

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, February 16, 2007
State Courts Building
1501 W. Washington Street
Phoenix, AZ 85007
Conference Room 345 A/B
10:00 a.m. to 2:00 p.m.

MEMBERS PRESENT:

Judge James A. Soto, Chair
Ms. Sylvia Brandfon Ph.D.
Judge James E. Chavez
Judge Robert Duber II
Judge Pat Escher
Ms. Karen D. Ferrara
Judge Andrew Gould
Judge Charles V. Harrington
Judge Bethany G. Hicks
Mr. Michael K. Jeanes
Judge William T. Kiger

Judge Kenneth Lee
Commissioner Margaret Maxwell
Judge Stephen F. McCarville
Judge Colleen McNally
Ms. JoJene Mills
Judge Fred Newton
Judge Dale Nielson
Mr. Marcus Reinkensmeyer
Judge Emmet J. Ronan
Mr. David Sanders

MEMBERS ABSENT:

Judge Margaret H. Downie
Judge Richard S. Fields

Judge George Foster
Judge Cathy Holt

PRESENTERS / GUESTS:

Ms. Melinda Hardman
Ms. Leila Gholam

Ms. Jennifer Green
Ms. Fran Johansen

STAFF:

Ms. Susan Pickard

Ms. Lorraine Nevarez

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the February 16, 2007 meeting of the Committee on Superior Court was called to order by Judge James Soto, Chair, at 10:00 am.

B. Approval of Minutes from December 1, 2006

The minutes for the December 1, 2006 Committee on Superior Court conference call meeting were presented for approval.

MOTION: Approve the December 1, 2006, meeting minutes as presented. Motion passed unanimously. COSC-07-001

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. AJCA § 6-114 Committee on Probation

Mr. Brett Watson, Juvenile Justice Services Division, AOC
Ms. J.L. Doyle, Adult Services Division, AOC

Mr. Watson presented AJCA § 6-114 Committee on Probation for approval. This document is the codification of Administrative Order No. 90-52 with revisions to standing members of the committee, specifically the inclusion of the following:

- Director or designee of Federal Probation, Arizona District
- Director or designee of the Arizona Department of Corrections
- Director or designee of the Arizona Department of Juvenile Corrections
- Two line officers, on juvenile, one adult.

MOTION: Recommend approval of the code section with the exception of paragraph C.8.; removing two line officers from the standing membership. Motion passed unanimously. COSC-07-002

B. Legislative Update

Ms. Leila Gholam, Legislative Officer, AOC

HB2096 Theft; Means of Transportation; Jail

- Establishes a list of circumstances under which it may be inferred that an individual knowingly took possession or assisted in the theft of a stolen means of transportation, under the permissible inferences defined in ARS § 13-2305.
- Requires a judge sentencing an individual convicted of a first violation to a term of probation to include as a condition of probation that the individual be imprisoned in the county jail for not less than two hundred seventy days.
- Requires the term of incarceration to commence on the date of sentencing and prohibits it from being deleted, deferred or otherwise suspended.
- Excludes individuals sentenced to serve a period of incarceration in the state department of corrections under Title 13.

HB2097 Identity Theft; Sentence; Jail

- Requires a judge sentencing an individual convicted of aggravated identity theft or trafficking in the identity of another person or entity to a term of probation to include as a term of condition of probation that the individual be imprisoned in the county jail for not less than one year
- Requires the term of incarceration to commence on the date of sentencing and prohibits it being deleted, deferred or incarceration in the state department of corrections. (Title 13)

HB2209 Law Enforcement Officers; Misconduct interviews

- Requires that before a misconduct interview that may result in dismissal, demotion or suspension, the employer must provide the law enforcement or probation officer being interviewed with a written notice informing the officer of the specific nature of the investigation, the officer' status in the investigation, any known allegations of misconduct that are the reason for the interview and the officer's right to have a representative at the interview at no cost to the employer.
- Exempts an employer from having to stop an interview and issue another notice for allegations based on information provided by the employee or to disclose any fact that would impede the investigation.
- In an appeal, the law enforcement or probation may request a change of hearing officer or administrative law judge if a single hearing officer or administrative law judge has been appointed to conduct the appeal hearing, whether or not the case is before the office of administrative hearings.
- Requires that the probation department give officers notice of suspension.
- The AOC is in opposition of this bill and anticipates some changes on the senate side.

HB2451 Organizational Right; Employee Organizations

- Adds the DOC to the list of state agencies whose employees cannot engage in sickouts, work slowdowns or strikes.
- Amendment passed Feb. 13 removed Probation, Surveillance and Juvenile Detention Officers from the list.
- This is a meet and confer bill and it has been amended to exclude probation officers.

HB2750 Justice Courts; Co-Location

- Requires the county boards of supervisors to locate one justice court in each justice precinct, unless the justice of the peace of the courts with contiguous jurisdictions agree to co-locate their courts in a single location.
- This bill is a striker and is currently being presented as new bill entitled Justice of the Peace.

HB2777 Sex Offenders; Probation; Annual Review

- Requires the court to hold an annual probation review hearing for any registered sex offender under 21 years of age whose committed the related offense prior to turning 18. The court must consider continuing, modifying or terminating probation, registration, or community notification requirements.
- This bill passed through the house after the age was amended from 25 to 21 years.

SB1228 Sex Offenders; GPS Monitoring; Probation

- Expands the list of convicted people who are required to wear GPS monitoring devices to include those who are required to register as a sex offender.
- The entire section now excludes convicted people who are in a correctional facility, a detention facility or a residential treatment center.
- This bill has been stricken from the consent calendar.

SB1286 Victims' Rights Omni bus

- Discusses post conviction relief (death penalty) and notification to victims
- A stakeholders meeting has been scheduled to addresses some concerns and improve the bill.
- The AOC is in opposition of the bill.

C. Arizona Lengthy Trail Fund

Ms. Melinda Hardman, Court Services Division, AOC

Ms. Hardman presented A.J.C.A § 5-109. This code section replaces:

- A.O. 2003-100 - established the fee on certain superior court filings to fund the Arizona Lengthy Trial Fund (ALTF) and
- A.O. 2004-41 - authorized the administrative director to issue procedures and forms to implement the fund.

Additionally, the code establishes two deadlines; one by which jurors are to submit the juror claim form and by which jury commissioners are to submit a request for reimbursement to the AOC.

Committee Comment/Concerns:

Will there be any exception to the deadlines?

Response: This issue was not addressed during the discussion, but generally, no.

Will the jury commissioner have any discretion in accepting the claim form after the 30-day timeframe?

Response: Generally, no.

MOTION: Approve the ACJA § 5-109: Lengthy Trials as presented. Motion passed unanimously. COSC -07-003

D. AJCA § 1-108: State, Tribal and Federal Court Forum

Mr. David Withey, Legal Services Division Director, AOC

Mr. Withey presented the codification of the AO that established the State, Tribal and Federal Court Forum. No substantive changes were made in the process of conversion.

MOTION: Recommend AJC approval of ACJA § 1-802: State, Tribal and Federal Court Forum. Motion passed unanimously. COSC 07-003

E. Public Health Law: A Judicial Reference Guide for Arizona Courts

Ms. Niki O'Keefe, Administrative Services Division Director, AOC

Ms. O'Keefe presented the reference guide on an informational basis. The Reference Guide was funded by the Centers for Disease Control & Prevention and authored by Daniel Strouse, S.M., J.D., Professor of Law, Arizona State University under the guidance of the grant. The Arizona Judicial Council will be considering the Reference Guide at their next meeting.

F. Legal Advice-Legal Information Guidelines

Judge Kevin Kane, Task Force Chair

Ms. Fran Johansen, Task Force Staff

Judge Kane and Ms. Johansen highlighted the changes to the guidelines, question & answer handbook, signage and the proposed revisions to the Code of Conduct for Judicial Employees, Canon 3. A.O. 2006-04 established the Task Force to develop Legal Advice-Legal Information Guidelines to address the growing number of self-represented litigants in the court. The Guidelines will provide court personnel with a clearer distinction between legal advice and legal information allowing them to provide court customers appropriate and meaningful assistance. The Task Force will present the proposed Guidelines for adoption by the AJC, and will present the Training Manual, Question and Response Handbook, and Glossary for approval. The Task Force will also request the approval and adoption of an implementation plan by AJC in March 2007.

Committee Comments/Concerns

The word "customer" works well in retail but may prove a liability to the court. A member of the public may assume that they can "demand" a service from the court that is beyond the resources and policy of that court or beyond the responsibilities and knowledge of an employee just as they would demand service at a department store.

