

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, February 4, 2011
Arizona State Courts Building
Conference Room 345 A/B
1501 W. Washington Street
Phoenix, AZ 85007

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 James Conlogue	Honorable Margaret Maxwell
Honorable Michael J. Cruikshank - <i>telephonic</i>	Honorable Colleen McNally
Honorable Robert Duber II	Honorable Patricia Noland
Honorable Sue Hall – <i>telephonic</i>	Mr. Marcus Reinkensmeyer
Mr. Joshua Halversen – <i>telephonic</i>	Honorable Michala Ruechel
Mr. Tim Hardy	Honorable Monica Stauffer
Honorable Charles V. Harrington - <i>telephonic</i>	Ms. Susan Wilson
Honorable Carey S. Hyatt	

MEMBERS ABSENT:

Honorable Stephen F. McCarville	Honorable Randall Warner
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PRESENTERS/GUESTS:

Mr. Jeff Schrade, AOC	Ms. Candy Wheeler-Ruby, Yuma County, Public Fiduciary
Ms. Jennifer Jones, AOC	
Ms. Amy Love, AOC	Ms. Doreen Borgmann, Arizona Court Reporters Association
Ms. Patience Huntwork, 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 February 4, 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 reviewed the remaining 2011 COSC meeting dates:

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

B. Approval of Minutes

The draft minutes from the November 5, 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-11-015

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. COJET ACJA §§ 1-108 AND 1-302

Mr. Jeff Schrade, AOC Education Services Division (ESD) director, presented proposed revisions to ACJA § 1-108: Committee on Judicial Education and Training (COJET), which lays out the structure, purpose, and functions of COJET and its standing committees, and ACJA § 1-302: Education and Training, which defines education requirements and functions of the ESD. He gave a brief history of the code sections and the basis for the recommended changes. He then detailed the recommendations, which primarily simplify some administrative processes related to tracking and compliance, consolidate language redundancies, and standardize committee requirements. Mr. Schrade stated the proposed revisions have been reviewed by ESD staff, COJET and all of the COJET committees, in addition to the AOC Executive Office and Legal Services. The proposals are currently posted on the ACJA Forum, and Mr. Schrade encouraged members to add their comments and suggestions prior to the February 18, 2011, deadline. The final proposals will be presented at the AJC March 2011 meeting.

During discussion, Mr. Schrade took note of the suggestion that both rural and urban clerks of court be represented in the Court Leadership Institute of Arizona (CLIA). In addition, he affirmed that the portion of ACJA § 1-302 pertaining to probation officers and defensive tactics and firearms training will be amended in the final draft so it includes strictly probation officers and not support staff. Further, he verified the provision for attendance at training programs of regional or national scope every three years – not just for judges, but for court administrators and probation managers. To the question of funding for attendance at such trainings, he offered that discussions on the matter in several COJET committee meetings concluded that the requirement itself could aid many jurisdictions in justifying funding.

MOTION: To approve the proposed changes to ACJA §§ 1-108 and 1-302 as presented, with changes as discussed during the meeting. Motion seconded. Approved unanimously.
COSC-11-016

B. Priority of Offender Payments – GJ Workgroup Formation

Ms. Jennifer Jones, AOC court financial specialist in the Court Services Division (CSD), informed the committee of a workgroup being established to rewrite the General Jurisdiction Priority of Offender Payments code. She explained the revisions to the code are necessary because of factors such as automation changes. It is anticipated that the project will be completed in approximately one year. Monthly meetings will be held, mainly telephonically; however, workgroup members will occasionally need to attend meetings at the AOC. COSC members were encouraged to participate on the workgroup. An interest form was provided in the meeting materials along with information on where to send completed forms. Members can contact Ms. Jones at jjones2@courts.az.gov with any questions about the project.

C. Legislative Update

Ms. Amy Love, AOC legislative liaison, updated members on proposed legislation that could impact superior courts.

HB 2224: Court appointed fiduciaries

Prohibits the Supreme Court from requiring a licensed fiduciary to be an attorney. A fiduciary must document work done on an hourly basis and may not charge more than \$75 per hour.

HB 2232: Sentencing; criminal restitution order

Trial courts are given authority to order and enforce the manner in which court-ordered payments are made. The court shall file a criminal restitution order for the money when the defendant is sentenced, rather than after the defendant completes the sentence.

HB 2352: Court commissioner; qualifications

Changes the requirements a person has to meet in order to be appointed as a court commissioner. A person must be admitted to the practice of law in Arizona and have lived in Arizona for at least 5 years preceding the appointment.

HB 2444: Probate; wards; rights

Establishes various requirements for probate cases, including burden of proof, causes for sanctions, and requirements for fiduciary court appointees. Also creates a probate advocacy panel to review the activities of probate courts and develop training standards for probate judges, and requires each judge serving in county probate courts to demonstrate competence in all areas of probate jurisprudence.

SB 1129: Court commissioner; qualifications

Changes the minimum qualifications for serving as a Superior Court Commissioner to mirror that of a Superior Court Judge.

SB 1185: Court records; electronic access

Requires the Supreme Court to provide for electronic filing and access of court records and bulk data.

SB 1201: Firearms omnibus

Makes changes to what is commonly known as “Shannon’s Law.” A person is guilty of a class 6 felony only if the person „knowingly“ discharges a firearm, rather than if the person discharges a firearm “with criminal negligence.”

HB 2354: Grand jury proceedings; electronic recording

Permits the presiding judge of the Superior Court to use an electronic recording system to record proceedings before the grand jury in lieu of a court reporter.

HB 2355: Court surcharges

Surcharges will be applied to the base charge and not to any other surcharge.

HB 2364: Disciplinary actions; probations officers

Probation officers or surveillance officers employed by Arizona or a political subdivision of Arizona are added to the definition of “law enforcement officer” for the purposes of ARS § 38-1104.

HB 2404: Criminal restitution order; absconders

If the defendant absconds from probation or a sentence, the court shall enter into a criminal restitution order in favor of the state for the unpaid balance of fines, court, fees, surcharges and assessments.

HB 2444: Law enforcement officer discipline

During the interview of an officer, the employer may not require a law enforcement officer or probation officer to submit to a polygraph examination unless the polygraph examination is agreed upon by both the employer and the officer.

HB 2477: Law enforcement officers; witness; representation

Currently, if an officer or employer believes that an interview may result in the officer’s dismissal, demotion, or suspension, there are certain procedures pursuant to A.R.S. § 38-1101 that the agency must follow. This bill requires the agency apply those same procedures to witnesses.

HB 2486: Community supervision; parole; officers; ratios

A parole or community supervision officer cannot supervise more than an average of 65 adults on community supervision or parole.

SB 1023: Enforcement of pretrial release conditions

In counties with a population of more than two million persons, adult probation may serve warrants and make arrests of persons who are alleged to have violated a condition of pretrial release.

SB 1054: Waiver; intensive probation standards

Allows the Supreme Court to waive intensive probation caseload and supervision requirements for any county, rather than only counties with fewer than 300,000 persons, so long as probation officers do not supervise more than 15 probationers and the program requires at least one visual contact per week.

SB 1057: Law enforcement officers; disciplinary action

Once it is established that a law enforcement officer was subject to disciplinary action without just cause, the officer may recover all costs associated with any legal proceedings held to establish the officer's innocence.

SB 1081: Minors; protective proceedings

Repeals the existing A.R.S. § 14-5301, regarding appointment of a guardian for an unmarried child who the parent believes is an incapacitated person. Creates a new section, A.R.S. § 14-5301.01, governing the effective date and procedure for confirming the guardianship.

SB 1187: Dissolution of marriage; legal separation

Makes various changes to the required educational programs provided by each county's superior court regarding divorce.

SB 1188: Adoption; marital preference

Establishes relevant factors that must be considered when placing a child for adoption and requires the court to make specific written findings regarding the best interests of the child in every adoption proceeding.

SB 1191: Juveniles; discretionary transfer; adult court

Expands the "transfer back" provisions of A.R.S. § 13-504 to all offenses listed in A.R.S. § 13-501, subsection B, not just for Title 13, Chapter 14 (sex offenses) or Chapter 35.1 (sexual exploitation of children).

