INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION
RULES COMMITTEE MEETING MINUTES

March 24-25, 2015
Meeting room 9002,
Indiana Judicial Center,
30 South Meridian Street
Indianapolis, IN 46204

Members in Attendance:
1. Jane Seigel   Chair, IN
2. Dori Ege     AZ
3. Jenny Nimer   FL
4. Chris Moore   GA
5. Milt Gilliam  OK
6. Tracy Hudrlik WI
7. Ed Ligtenberg SD
8. Robert Maccarone NY
9. Jim Ingle     Ex-Officio, UT
10. Shawn Arruti Ex-Officio, NV
11. Pat Odell    Ex-Officio, WY
12. Shari Britton Ex-Officio, FL
13. John Gusz    Ex-Officio, NJ
14. Rick Masters Legal Counsel

Members not in Attendance:
1. John Rubitschun MI
2. Dawn Sides     WY

Staff:
1. Harry Hageman
2. Mindy Spring

Call to Order

Approved on 4/22/2015. B.S.
Commissioner J. Seigel (IN) called the meeting to order at 8:38 a.m. ET. Eight out of ten voting members were present, a quorum was established.

**Approval of Agenda**
Commissioner C. Moore (GA) moved to approve the agenda. Commissioner E. Ligtenberg (SD) seconded.

Agenda approved.

**Approval of Minutes**
Commissioner E. Ligtenberg (SD) moved to approve the minutes from February 24, 2015. Commissioner J. Nimer (FL) seconded.

Minutes approved.

**Discussion**
Commissioner J. Seigel (IN) welcomed members and provided background as to the Rules Committee’s role in the Commission’s rule making process.

**Legal Memorandum**
Legal Counsel R. Masters provided a summary of the recently published legal memorandum regarding states shared obligation to supervise offenders and the authority each state has to sanction a compact offender supervised in the receiving state.

The Committee discussed the Commission’s defined term, ‘significant violation,’ as used in the memorandum’s conclusion as related to sanctioning the offender in the receiving state in lieu of retaking. R. Masters indicated, the receiving state cannot sanction the offender for a violation and then ask the sending state to retake the offender. The current rules provide the receiving state authority, but do not explicitly offer choices.

Discussion of when a violation is determined ‘significant’ and recommended revocation versus actually pursuing revocation. Commissioner D. Ege (AZ) indicated use of the term ‘significant violation’ in the memo could cause confusion. Commissioner R. Maccarone (NY) stressed the importance of states respecting other states supervision processes and culture in regards to sanction and retaking. R. Masters indicated the offender should only be subjected to sanctions in the receiving state in lieu of retaking with the knowledge and consent of the sending state. DCA J. Gusz (NJ) inquired if ‘Offender Application for Transfer’ should include language in the ‘waiver of extradition’ section. Commissioner C. Moore (GA) inquired about imposing a sanction for a new offense above the receiving state’s new sentence.

Commissioner J. Seigel (IN) proposed the Committee review Rules 1.101 ‘Definition of Significant Violation,’ 4.103, 4.103-1 and 4.109 in light of the memo. As practices are changing in states due to justice reinvestment initiatives, the compact rules may require modification.

**Advisory Opinion 1-2015**
Approved on 4/22/2015. B.S.
Legal Counsel R. Masters explained that North Carolina’s process for sanctioning offenders with brief jail time in lieu of retaking is permissible for incoming compact offenders so long as North Carolina informs the sending state of such condition to be imposed.

**Advisory Opinion 2-2015**

Legal Counsel R. Masters explained Virginia’s process for ‘conditional pardons’ imposes terms and conditions and does not restore civil rights to the offender until conditions are satisfied. The case at hand involves an offender whose offenses include multiple assaults on law enforcement and in lieu of prison, the offender received ‘conditional release’ imposing requirements to participate in an out of state treatment program.

The committee discussed amending the ‘offender’ definition to:

- reference parole made by executive order
- remove ‘criminal justice’ to broaden the definition
- reference ‘programs’ to provide guidance to the application of the compact rules as they relate contacted private and state agencies such as private probation and treatment facilities.

**Rule Proposals**

The Committee discussed the proposal from the West Region regarding the definition of resident family restricting adult adoption from qualifying as resident family.

“Resident family” means a parent, grandparent, aunt, uncle, adult child, adult sibling, spouse, legal guardian, or step-parent who—

1. has resided in the receiving state for 180 calendar days or longer as of the date of the transfer request; and
2. indicates willingness and ability to assist the offender as specified in the plan of supervision.
3. does not meet the definition of resident family due to an adult adoption, unless the offender has a disability that mandates a legal guardian

The Committee discussed the following issues with the proposal.

- Justification is negative and does not promote the purpose of the compact
- Only 1 case was confirmed using ICOTS data where a state used ‘adult adoption’ as reason for transfer
- Same issues exist with inmate marriages without legal recourse when determining ‘spouse’ under the definition
- Judge in Washington state legally approved the adoption and could pose a discrimination issue to not recognize such adoption
- Plan should be the focus of a transfer request rather than status

Approved on 4/22/2015. B.S.
Commissioner D. Ege (AZ) moved to provide a recommendation to the West Region to withdraw the proposal to Rule 1.101 definition of ‘resident family’ due to legal issues discussed by the Rules Committee, such as equal protection. Commissioner E. Ligtenberg (SD) seconded.

Motion passed.

Commissioner T. Hudrlik (WI) moved not to recommend the adoption of the West Region proposal. Commissioner M. Gilliam (OK) seconded.

Motion passed.

The committee discussed the proposal from the East Region regarding Rule 2.105 and moving the word ‘conviction’ to part (a). It was determined it is important the term ‘conviction’ remain in (a)(3).

