

COMMITTEE ON SUPERIOR COURT

MINUTES

Friday, February 13, 2004
10:00 a.m. to 3:00 p.m.
Judicial Education Center
541 E. Van Buren, Suite B
Copper and Gold Conference Rooms
Phoenix, AZ

MEMBERS:

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| ■ Honorable Fred Newton, Chair | ■ Mr. Gary Krmarik |
| □ Honorable Silvia Arellano | ■ Mr. Marty Krizay |
| ■ Mr. K Kent Batty | ■ Honorable Kenneth Lee |
| ■ Honorable James E. Chavez | □ Honorable Denise I. Lundin |
| □ Honorable Norman J. Davis | ■ Honorable Margaret Maxwell |
| □ Ms. Deborah Roxann Dyson | ■ Honorable Stephen F. McCarville |
| ■ Honorable Pat Escher | ■ Honorable Leslie Miller |
| ■ Honorable Charles V. Harrington | ■ Honorable Barbara Mundell |
| ■ Honorable Bethany G. Hicks | ■ Honorable Dale Nielson |
| □ Honorable Cathy Holt | ■ Honorable Emmet J. Ronan |
| ■ Honorable R. Douglas Holt | ■ Honorable James A. Soto |
| ■ Honorable Michael K. Jeanes | ■ Honorable Nanette Warner |
| ■ Honorable Kirby Kongable | □ Mr. Charles W. Wirken |

STAFF:

Susan Pickard

Isabel Gillett

GUESTS:

Ms. Megan Hunter
Mr. David Withey
Ms. Suzanne Matsumori
Ms. Konnie Young
Ms. Evelyn Buckner

Mr. Robert Roll
Mr. Karl Heckart
Mr. Todd Adkins
Ms. Xochitl Orozco

With a quorum present, the February 13, 2004, meeting of the Committee on Superior Court was called to order by Judge Fred Newton, Chair, at 10:15 a.m.

WELCOME AND OPENING REMARKS

Judge Newton announced that Judge Gloria Kindig had resigned from the committee. Judge Kindig cited the hardship of having two judges from a three-judge county on this committee as the reason for her resignation. Judge Newton asked members to refer possible candidates for this "superior court judge" position to Susan.

Members whose terms will be expiring in June 2004 were asked to contact Susan Pickard with their wishes to be considered for re-appointment. Those members are Honorable Bethany Hicks, Honorable Michael Jeanes, Honorable Denise I. Lundin, Honorable Leslie Miller and Mr. Charles Wirken.

APPROVAL OF MINUTES FROM NOVEMBER 21, 2003

**MOTION: Mr. Krcmarik moved to approve the minutes of November 21, 2003.
Seconded. Passed unanimously. COSC-04-001**

PROPOSED REVISION TO ARIZONA'S CHILD SUPPORT GUIDELINES

Ms. Megan Hunter presented the recommendations for improvements to the child support guidelines. After reviewing the research and reports (Economic Analysis and Case File Review) provided by the consultant, Policy Studies Inc., and analyzing stakeholder input collected via an Internet survey, the AOC developed draft recommendations. The AOC requested assistance in reviewing the guidelines and developing further recommendations from the Child Support Guidelines Workgroup (Judge Mark Armstrong, Chair) of the Child Support Committee (Legislative). The recommendations were submitted to and approved by the Child Support Committee in December 2003. The recommendations were again posted to the AJB web site for stakeholder input.

The recommendations include:

1. the premise that a custodial parent may be ordered to pay support.
2. a presumptive child support termination date.
3. revisions to reflect the McNutt decision.
4. revisions of language for consistency purposes.
5. a clarification that adjustments to gross income do not apply to the children at issue in the case for which the calculation is being performed.
6. a definition of "simplified application of the guidelines".
7. a clarification that adjustments for spousal maintenance can be from this dissolution or any other spousal maintenance order from another dissolution.
8. the addition of a provision for the cost of vision insurance.
9. a requirement that a parent be provided a request for reimbursement of uninsured

- medical/dental/vision expense to the other parent.
10. a clarification that if neither parent has the child for the greater part of the year, the childcare cost will not be adjusted for the childcare tax credit.
 11. revisions of “visitation” to “parenting time”.
 12. a clarification that the adjustment for costs associated with parenting time shall be used unless the noncustodial parent will not incur costs for children during parenting time.
 13. the expansion of language and examples that describe the method for adding blocks of time to determine the number of days parenting time has occurred or is expected to occur.
 14. an example to illustrate the intent behind the calculation of adjustments for other costs.
 15. the update of the self support reserve amount from \$710 to \$775 (subsistence standard of living - a cost of living increase/not the federal poverty guideline).
 16. a clarification that long-distance parenting time generally means a distance of more than 100 miles one-way.
 17. a clarification on:
 1. which documents should contain written findings regarding deviations
 2. that parties can agree to deviation based on written agreement or agreeing on the record, and
 3. that parties “enter into” an agreement to deviate instead of by “signed” agreement.
 18. direction to the court when setting arrears payments.
 19. direction to the court to use the guidelines in effect when the order is entered unless the court determines otherwise based on good cause.

Ms. Hunter moved forward to discuss the changes in the Schedule of Basic Support Obligation explaining economic indicators (child rearing expenditures and changes in price levels and tax rates) and the use of estimators. She indicated that while the Schedule had been approved by the Child Support Committee, there was a strong minority opinion against updating the schedule due to the increased amount for lower income levels and the decreased amounts for the higher income levels. The proposed schedule keeps the child support guidelines in line with current economic indicators. Ms. Hunter did add that there is no federal requirement to update the schedule at the same time the guidelines are reviewed/updated.

Concerns:

- Decreased amounts for higher income levels.
- Headline test regarding the proposed changes to the schedule.

MOTION: Recommend the Supreme Court adopt the guidelines and schedule as proposed. Seconded. Passed (11-8-0-0) COSC-04-0002

Further discussion after the vote to provide additional information for Supreme Court consideration:

Members would have unanimously recommended that the Supreme Court adopt the guidelines had the vote on the guidelines and schedule been in two separate motions.

Judge Warner expressed support for the schedule relating discussion from meetings held in Pima County, citing the “one-pony test”. She further noted that the increases in the lower income levels, if extreme, could be handled through deviation.

The group of eight voting against the recommendation for adoption of proposed guidelines and schedule, voiced support for the recommended improvements to the guidelines but expressed concern regarding the increased amounts for lower income levels, decreased amounts for the higher income levels and the headline test to be met when adopting the proposed schedule.

Judge Miller noted that she would have abstained from the vote on the recommendation for the schedule had it been moved separately, citing the need for additional information.

CPS REFORM LEGISLATION AND EMERGENCY JUVENILE COURT RULES

Ms. Suzanne Matsumori and Mr. David Withey presented information regarding House Bill 2024 which was passed in legislative special session. The bill incorporated statutes that directly affect the adjudication of dependency cases by the Juvenile Court. An in-home intervention hearing option was created in order to maintain children in their homes safely, while the parents participate in services with judicial oversight to provide incentive for parent compliance. The statute gave parents the right, upon request, to have their dependency hearings open to the public. In addition, parents now have the option to request a jury trial for a termination of parental rights adjudication hearing.

