

**ARIZONA JUDICIAL COUNCIL'S  
COMMITTEE ON SUPERIOR COURT**

**MINUTES**

**Prescott Resort & Conference Center  
1500 Highway 69  
Prescott, Arizona**

**May 19, 2000**

**MEMBERS PRESENT:**

Edward L. Dawson  
Carolyn C. Holliday  
R. Douglas Holt  
Michael Irwin  
Brian Ishikawa  
Michael Jeanes  
Roger W. Kaufman, Chair  
Gary Krcmarik  
Kenneth Lee

Nancy K. Lewis  
Denise I. Lundin  
Leslie Miller  
Fred Newton  
Marcus Reinkensmeyer  
Ronald Reinstein  
Don Stiles  
Oren D. Thompson  
Raymond W. Weaver, Jr.

**GUESTS:**

Marge Cawley  
George Diaz, Jr.  
Catherine Drezak  
Jennifer Greene  
Gary Husk  
Megan Hunter

Dennis Metrick  
Nina Preston  
David Sands  
Bob Schaller  
Patrick Scott  
Nancy Swetnam

**STAFF:**

Rick Rager  
Helen Tallent

## **I. WELCOME AND OPENING REMARKS**

Roger Kaufman called the meeting to order at 10:06 a.m. and welcomed everyone. All those present introduced themselves.

## **II. APPROVAL OF THE MINUTES - October 1, 1999**

The minutes from the October 1, 1999 meeting were previously mailed out. Revised minutes were included in the mailing for the current meeting.

**MOTION:** Michael Irwin made a motion to approve the revised minutes from the October 1, 1999 meeting and the motion was seconded by Oren Thompson. The motion passed unanimously. COSC 00-1.

## **III. BUSINESS ITEMS**

### **A. Review and Discussion of Proposed Child Support Guidelines**

Megan Hunter, Child Support Specialist from the Administrative Office of the Courts (AOC), advised the Committee that in Arizona and 17 other states, the Judicial Branch is responsible for the review of child support guidelines. She added that child support guidelines are addressed in approximately 25,000 new cases every year, adding that a private consultant assisted in the review of the guidelines. A work group formed from the state legislature's Child Support Coordinating Council was asked to assist in the review. The work group, chaired by Senator Petersen, included a presiding family court judge, a superior court commissioner, representatives from the Attorney General's Office, staff from Superior Court Clerk's Offices, Division of Child Support Enforcement staff and custodial, noncustodial and joint custodial parents.

Megan added that seven public hearings were held concurrent to the work group's meetings. A web page available on the Administrative Office of the Courts' website was also available for public comment. She stated that the hearings were poorly attended, but many comments were received through the website. After the work group made final recommendations, two additional public hearings were held.

The proposed guidelines involve four key changes. The Schedule of Basic Support Obligations was updated to be consistent with increases in price and tax levels since the last review in 1996. The Self Support Reserve Test, added in 1996, was placed in the guidelines to ensure that those paying support would not be placed under the federal poverty guideline which was raised to \$780 per month in 1999. The work group's recommendation sets the Support Reserve Test at \$710 which is reflective of a 10.1 percent increase in the Consumer Price Index (CPI) since 1996. The proposed guidelines include medical adjustments for expenses that are consistent with items specified in federal tax code. Adjustments for medical expenses are taken into consideration when calculating a child support order. Finally, the proposed guidelines include an adjustment for visitation, including

the recognition that expenses are incurred when a child lives in multiple households. These adjustments are included in tables that are part of the guidelines. After brief discussion a motion was made.

**MOTION:** Michael Jeanes moved to approve the recommended changes in the Child Support Guidelines and forward those recommendations to the Arizona Judicial Council for their consideration. Raymond Weaver, Jr. seconded the motion, which passed unanimously. COSC 00-2.

## **B. Legislative Update**

David Sands and George Diaz, Jr., Legislative Officers from the Administrative Office of the Courts, provided the Committee with an update on legislation proposed during the 2000 legislative session. A handout was provided to the members.

David advised the Committee that the legislative session was expected to last 75 days, however, debate on such issues as stadium funding, the tobacco settlement and education funding caused the session to run around the normal 100 days. He said 405 pieces of legislation were introduced, which was more than last year. David added that a more comprehensive legislative update would be provided at the Judicial Conference in June 2000.

David and George provided information on the following legislative issues (unless noted, the general effective date for legislation is July 18, 2000):

Judicial Salaries- Effective January 1, 2001 judicial salaries will increase from \$115,500 to \$120,750, which is what the governor's office had recommended. The Salary Commission had recommended \$125,606. Justices of Peace salaries will also increase based on work credits. Michael Jeanes noted that increases for clerks were killed by the governor, based on an expressed desire not to obligate the legislature and the state in the middle of a term. David said the Salary Commission will be making recommendations next year that will affect 2002 salary levels.

HB 2496 (Chapter 105): Jury Selection - Jury commissioners or their agents are now required to select juror names at least twice a year rather than specifying that selection must occur in January and July of each year. The presiding judge determines the number of alternate grand jurors, which must be a minimum of four, but cannot be more than eight. The jury commissioner's agent is allowed to randomly draw jurors from a master list and is not required to keep minutes of the drawings.

HB 2130 (Chapter 323): Justices of Peace and Habeas Suit - Increases the jurisdictional limit in entry and retainer cases to \$10,000, exclusive of interest, costs and awarded attorney fees. Justice courts are granted concurrent jurisdiction with the superior court in all cases when the amount involved is more than \$5,000 and less than \$10,000, exclusive of interest, costs and awarded attorney fees.

HB 2497 (Chapter 363): Juvenile Detention Funding - George said this became his priority for the session after visiting Gila County's juvenile detention center. He thanked Edward Dawson for his assistance during the visit. The legislation provides \$4.1 million in funding for completion of the final phase of the multi-year statewide master plan for construction and expansion of secure facilities for juveniles. George noted that the original bill had been introduced with a \$5.5 million request.

SB 1024 (Chapter 29): Juveniles; Disposition - George advised this legislation may lead to further action next year. The legislation prevents limited jurisdiction court judges from acting as hearing officers in cases involving juveniles, which primarily affects Maricopa County. The main penalty for a juvenile that fails to appear in court is suspension of his/her driver license until age 18.

HB 2449 (Chapter 345): Juvenile Court Parental Appearance - If a child has a court hearing, the parent, guardian or custodian must appear. The court may waive this requirement and shall state on the record the reason(s) for waiving the requirement. A parent, guardian or custodian who fails to appear in court will be issued an order to show cause as to why that person should not be held in contempt. George said the full impact of this legislation is unknown at this time.

SB 1160 (Chapter 369): Children's Mental Health Services - David said although the handout states this is a House Bill it is actually a Senate Bill. He said this legislation was originally introduced as HB 2114 and was vetoed by the governor. This particular issue was then added to another bill. A new article relating to the evaluation, treatment and placement of mentally ill children under the jurisdiction of the juvenile is enacted (repealing § 8-242.01).

SB1022 (Chapter 4): DUI; Affirmative Defense - Eliminates use of affirmative defense.

HB 2351 (Chapter 153): Ignition Interlock Devices - Previously, in second time Aggravated or extreme DUI cases the court would order an individual to install an ignition interlock device (IID) and was responsible for requiring a person to install the device. The responsibility is now transferred to the Department of Motor Vehicles upon the court's notification to MVD of the conviction. The court retains the authority to order a person to install an IID beyond one year. This legislation is effective October 1, 2000. David said a memorandum would be forthcoming to explain IID procedures for those convicted of DUI or extreme DUI before October 1, 2000 and required to install an IID and those who are convicted after October 1, 2000.

SB 1339 (Chapter 357): Conciliation Services Funding - Increases the fee from \$50 to \$60 that is paid by a petitioner and respondent when filing the petition and response in an action for a dissolution of marriage, legal separation or annulment in those counties that have established a conciliation court. The increase in fees will go solely toward funding of conciliation court services.

