

COMMITTEE ON SUPERIOR COURT

DRAFT MINUTES

Teleconference Meeting
Friday, November 6, 2009
Arizona State Courts Building
Conference Room 230
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable James A. Soto	Honorable Bethany Hicks
Honorable Eddward Ballinger	Ms. Denise Lundin, proxy for
Honorable Michael J. Burke	Honorable Michael Jeanes
Honorable James Conlogue	Honorable Kenneth Lee
Honorable Michael J. Cruikshank	Honorable David Mackey
Honorable Robert Duber II	Honorable Margaret Maxwell
Honorable Sue Hall	Honorable Colleen McNally
Mr. Josh Halversen	Mr. Phil Knox, proxy for
Ms. Margaret Guidero, proxy for Mr. Tim Hardy	Mr. Marcus Reinkensmeyer
Honorable Charles Harrington	Honorable Monica L. Stauffer
Honorable Danna Hendrix	Ms. Susan Wilson

MEMBERS ABSENT:

Honorable Norman Davis	Ms. JoJene Mills
Honorable Andrew Gould	Honorable Stephen Villarreal
Honorable Stephen McCarville	

PRESENTERS/GUESTS:

Ms. Melinda Hardman, AOC	Mr. Gordon Mulleneaux, Maricopa Superior Court
Mr. Mark Meltzer, AOC	Ms. Katy Proctor, AOC
Mr. Renny Rapier, AOC	Ms. Jennifer Greene, AOC
Mr. David Withey, 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 November 6, 2009, meeting of the Committee on Superior Court (COSC) was called to order by the Hon. James A. Soto, Chair, at 10:05 a.m.

B. Approval of Minutes

The minutes of the September 25, 2009, COSC meeting were presented for approval.

MOTION: To approve the minutes of the September 25, 2009, COSC meeting as presented. Motion seconded. Approved unanimously. COSC-09-018

Judge Soto announced the 2010 COSC meeting dates. He informed members that both COSC and the Committee on Technology (COT) are scheduled to meet on November 5, 2010, which could create a conflict for members who serve on both committees. Judge Soto reminded members that they may send a proxy to the COSC meeting if necessary. Meeting dates for 2010 are:

Friday, February 5, 2010
Friday, May 14, 2010
Friday, September 10, 2010
Friday, November 5, 2010

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. ACJA §§ 1-604 - Remote Electronic Access to Records; 1-605 - Requests for Bulk or Compiled Data; 1-606 - Providing Case Record Access to Public Agencies and Public Purpose Organizations

Ms. Melinda Hardman, AOC court analyst in the Court Services Division, presented proposed amendments to ACJA §§1-604 and 1-605 and a new ACJA § 1-606, which stem from recent amendments to Supreme Court Rule 123. Ms. Hardman noted that sections 1-604 and 1-605 were previously approved by COSC; however, 1-605 has since been modified to provide clarity and consistency with the statute. The new section, ACJA § 1-606 sets forth procedures for releasing case records to non-judicial government agencies and other public purpose organizations.

In response to member questions on ACJA § 1-606, Ms. Hardman explained that the custodian of records would need to execute a memorandum of understanding with the government agencies or public purpose organizations receiving the records. Due to the clerks' expressed concerns about the potential burden of drafting the memorandums, Ms. Jennifer Greene, assistant counsel, AOC Legal Services, stated the legal staff will be developing a memorandum that could be shared with the clerks and could possibly become standardized statewide.

Ms. Hardman explained currently no sanctions for misuse of information by third parties are set out in the ACJA; however, she agreed that it could be considered for the contract agreement. Regarding the *closed records* provision in section (C)(2) and (3), Ms. Hardman agreed that adding language to the effect of "*as referenced in Rule 123*," would ensure clarity. In addition, Ms. Hardman and Ms. Greene stated they would look further at how Rule 123 distinguishes the terms *confidential*, *sealed*, and *closed records*. Ms. Hardman informed members that all three draft proposals are available on the new ACJA Web Forum

for further review and comment until November 12, 2009. The link is: <http://azdnn.dnnmax.com/Default.aspx?alias=azdnn.dnnmax.com/forumacja>.

MOTION: To approve ACJA § 1-605; Requests for Bulk or Compiled Data as amended. Motion seconded. Passed unanimously. COSC-09-019

MOTION: To recommend ACJA § 1-606 not be approved at this time pending further comment and review from the Clerks. Motion seconded. Passed unanimously. COSC-09-020

- B. ACJA § 5-208; Operational Standards for Video-Conferencing in Criminal Proceedings**
Mr. Mark Meltzer, AOC court analyst in the Court Services Division, presented proposed ACJA § 5-208, which lays out the operational standards and technical requirements for interactive audiovisual proceedings, as required by amended Rule 1.6, effective January 1, 2010. Mr. Meltzer reviewed the basis for specified operational and technical standards, noting that the *minimum* technical requirement is that “all participants be able to clearly see and hear proceedings in the courtroom.”

