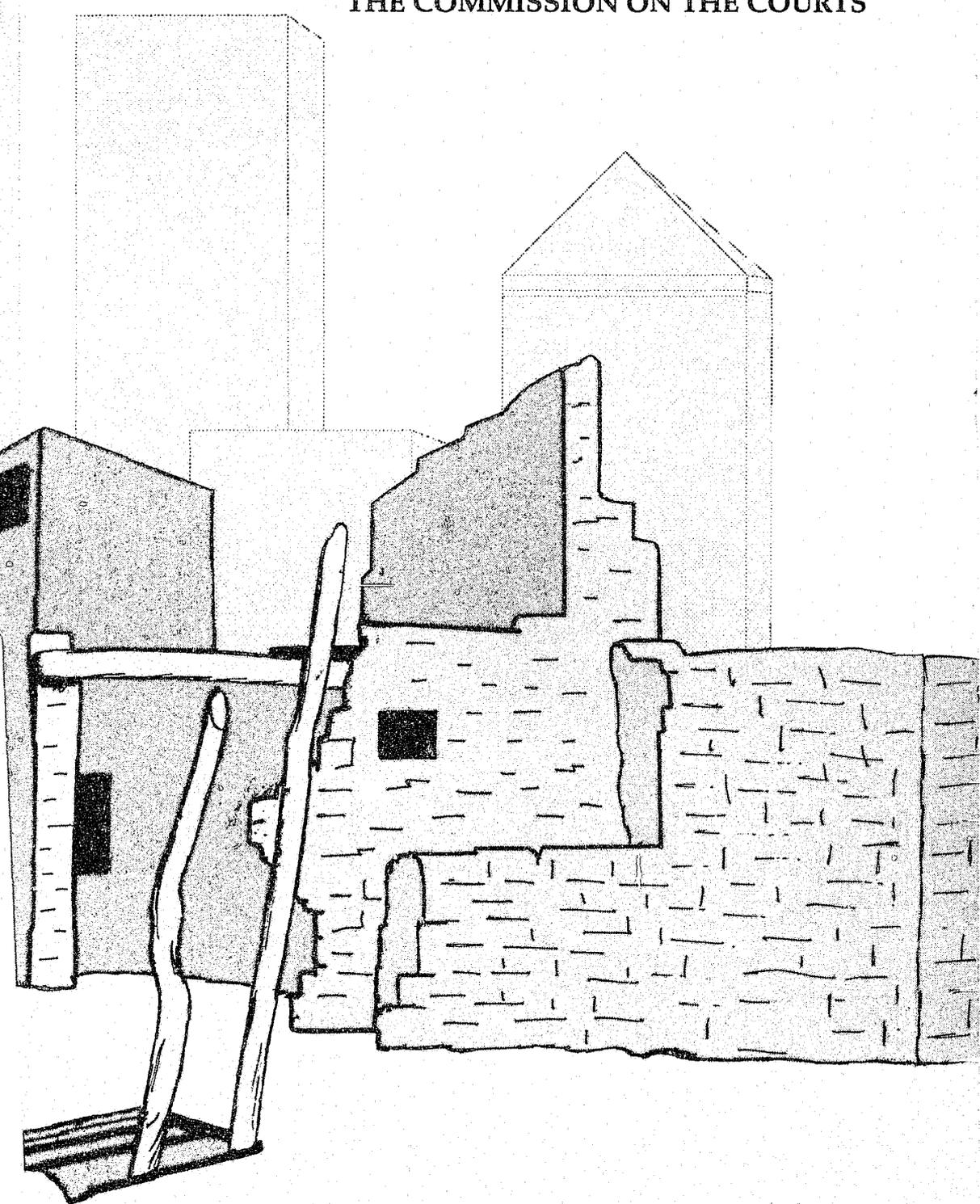


# THE FUTURE OF ARIZONA COURTS

Report of  
THE COMMISSION ON THE COURTS

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**REPORT OF  
THE COMMISSION  
ON THE COURTS  
1989**



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Arizona Supreme Court  
**COMMISSION ON THE COURTS**  
1314 North 3rd Street, Suite 330, Phoenix, Arizona 85004, (602) 255-2136

The Honorable Frank X. Gordon, Jr.  
Chief Justice  
Arizona Supreme Court  
201 West Wing, State Capitol  
Phoenix, Arizona 85007

Dear Chief Justice Gordon:

I am privileged to present to you the report of the Arizona Supreme Court's Commission on the Courts. This report reflects the action-oriented vision shared by the Executive Committee and the various Task Forces for shaping the direction of Arizona's courts into the next decade and beyond.

We believe the evaluations and suggestions of the report reflect the need for a balance between continuity and adaptability in the judiciary; between the need for stability and a realistic appraisal of the changes necessary as we face a new century. In my estimation, the Commission's goal to build a solid foundation for judicial administration by examining and reporting on the organization processes of the legal system in Arizona, in order to achieve an ordered, fully-integrated judicial branch of government, was well met.

Of invaluable importance to the Commission were the many hours of dedication contributed by Task Force chairpersons Noreen Sharp, Ed Hendricks, Bruce Meyerson and Pauline King. We also benefited from the exciting, diverse backgrounds of all our members. These legislators, attorneys, court personnel and business and community leaders were an essential asset, each bringing a unique perspective and background to the task.

Last, and most important, we all heartily commend your own personal vision and sense of urgency, best revealed in the creation of the Commission itself, as you contemplate the future of Arizona's courts. Both your challenge and the confidence you placed in us were critical to the completion of our goals. We truly hope we have met your hopes and expectations.

Sincerely,

Eddie Basha

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# INTRODUCTION



The citizens of Arizona are entitled to a justice system that:

- \* *Resolves criminal charges and civil disputes between citizens fairly and without undue delay;*
- \* *Employs modern management and technology to facilitate its task of providing justice;*
- \* *Is accountable for its work;*
- \* *Receives the human and technical resources it needs to perform its mission, and manages and uses those resources to maximize its effectiveness and minimize waste; and*
- \* *Is able to respond to foreseeable and unforeseeable social, technological, demographic, and environmental changes.*

With these goals in mind, Chief Justice Frank X. Gordon, Jr. of the Arizona Supreme Court appointed a 34-member Commission on the Courts on June 21, 1988. The Commission was asked to: (1) develop a long-range plan for the judiciary through and beyond the year 2000, (2) prepare specific recommendations and strategies for improving the court system, and (3) provide a plan for implementing changes found necessary by the court. This report is the Commission's response to that assignment.

To accomplish its work, the Commission established four task forces: Court Organization and Administration, Court Productivity, Dispute Resolution, and Children and Families in the Courts.

Each task force was chaired by a Commission member; six Commission members served as members of each task force. In order to draw upon the expertise of a full range of citizens, each task force added as members anywhere from 31 to 57 others: lawyers, judges, justices of the peace, court administrators, court clerks, representatives of affected and concerned agencies, and concerned citizens. In all, 175 people served on the four task forces. Countless others presented their views at numerous public meetings and task force work-group sessions. This diverse perspective and expertise proved invaluable to the Commission in the development of the four task force reports. Those who served on the task forces and who provided information and assistance to them merit the special thanks of the Commission and the citizens of Arizona.

The resulting recommendations are as comprehensive and far reaching as the challenge of the assignment. They will enable the judiciary to resolve disputes more effectively, provide the judiciary with the structure and flexibility needed to respond to the growing demands placed on it, and improve accessibility to the judicial system for all citizens.

The judicial branch of government has served Arizonans well since the first day of statehood. Yet, despite changes and improvements over the years, the organization and management of the courts and the process of resolving disputes have remained essentially unchanged in the 77 years. Today's conditions and needs mandate fresh approaches. The Commission's recommendations respond to that mandate. We have sought to preserve and build on the true strengths of our judicial system while introducing new approaches better suited to Arizona's needs in the 21st century.

This report presents the Commission's recommendations and an abbreviated statement of support. The reader wishing more in-depth analysis and supporting documentation is encouraged to review the appropriate task force report which is available through the Administrative Office of the Courts.

The citizens of Arizona can be justifiably proud of the character and quality of its judiciary. In responding to the challenge presented by Chief Justice Gordon, however, the Commission has identified a number of ways to improve our judiciary even further. We offer these thoughts and commend them to you.

## SUMMARY OF RECOMMENDATIONS

### CHAPTER ONE - ORGANIZING THE SYSTEM

- 1.1 The Arizona court system should have three levels: a Supreme Court, a Court of Appeals, and a District Court. (Page 6)
- 1.2 The Supreme Court should be increased to a total of seven justices when, and if, circumstances require. (Page 12)

### CHAPTER TWO - MANAGING THE SYSTEM

- 2.1 A Judicial Council, established by the constitution, should have responsibility to set administrative policy for the state judicial department. (Page 14)
- 2.2 Management of the Arizona judiciary should be the responsibility of the Chief Justice and state court executive, on the state level, and the chief district judge and district court executive, on the local level. (Page 17)

### CHAPTER THREE - STAFFING THE SYSTEM

- 3.1 Qualifications for various levels of judgeships should be increased to reflect the responsibilities of the judiciary. (Page 20)
- 3.2 All current superior court judges, commissioners, justices of the peace, and city or town magistrates should be "grandfathered" as members of the district court in accordance with policies, standards, and procedures adopted by the Judicial Council. Thereafter, all such judicial officers should be subject to the evaluation and retention election processes described elsewhere in this report. (Page 23)
- 3.3 The Supreme Court should create a commission on judicial performance evaluation. (Page 24)
- 3.4 The Commission on Judicial Conduct should enhance the professionalism of its performance, increase its visibility in the community, and extend its staff services to the Supreme Court's Judicial Ethics Advisory Committee. (Page 25)
- 3.5 There should be a merit selection system for all judges. (Page 26)
- 3.6 The clerk of the superior court should not be an elective position. The responsibilities of the current position of clerk of the court should be carried out under the direction of the court executive. (Page 28)
- 3.7 The responsibilities of the constable should be assumed by the sheriff's office, court staff, private process servers, or a combination thereof. (Page 29)
- 3.8 A pool of law clerks should be made available for district court judges who need legal support services. (Page 30)

## CHAPTER FOUR - RESOLVING DISPUTES

- 4.1 The district court should establish innovative alternative dispute resolution programs. (Page 32)
- 4.2 The effectiveness of court-annexed arbitration should be enhanced. (Page 35)
- 4.3 Medical malpractice cases should be processed like any other civil suit and made subject to alternative dispute resolution procedures. (Page 38)
- 4.4 The legislature should enact appropriate legislation and the Supreme Court should promulgate rules to establish confidentiality for communications made during a mediation. These should specify the nature of the communications, documents, or work product intended to be protected from disclosure, as well as the exceptions necessary for furtherance of other important public policies. (Page 40)
- 4.5 There should be a qualified immunity for mediators employed by a court-annexed dispute resolution program or by any governmental entity. The existing quasi-judicial absolute immunity established by case law for arbitrators should be codified. (Page 42)
- 4.6 A state Office of Public Dispute Resolution should be established that will provide assistance in the resolution of disputes, using mediation or other means of alternative dispute resolution, between government agencies, between public agencies and private citizens, or in private disputes that may have a substantial public impact. (Page 44)

## CHAPTER FIVE - ENHANCING PRODUCTIVITY

- 5.1 The Supreme Court should adopt the American Bar Association's trial and appellate court case processing time standards for all Arizona courts. (Page 46)
- 5.2 The Supreme Court, in consultation with the district court judges, should adopt additional caseflow-management techniques. (Page 48)
- 5.3 The Supreme Court should consider the adoption of caseflow-management techniques relating to appellate court productivity. (Page 50)
- 5.4 Incentives for greater professionalism and disincentives to the deterioration of professional standards for lawyers should be provided. (Page 52)
- 5.5 The Supreme Court should call upon the State Bar to study and report whether and to what extent the Rules of Professional Conduct might be constructively revised to give greater definition to the boundaries of a lawyer's adversary role. (Page 54)
- 5.6 Discovery in civil cases should be controlled and managed by the court from the outset. (Page 55)
- 5.7 The rules of professional conduct should be revised to define and emphasize lawyers' ethical obligations to society to donate legal services. (Page 56)
- 5.8 To expedite and otherwise enhance the lawyer discipline process in Arizona, additional resources, including full-time staff as needed, should be allocated to the agencies responsible for lawyer discipline. (Page 57)
- 5.9 Where practicable, landlord-tenant cases should be heard by special judges to avoid disruption of a court's calendar. (Page 59)

- 5.10 Prejudgment interest on unliquidated damages should be available from the date of service of a demand or a complaint, whichever comes first. (Page 60)
- 5.11 The Supreme Court should adopt a rule permitting bilateral offers of judgment with sanctions that are appropriate for the circumstances. (Page 61)
- 5.12 The standard for granting motions for summary judgment should be redefined to encourage earlier disposition of patently untenable claims or defenses. (Page 62)
- 5.13 The Supreme Court should appoint a permanent commission on automation as soon as practicable. (Page 63)
- 5.14 The Administrative Office of the Courts (AOC) should acquire and install facsimile, conferencing, audio, video, court reporting, personal computers, and other state-of-the-art equipment in courts where needed; it should establish on-line data bases for both Supreme Court and appellate court decisions; and it should establish coordinated training programs on automation. Pilot projects should be undertaken by the AOC in diverse jurisdictional settings to determine the utility, impact, and cost-effectiveness of: video arraignment, facsimile, video depositions, paper simplification, video testimony, optical disk storage, video transcript, optical and bar code scanning, audio transcriber, appellate on-line data bases, and computer transcription. (Page 65)

#### CHAPTER SIX - ISSUES AFFECTING THE CRIMINAL JUSTICE SYSTEM

- 6.1 The Arizona Rules of Criminal Procedure should be amended to give victims and witnesses more protection and control over their participation in pretrial proceedings. (Page 68)
- 6.2 A youthful offender program should be developed as a sentencing alternative for juvenile offenders who have been transferred to, and convicted in, adult court. (Page 70)
- 6.3 Certain provisions of the Arizona Rules of Criminal Procedure and methods for implementing those rules should be modified to streamline district court and felony pretrial proceedings. Existing rules of criminal procedure governing case processing and speedy trial should be enforced by all judges. (Page 72)
- 6.4 Changes should be made in post-conviction proceedings undertaken pursuant to Rule 32 of the Arizona Rules of Criminal Procedure. (Page 74)
- 6.5 A judge should have more latitude to become involved in settlement-related discussions in criminal cases and to provide for a "readiness conference" to discuss issues remaining prior to trial. (Page 76)

#### CHAPTER SEVEN - LEGAL NEEDS OF CHILDREN AND FAMILIES

- 7.1 Changes should be made in the legal and judicial system to enhance the quality of service to children and families. (Page 78)
- 7.2 The juvenile court dependency process should be changed to improve the timeliness and effectiveness of decisions and to reduce the need for direct judicial involvement. (Page 81)

- 7.3 Juvenile cases should be screened for referral to existing or newly established community or court-annexed mediation programs. (Page 83)
- 7.4 The Supreme Court should encourage the executive branch to develop a comprehensive state plan for community-based and institutional treatment resources for juveniles. (Page 86)
- 7.5 Expedited procedures should be established for domestic relations cases. Domestic relations disputes should be resolved through mediation wherever possible. (Page 88)
- 7.6 A more concerted, cohesive, and concentrated effort to protect the victims of domestic violence is needed. The Supreme Court should develop policies and procedures and promulgate rules that serve to deter domestic violence involving individuals appearing before the district court as well as in those cases in which domestic violence may result from the court's actions. (Page 91)
- 7.7 Arizona should adopt a Family Code consolidating all statutes impacting children and families. The statutes should be amended to correspond with federal regulations. (Page 93)

#### **CHAPTER EIGHT - INFORMING THE PUBLIC**

- 8.1 Courts should develop public education programs to improve accessibility, increase the judicial system's responsiveness, and create a well-informed community. (Page 94)
- 8.2 Courts should be accessible to those who need their services. (Page 96)

#### **CHAPTER NINE - FISCAL ISSUES**

- 9.1 State funding of the maintenance and operations of the entire court system should be phased in over an appropriate period of time, but should be fully implemented by July, 1995. (Page 98)
- 9.2 Court revenues should be enhanced through increased filing and usage fees and collection of outstanding fines. (Page 102)
- 9.3 The Supreme Court should develop a statewide, long-term funding proposal for technology. (Page 104)
- 9.4 Judicial salaries should be increased as necessary to ensure that the state attracts and retains the best possible judges to dispense justice for our citizens. (Page 106)



## Chapter One

# ORGANIZING THE SYSTEM

*The organization of the courts can help or hinder the provision of justice in individual cases and the establishment of a just system for all citizens. The court's structure is the framework on which the other elements of a modern judicial system are built.*

*We urge a new structure for the 21st century that will serve the court's basic task of determining cases justly, promptly, and economically.*

### Structure, Jurisdiction, and Geographic Organization



1.1 *The Arizona Court System Should Have  
Three Levels: A Supreme Court,  
A Court Of Appeals, And A District Court.*

- The existing three separate trial courts in each county should be reorganized into a unified district court consisting of two levels of judges in less populous districts and three levels of judges in more populous districts. The jurisdiction of each district court level should be uniform throughout the state, and should not overlap among or between levels.
- The district court should be geographically organized by districts rather than by county or city lines.
- To eliminate the redundancy and expense of time-consuming de novo (new) trials, all matters originating at any level of the district court should be heard on the record.



## Rationale

### *Current Court Structure and Jurisdiction*

Currently Arizona has five types of courts: the Supreme Court, the Court of Appeals, the superior court, and two "lower courts" - the justice of the peace courts and the municipal courts.

The Supreme Court, which consists of five justices, has exclusive jurisdiction to determine controversies between counties and to issue extraordinary writs to state officers. It has discretionary appellate jurisdiction in all other actions except that direct appeals to the Supreme Court are permitted in criminal matters involving sentences of death or life imprisonment. The court also has the constitutional power to make procedural rules.

The Court of Appeals consists of 21 judges in two divisions. Division One, with 15 judges, is located in Phoenix and hears appeals from the superior court in Apache, Coconino, La Paz, Maricopa, Mohave, Navajo, Yavapai, and Yuma counties; Division Two, with six judges, hears appeals from the superior court in Cochise, Gila, Graham, Greenlee, Pima, Pinal, and Santa Cruz counties.

Each of the 15 counties has a "branch" of the superior court with at least one judge sitting in each county. Presently there are 106 superior court judges, 56 of whom sit in Phoenix, and 21 of whom sit in Tucson. The superior court has jurisdiction as follows:

- Exclusive original jurisdiction in civil cases involving more than \$2,500;
- Exclusive jurisdiction in all proceedings affecting children, including juvenile and custody matters;
- Exclusive jurisdiction over all probate matters, dissolutions of marriage, adoptions, or other family-related matters except that jurisdiction for orders of protection and injunctions against harassment is concurrent with both justice of the peace and municipal courts;
- Exclusive jurisdiction over all felonies except for initial appearances and preliminary hearings, which are concurrent with justice of the peace and municipal courts;
- Concurrent civil jurisdiction with justice of the peace courts when the amount in controversy is between \$500 and \$2,500;
- Appellate jurisdiction over matters originating in the justice of the peace and municipal courts which are heard on the record;
- Trial de novo of matters not heard on the record; and
- Judicial review of the decisions of most administrative agencies.

Justice of the peace courts are created by county boards of supervisors, which divide the individual counties into justice precincts, each of which is presided over by a justice of the peace. Currently, there are 84 separate precincts in Arizona with jurisdiction as follows:

- Concurrent jurisdiction with the superior court when the amount in controversy is between \$500 and \$2,500, but exclusive civil jurisdiction in cases of less than \$500;



- Concurrent jurisdiction with the superior court in matters of forcible entry and detainer if the amount claimed is more than \$500, if the rental value of the property does not exceed \$750 per month, and if title to the property is not an issue;
- Concurrent jurisdiction with the superior court and municipal courts for issuance of domestic violence orders of protection and injunctions against harassment;
- Concurrent jurisdiction with municipal courts over misdemeanors and criminal offenses punishable by a fine not exceeding \$1,000 or a sentence not exceeding six months, or both;
- Concurrent jurisdiction with municipal courts over initial appearances and preliminary hearings in felony cases;
- Concurrent jurisdiction with municipal courts over civil traffic violations; and
- A small claims division to determine amounts in controversy of less than \$1,000 at the election of the litigants.

All incorporated cities and towns are required by statute to establish municipal courts. Currently, 80 separate cities have municipal courts and there are approximately 112 full-time and 58 part-time municipal court judges statewide. Their jurisdiction is as follows, if the acts occur within the city or town limits:

- Concurrent jurisdiction with justice of the peace courts over misdemeanors and traffic violations;
- Concurrent jurisdiction with justice of the peace courts over initial appearances and preliminary hearings in felony cases;
- Concurrent jurisdiction with justice of the peace courts and the superior court for issuance of orders of protection and injunctions against harassment; and
- Exclusive jurisdiction over violations of all city and town ordinances.

In areas other than metropolitan Maricopa and Pima counties, numerous "lower court" judges wear "two hats," serving as both elected justices of the peace within the counties and appointed municipal court judges.

### *Problems with the Existing Court Structure*

The most significant problem with the trial court system is its fragmentation. This results not only in the duplication of administrative resources but also in public confusion. Generally, the problems associated with multiple trial courts are:

- Too many different levels and kinds of trial courts with independent and yet duplicative functions, staffs, and facilities;
- Balkanization of the court system due to lack of overall systemwide management and planning, which precludes effective allocation of constantly growing and complex caseloads;
- Potential for misallocation or waste due to lack of coordination of fiscal resources, facilities, and equipment;



- Duplication of work because many matters presently appealed to the superior court must be heard a second time de novo; and
- Lack of uniform practices and procedures in the trial courts and lack of supervision over trial court personnel.

### *Advantages of a Unified Trial Court*

A unified general jurisdiction trial court exists in six states: Idaho, Illinois, Iowa, Massachusetts, Minnesota, South Dakota, and the District of Columbia. Some of the advantages of a unified trial court structure include:

- Elimination of overlapping and fragmented jurisdiction;
- Increased access by the public due to an organized court system with circuit riding and other means of improving accessibility;
- Better and more efficient use of judges, staff, and facilities with possible reductions in some instances and additions only where there is demonstrated need;
- Uniform procedures, records, and equipment to facilitate case management, reduce costs, and eliminate inconsistencies between trial courts;
- Reduction of duplication by elimination of trials de novo; and
- Caseload management and enhanced public access because individual judges within a district would be subject to centralized administration.

There have been no statewide efforts in Arizona to reform the current three-tier trial court structure into a single unified trial court. The Fifty-Third Arizona Town Hall, sponsored by The Arizona Academy in the fall of 1988, considered the issue of overlapping jurisdiction of the limited jurisdiction courts. The Town Hall recommended that those courts should be consolidated in urban counties and that jurisdictional limitations on civil actions in those courts be increased.

### *Description of a Unified Trial Court in Arizona*

The three separate trial courts in each county should be reorganized into a unified district court. The jurisdiction for each level should be uniform throughout the state, and not overlap. The court should allocate cases among levels of judges, as described below. The terminology used for the categories of jurisdiction are descriptive only.

**"General Jurisdiction" Judges** - These judges would have jurisdiction of all matters originating within the district court and, in most instances, exclusive original jurisdiction of all felonies, civil disputes in excess of \$5,000, family and juvenile cases, injunctions, probate matters, appeals from limited jurisdiction judges and administrative agencies, and other matters as may be deemed necessary in the future.

**"Limited Jurisdiction" Judges** - These judges should hear civil cases according to simplified procedures to expedite decision making in cost-effective ways. Criminal matters would include:



- All misdemeanors, including criminal traffic matters;
- Felony preliminary hearings;
- Violations of orders of protection and injunctions against harassment; and
- Violations of city or town ordinances.

Noncriminal matters would include:

- Civil disputes up to \$5,000;
- Name changes;
- Uncontested probate annual accountings;
- Small claims cases up to \$5,000;
- All residential landlord-tenant disputes up to \$5,000, including those involving injunctions;
- Default divorces if no children are involved;
- All judgment-debtor examinations;
- All matters currently handled by juvenile referees or limited jurisdiction judges, including traffic, curfew, and liquor violations;
- All civil traffic matters; and
- Orders of protection and injunctions against harassment.

Optional "Intermediate Jurisdiction" Judges - In the more populous districts an intermediate-level judge may be necessary to handle case volume but at a reduced cost, including a lower salary than a general jurisdiction judge. The chief judge of each district should have the flexibility to authorize the types of cases heard by these judges, subject to approval by the Judicial Council (described in Chapter Two of this report) within the following jurisdictional limits:

- Civil jurisdiction up to \$250,000;
- Family law and juvenile matters;
- Injunctions, probate matters, and appeals from limited jurisdiction judges and administrative agencies;
- Jurisdiction for criminal matters including felonies 4, 5, 6;
- All nonrepetitive felonies and nondangerous felonies, regardless of classification; and
- On assignment by the chief district judge, authority to engage in active case management in all civil cases, with full power to rule on pretrial motions except those that dispose of cases on the merits.



