

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, February 10, 2006
10:00 am to 3:00 pm
Judicial Education Center
541 E. Van Buren, Turquoise Room
Phoenix, AZ 85003

MEMBERS PRESENT:

Honorable Silvia Arellano
Mr. K. Kent Batty
Ms. Sylvia Brandfon Ph.D.
Honorable James E. Chavez
Honorable Robert Duber II
Ms. Karen D. Ferrara
Honorable Richard S. Fields
Honorable Charles V. Harrington
Honorable Bethany G. Hicks

Honorable Michael K. Jeanes
Honorable William T. Kiger
Honorable Kenneth Lee
Honorable Denise I. Lundin
Honorable Stephen F. McCarville
Ms. JoJene Mills
Honorable Fred Newton
Honorable Dale Nielson
Honorable James A. Soto

MEMBERS ABSENT:

Honorable Norman J. Davis
Honorable Margaret H. Downie
Honorable Pat Escher
Honorable Andrew Gould
Honorable Cathy Holt

Mr. Rod Marquardt
Honorable Margaret Maxwell
Honorable Emmet J. Ronan
Honorable Nanette Warner

PRESENTERS / GUESTS:

Justice Michael D. Ryan
Ms. Jennifer Greene
Mr. Jerry Landau
Ms. Elizabeth Ncube
Ms. Nancy Swetnam
Honorable George Anagnost
Mr. Robert B. Van Wyck

Mr. James Belanger
Mr. Dale Baich
Mr. Keith Stott
Ms. Barbara Marshall
Mr. Robert Hirsh
Ms. Patricia Trebesch

STAFF:

Ms. Susan Pickard
Ms. Kim Ruiz

I. REGULAR BUSINESS

A. WELCOME AND OPENING REMARKS

With a quorum present, the February 10, 2006, meeting of the Committee on Superior Court was called to order by Judge Fred Newton, Former Chair, at 10:15 am.

B. INTRODUCTION OF NEW CHAIR

Judge Newton introduced Judge James A. Soto, the newly appointed Chair of Committee on Superior Court.

C. APPROVAL OF MINUTES FROM November 18, 2005

Minutes for the November 18, 2005, Committee on Superior Court meeting were presented for approval.

**MOTION: To approve the November 18, 2005 meeting minutes as presented.
Motion passed unanimously. COSC-06-001**

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Committee on Keeping the Record

Justice Michael D. Ryan, Arizona Supreme Court
Ms. Jennifer Greene, Staff to the Committee

A. Committee on Keeping the Record

Justice Michael D. Ryan, Arizona Supreme Court
Ms. Jennifer Greene, Staff to the Committee

Justice Ryan gave a PowerPoint presentation reviewing the background of the Committee on Keeping the Record, their work products and the final report findings and suggestions. The committee was established to address the changes in the reporting environment in Arizona and elsewhere with the aim of identifying methods to ensure the verbatim record of court proceedings is made by the most reliable, efficient, and accurate means reasonably available to courts statewide.

Assignment:

- To ensure the quality and integrity of the record;
- To examine and acknowledge court reporters' contributions to making the court record;
- To assess the local needs and national trends and technological options;
- To examine what minimum standards are needed for the equipment, transcription, storing and managing of the record.

Challenges:

- To accommodate the new technology while at the same time being mindful of courts differing practices.
- To preserve the right to request a court reporter and gain consensus on appropriate priorities with respect to the use of court reporters.

Recommendations for rule and statute changes:

- Eliminate archaic language;
- Eliminate terms that lock the courts into stenographic reporting;
- Provide oversight of transcript production in the absence of official court reporters;
- To open up the language in rules and statutes that reference court reporters or keeping the record for use of alternative means of capturing the record to include technology (digital recording, audio visual recording, voice recognition software, etc).
- To change the language of A.R.S. §12-221, which currently requires that every superior court judge hire a court reporter. It is currently not being honored, so they suggested amending the language to allow a court to use electronic means for capturing the record-
- To change the language of A.R.S. §38-424, which currently requires that an attorney's request for a court reporter be honored. They suggested adding language to require the request be made "timely" and that "timeliness" would be set by a certain number of days or by local court rule.

- To change the language of Civil Rule 55F, this currently requires that a transcript be generated automatically after every default hearing. They suggested amending the rules to require a transcript be generated only upon a request by someone challenging the default. The party challenging the default would have to request a transcript be generated, and they would have to pay for it.

Questions/Concerns:

- Will the transcribers be certified? No, but the committee drafted model contract specifications to address maintaining minimum standards.
- Court reporters have ethical standards of confidentiality and regulations governing them. Will there be that kind of system for the transcribers? This could be part of the contract.
- If this is adopted, will court reporters lose their jobs? No, there is more than enough work for them to do. It is also believed that there will be a migration of court reporters moving to work for television networks to do closed-caption real-time reporting.
- The people who may be the logical people to prepare the transcripts of electronically recorded proceedings are the court reporters who didn't pass the certification qualifications.
- It seems the quality of the record may be more vulnerable to being challenged when there is no certification of the person transcribing.
- Can't courts use the digital format as the record and just have lawyers cite to the time stamp on a digital recording in their briefs on appeal? Appellate courts require a transcript right now, so they don't need to listen to multiple days' worth of hearings.
- In terms of storage, would both the recording and the transcript be stored? Under the new retention schedule for raw reporters' notes, whether electronic or paper, they will be stored for 10 years or less in most case types.
- The recommendations in the report include that a court reporter be the presumptive method of making the record for felony trials and all hearings for death penalty cases.
- Will there still be a recording of the proceedings at the cost of the County?
- Is there any sense of the cost difference for transcribing between an electronic recording and a court reporter transcription? Will this be a real advantage? No, in fact there is no current price advantage to having a transcript prepared by a non-reporter transcriber; the costs are running about the same.
- There are changes to Rule 30(b)(4) that make it look like the rule no longer specifies who bears the cost of the recording. (Justice Ryan suggested that the State Bar file a comment on this point to the committee's rule change petition.)
- If you do recognize there will be a lesser quality transcript with the transcribers, then you get what you pay for. Very concerned about the quality of a transcript by an individual not held to the same standard as a court reporter.
- This takes great flexibility away from the smaller local courts. There are restrictions that could potentially put local courts in a real bind.

MOTION: Motion was made and seconded to recommend approval of the Final Report of the Committee on Keeping the Record. Motion passed. 14-4-0 COSC-06-002

MOTION: Motion was made and seconded to recommend approval of the Final Report of the Committee on Keeping the Record. Motion passed. 14-4-0 COSC-06-002

B. Legislative Update

Mr. Jerry Landau, Director, Government Affairs

HCR2011: SUPREME COURT; JURISDICTIONAL LIMITS (REP. GRAY) Amends the Constitution to allow the 2006 general election ballot to carry the question of amending Article 6, Section 5, of the state constitution to add language that states the supreme court shall not "infringe on the authority of the Legislature or the people to enact otherwise constitutional substantive, procedural and evidentiary laws."

HCR2015: JUDGES; MERIT SELECTIONS, POPULATIONS (REP.RIOS)

Amends the Constitution to allow the 2006 general election ballot to carry the question of amending various sections of Article 6 of the state constitution to change the population threshold for direct election of superior court judges to counties with a population of less than 600,000.

HCR2016: JUSTICES AND JUDGES; GOVERNOR APPOINTMENT (REP. GRAY) Amends the Constitution to allow the 2006 general election ballot to carry the question of whether to amend various sections in Article 6 of the state constitution to require senate confirmation of appellate and supreme court justices and superior court judges in counties with a population of more than 250,000. All justices and judges subject to Senate confirmation must be reconfirmed by the Senate every four years. This is pending a hearing in House Judiciary.

HCR2020: SEPARATION OF POWERS; JUDICIAL LAWMAKING (REP. PEARCE)

Amends the Constitution's judicial powers to prohibit the Courts' ability to establish rules of law retroactively, including rules of laws arising before a claim is filed.

SCR1013: JUSTICES AND JUDGES; RETIREMENT AGE (SEN. HUPPENTHAL) Amends the constitution to change the age that a Superior Court Judge must retire from seventy to seventy-five years of age.

SCR1033: METHAMPHETAMINE; PROBATION INELIGIBILITY (SEN. BENNETT)

Removes Methamphetamine from the provisions of A.R.S. 13- 901.01 (Prop 200).

H2819: ADULT PROBATION; COUNTY RESPONSIBILITY (REP. PEARCE) Counties with a population of at least 2 million (Maricopa County) will fund both adult and juvenile probation. Other counties may opt in to such a program. In those counties that assume financial responsibility for probation services the statutory maximum caseload for probation is suspended. Those counties will see their contributions to AHCCCS and ALTCS reduced by an amount equal to what the county would have received for probation services and the county's base expenditure limit will be increased. The probation surcharge fee is increased from \$5 to \$10. (Titles 8, 11, 12, 13)

C. Court Leadership Institute of Arizona (CLIA)

Ms. Elizabeth Ncube, Education Services Division

Ms. Ncube shared background information on the program. The Education Services Division has been working on the concept of developing a management/leadership institute with initial groundwork on learning objectives for management courses and the development of Arizona specific curriculum. A new unit within the Education Services Division was developed in December (CLIA). CLIA is composed of three components:

1. First Level Manager/Supervisory Programs - Clearinghouse directing the court personnel to their local government (city, county) - Basic management skills, coaching, human resources, does not have to necessarily be court specific.

2. Mid-Level Managers, Continuing Managers, New Presiding Judges - In interviews with new presiding judges, an interest was defined in learning administrative and management concepts that they were not introduced before. In this area, local and national partnership could be formed with court organizations.
3. Executive Team, Presiding Judges, and Court Administrators - Part of the process would be to seek faculty that are experts in leadership methodology. These courses could present guidance for learning advantageous practices and leadership principles regarding motivating and building teams that move towards similar goals.

Goals:

- Continue to sponsor and develop programs for new and second level managers; Develop new programs for the top tier of leadership
- Prepare the next generation of leaders
- Address the problem of turnover within the court system (help define a career path through education)
- Assemble a Policy Committee (under COJET) to help develop a multi-year project plan and determine priorities. There is a web page on the Education Services Portal.

D. Anticipated Revisions to the Arizona Code of Judicial Administration Part 7, Chapter 2

Ms. Nancy Swetnam, Director, Certification and Licensing Division

Ms. Swetnam and Ms. Rittenhouse provided a presentation on anticipated changes to all of the code sections in Arizona Code of Judicial Administration, Part 7, Chapter 2 with the exception of the section regarding private process servers. There are provisions in § 7-201 - General which, for consistency purposes, are being applied to the other sections.

The sections will go out for public comment. At the end of the comment period, the sections that apply to the Limited Jurisdiction Courts will be brought before this committee for a formal recommendation.

§ 7-201- General has provisions that are recommended for application in all programs:

- Establish regulatory boards for all of the programs
- Provide standard processes for certifications
- Enhance complaint processing

Other section-specific recommended changes:

§ 7-206 - Court Reporter; Standard Certification

- Voice Writers
- Transcript Fees
- Arizona Transcript Format Standards

§7 -208 - Legal Document Preparer

- Restrictions on a legal document preparer doing business with a disbarred attorney.

§ 7-205 - Defensive Driving

- No statutory changes
- Courts running their own defensive driving programs- leave in the code?
- Timeframe for court diversion fees to be changed effective April 1 and October 1

- When is fee effective and how should this be viewed for the citation being received? (Suggestion: Date of citation can be used for the diversion fee)
- Regulatory Boards to be set up for fiduciary, defensive driving and confidential intermediary programs
- How are fees to be refunded and to be set out in the code
- Propose a 2 year renewal cycle for the schools and instructor to begin November 1, 2007
- Propose a provisional and standard certification for instructor certification

Nancy Swetnam and J.R. Rittenhouse will work with the Committee on Limited Jurisdiction Courts' Defensive Driving Subcommittee regarding proposed changes to § 7-205.

Four meetings have been scheduled. Announcements and code sections will be distributed to the Committee before those dates.

E. Implementation of ARCrP §§ 3.2 and 26.12 Re: Issuance of Warrants

Judge George Anagnost, Chair, LJC Rule Implementation Subcommittee

Effective December 1, 2005, ARCrP Rules 3 and 26 were amended to provide an additional optional method for issuance of court-initiated warrants to compel attendance of defendant pre - (Rule 3) or post - (Rule 26) adjudication. The LJC Rule Implementation Subcommittee has developed the usable basis for issuance of court warrants in the next few weeks. Judge Anagnost gave updated information on the warrant process. The purpose of the rule change was to greatly simplify how warrants were issued. It was found there was a great lack of uniformity across the state of how warrants are issued, treated, adjudicated and terminated. There is also not consistency between prosecutorial agencies across the state. This also leads to a high error rate for how warrants are cleared. They are balancing simplicity and adding another type of warrant into the system.

III. RULE CHANGE PETITIONS

**A. R-05-0021 Arizona Rules of the Supreme Court 31(a)(2), 41(g) & 53
R-05-0025 Arizona Rules of the Supreme Court 66, 67 & 68 pertaining to Conservatorships**

Mr. Robert B Van Wyck, Chief Bar Counsel

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Rule change for R-05-0021 came out of a desire to begin to emphasize the need for professionalism among lawyers as how they treat each other, the courts and clients. The proposed rule 41(g) changes "offensive personality" to "unprofessional conduct", then defines unprofessional conduct. The change is intended to tighten the language and to restrict prohibited acts to the conduct of unprofessional behavior. The comment to the rule is designed emphasize the importance of professionalism and to give attorneys greater notice of the kinds of unprofessional conduct prohibited by the rule. The rule change is part of an overall goal to promote professionalism through awareness, education, peer review and enforcement.