Response: The term customer gives a more service orientated sense. Ms. Johansen will take the comment back to the Task Force.

When will the code section be presented to AJC?

Response: The code section will be presented to AJC in March.

Some members felt the use words "shall" and "accurate" rather than more permissive words may place judicial employees in situations where they may be disciplined for an inability to provide prompt service and accurate information due to a senior employee's absence or a gap in their training.

MOTION: Table the discussion on Legal Advice- Legal Information Guidelines until the June 1 meeting. 12-6-0. Motion passes. COSC-07-004

G. Managing Capital Cases

Ms. Marna Murray, Director, Education Services Division, AOC

Ms. Murray announced that Arizona had been selected by the National Judicial College (NJC) as one of four states in which they would offer to develop and deliver an in-state, three-day course on managing capital cases that will be funded by the Bureau of Justice Administration. Arizona's program is slated for mid-September.

III. OTHER BUSINESS

A. ACJA § 1-105: Committee on Superior Court

Susan Pickard, Staff

Ms. Pickard presented the revisions to ACJA § 1-105: Committee on Superior Court which seek to include established business rules such as defining the quorum, telephonic conference procedures. If approved, it will be presented to AJC in June.

MOTION: Approve ACJA § 1-105: Committee on Superior Court as revised. Motion passed unanimously. COSC 07-005

B. Rule Change Petition Review

Judge James Soto

On December 1, 2006, the Rule Change Petitions that are open for comment were presented to the members. In the interim between the December and February meetings, volunteers were assigned to review and determine if the petition would impact the Superior Court and if so, should the COSC submit formal comment.

Judges Holt, Chavez, Duber, Escher, Harrington, Gould, McCarville and Nielson presented summaries of the petitions and made their recommendations for comment.

Committee comment will be drafted for the following petitions by the stated volunteers.

Rule Change Petition	Motion/Notes	Volunteer(s)
R-06-0016 Rule 1.6, Rules of Criminal Procedure (appearances by defendants via videoconferencing)	Motion to require defendants appear in person for Admission to Probation Violation and Change of Plea	Judge Robert Duber II
R-06-0018 Rule 7.1(e), Rules of Civil Procedure (motions for reconsideration)	Motion to express rule change unnecessary	Judge Pat Escher
R-06-0024 Rule 15, Rules of Criminal Procedure (ex parte communications, proceedings or requests)	Motion to oppose. Notes: <ul style="list-style-type: none">▪ Impact on business processes▪ Impact on indigent defendants that causes them to give up defense strategy when asking for \$ to hire investigator, mitigating specialist, expert witnesses, etc.▪ Previous Arizona Supreme Court Ruling that responsibility of approval lies with the trial court judge	Judge Steven McCarville Judge Charles Harrington

R-06-0026 Rule 5(c)(1), Rules of Civil Procedure & Rule 43(C), Rules of Family Law Procedure (proving options of service when the court orders serving the party directly)	Motion to support approval	Judge Andrew Gould Andrew Nash, Office of the Clerk of Superior Court in Maricopa County
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A COSC teleconference meeting will be scheduled for May to finalize and approve comments for submission.

C. Next Meeting:

Friday, June 1, 2007
10:00 a.m. – 2:00 p.m.
Pima Court Training Center
Tucson, Arizona

D. Good of the Order/Call to the Public

No public was present.

The meeting adjourned at 2:00 PM.

Respectfully submitted,
Susan Pickard
Staff

COMMITTEE ON SUPERIOR COURT

Wednesday, May 9, 2007

8:00 – 9:00 a.m.

Telephonic Meeting

Conference Call Number: 602.452.3193

Pass/Access Code: 7002

Public Attendance

State Courts Building
1501 W. Washington St.
Conference Room 230

MINUTES

MEMBERS PRESENT:

Judge James A. Soto, Chair
Ms. Sylvia Brandfon Ph.D.
Judge James E. Chavez
Judge Margaret H. Downie
Judge Robert Duber II
Judge Richard S. Fields
Judge George Foster

Judge Andrew Gould
Judge Charles V. Harrington
Commissioner Margaret Maxwell
Judge Colleen McNally
Mr. Marcus Reinkensmeyer
Mr. David Sanders

MEMBERS ABSENT:

Judge Pat Escher
Ms. Karen D. Ferrara
Judge Bethany G. Hicks
Judge Cathy Holt
Mr. Michael K. Jeanes
Judge William T. Kiger

Judge Kenneth Lee
Judge Stephen F. McCarville
Ms. JoJene Mills
Judge Fred Newton
Judge Dale Nielson
Judge Emmet J. Ronan

STAFF:

Ms. Susan Pickard

WELCOME AND OPENING REMARKS

With staff having established a quorum by role call, Judge James Soto, Chair, called the meeting to order at 8:10 a.m.

APPROVAL OF MINUTES FROM FEBRUARY 16, 2007

MOTION: Approve the February 16, 2007 Committee on Superior Court meeting minutes as submitted. Motion seconded. Passed unanimously. **COSC-07-006**

R-06-0016 - RULE 1.6, RULES OF CRIMINAL PROCEDURE

Judge Robert Duber II, introduced the draft committee comment for R-06-0016. The comment, if submitted would require defendants to appear in person for felony change of plea. Some members expressed that judicial discretion for this hearing should be maintained.

MOTION: Approve and submit comment as written. Motion seconded. Vote failed. 4-7-0 **COSC-07-007**

R-06-0018 - RULE 7.1(E), RULES OF CIVIL PROCEDURE

Judge James Soto presented the draft comment for R-06-0018. The comment, if submitted would oppose the adoption of the proposed changes as unnecessary.

MOTION: Approve and submit comment as written. Motion seconded. Passed unanimously. **COSC-07-008**

R-06-0024 - RULE 15, RULES OF CRIMINAL PROCEDURE

Judge Charles Harrington presented the draft comment for R-06-0024. The comment, if submitted, would oppose the adoption of the proposed changes. The proposed rule gives prosecutors an advantage over indigent defendants that they do not have with defendants who can afford to hire their own attorneys and adds unnecessary bureaucratic requirements that promote inefficiency and place an additional burden on presiding judges.

MOTION: Approve and submit comment as written. Motion seconded. Passed unanimously. **COSC-07-009**

R-06-0026 - RULE 5(C)(1), RULES OF CIVIL PROCEDURE (Now Rule RULE 5(c)(2)(D)) AND RULE 43(C), RULES OF FAMILY LAW PROCEDURE (Now Rule 43(C)(2)(d))

Judge Andrew Gould presented the draft comment for R-06-0026. The comment, if submitted would, support adoption of the proposed rule that continues the ability to leave documents with the Clerk for service upon a party whose address is known, but protected by court order, while eliminating the ability to leave documents with the Clerk for service upon a party whose address is unknown.

MOTION: Approve and submit comment as written. Motion seconded. Passed unanimously. **COSC-07-010**

NEXT MEETING

Friday, June 1, 2007
Pima Courts Training Center
2225 E. Ajo Way
Tucson, Arizona

GOOD OF THE ORDER/CALL TO THE PUBLIC

No public was present.

ADJOURNED

Respectfully Submitted,
Susan Pickard
COSC Staff

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, June 1, 2007
10:00 a.m. – 2:00 p.m.
Pima Courts Training Center
2225 E. Ajo Way
Tucson, Arizona

MEMBERS PRESENT:

Judge James A. Soto	Judge Fred Newton
Judge James E. Chavez	Commissioner Margaret Maxwell (partial meeting)
Judge Pat Escher	Judge Colleen McNally
Judge Andrew Gould	Ms. JoJene Mills
Judge Charles V. Harrington (partial meeting)	Mr. David Sanders
Judge Cathy Holt	Brian Karth for Mr. Marcus Reinkensmeyer
Mr. Michael K. Jeanes	

MEMBERS ABSENT:

Ms. Sylvia Brandfon, PhD	Judge Bethany G. Hicks
Honorable Margaret Downie	Honorable Kenneth Lee
Honorable Robert Duber	Honorable Stephen F. McCarville
Honorable Richard S. Fields	Honorable Dale Nielson
Honorable George Foster	

PRESENTERS/GUESTS:

Justice Rebecca White Berch	Mr. Paul Julien
Ms. Julie Dybas	Mr. Ken Kung
Ms. Annette Everlove	Judge William O'Neil
Ms. Jennifer Greene	Judge Tony Riojas

STAFF

Ms. Susan Pickard	Ms. Tama Reily
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I. REGULAR BUSINESS

A. Welcome and Opening Remarks

Without a quorum present, the June 1, 2007 meeting of the Committee on Superior Court was called to order by Judge James Soto, at 10:15 am.

