

ARIZONA JUDICIAL COUNCIL

Request for Council Action

| Date Action Requested: | Type of Action Requested: | Subject: |
|-------------------------------|--|---|
| December 5, 2007 | <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other | Arizona Code of Judicial Administration |

FROM:

AOC Legal Services

DISCUSSION:

This is a continuation of the project to update and publish significant supreme court administrative orders in the Arizona Code of Judicial Administration (ACJA) to make them readily available to judicial officers and employees throughout the state. Two new code sections and five amendments are recommended for adoption. For your reference, we've included a copy of Administrative Order No. 90-01, which has been redrafted as ACJA § 1-306: Tax Court Judges Pro Tempore and Commissioners.

RECOMMENDED COUNCIL ACTION:

The following code sections are recommended for approval unless any member of the Council has questions:

- 1-105 Committee on Superior Court (amendment)
- 1-106 Committee on Limited Jurisdiction Courts (amendment)
- 1-306 Tax Court Judges Pro Tempore and Commissioners
- 5-203 Trial Jury Management (amendment)
- 5-204 Administration of Victims' Rights (amendment)
- 6-103 Victims' Rights Requirements for Probation Personnel (amendment)
- 6-114 Committee on Probation.

**ARIZONA CODE OF JUDICIAL ADMINISTRATION
Proposal Cover Sheet**

**Part 1: Judicial Branch Administration
Chapter 1: Leadership
Section 1-105: Committee on Superior Court**

- 1. Effect of the proposal:** Amendment of Committee on Superior Court (COSC) rules of business.
- 2. Significant new or changed provisions:**
 - a. Defines the committee proxy policy
 - b. Defines the quorum necessary for the committee to discuss and vote on an agenda item
 - c. Defines the votes necessary to constitute an action of the committee
 - d. Allows the committee to hold one meeting per year outside of Maricopa County
 - e. Allows the committee chair to designate a meeting as virtual attendance meeting (conference call, video conference, etc.)
 - f. Allows members to virtually attend a meeting with prior approval of the chair
- 3. Committee actions and comments:** The COSC removed an item in D. that specified the percentage of meetings that a member must attend; finding it limiting and redundant to the currently proposed D.1. With that change, COSC unanimously approved ACJA § 1-105: Committee on Superior Court as revised.
- 4. Controversial issues:** None.
- 5. Recommendation:** The COSC respectfully requests AJC approval and adoption.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 1: Judicial Branch Administration
Chapter 1: Leadership
Section 1-105: Committee on Superior Court

[Added text is shown underlined, deleted text by ~~strikethrough~~]

A. General Purpose. The Committee on Superior Court (COSC) is established as a standing committee of the Arizona Judicial Council (AJC). ~~The~~ COSC shall assist the ~~council~~ AJC and the supreme court in the development and implementation of policies designed to improve the quality of justice, access to the courts and efficiency in court operations. The COSC shall identify the needs of the superior court and study the internal operation and identify the needs of the superior court. ~~The~~ COSC shall also analyze and plan for future developments and recommend uniform administrative policies and procedures to improve judicial administration.

B. Membership. COSC is composed of the following members:

1. The associate presiding judges of Maricopa and Pima counties;
2. Representatives from four non-metropolitan counties, two of ~~which~~ whom must be presiding judges;
3. Three presiding judges of special divisions;
4. Six judges of the superior court;
5. Two superior court clerks: one representing urban courts, the other representing rural courts;
6. Two court administrators, one representing urban courts, the other representing rural courts;
7. The chairperson of the Committee on Probation;
8. A representative of the State Bar of Arizona;
9. A public member; and
10. Such other members as may be appointed at the discretion of the chief justice.

C. Terms of Members. COSC members holding membership by virtue of their positions are members of the COSC so long as they hold their respective positions. The chief justice shall appoint the other members of the COSC for terms of varying lengths to encourage continuity ~~on COSC~~. Committee members may be reappointed for successive terms.

D. Responsibilities of Members. COSC members shall attend and actively participate in COSC meetings, assist with the administration of COSC affairs, and shall serve on other advisory subcommittees as deemed necessary. A COSC member may designate a proxy subject to ACJA § 1-104 and the following requirements:

1. COSC members may not use the proxy provision for more than three times during the member's term;
2. The use of proxies by members of the COSC is limited to extraordinary circumstances, as determined by the chair; and
3. If a COSC member cannot attend a meeting and would like to send a proxy, the member must obtain prior approval of the chair. If approved by the chair, that proxy must comply with other guidelines regarding proxy rights.

E. Organization. The chief justice shall appoint the chairperson of the COSC and other leadership as needed to organize committee affairs. The chairperson may appoint advisory subcommittees to help the COSC carry out its responsibilities.

F. Meetings. The COSC shall meet no less than twice a year. Additional meetings may be called at the discretion of the chairperson. All meetings shall be noticed and open to the public.

1. Quorum. A simple majority (50% + 1) of the current COSC membership shall constitute a quorum.
2. Virtual Attendance (conference call, video conference, etc.). The COSC chair may designate a meeting as a virtual attendance meeting. Otherwise COSC members may virtually attend a meeting with prior approval of the chair. In the instance where the COSC chair designates a meeting as a virtual attendance meeting, a meeting room and a connection must be available for members of the public who wish to attend.
3. Locations. The COSC may meet at a convenient location outside of Maricopa County, but no more than once per year.

G. Actions. ~~COSC shall adopt rules for conducting COSC business. These rules shall prescribe the quorum and majority need to constitute COSC actions.~~ Approval of a majority of those voting shall constitute an action of the COSC.

H. Staff. Under the direction of the chief justice, the administrative office shall provide staff to assist and support the COSC and may conduct or coordinate management projects and research studies related to judicial administration as recommended by the COSC.

**ARIZONA CODE OF JUDICIAL ADMINISTRATION
Proposal Cover Sheet**

**Part 1: Judicial Branch Administration
Chapter 1: Leadership
Section 1-106: Committee on Limited Jurisdiction Courts**

- 1. Effect of the proposal:** Amendment of Committee on Limited Jurisdiction Courts (LJC) rules of business.
- 2. Significant new or changed provisions:**
 - a. Defines the committee proxy policy
 - b. Defines the quorum necessary for the committee to discuss and vote on an agenda item
 - c. Defines the votes necessary to constitute an action of the committee
 - d. Allows the committee chair to designate a meeting as a virtual attendance meeting (conference call, video conference, etc.)
 - e. Allows members to virtually attend a meeting with prior approval of the chair
- 3. Committee actions and comments:** The LJC unanimously approved ACJA § 1-106: Committee on Limited Jurisdiction Courts as revised.
- 4. Controversial issues:** None.
- 5. Recommendation:** The LJC respectfully requests AJC approval and adoption.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 1: Judicial Branch Administration
Chapter 1: Leadership
Section 1-106: Committee on Limited Jurisdiction Courts

[Added text is shown underlined, deleted text by ~~strikethrough~~]

A. General Purpose. The Committee on Limited Jurisdiction Courts (LJC) is established as a standing committee of the Arizona Judicial Council (AJC). The LJC shall assist the ~~council~~AJC and the supreme court in the development and implementation of policies designed to improve the quality of justice, access to the courts and efficiency in court operations. The LJC shall identify the needs and study the internal operation and identify the needs of the limited jurisdiction courts. The LJC shall also analyze and plan for future developments and recommend uniform administrative policies and procedures to improve judicial administration.

B. Membership. LJC shall include the following members:

1. At least ten limited jurisdiction judges;
2. Six limited jurisdiction court administrators, deputy administrators or clerks;
3. A representative of the State Bar of Arizona;
4. A public member; and
5. Other members appointed at the discretion of the chief justice.

C. Terms of Members. The chief justice shall appoint members of the LJC for terms of varying lengths to encourage continuity ~~on LJC and~~. Committee members may be reappointed~~members~~ for successive terms.