**Rule 2.105 Misdemeanants**

(a) A misdemeanor offender whose sentence includes 1 year or more of supervision shall be eligible for transfer, provided that all other criteria for transfer, as specified in Rule 3.101, have been satisfied; and the instant offense includes 1 or more of the following—

1. an offense in which a person has incurred direct or threatened physical or psychological harm;
2. an offense that involves the use or possession of a firearm;
3. a 2nd or subsequent misdemeanor offense conviction of driving while impaired by drugs or alcohol;
4. a sexual offense that requires the offender to register as a sex offender in the sending state.

Commissioner R. Maccarone (NY) moved to recommend to amend Rule 2.105 as drafted, Commissioner J. Nimer (FL) seconded.

Motion passed.

This proposal will be considered for vote after the West Region proposal to Rule 2.105.

The Committee discussed the proposal from the West Region for Rule 2.105 and the definition of ‘offender.’ The intent of the amendment is to only require misdemeanor offenders with a sexual offense be transferred via the ICAOS.

**Rule 2.105 Misdemeanants**

(a) A misdemeanor offender whose sentence includes 1 year or more of supervision shall be eligible for transfer, provided that all other criteria for transfer, as specified in Rule 3.101, have been satisfied; and the instant offense includes 1 or more of the following—

Approved on 4/22/2015. B.S.
(1) an offense in which a person has incurred direct or threatened physical or psychological harm;

(2) an offense that involves the use or possession of a firearm;

(3) a 2nd or subsequent misdemeanor offense of driving while impaired by drugs or alcohol;

(4) a sexual offense that requires the offender to register as a sex offender in the sending state.

Adoption of this amendment would require the following additional changes to existing ICAOS definitions as follows:

**Offender** – means an adult placed under, or made subject to, supervision as the result of a felony conviction for a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, and who is required to request transfer of supervision under the provisions of the Interstate Compact for Adult Offender Supervision.

Issues discussed included:

- Require better justifications for discretionary transfers under Rule 3.101-2
- Issues with lower level courts not recognizing the compact may be less of an issue since sex offenders are typically not sentenced in those courts.
- May weaken the provisions of the compact
- Challenge lining up risk/needs with defining eligibility criteria by offense criteria
- Misdemeanant issues surface in retaking offenders and not just eligibility
- Commissioner R. Maccarone (NY) suggested surveying states on how they deal with retaking misdemeanor offenders when required due to new violations in the receiving state. Commissioner J. Seigel (IN) will address the issue at the upcoming Executive Committee meeting and possibly propose researching data for the last 2 years.
- Possibility of national retaking fund. Commissioner D. Ege (AZ) indicated local jurisdictions require a bond prior to interstate transfer.
- Creating an ad hoc committee to look specifically at retaking. It was noted there was formally a risk/needs assessment ad hoc committee several years ago.
- Executive Director H. Hageman suggested hiring a consultant to provide an independent review of the rules and available data to find ways the compact processes can allow for more evidenced based practices and a better screening process for which offenders actually need supervision based on risk/needs versus strictly based on the offense committed.

Approved on 4/22/2015. B.S.
• Commissioner E. Ligtenberg (SD) suggested creating an eligibility checklist which would serve as an assessment, but not be called a ‘risk/needs assessment’ since not all states have a formal assessment process.

Commissioner T. Hudrlik (WI) moved to recommend the West Region to withdraw or revise the proposal to Rule 2.105. Commissioner C. Moore (GA) seconded.

Motion passed.

Commissioner E. Ligtenberg (SD) moved not to recommend the adoption of the West Region proposal to Rule 2.105. Commissioner R. Maccarone (NY) seconded.

Motion passed.

The Committee discussed the proposal from the West Region for Rule 3.101-1 to allow for recently discharged military members to qualify as military members in order to be considered for a mandatory acceptance.

Rule 3.101-1 Mandatory reporting instructions and transfers of military, families of military, family members employed, employment transfer, and veterans for medical or mental health services
(a) At the discretion of the sending state, an offender shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer for:

1. Transfers of military members- An offender who is a member of the military and has been deployed by the military to another state, shall be eligible for reporting instructions and transfer of supervision.

   (A) An offender who has been discharged from the military within the last 30 days shall be eligible for reporting instructions to the state s/he resided in when s/he entered military service.

Issues discussed:
• Clarification of when the 30 days is considered.
• Does not consider length of how long the offender lived in that state prior to entering the military.

Rules committee drafted an alternate proposal to Rule 3.101-1.

Rule 3.101-1 Mandatory reporting instructions and transfers of military, families of military, family members employed, employment transfer, and veterans for medical or mental health services
(b) At the discretion of the sending state, an offender shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer for:

1. Transfers of military members- An offender who is a member of the military and has been deployed by the military to another state, shall be eligible for reporting instructions and transfer of supervision.

Approved on 4/22/2015. B.S.
(2) **Transfer of offenders who live with family who are members of the military**—An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and (e)(2) and who lives with a family member who has been deployed to another state, shall be eligible for reporting instructions and transfer of supervision, provided that the offender will live with the military member in the receiving state.

(3) **Transfer of offenders recently discharged from the military**—An offender who meets the criteria specified in Rules 3.101 (a), (b), (c) and (d) and who has been discharged from the military within the last 30 calendar days, shall be eligible for reporting instructions and transfer of supervision.

(4) **Employment transfer of family member to another state**—An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and (e)(2) and whose family member, with whom he or she resides, is transferred to another state by their full-time employer, at the direction of the employer and as a condition of maintaining employment, shall be eligible for reporting instructions and transfer of supervision, provided that the offender will live with the family member in the receiving state.

(5) **Employment transfer of the offender to another state**—An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and is transferred to another state by their full-time employer, at the direction of the employer and as a condition of maintaining employment shall be eligible for reporting instructions and transfer of supervision.

(6) **Transfers of veterans for medical or mental health services**—An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and who is a veteran of the United States military services who is eligible to receive health care through the United States Department of Veterans Affairs, Veterans Health Administration and is referred for medical and/or mental health services by the Veterans Health Administration to a regional Veterans Health Administration facility in the receiving state shall be eligible for reporting instructions and transfer of supervision provided:

(A) the sending state provides documentation to the receiving state of the medical and/or mental health referral; and

(B) the transfer of supervision will be accepted if the offender is approved for care at the receiving state Veterans Health Administration facility.