Individual cases could be certified as complex and heard by a general jurisdiction judge rather than an intermediate jurisdiction judge. Procedures and standards for certification of a matter as complex should be established by the Judicial Council.

The chart at the end of the report compares the current to the proposed court structure. The proposed structure will save citizens from having to guess which court has jurisdiction over their matter and will result in a more fair and efficient court system for the public.

### *Proposed Geographic Organization of the District Court*

Arizona is geographically the sixth largest state. By the year 2000, its projected population will be 5.3 million people, representing an increase of 309% from 1960 and 48% from 1986. Arizona has both urban and rural areas. For example, over 90% of the population of Maricopa and Pima counties is within the metropolitan areas of Phoenix and Tucson. The population density of these two urban areas is about 2,900 residents per square mile, while in the remainder of the state it is about 6.25 residents per square mile.

The current organization of the trial courts is based on county and city lines and jurisdictional thresholds rather than demographic and geographic needs. This creates barriers to the public because of the topography of the state and the extensive size of Arizona counties. The map at the end of this report indicates the current locations of all existing courts; it dramatizes the duplication of court services in many areas and the lack of those services in others.

The geographic boundaries of the courts should be reorganized by districts rather than along city or county lines. In a unified trial court system, governmental boundaries do not retain functional significance, particularly if state funding is part of the unified concept. For example, the entire rural population in far northwestern Arizona would be better served if a district court could serve a population that is physically proximate without being inhibited by county lines. Similarly, eastern Maricopa County and western Pinal County are experiencing significant population growth, yet citizens who are basically next-door neighbors are required to travel in opposite directions to their respective county seats to handle judicial business.

Initially, districts should be based on county lines, as is now the case. This means that each of the 15 counties where a branch of the superior court is now located will be an individual district, as will each division of the court of appeals. But factors such as population, caseload, and geography should be analyzed to determine what boundaries would better serve the public for the purpose of district court access and organization. The responsibility for determining the geographic boundaries of districts would rest with the Judicial Council. Allocating the distribution of judicial resources by need, rather than by arbitrary governmental county lines, would eliminate the imbalance in workloads, conflicts in procedure and policy between courts, and inefficiencies in the transfer of cases and other processes that normally require intergovernmental cooperation.

### *Proposal for a Record in all Trial Courts*

To eliminate the redundancy and expense of time-consuming de novo trials, all matters originating in the district court should be heard on the record. The record, at least in some instances, could be by tape recording, video machine, or some method other than a court reporter using stenography.

The general jurisdiction judges of the district court would hear all appeals from the limited jurisdiction judges. In districts with an intermediate level of jurisdiction, the chief judge could arrange for some or all appeals from the limited jurisdiction judges to be heard by the intermediate jurisdiction judges.

## Supreme Court



1.2 *The Supreme Court Should Be  
Increased To A Total Of  
Seven Justices When, And  
If, Circumstances Require.*



### Rationale

The size of state supreme courts ranges from three to nine justices. Only six states have courts with nine. Twenty-six states have seven justices and 18 states have five. Of these 18 states, nine have intermediate appellate courts.

Of those states having seven justices on the Supreme Court, six have a smaller population than Arizona (Connecticut, Oregon, Arkansas, Nebraska, Maine, and Montana). In fiscal year 1988, the Arizona Supreme Court had 1,119 filings. In comparison, Connecticut had approximately 1000 supreme court filings, Arkansas had 819, Nebraska had 1088, Maine had approximately 600, and Montana had 628.

The creation of the Court of Appeals relieved the Supreme Court of the burden of hearing many cases that were appealable of right from the superior court. Since then the Supreme Court's appellate jurisdiction has been largely discretionary. Consequently, the pressures to increase the size of the Supreme Court or for the court to sit in panels of three was significantly lessened.

However, the caseload of the Court of Appeals grows dramatically; in fact, it has expanded by 32% since 1984. This has correspondingly increased the filing of petitions to the Supreme Court for discretionary review. Each justice thus faces a growing task of considering these petitions in addition to the work of the court's own increasing caseload. The court's continuing practice of sitting *en banc* (the full cover) in all cases also contributes to the growing workload.

All this imposes a particular burden on the Chief Justice because, in addition to the regular work of a justice, the Chief Justice is the principal administrative officer of the court system. The Commission's recommendations that the court's administrative structure be expanded and strengthened will impose even greater duties on the Chief Justice. The Judicial Council should carefully monitor the workloads imposed on members of the Supreme Court and consider whether at some time it would be advisable for the state to increase the size of the court to seven and, perhaps, for the court to begin to sit in panels of three in at least some cases. Particular care must be taken to ensure that the Chief Justice has sufficient time to devote to his or her extra administrative duties.





## Chapter Two

# MANAGING THE SYSTEM

*For decades, the judicial branch has been the least managed branch of government. Fortunately, in recent years a new profession has developed - court administration.*

*Although many of our court systems are staffed by trained administrators, for a variety of reasons, today's management remains scattered, divided, and without clear direction.*

*We do not know exactly what the future will hold, but we are sure it will offer challenges to society and to the courts in particular. We envision a judicial system that is served by managers and a management system more defined, more coherent, more accountable, and more capable of responding to the certain growth to be experienced in our state.*

### Judicial Council



2.1 *A Judicial Council, Established By The Constitution,  
Should Have Responsibility To Set Administrative  
Policy For The State Judicial Department.*



- The powers and duties of the Judicial Council should include, but not be limited to, adopting the state court budget, evaluating judicial districts at least every five years and fixing the number and type of judges assigned to each district, establishing a personnel system for court employees, and implementing a formal program for the evaluation of judges. The Supreme Court should have oversight of the Judicial Council through approval or veto mechanism.

- The Chief Justice should serve as the presiding officer and chair of the Council, voting only in the event of a tie. The state court executive should serve as a voting member of and secretary to the Council.



- Other members of the Judicial Council should be appointed by the Chief Justice as follows: one member from the Supreme Court, one member from the Court of Appeals, four members who are judges fairly representative of district court judges of the state, two members who are court executives, and two public members. The Chief Justice may appoint one to five other members as deemed necessary provided that the Judicial Council will at all times be composed of a majority of members who are judges.

## Rationale

### *Problems with the Administration of the Courts*

Like private corporations, courts are complex organizations. The Arizona judiciary cost over \$175 million to operate in fiscal year 1988. Approximately 300 judges and 4,000 nonjudicial personnel are employed in the various courts throughout the state. Although the Constitution authorizes the Chief Justice to exercise administrative supervision over all the courts in the state, the current court organization and structure have made this role difficult to fulfill.

There are 181 courts in the state operating to a large extent independently of each other. Their differences in practices and procedures create an unnecessary burden for the public, attorneys, court staff, and other users of the system. The existing fragmented administrative structure works against the principles of effective administration, compromising the ability of the courts to function cooperatively as components of an integrated system. Although there is need for cooperation and uniformity, there is no way to assure either.

In each county, the presiding judge of the superior court has administrative authority over all courts within the county. Due to the current structure of independent justice of the peace and municipal courts, however, most presiding judges have not taken an active role in administering these courts. Thus, justices of the peace and municipal court judges have traditionally been responsible for administering their own courts. City and town councils have exercised administrative authority over some municipal courts.

The relationship between justice and municipal courts within communities varies depending upon the size of the community, location of facilities, personal relationships among the respective judges, and the extent of consolidation of judicial functions. As a rule, there is no coordination in the administration of the various trial courts within a county, although coordination is possible where courts are physically located within the same building. In those counties with several limited jurisdiction judges, cooperative efforts to solve common administrative problems typically are sporadic. Although there may be greater communication in smaller communities, this does not necessarily lead to better coordination of administrative procedures because each court may operate independently.

Courts may occasionally consolidate administrative functions to enhance the cost effectiveness of the system, as in Tucson where the Pima County justice courts consolidated in 1974. All five courts now share a central clerical office for filing and processing court matters; uniform administration and clerical procedures are the responsibility of a professional court administrator. In Maricopa County the justice courts are served by one court administrator. This individual's role is primarily to consolidate the various courts' budgets.

Currently, the management of court personnel is divided among all three branches of government. For effective operation, the judicial branch should have the ability to select and retain personnel without influence from the other branches of government, except for the appropriate overall budgetary responsibilities of the funding bodies. The establishment of a personnel system that is properly maintained would provide the framework for sound personnel administration, on a state and local level, and preserve the integrity of the judiciary.



## *The Role of Administration in the Judiciary*

The concept of judicial independence is one of the hallmarks of our judicial system. But some judges use the idea of judicial independence to justify operating independently of any management restraints. The judge who believes he or she answers "only to the people" may fail to recognize that administrative standards of performance are necessary for the effective operation of any court. If the court lacks the necessary administrative support to perform its functions, the overall quality of justice may be diminished.

Although judges are ultimately responsible for the court system, the skills required to manage the court are different from those needed to adjudicate cases. Judging is essentially the ability to render a decision after a problem has occurred. Managing, on the other hand, is the ability to anticipate problems before they occur and to devise measures to avoid the creation of administrative difficulties. Judges focus on cases one at a time; managers focus on the flow of all cases and on other macro-perspectives. Both perspectives are needed.

Just as private corporations are managed by boards of directors, the courts also require a body that can organize, plan, coordinate, and direct the entire system. A board of judges and other court professionals skilled in management, organized as a Judicial Council, can be an effective organizational mechanism to provide a forum in which various administrative policies can be discussed and adopted on a statewide level. A Council would have the responsibility of administering the court system as a whole, replacing the current collection of independent and unrelated parts. The Council also would relieve the Supreme Court justices of direct administrative policy-making, thus freeing time to decide cases.

### *Creation of a Judicial Council*

A Judicial Council, authorized by state constitution, should be created to assure that the judiciary keeps pace with legal, social, political, demographic, and technological developments. It would provide: (1) central direction for the administration of all courts, (2) uniformity in court operations, and (3) coordination of court services that will improve the administration of justice in the state.

The powers and duties of the Judicial Council should include, but not be limited to, adopting the state court budget, evaluating judicial districts at least every five years, fixing the number and type of judges assigned to each district, establishing a merit system for court employees, and implementing a formal program for the evaluation and allocation of judges. The Supreme Court should have oversight of the Judicial Council through an approval or veto mechanism.

The membership of the council should represent the various levels of the court system, as well as the public as consumers of justice. A chart showing the composition of the proposed Judicial Council is provided at the end of this report.

The Judicial Council should meet at least quarterly and all meetings should be open to the public. Members should serve at least three-year terms; appointments to be made by the Chief Justice should be staggered over the same period. No more than four members should be appointed from the same district. Members of the council should receive no compensation for their services but should be reimbursed for expenses incurred according to law.

By the year 2000, the population of Arizona should exceed 5.3 million, an increase of 66% over the 1980 census. No one, least of all this Commission, can predict all the social, political, demographic, and scientific developments that will occur as society moves into the 21st century. However, coordinated policy making, administration, and planning are essential to ensure that the judiciary keeps pace with those developments. The organization of a court system should serve the judiciary's basic task of determining cases justly, promptly, and economically. Its administration should provide the structure to predict the needs and ensure the quantity and quality of services necessary to respond effectively to growth and unexpected developments. The Judicial Council will fulfill those functions.

## Management of the Arizona Judiciary



2.2 *Management Of The Arizona  
Judiciary Should Be The Responsibility  
Of The Chief Justice And State Court  
Executive, On The State Level,  
And The Chief District Judge  
And District Court Executive,  
On The Local Level.*



- The Chief Justice should be responsible for the administration of all the courts in the state, and with approval of the Judicial Council, should appoint the chief judge of each judicial district and the state court executive.
- Chief judges should serve at the pleasure of the Chief Justice, but, in trial districts of ten or more general jurisdiction judges, the chief judge should serve no longer than one term of five years.
- The state court executive is the executive officer of the Administrative Office of the Courts, the staff agency for the Judicial Council, and should execute such administrative and management responsibilities as may be assigned by the Council.
- Each division of the Court of Appeals and each district court should be administered by a chief judge who would supervise personnel, implement policy and rules of the Judicial Council, monitor the court's caseload and other judicial needs, and perform other duties as assigned by the Judicial Council.
- The chief judge of each judicial district, with the approval of the Judicial Council, should appoint a court executive and, if necessary, a deputy court executive. The court executive should be the chief administrator of the district and supervise the work of all nonjudicial personnel.



## Rationale

### *Role of Judges in Administration: Current and Proposed*

The Chief Justice is selected by the court for a five-year term and has administrative authority over all the courts in the state. Each division of the Court of Appeals selects a chief judge to administer that division.

Presiding judges of the superior court are appointed by the Supreme Court and have the authority to exercise general administrative supervision over the personnel of the superior court. In 1980, the Supreme Court issued an administrative order delegating to the presiding judge the supervision of the justice of the peace courts within the county. Because justices of the peace are independently elected officials, however, this supervision is sometimes difficult to enforce.

All multi-judge "lower courts" have a presiding judge. In the municipal courts, that person is appointed by the city council. Where several justice courts have voluntarily combined administratively, the presiding judge is elected from among the judges in the participating precincts.

Under the Commission's proposal, the Chief Justice would be the administrative leader of the judicial department and responsible for the general management of the courts. He or she would preside as chair of the Judicial Council and with approval of the Council, would appoint the chief judge of each judicial district. The Chief Justice would also appoint the state court executive on the basis of professional ability and experience in the field of judicial administration.

Each division of the Court of Appeals and district court should be administered by a chief judge who should implement policy and rules of the Judicial Council, monitor the caseload, establish judicial assignments, and perform other duties as assigned by the Judicial Council.

### *Role of Court Professionals in Administration: Current and Proposed*

Currently, the Chief Justice is assisted through the Administrative Office of the Courts (AOC) by a state court administrator who, with staff, provides the services necessary for the supervision and administration of the state court system. Maricopa and Pima counties each have superior court administrators. In the other 13 counties, the administrative responsibilities of the court are handled by the clerk of the court. While some municipal courts have administrators, most do not. Generally, justice of the peace courts have no administrators.

Under the Commission's proposal, the state court executive would be the executive officer of the AOC and would perform duties as established by law or as assigned by the Judicial Council. Such duties would include hiring personnel as needed, consulting with judges on matters pertaining to court administration, implementing standards and policies established by the Judicial Council, preparing and administering the state judicial budget, collecting and reporting statistical data, and developing uniform procedures for the management of court business.



The chief judge in each district, with the approval of the Judicial Council, should appoint a court executive and, if necessary, a deputy court executive for each judicial district. The court executive should be the chief administrator of the district who would hire personnel as needed, supervise the work of all nonjudicial personnel, implement the policies and rules of the Judicial Council under the direction of the chief judge, and carry out other assigned duties.

### *Summary of Recommended Changes in the Structure of the Arizona Judicial Department*

Changes in the organization and administration of the judicial department should be made to meet the needs of the public for a fair and efficient court system. The chart at the end of this report describes these proposed changes. These recommendations for the creation of a unified district court and a Judicial Council reflect an effort to meet the Arizona Constitution's requirement of an integrated judicial department, and to enable that judiciary to respond to an unknown but challenging future.



## Chapter Three

# STAFFING THE SYSTEM

*Selecting judges and court personnel is the most important aspect of establishing and maintaining a court system. Without capable judges and staff, the Arizona judiciary will be unable to respond to the demands of the next century.*

## *Judicial Personnel*

### *Qualifications*



3.1 *Qualifications For Various Levels  
Of Judgeships Should Be Increased  
To Reflect The Responsibilities  
Of The Judiciary.*



- A course on lawyers' and judges' ethical and professional responsibilities should be required of judges at least every three years.



## Rationale

### *Current Qualifications*

The current qualifications for Arizona judges are too low for the significant responsibility these persons assume. For example, a person running for justice of the peace is not required to meet any threshold level of formal education, not even a high school diploma.

Municipalities vary greatly as to requirements for city court judgeships. While most urban cities require judges to be lawyers, others have little or no requirement for even a minimum level of education or experience.

There are a number of other judicial officers who serve with compensation at various levels, including judges pro tempore (temporary judges), commissioners, juvenile division referees, traffic hearing officers, justices of the peace pro tempore, and civil traffic hearing officers. These judicial officers generally are appointed without limitation on term and are not subject to public selection or election.

### *Role of Nonlawyer Judges in Trial Courts*

The term "nonlawyer" or "lay judge" traditionally has referred to individuals without a formal legal education whose jurisdiction is limited to minor matters. Court reform efforts in some states have attempted to eliminate nonlawyer judges in order to bring greater "professionalism" to the judicial branch. Many of these efforts have failed, however, because the contribution of nonlawyer judges has generally been recognized as valuable. The use of nonlawyer judges has been defended where there are an insufficient number of lawyers to fill judicial positions and where compensation is not sufficient to attract lawyer judges. Nonlawyer judges are said to provide greater accessibility to the court system and offer informal, speedy, and efficient adjudication of many matters.

In contrast, some criticism of nonlawyer judges has focused on their inability to analyze legal issues. Their courts are said to be disorganized, understaffed, and independent of central administration. Some reports advocate the elimination of lay judges.

At present, 43 states authorize nonlawyer judges. A 1979 survey of state statutes and practices found the following:

- Most states require lay judges to reside in their judicial district.
- A few states require lay judges to have a high school diploma (Colorado, Nebraska, South Dakota), or to be literate in English (Arizona, New Hampshire).
- Most states authorize jurisdiction in specified civil actions; some monetary limit is usually set ranging from \$200 - \$5,000. Small claims jurisdiction ranges from \$200 - \$1,500.
- In criminal cases, the jurisdiction of lay judges includes misdemeanors and minor offenses such as disorderly conduct, nonaggravated assault and battery, petty larceny, breaches of the peace, and willful injury to property. Occasionally, jurisdiction over traffic matters is specifically authorized. Authority to impose sentences ranges from \$50 - \$1,000 for monetary fines, and 30 days to one year for imprisonment.
- Most nonlawyer judges are authorized to issue search and arrest warrants and to set bail.



## *Proposed Qualifications*

The qualifications for the various levels of judgeships in Arizona should be upgraded as follows:

*Supreme Court Justices:* At least 35 years of age in addition to the existing requirements of good moral character, state residency and licensed to practice law in Arizona for at least ten years.

*Court of Appeals Judges:* At least 35 years of age and admitted to practice law in Arizona for at least ten years in addition to the currently required good moral character and state and district residency.

*General Jurisdiction Judges:* At least 35 years of age and of good moral character, a resident of Arizona for at least five years, and admitted to practice law in the state for at least ten years.

*Intermediate Jurisdiction Judges:* At least 30 years of age and of good moral character, a resident of the district he or she serves, and admitted to practice law in Arizona for at least five years.

*Limited Jurisdiction Judges:* At least 25 years of age and of good moral character, a resident of the district he or she serves, a high school diploma or its equivalent, and at least two years of college education or equivalent training or experience as determined by the Judicial Council.

In addition to these requirements, special training should be given at least yearly to the limited jurisdiction nonlawyer judges to assist them in fulfilling their judicial responsibilities. All judges should attend a course on attorney and judicial professionalism at least once every three years.

A chart comparing current judicial qualifications to those proposed by the Commission is presented at the end of this report.

## *Titles of Judgeships*

Persons sitting on the Supreme Court should be called "justices." Persons sitting on the Court of Appeals and as general, intermediate, or limited jurisdiction judges of the district court should be called "judges."

There should be no other categories of judicial officers for the purposes of traditional adjudication of litigated cases, although this limitation would not affect persons assisting with the resolution of disputes by alternative means.

While there probably will be a need for hearing officers, commissioners, and judges pro tempore during transition, eventually all these positions should be eliminated in favor of the more formal and accountable judiciary described in this report.

## "Grandfathering" Judges Currently in Office

3.2 *All Current Superior Court Judges, Commissioners, Justices Of The Peace, And City Or Town Magistrates Should Be "Grandfathered " As Members Of The District Court In Accordance With Policies, Standards, And Procedures Adopted By The Judicial Council. Thereafter, All Such Judicial Officers Should Be Subject To The Evaluation And Retention Election Processes Described Elsewhere In This Report.*

### Rationale

Historically, when judicial terms of office are changed in Arizona, current judges are grandfathered into the system for the balance of their elected terms and thereafter stand for election retention. The Commission believes that this same procedure should be used not only for elected superior court judges and justices of the peace who have elected terms of office to complete, but also for appointed city magistrates and superior court commissioners who have served the judicial system as full-time employees. It is the intent of the Commission that retirement benefits be preserved as judges move to the state district court system.

All current judicial officers of other categories who do not have elected or appointed terms should not be grandfathered into judgeships but should be subject to merit selection at the level of the district court consistent with the applicant's qualifications, when a judicial vacancy occurs.

## Evaluation and Retention

### 3.3 *The Supreme Court Should Create A Commission On Judicial Performance Evaluation.*

The Commission should:

- Be composed of both public members and lawyers;
- Develop and implement a formal program of judicial performance evaluation with uniform standards and criteria to be applied to the evaluation of all judges statewide; and
- Facilitate judicial self-improvement, promote the efficient assignment of judges, improve the choice of judicial education programs, and provide clear and accurate information to the public about judicial performance.

#### Rationale

Once judges take the bench, citizens expect them to maintain a certain degree of distance from lawyers who practice before them and from litigants. As a result, "feedback" about their performance is minimal and irregular. Beyond mandatory judicial education of all judges, the judicial system provides no formal mechanism to aid judges in evaluating and improving their judicial performance and pursuit of excellence.

The public is provided with little reliable information about judicial candidates before casting ballots in an uncontested retention election under our merit-selection system or in contested political campaigns. There is a lawyers' poll to evaluate general jurisdiction and appellate judges each year in Pima and Maricopa counties. There also are some evaluations of limited jurisdiction judges conducted each year by municipalities. But there is no system by which reliable and uniform information and observations from a variety of sources are collected on all judges statewide, disseminated to the public in a meaningful way, and used by judges for self-improvement and development.

There is a national movement toward creating programs for evaluating and improving judicial performance. In 1985 the American Bar Association (ABA) adopted a set of guidelines for the evaluation of judicial performance. Several states are in the process of using these guidelines to phase in a thorough and carefully crafted judicial evaluation process.

The Commission recommends that the Judicial Council consult with the ABA's Special Committee on Evaluation of Judicial Performance and with other states that have instituted similar programs. The Council should develop mechanisms for state and local commissions to explore appropriate sources of information. These could include surveys of lawyers, litigants, jurors, court personnel, other informed observers, colleagues on the bench, and presiding judges. Persons trained in data collection and analysis must be used. To enhance performance, the system should require direct written feedback to the judge in consultation with a colleague. In addition, a carefully designed method of disseminating clear and accurate information to the voting public about each judge's performance should be developed.

## Judicial Discipline

3.4 *The Commission On Judicial Conduct Should Enhance  
The Professionalism Of Its Performance, Increase Its  
Visibility In The Community, And Extend Its  
Staff Services To The Supreme Court's  
Judicial Ethics Advisory Committee.*

- To accomplish these objectives, it should be funded to hire a full-time executive director and authorized to extend the benefits of state employment to its executive director and executive assistant.

### Rationale

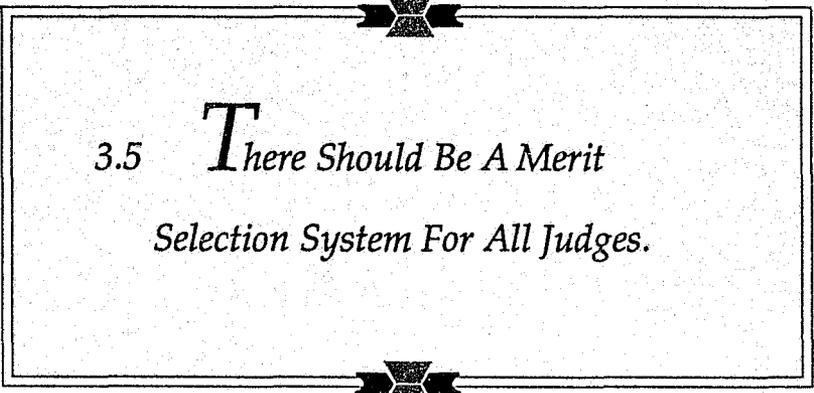
The purpose of the Commission on Judicial Conduct (CJC) is to investigate and, where necessary, prosecute cases of judicial misconduct. The CJC has operated in recent years with a part-time executive director, a full-time executive assistant, and limited funding for operating costs. The caseload of the CJC increased by an average of 33% annually from 1984 through 1988. At the end of 1988, by passage of proposition 102 in the November 1988 election, municipal judges came within the jurisdiction of the CJC, expanding considerably the number of judges subject to its jurisdiction.