D. Responsibilities of Members. LJC members shall attend and actively participate in LJC meetings, assist with the administration of LJC affairs and serve on advisory subcommittees as necessary. A LJC member may designate a proxy, subject to the requirements of ACJA § 1-104 and LJC policies.~~the following requirements:~~

1. LJC members shall attend 75% of the committee meetings;
2. LJC members may not use the proxy provision for more than three times during the member's term;
3. The use of proxies by members of the LJC is limited to extraordinary circumstances, as determined by the chair; and

4. If a LJC member cannot attend a meeting and would like to send a proxy, the member must obtain prior approval of the chair. If approved by the chair, that proxy must comply with other guidelines regarding proxy rights.

E. Organization. The chief justice shall appoint the chairperson of the LJC and other leadership as needed to organize committee affairs. The chairperson may appoint advisory subcommittees to help the LJC carry out its responsibilities.

F. Meetings. The LJC shall meet no less than twice a year. The chairperson may call additional meetings. All meetings shall be noticed and open to the public.

1. Quorum. A simple majority (50% + 1) of the current LJC membership shall constitute a quorum.

2. Virtual Attendance (conference call, video conference, etc.). The LJC chair may designate a meeting as a virtual attendance meeting. Otherwise, LJC members may virtually attend a meeting with prior approval of the chair. In the instance where the LJC chair designates a meeting as a virtual attendance meeting, a meeting room and a connection must be available for members of the public who wish to attend.

G. Actions. ~~LJC shall adopt rules for conducting LJC business. These rules shall prescribe the quorum and majority needed to constitute LJC actions~~Approval of a majority of those voting shall constitute an action of the LJC.

H. Staff. Under the direction of the chief justice, the administrative office shall provide staff to assist and support the LJC and may conduct or coordinate management projects and research studies related to judicial administration as recommended by LJC.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Proposal Cover Sheet

Part 1: Judicial Branch Administration
Chapter 3: Judicial Officers and Employees
Section 1-306: Tax Court Judges Pro Tempore and Commissioners

- 1. Effect of the proposal:** Administrative Order No. 90-01 contains qualifications for tax court commissioners and tax court judges pro tempore. The AO has been redrafted as an administrative code section and reorganized.
- 2. Significant new or changed provisions:** The only substantive change is the provision in subsection C that the presiding judge authorize completion of education requirements after appointment.
- 3. Committee actions and comments:** This code section will be presented for comment at the December 2007 Presiding Judges meeting. No other committee review was determined to be necessary.
- 4. Controversial issues:** None.
- 5. Recommendation:** Recommend approval of the code section.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 1: Judicial Branch Administration
Chapter 3: Judicial Officers and Employees
Section 1-306: Tax Court Judges Pro Tempore and Commissioners

A. Qualifications for Tax Court Judges Pro Tempore. A tax court judge pro tempore shall meet the requirements in A.R.S. § 12-142 and, in addition, shall be:

1. An individual who has previously been appointed as a tax court commissioner by the presiding judge of Maricopa County in accordance with A.R.S. § 12-213; or,
2. An individual with not less than three years experience as an attorney with a practice predominantly in the area of taxation.

B. Qualifications for Tax Court Commissioners. A tax court commissioner shall meet the requirements in A.R.S. §§ 12-211(B) and 12-213(B) and, in addition, shall be:

1. An individual who has previously been appointed a tax court commissioner by the presiding judge of Maricopa County in accordance with A.R.S. § 12-213; or
2. An individual who has previously been appointed a court commissioner and who satisfies the education requirements in subsection C; or
3. An attorney with at least three years experience practicing predominantly in the area of taxation during the five years preceding the appointment; or
4. An attorney with at least three years of practice in Arizona who satisfies the education requirements in subsection C.

C. Education Requirements. As required in subsection B, individuals shall have completed a minimum of 30 hours of study in matters relating to state taxation in courses or conferences approved by the Committee on Judicial Education and Training, the State Bar of Arizona, or the Bar of any state prior to appointment or, if authorized by the presiding judge of the superior court, to the extent possible, within three years following appointment.

**ARIZONA CODE OF JUDICIAL ADMINISTRATION
Proposal Cover Sheet**

**Part 5: Court Operations
Chapter 2: Programs and Standards
Section 5-203: Trial Jury Management**

1. **Effect of the proposal:** Modifies 5-203 to incorporate new provisions made necessary by revisions during the 2007 legislative session to the Title 21 jury statutes. Also tightens existing 5-203 language to clarify that provisions are mandatory and not voluntary.

2. **Significant new or changed provisions:** Requires the jury commissioner to give jurors 10-days notice to appear at court. Establishes the approval process for a plan for alternative summoning submitted by a superior court with multiple court locations in a county.

3. **Committee actions and comments:**
 - Presiding Justices of the Peace (6/13/07)
 - Presiding Municipal Court Judges (6/13/07)
 - Limited Jurisdiction Court Administrators Association (6/13/07)
 - Superior Court Clerks/Jury Commissioners (6/13/07 and 10/5/07)
 - State Bar of Arizona (10/5/07)
 - Committee on Limited Jurisdiction Courts (9/26/07 and 11/14/07)
 - Committee on Superior Court (9/28/07 and 11/30/07)
 - Presiding Superior Court Judges (6/19/07 and 10/23/07)
 - Superior Court Administrators (6/13/07 and 10/5/07)

(See attached table of comments.)

4. **Controversial issues:** None.

5. **Recommendation:** That ACJA Section 5-203 be adopted and become effective January 1, 2008.

**Comments and Responses to
ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 5: Court Operations
Chapter 2: Programs and Standards
Section 5-203: Trial Jury Management**

| PARAGRAPH | COMMENT | SUBMITTED BY | RESPONSE |
|-------------------------|---|---------------------------------|--|
| Suggested new provision | You might want to add a provision that explains what to do when a lawyer asks a judge for a list of jurors prior to the day of trial. | Judge | Not incorporated. Criminal Rule 18.3 and Civil Rule 47(a)(4) already explain that juror information is to be provided to the parties <u>on the day of trial.</u> |
| D. | Statute requires that when a jury trial is requested in a Forcible Entry and Detainer case, the trial must be held within three days. Therefore, a juror cannot be summoned <u>ten</u> days before the juror is required to attend as provided in “D.” Similarly, when a change of plea falls through and a trial must be scheduled quickly to meet Rule 8 time requirements, the court may not be able to provide a juror ten-days notice. | Clerk, Judges, Committee on LJC | Section was modified to say: “The jury commissioner or jury manager shall summon jurors at least ten days before the jurors are required to attend, <u>unless otherwise required by rule or statute.</u> ” |
| F. | Perhaps the code section should give better guidance as to who should be designated as the “jury manager” in a LJC. | Committee on LJC | The phrase: “jury manager, <u>as defined in A.R.S. § 21-101(3) . . .</u> ” was added to section “F” to clarify that the term “jury manager” is now defined in statute, and this definition applies to the code as well. |
| E. | Only “substantial” changes to an alternative summoning plan should be required to go through the extensive circulation process called for in E(2). The jury commissioner should be permitted to be make technical changes to a plan through a streamlined process. | Presiding Judge | E(3) was modified to require that only “substantial” modifications to a plan must go through the circulation process called for in E(2). An additional sentence was added at the end of E(3) to require the jury commissioner to provide a copy of a modified plan to the AOC, regardless of whether the modification is “substantial” or technical. |

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 5: Court Operations
Chapter 2: Programs and Standards
Section 5-203: Trial Jury Management

[Added text is shown underlined, deleted text by ~~strikethrough~~]

~~**A. Use of These Standards.** These standards are intended in part as mandates and in part as guidelines. The language of the standards distinguishes required standards from those described in advisory terms, for which either absolute adherence is not possible in every court, such as the standards relating to jury facilities, or because the subject matter of the standard does not lend itself to mandatory requirements, such as when to grant requests to postpone jury service.~~

A. Master Jury List. The jury commissioner shall produce the master jury list required by A.R.S. § 21-301 at least twice each year.

B. Use of Automation. The use of a jury management automation system as provided in ACJA § 1-501(B) is encouraged.

C. Procedures for Determining Eligibility of Trial and Grand Jurors.

1. Each person shall return the questionnaire fully answered to the jury commissioner or jury manager who issued the questionnaire within ten days after receiving it.