(c) The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.

**Commissioner R. Maccarone (NY) moved to present an alternate proposal for Rule 3.101-1, as drafted by the Rules Committee, for consideration by the West Region. Commissioner E. Ligtenberg (SD) seconded.**

**Motion passed.**

The Committee discussed the proposal from the East Region for Rule 3.102 to allow offenders to continue receiving treatment in the state they wish to request transfer.

Issues discussed:

Approved on 4/22/2015. B.S.
• DCA J. Gusz (NJ) indicated with close borders in the northeast and number of teaching hospitals, this proposal would benefit those offenders who need medical treatment during the transfer process.

• Proposal is based on the employment concept of the rule that the offenders employment or treatment should not be interrupted pending an investigation so long as he or she returns daily.

**Rule 3.102 Submission of transfer request to a receiving state**

(a) Except as provided in sections (c) & (d), and subject to the exceptions in Rule 3.103 and 3.106, a sending state seeking to transfer supervision of an offender to another state shall submit a completed transfer request with all required information to the receiving state prior to allowing the offender to leave the sending state.

(b) Except as provided in sections (c) & (d), and subject to the exceptions in Rule 3.103 and 3.106, the sending state shall not allow the offender to travel to the receiving state until the receiving state has replied to the transfer request.

(c) An offender who is employed or attending treatment or medical appointments, in the receiving state at the time the transfer request is submitted and has been permitted to travel to the receiving state for the employment, treatment or medical appointments purposes may be permitted to continue to travel to the receiving state for the employment these purposes while the transfer request is being investigated, provided that the following conditions are met:

1. Travel is limited to what is necessary to report to work, and perform the duties of the job or to attend treatment or medical appointments and return to the sending state.

2. The offender shall return to the sending state daily, immediately upon completion of the appointment or employment during non-working hours, and

3. The Transfer Request shall include notice that the offender has permission to travel to and from the receiving state, pursuant to this rule, while the transfer request is investigated.

(d) When a sending state verifies an offender is released from incarceration in a receiving state and the offender requests to relocate there and the offender meets the eligibility requirements of Rule 3.101 (a), (b) & (c), the sending state shall request expedited reporting instructions within 2 business days of the notification of the offender’s release. The receiving state shall issue the reporting instructions no later than 2 business days. If the proposed residence is invalid due to existing state law or policy, the receiving state may deny reporting instructions.

1. The receiving state shall assist the sending state in acquiring the offender’s signature on the “Application for Interstate Compact Transfer” and any other forms that may be required under Rule 3.107, and shall transmit these forms to the sending state within 7 business days and mail the original to the sending state.

2. The provisions of Rule 3.106 (b), (c) & (d) apply.

**Commissioner D. Ege (AZ) moved to recommend adoption of the proposal. Commissioner T. Hudrlik (WI) seconded.**

Motion passed.

Approved on 4/22/2015. B.S.
The Committee discussed the proposal from the South Region for Rule 3.102.

**Rule 3.103 Reporting instructions; offender living in the receiving state at the time of sentencing**

(a)

(1) A reporting instructions request for an offender who was living in the receiving state at the time of initial sentencing or disposition of a revocation proceeding shall be submitted by the sending state within 7 business days of the sentencing date or release from incarceration to probation supervision. The sending state may grant a 7 day travel permit to an offender who was living in the receiving state at the time of sentencing. Prior to granting a travel permit to an offender, the sending state shall verify that the offender is living in the receiving state.

The committee drafted alternate language upon reviewing a similar rule proposal presented in 2007 which failed by majority vote of the commission.

**Rule 3.103 Reporting instructions; offender living in the receiving state at the time of sentencing**

(b)

(1) A request for reporting instructions request for an offender who was living in the receiving state at the time of initial sentencing or after disposition of a violation or revocation proceeding shall be submitted by the sending state within 7 business days of the initial sentencing date, disposition of violation, revocation proceeding or release from incarceration to probation supervision. The sending state may grant a 7 day travel permit to an offender who was living in the receiving state at the time of initial sentencing or disposition of violation or revocation proceeding. Prior to granting a travel permit to an offender, the sending state shall verify that the offender is living in the receiving state.

(2) The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.

(3) The sending state shall ensure that the offender signs all forms requiring the offender’s signature under Rule 3.107 prior to granting a travel permit to the offender. Upon request from the receiving state, the sending state shall transmit all signed forms within 5 business days.

Commissioner M. Gilliam (OK) moved to recommend alternate proposal to the South Region for Rule 3.103. Commissioner E. Ligtenberg (SD) seconded.

Motion passed.

The Committee discussed the proposal from the West Region for Rule 3.103.

(e)

(1) If the receiving state rejects the transfer request for an offender granted reporting instructions, or if the sending state fails to send a completed transfer request by the 15th business day following the granting of reporting instructions, the sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request, direct the offender to return to the sending state. The offender shall be required to return within 15 business days of receiving notice of rejection or failure to send a transfer request. The receiving state retains authority to supervise the offender until the offender’s directed departure date from the receiving state or issuance of the sending state’s warrant.

Approved on 4/22/2015. B.S.
Language approved for Rule 3.106 from the February Rule’s committee meeting will be presented as alternate language to the West Region for Rule 3.103 changing the word ‘direct’ to ‘require’

(e) (1) If the receiving state rejects the transfer request for an offender granted reporting instructions, or if the sending state fails to send a completed transfer request by the 15th business day following the granting of reporting instructions, the sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request, require the offender to return to the sending state within 15 business days of receiving notice of rejection or failure to send a transfer request. The receiving state retains authority to supervise the offender until the offender’s directed departure date from the receiving state or issuance of the sending state’s warrant.

