

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, February 5, 2010
Arizona State Courts Building
Conference Room 119 A/B
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable James A. Soto
Honorable Eddward Ballinger
Honorable Michael J. Burke
Honorable James Conlogue
Honorable Michael J. Cruikshank
Honorable Robert Duber, II
Honorable Andrew Gould
Honorable Sue Hall
Mr. Joshua Halversen
Mr. Tim Hardy - *telephonic*
Honorable Charles V. Harrington

Honorable Danna Hendrix
Honorable Bethany Hicks
Honorable Michael K. Jeanes
Honorable David Mackey
Honorable Margaret Maxwell
Honorable Stephen F. McCarville
Honorable Colleen McNally
Honorable Monica L. Stauffer
Ms. Susan Wilson

MEMBERS ABSENT:

Honorable Norman Davis
Honorable Kenneth Lee
Ms. JoJene Mills

Mr. Marcus Reinkensmeyer
Honorable Stephen Villarreal

PRESENTERS/GUESTS:

Honorable Bruce Cohen
David N. Horowitz, J.D.
Ms. Kathy Sekardi, AOC
Ms. Katy Proctor, AOC
Ms. Patricia Madsen, Community Legal Services

Ms. Kathy Waters, AOC
Ms. Sharon Yates, AOC
Mr. Paul Julien, AOC

STAFF:

Ms. Kay Radwanski

Ms. Tama Reily

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the February 5, 2010, meeting of the Committee on Superior Court (COSC) was called to order by Honorable James A. Soto, chair, at 10:03 a.m.

B. Approval of Minutes

The minutes from the November 6, 2009, COSC meeting were presented for approval.

MOTION: To approve the November 6, 2009, COSC meeting minutes as presented. Motion seconded. Approved unanimously. COSC-10-01

BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Report of the Child Support Guidelines Review Committee

Judge Bruce Cohen, chair of the Child Support Guidelines Review Committee (GRC), and GRC member David Horowitz, J.D., presented the final proposed Child Support Guidelines. Judge Cohen briefed the committee on the historical background of the current child support guidelines and the *Income Shares Model* on which they operate. He discussed the areas where the current model falls short in meeting the needs and expenses of children. He then detailed the premise of the *Child-Outcome Based Support* (COBS) model that is being recommended in the new proposed guidelines, and how it addresses the shortcomings observed in the current model. The guidelines will be presented for approval at the March 2010 Arizona Judicial Council (AJC) meeting.

During discussion, Judge Cohen explained that the criteria used to determine the current guidelines produce inequitable results where disparate incomes exist. He also spoke to concerns about the length and apparent complexity of the proposed guidelines instructions. In response to concerns that the change in the child support award in most cases would be nominal, Judge Cohen emphasized that the outliers, those cases in which income disparity is a factor, where change is most needed, are the cases that will appreciate the most significant change.

MOTION: To recommend approval of the proposed Child Support Guidelines as presented. Motion seconded. Motion passed 18-1-0. COSC-10-02

B. Legislative Update

Katy Proctor, AOC legislative liaison, reported on the current session's proposed legislation that may impact the superior courts. She requested feedback from the committee on several bills.

HB 2650/SB 1199; divorce; waiting period; educational programs

This bill has two major provisions. First, it increases the waiting period for divorce from 60 days to 180 days after service of the divorce petition. Second, it introduces changes to the

educational programs and outlines specific instructional areas/topics that must be included in the programs, which could impact cost and the providers of the educational services.

In response to Ms. Proctor's request, members commented that a funding source should be established to address the cost of a mandated educational program, particularly in smaller counties. In addition, members expressed concern that the extended divorce waiting period could negatively impact the children involved in these situations. Finally, it was noted that the longer waiting period could produce an increase in temporary order petitions, which is another cost factor for the courts.

SB 1314; domestic relations

Requires that all court rulings regarding community property and debt or parental fitness include written explanation of the conclusions, analysis of each issue, and a detailed list of facts and laws supporting its decision. Would prohibit sole custody orders where both parents are found fit, unless both parents agree.

Members related concerns that this bill would significantly slow the family court process, and because the community property and debt in dispute in most cases is often of nominal value, the required analysis could make a ruling unmanageable.

HB 2109; superior court; holiday hours

Would allow the presiding judge of the county to adopt the county holiday change that the board of supervisors made last year.

HB 2174; post-judgment garnishment; attorney's writ

Would allow licensed attorneys to issue a writ of garnishment for \$5,000 or less if a judgment has been entered and the writ meets current statutory requirements. Ms. Proctor noted there is a lot of opposition to this bill and it may not move forward. She noted that the AOC does not have an official position on the bill.

HB 2334; costs; superior court; document preparation

Will permit the court to award to the prevailing party the cost of document preparation if the document is prepared by a legal document preparer that is certified by the Supreme Court. Ms. Proctor stated this will likely be a strike everything bill.