Open Hearings The right for and notification of the parent, guardian or Indian custodian to request an open hearing at any time during the entire dependency process is added. The court may determine for good cause whether all or part of the hearing should be closed.

In conjunction with the Open Hearing Pilot Project, which originally was to begin in Maricopa County, all counties are now considered pilot programs. Members of the Committee on Juvenile Court (COJC) will discuss how each county will be implementing the pilot project at their next meeting.

In HB 2024 dependency hearings are presumptively closed unless a party requests the hearing be open. This directly conflicts with the pilot project which requires that the court identify those cases that will automatically be open unless a party to the case requests that it be closed.

In-Home Intervention Hearing Adds the option of the court to order an in-home intervention hearing when specific conditions are met. Since the child remains in the home, the pre-hearing conference and preliminary protective hearing are surpassed for an in-home intervention hearing which centers on active parent participation in services.

The Office of the Attorney General is working on an in-home dependency intervention hearing

petition and when completed (est. March/April) will submit the petitions to the court. At their next meeting the COJC will be discussing how these petitions will be handled.

Jury Trials Adds language on the right of parents to request a jury trial for termination of parental rights adjudication hearings. The legislature's intent was to give parents an equal voice when it comes to termination of parental rights, citing the possible lack of objectivity in one family - one judge case processing scenarios. This provision has a three-year sunset.

The issues that may arise from this provision are:

- In counties with separate Juvenile Courts, jury boxes, rooms and facilities are not available.
- The increased expense for mileage reimbursement for jurors in rural counties.
- The December 19 emergency clause.

Currently there are 24 requests for jury trials, Pima County begins their first trial on February 24.

Mr. Withey reviewed the emergency order amending Rules 41, 45, 48, 50, 52, 54, 56, 60, 64, 65 and 66, and adopting Rules 8.1, 48.1 and 66.1, Rules of Procedure for the Juvenile Court including new provisions for judicial determinations. Handouts entitled, *Amendments to Rules of Procedure for the Juvenile Court, Implementation of HB 2024*, were provided at the meeting.

Comments regarding the emergency rules as adopted by the court on January 26, 2004 are due by April 2, 2004. He asked the committee members to review the amendments and include inconsistencies and additional amendments for these and other rules, in their comments.

Jury instructions are being created with the Office of the Attorney General taking the lead. There are jury instructions on the Dependant Children's Services web site at:

http://www.supreme.state.az.us/dcsd/improve/jury_instructions.htm

Jury protocols are also being developed.

Ms. Matsumori noted that Judge Christoffer Foley of Wisconsin will be presenting an advanced training session at the Dependency Conference on March 25.

Judge Pat Escher is on the Judicial College Board which is in the planning stage for the next Judicial Conference. Included will be a 3-hour segment on this legislation. She requested input regarding possible panelists and the subjects that should be covered.

Concerns:

In open court, persons in attendance who are not parties to the case are admonished to not disclose identifiable information about the children. If the parents elect to have an open hearing for the jury trial, do the jurors need to receive the same admonishment? This is not addressed in the rules and should be.

If the parent requests an open hearing, can that case count toward the Open Hearing Pilot Program requirements? Yes.

How does the Open Hearing Pilot Program relate to private petitions for termination of parental rights associated with petitions for adoption? Pilot cases are dependencies only, whereas the new rules apply to terminations and dependencies.

“In-home intervention hearing”: does this mean a petition is filed and temporary orders are entered making the child a temporary ward of the state? No. Where does the court get its jurisdiction? Are ASFA timelines triggered by this? No, because the child is still in the home and there is no legal custody change. Having the word “dependency” in the petition title denotes a dependency case and causes confusion. Mr. Withey will follow-up on that suggestion.

Ms. Matsumori added that the Open Hearing Pilot Project is not addressed in the rules because it is a pilot. But there is a concern regarding if there is an open hearing, the court records are open as well. The redaction required may increase costs and resource needs.

STATUS OF COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS (CIDVC) PROJECTS

The Domestic Violence Benchbook and the Domestic Violence Criminal Benchbook were approved by CIDVC on February 11, 2004. Ms. Evelyn Buckner, STOP Grant Program Administrator - Governor’s Office for Children, Youth and Families, acknowledged all those who participated in the development of the bench books which are available on the CIDVC web site at <http://www.supreme.state.az.us/cidvc>. The bench books will be distributed to Superior Court and Limited Jurisdiction Courts judicial officer on CD in March.

Ms. Konnie Young discussed the implementation of the new General Petition for Protective Orders, the Order of Protection and Injunction Guide Sheet and the Fee Waiver/Deferral forms that were adopted for mandatory use by all courts by February 1, 2004. Ms. Young distributed the FAQ’s for General Petition and Guide Sheet. The FAQ’s can also be found on the Arizona Judicial Information Network at: <http://ajin/selfserv/formprotord.htm>

Mr. Robert Roll presented an update regarding CPOR/LPOR. The enhancements recommended for approval previously by this committee and AJC have been implemented. DPS conducted training for the Holders of Record. On January 22 the program was moved into production in limited format (Holders of Record being able to bring up the electronic orders).

DPS has stated that full functionality could be attained within 60-90 days. In addition to the query capabilities they now have, full functionality means the capability to update the LPOR record and acceptance of the record for submission to NCIC. Over 1 million queries (including protective order, license plate or wanted person queries) have been made since January 22. Of those, 2000 were direct queries against protective orders.

LEGISLATIVE UPDATE

The legislative update was presented out of agenda order.

Mr. Todd Adkins and Ms. Xochitl Orozco presented updates on the following bills:

HB 2260 Court Clerks, Funds and Reports - If the Supreme Court approves a plan, allows the presiding judge in agreement with the clerk of the court to expend funds from the State Aid to the Courts Fund and Local Courts Assistance Fund to spend those monies without further approval. In addition the Supreme Court shall publish a detailed annual report on the monies received and spent. The auditor general shall conduct an audit of the AOC and the use of monies from JCEF and monies spent by COT. Heard and held on February 12, on the next House Judiciary Committee agenda.

HB2261 Courts; Commission on Technology - establishes, in statute, a Legislative Commission on Technology to administer the expenditure of all monies for automation in the Judicial Collection Enhancement Fund. Strike everything adds more members of the Legislative Commission on Technology as well as delineates additional duties.

Testimony was heard in the House Judiciary Committee on the following bills that affect Merit Selection:

HB 2286 Superior Court Judges, Election - eliminates the commission on trial court appointments.

HCR 2039 Judicial Retention; Two-thirds Vote

HCR 2024 Justices and Judges, Senate Confirmation

HCR 2007 regarding disclosure of party affiliation, HCR 2039 and HCR 2024 are on the agenda for the House Judiciary Committee next week. Judge Mundell, having attended the hearing, added that she sensed no support for these bills.

HCR 2040 Judicial Appointment Commissions - voters to be asked to amend the state constitution to replace four of the five governor-appointed attorneys on the judicial appointment commissions with attorneys appointed by the Senate president (2) and House speaker (2), to delete the requirement that the attorneys be chosen from lists of nominees prepared by the state Bar, to forbid justices and judges lobbying on behalf of any nominee, and to keep the chief justice as chairman of the commission but to make the chief a non-voting member. On the agenda for the House Judiciary Committee next week.