(2) If the offender does not return to the sending state, as ordered, the sending state shall initiate the retaking of the offender by issuing a warrant that is effective in all states without limitation as to specific geographic area, no later than 10 business days following the offender’s failure to appear in the sending state.

The Committee discussed proposal from the Executive Committee for Rules 3.103, 3.106, 4.111 and 5.103 creating a uniform process to return offenders to the sending state via reporting instructions request.

Rule 3.103 Reporting instructions; offender living in the receiving state at the time of sentencing

(a) (1) A reporting instructions request for an offender who was living in the receiving state at the time of sentencing shall be submitted by the sending state within 7 business days of the sentencing date or release from incarceration to probation supervision. The sending state may grant a 7 day travel permit to an offender who was living in the receiving state at the time of sentencing. Prior to granting a travel permit to an offender, the sending state shall verify that the offender is living in the receiving state.

(2) The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.

(3) The sending state shall ensure that the offender sign all forms requiring the offender’s signature under Rule 3.107 prior to granting a travel permit to the offender. Upon request from the receiving state the sending state shall transmit all signed forms within 5 business days.

(4) The sending state shall transmit a departure notice to the receiving state per Rule 4.105.

(5) This section is applicable to offenders incarcerated for 6 months or less and released to probation supervision.

(b) The sending state retains supervisory responsibility until the offender’s arrival in the receiving state.

(c) A receiving state shall assume responsibility for supervision of an offender who is granted reporting instructions upon the offender’s arrival in the receiving state. The receiving state shall submit an arrival notice to the sending state per Rule 4.105.

(d) A sending state shall transmit a completed transfer request for an offender granted reporting instructions no later than 15 business days following the granting to the offender of the reporting instructions.

(e) (1) If the receiving state rejects the transfer request for an offender granted reporting instructions, or if the sending state fails to send a completed transfer request by the 15th
business day following the granting of reporting instructions, the receiving state shall initiate the offender’s return to the sending state under the requirements of Rule 4.111 or continue to supervise the offender pending a subsequent completed transfer request. The sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request, direct the offender to return to the sending state within 15 business days of receiving notice of rejection or failure to send a transfer request. The receiving state retains authority to supervise the offender until the offender’s directed departure date from the receiving state or issuance of the sending state’s warrant.

(2) If the offender does not return to the sending state, as ordered, the sending state shall initiate the retaking of the offender by issuing a warrant that is effective in all states without limitation as to specific geographic area, no later than 10 business days following the offender’s failure to appear in the sending state.

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\text{Rule 3.106 Request for expedited reporting instructions}
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(a) (1) A sending state may request that a receiving state agree to expedited reporting instructions for an offender if the sending state believes that emergency circumstances exist and the receiving state agrees with that determination. If the receiving state does not agree with that determination, the offender shall not proceed to the receiving state until an acceptance is received under Rule 3.104-1.

(2) (A) A receiving state shall provide a response for expedited reporting instructions to the sending state no later than 2 business days following receipt of such a request. The sending state shall transmit a departure notice to the receiving state upon the offender’s departure.

(B) The sending state shall ensure that the offender signs all forms requiring the offender’s signature under Rule 3.107 prior to granting reporting instructions to the offender. Upon request from the receiving state the sending state shall transmit all signed forms within 5 business days.

(b) A receiving state shall assume responsibility for supervision of an offender who is granted reporting instructions during the investigation of the offender’s plan of supervision upon the offender’s arrival in the receiving state. The receiving state shall submit an arrival notice to the sending state per Rule 4.105.

(c) A sending state shall transmit a completed transfer request for an offender granted reporting instructions no later than the 7th business day following the granting to the offender of the reporting instructions.

(d) (1) If the receiving state rejects the transfer request for an offender granted reporting instructions, or if the sending state fails to send a completed transfer request by the 7th business day following the granting of reporting instructions, the receiving state shall initiate the offender’s return to the sending state under the requirements of Rule 4.111 or continue to supervise the offender pending a subsequent completed transfer request. The sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request, direct the offender to return to the sending state within 15 business days of receiving notice of rejection or failure to send a transfer request. The receiving state retains authority to supervise the offender until the offender’s directed departure date from the receiving state or issuance of the sending state’s warrant.

(2) If the offender does not return to the sending state, as ordered, the sending state shall initiate the retaking of the offender by issuing a warrant that is effective in all states without limitation as to specific geographic area, no later than 10 business days following the offender’s failure to appear in the sending state.

Approved on 4/22/2015. B.S.
Rule 4.111 Offender requesting return to the sending state

(a) offender’s request to receiving state shall request reporting instructions, unless the offender is under active criminal investigation or is charged with a subsequent criminal offense in the receiving state. The offender shall remain in the receiving state until receipt of reporting instructions. Upon a return For an offender returning to the sending state, the

(b) Except as provided in subsection (c), the sending state shall grant the request and provide reporting instructions no later than 2 business days following receipt of the request for reporting instructions from the receiving state.

(c) In a victim sensitive case, the sending state shall not provide reporting instructions until the victim notification provisions of Rule 3.108 (b)(1)(C) have been followed.

(d) The receiving state retains authority to supervise the offender until the offender’s directed departure date or issuance of the sending state’s warrant. Upon departing, the receiving state shall notify the sending state as required in Rule 4.105 (a) and submit a case closure as required by Rule 4.112 (a)(5.)

(e) If the offender does not return to the sending state as ordered, the sending state shall issue a warrant no later than 10 business days following the offender’s failure to appear in the sending state.

(f) This rule is applicable to offender requesting to return to the sending state.

Rule 5.103 Mandatory retaking for violation of conditions of supervision

(a) Upon a request by the receiving state and a showing that the offender has committed 3 or more significant violations, as defined by the compact, arising from separate incidents that establish a pattern of non-compliance of the conditions of supervision, a sending state shall issue a warrant to retake or order the return of an offender from the receiving state or a subsequent receiving state within 15 business days of the receipt of the request by the receiving state.