C. Petition to Amend the Arizona Rules of Protective Order Procedure

Patricia Madsen, managing attorney of Community Legal Services, addressed the committee on a rule petition recently filed by Judge Elizabeth Finn to amend Rule 4(B)(5)(b) of the Arizona Rules of Protective Order Procedure (ARPOP). The proposed amendment would require limited jurisdiction courts to transfer protective orders when the protected party is the subject of a custody, parenting time, or visitation order. Currently, Rule 4(A)(1) and (2) both prohibit a limited jurisdiction court from issuing a protective order in cases where there is a family law action *pending* in a superior court. The limited jurisdiction court must instead refer the party to the superior court to obtain an order of protection. In contrast, Rule 4(B)(5)(b) currently provides that where there is an *active* custody order involving the defendant or a child of the defendant, a limited jurisdiction court may issue the ex-parte

order, but then must transfer the order to the superior court for anything further. The proposed amendment is intended to clarify and to expand the transfer requirement for protective orders to include injunctions against harassment. The impetus for the change is primarily situations where the terms of a protective order conflict with a custody, parenting time, or visitation order.

Ms. Madsen described examples such as a mother obtaining an injunction against harassment against the father's new girlfriend. In this scenario, if the father resides with the new girlfriend, the injunction will necessarily impact his custody or parenting time order. The transfer of the injunction to the superior court would allow for a judicial officer in the superior court to make determinations regarding access and the terms of access in those cases where a custody order or parenting time order is either directly or indirectly impacted by the terms of the protective order.

During a lengthy discussion, members voiced concerns about lower jurisdiction courts intervening in these cases where the circumstances and history are known by the superior court, and the appropriate parenting time has been determined on that basis. Members feared that this practice could allow parents who are unhappy about their custody orders to manipulate the system to effectively *modify* their custody order by going to another court to request a protective order. Another concern was that the risk of harm to those legitimately seeking protection would be increased under this amendment because the lower court is not *required* to evaluate the legitimacy of the protection order request; therefore, some courts will fail to do so prior to referring the party to the superior court.

On the other hand, some members contended that cases where a custody order is several years old and there is no active litigation or petition pending, concurrent jurisdiction should be the rule, particularly in circumstances of an urgent nature. Others argued that when an emergency motion, such as a protective order, is at issue, if the closest or most available judge is in the municipal court, that judge should absolutely be allowed to issue the order.

After much discussion with no member consensus being achieved, it was suggested that the proposed rule change receive further review and be re-presented to COSC at another date.

MOTION: To recommend further discussion and refinement of the proposed rule change. Motion seconded. Vote: 17-1-0. COSC-10-03

D. ACJA § 6-207: Uniform Conditions of Supervised Probation

Kathy Waters, AOC director of Adult Probation Services, presented proposed changes to ACJA § 6-207: Uniform Conditions of Supervised Probation. Ms. Waters explained that the revisions would introduce evidence based practices into the Uniform Conditions of Probation and ensure consistency among the state courts and probations departments. Ms. Waters reviewed the primary changes to the code and discussed the intended outcome.

During discussion, members suggested some minor language changes for clarification purposes on the Uniform Conditions of Supervised Probation Form.

MOTION: To approve ACJA § 6-207: Uniform Conditions of Supervised Probation with the revisions discussed during the meeting. Motion seconded. Approved unanimously. COSC-10-04

III. OTHER BUSINESS

- A.** Mr. Paul Julien, AOC Education Services, announced that New Judge Orientation for general jurisdiction judges will take place from April 5, 2010, to April 8, 2010.

Commissioner Maxwell invited members to attend the Pima County Family Law seminar on April 9, 2010. The cost is \$10, which includes lunch.

B. Next Meeting

Friday, May 14, 2010
10:00 a.m. – 3:00 p.m.
Conference Room 119 A/B
Arizona State Courts Building
1501 W. Washington
Phoenix, AZ 85007

C. Good of the Order/Call to the Public

No comments offered.

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, May 14, 2010
Arizona State Courts Building
Conference Room 119 A/B
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable James A. Soto	Honorable Bethany Hicks
Honorable Eddward Ballinger	Honorable Michael K. Jeanes
Honorable Michael J. Burke	Honorable Kenneth Lee - <i>telephonic</i>
Honorable James Conlogue - <i>telephonic</i>	Honorable Margaret Maxwell
Honorable Michael J. Cruikshank - <i>telephonic</i>	Honorable Stephen F. McCarville
Honorable Norman Davis	Honorable Colleen McNally
Honorable Robert Duber II	Mr. Marcus Reinkensmeyer
Honorable Sue Hall - <i>telephonic</i>	Honorable Monica L. Stauffer - <i>telephonic</i>
Mr. Tim Hardy - <i>telephonic</i>	Ms. Susan Wilson
Honorable Charles V. Harrington - <i>telephonic</i>	Honorable Stephen Villarreal - <i>telephonic</i>
Honorable Danna Hendrix - <i>telephonic</i>	

MEMBERS ABSENT:

Honorable Andrew Gould	Honorable David Mackey
Mr. Joshua Halversen	Ms. JoJene Mills

PRESENTERS/GUESTS:

Ms. Katy Proctor, AOC	Mr. Paul Julien, AOC
Ms. Patience Huntwork, AOC	Ms. Theresa Barrett, AOC
Mr. Gabriel Goltz, AOC	

STAFF:

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

A. Welcome and Opening Remarks

With a quorum present, the May 14, 2010, meeting of the Committee on Superior Court (COSC) was called to order by Honorable James A. Soto, chair, at 10:06 a.m.

