

**Committee on Superior Court
Minutes**

Friday, February 29, 2008
State Courts Building
1501 W. Washington, 119 A/B
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable James A. Soto
Honorable Fred Newton
Mr. Marcus Reinkensmeyer
Honorable Andrew Gould
Honorable Colleen McNally
Honorable Norman Davis

Appearing Telephonically

Honorable Eddward Ballinger
Sylvia Brandfon, Ph.D.
Honorable James E. Chavez
Honorable Robert Duber II
Honorable Richard Fields
Honorable Sue Hall
Honorable Bethany Hicks

Honorable Cathy Holt
Honorable Kenneth Lee
Honorable David Mackey
Honorable Margaret Maxwell
Mr. David Sanders
Honorable Stephen Villarreal

MEMBERS ABSENT:

Honorable Pat Escher
Honorable George Foster
Honorable Charles V. Harrington
Honorable Michael K. Jeanes

Honorable Stephen F. McCarville
Ms. JoJene Mills
Honorable Dale Nielson
Mr. Paul O'Connell

PRESENTERS/GUESTS:

Ms. Ellen Crowley
Mr. Jerry Landau

Mr. David Withey

STAFF:

Ms. Melinda Hardman

Ms. Tama Reily

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the February 29, 2008, meeting of the Committee on Superior Court was called to order by Judge James Soto, chair, at 10:05 a.m.

Judge Soto welcomed Judge Norman Davis back to the Committee on Superior Court (COSC). Judge Davis is the associate presiding judge for Maricopa County.

B. Approval of Minutes

The minutes of the November 30, 2007, Committee on Superior Court meeting were presented for approval. It was noted that a correction was needed to add the Hon. George Foster to the list of absent members.

MOTION: To approve the COSC minutes for the November 30, 2007, meeting as presented, with correction as discussed. Motion seconded. Motion approved unanimously. COSC-08-001

C. 2008 Meeting Dates, Revisited

The (COSC) 2008 meeting dates were previously approved by the committee; however, the AOC has requested that meetings take place a minimum of three weeks prior to meetings of the Arizona Judicial Council (AJC). For this reason, new dates are being proposed. The dates are as follows:

Friday, May 30, 2008	Phoenix or Flagstaff, TBD; 10:00 a.m.
Friday, September 26, 2008	State Courts Building, Conference Rm 119 A/B; 10:00 a.m.
Friday, November 7, 2008	State Courts Building, Conference Rm 230; 10:00 a.m.

MOTION: To approve the proposed Committee on Superior Court meeting dates for the Year 2008. Motion seconded. Approved unanimously. COSC-08-002

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Rule Petition Filings Update

Ms. Ellen Crowley updated the Committee on pending Rule Change Petitions. The following are currently open for comment, and are most relevant to proceedings in the Superior Court. The comment deadline is May 20, 2008.

Arizona Rules of Civil Procedure:

R-07-0007 (Rule 65.2)
R-07-0022 (Rule 33.1)
R-07-0024 (Rules 5.2, and 84)
R-07-0027 (Rule 70.1)
R-08-0002 (Rules 39(d), 47(b), and 51(a)).

Arizona Rules of Criminal Procedure:

R-07-0003 (Rules 4.2, 7.2, 7.4, 27.7, and 31.6)
R-07-0005 (Rule 8.2(a))
R-07-0019 (Rule 15.1(i))
R-08-0005 (Rule 4.1)
R-08-0007 (Rules 16.1(b) and 16.4)
R-08-0010 Rules 32.4(c)(2), 32.6(a), and 32.6(b)

Rules of the Supreme Court:

R-07-0016 (Rule 122)

R-07-0018 (Rule 38(b)(7)(A)(v))
R-07-0021 (Rule 111)
R-08-0004 (Rule 38(g))

Superior Court Rules of Appellate Procedure – Civil and Criminal:

R-08-0001 (Rule 12, SCRAP – Civil and Rule 7 Criminal)

Uniform Rules of Procedure for Commissions on Appellate and Trial Court Appointments:

R-07-0031 (Rule 4)

Rules of Family Law Procedure:

R-07-0002 (Rule 35)
R-07-0010 (Various Rules of Family Law Procedure)

Rules of Probate Procedure:

R-07-0023 (Proposed Rules of Procedure for Eviction Actions)

B. Model Parenting Plans Workgroup

Judge Colleen McNally addressed the committee about establishing a workgroup to revise the Model Parenting Time Plans booklet. Model parenting plans were designed to provide the court, counsel and parents with suggested guidelines, based on social science research, regarding how children should share time with both parents after divorce. The current Model Parenting Time Plans for Parent/Child Access were originally published by the Supreme Court in 2001. Since that time, there have been changes in social science research that call for an update and revision of the plans. In addition, there is a need to update accessibility to current technology standards. The model was created by a statewide committee of judicial officers, mental health providers and attorneys after consulting with nationally known experts on child development and after reviewing current research and guidelines from other communities.

Discussion ensued as to whether this is an issue well suited to the COSC, or whether a committee such as the Domestic Relations Committee (DRC) would be more appropriate. It was noted that the DRC is inactive until July due to the legislative session, and that the hope was to eventually involve members from that committee, as well as mental health providers and other experts. Several committee members expressed interest and willingness in participating in the workgroup.