The CJC's expanding caseload has increased its need to delegate duties of administration and investigation management to a professional executive director. The CJC also supports increased judicial education in order to reduce cause for complaints against judges. It further wishes to expand its public education effort to better inform the public of the CJC's role. Presently, the primary information source about the CJC is its mailing of an annual report to judges and complainants seeking information. A more active educational effort by the CJC would enhance the public confidence in the judiciary of the state.

Additionally, the Commission on Judicial Conduct would like to provide staff support to the Judicial Ethics Advisory Committee of the Supreme Court. The Judicial Ethics Advisory Committee has no staff and no budget, but has the preventive responsibility to respond to the judicial requests for ethical advisory opinions as to contemplated conduct. The CJC staff conducts research in the area of judicial conduct, and maintains a professional affiliation with the American Judicature Society Center for Judicial Conduct Organizations and the Association of Judicial Disciplinary Counsel. As a result, the CJC could usefully provide drafting and other staffing resources to the Judicial Ethics Advisory Committee.

To meet these expanding areas of educational, disciplinary, and preventive responsibilities, the CJC should be funded to make its executive director a full-time employee. Further, to attract and maintain employees of the highest quality, the CJC, which now must engage staff members as independent contractors, should be authorized to extend the full benefits of state employment to its employees.

## Merit Selection



3.5 *There Should Be A Merit  
Selection System For All Judges.*

- A merit selection commission should be established in each district to nominate candidates to fill all judgeships within the district. Composition of the commission should parallel that of existing judicial nominating commissions in Maricopa and Pima counties and include five public members, three lawyers, and the Chief Justice.
- The commission should provide three names for each judicial vacancy to the Governor for selection.

### Rationale

In 1974, the people, by initiative measure, provided for the merit selection of judges on the Supreme Court, the Court of Appeals, and the Superior Court in Maricopa and Pima counties. Counties with a population of less than 150,000 have the option of adopting merit selection of superior court judges but none has done so to date. Merit selection does not currently apply to justice or municipal courts.

The Fifty-Third Arizona Town Hall acknowledged that merit selection has proven to be effective in the urban counties where the general voting population is not well acquainted with many of the candidates. It concluded that merit selection has improved the caliber of judges. Town Hall participants believed that merit selection should be applied to all justices of the peace and other judicial officers in all counties.

The Commission agrees and proposes that a merit selection commission be established in each district to nominate candidates to fill all judgeships within the district. The composition of the commission should parallel that of the existing judicial nominating commissions in Maricopa and Pima Counties. Each commission should be required to provide three nominees for each judicial vacancy, with selection made by the Governor.



The Commission believes that merit selection of judges has been a success and that, with the additional recommended measures for evaluation of judges, the system should be extended statewide to all judges for the following reasons:

- Most judges selected under the political system were and are initially selected by gubernatorial appointment to fill a vacancy. Such appointments lack a non-partisan merit review and may be wholly political. Once appointed, the incumbent judge is almost always re-elected.
- Given limitations on judicial campaigns, partisan judicial election campaigns are of almost no use to the voting public in assessing the important qualities of candidates seeking election to the bench.
- Few members of the voting public have sufficient information about judicial candidates to make informed choices; judicial campaigns are often won or lost on issues unrelated to judicial qualifications.
- Many qualified persons are reluctant to become candidates for the bench when it means engaging in partisan political activity.
- At the very least, the election of judges creates the appearance of impropriety by requiring judicial candidates to raise campaign funds from lawyers and others who may appear before them.
- Judges selected under the merit selection system are accountable to the people because appointed judges must first be interviewed and nominated by a non-partisan panel, the members of which are appointed by the Governor and confirmed by the Senate, all of whom are elected by the people; the judges are appointed by the Governor; they will be evaluated by a non-partisan commission of both public members and lawyers; and they must stand on their record in periodic retention elections.

Currently 22 states and the District of Columbia select some or all of their judges based upon merit. The Commission anticipates that the voters of Arizona will be receptive to this proposal.

## *Nonjudicial Personnel*

### *Clerks*



3.6 *The Clerk Of The Superior Court Should Not Be An Elective Position. The Responsibilities Of The Current Position Of Clerk Of The Court Should Be Carried Out Under The Direction Of The Court Executive.*



### **Rationale**

In the justice and municipal courts, the clerk is appointed by the judge. Clerks of the superior court are elected, and thus are legally independent of the direction of the presiding judge. In 19 other states the clerk of the general jurisdiction trial court is appointed.

By statute in Arizona, clerks of the superior court select and retain their own staff which further contributes to the fragmented administrative structure of the court system. They are required to prepare and submit their own budgets, often competing with the court for funding, even though both the clerk and the court are part of and operating in the same system.

Court clerks' responsibilities are solely administrative. Because the presiding judge is responsible for the administration of the court, the operation of the court would benefit from single direction. The elected position of clerk of the court should be eliminated. Clerks currently in office should be grandfathered in to perform their present duties for the balance of their elected terms. If the position is filled thereafter, it should be at the discretion of the district court executive and district chief judge.

## Constables

3.7 *The Responsibilities Of The Constable Should Be Assumed By The Sheriff's Office, Court Staff, Private Process Servers, Or A Combination Thereof.*

### Rationale

Constables are elected officials in the justice courts, serving four-year terms. They serve court orders and notices as directed by a local justice of the peace and enforce writs of restitution; some perform as bailiffs. Constables perform purely ministerial functions.

Historically, constables have been included in the budget of the justice court in which they serve; they operate independently of the court, however, administering their own staff and facilities. Some justice courts do not use constables, especially in the rural areas of the state. In a number of precincts where constables exist, a significant proportion of the court's civil process is served by private process servers.

Forty-eight states authorize sheriff's departments to serve process. The District of Columbia and 21 states have a constable or court official serving process; 15 states use marshals.

The elected position of constable should be eliminated. Constables now holding office should be grandfathered in for the balance of their elected term.

## Law Clerks



3.8 *A Pool Of Law  
Clerks Should Be Made  
Available For District  
Court Judges Who Need  
Legal Support Services.*



### Rationale

In light of the increasing legal and factual complexity of many cases, it is difficult for judges to thoroughly research the many important legal questions raised in the course of litigation. There are no law clerks in the superior court and, unless the bailiff is law trained, the judge must do all the necessary legal research and writing without assistance. At best, the result is greater delay in ruling on the matters taken under advisement. At worst, the judge may have to rely entirely on the lawyers' submissions. Legal assistance could reduce the possibility of error by the trial court judge.

The appellate courts in Arizona research difficult issues with the assistance not only of highly qualified recent law graduates, in most cases, two per judge, but also of a staff of several career lawyers.

Trial court judges do not have comparable research capabilities. They have attempted a variety of solutions with varying degrees of success, including hiring lawyers as "bailiffs" and developing and coordinating "intern" programs for law students. These programs do not provide the judges with the kind of consistent, permanent, and qualified research capabilities needed in today's trial courts.

A policy should be established to permit the appointment of permanent law clerks for district court judges. It would not be necessary, however, to provide a law clerk for each judge. The Commission recommends a permanent, centralized pool of law clerks. The addition of a career path for all district and appellate court law clerks, similar to that recently adopted in the federal courts, would be of tremendous value in keeping "seasoned" legal researchers while improving productivity and the quality of decisions.





## Chapter Four

# RESOLVING DISPUTES

*The adversary process with its formal and fairly rigorous rules of evidence has served the common law system of justice well for hundreds of years. It is an excellent way to logically present opposing viewpoints to enable a neutral fact-finder to determine the truth. But it is not the only way. Societies across the globe and over the centuries have evolved other means to resolve disputes.*

*The judicial system is our society's institutional vehicle for resolving disputes. If that system is to remain effective and viable through the next century, it must be open to alternative dispute resolution approaches.*

### Establishing Alternative Dispute Resolution Programs



4.1 *The District Court Should Establish  
Innovative Alternative Dispute  
Resolution Programs.*



- The district court should offer Alternative Dispute Resolution (ADR) options to litigants.
- District court judges should have the authority to refer civil cases to any one of a variety of ADR methods.



## Rationale

### *The Need for Alternative Dispute Resolution*

There is increasing dissatisfaction with litigation as the principal means available to resolve disputes. In 1988, the Fifty-Third Arizona Town Hall concluded:

*"...The increasing complexity, costs and time associated with the system have acted to intimidate citizens and discourage their participation."*

*"The length of time required to process a case at the trial level within the civil justice system increases the cost of the system to participants and the public and reduces access to the system. One of the effects of the increased cost of litigation (including those caused by delays) is to price certain people and organizations out of the civil justice system..."*

*"Clearly, the civil justice system is not fully meeting the objective of providing a fair and equitable resolution of disputes under the rule of law in a timely and cost-effective manner..." (Emphasis added)*

The purpose of ADR is not to replace the civil justice system but to provide parties with alternative forums or means more appropriate to their disputes. As one scholar declared, the purpose of ADR is to "fit the forum to the fuss." The trend toward utilization of ADR has gained great momentum since the mid-1970's. Over 700 ADR programs now are functioning in 44 states, the District of Columbia, and Puerto Rico. The types of cases resolved through these programs range from minor criminal and some felony charges to a wide variety of civil disputes. ADR programs are found in both rural and urban areas.

Although many ADR programs have successfully relieved court congestion (and reduced undue cost and delay), the primary advantages of ADR are to facilitate access to justice and to provide more effective dispute resolution. Because these two advantages coincide with the problems identified by the Town Hall, the Commission believes that Arizona courts should be given greater flexibility to experiment with ADR mechanisms.

Because not all courts in this state are congested and experience excessive delay, Arizona courts should have authority to experiment with ADR programs best suited to their needs and circumstances. Rather than pursue sweeping changes, the Commission prefers experimentation tied to the special needs of each court. Experimentation will, in the long run, be a more effective way of establishing sound, successful programs. If experimental programs prove to be successful, they can be expanded into permanent features of our judicial system.

At present, there are three statutory ADR procedures used in Arizona's courts: court-annexed arbitration, an informal procedure for resolution of complaints concerning new automobiles, and an administrative hearing procedure for persons with complaints involving mobile homes. In addition, mandatory mediation of child custody and visitation issues is permitted under local rules in six of the state's 15 counties. Finally, a mandatory settlement conference program has been established in all civil divisions in the superior court in Maricopa County.



### *District Courts Should Offer ADR Options to Litigants*

Each district court should establish ADR programs or make them available by contract with private dispute resolution providers. The public should be able to voluntarily utilize these ADR programs prior to or immediately after the filing of litigation. These programs should include intake offices staffed by persons knowledgeable about the various governmental offices and resources to which unrepresented persons may be referred for the resolution of their disputes. Intake officers would listen to the facts of a complaint or dispute and refer people to the appropriate forum for its resolution, whether it be mediation, arbitration, or traditional legal remedies. The model for the intake office procedure is that of the "Multi-Door Courthouse," a successful experimental program now in operation in Houston, Tulsa, Washington, D.C., and other jurisdictions. It is anticipated that many disputants may be able to resolve their disputes earlier through their voluntary use of these programs and will, thereby, minimize their need for costly legal services. Existing procedures such as small claims court will be enhanced by the implementation of ADR programs.

### *Judicial Authority to Refer Cases to ADR*

With limited exceptions, no statute or court rule presently authorizes judges to require parties to utilize alternative proceedings such as mediation, fact-finding, early neutral evaluation, summary jury trials, and mini-trials. At least 12 other states have adopted comprehensive dispute resolution legislation. In Texas, the Alternative Methods of Dispute Resolution Act of 1987 permits the court, on its own motion or on the motion of either party, to refer a pending dispute to any one of a variety of ADR procedures. Florida and Oklahoma have similar statutes.

The Supreme Court should adopt a rule authorizing innovative experimental programs permitting district court judges to refer civil cases to any one of a variety of ADR procedures. Data collected by the Task Force on Dispute Resolution indicate that Arizona's judges believe it would be useful to have this flexibility. The particular form of ADR for a given case could be determined in consultation with the parties, who would also be given the right to be heard on any objection they may have to the referral decision of the judge. The right to a jury trial would be preserved.

The Supreme Court should provide technical assistance in the implementation of ADR programs to the courts. It should also assist the courts in determining the appropriate standards for assuring that qualified persons serve in these ADR programs, whether as employees or volunteers.

## Arbitration

### 4.2 *The Effectiveness Of Court-Annexed Arbitration Should Be Enhanced.*

Court-annexed arbitration should be enhanced by:

- Identifying arbitrable cases early; referring cases to arbitrators immediately thereafter; setting and enforcing strict discovery limits tailored to arbitration cases; and setting and enforcing time limits for rulings by arbitrators;
- Expanding the cases subject to arbitration;
- Requiring attorneys to accept appointments as arbitrators, except for good cause shown;
- Utilizing nonlawyer arbitrators in limited jurisdiction court cases;
- Increasing arbitrator compensation;
- Establishing disincentives to appeal;
- Relaxing the rules of evidence;
- Repealing the statute excluding employer-employee disputes from private arbitration; and
- Providing training for arbitrators.

### Rationale

#### *Mandatory Civil Arbitration*

In mandatory court-annexed arbitration, litigants in civil cases claiming damages under certain limits must present their evidence and arguments in an informal hearing before an attorney arbitrator. The hearing results in an award or a finding of no liability. If either party is dissatisfied with the arbitrator's award, they may appeal to the court and request a trial *de novo*. Arbitration, used since colonial times for commercial disputes, is intended to speed the disposition of civil cases. Arbitration, by reducing the number of cases in court, also expedites those cases that remain in the normal litigation process. Court and litigants' costs also are reduced by arbitration.



Each court in Arizona is presently authorized to establish a local rule setting a maximum jurisdictional limit, not to exceed \$50,000, under which all civil cases are referred to nonbinding arbitration. The jurisdictional limits set by the courts range from \$1,000 in Santa Cruz, Graham, and Greenlee counties to \$50,000 in Coconino County, with Maricopa and Pima counties having a limit of \$30,000.

Data from Maricopa County show arbitration is effective in reducing the court's caseload. In 1987, 1,630 cases were referred to arbitration. Of 1,578 arbitration cases terminated, only 183 notices of appeal were filed. Of the latter, only nine new trials were held. Similarly, in 1988, 2,003 cases were placed in arbitration, 1,367 were terminated, and 107 notices of appeal were filed. Of the latter, only six cases were retried in the superior court. The court's usual trial rate for all civil cases is 4%.

Maricopa County recently raised its arbitration limit from \$15,000 to \$30,000. As a result, it is anticipated that the number of cases arbitrated will increase substantially. To prepare for this increase and to improve arbitration in the other counties, the Commission makes the following recommendations:

### *Identification of Arbitrable Cases*

Attorneys now are required to identify arbitrable cases when they advise the court that a case is ready for trial. This occurs as late as 11 months after the filing of a complaint. The arbitration rules should provide that parties, when filing their complaint or answer, certify whether a case is subject to mandatory arbitration.

### *Expand the Scope of Arbitration*

The arbitration statute and rules currently are limited to those arbitrable cases within jurisdictional limits established by each court, and all cases must be for a "money judgement." Arbitration also should be allowed in lien foreclosure cases.

### *Arbitrator Appointments*

Attorneys may refuse court appointments to act as arbitrator for any reason. Long delays in setting a case for an arbitration hearing are experienced in Maricopa County because some cases must go through the appointment process numerous times until an attorney accepts the appointment. Two reasons for the unwillingness of attorneys to serve as arbitrators are low compensation and the difficulty in scheduling because no information is provided by the court or the parties as to the expected length of a hearing. The serious problem of lawyers refusing to serve as arbitrators, most acute in Maricopa County, should be addressed in three ways:

- (a) Delete the provision in the rules of procedure permitting an attorney to withdraw from the list of arbitrators. Lawyers appointed as arbitrators should serve except for "good cause shown" (e.g., conflict of interest, illness). This proposal parallels the recommendation recently made by the Arizona State Bar to the Supreme Court;
- (b) The rule that requires the filing of a pre-hearing statement by the parties should be amended to require parties to state the estimated time for their arbitration hearing; and
- (c) If the Supreme Court requires pro bono (without compensation) service by all lawyers, uncompensated service as an arbitrator should be counted toward any such requirement. (See Chapter Five, Section 5.7)



In addition, nonlawyer arbitrators should be appointed for the arbitration of cases claiming damages under \$5,000. These are the cases that would be heard by the limited jurisdiction judges under the unified district court recommendation.

### *Compensation*

The present \$75 per day compensation for arbitrators is inadequate and a partial cause for the frequent refusal of attorneys to accept appointments, particularly in more complicated cases. These cases will be increasingly subject to arbitration as a result of the recent rise of the jurisdictional limit of arbitrable cases. Each court should be permitted to establish a fee schedule within a new statutory limit of \$250 per day.

### *Disincentives to Appeal*

If a party appealing an arbitration award does not obtain a more favorable result from the court, the party must now reimburse the arbitrator's compensation to the county and pay attorney's fees and costs to the opposing party. In Maricopa County, cases with damages between \$15,000 to \$30,000 likely will be more complex. Preliminary data indicate they already are taking longer to arbitrate. Greater disincentives to appeal will be necessary if the court's burden is not to increase. In addition to the existing statutory sanctions, expert witness fees should be treated as costs and paid by the appealing party who does not improve his or her position by at least 10%.

### *Rules of Evidence*

Despite the relaxation of the rules of evidence in arbitration cases, nonexpert witnesses still are required to give live testimony rather than being allowed to file sworn statements. This adds substantial expense and inconvenience to what is intended to be an inexpensive procedure. Nonexpert witnesses should be able to file sworn written statements of their testimony upon due notice to the opposing party. These statements could be rebutted by an opposing party. This change would enhance the cost effectiveness of arbitration in civil cases.

### *Employer-Employee Disputes*

Employer-employee disputes are excluded by statute from the Uniform Arbitration Act, which establishes the procedures for private arbitrations conducted by agreement of the parties. As no rationale for the exclusion of this type of case could be determined by the Commission, we recommend the repeal of this statute.

### *Arbitrator Training*

While training is currently provided to attorneys appointed as arbitrators, there is not necessarily uniformity in the quality of adjudication of arbitration cases. Training in arbitration techniques and theory should be provided to and required of all arbitrators.

## Medical Malpractice Cases



4.3 *Medical Malpractice Cases Should  
Be Processed Like Any Other Civil  
Suit And Made Subject To Alternative  
Dispute Resolution Procedures.*



### Rationale

Since 1976, almost all medical malpractice cases have been heard, prior to trial, by medical liability review panels comprised of a superior court judge, an attorney, and a medical professional of the same specialty as the defendant health care provider. The plaintiff outlined the theory of the claim to the panel and the defendant specified his or her defenses. The parties then presented their evidence within a maximum eight-hour time period, as provided by statute. The "finding" by the panel, arrived at within 20 days of the hearing, was not binding; however, it could be introduced as evidence in the trial and given whatever weight the jury wished to give it.

On June 28, 1989 the Governor signed into law a bill which repealed the statute establishing the medical liability review panels. The Commission concurs with the repeal of panel legislation. The data the Commission has collected regarding the medical panel system may still be useful in the event a proposal to re-establish the panels is made in the future.

The intended objectives of the panel procedure were to reduce the frequency and cost of malpractice litigation by encouraging expedited informal hearings in an effort to promote pretrial settlements of these cases. The panels were a legislative response to the "malpractice crisis" thought to exist nationwide in the mid-1970's. The assumption was that the panel hearings would expedite the resolution of malpractice claims and discourage the filing or further litigation of nonmeritorious claims. Thirty states adopted the panel procedure by the late 1970's. Currently, this number has been reduced to 24, with three state supreme courts having found them to be a denial of constitutional rights.

A 1977 report from the American Bar Association indicated that, where a panel finding is made admissible in a later trial, as in Arizona, the outcome may well depend on the decision the panel makes and, thus, the panel procedure was likely to become increasingly formal, taking on all the trappings of courtroom litigation. This prediction was borne out in Arizona, as noted by two empirical studies, one conducted in 1980 by the National Center for State Courts and one based solely on insurance claims data conducted in 1986.



The Task Force on Dispute Resolution found that much dissatisfaction with the panel system existed among plaintiffs, the plaintiff and defense bars, and judges. Court data from Maricopa County, which has the highest frequency of malpractice case filings in the state, indicate the panels have been waived by stipulation of the parties in approximately 50% of all cases filed since 1976. Contrary to the intended objectives, case data examined and testimony heard by the task force indicate that the panel procedure resulted in a severe administrative burden to the courts and had increased, rather than decreased, the cost of malpractice litigation. Further, all evidence indicates the panel procedure did not reduce the frequency or length of malpractice litigation. Indeed, practitioners believe costs increased because they were required to present their experts at a panel hearing and again later at trial.

Many plaintiffs' attorneys in Maricopa County will not take a malpractice case unless the damages exceed \$100,000. A large number of potential plaintiffs, therefore, may never receive the representation and opportunity for compensation they deserve. Both plaintiff and defense attorneys indicate that they would prefer a different form of dispute resolution. Almost 83% of the 82 plaintiff and defense attorneys responding indicated they favor mandatory settlement conferences; 63% favor mandatory mediation; and almost 50% favor the referral of malpractice cases to a wider range of alternatives.

A survey of superior court judges in the state, with 65 responding, indicates that 80% believe the panels did not meet their intended objectives. Twelve judges who administered their court's panels as a presiding judge state they have had difficulty in obtaining the cooperation of the medical community in appointments of panel members. Three out of four believe that malpractice cases could have been tried and disposed of earlier were it not for the panel system. Almost 70% of the judges state they would prefer having the authority to refer malpractice cases to any one of a variety of ADR procedures instead of the medical panels.

Of the 210 physicians responding to the task force survey, 79% favor the court being able to refer malpractice cases to other ADR procedures rather than the panels. Eighty-four percent state they would favor a mandatory mediation requirement for such cases.

In addition, prior to the repeal of the panel statute, the Governor's Task Force on Medical Malpractice Insurance recommended abolishing medical liability review panels and stated its "strong encouragement of alternative methods of dispute resolution."

Increased utilization of alternative means of resolving malpractice disputes was also recommended by the General Accounting Office in 1986 and in reports in 1987 by the Department of Health and Human Services Task Force on Medical Liability and Malpractice Insurance, the American Medical Association, and a number of medical specialty groups. The Commission proposes, therefore, that courts be authorized, in their discretion, to use different innovative means of resolving these disputes.

Medical malpractice cases should, therefore, be subject to the ADR techniques already available under court rules, such as mandatory settlement conferences. In addition, judges should have the discretion to direct a malpractice case to mediation, summary jury trial, mini-trial, or other ADR methods prior to trial.

## Confidentiality

4.4 *The Legislature Should Enact Appropriate Legislation  
And The Supreme Court Should Promulgate Rules  
To Establish Confidentiality For Communications  
Made During A Mediation. They Should Specify  
The Nature Of The Communications, Documents,  
Or Work Product Intended To Be Protected From  
Disclosure, As Well As The Exceptions Necessary  
For Futherance Of Other Important Public Policies.*

### Rationale

#### *The Need for a Confidentiality Statute*

To enhance the prospects of settling disputes through mediation, confidentiality of the parties' communication is necessary. The disputing parties must be encouraged to speak with candor and fully explore the issues. The existing Rules of Evidence preserve the confidentiality of settlement discussions. There is a growing recognition, however, of a need to limit a confidentiality rule, especially where other important public policies can be furthered.

Many states have legislation that provides for confidentiality of communications made during mediation sessions. Many states have created statutory exceptions where other social policies are frustrated by the privilege. A statute should be enacted in Arizona to provide limited confidentiality for all extra-judicial mediations. A similar Supreme Court rule should be promulgated covering all mediations conducted through court-annexed programs.



Certain exceptions to the confidentiality statute should exist where:

**(a) Disclosures By Parties**

- All parties agree to disclosure;
- The communication or document is relevant to a party's legal claims against the mediator or mediation program arising out of a breach of legal obligations;
- The communication or document is relevant to a resolution of a dispute regarding the existence or meaning of any agreement that resulted from the mediation;
- Disclosure is required by statute (e.g., A.R.S. §13-3620(A), requiring certain persons to report child abuse);
- Disclosure is relevant to the subsequent enforcement of an agreement to mediate; or
- The parties are engaged together in litigation with third parties and a court determines that fairness to the third parties requires disclosure of the fact or substance of the agreement.

**(b) Disclosure By the Mediator or Mediation Program**

- The parties, the mediator, and the mediation program (if applicable) agree to disclosure;
- The communication or document is relevant to a party's legal claims against the mediator or mediation program arising out of a breach of a legal obligation;
- Disclosure is required by statute; or
- The communication or document is relevant to the existence or meaning of any agreement that resulted from the mediation, provided that all parties agree.