Judge Soto recognized departing committee members Judges Danna Hendrix, Stephen Villarreal, and Norman Davis, and Ms. JoJene Mills, Arizona State Bar representative, and thanked them for their work and dedication to the committee.

B. Approval of Minutes

The minutes from the February 5, 2010, COSC meeting were presented for approval.

MOTION: To approve the February 5, 2010, COSC meeting minutes as presented. Motion seconded. Approved unanimously. COSC-10-05

BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Legislative Update

Katy Proctor, AOC legislative liaison, reported on bills passed in the recently concluded legislative session. The effective date of the legislation is July 29, 2010. Ms. Proctor also thanked members for their assistance and responsiveness during the session. The following bills were highlighted:

HB 2109: Superior court; holiday hours

If the Board of Supervisors designates the Friday after Thanksgiving a legal holiday in place of Columbus Day, the presiding judge of the county may close the Superior Court on the day after Thanksgiving and conduct court business on Columbus Day instead.

HB 2334: Costs; superior court; document preparation

Permits the court, at the judge's discretion, to award the prevailing party the cost of documentation preparation if the document is prepared by a legal preparer.

HB 2419: Sibling visitation rights

The Department of Economic Security must make reasonable efforts to place the child with siblings or if that is not possible, they need to provide information as to why it cannot occur, and then, frequent visitation or contact between the siblings must be maintained.

HB 2470: Public defender; duties; reimbursement

Clarifies and adds to the required duties of a public defender in Superior and Justice Court.

HB 2471: Appointed mental health experts; requirements

The court is not required to appoint a mental health expert in a competency exam; however, the court may appoint one on its own motion or on the motion of a third party. Stipulates that the expert must be approved by the court.

HB 2608: Constables; jurisdiction surcharge

Requires the court to collect a 10% surcharge on the amount of the fine owed by the defendant when the warrant served by a sheriff or constable was issued by a justice or superior court for failure to pay a fine.

HB 2629: Firearms; self defense; registration

Prohibits a political subdivision from requiring or maintaining permanent or temporary record of any person temporarily storing a weapon at a public establishment or event.

SB 1009: Juvenile prosecutions; adult court; age

Criminal prosecution of a juvenile is based on the age *at the time of the offense*, not the age at the time the case is filed.

SB 1035: Parental rights; termination; hearing

Court appointed guardians ad litem (GAL) or attorneys for a minor must meet with the minor at least once prior to the preliminary protective hearing (PPH) or within 14 days after the PPH.

SB 1189: Admissibility of opinion testimony

Requires that in a civil and criminal action, expert testimony regarding scientific, technical or other specialized may only be offered by a qualified witness. Essentially, applies *Daubert* to Arizona; however, the bill mandates that the judge apply the enumerated factors if applicable, whereas *Daubert* provides the discretion judge on this point.

SB 1314: Domestic relations

Contains a public policy statement declaring that it is in the best interest of a child to have substantial and meaningful parenting time with both parents and to have both parents engage in decision-making for the child, unless there is evidence to the contrary. Ms. Proctor thanked Judge McNally and Judge Gass for their efforts on the rewriting of this bill.

Ms. Proctor also noted two bills of interest that were not passed:

SB 1094: Marriage dissolution; disposition of property

HB 2501: Dependent children; hearings; notice

Judge Soto thanked Ms. Proctor for her work and that of the other legislative team members.

B. Pending Rule Change Petitions – *Item taken out of order*

Patience Huntwork, staff attorney, Arizona Supreme Court, reviewed current pending rule change petitions. She briefly discussed the rule-making process and encouraged members to participate in the process by following the submission of petitions, submitting comments, and viewing the comments of others. Pending rule petitions and comments can be viewed at <http://www.azcourts.gov/LinkClick.aspx?fileticket=uYZT0WnIn6U%3d&tabid=949>.

After much discussion on R-09-0016: Jury Duty by Court Employees, which would exclude court employees from jury service in the courts in which they are employed, and R-10-0018: Reporting of Superior Court Matters Not Decided Within 60 Days, which would require

superior court clerks to report violations of the 60-day requirement, members agreed the committee as a whole should file comments opposing the petitions. As the deadline for filing comments was May 20, the committee authorized Judge Soto to approve responses as prepared by staff and submit them prior to May 20.

MOTION: To submit a committee comment opposing R-09-0016, Petition to amend Arizona Rules of Civil Procedure. Motion seconded. Approved unanimously. COSC-10-06

MOTION: To submit a committee comment opposing R-10-0018, Petition to amend Rule 91(e), Rules of the Supreme Court. Motion seconded. Approved unanimously. COSC-10-07

C. Update and Discussion – Petition R-10-0017 to Amend the Arizona Rules of Protective Order Procedure

Kay Radwanski, AOC committee staff, updated members on Judge Elizabeth Finn’s proposed petition R-10-0017 to amend the Arizona Rules of Protective Order Procedure. The proposal was discussed at the February, 2010, COSC meeting, and at that time the committee recommended additional discussion and refinement of the petition. Since then Judge Finn has withdrawn her petition and, in lieu of the rule change, requested that a workgroup be formed to further explore the issue. Ms. Radwanski informed members that the workgroup has been formed and is expected to begin meeting soon. The workgroup includes superior court judges, limited jurisdiction court judges, and representatives of the clerks of court.