MOTION: To establish a workgroup with Judge Colleen McNally as Chair, to review the Current Model Parenting Time Plans and make any recommendations for updating the Plans, and to look at other related issues that might arise as part of that review. Motion seconded. Approved unanimously. COSC-08-003

C. New ACJA § 1-303; Code of Conduct for Judicial Employees Amendments

David Withey presented a proposal to convert the current Code of Conduct for Judicial Employees into a section of the Arizona Code of Judicial Administration for adoption and publication in that code. Amendments are also being proposed, to primarily two areas:

Canon 3E, pertaining to court staff assistance to court users, was previously presented to COSC in February 2007. The proposed amendment addresses the concerns voiced by COSC by eliminating the term “customer” and providing a qualifying statement as to existing limitations of court employees to always provide the requested assistance.

Canon 5C, pertains to employees seeking judicial department elective office, and would authorize any judicial employee to run for an elected judicial department office without resignation or leave of absence regardless of whether the employee is running for elective office within or outside the judicial department.

Several concerns were voiced regarding proposed changes to Canon 5C and 5D:

- The changes would create disruption in offices when the sitting incumbent is the one who grants or denies permission to employees who want to run also.
- It allows for the possibility of interference in the process if the presiding judge can deny/grant permission to one employee over another based on his/her personal preference.
- There are no standards against which to judge this process. It should include some criteria for denying or granting permission, as well as an appeal process.

Due to all of the committee concerns, Judge Soto suggested holding off on adopting the proposed changes to 5C & D, while Mr. Withey works on it further.

MOTION: To recommend approval to AJC of ACJA § 1-303, with the proposed amendment to Canon 3E, as presented, but not the changes to 5C and D. Motion seconded. Approved unanimously. COSC-08-004

D. Arizona Judicial Branch Legislative Package Update

Jerry Landau and Briana Jones, legislative intern, updated the committee on the Arizona judicial branch package and other legislation impacting Superior Court filed during the 2008 session.

HB2118: RETIREMENT; CORP; JUDICIARY; OTHER DESIGNATED POSITIONS

Amends A.R.S. § 38-891 to allow the local board of the judiciary under the Correctional Officer Retirement Plan (CORP) to designate a position within the Administrative Office of the Courts (AOC) as a CORP position.

HB2321: IDENTITY THEFT; FACTUAL INNOCENCE (REP. DRIGGS)

Permits a victim of identity theft or an individual whose name is mistakenly associated with criminal conduct to petition the superior court for an expedited determination of factual innocence.

HB2687: VICTIM’S RIGHTS; STATEMENTS OF RIGHTS (REP. THRASHER)

Requires the statement of victim’s rights to be posted in both English and Spanish outside the entrance of every courtroom and requires limited jurisdiction court judges to read the statement at the beginning of the regular criminal docket.

SCR1021/HCR2063: ACCOUNTABILITY; CLEAN ELECTIONS FOR JUDGES (REP. PEARCE)

Amends the Arizona Constitution to repeal merit selection of judges. Establishes an election process in counties with populations of more than 800,000 that is different from the process in counties with populations less than 800,000.

SB1186: JUDICIAL PERFORMANCE REVIEWS; COURT COMMISSIONERS (SEN. CHUCK GRAY)

Requires the Supreme Court to create a process for evaluating superior court commissioner performance. Affords the public participation in the process through hearings and public dissemination of reports. An amendment limits the provision to counties with a population of 250,000 or more.

SB1332: DNA TESTING; ARREST (SEN. CHUCK GRAY)

Narrows the scope of the requirement for judicial officers to order persons arrested for enumerated crimes to report and submit a DNA sample in cases involving persons summoned to court.

SCR1011: PERFORMANCE REVIEWS; SUPERIOR COURT COMMISSIONERS (SEN. CHUCK GRAY)

Amends the Arizona Constitution to include performance reviews of Superior Court Commissioners in counties with populations of 250,000 or more as well as justices and judges. Requires the Supreme Court to publish and maintain all evaluation reports on its website.

SCR1014: JUDICIAL VACANCIES; APPOINTMENTS; CONFIRMATION (SEN. CHUCK GRAY)

Amends the Arizona Constitution to increase the threshold for merit selection to 750,000. Extends the retirement age for Justices and Judges of a court of record to 75. Imposes Senate confirmation of Superior Court Judges to fill a vacancy. A nominee for judge shall not take office or discharge any duties of the office before obtaining the consent of the Senate.

SB1476: PROBATION; FACILITIES; SAFE COMMUNITIES ACT (SEN. HUPPENTHAL)

Requires JLBC to annually calculate the money saved from a reduction in percentage of probationers who have their probation revoked and the percentage of victim restitution payments of the money saved to the adult probation services fund.

E. Ad Hoc Committee Updates

Sue Hall reported that the joint ad hoc committee looking at clerk research fees will hold its first meeting on March 5, 2008.

III. OTHER BUSINESS

A. Next Meeting:

Friday, May 30, 2008
10:00 a.m. – 3:00 p.m.
TBD

B. Good of the Order/Call to the Public

No public present.

The meeting was adjourned at 11:50 a.m.