2. The jury commissioner or jury manager shall give seven days notice to any person ordered to appear pursuant to A.R.S. § 21-315(B) to testify under oath or affirmation concerning the person's qualifications or grounds for excuse or to complete a questionnaire.

D. Summoning Procedures. The jury commissioner or jury manager shall summon jurors at least ten days before the jurors are required to attend, unless otherwise required by rule or statute.

E. Alternative Juror Summoning Procedures.

1. Upon approval, a superior court with multiple court locations in a county may use alternative juror summoning procedures. To obtain approval, the jury commissioner shall submit a plan for alternative summoning to the approving authority, which is either the presiding judge of the superior court or the chief justice of the supreme court, containing the following:

a. The reason for proposing the alternative summoning procedures;

b. A detailed explanation of the alternative procedures to be used for summoning jurors to each court location;

- c. An explanation of how the alternative procedures provide for the summoning of jurors from a fair cross section of the communities within the county;
 - d. Any additional justification of the reasonableness of the alternative procedures; and
 - e. An explanation of how the alternative procedures satisfy the requirements of the constitutions of the United States and State of Arizona.
- 2. Before submitting a plan for alternative summoning for approval, the jury commissioner shall circulate the plan to the State Bar of Arizona, the county bar association, the county attorney's office, the county public defender's office, and other interested parties, as appropriate, for comment. If comments are received, the jury commissioner shall consider the comments and make changes to the plan as appropriate. The jury commissioner shall then submit the plan and any comments not incorporated to the approving authority. Approval may be obtained in one of two ways:
 - a. Approval by presiding judge. If the jury commissioner submits the plan to the presiding judge for approval, the presiding judge shall forward a copy of the plan and all comments to the Administrative Office of the Courts (AOC). The AOC shall review the plan, obtain expert advice as appropriate, and provide comments to the presiding judge within 90 days. Following receipt of the AOC comments, the presiding judge shall either approve the plan by administrative order, request modifications or reject the plan. An approval shall be effective for a period not to exceed five years.
 - b. Approval by the chief justice. If the jury commissioner submits the plan to the chief justice for approval, the AOC shall review the plan, obtain expert advice as appropriate, and place it on an agenda of the Arizona Judicial Council. At the Council meeting, parties may appear and offer comments. The Council shall recommend approval, approval with modifications or disapproval. The chief justice shall then either approve the plan by administrative order, request modifications or reject the plan. An approval shall be effective for a period not to exceed five years.
- 3. A plan, or substantial modifications to a plan, shall only be implemented after approval through the procedure outlined in subsection (E) (2) above. Upon advance written notice the presiding judge or chief justice may withdraw approval of a plan due to a significant change in law or circumstances and provide the jury commissioner the opportunity to submit an acceptable modification of the plan. Any plan approved for implementation shall be reviewed by the jury commissioner at least every five years to determine if the plan requires modification. The jury commissioner shall submit any required modifications or recommend that the plan be renewed without modification, in the manner provided in subsection (E) (2) above. Whenever a plan is modified, the jury commissioner shall promptly forward a copy of the new plan to the AOC.
- 4. The jury commissioner shall post the current plan for alternative summoning to the jury

commissioner's website.

F. Jury Manager. The presiding judge of each limited jurisdiction court shall designate a jury manager, as defined in A.R.S. § 21-101(3) and shall send notice of such designation to:

Court Services Division
Administrative Office of the Courts
1501 W. Washington, Suite 410
Phoenix, AZ 85007
Fax: (602) 452-3659
Ph: (602) 452-3453

BG. Selection of Prospective Jurors.

- ~~1. Opportunity for jury service. The opportunity for jury service shall not be denied or limited on the basis of race, sex, national origin, color, ethnicity, ancestry, gender, age, religious belief, income, occupation, disability, or sexual orientation.~~
- ~~2. Master jury list.
 - ~~a. The master jury list shall be as representative and as inclusive of the eligible adult population in the jurisdiction as possible. The court should review and update the master jury list periodically. A master jury list is representative of the population to the extent the percentages of cognizable group membership in the list equal the corresponding percentages in the population. A master jury list is inclusive of the population to the extent it includes all eligible members of the entire population in the jurisdiction.~~
 - ~~b. The names of potential jurors shall be drawn from a master jury list in accordance with statute (A.R.S. §§21-311, 312 and 313).~~~~
- ~~3. Random selection procedures.
 - ~~a. Random selection procedures shall be used throughout the juror selection process. Any automated or manual method that provides each eligible and available person with an equal probability of selection may be used, except when a court orders an adjustment for underrepresented populations.~~
 - ~~b. Random selection procedures shall be employed in:
 - ~~(1) Selecting persons to be summoned for jury service;~~
 - ~~(2) Assigning prospective jurors to panels; and~~
 - ~~(3) Calling prospective jurors for voir dire.~~~~
 - ~~c. Departures from the principle of random selection are appropriate:~~~~

- ~~(1) To exclude persons ineligible for service in accordance with subsection (B)(4);~~
- ~~(2) To excuse or postpone prospective jurors in accordance with subsection (B)(7);~~
- ~~(3) To remove prospective jurors for cause or if challenged peremptorily in accordance with subsections (C)(2) and (3).~~

~~4. Eligibility for jury service. A.R.S. §21-201 establishes an individual's eligibility for jury service as follows:~~

~~Every juror, grand and trial, shall be at least eighteen years of age and meet the following qualifications:~~

- ~~1. Be a citizen of the United States.~~
- ~~2. Be a resident of the jurisdiction in which he is summoned to serve.~~
- ~~3. Never have been convicted of a felony, unless the juror's civil rights have been restored.~~
- ~~4. Is not currently adjudicated mentally incompetent or insane.~~

~~5. Term of trial jury service.~~

~~a. Effective January 1, 2005, A.R.S. §21-336.01 establishes a term of service for trial jurors as follows:~~

~~A. A person's jury service obligation is fulfilled when the person does any of the following:~~

- ~~1. Serves on one trial until being excused or discharged.~~
- ~~2. Appears at court but is not assigned to a trial division for selection of a jury before the end of that day.~~
- ~~3. Is assigned on one day to one or more trial divisions for jury selection and serves through the completion of jury selection or is excused.~~
- ~~4. Complies with a request to telephone a court or check a court's website to determine whether to report on a particular day, for four days within a thirty day period.~~
- ~~5. Provides the court with a valid telephone number and stands to serve on the same day, for a period of two days.~~

~~b. If necessary, the presiding judge in coordination with the jury commissioner shall, pursuant to A.R.S. §21-336.01(B), apply to the supreme court for exemption from the one day one trial system for a specified period of time not to exceed one year. To~~

qualify for exemption, the court must demonstrate that:

- (1) The cost of implementing the system is so high that the trial court would be unable to provide essential services to the public if required to implement such a system; or
- (2) The requirements of the statute cannot be met because of the size of the population in the jurisdiction compared to the number of jury trials.

~~6. Term of grand jury service.~~

~~a. County grand jurors. The term of service for county grand jurors shall be determined pursuant to A.R.S. §21-403, which provides:~~

~~... a term designated by the presiding judge of the superior court which shall not exceed one hundred twenty days, unless at the end of such period the grand jury is serving in connection with unfinished inquiries or investigations, in which event the term may be extended by the presiding judge, upon petition by the county attorney stating the reasons therefor, until the conclusion of the investigation.~~

~~b. State grand jurors. The term of service for state grand jurors shall be determined pursuant to A.R.S. §21-421(e), which provides:~~

~~The regular term of the state grand jury shall be six months. The term may be shortened by the assignment judge at the request of the attorney general. The term may be extended by the assignment judge for a specified time period upon a verified, written petition by the attorney general stating that an extension is needed to conclude a grand jury inquiry begun prior to the expiration of its term.~~

~~c. Frequency of service. In no event shall either a county or state grand juror be asked to serve more than two days per week.~~

7H. Exemption, eExcuse, and postponement. ~~No automatic excuses or exemptions from jury service shall be permitted unless specified by statute. The following procedures shall apply to exempting, excusing and postponing jury service:~~ Prospective jurors seeking to postpone their jury service shall be permitted to submit a request by phone, mail, in person, or electronically if the court offers this option. Court officials shall promptly respond to requests to postpone service or to be excused from service. Any time a juror is granted a postponement or is excused from service, the court shall make an appropriate record of its decision.

