

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, February 27, 2009
Arizona State Courts Building
Conference Room 345 A/B
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable James A. Soto	Honorable Michael Jeanes
Honorable Eddward Ballinger	Ms. Deborah Schaefer, proxy for the Honorable David Mackey
Honorable James E. Chavez	Honorable Margaret Maxwell
Honorable Norman Davis	Honorable Stephen McCarville
Honorable Robert Duber II	Honorable Colleen McNally
Honorable George Foster - telephonic	Ms. JoJene Mills - telephonic
Honorable Sue Hall - telephonic	Mr. Marcus Reinkensmeyer
Mr. Joshua Halversen - telephonic	Honorable Stephen Villarreal - telephonic
Honorable Danna Hendrix	Ms. Susan Wilson
Honorable Bethany Hicks	
Honorable Cathy Holt	

MEMBERS ABSENT:

Honorable Patricia Escher	Mr. Tim Hardy
Honorable Richard S. Fields	Honorable Charles Harrington
Honorable Andrew Gould	Honorable Kenneth Lee

PRESENTERS/GUESTS:

Ms. Karen Pulley, Department of Corrections	Ms. Patience Huntwork, AOC
Mr. Joe Cesko, Department of Public Safety	Ms. J.L. Doyle, AOC
Mr. Dan Levey, COVIC	Mr. Clifford Ford, AOC
Mr. Mike DiMarco, AOC	Ms. Kathy Waters, AOC
Mr. Jerry Landau, AOC	Mr. Patrick Scott, AOC
Mr. Jim Price, AOC	
Mr. Karl Heckart, 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 February 27, 2009, meeting of the Committee on Superior Court (COSC) was called to order by the Hon. James A. Soto, chair, at 10:04 a.m.

Judge Soto welcomed new members Joshua Halversen, Judge Danna Hendrix, and Susan Wilson. He also introduced Deborah M. Schaefer, who served as proxy for Judge David Mackey.

B. Approval of Minutes

The minutes of the September 26, 2008, and November 7, 2008, COSC meetings were presented for approval.

MOTION: To approve the minutes of the September 26, 2008, COSC meeting as presented. Motion seconded. Approved unanimously. COSC-09-01

MOTION: To approve the minutes of the November 7, 2008, COSC meeting as presented. Motion seconded. Approved unanimously. COSC-09-02

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. GAP Program – Fingerprints and Criminal Histories

Karen Pulley, Arizona Department of Corrections (ADC), and Joe Cesko, Department of Public Safety (DPS), provided an overview of the GAP program, a cooperative program between ADC and DPS that serves to ensure that all criminals are fingerprinted and assigned an Arizona State Identification Number (SID). They discussed the role the courts play in the continued success of the program. Ms. Pulley explained that DPS uses a defendant's fingerprints to establish a criminal history and assign a SID number to the person. If a person is not fingerprinted at the time of arrest (for example, cited and released or indicted by a grand jury), a gap in establishment of the criminal history develops. The Arizona Attorney General's Office has approved a DPS procedure to close the gap by comparing fingerprints taken by ADC when the defendant enters the prison system with a fingerprint placed on the court order at time of sentencing (pursuant to ARS 13-607). If the defendant's fingerprint on the court order is illegible or absent, DPS has no other print to compare with ADC's fingerprint card; therefore, the history will not exist in the FBI's criminal database. At present, 134 inmates lack criminal histories and SID numbers.

During discussion, Ms. Pulley was asked whether ADC can refuse to accept an inmate who arrives at Corrections with no SID. She said ADC has reviewed that option and considers it a possibility. It was suggested that inmates be brought back to court for fingerprinting, but Ms. Pulley said there is no guarantee that the inmate appearing in court is the same person who stood in front of the judge at the time of sentencing. As to the court orders, Mr. Cesko explained that a photocopy of the print on the sentencing order, if captured at 500 dpi (dots per inch), is sufficient quality for DPS purposes. Mr. Jeanes noted that the courts generally

scan documents at 200 dpi. Regarding a legislative solution, Patrick Scott, Administrative Office of the Courts (AOC), told members that HB2449, if passed into law, would require law enforcement to take the right index fingerprint of a person arrested on a cite-and-release offense before releasing the person.

B. Report and Rule Petition of the Advisory Committee on Supreme Court Rule 123 and Data Dissemination

Honorable Michael Jeanes, Clerk of the Maricopa County Superior Court, and Chair of the Rule 123 & Data Dissemination Committee, provided an overview of the committee and its examination of Rule 123, which concerns access to judicial records. The committee filed its recommendations in January 2009. It will reconvene in April 2009 to review and address comments received on the rule petition and possibly file an amended petition if indicated. He added that the committee is seeking feedback on the proposed changes and requested members provide their formal comments on the Court Rules Forum by April 1, 2009.

C. Protective Orders and Public Access

Kay Radwanski, AOC Court Services Division, addressed the committee on the issue of remote access to protection order case information on the Arizona Judicial Branch webpage. To comply with the Violence Against Women Act (VAWA), plaintiff information is not published on the site; however, the Committee on the Impact of Domestic Violence and the Courts (CIDVC) recently discussed whether defendant information and case history also should be removed. CIDVC proposed three alternatives: 1) remove all protection order case information from the web page; 2) limit access to only those cases for which there was a contested hearing and at which the order was affirmed or modified; or 3) leave the information (defendant information and case history) on the web page as currently published. Ms. Radwanski requested that COSC members recommend one of the three alternatives. CIDVC will consider the issue again at its next meeting after reviewing the recommendations of COSC and the Committee on Limited Jurisdiction Courts (LJC).

During discussion, Ms. Radwanski explained that public access, which allows any person to review the case file at a courthouse, would not be affected. The VAWA provision limits only on-line (remote electronic) access. She noted that LJC members discussed this issue and recommended removing protection order case information in its entirety. LJC members felt that landlords and employers use the Judicial Branch website as a quick background check method but do not read or understand the case history, missing crucial information, such as in cases where orders are quashed without a hearing. However, the case look-up can be a legitimate tool for landlords and employers who may need to verify that a protective order is actually in effect. Ms. Radwanski noted that one way to ensure that the case disposition is clear is to place it more prominently on the web page, on the first screen that a viewer would see, so the viewer would not have to scroll through the information.