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, May 30, 2008
10:00 am to 2:30 pm
State Courts Building
Conference Room 119 A/B
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable James A. Soto
Honorable Eddward Ballinger
Honorable Robert Duber II
Honorable George Foster
Honorable Andrew Gould
Honorable Bethany Hicks
Honorable Cathy Holt
Honorable Michael Jeanes
Honorable David Mackey
Honorable Stephen McCarville
Honorable Colleen McNally
Honorable Fred Newton

Honorable Paul O'Connell
Mr. Marcus Reinkensmeyer

Telephonic attendees:

Honorable James E. Chavez
Honorable Patricia Escher
Honorable Richard S. Fields
Honorable Sue Hall
Honorable Charles Harrington
Honorable Kenneth Lee
Honorable Margaret Maxwell
Mr. David Sanders

MEMBERS ABSENT:

Sylvia Brandfon, Ph.D.
Honorable Norman Davis
Ms. JoJene Mills

Honorable Dale Nielson
Honorable Stephen Villarreal

PRESENTERS/GUESTS:

Mr. Jerry Landau
Honorable Bruce Cohen
Ms. J.L. Doyle
Mr. Patrick Scott
Mr. Paul Julien
Mr. Mark Meltzer

Ms. Nancy Swetnam
Ms. Kathy Waters
Mr. David Withey
Mr. Chad Campbell
Ms. Theresa Barrett
Ms. Susan Pickard

STAFF:

Ms. Kay Radwanski

Ms. Tama Reily

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the May 30, 2008, meeting of the Committee on Superior

Court (COSC) was called to order by Judge James A. Soto, Chair, at 10:08 a.m.

Judge Soto welcomed Kay Radwanski, new AOC staff to COSC, to the committee.

B. APPROVAL OF MINUTES

The minutes of the February 29, 2008, meeting of COSC were presented for approval.

MOTION: To approve the COSC minutes for the February 29, 2008, minutes as presented. Motion seconded. Approved unanimously.
COSC-08-005

Mr. Paul Julien, introduced Mr. Chad Campbell, new program manager for the Judicial College at the AOC's Education Services Division.

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

- A.** Mr. Jerry Landau, Director of Government Affairs, presented an update on legislation filed during the 2008 session that impacts Superior Court. He highlighted the following items:

HB2109: INTERSTATE COMPACT

Would increase Arizona's annual Interstate Compact for Supervision of Adult Offenders assessment in excess of the statutory amount is replaced with the requirement of a report to the Joint Legislative Budget Committee. Still in progress.

HB2207: SENTENCING; REORGANIZATION

Reorganizes the classification and sentencing provisions of the Criminal Code (Title 13, Chapters 6 and 7). It will renumber a substantial number of sections, and since there are other bills waiting to be chaptered that involve those same numbers, this one will wait for all the others to get through.

CHAPTER 152/HB2745: EMPLOYER SANCTIONS S/E SAME SUBJECT

Makes changes to last year's Employers Sanctions law. This bill already is in effect.

CHAPTER 237/HB2321: IDENTITY THEFT; FACTUAL INNOCENCE

Allows a person or prosecuting agency on behalf of a person in a criminal case to come to court and ask that the person's name be cleared. It is delayed until January and has been flagged for rule making. In response to a question, Mr. Landau noted that there has been no mention of any fee for this type of petition.

HB2389: FIREARMS; DEATH PENALTY; SEX WITH MINOR

Removes from the definition of "misconduct involving weapons" the act of carrying a concealed weapon without a permit in or on a means of transportation. It could change sentencing on first-degree murder cases by prohibiting the convicted person

from being released after 25 years in certain cases. Should receive the latest amendment on this bill today.

HB2453: CHILDREN; OPEN COURT PROCEEDINGS

All court proceedings related to dependency, permanent guardianship and termination of parental rights are open to the public.

SB1160: JUROR SUMMONS; QUESTIONNAIRE; RETURN POSTAGE

A prospective juror should not have to pay the return postage, or any other cost, when returning a prospective juror questionnaire issued by a court. This bill has stalled.

SB1332: DNA TESTING; ARREST

The court at initial appearance is required to order that a DNA sample be collected if the defendant is charged with an enumerated offense only if the defendant appears on a summons. The change is intended to eliminate collection of duplicate samples.

SB1412: BIOLOGICAL EVIDENCE; RETENTION; PRESERVATION

Requires the court to order an arrestee to submit fingerprints if the arresting authority files a petition alleging the individual refuses to do so. Title 13. Also requires the appropriate governmental entity to retain all identified biological evidence that is secured in connection with a felony sexual offense or homicide in a condition that is suitable for DNA testing for the amount of time that a person remains incarcerated.

SB1476: PROBATION; FACILITIES; SAFE COMMUNITIES ACT

Allows the court to adjust a probationer's period of probation for earned time credit (ETC) in the amount of 20 days for every 30 days that the probationer meets specific requirements. This is a Council of State Governments bill. Mr. Landau noted that the animal rights and domestic violence communities sought exclusions for certain types of offenders. This bill could take effect next January.

HCR2063: ACCOUNTABILITY; CLEAN ELECTIONS FOR JUDGES

A separate and different process is established for the election of judges in counties with populations of 800,000 people or more. This bill was opposed by the AOC. At present, this bill is not moving forward.