**(c) Threats or Actual Violence During Mediation**

Mediators should disclose to the parties that the confidentiality rule will not prevent them from disclosing actual or threatened violence during a mediation session. The Task Forces on Dispute Resolution and Children and Families in the Courts have, however, reached differing conclusions regarding whether mediators should have an affirmative duty to disclose such conduct to the court; the latter believing they should, and the former that they should not. The Commission believes, therefore, that this matter should be thoroughly debated in the legislature when the issue arises.

## Immunity

4.5 *There Should Be A Qualified Immunity For Mediators Employed By A Court-Annexed Dispute Resolution Program Or By Any Governmental Entity. The Existing Quasi-Judicial Absolute Immunity Established By Case Law For Arbitrators Should Be Codified.*

### Rationale

#### *Mediators*

Mediation is growing in popularity as a means to avoid costly and protracted litigation. Community mediation programs in Phoenix and Tucson all use volunteer mediators. Several state agencies utilize mediation in resolving intra-agency disputes. Mediators will be utilized by the proposed Office of Public Dispute Resolution to aid in the resolution of public disputes.

Many of these neutrals are, therefore, serving the courts and acting in the place of judges. To promote the use of mediation as an alternative form of dispute resolution and to encourage the participation of persons as professional or volunteer mediators, these persons should have a qualified immunity from suit.

Because tort law is supposed to promote and enhance the standard of care by which people govern their behavior, immunities should be granted sparingly. A grant of immunity is a matter of public policy that balances the social utility of the immunity against the social loss of being unable to recover against the immunized defendant. Where a court orders parties to mediation, mediators should be able to act without the possible threat or fear of civil liability. To do otherwise might frustrate the public policy of encouraging the resolution of disputes through mediation and the participation of volunteers and private practitioners in the mediation process. Any mediator entitled to claim the benefit of qualified immunity should be certified and required to pass an approved training program.



Many states with comprehensive dispute resolution statutes provide mediators immunity from civil liability. Some immunity statutes extend only to "negligent acts." Others contain certain exceptions for conduct, such as, "bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of the rights, safety, or property of another" (Florida and Iowa); "willful and wanton misconduct" (Washington); and "wrongful conduct" (New Jersey). Some states have recognized the value of volunteer mediators and have expressly included them, as well as employees and board members of such programs, within legislation defining the scope of the qualified mediator immunity.

The grant of immunity from liability would apply to all staff and volunteer mediators affiliated with court-annexed dispute resolution programs, programs that accept court referrals, and other governmental entities, such as the proposed Office of Public Dispute Resolution.

Qualified immunity would apply to all acts or omissions of "covered" mediators except those acts or omissions that could be characterized as exhibiting a reckless disregard of a substantial risk of significant injury to the rights of others, or intentional misconduct.

### *Arbitrators*

Quasi-judicial immunity for arbitrators is well established under Arizona case law. This immunity is extended to arbitrators because they are performing an essentially judicial function; there is a need to protect the decision-maker's independence, to leave decision makers unfettered by fear of reprisal and recrimination.

In light of the expanded use of mandatory civil arbitration and the proposals made to encourage the use of private arbitration, the legislature should enact specific legislation to codify the existing arbitral immunity under case law.

Historically, arbitrators have been afforded quasi-judicial immunity from suit by case law in most states. There appears to be a trend to codify this protection.

Arbitrators should be afforded immunity for acts relating to an arbitrator's duties. No expansion or restriction of the existing arbitral immunity is contemplated by the Commission, which recommends that this immunity be codified.

## Office of Public Dispute Resolution

4.6 *A State Office Of Public Dispute Resolution  
Should Be Established That Will Provide Assistance  
In The Resolution Of Disputes, Using Mediation  
Or Other Means Of Alternative Dispute  
Resolution, Between Government Agencies,  
Between Public Agencies And Private Citizens,  
Or In Private Disputes That May Have  
A Substantial Public Impact.*

### Rationale

#### *Public Dispute Resolution*

Population growth throughout Arizona and increased urbanization in Maricopa and Pima counties have brought about conflicts among many segments of our state. As our government agencies attempt to plan for new residents and economic growth, they must confront the concerns of citizens who are impacted by the difficult decisions that must be made: freeway alignments, locating hazardous waste treatment and disposal sites, and alleviation of air and water pollution.

There appears to be little doubt that litigation is unsuited to the resolution of complex, social problems affecting multiple interest groups. Judicially-imposed solutions tend to be all or nothing. Areas for compromise, usually identified through ADR procedures, are not within the remedial power of courts.

At present, the Office of the Attorney General conducts some mediation of these types of disputes when they involve inter-agency conflicts or when special interest groups object to new regulations contemplated by an agency. Because the Office of the Attorney General represents state agencies, its ability to act in a neutral capacity to mediate disputes with state government is greatly hampered. According to a recent survey of state agencies, only four have an informal mediation system in place for resolving citizen or internal disputes.

Statewide offices of public dispute resolution have been established with grants from the National Institute for Dispute Resolution and state matching funds in Hawaii, Massachusetts, Minnesota, and New Jersey. They have demonstrated that innovative dispute resolution efforts can assist state government in dealing with potentially complex public policy disputes.



In Hawaii, the program is located in the office of the Administrative Director of the Courts and has already facilitated a legislative effort to redraft the state's water code, mediated disputes regarding tour helicopter regulations, and implemented a mandatory court-annexed arbitration program. It also trains county and state agency employees in dispute resolution methods.

The Massachusetts program is located in the Executive Office for Administration and Finance and has mediated disputes involving affordable housing, hazardous waste disposal, long-term health care regulations, mobile home parks, local elections, and water resources. It is now developing a mediation program to be implemented in the state courts. It has a two-member staff governed by a 12-member board.

Minnesota's Office of Dispute Resolution is part of the state planning agency. It has developed a farmer-lender mediation program and has mediated disputes involving statewide herbicide spraying, a sewage dispute between two municipalities, and the role of regional centers for the treatment of the developmentally disabled. It also trains state personnel in mediation and negotiation techniques.

### *Establishment of an Office of Public Dispute Resolution*

The proposed office should be located in the executive branch. It should work closely with an advisory board of members knowledgeable about dispute resolution. The board would actively develop the training and ethical standards for certified neutrals who will act on its behalf.

#### *Purpose*

There would be four primary functions of the Office of Public Dispute Resolution. First, the office would provide a pool of trained mediators or other neutrals to assist in the resolution of disputes which involve public entities, impact public policy, or otherwise affect the public interest.

Second, in consultation with professional dispute resolvers, the office would establish training requirements for neutrals acting on behalf of others, such as neutrals used in court-annexed dispute resolution programs (when so requested by the court). Its training requirements would include establishment and enforcement of a code of ethics for its neutrals and others it may certify. Special training would be provided in the mediation of environmental planning, land use, and other highly technical issues.

Third, the office would assist state agencies and political subdivisions to develop internal methods of dispute resolution for disputes involving their own personnel or the public. This may include training in ombudsmanry, mediation, facilitation, or fact finding.

Lastly, through public education, the office will serve as a catalyst to bring about the increased use of nonadversarial means of dispute resolution. This would include hosting conferences and seminars that address issues in the dispute resolution field, encouraging policy dialogues between interest groups and public offices, and developing educational programs for the general public.

Cases would be referred by the courts, state agencies, or parties involved in public disputes. The office could become involved at any stage of a dispute. The functions of this office would not limit the jurisdiction of any other public agency or court.

#### *Administration*

The Office of Public Dispute Resolution should maintain local or regional offices or other links to rural areas to maximize the future use of alternative dispute resolution methods statewide. Continual monitoring and periodic evaluation of the office's training program should be employed with a view toward improving and modifying the program as experience with public dispute resolution develops.



## Chapter Five

# ENHANCING PRODUCTIVITY

*The quill and inkstand references to courts are analogous to buggy whip factory references in the business sector. But while buggy whip factories are virtually extinct, there are a distressing number of practices in courts today that date back to quills and inkstands. One of the biggest challenges faced by the judicial branch as it approaches the year 2000 is to modernize its practices and its technology and to prepare for the continuing dramatic impact on society of further technological advances.*

*Yet, while the courts must expand their use of technology to do their job efficiently as well as effectively, the profession of law may need to look back in order to move forward in a way that will best serve the courts and society. The Bar must recommit to the law as a profession rather than a vocation if the courts and legal system envisioned in the future are to be realized.*

### *Caseflow Management and Information Utilization*

#### **Time Standards**



5.1 *The Supreme Court Should Adopt The American Bar Association's Trial And Appellate Court Case Processing Time Standards For All Arizona Courts.*





- The time standards developed for Arizona's courts should take into consideration the caseloads of the trial and appellate courts.
- The Supreme Court, directly or through the Judicial Council, should develop regular training programs in the elements and techniques of effective case management and court administration for judges and other court personnel at all levels.
- The Supreme Court should require Arizona district and appellate courts to develop and submit caseflow management plans to achieve established standards.

### **Rationale**

"It costs too much and it takes too long" is the oft-cited complaint voiced by the public about the judicial system. While some courts in Arizona properly are recognized as being among the most advanced and efficient in the country, variations in caseflow management have resulted in dramatic differences in the time required to dispose of both civil and criminal cases. Justice should be provided in a consistent and timely manner across Arizona.

Case management and time standards for trial courts were first proposed by the American Bar Association (ABA) National Conference of State Trial Judges in the early 1970's and originally adopted by the ABA in 1976. In 1984, the ABA adopted revised court delay reduction standards that provide a coherent delay reduction strategy and reaffirm the court's responsibility for controlling the pace of litigation. In 1987, after extensive study, standards were promulgated for state appellate courts.

These standards and caseflow-management techniques are being implemented in the civil and criminal departments of some of our trial courts and in courts in many other jurisdictions. Approximately 30 states have adopted or are in the process of adopting statewide standards for processing cases, and nearly half have done so by supreme court order or rule.

## Caseflow Management Techniques for the District Court



5.2 *The Supreme Court, In Consultation  
With The District Court Judges,  
Should Adopt Additional  
Caseflow-Management Techniques.*



- The administrative and case management authority of chief judges to administer the court system and enforce caseflow management should be increased.
- In districts where the caseload is such that active case management requires the establishment of intermediate jurisdiction judges, such judges, under the supervision of general jurisdiction judges, should have the power to engage in active case management with full judicial power over pretrial proceedings, including discovery, and power to rule on all motions except those that dispose of a case on the merits.
- The statistical reporting standards promulgated by the National Center for State Courts should be adopted for all Arizona courts. The resulting statistics should be published in the Supreme Court's annual report to suggest improvements in case-management techniques, much as an auditor's management letters are used in the private sector.



## Rationale

The public, which spends over \$175 million on the Arizona judicial system each year, can no longer afford to rely on the private interests of parties and their lawyers to dictate the pace at which litigation should proceed. The need for judges to manage their caseloads effectively is evident even in courts in rural counties, but that need becomes overwhelming as a community becomes more urbanized. Greater uniformity among courts and judges is required in the management of cases, the definition of terms related to productivity, and the reporting of meaningful data to measure performance as compared to goals.

The court should supervise and control the movement of all cases from the time of filing of the first document through disposition by monitoring time standards, establishing rules, conferences, or other techniques of scheduling the completion of critical stages in the litigation process, particularly the discovery phase. Procedures should be developed for early identification and mandatory scheduling of complex and protracted cases. Individual calendaring, which would make each judge accountable for each case assigned and provide continuity throughout the decision process, should be adopted as well as firm, consistent policies for minimizing continuances and overscheduling. A policy should be established that trials will begin on the original date scheduled.

Chief district judges must be given authority commensurate with their responsibility. They should have authority to assign and reassign judges, establish and uphold policies concerning external and internal matters affecting the court, and assist and counsel other judges in the performance of their duties and in the administration of the court. In recent years, court administrators have been employed to handle the purely management functions of calendaring for the entire court, but their operations do not touch the issue of administration of pretrial procedure in individual cases. Chief district judges should administer the court so as to ensure that case-management standards are being achieved in accordance with guidelines to be developed by the Supreme Court and that the workload of members of the court is equalized so far as possible.

Judges occupy a special role in the legal system and their independence from direction and control in deciding cases must be preserved. At the same time, the administrative demands of a complex court system require a chief judge with sufficient authority to regulate the flow of work.

In making judicial assignments the chief district judge should identify the need for intermediate jurisdiction judges whose duties would include the supervision of caseflow management and pretrial proceedings in complex cases to ensure their speedy progress toward disposition.

Arizona courts are required to submit significant amounts of data on case filings, dispositions, and cases pending. Thus far, the data's main use has been inclusion in the Supreme Court's annual report. The only measures of case aging are "civil cases pending over 18 months" and "criminal cases pending over 150 days." Measuring performance, improving the system, and informing the public is very nearly impossible with the data presently available.

Data collection requirements of the Supreme Court should be reviewed and revised to include time from filing to disposition by case type, judge, and jurisdiction. Additional staff of the Administrative Office of the Courts (AOC) should be employed with skills to analyze the data, interpret its meaning, and maintain and operate a statistical and management system. Legislation should be enacted to appropriate adequate funds from filing fees to enable the AOC to provide software and computer equipment to every court in the state. This would allow the courts to conduct their business expeditiously, identify areas for improvement, and provide all of the statistical information required by the Supreme Court.

## Caseflow Management Techniques for the Intermediate Appellate Courts



5.3 *The Supreme Court Should Consider  
The Adoption Of Caseflow-Management  
Techniques Relating To  
Appellate Court Productivity.*



- A chief judge should be appointed over each division of the Court of Appeals to devise and implement the means for increasing productivity.
- Limits on the length of briefs and oral argument should be reviewed and perhaps tightened.
- Standards should be developed for extensions of time for filing briefs and the court transcript, circulation and discussion of drafts, and publication.
- Standards for candidates to the Court of Appeals should include evaluating work habits.
- Judges pro tempore should be utilized on a short-term basis to help reduce both backlog and caseload in cases not requiring published opinions.
- Appellate courts should develop written internal operating procedures that should be reviewed at least every five years.



## Rationale

Each division of the Court of Appeals is experiencing phenomenal caseload increases. As of December 31, 1987, Division One had 1,749 cases of all types pending decision. As of December 31, 1988, the court had 1,873 cases pending, an increase of 124 cases (7%). Currently, it takes about nine and a half months from the time a civil case is at issue until it reaches oral argument or the conference at which a case is disposed. The national standard is eight months from filing to disposition.

A 1989 study of 45 appellate courts nationwide and an evaluation of their myriad responses to burgeoning caseload growth concluded that adding judges and deciding cases without opinion are the two most effective means for increasing appellate output. Use of temporary judges, unpublished memorandum opinions, and curtailment of oral argument also were found effective, while adding more staff attorneys and reducing panel sizes were not.

Twenty-two of these 45 states decide certain appeals by simple order, while about 25% of these are decided without any opinion at all. Thirty-four states reduced the length of opinions using memorandum or per curiam (by the court) opinions. Likewise, curtailing opinion publication and issuing unsigned opinions have increased the decision output per judge. It also was shown that for each 10% of cases in which oral argument is limited, there is a corresponding increase of 1% - 2% in appeals decided.

The Commission recommends that a chief judge preside over each division of the Court of Appeals who would have the secondary duty of devising and implementing courtwide means for increasing productivity. If this task were made the explicit, continuing responsibility of one person, more would get done. Standards should be developed for appellate court candidates to enable the appellate courts to maintain the devotion and work ethic that has been so essential to the productivity of the court.

# *Role of Lawyers in Enhancing Court Productivity*

## *Professionalism Among Lawyers*



### *5.4 Incentives For Greater Professionalism And Disincentives To The Deterioration Of Professional Standards For Lawyers Should Be Provided.*



- Law schools should encourage aspiring lawyers to develop realistic, ethical approaches to practice-related problems.
- An aspirational creed of professionalism should be distributed to all Arizona attorneys.
- The Supreme Court should:
  - Require that everyone seeking legal service receive an approved disclosure statement describing the role of lawyers;
  - Impose on all lawyers a meaningful continuing legal education program;
  - Expand lawyer certification to litigation specialty areas not now covered;
  - Implement a pilot review program that includes district and appellate judges rating lawyers; and
  - Require that all new attorneys successfully complete a course on professionalism as a condition of practicing law and that to retain their license to practice, all attorneys attend a course on ethics and professionalism at least every three years.
- Informal peer review meetings could be convened by the Chief Justice with attorneys throughout the state.



## Rationale

There is a growing and justified concern among lawyers and jurists alike that the practicing bar, in Arizona and elsewhere, is moving away from the principles of professionalism. The legal profession is viewed too often by some as simply a means of earning a lucrative income to which an individual becomes entitled simply by passing a bar examination, without any corresponding, continuing professional responsibilities. Several steps must be taken to reverse this trend and to ensure that standards of practice expected of the profession are achieved and maintained.

Law schools possess an important, if not critical, responsibility for imbuing future professionals with the goals and values of the profession. At a minimum, there should be courses in "lawyering" and simulated exercises that concentrate on the practical aspects of ethics, alternative dispute resolution, and professionalism. Law schools and judges should support the internalization of these principles by encouraging students to practice in court under the tutelage of a competent lawyer during their last year of law school and to provide legal research to the court during internship programs.

An aspirational creed of professionalism that goes beyond the Rules of Professional Conduct should be adopted and distributed by the State Bar and Supreme Court to all Arizona lawyers with a request that it be prominently displayed in each member's office. The creed should note the lawyer's:

- Role as an officer of the court;
- Responsibility to exercise independent judgment within the attorney-client relationship; and
- Duty to make the justice system work, with the parallel duty not to misuse or abuse the legal system.

All individuals seeking to retain a lawyer should receive a disclosure statement that describes the attorney's role in handling the dispute and limitations upon that role. Specifically, the statement should disclose that the lawyer may not pursue frivolous claims, defenses, or positions. In civil cases, the statement should also disclose that the lawyer has provided the client with an estimate of the relative costs and time involved in handling the dispute through the normal litigation process as compared to use of available alternative dispute resolution (ADR) techniques. Lawyers should certify in the initial pleading that they have complied with this rule and pursued settlement and other ADR mechanisms with the client before filing the action involved or state the reasons why they have been unable to do so.

Lawyers should be required to meet mandatory, meaningful continuing legal education (CLE) requirements. The Commission is also aware of the need for additional CLE to obtain and retain certified juvenile court specialists. The Commission urges the Supreme Court to request that the State Bar expand lawyer certification to include various areas of litigation practice with a view toward enhancing the competence of the litigation bar, particularly in the juvenile area. Peer review, as recommended by the State Bar Committee on Quality of Advocacy, should be implemented on a pilot basis and should be broadened and supported, if successful, by additional CLE. Informal peer pressure also could be used to encourage colleagues to greater professionalism.

Lastly, it is imprudent to believe professionalism will be advanced without continuing reinforcement through CLE programs. Practicing attorneys should be reminded of the goal of professionalism and what one must do to be a true professional.

## Societal and Professional Responsibilities of Lawyers

5.5 *The Supreme Court Should Call Upon The State Bar  
To Study And Report Whether And To What  
Extent The Rules Of Professional Conduct Might  
Be Constructively Revised To Give Greater Definition  
To The Boundaries Of A Lawyer's Adversary Role.*

- There should be specific provisions in the Rules of Professional Conduct to address the problems of performing more legal work than is reasonably required or assigning more legal staff to a problem than is warranted under the circumstances (over-lawyering).

### Rationale

The adversarial system is the process for the resolution of civil and criminal disputes in the common law tradition of the United States. There has been a growing perception and concern, however, that the present operation of the adversary system too often produces neither justice nor efficiency. Many of these problems find their genesis in a skewed perception by lawyers, clients, and the public-at-large of the role of the lawyer in our dispute resolution process. The proper functioning of our adversary system requires that lawyers be lubricants, not sandpaper inhibitors of dispute resolution.

The Commission recommends that a rule be adopted that provides that a lawyer has an affirmative duty to cooperate with opposing counsel and the court on matters to minimize delay and cost, and to advance the interests of the client and of justice. A provision should be included that a client's written consent must accompany all motions for a trial continuance. In addition, a motion for such a continuance should be required to set forth in detail the reason for the request, when the need arose, what efforts were made to avoid requesting a continuance, and the earliest date at which trial could commence.

The Commission also believes there is a need to adopt specific provisions in the Rules of Professional Conduct to address the problems of accepting too much work and of overlawyering.

## Discovery Abuse in Civil Cases



5.6 *Discovery In Civil Cases  
Should Be Controlled And  
Managed By The Court  
From The Outset.*



- Rules should be adopted imposing presumptive limits on discovery.

### Rationale

Perhaps the most prominent way in which the conduct of lawyers has contributed to inefficiencies, delay, and excessive cost in the resolution of civil disputes is in the conduct of civil discovery. There is now virtual unanimity among various segments of the profession that some concrete and definitive steps must be taken to curb discovery abuse.

Studies have shown in both the federal and state courts that controls on discovery have dramatically reduced both the cost and delay normally associated with civil case processing. After exhaustive study, the Commission recommends a multi-part approach that includes: (1) a mandatory discovery conference convened on motion of either party or by order of the court in its discretion, (2) in complex cases, the appointment of a discovery master, with the fees of the master charged to the parties, (3) requiring parties by rule to engage in mandatory exchange of information, (4) limiting interrogatories (including subparts) to 30 questions, (5) limiting depositions to those of individual parties, present and future officers, and employees of corporate parties who were actual participants in the events in issue, and expert witnesses (exceptions would be permitted only upon an express finding of genuine good cause), and (6) imposing mandatory sanctions for failure to abide by the discovery rules.

The Commission believes that a rule of this nature will adequately address the problem of abuse without foreclosing the opportunity for judicial recognition of the truly complex case warranting greater latitude.

## Donated Legal Service by Lawyers

  
5.7 *The Rules Of Professional Conduct*  
*Should Be Revised To Define*  
*And Emphasize Lawyers'*  
*Ethical Obligations To Society*  
*To Donate Legal Services.*  


### Rationale

Standards that strongly encourage and specifically define pro bono (without compensation) service by lawyers, similar to those recently recommended by the Arizona State Bar's Legal Services Committee for adoption by the Board of Governors, should be adopted by Supreme Court rule with the following modifications or understandings:

- (a) That the hours of service or financial contribution standards may be adjusted downward by an appropriate percentage for lawyers whose practice or employment is less than full-time;
- (b) That lawyers who render substantially more than 50 hours of legal services in one year through, for example, work on a substantial "impact," or law-reform case, may "carry over" hours toward their pro bono commitments in a subsequent year; and
- (c) That uncompensated service in ADR programs (settlement week, mediation, arbitration) be considered pro bono service.

All of us at critical times in our lives require legal counsel; however, too many cannot afford to pay the necessary legal fees. The unmet need for legal services because of an inability to pay is enormous, although difficult to quantify. Perhaps more important than the volume of this need is its character: matters of decent housing, medical care, minimum economic sustenance, alimony and child support payments, and many other "gut" issues.

The Commission considered a variety of ways to address this need, including "mandatory pro bono." No other state bar has adopted mandatory donated legal services by lawyers, although several state bar associations and legislatures have such proposals under consideration. Federal courts have imposed mandatory appointment lists upon federal bar members in order to provide representation for indigent civil litigants lacking counsel.

While there is much merit in mandatory pro bono, as a condition of continued membership in the bar, the Commission is persuaded that its less drastic recommendation is a preferable way to close the substantial gap in quality legal services available to those with limited resources. The inclusion of uncompensated service on behalf of ADR programs and mandatory civil arbitration will also greatly benefit the public and the court by reducing the cost of these programs and the caseload of the courts.

## Lawyer Discipline

5.8 *To Expedite And Otherwise Enhance The Lawyer Discipline Process In Arizona, Additional Resources, Including Full-Time Staff As Needed, Should Be Allocated To The Agencies Responsible For Lawyer Discipline.*

### Rationale

On February 1, 1985, the Supreme Court of Arizona adopted new rules governing the professional conduct of lawyers and for processing complaints of lawyer misconduct. In 1985, the Board of Governors of the State Bar of Arizona increased the budget for the Office of Bar Counsel and Disciplinary Commission of the Supreme Court of Arizona by 13%; the staff was expanded from 12 to 18; the office space was doubled; several functions were computerized; word processing capacity was expanded; and the structure of the Discipline Department, including the Office of Bar Counsel, was completely reorganized for more effective and efficient operation. In addition, long-term planning was initiated; office policies and work performance standards were reviewed and upgraded; and an educational, preventive program for Bar members relating to ethical conduct was started.

The discipline system is completely funded by dues paid by members of the State Bar of Arizona. In 1985, the total budget was \$568,233. In 1986, the Board of Governors of the State Bar budgeted funds in excess of \$642,000 for discipline. This increase was occasioned, in part, because of a 15% increase in the number of complaints filed.