D. Judicial Education in 2010 and Beyond

Gabriel Goltz, Education Services Division (EDS) manager of the Judicial College of Arizona (JCA), and Paul Julien, EDS judicial education officer, updated the committee on the status and focus of their training and education programs for judicial officers in 2010. Mr. Goltz discussed their efforts to improve on continuing education programs, particularly in light of the cancellation of the 2010 Judicial Conference. They hope to place more emphasis on the needs for various types of training throughout the year rather than having so much prominence on the annual Judicial Conference. He reported on some format changes in the New Judge Orientations (NJOs) conducted this year, for both limited and general jurisdiction. Mr. Julien reviewed several of the seminar topics that will take place at the upcoming Arizona State Bar Convention slated for June 9 to 11 in Glendale. Members were encouraged to attend based on the exceptional educational opportunities being provided. In addition, judges attending the convention would fulfill all of their COJET requirements.

III. OTHER BUSINESS

Ms. Radwanski informed members of changes to SB 1266, the juvenile ‘sexting’ bill, which was signed into law by the governor. At the last hour, it was amended with three domestic violence bills that included provisions for orders of protection for pets, increased

the offense of attempted strangling or suffocating to aggravated assault, and added several crimes to the definition of domestic violence.

A. Next Meeting

Friday, September 10, 2010

10:00 a.m. – 3:00 p.m.

Conference Room 119 A/B

Arizona State Courts Building

1501 W. Washington

Phoenix, AZ 85007

C. Good of the Order/Call to the Public

No comments offered.

**COMMITTEE ON SUPERIOR COURT
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MEMBERS PRESENT:

Honorable James A. Soto, Chair	Mr. William G. Klain
Honorable Eddward Ballinger	Honorable Kenneth Lee - <i>telephonic</i>
Honorable Michael J. Burke	Honorable David Mackey - <i>telephonic</i>
Honorable Michael J. Cruikshank - <i>telephonic</i>	Honorable Margaret Maxwell
Honorable Robert Duber II	Honorable Stephen F. McCarville
Honorable Andrew Gould	Honorable Colleen McNally
Honorable Sue Hall	Honorable Patricia Noland
Mr. Joshua Halversen - <i>telephonic</i>	Mr. Marcus Reinkensmeyer
Mr. Tim Hardy	Honorable Michala Ruechel
Honorable Charles V. Harrington - <i>telephonic</i>	Honorable Randall Warner
Honorable Carey S. Hyatt	Ms. Susan Wilson

MEMBERS ABSENT:

Honorable James Conlogue	Honorable Monica Stauffer
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PRESENTERS/GUESTS:

Ms. Katy Proctor, AOC	Mr. Ken Kung, AOC
Mr. Renny Rapier, AOC	Ms. Sharleen Decker, AOC
Mr. Stewart Bruner, AOC	Ms. Patience Huntwork, AOC
Ms. Melinda Hardman, AOC	Ms. Nancy Swetnam, AOC
Honorable Ronald Reinstein	

STAFF:

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

A. Welcome and Opening Remarks

With a quorum present, the September 10, 2010, meeting of the Committee on Superior Court (COSC) was called to order by Honorable James A. Soto, chair, at 10:05 a.m.

Judge Soto welcomed the following new committee members:

- Honorable Michala Ruechel, Presiding Judge, Superior Court in Navajo County
- Honorable Carey Hyatt, Family Court Presiding Judge, Superior Court in Maricopa County
- Honorable Randall Warner, Superior Court in Maricopa County
- Honorable Patricia Noland, Clerk of the Court, Superior Court in Pima County
- William Klain, State Bar of Arizona Representative

He also welcomed back returning members Judges Robert Duber II, Kenneth Lee, and David Mackey, along with Clerk of Court Honorable Sue Hall.

In addition, Judge Soto made the following announcements:

- New Judge Orientation (NJO) is scheduled for September 13-16, 2010, at the AOC Judicial Education Center (JEC) in Phoenix.
- The 2010 Family Law Conference is scheduled for October 14-15, 2010, also at the JEC.
- A Legal Competency and Restoration Training for mental health experts seeking to become court-approved evaluators will take place in Tucson on October 25-27, 2010.
- The Second Annual Domestic Violence Summit is scheduled for March 3, 2011, at the Marriott Buttes Resort in Tempe.

B. Approval of Minutes

The draft minutes from the May 14, 2010, meeting of the COSC were presented for approval.

MOTION: To approve the May 14, 2010, COSC meeting minutes as presented. Motion seconded. Approved unanimously.
COSC-10-08

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Legislative Update

Ms. Katy Proctor, AOC legislative liaison, presented an update on legislation that will impact superior courts. Her comments focused on five legislative proposals for which she requested the committee support or oppose each proposal.

2011-01: probation funding; counties with population of two million or more persons

Would make technical changes to A.R.S. § 12-269, which provides funds to Maricopa County, so that it conforms to A.R.S. § 12-114.01, which funds the remaining 14 counties

and was amended in the last session, so that the application of the probation assessment is uniform statewide.