- Disagreement has been voiced by members of the State Bar with Mr. Van Wyck's view. There is concern that the Pam Treadwell Ruben's Task Force on Professionalism Report recommendations expand the grounds for disciplinary action for unprofessional conduct. Some interpret the report to recommend an expansion of the peer review program at the

State Bar, which is not a disciplinary program. Some members of the bar have indicated they will be filing an opposition to this petition.

Rules change for R-05-0025: This rule relates to the State Bar's role in conservatorship proceedings where the state bar must take custody of an attorney's files provide notice to and return files to clients. These proposed change include a definition of written notice to the clients; placing a cap of \$10,000 payment to a private attorney for assuming conservatorship duties for the Bar; requiring that courts notify the State Bar of the appointment of a conservator; adding a provision allowing the State Bar to develop a record retention policy for the preservation of conservatorship files.

B. R-05-0031 Arizona Rules of Criminal Procedure 6.8

Mr. James Belanger, Lewis and Roca LLP
Mr. Dale Baich, Federal Public Defender

Mr. Baich gave a brief history of ABA guidelines for counsel of defendants in capital cases. The proposal is intended to incorporate practitioner specific guidelines for capital cases.

Some comments and questions from the members were:

- Will these guidelines be mandatory? If so, if counsel violates one of the guidelines is a *per se* ineffective assistance of counsel violation? No, the guidelines are objective standards; not a mandatory ineffective assistance of counsel barometer.
- Has any other state has adopted this. No, but other states are considering it.
- Who will pay for all this? Establishing a “dream team” of defenders that travel throughout the state? It creates a new layer of administration.
- As proposed, it seems to read that it is mandatory to have a mental health professional as part of the team. If that is not the intent, the wording needs to be changed.
- Does APAC support this? This proposal has not been presented to APAC, but APAC has represented in principle that they supported the adoption of the guidelines, however it is not an official support.

C. R-05-0026 Rules of the Commission on Judicial Conduct

Mr. Keith Stott, Staff, Commission on Judicial Conduct

This petition is a small amendment to a larger amendment made last summer. This amendment is intended to resolve issues the Commission is encountering with implementing the previous amendment. All judges in the state have been notified of the changes the Commission made, and they are also posted on the Commission's website.

- All complaints against judges are public, to varying degrees, starting January 1 of this year. Original complaints and dismissal orders will be on the internet, with names redacted. Complaints and the judge's response in cases that result in reprimands will be posted without redacting the names.

Housekeeping items in the petition:

- Change language from “final dispositional letter” to “final dispositional order”;
- Change similar language to parallel language;
- Strike references to “disciplinary remedies” because they no longer exist.

The more substantive changes are:

- Rule 9(D) governs protective orders and states a party or a witness can file a motion for a protective order that would keep the person's response or identity confidential. The proposal would allow “a judge, witness or disciplinary council “ to ask for a protective order.

- For the Superior Court to enforce subpoenas in judicial discipline cases similar to the process for attorneys.
- The executive director is not required to notify all members of the Commission when an investigative panel has been organized. Other members of the Commission will not know when an investing panel is operating, thus enabling them to maintain their objectivity in subsequent proceedings.
- Requires the Commission to file a recommendation for interim assignment with the Clerk of the Court. It is currently filed in the Chief Justice's Office.
- Currently both a judge and a complainant can file a motion for reconsideration and a response is then invited. The proposal would leave it to the Commission's discretion to ask a judge to respond to a motion for reconsideration. The Commission would not grant a motion without inviting the judge to respond.

D. R-05-0027 Rule of the Commission on Judicial Conduct 9

Ms. Barbara Marshall, Maricopa County Attorney's Office

The purpose for petition is to change the language that states a judge may be given a copy of the complaint and the complainant may be given a copy of the judge's response. The proposal would add subsection (E) that requires the Commission to give a copy of a response to the complainant.

- Mr. Stott commented that the Commission currently will only deny the release of a response if they fear it is going to go public, which has been the case in the past. The Commission's concern with this petition is that once a response is released, they will no longer be able to keep the response confidential. This is not a concern where the County Attorney's Office is the complainant; it is a concern with individual complainants.

E. R-05-0028 Arizona Rules of the Supreme Court 38(c) 1B and C

Mr. Robert Hirsh, Law Office of the Pima County Public Defender

Mr. Hirsh gave a brief explanation for the proposed amendment to Rule 38. The two reasons for the petition are:

- Provide a greater opportunity for law students and clinical programs to do additional work;
- It will fill a gap in the criminal justice system where many people go unrepresented in the initial appearance on felony charges.

The petitioners propose to expand Rule 38 to allow third year law students to fill the gap and be able to, under supervision, represent indigent defendants for their initial appearance. Mr. Hirsh has talked to Andy Silverman with University of Arizona Law School and he supports this. He has not had a chance to speak anyone at Arizona State University.

F. R-05-0032 Arizona Rules of Procedure for the Juvenile Court 91 and A.R.S. 17B

Ms. Patricia Trebesch, Unit Chief Counsel Protective Services Section

Ms. Trebesch gave a brief background regarding the focus that has been put on court improvements that can be made in the area of child welfare. One of the areas found to have significant delay was in processing appeals in the civil dependency. The subcommittee of the Court Improvement Workgroup drafted the petition to address abandoned appeals and nonmeritorious appeals. The basic goal of the rule is:

- To allow for summary disposition of these cases and

- To allow an attorney who does not feel there is a meritorious issue to pursue, to then also file an affidavit that allows them to avow to the court that they have explored the record and all the issues and do not believe there is anything they could, in good faith, assert as an appeal. An affidavit could also be used for a summary disposition when the parent has abandoned the appeal by failing to keep in contact with the appellate attorney after a diligent effort on the part of counsel to locate the parent.

MOTION: A motion was made and seconded to recommend approval of the proposed amendment (R-05-0032) to Juvenile Court Rule 91. Motion passed unanimously. 18-0-0 COSC-06-003

MOTION: A motion was made and seconded to recommend approval of the proposed amendment (R-05-0028) to Supreme Court Rule 38(c). Motion passed unanimously. 18-0-0 COSC-06-004

MOTION: A motion was made and seconded to recommend approval of the proposed amendment (R-05-0026) to Commission on Judicial Conduct Rules. Motion passed unanimously. 18-0-0 COSC-06-005

MOTION: A motion was made and seconded to oppose approval of the proposed amendment (R-05-0027) to Commission on Judicial Conduct Rule 9. Motion passed by a vote of 16-2-0 COSC-06-006

MOTION: A motion was made and seconded to recommend approval of the proposed amendment (R-05-0025) to Supreme Court Rules 66, 67 and 68. Motion passed unanimously. 18-0-0 COSC-06-007

MOTION: A motion was made and seconded to recommend approval of the proposed amendment (R-05-0021) to Supreme Court Rules 31, 41 and 53.

After additional discussion it was determined this amendment requires the further scrutiny of a subcommittee.

The motion was withdrawn.

MOTION: A motion was made and seconded to form a subcommittee to study the issue (R-05-0021) further and, if determined necessary, draft and submit comment. The motion passed by a vote of 16-2-0 COSC-06-008

MOTION: A motion was made and seconded to oppose approval of the proposed amendment (R-05-0031) to Arizona Criminal Procedure Rule 6.8. The motion passed by a vote of 13-2-3 COSC-06-009

The process for the subcommittee to study R-05-0021 will be:

1. Recruit volunteers.
2. Study the proposal and determine if a comment from this committee should be submitted.
3. If a comment is to be submitted, a draft will be distributed to the committee members, a public teleconference will be scheduled to consider the language of the comment and, if a motion is made, vote on the comment.

A suggestion was made that the COSC judicial members consider whether they are seeing unprofessional conduct by attorneys that cannot be addressed by the existing rules.

It was recommended that the telephonic meeting be scheduled two weeks prior to the May 22 deadline.

G. Arizona Code of Judicial Administration RE: Superior Court Records Retention And Disposition Schedule

Ms. Jennifer Greene, Policy Analyst, Court Services Division

Ms. Greene gave a brief history of the approval of the retention document and why it keeps coming back for this committee's consideration. The additional changes this time are:

- The Criminal Practice and Procedure Section of the State Bar's concern for retention period for court reporter notes in capital cases. The proposal was a ten year period, but because of concern they have amended it to fifty years. This is keeping with the standard of many states, while there are others that don't require keeping them at all. They will be asking that capital cases be kept segregated from other cases, so they can be easily retrieved.

MOTION: A motion was made and seconded to approve the Superior Court Records Retention and Disposition Schedule as presented. The motion passed by a vote of 15-2-0 COSC 06-010

IV. OTHER BUSINESS

A. Next Meeting:

Friday, June 2, 2006
State Courts Building
Conference Rooms 345 A & B
10:00 a.m. – 2:00 p.m.

B. Good of the Order / Call to the Public

No response.

V. ADJOURNMENT

The meeting adjourned at 2:53 pm.

Respectfully submitted,
Susan Pickard
COSC Staff

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, May 3, 2006

8:00 to 8:30 a.m.

State Courts Building

Teleconference Number 602.542.9001

MEMBERS PRESENT:

Dr. Sylvia Brandfon, Ph.D., Telephonic
Honorable James E. Chavez, Telephonic
Honorable Margaret H. Downie, Telephonic
Honorable Pat Escher, Telephonic
Honorable Richard S. Fields, Telephonic
Honorable Andrew Gould, Telephonic
Mr. Michael Jeanes, Telephonic

Honorable William T. Kiger, Telephonic
Honorable Kenneth Lee, Telephonic
Honorable Fred Newton, Telephonic
Honorable Emmet J. Ronan, Telephonic
Mr. David Sanders, Telephonic
Honorable James A. Soto, Chair, Telephonic
Honorable Nanette Warner, Telephonic

MEMBERS ABSENT:

Honorable Silvia Arellano
Mr. K. Kent Batty
Honorable Norman J. Davis
Honorable Robert Duber, II
Ms. Karen D. Ferrara
Honorable Charles V. Harrington
Honorable Bethany G. Hicks

Honorable Cathy Holt
Ms. Denise I. Lundin
Honorable Margaret Maxwell
Honorable Stephen F. McCarville
Ms. JoJene Mills
Honorable Dale Nielson

GUESTS:

Mr. Robert Van Wyck, Telephonic

STAFF:

Ms. Susan Pickard

WELCOME AND OPENING REMARKS

With a quorum present, the May 3, 2006, meeting of the Committee on Superior Court was called to order by Judge James Soto, Chair, at 8:12 a.m.

APPROVAL OF MINUTES FROM February 10, 2006

The minutes for the February 10, 2006, meeting of the Committee on Superior Court were previously distributed.

MOTION: To approve the minutes of February 10, 2006. Second. Passed unanimously. **COSC-06-011**

BUSINESS ITEMS/POTENTIAL ACTION ITEMS

Proposed Comment Regarding R-05-0021 Amended Petition to Amend Rules 53, 31(a)(2) and 41(g), Arizona Rules of the Supreme Court

At the February 10, 2006 meeting of the Committee on Superior Court, a subcommittee was established to further study R-05-0021, and if necessary, comment on behalf of the committee. The concerns to be

addressed mainly involved Rule 41(g) and included perceived conflict with the recommendations of the Professionalism Task Force, the definition of unprofessional conduct and the perception of the expansion of disciplinary actions. Having studied the proposed amendments and addressed previously noted concerns, the subcommittee offered their draft comment to the committee for discussion and approval.

The clarifying language "for complaints involving unprofessional conduct" was added to subparagraph (3).

MOTION: To recommend approval of Rule Change Petition R-05-0021 by filing the amended and approved comment. Second. Passed unanimously. **COSC-06-012**

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, June 2, 2006
State Courts Building
Conference Room 345 A/B

ADJOURN

The meeting was adjourned at 8:30 a.m.

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, June 2, 2006
10:00 am to 2:00 pm
State Courts Building
1501 W. Washington, Conference Room 230
Phoenix, AZ 85007

MEMBERS PRESENT:

Mr. K. Kent Batty	Honorable Michael K. Jeanes
Honorable James E. Chavez	Honorable William T. Kiger
Honorable Norman J. Davis	Honorable Kenneth Lee
Honorable Margaret H. Downie	Honorable Margaret Maxwell
Honorable Robert Duber, II	Honorable Stephen F. McCarville
Honorable Richard S. Fields	Honorable Emmet J. Ronan
Honorable Charles V. Harrington	Mr. David Sanders
Honorable Bethany G. Hicks	Honorable James A. Soto
Honorable Cathy Holt	

MEMBERS ABSENT:

Honorable Silvia Arellano	Honorable Denise I. Lundin
Ms. Sylvia Brandfon Ph.D.	Ms. JoJene Mills
Honorable Pat Escher	Honorable Fred Newton
Ms. Karen D. Ferrara	Honorable Dale Nielson
Honorable Andrew Gould	Honorable Nanette Warner

PRESENTERS / GUESTS:

Mr. Gary Graham	Ms. Leila Gholum
Mr. Brett Watson	Ms. Melinda Hardman
Mr. Patrick Scott	Mr. John Sousa
Ms. Nancy Swetnam	Ms. Konnie Neal
Ms. JR Rittenhouse	Honorable William J. O'Neil

STAFF:

Ms. Susan Pickard	Ms. Kim Ruiz
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I. REGULAR BUSINESS

A. WELCOME AND OPENING REMARKS

With a quorum present, the June 2, 2006, meeting of the Committee on Superior Court was called to order by Judge James Soto, Chair, at 10:15 am.