The Board of Governors has continued to upgrade the discipline system since 1986. The total budget in 1987 was \$663,403. The discipline staff, together with volunteers serving on hearing committees and as volunteer bar counsel, processed or investigated over 800 charges of lawyer misconduct in 1987. In 1988, the Board of Governors allocated \$748,578 to the discipline system. The State Bar received more than 1,550 inquiries regarding lawyer conduct.



In November, 1988, the Board of Governors allocated \$783,773 to the discipline system in 1989, based on a projected 10% increase in filings. As of January 1, 1989, the State Bar employed 17 full-time employees, including 5 attorneys, 3 part-time investigators who work both for staff and volunteer bar counsel, a part-time word processor operator, and a part-time law student clerk who works at the direction of the Disciplinary Commission of the Supreme Court.

In April, 1989, the Board of Governors responded to a request for increased personnel for the discipline system. Specifically, it approved a \$50,000 mid-year budget amendment to permit the hiring of 2 additional full-time staff employees, including 1 lawyer, and a part-time lawyer for the Disciplinary Commission of the Supreme Court. The additional personnel were approved to meet the growing need to expedite the disciplinary process and to assist the Disciplinary Commission in responding to the Supreme Court's request for more detailed reports.

The Board of Governors, the Disciplinary Commission, and the Supreme Court are united in the goal of timely disposition of disciplinary cases. One issue in meeting that goal involves the use of volunteer bar counsel. Another concerns the number and effectiveness of the hearing committees.

The Board of Governors, along with the Disciplinary Commission and the Supreme Court, should continue to monitor the timeliness and effectiveness of the disciplinary process in Arizona. The Board of Governors should allocate additional resources, as necessary, to enhance that process.

## *Proposals Which Impact the Entire Judicial System*

### *Landlord-Tenant Cases*

5.9 *Where Practicable, Landlord-Tenant Cases Should  
Be Heard By Special Judges To Avoid  
Disruption Of A Court's Calendar.*

- Special judges are needed due to the expedited right to jury trial.
- The inconsistency in the law regarding attorneys' fees in residential and commercial forcible detainer should be resolved.

#### **Rationale**

##### *Calendar Disruption*

Under Arizona law, both landlords and tenants in eviction cases have a right to a jury trial within six days from the date of the summons. This causes an extreme hardship for the court and, more importantly, for litigants in other cases because all matters previously set for a judge's calendar must be rescheduled to accommodate the parties' right to trial by jury. This often results in the interruption of ongoing trials.

The Commission proposes that, where practicable, there be certain judges to hear these cases so long as this expedited right to trial by jury exists, thereby avoiding the current disruption to a court's calendar.

##### *Uniform Rules of Procedure*

The rules of procedure for forcible detainer cases, which presently vary in different courts, should be made uniform in the proposed unified district court.

##### *Attorney's Fees*

The Commission is concerned with the inconsistency regarding attorney's fees in forcible detainer cases. The potential grant of these fees often is a factor in the decision of a party to pursue or settle litigation. A 1983 Arizona case held that attorney's fees were not recoverable in commercial forcible detainer cases, yet they are presently allowed in residential cases. Legislation should be enacted allowing for attorney's fees in such cases.

## Prejudgment Interest to Encourage Settlement

5.10 *Prejudgment Interest On Unliquidated  
Damages Should Be Available From  
The Date Of Service Of A Demand  
Or A Complaint, Whichever Comes First.*

### Rationale

Before the legislature raised the interest rate on judgments from 6% to 10% it was cheaper, in some cases, for a party who had lost a money judgment in the trial court to appeal than to pay. When the losing party could earn more on the judgment amount from investments during the appellate process, this strategy made sense. Even today, there is little incentive for the party who will ultimately be required to pay to come to the bargaining table early. As a result, many cases are settled shortly before trial or during trial.

Attempts have been made to encourage settlement of civil cases prior to substantial use of litigant, attorney, and court resources. Many proposals are designed to provide incentives to settlement, particularly in controversies that center on money damages. One of the most successful mechanisms in this regard has been the addition of prejudgment interest. In Arizona the law has permitted recovery of prejudgment interest on liquidated but not unliquidated claims.

Today, 41 states have some form of prejudgment interest, either by court rule or statute. No state has ever repealed prejudgment interest. Interest rates applied for the prejudgment period vary from a low of 8% to a high of 12%, with the Treasury-bill discount rate being the most common. The precipitating event triggering the running of the interest clock varies among the states, as does whether the interest is simple or compound.

In order to reduce the economic incentive of defendants to postpone settlement negotiations and prolong litigation, the Commission recommends that legislation be enacted to provide prejudgment interest on compensatory damages in all civil cases where the claim is for unliquidated damages (i.e., not for a sum certain or a sum that can by computation be made certain). The rate of interest should be tied to some readily definable and reliable floating rate measuring the cost of the use of money. Interest should be awardable from the date of the claimant's first demand upon the defendant or from the date of the service of the claimant's civil complaint upon the defendant, whichever occurs first.

The district court should have discretion to reduce or disallow an award of prejudgment when the court determines that the claimant was guilty of unreasonable delay, an unrealistic demand, or a similar abuse.

## Bilateral Offers of Judgment

5.11 *The Supreme Court Should Adopt A Rule Permitting Bilateral Offers Of Judgment With Sanctions That Are Appropriate For The Circumstances.*

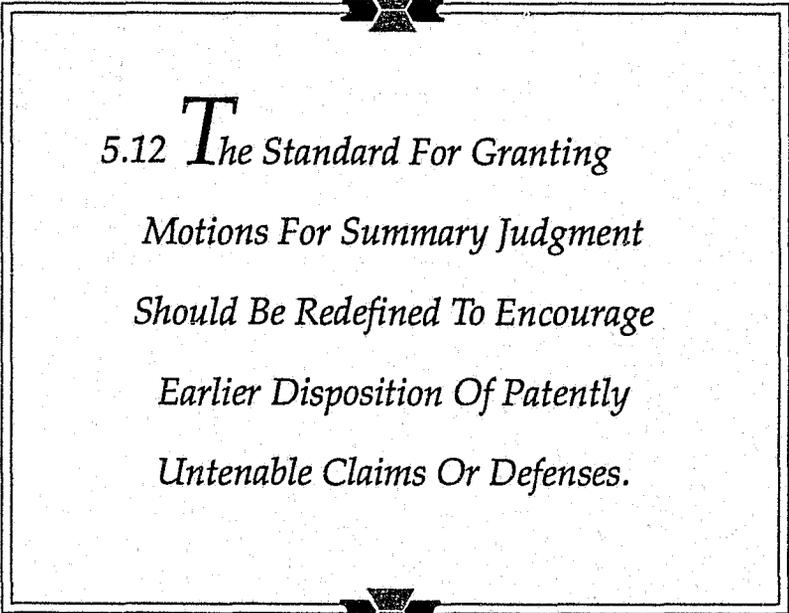
### Rationale

Rule 68 of the Arizona Rules of Civil Procedure permits a defendant to make an offer of judgment and, if it is not accepted, certain costs incurred by the defendant from that point forward are charged against the plaintiff in the event the plaintiff does not obtain a judgment more favorable than the offer.

This rule serves a useful function and undoubtedly results in settlement of some cases that otherwise would go to trial. The rule, however, only permits an offer of judgment by the defendant; there is no provision for an offer by the plaintiff which, if not accepted, would result in meaningful sanctions against the defendant if the final result is not more favorable to the defendant than the offer.

Although every state appears to have some form of offer of judgment patterned after Rule 68 of the Federal Rules of Civil Procedure that the defendant can use, only two states, Connecticut and Florida, have what amounts to a plaintiff's offer of judgment.

## Lessening The Standard For Summary Adjudication



5.12 *The Standard For Granting  
Motions For Summary Judgment  
Should Be Redefined To Encourage  
Earlier Disposition Of Patently  
Untenable Claims Or Defenses.*

- The Commission believes that the rule should be amended to provide for an offer of judgment by the plaintiff, as well.

### Rationale

Recent United States Supreme Court decisions should be engrafted onto Rule 56 summary judgment practice in Arizona to permit earlier resolution of more cases by such motions, thereby avoiding the time and expense associated with additional pretrial procedures and trial. In 1986 the court used the opportunity presented in three cases to equate the standard for granting summary judgment under Federal Rule of Civil Procedure 56 to the directed verdict standard of Federal Rule of Civil Procedure 50(a). These three cases change the tone of judicial perspective on Rule 56, creating a climate conducive to more frequent granting of summary judgment motions in cases involving patently weak claims or defenses. The federal district courts now can be more aggressive in their pretrial resolution of cases susceptible to this broader notion of summary judgment.

No state courts of which we are aware have amended their summary judgment practice as proposed here. The Commission believes, however, that the efficiency of civil litigation in Arizona would be enhanced by encouraging earlier disposition of cases involving plainly implausible claims or defenses through summary adjudication by amending Rule 56 to equate the standard for granting a motion for summary judgment with the standard for granting a motion for directed verdict under Rule 50(a).

## Automation

5.13 *The Supreme Court Should Appoint  
A Permanent Commission On  
Automation As Soon As Practicable.*

- A statewide funding proposal for automation and technological improvements in all courts should be established.
- Initiation of the design and implementation of a statewide communications network should be a high priority.
- Definitions of statistical terms, calculations, and reporting requirements of data from courts at all levels throughout the state should be established.
- An inventory of data elements used in all courts should be compiled.

### Rationale

The Commission recognizes the diversity of needs among the various courts within the state and believes that technological solutions must be tailored to each jurisdiction. As stated by the Supreme Court's Advisory Committee on Information Systems:

The Committee recommends that automated information systems of the court NOT be centralized statewide; rather, decentralized systems should be adopted.

This philosophy requires a close partnership between the Administrative Office of the Courts (AOC) and local courts. The AOC should not make unilateral decisions which could adversely affect the use of automation in the local courts.



Establishment of a permanent commission on court automation is critical to the formation of a workable organizational structure necessary to implement automation projects. This organizational entity must represent the diverse perspectives and needs of Arizona's family of courts.

The membership of the automation commission should consist of representatives from: the Supreme Court; presiding judges from both divisions of the Court of Appeals; district court presiding judges from each of the counties; judges of the district court; the State Bar; court administrators; court clerks; and the AOC. The chairperson of the automation commission should be a judge appointed by the Chief Justice.

The automation commission should have the authority to establish advisory committees to assist it in carrying out its duties and responsibilities. Representatives on the advisory committees should reflect the same proportional representation that the various interest groups represent as members on the automation commission. The chairperson of each advisory committee should be a judge.

The first task of the automation commission should be to develop a five-year plan to automate each court in the state, assessing the advantages and the disadvantages of centralized versus decentralized automated information systems. The plan should relate each court's needs for specific technical solutions while accounting for the logistics of funding, implementation, and training. The automation commission should submit the long-range plan to the Supreme Court no later than one year after its formation.

The automation commission should have full responsibility for the implementation of the long-range plan once it has been approved by the Supreme Court. The responsibilities of the automation commission would include:

- Establishing priorities for funding of automation projects;
- Monitoring progress of automation projects;
- Providing guidance and direction to staff implementing automation projects;
- Approving budgets for automation projects; and
- Serving as a review board for all decisions relating to implementation of these technology and automation recommendations.

Ideally, the state judiciary should work as one system. This would greatly simplify the ability of citizens to deal with the courts. It is possible to implement such a system.

## Technology



5.14 *The Administrative Office Of The Courts (AOC) Should Acquire And Install Facsimile, Conferencing, Audio, Video, Court Reporting, Personal Computers, And Other State-Of-The-Art Equipment In Courts Where Needed; It Should Establish On-Line Data Bases For Both Supreme Court And Appellate Court Decisions; And It Should Establish Coordinated Training Programs On Automation.*

*Pilot Projects Should Be Undertaken By The AOC In Diverse Jurisdictional Settings To Determine The Utility, Impact, And Cost-Effectiveness Of: Video Arraignment, Facsimile, Video Depositions, Paper Simplification, Video Testimony, Optical Disk Storage, Video Transcript, Optical And Bar Code Scanning, Audio Transcribers, Appellate On-Line Data Bases, And Computer Transcription.*





## Rationale

A substantial number of technologies are available that can be used by the courts. Rather than analyzing each in depth, only the most likely candidates for enhanced court productivity are presented here.

The exchange of information in the more rural or remote areas of the state is critical. Facsimile (FAX) equipment should be purchased and installed in each district court that does not presently have such equipment to allow anyone to FAX file documents to any other court, including the Supreme Court and Court of Appeals. A new rule permitting filing of documents by FAX equipment should be adopted.

Conferencing, video, audio, personal computers, and other equipment should be provided to other courts that would benefit from such technology, including those whose geographic remoteness results in delays in communicating with other courts. The expansion of communication capacity also is needed to implement the concept of a unified district court providing to litigants statewide access to all district court sites and the appellate courts.

In many respects the technology, including computer technology, available to our Supreme Court and Court of Appeals is more limited and less advanced than that available in the trial courts. It is essential now, and more so in the future, for the appellate courts to have a data base computerized information system.

People need training, sometimes sophisticated and extensive training, if technology is to provide the advances in productivity it promises. Without a carefully designed, complete training program, the judiciary will have wasted whatever is spent to obtain the technology mentioned here.

Pilot projects should be undertaken to explore the use of video arraignment. Video arraignments can minimize security risks of transporting inmates from the jail to the court and minimize the cost for short hearings for defendants in jail.

Depositions and trial testimony could be presented via audio-video. Audio-video in a statewide, satellite telecommunications system would make peer-to-peer or conferencing capabilities a reality for every judge in the state. The system may already be in place through probation services.

Pilot projects should be initiated to evaluate the utility and effectiveness of producing and using audio and video transcripts for certain cases. Adjunct pilot programs should evaluate computer displayed transcripts in our general jurisdiction courts. It is possible to have multiple-display devices in the courtroom at various locations so that the judge, counsel, and witnesses can read the text of everything being said moments after it is uttered in court. Transcripts of the proceedings are nearly instantaneous.

Current statistical reports should be automated as a natural by-product of doing the court's business. For example, automated calendars, fines, fees and forfeitures, separation of cases into active and inactive cases, random judge assignment, access to up-to-the-minute information on criminal defendants, legal research, outstanding warrants, and amount of child support paid could be of tremendous assistance to the district court.

Available technologies should be used to supplant the creation, maintenance, and retention of records on paper. This should include a systems approach to the life cycle of court records, a simplification of paperwork through the reduction of duplication, a standardization of the format of records created both on paper and electronically, and the capability to exchange information among the court, the users (litigants and lawyers), and the public. Specific standards for computer based or electronic records are nonexistent. The ability to retain these records will depend on the standards adopted.





## Chapter Six

# ISSUES AFFECTING THE CRIMINAL JUSTICE SYSTEM

*Courts long ago replaced jousts, duels, fights, and vigilantes as civilized society's response to crime. Today, courts are an integral part of society's effort to control crime and punish criminals. We have proposed changes in our judicial system to help the courts perform this role more effectively, but there remain issues and concerns unique to criminal law that should be addressed if the courts are to remain effective components of Arizona's criminal justice system.*

### Victims and Witnesses



6.1 *The Arizona Rules Of Criminal Procedure Should Be  
Amended To Give Victims And Witnesses  
More Protection And Control Over Their  
Participation In Pretrial Proceedings.*



- Courts should be given the discretion to excuse prospective witnesses from the courtroom until they have testified, after which the witness would be permitted to remain in the courtroom unless the court finds that his or her presence would be clearly prejudicial to a fair trial.
- Victims and witnesses should be given more protection and control over the conduct of pretrial interviews and depositions and the right to obtain protective orders and sanctions to protect against abuse.



- Victims should have the right to have a supportive person of their choice present in court with them unless such person is a witness, and neither the victim nor the supporting person should be excluded from any proceeding except as provided by Rule 9.2, Arizona Rules of Criminal Procedure.

## Rationale

Under current practice, at the request of either party, the court is required to exclude prospective witnesses, including the victim, from the courtroom and to prohibit them from communicating with each other until all have testified. Victims have consistently complained about the unfairness of being excluded from court while the defendant, as well as the defense and prosecution investigators, are allowed to remain.

Based upon this recent criticism from the public, various victims' rights groups and certain prosecutors, the Chief Justice appointed a 20-member committee in September, 1988 to examine whether victims and witnesses were being unnecessarily and unfairly excluded from court proceedings. In addition, the committee was asked to examine whether the current pretrial interview and deposition process in criminal cases fosters unfairness or abuse of victims and witnesses.

The committee, composed of a broad-based, cross section of the community (victim's advocates, private-sector representatives, judges, prosecutors, law enforcement officers, public defenders, and defense lawyers) debated all aspects of the issues, and reviewed several proposed amendments to Rules 9.3 and 15. The committee noted that all parties to civil lawsuits are allowed to remain throughout the trial proceedings. Nearly all members of the committee agreed that no substantial reason exists for the current prohibition against prospective witnesses remaining in the courtroom or communicating with each other "until all have testified" and that, contrary to the rule, victims and witnesses were usually allowed to return to the courtroom after they had testified or been excused.

In January, 1989 a majority of the committee voted to amend Rule 9.3 to make exclusion of trial witnesses discretionary and to allow victims to attend all trial proceedings. The majority also voted to reduce victim and witness abuse at pretrial interviews and depositions. This would be accomplished by allowing the victim or witness to impose reasonable conditions upon the conduct of such proceedings by making it clear that a witness or victim may seek a court order protecting against abuse of the pretrial interview or deposition process.

On July 24, 1989 the Supreme Court adopted a new rule of criminal procedure, Rule 39, on victims' rights. The Commission supports this recent enactment. Rule 39 is even more extensive in addressing crime victims' concerns than some of the proposed rules. In addition, Rule 9.3 was amended to guarantee victims who are witnesses the right to attend trial without restriction following their testimony.

## Youthful Offenders Sentencing Alternative



6.2 *A Youthful Offender Program Should  
Be Developed As A Sentencing  
Alternative For Juvenile Offenders  
Who Have Been Transferred To,  
And Convicted In, Adult Court.*



- A youthful offenders' correctional system should be created to deliver treatment and rehabilitation services to offenders who have been specifically identified as suitable for such services and who have a chance for successful treatment and rehabilitation in such a system prior to their 21st birthday.
- Any juvenile offender who has been transferred to, and convicted in, the adult system should be eligible for designation by the court as a youthful offender at the time of sentencing.
- The court should be able to declare the appropriate sentence under the adult criminal code, suspend the imposition of the sentence, and order the offender into the custody of the Department of Corrections in the Youthful Offender Program.
- The court should be able to reinstate the original sentence if treatment is unsuccessful.
- If treatment is successful, the court should be able to designate the original conviction as an adjudication of delinquency.



## Rationale

A 1979 ruling by the Arizona Supreme Court holds that juvenile court jurisdiction ends when a juvenile reaches age 18. Accordingly, the court and the Department of Corrections (DOC) must relinquish jurisdiction over juvenile offenders at age 18. Previously, the DOC retained control over the youth until age 21. As a result of this ruling, some juvenile offenders in need of the type of control and treatment available in the juvenile system beyond age 18 are transferred to adult criminal court for prosecution.

The Juvenile Court Rules of Procedure state that juvenile offenders are transferred to criminal court because "...the public safety or interest would best be served ..." by adult prosecution. It may be the advanced age of the offender, his or her record, or the nature of the offense that tips the scale to adult treatment, or all three. For very serious crimes, such as murder and sexual assault, some offenders as young as 14 and 15 are transferred. However, advanced age is the deciding factor in most transfers to criminal court.

When there is a year or less from adjudication to loss of jurisdiction, the juvenile system cannot work miracles in the time available. Neither adequate protection of the public nor a reasonable likelihood of rehabilitation can be predicted by the juvenile judge.

Studies have shown that most juveniles tried as adults were age 17 and charged with property crimes. Contrary to common belief, the most common disposition for juveniles transferred to adult court is probation, not jail or prison time.

The problem to be addressed is that these offenders are not handled adequately by the adult criminal system when transferred. Sometimes the tender age of the offender, together with the relatively minor nature of the felony charged, results in an inappropriate decision by the prosecutor to not prosecute or to plea bargain. The nature of the offender's criminal history and his danger to the public are often overlooked in the adult system because of the offender's young age and absence of a prior record useable for enhancement of punishment.

At the other extreme is the 17 year old first-time offender with a history of drug use, who is charged with the sale of marijuana and who is transferred because juvenile authorities believe there is not sufficient time to assure appropriate treatment and rehabilitation. The youth may be facing a five-year mandatory sentence in an adult institution upon conviction. A criminal division judge, if convinced that this youth may be rehabilitated by age 21, should have some alternative other than imprisonment in an adult institution. No such alternative now exists. Regular adult prison offers little, if any, meaningful rehabilitation opportunity for the youthful offender.

The proposal for a youthful offender option is unique in that it applies only to youths transferred to, and convicted in, criminal court. Although there is almost universal concern that juvenile offenders be given individualized rehabilitative treatment, this concern seems to end abruptly when the offender reaches age 18. In states with a high degree of judicial discretion in sentencing adults, courts may be able to fashion sentences appropriate to specific youthful offenders.

The proposal is conditioned upon the legislature appropriating sufficient funding for the youthful offender program's treatment resources and beds. With the system recommended, Arizona can retain its presumptive sentencing system for adults, including many youthful offenders. But judges also would have the sentencing option of an individualized rehabilitative approach for appropriate cases involving transferred youths.

## *The Criminal Justice System*

6.3 *Certain Provisions Of The Arizona Rules Of Criminal Procedure And Methods For Implementing Those Rules Should Be Modified To Streamline District Court And Felony Pretrial Proceedings. Existing Rules Of Criminal Procedure Governing Case Processing And Speedy Trial Should Be Enforced By All Judges.*

### **Rationale**

Doing justice in the justice of the peace and municipal courts is made difficult by the large caseloads. The lower court system accounted for over 90% of all criminal filings in Arizona, as well as almost 100% of all traffic cases.

The Commission recommends that the case volume issues in the district court be addressed through uniform enforcement of the Arizona Rules of Criminal Procedure and the use of standardized forms and procedures.



## *Rule Enforcement*

In Maricopa County, over 60% of defendants arrested and given an initial appearance are released without any charges being filed. This places a substantial economic burden on the county and the court. The initial appearance proceeding should be restructured to require that felony charges be filed within 24 hours of arrest with no holdover for an additional 48 hours after initial appearance to file a complaint or dismiss the case. Procedures are needed to require that prosecution and defense counsel attend and participate in all initial appearance proceedings, and that procedures be implemented to ensure that each defendant is given a meaningful and continuous bail review at all stages of pretrial proceedings. Further, in the more populous counties, the conduct of preliminary hearings and other limited jurisdiction-level proceedings should be centralized. A pretrial conference should be held within 28 days of arraignment for the purpose of reviewing status reports and establishing firm scheduling deadlines.

With the explosive growth of population and caseloads since 1975, particularly in Maricopa and Pima counties, the pace of criminal cases has slowed substantially and adherence to certain rules of criminal procedure regarding speedy trial, discovery, and pretrial resolution of issues has declined substantially. There is a great inconsistency in judicial adherence to Rule 8 in trial courts throughout the state. The Commission proposes that the Supreme Court carefully examine the application of the speedy trial provisions and eliminate the apparent widespread abuse of continuances and excludable time by modifying Rules 8.4(a)(d) and 8.5 of the Rules of Criminal Procedure to achieve more consistent and predictable enforcement.

The Supreme Court is in the process of reviewing a complete set of proposed criminal rules applicable only to the lower courts. Meanwhile, existing Rules of Criminal Procedure governing case processing must be enforced by limited jurisdiction judges. These include Rule 8, regarding speedy trial, continuances, and delays; Rule 15, which imposes certain discovery obligations on both the state and the defense; and Rule 16, concerning pretrial issues such as motions to suppress and to dismiss. Discovery should be exchanged at the time of arraignment. New, accelerated intermediate time standards governing the time between major decision points should be adopted and enforced. The need for timely processing of DUI cases within the 150-day limit is mandatory. The Commission recommends adherence to recognized court-management techniques to meet this goal.

## *Standardized Forms*

Presently, limited jurisdiction courts utilize highly individualized forms and procedures that make training, management, auditing of and communication among courts very difficult, if not impossible. The Commission recommends the adoption and use of standardized forms and procedures approved by the Supreme Court. Both the Lower Court Benchbook and other form books are available for this purpose. The Commission recommends that the Supreme Court, in consultation with the trial or appellate courts, adopt by court rule appropriate special case-management standards and closely monitor their implementation and utilization. The courts should be required to utilize standard forms and procedures and train court staff in their proper use.