B. Approval of Minutes from May 9, 2007

The minutes for the May 9, 2007 Committee on Superior Court meeting were not presented for approval at this time because of the lack of a quorum.

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Arizona Rules of Family Law Procedure

Representing the Family Law Rules Review Committee (FLRRC), Ms. Annette Everlove presented the proposed revisions to the Arizona Rules of Family Law Procedure that were filed in November 2006. The revisions address typographical and consistency issues between the rules and the Arizona Revised Statutes. Public comment on the petition closed on May 21, 2007. The proposed changes will be presented to AJC on

the June 18. If approved by the Court in September, the earliest these changes would take effect is January 2008.

COSC was asked to review and recommend AJC approval of proposed changes. A formal motion was not made due to the lack of a quorum; however, a majority of the members present were supportive of the requested changes and applauded the committee's efforts.

Ms. Everlove announced a pending rule change petition that will address a wide variety of concerns raised by the superior court bench and clerks of court including the rules of evidence and an omission on discovery regarding custody and parenting time. The proposed petition is available on the FLRRC website at: <http://supreme.state.az.us/drrc/FLRRC/default.htm>. Members are asked to review it carefully. This Petition, if accepted by the Court, should go out for public comment in November 2007.

B. Legislative Update

Leila Gholam presented the legislative update. A summary of the bills of note for the Committee on Superior Court was distributed at the meeting. Ms. Gholam informed the committee that while the House has passed the budget the Senate is still in negotiations.

The following bills were discussed.

HB2016 Material Witness; Detention; Depositions

Says that a material witness may be held in a human smuggling case if their immigration status makes it impossible to secure their presence by subpoena. This is a new bill. Pima County appears to be more impacted by the bill, as Pima has more of these cases than Maricopa County does.

HB2052 Vehicle use; Causing death; Injury

Blends two versions of ARS §28-672 that passed last year.

HB2096 Theft; Means of Transportation; Jail, and HB2097 Identity Theft; Sentence; Jail These are mandatory sentencing bills, which require a sentence of probation and as part of the probation, there is a term of jail time. Both bills are stuck in the Senate.

HB2209 Law Enforcement Officers; Misconduct Interviews

Deals specifically with probation officers, and it requires a written notice be given prior to a misconduct interview, and that it specify the nature of the investigation, the status of the investigation, and any known allegations of misconduct.

HB2249 Child Support Enforcement

Would allow DES, rather than the court, to administratively suspend professional or occupational licenses. There was opposition to the bill in the beginning, and although Representative Hershberger was able to help work some of the issues out, it barely made it through the House. It is unsure whether it will be able to make it through the Senate.

HB2342 Unlawful Sexual Conduct Involving Prisoners

This one has several changes, including the look back period for a felony conviction to 84 months. It's something like a criminal code omnibus, with a lot of different criminal bills that didn't make it through the first time, that have all been combined in this one. The child prostitution bill is one of them.

HB2344 Juvenile Graffiti; Monetary Assessment

Deals with graffiti. Requires a person adjudicated for a graffiti offense to pay \$300 - \$1000 fine plus surcharge. This could be done through community restitution hours as well.

HB2393 Special Education; Surrogate Parents

Allows the Department of Education to appoint a surrogate parent as well as the courts in order to move the appointments of surrogate parents along more quickly.

HB2357 Firearms; Peace Officers

Allows a peace officer to carry a firearm essentially anywhere, in compliance with AZPOST. However, there can be an order through the courts which does not allow them to carry firearms within the court buildings.

HB2635 Child Custody; Military Deployment

Judge Davis helped a lot on this bill, which requires that if a custodial parent is deployed and the child is moved out of the United States during the deployment, Arizona would still remain the home-state.

HB2750 Justice Courts; Jurisdiction

Changes the JP jurisdiction for civil actions from \$5,000 - \$10,000. This applies to all JP courts.

SB116 Jury Duty Exemption; Cognitive Disability s/e Self Defense; Home Protection; Applicability

This was the Jury Duty Exemption, but actually changed to the Self Defense Home Protection. It was vetoed earlier this year, but came back more narrow, and is ready, but has not yet been sent, for the Governor to sign. This could possibly be one of the "bargaining chips" for the budget.

SB1167 Criminal Case Information; Disclosure

Requires that the clerk of the superior court publish all criminal case minute entries in Maricopa County as of January 1, 2008. It must be searchable by case name, number, or the name of the judge or commissioner. Additionally, there was an amendment added to this that requires all superior courts to do this by January 1, 2010.

The following comments and questions were raised regarding this bill:

- Mr. Jeanes clarifies that in Maricopa County, the minute entries are currently searchable by party name, or case number, but not the judicial officer. In addition, a critical issue for the committee to be aware of is that for the rest of the state to comply with this by January 1, 2010, it is going to take a change to the case management system. In Pima they are currently working on AGAVE (sp.?), and it will have modifications to meet the deadline, but in the other 13 counties, AZTEC would not be able to handle this. This issue was discussed with the Legislature, and they said if it can't be met, come back and they will address whether the deadline could be adjusted. This issue is currently on the agenda for the next Commission on Technology meeting, next week.
- Is there a reason given for the need to search cases by the judge?
The individuals in the legislature who were supporting and pushing this bill, wanted to be able to go in and look at how a judge rules in criminal cases, and it was felt it was too difficult to do that case by case.

SB1222 Criminal Street Gangs; Sentencing

This is a large bill that deals with all sorts of different issues with criminal street gangs. There were significant House amendments added, and it has passed the House, but has not had any movement on the Senate side.

SB1251 Deadly Weapons; Storage

This is an extension of the gun storage bill from last year, and the pertinent section for the court is that it says you can record the identity of a person who is leaving their gun in the secure storage for the court, however, you cannot maintain that record once the gun is returned to the individual. No "log" of people bringing in guns can be kept.

SB1265 Courts; Costs and Fees; Reimbursement

Says that any civil action that is brought to a court by an individual who is here illegally, would have to be paid for by the individual bringing the case. It was added on an appropriation bill on the House side, so there seems to be some support there, but the bill is not going anywhere.

SB1267 DNA Testing; Arrest

Requires that an arresting authority obtain a DNA sample in a situation where a person charged with a felony could be released. A summons is to be issued directing the individual to submit to a DNA test within 5 days. It would also increase the surcharge from 80% to 85%.

- A comment from the committee asks whether the constitutionality of this bill was considered. Leila states that the bill did pass by the rules attorneys.

SB1286 Victims' Rights Omnibus

This bill continues to change and linger, with negotiations among several interested parties. It has returned for several hearings on the floor of the Committee of the Whole. This one will have significant amendments.

SB1582 DUI; Treatment; Ignition Interlock Device

This bill is still up in the air due to some conflicting language in the two other DUI bills, and because there is some concern about the requirement for ignition interlock device on first time DUI's earlier this year that requires ignition interlock device being held, and it is hoped that it will help clear up some of the issues with the other DUI bills protocol and procedures forIt has gone before the Committee on the Whole several times. Jerry Landau has been very involved with this one, but it is hard to say what will happen with it.

Committee Comments/Concerns:

- Jerry Landau had a project that he brought to us at the last meeting regarding trying to reorder Title 13 and the efforts to put it into more readable form. What is the status of this?
The Criminal Code "rewrite" has been "held back," due to a fear that the courts would make more substantive changes, rather than just a "cleanup." The plan at this time is to have a workgroup over the summer and fall that will look at all of the changes that were suggested, and possibly make its own suggestions, just making sure that the substance is not being changed. That should be coming out next year.

C. Proposition 100

1. Rule Change Petition

Mr. Paul Julien provided the committee with a brief chronological history on the Proposition 100 leading up to the rule change petition.

