURN

The meeting was adjourned at 11:10 a.m.

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, November 18, 2005
10:00 a.m. to 1:00 p.m.
State Courts Building
Conference Room 119 A&B
Phoenix, Arizona 85007

MEMBERS PRESENT:

Honorable Silvia Arellano
Mr. K. Kent Batty
Ms. Sylvia Brandfon, Ph.D., Telephonic
Honorable James E. Chavez
Honorable Norman J. Davis
Honorable Margaret H. Downie
Honorable Robert Duber II
Honorable Pat Escher
Honorable Richard S. Fields
Honorable Charles V. Harrington
Honorable Bethany G. Hicks

Honorable Cathy Holt
Honorable Michael K. Jeanes
Honorable Kenneth Lee
Honorable Denise I. Lundin
Mr. Rod Marquardt
Honorable Margaret Maxwell
Honorable Stephen F. McCarville
Ms. JoJene Mills
Honorable Fred Newton
Honorable James A. Soto

MEMBERS ABSENT:

Ms. Karen D. Ferrara
Honorable William T. Kiger
Honorable Kirby Kongable

Honorable Emmet J. Ronan
Honorable Nanette Warner

GUESTS:

Mr. Jerry Landau
Mr. Tom Wing

Ms. Konnie Neal

STAFF:

Ms. Melinda Hardman

Ms. A. Teaunee Duran

WELCOME AND OPENING REMARKS

With a quorum present, the November 18, 2005, meeting of the Committee on Superior Court was called to order by Judge Fred Newton, Chair, at 10:15 a.m.

APPROVAL OF MINUTES FROM June 3, 2005

The minutes for the September 23, 2005, meeting of the Committee on Superior Court were previously distributed.

MOTION: To approve the minutes of September 23, 2005. Second. Passed unanimously. COSC-05-011

BUSINESS ITEMS/POTENTIAL ACTION ITEMS

2006 MEETING SCHEDULE

Susan previously distributed the proposed 2006 meeting dates. The February 17, 2005 meeting date poses a problem, the committee would like for the meeting to be moved to February 10, 2005.

Comments/Concerns

- There are a number of statewide committees and judges from other counties want to participate. However, with a long commute for those from outlying counties, traveling for a short meeting is not justifiable. Will AOC staff explore the possibility for video conferencing?

MOTION: To recommend the AOC promote greater participation by judges as well as other persons from throughout the state in court wide committees by actively exploring the development of a video conferencing capability for all Supreme Court committees. Second. Passed unanimously. **COSC-05-12**

Comments/Concerns

- The AOC may want to re-think the representation on various committees, too many of the same judges are on more than one committee; therefore, causing an inconvenience for those who travel long distances more frequently.
- There are numerous members who participate on more than one committee. Is it possible to ensure that meetings do not overlap so that those who participate on more than one committee may be able to attend each meeting, separately?

LEGISLATIVE UPDATE

Mr. Jerry Landau, Director of Government Affairs, AOC

Mr. Landau provided the members with an update on the legislative proposals which were approved by the Arizona Judicial Council (AJC).

- The wording of the Arizona Lengthy Jury Trial Fund proposal is still in the process of revisions. The proposal would reduce the eligibility date for jurors to receive funds from the 11th day to the 6th day of a trial.
- The JCEF Funding proposal would eliminate the legislature's annual "sweep" of \$2.2M from the automation fund. The AOC is developing new case management systems and will need the funds to implement the new automation.
- The Service of Process; Orders of Protection proposal is still being opposed by the law enforcement community; law enforcement representatives anticipate that the proposed language would result in a shift of resources from the Sheriff's Office and Constables to the municipal law enforcement agencies.
- The Preparatory Release of Inmates proposal was vetoed by the Governor at AJC's request two years ago. The proposal would result in a large increase of defendants released to probation; as a result caseloads may become unmanageable.

Comments/Concerns

- The statute would need to clarify that the defendant will be discharged from the Department of Corrections (DOC) so the Probation Department will have authority to supervise the defendant.
- The need to advise the defendant of the 90 extension to their probation tail would need to take place at sentencing. The advisory may be able to be included on the plea agreement form.
- Regarding competency reports, if the probation department is going to have access to such reports, they need to be treated with the respect and confidentiality they require.
- Regarding the Lengthy Trial Fund, the ability of Judges to assess the parties' jury fees in lengthy jury trial cases in order to recoup the amount that is paid out. Will the legislative team look at the statute in order to "clean it up" and require that parties' pay back the fees?
- How confident is the AOC in the analysis that moving the lengthy trial fund from 10 days to 6 days? Were the clerks or jury commissioners consulted?