~~a. The following are grounds for exemption or excuse from jury service:~~

- ~~(1) Qualified peace officers who make a timely application pursuant to A.R.S. §21-202.~~
- ~~(2) The individual suffers from a mental or physical condition causing that person to be~~

incapable of performing jury service. A supporting statement from a physician who is licensed pursuant to Title 32 must be provided.

- ~~(3) Jury service by this individual would substantially and materially affect the public interest or welfare in an adverse manner.~~
- ~~(4) Jury service would cause undue or extreme physical or financial hardship to the prospective juror or a person under the prospective juror's care or supervision. This excuse must be supported by documentation such as income tax returns, payroll records, medical statements, proof of dependency or guardianship and is limited to the following circumstances:
 - ~~(a) Jury service would require abandoning a person under the potential juror's care or supervision due to the impossibility of obtaining an appropriate substitute caregiver.~~
 - ~~(b) The potential juror would incur costs that would have a substantial adverse impact on the payment of the person's necessary daily living expenses or on those for whom the potential juror provides regular employment or the principal means of support.~~
 - ~~(c) The potential juror would suffer physical hardship that would result in illness or disease.~~
 - ~~(d) The potential juror is not currently capable of understanding the English language.~~~~
- ~~(5) An individual who was selected to serve on a jury in Arizona is not required to serve again in any court in this state for two years following the juror's service. A.R.S. §21-335.~~

~~b. Undue or extreme physical or financial hardship does not exist solely based on the fact that a prospective juror will be required to be absent from the prospective juror's place of employment.~~

~~c. The following are grounds for postponement from jury service:~~

- ~~(1) Postponement shall be granted to an individual who works for an employer with five or fewer full-time employees, or their equivalent, if during the same period another employee of that employer is serving as a juror. A.R.S. §21-236(D).~~
- ~~(2) A jury commissioner shall postpone service not more than two times for those requesting postponement. A subsequent request for postponement may be granted based on a finding that an extreme emergency exists that could not have been anticipated at the time of the previous postponements. A.R.S. §21-336.~~

~~d. The presiding judge shall adopt specific uniform guidelines for determining requests to postpone service and to be excused from service. Prospective jurors seeking to postpone their jury service shall be permitted to submit a request by phone, mail, in person, or electronically if the court offers this option. Prospective jurors seeking to be excused from jury service shall submit a written request that complies with the court's specific~~

~~guidelines. Court officials shall promptly respond to requests to postpone service or to be excused from service. Any time a juror is granted a postponement or is excused from service, the court shall make an appropriate record of its decision.~~

¶I. Selection of a Particular Jury. [No change in text]

¶J. Efficient Jury Management.

1. Administration of the jury system. The judicial department shall be solely responsible for administering the jury system in compliance with statute and this section.
2. Notification and summoning. The following procedures shall apply to notifying and summoning jurors:
 - a. The notice summoning a person to jury service and the questionnaire eliciting essential information regarding that person shall be phrased so as to be readily understood by an individual unfamiliar with the legal and jury systems.
 - b. A summons shall clearly explain how and when the recipient must respond and the consequences of a failure to respond. The summons shall also contain clear directions on where to report for service.
 - c. A summons shall clearly state the process for a prospective juror to seek excuse or postponement of their jury service.
 - d. The questionnaire shall be phrased and organized to facilitate quick and accurate screening, and should request only information essential for:
 - (1) Determining whether a person meets the criteria for eligibility;
 - (2) Providing basic background information ordinarily sought during voir dire examination; and
 - (3) Efficiently managing the jury system.
 - e. Written policies and procedures shall be established for monitoring failures to respond to summons and for taking appropriate action when failures occur.
3. Monitoring the jury system. Courts shall periodically monitor the performance of their jury system and should collect and analyze information regarding the performance of the jury system on a regular basis in order to ensure:
 - a. The representativeness of the master jury list;

- b. The inclusiveness of the master jury list;
 - c. The effectiveness of qualification and summoning procedures;
 - d. The responsiveness of individual citizens to jury service summonses;
 - e. The efficient utilization of jurors;
 - f. The cost effectiveness of the jury system; and
 - g. The court's ability to meet jurors' needs.
4. Juror utilization. To the extent feasible within operational and budgetary limitations, Courts shall implement the following ~~practices~~ relating to the number of jurors summoned to the courthouse:
- a. ~~Courts should employ practices~~ Adopt procedures that achieve optimum juror utilization with a minimum of inconvenience to jurors.
 - b. ~~Courts should~~ determine the minimally sufficient number of jurors needed to accommodate trial activity. This information and appropriate management techniques should be used to adjust both the number of individuals summoned for jury service and the number assigned to jury panels.
 - c. ~~Courts should~~ eCoordinate jury management and calendar management for effective juror utilization.
5. Jury facilities. To the extent possible within budgetary limitations, Courts shall provide adequate and suitable environment for jurors where possible facilities for jurors, arranged to minimize contact between jurors, parties, counsel, and the public. This These facilities should include:
- a. Safe, convenient and free parking;
 - b. Entrance and registration areas that are clearly identified and appropriately designed to accommodate the daily flow of prospective jurors to the courthouse;
 - c. A pleasant and safe waiting facility furnished with suitable amenities; and
 - d. Safe and secure jury deliberation rooms with adequate space, furnishings and facilities, ~~conducive to reaching a fair verdict; and~~
 - e. ~~Juror facilities arranged to minimize contact between jurors, parties, counsel, and the public.~~

6. Juror compensation. Persons called for jury service shall be promptly compensated for fees and mileage pursuant to statute and local court policy. ~~Every effort shall be made to compensate jurors within two weeks of termination of service.~~

EK. Juror Performance and Deliberations Orientation.

1. ~~Juror orientation and instruction. The following practices should be observed in orienting and instructing jurors:~~
 - a. Courts ~~should~~ shall provide some form of orientation ~~or instructions~~ to persons called for jury service ~~at all the following points:~~
 - (1) ~~Upon~~ initial contact prior to service.
 - (2) ~~Upon~~ first appearance at the courthouse, and
 - (3) ~~Upon~~ reporting to a courtroom for voir dire.
 - (4) ~~Directly following~~ empanelment.
 - (5) ~~During the trial.~~
 - (6) ~~Prior to deliberations.~~
 - (7) ~~After the verdict has been rendered or when a proceeding terminates without a verdict.~~
 - b. Orientation programs should be designed to increase prospective jurors' understanding of the judicial system, ~~and~~ prepare them to serve competently as jurors, ~~and should~~ be presented in a uniform and efficient manner using a combination of written, oral, electronic and audiovisual materials. Any orientation materials provided to jurors shall be consistent with this section and all applicable rules and statutes. Any handbook used to orient jurors shall be approved by the supreme court.

L. Juror Performance and Deliberations.

- e1. Juror Instruction. Courts shall strive to instruct the jury in plain and understandable language regarding the applicable law and the conduct of deliberation. In instructing a jury, the judge should:
 - (1)a. Give preliminary instructions directly following empanelment of the jury that explain the jury's role, the trial procedures including note-taking and questioning by jurors, the nature of evidence and its evaluation, the issues to be addressed, and the basic relevant legal principles in the case at issue;
 - (2)b. Prior to the commencement of deliberations, instruct the jury on the law, on the appropriate procedures to be followed during deliberations, and on the appropriate method for reporting the results of its deliberations. Such instructions should be recorded or reduced to writing and made available to the jurors during

deliberations; and

- ~~(3)~~c. Prepare and deliver instructions which are readily understood by individuals unfamiliar with the legal system.