HCR 2010 Supreme Court Jurisdiction - voters will be asked to amend the state constitution to state that the power to enact substantive, procedural and evidentiary laws is not a power inherent in the judiciary but is a legislative power inherent in the Legislature and the people.

HB 2001 Judges Pro Tem; Domestic Relations - if parties in a DR case who are represented by counsel agree and request that a judge pro tem be assigned, the assigned trial judge shall appoint the pro tem judge to hear the case. The parties in the case shall agree and pay the pro tem's salary up approval of the court. AJC formally opposed, passed House and is awaiting Senate action.

HB2377 Homeowners' Association Penalties; Notice; Hearing - Justice courts must provide expedited hearings for person contesting penalties from homeowners associations. The association is required to provide written notice of the right to expedited hearing when penalty reaches a threshold amount. Awaiting third read in the House.

SB1307 Sex Offenders; Residency Restrictions - As a condition of probation, sex offenders shall not reside within one hundred yards of a child care facility, a school, a public playground or swimming pool. The probation officer is responsible for ensuring compliance. Provides for four exemptions; (1) probationer convicted of sex offense before law becomes effective and until that offender moves (2) probation in a residential treatment facility (3) a juvenile living with parent or guardian (4) probationer living in homeless shelter. Amendment pending for a business with at least 25% of its clientele under the age of 18 and the residency restrictions. This bill may become a striker. Was assigned to the Senate Judiciary Committee.

SB 1308 Domestic Relations; Child Custody - restricts judicial discretion in custody and parenting time decisions when domestic violence is alleged.

SB 1222 Victim's Rights; statement by judge - requires the superior court judge, at the commencement of the regular criminal docket, to read a short statement advising crime victims of their rights under Arizona law. AOC supports shorten version. Passed Senate awaiting House action.

SCR 1019 Justices and Judges; Retirement Age - voters will be asked to amend the Arizona constitution to increase from seventy to seventy-five years of age, the mandatory retirement age for a justice or judge of a court of record. Failed.

Mr. Adkins reminded the members of the Friday Legislative Conference Call, with discussion regarding bills that affect the Superior Court beginning at 1:00 p.m. 602.542.9006.

COMMITTEE ON TECHNOLOGY UPDATE

Mr. Karl Heckart provided the members of the committee with updated information regarding:

- The future of AZTEC
 - technological issues
- COT Plans
 - identified packages that may suit limited jurisdiction courts' needs.
 - no packages identified for general jurisdiction court.
 - the Court Automation Coordinating Committee of COT will be seeking experts (20 teams) to set out the specific business requirements for systems analysis beginning with the limited jurisdiction courts and then moving on to general jurisdiction.
 - a decision will be based upon three approaches
 - build custom
 - buy a system via RFP
 - borrow a system, specifically iCIS - good option for general jurisdiction - project plan and budget being developed - lacking a financial system
 - Limited jurisdiction courts are in the process of working out their functional requirements it is anticipated that the specifications will be ready to base a

- decision on in late summer.
- iCIS in Pima County will come up in the fall and will then be reassessed.
 - COT adopted technology standards to assist in technology sharing across the courts.
 - New JOLTS will be constructed and implemented a piece at a time over the next 30 months.
 - Adult Probation System designed for statewide use and currently only being used in Maricopa County due to funding issues. Should be rolled out over the next two years contingent upon the funding model.

Judge Newton requested that a COT update be a standing agenda item for COSC. Committee members who are also COT members were asked to provide updates.

MINUTE ENTRY REFORM

The AJC meeting the Minute Entry Reform Rule Petition was approved with amendments as follows:

- clarification that the minute entry would also refer to electronic minute entries.
- minute entries would not be required in all proceedings.
- rule change was not to be interpreted to affect work assignments.

NEXT MEETING

After discussion the committee rescheduled their next meeting for:

Friday, September 24, 2004
Superior Court in Pima County
Large Conference Room

GOOD OF THE ORDER/CALL TO THE PUBLIC

No comment made.

ADJOURN

Judge Newton adjourned the meeting at 2:30 p.m.

Respectfully submitted,

Susan Pickard
COSC Staff

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, September 24, 2004
10:00 a.m. to 3:30 p.m.
Superior Court in Pima County
110 W. Congress Street, Conference Room 945
Tucson, Arizona 85701

MEMBERS PRESENT:

Mr. K. Kent Batty
Honorable James E. Chavez
Honorable Robert Duber, II
Honorable Pat Escher
Honorable Richard S. Fields
Honorable Charles V. Harrington
Honorable Cathy Holt
Honorable Michael K. Jeanes
Honorable Kirby Kongable

Honorable Kenneth Lee
Honorable Denise I. Lundin
Mr. Rod Marquardt
Honorable Margaret Maxwell
Honorable Stephen F. McCarville
Ms. JoJene Mills
Honorable Fred Newton
Honorable Nanette Warner

MEMBERS ABSENT:

Honorable Silvia Arellano
Ms. Sylvia Brandfon, Ph.D.
Honorable Norman J. Davis
Honorable Bethany G. Hicks
Honorable William T. Kiger

Mr. Gary Krcmarik
Honorable Barbara Mundell
Honorable Dale Nielson
Honorable Emmet J. Ronan
Honorable James A. Soto

GUESTS:

Ms. Konnie K. Neal
Ms. Nancy Swetnam
Mr. Ted Wilson
Mr. Bob James

Mr. Peter Kiefer
Ms. Debbie Olsen
Mr. Brett Watson
Ms. Margaret Toot

STAFF:

Ms. Susan Pickard

Ms. Elizabeth Portillo

WELCOME AND OPENING REMARKS

With a quorum present, the September 24, 2004, meeting of the Committee on Superior Court was called to order by Judge Fred Newton, Chair, at 10:10 a.m.

Judge Newton welcomed new and returning members and thanked Judge Leslie Miller, who was not reappointed, for her ten years of service to the committee. Judge Miller's dedication and valuable input will be missed.

New Members:

Honorable Robert Duber, II
Gila County

JoJene Mills
State Bar

Honorable William T. Kiger
Yavapai County

Dr. Sylvia Brandfon, Ph.D.
Public Member

Honorable Richard S. Fields
Pima County

Rod Marquardt
Mohave County

Returning Members:

Honorable Emmett Ronan
Maricopa County

Honorable Bethany Hicks
Maricopa County

Honorable Michael Jeanes
Maricopa County

Honorable Denise Lundin
Cochise County

Judge Newton also thanked Mr. Batty and his staff, especially Susan Foster, for coordinating this meeting in Tucson.

Judge Newton noted that the Superior Court Records Retention Schedule had been withdrawn from the agenda.

APPROVAL OF MINUTES FROM FEBRUARY 13, 2004

The minutes for the February 13, 2004, meeting of the Committee on Superior Court were previously distributed electronically. Revisions and corrections received from members were incorporated by staff.