B. APPROVAL OF MINUTES FROM May 3, 2006

The minutes for the May 3, 2006, Committee on Superior Court conference call meeting were presented for approval.

MOTION: To approve the May 3, 2006, meeting minutes as presented. Motion passed unanimously. **COSC-06-011**

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Court Rules Forum

Mr. Gary Graham, AOC Information Technology Division

Mr. Graham presented the new Arizona Court Rules Forum website sponsored by the Arizona Supreme Court and the Administrative Office of the Courts. The website allows electronic filing and monitoring of court rule petition and comments. In addition, the Court Rules Forum provides visitors with a single point of access to all aspects of court rule making in Arizona: from a database of existing rules of court to recent amendments of those rules, pending rule petitions and comments, recent court actions on rules, and an annual schedule of the Court's consideration of rules. Rule change petitions may be filed using electronic filing or by the traditional paper filing method. The court encourages the use of electronic filing and provides user-friendly instructions for using the website.

B. Proposed Amendments to Arizona Code of Judicial Administration (ACJA) §§ 6-107: Safety Training and 6-113: Firearms Standards

Mr. Brett Watson, AOC Juvenile Justice Division

Mr. Watson presented the proposed amendments to ACJA §§ 6-107 and 6-113 asking for a recommendation to the Arizona Judicial Council for approval from the Committee.

Proposed amendments to ACJA § 6-107:

- To clarify post Defensive Tactics Academy accommodations provisions.
- To clarify practical testing requirements in the Firearms Training Academy

Committee questions and concerns:

The remedial training seems to go to extraordinary means to remediate someone that cannot qualify. It seems to require the certified firearms instructor and a representative of the AOC to tailor-make a program for an individual that has previously failed twice to now pass. What is the purpose of this approach, and what additional resources will this require? There are also no provisions for additional or more frequent testing for someone that has been remediated.

Response

The old language required an individual that failed one part of the qualification to complete the entire eight-hour remedial training, even though, many times remediation could have been handled right on the spot. The proposed change is to provide for the instructor to do remediation at that time and remove the requirement for sixteen hours of remediation. Developing a remedial course was not the intent of the amendment. It is believed instructors can work with individuals immediately on the course.

The amendments were then moved for approval.

MOTION: To support the adoption of the code sections ACJA §§ 6-107: Safety Training and 6-113: Firearms Standards as presented to the Committee. Motion passed unanimously. **COSC-06-012**

C. Committee on Compulsory Arbitration in the Superior Court in Arizona

Mr. Patrick Scott, AOC Court Services Division

The Committee on Compulsory Arbitration was established to review a report, *A Study of Court-Connected Arbitration in the Superior Court of Arizona*, prepared by Lodestar Dispute Resolution Program, to evaluate the compulsory arbitration system in Arizona. This committee reviewed the arbitration rules and the statutes concerning arbitration to make recommendations to the Arizona Judicial Council.

Recommendations from the report that should be adopted:

- Arbitration should be kept in Arizona.
- All active bar member attorneys with four years experience are required to be participants as arbitrators.

Recommended revisions:

- To raise the case qualifying limit from \$50,000 to \$75,000.
- To raise the compensation for arbitrators from \$75 to \$150.
- If the statute is not changed pursuant to compensation, then allow the option of CLE credits in lieu of compensation.
- To limit the motions an arbitrator can rule on. Specifically stating that all dispositive motions will be given to the judge, since there is already a high appeal rate in that area.
- To appoint an arbitrator as soon as possible in the case, but no later than 120 days after the filing of the answer.
- The notice of decision automatically becomes the Award within thirty days, if no Award has been filed. If neither party acts to ask for judgment on the Award, the case is automatically dismissed after ninety days.
- They drafted a new section that includes the following:
 1. Disclosure, by the filing party, within ten days of the filing,
 2. For the defendant, filing HIPA releases in personal injury cases within 30 days of the answer, and
 3. The Rules of evidence will guide the court without requiring a strict adherence. Similar to the provision put in the Family Law Rules.
- To have the court direct the AOC to track the effect of these rules changes and see if they are as beneficial as intended.
- To develop a comprehensive training program for arbitrators, so they have a greater comfort level when performing this duty.

Committee questions and concerns:

- How would serving as an arbitrator be considered "Continuing Legal Education" (CLE)?

Many times when an attorney is assigned a case for arbitration it is an area of law they do not specialize, so they need to extensively research the area before hearing the case. There is also the experience of seeing the process from a judge's point of view. It is a learning experience for them. There would also be a cap on the number of CLE credits that could come from arbitration.
- It is concerning to raise the qualifying limit to \$75,000, while not increasing the number of years experience the attorney needs to have. That is a large sum of money to be determined by a fourth year attorney, especially if it is an area of law they are not specialized.
- The committee should define what is meant by dispositive motions. Dispositive motions could include motions for summary judgment, discovery motions to preclude evidence, to strike witnesses. If dispositive motion only means Motions for Summary Judgment, you should state that. If it is broader than that, then it really should be spelled out.

The committee will change this language to be more specific.
- The State Bar is also drafting something as a proposal to rule 74. There recommendation was to have the arbitrator rule on all motions, including dispositive motions.

This presentation was for information only. Mr. Scott will take COSC's comments back to the Committee on Compulsory Arbitration.

D. Proposed Amendments to ACJA §§ 7-201: General Requirements, 7-202: Fiduciaries, 7-203: Confidential Intermediary, 7-205: Defensive Driving, 7-206: Court Reporters and 7-208: Legal Document Preparers

Ms. Nancy Swetnam and Staff, AOC Certification and Licensing Division

The proposed amendments to various sections of the ACJA provide standardization across the sections and incorporating best practices. The recommended amendments are:

§ 7-201: General Requirements - contains general provisions regarding certification, licensing, complaints, hearings and the disciplinary process.

- Establishes “regulatory boards” for each profession. Each board will have the responsibility for final decisions on certification and complaints, and will make recommendations to the Supreme Court on policies, procedures and rules affecting the applicable profession. [§ 7-201(D)]
- Requires the administrative director to establish time frames for the processing of certification applications and audits. [§ 7-201(D)]
- Requires the administrative director to establish procedures regarding credit reports. [§ 7-201(D)]
- Authorizes the administrative director to appoint ethics advisory committees. [§ 7-201(D)]
- Authorizes the division director of the Certification and Licensing Division to issue investigative subpoenas. [§ 7-201(D) and (H)]
- Restricts the number of times an applicant can retake the examination for certification. [§ 7-201(E)]
- Establishes criteria for board review of an applicant with a conviction record. [§ 7-201(E)]
- Authorizes the board to conduct an informal interview with an applicant for certification. [§ 7-201(E)]
- Provides an expedited process for complaints that are without merit or are outside the jurisdiction of the Supreme Court. The Certification and Licensing Division director will have the authority to dismiss complaints without merit and to refer complaints without jurisdiction to other appropriate entities. The complainant will have the right to request review of the director’s decision by the board. [§ 7-201(D) and (H)]
- Grants boards authority to issue cease and desist orders for enforcement of the ACJA sections and applicable court rules and statutes. [§ 7-201(E)]
- Provides procedures for reinstatement after suspension or revocation. [§ 7-201(E)]
- Grants authority to investigate and take disciplinary action if the misconduct by the certification holder occurred while the certification was active. [§ 7-201(H)]
- Provides an “opt in” process for the complainant where the complainant can request to be kept informed of the progress of the complaint. [§ 7-201(H)]
- Provides a process for the receipt and review of anonymous complaints.
- Specifies the qualifications for hearing officers and authorizes the hearing officer to make a recommendation on the appropriate sanctions in a complaint case upon a finding of violations. [§ 7-201(H)]
- Adds “unprofessional conduct” as grounds for discipline. [§ 7-201(H)]
- Specifies that complaints dismissed by the division director for lack of jurisdiction and clear insufficiencies are confidential. All other complaints are public record upon a finding of probable cause. [§ 7-201(H)]
- Authorizes the board to find a violation for a “technical error” but not impose a sanction. [§ 7-201(H)]
- Provides an expedited hearing process for emergency suspension cases. [§ 7-201(H)]
- Specifies the disciplinary clerk of the Certification and Licensing Division will accept the filings associated with certification and disciplinary hearings. [§ 7-201(H)]
- Expedites the processing and resolution of complaints by providing the option for a “Formal Interview” in front of the Board. [§ 7-201(H)]
- Establishes board policies. These policies prohibit the use of proxies in certification and complaint issues, but allow the proxies on administrative matters. [§ 7-201(I)]

Committee questions and concerns:

- The section regarding Judicial Review, first says that decisions of the board are final, but then confers on a party the right to file a petition for special action within one year. One year seems very excessive. Thirty-five days is the limit on administrative appeals, and special actions are thought to be time sensitive.

Under the current rules there is no time limit, so we added the time limit of one year, but we are in agreement with changing it to the standard thirty-five days.

- How will this effect staffing with regard to the creation of boards and staffing committees as opposed to investigation of claims?

It should involve less staff work, and will speed the process up.

- Statutory special actions must be reviewed because the court has no discretionary jurisdiction. The majority are discretionary review, where the court can decline jurisdiction, if appropriate. The new provision almost seems to say the superior court has to take jurisdiction. You might want to consider just stating that the decisions of the board, pursuant to this section, are final. Then delete the rest. A person still has the right to file a special action, while not binding a superior court to review them.

MOTION: To amend the first sentence of ACJA § 7-201(H)(28) on Judicial review to read, "Decisions of the board, pursuant to this section and the program's specific sections, are final." Then strike all other language. Motion passed unanimously. **COSC-06-013**

MOTION: To recommend approval of ACJA § 7-201 as modified. Motion passed unanimously. **COSC-06-014**

§ 7-202: Fiduciaries

- Makes technical changes in conjunction with the proposed changes to § 7-201: General Requirements. As proposed, ACJA § 7-201 will now contain all general requirements regarding administration, certification and disciplinary action; reference to these provisions in § 7-202 is stricken.
- Establishes the Board of Certified Fiduciaries. The board will make all final decisions on certification and complaints and will make recommendations to the Supreme Court on policies, procedures and rules for the program. [§ 7-202(D)]
- Petition for ability to sit for examination. Provides ability for an individual to petition the board to justify why the petitioner should be relived from meeting the requirements to sit for the examination. The petitioner must also demonstrate knowledge and the minimum competencies to sit for the examination. [(§ 7-202(E)]
- Status of Trainee. A trainee could only remain in a trainee status for a maximum of three years as that is the longest length of time necessary to achieve the experience requirement under subsection E for certification. [(§ 7-202(F)]
- The Code of Conduct. Amended to reflect the change in court rule for notification of death or change in address of client or ward. [(§ 7-202(J)]
- The Code of Conduct. Amended to reflect if a fiduciary is preparing a power of attorney or other legal document, the certified fiduciary shall be certified as a legal document preparer, except for documents required by court order. [(§ 7-202(J)]
- The Code of Conduct. Amended to require disclosure to the public, if the certified fiduciary is serving as a power of attorney or in a fiduciary capacity other than a court appointed guardian, conservator or personal representative. [(§ 7-202(J)]
- The Code of Conduct. Amended to require the court-appointed guardian to visit the ward a minimum of four times per year or as is needed by the ward. [(§ 7-202(J)]

There was no committee discussion.

MOTION: To recommend approval of ACJA § 7-202 as presented. Motion passed unanimously. **COSC-06-015**

§ 7-203 – Confidential Intermediaries (CI)

- Makes technical changes, in conjunction with the proposed changes to § 7-201: General Requirements. As proposed, ACJA § 7-201 will now contain all general requirements regarding administration, certification and disciplinary action; any reference to these provisions in § 7-203 is stricken.
- Adds a definition for a “mentor.” ACJA § 7-203 allows experienced confidential intermediaries to serve as a mentor for a less experienced confidential intermediary. [§ 7-203(A)]
- Establishes the Board of Confidential Intermediaries. The Board will have the final responsibility for all certification and disciplinary matters, and will make recommendations to the Supreme Court on policies, procedures and rules affecting confidential intermediaries. [§ 7-203(D)]
- Clarifies the procedure when a confidential intermediary withdraws from a case or completes the search. [§ 7-203(F)]
- Provides that the certification of confidential intermediaries will expire every two years, instead of every three years and requires confidential intermediaries to complete 12 hours of continuing education during the two year certification period. [§ 7-203(G)]
- Amends the certification fee schedule to prorate certification fees to conform to the two year certification period. Adds miscellaneous fees. [§ 7-203(K)]
- Amends the Client Fee Schedule to increase the fees a confidential intermediary may charge a client to perform a search. [§ 7-203(M)]
- Adds continuing education policies, specifying that confidential intermediaries will submit an affidavit of continuing education compliance with their application for renewal of certification. Confidential intermediaries will be subject to random audits of their continuing education. [§ 7-203(L)]

There was no committee discussion.

MOTION: To recommend approval of ACJA § 7-203 as presented. Motion passed unanimously. **COSC-06-016**

§ 7-205 - Defensive Driving

- Since this section deals primarily with defensive driving schools and instructors, it is recommended to have it deferred to the Limited Jurisdiction Committee.