- In 2002 Proposition 103 amends Article II, § 22 of the Arizona Constitution and A.R.S. § 13.3961. This adds sexual assaults, sexual conduct with a minor under 15 years of age, and molestation of a child under 15 years of age, as offenses where bail can be denied when the “proof is evident or the presumption great” that the individual committed the offense. But there was no real definition of procedure.
- In 2004, *Simpson v. Owens* sets a new standard of proof that is called “plain and clear.” But this is the only definition we really have about how to run these Simpson hearings, for people who are determined to be held without bail at initial appearance.
- In 2006, the House introduced a Concurrent Resolution (2028) to amend Article II, § 22 to allow denial of bail to persons who commit a serious felony if they have entered or remained in the US illegally, and if “proof is evident or presumption great” as to the present charge.
- In anticipation of the resolution passing, the legislature had passed an amendment to A.R.S. § 13.3961, which defined a serious felony offense as a class I, II, III or IV felony, however, there remained questions about the procedures that should be followed in making determinations in these cases.
- On April 3, 2007, the Chief Justice issued an Administrative Order (a copy is provided in today’s materials) to clarify the issues that had arisen concerning the amendments:
 - I. What procedures should be followed in making a determination on whether bail should be allowed?
 - II. What is the standard of proof that should be applied to evidence intended to show the person’s citizenship?
 - III. What are the roles the various participants play during the Initial Appearance hearing and subsequent proceedings?
- On the same day, the Chief Justice sent a letter to the Legislature asking that they provide some structure and clarity on the responsibilities of law enforcement at the initial appearance and the standard of proof that should be applied.

Dave Byers submitted a rule petition on May 25, 2007 to change Rules 4.2, 7.2, 7.4, 27.7, and 31.6, as well as to adopt changes to Form 4. This petition requested an emergency adoption of these changes, and set a brief comment period of 2 weeks. Among the changes in the Petition is the “Simpson Hearing” is no longer automatic. The prosecutor or defendant must request the hearing which is to be held within 7 days in writing.

If legislation as it is now draft were signed by the Governor, law enforcement agencies would be required to transmit any information they obtain regarding the defendant’s legal status to the court and the prosecuting agency for purposes of making a determination under A.R.S. § 13-3961.

2. LJC/COSC Proposition 100 Subcommittee Update

Judge Antonio Riojas updated the committee on the progress of the joint LJC/COSC Proposition 100 Subcommittee. Chief Justice Ruth McGregor directed the

Committee on Limited Jurisdiction Courts (LJC) and the Committee on Superior Court (COSC) to conduct a thorough review of forms, rules, statutes and published documents for impact and implementation of Proposition 100 and to identify adjustments to the procedures described in A.O. 2007-30, if any. The committees established the LJC/COSC Proposition 100 Subcommittee with Judge R. Michael Traynor, LJC Chair and Presiding Judge Chandler Municipal Court, as chair and Melinda Hardman as staff. This subcommittee includes members from both committees as well as the Commission on Minorities in the Judiciary, Commission on Victims in the Courts and representatives of the initial appearance benches in Coconino, Maricopa and Pima Counties.

In the time since the subcommittee received direction from the Chief Justice, the counties have implemented A.O. 2007-30 in a variety of ways, with Maricopa County is experiencing some unintended consequences. The Rule Change Petition was filed by the AOC to further clarify the A.O. and ease the burden on the courts. Additionally, the Legislature has proposed statutory changes to clarify the level of evidence necessary.

Issues currently being addressed by the courts include:

- Where do you find reliable information about a defendant's immigration status?
- Is it appropriate for the court to ask the defendant if they have entered or remained in this country illegally, when answer this question may have criminal implications for the defendant?
- Is the information obtained from the defendant reliable?

Under the administrative order, the hearing must be held within 24 hours, unless an extension is requested by the public attorney, who can request 5 days, or the county attorney, who can request 24 hours.

Committee concerns/comments

- Identification is normally requested by the law enforcement officer in the field. Should the officer be providing Miranda Warnings before asking for your identity/citizenship status?
- A.R.S §13-3906 requires law enforcement officers to obtain an individual's citizenship at the time of arrest. It's not the same question as the release form asks, but they are required by law to obtain the defendant's citizenship.
- On Form 4, the officer may indicate that the defendant admitted to being here illegally. As in the Simpson case, if the officer is not present to testify, the Form 4 becomes the only evidence. In this instance does the evidence rise to the level of proof evident, presumption great? Could it also become Corpus Delicti issue, because all you have is the defendant's word?
- In applying A.O. 2007-30, Pima County has handled the cases in which the Form 4 was the only evidence. If the Form 4 had been filled out, it was considered to be sufficient to find probable cause and set the "Simpson Hearing". The hearing was set within 24 hours. The County Attorney would appear and they vacate the hearing not wanting to present their case that early. Most of the time there wasn't sufficient proof at the Simpson hearing, to hold the individual without bond. The courts' hands were tied.
- Does the 5th Amendment apply to the question "Are you here legally?" Should defendants be told that they can remain silent?
- Pursuant to current bench books and scripts, judicial officers always announce to the defendant that they have the right to remain silent. Also, because of the changes in Rule 17(2)(F) a couple of years ago, anyone entering into a plea agreement is

warned about the consequences. There are conflicting opinions about whether Rule 17(2)(F) is applicable at initial appearance.

- Pretrial release forms ask a lot of questions that could be considered evidence of a crime. For example, courts ask them “Have you ever failed to appear at a court proceeding?”
- With regard to both the proposed legislation and the rule, neither of them addresses another portion of Article 2, section 20, and that is felony release. There is no rule that addresses how we have a hearing on that section, and it’s not addressed in the draft legislation.
- There seems to be 4 different ways that a person can be held without bail: Murder, sexual assault, sexual assault on a minor, and now the illegal immigrant circumstance. We need a uniform rule that requires that all non-bailable offenses be handled the same way procedurally, and required the same standard of proof.

There is a tentative meeting of the subcommittee set for June 14, 2007.

D. Arizona Rules of Probate Procedure

Vice Chief Justice Rebecca White Berch announced that the Probate Rules Committee had been established under Administrative Order 2007-96 to review all local probate rules and produce a standard set of rules to guide fiduciaries, legal practitioners and unrepresented litigants in probate proceedings.

Family fiduciaries, who make up the majority of court appointments, often come to probate matters with little knowledge of the court processes involved and the responsibilities they are charged with undertaking. The Committee has reviewed all Arizona local rules regarding probate and the probate rules of other states, including Colorado, Hawaii and Georgia. The Committee members and staff have also reviewed the rule process and results of other recently completed sets of rules.

The proposed probate rules were submitted for committee member review. Vice Chief Justice Berch also asked members aware of concerns that should be addressed in these rules to contact J.R. Rittenhouse prior to the rules being submitted to AJC at the October.

Committee Concern/Comments:

- Rule 4D talks about juvenile proceedings filed within or consolidated with a probate case. If it is contemplated that dependency actions might be filed in a probate proceeding, this could be a constitutional issue, because the juvenile court by constitution and by statute has exclusive jurisdiction over dependency matters.
It was thought that this would occur with dependencies, but not delinquencies. However, this is an important point and will now need to be reviewed.
- There are no forms attached to the rules. Will these be designed?
Forms are being developed.
- Rule 7 addresses the confidential information issue. Does it deal satisfactorily with confidentiality in terms of identity theft?
In writing rules 6 and 7, which deal with confidential information, the committee enlisted the aid of Jennifer Greene, who has worked on the Sensitive Data Workgroup project, so they are felt to be comprehensive.

The target date for implementing the rules is January 1, 2008. It is requested that committee members send any suggestions they may have for the rules to J.R. Rittenhouse at JRittenhouse@courts.az.gov.

E. Arizona Rules of Protective Order Procedure

Judge William O'Neil from the Domestic Violence Rules Review Committee presented proposed revisions to the Arizona Rules of Protective Order Procedure. There have been very minor changes to the rules since the last time they were presented to COSC. The strikethrough versions of the proposed rule changes are currently available on the CIDVC website at:

<http://supreme.state.az.us/cidvc/DVRules/default.htm>

Judge O'Neil asked that the committee recommend the rules for adoption.

A formal motion was not made due to the lack of a quorum; however, a majority of the members present were supportive of the requested changes and applauded the committee's efforts.

Committee Comments/Questions:

- Is there an update on Project Passport and Arizona's protective orders?
Yes. The goal of Project Passport is to establish a uniform first page for all protective orders country-wide. Arizona's first page is the model which the National Center for Courts recommends. Arizona adopted its new Order of Protection forms last year and they are scheduled to be implemented by the start of 2008.

F. Capital Case Task Force

Jennifer Greene, Capital Case Task Force staff, presented the preliminary recommendations of the Appellate Court Subcommittee. The Task Force was established by the Chief Justice in A.O. 2007-18 in February, 2007, to:

- study how the judicial branch may ensure the availability of adequate resources for processing capital cases in Maricopa County and in the appellate courts of Arizona, and
- make recommendations for rule and statutory amendments that would promote efficient resolution of these cases in light of the pending caseload, including consideration of case management practices, and judicial, clerk, and defense team staffing levels.