CHAPTER 82/ SB1186: JUDICIAL PERFORMANCE REVIEWS; COURT COMMISSIONERS

Requires inclusion of Superior Court commissioners in counties with populations of 250,000 or more in judicial performance review. Affords the public participation in the process through hearings and public dissemination of reports, including posting on the Supreme Court website.

Mr. Landau was asked whether there is any indication where the legislature stands concerning the Chief Justice's proposal to raise the filing fees by 40-45 percent. He

noted that at this point, it appears that the court's plan is included in the budget proposal and if it is included in the budget, the effective date would be 90 days after *sine die*.

A. Amended ACJA § 7-205; Defensive Driving

Nancy Swetnam, Certification Licensing Division Director, and AOC staff reported on the status of the plan for implementing HB 2001, passed by the Legislature in 2007, and HB 2488, passed in the current session, both of which affect defensive driving schools. HB 2001 allows a driver to attend any driving school, and under HB 2488, a court cannot promote or favor one school over another. To implement these laws, proposed changes are being made to ACJA 7-205. In addition, some of the questions and concerns raised at the Maricopa County LJC's Presiding Judges meeting on May 9, 2008, were brought forward for feedback from the committee. Ms. Swetnam asked COSC members to work with judges and staff in each county to look at controversial issues related to this code revision. She noted that the presiding judges of the superior courts have oversight of the selection process of the driving schools, which is why she has brought this information to COSC.

B. Guidelines Review Committee – Child Support

Judge Bruce Cohen briefed the committee on the activities of the Child Support Guidelines Review Committee, and sought input from COSC. GRC is seeking information and comment at the beginning of its review task. Judge Cohen asked for consent from COSC to provide a survey to the Superior Court judges to solicit information from them. Judge Soto indicated that COSC authorization is unnecessary and the Guidelines Review Committee can communicate with the judges.

C. Arizona Code of Judicial Administration (ACJA) §§ 6-105; 6-201; 6-202

Ms. J.L. Doyle, Ms. Sarah Schmoll, and Ms. Kathy Waters of AOC's Adult Probation Services Division presented proposed modifications to several code sections. All have previously been heard and approved by the Committee on Probation (COP).

Amended ACJA § 6-105; Powers and Duties of Officers

Changes to the code are as a result of the initiative to roll out evidence-based practices to probation in the State of Arizona.

MOTION: To approve going forward with changes presented. Motion seconded. Approved unanimously. COSC-08-006

Amended ACJA § 6-201; Standard Probation

Points of discussion at the COP:

- Removal of minimum contact standards. Contacts will be driven by the risk/needs assessment and offender behavior.
- Case plans for low risk offenders are not required, unless there is an identified criminogenic need requiring a strategy for intervention.

- Revised criteria for what is included as a direct (active) case, specifically, the exclusion of jail cases.

MOTION: To approve going forward with modifications presented.
Motion seconded. Approved unanimously. COSC-08-007

Amended ACJA § 6-202; Adult Intensive Probation

Points of discussion at the COP:

- Impact on the IPS Program if restricted only to high-risk offenders.
MOTION: To approve with the changes as presented in today's meeting.
Motion seconded. Approved unanimously. COSC-08-008

D. New ACJA § 1-303; Code of Conduct for Judicial Employees Amendments

Mr. David Withey presented the modified version of Section 1-303: Code of Conduct for Judicial Employees, which was previously presented at the COSC meeting in February 2008. The Arizona Judicial Council is expected to consider the code section revisions in October. In response to the concerns from committee members in February, the following amendments were made and brought to COSC for a second time:

“Courtroom Clerk,” has been amended to apply to employees performing duties in a courtroom with a judge (not strictly superior courts).

“Incumbent” is defined to clarify that a person may be an incumbent by election *or* appointment to an elected office.

Canon 2F concerning “Former Employees” is amended to avoid undue restriction on use of former employees. Mr. Withey noted that this section encompasses four factors, all of which must be met for the section to be applicable. It is contemplated, however, that the fourth factor may be stricken.

Canon 3E provides a list of circumstances in which court employees are required to provide assistance to court users. This is qualified with a statement stipulating that such duties will be consistent with each court's resources and policies and the respective employee's assigned responsibilities and knowledge.

Canon 5B, 5C, and 5D are revised to authorize any judicial employee to run for an elected judicial department office without resigning or taking an unpaid leave of absence if the office is in a court other than the court in which the employee is employed.

The revisions to these code sections led to lengthy discussion of them. Mr. Withey will take the comments and suggestions of COSC members forward to AJC when the code sections reach the AJC agenda.

MOTION: To approve, with inclusion of COSC comments and concerns, and recommend adoption by the Arizona Judicial Council. Seconded. By a vote of 5 in favor and 16 against, the motion failed. COSC-08-009

E. Administrative Order 2008-42: Pilot Program Expanding the Powers and Duties of Court Commissioners in Criminal Proceedings

Judge Fred Newton discussed Administrative Order 2008-42, which establishes an 18-month pilot program in Coconino and Yavapai counties to expand powers and duties of commissioners in criminal proceedings. Under the pilot program, commissioners, who usually have limited authority in criminal matters, will be permitted to hear probation revocations and Term I violations. The pilot program will begin June 1, 2008, and end on December 31, 2009. The presiding judges of Coconino and Yavapai counties will be required to submit an interim report to the Supreme Court by December 1, 2008, and a final report by December 31, 2009.