MOTION: To support proposal *2011-01: probation funding; Maricopa County*. Motion seconded. Approved unanimously. COSC-10-09

2011-02: restoration of right to possess firearm, mentally ill persons

Seeks to expand A.R.S. § 13-925 to mirror more closely the federal law thereby allowing Arizona to receive federal funding for the improvement of criminal history records. Would address certain deficiencies by providing specific references to federal law and specifying additional information at hearings by applicants seeking to have their rights restored. This information would include their full mental health and criminal history records, character evidence on their behalf, and original circumstances that surrounded having their right to possess the firearm taken away. It requires the judge to make specific findings and conclusions and requires the court to promptly notify DPS if the application is granted.

In answer to members' questions, Ms. Proctor noted that this statute is intended solely for people who have been found to be a danger to themselves or others, who are persistently and acutely disabled, or otherwise adjudicated as mentally defective pursuant to federal law. Also, regarding concerns raised by the clerks as to whether the records from these types of proceedings would be available to the public, Ms. Proctor offered to look into the issue. Because the records pertain to a person's mental health, they would usually be kept confidential; however, restoration issues are handled in the criminal area, where confidentiality of records is addressed differently. Furthermore, questions arise in circumstances where the mental health records are located in one county and restoration proceedings are in another. A burden could be imposed on a court to check other jurisdictions for proceedings that may have taken place. Ms. Proctor stated she will investigate further the issue of records management in the scenarios discussed.

MOTION: To support proposal *2011-02: restoration of right to possess firearm, mentally ill persons*, subject to the concerns raised by members. Motion seconded. Approved 20-1-0. COSC-10-010

2011-03: unlawful sexual conduct; probation employees

Would establish a felony for specific probation employees, volunteers, interns, or other representatives of the court who engage in any act of a sexual nature with an offender who is on probation, on pre-trial or pre-sentence supervision, or is confined in a juvenile detention center. The offense would be a Class 2 felony if the victim is under 15 years of age, a Class 3 felony if the victim is 15-17, and a Class 5 felony if the victim is over 18.

Concern was expressed by several members that the summarized versions of some of the proposals are too general to fully commit to support or oppose them. Ms. Proctor offered to provide the full language of the statutes after the meeting.

MOTION: To support proposal *2011-03: unlawful sexual conduct; probation employees* as presented. Motion seconded. Approved 16-5-0. COSC-10-011

2011-04: waiver of standards; IPS; JIPS

Would allow counties to apply to the Supreme Court for a waiver of caseload and supervision requirements under specific conditions. This would enable counties to maintain a caseload ratio of one officer to 15 offenders while meeting the program requirement of one visual contact with each probationer at least one time per week.

MOTION: To support proposal *2011-04: waiver of standards; IPS; JIPS* as presented. Motion seconded. Approved unanimously. COSC-10-012

2011-05: unlawful transporting; moving, concealing, harboring or shielding of unlawful aliens

This proposal adds probation officers and court-appointed special advocates to the list of persons exempted from A.R.S. § 13-2929, when they are acting in their official capacity.

MOTION: To support proposal *2011-05: unlawful transporting; moving, concealing, harboring or shielding of unlawful aliens* as presented. Motion seconded. Approved unanimously. COSC-10-013

In closing, Ms. Proctor informed the committee that there will be proposals on probate matters to discuss at the next COSC meeting. She explained that workgroups of the Committee on Improving Probate Matters have been reviewing some probate issues and are currently drafting legislative proposals to address the issues. The current drafts can be viewed on the [committee website](#).

B. AJACS Update (taken out of agenda order)

Mr. Renny Rapier, AOC program manager for development of the General Jurisdiction Case Management System (GJCMS) project, provided a brief update on the status of the project. He reported that 13 courts are fully functional, and the team is currently conducting ‘clean-up’ with various issues the courts are experiencing. Training documentation is being prepared for version 3.5. Version 3.5 has been in testing, with a production version scheduled for release in early 2011. Work also is proceeding on integration with AZTurboCourt, the e-filing application.

Several committee members questioned Mr. Rapier regarding challenges their courts are having, such as running reports, calendaring, and inconsistent data on caseload lists requiring staff to manually prepare the reports. He asked that members provide a list of specific reports that are troublesome so that he can research and identify the cause. Mr. Rapier reported there will be more training available for those who need it or missed previous sessions.

C. Revisions to Supreme Court Rule 124 (taken out of agenda order)

Ms. Melinda Hardman, court analyst in the Administrative Office of the Courts (AOC), Court Services Division (CSD), and Mr. Stewart Bruner, manager of strategic planning in the AOC Information Technology Division (ITD), presented information regarding the revision of Supreme Court Rule 124; Electronic Filing, Delivery, and Service of Documents (SCR 124). Mr. Bruner provided an overview of SCR 124, which was originally put in place in 2000 to authorize electronic filing of court documents. He detailed the current efforts to modify the rule so that it accommodates the new unified statewide e-filing system for courts. Their goal is to submit a rule petition by the January 2011 rules deadline and to present the draft petition to COSC at its November 5 meeting. This advance notice is being provided simply to alert the committee that they will be asked at that time to review and provide feedback on the draft in a very brief timeframe.