MOTION: To recommend approval of the portions of ACJA § 7-205 that apply to Superior Court and defer the rest of the section to Committee on Limited Jurisdiction Courts. Motion passed unanimously. **COSC-06-017**

§ 7-206 – Certified Court Reporter

- Makes technical changes in conjunction with the proposed changes to § 7-201: General Requirements. As proposed, ACJA § 7-201 will now contain all general requirements regarding administration, certification and disciplinary action; reference to these provisions in § 7-206 is stricken.
- Incorporates the statutory changes enacted by the 2005 Legislature requiring certification of voice writers and reference to “certified reporters” instead of “court reporters”. The statutory changes require that voice writers hold certification by January 1, 2007 and specify an applicant may qualify for certification by passing the RPR or CVR examination, or “an alternative demonstration of proficiency approved by the Supreme Court.” The RPR examination is the examination typically used for stenographic reporters, the CVR for voice writers. [§ 7-206(E)]
- Grants the Board of Certified Reporters the authority to renew provisional standard certification if the reporter held a provisional standard certificate on December 31, 2005 and

has passed two of the three skills legs of the RPR and the written examinations by December 31, 2006. The reporter must participate in every subsequent administration of the RPR until the pass the RPR. [§ 7-206(G)]

- Clarifies the fee a reporter may charge for additional copies of a transcript. [§ 7-206(J)(3)]
- Increases the fee for initial certification to \$220.00 from \$200.00. The annual renewal fee will remain at \$200.00. Increases the examination fee to \$50.00 from \$25.00 and adopts other miscellaneous fees. [§ 7-206(K)]
- Amends the continuing education policies, specifying that certified reporters will submit an affidavit of continuing education compliance with their application for renewal of certification. Certified reporters will be subject to random audits of their continuing education. [§ 7-206(L)]
- Adopts the Arizona Transcript Format Standards as recommended by the Keeping of the Record Committee. [§ 7-206(M)]
- Member of the Public, Joseph Notaro, President of Voice Writers of America, want to be regulated and participated fully in licensing, but want to have the CVR qualified as a form of exam. He then explained how the voice writer works and the schooling required.

Committee questions and concerns:

- The Committee is only hearing one side of the issue, and doesn't really know if the information is fully accurate. What is the basis of the opposition if all things are equal regarding the testing? The only way to make the tests equivalent is to say one can be exchanged for the other.

Response - It is not a matter of comparing one exam to another. What the exams measure with regard to knowledge, skills and abilities is essentially the same, but the exams are very different. The RPR has been held up as the "Gold Standard", but in the testing community there is no "Gold Standard". All that matters is if it is testing what it should be testing.

MOTION: To recommend approval of the CVR testing section of ACJA § 7-206 as presented. 4-0-10. Motion failed. **COSC-06-018** Those members abstaining from the vote stated they didn't have enough information to make a decision.

The Board of Certified Court Reporters is recommending that people holding provisional certifications should have additional time to take and pass the RPR. They are allowed to hold their provisional certification as long as they are taking the RPR at every opportunity (2x/year).

Committee questions and concerns:

- Shouldn't there be an ultimate limit for how long they can keep their provisional certification if they keep failing the exam?
You can't limit the number of times they can take the exam, due to statute, but you can take away their provisional status.
- The Superior Courts are courts of record and they have to be accurate with integrity and high quality. We need to ensure that the court reporters taking the record are qualified.
- Once a court reporter passes the exam once, do they ever have to take it again for recertification?
No. There should be some kind of provision for testing to monitor abilities, skills and knowledge.

MOTION: To recommend approval of section ACJA § 7-206 that addresses provisional status as modified, limiting how long a court reporter can keep their provisional status to only six exam attempts. 4-9-1 Motion failed. **COSC-06-019**

MOTION: To recommend that ACJA § 7-206 be maintained as the code currently reads with regard to provisional certifications. 7-4-2 Motion passed. **COSC-06-020** (Kent Batty was out of the room)

The Board of Certified Court Reporters is recommending that the initial copy of a transcript will be charged at the full copy rate, and additional copies can be charged at a reduced rate. Court reporters can set their own fees, but they currently have to charge the parties the same rate to avoid bias. This amendment has to do with the issue of multiple defendants on one side. Are they seen as multiple parties or one party? This chooses to see them as one party, charging the full rate for the first transcript, and a reduced rate for all other copies.

Committee comments and concerns:

- There will be nothing but problems with this. There will be discovery disputes as to who is going to pay the full rate and who pays the reduced rate.

MOTION: To recommend approval of a reduced rate for additional transcript copies in section ACJA § 7-206, as presented. 3-10-0 Motion failed. **COSC-06-021** (Kent Batty was out of the room)

MOTION: To take no position on the whole amendment to section ACJA § 7-206, and forward only the specific recommendations made. Motion passed unanimously. **COSC-06-022** (Kent Batty was out of the room)

§7 -208 - Legal Document Preparer (LDP)

- Makes technical changes in conjunction with the proposed changes to § 7-201: General Requirements. As proposed, ACJA § 7-201 will now contain all general requirements regarding administration, certification and disciplinary action; any reference to these provisions in § 7-208 is stricken.
- Incorporates recent amendments to Rule 31, Rules of the Supreme Court regarding the unauthorized practice of law. [§ 7-208(B) and (E)]
- Adds a definition for a designated principal. [§ 7-208(A)]
- Strikes the qualifiers for the public members of the Board of Legal Document Preparers. {§ 7-208 (D)}
- Strikes the language for initial certification as initial certification will no longer exist after July 1, 2006. All certificate holders must convert to standard certification by that date. [§ 7-208(F)]
- Requires legal document preparers to place their name and certificate number on all documents they prepare, unless expressly prohibited by a non-judicial entity. The current § 7-208 requires the name and number only on those documents prepared for filing in an Arizona court. [§ 7-208(F)]
- Clarifies the role and supervision of a trainee. [§ 7-208(F)]
- Prohibits a legal document preparer from denigrating judicial officers or judicial staff. [§ 7-208(J)]
- Increases the fee for initial certification to \$325.00 from \$250.00 per year. The annual renewal fee will be \$300.00 per year. Adopts other miscellaneous fees. [§ 7-206(K)]
- Amends the continuing education policies, specifying that legal document preparers will submit an affidavit of continuing education compliance with their application for renewal of certification. Legal document preparers will be subject to random audits of their continuing education.[§ 7-208(L)]

Committee questions and concerns:

- Concern was voiced about the structure of the Board for the LDP. It is primarily comprised of LDP, can we trust them to regulate themselves?
The board currently exists and has been functioning very well.

MOTION: To recommend approval of ACJA § 7-208 as presented. Motion passed unanimously. **COSC-06-023**

E. Legislative Update

Ms. Leila Gholam, AOC Legislative Liaison

Ms. Gholam informed the members that the cycle for the next legislative session has begun, even though this session has not yet ended. Last year there were a little over twenty (20) bills that came through the committees to the AJC, and the AJC voted to forward eight (8) of those bills to the legislature.

The following seven (7) AJC Bills passed and were signed by the Governor:

H2094: dependency hearings; private service provider - In a juvenile action, if the court finds a parent or child has the right to receive medically covered services from an agency or private service provider; after giving notice and an opportunity to be heard, the court may order an agency or private service provider to appear at a hearing to discuss the child or parent's service plan. The court may order only those services, that an agency or private service provider determines are medically necessary covered services, which they are entitled. An agency or private service provider may meet with the parent or child's representative prior to the hearing to coordinate services. (Title 8)

H2125: foster care review board; continuation - Extends the Arizona Foster Care Review Board 10 years to July 1, 2016. Retroactive to July 1, 2006. (Title 41)

S1047: courts; personnel and volunteers - Provides authority to fingerprint and conduct criminal background checks of current and prospective judicial branch contractors and volunteers. Includes applicants applying for certification to become legal document preparers. (Title 12)

S1053: probation; extension - Allows inmates sentenced with a probation tail to be eligible for temporary early release to probation, up to 90 days, for purposes preparatory to the return to the community, if community supervision is waived. The bill is prospective and the 90 days would be added to the probation term. (Titles 7, 13 and 31)

S1116: competency; sealed reports; exceptions - Permits reports submitted to the court during a proceeding held to determine whether a defendant (adult or juvenile) is competent to stand trial to be available after an admission or adjudication of delinquency or after final disposition of the case; (1) to a treatment provider for the purposes of assessment, supervision or monitoring of the defendant (2) to a probation department or the Department of Juvenile Corrections for the purposes of supervision, monitoring, treating or assessing the defendant. (Titles 8 and 13)

S1227: interstate compact; adult offender - Increases the maximum annual assessment levied by the Interstate Commission on Adult Offenders by \$500 to \$25,500. (Title 31)

S1242: traffic ticket enforcement assistance program - Expands the Traffic Ticket Enforcement Program. Permits the court to request MVD to withhold the registration renewal on a person's vehicle if a person has failed to pay any outstanding fees, court costs, assessments and penalty enhancements, in addition to any fines, penalties and surcharges covered by current law. Notification must be given to all persons listed on the title that the court is sending notice to MVD to hold renewal of the person's vehicle. A co-owner of the vehicle subject to TTEAP, who did not receive any of the citations that resulted in the request to hold the registration, may file a sworn petition in any court where the citation(s) were issued to waive the request to MVD requiring the withholding of a registration renewal. If the person does not live in the jurisdiction where the court in which the citation(s) was filed is located the person can appear telephonically if oral argument is required. Removes the \$200 threshold in order to trigger TTEAP. (Title 28)

Ms. Gholam also gave an update on the following major implementation bills:

H2819: adult probation; county responsibility - Beginning in fiscal year 2006-2007, counties with a population of at least 2 million (Maricopa County) will fund both adult and juvenile probation services. Any centralized support services will be provided by AOC. AOC

will not disburse any direct state aid for probation services. Probation ratios will not apply however Maricopa County must maintain probation standards that are consistent with evidence based practices in differentiated case management. The county will give annual performance reports to the Chief Justice, Speaker of the House and President of the Senate on or before October 1 of each year. Probation surcharges collected in Maricopa County Superior, Justice, and Municipal Courts, will be transmitted to Maricopa County. The probation surcharge fee is increased from \$5 to \$10 for all counties other than Maricopa County. The probation surcharge fee in Maricopa County is set by the Maricopa County Board of Supervisors. (Titles 8, 11, 12 and 13)

S1142: retirement; corp; judiciary - Adds probation, surveillance and juvenile detention officers to CORP. Establishes a local AOC review panel. A number of questions have been raised as to cost. Amendment defines probation and surveillance officers. (Title 38)

S1267: integrated family court; pilot programs - Requires the implementation of the two year Integrated Family Court pilot program that was recommended by the Domestic Relations Committee. The Supreme Court will implement this program in two counties (Pinal and Coconino) with a population of 500,000 or less beginning on July 1, 2006 using an appropriation of 1.75 million dollars from the State general fund. (Title 25)

S1371: sex offenders; gps monitoring; appropriations - Beginning November 1, 2006, if a term of probation is imposed on a person convicted of a dangerous crime against children the court must require global position system monitoring for the term of probation. A person convicted of a dangerous crime against children who is discharged from prison or released on parole, community supervision, work release or other conditional or temporary release be required to be on global position monitoring system. Any person who interferes with a monitoring device by removing or bypassing the device or assisting a person in removing or bypassing the device is guilty of a class 4 felony. Will include a GPS study committee. (Titles 13 and 41)

Updates on some other bills of interest are:

H2076: weapons; checked at the door - If an individual requests after January 1, 2009 that an operator of an establishment or sponsor of an event store a deadly weapon, storage must be provided for the weapon that is readily accessible on entry and available for immediate retrieval on exit. If storage is not provided the person carrying a deadly weapon can not be convicted of §13-3102, misconduct involving weapons. (Title 13)

H2133: lengthy trial fund; juror compensation - Jurors who serve on a trial lasting more than five days and who do not receive their normal wages from their employer are eligible to receive reimbursement of lost income up to \$300 per day beginning on the fourth day. (Title 21)

H2292: child support; court orders - If a court order does not specify the date when current support begins, the support obligation begins on the first day of the month following the entry of the orders. In calculating child support arrearages not reduced to a final written money judgment, interest accrues at the annual rate of 10% beginning at the end of the month following the month in which the support payment is due. Past support that is reduced to final written money judgment accrues interest at the annual rate of 10% beginning on the entry of the judgment. Direct payments or equitable credits are applied to support arrearages as directed in the court order. Any written agreement between parties regarding support arrearages must be made only by written affidavit signed by both parties. An arrearage calculator may be developed by a government agency using an automated transfer of data from the child support registry. (Title 25)

HB2440: public participation in government - In actions involving a party's right to petition that is made as part of an initiative or referendum, the defending party may file a motion to dismiss any legal actions. The court must give calendar preference when possible and must conduct an expedited hearing after the motion is filed. The court must grant the motion unless the defending party's acts caused actual compensable injury to the responding party. The motion to dismiss may be filed within 90 days and the court must award the party costs and reasonable attorney fees if the motion is granted. (Title 12)

H2484: secure records disposal - Prohibits an entity from knowingly discarding or disposing of documents that contain an individual's first and last name or first initial and last name with either the person's social security number, credit or debit card number, retirement account number, savings or checking number, securities entitlement account number, or driver's license or ID number. This only applies to paper records and paper documents. Civil penalties will be imposed for violations. An entity that maintains and complies with the entity's own procedures for discarding or disposing of documents that are consistent with the requirements set forth in this bill will be deemed in compliance. Effective October 1, 2006. (Titles 13 and 44)