MOTION: To approve the minutes of February 13, 2004 as presented. Seconded.
Passed unanimously. **COSC-04-003**

STRATEGIC AGENDA

Mr. Tom Aughterton, AOC Public Information Officer

Mr. Aughterton distributed the draft version of the Arizona Judicial Branch Strategic Agenda, *Justice for a Better Arizona*, 2005-2010. The primary purpose for the strategic agenda is to help with budget preparation and the delivery of the budget message to the state legislature, allocation of FTE's throughout the state court system and to provide some type of continuity between the five year administrations of the chief justices.

The five proposed goals for the strategic plan are:

- Protecting children, families and communities
- Providing access to swift, fair justice
- Connecting with the community

- Being accountable
- Serving the public by improving the legal profession

Mr. Aughterton encouraged individual and collective responses from the committee by December 2004.

2005 AJC PROPOSED LEGISLATIVE PACKAGE

Mr. David Benton, AOC Legislative Officer
 Ms. Page Gonzales, AOC Legislative Officer
 Ms. Jamie Sears, AOC Legislative Specialist

Votes indicated: Include – Not include – Option A – Option B

05-14 Drug Court (1st in order of importance) - Appropriates funds for drug courts to provide treatment, staff and drug-testing services.

Vote: The committee voted to include the proposal in the legislative package, 11-2-0-0

Probate Package – 05-06, 05-07, 05-08, 05-09 and 05-10 combined for prioritization purposes (2nd in order of importance)

05-06 Appointment of Guardians or Conservators - The proposal would add the provision to allow the court to investigate the need, and appoint a temporary guardian or conservator, if they find a person to be “persistently or acutely disabled,” in addition to the current “gravel disabled.”

Vote: The committee voted to include the proposal in the legislative package, 12-1-0-0

05-07 Probate Protective Proceedings; Notice of Death Requirement - This proposal would add a provision to the Arizona Probate Code requiring that a guardian and/or conservator appointed in an existing case give written notice to the court within 10 days of learning that the minor, incapacitated or protected person has died.

The committee suggested Option A, which would change the 10 day written notice to the court requirement to 30 days.

Vote: The committee voted to include Option A of the proposal, 3-0-10-0

05-08 Probate Protective Proceedings; Confidential Records - This proposal would add a provision to the Arizona Probate Code requiring that any medical reports or records filed in connection with guardianships or conservators for adults, or guardianships for minors, be kept confidential and not be a public record.

Vote: The committee voted to include the proposal as amended to require that the filer request that the documents be kept confidential and not be public record, 11-2-0-0

05-09 Probate Protective Proceedings; Guardian Reports for Minors - This proposal would add a provision to the Arizona Probate Code requiring that any guardian appointed for a minor must submit a written report to the court no less than annually to apprise the court concerning the minor’s circumstances and condition. This reporting requirement exists for guardians of adults.

Vote: The committee voted to include the proposal in the legislative package, 9-4-0-0

05-10 Probate Protective Proceedings; Final Accounting After Death - This proposal would add a provision to the Arizona Probate Code requiring that any conservator appointed to an adult or minor be required to submit a final accounting to the court within 90 days after the protected person had died, unless accountings have been previously waived.

Vote: The committee voted to include the proposal in the legislative package, 11-2-0-0

05-17 Fiduciary Program Funding (3rd in order of importance) - This proposal is a funding packet designed to support the additional needs for the Fiduciary Program. The packet includes possible funding sources such as increased surcharges on birth and death certificates.

Vote: The committee voted to include the proposal in the legislative package, 13-2-0-0

05-15 Jury Reform (4th in order of importance) - This proposal would make various revisions, both substantive and technical, to recently passed jury reform legislation addressing excuses and documentation.

Vote: The committee voted to include the proposal in the legislative package, 11-2-0-0

05-16 Juvenile Detention Center; Healthcare (5th in order of importance) - This proposal would permit juvenile court judges to require parents who have children in juvenile detention centers or placed on probation to enroll their children in appropriate healthcare networks or treatment.

Vote: The committee voted to include the proposal in the legislative package, 11-2-0-0

05-12 Access to Confidential Records (6th in order of importance) - This proposal would allow access to a patient's medical records and files to a patient's legal representatives pertaining to court proceedings pursuant to Title 36 or Title 14 and requires that medical records and files from the Department of Health Services that are used in connection with these proceedings not be made part of public record.

Vote: The committee voted to include the proposal in the legislative package, 12-1-0-0

05-11 Change of Name; Fingerprinting (7th in order of importance) - This proposal would add a provision requiring any adult applicant for a change of name be required to submit a fingerprint card to Department of Public Safety (DPS) to conduct a criminal background check. The person requesting the name change bears the cost of the background check.

Vote: The committee voted to include the proposal in the legislative package, 8-5-0-0

05-25 Payment for Competency Examinations (8th in order of importance) - A.R.S. §13-4505 requires the county to pay for mental health examinations to determine defendant competency in all cases, even if a defendant is not indigent. This change in statute would make defendants responsible to pay examination costs unless the court finds that defendant indigent. This will save the County the cost of examination payments on behalf of defendants able to pay, and will require defendants to should the financial burden of the examination when appropriate.

Vote: The committee voted to include the proposal in the legislative package, 10-3-0-0

05-03 Preparatory Release for Inmates Sentenced to Probation (9th in order of importance) - Allows an inmate sentenced with a probation tail (consecutive terms of prison and probation), to be eligible for temporary early release, up to 90 days prior to the end of a prison sentence, the same as inmates sentenced without the probation tail. Temporary release is at the discretion of the Director of the Department of Corrections and determined by department rules.

Vote: The committee voted to include the proposal in the legislative package, 10-3-0-0

05-01 Judges' Retirement Age - Extends from 70 to 75 years of age the mandatory retirement age for justices and judges of courts of record prescribed by Article VI, sections 20 and 39 of the Arizona Constitution. Courts of record are the Supreme Court, the court of appeals and the superior court.

Vote: The committee voted to not include the proposal in the legislative package, 5-9-0-0

05-05 Probation Officers Seizing Prohibited Property - Gives Probation Departments and the Superior Court the authority to order the forfeiture of prohibited property seized by probation officers during the course of their duties.

Vote: The committee voted to not include the proposal in the legislative package, 4-9-0-0

SUPERIOR COURT RECORDS RETENTION SCHEDULE

Mr. Ted Wilson, Court Services Division

Mr. Wilson provided the members with a brief update on the project. His intent was to ask for a vote of approval on the schedule, but due to last minute discussions, it was not ready to be presented at this time. Mr. Wilson further asked that time be allowed for this topic on this committee's November agenda.

Judge Newton offered to establish an *ad hoc* subcommittee to work with the Records Retention Committee should they wish to present the schedule at the October AJC meeting.

ARIZONA CODE OF JUDICIAL ADMINISTRATION: VICTIMS' RIGHTS/ RESTITUTION

Mr. Ted Wilson, Court Services Division

Ms. Debbie Olsen, Adult Services Division

Mr. Brett Watson, Juvenile Services Division

The current Administrative Order governing Victims' Rights, (A.O. 94-16) contains both court-specific provisions as well as some probation-related items. The two proposed sections of the Arizona Code of Judicial Administration were developed to more clearly outline requirements for victim services:

1. §6-103: Victim's Rights Requirements for Probation Personnel focuses on the responsibilities of adult and juvenile probation personnel in preserving and protecting the rights of victims.
2. §5-204: Administration of Victims' Rights, focuses on the role and responsibilities of courts in preserving and protecting victims' rights in the justice process and processing of victims restitution.