SB 1212: Civil appeals bonds; limits

Sets the bond that is necessary to stay execution during the course of all appeals or discretionary reviews of a civil judgment for damages as the lesser.

SB 1233: Peace officers at will employment

An *at will employee* (defined) in an executive or managerial position in a law enforcement agency is excluded from § 38-1104, the just cause statute.

SB 1283: Child custody; military families

Removes the requirement that a custodial parent who is a member of the U.S. armed forces file a military family care plan prior to any deployment. Requires the court to enter a temporary order modifying parental rights. The court is required to hear motions for modification as expeditiously as possible.

SB 1396: Domestic relations; support; community restitution

Requires the court to provide written notice to all parties in a custody proceeding of the right to have a written court analysis and conclusions of fact and law regarding child custody, community property/debt, and child support. If requested, the written analysis must include a detailed list of facts, case law, and statutes supporting the decisions. Ms. Love stated there have been a lot of concerns voiced on this proposal, and she requested that members review the bill and provide her with their feedback.

Ms. Love pointed out that information on numerous proposals on judiciary issues is included at the back of the packet. They included the following:

HCR 2020	SCR 1010	SCR 1042	SCR 1046
HCR 2026	SCR 1020	SCR 1043	SCR 1047
SB 1472	SCR 1040	SCR 1044	SCR 1048
SB 1481	SCR 1041	SCR 1045	SCR 1049
SB 1482			

Members can view all proposals on the [bills page](#) on the legislative website. Ms. Love asked that members' concerns on any of the proposals be outlined in an email to her at ALove@courts.az.gov.

D. New Rule Petitions

Ms. Patience Huntwork, staff attorney, Arizona Supreme Court, reviewed pending rule petitions that relate to superior court. The following were highlighted:

Civil Procedure Rules

R-10-0030
R-10-0034
R-10-0036
R-11-0008
R-11-0009
R-11-0010
R-11-0011

Rules of Evidence

R-10-0035

Rules of the Supreme Court

R-10-0031
R-10-0032
R-10-0001
R-11-0003
R-11-0012

Rules of Criminal Procedure

R-10-0026

Ms. Huntwork directed members' attention to *R-10-0035: Conforming Arizona Rules to Federal Rules of Evidence*, and suggested the committee might want to comment on this rule petition. Judge Soto advised that members can comment individually if they wish. All of the rule petitions can be reviewed on the [Court Rules](#) website. Members wishing to file comments on new rule petitions should visit the [Court Rules Forum](#).

III. OTHER BUSINESS

A. Next Meeting Date

Friday, May 20, 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

Two members of the public addressed the committee.

Candy Wheeler-Ruby, a fiduciary with the Yuma County Public Fiduciary's Office, expressed concerns about the negative consequences of HB 2424, HB 2224, and SB 1499 for fiduciaries and their clients. She said she has spoken with fiduciaries in Yavapai, Coconino, and Mohave counties regarding these concerns, and they are in agreement. She also related that a conference of the Arizona Fiduciary Association is scheduled for February 18 in Tucson, and this issue is to be addressed then. Ms. Wheeler-Ruby stated she recently met with Judges Andrew Gould, John Paul Plant, and John Nelson regarding her concerns and was urged to come before COSC to express them, as well as to quote statutes that Judge Gould noted are in conflict with the proposed legislation.

Ms. Wheeler-Ruby went on to detail the effects of HB 2424, which would add a new section 14-5109 to existing statute. She also explained the ways in which HB 2224 and SB 1499 would negatively impact fiduciaries and their clients. Ms. Wheeler-Ruby stated that if these bills are passed, Yuma County alone would face increased staff costs of approximately \$300,000.

Judge Soto recommended Amy Love (ALove@courts.az.gov) and/or Jerry Landau (JLandau@courts.az.gov) be made aware of these concerns. He also suggested that following the February Arizona Fiduciary Association Conference, it would be useful to have a spokesperson for the organization address the legislature about all of their concerns.

Ms. Doreen Borgmann, President of the Arizona Court Reporters Association (ACRA), addressed the committee to report that ACRA continues to vigorously fight SB 1132 [*sic* – see SB 1156] and HB 2354, regarding grand jury electronic recordings. She stated that ACRA's lobbyist and several ACRA members met last week with Senator Linda Gray to relate their concerns about the legislation. Following that meeting, they were advised that Senator Gray withdrew her support of the bills and cancelled the Senate Judiciary Committee meeting, withdrawing the bills from this session.

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Mr. Joshua Halversen	Honorable Michala Ruechel – <i>telephonic</i>
Honorable Charles V. Harrington	Honorable Monica Stauffer – <i>telephonic</i>
Honorable Carey S. Hyatt	Honorable Randall Warner
William G. Klain, Esq.	

MEMBERS ABSENT:

Honorable Eddward Ballinger	Honorable Stephen F. McCarville
Honorable Michael J. Cruikshank	Honorable Margaret Maxwell
Mr. Tim Hardy	Ms. Susan Wilson

PRESENTERS/GUESTS:

Mr. Jerry Landau, AOC	Ms. Janet Johnson, AOC
Steve D. Wolfson, Esq.	Ms. Kathy Sekardi, AOC
Ms. Melinda Hardman, AOC	Ms. Theresa Barrett, AOC
Mr. Stewart Bruner, AOC	Mr. Paul Julien, AOC
Peter Kozinets, Esq.	Ms. Jennifer Greene, AOC
Mr. Cliff Ford, AOC	Mr. Patrick Scott, AOC
Mr. Mark Stodola, AOC	Ms. Amy Love, AOC

STAFF:

Ms. Kay Radwanski, AOC	Ms. Julie Graber, AOC
	Ms. Tama Reily, AOC

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the May 20, 2011, 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 announced that the symposium entitled “Connecting the Dots, Domestic Violence – Child Welfare: One State, One System,” is scheduled for September 9, 2011, from 8:30 a.m. to 4:30 p.m. at the Sandra Day O’Connor College of Law at Arizona State University in Tempe. Judge Soto noted that the seminar unfortunately conflicts with the next COSC meeting.

Judge Soto reviewed the remaining 2011 COSC meeting dates:

- Friday, September 9, 2011
- Friday, November 4, 2011

B. Approval of Minutes

The draft minutes from the February 4, 2011, meeting of the COSC were presented for approval.

MOTION: To approve the February 4, 2011, COSC meeting minutes as presented. Motion seconded. Approved unanimously.
COSC-11-017

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Legislative Update

Mr. Jerry Landau, AOC government affairs director, reported on bills passed in the recently concluded legislative session. The effective date of the legislation is July 20, 2011. Mr. Landau also thanked members for their assistance and responsiveness during the session. The following bills were highlighted:

SB 1614: State budget procedures; 2011-2012

Makes changes to employee benefits, retirement eligibility for a new member to Arizona State Retirement Statutes (ASRS), and to the employee/employer contribution rate to ASRS from 50/50 to 53/47. The bill is effective July 20, 2011, with a retroactive date of July 1, 2011.

HB 2024: ASRS; amendments

Specifies additional changes to ASRS relating to administration, distribution of benefits, Long Term Disability (LTD), employer collections, return to work, service purchase and benefit transfers. The bill is effective July 20, 2011, with a retroactive date of July 1, 2011.

SB 1621: Budget reconciliation; criminal justice; 2011-2012

Mr. Landau reported that part of the bill on reimbursement agreements with county jails would be put off for a year as a compromise to address potential implementation pitfalls. The bill would require a county jail to enter into an agreement with the Arizona

Department of Corrections (ADC) to reimburse ADC's costs for the incarceration of a person sentenced to one year or less in the ADC. In the absence of an agreement, a person convicted of aggravated DUI, aggravated operation of watercraft/operation of aircraft, while under the influence, would be required to serve in jail.

HB 2064: Foreign law; conflict of laws

Prohibits the enforcement of foreign law if doing so would violate a federal or state constitutional right or conflict with federal or state law.