HB 2109 (Chapter 72): Workplace Harassment; Injunction - Permits an employer to petition for an injunction prohibiting workplace harassment, defined as a threat or act or series of acts that would cause a reasonable person to be seriously alarmed or annoyed. David noted that this legislation will

probably be dealt with at the limited jurisdiction court level. He said the Committee on the Impact of Domestic Violence and the Courts (CIDVC) would likely be involved in the development of forms.

HB 2126 (Chapter 361): Domestic Violence - David advised in addition to making substantive and technical amendments to protective order statutes, the definition of domestic violence now includes aggravated domestic violence (A.R.S. § 13-3601.02) and surreptitiously photographing, videotaping, filming or digitally recording a person (A.R.S. § 13-3018). He reminded the Committee that same sex partners were not included in the relationship test that is used to define domestic violence. He added that another bill, SB 1173 (Chapter 370) which addresses insurance discrimination and domestic violence, alters the relationship test by not excluding same sex partners from the definition of intimate partner. This has created a conflict between the two bills.

Catherine Drezak, the AOC's Domestic Violence Program Specialist, addressed the group and explained that the conflict between the two bills needs resolution. She added that forms used in orders of protection and injunctions against harassment must be revised by July 18, 2000 to reflect the changes in HB 2126. She added that forms currently do not include the same sex provision referenced in SB 1173. Catherine said CIDVC and its chair Mike Pollard presented this issue to the Committee on Limited Jurisdiction Courts at their meeting on May 17, 2000 in an effort to seek clarification on the conflict between the two bills. She said that committee tabled the issue. Catherine suggested that the forms should be printed to afford same sex partners equal protection against domestic violence as those of the opposite sex, adding that CIDVC is seeking guidance and recognizes that preserving judicial discretion is as important as providing the public with a consistent response in domestic violence cases. She said the current conflict in the definition of intimate partner will make it difficult for law enforcement to address orders of protection, adding that in the instance of former roommates, there could be increased litigation due to a failure to protect. Catherine said this information would be presented to AJC at their next meeting. Discussion ensued.

Leslie Miller said she views this issue from a protection point of view. She said sometimes members of the opposite sex ask for orders of protection that do not meet the relationship test because certain criteria are not met. She said that criteria are no different for people of the same or opposite sexes. The following motion was made.

**MOTION:** Leslie Miller moved for the Committee to recommend the adoption of orders of protection that do not include the words "opposite sex" on the form used to determine relationship and forward that recommendation to the Arizona Judicial Council for their consideration. Fred Newton seconded the motion, which passed unanimously. COSC 00-3.

#### C. Update on Advisory Committee on Rules of Judicial Conduct

Rick Rager referred to Administrative Order 2000-17 that was included in the pre-meeting mailing. He advised that a committee had been formed to examine the rules and structure of the Commission on Judicial Conduct. The committee, using the ABA Model Rules for Judicial

Disciplinary Enforcement, is charged with determining whether changes to the Commission on Judicial Conduct's rules of procedure and structure are necessary and to make recommendations if changes are in order. Rick noted that Michael Jeanes is a member of the Advisory Committee on Rules of Judicial Conduct and asked him to provide additional information.

Michael said members of the Commission are responsible for both investigative and adjudicatory functions and any modifications to the Commission might be difficult without a constitutional change. He noted there is currently a recommendation to split the Commission into two panels, similar to Kansas, and have one group handle investigations and the other adjudication. There are currently 11 members on the Commission and he said the proposal calls for each group to periodically switch roles. He said the proposed approach is not as common as other models, noting that constitutional issues are driving the considerations to some extent. Michael said there seems to be consensus that investigative and adjudicatory functions should be separate from one another. He added that the Advisory Committee would be meeting again before making any final recommendations.

#### **D. Review and Discussion of Proposed Garnishment Forms**

AOC's Court Project Specialist Jennifer Greene told the Committee that the packet of garnishment forms was first developed for court use in 1986. Those forms were substantially revamped by a statewide advisory committee about 10 years ago. The packet of forms the committee created was approved by the AJC and then formally adopted through an administrative order in 1991.

Jennifer explained that only four of the 27 garnishment forms had undergone substantive changes since the Supreme Court last approved them. Jennifer stated she is seeking Committee approval of modifications to the garnishment forms as the initial step in seeking a new administrative order. She noted that the proposed changes to the garnishment forms were made to reflect changes in the statutes governing the forms. Jennifer referred to the information included in the material that was mailed prior to the meeting. She highlighted the major revisions as follows.

In 1998, staff from AOC's Court Services Division added pages 2 and 3 to the Notice to Judgement Debtor of Garnishment (Non-Earnings). A.R.S. § 12-1596 (C) sets out the language that is required for this form. The version of this form that has been in use since June 1998 restates the statutory language verbatim. However, the 1991 version of the form omitted most of the language that should have been included.

Additionally, the Hearing Request and Notice of Hearing on Garnishment (Non-Earnings) has been changed to reflect the language required by A.R.S. § 12-1596 (c). This form is used in conjunction with the Notice to Judgement Debtor previously referenced.

The return of service on the Garnishee's Answer (Non-Earnings) was incorrect and now reflects service on the creditor and judgement debtor, rather than the garnishee and judgement debtor.

The garnishee is no longer certifying that he has served himself, which is what was stated on the previous form.

Also, the Garnishment Instructions for Creditor (Earnings) failed to mention that the creditor is required to serve the garnishee with blank copies of the Hearing Request and Notice of Hearing on Garnishment Earnings Statement (A.R.S. § 12-1598.11 (E)), so that was included. This Notice to Creditor form is not one of the 13 forms that the Supreme Court must approve by statute.

It was suggested that an index be created to make it easier for people to obtain the correct form. Jennifer agreed to draft such an index and Roger Kaufman agreed to review the index. Gary Krcmarik offered to assist Jennifer.

**MOTION: Raymond W. Weaver, Jr. moved for the Committee to approve the revisions to the Garnishment Forms. Marcus Reinkensmeyer seconded the motion. The motion passed unanimously. COSC 00-4.**

**E. Update on Rule 10.2 Study Committee**

Jennifer Greene advised the Committee that she was presenting information on behalf of the Rule 10.2 Study Committee Chair who was not able to attend this meeting.

She referred to information that was sent to Committee members prior to the meeting. Jennifer also handed out a copy of Study Committee's Interim Report dated May 17, 2000. She noted Appendix A which states the requirement of an avowal that the Notice of Change of Judge is being filed in good faith and not for the purpose of delay. She said there was not unanimous agreement on the proposed Comment to the rule which sets out five situations where Notice of Change of Judge would be improperly motivated. She said the Committee plans to present the interim report to AJC at their October 19, 2000 meeting, adding that the Committee may complete a more formal report in September 2000.

**F. Video Conferencing Rule 28 Petition**

Jennifer Greene said the comment period for the proposed rule change that would provide guidance on the permissible scope of videoconferencing in the courts ended April 10, 2000. She said the Supreme Court is scheduled to consider the proposal at its rules agenda meeting on May 23, 2000. She referred to a copy of the proposal that was included in the mailing prior to the meeting. She said since the mailing, Judge Anagnost advised her that his subcommittee was not able to get approval from the Committee on Limited Jurisdiction Courts' chairman, so it was never filed as an official Comment to the Rules Petition.

A discussion followed around issues of identification, especially for those incarcerated in another state that are seeking resolution of legal matters in Arizona, security, and the definition of

what constitutes an original signature on electronically generated documents. There were a few attempts at making a motion on this issue, that resulted in the following:

**MOTION:** Leslie Miller moved for the Committee to recommend that a court of general jurisdiction may, at its discretion, accept a telephonic or video conference plea of guilty or no contest upon stipulation of parties. Gary Krcmarik seconded the motion, which passed unanimously. COSC 00-5.

Jennifer said she would present the Committee's position to the AOC Director prior to the May 23<sup>rd</sup> rules agenda meeting.