D. Minute Entries and Victim Protection

Honorable Ron Reinstein, chair to the Committee on Victims in the Court (COVIC), spoke about an issue brought to light by a member of the public, who recently reported finding an online minute entry in which victim information was included. Judge Reinstein referenced Arizona Supreme Court Rule 123, which governs remote electronic public access to court records. He specifically pointed to section (g)(1)(C)(ii), which lists certain documents that are excluded from electronic access because they contain sensitive data or involve a juvenile victim. He also noted the section in Criminal Rule 2.3 that directs prosecuting agencies to advise clerks of cases that are subject to this Rule 123 provision. Judge Reinstein emphasized how critical these court rules are to the protection of victims and suggested that the courts and clerks work together to prevent sensitive information from becoming electronically available.

There was much discussion as to the potential system and procedural breakdowns involved, as well as suggestions to improve or develop new methods of processing and sharing information. One suggestion was to use initials rather than full names. Practices vary among the Clerks of Court in how victims are identified in court documents. The clerks related how various agencies and organizations send their staff to the courts to access hardcopy information – some of whom bring in their own scanners - and subsequently put the information online. Members also considered the possibility that because of technological advancements, it may be necessary to rethink the parameters for public access to court records.

Judge Reinstein said that COVIC has established a subcommittee to review this issue. He will report back to COSC after the subcommittee has met.

E. ACJA § 1-402: Minimum Accounting Standards

Mr. Ken Kung, financial specialist Court Operations Unit (COU), Court Services Division, presented proposed changes to ACJA § 1-401: Minimum Accounting Standards (MAS). He summarized the history and composition of the Financial Review Workgroup (FAW), which began a review of MAS in 2009. He reported that the code changes he has brought to COSC for consideration are the result of the work of FAW. Mr. Kung touched on the following changes made to the code section:

- eliminated redundant standards already mandated by statute
- eliminated standards too difficult for courts to implement due to automation restrictions
- created standards for online merchant processing and electronic fund transfers
- updated language to accommodate the many electronic and automated processes
- clarified language and definitions

There was discussion about whether the 13 counties using the AJACS case management system would be immediately out of compliance with the MAS code. Mr. Kung noted that if the Arizona Judicial Council adopts the code changes, the implementation date for the changes will be January 2012.

MOTION: To recommend proposed ACJA § 1-401: Minimum Accounting Standards as presented. Motion seconded. Approved 19-2-0. COSC-10-014

F. Supreme Court Rules Agenda Meeting

Ms. Patience Huntwork, staff attorney, Arizona Supreme Court, reviewed rule change petitions filed under Rule 28, Rules of the Supreme Court. The petitions were addressed by the Arizona Supreme Court at its Rules Agenda meeting on August 31-September 1, 2010. The Supreme Court either adopted proposed rule changes, rejected them, or extended comment periods. Prior to the May deadline, COSC had submitted comments in opposition to petitions R-09-0016 and R-10-0018. The Supreme Court rejected both of the petitions. Members were encouraged to go to the [Court Rules Forum](#) website to review the Supreme Court's disposition of petitions and to comment on petitions that are still open.

III. OTHER BUSINESS

A. Next Meeting Date

Friday, November 5, 2010
 10:00 a.m. – 2:00 p.m.
 Arizona State Courts Building
 Conference Room 345 A/B

B. Good of the Order/Call to the Public

No public comments offered.

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Honorable James Conlogue	Honorable Colleen McNally
Honorable Michael J. Cruikshank - <i>telephonic</i>	Honorable Patricia Noland - <i>telephonic</i>
Honorable Robert Duber II	Mr. Phillip Knox, proxy for
Honorable Sue Hall - <i>telephonic</i>	Mr. Marcus Reinkensmeyer
Mr. Joshua Halversen	Honorable Michala Ruechel - <i>telephonic</i>
Honorable Charles V. Harrington - <i>telephonic</i>	Honorable Monica Stauffer
Honorable Carey S. Hyatt	Honorable Randall Warner
Mr. William G. Klain	Ms. Susan Wilson
Honorable Kenneth Lee - <i>telephonic</i>	

MEMBERS ABSENT:

Mr. Tim Hardy

PRESENTERS/GUESTS:

Ms. Katy Proctor, AOC	Ms. Susan Pickard, AOC
Ms. Linda Grau, AOC	Ms. Jennifer Greene, AOC
Ms. Cindy Cook, AOC	Ms. Doreen Borgmann, Arizona Court
Ms. Melinda Hardman, AOC	Reporters Association
Mr. Patrick Scott, AOC	

STAFF:

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

A. Welcome and Opening Remarks

With a quorum present, the November 5, 2010, meeting of the Committee on Superior Court (COSC) was called to order by Honorable James A. Soto, chair, at 10:07 a.m.

Judge Soto announced the COSC meeting dates for 2011:

- Friday, February 4, 2011
- Friday, May 20, 2011
- Friday, September 9, 2011
- Friday, November 4, 2011

The meetings will take place at the State Courts Building. The committee made no objections to the meeting dates.

B. Approval of Minutes

The draft minutes from the September 10, 2010, meeting of the COSC were presented for approval.

MOTION: To approve the September 10, 2010, COSC meeting minutes as presented. Motion seconded. Approved unanimously. COSC-10-015

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Legislative Update

Ms. Katy Proctor, AOC legislative liaison, reported on proposed legislation that may impact superior courts. She also requested committee feedback on several proposals submitted after the September COSC meeting.