## Post-Conviction Proceedings



6.4 *Changes Should Be Made In  
Post-Conviction Proceedings  
Undertaken Pursuant To  
Rule 32 Of The Arizona  
Rules Of Criminal  
Procedure.*



- Eliminate the need for the sentencing judge to review the petition except when a trial has occurred.
- Streamline the avenue for review by eliminating the need for a petition for rehearing.
- Provide a time limit for filing petitions for post-conviction relief.

### Rationale

In 1973, the Arizona Supreme Court adopted Rule 32 of the Rules of Criminal Procedure. It provides a vehicle for criminal defendants to attack their convictions and otherwise seek relief in the trial courts. Relief by way of post-conviction proceedings in the trial courts has a place in the criminal justice system in order to ensure that defendants' rights are not violated. The process has been abused, however, by the filing of frivolous and repetitive petitions. Additionally, the requirement of Rule 32.9(a) that a motion for rehearing be filed before pursuing appellate review has created a step in the post-conviction process that is often unnecessary. In 1984, the legislature attempted to address one aspect of the problem by providing a one-year limitation from the date of an appellate court mandate for the bringing of post-conviction relief petitions. The legislature's



action was flawed, however, because it provided no time limitation for cases that had not been appealed. In any event, the legislative time limitation was found to be unconstitutional as an improper intrusion into the rule-making function of the judicial branch.

The Commission proposes three changes for post-conviction proceedings: (1) elimination of the requirement that the petition be reassigned to the sentencing judge except where a trial has occurred, (2) adoption of a time limitation on the filing of petitions for post-conviction relief, and (3) a more streamlined avenue for appellate review.

### *Sentencing Judge*

The rule requiring that petitions be assigned to the original sentencing judge has created situations where judges long removed from the criminal bench are required to interrupt their civil, domestic relations, or juvenile calendars to consider criminal post-conviction petitions. This rule should be amended to eliminate the requirement that cases be reassigned to the original sentencing judge except when a trial has occurred. Further, judges should be allowed to specialize in the area of post-conviction proceedings by hearing cases other than those in which they were the trial judge, thereby resulting in greater efficiency. Proceedings could be conducted by a regularly sitting general jurisdiction judge.

### *Time Limitation*

The legislature's recent attempt to place a limitation on the time during which a post-conviction petition can be filed was found unconstitutional because it did not deal with cases in which no appeal had occurred. The availability of post-conviction relief should be limited to two years after the date of the sentence or one year after the date of the issuance of the appellate mandate, whichever is greater. Exceptions should be provided for newly discovered evidence, retroactive changes in the law, and the situation where one is being held beyond the term of the sentence imposed.

### *Discretionary Motion for Rehearing*

The requirement of a motion for rehearing as a predicate for seeking appellate review should be eliminated. In certain cases a motion for rehearing may be necessary, but in the majority of cases there is no rational probability that such motion will be granted. Holding a hearing should be discretionary. The requirements for the content of a petition for review should parallel the requirement for a motion for rehearing.

## The Judicial Role in Settlement-Related Discussions

6.5 *A Judge Should Have More Latitude  
To Become Involved In Settlement-  
Related Discussions In Criminal  
Cases And To Provide For A  
"Readiness Conference"  
To Discuss Issues  
Remaining  
Prior To Trial.*

- Rule 17.4(a), Arizona Rules of Criminal Procedure, prohibiting court participation in plea negotiations should be deleted.
- A provision should be added to Rule 16 for a "readiness conference" to discuss any remaining issues prior to trial and to determine whether the case can be disposed without trial.



## Rationale

Rule 17.4(a), Arizona Rules of Criminal Procedure, prevents the court from participating in plea negotiations between the parties. Research indicates that plea bargaining can operate in a more fair, straightforward manner when judges take an active role in the process. In fact, judges do participate in plea bargaining in Arizona and other jurisdictions. While not taking an active role in negotiations, many judges conduct in-chamber conferences with counsel regarding their plea discussions. When negotiations have broken down, some see the judge's role as that of a facilitator to point out possible ways of resolving pleas.

Just as in civil settlement conferences, judicial participation in the plea bargaining process can help dispose of cases that should not be tried. Judges can bring a touch of reality and practicality to the process, particularly when one or both counsel are relatively inexperienced or when the parties do not appear to be communicating.

Judicially-supervised settlement conferences are being employed increasingly in civil and domestic relations cases. The court should be given more latitude to become involved in settlement-related discussions in criminal cases, as well.

Through Rule 16.3, Arizona Rules of Criminal Procedure, the court becomes involved in the parties' decision-making process by determining pretrial issues to promote a fair and expeditious trial. While there is concern that the court not unduly pressure, or be perceived as pressuring either party to settle in lieu of proceeding to trial, judicial involvement can help ensure due process.



## Chapter Seven

# LEGAL NEEDS OF CHILDREN AND FAMILIES

*The family, battered and changed from the institution our grandparents knew, nevertheless remains a cornerstone of our society. It is still true today that our children are Arizona's future. The judicial system of the 21st century must reinforce society's interest in a sound family structure and be able to help children become productive adult citizens. The court system must accept this challenge, and respond to social as well as judicial needs. We encourage the development of a comprehensive continuum of services and training for the judicial system to meet the needs of children and families.*

### Legal Representation



7.1 *Changes Should Be Made In The Legal And  
Judicial System To Enhance The Quality Of  
Service To Children And Families.*



- The Supreme Court should require and provide training on juvenile and family matters for judicial officers in juvenile court.
- Judges should be appointed to sit in juvenile court based upon their interest and ability; they should serve for a substantial period of time.
- The Supreme Court is encouraged to work with the State Bar to establish a juvenile law specialty.



- The Supreme Court should institute mandatory continuing legal education programs on State Bar members that includes legal and nonlegal issues pertaining to children.
- Adequate funding should be provided for attorneys appointed to represent children.

## Rationale

Because decisions concerning children have such far-reaching effects, the Commission recommends improvements in the quality and quantity of judicial education and legal resources, and a mechanism to ensure judicial continuity in family law matters. These efforts should serve to increase the level of prestige and professionalism of those serving in the juvenile law area and ensure high quality legal representation for children.

## *Training*

The issues addressed in juvenile court and the domestic relations division include a variety of situations ranging from juvenile delinquency and dependency issues, to marital and dissolution matters, and to domestic violence cases. Each of these situations brings into the courtroom its own complexities: children as victims, children as perpetrators, families in conflict, psychological problems, economic problems, and, at times, conflicting recommendations to the court. To be prepared to address these complex issues and to keep abreast of current developments in the law, specialized training is required for the judiciary and attorneys.

Continuing judicial education is required for judges in Arizona, but specialized training regarding juvenile and family matters is not embraced in the mandate. Volunteer or part-time judicial officers currently are excluded from the education requirements. While juvenile courts in Maricopa and Pima counties provide training for judicial officers, training in the other counties is minimal. The Commission recommends that the Supreme Court provide training on juvenile and family legal and nonlegal matters to the judiciary, including volunteer or part-time judicial officers, as part of its mandatory education program.

The status accorded those practicing juvenile law would be raised if the State Bar established a juvenile specialization and identified specific criteria for the specialty. The Supreme Court is encouraged to institute a mandatory continuing legal education program on State Bar members which includes education in juvenile law matters. Mandatory training programs could be similar in content to those recommended for the judiciary.

The Commission also recommends that supervised practical experience for law students interested in juvenile law be made available. For example, the juvenile courts could develop internship opportunities that would allow law students to practice under Rule 38 of the Arizona Supreme Court Rules of Procedure. Potentially, this could increase the number of attorneys with an interest in representing children. This recommendation parallels the previous discussion in Chapter Five regarding internships for law students.

## *Judicial Continuity*

The guidelines for the designation of juvenile court judges are contained in the Arizona Revised Statutes. In counties having more than one trial court judge, the judges annually designate one or more judges to hear all juvenile matters. The presiding judge is authorized to designate additional judges, if needed.



Judges assigned to hear juvenile proceedings should profess interest in juvenile law and a willingness to commit to more than a short-term assignment. Sufficient time must be allocated so the judge can become familiar with the complex legal and social problems of children and families. A short-term assignment is not adequate to acquaint a judge with the range and quality of community services available to the court, the cultural sensitivities of the community, or the intricacies of the juvenile justice system. The Commission recommends that any policy of one, two, or three-year rotation of judges to assignments, especially in Maricopa and Pima counties, exclude the juvenile designation.

### *Attorney Compensation*

Compensation for attorneys appointed to serve in juvenile courts is set by each presiding juvenile court judge and varies across Arizona. Compensation ranges from a flat fee of \$40 to \$55 per hour to a per case fee of \$300, generally with no reimbursement of out-of-pocket expenses. In some counties, attorneys in juvenile court receive less than attorneys appointed to represent adults. Inadequate compensation and a lack of recognition of the specialized nature of practice in the juvenile court have resulted in a limited pool of attorneys available to be appointed to represent children and families. A more equitable fee schedule is essential to providing legal representation by experienced attorneys interested in juvenile law.

The Commission recognizes that county funding limitations do not allow for the reimbursement of court-appointed attorneys at the same rate a private party would pay. Nevertheless, the Commission recommends that court-appointed attorneys be compensated at a rate that will encourage increased availability of high-quality legal representation for children. Compensation should be on an hourly basis in each county, plus reimbursement of reasonable out-of-pocket expenses. The rate should be based upon the standard of the community for legal services and at least equivalent to the rate of compensation of other court-appointed attorneys. The judge should set a cap on hourly and out-of-pocket expenses and have the discretion to raise the cap for exceptional cases.

## *Juvenile Court*

### **Dependency**

7.2 *The Juvenile Court Dependency Process Should  
Be Changed To Improve The Timeliness  
And Effectiveness Of Decisions And  
To Reduce The Need For Direct  
Judicial Involvement.*

- Dependency proceedings should be evaluated to identify opportunities to streamline the process.
- Statewide standards should be developed for use in dependency hearings as a guideline to determine what reasonable efforts have been made to prevent the removal of a child from his or her home or to reunite a family at the earliest possible time.
- The Court Appointed Special Advocate program should be expanded to all counties and appropriately funded.
- Efforts should be made to remove unnecessary barriers to appropriate guardianship proceedings, including creating a permanent guardianship as a dispositional alternative.
- The Supreme Court should encourage the State Bar to provide a funding mechanism for processing guardianship actions for low-income families.
- The child welfare system should be expanded.



## Rationale

The court process for dependency actions is complex. There are mandated requirements for several of the hearings, such as the five-day hearing, if requested by the family, and the 21-day initial commitment hearing. Continuances at these hearings are not uncommon, particularly in the urban counties, due to service of process issues, delays in requesting court-appointed attorneys, jurisdictional issues, and conflicting schedules of the few attorneys available for appointment. As dependency and custody issues are delayed and left unresolved, they become more difficult and time consuming.

Once the Office of the Attorney General and the Department of Economic Security (DES) make the decision to remove a child from the home, an adverse relationship is established between the family and the DES. Under these circumstances, it is very difficult, if not impossible, to have effective communication between the parties. In many cases, the court has become the first step in the process to address a problem. Because approximately 50% of disputes are resolved after one hearing, better communication at the initiation of an action has great potential for resolving dependency issues quickly.

Arizona has been very pro-active in establishing systems to improve the process once an issue is presented to the court. The Foster Care Review Board (FCRB) system and the Court Appointed Special Advocate (CASA) program enhance court services. The FCRBs systematically review the cases of all children who are in out-of-home care for six months or longer, and make recommendations to the judge regarding the efforts and progress made by the DES or other child welfare agencies in establishing a case plan. An early review pilot project has been implemented in Coconino County, where the FCRB reviews cases within 45-to-60 days of a filing of a dependency petition. Preliminary findings indicate the project is succeeding at improving the case planning and resolution process. The Commission recommends that the FCRBs be authorized to review cases at an earlier stage in the proceedings at the discretion and order of the judge.

A CASA program has been established in eight counties in Arizona. CASAs are trained volunteers appointed by the presiding judge to act as an advocate for children who become wards of the court. Forty-five states have established CASA programs thus far. Evaluations indicate that CASAs greatly expedite a child's movement through the system and into a permanent home by reducing the amount of time the child spends in a foster care setting and reducing the number of times a child is moved while in placement.

In terms of judicial review, however, the 15 counties are left to their own resources to obtain the best information in reviewing dependency actions. No standard guide exists identifying what steps can be expected from the family, caseworker, and other interested parties to keep the child at home or to reunite the family.

The DES has the authority to petition for guardianship for children who are wards of the court. As currently written, however, the law requires the DES to go through the dependency process even when an uncontested guardianship could resolve the problem. By requiring two separate actions, the attainment of a permanent home for the child is often delayed.

Although dependency petitions are filed most often by the DES through Child Protective Services, private parties also may petition the court to have the DES provide care, custody, and control of the child. Petitions are filed at times by parents in an attempt to obtain placement resources for the child, such as psychiatric hospitalization or residential treatment, or because they are unable to control their children, are unwilling to care for them, or are unable to pay for necessary treatment. As a result, the DES must respond to the court petition, spending unbudgeted resources. The courts should support the expansion and funding of a social service system which would preclude the need for families to seek court action to obtain needed services.

No single activity will improve the dependency process. Therefore, the Commission recommends a comprehensive review of the number, type, and effectiveness of hearings to ensure that hearings held are necessary, timely, and productive. Options to routine judicial review must be explored.

## Mediation



7.3 *Juvenile Cases Should Be Screened For  
Referral To Existing Or Newly Established  
Community Or Court-Annexed  
Mediation Programs.*



- Mediation training should be provided to law enforcement and court personnel.
- Victim advocacy services should be available for juvenile court matters.
- Access to the court should be improved.

### Rationale

#### *The Present System*

In the present juvenile justice system, three types of cases are heard. Incurrigibility cases involve youths alleged to be uncontrollable by their parents or guardians and are often based on truancy, running away, or other noncriminal conduct. Delinquency cases are those in which criminal conduct by a juvenile is alleged. Dependency cases are those based on parental neglect, child abuse, and other forms of injurious conduct toward children.

While our courts largely use a treatment-oriented approach toward juveniles, inadequate use has been made of mediation in court procedures affecting children in each of the three types of juvenile cases. Because mediation is most effective in resolving disputes between persons that have ongoing relationships, the Commission believes that it should be introduced as a regular part of juvenile court proceedings.



There is widespread sentiment that incorrigibility cases are inappropriate for judicial resolution. Alternative approaches are needed, including referral to family and individual counseling, voluntary placement, and family mediation.

The primary problem in dependency cases, which typically involve neglected children, is their adversarial nature. Traditional litigation frequently is traumatic to the family; it can aggravate hostilities between parties to a juvenile dependency case. At present there are no available alternatives to traditional processes.

Mediation should be used to divert appropriate cases from the court, thereby alleviating congestion and delay, especially in Maricopa County Juvenile Court. Mediation has the further advantage of avoiding the traumatic effect of the adversarial process on the children.

It is contemplated that the following proposals would be implemented by way of local rules in those courts electing to adopt them, as authorized by a new Supreme Court rule.

### *Screening and Referral to Mediation*

A screening and referral system should be developed for diversion and mediation of juvenile cases. The cases, which would include some delinquency and dependency cases and all incorrigibility cases, should be referred to existing community mediation programs, an expanded conciliation court, or a court-annexed mediation program.

Incorrigibility cases should be referred to screening and referral prior to the filing of a petition by the county attorney. Rules should require a stay of juvenile proceedings until a mediation report is filed. In dependency cases, mediation should be available both prior to and after filing of a petition. Mediation could result in a contract between the child, the police officer, the victim, and, where appropriate, the parents of the juvenile. Prosecution would remain an option if a juvenile fails to comply with the mediated agreement.

A substantial education program should be adopted to inform the public of the new procedures. Once the screening and referral system is in place, informational brochures, films, and a speaker's bureau should be developed. Court personnel and all parties to these cases should become fully informed of the details of the new procedure.

### *Mediation Training*

Adjustment of juvenile offenses often involves mediation skills, whether by the police officer in the field or by the intake probation officer. Similarly, state agency personnel are called upon to mediate disputes between caseworkers and the public as often occurs in conflicts in child welfare cases. While some of these disputes are resolved by agreement, the lack of a mediation program or mediation training results in more disputes being resolved unnecessarily by the court.

Judicial and court personnel involved in juvenile cases including judges, probation officers, court commissioners, police officers, and school personnel should be trained in mediation. Agencies should designate ombudsmen to resolve citizens' disputes, particularly where they involve child welfare issues in juvenile dependency cases.



### *Victim Involvement*

Victims of juvenile offenders rarely participate in the disposition of juvenile cases. Most juvenile cases are "adjusted" by police officers or intake probation officers. Existing community mediation programs, which attempt to mediate disputes between the parties, are not being utilized in the resolution of juvenile cases involving minor criminal violations.

Current advocacy services for adults should be expanded to include juvenile court matters. Trained and screened community volunteers should be enlisted to assist victims through the court process. Public relations and informational materials on criminal and juvenile case processing should be prepared and distributed to victims, and a "hotline" telephone number should be established to aid victims.

### *Access to the Court*

The Commission recommends that the juvenile court in Pima and Maricopa counties study the feasibility of holding some hearings at community mediation centers or other locations that may be more accessible to families. Community mediation programs could be utilized more than they have been for conferences. Alternative avenues of participation by parties should be utilized, including audio and video participation in hearings and mediation sessions.

## Treatment Resources



7.4 *The Supreme Court Should Encourage  
The Executive Branch To Develop A  
Comprehensive State Plan For  
Community-Based And Institutional  
Treatment Resources For Juveniles.*



- The juvenile justice system should emphasize early crime prevention and intervention programs for at-risk youths and those already in trouble with the law.
- A broad range of secure and nonsecure treatment resources should be made available to the court, Department of Corrections, and the community.

These resources should include:

- Family counseling and treatment resources for incorrigible youths;
- Alcohol and substance abuse programs;
- Sex offender programs;
- Diagnosis and remediation of learning deficiencies and basic educational skills;
- Pre-vocational testing, counseling, and vocational training;
- Meaningful work opportunities;
- Training in independent living skills;



- Services for developmentally disabled youths and for emotionally disturbed youths; and
- Sufficient numbers of secure detention and correctional beds for juvenile offenders.

## Rationale

It is estimated that one-third of all crime is committed by people under the age of eighteen. Some authorities believe that more than one-half of all property crime is committed by juveniles. Arizona cities have the high crime rate typical of sunbelt cities and a significant portion of this rate is attributable to juveniles.

The state's approach to juvenile crime has been to emphasize rehabilitation instead of retribution, but every professional interviewed, from judges to police, agrees that there are inadequate rehabilitative resources available to the juvenile court. Treatment resources available to families, courts, and the institutions are too scarce and too expensive.

Arizona's frustration in attempting to reduce the juvenile crime rate and provide services to children and their families is not unique. Other jurisdictions consulted have similar problems. Although there may be a bright spot here in mental health or there in education, most states have the same problems as Arizona across the board.

The Commission suggests better planning efforts and increased efficiency among the judicial and executive branches in the use of existing resources. It is also recommended that more governmental resources be expended in this area.

The consensus, however, is that the major emphasis should be on crime prevention and the provision of assistance to youth and their families at the earliest time and in the least intrusive manner possible, particularly for incorrigible youth who are at risk of becoming victims or offenders, or both. The Commission does not attempt to establish a list of priorities in this regard because it believes each item is essential to an effective system.

*Family*  
Domestic Relations

7.5 *E*xpedited Procedures Should Be Established  
For Domestic Relations Cases. Domestic  
Relations Disputes Should Be  
Resolved Through Mediation  
Wherever Possible.

- The court system should provide:
  - Education regarding domestic relations procedures and alternative arrangements for visitation and custody; access to psychological counseling and evaluation; information about available community services, and constructive approaches to dispute resolution through a conciliation court; and
  - Informational brochures to divorcing parties from the court.
- Court proceedings should include:
  - Mandatory disclosure of assets and liabilities upon filing of a petition for dissolution of marriage;
  - Mandatory status conferences set as soon as possible after a response is filed;
  - Temporary relief hearings within ten days of a request, including such matters as child support, custody, and visitation. These hearings should include automatic orders to produce income information and to utilize relaxed rules of evidence in hearings taking no longer than one hour;
  - Mandatory mediation, except for good cause shown. Incidents of child abuse, domestic violence, or the mental incapacity of a party would ordinarily constitute examples of good cause for excusing mediation. Attorneys should certify that they have advised clients of available



mediation alternatives. Disputed issues may be heard by a district court judge; and

— The award of default dissolutions in certain cases by affidavit, without requirement of personal appearance.

## Rationale

### *Educational and Family Services*

Six courts in this state have established a conciliation court which usually provides family counseling, psychological services, and information regarding domestic relations procedures and resources available to families involved in a divorce. The Commission believes that all courts should provide such services, either directly or by contract with appropriate providers. These services can benefit the divorcing parties by alleviating the anxiety felt by many as a result of the complexity of the process and may be necessary or beneficial to both represented and unrepresented spouses.

### *Education Regarding Alternatives to Litigation*

Family courts are uniquely appropriate for alternative dispute resolution processes. Courts should provide the public with an informational brochure upon the filing of any petition seeking dissolution of marriage, legal separation, or post-divorce modification. The brochure should explain the nature and uses of mediation and arbitration and should advise the parties of the availability of these services in the private sector and through court-annexed programs.

Likewise, attorneys should be required to certify in their domestic relations pleadings that they have provided similar information to their clients regarding the nature and availability of mediation and arbitration services before initiating court proceedings.

### *The Need for An Expedited Process*

An ever increasing number of people cannot afford the cost of domestic relations litigation, which frequently imposes permanent financial damage. In domestic relations cases, as in other civil matters, many attorneys believe they are obligated to conduct formal, expensive, and time-consuming discovery often because of a concern about malpractice if they fail to do so. In Maricopa County hearings on the issues of temporary child support, visitation, and spousal support generally are not heard earlier than six weeks from the date of filing the request. In addition to the long discovery process, another cause of delay is the holding of hearings in default dissolution cases. These are essentially perfunctory proceedings to provide a formality to the termination of a marriage. While there is merit in reinforcing the significance of a dissolution, in practice these hearings are inconvenient, traumatic, costly, and, for the most part, unnecessary. Dispensing with these hearings would make scarce judicial resources available for other matters. The problem of delay will continue and could worsen as our population grows. An expedited process designed exclusively for domestic relations cases is necessary, particularly for cases in which parties seek temporary relief by way of orders regarding child custody, support, and visitation.

There is a significant need to expedite the provision of and resolution of hearings on requests for temporary relief or orders to show cause. The procedures recommended above would do much to meet the need.



### *Mandatory Disclosure of Assets and Liabilities*

When a petition for dissolution of marriage or a response is filed, the parties should be required to file a verified statement of their assets and liabilities, to the extent known, and should have a continuing duty to supplement the information as more becomes available. This rule, already implemented by several other states, would eliminate much of the time-consuming discovery process, thereby reducing the problem of delay and the cost of litigation.

### *Mandatory Status Conferences*

Mandatory status conferences should be set in all cases as early as possible after the filing of a response. The purpose of such conferences would be to: (a) attempt a settlement of the case; (b) refer the parties to mandatory mediation of all issues not settled, except for good cause shown; (c) set a discovery schedule and limits; (d) refer the parties to mediators trained in financial matters; or (e) appoint financial or other experts.

### *Mandatory Mediation*

A growing trend among other states is to mandate the mediation not only of custody and visitation issues, as is already done by six courts in Arizona, but of economic issues such as child support and property distribution, as well. A recent survey disclosed that other states report great success in programs utilizing different methods for dealing with complex cases that require financial expertise. In such cases, the court may refer the parties to mediators with financial training, or may make financial experts available to consult with both parties.

The Commission's proposal regarding mandatory mediation contains an automatic exception for good cause shown by either party. Incidents of child abuse, domestic violence, or the mental incapacity of a party would ordinarily constitute examples of good cause for excusing mediation.

Parties should be assured that qualified mediators are available for court-ordered mediation. Training requirements should include 40 hours of special training in family mediation and domestic violence (including the cycle of violence theory, the battered woman and child syndrome, and the role and responsibilities of law enforcement), continuing education, and an apprenticeship for beginning mediators. Mediators should be guided by the best-interests-of-the-child standard in custody disputes. Additional requirements could be developed following further study by each participating court.

The use of private mediation services should be encouraged. The mediation agreements from voluntary or court-ordered mediation would be subject to court review. Issues not resolved in mediation may be referred to a judicial officer appointed by the court who will make a recommended disposition to the district court judge.

### *Dissolution by Affidavit*

An emerging trend is to allow for divorce by affidavit in cases where there are no children, limited property is at issue, and the parties have agreed upon all issues. The personal appearance by one party at the "traditional" default hearing is no longer necessary. The Commission endorses this approval for a dissolution of marriage.