(b) If the offender is ordered to return in lieu of retaking, the receiving state shall request reporting instructions for the offender to return per Rule 4.111 retaining authority to supervise until the offender’s directed departure date. If the offender does not return to the sending state as ordered, then the sending state shall issue a warrant, no later than 10 business days following the offender’s failure to appear in the sending state.

Issues discussed:

• No time specified frame for returning after rejection.

• Returning reporting instructions could track dates and time frames entered.

• Rule 3.101-1, 3.101-3 need to be reviewed in light of the proposal.

• Commissioner D. Ege (AZ) stated the addendums to violation reports should be used to track offenders returning after violation in lieu of retaking under Rule 5.103. Commissioner D. Ege (AZ) will draft justification for 5.103.

• Rule 5.103 should be voted on separately and Rules Committee offered alternate language for the proposals which will also include proposed language to Rule 3.101-1. It

Approved on 4/22/2015. B.S.
was determined by consensus that no additional language was needed for Rule 3.101-3 as it references other rules.

**Rule 3.101-1 Mandatory reporting instructions and transfers of military, families of military, family members employed, employment transfer, and veterans for medical or mental health services**

(d) At the discretion of the sending state, an offender shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer for:

1. **Transfers of military members**- An offender who is a member of the military and has been deployed by the military to another state, shall be eligible for reporting instructions and transfer of supervision.

2. **Transfer of offenders who live with family who are members of the military**- An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and (e)(2) and who lives with a family member who has been deployed to another state, shall be eligible for reporting instructions and transfer of supervision, provided that the offender will live with the military member in the receiving state.

3. **Employment transfer of family member to another state**- An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and (e)(2) and whose family member, with whom he or she resides, is transferred to another state by their full-time employer, at the direction of the employer and as a condition of maintaining employment, shall be eligible for reporting instructions and transfer of supervision, provided that the offender will live with the family member in the receiving state.

4. **Employment transfer of the offender to another state** – An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and is transferred to another state by their full-time employer, at the direction of the employer and as a condition of maintaining employment shall be eligible for reporting instructions and transfer of supervision.

5. **Transfers of veterans for medical or mental health services**- An offender who meets the criteria specified in Rules 3.101 (a), (b), & (c) and who is a veteran of the United States military services who is eligible to receive health care through the United States Department of Veterans Affairs, Veterans Health Administration and is referred for medical and/or mental health services by the Veterans Health Administration to a regional Veterans Health Administration facility in the receiving state shall be eligible for reporting instructions and transfer of supervision provided:

   (A) the sending state provides documentation to the receiving state of the medical and/or mental health referral; and

   (B) the transfer of supervision will be accepted if the offender is approved for care at the receiving state Veterans Health Administration facility.

(e) The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.

Approved on 4/22/2015. B.S.
(f) If the receiving state rejects the transfer request for an offender who has been granted reporting instructions and has arrived in the receiving state, the receiving state shall initiate the offender’s return to the sending state under the requirements of Rule 4.111.

(g) If the sending state fails to send a completed transfer request by the 15th business day for an offender who has been granted reporting instructions and has arrived in the receiving state, the receiving state shall initiate the offender’s return to the sending state under the requirements of Rule 4.111.

**Rule 3.103 Reporting instructions; offender living in the receiving state at the time of sentencing**

(a)

(1) A reporting instructions request for an offender who was living in the receiving state at the time of sentencing shall be submitted by the sending state within 7 business days of the sentencing date or release from incarceration to probation supervision. The sending state may grant a 7 day travel permit to an offender who was living in the receiving state at the time of sentencing. Prior to granting a travel permit to an offender, the sending state shall verify that the offender is living in the receiving state.

(2) The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.

(3) The sending state shall ensure that the offender sign all forms requiring the offender’s signature under Rule 3.107 prior to granting a travel permit to the offender. Upon request from the receiving state the sending state shall transmit all signed forms within 5 business days.

(4) The sending state shall transmit a departure notice to the receiving state per Rule 4.105.

(5) This section is applicable to offenders incarcerated for 6 months or less and released to probation supervision.

(b) The sending state retains supervisory responsibility until the offender’s arrival in the receiving state.

(c) A receiving state shall assume responsibility for supervision of an offender who is granted reporting instructions upon the offender’s arrival in the receiving state. The receiving state shall submit an arrival notice to the sending state per Rule 4.105.

(d) A sending state shall transmit a completed transfer request for an offender granted reporting instructions no later than 15 business days following the granting to the offender of the reporting instructions.

(e) If the receiving state rejects the transfer request for an offender who has been granted reporting instructions and has arrived in the receiving state, following the granting of reporting instructions, the receiving state shall initiate the offender’s return to the sending state under the requirements of Rule 4.111.

(f) If the sending state fails to send a completed transfer request by the 15th business day for an offender who has been granted reporting instructions and has arrived in the receiving state, following the granting of reporting instructions, the receiving state shall initiate the offender’s return to the sending state under the requirements of Rule 4.111.

(1) If the receiving state rejects the transfer request for an offender granted reporting instructions, or if the sending state fails to send a completed transfer request by the 15 business day following the granting of reporting instructions, the sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request, direct the offender to return to the sending state within 15 business days of

Approved on 4/22/2015. B.S.
receiving notice of rejection or failure to send a transfer request. The receiving state retains authority to supervise the offender until the offender’s directed departure date from the receiving state or issuance of the sending state’s warrant.

(2) If the offender does not return to the sending state, as ordered, the sending state shall initiate the retaking of the offender by issuing a warrant that is effective in all states without limitation as to specific geographic area, no later than 10 business days following the offender’s failure to appear in the sending state.

Rule 3.106 Request for expedited reporting instructions

(a)

(1) A sending state may request that a receiving state agree to expedited reporting instructions for an offender if the sending state believes that emergency circumstances exist and the receiving state agrees with that determination. If the receiving state does not agree with that determination, the offender shall not proceed to the receiving state until an acceptance is received under Rule 3.104-1.