MOTION: To maintain the status quo with the defendant information and case history currently published on the web page. Motion seconded. Vote: 8-10-0. Motion failed. COSC-09-03

MOTION: To provide limited access by publishing defendant information and case history only in cases in which the order has been affirmed or modified after a contested hearing. Motion seconded. Vote: 12-4-2. Motion passed. COSC-09-04

D. R-09-0001 – Petition to Amend Rule 31.6, Rules of Criminal Procedure, and Rule 103, Rules of Procedure in Juvenile Court

Dan Levey, a member of the Commission on Victims in the Courts (COVIC), briefed committee members on COVIC's pending rule petition, R-09-0001, which seeks to bring consistency to the requirements on disbursement of restitution payments collected by the court during pending appeals. At present, there is a discrepancy in how adult and juvenile courts address this issue. The goal is to attain a statewide standard and ultimately ensure that victims receive consistent judicial rulings from case to case. Mr. Levey invited COSC members to file comments to the petition on the Court Rules Forum webpage at <http://www.dnnsupremecourt.state.az.us/AZSupremeCourtMain/AZCourtRulesMain/CourtRulesForumMain/CourtRulesForum/tabid/91/forumid/3/postid/742/view/topic/Default.aspx>. Comment deadline is May 20, 2009.

E. ACJA 5-205 Collections

Mike DiMarco, manager of the Consolidated Collections Unit, AOC Court Services Division, presented a new code section and requested a favorable recommendation from COSC. ACJA § 5-205, concerning collections, codifies Administrative Orders 97-57, 2003-126, and 2005-029, all of which deal with the Fines, Fees and Restitution Enforcement (FARE) program. Mr. DiMarco explained that the proposed code section contains no significant changes in the new section; it simply brings the program, as it exists currently, into compliance with the establishing administrative order.

MOTION: To approve ACJA 5-205 Collections with discretion given to the FARE Advisory Committee to continue to address language in this section regarding civil filing fee deferrals. Seconded. Passed unanimously. COSC-09-05

F. Legislative Report

Jerry Landau, AOC Director of Government Affairs, gave an update on proposed legislation that would impact superior courts.

HB2024: LAW ENFORCEMENT; DUTY FITNESS EXAMINATION

Mr. Landau said he expected this bill to be amended in the Military Affairs Committee. It requires the employer of a law enforcement or probation officer to provide the results of a fitness for duty examination to the officer within three days of the employer receiving the results. The amended version will require medical reports to be exchanged with the employee after a second evaluation by an independent doctor.

HB2236: COUNTY OFFICES; BUSINESS PERIODS

Mr. Landau reported that legal research shows the bill does not apply to the court. The bill covers Title 11 officers while courts are located in Titles 9, 11 and 12.

SB1087: AGGRAVATED DOMESTIC VIOLENCE; VIOLATION

This bill would dramatically increase the workload of the superior court as well as probation. Mr. Landau said it is unclear whether this bill will progress.

SB1106: DOMESTIC VIOLENCE; CHILD CUSTODY

Mr. Landau said he expected the requirement of written findings of fact to be removed from this bill, along with some other changes. The bill would require the court to make written findings of fact, in addition to considering all of the relevant factors, to determine if a parent, who is seeking custody of a child, has committed an act of domestic violence. Current law (ARS 25-403.03) establishes a rebuttable presumption that awarding custody to a parent who has committed domestic violence is not in a child's best interests. The standard of proof to rebut the presumption is by a preponderance of the evidence, but the proposed bill would raise the standard of proof to clear and convincing evidence.

HB2449: MANDATORY FINGERPRINTING; CENTRAL STATE REPOSITORY

This bill would require persons arrested for specified offenses to be fingerprinted prior to being released and requires the arresting authority to forward a report to all courts involved, indicating that the person was fingerprinted. The Arizona Criminal Justice Commission (ACJC) currently is trying to deal with a 40- to 60-percent compliance rate with fingerprinting and forwarding of the reports throughout the state. ACJC is proposing a requirement that an index fingerprint be placed on every citation. Discussions will continue regarding relieving the Clerks of Court from having to handle final disposition reports and shifting the responsibility back to prosecutors.

HB2058: COMMISSIONERS; QUALIFICATIONS

Requires a superior court commissioner to be a licensed member of the State Bar of Arizona for at least five years, mirroring the qualifications for a superior court judge. Current law requires a commissioner to have engaged in the practice of law for at least three years preceding appointment.

G. Criminal Rules Video-Conferencing Advisory Committee

Patience Huntwork, staff attorney to the Supreme Court, discussed establishment of the Criminal Rules Video-Conference Advisory Committee (CRVAC). The committee will review issues raised by rule petition R-06-0016, which concerns the appearance of defendants via video-conferencing in criminal proceedings. The committee will provide its recommendations to the Arizona Judicial Council (AJC) in June 2009.

H. Rule Changes Update

Patience Huntwork, staff attorney to the Supreme Court, provided an update on existing and pending rule change petitions that will impact superior courts. An on-line list of the rules and related information can be found at <http://www.supreme.state.az.us/rules/>.

I. E-Filing Update

Jim Price, AOC Information Technology Division, outlined the statewide e-filing initiative. He explained that the AOC has contracted with a vendor, Intresys, to provide a product that will serve all courts and all case types. The AOC will maintain the infrastructure of the e-filing system. The Maricopa County superior and justice courts, the initial pilot courts, are

expected to begin implementation in Summer 2009. Appeals courts are expected to begin using e-filing in the fall, followed by all other courts. The long-term goal is to have e-filing occur electronically from the user all the way through to the court and its case management system. Currently, Intresys provides services to a few large jurisdictions, including California, New York, and Florida, with its TurboCourt e-filing application. Mr. Price gave members a brief online demonstration of the steps to filing a case on the TurboCourt website (<http://www.turbo-court.com/>) and suggested they peruse the sight to get an idea of the features and ease of use an e-filing application provides.

J. ACJA 6-106 Personnel Practices

JL Doyle, AOC Adult Probation Services Division, presented proposed changes to ACJA § 6-106 that would eliminate the requirement for mandatory testing when an employee is involved in an accident in a state vehicle, if the officer on scene does not have reasonable suspicion that the driver is under the influence of alcohol or other substance. The change does not preclude any chief or director from requiring drug testing based on his or her own reasonable suspicion.

MOTION: To approve ACJA § 6-106: Personnel Practices as presented. Seconded.
Vote: 17-1-0. Motion passed. COSC-09-06

ACJA 6-202.01 Evidence-Based Practice – Intensive Probation Supervision

This code section has been withdrawn and will not be submitted to AJC at this time.

ACJA 6-204 Interstate Compact Probation

Ms. Doyle also presented proposed changes to ACJA § 6-204, which are necessary because of rule amendments that became effective January 2008. The changes are non-substantive, adding two new definitions in the definitions section and minor changes in the language.

MOTION: To approve ACJA § 6-204: Interstate Compact Probation as presented.
Seconded. Motion passed unanimously. COSC-09-07

ACJA 6-204.01 Evidence-Based Practices – Interstate Compact Probation

Ms. Doyle briefed the committee on proposed changes to code section 6-204.01. The changes are necessary because of the roll-out of the evidence-based practices for probation. The code change would bring together the interstate compact code and the standard probation code, so that incoming interstate compact offenders on probation in Arizona would be supervised under the evidence-based requirements.