~~d.~~2. Courts shall give jurors legally permissible post-verdict advice and information. Before dismissing a jury at the conclusion of the case, the judge should:

- ~~(1)~~a. Release the jurors from their duty of confidentiality;
- ~~(2)~~b. Explain their rights regarding inquiries from counsel, the media or any person;
- ~~(3)~~c. Either advise them that they are discharged from service or specify where they must report; and
- ~~(4)~~d. Express appreciation to the jurors for their service.

e.3. All communications between the judge and members of the jury panel from the time of reporting to the courtroom for voir dire until dismissal shall be in writing or on the record in open court. Counsel for each party shall be informed of such communication and given the opportunity to be heard.

~~2.~~ 4. Jury size and unanimity of verdict. In determining jury size and number of jurors required to return a verdict in criminal and civil cases, courts shall comply with Arizona law.

~~3.~~ 5. Jury anonymity. When polling a jury at verdict, the judge and clerk shall not identify the individual jurors by name, but shall use such other methods or form of identification as may be appropriate to ensure an accurate record of the poll and to accommodate the jurors' privacy.

4. 6. Jury deliberations. Courts shall ~~The following conditions and procedures should be observed to~~ ensure impartiality and enhance rational decision-making during jury deliberations. The following conditions and procedures should be observed:

- a. The judge should instruct the jury concerning appropriate procedures to be followed during deliberations in accordance with subsection ~~(E)(1)(e)(L)(1)(b)~~.
- b. The deliberation room should conform to the recommendations set forth in subsection ~~(D)(5)(d)(J)(5)(d)~~.
- c. The jury should not be sequestered except under the circumstances and procedures set forth in subsection ~~(E)(5)(L)(7)~~.
- d. A jury should not be required to deliberate after normal working hours unless the judge after consultation with counsel and the jury determines that evening or weekend deliberations would not impose an undue hardship upon the jurors and are required in the interests of justice.

- e. Personnel who escort and assist jurors during deliberation should receive appropriate training.

5.7. Sequestration of jurors. The following practices should be observed in sequestering a jury:

- a. A jury should be sequestered only for the purpose of insulating its members from improper information or influences.
- b. The judge has the discretion to sequester a jury on the motion of counsel or on the judge's initiative. The judge also has the responsibility to oversee the conditions of sequestration.
- c. ~~Training should be provided to personnel who escort and assist jurors during sequestration. Use of personnel actively engaged in law enforcement for escorting and assisting jurors during sequestration is discouraged.~~

M. Jury Assistance. To ensure impartiality during jury deliberations courts shall ensure that appropriately trained personnel escort and assist jurors during sequestration and deliberation. Use of personnel actively engaged in law enforcement for escorting and assisting jurors during sequestration is discouraged.

N. Frequency of Grand Juror Service. A county or state grand juror shall not be asked to serve more than two days per week, unless approved by the presiding judge.

**ARIZONA CODE OF JUDICIAL ADMINISTRATION
Proposal Cover Sheet**

**Part 5: Court Operations
Chapter 2: Programs and Standards
Section 5-204: Administration of Victims' Rights**

1. Effect of the proposal:

This is an amendment to ACJA § 5-204, which has been updated in accordance with recent legislative and case law changes.

2. Significant new or changed provisions:

Many of the revisions to this code were a result of legislative mandates from the Victim Omnibus Bill, SB 1286, that made changes to various sections in ARS Chapter 40, Victims' Rights. In addition, case law decisions from 2007 required updating the code section. An overview of the changes is listed below:

- Victim's Omnibus bill (SB1286, Chapter 290)
 - Requires clerk of court to provide minute entry at no charge for offense committed against the victim if necessary for representation regarding a claimed victims right (Section F)— Effective December 1, 2007
 - Requires appellate courts to provide notice of decisions or memorandums to victims concurrently with other parties Effective December 1, 2007
- State v. Klein (appellate court decision)
 - Change the definition of victim to include victims of misdemeanor crimes (definitions, old description dropped down)
 - Changed definitions to remove references to criminal offenses
 - Included misdemeanors in definition of crime
 - Changed definition of victim in keeping with the case law
- Removed paragraph relating to the collection of restitution. Replaced with reference to ACJA §§ 3-401 and 4-301.

3. Committee actions and comments:

The original draft of the code section revisions were reviewed and approved by the following committees with no major changes:

Commission on the Impact of Domestic Violence in the Courts 9/5/07

Committee on Probation 9/7/07

Commission on Victims in the Courts 9/14/07

The original draft of the code section revisions were reviewed and approved by the following committees with summarized comments included:

Committee on Limited Jurisdiction Courts

- The committee requested the following changes:
 - Section C: Add language specific for superior courts, as statute excluded limited jurisdiction courts. This recommendation was adopted and included.
 - Section D: Change language to reading statement of rights versus victim bill of rights. This recommendation was adopted and included.
 - Section D: Change language from in any court, to “in superior court”, because § 13-4438 does not include limited jurisdiction courts. Recommendation was included.

Committee on Superior Courts 9/28/07

- The committee requested the code reflect consistency in all proceedings, including continuances. The recommendation was adopted and included.

Committee on Juvenile Courts 11/9/07

- The committee requested a change in section G to include the term disposition reports that are used in juvenile cases. The recommendation was adopted and included.

4. **Controversial issues:**

The Commission on Victims in the Courts (COVIC) firmly believes that due to the recent appellate decision in *State v. Klein*, (expanding definition of victims to include all misdemeanors) and for the overall value, limited jurisdiction courts should provide victims of crime all of their constitutional and statutorily mandated rights, which includes reading the victims statement of rights in court at the beginning of the criminal or delinquent docket. The Committee on Limited Jurisdiction Courts (LJC) disagreed on this point due to practical and logistical implementation barriers for their courts; however, LJC was willing to work with COVIC to craft language that will be mutually agreeable to both committees and submit a revised draft to AJC in late 2008.

5. **Recommendation:**

Approve the revised AJCA § 5-204, Administration of Victims Rights as submitted.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 5: Court Operations
Chapter 2: Programs and Standards
Section 5-204: Administration of Victims' Rights

A. Definitions. In this section the following definitions apply:

“Court” means the superior court or any court of limited jurisdiction.

~~“Criminal history record information” means those records of arrests, convictions, sentences, dismissals and other dispositions of charges against individuals that have been provided to the court by the National Crime Information Center, Arizona Crime Information Center, or any other criminal justice agency for use in juvenile and adult criminal justice cases, employment, licensing or other authorized investigations.~~

~~“Crime means a misdemeanor or a felony pursuant to A.R.S. § 13-105(6).~~

~~“Criminal offense” means “conduct that gives a peace officer or prosecutor probable cause to believe that a felony or that a misdemeanor involving physical injury, the threat of physical injury or a sexual offense has occurred,” as provided in A.R.S. §13-4401.~~

~~“Victim”, except as otherwise specified, means a person against whom the criminal offense crime or delinquent act has been committed, or if the person is killed or incapacitated, the person's immediate family spouse, parent, child, grandparent or sibling, any other person related to the person by consanguinity or affinity to the second degree or other lawful representative, except if the person person’s spouse, parent, child, grandparent, sibling, other person related to the person by consanguinity or affinity to the second degree or other lawful representative is in custody for an offense or is the accused as provided in Article II, § 2.1 of the Arizona Constitution Az. Const. Art. 2, § 2.1, A.R.S. §§ 8-382 and 13-4401.~~

B. Purpose and Applicability. ~~To define~~ This section defines the role and responsibility of courts in preserving and protecting victims’ rights to justice and due process as provided by Az. Const. Art. 2, § 2.1, Art. 6 § 3 and A.R.S. §§ 13-603, -804, -4401 et seq. and 8-381 et. seq.

C. Applicability. ~~Pursuant to Article II, §2.1, Article VI, §3 of the Arizona Constitution and A.R.S. §§ 13-603, -804, and -4401 et seq., the following requirements shall govern the administration of victims’ rights.~~ **D. Notice of Criminal Proceedings.**

1. The court shall provide at least five business days notice before the scheduled proceeding to the prosecutor, ~~as required by A.R.S. §13-4409,~~ by written document, telephonic transmission followed up with a written confirmation, facsimile transmission, or any other electronically transmitted message or document which includes the transmittal date, case number, defendant's name, type of hearing, and the date, time and place of next hearing. The court may provide additional information. If notice is initially given by

telephonic transmission, the court shall record the name of the person contacted on a confirming written notice.