(2)

(A) A receiving state shall provide a response for expedited reporting instructions to the sending state no later than 2 business days following receipt of such a request. The sending state shall transmit a departure notice to the receiving state upon the offender’s departure.

(B) The sending state shall ensure that the offender signs all forms requiring the offender’s signature under Rule 3.107 prior to granting reporting instructions to the offender. Upon request from the receiving state the sending state shall transmit all signed forms within 5 business days.

(b) A receiving state shall assume responsibility for supervision of an offender who is granted reporting instructions during the investigation of the offender’s plan of supervision upon the offender’s arrival in the receiving state. The receiving state shall submit an arrival notice to the sending state per Rule 4.105.

c) A sending state shall transmit a completed transfer request for an offender granted reporting instructions no later than the 7th business day following the granting to the offender of the reporting instructions.

d) If the receiving state rejects the transfer request for an offender who has been granted reporting instructions and has arrived in the receiving state, following the granting of reporting instructions, the receiving state shall initiate the offender’s return to the sending state under the requirements of Rule 4.111.

e) If the sending state fails to send a completed transfer request by the 15th business day for an offender who has been granted reporting instructions and has arrived in the receiving state, following the granting of reporting instructions, the receiving state shall initiate the offender’s return to the sending state under the requirements of Rule 4.111.

(1) If the receiving state rejects the transfer request for an offender granted reporting instructions, or if the sending state fails to send a completed transfer request by the 7th business day following the granting of reporting instructions, the sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request, direct the offender to return to the sending state within 15 business days of receiving notice of rejection or failure to send a transfer request. The receiving state retains authority to supervise the offender until the offender’s directed departure date from the receiving state or issuance of the sending state’s warrant.

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(2) If the offender does not return to the sending state, as ordered, the sending state shall initiate the retaking of the offender by issuing a warrant that is effective in all states without limitation as to specific geographic area, no later than 10 business days following the offender’s failure to appear in the sending state.

**Rule 4.111 Offender requesting return to the sending state**

(a) If the receiving state rejects the transfer request for an offender granted reporting instructions under Rules 3.101-1, 3.101-3, 3.103 and 3.106 the receiving state shall, upon submitting notice of rejection, submit a request for return reporting instructions within 7 business days.

(b) For an offender returning to the sending state, the receiving state shall request reporting instructions, unless the offender is under active criminal investigation or is charged with a subsequent criminal offense in the receiving state. The offender shall remain in the receiving state until receipt of reporting instructions.

(c) Except as provided in subsection (c)(d), the sending state shall grant the request and provide reporting instructions no later than 2 business days following receipt of the request for reporting instructions from the receiving state. The sending state shall direct the offender to return to the sending state within 15 business days of the reporting instructions request.

(d) In a victim sensitive case, the sending state shall not provide reporting instructions until the victim notification provisions of Rule 3.108 (b)(1)(C) have been followed.

(e) The receiving state retains authority to supervise the offender until the offender’s directed departure date or issuance of the sending state’s warrant. Upon departing, the receiving state shall notify the sending state as required in Rule 4.105 (a) and submit a case closure as required by Rule 4.112 (a)(5.)

(f) If the offender does not return to the sending state as ordered, the sending state shall issue a warrant no later than 10 business days following the offender’s failure to appear in the sending state.

(g) This rule is applicable to offender requesting to return to the sending state.

Rule 5.103 to be voted separately.

**Rule 5.103 Mandatory retaking for violation of conditions of supervision**

(a) Upon a request by the receiving state and a showing that the offender has committed 3 or more significant violations, as defined by the compact, arising from separate incidents that establish a pattern of non-compliance of the conditions of supervision, a sending state shall issue a warrant to retake or order the return of an offender from the receiving state or a subsequent receiving state within 15 business days of the receipt of the request by the receiving state.

(b) If the offender is ordered to return in lieu of retaking, the receiving state shall submit an addendum to the violation report notifying the sending state that the offender has departed as ordered. The receiving state shall retain authority to supervise until the offender’s directed departure date.

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(c) The sending state shall respond to the addendum notifying whether the offender returns to the sending state.

(d) If the offender does not return to the sending state as ordered, then the sending state shall issue a warrant, no later than 10 business days following the offender’s failure to appear in the sending state.

Commissioner D. Ege (AZ) moved to recommendation that the Executive Committee accept the Rules Committee version of the proposal for Rules 3.103, 3.106, 4.111 & 5.103. Commissioner E. Ligtenberg (SD) seconded.

This would include Rule 5.103 that would be voted separately and 3.101-1 added to the alternate language as recommended by the Rules Committee.

Motion passed.

Commissioner D. Ege (AZ) moved to approve the Rule 5.103. Commissioner E. Ligtenberg (SD) seconded.

Motion passed.

The Committee revisited the West Region’s proposal for Rule 3.101-2 from Tuesday’s discussion. CA S. Britton (FL) presented language stressing the importance of good justifications for discretionary cases and the committee discussed the importance of rejections based on the purposes of the Compact.

**Rule 3.101-2 Discretionary transfer of supervision**

(a) A sending state may request transfer of supervision of an offender who does not meet the eligibility requirements in Rule 3.101, where acceptance in the receiving state would support successful completion of supervision, rehabilitation of the offender, promote public safety, and protect the rights of victims.

(b) The sending state must provide sufficient documentation to justify the requested transfer to include the current level of supervision.

(c) The receiving state shall have the discretion to accept or reject the transfer of supervision in a manner consistent with the purpose of the compact specifying the discretionary reasons for rejection.

Commissioner R. Maccarone (NY) moved to recommend the Rules Committee’s alternative to the West Region’s proposal for Rule 3.101-2 and recommend the withdrawal of the West Region proposal. Commissioner J. Nimer (FL) seconded.

Motion approved.