MOTION: To approve ACJA § 6-204.01: Evidence-Based Practices Interstate Compact Probation as presented. Seconded. Vote: 17-0-1. Motion passed. COSC-09-08

ACJA 6-205 Drug Treatment and Education

Clifford Ford, AOC Adult Probation Services Division, presented proposed revisions to ACJA § 6-205 to bring the code in line with evidence-based principles regarding assessments and evaluations for substance abuse treatment.

During discussion, Mr. Ford was asked about changes at page 7, paragraph 4, that appear to limit the number of service providers. Concern was expressed that the proposed amendment would narrow the number of eligible treatment providers, particularly in rural counties where there are fewer professionals. Also, members asked whether the code change would restrict the flexibility of probation department administrators to choose, based upon the particular constraints, appropriate care providers. Ms. Waters explained that the code change creates no more requirements for care providers than already required. She noted that Behavioral Health standards govern treatment programs. She said that larger probation departments, as in Maricopa, Pima, and Yuma, have internal treatment providers who meet many of the licensing requirements. If they do not meet the licensing requirements, the probation departments use contracted Regional Behavioral Health services, where state requirements dictate required standards. Ultimately, the code change would create consistency with Behavioral Health requirements. Ms. Waters noted that the Committee on Probation had no concerns about this particular provision.

MOTION: To approve ACJA § 605: Drug Treatment and Education Fund as presented.
Seconded. Vote: 7-6-3. Motion passed. COSC-09-09

K. Parenting Plans Workgroup

Judge Colleen McNally, co-chair of the Parenting Plans Workgroup, updated the committee on the workgroup's progress and presented its third draft. The draft will be published on the Arizona Judicial Branch website where a page is currently being developed and set up to receive comments. If members would like to offer feedback on the current draft prior to that time, they can send their comments to Kay at KRadwanski@courts.az.gov. The link for the new webpage will be sent to members once it is available.

III. OTHER BUSINESS

Judge Soto announced that Judge Chavez will retire in March and thanked him for his service to COSC. Judge Chavez' departure creates a rural county judicial vacancy on the committee.

A. Next Meeting:

Friday, May 15, 2009, 10:00 a.m. – 3:00 p.m.
Arizona State Courts Building, Conference Room 345
1501 W. Washington, Phoenix, Arizona

B. Good of the Order/Call to the Public

No comments offered.

The meeting was adjourned at 2:43 p.m.

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, May 15, 2009
Arizona State Courts Building
Conference Room 345 A/B
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable James A. Soto	Honorable Michael Jeanes
Honorable Eddward Ballinger	Honorable Kenneth Lee
Honorable Patricia Escher - <i>telephonic</i>	Honorable David Mackey
Honorable Sue Hall	Honorable Stephen McCarville
Mr. Josh Halversen	Honorable Colleen McNally
Mr. Tim Hardy	Ms. JoJene Mills - <i>telephonic</i>
	Mr. Phil Knox, proxy for Marcus Reinkensmeyer
Honorable Charles Harrington	Honorable Stephen Villarreal
Honorable Danna Hendrix	Ms. Susan Wilson
Honorable Bethany Hicks	
Honorable Cathy Holt	

MEMBERS ABSENT:

Honorable Norman Davis	Honorable George Foster
Honorable Robert Duber II	Honorable Andrew Gould
Honorable Richard S. Fields	Honorable Margaret Maxwell

PRESENTERS/GUESTS:

Honorable Bruce Cohen - <i>telephonic</i>	Cindy Cook, AOC
Cindy Trimble, AOC	Honorable Antonio Riojas
Ken Kung, AOC	Jeremy Mussman
Amy Love, AOC	Mark Meltzer, AOC
Katy Proctor, AOC	Kathy Sekardi, AOC
Niki O'Keefe, AOC	Theresa Barrett, AOC
Jim Price, 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 May 15, 2009, meeting of the Committee on Superior Court (COSC) was called to order by the Hon. James A. Soto, chair, at 10:05 a.m.

Judge Soto introduced Pima County Superior Court Judge Steven Villarreal, who, has attended previous meetings telephonically, and new member Joshua Halversen, who had attended his first meeting in February telephonically.

B. Approval of Minutes

The minutes of the February 27, 2009, COSC meeting were presented for approval.

MOTION: To approve the minutes of the February 27, 2009, COSC meeting as presented. Motion seconded. Approved unanimously.
COSC-09-010

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Update from the Child Support Guidelines Review Committee

Judge Bruce Cohen, chair of the Child Support Guidelines Review Committee (GRC), joined the meeting telephonically to present a report on the work of the GRC. He provided a summary of the proposed Child Support Guidelines and the expected timeline for completion of the committee's final product. The draft final report will become available within the next few weeks. Members were provided with the current draft at the meeting. Judge Cohen explained that the GRC is requesting that COSC establish a workgroup to do the following:

- 1) Review the GRC's "Draft Final Report and Recommendations" and offer its comments, input and feedback to the GRC, prior to the September COSC meeting.
- 2) Assist the GRC with broadcasting the report and directing stakeholders to the GRC comments website.
- 3) Provide recommendations to the GRC chair and staff regarding information to present in September that colleagues and fellow COSC members need in order to make an informed decision regarding the child support guidelines.

In response to member questions, Judge Cohen explained that the goal is for the proposed guidelines to establish a standard of support for children that is consistent with the reasonable needs of children. Where increases occur in the support award, factors like significant disparity of income have been considered. For those paying parents whose support amount does increase, there will be a phase-in period to allow for adjustment to the payment schedule. Ultimately, the development of the proposed guidelines was undertaken with the well-being of the children being paramount.

Judge Cohen offered to meet with family judges around the state once the draft version is completed in order to walk them through the guide and to gather some of their comments and insight. The GRC will present the final product before this committee in September. In the interim, Judge Cohen requested that COSC establish a workgroup to provide input prior to that meeting. Members interested in

participating in the workgroup were asked to contact Kay Radwanski at kradwanski@courts.az.gov.

B. Financial Advisory Workgroup

Cindy Trimble, acting manager, and Ken Kung, financial specialist, of the Court Services Division's Court Operations Unit addressed the committee on the formation of a Financial Advisory Workgroup to review the Minimum Accounting Standards (MAS). Since coming into use by the court community in January 2008, the current MAS appear to need some clarifications and technical corrections. Ms. Trimble stated they are seeking volunteers from COSC to participate on this workgroup. They would be working with Court Services staff. The goal is for the workgroup to have something prepared to go before the Arizona Judicial Council (AJC) in December 2009, so meetings need to start in the early part of June. Members who would like to assist on this workgroup were asked to contact either Kay Radwanski at kradwanski@courts.az.gov, or Cindy Trimble at Ctrimble@courts.az.gov.

C. ACJA § 6-209: Adult Probation Services to Limited Jurisdiction Courts

Dori Ege, manager in the Adult Probation Services Division, presented proposed ACJA Section 6-209: Adult Probation Services to Limited Jurisdiction Courts. The purpose of this section is to codify an existing practice affecting offenders sentenced in limited jurisdiction courts, who are then transferred to a superior court probation department for supervision. The code was passed by the Committee on Probation last week.