H2559: juvenile hearings; jury trials - In counties with a population greater than 500,000, persons whose parental rights are challenged at a termination hearing may request a change of judge and be provided with a decision within 30 days. If the court does not terminate parental rights, another action can be brought only if the action relates to a new allegation or new information. Any evidence that was considered or introduced at a prior proceeding may be presented if admissible. The Administrative Office of the Courts, if funding is available, is required to establish a permanency mediation program in the juvenile court to provide non-adversarial dispute resolution alternatives. Previously filed dependency petitions will be used by the AOC to prescribe the funding formula for each county juvenile court. Appropriates \$525,000 from the state general fund to the AOC for the dispute resolution program. (Title 8)

H2712: tax decisions; distribution - Requires various agencies to provide tax decisions to the law libraries of Maricopa County, ASU and U of A Colleges of Law. Tax decisions must be published on their official website. Requires the Supreme Court to adopt rules to establish procedures to distribute tax decisions to the general public and determine what tax decisions are appropriate for distribution. (Titles 12 and 42)

S1338: personal information; security breach; notification - Requires law enforcement agencies, prosecution agencies and courts to create and maintain an information security policy that includes notification of a breach of the security system. Requires a business that owns or licenses unencrypted computerized data to notify state residents of a breach of their security system when personal information of the individuals has been compromised. The notice can be written, electronic or telephonic but must be in the most expedient manner possible without unreasonable delay subject to the needs of law enforcement. If the cost of notice would exceed \$50,000 or exceeds \$100,000, an agency may substitute notice through all of the following: electronic mail, conspicuous postings on a website and notification of major statewide media. There is a delayed effective date of January 1, 2007. (Title 44)

S1376: capital case litigation; public defender - Establishes a state capital post-conviction public defender office effective February 2007. Specifies appointment, qualifications and duties. Limits the public defender from employing more than three deputies and more than four other employees. Court appointed counsel for capital defendants in post-conviction proceedings must be from the capital post-conviction public defender's office unless a conflict exists or the court makes a finding that the office can not represent the defendant. Any non-public defender appointees must be in good standing of the state bar for at least five years, have practiced state criminal appeal or post-conviction proceedings for at least three years and have never represented the defendant in question unless the defendant and counsel expressly request continued representation. For every person represented the state capital post-conviction public defender's office must request reimbursement from the court in which the person was convicted for fees it incurs. The county must pay half of the fees incurred by the state but not to exceed \$47,000. Appropriates \$220,000 for fiscal year 2006-2007. There is a request to increase the budget by approximately \$125,000. (Titles 13 and 41)

S1430: children; cps - Requires CPS to inform person under investigation of certain enumerated rights. The CPS worker must make all reasonable efforts to provide these rights and receive written confirmation of doing so before a child can be removed from the home. Changes the makeup of the review team by removing one DES member. At least one FCRB member must be present at a review team meeting. If two members of the FCRB are not available, the review team must consult an employee of the family advocacy office established in section 8-902. Establishes an 11 member Family Advocacy Council (FAC) and

FAC Office to serve as a resource to families as well as advocate on the parent's behalf. (Titles 8 and 41)

S1444: sentencing; third felony offenses - Amends the criminal code to require a life sentence for any defendant with two prior violent or aggravated offenses that is convicted of a third offense, with eligibility for release only after serving thirty-five years. Prior convictions must have occurred within fifteen years of the current offense and the sentence for the first two felony convictions must have been imposed before the conduct occurred that gave rise to the third conviction. Any suspension of sentence, probation, pardon or release is prohibited. The offenses which are considered a violent or aggravated felony are listed. (Title 13)

HCR2015: judges; merit selection, populations - Amends the Constitution to allow the 2006 general election ballot to carry the question of amending various sections of Article 6 of the state constitution to change the population threshold for direct election of superior court judges to counties with a population of fewer than 600,000. (Title 98)

SCR1033: meth offenses; probation - Amends the constitution to remove methamphetamine from the provisions of A.R.S. 13- 901.01 (Prop 200). (Title 97)

F. Legislative Impact Summary

Ms. Melinda Hardman, AOC Court Services Division

Ms. Hardman presented a report that the AOC has produced for the last two years, called the Legislative Impact Summary. The report is prepared to summarize the legislation that impacts court processing and administrative matters. She presented the 2005 report to the committee to find out:

- If people in the courts were aware of it;
- Would they find it useful;
- How can the AOC improve upon it;
- Who in the courts should receive it, and
- What is the best method to disseminate the information?

The following recommendations we made:

- A number of judges were not aware of it, but it would be a very useful tool.
- Send out an email to all judges with notice of the 2006 Legislative Impact Summary and a link. This way it reaches everyone, and people that didn't know about it, will now have access. Judges can decide for themselves whether or not it is a useful tool.
- Court Clerks and administrative staff are aware of it and find it very useful.
- It would be helpful if the report could be separated out based on level of court and area of law (civil, criminal, family, etc).

G. Codification of Minimum Accounting Standards (MAS)

Mr. John Sousa, AOC Court Services Division

Mr. Sousa presented the proposed changes to the current MAS stating a workgroup was established to codify MAS as part of an ongoing project at the AOC to codify policies and procedures in various areas. Some of the keys changes proposed are to:

- Eliminate repetition by restructuring the document to group and consolidate related topics;
- Provide clarification by changing a lot of the language;
- Change commentary language to code language to remove the implication of suggestions and make them standards;
- Clarify time frames for many operating and reporting procedures;
- Remove the attachments that were part of the original document and provide a link to access the forms, so as there are updates to the forms, they don't need to update the document, and
- Establish a new standard for the use of a mail payments log for handling the recording of payments received in the mail.

Committee questions and concerns:

- If a county already has a safe combination control in place that is not identical to the standard established in MAS, will they be in violation?
 1. Exceptions can be presented to the AOC for review and approval.
- Are payroll systems included in the financial systems of E.3.a that mandate the use of automated financial systems?
 1. No, the references here to financial systems have more to do with AZTEC type systems.

MOTION: To table approval of the Minimum Accounting Standards to the September Committee meeting. Motion passed unanimously. **COSC-06-024**

H. Arizona Rules of Family Law Procedure (ARFLP)

Ms. Konnie Neal, AOC Court Services Division

Ms. Neal gave a brief history of the establishment of the Family Law Rules Review Committee once the rules became effective. The Committee was established to:

- Garner feedback on what was working and what wasn't;
- Hammer out the kinks;
- Track any unintended consequences, and
- To provide a report in two years of proposed changes.

She encouraged members to submit comments on the Rules, so the Family Law Rules Review Committee can review and discuss the recommendations via the comment form on the website at: <http://supreme.state.az.us/drrc/CommentForm.asp>

I. Arizona Rules of Protective Order Procedure (ARPOP) and New Project Passport Protective Order Forms

Judge William O'Neil

Ms. Konnie Neal, AOC Court Services Division

Ms. Neal gave a brief history of the Domestic Violence Rules Committee. It was established to create Domestic Violence Rules from the Domestic Violence Benchbook, Rule 96 in ARFLP. The key issues the Domestic Violence Rules need to address are to:

- Remove the DV Benchbook from Rule 96 and create procedural rules, and
- Make the rules in clear language that is easy for pro se litigants to find. The primary people that come in on these matters are not attorneys, therefore the rules need to be easy to understand and determine where they can get further information.

The ARPOP draft presented fulfill these goals, and are meant to be stand alone rules. The DV Rules Committee will file a petition in November with ARPOP, for approval. Committee members are encouraged to make comments and suggestions once they have reviewed the ARPOP. A comment form regarding ARPOP is available on the Internet at:

<http://supreme.state.az.us/cidvc/DVRules/comment.asp>

Judge O'Neil gave a brief history of Projection Passport, a national movement to standardize a recognizable first page of Protective Orders to make them immediately recognizable and have the same information in the same location for all states. Arizona has been a leading state in this area. There have been no substantive changes to the Protective Order forms; there were just formatting changes for automation. Some of the changes made were:

- "Defendant/Plaintiff Relationship" was added for automation interface;
- "Estimated Date of Birth" was added because the database requires a birth date, which may not be known by the plaintiff. This alerts law enforcement that it may not be accurate;
- Changed "Civil Standby" to "Law Enforcement Standby" to add clarity, and
- Added an additional warning to the defendant informing them that they can still be in violation of the Order, even if the Plaintiff initiates contact.

The Defendant Guide Sheet was created to further expand on the information to the defendant. The key points of the Guide Sheet are:

- When children are listed on Protective Orders, custody issues need to be addressed at Superior Court;
- Protective Orders expire one year from the date of service, not one year from the date of issue;
- Gives information about the right to a hearing, and Brady eligibility;
- Only the judge can modify or dismiss the Order;
- Law enforcement does not have the responsibility or authority to settle property disputes, and
- Information about turning in firearms.

Committee questions and concerns:

- Advising the defendant, "If you do not want the Plaintiff to contact you, you have the right to request a protective order against the Plaintiff," misinforms the defendant that they can get a protective order simply because the plaintiff is contacting them. That is not the statutory basis for granting a protective order. This language needs to be removed or clarified; otherwise courts will be clogged with defendants saying the Order from the court says they can have their own protective order.
- It is confusing to plaintiffs that they also are not allowed to initiate contact. It should be stated in the Protective Order that the plaintiff cannot contact the defendant. The problem with that is, when you have done nothing wrong, does the court have the authority to tell you that you cannot do certain things? The impact is potentially arresting plaintiffs for violating their own Order. The judge needs to ask all the questions and spell out what kind of contact is necessary and allowable.
- Defendants know they can get their own Order, so remove that line from the Protective Order form and from #6 on the Defendant Guide Sheet. Just keep the warning that even if the plaintiff initiates contact, they may be in violation of the Order.
- Under the "Law Enforcement Stand-by" section of the Protective Order form and Defendant Guide Sheet add they cannot settle custody or parenting time disputes either.

MOTION: To approve the adoption of the Defendant Guide Sheet and Protective Order forms, with the recommended changes. Motion passed unanimously. **COSC-06-025**

III. OTHER BUSINESS

A. Issues for the Committee to consider that will be on the next meeting agenda:

- Whether the Committee wants to allow people that cannot attend in person to participate telephonically, and
- If the Committee would like to have one meeting per year held outside Maricopa, possibly in Tucson or Flagstaff.

B. Next Meeting:

Friday, September 22, 2006
State Courts Building
Conference Rooms 119 A & B
10:00 a.m. – 2:00 p.m.

C. Good of the Order / Call to the Public

No response.

IV. ADJOURNMENT

The meeting adjourned at 2:00 pm.

Respectfully submitted,
Susan Pickard
COSC Staff

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, September 22, 2006
10:00 am to 3:45 pm
State Courts Building
1501 W. Washington, Conference Room 119 A/B
Phoenix, AZ 85007

MEMBERS PRESENT:

Judge James A. Soto, Chair
Ms. Sylvia Brandfon Ph.D.
Judge James E. Chavez
Judge Margaret H. Downie
Judge Robert Duber II
Ms. Karen D. Ferrara
Judge George Foster
Judge Andrew Gould
Judge Bethany G. Hicks
Judge Cathy Holt
Judge Michael K. Jeanes

Judge Jan Kearney
Judge Kenneth Lee
Judge Margaret Maxwell
Judge Stephen F. McCarville
Judge Colleen McNally
Judge Fred Newton
Mr. Phil Knox for Marcus Reinkensmeyer
Judge Emmet J. Ronan
Mr. David Sanders

MEMBERS ABSENT:

Judge Pat Escher
Judge Richard S. Fields
Judge Charles V. Harrington
Judge William T. Kiger

Denise I. Lundin
Ms. JoJene Mills
Judge Dale Nielson

PRESENTERS / GUESTS:

Ms. Julee Bruno
Judge Norman J. Davis
Ms. Jennifer Green
Mr. Jerry Landau
Ms. Melinda Hardman

Ms. Marna Murray
Mr. John Sousa
Mr. Patrick Scott
Ms. Konnie Young
Judge William J. O'Neil

STAFF:

Ms. Susan Pickard
Ms. Lorraine Nevarez

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the September 22, 2006, meeting of the Committee on Superior Court was called to order by Judge James Soto, Chair, at 10:00 am.

Data Standards Committee-Volunteer Needed

Primary goals:

- Monitoring the performance of the standard codes and the Supreme Court policies governing data standards for both general and limited jurisdiction courts
- Reviewing and acting on requests for additions, modifications, or deletions of existing codes
- Preparing recommendations for the Supreme Court for additions, modifications, or deletions of policies governing data standards

Proposing and commenting on policies related to use of data arising from standardized code sets.

B. Approval of Minutes from June 2, 2006

The minutes for the June 2, 2006, Committee on Superior Court conference call meeting was presented for approval.

MOTION: To approve the June 2, 2006, meeting minutes as presented. Motion passed unanimously. COSC-09-026

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Proposed Arizona Code of Judicial Administration (ACJA) § 4-302: Limited Jurisdiction Courts Records Retention and Disposition

Melinda Hardman, Staff, Subcommittee on Limited Jurisdiction Courts Records Retention and Disposition

Ms. Hardman presented the proposed code section for Limited Jurisdiction Courts Records Retention and Disposition, ACJA § 4-302. Along with establishing a code section for this topic, some revisions have been made to the retention and disposition schedule; Ms. Hardman highlighted those changes.