HB 2353: Sentencing; dangerous offenses; probation

Reverses special sentencing sections that were part of the 2008 sentencing reorganization by reinserting the sentencing provisions in the actual criminal offense. Adds code enforcement officers and park rangers to the aggravated assault statute.

SB 1212: Civil appeal bonds; limits

Restricts the amount of a bond that is necessary to stay execution during an appeal or discretionary review of a judgment in a civil action by an appellate court. Modifies interest rates on judgments and lowers the statutory medical malpractice interest rate.

HB 2406: Crimes; forensic interviews; mandatory fine

Requires a person convicted of a dangerous crime against children or sexual assault to pay an assessment of \$500 in addition to any other fine or restitution imposed, in order to pay for medical and/or forensic interview expenses required to investigate or secure evidence. Delayed effective date to January 1, 2012.

HB 2355: Court surcharges

Clarifies surcharges will be applied to the base fine and not to any other surcharge.

SB 1424: Assessment for family offenses; stalking

Requires a person convicted of aggravated harassment, stalking, and other violent family offenses to pay an assessment of \$50 in addition to any other fine imposed, in order to be used for shelters for domestic violence victims.

HB 2302: Protected address; secretary of state

Directs the Secretary of State (SOS) to establish the Address Confidentiality Program (ACP) by January 1, 2013, which will allow victims of domestic violence, sexual offenses, or stalking to keep their residential address confidential by giving them a substitute lawful address. Assesses \$50 to a person convicted of domestic violence, sexual offenses, or stalking, effective January 1, 2012. Mr. Landau reported that SOS will wait until the next legislative session to implement the program in order to spend more time working on it.

SB 1398: Moving violations; assessment; equipment; enforcement

Establishes a \$13 assessment for criminal offenses and civil penalties relating to violations of local motor vehicle ordinances and provides for the disposition of those monies. Repeals various state photo enforcement statutes. Amends requirements for

persons who have received a notice of violation from photo enforcement. This bill has a general effective date of July 20, 2011.

HB 2352: Court commissioner; qualifications

Removes the requirement that court commissioners complete three years of active practice before appointment so that the minimum qualifications of a superior court commissioner mirror those of a superior court judge.

SB 1167: Legislation; referenda challenges

Emergency measure that specifies filing timeframes and jurisdiction regarding legal challenges to legislative referenda. Effective date is April 18, 2011.

SB 1482: Appellate judges; judicial performance reviews

Requires the Commission on Judicial Performance to prepare and publish on its website a list of decisions that an appellate judge made, including the official citations and electronic copies of the decision, no later than 60 days prior to the primary election for the judge's retention. Questions were raised by the committee as to how to interpret the requirements of the bill, location in the code, as well as "primary election."

SB 1472: Publicity pamphlets; judicial performance; comment

Requires the Commission on Judicial Performance to prepare for electronic publication and file with the SOS, Supreme Court justices' and Court of Appeals judges' specified biographical information, and a listing of published decisions that declared a statute constitutional or unconstitutional, and the provisions of the Constitution relied upon, no later than 60 days before a regular primary election. This bill raised further concerns with the committee regarding the scope of the requirements, need for extensive tracking methods, and treatment of unpublished decisions in an electronic environment.

SB 1235: Law enforcement officers; disciplinary procedures

Modifies requirements related to officer disciplinary action and appeals. Prohibits a critical incident stress management team member from disclosing certain information except under specified circumstances. Applies the whistle blower statute to law enforcement officers of cities and towns. Mr. Landau pointed out that this is one of many bills that were introduced this session regarding law enforcement officers.

HB 2645: Firearms, rights restoration; peace officers

Modifies procedural aspects of statute regarding restoration rights for a mentally ill person to possess a firearm and includes a crime victim notification clause. Adds retired peace officers to the carrying of firearms by peace officers statute. Mr. Landau noted the absence of any proposed fee in connection with the rights restoration. Because the rights restoration is a civil action, a fee is applicable and should be attached.

B. Potential Legislation -- Child Custody Statutes, ARS § 25-401, et seq.

Mr. Steve D. Wolfson, family law attorney and co-chair of the Substantive Law/Court Procedures (SL/CP) Workgroup, Domestic Relations Committee (DRC), prepared an

introduction for COSC members about the proposed controversial redrafting of the child custody and visitation statutes, ARS §§ 25-401 to 25-415, which may be introduced in the legislature in January, 2012. Mr. Wolfson provided background into the statute revision that stemmed from a failed legislative push by a group to create a presumption of joint custody between separating and divorcing parents. A public policy statement was created as a compromise (§ 25-103), which reaffirmed core principles of a child's best interest. The Ad Hoc Custody Workgroup (AHCW) was tasked by DRC to perform a comprehensive review of the statutes and devise a system that was more user-friendly and that provided courts more guidance in cases with special circumstances. The result was a dramatically different product. The product incorporated the public policy statement into the custody statutes, and added provisions, for example, for the courts to determine the existence of special circumstances before entering parental decision-making and parenting time orders. SL/CP has been reviewing and modifying AHCW's draft with input and feedback from many stakeholders with different viewpoints on presumption issues and special circumstances.

Mr. Wolfson expressed concerns about how the final product would be viewed at the legislative level given the scope of changes and controversial topics and whether it would be proposed as a whole, in chunks, or at all. A comment was made about possible delays it would create once in place. A member commented about the implication it makes of judges' performance. Mr. Wolfson reported that the State Bar's Family Law Section had just begun the review process and that final versions of the product had recently been sent to all presiding judges for review. He encouraged COSC members to provide input and feedback based on their unique judicial perspective in anticipation of DRC's June 3, 2011, meeting, in which SL/CP will unveil their work in progress and also request additional time to obtain feedback from the public and experts. Any comments to take back to DRC may be directed to Mr. Wolfson at steve.wolfson@mwmf.com, or to Kathy Sekardi at ksekardi@courts.az.gov. Meeting information and product update will be posted on the DRC and workgroup's websites.

C. Revisions to ACJA §§ 1-605: Requests for Bulk or Compiled Data and 1-606: Providing Case Record Access to Public Purpose Agencies and Public Purpose Organizations

Ms. Melinda Hardman, AOC policy analyst, presented proposed revisions to ACJA § 1-605: Requests for Bulk or Compiled Data, and ACJA § 1-606: Providing Case Record Access to Public Purpose Agencies and Public Purpose Organizations. Ms. Hardman explained how the process for data requests and data releases could be improved and clarified, especially as it relates to First Amendment issues encountered with media requests. Regarding § 1-605, Ms. Hardman differentiated between a request for bulk or compiled data that includes a request for "protected personal identifiers" such as a street address, last four digits of a social security and a driver's license number, and a request that does not. Ms. Hardman also acknowledged that there are different types of requestors of bulk or compiled data, and she clarified the concept of a subscription service for court data. She further reduced the number of provisions or terms required in a dissemination agreement when protected personal identifiers are not requested. With respect to § 1-606, Ms. Hardman clarified the persons and entities to whom the section applies and the types of requests to which it applies, including that it does not apply to persons or entities covered by § 1-605.

Mr. Peter Kozinets, attorney with Steptoe & Johnson, described how the new code sections affected his client, *the Arizona Republic*, in its dealings with the court. The proposed revisions are supported by Mr. Kozinets and *the Arizona Republic*.

Ms. Hardman indicated that the proposed revisions are posted on the AJC Forum but have not been presented yet to the Committee on Technology or to the Clerk's Association. Clerks of the Court expressed concerns about the proposed revisions since it was the first time they had seen these changes, and they refrained from support until they discussed with other clerks. A member commented on the difficulties of making requests for everyone else when it is difficult for a newspaper.

MOTION: To approve the proposed changes to ACJA §§ 1-605 and 1-606 as presented. Motion seconded. Approved 10-6. COSC-11-018

D. Supreme Court Rule 124

Ms. Melinda Hardman, AOC policy analyst, and Mr. Stewart Bruner, AOC manager of strategic planning, presented a progress update regarding the revisions to Supreme Court Rule 124; Electronic Filing, Delivery and Service of Documents (SCR 124). Mr. Bruner provided a brief recap of the rule and its purpose to coordinate with the new unified statewide E-filing system. The proposed changes to the revised petition have been reposted for a second comment period, which ends on June 6, 2011. Mr. Bruner noted that fee deferrals and waivers are not available when filing electronically, and legal service providers are exempt from AZTurboCourt because there is currently no way for AZTurboCourt to know when this is applicable.