MOTION: To approve ACJA § 6-209: Adult Probation Services to Limited Jurisdiction Courts as presented. Motion seconded. Approved unanimously. COSC-09-011

D. H1N1 Resources for Courts

Niki O'Keeffe, director of the Administrative Services Division, addressed the committee on the status of the H1N1 flu. She discussed the challenges faced by the court community during an outbreak of this nature. She advised members the Public Health Bench Book is available online on the Wendell website. In addition, she provided the website address for Emergency Preparedness information (<http://supreme8/status/>), which gives information and numerous other resources regarding public health. Written materials on Pandemic Emergency Preparedness were provided.

E. Arizona TurboCourt Project

Jim Price, project manager in the Information Technology Division, and Cindy Cook, specialist in the Court Services Division Case Flow Management Unit, brought members up to date on the status of the E-filing project. Mr. Price discussed the development schedule and target dates for various courts to begin full E-filing. He also reported that Arizona's e-file site has been coined AzTurboCourt.gov. It will function similarly to the website of the Arizona Department of Transportation with

the main page linking users to functions like the child support calculator, e-filing, perhaps FARE, and so forth. He also noted that the E-court Policy Subcommittee has issued some policy decisions that can be viewed online at <http://www.supreme.state.az.us/eCourts/Documents.htm>.

Ms. Cook reported that the Committee on the Impact of Domestic Violence and the Courts (CIDVC) recently formed a workgroup to develop intelligent forms for e-filing of protection orders. She requested members provide their feedback or share any suggestions they have on e-forms by contacting her at Ccook@courts.az.gov.

F. Recommendations of the Criminal Rules Video-Conference Advisory Committee

Judge Antonio Riojas, chair of the Criminal Rules Video-Conference Advisory Committee (CRVAC), and Jeremy Mussman, deputy director, Maricopa County Public Defender, addressed the committee regarding proposed amendments to Rule 1.6, Arizona Rules of Criminal Procedure, which provides for appearances by defendants via videoconferencing in court proceedings. Judge Riojas noted that a majority of the committee supports the proposed amendments; however, a minority of the membership oppose the amendments. The minority view will be presented to COSC by Mr. Mussman.

Judge Riojas summarized the proposed amendments, explaining they would expand the use of videoconferencing in court proceedings, while upholding the rights of the defendant. Provisions were included to ensure adequacy of interactive audiovisual systems and availability of interpreter service and compliance with victims' rights laws. He stated that much of the debate in CRVAC centered on the inclusion of initial appearances under those cases in which appropriateness of videoconferencing would be determined by the courts. The majority concluded there would be no infringement upon the defendant's constitutional rights or that any injustice would result from conducting these proceedings by video.

Mr. Mussman related the minority's opposition, stating they believe the amendments are overly broad, premature, and highly vulnerable to legal challenge. Of primary concern is the disregard for the defendant's right to appear in court, where the proposal would give sole discretion to the court to determine whether videoconferencing will take place. The minority's view is that Rule 1.6 should permit the defendant to decide if he/she wishes to participate in any proceeding via videoconferencing. Another of the minority's concerns is that state-of-the-art videoconferencing technology is not available at present, and the current budgetary constraints prohibit significant funding for technological upgrades. Thus, the minority maintains that under the proposed rule, videoconferencing could consist of a laptop and a video camera in some courts.

Committee discussion revealed general support for the idea of videoconferencing in court proceedings; however, concerns were expressed by several members:

- The urgency with which the rule amendment is being pursued is uncalled for, especially in light of the lack of readiness and preparation.
- The scope of the proposal is too broad – and no other states using videoconferencing have a rule as broad as this.
- The equipment currently in place in most courts would not allow adequate communication for defense counsel and interpreter and the court. Confidential communication between defendant and counsel would be compromised.
- Technical standards and guidelines for the operation of such a system need to be developed prior to going forward with amendments to this rule.

Despite the concerns being voiced, comment was made that judicial discretion should be sufficient to make the determinations proposed by the amendments. A motion was then made to approve the majority proposal.

MOTION: To support the majority’s proposed amendments to Rule 1.6 Arizona Rules of Criminal Procedure, except that the committee’s support shall not be construed as an advisory opinion with respect to any legal challenges that may come before the court, or that are presently pending before the court; rather the support of the committee reflects its support of efficiency and convenience within the confines of applicable law. Motion seconded. Vote: 5:12:1. Motion failed. COSC-09-012

G. Legislative Report

Katy Proctor, legislative officer, and Amy Love, legislative liaison for the AOC, briefed the committee on legislation impacting the superior courts. Ms. Proctor reported that the Senate is still not hearing bills, as they are waiting for the FY10 budget to be resolved. Therefore, only a few bills have come out of the process.

HB2374: CHILD PROTECTIVE SERVICES WORKERS S/E SAME SUBJECT

Authorizes CPS to take a child into temporary custody when there are reasonable grounds to believe the child is the victim of criminal conduct. The child in temporary custody must not be asked to make a statement relating to the incident before any charges have been filed. This bill raised concerns because of the way it was drafted, which implied that the child could be prohibited from speaking with a judge or a court. Ms. Proctor said discussions are ongoing at this time to try to develop a new draft.

SB1106: DOMESTIC VIOLENCE; CHILD CUSTODY

Authorizes a court granting custody of a child to not consider which of the parents is more likely to allow the child continuing contact with the other parent only if the court determines that one parent is acting in good faith to protect the child from domestic violence or child abuse. There have been concerns on this bill from the family law bench, again because of the way the bill was drafted. It would require

written finding of fact on any evidence introduced alleging domestic violence abuse. Since in these cases many of the litigants are pro per, the process can be severely delayed. The Arizona Coalition Against Domestic Violence and Judge McNally have assisted in the rewriting of this bill.

H. Parenting Plans Workgroup

Judge Colleen McNally, chair of the workgroup, updated the committee on the progress of the Parenting Plans guide. She pointed out that they have changed the title of the guide to *Planning for Parenting Time: Arizona's Guide for Parents Living Apart*. She explained that work on the guide is nearly complete; however, there are some changes still in progress. Judge McNally asked for approval from COSC so the guide can go forward to the AJC June 2009 meeting to be approved *in concept* and so the workgroup can continue with the final revisions. This also would allow for information used in the guide to also be integrated into the TurboCourt e-filing project.