F. Ad Hoc Committee Updates

▪ **Clerk Research Fee Update**

Mr. Patrick Scott summarized the research fees around the state and discussed the committee's research findings. He noted that some courts charge the federal government for the research fee while others do not.

▪ **Model Parenting Time Plans Workgroup**

Judge Colleen McNally informed the committee of the upcoming organizational meeting for the workgroup, scheduled for Friday, June 27, 2008, and gave a brief description of workgroup's goals. One objective will be to make the parenting time materials more accessible electronically, both to litigants and to judges.

III. OTHER BUSINESS

A. Next Meeting:

Friday, September 26, 2008
10:00 am – 2:00 pm
State Courts Building
Conference Rooms 119 A/B

B. Good of the Order/Call to the Public

Judge Eddward Ballinger reported that at the recent New Judge Orientation, assessment was done by having mentors and students review questions and discuss as a group. There were no objections to this method, and it was felt that this type of assessment met the goals of the Chief Justice.

The meeting was adjourned at 1:54 p.m.

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, September 26, 2008
10:00 a.m. to 2:30 p.m.
State Courts Building
Conference Room 119 A/B
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable James A. Soto	Honorable David Mackey
Honorable James E. Chavez	Honorable Margaret Maxwell
Honorable Norman Davis	Honorable Stephen McCarville
Honorable Robert Duber II	Ms. JoJene Mills - <i>telephonic</i>
Honorable Richard S. Fields	Honorable Fred Newton
Honorable Andrew Gould	Honorable Dale Nielson
Honorable Sue Hall - <i>telephonic</i>	Honorable David Mackey
Honorable Charles Harrington	Mr. Paul O'Connell – <i>telephonic</i>
Honorable Bethany Hicks	Mr. Marcus Reinkensmeyer
Honorable Cathy Holt	Mr. David Sanders
Honorable Michael Jeanes	
Honorable Kenneth Lee	

MEMBERS ABSENT:

Honorable Eddward Ballinger	Honorable Colleen McNally
Honorable Patricia Escher	Honorable Stephen Villarreal
Honorable George Foster	

PRESENTERS/GUESTS:

Mr. Paul Hrisho, AOC	Ms. J.L. Doyle, AOC
Ms. Lisa Hernandez, AOC	Ms. Kathy Waters, AOC
Ms. Katy Proctor, AOC	Mr. Karl Heckart, AOC
Ms. Susan Pickard, AOC	Mr. Stewart Bruner, AOC
Ms. Vanessa Haney, AOC	Ms. Patience Huntwork, AOC
Mr. James Westmiller, AOC	Honorable John Rea
Mr. Paul Julien, AOC	Mr. Patrick Scott, AOC
Ms. Linda Grau, AOC	

STAFF:

Ms. Kay Radwanski	Ms. Tama Reily
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I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the September 26, 2008, meeting of the Committee on Superior Court (COSC) was called to order by the Hon. James A. Soto, chair, at 10:08 a.m.

Judge Soto announced that Dr. Sylvia Brandfon resigned effective September 15, 2008, creating a vacancy in the public member position. Members were asked to provide Kay with any recommendations they might have for this position.

B. Approval of Minutes

The minutes of the May 30, 2008, meeting of COSC were presented for approval.

MOTION: To approve the minutes of the May 30, 2008, COSC meeting as presented. Motion seconded. Approved unanimously. COSC-08-010

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Teleconference Etiquette

Paul Hrisho, infrastructure operations manager, AOC, gave the committee some useful tips for holding successful conference phone calls. A handout listing this information was provided in the meeting materials.

Lisa Hernandez, AOC Information Technology Department staff, updated the committee on the status of videoconferencing capabilities at the AOC. She explained that the AOC has several mobile units that can connect directly with various courts throughout the state. There are systems up and running in Tucson, Flagstaff, Yuma, Globe, Payson, Lake Havasu, and Bullhead City. Testing is being conducted in Prescott and in some courts in Navajo County. Courts seeking more information about videoconferencing should contact Ms. Hernandez (602-452-3119) or Rick Collins (602-452-3276). Requests to establish videoconferencing for COSC meetings should be directed to Kay Radwanski, committee staff, who will coordinate the request with the COSC chair and the AOC's ITD staff.

In response to members' questions, Ms. Hernandez explained that with an IP-enabled system, videoconferencing can be used at no cost by persons who are out of state. Videoconferencing also can function with an inexpensive webcam from a desktop if the system is set up properly. Videoconferencing has many uses, including committee meetings and court hearings. Use of videoconferencing can result in reduced travel costs.

B. Arizona Judicial Branch Legislative Package

Katy Proctor, AOC legislative liaison, presented four proposals that will go before the Arizona Judicial Council (AJC) in October.

2009-01 Domestic violence; designation

Replaces all statutory references to “domestic violence” in Arizona Revised Statutes (of which there are at least 233) with the term “domestic victim.” She informed members that this proposal was not supported by the Committee on the Impact of Domestic Violence and the Courts (CIDVC). The committee concurred with CIDVC’s assessment of the proposal and did not favor it.