The Appellate Court Subcommittee has drafted the proposal, provided in the meeting materials, for an administrative order that would set minimum standards for managing court reporting and court reporting resources. The subcommittee would like to hear from the members of COSC regarding their thoughts on the proposal. The proposal will be available during July and August through the Task Force's website:

<http://www.supreme.state.az.us/cctf/>.

The committee's work is due to be reported to the Supreme Court in October at the AJC meeting.

Committee Comments/Concerns:

- On the first page of the A.O. in the second paragraph, last line, why does it read that the court must maintain "usable" notes for 50 years? That language is not within the retention schedule. Why not just say "maintain notes" and leave out the word usable?
To the extent that there might be electronic notes, the court would need to be able to read the notes with whatever equipment would be required. The

reference to the retention schedule is simply to recount that the notes must be kept for the 50 year period.

- Has the committee looked at the number of cases in which the county attorney is saying “this is a capital case,” versus how many cases actually turn out to have a death sentence imposed?

Yes, we’ve been refining our data to project how many of the 135 pending cases might end up as a direct appeal to the Supreme Court. On average over the last 40 months, in Maricopa County, about 30% of the case inventory has to be resolved by a trial, and of that 30 percent we’re seeing death sentences imposed in about 57% of the cases. If a jury is still involved at the very end of the case, the juries are choosing death in about 75% of the cases.

- In section 3, paragraph A, on labeling, it should also state that the defendant’s name be included with the reporter’s name and the case number. This is because case numbers can easily be transposed, and at least if you have the case number and the name, it will help to identify if you have the right case with both sets of information.
- It would be a good idea to take this to the presiding judges because the whole court reporting process is really an administrative function of the presiding judges.

G. A.C.J.A. § 3-401: Priority of Offender Payments

Julie Dybas presented Arizona Code of Judicial Administration section 3-401. This code section prioritizes and directs courts in the distribution of offender payments. At issue is how to apply payment received from a defendant who has been order to pay restitution in multiple cases. Should the payment be applied first to the old/closed/inactive case(s) or the new, current active case(s) or should it be applied proportionally? The Committee on Probation (COP) supports applying the funds to the current, active case(s). Some clerks have taken the position that the oldest accounts should be paid in full before monies are applied to active cases.

The Committee on Probation (COP) approved this code on May 11,2007, and requested that language be added that would require priority be given to new, current active cases for monetary obligation, other than restitution and time payments fee. This code section is scheduled to go to AJC on June 18th. COSC was asked to recommend approval either as written, or with any suggested changes.

A formal motion was not made due to the lack of a quorum. The members made the following comments to be included in their report to AJC.

Committee comments/questions:

- In Maricopa County, juveniles are assigned one case in the juvenile court, and it remains for as long as the juvenile is in the juvenile court. The issue of whether there are different petitions, adjudications and/or victims under that one case number could influence where the payment is applied.
- If the newer case is paid first, and the older case goes to collections, the taxpayers are paying twice for the counties’ efforts to collect the monies.
- A defendant could potentially lose his/her liberty for non-payment of current court ordered monetary obligations, even if his/her period of incarceration has been served.
- The wrong message is sent to the defendant if the current case must be paid first, since the older cases are effectively forgotten in the process.
- Regarding any type of fees, restitution is supposed to be paid first, so any monies that come in, on old or new cases, should go to restitution.

The code does clearly state this; however, a judge always has the option of ordering monies to be applied in different ways.

- In cases where restitution is owed to a current case, as well as an older case, should monies paid by the defendant be prorated?

III. OTHER BUSINESS

A. IRS Public Employer's Outreach Guide and ProTem Selection

Ms. Susan Pickard addressed the committee on the issue of classifying judges pro tem as employees versus independent contractors, for tax purposes. According to Chapter 4 of the IRS Federal-State Reference Guide, a judge pro tem should be classified as an employee because the court sets the procedures and provides resources (facilities and personnel) for accomplishing the work assigned. The document is available on the LJC website at:

<http://www.supreme.state.az.us/ljc/>.

Members were encouraged to review the document.

B. A.C.J.A. § 1-105: Committee on Superior Court

Ms. Susan Pickard presented proposed revisions to A.C.J.A. § 1-105: Committee on Superior Court. On February 16, 2007, this committee approved revisions to the code section having to do with quorums, proxies and telephonic appearances at meetings. AOC management has expressed concern that the last statement in part F "otherwise COSC members may appear telephonically no more than one meeting per year," may be too restrictive, and could contribute to quorum issues. They recommended that the committee add the phrase "unless approved by the Chair" to the statement.

C. Next Meeting:

Friday, September 28, 2007

10:00 a.m. – 2:00 p.m.

State Courts Building

Conference Room 119 A/B

D. Good of the Order/Call to the Public

No response

IV. ADJOURNMENT

The meeting adjourned.

Respectfully submitted,

Susan Pickard
COSC Staff

**Committee on Superior Court
Minutes**

Friday, September 28, 2007
10:00 a.m. – 3:00 p.m.
State Courts Building
1501 W. Washington
Phoenix, AZ 85007

MEMBERS PRESENT:

Judge James A. Soto
Judge Eddward Ballinger
Ms. Sylvia Brandfon (called-in)
Judge James E. Chavez (called-in)
Judge Margaret H. Downie
Judge Robert Duber, II
Judge Andrew Gould
Ms. Sue Hall
Judge Charles V. Harrington
Judge Bethany Hicks
Judge Cathy Holt

Mr. Michael Jeanes
Judge Kenneth Lee
Judge David Mackey
Judge Margaret Maxwell
Judge Stephen F. McCarville
Judge Colleen McNally
Ms. JoJene Mills
Judge Fred Newton
Judge Dale Nielson
Mr. Phil Knox for Marcus Reinkensmeyer
Mr. David Sanders

MEMBERS ABSENT:

Judge Pat Escher
Judge Richard S. Fields

Judge George Foster
Judge Stephen Villarreal

PRESENTERS/GUESTS:

Vice Chief Justice Rebecca White Berch
Ms. Katy Proctor
Ms. Amy Love
Ms. Julie Dybas
Ms. Amy Wood
Ms. Nancy Swetnam

Judge Ann Scott Timmer
Judge Mark Armstrong (Ret.)
Ms. Kay Radwanski
Mr. David Withey
Ms. Jennifer Greene
Ms. J.R. Rittenhouse

STAFF:

Ms. Susan Pickard
Ms. Melinda Hardman

Ms. Tama Reily

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the September 28, 2007 meeting of the Committee on Superior Court was called to order by Judge James Soto.

Judge Soto introduced the following new members:

- Judge Stephen Villarreal
- Judge Eddward Ballinger
- Judge David Mackey
- Ms. Sue Hall

The following re-appointed members were also welcomed back:

- Judge Kenneth Lee
- Judge Bethany Hicks
- Judge Robert Duber, II
- Mr. Michael Jeanes
- Ms. JoJene Mills
- Ms. Sylvia Brandfon

B. Approval of Minutes

The minutes from the COSC May 9, 2007 and June 1, 2007 meetings were presented for approval.

MOTION: Approve the COSC meeting minutes for May 9, 2007, and June1, 2007, with corrections noted. Motion seconded. Motion passed unanimously. **COSC-07-011**

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Proposed Arizona Judicial Branch Legislative Package

Ms. Katy Proctor, Legislative Liaison for the AOC, and Ms. Amy Love, Legislative Staff for the AOC presented the 2008 Legislative Proposals.

2008-01: Criminal Code Sentencing Reorganization

- Reorganizes Title 13, Chapters 6 and 7 to simplify the structure of the sentencing code.
- Does not make structural or philosophical changes to the code.

MOTION: Recommend that the Arizona Judicial Council (AJC) include legislative proposal 2008-01: Criminal Code Sentencing Reorganization, in the legislative package for 2008. Motion seconded. **20-1-0** Motion passed **COSC-07-012**

2008-02: Time payment fee

- Repeals the statute authorizing the Time Payment Fee revert to \$12 on January 1, 2010.
- Maintains the current fee at \$20 indefinitely **OR** creates a \$5 surcharge on all fines, penalties and forfeitures to be split evenly between the state Judicial Collection Enhancement Fund (JCEF) and the local courts.