MOTION: To approve in concept the *Planning for Parenting Time: Arizona's Guide for Parents Living Apart* booklet in concept. Motion seconded. Approved unanimously. COSC-09-013

I. Strategic Agenda Planning

Theresa Barrett, manager, and Kay Radwanski, specialist, in the Court Services Division's Court Programs Unit, addressed the committee on the planning of the new strategic agenda for 2010 - 2015. Ms. Barrett provided information on the planning process and the role that AJC standing committees play in the development of the new agenda. Ms. Barrett reviewed some of the new initiatives that were proposed at the March 2009 AJC meeting, as well as some statistics on case filing trends and other information affecting the courts. Ms. Radwanski reviewed the features and demonstrated the registration process on the new Arizona Judicial Branch Strategic Agenda Planning Collaboration Tools website (www.sp2010.courts.az.gov), which has been set up to allow members to participate in and follow the progress of the new strategic agenda.

COSC was asked to consider using the remainder of the meeting time or establish a workgroup to discuss and amass potential initiative ideas for the new agenda. The deadline for providing the committee's suggestions is August 1, 2009, to allow time for the finalized agenda to be completed and presented at the AJC October 2009 meeting. After some discussion, the committee determined to hold a conference call in June or July with as many members as can join in at the time to discuss possible initiatives. Members were asked to review the information on the website before joining the call to be familiar with projects already on tap or those that have already been proposed, in order to have a more productive meeting.

III. OTHER BUSINESS

Judge Soto announced that this will be the last meeting for Judge Patricia Escher, who has served on the committee since 2002. She was thanked her for her time

and service to the committee. Judge George Foster's term also expires on June 30, 2009, and he did not seek reappointment.

A. Next Meeting:

Friday, September 25, 2009
10:00 a.m. – 3:00 p.m.
Conference Room 119 A/B
Arizona State Courts Building
1501 W. Washington
Phoenix, Ariz.

B. Good of the Order/Call to the Public

No comments were offered.

The meeting was adjourned at 1:45 p.m.

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, September 25, 2009
Arizona State Courts Building
Conference Room 119 A/B
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable James A. Soto	Honorable Michael Jeanes
Honorable Eddward Ballinger	Honorable Kenneth Lee
Honorable Michael J. Burke	Honorable David Mackey
Honorable James Conlogue	Honorable Margaret Maxwell
Honorable Michael J. Cruikshank	Honorable Stephen McCarville
Honorable Norman Davis	Honorable Colleen McNally
Honorable Andrew Gould	Ms. JoJene Mills
Honorable Sue Hall	Marcus Reinkensmeyer
Mr. Josh Halversen - <i>telephonic</i>	Honorable Monica L. Stauffer
Mr. Tim Hardy	Honorable Stephen Villarreal
Honorable Charles Harrington	Ms. Susan Wilson
Honorable Bethany Hicks	

MEMBERS ABSENT:

Honorable Robert Duber II	Honorable Danna Hendrix
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PRESENTERS/GUESTS:

Honorable Bruce Cohen	Ms. Amy Love, AOC
Ms. JL Doyle, AOC	Ms. Niki O'Keefe
Ms. Dori Ege, AOC	Ms. Susan Pickard, AOC
Ms. Melinda Hardman, AOC	Ms. Janet Scheiderer, AOC
Ms. Patience Huntwork, AOC	Mr. Jeff Schrader, AOC
Mr. Paul Julien, AOC	Mr. David Withey, 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 25, 2009, meeting of the Committee on Superior Court (COSC) was called to order by the Hon. James A. Soto, Chair, at 10:05 a.m.

Judge Soto welcomed the following new committee members:

Honorable Michael J. Burke, Presiding Judge, Superior Court in La Paz County
Honorable James Conlogue, Superior Court in Cochise County
Honorable Michael J. Cruikshank, Associate Presiding Judge, Superior Court in Pima County
Honorable Monica Stauffer, Presiding Judge, Superior Court in Greenlee County

B. Approval of Minutes

The minutes of the May 15, 2009, COSC meeting were presented for approval.

MOTION: To approve the minutes of the May 15, 2009, COSC meeting as presented. Motion seconded. Approved unanimously.
COSC-09-010

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Introduction – AOC Education Services Director

Mr. Paul Julien, AOC judicial education officer, introduced Mr. Jeff Schrade, new AOC education services director. Mr. Schrade was formerly the senior director for the Arizona Foundation for Legal Services and Education. Mr. Schrade shared his interest in the work of this committee, and he commented that he plans to become acquainted with the superior courts and the court community.

B. Child Support Guidelines Review Committee

Honorable Bruce Cohen, chair of the Child Support Guidelines Review Committee, (GRC) updated the committee on the status of the new Guidelines. He explained the committee's review process, what it encompassed, and the basis for their recommendations. The committee has been extended to continue its work through December 2009, with the final report and recommendations being presented to the AJC in October. The report, the new guidelines, and the calculator will be on the GRC webpage in early October, and COSC members were asked go to the website and test the calculator and provide feedback on the guidelines.

In response to members' comments, Judge Cohen noted the following:

- The complexity of the table and potential difficulty for pro pers has been discussed previously, and the GRC plans to look at simplifying the steps at its next meeting.
- The final report will contain the complete description of the methodology used in calculating support.
- A printed calculation process will be available for parents lacking access to a computer.
- The new guidelines do not serve to “redistribute income”; rather, they seek to balance the “earner’s priority” philosophy of the current guidelines, with the needs of the child, and to honor the child support statute, A.R.S. § 25-320, which states the support should maintain “the standard of living had the parents stayed together.”

- The calculator for the current guidelines will remain available for an indefinite period of time to allow for retroactive modifications.

Judge Cohen reported that the GRC will reconvene in December to review feedback received on the guidelines and complete any needed modifications. The final product will be presented to COSC in February 2009. Judge Cohen also thanked members of the COSC ad hoc subcommittee that met over the summer to provide input to the GRC.

C. Legislative Proposals – 2010 Session

Ms. Amy Love, legislative liaison for the AOC, discussed legislation passed in the recent session that impacts superior courts. A print-out of the more relevant bills was provided to members, as well as the legislative website, www.supreme.state.az.us/legupdate, should members wish to see a more exhaustive list of bills. Two bills highlighted by Ms. Love included:

SB1106: DOMESTIC VIOLENCE; CHILD CUSTODY

Authorizes a court granting custody of a child to refrain from considering which parent is more likely to allow the child continuing contact with the other parent if the court determines one parent is acting in good faith to protect the child from domestic violence or child abuse. Requires the court to consider specific findings as to allegations of domestic violence when making a custody determination.

SB1088: DOMESTIC VIOLENCE; DATING RELATIONSHIPS

Adds current or previous romantic or sexual relationships to the definition of domestic violence to qualify individuals seeking an order of protection. Ms. Love added there will be some clean-up on this bill for the 2010 session in order to ensure dating relationships are included in this definition.

Effective date for all of the legislation is September 30, 2009. Ms. Love reported that the only proposal for the 2010 legislative session being processed currently relates to implementation of E-filing and E-access to court records.