MOTION: To *oppose* proposal 2009-01 Domestic violence; designation. Motion seconded. Approved unanimously.
COSC-08-011

2009-03 Restitution; orders

Contains provisions for both juvenile and adult restitution orders. Requires the court to issue the signed order and the amount of restitution awarded upon sentencing, when the amount is determined. This is the final restitution order that would be issued. It would also allow restitution to accrue at the statutory rate of 10 percent from that point forward. It would make the court-signed order, at that time, recordable as a lien against the assets of the defendant. This also would be applicable to the juvenile restitution component and would be recordable as a lien not only against the juvenile’s assets but also against the parents’ assets. In addition, this proposal removes the term “custodial” parent from the current law, so the court could order any parent to make restitution on behalf of the juvenile.

Members expressed concern about due process issues for non-custodial parents, implementation issues, the interest rate (e.g., its reasonableness, whether it would accrue while a defendant is incarcerated), innocent co-owners of property against which a lien could be entered, release of lien, and revealing victim identification on a lien.

MOTION: To *oppose* proposal 2009-03 Restitution; orders, as presented. Motion seconded. Approved unanimously.
COSC-08-012

2009-05 Fiduciaries; power of attorney; trustee; representative payee

Would grant to the Supreme Court oversight of a fiduciary serving as a trustee, representative payee, or an agent under a power of attorney (POA), regardless of whether the fiduciary has been court appointed to the case. Prohibits a fiduciary whose license has been suspended or revoked from serving as an agent under a POA in any capacity unless related to the principal. This proposal, advanced by the AOC Certification & Licensing Division, addresses a concern regarding persons who function as fiduciaries under authority of the Fiduciary Board but, when acting

outside that scope as a power of attorney, are not subject to the board's disciplinary process.

MOTION: To approve proposal 2009-05 Fiduciaries; power of attorney; trustee; representative payee. Motion seconded. Approved by an 18-2 vote. COSC-08-013

2009-09 Criminal code sentencing reorganization, cleanup

Makes technical changes in three statutes and conforming changes in one statute contained in the criminal code sentencing reorganization bill passed in the 2008 session.

MOTION: To support proposal 2009-09 Criminal code sentencing reorganization, cleanup, as presented. Motion seconded. Approved unanimously. COSC-08-014

C. Arizona Courts Judicial Jobs Site

Susan Pickard, Vanessa Haney, and James Westmiller, AOC staff, presented the new judicial vacancy website and demonstrated some of the navigational tools. The website is located at <http://www.supreme.state.az.us/azjudicialjobs/>.

D. Appeals Guides for Self-Represented Parties

Paul Julien, AOC Education Services, briefed the committee on the appeals guides developed for self-represented parties. Mr. Julien noted that all limited jurisdiction courts received copies of the guides, and the Arizona Bar Foundation has provided \$2,000.00 to distribute the guides to legal service providers around the state. The guides can be found at <http://supreme.state.az.us/appellateguide.htm>.

E. Code of Conduct

Paul Julien presented the new code of conduct proposed by the Judicial Code Task Force and provided a handout summarizing the proposal. He also invited members to attend one of two public hearings being held to discuss the proposed changes. An invitation with location and other details was included in the meeting materials.

F. ACJA § 7-202: Fiduciaries and ACJA § 7-206: Certified Reporter

Linda Grau of the Certification & Licensing Division discussed proposed amendments to the two code sections.

ACJA § 7-202: Fiduciaries

Suggests both technical and substantive changes to the examination and certification requirements for fiduciaries. Would amend the code of conduct for fiduciaries. Ms. Grau noted that the Fiduciary Board had approved the amendments, except for proposed language requiring a certified fiduciary to have three years of experience under the supervision of a designated principal to qualify as a designated principal.

The committee entertained comments from two public members, both of whom are fiduciaries, who were present at the meeting. (See Public Comments section.) After some discussion, it was suggested that the item be tabled to allow members further time to review the proposal prior to making a recommendation.

MOTION: To table ACJA § 7-202: Fiduciaries and reconsider it at the November meeting. Motion seconded. Vote: 20-1-0.
Approved COSC-08-014

ACJA § 7-206: Certified Reporter

Proposes both technical and substantive changes to requirements of certified reporter programs and education requirements for certified reporters.

MOTION: To approve ACJA § 7-206: Certified Reporter as presented. Motion seconded. Approved unanimously. COSC-08-015

G. ACJA §§ 6-105.01; 6-201.01; and 6-202.01

JL Doyle and Kathy Waters, AOC Adult Probation Services, presented the revised proposed code sections, which outline and clarify the powers and duties of directors of juvenile court services, chief probation officers, probation officers, and surveillance officers. Changes to the code sections were presented to COSC at its May 30, 2008, meeting, at which time the committee suggested additional modifications regarding governance of the provisions.