2. In the superior court, continuances shall only be granted when extraordinary circumstances exist weighing these circumstances against the victim's right to a speedy trial. The court shall state on the record the reason for any continuance.
3. In the supreme court and court of appeals cases, victims who have requested post-conviction notifications shall be sent a copy of the memorandum decision or opinion from the issuing court concurrently with the parties. If the victim is represented by counsel, the notice shall be provided to the victim's counsel.

E. D. Reading of Victim Rights. At the daily commencement of the regular criminal or delinquent docket in superior court, ~~at which accused persons are arraigned, appear for a status conference, or a change of plea or are sentenced,~~ superior court judges shall read the victims bill-statement of victim rights out loud in court, as required by A.R.S. §13-4438.

F. E. Victim Statements. Any victim requests and victim statements received by court offices shall be forwarded to the appropriate court or prosecuting agency.

F. Transcripts for Crime Victims. On the request of the victim, the court or clerk shall provide at no charge, the minute entry or portion of the record of any proceeding in the case that is reasonably necessary for the purpose of pursuing a claimed victim's right.

G. Inspection of Pre-sentence/Disposition Report. Each court in conjunction with the prosecutor shall develop a written plan and procedures to allow the victim to inspect the presentence/disposition report, as provided in A.R.S. §13-4425. When requested by the victim, the presentence/disposition report should be made available to the victim within the same timeframe it is available to the sentencing judge as prescribed in Rule 26.4, Rules of Criminal Procedure and Rule 30.A.1., Rules of Procedure for the Juvenile Court.

H. Criminal History Record Information. Pursuant to Rule 123, Rules of the ~~of~~ Supreme Court, all criminal history record information ~~obtained during the presentence investigation shall be handled in court files shall be included~~ as an addendum to the presentence report and shall not be made available for review by the victim. ~~The clerk's office will~~ clerk shall maintain a filing system that will ensure that confidential criminal history information does not become part of the public record and that criminal history and other confidential information is made available only to authorized criminal justice agencies.

I. Minimizing Victim Contacts.

1. The court shall work closely with law enforcement officials, prosecutors, and defense attorneys to assist with separation of defendant and defendant's family from the victim and victim's family or representative, ~~as provided in A.R.S. §13-4431.~~

2. When new court facilities are constructed or renovated, provisions shall be made for separation of the victim and victim's family or representative from the defendant and the defendant's family or representative.

J. Victim Right to Privacy. The court shall ~~adopt~~ develop a written plan and procedures to ensure that victim information is not improperly disclosed, ~~as provided in A.R.S. §13-4434.~~

K. Restitution Payment Processing.

1. ~~Any amounts received shall first be applied to satisfy court ordered restitution until the obligation is paid in full. If the provisions of any restitution order specify a periodic payment plan, then payments shall be applied according to the order until the specified obligations are paid in full. Any remaining balance paid for each case may then be applied to satisfy penalty assessments, fees and fines in that case, as provided by administrative order or this code.~~

Collection of restitution should be done pursuant to ACJA §§ 3-401 and 4-301.

2. The clerk of court or other court entity responsible for receipting and disbursing restitution shall ~~send~~ forward all restitution payments made by cash, cashiers' check, credit card or money order to victims within ten days, unless the amount of any single disbursement is less than ten dollars. The court, clerk of court, or other court agency responsible for receipting and disbursing restitution shall disburse all personal check payments within 21 calendar days of receipt. Where a single disbursement is less than ten dollars the court may develop a clearly defined business system routine to hold funds received for individual victims until the aggregate total in an account reaches a minimum of ten dollars.
3. Notwithstanding subsection (2) above, ~~any court policies designed to hold amounts that are less than ten dollars,~~ courts receiving restitution payments shall, ~~not less than once each calendar year,~~ remit all amounts collected over one dollar to victims not less than once each calendar year. In cases where victims cannot be located then courts, clerks of court or other agencies responsible for restitution payments shall follow state unclaimed property provisions.
4. Restitution that has been ordered and collected on cases which have been appealed shall continue to be disbursed to victims throughout the appeal period.

~~4-5.~~ For purposes of this subsection (K), "victim" also ~~means~~ includes any person, including the surviving dependent of a person, who has suffered physical injury or pecuniary loss resulting from the crime or delinquent act of the accused or a corporation, partnership, association or other legal entity, ~~as provided in A.R.S. §§8-382, 13-4201 and 13-4404.~~

L. Nonpayment of Restitution. Upon notice from the clerk, regarding a defendant's default in payment of restitution, the court, on motion of the prosecutor, on petition of any person entitled to restitution pursuant to a court order or on its own motion, shall require the defendant to show cause why the defendant's default should not be treated as contempt and may issue a summons or warrant for arrest of the defendant's appearance.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Proposal Cover Sheet

Part 6: Probation
Chapter 1: General Administration
Section 6-103: Victims' Rights Requirements for Probation Personnel

1. Effect of the proposal:

To reflect changes in statute due to Senate Bill 1286, as well as case law (State v. Hansen and State v. Klein)

2. Significant new or changed provisions:

Removes the definition of criminal offense, which only included victims of misdemeanor offenses if physical injury was involved. Adds the definition of crime. Updates the definition of "Victim" to be consistent with Arizona Code of Judicial Administration Section 5-204.

3. Committee actions and comments:

To be presented at the November 2007 Committees

| | |
|--|-------------------|
| Committee on Probation | November 8, 2007 |
| Committee on Juvenile Courts | November 9, 2007 |
| Committee on Limited Jurisdiction Courts | November 14, 2007 |
| Committee on Superior Court | November 30, 2007 |

4. Controversial issues:

None

5. Recommendation:

Approve and recommend for adoption as written

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 6: Probation
Chapter 1: General Administration
Section 6-103: Victims' Rights Requirements for Probation Personnel

A. Definitions. In this section unless otherwise specified, the following definitions apply:

“Court” means the superior court or any court of limited jurisdiction.

“Crime” means a misdemeanor or a felony pursuant to A.R.S. § 13-105(6).

~~“Criminal Offense” means “conduct that gives a peace officer or prosecutor probable cause to believe that a felony or that a misdemeanor involving physical injury, the threat of physical injury or a sexual offense has occurred,” as provided in A.R.S. § 13-4401.~~

“Delinquent” means “a child who is adjudicated to have committed a delinquent act” as provided by A.R.S. § 8-382.

“Victim” means a person against whom the ~~criminal offense~~ crime or delinquent act has been committed, or if the person is killed or incapacitated, the person’s spouse, parent, child, grandparent or sibling, any other person related to the person by consanguinity or affinity to the second degree or other lawful representative, except if the person or person’s spouse, parent, child, grandparent, sibling, other person related to the person by consanguinity or affinity to the second degree or other lawful representative is in custody for an offense or is the accused, as provided by Article II, § 2.1 of the Arizona Constitution Az. Const. Art. 2, § 2.1, A.R.S. § 13-4401 and A.R.S. § 8-382.

B. Applicability. Pursuant to ~~Article II, §2.1, Article VI, §3 of the Arizona Constitution~~ Az. Const. Art. 2, § 2.1 and Art. 6, § 3 and A.R.S. §§13-603, 13-804, 13-4401 et seq., and A.R.S. §§8-381 through 8-420, the following requirements shall govern the administration of victims’ rights by adult and juvenile probation departments.

C. Purpose. To define the role and responsibility of probation personnel in preserving and protecting victims’ rights to justice and due process.

D. General Duties of Probation. Adult and juvenile probation departments shall:

1. Maintain the confidentiality and security of all victim information, including but not limited to, addresses, telephone numbers, place of employment, social security number or other locating information; and
2. Provide training concerning victim sensitivity, victim trauma and victims’ rights in orientation for all probation department personnel.