D. ACJA §§ 1-604 and 1-605: Remote Electronic Access to Case Records and Requests for Bulk or Compiled Data

Ms. Melinda Hardman, analyst in the AOC Court Programs Unit, presented two new proposed code sections. Ms. Hardman reported that the code sections came about as a result of the passage of the rule petition amending Supreme Court Rule 123 and governing remote electronic access to records maintained in the judiciary, including bulk data, database access, and case look-up websites. The new code sections deal with the standards and procedures for courts to release records.

In response to member comments, Ms. Hardman and the Honorable Michael Jeanes, Chair of the Rule 123 Committee, explained that sealed or non-sealed records were not included in the committee's review of Rule 123. The primary focus of the committee was remote access, and that access pertains strictly to civil and criminal documents. Family court records, probate records, and juvenile records are excluded from access. In addition, Ms.

Hardman described some of the measures included in the rule to prevent misuse of bulk data released to a vendor, including a user agreement and liability insurance policy.

MOTION: To approve ACJA § 1-604: Remote Electronic Access to Case Records as presented. Motion seconded. Approved unanimously. COSC-09-011

MOTION: To approve ACJA § 1-605: Requests for Bulk or Compiled Data as presented. Motion seconded. Approved unanimously. COSC-09-012

E. ACJA § 1-303: Code of Conduct for Judicial Employees

Mr. David Withey, AOC chief legal counsel, presented new ACJA § 1-303: Code of Conduct for Judicial Employees. This code section was previously presented to COSC in February 2008; however, members had concerns about amendments addressing employees seeking judicial department elective office. The new code rectifies those concerns and was developed so it corresponds with the new Code of Judicial Conduct where the same principles apply to both judges and employees. Mr. Withey described the amendments, additional language, and new provisions in the code section. The code section is expected to be presented at the October or December AJC meeting.

During discussion, several members voiced concerns that the language in Rule 2.6, which states a “judicial employee *shall* provide authorized assistance,” could inadvertently lead to staff giving legal advice. In addition, members of the Clerks’ Association reported having issues about some of the language in Rules 4.3 and 4.4, concerning procedures for judicial employees running for elective office. A conference call is planned for the Clerks and Mr. Withey next week to hone and provide clarity in the language exemption.

MOTION: To approve ACJA § 1-303: Code of Conduct for Judicial Employees as presented. Motion seconded. Motion and second withdrawn.

MOTION: To table the matter of ACJA § 1-303: Code of Conduct for Judicial Employees until further discussion and modification has taken place. Motion seconded. Approved unanimously. COSC-09-013

F. ACJA § 6-201: Adult Intensive Probation Evidence-Based Practices

Ms. JL Doyle, AOC Adult Probation Services, presented the amended proposed code section ACJA § 6-201: Adult Intensive Probation Evidence-Based Practices. This code was previously presented to COSC in September 2008. Ms. Doyle explained the changes that have been made to the code section, which serve to simplify comparison between current intensive probation supervision (IPS) and newly proposed IPS. In addition, the changes ensure the code remains consistent with the intent of the IPS statute, and specific guidelines have been added in to address the change in the caseload ratio of officers to probationers.

MOTION: To approve ACJA § 6-201: Adult Intensive Probation Evidence-Based Practices. Motion seconded. Approved unanimously. COSC-09-014

G. ACJA § 6-211: Inter-County Courtesy Transfer

Ms. Dori Ege, AOC Adult Probation Division manager, presented proposed ACJA § 6-211: Inter-County Transfers. Ms. Ege explained that this code section was put into place in January 2004; however, it recently underwent review and revision aimed at clarifying the language and improving the process by which courtesy transfers of probationers are made from county to county. Ms. Ege directed the committee's attention to section F(5) of the code, where some language changes have been made since this meeting's materials were prepared. The new language reads as follows:

“A judge from the sending county may assess the probationer who requests a transfer additional amounts monthly, as part of the probation service fees, charged pursuant to A.R.S. § 13-901(A) following due consideration of the probationer's ability to pay the increased fee.”

Ms. Ege explained the changes were recommended by legal counsel to ensure consistency with the statute allowing the authority to assess any kind of additional probation service fees. The code section was approved by the Committee on Probation in early September with the exception of striking the first five words “In accordance with caseload capacities...” in sections E(1) and E(2), and approved by the Committee on Limited Jurisdiction Courts with the changes described. The code section will be presented to the AJC in October.

MOTION: To approve ACJA § 6-201: Inter-County Courtesy Transfer as written and amended. Motion seconded. Approved unanimously. COSC-09-015

H. ACJA § 3-302: Parent Education Programs

Ms. Susan Pickard, specialist in the AOC Court Programs Unit, presented proposed code section ACJA § 3-302: Parent Education Programs. The proposed amendments would add the option of distance learning methods, such as online, correspondence, or cable television, to parent education programs. In addition, the responsibility for review and approval of any videotape used in a parent education program would be placed with the superior court in each county. Ms. Pickard noted that the Arizona Conciliation Court Roundtable group has reviewed and approved the code section. A best practices checklist for courts considering online parent education classes was provided to members.

Judge McNally related Maricopa County's experience with the pilot program for parent education programs. She did note that the pilot, by administrative order, was limited to persons who meet ADA qualifications, live out of state, or are incarcerated.

MOTION: To approve ACJA § 3-302: Parent Education Programs as presented. Motion seconded. Vote: 19-2-0. Motion passed. COSC-09-016

I. Parenting Plans Workgroup

Judge Colleen McNally, co-chair of the Parenting Plans Workgroup, reported that the workgroup has now completed the parenting time guide. She reviewed the history of the parenting guide, explained the composition of the workgroup, and the process they used to complete the guide. She added that the guide is to be published on-line once it receives approval from COSC and AJC. Judge McNally thanked COSC for sponsoring the workgroup. A copy of the new parenting plans guide was provided in the meeting materials.

MOTION: To approve the final draft of “Planning for Parenting Time: Arizona’s Guide for Parents Living Apart” as presented. Motion seconded.
Approved unanimously. COSC-09-017

J. Update on the Strategic Plan

Ms. Janet Scheiderer, director of the AOC Court Services Division, briefed the committee on the progress of Chief Justice Berch’s strategic agenda. She stated they have consolidated the suggestions received from the various committees, commissions, and associations and are in the process of reviewing and editing. She added that due to limited resources, it would not be possible to incorporate all suggestions, and some balancing of priorities would be necessary. Possible strategic agenda titles are still being considered, and members were welcomed to continue providing ideas for this. The next step will be to present the draft document to AJC for input. It will then be provided to the whole court community for additional input.

K. H1N1 Update

Ms. Niki O’Keefe, director of the AOC Administrative Services Division, and courts’ liaison with the executive branch for the H1N1 flu, updated the committee on the current recommendations from the Arizona Department of Health Services for the 2009 – 2010 influenza seasons. Due to the effects of the first wave of H1N1 in 2009, employers are being encouraged to take recommendations seriously. Ms. O’Keefe encouraged members to contact her by telephone (602-452-3306) if they have any questions. Informational handouts and brochures were provided in the meeting materials.