2011-03: Unlawful sexual conduct; probation employees

Concerns were raised at the September COSC meeting as members did not have the full language of this proposal. Ms. Proctor reported the proposal has been revised to address some of the committee's concerns. The changes include a reduced scope as to the offenses that would rise to the level of felony. In addition, sanctions would range from training and discipline, to termination, and, finally, felony. Furthermore, the revised draft would separate juvenile detention from probation-type activities, and juveniles in physical custody would be covered under the existing state statute. The Committee on Probation has voted to support the revised draft, and the Arizona Judicial Council (AJC) granted approval to include this proposal in the legislative package.

MOTION: To approve revised proposal 2011-03: Unlawful sexual conduct; probation employees, as presented. Motion seconded. Approved unanimously. COSC-10-016

2011-06: Pretrial services, arrests

Ms. Proctor reported that this proposal was submitted after the September COSC meeting and that AJC is looking for COSC's feedback prior to the December AJC meeting. The proposal would allow probation officers in Maricopa County to serve warrants, make arrests, and bring in people who are under the authority of the probation department for violation of pretrial release conditions. The proposal applies only to Maricopa County and uses permissive language so that it is not mandatory.

Members expressed several concerns during discussion, including the fact that the proposal would create specialized areas, so that there is not a statewide set of duties and authority for probation officers – essentially conflicting statutory definitions. Conversely, Ms. Proctor related that the probation chiefs have expressed concerns that if the proposal were passed statewide, then the smaller counties' boards of supervisors may make it mandatory without providing additional funding. Other members countered that what is good for the larger urban counties may not work well for smaller rural counties. To the suggestion that the proposal is „morphing“ probation officers into law enforcement officers, Ms. Proctor pointed out that probation officers currently have the authority to perform these actions with persons under the supervision of the court and on probation. This proposal simply extends their authority to persons on pretrial release.

Several members remarked on the lack of information as to the purpose for the proposal and the difficulty in providing feedback. To that end, Ms. Proctor read the proposal verbatim as it was submitted:

Current law provides that adult probation officers have only the power to arrest those who are on probation. However, the court releases defendants before conviction and often places the defendant under the supervision of pretrial services. When these individuals fail to appear for a court proceeding, pretrial services/adult probation has no authority to arrest or otherwise bring these individuals in. This proposal would give probation officers the authority to arrest those defendants who are subject to the supervision of pretrial services and who the court has issued a bench warrant for their failure to appear at a court proceeding. This will greatly increase public safety, it will enable the court to complete criminal cases quicker, and it benefits victims.

MOTION: To oppose proposal 2011-06: Pretrial services; arrests.
Motion seconded. Passed 12-8. COSC-10-017

2011-09: Grand jury

This proposal was also submitted after the September COSC meeting. It would allow for the presiding judge to use an electronic recording system for recording grand jury proceedings and makes several conforming changes to allow for that as well. It would also repeal the requirement that the recordings be transcribed and filed within a specific period of time. The time period required for filing transcripts would be determined by the Supreme Court.

Ms. Doreen Borgmann, president of the Arizona Court Reporters Association (ACRA) addressed the committee regarding ACRA's opposition to the proposal. She described one of the main objections on the matter is the lack of stakeholders' involvement. There were no public defenders, defense attorneys, judges, or court reporters asked to weigh in on the issue prior to its presentation at the AJC. ACRA's position on the proposal is that it would restrict the rights of litigants and reduce the quality of the court record. Ms. Borgmann contended that it would replace court reporters in the grand jury room with the electronic recording system *For the Record* (FTR) for all proceedings. She also maintained that FTR recordings are of inconsistent quality, often inaudible, and compromise the integrity of the record.

Extensive discussion ensued on the issue. Mr. Phil Knox, court administrator for Maricopa County Superior Court, who also oversees the court's reporters, stated the proposed changes would be a significant cost savings to the court and asserted that the transcripts of grand jury proceedings in Maricopa County are requested only about seven percent of the time. Furthermore, only some of those recordings would then be transcribed by a reporter.

During discussion, several members questioned such minimal need of grand jury transcripts, reasoning that the defense attorney would rely upon the transcript for the facts of the case, as he/she is not present during the grand jury proceedings. Further discussion on this point revealed that there is a significant difference among the counties in how grand jury cases are processed, leading to a much higher transcript request rate in some counties. In Maricopa County, grand jury cases frequently reach resolution prior to filing of the transcripts, thus there is little need for the transcripts. However, Pima County reports a majority of cases settling after the defense attorney obtains the transcripts from the Clerk's office.

Several members reported that FTR recordings are inconsistent in quality and, that being the case, would not support the proposal. However, members agreed that if the electronic recording system were reliable, then the proposal would be an effective cost-saving measure. Members agreed that until the quality issue with the FTR, or any other electronic recording system, is resolved, it may be sufficient to use the system in domestic cases; however, in criminal cases there needs to be a higher standard upheld.