MOTION: COSC supports the repeal of the reversion to \$12, but does not support the \$5 surcharge as an option for replacing these funds. Motion seconded. Motion passed unanimously. **COSC-07-013**

2008-03: Capital case task force proposals

- Increases the hourly rate contract lawyers are paid to handle Rule 32 cases from \$100 to \$125.
- Deletes the requirement for appointed counsel to show good cause to receive payment for work done in excess of 200 hours on post-conviction cases.

MOTION: Recommend that the AJC include legislative proposal 2008-03: Capital Case Task Force Proposals, in the legislative package for 2008. Motion seconded. Motion passed unanimously. **COSC-07-014**

2008-04: Court reporter; transcript fees

- Increases the dollar amount a court reporter may receive for an appeals transcript from \$2.50 to \$3.25 per page for an original and from \$0.30 to \$0.50 per page.
- Increases the dollar amount a court reporter may receive for a note transcription of a preliminary hearing from \$2.50 to \$3.25 per page.

MOTION: Recommend to the AJC that they include proposal 2008-04: Court Reporter; Transcript Fees, in the legislative package for 2008. Motion seconded. **14-7-0** Motion passed. **COSC-07-015**

2008-05: Change of name; fingerprinting

- Requires an individual applying for a name change to furnish the court with a full set of fingerprints for the purpose of conducting a criminal background check.
- Makes the applicant responsible for the cost of the background check, but prohibits any fee charged to the applicant from exceeding the actual cost of the background check.

There were several concerns about the variety of circumstances in which name changes are requested, and in which different procedures would be warranted:

- Juveniles
- Transgender
- Domestic relation situations, paternity issues
- Civil liberties
- 911 securities
- Prisoners name changes

Additionally, the members had the following questions:

- Are there statistics that support the need for this proposal
- Process: Which entity will bear the responsibility and cost of verification
- Confidentiality: Which entity keeps the prints; are they public record or confidential

MOTION: Make no recommendation on the proposal. Motion seconded. **15-6-0** Motion passed. **COSC-07-016**

Comment: While COSC is aware of the possible need for this type of protection given current security, immigration, and felon issues, members are concerned about the affect this proposal would have on families, minors, and others with legitimate need and motive to request a name change. If this proposal goes forward, legislation should be carefully and thoughtfully drafted to specify the types of cases in which fingerprints would be required. Legislation should also address responsibility, cost and process specifics.

2008-06: Guardianship; persistently or acutely disabled

- Authorizes the court, upon determining that a person is *persistently or acutely disabled*, to order an investigation concerning the need for a guardian or conservator or both.

- Authorizes the court to appoint a temporary guardian for a person who has been found to be persistently or acutely disabled if the court finds that the patient is in need of immediate guardianship.

MOTION: Recommend that the AJC include legislative proposal 2008-06: Guardianship; persistently or acutely disabled, in the legislative package for 2008. Motion seconded. **17-3-0** Motion passed. **COSC-07- 017**

2008-07: Juvenile court; contracting authority (Katy Proctor) - WITHDRAWN

2008-08: Redaction of personal information (Katy Proctor) – WITHDRAWN

2008-09: Guardianship of foreign national minors

- Permits guardianships for foreign citizens under 18 years of age who have been either documented by the US Office of Refugee Resettlement and authorized to enter the US as a refugee or granted asylum by an agency of the US Government.
- Expands statute to include minors who meet the requirements outlined above.

MOTION: Recommend that the AJC not include legislative proposal 2008-09: Guardianship of Foreign National Minors, in the legislative package for 2008. Motion seconded. **10-8-3** Motion passed. **COSC-07-018**

2008-10: Interstate Compact; Finance

- Amends A.R.S. §§ 12-267 and 31-467, Article X, subsection B, to increase the cap on Arizona's annual assessment to the interstate commission to a figure that covers the increase in assessment (to be determined) or alternatives; striking the provision requiring appropriation from the legislature for increases to Arizona's annual assessment or increasing the cap to \$50,000.

MOTION: The COSC supports legislation to provide for the feasible payment of the interstate compact assessments. Motion seconded. Motion passed unanimously. **COSC-07-019**

2008-11: Deputy probation officers; appointment

- Allows the Chief Justice to appoint deputy probation officers in the AOC to provide services to county juvenile and adult probation departments for purposes of training, consultation and technical assistance.

MOTION: Recommend that the AJC include legislative proposal 2008-11: Deputy probation officers; appointment, in the legislative package for 2008. Motion seconded. **12-7-2** Motion passed. **COSC-07-020**

B. ACJA § 1-702: Operational Reviews

Ms. Julie Dybas presented proposed ACJA § 1-702: Operational Reviews. The proposal would codify A.O. and grant the Court authority to examine records and order corrective actions.

The code section has been reviewed and approved by the Committee on Probation, and is scheduled to be presented to AJC in October 2007.

Committee Comments/Concerns:

While the Clerks of the Superior Court are not opposed to the concept they would like to language in the code section that addresses the following:

- Standards, scope and process for the review
- Expected timeframes for the review, findings, and compliance
- Clerk/Court review time commitment expectation
- Documentation of court corrective action and compliance
- Dispute process

Ms. Dybas explained that the standards and scope of operational reviews are dependent upon revision to statute, code and administrative orders and specific review areas requested by the presiding judge; therefore difficult to define in the code. These same issues along with election processes can impact timeframes which were not addressed in the code section to allow for changes.

MOTION: Approve proposed ACJA § 1-702: Operational Reviews, as written.
Motion seconded. Motion passed unanimously. **COSC-07-021**

C. ACJA § 3-401: Priority of Offender Payments

Ms. Dybas presented proposed revisions to ACJA § 3-401: Priority of Offender Payments. At the request of the Chief Justice, COSC formed an ad hoc workgroup to address issues identified in this code section. Unless otherwise ordered, the code would give priority to the current active case. Once that case is current, any additional monies go to the oldest restitution case, until it is paid off. The next monies received after that would go to the next oldest restitution case until that amount is paid off. This code would have up to a 2-year implementation period, as it will need to be programmed into the new case management systems. This code section will be returning to the AJC in October 2007.

Committee Comments/Concerns:

- The offender sometimes sends in the payment and writes on the check that it is to be given to. Would this control where the check goes?
In this case, the check would have to be sent back to the payor, telling him/her that the payment can not be processed as specified.
- Can a judge change the priority of payment by court order?
Yes, judicial orders take precedence over everything
- In section C, the references to subsection E & F should read subsections D & E?
Yes. This is a typo that has been corrected since the copies for today's meeting were made.
- On page 1, "FARE fee" is defined to mean "any fee established by the Supreme Court for services provided to enhance enforcement of court orders." This appears overly broad, and may actually preclude future fees. This should be clarified.

MOTION: Approve proposed ACJA § 3-401: Priority of Offender Payments with typographical corrections noted in section C. Motion seconded. Motion passed unanimously. **COSC-07-022**

D. ACJA § 5204: Administration of Victims' Rights

Amy Wood spoke on behalf of the Commission on Victim's in the Courts (COVIC) presenting proposed amendments to ACJA § 5-204: Administration of Victim's Rights. The purpose of the revisions is to incorporate legislative (SB1286), and case law (*State*

v. Klein and *State v. Hansen*) changes, as well as to make the code section complement the priority of payment code section as opposed to covering the same issues in both code sections. This code section has gone before the Committee for the Impact on Domestic Violence, the Committee on Probation and the Committee on Limited Jurisdiction. The following language changes were recommended by those committees and they will be made:

- Conform sections G & J to create more uniformity in their language
- Section D, regarding reading of the victim's bill of rights, will be modified to more accurately state the "victim's statement," as opposed to the entire bill.
- Clarification of section D's application to limited jurisdiction courts, and possible subsequent modification of language therein.

Committee Comments/Concerns:

- Could "except in emergency circumstances" be added to subsection C, where it says the court shall provide at least 5 days notice to the prosecutor before a scheduled proceeding?
- The second paragraph of subsection C doesn't read consistent with the first paragraph. Is this intended to say that victim counsel would receive the motion of criminal proceeding only if a continuance was submitted in writing?
- Paragraph L addresses nonpayment of restitution; it seems to say that if a court gets notice of a default in payment of restitution, there can be an order to show cause hearing where the judge could have someone held in contempt and subject to incarceration for failure to make a monetary payment? That seems to suggest we've created a debtors prison.
- Is there a victim's rights group that has passed on this? Who speaks for that constituency?