L. Update: Arizona Supreme Court Rules Agenda

Ms. Patience Huntwork, staff attorney to the Arizona Supreme Court, reported on the new rules impacting the superior courts. She reminded members they may view rules, pending rule petitions, and amendments to rules on the Arizona Court Rules Forum website at <http://www.supreme.state.az.us/rules/>. All of the rules reviewed by Ms. Huntwork become effective January 2010, unless indicated otherwise.

R-06-0016

Amends Rule 1.6, Rules of Criminal Procedure. Provides for appearances by defendants via videoconferencing, at the sole discretion of the court and without the consent of the defendant, under specified conditions.

R-08-0015

Amends Rule 50(b), Rules of Civil Procedure, to remove the requirement that a party renew a motion for judgment as a matter of law at the close of all evidence.

R-08-0017

Amends Rules 6(c) and 6(e), Rules of Protective Order Procedure, to conform with amendments to A.R.S. § 13-3602(E) and A.R.S. § 12-1809(E) and to make technical changes to Rules 1, 2, 4, and 7 of the Rules of Protective Order Procedure.

R-08-0019

Amends Rules 23 and 28, Rules of Procedure for the Juvenile Court and Rules 7.3 and 7.5, Rules of Criminal Procedure, allowing for court orders that juveniles or adults charged with specified offenses submit biological samples for DNA testing.

R-08-0020

Amends Rule 41, Rules of Procedure for Juvenile Court et al, implementing new provisions concerning open court proceedings and notice requirements for juvenile court.

R-08-0024

Amends Rule 27.4, Rules of Criminal Procedure, to allow courts to adjust the term of a probationer's supervised probation based on "earned time credit."

R-08-0025

Adopts Rule 97, Rules of the Supreme Court, which establishes written performance standards and a public review process for superior court commissioners.

R-08-0026

Amends Rule 28.2, Rules of Criminal Procedure, which grants prosecutors and/or law enforcement agencies discretion to dispose of evidence, specifically, court-ordered fingerprints.

R-08-0027

Amends and adopts on a permanent basis Rules 57.1 and 57.2, Arizona Rules of Civil Procedure, related to procedures for victims of identity theft.

R-08-0031

Amends Rules 74, et al Rules of Family Procedure, dealing with parenting coordinator recommendations and summary judgment motions.

R-08-0034

Amends Rule 4, Rules for Judicial Performance, relating to organization of conference teams, dissemination of findings, and confidentiality.

R-08-0035

Amends Rule 408, Rules of Evidence, prohibiting the use of settlement offers for impeachment purposes.

R-08-0036

Amends Rules 703 and 705, Rules of Evidence, recognizing the court's discretion not to allow an expert to disclose to the jury inadmissible evidence upon which the expert's opinion is based.

R-08-0038

Amends Rule 96, Rules of the Supreme Court, powers and duties of court commissioners.

R-08-0039

Amends Rule 123, Rules of the Supreme Court, Rule 2.3 Rules of Criminal Procedure, and adds Rule 5(f), Rules of Civil Procedure, to provide greater access to case records.

R-09-0004

Adopts Rule 502, Rules of Evidence, concerning inadvertent disclosure of information covered by attorney-client privilege.

R-09-0009

Adopts Rule 804(b)(5), Rules of Evidence, a new hearsay exception.

R-09-0013

Amends Rules 48.1, 50, 52-62 and 65 and Forms 1, 2, and 3, and adds Form 1A, Rules of Procedure for the Juvenile Court.

R-09-0015

Amends Rules 55 and 66, Rules of Procedure for Juvenile Court, conforms the rules to recent statutory changes, case law, and Indian Child Welfare Act.

The following rules become effective September 30, 2009:

R-09-0026

Amends Rule 6(C), Arizona Rules of Protective Order Procedure, which adds relationships of a romantic or sexual nature to the definition of statutory relationships in A.R.S. § 13-3601. Comments are due by May 20, 2010.

R-09-0028

Amends Rules 11.5 and 11.6, Rules of Criminal Procedure, conforming the rules to amendments to A.R.S. § 13-4515 for calculating maximum time allowed for a restoration to competency program in a criminal case.

III. OTHER BUSINESS

A. Next Meeting:

Friday, November 6, 2009

10:00 a.m. – 3:00 p.m.

Conference Room 230

Arizona State Courts Building

1501 W. Washington

Phoenix, Ariz.

B. Good of the Order/Call to the Public

Judge David Mackey, superior court in Yavapai County, noted that his court will be moving to the new AJACs case management system before the end of September. He asked that the AOC's IT Department provide an update on AJACs at the November COSC meeting.

The meeting was adjourned at 2:20 pm.

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Teleconference Meeting
Friday, November 6, 2009
Arizona State Courts Building
Conference Room 230
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable James A. Soto	Honorable Bethany Hicks
Honorable Eddward Ballinger	Ms. Denise Lundin, proxy for
Honorable Michael J. Burke	Honorable Michael Jeanes
Honorable James Conlogue	Honorable Kenneth Lee
Honorable Michael J. Cruikshank	Honorable David Mackey
Honorable Robert Duber II	Honorable Margaret Maxwell
Honorable Sue Hall	Honorable Colleen McNally
Mr. Josh Halversen	Mr. Phil Knox, proxy for
Ms. Margaret Guidero, proxy for Mr. Tim Hardy	Mr. Marcus Reinkensmeyer
Honorable Charles Harrington	Honorable Monica L. Stauffer
Honorable Danna Hendrix	Ms. Susan Wilson

MEMBERS ABSENT:

Honorable Norman Davis	Ms. JoJene Mills
Honorable Andrew Gould	Honorable Stephen Villarreal
Honorable Stephen McCarville	

PRESENTERS/GUESTS:

Ms. Melinda Hardman, AOC	Mr. Gordon Mulleneaux, Maricopa Superior Court
Mr. Mark Meltzer, AOC	Ms. Katy Proctor, AOC
Mr. Renny Rapier, AOC	Ms. Jennifer Greene, AOC
Mr. David Withey, 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 November 6, 2009, meeting of the Committee on Superior Court (COSC) was called to order by the Hon. James A. Soto, Chair, at 10:05 a.m.

B. Approval of Minutes

The minutes of the September 25, 2009, COSC meeting were presented for approval.