MOTION: To refrain from action on proposal 2011-09: Grand jury and to request more information from court reporters or others who might have the information about the frequency with which savings occur and further information from other counties about the differences from Maricopa County to the other counties. Motion seconded.
Passed 13-8-0. COSC-10-018

B. ACJA § 7-206: Certified Reporter

Ms. Linda Grau, programs and investigations unit manager in the Certification and Licensing Division, presented proposed changes to ACJA § 7-206: Certified Reporter. The amendments address language contained in the code of conduct that governs certified reporters, specifically the ethics section. The proposed amendments clarify provisions and prohibitions that pertain to certified reporters and third-party contracting. Ms. Grau reviewed the amended portions of the code section and discussed the public comments received on the proposal. She reported that the Board of Certified Reporters has recommended adoption of the proposed amendments.

Ms. Doreen Borgmann, president of the Arizona Court Reporters Association (ACRA), commented on ACRA's support of the proposed amendments. She discussed the "unfair business practices" of some national firms and stated that the amended language would aid in protecting the integrity of the record in Arizona.

Committee members suggested minor clarifications to the proposed new language.

MOTION: To recommend approval of the proposed amendments to ACJA § 7-206: Certified Reporter as presented. Motion seconded. Approved unanimously. COSC-10-019

C. E-Filing Update

Ms. Cindy Cook, court specialist in the AOC Caseflow Management Unit, updated the committee on the AZTurboCourt E-Filing Project. She reviewed the types of forms being developed: the intelligent form, which is targeted to the self-represented litigants and walks them through the process, and the simple form, which is more suited to attorneys. She also reviewed the various forms in production as print forms. Ms. Cook reported that there are currently attorneys filing into Maricopa County Superior Court through AZTurboCourt, and this continues to increase in volume. Under development with attached applications are civil initiating pleadings with Pima County Superior Court. The appellate courts began a pilot with an attached application to the Court of Appeals and to the Supreme Court on November 3. She added that civil subsequent filings into Maricopa County Superior Court will begin moving to mandatory e-filing in January. Notification will go out to attorneys within the next week, and training sessions are being scheduled. She reminded members this will be a phased-in process.

Ms. Cook provided two links where members can find additional information about AZTurboCourt and follow the E-Court Committee updates about policy issues:

- <http://www.azcourts.gov/cot/EFilingPolicyIssues.aspx>
- <http://supreme22/azturbocourtinfo/Forms.html>

D. Supreme Court Rule 124

Ms. Melinda Hardman, AOC court analyst, Court Services Division, gave a brief recap of Supreme Court Rule 124 (SCR 124) and the process of revising the rule to coordinate

with the statewide E-filing system. She also reported on developments and changes that have transpired since the September COSC meeting. She informed members the revised SCR 124 will be accompanied by a proposed Technical Standards document that is expected to be a more flexible document than the rule in order to accommodate the various technical processes that may need updating occasionally. Because all of the technical details have not yet been ironed out, the document is still in progress at this time. Ms. Hardman stated the goal is to file a rule change petition for SCR 124 and request an effective date of January 1, 2012.

During discussion, there were questions about a bullet point in the PowerPoint presentation that states „incorporates clerk – no reject concept.” Ms. Hardman explained that in the mandatory e-filing project expected to go forward shortly in the Superior Court in Maricopa County, the policy may be somewhat flexible, but, ultimately, the statewide policy may be more firm. There was further questioning as to possible leeway being provided to the clerks to have the opportunity to notify a filer of needed corrections, so that the time of receipt and acceptance of documents are not necessarily the same. Ms. Hardman explained that these are matters still somewhat in flux and she is unable to provide a definitive answer at this time. Complaints were voiced by the clerks, who feel their concerns have not been heard.

MOTION: To oppose revisions to Supreme Court Rule 124 as presented based upon concerns that have been expressed regarding the concerns of the clerks. Motion seconded. Motion passed 22-1-0. COSC-10-020

E. Fee Waivers and Deferrals

Mr. Patrick Scott, court specialist, AOC Court Services Division, presented proposed amendments to ACJA § 5-206: Fee Deferrals and Waivers. Mr. Scott provided a brief overview of the code section and its purpose, which is to provide access to the courts for litigants who are unable to pay court fees. He explained the recommended changes will allow for waiver of fees upon application by a person receiving Supplemental Security Income (SSI). He discussed some of the substantive changes, which include allowing for a waiver of fees upon application in addition to some technical changes that were made to bring the code up to date.

MOTION: To support the proposed amendments to ACJA § 5-206::Fee Deferrals and Waivers, without the provision for the \$26.00 filing fee. Motion seconded. Approved unanimously. COSC-10-021

F. ACJA § 3-3202: Parent Education Class

Ms. Susan Pickard, court specialist, AOC Court Services Division, presented proposed amendments to ACJA § 3-202: Parent Education Program. She explained the changes are intended to allow for Alternative Delivery Methods (ADM), including web based, net meeting, and cable methods, and to allow for videotaped program presentations without the need for approval by the Administrative Office of the Courts. In addition, two

options were offered for language in paragraph F(8) regarding procurement laws and requirements.

MOTION: To approve the proposed changes to ACJA § 3-202: Parent Education Program, including alternate language to paragraph F(8). Motion seconded. Passed unanimously.
COSC-10-021

III. OTHER BUSINESS

A. Next Meeting Date

Friday, February 4, 2011
10:00 a.m. – 2:00 p.m.
Arizona State Courts Building
Conference Room 345 A/B

B. Good of the Order/Call to the Public

No public comments offered.