The Committee reviewed the West Region’s proposal to create a new rule regarding offenders sentenced to a period of incarceration based on a new offense in the receiving state.

**Rule 5.---**

(a) Notwithstanding any other rule, an offender who is serving an incarceration sentence of 1 year or more in the receiving state for a new felony or misdemeanor conviction(s) which occurred during the

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compact period may serve any incarceration ordered by the sending state concurrent with the receiving state’s sentence and not be required to be retaken provided:

(1) The sending state conducts, at its own expense, an electronic or in-person violation hearing and orders any additional incarceration time be served concurrent with the receiving state sentence.

(b) The sending state shall send the violation hearing results to the receiving state within 10 business days and the receiving state shall close the case under Rule 4.112(a)(3).

(c) In cases where the receiving state conviction is a felony or violent crime, if the offender completes the receiving state sentence prior to the sending state’s violation sentence being completed, the sending state shall retake the offender as required by Rule 5.102.

Issues discussed included:
• Limiting the rule to length of sentence to 1 year
• Broadening the rule to include offenses in any state other than the sending state.
• Allowing the sending state to address the violation when the offender serves time in the receiving state is in line with purpose of the compact and evidence based practice initiatives.

The Rules Committee drafted alternate language to be proposed as Rule 5.101-2 to be presented to the West Region.

**Rule 5.101-2 Disposition of violation in the sending state for a new crime conviction**

(a) Notwithstanding any other rule, a sentence imposing a period of incarceration on an offender convicted of a new crime which occurred outside the sending state during the compact period may satisfy or partially satisfy the sentence imposed by the sending state for the violation committed. This requires the approval of the sentencing authority in the sending state and consent of the offender.

(b) Unless waived by the offender, the sending state shall conduct, at its own expense, an electronic or in-person violation hearing.

(c) The sending state shall send the violation hearing results to the receiving state within 10 business days.

(d) If the offender’s sentence to incarceration for the new crime fully satisfies the sentence for the violation imposed by the sending state for the new crime, the sending state is no longer required to retake if Rules 5.102 and 5.103 apply.

(e) If the offender’s sentence to incarceration for the new crime only partially satisfies the sentence for the violation imposed by the sending state for the new crime, the sending state is required to retake if Rules 5.102 and 5.103 apply.

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The receiving state may close the case under Rule 4.112 (a)(3).

**Justification:**
This new rule is intended to:
- promote joint and cooperative supervision of offenders who commit new crimes outside the sending state
- provide for offender accountability
- promote victim safety
- allocate supervision responsibility between sending and receiving states in the interest of public safety
- reduce costs to states associated with retaking offenders where imposition of sentence can best be carried out by the supervising state
- promote “swift and certain” violation sanctions as advocated by justice reinvestment
- increase the likelihood that supervision is continued in lieu of early termination of supervision

Commissioner D. Ege (AZ) moved to recommend the revised Rule 5.101-2 as an alternate proposal to the West Region’s proposal for a new rule. Commissioner C. Moore (GA) seconded.

Motion passed.

The Committee reviewed the definition of ‘significant violation’ and discussed the inconsistent application of Rules 4.109 & 5.103.

Issues and topics of discussion included:
- Tightening the definition to require the violation be a new crime in the receiving state.
- Defining the authority to pursue revocation
- Better quality control over violation reports
- R. Maccarone suggested the national office provide each state’s violation report data at the annual business meeting.
- According to annual report for FY2014 technical violations make up 75% of total violations reported, 20% absconders and 5% new convictions

The Rules Committee drafted proposed amended language.

**Rule 5.103 Mandatory retaking for violation of conditions of supervision**

(a) Upon a request by the receiving state and a showing that the offender has committed 3 or more a significant violations, as defined by the compact, arising from separate incidents that establish a pattern of non-compliance of the conditions of supervision, a sending state shall issue

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a warrant to retake or order the return of an offender from the receiving state or a subsequent receiving state within 15 business days of the receipt of the request by the receiving state.

(b) If the offender does not return to the sending state as ordered, then the sending state shall issue a warrant, no later than 10 business days following the offender’s failure to appear in the sending state.

(c) Either Commissioner of the sending or receiving state may request a review of whether the requisite showing in (a) has been met prior to retaking the offender.

“Significant violation” means an offender’s failure to comply with the terms or conditions of supervision that, if occurring in the receiving state, would likely result in a request for revocation of supervision.

**Justification:** Establishing a consistent standard of supervision for compact offenders with offenders being supervised in the receiving state. In order to enforce this rule, receiving states should only file violations for those they would revoke in the receiving state.

**Commissioner E. Ligtenberg (SD) moved to recommend forwarding proposed amendment to definition of ‘significant violation’ and Rule 5.103 for comments. Commissioner R. Maccarone (NY) seconded.**

Motion passed.

Members were assigned as follows to review Rules committee action and proposals with their respective regions:

- West: D. Ege
- South: C. Moore, M. Gilliam & J. Nimer
- East: R. Maccarone & J. Gusz
- Midwest: J. Seigel
- Executive Committee: J. Seigel

The Committee updated the 2014-2015 calendar and scheduled the next meeting dates.

The Committee will meet by WebEx April 22, 2015 at 2:30 pm ET to finalize proposals to be posted for comment.

The Committee drafted and discussed goals for the upcoming year.

The Committee came up with 2015-2016 goals.
1. Promote purposes of the Compact in the rules making process (give examples, encourage conversation)
2. Incorporating Evidenced Based Practices into rule making and decision making
3. “How-to” rule making guide. ‘rule making for dummies’: Training module outlining the process
6. Preparation of rule proposals for Portland 2015 ABM

Approved on 4/22/2015. B.S.
Adjourn
Commissioner D. Ege (AZ) moved to adjourn. Commissioner M. Gilliam (OK) seconded.

Meeting adjourned at 3:10 pm ET.