#### **G. Update on Committee on Probation**

Committee member Don Stiles, who is also the Chair of the Committee on Probation (COP), provided information on the committee's efforts. He distributed a two-page summary. The COP is a standing subcommittee of the Committee on Superior Court.

#### **H. Defensive Driving Schools Advisory Committee Presentation**

The intended speaker was not able to attend the meeting. Gary Husk, an attorney representing U.S. Interactive was in attendance to answer any questions. U.S. Interactive is company seeking to provide Arizona with interactive defensive driving programs via the Internet.

#### **I. Review and Discussion of Proposed Administrative Rules for the Defensive Driving Program**

Bob Schaller, the AOC's Defensive Driving Program Manager, referred to information in the pre-meeting mailing and addressed the group regarding proposed modifications to the rule that governs the defensive driving program. He said the proposed rule combines aspects of an administrative order and the current defensive driving certification criteria and adds minimum accounting standards for defensive driving schools. He said the proposed rule will have the largest impact on limited jurisdiction courts and juvenile courts that handle traffic matters. Bob said the rule authorizes the presiding judge of each county to oversee the procurement process for obtaining services from a defensive driving school. He noted that the Committee on Limited Jurisdiction Courts had requested a provision that once a contract between a court and a defensive driving school was entered into and if proper procurement rules had been adhered to, there was no need to seek the approval of the presiding judge. He also discussed alternative delivery methods for defensive driving instructions, including the Internet. He cited security and proper identification as being two main issues that would need to be resolved before such instruction could take place.

Fred Newton noted that alternative service delivery methods would be especially beneficial to Native Americans in rural areas of Coconino County. After a brief period of discussion, the following motion was made.

**MOTION:** Oren Thompson moved to approve the proposed rule governing the Defensive Driving Program and forward that recommendation to the Arizona Judicial Council for their consideration. Ronald Reinstein seconded the motion, which passed unanimously. COSC 00-6.

**J. Strategic Planning Update**

This item was moved up on the agenda. Marge Cawley of AOC's Executive Office, provided a brief overview of strategic planning efforts within the courts and distributed a status report as of May 2000 outlining progress toward goals expressed in Chief Justice Thomas Zlaket's 2002 Initiative. She noted that all court commissions and committees would be required to undergo the strategic planning process in the future. It was suggested that 1 ½ hours be dedicated to strategic planning at the Committee's next meeting in September. Denise Lundin expressed that 1 ½ hours was not enough time to devote to strategic planning. She then made a motion that a special session dedicated to strategic planning be held the day before the next meeting in September.

**MOTION:** Denise Lundin moved for the Committee to hold a special strategic planning session the day before the next scheduled meeting. Oren Thompson seconded the motion. The motion passed unanimously. COSC 00-7.

**K. Review and Discussion of Proposed Administrative Rules for Private Process Servers**

Nancy Swetnam, the AOC's Director of the Certification and Licensing Division, stated that the proposed Administrative Rules for Private Process Servers prescribe Standards of Conduct to establish minimum standards of performance and to ensure the service of process is conducted in a professional manner. The proposed rule outlines certification procedures for private process servers. She advised the proposed rule was initially scheduled to be presented to AJC at their October 2000 meeting. She added that she would like to contact clerks of court and court administrators for their input as well. Nancy said there are concerns that the test required for certification is antiquated and needs to be updated. After further discussion, Nancy suggested that the Committee defer approval of the proposed rules and that this item be placed on the agenda for further discussion at the Committee's September 2000 meeting.

**L. Update on Court Reporter Certification Process**

Nancy Swetnam said a temporary certification requirement takes effect July 1, 2000. She said those seeking certification should have already applied, adding that a memorandum was sent to clerks

of court and court administrators on May 9, 2000 listing all court reporters who had applied for certification. Nancy said people could still apply for temporary certification, but there was no guarantee that the application would be processed before July 1, because fingerprint checks may take significant time to complete. She said that, pursuant to statute, the temporary certification will expire December 31, 2002. She noted that the law also requires all applicants for standard certification to pass a written exam of Arizona rules and statutes. Under consideration by the Board of Certified Court Reporters at this time is the draft of the rule for standard certification. Included in this discussion is the issue of requiring all court reporters to also take a proficiency exam or to allow some alternate demonstration of proficiency.

**M. Review and Discussion of Proposed Rules for the Confidential Intermediary Program**

Nancy Swetnam explained that the Confidential Intermediary Program aids people in seeking birth parents through the efforts of a third party. The most critical aspect of the program is confidentiality, however, under current rules one Confidential Intermediary cannot speak with another Confidential Intermediary about aspects of a particular case. Nancy said such interaction should be allowed as long as information is maintained as confidential. She said the proposed rule would allow this, adding that she is not aware of any controversy regarding this issue or the proposed changes. Nancy asked the Committee to approve the proposed rule which she will be presenting to the AJC on June 5, 2000.

**MOTION: Marcus Reinkensmeyer moved to approve the proposed rule governing the Confidential Intermediary Program and forward that recommendation to the Arizona Judicial Council for their consideration. Leslie Miller seconded the motion, which passed unanimously. COSC 00-8.**

**IV INFORMATION ITEMS**

Rick Rager asked the Committee to comment on their preferences regarding the sending of documents that require review during periods when a meeting is not scheduled. He has tried to send them via E-mail, when possible. Generally, the Committee agreed that sending documents by E-mail was acceptable, however, there was request to mail more lengthy documents.

Rick advised the Committee that he had revised Administrative Order 90-17, which governs the activities of the Committee, to make membership categories more broad as there are some positions that are difficult to fill because the pool from which applicants are drawn is too narrow. He said he intended to place the issue on the agenda for the next meeting. It was suggested that the issue be addressed by the Committee during their strategic planning. The Committee agreed to address revisions of the administrative order at that time.

**V. SCHEDULE NEXT MEETING DATE/PLACE**

After discussion, it was agreed that **the next meeting will be held on September 15, 2000 in Tucson beginning at 10:00 a.m. The strategic planning session will be held September 14, 2000 in Tucson beginning at 1:00 p.m.** Rick will provide the Committee with information on the location and hotel accommodations once the location is determined.

**VI. ADJOURNMENT**

The meeting was adjourned at 2:20 p.m.

**ARIZONA JUDICIAL COUNCIL'S  
COMMITTEE ON SUPERIOR COURT**

**MINUTES**

**Westward Look Resort  
245 Ina Road, Tucson, Arizona  
September 14-15, 2000**

**MEMBERS PRESENT**

Hon. Roger W. Kaufman  
Hon. Silvia Arellano  
Hon. Mark Armstrong  
Hon. Edward Dawson  
Hon. R. Douglas Holt  
Hon. Brian Ishikawa  
Hon. Michael Jeanes  
Hon. Cindy K. Jorgenson  
Hon. Kirby Kongable  
Mr. Gary Kremarik

Hon. Kenneth Lee  
Hon. John S. Leonardo  
Hon. Nancy K. Lewis  
Hon. Denise I. Lundin  
Hon. Leslie Miller  
Hon. Fred Newton  
Hon. William J. O'Neil  
Mr. Marcus Reinkensmeyer  
Hon. Monica Stauffer

**MEMBERS NOT PRESENT**

Mr. Don Stiles  
Mr. Oren D. Thompson

Hon. Raymond W. Weaver, Jr.  
Mr. Charles W. Wirken, Esq.

**STAFF/GUESTS**

Margaret Cawley  
George Diaz Jr.  
David Sands  
Karen Westover  
Stephen Nelson  
Debbie Finkle  
Nancy Swetnam

Deborah Marshall  
Dennis Metrick  
Helen Tallent  
Rick Rager  
Mark Moran  
Janet Scheiderer  
Zachary Dal Pra

## **I. WELCOME AND OPENING REMARKS**

Roger Kaufman called the meeting to order and welcomed everyone. All those present introduced themselves. The meeting on Thursday, September 14, which started at 1:00 PM, was devoted to strategic planning, while the meeting on Friday, September 15 was devoted to normal Committee business.