Judge Newton will inform the committee of updates as he learns details from Jerry. The weekly superior court legislative teleconference calls will take place every Friday, commencing January 13 at 1:00 p.m.

ARIZONA CODE OF JUDICIAL ADMINISTRATION SECTION AMENDMENTS

On October 19, 2005 the Arizona Judicial Council adopted amendments to some adult probation related sections of the Arizona Code of Judicial Administration (Standard Probation, Adult Intensive Probation and Interstate Compact). These amendments were adopted due to the implementation of the Offender Screening Tool (OST) as the statewide standardized assessment tool for adult probation, statutory and rule changes, and best practices. Upon further review it was determined that the adopted amendments in those sections necessitated conforming amendments to the following sections.

ACJA § 6-105 Powers and Duties of Officers

Comments/Concerns

- Why the legal residency of a person is not a factor that should be considered when determining when to file a petition to revoke on a probationer believed to be an absconder?

ACJA § 6-106 Personnel Practices

Comments/Concerns

- None.

ACJA § 6-107 Safety Training

Comments/Concerns

- This particular section will not be going forward at this time. The Committee on Probation (COP) received additional comments that were quite substantial and will require extra time to review them.

ACJA § 6-109 Community Service and Volunteer Insurance

Comments/Concerns

- None.

ACJA § 6-113 Firearms Standards

Comments/Concerns

- This particular section will not be going forward at this time. The Committee on Probation (COP) received additional comments that were quite substantial and will require extra time to review them.

ACJA § 6-203 Community Punishment Program

Comments/Concerns

- None.

ACJA § 6-301 Juvenile Standard Probation

Comments/Concerns

- None.

ACJA § 6-302 Juvenile Intensive Probation Supervision

Comments/Concerns

- None.

MOTION: To approve the proposed amendments so that they can be presented to the Arizona Judicial Council on December 14, 2005. Second. Passed unanimously. **COSC-05-013**

MINUTE ENTRY REFORM: PHASE 2

Judge Newton and Ms. Denise Lundin presented information on the minute entry reform project. The term "minute entry" is confusing for *pro se* litigants and generally the term is used to refer to actions that take place during a hearing. The term has been redefined as "a brief recitation of what happened in court during a specific hearing" and would not include under advisement rulings and notices of new court dates.

MOTION: To recommend to the Arizona Judicial Council that the workgroup's proposal for a rule change petition be filed by the Chairman on behalf of the Committee on Superior Court. Second. Passed unanimously. **COSC-05-13**

ARIZONA RULES OF FAMILY LAW PROCEDURE (ARFLP)

Judge Mark Armstrong and Ms. Konnie Neal informed the committee that on October 19, 2005 the Chief Justice approved the Arizona Rules of Family Law Procedure. The Rules will be effective on January 1, 2006 and will include newly filed cases as well as pending cases, with two exceptions. 1) Rule 2(B) will only be effective for cases filed after January 1, 2006 and 2) if parties have already disclosed under ARCP 26.1, parties will not be required to file again under the new rules.

The ARFLP committee will have a two-year review committee to make necessary changes to the new rules as they are encountered.

The Supreme Court has established a Domestic Violence Rules Committee to explore the necessity of developing a separate set of rules that address domestic violence.

Copies of the training registration forms are included in the handouts. The dates of upcoming trainings are December 2, 9, 12 and 16.

SENSITIVE DATA IN CASE FILES

Ms. Melinda Hardman, Court Specialist with the AOC, informed the committee of the status of Rule 123 with regard to electronic access to court records and court information. Many of the documents that a court would display on the Internet contain sensitive data, which should not be accessible to the general public via the internet. The task of identifying specific documents and information, which should not be posted to the Internet, and redacting such information is daunting. The new policy will include a sensitive data form, which will serve as the form in which all sensitive data will be stored eliminating the need to have sensitive data on various other court documents.

Ms. Jennifer Greene is compiling a list of documents, contained in case files, which contain sensitive data; please contact her at JGreene@courts.az.gov with suggestions of documents to include on the list.

GOOD OF THE ORDER/CALL TO THE PUBLIC

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

NEXT MEETING

The next committee meeting of the Committee on Superior Court is scheduled for:

Friday, February 10, 2005
State Courts Building
Conference Room 119 A/B

ADJOURN

The meeting was adjourned at 1:00 p.m.