## Domestic Violence

7.6 *A More Concerted, Cohesive, And Concentrated Effort To Protect The Victims Of Domestic Violence Is Needed. The Supreme Court Should Develop Policies And Procedures And Promulgate Rules That Serve To Deter Domestic Violence Involving Individuals Appearing Before The District Court As Well As In Those Cases In Which Domestic Violence May Result From The Court's Actions.*

- Training on domestic violence should be available for the judiciary, bar, prosecutors, public defenders, court personnel, and law enforcement agencies. Such training should be mandatory for those persons or agencies having contact with domestic violence cases.
- The extent of jurisdictional power of the courts should be determined with respect to ordering mediation or referring order-of-protection applicants to conciliation court.
- There should be coordination and communication among courts regarding issuance of orders of protection to prevent conflicting orders.
- The courts should access the central registry maintained by law enforcement on domestic violence orders of protection to record and track domestic violence history, the issuance of orders of protection, and the enforcement of such orders.
- The crime of interfering with a witness to prevent testimony should be fully prosecuted.
- State law and court policies and procedures need to be examined and, where appropriate, changed to ensure that children from violent families have access to basic services.



- To ensure that orders of protection are issued appropriately, uniform forms for such orders should be developed for statewide use which require specific factual information, accountability for statements made, penalty for abuse of process, and visitation to children.

## Rationale

Domestic violence is a crime - a serious societal, not private, matter. The justice system is a primary mechanism for holding abusers accountable and providing protection to victims.

Matters involving domestic violence, including orders of protection petitions, can be presented in the civil, criminal, and domestic relations divisions of the court. Many times, the lives of persons, including children, are in danger. The law requires domestic relations courts to consider domestic violence when determining child custody in order to protect the victim and children, and allows a protective order prohibiting violence or the threat of violence. An order of protection also may award exclusive use and possession of a residence to one of the parties. Even with such progressive laws, intervention by the legal system to provide assistance to victims of domestic violence is inadequate.

Some of the problems victims experience with orders of protection include issuance of orders by courts that exceed their jurisdiction (i.e., custody orders or orders to attend conciliation court), orders issued by different court divisions that contain conflicting provisions or conflicting orders out of the same division, inability of courts to access the law enforcement computer registry to determine the status of an order, refusal of some courts to issue orders of protection, and nonenforcement of orders of protection by law enforcement.

Generally, the criminal penalty for domestic violence can be applied whether the couple is married or cohabitating. Some states have adopted a "shall" arrest policy for violations of orders of protection; others have mandated a minimum jail hold period. Where it often is difficult to proceed with a criminal prosecution which may lead to incarceration of the abuser, civil contempt could be used to arrest the abuser. Arrest statutes in Arizona should be examined for the adoption of a statewide "shall" arrest policy for violations of orders of protection and a minimum jail-hold period (24 hours is suggested) for abusers.

The Commission recommends that the Supreme Court develop guidelines for the treatment of domestic relations matters where domestic violence is an issue and create a Family Law Judicial Advisory Committee to examine systemic reform.

## Family Code



7.7 *Arizona Should Adopt A Family Code  
Consolidating All Statutes Impacting  
Children And Families. The Statutes  
Should Be Amended To Correspond  
With Federal Regulations.*



### Rationale

At present, when issues involving children and families are before the court, the parties and court face the very difficult task of identifying all applicable statutes. As laws have been enacted and amended over the years, duplication and inconsistency have resulted from not adequately identifying and researching other statutes impacted by the new provisions. For example, statutes crucial to a full understanding of all legal rights and responsibilities regarding support are located in Titles 8 (Children), 12 (Court and Civil Proceedings), 25 (Marital and Domestic Relations), 41 (State Government), and 46 (Welfare).

Consolidating children and family statutes into an Arizona Family Code would improve understanding by the public, courts, and family law practitioners; reduce duplications; resolve inconsistencies; and enhance interpretation and application of the law. The Texas Family Code provides a model of a comprehensive legal framework.

The statutory structure of our laws should enable an individual representing himself without benefit of counsel to understand and justifiably be held to the standards of conduct promulgated in the Arizona Rules of Professional Conduct.

Substantive changes to existing state law must be addressed to reflect recent federal regulations applying to children and families. For example, state child support statutes should correspond to Public Law 100-485 which requires that there be a rebuttable presumption that the amount of the award as determined by child support guidelines is appropriate. The state must establish specific criteria to assess whether the application of the guidelines is unjust or inappropriate in a particular case. The guidelines must be reviewed at least once every four years to ensure that their application results in appropriate child support awards.

The Commission has developed a sample statutory format of domestic relations statutes, similar in organization to the Texas Family Code. The Commission also proposes that the Arizona Supreme Court endorse and staff the creation of an advisory board to oversee the development of an Arizona Family Code.



## Chapter Eight

# INFORMING THE PUBLIC

*Access to the courts by the public is critical to the mission and image of the judicial department. More and more citizens are turning to the courts to resolve their disputes. As the cost of litigation and attorneys' fees increase, many individuals, though they lack knowledge about the judicial process attempt to resolve their disputes without legal representation.*

*Courts have an obligation to educate citizens about the judicial system and to create an environment in which courts are accessible and responsive to the needs of society.*

### Public Education and Information Programs



8.1 *Courts Should Develop Public Education Programs To Improve Accessibility, Increase The Judicial System's Responsiveness, And Create A Well-Informed Community.*



- The education programs and materials should provide information on court organization and procedures, key actors in the judicial system and their responsibilities, and the rights of individuals.
- The education programs should address juvenile as well as adult matters.
- The Education Services Division of the Administrative Office of the Courts should serve as a clearinghouse for public education materials and assist courts in the development of materials.



## Rationale

Courts have an obligation to educate people on court processes, the organization and responsibilities of the judicial system, roles and responsibilities of key players, and the rights of individuals.

In fiscal year 1988, almost 2,000,000 cases were filed in the state's courts, of which over 1,750,000 were filed in the justice and municipal courts. Many of the litigants in these cases were not represented by attorneys and were not knowledgeable about court policies and procedures.

Currently, it is largely up to individual counties, cities, or precincts to provide information on how to use the courts. This results in a variety of sometimes erroneous forms and information about legal procedures. There are virtually no statewide pamphlets, information, or uniform court forms related to the various kinds of cases people bring to the courts.

This situation is exacerbated by a "nonsystem" of 4,000 nonjudicial employees working for the various courts who have little or no training or encouragement to provide information to the public. Currently there is a fine line, if any line at all, between legal advice and legal information. It is necessary to develop workable definitions of legal advice and legal information and to modify the current restraints against the unauthorized practice of law by nonattorneys. This would allow court personnel to assist the public with information about legal procedures in order to ensure that the courts are used effectively and justly.

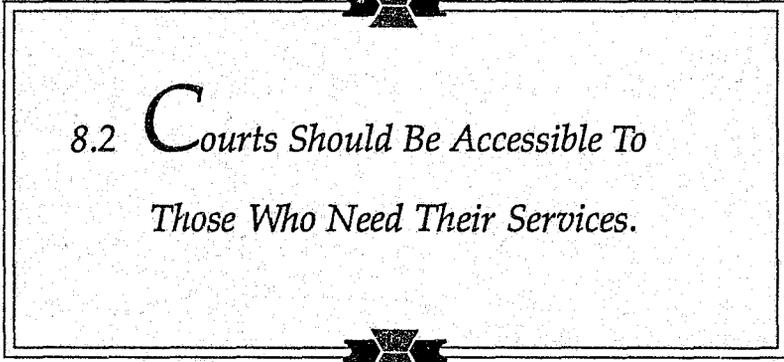
A responsive court can increase its level of accessibility and help demystify the court process for the public by developing and instituting a variety of educational programs. The Supreme Court has extensive experience in producing informational brochures, videos, and other materials; it should assist the courts in developing information written or presented at a level easily understood by the public and designed to address specific needs.

There should be a comprehensive system for the dissemination of information to assist litigants who cannot afford an attorney or who, for any reason, choose to represent themselves. At a minimum, the court system must have a uniform, comprehensive, and continuing system for the publication of pamphlets, simplified forms, and other information to assist citizens who need to use the courts.

The courts need to provide court personnel with general information on community resources and the judicial system so they can respond appropriately to basic questions from the public. Each court should have a person on location with responsibility to provide information to the public.

The Commission recommends that there be public education efforts among the Supreme Court, Court of Appeals, district court, state and local bar associations, and other professional organizations. Courts should provide regular features on legal issues to local print and broadcast media and establish speakers bureaus to address civic groups, schools, and other organizations.

## Access



### 8.2 *Courts Should Be Accessible To Those Who Need Their Services.*

## Rationale

### *Access to Full Court Services*

Currently, matters before the Supreme Court usually are heard only in Phoenix, matters before the Court of Appeals usually are heard only in Phoenix and Tucson, and matters related to the superior court other than in Maricopa County are heard only in the county seats. This means that persons in rural areas, including rural Maricopa and Pima counties, must find a way to get to the county seat to transact superior court business, regardless of distance or other difficulties. Presently, although the superior court in each county is authorized by law to "hold court" in places other than the county seat, limited resources and the current organization of the three overlapping trial courts largely preclude the conduct of superior court business in places other than the county seat.

This geographic barrier to access should be broken down by creating a system that brings justice to the people throughout the state. The chief judge of each district should make full use of existing facilities to bring all district court matters to the people, including matters related to divorce, child custody, and juvenile dependency or delinquency. It is particularly important that citizens in rural areas have access to full court services at courthouses located near their homes, at least on a rotating or circuit-riding basis. The Commission's proposal regarding a unified district court will facilitate a positive response to this recommendation.



### *Access Beyond Traditional Business Hours*

Although some municipalities and justice of the peace precincts offer extended hours, generally courts are open Monday through Friday from 8:00 a.m. to 5:00 p.m. and are closed on legal holidays. This limits the conduct of court business to normal business hours, notwithstanding work or family commitments of the litigants, jurors, and other consumers of court services.

The judicial department should make a deliberate effort to expand the availability of the services of the district court to include times more convenient for the public. This means the chief judge should consider extending hours and days of operation to evenings, weekends, and holidays. Under a statewide court personnel system with appropriate uniform administration, employees of the court could be scheduled on a regular 40-hour week to accommodate extended hours and days of operation to benefit the public.

### *Access to a Statewide Filing System*

In addition to the Supreme Court, Court of Appeals, and superior court, there are 84 justice of the peace courts and 80 municipal courts. In Maricopa County alone there are 18 separate justice courts, 20 separate municipal courts, three branch locations of the superior court, as well as a court of appeals, and the Supreme Court. It is now incumbent upon a litigant or user of the court to know precisely which court he or she should be in and where papers should be filed.

With a unified district court and a statewide court system, the public will not be confused about finding the correct courthouse.

An automated filing system for the courts would allow litigants access to the complete court system by filing in one court. For example, a resident from Yuma subject to a traffic ticket in Flagstaff should be able to file documents related to that ticket in any courthouse in Yuma County, which then would transmit the information to the correct court for review and adjudication. This would result in better utilization of the courts and access to court services, particularly to persons involved in legal matters outside their county or city of residence.



## Chapter Nine

# FISCAL ISSUES

*Providing sufficient funding for Arizona's judicial system is a problem of major importance in this time of fiscal and budgetary restraint. A challenge of the future will be to create and maintain a court system that is adequately and equitably funded throughout Arizona.*

### *Funding the System*

#### **Proposal for Statewide Funding**



9.1 *S* *State Funding Of The Maintenance And Operations  
Of The Entire Court System Should Be Phased  
In Over An Appropriate Period Of Time,  
But Should Be Fully Implemented  
By July, 1995.*



- The issues of the collection and distribution of revenues, funding and ownership of court facilities should be studied by a commission with broad-based support and membership.



## Rationale

### *How the Court System is Currently Funded*

In fiscal year 1988, the total cost of the Arizona judiciary with regard to maintenance and operations was \$175 million. The operations of the superior court consumed 71% of the funds, municipal courts 15%, justice courts 6%, and appellate courts 6%. The court system is funded by the state (25%) and local governments (74.5%), with a small portion of funds coming from the federal government and private sources (.5%). The facilities in which the courts operate are generally funded by county and city governments, although many of these facilities also are occupied in part by other governmental agencies.

The Supreme Court, Court of Appeals, Commission on Judicial Conduct, and commissions on appellate and trial court appointments are totally funded by the state.

The superior court is funded primarily by the counties, except half of judges' salaries and various programs such as select probation functions and family counseling, are funded by the state.

Justice of the peace courts are funded by the counties, although the state funds 40% of these judicial salaries. Municipal courts are funded entirely by local cities and towns.

Miscellaneous judge and court personnel positions are funded through federal and state grants.

### *Problems in Arizona*

Because the courts largely are dependent upon local funding, the quality and effectiveness of the justice system is disproportionately influenced by the willingness and ability of local elected officials to appropriate monies for court operations. This fragmented approach to funding the court system has created several problems.

#### **Disparity in Court Resources**

The overall level and adequacy of court funding is integrally dependent upon the financial condition of the individual counties and cities. Because economic conditions vary considerably across the state, some counties and cities are better equipped than others to support their court systems, resulting in considerable disparity in resources and in the services provided to citizens throughout the state.

#### **Inadequate Facilities**

Court facilities are inadequate in many of the rural areas and many lack essentials such as temporary holding cells, law libraries, jury rooms, and conference rooms.

#### **Inability to Comply with Legislative Mandates**

The state legislature continues to enact laws that substantially impact the financial requirements of the courts while at the same time state laws place revenue and expenditure limitations on county and local governments that severely limit their ability to meet the demands of new legislation.



Because the state is responsible for only 25% of total funding, the courts are required to compete for their funding against other local government programs and necessities. The problem is exacerbated by the attitude of some local officials who seem unwilling to allocate the funds necessary to enforce state legislation.

### **Inability to Allocate Resources**

While charged with the responsibility for administrative supervision over all the courts in the state, the Supreme Court lacks the authority to shift resources, even within a given locality, to meet workload requirements. Judges are responsible primarily to local officials for resources to operate the courts.

### **Inability to Operate a State Court System**

Because courts are primarily funded by city and county governments, they are perceived as belonging to the local government rather than as components of an integrated state judicial system. This problem is compounded by the fact that these courts often are viewed as revenue sources to support the cost of other local government agencies. Further, although the Arizona Constitution provides that the courts are part of a state judicial department, the Supreme Court's ability to establish procedures, rules, guidelines, and requirements for the operation of the overall court system is severely restricted by its lack of involvement in the majority of the decisions regarding the funding of the judicial system.

### ***Experience in Other Jurisdictions***

Every state funds its appellate courts at the state level. With regard to trial courts, 29 states have total or substantial state funding; six of these are totally state funded, including facilities. Pennsylvania will be shifting to state funding soon, and Minnesota and New Jersey are seriously considering it.

Some states have hesitated to assume funding of court facilities because of the cost, the difficulty of negotiating with local governments, and the fact that courts are often located in buildings with tenants of other branches of local government.

In 1979, a study was conducted of five states having state-funded court systems: Colorado, Connecticut, Kentucky, New Mexico, and South Dakota. In all five there was general acceptance of state funding and endorsement of the concept. The advantages of state funding include:

- Greater uniformity and standardization of policies and procedures;
- More equitable and consistent services;
- Improved court facilities, as statewide standards of adequacy are developed and applied;
- Facilitation of data collection, making it possible to ascertain trends;
- Centralized planning resulting in more efficient use of resources; and
- Attraction and maintenance of quality staff.



These courts also cited obstacles associated with state funding; they indicated, however, that these are not insurmountable and solutions are possible. They include:

- Resistance to the loss of independence at the local level;
- Difficulty in initiating new programs in the middle of the fiscal year; and
- The lack of knowledge and understanding of the judicial system by the public and legislature with regard to increased expenditures and constitutional mandates under which the courts must operate.

### *Statewide Funding*

State funding of the entire court system should be phased in over an appropriate period of time but should be fully implemented by July, 1995. The trend toward state funding of courts received strong support in 1974 from the American Bar Association Commission on Standards of Judicial Administration. The Arizona Town Hall recently recommended that the responsibility for funding the superior court system should be transferred completely to the state.

In order to minimize or "neutralize" the expenditure impact of shifting to a state-financed system, a commensurate share of sales tax revenues normally distributed to the cities and counties should be retained by the state. In fiscal year 1988, sales tax distributions to the cities and counties were \$136 million and \$208 million, respectively, for a total of approximately \$344 million. Thus, there is more than enough sales tax collected and ultimately distributed to the cities and counties to offset the shift in expenditures to achieve an "expenditure-neutral" transition to state funding.

The issue of how court revenues are collected and distributed should be studied by a commission with broad-based support and membership to ensure equitable treatment of local and county governments. The commission also should study the issue of funding and ownership of court facilities in Arizona. Although the state may not desire to be the owner and landlord of all 180 courthouses across the state, it may opt to pay rent and assume ongoing maintenance and improvement of these courthouses. A statewide court facilities survey is being conducted by the Administrative Office of the Courts. A report on the results of this survey is anticipated in November, 1989.

## Enhancement of Court Revenues



9.2 *Court Revenues Should Be  
Enhanced Through Increased  
Filing And Usage Fees  
And Collection Of  
Outstanding Fines.*



- Initial filing fees for general jurisdiction and appellate courts should be increased by 100% and indexed to the rate of inflation.
- A court utilization assessment should be charged based on the extent to which litigants in civil cases utilize court resources. A judge should have discretion to determine which party is liable for the fee. Access to courts by indigent persons should be protected.
- Delinquent fines for traffic misdemeanors should be collected with annual motor vehicle registration fees and title transfers. Revenues collected could be shared between the Motor Vehicle Division and the appropriate court.
- Limited and general jurisdiction courts should be allowed to accept credit cards to pay fines.
- Private collection agencies should be utilized for the collection of delinquent fines.
- Surcharges should be established on civil filings to fund alternative dispute resolution programs and increased compensation for arbitrators.



## Rationale

The limited jurisdiction courts collect nearly \$20 million and spend \$14 million annually. The majority of these revenues consist of fines and penalties, with filing fees constituting only .02% of the total income.

Current general jurisdiction revenues of \$17 million fall far short of the total expenditures of \$124 million for those courts. Filing fees constitute 33% of the \$17 million. The \$100 million difference could be lessened substantially through a system whereby litigants using the courts bear a greater share of the cost of the operation of the courts. This may also have the salutary effect of lessening tendencies to abuse the system.

The Commission, after significant research, has concluded that filing fees should be doubled in general jurisdiction cases statewide. This would add nearly \$7.5 million to court revenues. The Commission recognizes, however, that there should be some exceptions to the imposition of a usage assessment in hardship cases, such as battered spouses or those seeking an order of protection.

Additionally, it is believed that a \$100-\$200 usage fee, based on the complexity of the case, should be imposed in both bench and jury trials, and that fees should be charged for motions.

Attempts should be made to identify and collect outstanding fines which are estimated to be between \$20-40 million. This can be done in a variety of ways such as utilizing the services of private collection agencies, allowing defendants to pay fines via credit cards, and freezing annual vehicle registration and title transfers until outstanding fines are paid.

The surcharge for alternative dispute resolution programs would be used by courts establishing ADR programs for staffing and to inform the public of their existence. The surcharge fund also would be used to pay arbitrators' compensation.

## Proposal For Funding Technology



9.3 *The Supreme Court Should Develop A  
Statewide, Long-Term Funding  
Proposal For Technology.*



The plan should cover:

- Enactment of a statutory assessment on filing fees;
- Establishment of priorities for funding of automation projects;
- Approval of budgets for automation projects;
- Participation by local courts;
- Recognition of the diversity of equipment and needs of local courts; and
- Commitment to tailor technological solutions to each decentralized jurisdiction using existing equipment where possible.

### Rationale

Automation requires consistent funding in order to develop systems and communication networks. Most systems cannot be built in a single year and, once built, require ongoing funding for maintenance, routine programming, and enhancement of the software and hardware. In addition, due to the pace of innovation in computer automation, one must plan for obsolescence and replacement of equipment and software.

State and local governments facing severe budget shortfalls and other budget restrictions have concluded that the users of governmental services must bear more of the costs for those services in order to maintain adequate service levels. Justice and municipal courts in Arizona have long collected assessments (surcharges) on criminal fines to fund police and prosecutor training programs even though these agencies often have accumulated a number of grant-funded technological tools. Many states have added assessments to court filing



fees to support their automation efforts (e.g., California, Florida, and Georgia). Arizona must follow this example in order to keep up with the increasing demand for services.

The 1988 Report of the Advisory Committee on Information Systems of the Arizona Supreme Court's Council on Judicial Administration made the following recommendation:

"The committee recommends that a statutory assessment on filing fees and fines be created in order to provide adequate ongoing funding for automation in the courts and probation departments. The assessment shall be split so that 50% will be deposited to a fund under control of the presiding judge in a fund designated for court automation and 50% will be transmitted to the state to be administered by the Supreme Court."

The Commission prefers that a greater percentage of the monies collected be directed to the district court. Of all the monies collected, at least 80% should be spent directly on local court projects. Estimates of potential assessment revenue have been prepared by the Advisory Committee on Information Systems based upon case filings by case category and type of court. The 1987 projections of potential revenue ranged between \$5-10 million depending on the amount of surcharge imposed, the number of court filings, the distribution ratio, and the courts participating in the project.

Recognizing the needs of various courts, specific long-range funding proposals and available revenues for those proposals must be developed. The Supreme Court must build in sufficient audit controls to monitor and track the progress of automation projects effectively as well as the amount of money collected and spent by each jurisdiction. Guidance and direction should be provided by staff and programming assistance also should be available to allow courts to tailor their systems.

Establishment of permanent funding is critical to the formation of automation projects. It is equally important that the long-range funding plan complement and represent the diverse perspectives and needs of Arizona's courts.

## Compensation of Judges



9.4 *Judicial Salaries Should Be Increased As  
Necessary To Ensure That The State  
Attracts And Retains The Best  
Possible Judges To Dispense  
Justice For Our Citizens.*



### Rationale

The role of judges is of central importance to the effective administration of justice. Society must choose as its judges persons of superior legal ability, judicious temperament, and unimpeachable integrity. Sufficient compensation must be paid to the judiciary to provide incentives for outstanding lawyers to become judges and remain on the bench.

The Commission recognizes that Arizona's judges cannot expect to earn as much as their contemporaries in private practice. Nevertheless, potential candidates for judgeships, as well as sitting judges, are very aware of the substantial disparity between judicial salaries and income levels in the private sector. A 1985 survey of Arizona law firms revealed that the median salary for a 55-year old partner was \$164,000. This figure has increased substantially over the past four years. As a result, it is very difficult for capable, experienced lawyers, in their most productive years, to make the considerable financial sacrifice associated with becoming a judge.

In addition, there appears to be no uniformity in municipal courts salaries which are set by municipalities. In at least one case, the salary and benefits paid to a municipal court judge, when combined, actually surpass the salary of the Chief Justice.

In 1987, the Maricopa County Bar Association's Judicial Salary Committee studied salaries of Arizona attorneys in private law firms, federal judges, and judges in other states. The committee concluded that there was an unacceptable disparity between salaries paid to (1) Arizona judges and attorneys with only five to six years of experience, (2) Arizona judges and federal judges, and (3) Arizona judges and judges in other states.

The Commission recommends that every effort be made to state fund judicial salaries at a level commensurate with the responsibilities of the office.





Chapter Ten  
**ISSUES FOR  
FURTHER STUDY**

*The proposals presented in this report reflect the Commission's goals to develop a plan for the Arizona judiciary through the year 2000, prepare specific recommendations and strategies for improving the court system, and provide the Supreme Court with an action-oriented process for accomplishing change.*

*While concerns were limited to those that could most productively be examined within the timeframe of the Commission's work, this by no means reflects a lack of concern about other issues affecting the court system. The Commission recommends that the Supreme Court support the immediate study of the following issues.*

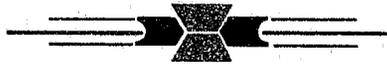
*Creation of a Unified Family Court*

Family and juvenile matters consume a significant amount of time in the trial courts of this state. In Arizona, a separate juvenile court and a specialized domestic relations division, presided over by trial court judges, are maintained in the two major metropolitan areas of Maricopa and Pima counties. In the less populous counties, where the trial court consists of only one or a few judges, children and family law proceedings are handled by all judges. Collectively, Maricopa and Pima counties account for 69% of the state's juvenile cases and 75% of all domestic relations cases.

Some juvenile and family practitioners have expressed frustration over the increasing overlap of jurisdiction between domestic relations and juvenile court. Other problems include a lack of resources to deal with family issues, the inconvenience of having to be in two or more places to deal with similar issues, delay in resolving issues, the inconsistency and confusion from findings and orders, and the lack of judicial efficiency. The creation of a unified family court system that would consolidate juvenile and family matters in one court or division is believed to be an approach to court organization that would improve judicial efficiency, minimize jurisdictional overlap, reduce court delays, and provide more uniform treatment of litigants and more consistent court orders.