## **II. BUSINESS ITEMS**

### **A. Strategic Planning Session - Thursday, September 14, 2000**

Marge Cawley (AOC) began the session with an overview of strategic planning. She reported on the recent results of the citizen's survey and indicated this would be complemented with a court survey that is presently being conducted. Marge also presented information on "problem solving courts," an initiative instituted by the Conference of State Court Administrators (COSA). Rick Rager (AOC) presented a five-year statistical overview dealing with population, filing, disposition, pending, revenue and expenditure data.

The Committee listened to a presentation from Maricopa County given by Zachary Dal Pra on the treatment needs of drug dependant defendants, an estimated 13,500 in Maricopa alone. At least 10,000 of these probationers are left to fund their own treatment interventions. There is a general lack of funds and treatment facilities to address this issue. Judge Kaufman indicated that this treatment neglect only leads to continuing recidivism problems. Judge Kaufman recommended that this should become one of our strategic initiatives, namely, we should emphasize treatment over incarceration and that this should be a state initiative. If we do not do this, with Proposition 200 prohibiting incarceration for many offenses, we will have second and third time felony offenders with no significant intervention at all. We also need to deal with drug cases at the limited jurisdiction level. Another problem is the need for Spanish interpreters, especially for civil cases.

There was a second presentation by Karen Westover, Maricopa County on their recent jail facility expansion project. The aim is to have four courtrooms in the jail—two early felony proceedings and two initial appearance courtrooms - to expedite the processing of probation bound cases in five days. The Committee decided this project may be not be applicable outside Maricopa County.

### **B. The Committee then proceed to engage in the actual strategic planning process and came up with the following issues:**

1. We need a coherent plan for drug offenders. We need to deal with issues of resources, costs, and recidivism rates. More information is needed on program successes and failures. We need an assessment of different treatment programs, including juvenile court and family court. We need to deal with substance abuse in general, both drug and alcohol. There is also the issue of clients in civil and domestic relations cases, e.g., divorce, domestic

violence, etc., who may need substance abuse treatment. Mental health is another treatment issue.

2. This discussion lead to the issue of what is the proper role of the court in such a therapeutic treatment environment? What should the proper role of the judge be? Should the court go this far in offering treatment alternatives? Should it be the role of the court to inform the public about needs and lack of resources (public education)? What are the limitations of the court? (This issue will become the subject matter of the next meeting of the Committee.)
3. A third issue discussed was the need for professional trained court interpreters, both language and for the deaf. This lead to a general discussion on need to improve access to the courts in general, especially since we are witnessing an increase in pro se representation in domestic relations cases. We need to remove legalese and other court specific jargon as much as possible.
4. This lead to a further discussion about the need to expedite and simplify court processes, including court rules. The court should encourage pro bono work by lawyers and simplify court forms. The court should expand its self-help centers and provide additional pro se services perhaps through some type of "Friend of the Court" program.
5. Quality of work force issues were raised, particularly with regard to attracting and retaining court employees amid a changing work force environment. Courts cannot find adequately trained staff. This lead to a general discussion of training issues noted below in item #7.
6. There is an increased demand for probation services at the limited jurisdiction level and this must be addressed somehow given the lack of funds and resources.
7. Training was recognized as a huge issue, both for staff, court administrators and top level managers, and new judges. There is need for a comprehensive training program at the state and county level. The National Association of Court Managers has put together a suggested core curriculum which could be used as a model for such a training program. A certification program, especially for clerks, is another possibility. There is a general need for leadership training. We may be able to link with local universities to provide this training.
8. The AOC should prepare a media package on the courts that could be distributed to local County Board of Supervisors for orientation purposes. A similar package should be prepared for new presiding judges. Any information prepared needs to be user friendly.

9. We need to learn how to use technology more efficiently, e.g., probation to clerks connection), including proper training.
10. We need to increase juror compensation. Information on compensation in other jurisdiction would be helpful. We need to look into current summons and questionnaires to determine if any changes are needed or if we can devise a statewide summons and questionnaire. (The AOC is currently working with a user group of juror commissioners on these issues.)
11. There is the need for more public education on the role and function of the courts. We need to improve communication in general, especially information distribution. In general, we need to increase customer service and assistance to the public.
12. We need to provide for better physical access to our courts. We need to explore the idea of regional courthouses. We need to develop plans for courthouse expansion.
13. We need to develop some type of training manual on how to deal with the media. We need to develop a media package that can be distributed at the local level.

**C. Under the direction of Marge Cawley the Committee reworded and consolidated the suggestions as detailed below. A vote was then taken on each issue, the results of which appear below.**

**Issue A** - Coherent Plan for Drug Court/Alcohol/Mental Illness (Court process, resources, develop information, adult, family, juvenile, and cost effectiveness) - **7.1**

**Issue D** - Simplify and Expedite Court Processes Especially with Domestic Relations Court, Improve Access - **6.8**

**Issue J** - Training and Education for Court Administration, Management Judges and Court Staff. Recruitment and Retention of Court Staff - **6.4**

**Issue C** - Public Education, Media, Legislative Relations - **5.1**

**Issue K** - More Efficient Use of Technology and Local Training, Electronic Filing, Improve Information Sharing - **4.9**

**Issue M** - Facility Planning, Regional Access (Courthouses), Space Planning - **4.9**

**Issue G** - Increase Resources to Meet Additional Requirements for Probation Services in Limited Jurisdiction Courts - **4.3**

**Issue E - Clarify Role of Court. Public/Legal Community Expectations Concerning Court Functions - 4.3**

**Issue B - Delivering Services to Non-English Clients, Deaf - 3.7**

**Issue F - Provide User Friendly Information for Use with Local Decision Makers - 2.7**

**Issue L - Jury Issues and Reform, Compensation, etc. - 2.7**

- D. The group then focused its attention on the role and function of the Committee.** Rick Rager and Judge Kaufman provided some background on the Committee. They discussed how the agenda is formed and how committee membership is put together as detailed in the Administrative Order that created this Committee. In answer to a question from Judge Kaufman there was strong support for strategic planning. This was followed by a general discussion on how often the Committee should hold a strategic planning meeting. The Committee decided to do strategic planning once a year in the spring, except that the Committee will wait until Spring 2002 to hold the next strategic planning session.

**The discussion then turned to the membership of the Committee.** It was noted that there is no need to have five rural presiding judges. A suggestion was made just to have five rural members, perhaps with a minimal number of presiding judges, for example, five rural judges with at least two being presiding judges, the rest designees. Each special division judge should be represented. We need more flexibility in general in selecting committee members.

**There was a brief discussion on how the agenda for the meetings is put together.** We may be able to use telephonic conferences, but only for emergency matters. It is important that the Committee members meet face-to-face. Also, it is hard to get away from local workload duties when you are attending a meeting telephonically. One meeting should be devoted exclusively to legislative changes. We should not have other matters on the agenda. This meeting is usually held in the fall. The Committee agreed to having three meetings with the winter/spring meetings having an unrestricted agenda.

**There was a brief discussion about the role and function of the Superior Court.** For example, it is important that the courts engage in outreach efforts but how far should this outreach extend. Also, we are affected by what is going on around us. The Committee agreed that this topic should be on the winter agenda.

**E. Legislative Review and Other Issues - Friday, September 15, 2000**

The Committee members introduced themselves again. The Committee then considered the legislative package as detailed below.

01-01 - Drug Court Funding

Concern was voiced that treatment money should not only go to Drug Court.  
**The Committee voted 17-2 to include.**

01-02 - Interstate Compact for Adult Offenders

**The Committee voted 18-1 to include.**

01-04 - Time Payment Fee Extension

**The Committee voted 19-0 to include.**

01-05 - Collection Agency Costs

A motion was made to change the wording from "may" to "shall," and that the proposal only apply to restitution. The motion died for want of a second.  
**The Committee voted 13-6 to include.**

01-06 - Jurisdiction for Court Ordered Payments

**The Committee voted 1-18 to not include.**

01-07 - Collection from Inmates

A motion was made to change the phrase "dependant care" to "child support." After further discussion the motion was suspended.  
**The Committee voted 1-18 to not include.**

01-08 - Domestic Violence

Section 6, pages 9-12 were withdrawn from consideration.  
**A motion was made that per page 9 of the legislation the definition of domestic violence should not be changed. Also, per page 16, line 37, Section 4.2(C) should appear in both sections of the bill. The motion was seconded and passed unanimously.**  
Concern was voiced whether there were sufficient funds to provide the needed probation services. There is only about \$300,000 available for such services.  
**The Committee voted 2-0-16 to include with amendments.**

The Committee paused to consider the minutes from the last meeting. The minutes were approved as written.