E. Duties of Adult Probation. Adult probation departments shall:

1. Pursuant to A.R.S. § 13-4415, ~~Develop~~ a process to furnish victims who request notice with timely notification of the following: ~~as provided in A.R.S. § 13-4415:~~

A. On request of a victim who has provided an address or other contact information, the court shall notify the victim of any of the following:

A1. A probation revocation disposition proceeding or any proceeding in which the court is asked to terminate the probation or intensive probation of a person who is convicted of committing a criminal offense against the victim.

2. Any hearing on a proposed modification of the terms of probation or intensive probation.

3. The arrest of a person who is on supervised probation and who is arrested pursuant to a warrant issued for a probation violation.

B. On request of a victim who has provided a current address or other current contact information, the probation department shall notify the victim of the following:

1. Any proposed modification to any term of probation if the modification affects restitution or incarceration status or the defendant's contact with or the safety of the victim.

2. The victim's right to be heard at a hearing that is set to consider any modification to be made to any term of probation.

3. Any violation of any term of probation that results in the filing with the court of a petition to revoke probation.

4. That a petition to revoke probation alleging that the defendant absconded from probation has been filed with the court.

5. Any conduct by the defendant that raises a substantial concern for the victim's safety.

~~b. Proceeding in which the court is asked to terminate probation or intensive probation;~~

~~c. Modification of the terms of probation or intensive probation which will substantially affect the probationer's contact with or safety of the victim;~~

~~d. Modification of restitution;~~

~~e. Modification of the probationer's incarceration status; and~~

~~f. Arrest of the probationers pursuant to a warrant issued for a probation violation;~~

2. Develop a standardized presentence report format, in conjunction with the superior court, which addresses the emotional, economic and physical losses of victims;
3. Monitor the payment of restitution by working with the clerk of the court to establish a process by which supervising probation officers are provided with accurate and timely information concerning the collection of court-ordered restitution;
4. Require probation staff to:
 - a. Utilize all available means to contact victims telephonically, electronically, personally, or in writing to ascertain, pursuant to A.R.S. § 13-4424(B), “... the economic, physical and psychological impact that the criminal offense has had on the victim and the victim’s immediate family pursuant to ~~A.R.S. section~~ § 12-253;”;
 - b. Take into consideration the impact of the criminal offense on the victim, the victim’s thoughts concerning sentencing alternatives, and the circumstances surrounding victim and community protection when making a sentencing recommendation to the court;
 - c. ~~Notify the victim of the date, time and place of the following proceedings and the victim’s right to be present and be heard p~~Pursuant to A.R.S. § 13-4426 and 13-4427:
 - ~~(1) Aggravation, mitigation, presentencing or sentencing proceeding;~~
 - A. The victim may present evidence, information and opinions that concern the criminal offense, the defendant, the sentence or the need for restitution at any aggravation, mitigation, presentencing or sentencing proceeding;
 - ~~(2) Probation revocation~~
 - B. At any disposition proceeding; the victim has the right to be present and to address the court.
 - ~~(3) Proceeding in which the court is asked to terminate probation or intensive probation;~~
 - ~~(4) Modification of terms of probation or intensive probation will substantially affect the probationer’s contact with or the safety of the victim;~~
 - ~~(5) Modification of restitution; and~~
 - ~~(6) Modification of the probationer’s incarceration status.~~
 - d. Pursuant to A.R.S. § 13-4427:
 - A. The victim has the right to be present and be heard at any probation revocation disposition proceeding or any proceeding in which the court is requested to terminate the probation or intensive probation of a person who is convicted of committing a criminal offense against the victim.
 - B. The victim has the right to be heard at any proceeding in which the court is requested to modify the terms of probation or intensive probation of a person if the modification will substantially affect

the person's contact with or safety of the victim or if the modification involves restitution or incarceration status.

- eđ. Document all victim notifications and attempts to notify the victim;
- fe. Respond to all queries by victims, providing accurate information in accordance with supreme court rules governing public access to judicial records;
- gf. Within the scope of their duties, minimize contact between victims and victims' family and the probationer and probationer's family;
- hg. Emphasize and address the probationer's responsibility to satisfy any court-ordered restitution at each scheduled visit and immediately address any arrearage in court ordered restitution with the probationer;
- ih. Notify the court having jurisdiction upon finding that the probationer has become in arrears in an amount totaling two full court ordered monthly payments of restitution. This notification shall consist of a petition to modify, petition to revoke, or memorandum to the court outlining the reasons for the delinquencies and expected duration thereof. A copy of the memorandum shall be provided to the victim, if the victim has requested notice of restitution modifications; and
- ji. Request court extension of probation pursuant to A.R.S. §13-902(C):
 - When the court has required, as a condition of probation, that the defendant make restitution for any economic loss related to the defendant's offense and that condition has not been satisfied, the court at any time before the termination or expiration of probation may extend the period within the following limits:
 - 1. For a felony, not more than five years.
 - 2. For a misdemeanor, not more than two years." ~~if restitution is not satisfied at the time of expiration of probation. The supervising probation officer shall file a criminal restitution order if restitution has not been satisfied at the time of expiration of the probation extension.~~

F. Duties of Juvenile Probation. Juvenile probation departments shall require probation staff to:

- 1. Utilize all available means to contact victims and, where appropriate, the victim's family telephonically, electronically, personally or in writing to ascertain the emotional, economic and physical impact the delinquent offense has had on the victim;
- 2. Advise the victim that, pursuant to A.R.S. § 8-400, ~~he or she~~ the victim "...has the right to be present throughout all court hearings in which the accused or delinquent has the right to be present";

3. ~~When making a recommendation to the court, p~~Pursuant to A.R.S. § 8-404(B); “In preparing the predisposition or transfer report, the probation officer, shall ---consider the economic, physical and psychological impact that the delinquent has had on the victim and the victim’s immediate family”;
4. Respond to all queries by victims, providing accurate information in accordance with supreme court rules governing public access to judicial records;
5. Within the scope of their duties, minimize contact between victims and victims’ family and the probationer and probationer’s family; and
6. Emphasize and address the probationer’s responsibility to satisfy any court ordered restitution at each scheduled visit and immediately address any arrearage in court-ordered restitution with the probationer.

G. Duties of Juvenile Court. Each juvenile court shall:

1. Give victims notice if an accused is accepted into a diversion program, pursuant to A.R.S. § 8-388:

If an accused is accepted into a diversion program pursuant to §8-321, the court administering the program shall give the victim notice of the conditions that the accused must comply with in order for the complaint or citation to be adjusted or dismissed. The notice shall state whether restitution was required and that, on request of the victim, the victim has the right to be notified of the accused’s completion of or termination from the program.

2. Provide the victim with information from the predisposition report pursuant to A.R.S. § 8-404(C):

On the request, the court shall provide the victim with the following information from the predisposition report:

- 1.The referral history.
- 2.The probation officer’s assessment of the case.
- 3.The disposition and treatment recommendations.
- 4.The probation officer’s recommendations for treatment and disposition.
- 5.The detention history.

3. Notify the victim in the circumstances as required by A.R.S. § 8-396(A-C):

~~A. On request of the victim, the court shall notify the victim of any probation revocation disposition proceeding or any proceeding in which the court is asked to terminate the probation or intensive~~

~~probation of the delinquent who committed the delinquent act against the victim.~~

~~B. If the victim has requested postadjudication notice and probation is revoked, the court shall provide a copy of the victim's request for postadjudication notice to the department of juvenile corrections.~~

~~C. On request of the victim, the court shall notify the victim of any of the following:~~

~~1. A modification of the terms of probation or intensive probation of a delinquent only if the modification will substantially affect the delinquent's contact with or the safety of the victim or if the modification affects restitution or incarceration status.~~

~~2. The arrest of a delinquent pursuant to a warrant issued for a probation violation.~~

A. On request of a victim who has provided an address or other contact information, the court shall notify the victim of any of the following:

1. A probation revocation disposition proceeding or any proceeding in which the court is asked to terminate the probation or intensive probation of the delinquent who committed the delinquent act against the victim.