Opponents of a unified family court system believe that the current separation of the jurisdiction is healthy because it allows each issue to be focused on without the distraction of some other issue simultaneously presented. Some believe that children's issues would suffer if they had to compete with adult issues. Opponents, arguing that the creation of such a system would be an administrative nightmare that soon would burn out any judge assigned to it, suggest instead that more cooperation and communication, rather than consolidation, will bring about the improvement needed.

While all national standards groups have recommended separate family courts, only four states have yet to take this step. Three states have a family court that is a division of the state's general trial court. Other states have consolidated family-related judicial matters in a single court or division without assigning the name "family court." Studies in some of the states with family courts have indicated that the courts have resulted in



a faster docket and improvement in the quality of judges and of decisions. But other research emphasizes that such a family court system may not be a panacea for a court's problems and recommends exploring other approaches to court organization.

The Commission believes a study is needed to assess the merits of creating a unified family court system in Arizona. The study should determine the problems related to the separation of children and family issues in various divisions of the court, problems created and solved by a unified family court system, other approaches to court organization, and what statewide and local programs are available which could better serve the needs of divided families, e.g., better enforcement of child support and visitation.

### *Condition and Location of Court Facilities*

The status of court facilities in the state should be evaluated. Not only are many courthouses inadequate but, with a unified district court, some may no longer be necessary and others may need to be relocated to increase accessibility to the courts.

### *Sufficiency and Allocation of Resources*

There may be a need for the proposed Judicial Council to develop a method for "weighting caseloads" to account for the increased burden on judicial resources caused by complex and time-consuming matters. Data were not available to determine future trends in workloads. The workload of each judicial district should be reviewed under the direction of the Judicial Council; only the number of judges necessary to handle that workload should be appointed.

### *Consolidation of Divisions of the Court of Appeals*

It is questionable whether there is a need for two distinct divisions of the Court of Appeals. Currently each division is administered as a separate court, with its own chief judge, budget, computer system, case management system, personnel system, and policies. The Judicial Council should study this situation and, if appropriate, consolidate the divisions when evaluating judicial districts. Further, the Judicial Council should consider having the Court of Appeals sit on occasion in cities and towns other than Phoenix and Tucson, to the extent it is practical to do so.

### *Focus and Responsibilities of the Administrative Office of the Courts*

It is possible and may be desirable to transfer some programs and funds presently administered by the Administrative Office of the Courts (AOC) to some other department of government. The AOC should remain fully capable of discharging its primary mission, the effective execution of such administrative and management responsibilities as may be assigned to it by law and by the Judicial Council. The Judicial Council should review the AOC to determine which programs are appropriate for it to administer.

### *Juveniles Transferred To Adult Court*

There is very little current statewide information on juvenile offenders transferred to adult court for prosecution. The last study conducted examined juveniles transferred in Maricopa and Pima counties during 1980 and 1981.



We need to know what happens to juveniles who are transferred compared to those who remain under the jurisdiction of the juvenile court. Longitudinal data should be provided to the judiciary and the executive branch on how these individuals are being processed and how the establishment of a youthful offender correctional system might enhance the goals of the juvenile and the criminal justice systems. The Supreme Court should fund the study to the extent necessary.

### *Testimony of a Child*

Policies regarding the testimony of children who are victims of crime should be examined. The use of video testimony should be evaluated, particularly in child abuse and domestic violence cases.

### *Domestic Violence*

Studies have shown that the amount of recidivism of domestic violence and at least injury to the victim is reduced where jail time (which may be short but must be immediate) is imposed on the abuser. The domestic violence arrest policies in Arizona should be examined to determine if a minimum jail hold period should be implemented statewide.

Violations of orders of protection often go unenforced and do not result in arrest. The idea of uniform policies statewide which limit the discretion allowed law enforcement officers who respond to domestic violence calls should be analyzed, and, if found acceptable, implemented.

Given that a majority of domestic violence arrests are misdemeanors, even after a history of repeated arrests, the domestic violence law should be studied to determine whether and how to make provisions for "stacking" of repeated misdemeanor domestic violence arrests to build to a felony charge with enhanced penalties.

### *Reclassification and Possible Decriminalization of Felonies and Misdemeanor Offenses*

There has been no major revision of the Arizona Criminal Code since 1978. There are many misdemeanor offenses which because of their facts continue to be serious offenses. Conversely, there are several felony offenses, though designated as class 6 felonies, which should be redesignated as misdemeanor offenses. Adding to the confusion, there are criminal traffic offenses, civil traffic offenses, class 1, 2, and 3 misdemeanors, and petty offenses. Naturally, there is confusion concerning the classification of offenses not only with the general public but with legal practitioners as well. A simplification of the classification system itself should be studied.

### *Creation of an Arizona Judicial College*

The feasibility of creating an Arizona Judicial College for the purpose of training and conducting continuing legal education for Arizona's judges should be examined.



### *Peremptory Challenge of Judges*

There has been a great deal of recent controversy concerning the automatic change-of-judge rules. Only 17 states presently allow disqualification of a judge without a hearing on the truth or legal sufficiency of the facts alleged. Only four states allow a change of judge with no mention of prejudice: Alaska, Montana, New Mexico and Arizona. Arizona seems to be the only state that allows each party to an action to "notice" or change the judge "as a matter of right." There have been several attempts by lawyers over the years to convince Congress to adopt a federal peremptory change-of-judge provision, but Congress has refused.

Judges are concerned, and numerous studies have determined, that the rules, by definition, permit judge-shopping, cause delay, increase inefficiency, and perhaps threaten judicial independence. Lawyers defend the rules because they believe the rules provide a salutary safety valve to be employed in situations where justice would be better served by having a case presided over by a different judge than the one the court system randomly assigns. The Arizona State Bar Civil Practice and Procedure Committee has been studying this problem for the past two years.

Notwithstanding this general disagreement, there is a consensus that the rules have been abused by some lawyers and some action is necessary. Because the Commission is unable to achieve consensus on a revised approach, we urge that a special committee be convened by the direction of the Supreme Court to review these rules and Rule 17.4(g), Arizona Rules of Criminal Procedure, which gives the defendant the right to disqualify the judge if a plea is withdrawn after submission of the pre-sentence report, and propose changes to eliminate abuse.

### *Bailiffs*

The Supreme Court, either directly or through the Judicial Council, should study alternatives to current staffing patterns for court reporters and bailiffs, including the pooling of some or all of such employees, to assure that the most cost effective use is made of these non-judicial personnel.

### *Administrative Law Judges*

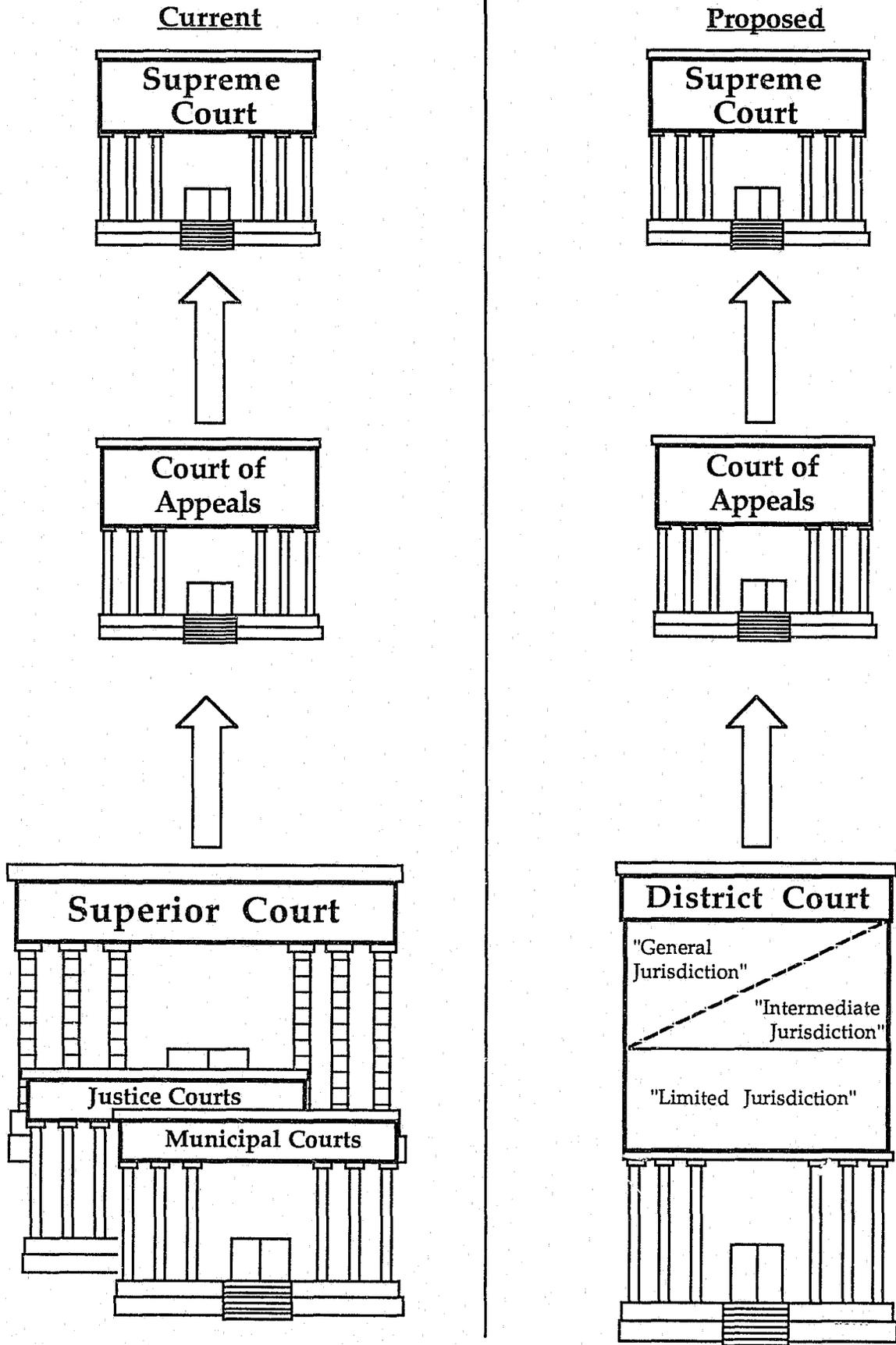
Many administrative law judges are used by public agencies to resolve claims or disputes, such as those involving public aid, environmental protection, medical benefits, and the like. The public is often concerned about whether such judges, as employees of the agencies, can impartially decide such cases. Some states (e.g., California) have established a central office of administrative hearings to provide independent hearing officers and administrative law judges. The Commission believes this proposition may have merit and recommends that further study of the issue be conducted.

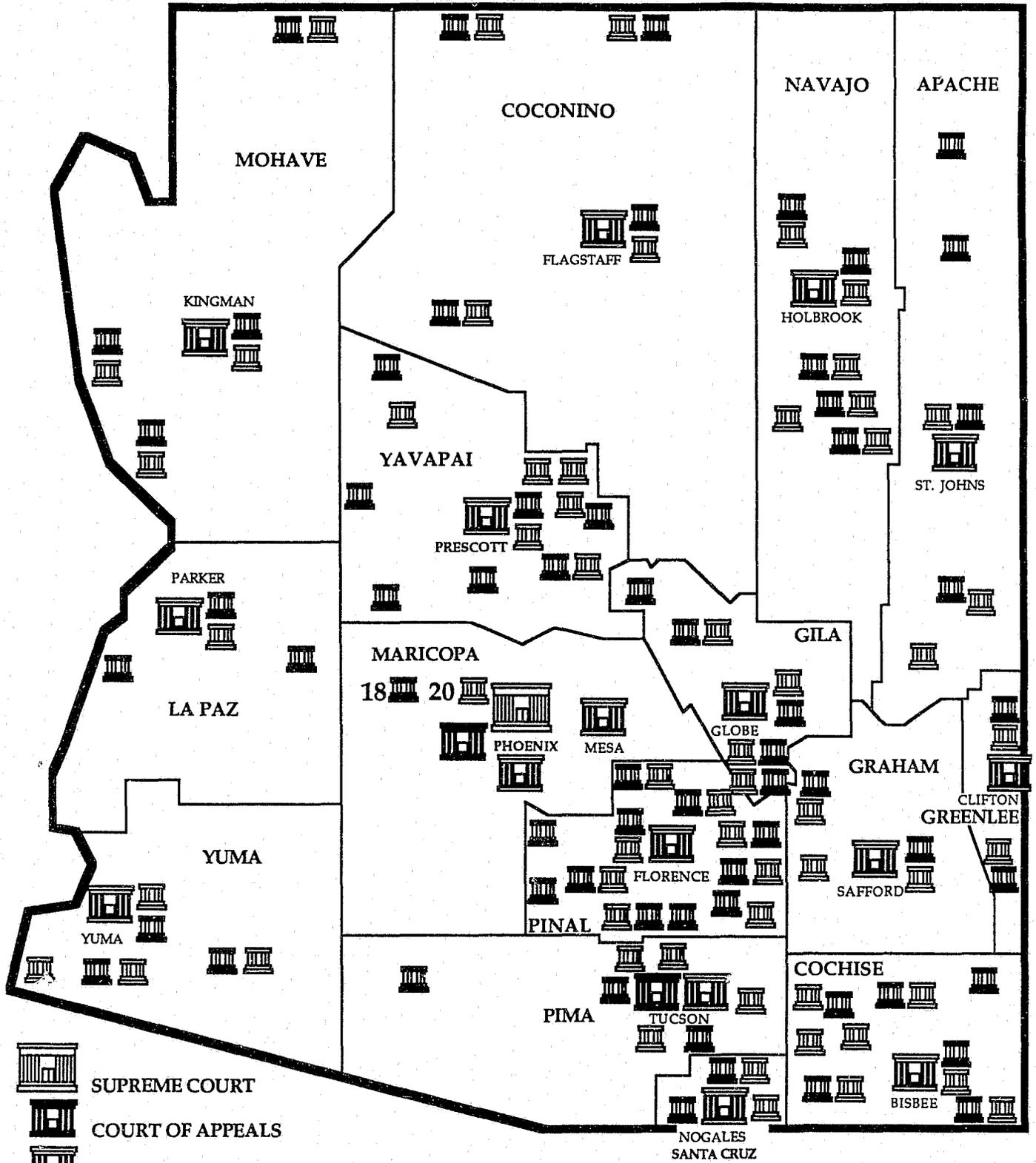
### *Court Interpreters*

The Supreme Court should appoint a committee to study the profession of court interpreters. The lack of qualified court interpreters affects the access of non-English speaking people to equal justice in our judicial system. The committee should consider requiring standardized, uniform credentials for court interpreters and determine the need for interpreters in all judicial forums.

# APPENDICES

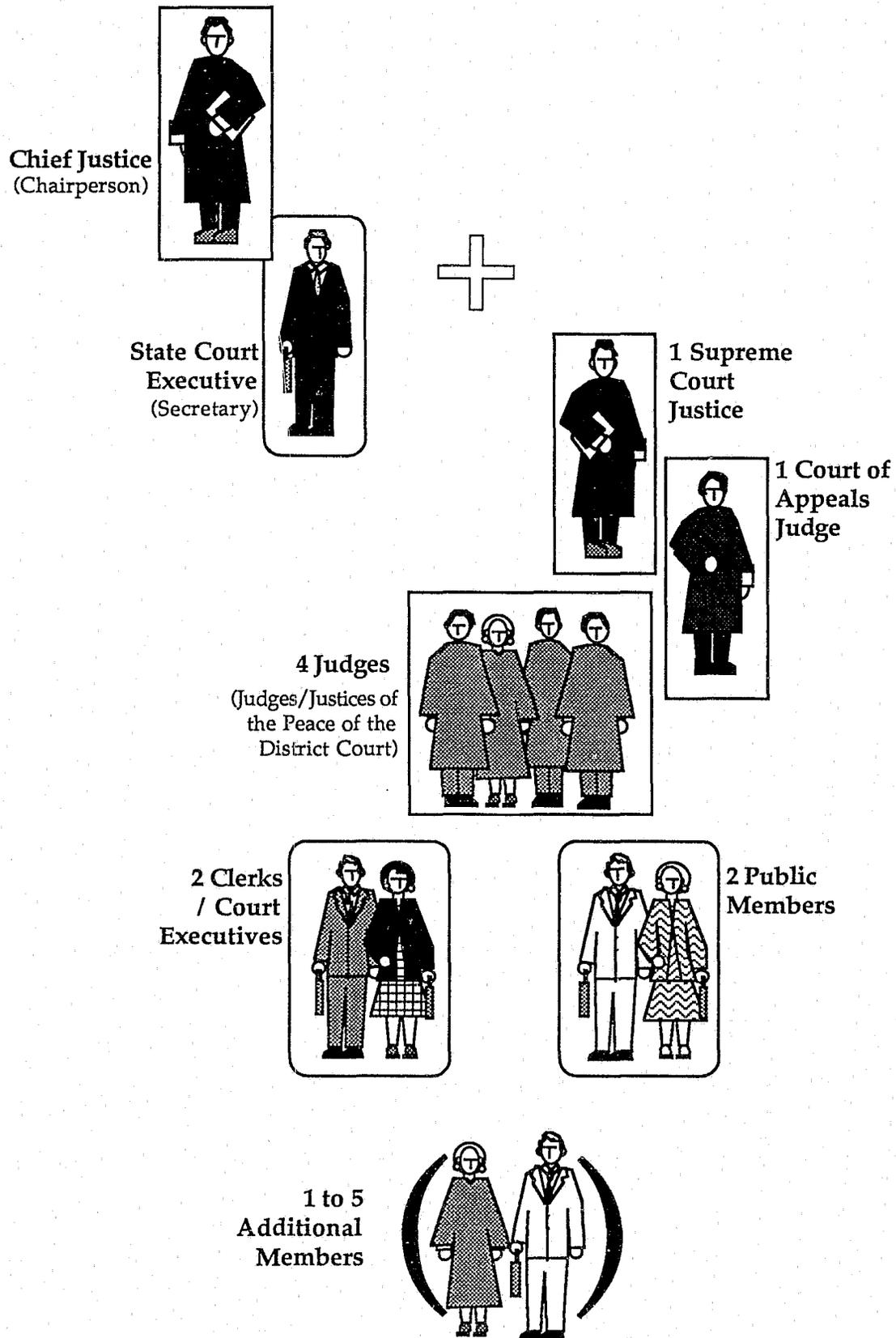
# Current Court Compared to Proposed Court





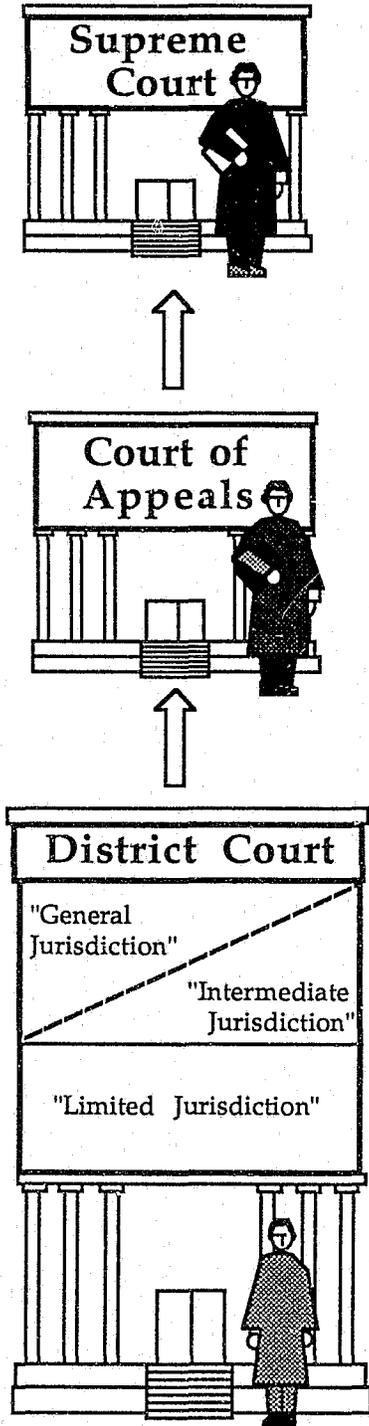
**MAP SHOWING CURRENT  
LOCATIONS OF ALL  
EXISTING COURTS**

# Composition of the Judicial Council

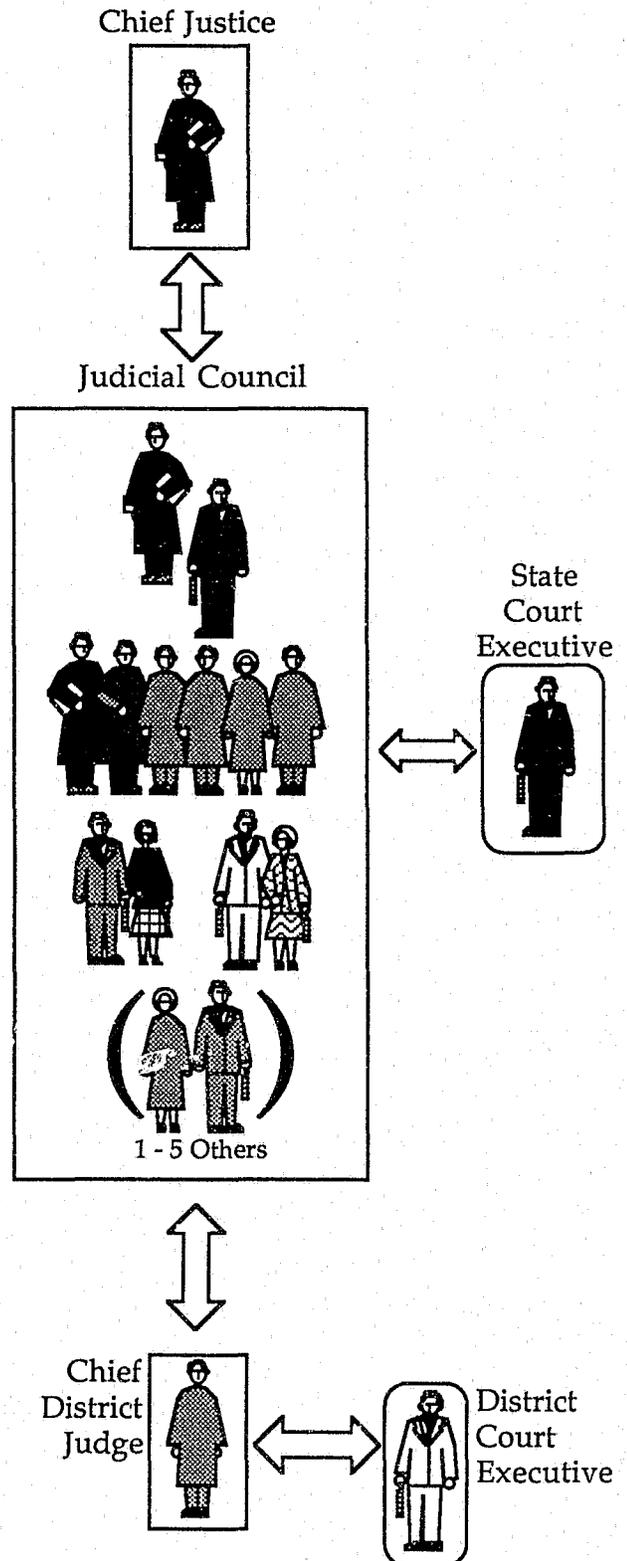


# ARIZONA JUDICIAL DEPARTMENT

## Court Organization



## Court Administration



# CURRENT JUDICIAL QUALIFICATIONS COMPARED TO PROPOSED JUDICIAL QUALIFICATIONS

## CURRENT

<u>Supreme Court</u> 	No age Good moral character Resident of state 10 years licensed attorney
<u>Court of Appeals</u> 	30 years old Good moral character Resident of state and county of judicial seat 5 years licensed attorney
<u>Superior Court</u> 	30 years old Good moral character Resident of state 5 years licensed attorney
<u>Justice of the Peace</u> 	18 years old Resident of state Qualified elector in precinct Able to read and write the English language
<u>Municipal Court</u> 	Discretion of City/Town

## PROPOSED

<u>Supreme Court</u> 	35 years old Good moral character Resident of state 10 years licensed attorney
<u>Court of Appeals</u> 	35 years old Good moral character Resident of state and county of judicial seat 10 years licensed attorney
<u>District Court</u> 	("General Jurisdiction") 35 years old Good moral character Resident of state 10 years licensed attorney  ("Intermediate Jurisdiction") 30 years old Good moral character Resident of state 5 years licensed attorney  ("Limited Jurisdiction") 25 years old Good moral character Resident of district where appointed High school diploma or equivalent 2 years college or equivalent

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# TASK FORCE ON COURT PRODUCTIVITY

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