01-09 - Children's Mental Health Services

**The Committee voted 14-1 to include.**

01-10 - Authorized Bail Payment

**A motion was made to delete reference to "cash bond." The amendment passed unanimously. The Committee voted 1-0-17 to include with amendment.**

01-11 - Fee Elimination

*This bill was withdrawn because the provisions are already included in proposal 01-08, Domestic Violence.*

01-12 - Write-Off of Uncollectible Debts

**A motion was made to have the clerks process this bill on their own. The motion passed. The Committee voted 4-0-14 to have Clerks propose this bill on their own.**

01-13 - Adult Adoption

**The Committee voted 19-0 to include.**

01-16 - Juror Pay

**A motion was made to incorporate the language for last year's juror bill, namely, "no less than \$30 the second day and thereafter." The motion passed. The Committee voted 0-2-17 to include with amendment.**

01-17 - Probation Officer Pay

**The Committee voted 16-2-0 to include.**

01-18 - Judicial Disability Retirement Procedure

**The Committee voted 16-3 to include.**

The Committee heard from Judge Mark R. Moran on injunctions against workplace harassment and order of protection forms.

**The Committee voted to support the work of the domestic violence work group.**

- F. At lunch the Committee considered the "Fees Waivers and Deferrals Procedure." Steve Nelson, Karen Westover and Debby. Finkel provided an overview of the procedure. The Committee was informed that they should only consider version B on the proposal (version A was withdrawn). Karen highlighted the important provisions of the proposal, for example, permanent inability to pay, verbal avowal, entry of final judgment, notice of court fee due, length of time to pay court fees, appearance of applicant in person, inmate filings, domestic relations cases, and

hearing before collection procedures. Steve Nelson provided a brief overview of the payment procedure in Yuma County.

**A motion was made to approve version B with local option. There was a discussion as to the definition of "permanent inability to pay." One suggestion was to define it as a "condition unlikely to change." Other suggestions included "forever unable to pay," "unlikely able to pay," and "inability to pay is unlikely to change." A suggestion was made to have the work group come up with multiple definitions. Version B was approved.**

- G.** Marge Cawley provided an overview of the victim summit. Major concerns of victims include restitution payment, enforcement/implementation of existing victims' rights, and general safety issues in the court. Two victim summits were held and a plan was developed with ten action items for review by the Chief Justice. These issues will be reviewed by the Arizona Judicial Council (AJC) at its October 2000 meeting.
- H.** Nancy Swetnam provided an overview of the Temporary Certification Rule for Court Reporters. General Rule I applies to most certification programs. Complaints are treated as confidential until probable cause has been established. There may be a need to insulate the investigation process from the adjudication process. A suggestion was made to let the defendant decide. It is proposed that court reporters will not be re-fingerprinted as part of the standard certification program. There was discussion about a possible "grandfather" clause in the proposal. Nancy indicated this was not a grandfather clause but simply allowed for certification of court reporters from other states based on experience. Questions were raised about court reporters who may be practicing without certification. Judges and court staff have an obligation to report such infractions to the Court Reporter Certification Board. The proposal would also prohibit contracting by court reporters.

Per the Private Process Servers Certification Program a remark was made that possibly this should be a state system (certification is handled at the local level currently). The status of government process servers was also briefly discussed. Should they conform to the certification program? These rules will be finalized and present to the Committee in December for final approval.

- I. Judge Kaufman welcomed the new members to the Committee. The Committee then voted to prioritize the legislative package as follows:**

C - Proposal 01-04, Time Payment Extension - **7.3**

A - Proposal 01-01, Drug Court Funding - **7.2**

E - Proposal 01-08, Domestic Violence - **6.4**

K - Proposal 01-17, Probation Officer Pay - **6.1**

J - Proposal 01-16, Juror Pay - **5.9**

G - Proposal 01-10, Authorized Bail Payment - **4.5**

B - Proposal 01-02, Interstate Compact for Adult Offenders - **4.4**

F - Proposal 01-09, Children's Mental Health Services - **4.4**

H - Proposal 01-12, Write-Off of Uncollectible Debts - **4.2**

L - Proposal 01-18, Judicial Disability Retirement Procedures - **4.1**

I - Proposal 01-13, Adult Adoption - **3.7**

D - Proposal 01-05, Collection Agency Costs - **3.6**

- J.** Via telephone Ms. Lynn Wiletsky, AOC, Juvenile Court Services, provided an overview of the operational review procedure. Mike Jeans stated that some mention should be made of the Clerks having responsibility for their office. The AOC should not duplicate audits; audits should be coordinated.

**The Committee approved the proposed procedures.**

The next meeting of the Committee on Superior Court shall be held on Friday, December 8, 2000 at The Property in Casa Grande.

Rick Rager, staff to the Committee on Superior Court, has left the AOC to take a position as Civil Court Administrator for the Tempe Municipal Court. Ms. Theresa Barrett has been promoted to fill Rick's position and will serve as staff to the Committee in the future. Ms. Barrett can be reached by contacting (602) 542-9364.

**ARIZONA JUDICIAL COUNCIL'S  
COMMITTEE ON SUPERIOR COURT**

**MINUTES**

**For Meeting held Friday, December 8, 2000  
The Property, Casa Grande, Arizona**

**MEMBERS PRESENT:**

Hon. Roger Kaufman, Chair  
Hon. Silvia Arellano  
Hon. Mark Armstrong  
Hon. Edward Dawson  
Hon. R. Douglas Holt  
Hon. Brian Ishikawa  
Hon. Michael Jeanes  
Hon. Cindy Jorgenson  
Hon. Kirby Kongable  
Mr. Gary Krcmarik  
Hon. Kenneth Lee  
Hon. John Leonardo  
Hon. Nancy Lewis  
Hon. Dennis Lundin  
Hon. Leslie Miller  
Hon. Fred Newton  
Mr. Marcus Reinkensmeyer  
Mr. Oren D. Thompson  
Hon. Raymond W. Weaver, Jr.  
Mr. Charles W. Wirken, Esq.

**MEMBERS ABSENT:**

Hon. Carolyn Holliday  
Hon. William J. O'Neil  
Hon. Monica Stauffer  
Mr. Don Stiles

**GUESTS:**

Judge Louraine Arkfeld  
Catherine Drezak  
Debby Finkel  
Dennis Metrick  
Steve Nelson  
David Withey

**STAFF:**

Theresa Barrett  
Helen Tallent

**I. WELCOME AND OPENING REMARKS**

Roger Kaufman, Chair, called the meeting to order at 9:05 a.m. and welcomed everyone. He introduced Theresa Barrett, new AOC staff to committee, followed by all present introducing themselves.

**II. APPROVAL OF MINUTES - September 14-15, 2000**

The minutes from the September 14-15, 2000 meeting were previously mailed out. Revised minutes were included in the mailing for the current meeting.

**MOTION: To approve the revised minutes for the September 14-15, 2000 meeting as distributed. Seconded and passed. COSC-00-15**

### **III. NEW BUSINESS ITEMS**

#### **A. Rules of the Judicial Conduct Commission**

Jack Barker, Chair for the Advisory Committee on the Rules of Judicial Conduct was not able to attend the meeting. Michael Jeanes, who served as a member on the subcommittee, substituted for Mr. Barker and presented the recommendations made by the Advisory Committee.