MOTION: To approve the minutes of the September 25, 2009, COSC meeting as presented. Motion seconded. Approved unanimously. COSC-09-018

Judge Soto announced the 2010 COSC meeting dates. He informed members that both COSC and the Committee on Technology (COT) are scheduled to meet on November 5, 2010, which could create a conflict for members who serve on both committees. Judge Soto reminded members that they may send a proxy to the COSC meeting if necessary. Meeting dates for 2010 are:

Friday, February 5, 2010
Friday, May 14, 2010
Friday, September 10, 2010
Friday, November 5, 2010

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. ACJA §§ 1-604 - Remote Electronic Access to Records; 1-605 - Requests for Bulk or Compiled Data; 1-606 - Providing Case Record Access to Public Agencies and Public Purpose Organizations

Ms. Melinda Hardman, AOC court analyst in the Court Services Division, presented proposed amendments to ACJA §§1-604 and 1-605 and a new ACJA § 1-606, which stem from recent amendments to Supreme Court Rule 123. Ms. Hardman noted that sections 1-604 and 1-605 were previously approved by COSC; however, 1-605 has since been modified to provide clarity and consistency with the statute. The new section, ACJA § 1-606 sets forth procedures for releasing case records to non-judicial government agencies and other public purpose organizations.

In response to member questions on ACJA § 1-606, Ms. Hardman explained that the custodian of records would need to execute a memorandum of understanding with the government agencies or public purpose organizations receiving the records. Due to the clerks' expressed concerns about the potential burden of drafting the memorandums, Ms. Jennifer Greene, assistant counsel, AOC Legal Services, stated the legal staff will be developing a memorandum that could be shared with the clerks and could possibly become standardized statewide.

Ms. Hardman explained currently no sanctions for misuse of information by third parties are set out in the ACJA; however, she agreed that it could be considered for the contract agreement. Regarding the *closed records* provision in section (C)(2) and (3), Ms. Hardman agreed that adding language to the effect of "*as referenced in Rule 123*," would ensure clarity. In addition, Ms. Hardman and Ms. Greene stated they would look further at how Rule 123 distinguishes the terms *confidential*, *sealed*, and *closed records*. Ms. Hardman informed members that all three draft proposals are available on the new ACJA Web Forum

for further review and comment until November 12, 2009. The link is: <http://azdnn.dnnmax.com/Default.aspx?alias=azdnn.dnnmax.com/forumacja>.

MOTION: To approve ACJA § 1-605; Requests for Bulk or Compiled Data as amended. Motion seconded. Passed unanimously. COSC-09-019

MOTION: To recommend ACJA § 1-606 not be approved at this time pending further comment and review from the Clerks. Motion seconded. Passed unanimously. COSC-09-020

- B. ACJA § 5-208; Operational Standards for Video-Conferencing in Criminal Proceedings**
Mr. Mark Meltzer, AOC court analyst in the Court Services Division, presented proposed ACJA § 5-208, which lays out the operational standards and technical requirements for interactive audiovisual proceedings, as required by amended Rule 1.6, effective January 1, 2010. Mr. Meltzer reviewed the basis for specified operational and technical standards, noting that the *minimum* technical requirement is that “all participants be able to clearly see and hear proceedings in the courtroom.”

In response to member comments regarding the burden of an annual recertification process, Mr. Meltzer explained that the process was proposed to ensure that standards continue to be met and that conditions at the court site and the remote site have not changed.

MOTION: To approve ACJA § 5-208; Operational Standards for Video-Conferencing in Criminal Proceedings as presented. Motion seconded. Motion passed 18-1-0. COSC-09-021

C. Update: General Jurisdiction Case Management System

Mr. Renny Rapier, AOC program manager over development of the General Jurisdiction Case Management System (GJCMS) project, reported on the progress of the project. He reported that Santa Cruz and Yavapai County courts have been successfully converted, and Apache and Navajo County are currently in the process, with a „go live“ date expected in early December 2009. Mr. Rapier also informed members that all conversion, training, and implementation processes, as well as technical support will be taken over by AOC Support in February 2010. The anticipated completion date for the project is May 7, 2010.

D. ACJA § 1-303: Code of Conduct for Judicial Employees

Mr. David Withey, AOC chief legal counsel, presented a newly revised version of ACJA § 1-303: Code of Conduct for Judicial Employee, which addresses concerns that emerged during the comment period over two policy areas. The issues concerned Rule 2.6, Assistance to Litigants, and Rule 4.3, Elected Judicial Department Office. Mr. Withey reviewed the amended sections and explained how the revisions will address the issues of concern.

Lengthy discussion ensued regarding sections 4.4(A), and 2.6 with the following concerns being voiced:

- With respect to section 4.4(A), the Clerks of Court submitted comments regarding the provision that judicial employees take a leave of absence if elected or appointed to an elective office. The clerks asserted that circumstances in which appointments generally occur do not carry the same risk of office conflict that the election process does; therefore, the clerks requested the “or appointment” language be stricken. In addition, they requested the following language be inserted in 4.4(A):

“A leave of absence must be approved by the judicial employee’s appointing authority, i.e., presiding judge, chief judge, chief justice, or elected clerk of court.”

- Regarding section 2.6, several members voiced concerns that the word *shall* in “a judicial employee *shall* provide...” should be replaced with the word *may*, so that the provision does not constitute a mandate that judicial employees must *always* provide assistance. Members expressed concern that the provision as written would create ambiguity for employees, possibly blurring the line between providing assistance and providing legal advice or interpretation. Mr. Withey explained that the language in this section was previously amended to say “consistent with the employee’s responsibilities and knowledge...” in order to forestall any ambiguity. He stated this language was intended to leave it to the courts to set office policies specifying what employees can and cannot say to court customers.

MOTION: To approve revised ACJA § 1-303: Code of Conduct for Judicial Employees with the exception of Rule 2.6, as discussed, and to amend 4.4(A) as discussed. Motion seconded. Motion passed 18-1-0. COSC-09-022

E. ACJA § 5-204; Restitution Payment Processing

Mr. Gordon Mulleneaux, associate clerk of Maricopa County Superior Court, presented proposed amendments to ACJA § 5-204, section (K), regarding the processing of restitution payments. The changes 1) clarify that the payment processing timeline refers to business days, and 2) increases the threshold for mailing out restitution payments from \$10 to \$30. Mr. Mulleneaux explained that the increase in threshold is not mandatory, and courts can voluntarily determine to agree to the increase. The estimated cost savings per month for Maricopa County Superior Court would be approximately \$1,500.

MOTION: To approve amended ACJA § 5-204; Restitution Payment Processing as presented. Motion seconded. Approved unanimously. COSC-09-023

F. Legislative Update

Ms. Katy Proctor, AOC legislative analyst, briefed the committee on the plans for the upcoming regular legislative session. She stated there are no AOC proposals expected and the budget will be the primary focus. In addition, she added that the legislature will hold a

special session mid-November to look at funding for the Department of Revenue and the Corporation Commission.

III. OTHER BUSINESS

A. Next Meeting:

Friday, February 5, 2009

10:00 a.m. – 3:00 p.m.

Conference Room 119 A/B

Arizona State Courts Building

1501 W. Washington

Phoenix, Ariz. 85007

B. Good of the Order/Call to the Public

No comments were offered.

The meeting was adjourned at 12:16 pm.