The Commission on Victims in the Courts is not a "victim's rights" group, per se, but protecting the victim's rights in the court setting. Commission membership includes a number of victim advocates and attorneys who represent victims, as well as judges, court support, and other individuals who are familiar with the court system.

- Statute requires judges to advise a defendant of potential federal repercussions, so we notify him/her that if they are not a citizen, they may be deported, their legal resident status could be revoked, and any application to become a citizen could be denied based on the plea that they're entering. But, we don't advise victims of their potential federal rights, and one of the things they're finding is that women won't report domestic violence, because their sponsor is the perpetrator, and that person is threatening them that they're going to withdrawal their application or sponsorship. I think at some point we need to consider also advising those victims that in fact, they may not be deported, and are entitled to a special visa if they are a victim of certain crimes.

Ms. Wood states she will gladly take this suggestion back to the Commission on Victims in the Court.

- Is there a grace period in the statute, with regard to section L, a defendant's default in payment, or is it day one after they have not made their payment to the court?

There is not a grace period built into the statute.

MOTION: Recommend AJC approve revisions to ACJA § 5-204: Administration of Victims' Rights, with modifications presented in meeting. Motion seconded. Motion passed unanimously. **COSC-07-023**

E. Report and Recommendations of the Capital Case Task Force

Judge Ann Scott Timmer, Vice Chief Judge, Court of Appeals, Division One, presented the Capital Case Task Force Report and Recommendations on behalf of Justice Michael Ryan. Chief Justice Ruth McGregor issued A.O. No 2007-18 establishing the Capital Case Task Force in February 2007, to address how the judicial branch can improve case processing for the unprecedented number of capital cases awaiting trial in Maricopa County.

MOTION: Recommend that AJC approve the recommendations of the Capital Case Task Force as presented. Motion seconded. **12-0-7**. Motion passed. **COSC-07-024**

Comment: The seven members who abstained from voting on this motion were from the Superior Court in Maricopa County. Some stated that they were abstaining solely because they did not feel it was appropriate to approve recommendations dealing with issues directed at Maricopa County's judicial rotation policies.

F. Employer Sanctions

Judge Mark Armstrong (Ret.) presented proposed new Rule 65.2, Arizona Rules of Civil Procedure. The intent of the new rule is to implement A.R.S. § 23-212, which provides for business license suspension or revocation for employers who intentionally or knowingly employ unauthorized aliens. Judge Armstrong welcomes comments from the Committee.

G. Rules of Procedure for Family Law

Judge Mark Armstrong also provided an update the changes in the Arizona Rules of Procedure for Family Law. The changes in Rule Change Petition R-06-022 were mostly technical, non-substantive changes. The rules become effective January 1, 2008.

H. Rules of Protective Order Procedure

Judge Mark Armstrong announced that the whole new set of Rules of Protective Order Procedure as proposed in Rule Change Petition No. R-06-0032, were adopted and become effective January 1, 2008.

I. ACJA §§ 7-201: General and 7-203: Confidential Intermediary; proposed amendments regarding Sibling Information Exchange Program

Ms. Nancy Swetnam, Certification and Licensing Division Director, presented proposed revisions to two code sections that are intended to implement HB 2212; Sibling Information Exchange Program (SIX).

The proposed amendments to ACJA §§ 7-201 and 7-203 include:

ACJA § 7-201: General Requirements:

- Incorporates references to ARS § 8-543

ACJA § 7-203: Confidential Intermediary:

- Adds a definition of "former dependent child"
- Amends the definition of "search" to include all participants qualified to request adoption or sibling searches

- Adds a definition of “sibling”
- Incorporates references to the SIX regarding applicability, purpose, administration, role and responsibility of certified Confidential Intermediaries
- Eliminates the “request for appointment” procedure
- Redirects filing of original search finalization reports to the Certification and Licensing Division; eliminates filing with Superior Court requirement

MOTION: Recommend the AJC approve and adopt the proposed amendments to AJCA §§ 7-201 and 7-203. Motion seconded. Motion passed unanimously. **COSC-07-025**

J. Rules of Probate Procedure

Vice Chief Justice Rebecca White Berch presented the revised Rules of Probate Procedure. This version is different from the one presented to COSC in June. In particular, the Probate Rules Committee revised Rules 2 and 3, regarding juvenile proceedings, and Rules 6 and 7, with respect to confidential information and documents. Corresponding changes were made to the comments. The Rules are intended to guide both practitioners and unrepresented parties.

MOTION: Recommend that AJC approve the Rules of Probate Procedure as presented. Motion seconded. Motion passed unanimously. **COSC-07-026**

K. Integrated Family Court Update

Judge Fred Newton updated the members on the progress on the Integrated Family Court in Coconino Court. A short DVD presentation was shown, and a full written report was provided in today’s meeting materials.

L. Protective Order Updates

Kay Radwanski discussed Administrative Directive 2007-03 which revises the Order of Protection and Emergency Order of Protection to include warning language approved by the passage of SB 1286 that becomes effective January 1, 2008.

Ms. Radwanski also discussed the Arizona Rules of Protective Order Procedure (ARPOP) that were recently adopted by the Arizona Supreme Court and become effective January 1, 2008. Training sessions include:

- Thursday, October 4th, Family Law Judicial Conference session
- October 31, 2007, 9:00 a.m. to Noon, State Bar Association web cast

The AOC Education Services Division is working with Ms. Radwanski to develop central training and computer based training.

M. ACJA § 5-203: Trial and Grand Jury Management

Ms. Hardman presented select proposed amendments to ACJA § 5-203: Trial and Grand Jury Management. The changes are necessary because of the passage of SB1424, which takes effect January of 2008. The new provisions include:

- Time requirements for:
 - producing the master jury list – at least twice each year,
 - giving a juror notice to appear to complete a questionnaire or testify about the juror’s qualifications or grounds for excuse – seven days, and
 - summoning jurors to appear at court – ten days

- The procedure for approval of an alternative summoning plan by either the Supreme Court or the presiding judge. The code sets forth the following:
 - Required contents of the plan,
 - Calls for circulation of the plan to the court community within the county,
 - Defines the alternative approval procedures for the presiding judge or the chief justice, and
 - Provides that a plan must either be renewed or terminated in five years.

Revisions to the code section are still in process; however, the first six sections of the revisions are provided in today's meeting materials, for informational purposes and committee comments.

N. ACJA § 1-202: Public Meetings

David Withey reported on a proposal to amend ACJA § 1-202 Public Meetings. The intent is to delete subsection D (1) (f) which reads:

f. Standing subcommittees of public councils shall also keep minutes of their meetings.

Generally, it has not been the case that subcommittee minutes are necessary to the work of the committees, the general practice of note-taking having proved sufficient. Thus, the change is being recommended to reflect current practices.

MOTION: Recommend that AJC approve the amendment to ACJA § 1-202 as presented. Motion seconded. Motion passed unanimously. **COSC-07-027**

O. ACJA § 1-105: Committee on Superior Court

Judge James Soto discussed the proposed amendments to ACJA § 1-105: Committee on Superior Court regarding proxy policy and virtual attendance.

Committee Comment/Concerns:

- Subsection D (1), which reads that COSC members shall attend 75% of the committee meetings, is somewhat unclear.
- Virtual attendance should be defined.

MOTION: Recommend AJC approve and adopt amendments to ACJA § 1-105: Committee on Superior Court with modifications discussed at meeting. Motion seconded. Motion passed unanimously. **COSC-07-028**

III. OTHER BUSINESS

A. Next Meeting:

Friday, November 30, 2007
 State Courts Building
 Conference Rooms 345 A/B
 10:00a.m. to 2:00p.m.

B. Good of the Order/Call to the Public

Judge Robert Duber reported that he had been at new judge orientation, where at the conclusion of their session, the superior court judges were required to take a proficiency test. Judge Duber requested that this topic be added to the November COCS agenda for discussion. Judge Soto asked that staff arrange a presentation from the Education Services Division.

MOTION: Add to proficiency test discussion to the agenda for the November COSC meeting. Motion seconded. Motion passed unanimously. **COSC-07-029**

No public members present.

VI. ADJOURNMENT

The meeting was adjourned at 2:45.