Michael advised members in early 2000, the Chief Justice appointed the Advisory Committee on the Rules of Judicial Conduct to review the Commission on Judicial Conduct rules and make recommendations about adopting the ABA Model Rules. The Advisory Committee met from February 2000 through September 2000 to discuss the Model Rules, the present rules and issues of concern about current practices. In September, a set of revised rules was sent to the Supreme Court for consideration. Michael indicated these rules were already presented to the Limited Jurisdiction Court Committee for comment and will be provided to AJC for comment following the Committee on Superior Courts' review.

Michael highlighted the Advisory Committee's recommendations and rationale for their proposal utilizing Jack Barker's letter to the Chief Justice, included in the pre-meeting mailing. He indicated the Advisory Committee's primary concern was that no due process was afforded to the respondent judge in the current system. Specifically, they felt it was difficult to know up front which case would have the potential to go beyond an informal investigation. To rectify this shortcoming the proposed rule establishes a divided panel. The committee felt having a divided panel would provide a fair and impartial way of investigating and hearing complaints made against judges. One panel would investigate charges and make decisions about informal discipline. Then, if a case goes to a formal hearing, the other panel would hear the case. To prevent ex parte communications from occurring and to ensure that the respondent judge's due process rights are protected, anyone assigned to the investigative panel is precluded from sitting on the associated formal hearing panel.

Another problem perceived by the Advisory Committee is that the respondent judge has no right of appeal in the current process, even though informal reprimands can add to the sanctions recommended for future complaints. To address this, the proposed process includes a right to appeal informal discipline.

Michael indicated there were concerns voiced by Commission staff that administering the new process would be problematic. Alternatively, in order to give maximum flexibility in implementing the Rules the Advisory Committee purposely did not make specific recommendations for implementing the new process.

There was disagreement as to whether the two panel system would improve timeliness. While Commission members believe the proposed system may increase processing time, Advisory Committee members felt the proposed system should expedite the process. It was suggested that until the new system is tested there is no way to know.

Implementation costs were another point of contention. While the Advisory Committee acknowledged additional costs would be incurred they did not feel these costs were what Commission staff projected. The Advisory Committee did not conduct any work on costs.

Clarification was requested regarding exactly how many cases would involve a formal hearing. It was reported about four or five cases go to formal hearing. The statistics from FY2000 show that 276 cases were filed, 234 were dismissed, 40 had informal discipline and 2 had formal procedures instituted.

At this point, Judge Arkfeld requested the opportunity to speak on behalf of the Commission on Judicial Conduct and referred members to the fax she sent at 3:30 pm on December 7.

Judge Arkfeld, a member of the Commission for six years, stated while the Commission appreciated concerns surrounding due process issues, they believe the Advisory Committee's fears are unjustified. Furthermore, in her experience the Commission is indeed capable of identifying at the beginning of a case whether there will be an informal or formal proceeding. It was argued since most individuals appointed to Commission are judges, they routinely listen to motions and other related actions for a given case and are capable of doing the same in the current system. However, to address appearance of lack of due process, the commission suggested two options.

First, in the event the current reasonable cause committee recommends a formal hearing the Commission proposed excluding these members from sitting on the subsequent hearing panel. Alternatively, the exception model favored by the Commission suggests using segregated panels as needed for the small number of cases that may result in formal charges and evidentiary hearings, rather than across the board as in the proposed rules.

Judge Arkfeld pointed out that having the full commission make informal decisions develops consistency in rulings and expressed concern this perspective will be lost if a decision is made to go with proposed rule.

Some additional objections made by the Commission in regards to the proposed Rules include:

- < In the proposed system 99% of complaints filed will be heard by three-member investigative panels. Therefore, a minority of members will make most of decisions affecting judicial discipline. Commission members feel this will hurt the process because they have found it valuable to have a representative from every level of court to shed light on case specific issues.
- < Since there is only three public representatives on commission, the new process will make incredible demands on public representatives and could run into attrition problems.
- < The proposed rules are inconsistent and still need review. For example, the rule on confidentiality only applies to the commission and staff– not judges, complainants and witnesses. Another rule, which allows the hearing panel to consider stipulations, could also be argued to “taint” the same panel if negotiations fail and the case goes forward.

- < Some additional rules should be considered before finalizing the proposed draft. For example, the provision that requires a two-thirds vote of an eight-member panel is a practical impossibility.

In her closing, Judge Arkfeld pointed out there were a number of things the Commission was happy to see happening and indicated they, like the Advisory Committee, are always looking for ways to make the system better.

Discussion followed. Comments and issues mentioned include the following:

- < If most cases resolved at investigative level, there should be more members on the investigative panel. Proposed number of three shifts power too much to the investigative panel.
- < As there are only two lawyers on the Commission, proposed rules will mandate they alternate in sitting on all the investigative panels. It will be difficult to divide the work.
- < Need judge from same level as judge under investigation to ensure investigative/hearing panel understands work of judge.
- < Will need to increase size of Commission if a decision is made to go with recommendation, cannot have 2/3 with a panel of eight. Does not see weakness with judge from different level making decision. If need expertise, reasonable person will seek information. Do not need to mix to ensure peer on panel.
- < Concerned that current system vests inordinate amount of power with the executive director.
- < Endorses change to a larger commission (i.e., five on investigative panel and seven on adjudicatory panel).
- < Concerned two tier system would extend time in system. Wants quick resolution in order to minimize disruption.
- < Still need to hone sexual harassment section.
- < No concern about people of this caliber doing both investigative and adjudication role.
- < Prefers a system with two independent bodies; one to investigate and one to arbitrate.

Judge Kaufman concluded discussion stating he feels the appearance of justice is very important and that in his opinion it is impossible to get procedural fairness if investigators are also the arbitrators. Furthermore, he pointed out that although those in the process feel we can be fair, those outside the system have a different view.

**MOTION: Adopt the work of the Advisory Committee with the exception that the investigative panel will be comprised of 5 members instead of 3; two of whom shall be judges, one being from the same court level as**

**the respondent judge. Motion seconded. Motion passed. 10-9-0.  
COSC-00-16**

*Note: Judge O’Neil’s “No” vote received via e-mail (see attached) not included in final count because it predated discussion and motion was somewhat different than original proposal.*

## **B. Fee Deferral and Waiver Procedures and Forms**

Judge Kaufman began the discussion by providing the Committee with the background surrounding the origin of the original fee deferral and waiver legislation. Judge Newton was asked to chair discussion.

AOC’s Court Financial Specialist, Debby Finkel, referred members to information included in the pre-meeting mailing, focusing primarily on the handout provided at the meeting containing four proposed definitions of “permanent inability to pay.” She indicated the intent was to go forward to AJC on December 13<sup>th</sup> with the LJC definition and the Yuma County definition already included in the packet, along with any definition the Committee on Superior Courts provided.

Debby indicated the applications had been revised to go along with the Yuma County definition. If AJC chose a different definition, then the procedures and forms will be modified accordingly. Definitions provided apply to waivers only.

Steve Nelson, Program Manager, Judicial Enforcement Unit, Yuma County Superior Court, presented information regarding why he had concerns with the definitions proposed other than Yuma’s. He explained Yuma’s interest in this issue began last December when AJC was considering a legislative proposal that would change the statute regarding waivers and deferrals. Steve indicated that Yuma felt the legislative proposal was an attempt to codify then existing policy and procedures which were in conflict with the existing statute. Specifically, he stated the policy and procedures associated with last year’s proposed legislation were going to mandate all categories in existing statute which were obligatory for deferral (i.e., AFDC, food stamps, income barely sufficient or insufficient to meet daily essentials, etc.) would become automatic waivers. Yuma County had problems with this directive because their research concluded that the legislative intent and subsequent case law was to “to extend, not waive fees.”

Steve contended the least restrictive definition and moderately restrictive definitions provided to the committee did not follow statutory instructions and instead mixed criteria that would mandate a deferral with the separate criteria used for granting waivers. In Steve’s opinion the Yuma definition is not necessarily the most restrictive definition but felt it followed the statute closest.