Committee Comment/Concerns:

How did the committee come to seven years as a retention period for DUI's?

Response:

The retention period for DUI cases was set at seven years to be consistent with 2006 legislation, SB 1560, which increased penalties to repeat DUI offenders if the repeat offense occurs within 84 months.

Does the definition of "Record" mean that records could be saved on a computer disk and papers could be scanned in and considered records for retention.

Response:

The definition of "Records" refers to the electronic record in the AZTEC system a description such as a docket. In regards to imaging that is still in the works.

MOTION: To recommend Arizona Judicial Council (AJC) approval of ACJA § 4-302: Limited Jurisdiction Courts Records Retention and Disposition as presented to the Committee. Motion passed unanimously. COSC-09-027

B. Arizona Rules of Protective Order Procedure (ARPOP)

Judge William O'Neil, Chair, Domestic Violence Rules Committee
Konnie Young, Staff, Domestic Violence Rules Committee

Judge O'Neil gave a brief history of the Domestic Violence Rules Committee. This ad hoc committee was established by Chief Justice McGregor on November 17, 2005, to focus on civil protective order processing. The Committee has developed proposed Arizona Rules of Protective Order Procedure which have been distributed for comment. The Committee's intent was to conduct these hearings using an administrative hearing standard for evidence thus providing an opportunity for the court to give pro se litigants some leeway regarding the Rules of Evidence, so as to better assure that the public is fully protected as best the courts can. The rules are designed to be user-friendly and formatted to be a guide for litigants. There are extensive references to statute citations which will entail changes as statutes change. The Committee will be considering several changes as reflected in a multi-page document circulated with the proposed rules.

Committee Comment/Concerns:

The statutes that are referenced in regards to the statement “no protective order shall be denied on the basis of immigration status” are incorrectly cited. Also the format is not user-friendly. It is extremely lengthy and since it has numerous references to statutes that can change, the information may give litigants conflicting information. The reference made to plaintiffs as victims is not correctly used. A plaintiff cannot be a victim until the court has reached its finding.

Response:

The *Arizona Rules of Protective Order Procedure* (ARPOP) has been available on the Arizona Judicial Branch Internet site for comments and will continue to be available for comments. Judge O’Neil encourages and appreciates all comments and suggestions which will then be taken back to the Domestic Violence Rules Committee for consideration. Under Chapter 13 which creates protective orders plaintiffs are referred to as victims but that these suggestions will be taken back to the committee for discussion. The Committee is scheduled to review all comments October 4, 2006.

Ms. Young provided an update on the Project Passport Forms, which are ready for implementation. The Order of Protection was modified to conform to the Project Passport concept and approved by AJC. Our front page is being used as the model across the nation. Implementation of the form will be based on training. The forms are mandated for use on December 31, 2007.

MOTION: To recommend AJC approval of the *Arizona Rules of Protective Order Procedure* (ARPOP) as presented in concept. 12-3-3. Motion passed. COSC-09-028

C. Arizona Rules of Family Law Procedure

Judge Norman Davis, Chair, Family Law Rules Review Committee
Konnie Young, Staff, Family Law Rules Review Committee.

Judge Norman Davis gave a brief overview of the Family Law Rules Committee which will file a Rule 28 Petition requesting changes to the *Arizona Rules of Family Law Procedure* (ARFLP), if the changes are approved by AJC on October 12, 2006. The first phase of the Committee’s work focused on revisions that are non-substantive, but necessary to clarify language, correct rule references and avoid unintended consequences. The Committee may file a request to consider this rule change petition on an expedited basis, pursuant to Rule 28(G), *Arizona Rules of the Supreme Court*.

MOTION: To recommend AJC approval of the proposed revisions to the Arizona Rules of Family Law Procedure (ARFLP). Motion passed unanimously. COSC -09-028.

D. Business Rules- Attendance via Conference Call

Judge Soto presented the issues on whether the Committee wants to allow people that cannot attend in person to participate telephonically. He also presented the opportunity for the Committee, if they choose, to conduct one meeting per year outside of Maricopa County, possibly in Tucson or Flagstaff.

Committee Comment/Concerns:

The members were in agreement that a member should be limited to appearing telephonically once per year. They also agreed that the Committee should conduct its June meeting in Tucson.

MOTION: To approve amend the Committee on Superior Court business rules to allow members the opportunity to appear telephonically for one meeting per year. Motion passed unanimously. COSC -09-029.

No motion was made or required to conduct the June meeting in Tucson.

E. Committee on Compulsory Arbitration

Mr. Patrick Scott, Committee, Staff

In early 2004, the Supreme Court, through the Administrative Office of the Courts (AOC), commissioned a study through the Lodestar Dispute Resolution Program of the Sandra Day O'Connor School of Law at Arizona State University. The study examined Arizona's current compulsory arbitration system to determine its efficiency and effectiveness in achieving its purpose and to ascertain user satisfaction with the process and its outcomes.

In June 2005, the project consultants presented their findings to the Arizona Judicial Council (AJC). During the ensuing discussion the AJC concluded additional review of the report was needed and recommended the creation of a committee to review the project report.

In November 2005, Chief Justice McGregor established the ad hoc Committee on Compulsory Arbitration in the Superior Court in Arizona. The purpose of the Committee was to review the report prepared by Lodestar Dispute Resolution Program, *A Study of Court-Connected Arbitration in the Superior Court of Arizona*, and any other materials it deemed relevant and make recommendations on ways to improve the effectiveness and efficiency of the compulsory arbitration system and the handling of claims filed in the Superior Court.

The Committee concluded their work in August 2006 after obtaining input from members of the State Bar during a Bar Convention break-out session, the Committee on Superior Court, Superior Court Clerks Association, and Superior Court Administrators. Mr. Scott presented the final report of the Committee including revised and expanded rules for compulsory arbitration in the Superior Court.

There are two main changes that were made in the report (1) the change of language to 74c on motions for summary judgment and (2) the exchange of information given at the beginning of a case.

Committee Comment/Concerns:

What was the rationale on the provision about judges ruling on motions to withdraw as council of record? Did the report address giving CLE credit for arbitrators? How are the discovery and disclosure provisions intended to change the process? Was there any rule that addressed attorneys practicing in a county they do not live in serving as arbitrators?

Response:

The withdrawal as council of record is covered in Rule 5.1, ARCP. The committee included that reference to make it clear that the trial court not the arbitrator would rule on any motion to withdraw. The report recommends that if the compensation is not increased for arbitrators, the Supreme Court may want to consider giving CLE credit as an alternative. The Committee considers the arbitration process to be educational by increasing the knowledge of the arbitrating attorney outside their area of expertise.

The intent of requiring discovery and disclosure tied to the filing of the petition or answer was to accelerate the pace of the arbitration. The hearing can take place sooner because the parties have more information sooner.

A modification to rule was proposed regarding arbitrators serving in a county where they do not reside, but on the whole, the committee declined to include the recommendation. It is possible however to have such a requirement if the supreme court approved a superior court local rule.

MOTION: To recommend AJC approval of the recommendations of the Committee on Compulsory Arbitration in the Superior Court in Arizona and the proposed rules

governing compulsory arbitration in the superior court. Motion passed unanimously. COSC -09-030.

F. ACJA §§ 6-301: Juvenile Standard Probation, 6-302: Juvenile intensive Probation Supervision, and 6-104: Probation Officer Certification and Training

David Sanders, Chair, Committee on Probation

Mr. Sanders is here at the request of Bret Watson of the AOC to present revisions to two code sections and one proposed code section.

§ 6-301: Juvenile Standards Probation

The effect of this proposal is to update the code section with current ACJA section requirements and add new legislative mandates.

The substantive change was driven by A.R.S. §8-396(B) which requires certain contacts with victims under certain circumstances: In the case of an identifiable victim, the victim must be: (1) notified if any proposed modification to any term of probation if the modification affects restitution or incarceration status or the delinquent's contact with or the safety of the victim, (2) informed of his/her right to be heard at a hearing that is set to consider any modification to be made to any term of probation, (3) notified of any violation of any term of probation that results in the filing with the court of a petition to revoke probation, (4) notified of a petition to revoke probation alleging that the juvenile absconded from probation has been filed with the court and (5) informed of any conduct by the juvenile that raises a substantial concern for the victim's safety.

This code section was circulated for review and comment to the Committee on Juvenile Courts, Presiding Superior Court Judges, Presiding Juvenile Court Judges, Juvenile Court Directors, Adult Chiefs of Probation, the Committee on Probation, and other interested parties.

- No comments were received.
- This code section was recommended for AJC approval as written by the Committee on Probation on September 8, 2006.

§ 6-302: Juvenile Intensive Probation Supervision

The effect of this proposal is to update the code section with current ACJA section requirements and add new legislative mandates for victim contact requirements.

- This code section was circulated for review and comment to the Committee on Juvenile Courts, Presiding Superior Court Judges, Presiding Juvenile Court Judges, Juvenile Court Directors, Adult Chiefs of Probation, the Committee on Probation, and other interested parties.
- This code section was recommended for AJC approval as written by the Committee on Probation on September 8, 2006.

§ 6-104: Probation Officer Certification and Training

The effect of this proposal is to establish AJCA section and minimum standards for the training and certification of probation officers. The Probation Officer Certification Academy establishes and measures a standard level of knowledge and application necessary to serve as a probation officer in Arizona.

- This code section was circulated for review and comment to the Committee on Juvenile Courts, Presiding Superior Court Judges, Presiding Juvenile Court Judges, Juvenile Court Directors, Adult Chiefs of Probation, the Committee on Probation, and other interested parties.

- Received comments were distributed to the members.
- This code replaces AO 95-36.
- This code section was recommended for AJC approval as written by the Committee on Probation on September 8, 2006.

MOTION: To recommend AJC approval of revisions to ACJA §§ 6-301: Juvenile Standards Probation and 6-302: Juvenile Intensive Probation Supervision and adoption of AJCA § 6-104: Probation Officer certification and Training as presented. Motion passed unanimously. COSC -09-031.

G. Codification of Minimum Accounting Standards (MAS)

Mr. John Sousa, AOC Court Services Division

Mr. Sousa presented the proposed ACJA section for Minimum Accounting Standards (MAS). This code section was originally presented to this Committee at its June 2, 2006 meeting. It has also been presented to the Committee on Limited Jurisdiction Courts and the Limited Jurisdiction Court Administrator’s Association and sent to the all clerks of court and probation departments for comment.

This proposal revises existing MAS by restructuring the document to group and consolidate standards related to a particular subject i.e. administrative requirements, cash handling, receipting, disbursements, etc. in an attempt to reduce repetition of the same topic in several sections. More significantly, the proposed code clarifies and incorporates standards previously included as “commentary” that were not specifically identified as standards in the existing MAS. In addition, time frames for performance of many operating and reporting procedures were clarified or specified or in some instances increased to allow courts a reasonable time period to comply.

Comments received were reviewed and considered. The code section revisions reverse the original position on many increased internal controls (for example, the mail log section is removed). Although public monies may be more protected with the increased internal controls, the code section takes into account that operationally the controls may be very difficult to implement with existing resources.

MOTION: To recommend AJC adoption of ACJA § 1-401: Minimum Accounting Standards. Motion passed unanimously. COSC-09-032

H. Review and Comment on AJCA § 1-302: Judicial Education

Ms. Julee Bruno, Education Services Division Program Manager
 Ms. Marna Murray, Education Services Division Director

The administrative guidelines for judicial education in Arizona have historically been governed by Administrative Order (AO), which is currently AO 99-08. The Committee on Judicial Education and Training (COJET) has been working on converting AO 99-08 into a section of the ACJA. Additionally, the proposed ACJA section reflects changes to educational needs statewide, references to other administrative codes for probation officer requirements, and actual practice. COJET would like this Committee’s comments and feedback regarding the proposed AJCA section to present to the AJC on December 7, 2006. There were four primary changes:

- COJET and subcommittee roles, responsibilities and composition will be placed into ACJA § 1-108
- ACJA § 1-302 will include guidelines, including but not limited to, definitions, accreditation, independent learning, compliance and reporting.
- Primary proposed changes affecting general jurisdiction court personnel

- Definition for on-call staff
 - Orientation shall include ethics appropriate to the job
 - Definition of temporary staff
 - Defines what qualifies for an accredited program
 - 8 hour maximum in CY for combination of ALL independent learning
 - Writing articles qualifies for independent learning credit
 - Written procedure for appeal of denial of COJET credit at the local level
 - Allows training coordinator to accredit “special status college courses”
 - Automatic exemption from compliance for temporary and on-call staff
 - Clarifies “qualifications for exemption” of compliance
 - Changes deadline for annual report to 1-/31
 - Staff orientation must be complete within 90 days of hire
 - Condense five core curriculum into two (AZ Court System and Working & Communicating with Others)
 - Training coordinators must attend new training coordinator orientation
 - Financial assistance for staff, as available; and procedure to apply
- Specifics to probation personnel
 - Required to complete core curriculum training
 - References ACJA Chapter 6 for officer safety & firearms training requirements
 - Medical waivers for DT or DT refresher
 - Deleted stress management and time management from Probation Officer Certification (POC)
 - New assault & juvenile officers shall complete D/T and Officer Safety in accordance with ACJA § 6-107
 - Intensive probation & surveillance officers complete IPS
 - Officers, trainer, management staff complete D/T refresher & FT as appropriate

Committee Comment/Concerns:

The Committee member comments were in regard to exemptions to compliance for probation staff and recommended that this AJCA section be presented to the Presiding Judges Committee.