Mr. Bruner also identified key changes in the proposed rule language. The first item regarded the format of electronic signatures (“/s/”). The second item clarified that “withdrawal of consent to electronic service” means only withdrawal of consent to be served through AZTurboCourt, not an outright waiver of service required by rule or law and that self-represented litigants may request that the clerk exempt them from all electronic communications issued by the clerk, even though they have previously e-filed. The third item was an added option that permits the courts to communicate “through AZTurboCourt or by other electronic means” to be consistent with AO 2009-43, Electronic Distribution of Court Documents. The fourth item revised the definition of original to indicate that an electronic document that resides within the clerk's or court's EDMS constitutes an original document of record. The fifth item was striking Courtroom Exhibits since it was not relevant. The sixth and more controversial item about extensions of time due to interruption in service reduced the number of requirements to only those specified in AO 2010-17.

During the COSC meeting, Hon. Patricia Noland, Clerk of Pima County, proposed a 24- or 48-hour deadline for the court to accept the filing because nothing prevents a party from waiting months before submitting again. Another member commented on the recent Yavapai County computer virus and recommended to specifically include language regarding interruption at the local or user level versus state level only. Mr. Bruner and Ms. Hardman reminded COSC

members that they are still seeking feedback, and the deadline to submit comments to the amended petition is June 6, 2011.

E. ACJA § 6-110: Offender Drug Testing

Mr. Cliff Ford and Mr. Mark Stodola, AOC Representatives of Adult Probation Services, presented proposed revisions to ACJA § 6-110: Offender Drug Testing, which would provide consistency for the probation departments in Arizona with regard to the alcohol and drug testing of offenders. A brief history underscored the need to update guidelines that were revised back in 1985. Over the last year, a new code section was developed to provide minimum standards and consistency to all probation departments when testing offenders for drugs and alcohol. Specifically, standards for specimen collection, chain of custody, and laboratory testing requirements were devised. Probation officers are happy with the proposal, and the Committee on Probation has approved the changes.

MOTION: To approve the proposed changes to ACJA § 6-110 as presented. Motion seconded. Approved unanimously.
COSC-11-019

F. Model Time Standards

Ms. Janet Johnson, AOC director, sought feedback from the committee regarding proposed model time standards for state courts, which are expected to be debated, and potentially adopted, during the Conference of State Court Administrators (COSCA) in July. Ms. Johnson provided a brief history and definition of time standards as a way to establish expectations for timely justice. However, public expectations for timeliness of court decisions is based on the current pace of business, as opposed to the current pace of the judicial system. The proposed time standards are intended to establish a reasonable set of expectations for the courts, for the lawyers, and for the public. Ms. Johnson anticipated that, depending on the input received and the outcome of COSCA discussion, the AOC would begin the process to consider adoption of any or all of the standards. She assured that while standards would be followed closely, they would be applied based on Arizona's culture.

Some members questioned the research protocols and parameters behind the standards. Some members observed that court cases are sometimes at the mercy of attorneys, and sometimes a resolution may need time to percolate. A few members were in agreement that a computer system was needed to monitor the standards and generate reports and that this system should be in place before agreeing on any standard. A question was raised about how cases involving a mental health commitment would be handled. One member opposed such standards because they give the impression that judges are incompetent. Comments should be forwarded to Ms. Johnson at jajohnson@courts.az.gov no later than June 13, 2011.

G. Parenting Time Guide

Judge Colleen McNally, co-chair of COSC's Parenting Plans Workgroup, reported that the parenting time guide, "Planning for Parenting Time," is now available in Spanish. The Arizona Court Interpreters Association volunteered to provide a Spanish translation of the guide, which

was released on March 28, 2011. Both versions are available for download on the Arizona Judicial Branch's website at <http://azcourts.gov/familylaw/ChildrenFamilyIssues.aspx>.

III. OTHER BUSINESS

A. Next Meeting Date

Friday, September 9, 2011
10:00 a.m. – 2:00 p.m.
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B. Good of the Order/Call to the Public

No public comments offered. Adjourned at 11:54 a.m.

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Mr. Joshua Halversen	Honorable Michala Ruechel
Honorable Celé Hancock	Honorable Monica Stauffer
Honorable Charles V. Harrington	Honorable Randall Warner
Honorable Carey S. Hyatt – <i>telephonic</i>	Ms. Susan Wilson

MEMBERS ABSENT:

Mr. Tim Hardy

PRESENTERS/GUESTS:

Mr. Stewart Bruner, AOC	Ms. Amy Love, AOC
Ms. J.L. Doyle, AOC	Mr. John MacDonald, Court Reporters Association
Ms. Jennifer Greene, AOC	Mr. Mark Meltzer, AOC
Ms. Melinda Hardman, AOC	Mr. Brett Watson, 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 September 9, 2011, 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 current members and then introduced new members Judge Joseph Lodge from Coconino County, Judge Celé Hancock from Yavapai County, and

Commissioner David Cunanan from Maricopa County. The Chair welcomed back re-appointed member Judge Charles Harrington from Pima County and expressed thanks to departing members, Judge Michael J. Cruikshank, Judge Stephen F. McCarville and Commissioner Margaret Maxwell, for their contributions.

Judge Soto reviewed the remaining 2011 COSC meeting dates:

- Friday, November 4, 2011

B. Approval of Minutes

The draft minutes from the May 20, 2011, meeting of the COSC were presented for approval.

MOTION: To approve the May 20, 2011, COSC meeting minutes as presented. Motion seconded. Approved unanimously.
COSC-11-020

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Legislative Update

Ms. Amy Love, AOC legislative liaison, provided summaries of six legislative proposals for the next legislative session:

2012-1, Criminal Code; Law Enforcement; Probation Officer Correction Bill: Annual clean-up bill.

2012-2, Probate Omnibus: Implements recommendations from the Committee on Improving Probate Matters (Probate Committee) to provide further protections to the vulnerable adult through increased court oversight by allowing judges to enter support/access orders; to order ADR throughout the proceedings; and by creating a statewide post-appointment visitor program. Delayed effective date of 1/1/13.

Some members had concerns about the funding of the visitor program and questioned its purpose and organization. Judge Mackey, also member of the Probate Committee, explained that the program was devised to resolve problems with court-appointed fiduciaries and perhaps be integrated in the CASA program; however, CASA voiced concerns about merging programs with diverging purposes.

2012-3, Termination of Parental Rights: Clarifies a timing question in the statute about when the court is to consider the age of the child in the cases of children under three who have been in an out-of-home placement. May be subject to change.

2012-4, Grand Jury Electronic Recording: Authorizes the superior court to use electronic recording in grand jury, subject to amendments to the Rules of Criminal Procedure. An identical measure was introduced last year but failed to advance out of the House Judiciary Committee.

Both Judge Ballinger and Judge Davis supported this proposal and emphasized that it would be voluntary for each county. Mr. Reinkensmeyer also called attention to the construction project going on at Maricopa County Superior Court that requires electronic recording systems to be built in the hearing rooms, and he believed that a proposal should be in place for this. Mr. John MacDonald, representing the Court Reporters Association (CRA), opposes the proposal, saying it would compromise the integrity of grand jury records. On the other hand, he supported modifying the statute so grand jury transcripts would be produced upon request and welcomed the opportunity to discuss cost-cutting measures for transcript production.

2012-5, Homeless Court: Allows the superior court to create a consolidated homeless court and for justice of the peace and municipal courts to participate. The proposal is modeled after the San Diego homeless court.

Judge Duber questioned the need to establish these specialty courts through legislation. A member explained the purpose of the proposal as consolidating jurisdictions so a city judge may have the authority to hear cases from another city or justice court. Judge Mackey reported that he has received several requests for veterans' courts and asked if that court type was considered in the proposal. Ms. Love was unaware whether veterans' courts were or would be considered in the proposal.