The group duly noted the importance of consistency statewide in handling waivers and discussion followed. Comments include the following:

- < Least restrictive definition provided is arbitrary and inappropriate. Feels it has potential to be most restrictive definition as there are people unable to pay who are not receiving

government assistance. Should not be used as a “standalone” definition but could be used to supplement one of the other definitions.

- < It was proposed to combine “least restrictive” definition with LJC’s definition.
- < People should be accountable, the court has a responsibility to taxpayers to do our fiduciary duty, otherwise, we are providing an indirect subsidy and funding personal disputes.
- < If you do not require individuals to pay or take the burden of proving inability to pay away, then they will agree “I cannot.”
- < Need to take into consideration that the definition selected will effect the Limited Jurisdiction Courts that are looking to waive fees on DV cases.
- < Need to make wise decision (i.e., if it costs \$2 to collect \$1, this is not a wise decision). Need to have flexibility to use discretion to waive.
- < Permanent does not always mean forever and this is why definition was left out before for flexibility.

**MOTION: Do not further define the phrase “permanent inability to pay” for waiver forms. If further definition is necessary, recommend it be done on county-by-county basis. Motion seconded. Motion passed unanimously. COSC-00-17**

*Note: After the motion, concerns were voiced that if going to waive fees there ought to be a written record. Debby Finkel pointed out the ability to have a verbal avowal is important to LJC judges. LJC courts prefer to use verbal avowal process because most of their cases are DV cases in which the individual is in crisis and needs to have order of protection or injunction issued immediately. In general, verbal avowal is used by LJC judges because they do not want to tax the individual by requiring them to complete an application. The impact of the current legislative proposal which eliminates the \$5 order of protection fee was then discussed and the consensus was, if passed, this proposal would eliminate concerns for having verbal avowal in writing.*

### **C. New DV Forms**

In response to questions concerning newly approved protection order forms approved for use by AJC in October 2000, Catherine Drezak, AOC staff to the Committee on the Impact of Domestic Violence and the Courts (CIDVC), provided an informational presentation.

The new forms presented to the Committee include *Injunction Against Workplace Harassment* and the *Petition for Injunction Against Workplace Harassment*. Additionally, Catherine addressed revisions to the *Order of Protection*, *Petition for Order of Protection*, *Certificate of Service*, *Acceptance of Service*, *Hearing*

*Request, Hearing Notice, and Hearing Order* forms which were also approved this year.

Specific changes to standard forms and their effect include:

- < Adding a line for Injunction Against Workplace Harassment which allows judge to check a box for this particular type of injunction.
- < Per directive from AJC, on the Order of Protection form, adding a box which states “living together now or in the past.” Catherine pointed out they also kept the box that states “opposite sex living together now or in the past,” thus leaving the decision with the judge as to which box to select.
- < On the Order of Protection form the last sentence of the first paragraph was stricken. The effect of this change is that it allows the judge discretion to set prohibition against weapons versus automatic Brady trigger when a hearing is held.

Catherine indicated a floppy disc with the new versions of these forms was mailed in the latter part of November to Presiding Judges, Court Administrators and Chief Clerks for all Courts. Denise Lundin indicated her office did not receive the package. Catherine stated she would check her list.

For further information about these forms or to voice concerns members were encouraged to contact Catherine at: [cdrezak@supreme.sp.state.az.us](mailto:cdrezak@supreme.sp.state.az.us) or at (602) 542-9607.

#### **D. Recognition of Tribal Court Civil Judgments Form**

David L. Withey, Chief Counsel, Administrative Office of the Courts, provided an informational presentation on the Rules of Procedure for Recognition of Tribal Court Civil Judgments, which went into effect on December 1, 2000.

David explained these rules provide for certification by the clerk of superior court of civil judgments of tribal court for which no objections have been filed following notice and the opportunity to respond for persons subject to the judgment. He explained subsequent to the rules adoption, the Clerks of Superior Court requested a form to use for this certification. David informed the Committee a draft form had been provided to the clerks by e-mail for review and comment. In closing, he requested Committee members submit comments to him for incorporation in the final version.

Rather than use Committee time, Michael Jeanes indicated he would like to get together with David to discuss procedural issues.

#### < **Minute Entry Reengineering Project Proposal**

Denise Lundin, Clerk of Court for Cochise County, provided an update on findings of an ad hoc committee of the Superior Court Clerks Association formed to address reforming minute entries. Denise indicated that these meetings involved a review of current superior court practices in ten Arizona counties. The committee acknowledged

that currently there are no apparent or specific governing standards or guidelines for format, content, purpose or even ownership of minute entries. While it was clear the committee could do a lot informally, due to the nature of some of the issues being advanced by the committee, the members felt their cause would be better served if they could establish a formal workgroup including all stakeholders (i.e., judges, clerks, attorneys, court administrators and administrative staff). This workgroup would report their recommendations to the Committee on Superior Court. A list of workgroup participants was provided to committee members in the pre-meeting mailing.

**MOTION: Support and encourage the establishment of a Minute Entry Reform Workgroup which will report to the Committee and is charged with, and responsible for, re-engineering minute entry practices. Motion seconded. Motion passed unanimously. COSC-00-18**

**F. Intrastate Orders Workgroup Legislative Proposal**

Judge Armstrong provided briefing on the legislative proposal recently submitted to Child Support Coordinating Council Subcommittee. This proposal came about as the result of wide disparity of how certified court orders for support are handled from one county to another.

Judge Armstrong explained the proposal amends section 25-502 Jurisdiction, venue, and intrastate transfer procedure; additional enforcement provisions. Specifically the proposal does the following:

- < Clarifies that proceedings to establish support when there is no court order or court action shall be filed in the county where the child resides if residing in this state, or in the county where the party resides if the child is not residing in this state.
- < Adds a new procedure for intrastate transfer of child support cases from one county to the county where the child resides, or if the child is not residing in this state to the county, where the party resides; and,
- < Conforms the time frames in subsection D to those contained in 25-504L.

Judge Armstrong indicated most judges that have studied the proposal support it because it establishes uniformity, and ensures that in the county where a case is being transferred the court has the complete filing. Currently, in some counties this is not the case. He informed members this proposal had merely been taken under advisement as DES is not sure if they are on board with the proposed changes, and it was possible the proposal would not make it to the legislative process. If members have any comments or questions, they should contact Megan Hunter, Child Support Specialist, Administrative Office of the Courts, at: [mhunter@supreme.sp.state.az.us](mailto:mhunter@supreme.sp.state.az.us) or (602)542-9253.

Break for Lunch

Following a brief luncheon break, the Committee began its discussion of the Role and Function of the Court.

## G. Role and Function of the Court

At the Committee's September Strategic Planning Session members expressed the desire to continue discussion of what is the proper role of the court? What is the court doing that they should be doing? Is there anything the court is not doing that they should be doing? Are there things we are doing that would best be left with others so that we can concentrate on court functions?

Dennis Metrick, AOC Court Projects Unit Program Manager, set the stage for the group's discussion using three articles provided in pre-meeting mailing as a springboard to throw ideas out for discussion.

Judge Kaufman facilitated discussion and generated group participation by posing additional questions. The following is a summary of these questions and responses.

**Is it the role of the court to bring a case to trial if the lawyers don't? Or does the court simply decide what the lawyers ask the court to decide? If the court has obligation to get cases to resolution what do you do about it under the separation of powers, where the county attorney is filing increasing claims of felony violations? Is it the role of the court to get involved and question why filings are increasing so fast? Or would this be involving the judge in prosecutorial matters that a judge should not be involved in under separation of power? On the civil side, should the court grant any stipulated motion to continue if parties agree to them?**

- < Judges, public and lawyers benefit by caseflow techniques being employed. Hands on case management by judges can be very positive, not only in criminal cases, but civil and domestic relations cases too.
- < Judges need to be involved in managing a case once it is brought to the court. The role of a judge is to protect not only defendant's rights but victim's as well.
- < Judges should practice case management because the court is a public resource. Judges cannot leave it to litigants to decide time line and/or delay system.
- < Judges have an obligation to make sure cases are moved efficiently. Judges have a responsibility to make sure cases are resolved, therefore, they should take a role in case management.