Concerns:

1. §6-103(D)(1) and (E)(1) – Concern over the use of the word "ensure." Sentences should be restructured.
2. §6-103(E)(4)(f) and (F)(5) – Provision is too broad. Probation staff's responsibility to minimize contact with victims and their families should be limited to within the scope of their duties.
3. §5-204(E) – This paragraph is already promulgated by Rule and does not need to be duplicated in Code.
4. §5-204(L)(2) – Should be changed to read, ". . . remit all amounts over one dollar collected to victims." Mr. Jeanes noted that he had discussed this issue with the Governor's Office for Victims and other victims' advocacy groups; none had any concerns. He continued by stating that in 2003, Maricopa County had more than 1,500 accounts under \$1 and of that number 420 were under 10 cents.

MOTION: To recommend that AJC approve §5-204 with insertion into paragraph L(2) "... over one dollar" immediately after the words "amounts collected". To approve §6-103as written noting the concerns.. Seconded. Passed unanimously. **COSC-04-004**

MINUTE ENTRY REFORM

Ms. Denise Lundin, Clerk of Superior Court in Cochise County

Ms. Margaret Toot, Clerk of Superior Court in Gila County

Ms. Lundin provided the members with an update on Supreme Court No. R-03-0019, Order Promulgating Rule 125, Rules of the Supreme Court, and Amending Rule 5(j), Rules of Civil Procedure, effective December 1, 2004, more commonly known as Minute Entry Reform.

Ms. Margaret Toot gave the members a summary of how the recently approved Rule is working in the Superior Court in Gila County, noting the leadership of Judge Robert Duber II as being pivotal to their success.

COMMITTEE ON KEEPING THE RECORD UPDATE

Mr. Michael Jeanes, Clerk of the Superior Court in Maricopa County

The Keeping the Record Committee is an *ad hoc* policy advisory committee that was established late last year by Chief Justice Charles Jones and began holding monthly meetings in January 2004. Justice Michael D. Ryan is the Chair for this committee. The committee's focus is to examine alternatives to stenographic court reporting and make recommendations on whether and to what extent courts should be permitted to employ recording technology or other solutions to fill the gap in reduced court reporter resources.

The committee consists of two workgroups: Standards Workgroup and Rules and Statutes Workgroup. The Standards Workgroup has drafted some preliminary proposals for:

- digital recording equipment minimum standards,
- identifying qualified transcription service contractors, and
- transcript formatting standards

The Committee's Rules and Statutes Workgroup identifies rules amendments that would be needed to expand the permissible use of electronic recording equipment and non-stenographic court reporters.

Mr. Jeanes also acknowledged the many contributions of Jennifer Greene, AOC Committee Staff Support for the Committee on Keeping the Record.

DOMESTIC VIOLENCE FORMS

Mr. Bob James, Superior Court in Maricopa County

The CIDVC Forms Workgroup had previously presented protective order forms to the Committee on Superior Court, and the forms were approved "in concept"; however, these approved forms and other supporting documents have since been revised. Revisions to the protective order forms and other supporting documents were necessary for several reasons:

- To comply with Federal Law that allows for judicial discretion when judges implicate Brady, but there is no finding of a threat to physical harm; the current protective orders in production do not allow that discretion;
- To create protective orders forms and related documents that are consistently used, as statewide mandated forms;
- To eliminate confusion among the courts, law enforcement, victims, and advocates;
- To enhance readability and understanding for self-represented litigants
- To capture necessary information and facilitate transmission of information in CPOR/LPOR, and
- Ultimately, to improve victim safety and provide for nationwide protection through NCIC

CIDVC approved these protective order forms on August 25, 2004. The forms will be presented to LJC for approval on September 29, 2004 and to AJC on October 14, 2004.

Concerns:

- On the Order of Protection Form if a judge does not check the "Commit No Crimes" checkbox, does that indicate that the defendant can commit crimes?
- On the Order of Protection Form under "Protected Persons" there are three lines only to list only three people who require protection. There needs to be more.
- On the Hearing Order Form under the paragraph that reads, "Parties are to present testimony and evidence whether the Court should continue, revoke or modify the protective order listed

above.” there should be two check boxes that should appear as so: Plaintiff Defendant.

- Also noted were some typographical errors.

MOTION: To approve the newly revised protective order forms and related documents and recommend approval by LJC, and AJC to begin IT production and implementation.
This motion was tabled until the committee’s concerns were addressed.

CODE STANDARDIZATION PROJECT

Ms. Janet Scheiderer, Director, Court Services Division

Through the Commission on Technology, a general statewide agreement has been reached that the success of major initiatives in Arizona’s courts for a range of automation projects, such as statistical reporting, case management reporting, public access, and sharing information with other government agencies, is dependent on the consistency and quality of codes used for data entry into automated systems. To that end, a consultant, Greacen and Associates, has been working with representatives of the general jurisdiction courts to develop an agreed upon standard code set that will be implemented in the new statewide case management system.

Members of the Committee on Superior Court will be provided an update on the progress of this project and informed of future challenges that could impact the long-term success of this initiative.

COMMITTEE ON RULES OF PROCEDURE FOR DOMESTIC RELATIONS CASES UPDATE

Ms. Konnie Neal, AOC – Court Services Division

Ms. Neal presented an update on the committee’s progress in drafting *Arizona Rules for Domestic Relations Cases* and the timeline for approval. Judge Mark Armstrong is Chair of this Committee.

COMMITTEE ON TECHNOLOGY UPDATE

Mr. Kent Batty, Superior Court in Pima County

Mr. Batty provided members with a summary of the main issues and actions discussed at the most recent COT meeting. It included a short update on the status of the AGAVE system development, which is the project to adapt Maricopa’s iCIS case management system for use in Pima and then other counties. The summary also included an update on the requests of the COT for use of JCEF funds, including the first-ever, non-case-management-system funding, for an imaging system in the Apache County Clerk’s office.

NEXT MEETING

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

Friday, November 19, 2004
State Courts Building
Conference Rooms 345 A & B

GOOD OF THE ORDER/CALL TO THE PUBLIC

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

ADJOURN

The meeting was adjourned at 3:00 p.m.