2012-6, Juvenile Probation Records: Allows juvenile probation departments to share information and records with each other, which follows a computer system change.

Judge Soto recommended the Committee wait until the November meeting to vote on these proposals so members may have time to review the details. The full legislative packet will be forwarded to the members for further review.

B. Joint Implementation Committee -- HB 2302

Ms. Love provided background information and updates about the Secretary of State (SOS)'s address confidentiality program, effective 1/1/13. She reported that assistance is being requested from the courts to address implementation issues and to offer suggestions and feedback. Ms. Love asked members interested in participating in the implementation workgroup to contact her.

Ms. Patricia Noland recommended that electronic transfer of information be addressed because of its impact on caseflow management when it is not fast enough. She also called for clerks to be represented in this workgroup. Ms. Sue Hall added that clerks from both the rural and urban counties should be represented. Ms. Hall also sought process standardization regarding the administrative costs that the courts collect. Judge Soto suggested this item be put on the next Clerks' Association meeting agenda in order to find two volunteers (rural and urban) to work on these issues.

C. Update from Committee on Civil Rules of Procedure for Limited Jurisdiction Courts (RCiP)

Mr. Mark Meltzer, AOC court analyst, described the Committee's background and membership as well as its charge to simplify court processes and make the civil rules for limited jurisdiction courts more understandable to everyone. Mr. Meltzer explained their decision-making process and highlighted new features and tools that fulfill their charge.

- Rules were simplified, incorporated by reference or removed depending on whether the rules applied often, infrequently or did not apply. Medical malpractice rules were removed because they did not apply, but jury trial rules were incorporated by reference because of their infrequent use. Mr. Meltzer cited only 71 jury trial cases out of 126,000 non small-claims and non-eviction cases in 2010.
- Procedures were modified to make them more understandable to self-represented litigants (e.g., notice of service of discovery would require the addition of a warning about the consequences of failing to respond).
- Language was simplified by reducing legal jargon, removing redundancies, using the active voice and clarifying terms.
- Rules were also rearranged in a sequential order with a new numbering system to make the process more understandable.
- New reference and cross-reference tables were added to assist stakeholders in the transition period.

Mr. Meltzer reported that members discussed the downfalls of simplification and oversimplification, undercutting case law and precedents, and deviating from the intent of rules. Mr. William Klain, member of both committees, underscored, for example, the members' struggle to ensure that due process was not lost in the simplification process. Mr. Klain also illustrated the tensions between stakeholders: legal aid attorneys representing debtors sought extensive rule simplification while consumer debt attorneys preferred keeping the complexity of the superior court rules.

Mr. Meltzer advised that the Committee would submit recommendations to the AJC in December to file a rule petition to adopt a new set of rules of civil procedure for justice courts. In anticipation of the AJC meeting, Mr. Meltzer is seeking input and feedback from various stakeholders, including COSC, to bring back to their next meeting on 9/28/11 and make further revisions. Comments may be forwarded directly to mmeltzer@courts.az.gov. Mr. Meltzer plans to return to the November COSC meeting with an updated work product for members to review.

D. ACJA § 6-206 – Adult Probation Services Fund, Probation Fees Account

Ms. J.L. Doyle, AOC, presented proposed revisions to ACJA § 6-206, Adult Probation Services Fund, Probation Fees Account, and explained the reasons for the changes. The proposed changes would provide relief to adult probation departments by excluding GPS and risk management expenditures from the requirement that 60 percent of each department's Probation Services Fund must be used to pay probation employee salaries and related benefits. In addition, the changes would add a new section on "how to assess fees" to address inconsistencies among counties by having the probation departments make recommendations to the court on how and when probation service fees are assessed and distributed for offenders on Adult Probation Supervision. These proposed revisions have been approved by LJC and COP.

Judge Mackey disagreed with the proposal, saying that the authority falls on the judges to impose fees and start dates, not the probation departments. Furthermore, the probation departments do not always make a recommendation. He believed this to be an educational issue for judges more than a rule requirement for probation departments.

MOTION: To approve the proposed revisions to ACJA § 6-206 as presented. Motion seconded. Motion approved 20-1-0. COSC-11-021

E. ACJA § 6-111 – Vehicle Fleet Management

Mr. Brett Watson, AOC, presented proposed amendments to ACJA § 6-111, Vehicle Fleet Management, which were mostly cosmetic in nature in order to promote consistency with code requirements and other guidelines. Under the changes, the Motor Vehicle Department would have the ability to review employee records annually instead of biennially. These proposed amendments have been approved by LJC and COP.

MOTION: To approve the proposed revisions to ACJA § 6-111 as presented. Motion seconded. Approved unanimously. COSC-11-022

F. ACJA § 1-507 – Protection of Electronic Records in Paperless Court Operations
(Item taken out of order)

Ms. Jennifer Greene, AOC assistant counsel, and Mr. Stewart Bruner, AOC ITD strategic planning manager, presented proposed amendments to ACJA § 1-507, Protection of Electronic Records in Paperless Court Operations, that would establish new technical standards for courts that want to destroy paper administrative and regulatory records after scanning into an electronic document management system (EDMS) or OnBase. Ms. Greene explained the changes are necessary because there is no mechanism in place to approve the destruction of these records. The proposed amendments would provide authority to the superior courts and the AOC to destroy administrative and regulatory records once they have been scanned into OnBase. Ms. Greene described administrative and regulatory records and identified superior courts' process service records as regulatory records. She clarified that courts that store their records on OnBase do not need prior authorization to destroy paper case records. These proposed changes have been approved by LJC and TAC and will be presented to AJC in October. Ms. Greene advised that the proposed amendments have been posted on the ACJA forum and encouraged members to visit the forum and submit their comments.

Ms. Noland and Ms. Hall expressed concerns about the seemingly archaic requirement that backup copies be stored on magnetic tapes. Ms. Hall further cautioned that the Clerks' Association might object to paragraph (G), as written, because it would require clerks to get approval from the county presiding judges before destroying any paper administrative or regulatory case records. Since the clerks are the elected officials and are responsible for their offices' operations, administrative records would fall under their purview. Mr. Bruner defended the use of magnetic tapes by calling attention to instances in which using disks is not favorable. In virus situations, if the primary disk is infected,

the secondary will be, too. The disk images only the most recent changes during a backup, which prevents the return to a prior point in the history when the disk was virus-free. Furthermore, disks are not mobile for restoration because they require identical infrastructure elsewhere. Mr. Bruner acknowledged possible issues with magnetic tapes; however, a safety net is needed and the costs must be balanced with the risks in a paperless environment.

MOTION: To approve the proposed amendments to ACJA § 1-507, with concerns raised by the clerks (P. Noland and S. Hall) about (1) the backup of records using magnetic tape; and (2) separation between the Clerk's Office (who is records custodian for some administrative case records) and the court, to be addressed and clarified, as discussed. Motion seconded. Approved unanimously. COSC-11-023

G. Proposed changes to technical standards relating to electronic filing

Mr. Bruner presented proposed changes to technical standards in ACJA §§ 1-501, 1-504 and 1-506 about electronic filing, electronic documents, document imaging and handling of digital documents. Mr. Bruner explained that these changes are necessary because Rule 124 was stricken following the Supreme Court's decision not to adopt the rule change petition to amend Rule 124. Furthermore, recent administrative orders have authorized the technical standards to conform to the current paradigm for statewide e-filing. As a result, rules and technical standards are changing to catch up with the times and to support AZTurboCourt. Mr. Bruner advised that the proposed amendments have been posted on the ACJA forum, and he encouraged members to visit the forum and submit their comments.

Mr. Bruner provided some background information and context for the technical standards. He explained that the new objective to conform the technical standards to the statewide e-filing reflects a shift toward more statewide and centralized efforts rather than on a "one jurisdiction, one filing system" strategy. He pointed to proposed changes to court automation standards in ACJA § 1-501 that support this new direction. AZTurboCourt would be added to the list of authorized systems and a central document repository added to the list of mandated initiatives.