MOTION: To approve the requirements for governance under ACJA § 6-105.01: Powers and Duties of Officers. Motion seconded. Approved unanimously. COSC-08-016

MOTION: To approve the requirements for governance under ACJA § 6-201.01: Standard Probation as presented. Motion seconded. Approved unanimously. COSC-08-017

MOTION: To approve the requirements for governance under ACJA § 6-202.01: Adult Intensive Probation. Motion seconded. Approved unanimously. COSC-08-018

H. ACJA § 1-507: Protection of Electronic Case Records in Paperless Court Operations

Karl Heckart and Stewart Bruner, AOC Information Technology Department, presented a proposed code section regarding protection of electronic records. The code section sets standards for providing adequate safeguards for equivalent electronic records that are substituted for paper records. The e-Records subcommittees of the Limited Jurisdiction Courts Committee and the Commission on Technology's Technical Advisory Council defined the minimum requirements as the basis for this code section. COT approved the code section at its September 5, 2008, meeting.

MOTION: To approve ACJA § 1-507: Protection of Electronic Case Records in Paperless Court Operations. Motion seconded. Approved unanimously. COSC-08-019

I. *Ad Hoc* Committee Updates

Parenting Plans Workgroup

Judge John Rea updated the committee on the progress the workgroup has made in updating the 2001 edition of the Model Parenting Time Plans. The workgroup met in June and August and will meet again on October 17, 2008. He noted that the group hopes to have the completed product by Spring 2009.

Clerk Research Fee Update

Patrick Scott briefed the committee on the outcome of the workgroup's efforts and provided a handout that detailed the workgroup's proposed recommendations. Patrick asked members to review the information and provide any additional recommendations or feedback to the workgroup.

J. Rule Changes

Patience Huntwork, chief staff attorney, Arizona Supreme Court, reviewed recently adopted rule changes that are pertinent to superior courts. The Arizona Supreme Court met on September 8, 2008, to review the petitions. The court adopted a number of rule changes and kept open six petitions for comment, including a petition regarding adoption of Rules of Procedure for Eviction Actions. Minutes of the September meeting and other information about the rules can be found on the Arizona Court Rules Forum at <http://www.supreme.state.az.us/rules/default.htm>.

Of particular note were R-06-0017, regarding bar admission; R-07-0022, amending uniform interrogatories, and R-08-0008, Civil Cover Sheet. Ms. Huntwork also discussed R-07-0016, which would amend Rule 122, Rules of the Supreme Court, regarding electronic or still photography in courtrooms. The rule establishes a presumption that allows camera coverage of judicial proceedings unless the court makes a finding that there is a substantial likelihood of harm. Members had questions about who would be permitted to bring a camera into a courtroom. For example, one judge received a request from You Tube to bring a camera into the courtroom. The rule does not provide a limiting definition of "media," leaving it open to interpretation. In other discussion, Ms. Huntwork informed members that an *ad hoc* workgroup is being created to review the issues related to Petition R-06-0016, which provides for appearances by defendants via videoconferencing for initial appearances, arraignments, and some other hearings. Members were asked to notify Kay if they are interested in participating on the workgroup, and Commissioner Maxwell volunteered.

III. OTHER BUSINESS

A. Next Meeting:

Friday, November 7, 2008
10:00 a.m. – 3:00 p.m.
State Courts Building
1501 W. Washington
Conference Room 230

B. Good of the Order/Call to the Public

Public Comments:

Candy Wheeler-Ruby, a Yuma County public fiduciary and an Arizona Fiduciary Association board member, expressed her concerns related to the power of attorney aspect of fiduciary responsibilities. She stated it is incorrect that fiduciaries can wait until re-registration to notify their licensing division if they are convicted of a felony; they are required to do so immediately. She explained that this would trigger an investigation, during which their certification is removed. She added that their clients typically are “competent” individuals, and because other family members are sometimes unhappy about the fiduciary’s involvement in the situation, they might complain to the AOC. When the AOC responds and reviews the fiduciary records, the client is unhappy about what he/she feels is an invasion of his/her privacy.

Peter Frenette, a private fiduciary, voiced his concerns with the proposed legislation (see 2009-05, page 3), stating that powers-of-attorneys, trust documents, and representative payees have other remedies for violations. In addition, he noted that training actually is not optional, because, unless a person is certified, he/she is, in essence, not allowed to function at any level, so in reality everyone must become certified. This, he said, puts enormous burden on the administration of a private entity as well as a public entity, and does not allow the fiduciary to have other persons assist in the performance of certain tasks, such as informed consent and contracting.

The meeting was adjourned at 1:31 p.m.

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, November 7, 2008
Teleconference Meeting
State Courts Building
12:30 p.m. to 1:00 p.m.

MEMBERS PRESENT:

Honorable James A. Soto	Honorable David Mackey
Honorable Eddward Ballinger	Honorable Margaret Maxwell
Honorable James E. Chavez	Honorable Stephen McCarville
Honorable Norman Davis	Honorable Colleen McNally
Honorable Andrew Gould	Honorable Fred Newton
Honorable Sue Hall	Mr. Paul O'Connell
Honorable Cathy Holt	Honorable Stephen Villarreal
Ms. Karen Westover, proxy for Marcus Reinkensmeyer	Honorable Kenneth Lee

MEMBERS ABSENT:

Honorable Robert Duber II	Honorable Bethany Hicks
Honorable Patricia Escher	Honorable Michael Jeanes
Honorable Richard S. Fields	Ms. JoJene Mills
Honorable George Foster	Honorable Dale Nielson
Honorable Charles Harrington	Mr. David Sanders

PRESENTERS/GUESTS:

Ms. Linda Grau, AOC	Ms. Nancy Swetnam, AOC
Ms. Nina Preston, AOC	Ms. Lisa Price, Public
Ms. Theresa Barrett, AOC	Ms. Candy Wheeler-Ruby, Public

STAFF:

Ms. Kay Radwanski	Ms. Tama Reily
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I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the November 7, 2008, meeting of the Committee on Superior Court (COSC) was called to order by the Hon. James A. Soto, chair, at 12:33 p.m. The meeting was conducted telephonically.