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

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, November 19, 2004
10:00 a.m. to 3:30 p.m.
State Courts Building
Conference Room 345 A&B
Phoenix, Arizona 85007

MEMBERS PRESENT:

Honorable Silvia Arellano
Mr. K. Kent Batty
Ms. Sylvia Brandfon, Ph.D.
Honorable James E. Chavez
Honorable Norman J. Davis
Honorable Robert Duber, II
Honorable Richard S. Fields
Honorable Charles V. Harrington
Honorable Bethany G. Hicks
Honorable Michael K. Jeanes
Honorable William T. Kiger
Honorable Kirby Kongable

Mr. Gary Krcmarik
Honorable Kenneth Lee
Honorable Denise I. Lundin
Mr. Rod Marquardt
Honorable Stephen F. McCarville
Ms. JoJene Mills
Honorable Barbara Mundell
Honorable Fred Newton, Chair
Honorable Dale Nielson
Honorable Emmet J. Ronan
Honorable James A. Soto
Honorable Nanette Warner

MEMBERS ABSENT:

Honorable Pat Escher
Honorable Cathy Holt
Honorable Margaret Maxwell

GUESTS:

Ms. Melinda Hardman, AOC
Mr. Rob Lubitz, AOC
Paul Rubin, New Times

Ms. Konnie Neal, AOC
Mr. Brett Watson, AOC

STAFF:

Ms. Susan Pickard

Ms. Theresa Barrett

WELCOME AND OPENING REMARKS

With a quorum present, the November 19, 2004, meeting of the Committee on Superior Court was called to order by Judge Fred Newton, Chair, at 10:00 a.m.

APPROVAL OF MINUTES FROM SEPTEMBER 24, 2004

The minutes for the September 24, 2004, meeting of the Committee on Superior Court were previously distributed electronically. Judge Newton stated that on page 3 of the minutes in the paragraph discussing legislative proposal 05-06 "gravel disabled" should read "gravely disabled." Revisions and corrections received from members were incorporated by staff.

MOTION: To approve the minutes of September 24, 2004 as corrected.
Second. Passed unanimously. **COSC-04-005**

BUSINESS ITEMS/POTENTIAL ACTION ITEMS

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

Ms. Kathy Waters, Mr. Rob Lubitz

Mr. Lubitz distributed the proposed revision of A.C.J.A. § 6-106 regarding drug testing, pre-employment testing and testing for reasonable cause. These revisions are proposed to address issues with process, procedure and cost benefit.

The proposed changes include:

- The adoption of a random drug testing design.
- An AOC determined testing frequency, in consultation with the Committee on Probation.
- An AOC determined drug testing methodology, in consultation with the Committee on Probation.
- The removal of alcohol testing from random drug testing while leaving this option available under reasonable suspicion testing.
- Departmental polygraph examination and/or drug testing for pre-employment screening.

The proposed amendments have been adopted unanimously by the Committee on Probation.

Concern: People are not being detected through reasonable suspicion testing, how effective will the random drug testing be and what is the cost benefit?

Response: The initial rationale was related to the arming officers and the heightened responsibility to assure the public and ourselves that we have a drug free workplace. The threat of some random testing, even though it is a small percentage, is likely to act as a deterrent. This is an important part of the program. In offices that are using this method of testing, some significant issues have been uncovered. Random drug testing promotes professionalism

MOTION: To approve the proposed amendments to A.J.C.A. 6-106 as presented. Second. Passed 21-1-0 **COSC-04-006**

A.C.J.A. § 1-301: EQUAL EMPLOYMENT OPPORTUNITY

Mr. Eric Carlson, Ms. Frida Zilberman

Mr. Eric Carlson (AOC) presented A.C.J.A. § 1-301 for approval.

A.C.J.A. § 1-301 pertains to Equal Employment Opportunity. This new code section, if approved, will replace Administrative Order (A.O.) 93-11. The code section contains the same language as the A.O. except that it extends its application from the appellate courts to the entire Arizona Judiciary.

MOTION: To approve the proposed draft document of A.J.C.A. 1-301 as presented. Second. Passed unanimously. **COSC-04-007**

2005 MEETING DATES

Honorable Fred Newton

This item, initially scheduled for discussion at 3:15 p.m., was discussed out of agenda order.

The proposed 2005 meeting dates for the Committee on Superior Court have been scheduled 3-4 weeks prior to the Arizona Judicial Council (AJC) meetings. This schedule allows time for those wishing to present agenda items to AJC to make this committee's recommended changes prior to presentation. Additionally, the 2005 meetings for the Committee on Probation have been scheduled for two weeks prior to this committee's meetings for the same purpose.

MOTION: To approve the proposed meeting dates for 2005 for the Committee on Superior Court as presented. Second. Passed unanimously. **COSC-04-008**

COMMITTEE ON TECHNOLOGY UPDATE

Mr. Kent Batty

This item, initially scheduled for discussion at 2:45 p.m., was discussed out of agenda order.

At the last meeting of the Commission on Technology (COT) the state Information Technologies Strategic Plan was approved. The revised integrated financial system project justification and expenditure plan for Maricopa County was also discussed. Mr. Batty added that at the preceding meeting Maricopa County's two-year plan to provide funding in six-month increments to support the development and integrated financial plan was presented; however, only the first segment of the plan, approximately \$228,000 from state JCEF funds, was approved. Maricopa County was asked to investigate other fund sources.

SUPERIOR COURT RECORDS RETENTION SCHEDULE

Mr. Ted Wilson

This item, initially scheduled for discussion at 2:00 p.m., was discussed out of agenda order.

Mr. Wilson provided an update of progress in revising the Superior Court Records Retention Schedule. The reasons for updating the schedule are as follows:

- The current schedule was published 1991
- Changes have been made to rules, statutes and operating practices.
- The volume of cases that come before the Superior Court
- Changes in technology

Recommendations:

- Civil and criminal cases, 50 years with motor vehicle tort cases having a shorter timeline
- Family court cases, 75 years
- Probate and Adoption, 100 years

The proposed schedule was presented at the Presiding Judges meeting. They expressed concern with the 50-year timeline. That has been resolved by securing an agreement with Arizona State Library, Archives and Public Records Department which will accept the files after the fifty year period.

Due to the short timeline before presenting the proposed schedule for AJC approval in December, Mr. Wilson requested that the Committee on Superior Court establish a subcommittee to facilitate the review and approval of the schedule.

Judge Newton stated that a sub-committee would be formed to review the final draft schedule and provide recommendations to the Presiding Judges and the AJC. He requested volunteers for the task, noting that Mr. Wilson would be provided with a list of the subcommittee members after the meeting.

RULE CHANGE PETITIONS

Discussions regarding Rule 28 Petitions R-04-0024, R-04-0022, R-04-0023 and R-04-0015 were facilitated by Judges Cathy Holt, Kenneth Lee, Nanette Warner and Norman Davis. All petitioners were invited to attend the meeting and provided input on these petitions. Committee members were asked to consider each of the petitions and decide if comment on behalf of the committee should be developed and if so, establish ad hoc subcommittees for the tasks.

While the rule change petitions were presented out of agenda order, they are memorialized in these minutes together to avoid confusion.

R-04-0022- Petition to Amend Rule 44, Arizona Rules of the Supreme Court

PRESENTERS: Honorable Nanette Warner; Ms. Christine Thompson and Ms. Shauna Miller, State Bar of Arizona; Ms. Kevin Ruegg and Ms. Sarah Ramos, Arizona Foundation for Legal Services and Education

COMMENT DEADLINE: 11/24/2004

PETITIONER: Robert Van Wyck, Chief Bar Counsel, Arizona State Bar

DESCRIPTION: Amends rule relating to the banks that hold IOLTA accounts, targeting the reasonableness of fees they charge. The petition also seeks authorization for the State Bar

and the Arizona Foundation for Legal Services and Education to approve financial institutions as IOLTA depositories, and to publish an annual list of approved institutions.