Mr. Bruner encouraged proposed changes to ACJA § 1-504 about reproducing and imaging electronic court records that incorporate some lessons learned over the last few years. He called for additional requirements for metadata, indexing and quality assurance details in order for the EDMS to work appropriately. For example, a sealed record would include an indicator in the metadata that tells the EDMS to protect it; otherwise, the record could be found in an index search. Mr. Bruner proposed that public access to records would be provided through a portal managed by the AOC in keeping with the centralized statewide effort. Mr. Bruner also described a new section about disconnected scanning that would apply to limited jurisdictions so they could participate in an EDMS that complies with ACJA § 1-507 and supports the statewide initiative.

Mr. Bruner discussed proposed changes to ACJA § 1-506 on filing and management of electronic documents. He proposed updating current language to reflect OnBase as the EDMS product. Mr. Bruner outlined proposed EDMS requirements for courts transitioning to the statewide e-filing approach and advantages to using the AOC-controlled EDMS or disconnected scanning. He proposed allowing some new options and requiring some new standards for electronic document filing and management. For example, abstracts could be reproduced for form-based filings and sealed records could be filed with the appropriate metadata while bookmarks would be required for multiple appendices and a minimum number of keywords would be required in OnBase.

Ms. Noland had concerns about the requirement to scan documents using a disconnected EDMS. Mr. Bruner responded that this requirement is intended only for limited jurisdiction courts.

III. OTHER BUSINESS

A. Next Meeting Date

Friday, November 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

Ms. Hall requested that the committee explore social media topics relevant to the courts and possibly develop some standards to deal with this topic. Mr. Reinkensmeyer agreed that social media is a timely topic that warrants further research and discussion. While he thought this topic might not be appropriate for all case types, he proposed exploring ways to incorporate this topic with jury-related issues. Judge Soto suggested that this topic be presented at a future committee meeting.

Mr. Klain gave members notice of some upcoming draft rule changes that the State Bar's Civil Practice and Procedure Committee has approved.

Adjourned at 12:30 p.m.

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, November 4, 2011
Arizona State Courts Building
Conference Room 345 A/B
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable James A. Soto, Chair	Honorable Charles V. Harrington
Honorable Eddward Ballinger	Honorable Carey S. Hyatt
Honorable Michael J. Burke	Honorable Kenneth Lee
Honorable James Conlogue	Honorable Joseph J. Lodge
Honorable David Cunanan	Honorable David Mackey – <i>telephonically</i>
Honorable Robert Duber II	Honorable Colleen McNally
Honorable Richard Gordon	Mr. Marcus Reinkensmeyer – <i>by proxy</i>
Honorable Sue Hall – <i>telephonically</i>	Honorable Michala Ruechel – <i>telephonically</i>
Mr. Joshua Halversen – <i>telephonically</i>	Honorable Monica Stauffer – <i>telephonically</i>
Honorable Celé Hancock – <i>telephonically</i>	Honorable Randall Warner
Mr. Tim Hardy	

MEMBERS ABSENT:

William G. Klain, Esq.	Ms. Susan Wilson
Honorable Patricia Noland	

PRESENTERS/GUESTS:

Chief Justice Rebecca Berch	Mr. Jerry Landau, AOC
Mr. Stewart Bruner, AOC	Ms. Jennifer Liewer, AOC
Ms. Jennifer Greene, AOC	Mr. Mark Meltzer, AOC
Ms. Janet Johnson, AOC	Ms. Carol Mitchell, AOC
Mr. Paul Julien, AOC	Ms. Karen Westover, proxy for Mr. Reinkensmeyer

STAFF:

Ms. Kay Radwanski, AOC	Ms. Julie Graber, AOC
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I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the November 4, 2011, meeting of the Committee on Superior Court (COSC) was called to order by Honorable James A. Soto, chair, at 10:10 a.m.

Judge Soto welcomed members to what was his final meeting as chair of COSC. He introduced Chief Justice Rebecca Berch, who thanked him for his contributions and dedication over the last six years as committee chair and presented him with a certificate of appreciation. Judge Soto remarked how impressed he has been over the years by the members' dedication and hard work and attested to the high regard COSC recommendations do hold. Judge Soto also welcomed a new member, Judge Richard Gordon, from Pima County.

Judge Soto reviewed proposed meeting dates for 2012 that the Committee approved:

- February 3, 2012
- May 18, 2012
- September 7, 2012
- November 2, 2012

B. Approval of Minutes

The draft minutes from the September 9, 2011, meeting of the COSC were presented for approval.

MOTION: To approve the September 9, 2011, COSC meeting minutes as presented. Motion seconded. No further discussion. Approved unanimously. COSC-11-023

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Legislative Update *(taken out of order)*

Mr. Jerry Landau, AOC director of government affairs, discussed proposed legislation that may impact the superior courts.

1. Mr. Landau first reported on decisions made at the last AJC meeting regarding legislative proposals previously presented to COSC.
 - a. *Proposals moving forward.*

2012-1, Criminal Code Corrections Bill: Annual clean-up bill without substantive changes.

2012-2, Probate Omnibus: Expands the judge's authority to protect vulnerable adults; clarifies when and how the conservator's annual accounting must be filed; permits the court to order fingerprints and background checks for proposed guardians and conservators. Mr. Landau commented that this proposal is still being drafted and concomitant rules are being considered.

A member asked who would pay for the fingerprinting checks. Mr. Landau believed it was the person who was being fingerprinted.

2012-3, Termination of Parental Rights: Clarifies a timing question in the statute so the clock starts *at the time the dependency petition was filed* for children who have

been in an out-of-home placement for six months or longer and were under the age of three.

2012-4, Homeless Court: Allows a county to establish a homeless court made up of different municipal courts and justice of the peace courts so a judge will have the ability to hear a case from another jurisdiction.

b. *Proposals not moving forward.*

- Grand jury electronic recording, from Maricopa County.
- Removal of the Board of Supervisors from salary decisions for court reporters and probation officers, from Pima County.
- Juvenile probation records, from Maricopa County; action was not taken because the goal can be achieved by rule change.

2. Mr. Landau presented legislative proposals that were deferred or submitted after the September COSC meeting and sought feedback and recommendations from the committee.

a. *Proposals from the Clerks of the Superior Court.*

Clerks' Proposal #1: Civil Arbitration Bonds: Requires a court order for disbursements of civil arbitration bonds after an arbitration case is appealed by filing a motion to obtain the deposit by appellant; a motion to order the deposit to pay costs and fees by appellee; or on the court's own motion. The intent of this proposal is to clean out records. Mr. Landau reported that AJC is planning to meet with the clerks to determine whether this proposal could move forward other than by legislation.

Ms. Hall stressed the importance of this proposal for the Clerks. While the Clerks are open to discussion, they will be moving the proposal forward whether by legislation or by rule change. Judge Duber recommended that the committee take no position if the Clerks intend to pursue legislative changes. Judge Harrington commented that arbitrations are subject to court rules, and any amendment to court rules should be done through a rule change petition and not by modifying the statutes.

MOTION: To recommend that AJC work with the Clerks to move forward with the proposal by rule change rather than by legislation, as presented. Motion seconded. No further discussion. Approved unanimously. COSC-11-024

Clerks' Proposal #2: Entry on records; wrongful arrest: Adds language restricting access to records that have a notation clearing an individual from a wrongful arrest and conviction. The intent of this proposal is to standardize court practices and catch up with technology. Mr. Landau sought feedback from COSC and reported that AJC postponed action on this proposal to determine whether the proposal is needed.

Mr. Halversen inquired whether the proposed language restricted specific types of access. Mr. Landau indicated that the language broadens the statute by adding the words “from providing access to.” Judge Duber questioned whether the proposal is needed or if it merely anticipates a problem that might not happen. Judge Conlogue pointed out that this is an existing statute and a rule change is inappropriate. Ms. Hall indicated that the Clerks want to move forward with the proposal but remain open to discussion on the best way to accomplish the proposal’s intent, which is to update a statute dating back to 1973 and get ahead of the curve with regard to technology. Ms. Hall added the courts already have the ability to do this without additional costs.