**For rural judges who are elected, if constituents are up in arms about a particular law, is it a judge's role to change the law? Or should a judge only enforce the law and interpret the law, not to write it?**

- < As a citizen, a judge should speak out against a law. Judges have to be a part of the community and speak their conscience. Alternatively, judges cannot use their judicial duties as a protest movement and not follow the law. When they put on their robes, they must enforce the law.

- < Concerned with mixing roles as community participant and judge. Need to define role to make courts efficient. Role cannot be ambiguous.

**If you speak out about a issue of public concern (i.e., drunk driving) do you jeopardize the appearance of your objectivity?**

- < Judges can be advocates outside the courtroom.
- < We have educational role as judges because of our perspective. Judges need to inform public and legislature of views. Where there is statutory problems that legislators may not be aware of judges should draft revisions. Need to be involved in public forums and writing letters to the editor regarding certain problems.
- < Even if we think a policy decision is wrong, as judges we are in a very difficult position to be lobbying either for or against these types of issues.
- < Judges have a responsibility to oblige public requests for appearance, however, need to weigh sense of obligation to community without stretching too thin.

**Is it good or bad to know more about parties in a case?**

- < Reaching out to public is problematic for rural court judges because it brings them too close to potential participants in process. Community participation puts judges in danger of influences that could effect decision.
- < If a judge has personal knowledge about a case, then he should use it. From public member's perspective, unless the law mandates otherwise, to ignore information is a dereliction of duty.

**With scarcity of judicial resources, should judges be running Drug Courts or should it be done by another agency? Are funding specialty courts a legitimate expenditure of tight funds?**

- < Specialty courts are worthy of experimentation.
- < Cannot afford in a one judge county to divert judges attention to specialty courts because limited funds provided to these therapeutic causes.
- < Judicial presence is an effective tool in Drug Court. What causes people to participate in Drug Court is that the consequences are so severe that they are willing to participate. Drug Courts can improve case management by adjudicating case earlier. Also, can save money on the front end of system by eliminating the costs associated with traditional prosecution. Immediate consequences for behavior creates much more accountability and structure.
- < The reason we go to these types of courts is because they are bait for funds. Legislature will give us money if we have something that catches on with the public. Although there is a tremendous need to deal with social issues/problems, the judge is not the solution or what makes people successful. Rather, it is the funds for treatment and funds for

supervision they need. Do not need specialty courts, need public awareness so that we can get funds for treatment across the board and can apply to everyone.

- < Even if more comfortable with traditional approach to courts (i.e., adversarial system) cannot ignore the fact that focus of problem solving lies with the courts. Therefore, judges need to be prepared to apply therapeutic approach and to take greater interest in social sciences, family dynamics, and child development. Always need a tie breaker, and problem solving/therapeutic courts work well in achieving this end.
- < If you are enjoying success in improving case processing, and there are some cost savings while at the same time changing people's lives through the administration of justice, then it can be argued the end product is better than the beginning. Therefore, it behooves the court and judges to be involved.

**Should judges be specialized and supervising treatment activities? Should judges be specializing as lawyers do? Have we gone too far with specialization or not far enough?**

- < Not appropriate for judge to go out and form coalitions in order to raise funds to provide resources that have not been provided by legislature. We are spreading ourselves too thin. Judge should only resolve controversies brought to court.
- < Therapeutic justice is not a cure all, and only works for certain people. Courts need to be careful when they plan how they will utilize it in order to have an effective program. It cannot take away from regular requirements of criminal justice system. There are specific areas where it can be effective, and we have to really work at understanding it and applying it.
- < Question whether it is the judge's role to make life impacting decisions regarding mental health issues that might be better served by another professional (i.e., psychologist, psychiatrist, etc.)
- < There are certain circumstances when there is a role for court to play, however, need to plan carefully and identify those specific circumstances that will be appropriate to ensure whole judicial system does not become a therapeutic process.

**Should there be as much specialization as size of court and nature of docket permits? Or should we resist specialization and insist on rotation?**

- < Specialization creates predictability but also creates scenario for burnout.
- < Good to rotate through divisions, however, some judges not suitable for certain areas (i.e., drug court). Sometimes rotation does not always achieve the best utilization of talents.
- < For smaller counties, unless you have the number of divisions that will allow the percentages to divide more or less evenly, rotation does not really work.
- < Encourages anything that will help avoid burnout.

- < Rotation process works well, however, perhaps should rotate every three years versus two years.
- < There are economics to rotation. If rotate every two years, there is a transition period where very little gets done when the judge is becoming oriented and getting up to speed with their assignment. Using rotation process can effect case processing as studies have shown you lose approximately six months; three months of down time and three months on the other side.

**Do you want to go before a specialized judge? Should we select judges to be specialized judges?**

- < Practitioners/attorneys want specialized judges with predictability. Lends to greater expertise, greater efficiency.
- < World is getting a lot more complicated, so has the vocation. If someone has a particular interest or talent in a certain area should utilize it. Capitalize on special talents and interests.

In closing, Judge Kaufman asked the group to provide him with at least two recommendations on what should be discussed from this meeting at the next strategic planning session. He also requested suggestions addressing how to reach a consensus on the ideas discussed for the long range benefit of Arizona courts.

**IV. OLD BUSINESS**

Theresa Barrett advised the Committee that she had reformatted Administrative Order 90-17, which governs the activities of the Committee, to a code section. Theresa explained that while overall committee size remains the same, the membership make-up in three categories had been modified.

Specific changes include:

- < Requirement for five non-metro presiding judges has been changed to representatives from four non-metro counties, two of whom must be presiding judges.
- < Requirement for four presiding judges of special divisions is changed to three presiding judges of special divisions.
- < Requirement for four superior court judges has been increased to six.
- < Requirement for a justice of the supreme court as a liaison has been removed.

In general, the proposed changes allow more flexibility in selecting committee members, while still keeping acceptable statewide representation. The changes proposed will also help to ensure AOC staff can provide the chief justice with multiple candidates to select from in each category.

Theresa asked members to review the document and confirm whether or not the suggested changes were accurately interpreted. Committee had no concerns and approved taking final version of administrative code section 1-105 forward for review by AJC.

## V. INFORMATION ITEMS

Ted Wilson, Court Specialist, AOC, prepared a handout for the committee regarding the Court Job Posting Site introduced in April 2000 by the AOC. On Ted's behalf, Theresa explained the website was designed to serve as an additional resource to assist courts in recruiting a qualified workforce. Theresa encouraged Committee members to share information with appropriate court staff to ensure continued participation. All jobs within the court are eligible for posting.

For more information, or to post jobs on this site, contact the Human Resources Division of the AOC: (602) 542-9311.

David Sands and George Diaz, Jr., Legislative Officers from the Administrative Office of the Courts, prepared a summary sheet of AJC's 2001 Legislative Package. A handout was provided to members.

Theresa informed members that starting January 12, every Friday until the legislative session ends, two conference calls will take place between the Administrative Office of the Courts and court personnel statewide to solicit comments on pending legislation and how it may affect the courts. The calls will be divided between the limited jurisdiction courts at noon and superior and appellate courts at 1:00 p.m. On the morning of each Friday, a list of bills to be discussed will be faxed to each participant. Theresa indicated that all committee members will be included on this distribution and requested members let her or Helen Tallent know if their fax number has been changed.

At the request of Michael Jeanes, Theresa will look into feasibility of e-mailing the agenda. The number to call to participate is (602)542-9000.

## VI. SCHEDULE NEXT MEETING DATE/PLACE

Discussion indicated that there were too many schedule conflicts for the available dates in April. **The next meeting will be held in Phoenix on Friday, March 9, 2001.** Theresa Barrett will provide the Committee with information on the location and hotel accommodations once the location is determined.

## ADJOURNMENT

The meeting was adjourned at 2:30 p.m.