Judge Warner summarized the reasons for the proposed change, which were:

- Reasonableness of fees charged by financial institutions
- Negative netting and inconsistencies in financial institution charges, that deprive the State Bar Foundation of interest that has been accrued to which they are entitled
- Establishing better criteria for improving financial institutions that hold IOLTA accounts

Negative netting occurs when a financial institution pools all of the interest in the IOLTA accounts and charges fees against the pooled interest rather than on a per-account basis.

Ms. Ruegg stated that there are currently 53 approved IOLTA financial institutions. The Arizona Foundation for Legal Services and Education has discovered that 14 of those institutions are not meeting reporting requirements. There are 8 institutions that are negative netting which has an approximate \$40,000/year impact on the foundation. This impact equates to 200 hours free legal services or an additional 130 schools receiving educational benefits. Ms. Ruegg provided the following examples of negative netting outcomes.

Institution A was holding \$13,977,000 IOLTA trust money in July. After negative netting was applied, the foundation was informed that it owed the institution \$15.00.

Institution B held \$7,543,466 and informed the foundation that it owed the institution \$265.00.

Judge Warner added that there is currently no significant opposition to this rule change that she is aware of other than perhaps the financial institutions.

Concern: What are the Bar/Foundation's intentions in terms of approving the institutions?

Response: The Foundation will be meeting with the financial institutions and providing training regarding rules and procedures for these accounts and how they are to be maintained. The foundation will also make the rates offered by the different institutions public via their website.

Concern: How will the determination of reasonableness be made?

Response: The Foundation will have a round-table type discussion with the institutions to discuss reasonable charges.

Concern: The Bar/Foundation is negotiating with and selecting the financial institutions that attorneys can do business with to the advantage of the Bar/Foundation irrespective of the impact it may have on the individual attorney.

MOTION: To move to recommend the rule change to the AJC. Second. Passed unanimously. **COSC-04-009**

R-04-0023- Petition to Amend Terminology and Rules 9 and 16, Rules of the Commission on Judicial Conduct

PRESENTERS: Honorable Norman Davis, Honorable Barbara Mundell and Mr. Paul Ahler and Ms. Sally Wells, Maricopa County Attorney's Officer

COMMENT DEADLINE: 11/24/2004

PETITIONERS: Richard Romley, Paul McMurdie, Maricopa County Attorney's Office

DESCRIPTION: The petition seeks to make judicial disciplinary records as publicly-accessible as attorney disciplinary records. It proposes that once the Commission has disposed of a complaint, the records would be open for public inspection even if the Commission decided to dismiss the complaint or to impose only informal discipline.

Judge Davis said that the intent of this petition was to make public and remove confidentiality that currently exists with respect to all complaints of any nature or any character filed with the Judicial Conduct Commission after disposition.

Mr. Paul Ahler, Chief Deputy for Maricopa County Attorney's Office was introduced and noted that the petition was filed on behalf of Mr. Rick Romley and the county attorney's office. Mr. Ahler stated that the county attorney's office is attempting to have the rules governing the public disclosure of judicial disciplinary records mirror those governing attorney disciplinary records. With the adoption of revisions to Rule 70, Rules of the Supreme Court, in 1996, all attorney disciplinary records were opened up for public review.

About a year ago there was a complaint about a judicial officer filed with the Commission on Judicial Conduct which the county attorney's office saw as a very serious matter. This complaint involved an improperly issued search warrant which was lacking probable cause. The county attorney's office feels the public has the right to know about conduct of this nature by elected officials.

Concern: Why should unfounded complaints be disclosed?

Response: The position that the county attorney's office is why should there be different rules for judges and attorneys.

Judge Barbara Mundell, member of the Commission on Judicial Conduct, said that the Commission has asked for and received an extension to respond to this petition until January 24, 2005. She further noted that currently any charges and sanctions that are formal are disclosed to the public. The only actions that are kept confidential are:

- Advisory letters which do not have anything to do with misconduct
- Diversions, for those who may have substance and/or alcohol abuse issues
- Admonitions, for appearances of impropriety in the manner in which a case was processed where no misconduct was found
- Reprimands which are sanctions that acknowledge that some sort of misconduct has occurred

The Commission has the discretion to disclose any informal sanctions. The Commission obtains an investigator and gathers information upon which the Commission can determine whether misconduct has occurred and the appropriate type of sanction. Judge Mundell stated that the Commission is leaning towards agreeing that reprimands be made public, but the members think it is extremely unfair to suggest that informal sanctions be disclosed when those informal sanctions, other than reprimands, acknowledge that no misconduct has occurred on the part of the judge.

The disciplinary processes for attorneys and judges are different because judges are elected/retained, and in the case where they are elected, judges have opponents. Judges and their decisions are often the fodder for bulletin boards and advertisements. Attorneys do not face the same challenges.

Judge Mundell further stated that allowing frivolous/meritless/unfounded complaints to be disclosed would invite more of the same. The Commission believes that it is extremely unfair to allow these types of complaints to be made public.

Judge Silvia Arellano commented that she agreed that discipline at any level for judge should be made public; however, complaints should not be made public.

Dr. Sylvia Brandfon stated that as a member of the public she did not want to hear about judicial complaints, because there are too many things that can go wrong. What she is interested in is the disciplinary actions, but only after careful review/consideration. She sees attorneys as being very different from judges. It is like comparing apples to oranges.

Judge Newton stated that the judicial branch is the most open branch of government by far. He noted the possible impact this rule would have on judicial rotation onto the family bench for Maricopa, Pima and some of the out lying counties. These counties continue to have difficulty getting good judges to go onto the family bench and this rule will not help in anyway. Judge Newton is also concerned about the impact this rule would have on the Commission and its workload.

Judge Mundell commented that should this rule be adopted whenever a complaint is filed that might merit a reprimand, a letter will be sent to the judge asking him/her to respond. The judge would know the complaint was going to be made public. If they are up for retention or re-election, they will probably hire an attorney. This would result in and increase costs for all complaints that are filed.

MOTION: Moved to recommend the proposed petition to AJC and support disclosure of any action by the Commission based upon a finding of misconduct be it reprimand or other. Second. Passed unanimously. COSC-04-010

R-04-0024 – Petition to amend Rule 64.1, Arizona rules of Civil Procedure, Allowing Challenge to Civil Warrant Validity at Initial Appearance Hearing

PRESENTERS: Honorable Cathy Holt, Mr. Donald Guadagni

COMMENT DEADLINE: 11/24/2004

PETITIONERS: Mr. Donald Guadagni

DESCRIPTION: This petition seeks to specifically permit a challenge to the validity of a civil arrest warrant at the initial appearance.

Mr. Guadagni presented his proposal. Having personally observed some of these cases and reviewed case records, he feels it is apparent that due process is sometimes hastened in order to validate warrants. From his research, Mr. Guadagni concluded that there are statutory wording deficiencies on some warrants. Further, he stated there are process deficiencies verifying proper service of the warrant. Mr. Guadagni's research involved mainly child support arrest warrants.