2. Any hearing on a proposed modification of the terms of probation or intensive probation.

3. The arrest of a delinquent pursuant to a warrant issued for a probation violation.

B. On request of a victim who has provided a current address or other current contact information, the probation department shall notify the victim of the following:

1. Any proposed modification to any term of probation if the modification affects restitution or incarceration status or the delinquent's contact with or the safety of the victim.

2. The victim's right to be heard at a hearing that is set to consider any modification to be made to any term of probation.

3. Any violation of any term of probation that results in the filing with the court of a petition to revoke probation.

4. That a petition to revoke probation alleging that the juvenile absconded from probation has been filed with the court.

5. Any conduct by the juvenile that raises a substantial concern for the victim's safety.

C. If a victim has requested post adjudication notice and probation is revoked and the juvenile is committed to the department of juvenile corrections, the court shall notify the department of juvenile corrections of the victim's request.

**ARIZONA CODE OF JUDICIAL ADMINISTRATION
Proposal Cover Sheet**

**Part 6: Probation
Chapter 1: General Administration
Section 6-114: Committee on Probation**

1. Effect of the proposal:

To codify Administrative Order 90-52, which established the Committee on Probation

2. Significant new or changed provisions:

Specified inclusion of the Juvenile Bench

3. Committee actions and comments:

To be presented at the November 2007 Committees

| | |
|--|-------------------|
| Committee on Probation | November 8, 2007 |
| Committee on Juvenile Courts | November 9, 2007 |
| Committee on Limited Jurisdiction Courts | November 14, 2007 |
| Committee on Superior Court | November 30, 2007 |

4. Controversial issues:

Membership – the specified inclusion of members from agencies or organizations

Suggested for membership but not incorporated were members from the Arizona Superior Court Administrator's Association and probation or surveillance officers

5. Recommendation:

Approve and recommend for adoption as written

Comments and Responses to ACJA Section 6-114: Committee on Probation

| PARAGRAPH | COMMENT | RESPONSE |
|---|---|---|
| Section C: Membership | Add one member from the Arizona Superior Court Administrator’s Association | Not incorporated as Court Administrators are represented through the Committee on Superior Court. |
| Section C: Membership | The Committee on Probation continues to serve a valuable function for the judicial branch and I am grateful for the effort to bring current this section of the Administrative Code. Because this Committee continues to strive to promote consistency across the state in probation services and because the Committee makes this effort for both the Juvenile and Criminal Courts, I have long believed that it is important that judges who are on the juvenile court serve on this committee. While all directors of juvenile court are mandated as members as well as the director of the juvenile justice services division of the AOC, there is no requirement for a juvenile judge voice to be heard on this committee. There are two criminal court judges mandated for the committee. There should be at least one voice and preferably two on this committee representing the judiciary that serves in the Juvenile Court. I suggest mirroring the language in section C3 and require two judges serving on the juvenile bench be appointed to this committee. | Incorporated as two judges, one from the juvenile bench and one criminal from the criminal bench. |
| Section E: Responsibility of Members | Last line states “shall send a representative” when unable to attend. This can be difficult for small departments and public members. Recommend the word SHALL be substituted with MAY. | Change incorporated. |
| Section H: Action | It appears to be vague. Have we ever adopted rules? Would this be a good spot to address who has voting rights? As an example, if I send a representative, can that person vote in my absence? | Not incorporated, as the COP shall adopt it’s own rules, not have the rules delineated in Code. |
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ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 6: Probation
Chapter 1: General Administration
Section 6-114: Committee on Probation

~~**ARIZONA JUDICIAL COUNCIL**~~
~~**COMMITTEE ON PROBATION**~~

~~Administrative Order No. 90-52~~

~~In accordance with Administrative Order No. 90-17, advisory committees to help the Committee on Superior Court carry out its responsibilities may be appointed with the approval of the Chief Justice. Now, therefore,~~

~~IT IS ORDERED THAT a committee on probation is hereby established as a standing subcommittee of the Committee on Superior Court and shall be known as the Committee on Probation.~~

~~1.A. **Purpose.** The purpose of this Committee is to examine current probation procedures and to develop policies and procedures that improves the quality, promote standardization, consistency and coordination of probation procedures statewide. The Committee on Probation (COP) shall be established as a subcommittee of the Committee on Superior Court (COSC) which is a standing committee of the Arizona Judicial Council (AJC) and shall examine current probation practices and develop rules, policies and procedures for recommendation to the COSC, AJC and the supreme court.~~

~~**B. General Policy.** COP shall promote standardization, consistency and coordination of probation services statewide and recommend evidence-based practices and programs that improve the quality and effectiveness of probation services.~~

~~2.C. **Membership.** The Committee is composed of the following members: all chief probation officers and directors of juvenile court services; the directors of the administrative office of the courts adult services division and juvenile justice services division; the criminal division presiding judge in Maricopa County or his designee; the presiding superior court judge in Pima County or his designee; one member who serves and sits on the Committee on Limited Jurisdiction Courts; and a minimum of two public members whose interests and avocations are adult and/or juvenile corrections and rehabilitation issues. The chairperson of the Committee shall be appointed by the Chief Justice. COP shall be composed of the following members:~~

- ~~1. All chief probation officers and directors of juvenile courts;~~
- ~~2. Directors of the Administrative Office of the Courts (AOC) Adult Probation Services Division and Juvenile Justice Services Division;~~

3. Two judges serving on the criminal bench; one representing a rural county and one representing an urban county;
4. One member who serves on the Committee on Limited Jurisdiction Courts;
5. One member representing the United States Probation Office, District of Arizona;
6. A minimum of four public members with demonstrated interest or knowledge in criminal justice or juvenile justice matters. The public members shall include:
 - a. A representative from the tribal community;
 - b. A representative from the substance abuse or mental health profession; and
 - c. A crime victim or crime victim advocate.
7. Other members may be appointed at the discretion of the chief justice.

3.D. Terms of Members. ~~Committee~~ COP members holding membership by virtue of their position shall be members of ~~the Committee COP so long as~~ long as they hold their respective positions. ~~The other members of the Committee shall be appointed by the Chief Justice for terms of varying lengths to encourage continuity on the Committee.~~ The chief justice shall appoint other members of COP to a two year term. Committee members may be re-appointed for successive terms.

1. The chairperson shall serve a two year term from the appointment date. If the chairperson is unable to complete the full term, an interim chairperson shall be appointed for the remainder of the term.
2. Chairpersons may serve a maximum of two terms as long as that person meets the membership criteria as defined in subsection C.

4.E. Responsibilities of Members. ~~COP Committee~~ members shall attend and actively participate in COP Committee meetings, assist with the administration of COP Committee affairs, and shall serve on COP advisory committees as appointed by the chairperson. Members unable to attend a meeting shall send a representative. A COP member may designate a proxy subject to ACJA § 1-104 and the following requirements:

1. COP members may not use the proxy provision for more than three times during the member's term;
2. The use of proxies by members of COP is limited to extraordinary circumstances, as determined by the chair; and

3. If a COP member cannot attend a meeting and would like to send a proxy, the member must obtain prior approval of the chair. If approved by the chair, that proxy must comply with other guidelines regarding proxy rights.

5.F. **Organization.** The Chief Justice shall appoint the chairperson Committee and other leadership as needed to organize committee affairs. ~~Advisory committees to help the Committee on Probation carry out its responsibilities may be appointed by the chairperson.~~ The chairperson may appoint ad hoc advisory committees to help facilitate COP responsibilities.

6.G. **Meetings.** ~~The Committee~~ COP shall meet, at minimum, no less than three times a per calendar year. ~~and a~~ Additional meetings may be called at the discretion of the ~~Committee~~ chairperson. All meetings shall be noticed and open to the public.

7.H. **Actions.** ~~The Committee~~ COP shall adopt rules for conducting ~~Committee~~ COP business. These rules shall prescribe the quorum and the majority needed to constitute ~~Committee~~ COP actions.

8.I. **Staff.** ~~Under the direction of the chief justice, t~~ The Administrative Office of the Courts AOC shall provide staff to assist and support for the Committee COP under the direction of the chief justice.