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Proposed Amendments to Arizona Code of Judicial Administration (ACJA) § 7-202: Fiduciaries

Linda Grau, AOC Certification & Licensing Division (CLD), re-addressed the committee regarding the proposed amendments to ACJA § 7-202: Fiduciaries. This proposal was presented to the committee at the September 26, 2008, meeting, at which time the committee tabled the issue to have additional time to review it.

Ms. Grau explained that since the committee's September review of the proposal, the board went back and requested that alternative proposed language be submitted in order to address some of this committee's questions. In particular, CLD sought input on the question about restricting or prohibiting the ability of fiduciaries to delegate non-informed consent, or non-contractual agreement related activities. The matters were addressed by the Fiduciary Board at its October meeting, and the board adopted alternative provisions. The proposed changes include codification of the eligibility requirement; elimination of a prequalification, core competency exam process; additional clarification of the proposed optional trainee provision, and a definition of *active and direct supervision* with regard to the certified fiduciary's responsibility when the fiduciary is supervising trainees. Ms. Grau concluded her presentation with a request for a motion from COSC to recommend that the Arizona Judicial Council adopt the proposed amendments.

The committee then heard comments from two members of the public who are fiduciaries. (See Public Comments section.) Following their statements, Ms. Grau responded that the reference made to 7-201(H)(6)(k)(13), relating to the ability to delegate tasks was a misinterpretation of that subsection. She explained that it is a section used by the board when stating grounds for formal discipline. She added that there is currently nothing in the code of conduct that says what tasks can or cannot be delegated. What the proposed amendments are offering is a limitation that provides that the certified fiduciary alone can make those informed consent and contractual agreement-related decisions.

Committee Comments/Concerns:

In making a motion to oppose amendment of ACJA § 7-202, Judge Gould said he believed that that the current code is adequate as written. Fiduciaries are sufficiently responsible and accountable for any misconduct that occurs, whether by themselves or by someone under their supervision. He said the proposed amendment would make it more difficult to recruit fiduciaries, particularly in rural counties, and simply make it more difficult for the fiduciaries to run their offices and use their discretion. Judge Chavez seconded the motion, and there was no further discussion.

MOTION: To oppose proposed amendments to ACJA § 7-202:
Fiduciaries. Motion seconded. Approved 13-2-0
COSC-08-020

B. 2009 Meeting Dates

Judge Soto announced the proposed meeting dates for 2009. The dates are:

Friday, February 27, 2009

Friday, May 22, 2009

Friday, September 25, 2009

Friday, November 6, 2009

There was some discussion by committee members that May 15, 2009, might work better than May 22, because of the Memorial Day holiday. Committee staff was directed to look into the possibility of rescheduling the meeting to May 15, 2009. The consensus was that no formal action was needed to approve the dates.

III. OTHER BUSINESS

Good of the Order/Call to the Public

Public Comments:

Lisa Price, president of the Arizona Fiduciaries Association and a private fiduciary, stated that changes to ACJA 7-202 are unnecessary because they are already addressed in the current administrative code sections dealing with fiduciaries. She provided an example, saying that one of the changes being proposed is related to the ability of a fiduciary to delegate tasks to someone that the fiduciary knows does not have the qualifications to perform the task. That is addressed in ACJA § 7-201(H)(6)(k)(13), which specifically states this. Additionally, the issue of informed consent is provided in ACJA § 7-202(J)(3), the code of conduct for fiduciaries. It also states the fiduciary alone is ultimately responsible for the decisions made on behalf of a ward or protected person. She said the proposal being presented also makes a statement that is a misrepresentation, stating "the fiduciaries have opposed this because designated principals do not believe they should be responsible for the actions of their staff." The concern they have voiced to the Fiduciary Board is that when the staff is certified and a complaint is filed, it is only the designated principal who is being brought up on any disciplinary action, not also the certified fiduciary who actually committed the wrongdoing.

Candy Wheeler-Ruby, a public fiduciary and member of the Arizona Fiduciary Board, stated that she concurred with Ms. Price's statements. She also expressed the belief that if she is responsible for and can be held accountable for what occurs in her office and with her clients, then she should be able to hire persons that she feels are qualified to do the tasks for which she hires them.

Member Comments:

Judge Newton informed the committee that this would be his last meeting, as his committee term is expiring and he plans to retire. He was thanked for his ten years of service to the committee.

Next Meeting

Friday, February 27, 2009

10:00 a.m. – 3:00 p.m.

Conference Room 345 A/B

Arizona State Courts Building

1501 W. Washington

Phoenix, AZ 85007

The meeting was adjourned at 12:48 p.m.