Mr. Guadagni gave some practical examples that would be remedied by this change. One of the examples he gave was of a warrant issued resulting in the individual being maintained in the county jail for approximately seven days before he was accorded the opportunity to challenge the validity of the warrant. Through his research, Mr. Guadagni claims he found approximately 1,100 cases in which the warrants were not valid or errors were made.

Mr. Guadagni stated that the wording for warrants in Rule 64.1 and A.R.S. § 25- 681 was very vague and nebulous regarding the definition of what the statutory wording needs to encompass in order to be valid. One of the prerequisites is that the individual needs to be ordered to personally appear and the second prerequisite is that one has to make sure the individual is served with this and then you need to verify the individual did not show up as ordered.

MOTION: Moved to NOT recommend petition as it is proposed to AJC but take whatever documentation Mr. Guadagni has to support his contention that more than a majority of samples were insufficient and that information be provided to presiding domestic relation judges and major counties like Maricopa and Pima. Second. Passed unanimously. COSC-04-011

R-04-0015 – Petition to amend Rule 15.1, Arizona Rules of Criminal Procedure

With the agreement of Honorable Kenneth Lee and Mr. Steven Twist of the Arizona Voice for Crime Victims, this petition will be considered at the February 2005 meeting of this committee.

DOMESTIC VIOLENCE FORMS UPDATE

Ms. Konnie Neal

Ms. Konnie Neal presented an update on the progress of the domestic violence forms.

On September 24, 2004, this committee voted to table the discussion on the forms so the Domestic Violence Forms Workgroup could reconsider the language in the checkbox before “Commit no crimes” as did the Arizona Judicial Council. The Workgroup had developed new language and were well on the way back to the approval process when Judge O’Neil, CIDVC Chair, Ellen Buchner, Office of the Governor STOP Grant Administrator, and Konnie Neal attended a domestic violence conference in Florida, where they learned about Project Passport.

Project Passport is a national effort to create regionally recognized protective order forms (to enhance protective order enforcement by law enforcement by encapsulating all of the necessary legal language on the first page of the form – ‘Model Template’). This project was implemented to expand the success of the original Project Passport which began with Kentucky and its border states.

The ‘Model Template’:

- Contains commonly agreed upon data elements
- Is recognized across jurisdictions
- Identifies Federal gun law prohibitions
- Facilitates enforcement in the field
- Is the product of multi-disciplinary consensus

- Is flexible for varied state statutory requirements

The Model Template effort will come to the Central Southwestern Region in February 2005. The Central Southwestern Region includes Arizona, Colorado, Utah, New Mexico, Texas, Montana, Wyoming, Idaho, North Dakota, South Dakota and Tribal Courts. The February conference is an effort to create the regionally recognized Model Template (first page). Each state will be represented by a team which will include at a minimum a judge, a court administrator, a law enforcement representative and a tribal court representative at a minimum.

As it is understood at this time, due to conforming just the first page of our forms to the Model Template and the use of XML as an interface between the states and NCIC, the transition should not be difficult. Robert Roll, AOC – Information Technology Division, has already begun addressing the technical issues. The CPOR/LPOR databases are compatible with XML which acts as an interpreter between the varying systems and NCIC. Because the data interpretation will be done at the CPOR/LPOR stage in our process, AZTEC should not be affected.

Judge Newton asked Ms. Neal how Arizona's participation in the regional group meshes with the Arizona protective order forms. Ms. Neal stated that the template was to be a form that was uniform with the other states. Ms. Neal said that other states are battling the same stumbling blocks that Arizona is battling with regards to Emerson and Brady and how to have the form in federal compliance and also have the states laws included on the form. Judge Newton also asked Ms. Neal if the "old" forms will continue to be used and Ms. Neal said yes and that implementation of the new forms will not begin until AJC approves them.

E-FILING

Judge William Druke (Ret.)

Judge Druke described the development of the e-filing system used by the Court of Appeals, Division II covering the system's basic components. The idea behind e-filing is to be paperless. The goal was for judges to be able to view any document in a case on their computers.

Documents are currently received, stored, produced, distributed and managed electronically. Documents that are filed in hard copy are immediately scanned and sent to the repository. Transcripts are also stored electronically. All files are stored in PDF format.

Judge Druke discussed the benefits of the e-filing system which are as follows:

- It is essentially a paperless environment
- Anyone with proper access can simultaneously review a document without the document having to transport from one place to another
- Faster access and distribution of documents

LEGISLATIVE UPDATE

Ms. Jamie Sears (AOC Legislative Specialist) presented an update on the finalized AJC Legislative Package.

Drug Court Funding – Appropriate funds for drug court to provide treatment, staff and drug-

testing services. AOC legislative staff are working to garner community-based treatment provider support through the Regional Detox Center Committee. They are also working to obtain support from the Department of Corrections and Juvenile Corrections. They have met with a representative of the Governor's Office who is interested in the proposal. A bill folder has been opened with legislative council by Representative Konopnicki. Currently legislative staff is working with legislative council on the wording of the bill. One of the major issues is the dollar amount.

Fiduciary Program Funding – This proposal is a funding packet designed to support the additional needs of the Fiduciary Program. The packet includes possible funding sources of increased surcharges on birth and death certificates. Technical statutory changes are also addressed. The AARP is going to be supporting this proposal. There have also been calls placed to the Governor's Council on Aging, the Area Agency on Aging, the Veteran's Administration and the Attorney General's Office to garner support. A meeting has been scheduled to ask Representative Nelson to sponsor this bill and open a bill folder.

Appointment of Guardians or Conservators in Mental Health Proceedings – The proposal would add the provision to allow the court to investigate the need, and appoint a temporary guardian or conservator, if they find a person to be "persistently or acutely disabled," in addition to the current "gravely disabled." A bill folder has been opened by Representative Hirschberger. Public Fiduciaries may oppose this bill however; David Benton is working with them to resolve their issues.

Concern: Will the extension of a judge's ability to appoint temporary guardians or conservators in permanently or acutely disabled type cases negatively impact public fiduciary resources.

Response: David Benton stated that Judge Mundell did not feel that fiduciaries would be overwhelmed, because fiduciaries are the appointment of last resort.

Mental Health Services; Access to Confidential Records – This proposal would give a legal representative access to the patient's medical records and files pertaining to court proceedings pursuant to Titles 36 or 14, and requires that medical records and files used in connection with these proceedings not be made part of the public record. A bill folder has been opened by Representative Hirschberger. There is reason to believe that the hospital associations, that sponsored the bill that created the problem that this bill is attempting to resolve, may support the proposal but at this time it is still tentative.

Jury Service Reform – This proposal would make various revisions, both substantive and technical, to recently passed jury reform legislation addressing jury duty excuses and documentation. A final meeting is scheduled with Representative Lopez to discuss this bill and the issues involving another bill which has been proposed (Representative Nelson's bill). There is an age requirement in this proposal. AARP likes the idea of the bill; however, they are hesitant about setting any age requirement, as it goes against their philosophy. The AJC had mixed feelings on whether or not to have an age requirement but they are supportive on the rest of the proposal.

GOOD OF THE ORDER/CALL TO THE PUBLIC

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

NEXT MEETING

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

Friday, February 25, 2005
State Courts Building
Conference Rooms 345 A & B

ADJOURN

The meeting was adjourned at 3:00 p.m.

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