Motion: To recommend AJC approval of ACJA § 1-302: Education and Training requested. Motion passed unanimously. COSC – 09-033.

I. Proposed Arizona Code of Judicial Administration: Manual of Transcript Procedures

Ms. Jennifer Greene, Policy Analyst, Court Services Division, AOC, Staff to Committee on Keeping the Record.

Ms. Greene gave a brief overview of the Committee on Keeping the Record. The Committee’s intent was to standardize and encourage uniformity in the transcribing format. She then presented proposed ACJA §1-603, Arizona Manual of Transcript Procedures.

Committee Comment/Concerns:

What is being done about off-shore transcript preparers?

Response:

The committee was made aware that off-shore transcribers are sometimes used by stenographic reporters to help prepare rough drafts of their transcripts. This proposed ACJA sets expectations for transcripts, but does not regulate the use of off-shore and electronic transcription services.

Motion: to recommend AJC adoption of ACJA § 1-603: Arizona Manual of Transcript Procedures. Motion passed unanimously. COSC – 09-034

K. 2007 Arizona Judicial Branch Legislative Proposals

Mr. Jerry Landau, Director of Government Affairs

Voting is reflected as Include – Do Not Include – Include as Modified – No Action. Not all votes total to 17 because members were coming and going throughout the presentation.

2007-01: Record Making (Jennifer Greene, Policy Analyst, Administrative Office of the Courts)

- Establishes definitions for ‘certified transcript’ and ‘official court reporter.’
- Amends language throughout statute relating to court reporters to now include reporting by electronic means.
- Permits under certain circumstances the use of electronic means of reporting in addition to stenographic reporting.

Committee Comment/Concerns:

The committee had concerns about transcript rates charged by court reporters. There have been issues of paying reporter’s overtime or compensating them for the preparation.

Response: Will note that concern.

Motion: To recommend AJC include proposed legislation 2007-01: Record Making in the Arizona Judicial Branch Legislative Package. 17-0-0-0. Passed unanimously. COSC- 09-034.

2007- 02: Eviction Order; SSN (Jennifer Greene, Policy Analyst, Administrative Office of the Courts) Eliminates the requirement that if the defendant’s social security number is contained on the complaint it must also be placed on a judgment in a forcible entry and detainer action (FED).

Committee Comment/Concerns:

Do you have to put the social security number on the complaint? Is this an illegal use of the social security number?

Response: The court must display the social security number on the final order. ARS 12-1178 states the social security number must be included in the judgment if it is on the petition.

Motion: To recommend AJC include proposed legislation 2007-02: Eviction Order; SSN in the Arizona Judicial Branch Legislative Package. 17-0-0-0. Passed unanimously. COSC-09-0-35.

2007- 03B: Probation Funding Deficits (Diane McGinnis, President, Arizona Chief Probation Officers Association) Appropriates \$2.2 million fiscal year 2007-2008 to the Administrative Office of the Arizona Supreme Court for the purpose of fully funding probation salaries and operating expenses for projected deficits in the coming fiscal year.

Motion: To recommend AJC include proposed legislation 2007-03B: Probation Funding Deficits in the Arizona Judicial Branch Legislative Package. 17-0-0-0. Passed unanimously. COSC-09-036.

2007- 04B: Problem-Solving Courts (Diane McGinnis, President, Arizona Chief Probation Officers Association) Appropriates approximately \$2 million in fiscal year 2007-2008 to establish four additional drug courts and to supplement funding for current drug courts. Funding would also be utilized for additional specialty courts such as domestic violence, DUI, mental health and family courts. The Administration of Courts would approve plans, perform audits, gather statistical information and allocate monies accordingly for these additional courts.

Motion: To recommend AJC include proposed legislation 2007-04B: Probation-Solving Courts in the Arizona Judicial Branch Legislative Package. 17-0-0-0. Passed unanimously. COSC- 09-037.

2007-06: DTEF; Percentage Increases (Diane McGinnis, President, Arizona Chief Probation Officers Association) Increases the percentage of the liquor tax designated to the Drug Treatment and Education Fund as follows: (1) a 3% increase on each sealed container of spirituous liquor, a change from 7 to 10%, (2) a 2% increase on each container of vinous and malt liquor, a change from 18 to 20%. 50% of these funds are distributed to probation departments in the state and will help provide additional funding needed for substance abuse treatment of adults on probation.

Committee Comment/Concerns:

The surcharge will still be 80% but the split will be different.

Response: This will not affect the surcharge. Current law puts a tax on the liquor and a certain percentage of that tax is stiffened off and given to the Drug Treatment Education Fund. The percentage that is stiffened will be increased.

Motion: To recommend AJC include proposed legislation 2007-06: DTEF; Percentage Increase in the Arizona Judicial Branch Legislative Package. 17-0-0-0. Passed unanimously. COSC-09-038.

2007-07B: Sex Offenders; Management; Funding (Diane McGinnis, President, Arizona Chief Probation Officers Association) Appropriates monies in fiscal year 2007-2008 to the Community Punishment Program Fund for the purposes of funding uniform standards and guidelines for the effective management of sex offenders on probation supervision. Appropriates monies to the Juvenile Services Probation Fund for the purpose of funding the effective management, supervision, placement and treatment of juvenile sex offenders.

Committee Comment/Concerns:

There is no dollar amount associated with this proposal?

Response: The dollar amount has not been calculated. There is still a need to determine how much money and what the use will be, along with the number of sex offenders are in the system. This is still in discussion.

Motion: To recommend AJC include proposed legislation 2007-07B: Sex Offenders; Management; Funding in the Arizona Judicial Branch Legislative Package. 12-0-0-4. Motion passed. COSC- 09-039

2007-9: Probations Absconders; Apprehension; Funding (Diane McGinnis, President, Arizona Chief Probation Officers Association) Requires Adult and Juvenile Probation Departments to assign probation or surveillance officers to locate and apprehend probation absconders. A case load ratio of no more than an average of 200:1 is established. Appropriates 1.8 million dollars.

Committee Comment/Concerns:

How do we deal with it now? Is there any break down in how the money will be allocated between adult and juvenile? Is there a way to break it down by the level of offense? Either this needs to be added to the proposal or it can be left up to the probation departments to decide which type of offenders they need locate and apprehend? This state appropriation, is it available to all counties except Maricopa?

Response: There is no guidance in how we deal with absconders and warrants. There is no funding. There are about 200 absconders to every officer. There are roughly about fourteen thousand. This proposal will help fund the initiative.

Motion: To table recommendation regarding proposed legislation 2007-9: Probations Absconders; Apprehension; Funding till the December meeting. 17-0-0-0. Passed unanimously. COSC-09-040.

2007-10B: LJC; Probation Services; Funding (Diane McGinnis, President, Arizona Chief Probation Officers Association) Appropriates monies in fiscal year 2007-2008 to the Administrative Office of the Arizona Supreme Court for the purpose of funding probation services for limited jurisdiction courts.

Committee Comment/Concerns:

Does that mean a dollar amount has already been incorporated? What services would be provided?

Response: Not sure how much is in the budget. There is already a statutory authority to provide probation services for DUI and Domestic Violence cases that has not been funded been over the years.

Motion: To recommend AJC include proposed legislation 2007-10B: Probation Services; Funding in the Arizona Judicial Branch Legislative Package. 12-01-2. Motion passed. COSC-09-41.

2007-11B: Pilot Program; Youth Offenders; Re-entry (Diane McGinnis, President, Arizona Chief Probation Officers Association) Appropriates \$500,000 to the Supreme Court to fund a Reintegration/Re-entry of Youth Offenders Pilot Program. Pilot programs would be established in three rural and one metro county. Money would be used to provide training, supervision and coordination of volunteer mentors to youths released from detention or residential placement. The concept is similar to that of the CASA volunteer.

Motion: To recommend AJC include proposed legislation 2007-11B: Pilot Program; Youth Offenders; Re-entry in the Arizona Judicial Branch Legislative Package. 13-0-1-2. Motion passed. COSC-09-042.

2007-12: Criminal Code: Sentencing (Jerry Landau, Director of Government Affairs, Arizona Supreme Court) Reorganizes Title 13, Chapters 6 and 7 to simplify the structure of the sentencing code and make it more user friendly. This legislation would not make structural or philosophical changes to the code. Renumbers nine scattered sections dealing with death penalty placing them in their own article. Repeals four sections placing them in a more organized fashion in the code. Separates dangerous offenses and repetitive offenses, placing all repetitive offenses in the same sections. Combines the two sections of 'three strikes and you are out' into the same statute.

Motion: To recommend AJC include proposed legislation 2007-12: Criminal Code: Sentencing in the Arizona Judicial Branch Legislative Package. 15-0-0-0. Passed unanimously. COSC-09-043.

2007-13: Jury; Commissioner Duties; Juror Selection (Jerry Landau Director of Government Affairs, Arizona Supreme Court) A holding place for possible legislation to align the duties of the jury commissioner and the method of selecting jurors to account for the changing demographics of the state and technological advances.

Committee Comment/Concerns:

If this is a work in progress, this is not the time to address it. Is there a statutory prohibition against this now?

Response: Yes, there is a prohibition against it. There has to be a close look at the constitution in what the different areas that the county is divided and can it be divided into a lesser subdivision.

Motion: To recommend AJC include proposed legislation 2007-13: Jury; Commissioner Duties; Juror Selection in the Arizona Judicial Branch Legislative Package. 4-0-3-9. Motion failed, vote indicates No Action. COSC-09-044.

2007-14: Arbitration: Limit and Compensation (Mike Baumstark, Deputy Director, Administrative Office of the Courts) Increases the jurisdiction limit for arbitration claims to \$75,000, previously \$50,000. Increases an arbitrator's compensation by raising the maximum daily fee from \$75 to \$150. An alternative proposal under discussion would allow a credit to be applied for Continuing Legal Education.

Motion: To recommend AJC include proposed legislation 2007-14: Arbitration: Limit and Compensation in the Arizona Judicial Branch Legislative Package. 13-0-2-1. Motion passed. COSC-09-045.

2007-15: Time Payment Fee (Karl Heckart, Director, Information Technologies Department, Administrative Office of the Courts) Repeals laws enacted in 1999, 2000, 2001, and 2002 relating to the time payment fee in order to retain the \$20.00 time payment fee. If no action is taken, the time payment fee will revert to \$12.00 in 2010. Reversion of the time payment fee will result in a 1.2 million dollar per year impact on the JCEF.

Motion: To recommend AJC include proposed legislation 2007-15: Time Payment Fee in the Arizona Judicial Branch Legislative Package. 13-0-2-1. Motion passed. COSC-09-046.

2007-16: Superior Courts; Verbatim Record (Jennifer Greene Policy Analyst, Administrative Office of the Courts) Superior court judges will ensure accurate verbatim records of proceedings are made. Each superior court judge is entitled to the use and services of a certified court reporter and the cost of the service shall be a county charge. Subject to A.R.S. § 38-424, a superior court judge may alternatively discharge this duty through the use of electronic or other means, in accordance with rules established by the Supreme Court. Permits the state, any agency of the state, judiciary, and political subdivision to utilize electronic means in lieu of certified court reporters. Does not allow electronic means in a court of record if either party timely requests a certified court reporter.

Committee Comment/Concerns:

This proposal seems to require that we have accurate verbatim records of proceedings such as scheduling conferences, case management conferences. Not all proceedings need to be on the record. It is the responsibility of the court reporter to make sure there is an accurate verbatim record. Without the first sentence, would it capture what was meant to be said?

Response: The focus of the amendment was to move away from a one-judge/one-reporter model and to use the most appropriate means of record making.

Motion: To recommend AJC include proposed legislation with the modification to delete the first sentence of 2007-16: Superior Courts; Verbatim Record in the Arizona Judicial Branch Legislative Package. 8-8-0-0. Motion was tied; 8 Include and 8 Do Not Include. COSC-09-047.

2007-17: Justice of the Peace Courts; Appeal of Judgment (Jennifer Greene Policy Analyst, Administrative Office of the Courts) Updates statutory language relating to court records in justice court. 'Transcript' is replaced with 'verbatim record.' Allows for the remand of the case to the original trial court for a trial de novo in circumstances where the record is insufficient for the Superior Court to consider the appeal. Clarifies the required notice to appellants for payment of fees in an appeal from justice court in civil cases. Extends the time due for payment from 15 days to 30 days after giving notice. If failure to pay within that time, the appeal or cross-appeal will be deemed abandoned and dismissed by the justice court rather than returned to the justice court as previously stated.

Committee Comment/Concerns:

Would this allow reviewing the transcript on CD?

Response: It will allow hearing the proceeding on CD and receiving the transcript in written form.

Motion: To recommend AJC include proposed legislation 2007-17: Justice of the Peace Courts: Appeal of Judgment in the Arizona Judicial Branch Legislative Package. 14-0-1-1. Motion passed. COSC-09-048.

2007-18: Sibling Information Exchange Program (Judge Patricia Escher, Pima County Superior Court) Establishes a sibling information exchange program for the purpose of facilitating contact between former dependent children and their siblings. The Administrative Office of the Courts would administer the program and maintain records of all former dependant children. Only former dependant children at least eighteen years old, parents of former dependant children under eighteen and siblings of former dependant children may participate in the program.

Committee Comment/Concerns:

Is there any funding requested to run this program.