MOTION: To recommend that AJC support the Clerks’ proposal #2, as presented. Motion seconded. No further discussion. Approved unanimously. COSC-11-025

b. *Proposal from the Fraternal Order of Police.*

The proposal clarifies requirements for smaller jurisdictions to provide an alternate hearing officer by means of a contract with outside jurisdictions. AJC did not have an issue with this part. The proposal would also define disciplinary action as the dismissal, demotion or suspension *for any length of time*. Currently, appeals are guaranteed for law enforcement and probation officers if the disciplinary action is for more than eight hours, but they are not allowed if the action is for less than eight hours. The Committee on Probation (COP) was split on this proposal. AJC requested input from COSC.

Mr. Hardy, COP chair, shed some light on the controversy regarding whether the appeal process should cover all types of disciplinary actions. Some chiefs believed that appeals should not be allowed for those disciplinary actions less than eight hours because of the amount of work involved with investigations, disciplinary processes and appeals. Others argued that the proposal was unnecessary based on the relative infrequency of these types of disciplinary actions in their counties.

MOTION: To recommend that AJC take no position with regard to the proposal, as discussed. Motion seconded. No further discussion. Approved unanimously. COSC-11-026

c. *Proposals from the Arizona Prosecuting Attorney’s Advisory Council (APAAC).*

APAAC Proposal #1: Definition of Criminal Offenses: Defines criminal offense, for the purposes of victim rights, as a felony, misdemeanor, petty offense and violation of a local ordinance. An appellate case decision prompted this proposal from the County Attorneys’ Office.

A question was asked about the effect of the proposal on notice requirements for county attorneys. Mr. Landau indicated that notice requirements apply to all cases and that there would be no change for county attorneys. Several members expressed concern about possible consequences on justice courts, municipal courts, city

attorneys and county attorneys. Mr. Landau clarified that the impact would be on justice courts, municipal courts and city attorneys based on their responsibility for misdemeanors and for local ordinances that are criminal in nature.

MOTION: To recommend that AJC support APAAC Proposal #1: Definition of Criminal Offenses, with the understanding that the members did not consider or intend to impact limited jurisdiction courts, due to lack of information, as discussed. Motion seconded. Approved unanimously. COSC-11-027

APAAC Proposal #2: Minor Victim Identification Protection: Withdrawn by APAAC in order to proceed by rule change.

APAAC Proposal #3: Term of Grand Jury: Option 1 increases the maximum allowable term for a grand jury to 180 days in counties with a population under 200,000, except if a presiding judge extends the grand jury until an ongoing investigation is completed. In addition, the grand jury remains optional for these counties. Option 2 keeps the same exception but limits the timeframe for a grand jury to 120 days in counties over 200,000. APAAC is considering these two optional proposals after AJC took no position on the County Supervisors Association (CSA)'s proposal that would have increased the maximum allowable term for a grand jury to 180 days at the discretion of the presiding judge and across the state. The intent behind that proposal was to realize savings for counties.

Judges Burke and Mackey related their observations after attending the Presiding Judges meeting. According to Judge Burke, presiding judges had concerns over the length of an empanelment and its impact on members. Presiding judges also discussed the appropriateness of proceeding through legislation. Ms. Hall drew attention to the burden a six-month empanelment would place on many self-employed individuals in rural counties. Judge Burke agreed with Ms. Hall's comment.

MOTION: To recommend that AJC take no position regarding the proposal, as discussed. Motion seconded. No further discussion. Approved unanimously. COSC-11-028

3. Mr. Landau discussed upcoming legislation. He is anticipating a proposal regarding jail costs and jail capacity, which should be of interest to the counties. In addition, he is awaiting proposed legislation that would allow a judge under certain statutory criteria to release a person convicted and sentenced to the Department of Corrections (DOC) out of the DOC prior to the sentence completion if this person has secured an appearance bond. A new proposal from the Arizona Bail Bondsmen Association is expected. AJC considered seven proposals from the association that, for instance, would eliminate a judge's ability to impose a cash-only bond and would mandate a judge to set a minimum bond for a person who once failed to appear. AJC opposed

two of the proposals and took no position on the remaining five. Mr. Landau will meet with the sponsoring legislator about the agency's position.

B. Proposed Changes to Technical Standards Related to E-Filing *(taken out of order)*

Mr. Stewart Bruner, AOC, ITD strategic planning, reviewed background information and specific changes to ACJA §§ 1-501, 1-504 and 1-506 regarding proposed technical standards on e-filing, document imaging and handling of digital documents after changes to Rule 124 were not approved by the court. Proposed changes incorporate feedback and comments received from AJC, COSC and other stakeholders. No additional comments were received on the ACJA Web Forum. Mr. Bruner sought a recommendation from COSC that AJC approve the proposed changes to these technical standards.

Mr. Bruner reviewed specific changes in ACJA §§ 1-501, 1-504 and 1-506 that resulted from comments by COSC. In ACJA § 1-501, information technology plans are now submitted by the courts "at COT's discretion" rather than "annually" so rural counties are not impacted as much by the economy and fewer resources. In ACJA § 1-504, the definition of metadata was enhanced so metadata is now an inherent part of the documents, which is important for document management and retrieval. Criteria for purging documents before archival were specified in ACJA § 3-402 and apply only to superior courts. Disconnected scanning requirements were clarified so they apply to limited jurisdiction courts only. "Status Code" was changed to "event code" to accommodate for judgment renewals in limited jurisdiction courts. In ACJA § 1-506, "and related administrative orders" was added to Rule 124 in authority sections to accommodate for future situations. Hyperlink language was updated to match the latest Rule 124 description. Bookmark language was changed from "shall" to "may" at COT's discretion because the State Bar of Arizona argued that it would be too much work for attorneys and that some attorneys would be unable to fulfill the technical requirements. Date and time requirements for proof of filing were aligned with AZTurboCourt. The timetable for communication with the central document repository and AZTurboCourt was clarified so it is only prior to acceptance of any e-filings.

MOTION: To recommend that AJC approve the proposed changes to the technical standards in ACJA §§ 1-501, 1-504 and 1-506, as presented. Motion seconded. No further discussion. Approved unanimously. COSC-11-029

C. Justice Court Rules of Civil Procedure *(taken out of order)*

Mr. Paul Julien, AOC judicial education officer and chair of the Committee on Civil Rules of Procedure for Limited Jurisdiction Courts (RCiP), and Mr. Mark Meltzer, AOC policy analyst, updated members on the progress of the Justice Court Rules of Civil Procedure (JCRCP) draft. Mr. Julien reviewed background information about the committee and highlighted some of the JCRCP features and tools. Mr. Julien underscored the need for proper vetting of the JCRCP to educate and answer questions. Comments and feedback received during presentations to stakeholders, such as LJC, COSC, LJCAA, JP Association and justice courts in Maricopa, Cochise and Mohave counties were incorporated into this final product. LJC approved an earlier version of the JCRCP. The

committee will submit a written report to AJC in December and will request that AJC approve its recommendation to file a rule petition seeking to adopt the JCRCP.

The decision to draft a new set of rules emerged from a consensus among RCiP members that the rules could use restyling as well as substance and formality. Mr. Julien commended the committee's ability to reach general consensus on all but one issue given that the members represented many different stakeholders with competing interests (from judge, justice of the peace, clerk and court administrator to legal aid and debt collection attorneys). At issue was how much information should debt buyers have to produce. Debt collection attorneys felt targeted while debtors' attorneys argued that debt owners are not always known to debtors. Representatives from both sides will attempt to resolve this issue in a subcommittee meeting one last time.

A member questioned the impact of these rules on superior court operations. Mr. Julien responded that there would be fewer appeals to the superior court if the JCRCP were successful. Furthermore, he is anticipating the creation of a committee that will look at the rules of civil procedure statewide and attempt stylistic changes and simplification of the rules in a similar way as the rules of evidence. Judge Duber said that while he recognized that the JCRCP is a good product, he objected to another set of rules.