Respectfully submitted,
Susan Pickard
COSC Staff

**Committee on Superior Court
Minutes**

Friday, November 30, 2007
State Courts Building
1501 W. Washington, 345 A/B
Phoenix, AZ 8500

MEMBERS PRESENT:

Judge James A. Soto
Judge Eddward Ballinger
Mr. Paul O'Connell
Mr. Marcus Reinkensmeyer
Judge Fred Newton
Judge Stephen F. McCarville
Mr. Michael Jeanes
Judge Bethany G. Hicks

Appearing Telephonically

Sylvia Brandfon, Ph.D
Judge James E. Chavez
Judge Margaret Downie
Judge Robert Duber II
Judge Pat Escher
Judge Richard S. Fields
Judge Sue Hall
Judge Margaret Maxwell

Judge Cathy Holt
Judge Kenneth Lee
Judge David Mackey
Judge Colleen McNally
Judge Dale Nielson
Judge David Sanders
Judge Stephen Villarreal
Ms. Jojene Mills

MEMBERS ABSENT:

Judge Andrew Gould
Judge Charles V. Harrington

Honorable George Foster

PRESENTERS/GUESTS:

Mr. Jerry Landau
Ms. Katy Proctor
Mr. Brett Watson
Mr. Paul Julien

Ms. JL Doyle
Mr. John Sousa
Mr. Patrick Scott

STAFF:

Ms. Melinda Hardman
Ms. Tama Reily

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the November 30, 2007 meeting of the Committee on Superior was called to order by Judge James Soto, Chair, at 10:15 a.m.

The following announcement was made:

- New member Paul O'Connell was introduced and welcomed to the committee by Judge Soto.

Members appearing telephonically were asked to announce themselves.

B. Approval of Minutes

The minutes from the September 28, 2007 COSC meeting were presented for approval.

MOTION: To approve the COSC meeting minutes for September 28, 2007. Seconded.
Motion approved unanimously. **COSC-07-030**

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Review of New Judge Orientation

Chief Justice Ruth V. McGregor briefed the committee on the purpose and goals of new judge orientation assessments for general jurisdiction judges i.e. measure our success at teaching and at participants' learning; Identify areas where a particular judge may need additional training.

Questions and concerns were raised about the basis for assessments, mandatory participation in the assessments, and confidentiality of results. She made the following points:

- Assessment results are completely confidential
- They help to determine if judges are gaining anything from orientations
- They can identify those who may need a little extra help/knowledge in some areas
- They assist in the effort by AOC to constantly improve the courses and ensure they are on the right track

Committee Comments/Concerns:

- There seems to be a general agreement that the court will not be able to keep the results confidential if an interested party would want to see them.
 - *The assessments have been in place for five years for limited jurisdiction judges, and there have been no known instances of results becoming public.*
- Is there a reason to retain them?
 - *Probably not. It might be useful to consider keeping the results while removing identification to a particular judge. This is something to think about.*
- There are times when individuals refuse to take the assessment. It seems that if required for some, it should be required for all.
 - *We're looking into that*

B. Proposed Meeting Dates for 2008

The proposed 2008 meeting dates for the COSC were presented for approval. All of the dates fall on Fridays, and are as follows:

- March 14, 2008
- June 6, 2008
- October 10, 2008
- November 21, 2008

Discussion followed, as to some members' conflicts with the proposed meeting dates. It was agreed to re-visit the meeting dates at the COSC March meeting.

C. Arizona Judicial Branch Legislative Package Update

Mr. Jerry Landau, Director of Government Affairs for the AOC, updated the members on the 5 proposals that the AJC adopted at its last meeting, as well as a 6th possible proposal that has come about.

The proposals are as follows:

2008-02: Time payment fee

Would repeal the statute authorizing the Time Payment Fee to revert to \$12 on January 1, 2010. The proposal seeks to either maintain the current Fee at \$20 indefinitely or create a \$5 surcharge on all fines, penalties and forfeitures to be split evenly between the state Judicial Collection Enhancement Fund (JCEF) and the local courts.

2008-10: Interstate compact

Amends A.R.S. § 12-267 and 31-467, increasing the cap on Arizona's annual assessment to the interstate commission.

2008-11: Deputy probation officers; appointment

Allows the Chief Justice to appoint deputy probation officers in the AOC to provide services to county juvenile and adult probation departments.

2008-01: Criminal code sentencing reorganization

Reorganizes Title 13, Chapters 6 and 7 to simplify the structure sentencing code.

2008-03: Capital case task force proposals

Increases the hourly rate contract lawyers are paid to handle Rule 32 cases from \$100 to \$125. Deletes the requirement for appointed counsel to show good cause to receive payment for work done in excess of 200 hours on a post-conviction case.

Mr. Landau informed the members of a 6th possible proposal that will be presented to the presiding judges and the AJC next week, which would extend the Court Reporter Certification Program, established in 1999. The program provides for the regulation of stenographic and voice writer reporters, establishes a board, and recommends rules to the Supreme Court. It is scheduled for sunset in July of this year.

Committee Comments/Questions:

- Regarding the Capital Case proposal, is the proposed increase enough to entice other people to provide services?
 - Jennifer Greene, of the Capital Case Task Force, answered that the rate of increase was arrived at by the county, and it has attracted four more attorneys to the list of contract attorneys qualified to handle cases as lead council. Additionally, this is the rate of a proposal being introduced in the Utah Legislature this year. It is also the rate paid in California, and it is more than what they are paying in Colorado and several other states.

Mr. Landau announced that the Legislature reconvenes on January 14th, 2008. The main issues that we are likely to see legislation on are:

- Budget

- Immigration issues, such as employer sanctions
- Criminal Law

D. ACJA § 6-114 Committee on Probation

Mr. Brett Watson of the Adult Probation Services Division, AOC, presented the revised version of proposal ACJA § 6-114: Committee on Probation, which establishes who would be standing members on the Committee on Probation. Following an order by the Chief Justice, a section has been added to the code, concerning proxy voting, which adopts the same format/process that the AJC follows.

MOTION: To approve proposed ACJA § 6-114 Committee on Probation as presented today. Seconded. Motion approved unanimously. **COSC-07-031**

E. ACJA § 6-103 Victims' Rights Requirements for Probation Personnel

Ms. JL Doyle presented a revised version of ACJA § 6-103: Victims' Rights for Probation Personnel. Changes were made to the code as a result of Senate Bill 1286 and *Sate v. Klein*, and *State v. Hansen*. The changes:

- Increase the length of time probation may be extended for purposes of restitution payments.
- Expand the definition of victim to include those who have had misdemeanor offenses committed against them whether or not serious bodily injury occurred.

MOTION: To approve ACJA § 6-103 Victims' Rights Requirements for Probation Personnel as presented today. Seconded. Motion passed unanimously. **COSC-07-032**

F. ACJA § 5-103 FTG 5% Set Aside

Mr. John Sousa, Court Services Division, AOC, presented proposed ACJA § 5-103: Enhanced Collections, which concerns the inconsistency in the five percent "set aside" of funds by the courts, and seeks to provide guidelines to ensure uniform application of the statute statewide. The code would clarify the funds that are subject to the 5% set aside and remove the "reimbursables" category.

MOTION: To approve ACJA § 5-103: Enhanced Collections as presented today. Seconded. Motion approved unanimously. **COSC-07-033**

G. ACJA § 5-203 Trial Jury Management

Ms. Melinda Hardman, Court Services Division, AOC, updated the committee on changes to ACJA § 5-203: Trial Jury Management, section D, which concerns summoning procedures.

Committee Comments/Concern:

- In section E, 1 (c), it seems that a cross section of singular subdivision would be more appropriate than a "fair cross section."
- In section E, 2 (a), it allows a 90 day period for the AOC review of a plan. A shorter duration, such as 30 to 45 days, should be considered.
- In section G, the terms "sex" and "gender" are both named. It should be one or the other.

MOTION: To approve recommendation of ACJA § 5-203: Trial Jury Management to the AJC as presented today provided the concerns of this committee are presented with that recommendation. Seconded. Motion approved unanimously. **COSC-07-034**

H. Clerk Research Fees

Mr. Patrick Scott reported on issues concerning application of A.R.S. 22-404 and 22-281 (research fees) across the judiciary. Mr. Scott is requesting that members of COSC volunteer to form a joint workgroup with LJC's Implementation subcommittee, to review and develop a policy recommendation for the AOC as to when research fees should be charged.

MOTION: To provide COSC members to convene a workgroup with the LJC Implementation Subcommittee to review the issue of research fees. Seconded. Motion approved unanimously. **COSC-07-035**

III. OTHER BUSINESS

A. Next Meeting:

Friday, March 14, 2008

10:00 a.m. – 3:00 p.m.

Location TBD

B. Call to the Public

No public present.

The meeting adjourned at 11:45 a.m.