Responses: There was not a request but I am sure there is funding that may be needed.

Motion: To recommend AJC include proposed legislation 2007-18: Sibling Information Exchange Program in the Arizona Judicial Branch Legislative Package. 13-0-2-1. Motion passed. COSC-09-0-49.

III. GOOD OF THE ORDER/CALL TO THE PUBLIC

There was no response to the Call to the Public.

A. Next Meeting:

Friday, December 1, 2006

State Courts Building
Conference Rooms 119 A & B
10:00 a.m. – 2:00 p.m.

IV. ADJOURNMENT

The meeting adjourned at 3:45 pm.

Respectfully submitted,
Susan Pickard
Staff, Committee on Superior Court

Filename: Min092206Final.doc
Directory: C:\Documents and Settings\SPickard\COURTS\My Documents\COSC
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Title: COMMITTEE ON SUPERIOR COURT
Subject:
Author: Arizona Supreme Court
Keywords:
Comments:
Creation Date: 12/6/2006 10:47 AM
Change Number: 2
Last Saved On: 12/6/2006 10:47 AM
Last Saved By: SPickard
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As of Last Complete Printing
Number of Pages: 12
Number of Words: 5,343 (approx.)
Number of Characters: 30,458 (approx.)

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, December 1, 2006
10:00 am to 11:45 pm
State Courts Building
1501 W. Washington, Conference Room 119 A/B
Phoenix, AZ 85007

MEMBERS PRESENT:

Judge James A. Soto, Chair
Ms. Sylvia Brandfon Ph.D. by teleconference
Judge James E. Chavez by teleconference
Judge Margaret H. Downie
Judge Robert Duber II by teleconference
Judge Pat Escher by teleconference
Ms. Karen D. Ferrara by teleconference
Judge Richard S. Fields by teleconference
Judge George Foster
Judge Andrew Gould
Judge Charles V. Harrington
Judge Bethany G. Hicks

Judge Cathy Holt
Judge Jan Kearney by teleconference
Judge William T. Kiger by teleconference
Judge Kenneth Lee
Judge Margaret Maxwell by teleconference
Judge Colleen McNally
Ms. JoJene Mills by teleconference
Judge Fred Newton
Judge Dale Nielson by teleconference
Mr. Marcus Reinkensmeyer
Mr. David Sanders by teleconference

MEMBERS ABSENT:

Mr. Michael Jeanes
Judge Stephen F. McCarville

Judge Emmet J. Ronan

PRESENTERS / GUESTS:

Ms. Leila Gholam
Ms. Jennifer Greene

Ms. Fran Johansen

STAFF:

Ms. Susan Pickard

Ms. Lorraine Nevarez

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the December 1, 2006, meeting of the Committee on Superior Court was called to order by Judge James Soto, Chair, at 10:00 am.

Members noted their appreciation to the Judge Soto for allowing this 2-hour meeting to be held telephonically for those outside of the Phoenix metropolitan area.

B. Approval of Minutes from September 22, 2006

The minutes for the September 22, 2006, Committee on Superior Court conference call meeting were presented for approval.

**MOTION: To approve the September 22, 2006, meeting minutes as presented.
Motion passed unanimously. COSC-06-050**

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Arizona Judicial Branch Legislative Proposals

Leila Gholam, Legislative Officer, AOC

Ms. Gholam presented the proposed update concerning the AJC legislative proposals for 2007.

Proposal I: Jury; Commissioner Duties; Juror Selection (Leila Gholam, Supreme Court Legislative Liaison)

- Requires the Supreme Court to adopt rules relating to the summoning and selection of trial and grand jurors.
- Removes procedural duties of jury commissioners/clerks from statute and requires that they be placed into court rule. Statutes dealing with policy issues such as substantive jury commissioner duties, excuses, qualifications, disqualification and lengthy jury fund remain.
- Authorizes a countywide juror summoning plan to be developed by the Supreme Court. Courts wanting to adopt an alternative plan must submit a summoning plan to the Supreme Court for approval.
- Alternate procedures for summoning jurors to superior courts with multiple court locations may include dividing counties into jury districts or using a countywide method that minimizes the distance a prospective juror must travel.
- Consolidates and renumbers many of the remaining statutes.
- Makes conforming changes to internal references.

Committee Comments/Concerns:

There are issues still pending both civil and criminal in Maricopa County. This proposal raises serious policy issues.

Response: The packet will come from the Judicial Council. There is a diverse body working on drafting the language.

Proposal II Criminal Code: Sentencing (Jerry Landau, Supreme Court Director of Government Affairs) - Reorganizes Title 13, Chapters 6 and 7 to simplify the structure of the sentencing code. Does not make structural or philosophical changes to the code. Major provisions include:

- Adds the definitions of “dangerous offense” and “serious offense” to §13-105, definitions.
- Splits the various provisions of §13-604 into separate statutes dealing individually with dangerous offenses, repetitive offenses, serious offenses and special sentencing provisions, such as crime against police officer.
- Places all statutes dealing with repetitive offenses in the same statute, except those that deal with repetitive dangerous offenses, which are grouped in the dangerous offense statute.
- Places both “three strikes and your out” provisions in the same statute.
- Renumbers sections dealing with death penalty placing the statutes in a separate article.
- Transfers the statute dealing with Class 6 Felonies from Chapter 7 to Chapter 6.
- Makes a clarifying change to §13-604.01, Dangerous Crimes against Children.
- Consolidates all misdemeanor sentencing provisions.
- Within the reorganization, repeals and renumbers some sections.
- Makes conforming changes to internal references

Proposal III: Forcible Entry and Detainer Judgments, Social Security Numbers (Amy Love, Supreme Court Legislative Analyst) - Modifies the requirement that in a Forcible Entry and Detainer complaint, if the defendant’s social security number is contained on the complaint, it must also be placed on a judgment, to requiring only the last four digits of the defendant’s social security number.

Proposal IV: Probations Absconders; Apprehension; Funding (Leila Gholam, Supreme Court Legislative Liaison) - Requires Adult and Juvenile Probation Departments to assign personnel to locate and apprehend probation absconders. Carries an appropriation to be determined.

Committee Comments/Concerns:

Will this apply to juvenile courts? Will counties that do not meet the 200 absconders be eligible for the funding?

Response: This will not apply to juvenile courts, Maricopa county or absconders on probation for drugs. This will apply to warrants that are less than five years. Counties that have less than 200 absconders can partner with adjacent counties to receive the funding to seek out absconders and bring them to justice.

Motion: To recommend approval of the proposed legislation proposal IV: Probation Absconders; Apprehension; Funding. 24-0-0. Motion passed. COSC-06-051

Proposal V: Time Payment Fee (Leila Gholam, Supreme Court Legislative Liaison) - Repeals laws enacted in 1999, 2000, 2001, and 2002 relating to the time payment fee in criminal cases in order to retain the \$20.00 time payment fee. If no action is taken, the time payment fee will revert to \$12.00 in 2010. Reversion of the time payment fee will result in a 1.2 million per year negative impact on the Judicial Collection Enhancement Fund, compromising automation projects that affect all levels of the court system and the Public Defender Training Fund.

Proposal VI: Sibling Information Exchange Program (Amy Love, Supreme Court Legislative Analyst) - Establishes a sibling information exchange program for the purpose of facilitating contact between former dependent children and their siblings. The Administrative Office of the Courts would administer the program using the already in existence Confidential Intermediary Program.

Former dependant children at least eighteen years old, parents of former dependant children under eighteen and siblings of former dependant children may participate in the program. The definition of "former dependent child" is added to statute, to mean "a person who was adjudicated a dependent child in a dependency proceeding pursuant to this chapter that has been dismissed by order of the juvenile court."

Committee Comments:

This indicates that parents of dependent children under the age of 18 years may participate in this program. What are the protections? Does this include children that have been adopted that were dependent children?

Response: This is intended to allow children that have "graduated" from the foster care system to make contact with their siblings if there siblings want contact with them. It also authorizes those who have adopted dependent children to give consent of such contact. It is left to the adopted parent.

Proposal VII: Arbitration: Limit and Compensation (Leila Gholam, Supreme Court Legislative Liaison) - Increases the jurisdiction limit for arbitration claims to \$75,000, previously \$50,000.

Increases an arbitrator's compensation by raising the maximum daily fee from \$75 to \$150.

This is a county by county decision.

Committee Comment/Concerns:

Is CLE credit no longer an option?

Response: It was decided not to put that into legislation. If the proposal does not pass, something to consider is putting it into court rule.

Additional Possible Bills:

- DUI level might change to .20 and above
- Extreme DUI sentencing will have the mandatory sentence
- Hospitals will be required to report to officers high levels of alcohol
- Proposed legislation in regards to the death penalty cases with Delay to Rule 8 -15 Post Conviction Relief Petition Delays. This is do to the trial courts liberally construing the term "good cause" and granting extensions frequently.

B. Task Force Report on Legal Advice-Legal Information Guidelines

Fran Johansen, Staff, Task Force on Legal Advice –Legal Information Guidelines

Administrative Order 2006-40 established the Task Force to develop Legal Advice – Legal Information Guidelines to address the growing trend of self-represented litigants in the court. The Guidelines will provide court personnel a clearer distinction between legal advice and legal information to allow them to provide court customers appropriate and meaningful assistance. The Task Force will present the proposed Guidelines, Question and Response Handbook and training implementation methods to AJC for adoption in March 2007.

Task Force recommendations:

- The Guidelines should be approved and incorporated into Arizona Court's Code of Conduct for Court Staff.
- The Signage should be approved and the Supreme Court issue an order requiring the signage be prominently displayed at court service counters, self-service centers, and law libraries open to the public.
- The manual for court employees that includes policy, guidelines, glossary of common terms, and question and response handbook should be available to court personnel and be included with their training.
- New employee orientation should be required to include a Legal Advice v. Legal Information component with current employees being regularly required to participate in a review program.
- The manual, glossary, and questions and helpful response, as well as interactive review modules should be available for court personnel on the intranet.
- Materials should be made available to the public on internet sites.

Committee Comment/Concerns:

This addresses the issue at the clerk's office. The person who bears the brunt of all these issues is the JA. Incorporating the JA's for the March 27th training would be beneficial. There is also concern about the two sentences on the signage sign: (1) We can give you general information about court rules, procedures, and practices. (2) We can usually answer questions about court deadlines and how to compute them. These two statements could be interpreted by litigants to give them the right to keep insisting that court personnel answer all questions that should be referred to a lawyer.

Response: The Task Force would appreciate any comment and suggestions from JA's. JA's have to deal with the more difficult questions. All comments will be taken back to the Committee.

MOTION: To recommend AJC approval of the Task Force Report on Legal Advice-Legal Information Guidelines as presented in concept. 24-0-0. Motion passed. COSC-06-052

C. Garnishment Forms

Jennifer Greene, Staff, Project Specialist

Problems addressed by this project:

- Arizona statutes require the Supreme Court to approve and distribute garnishment forms for use by the public at no charge. The cost of printing forms for the public is borne by individual courts, especially justice courts.
- The forms packet originally approved circa 1990 is still in use around the state with only minor updating; the original packet does not offer much in the way of instructions for the user. More so than small claims or even divorce, garnishment is difficult for the average pro se litigant to understand and navigate successfully. Garnishment laws require that parties strictly adhere to timelines and impose potentially serious financial consequences on parties who fail to meet statutory requirements. In providing garnishment forms to pro se litigants without adequate instructions, courts run the risk of setting people up for failure.
- The Court Services Division called upon the expertise of the Self-Service Center Forms Committee to create the new packet. This Committee has been assisting AOC with development of domestic relations forms for several years. Its membership includes self-service center administrators, attorneys, clerks, and superior court judicial officers. The new packet incorporates standards that have emerged since the packet was originally created in 1990. Each new form is accompanied by a separate instruction sheet. Along the way, the Workgroup received assistance from content experts familiar with the garnishment process.

Committee Questions/Comments:

When they print the forms online will there be a detailed guide sheet per form that prints out with them?

Response: Yes, each form will print with an instruction sheet.

There is concern with the instruction that advises a corporation can represent itself, isn't that true only in Justice Court?

Response: Will look into the rule from which that instruction was taken.

MOTION: To approve adoption of the new packet of garnishment forms for online distribution. Motion passed unanimously. COSC-06-053.

D. 2007 Meeting Schedule

Each year staff meets to develop proposed schedule for the AJC standing committees. We conduct the scheduling in this fashion to ensure that those wishing to place an item on the AJC agenda, have time to present their issue to all pertinent committees, consider the comments and suggestions offered at those meeting and revise their issue before presentation at AJC. The proposed schedule is presented for consideration and approval.

Committee Comment/Concerns:

The members were in agreement of the dates presented except for February 16th which may be a holiday weekend.

MOTION: To approve the Committee on Superior Court 2007 Meeting Schedule. Motion passed unanimously. COSC-06-054.

E. Rule Status List

Judge James Soto, Committee Chair

This came from the Supreme Court Attorney's Office. This is just an update of the Arizona Rules of Court-Rule 28 Amendments Statues List. This is just an update for informational purposes.

III. Other Business

There was no response to the Call to the Public.

A. Next Meeting:

Friday, February 16, 2006

State Courts Building

Conference Rooms 345 A & B

10:00 a.m. – 2:00 p.m.

B. Good of the Order/Call to the Public

The meeting adjourned at 11:45 a.m.

Respectfully submitted,
Susan Pickard
COSC Staff