In response to member comments regarding the burden of an annual recertification process, Mr. Meltzer explained that the process was proposed to ensure that standards continue to be met and that conditions at the court site and the remote site have not changed.

MOTION: To approve ACJA § 5-208; Operational Standards for Video-Conferencing in Criminal Proceedings as presented. Motion seconded. Motion passed 18-1-0. COSC-09-021

C. Update: General Jurisdiction Case Management System

Mr. Renny Rapier, AOC program manager over development of the General Jurisdiction Case Management System (GJCMS) project, reported on the progress of the project. He reported that Santa Cruz and Yavapai County courts have been successfully converted, and Apache and Navajo County are currently in the process, with a ‘go live’ date expected in early December 2009. Mr. Rapier also informed members that all conversion, training, and implementation processes, as well as technical support will be taken over by AOC Support in February 2010. The anticipated completion date for the project is May 7, 2010.

D. ACJA § 1-303: Code of Conduct for Judicial Employees

Mr. David Withey, AOC chief legal counsel, presented a newly revised version of ACJA § 1-303: Code of Conduct for Judicial Employee, which addresses concerns that emerged during the comment period over two policy areas. The issues concerned Rule 2.6, Assistance to Litigants, and Rule 4.3, Elected Judicial Department Office. Mr. Withey reviewed the amended sections and explained how the revisions will address the issues of concern.

Lengthy discussion ensued regarding sections 4.4(A), and 2.6 with the following concerns being voiced:

- With respect to section 4.4(A), the Clerks of Court submitted comments regarding the provision that judicial employees take a leave of absence if elected or appointed to an elective office. The clerks asserted that circumstances in which appointments generally occur do not carry the same risk of office conflict that the election process does; therefore, the clerks requested the “or appointment” language be stricken. In addition, they requested the following language be inserted in 4.4(A):

“A leave of absence must be approved by the judicial employee’s appointing authority, i.e., presiding judge, chief judge, chief justice, or elected clerk of court.”

- Regarding section 2.6, several members voiced concerns that the word *shall* in “a judicial employee *shall* provide...” should be replaced with the word *may*, so that the provision does not constitute a mandate that judicial employees must *always* provide assistance. Members expressed concern that the provision as written would create ambiguity for employees, possibly blurring the line between providing assistance and providing legal advice or interpretation. Mr. Withey explained that the language in this section was previously amended to say “consistent with the employee’s responsibilities and knowledge...” in order to forestall any ambiguity. He stated this language was intended to leave it to the courts to set office policies specifying what employees can and cannot say to court customers.

MOTION: To approve revised ACJA § 1-303: Code of Conduct for Judicial Employees with the exception of Rule 2.6, as discussed, and to amend 4.4(A) as discussed. Motion seconded. Motion passed 18-1-0. COSC-09-022

E. ACJA § 5-204; Restitution Payment Processing

Mr. Gordon Mulleneaux, associate clerk of Maricopa County Superior Court, presented proposed amendments to ACJA § 5-204, section (K), regarding the processing of restitution payments. The changes 1) clarify that the payment processing timeline refers to business days, and 2) increases the threshold for mailing out restitution payments from \$10 to \$30. Mr. Mulleneaux explained that the increase in threshold is not mandatory, and courts can voluntarily determine to agree to the increase. The estimated cost savings per month for Maricopa County Superior Court would be approximately \$1,500.

MOTION: To approve amended ACJA § 5-204; Restitution Payment Processing as presented. Motion seconded. Approved unanimously. COSC-09-023

F. Legislative Update

Ms. Katy Proctor, AOC legislative analyst, briefed the committee on the plans for the upcoming regular legislative session. She stated there are no AOC proposals expected and the budget will be the primary focus. In addition, she added that the legislature will hold a

special session mid-November to look at funding for the Department of Revenue and the Corporation Commission.

III. OTHER BUSINESS

A. Next Meeting:

Friday, February 5, 2009
10:00 a.m. – 3:00 p.m.
Conference Room 119 A/B
Arizona State Courts Building
1501 W. Washington
Phoenix, Ariz. 85007

B. Good of the Order/Call to the Public

No comments were offered.

The meeting was adjourned at 12:16 pm.