MOTION: To commend the Committee on the Rules of Civil Procedure for Limited Jurisdiction Courts for their efforts and hard work in putting together the JCRCP, as discussed. Motion seconded. No further discussion. Approved with one abstention. COSC-11-030

D. 2011 Rules Update *(taken out of order)*

Mr. Mark Meltzer, AOC policy analyst, presented items from the Supreme Court's September 2011 rules agenda that might be of interest to COSC. Mr. Meltzer provided a synopsis and background information regarding rule petitions the Supreme Court either rejected, adopted on a permanent basis or adopted effective 1/1/2012. He highlighted rule petition R-11-0013: Juvenile Court Rules, Rule 40.1, that was adopted effective 1/1/12. This new rule establishes specific duties and responsibilities for all attorneys and guardians ad litem who represent children in order to promote higher quality representation and to bar appointment of untrained or poorly trained representatives. He also drew attention to rule petition R-10-0035: Rules of Evidence, that was adopted effective 1/1/12. The Arizona Rules of Evidence were revamped in their entirety by restyling and making the rules more understandable; conforming some of the Arizona rules of evidence to the federal rules of evidence; and by maintaining distinct differences from the federal rules of evidence. These changes may or may not affect the admissibility of evidence.

A member asked if R-11-0013 would apply only to dependency cases. Mr. Meltzer responded that all attorneys and guardians ad litem appointed to represent children in dependency cases shall adhere to this rule. However, the rule does not contain a

restriction limiting it only to dependency. In juvenile rules, rules apply to dependencies, guardianships and terminations of parental rights.

E. Language Access Planning *(taken out of order)*

Ms. Carol Mitchell, AOC specialist, informed members that Chief Justice Berch recently signed Administrative Order 2011-96, which requires courts to develop formal, written language access plans that describe court services for non-English speaking court users. Ms. Mitchell reviewed the A.O.'s basic requirements. She explained that one of the first steps is to identify the needs (i.e., foreign languages) and document the resources and services currently provided inside and outside of the courtrooms. Additionally, courts must develop a plan to remedy their deficiencies. She recommended that courts lacking the funding create a budget request and request additional funds for portions of the court's plan that are currently unachievable. Finally, Ms. Mitchell provided additional resources to help courts develop their respective plans, including templates and model plan instructions. Plans are to be submitted to the AOC by December 31, 2011.

Judge Soto stressed the importance for presiding judges to comply with the language access plans. Presiding judges have been tasked to ensure compliance across all courts in their county. Failure to provide a plan may have funding repercussions.

F. Draft Rule Petition – Victim Identification Procedures *(taken out of order)*

Ms. Carol Mitchell, AOC, staff to the Commission on Victims in the Courts (COVIC), reviewed the draft rule petition that represents COVIC's recommendation to amend several court rules in order to reduce potential harassment and re-victimization and improve the treatment for victims of sexual offenses and victims who were juveniles at the time of the offense. Ms. Mitchell offered some background information and provided specific examples where court records containing personal information and embarrassing references were accessed online by the public. Because these recent cases highlight victim privacy concerns, the commission recommends that the judicial system take action to strike the appropriate balance of public versus private information; that a statewide standard be implemented to ensure consistent protection of a victim's personal information; and that the amount of information be reduced in court documents, i.e., in parties' pleadings, briefs, motions and judicial rulings, so the information is not out there to be found on the internet.

COVIC is seeking approval from COSC to present the proposed rule petition to AJC for approval to file prior to the January 2012 deadline. Ms. Mitchell welcomed comments from COSC and went over some of COVIC's discussions. A sensitive data sheet was suggested to address requests for an alternative way to obtain protected information. Several COSC members had questions about how the proposed changes would impact them in actual practice: "How to refer to multiple victims?", "How to protect victims' names in restitution orders in open court?", "What are my obligation as clerk or judge?", and "How to protect sensitive information in documents such as victim impact statements?" COVIC had not considered document types like restitution orders or victim impact statements, and logistics would still need to be figured out in many situations. COVIC will be looking to other states that have similar statutes to see how they

addressed some of these issues. Several members agreed with the overall concept proposed and the need to balance public information and victims' privacy.

MOTION: To endorse the concept of the rule petition without commenting on the specific draft rule petition that is before the committee. Motion seconded. No further discussion. Approved unanimously. COSC-11-031

G. Rule Petition for Revisions to Rule 123, Rules of the Supreme Court *(taken out of order)*

Ms. Kay Radwanski, AOC policy analyst, and Ms. Jennifer Greene, AOC assistant counsel, presented revisions to Rule 123 concerning data dissemination on behalf of Ms. Melinda Hardman. Ms. Radwanski highlighted two substantive changes and produced a table that summarized the proposed modifications and explained why the mostly technical changes were necessary.

Ms. Radwanski addressed the first substantive issue regarding unserved Orders of Protection and whether they should be considered a closed record. This issue arose in connection with a media query; however, Rule 123 is mostly silent on this. Ms. Radwanski provided reasons to keep case records closed, foremost to avoid putting the plaintiff at risk if it becomes known to the defendant that the plaintiff obtained an order. The topic of courthouse access to unserved protective orders is currently being considered by the Committee on the Impact of Domestic Violence and the Courts (CIDVC) after Ms. Hardman's presentation last September. Ms. Radwanski, who also staffs CIDVC, informed members that CIDVC will recommend that the Arizona Rules of Protective Order Procedure be amended instead of Rule 123 and that case records remain closed until proof of service is filed.

Ms. Greene discussed the second substantive revision brought to light by a legislative change that would limit the public's right to access a judicial branch employee's disciplinary action records, once the action is completed, to the following documents: notice of charges, action taken, and the employee's response. Rule 123 allows for only a limited number of information in employees' records to be accessed; however, the AOC and the Attorney General's Office have interpreted Rule 123 differently. The proposed changes would therefore set the standard on what the rule allows in the way of public access to disciplinary and misconduct records of an employee and clarify how a custodian of records should respond to inquiries.

A member expressed concern about the impact on witnesses involved in a disciplinary case and whether their information would be released. Ms. Greene responded that the paperwork would need to be written in such a way to protect their identity.

MOTION: To recommend that AJC approve the filing of a rule petition for revisions to Rule 123, Rules of the Supreme Court, in January, 2012; support the proposed language regarding protective orders; and adopt the position that

unserved protective orders should not be accessed, as discussed. Motion seconded. No further discussion. Approved unanimously. COSC-11-032

H. Social Media and the Courts

Ms. Jennifer Liewer, AOC chief communications officer, provided an overview of various social networking sites. She illustrated the impact of social media throughout our society with new trends (47 percent of people get news from mobile devices), new topics and public policy concerns (media literacy), new risks and opportunities (R.O.I. refers to (R)isk (o)f (I)naction), and new meanings and definitions (is a blogger a journalist?). Similarly, social media affects the courts. Because of its relevance and reality in the courts, Ms. Liewer stressed the importance for the courts to work with and around social media as well as on new policies for the courts to manage it. She described the opportunities and challenges that social media presents in the judicial branch.

Ms. Liewer identified social media as a valuable and useful communications tool for the courts because it provides opportunities for the judicial branch to stay relevant; to educate and expand ongoing outreach with the community; to improve the public's media literacy; to monitor and broadcast messages about the courts and courts' business; and to communicate and reach reporters with immediacy. However, problems have arisen when social media is used in the courts by jurors. When jurors tweet about their experiences during trials or educate themselves about courtroom matters, there is the potential for mistrials, reversals of jury verdicts and jury misconduct. Ms. Liewer discussed appropriateness, implication and ethical concerns when judges or attorneys use social networking sites, or when there is "friending" between judicial positions. In order to manage these challenges, Ms. Liewer called for the judicial branch to develop appropriate standards, guidelines, definitions and best practices to promote proper interactions while being careful not to be too restrictive.

III. OTHER BUSINESS

A. Next Meeting Date

Friday, February 3, 2011
10:00 a.m. – 2:00 p.m.
Arizona State Courts Building
Conference Room 119 A/B

B. Good of the Order/Call to the Public

Adjourned at 12:40 p.m.