Approved on 4/22/2015. B.S.
Justification for By-Law Art7Sec1,2and 4

This amendment allows a vice-chair of a committee or a designee of a region to stand in place of a committee chair or regional representative when that chair or representative is unavailable. This allows for business to be conducted in spite of those absences and therefore creates greater continuity of business. It also encourages for an expansion of potential leadership for the Commission and formally defines the role of vice-chair and designee.

Justification for By-Law Art2Sec2

This amendment updates and expands the ex-officio organizations/members to reflect current practice and to allow for additional interested stakeholders to be considered as ex-officio members as needed.
Proposal to create/amend rules:

2015-MIDWEST-4111

Rule 4.111 Offender requesting return to the sending state

(a) Upon an offender’s request to return to the sending state, the receiving state shall request reporting instructions, unless the offender is under active criminal investigation or is charged with a subsequent criminal offense in the receiving state. The offender shall remain in the receiving state until receipt of reporting instructions.

(b) Except as provided in subsection (c), the sending state shall grant the request and provide reporting instructions no later than 2 business days following receipt of the request for reporting instructions from the receiving state.

(c) In a victim sensitive case, the sending state shall not provide reporting instructions until the victim notification provisions of Rule 3.108 (b)(1)(C) have been followed.

(d) A receiving state shall notify the sending state as required in Rule 4.105 (a).

(e) A sending state shall assume responsibility for supervision of an offender who is granted reporting instructions upon the offender’s departure from the receiving state. A sending state shall notify the receiving state as required in Rule 4.105 (b).

Justification:

When an offender returns to the sending state on approved reporting instructions, the Notice of Departure is submitted upon the offender’s departure by the receiving state per Rule 4.111 (d). Rule 4.112 (a) provides the receiving state may close its supervision of an offender and cease supervision upon (5) Return to sending state. Since it is not required by Rule, at the sending state’s discretion, a Notice of Arrival may or may not be submitted notifying the receiving state of the offender’s arrival. Therefore, the receiving state may not receive confirmation of the offender’s return. Although the Case Closure Notice reply may include this information when it is submitted to the receiving state, which by Rule must occur within 10 business days of receipt, there is no requirement the offender’s arrival or failure to arrive be documented. In the interest of public safety and sound accountability practices, it needs to be clear that the sending state has assumed supervision upon the offender’s return to the sending state. This Rule Amendment would provide clear direction to the sending state that a Notice of Arrival must be submitted upon the offender’s arrival or failure to do so.

The following information is drafted by the Rules Committee

Effect on other rules, advisory opinions or dispute resolutions:
[Effect]

**ICOTS impact:**

[ICOTS Impact]

**Scope and Metric**

[How will compliance be measured. How many cases will this effect]

**Rules Committee action:**

[Rules Committee Action]

**Effective date:**

[Effective Date]
Proposal to create/amend rules:

Rule 3.103 Reporting instructions; offender living in the receiving state at the time of sentencing

(a)

(1) A reporting instructions request for an offender who was living in the receiving state at the time of sentencing shall be submitted by the sending state within 7 business days of the sentencing date or release from incarceration to probation supervision. The sending state may grant a 7 day travel permit to an offender who was living in the receiving state at the time of sentencing. Prior to granting a travel permit to an offender, the sending state shall verify that the offender is living in the receiving state.

(2) The receiving state shall issue reporting instructions no later than 2 business days following receipt of such a request from the sending state.

(3) The sending state shall ensure that the offender sign all forms requiring the offender’s signature under Rule 3.107 prior to granting a travel permit to the offender. Upon request from the receiving state the sending state shall transmit all signed forms within 5 business days.

(4) The sending state shall transmit a departure notice to the receiving state per Rule 4.105.

(5) This section is applicable to offenders incarcerated for 6 months or less and released to probation supervision.

(b) The sending state retains supervisory responsibility until the offender’s arrival in the receiving state.

(c) A receiving state shall assume responsibility for supervision of an offender who is granted reporting instructions upon the offender’s arrival in the receiving state. The receiving state shall submit an arrival notice to the sending state per Rule 4.105.

(d) A sending state shall transmit a completed transfer request for an offender granted reporting instructions no later than 15 business days following the granting to the offender of the reporting instructions.

(e)

(1) If the receiving state rejects the transfer request for an offender granted reporting instructions, or if the sending state fails to send a completed transfer request by the 15th business day following the granting of reporting instructions, the sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request, direct the offender to return to the sending state. The sending state shall be required to return within 15 business days of receiving notice of rejection or failure to send a transfer request. The receiving state retains authority to supervise
the offender until the offender’s directed departure date from the receiving state or issuance of the sending state’s warrant.

(2) If the offender does not return to the sending state, as ordered, the sending state shall initiate the retaking of the offender by issuing a warrant that is effective in all states without limitation as to specific geographic area, no later than 10 business days following the offender’s failure to appear in the sending state.

**Justification:**

Minor wording change to clarify that the offender is required to return within 15 business days.

*The following information is drafted by the Rules Committee*

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**Effect on other rules, advisory opinions or dispute resolutions:**

[Effect]

**ICOTS impact:**

[ICOTS Impact]

**Scope and Metric**

[How will compliance be measured. How many cases will this effect]

**Rules Committee action:**

[Rules Committee Action]

**Effective date:**

[Effective Date]
Proposal to create/amend rules:

**Rule 3.106 Request for expedited reporting instructions**

(a)
(1) A sending state may request that a receiving state agree to expedited reporting instructions for an offender if the sending state believes that emergency circumstances exist and the receiving state agrees with that determination. If the receiving state does not agree with that determination, the offender shall not proceed to the receiving state until an acceptance is received under Rule 3.104-1.

(2)
(A) A receiving state shall provide a response for expedited reporting instructions to the sending state no later than 2 business days following receipt of such a request. The sending state shall transmit a departure notice to the receiving state upon the offender’s departure.

(B) The sending state shall ensure that the offender signs all forms requiring the offender’s signature under Rule 3.107 prior to granting reporting instructions to the offender. Upon request from the receiving state the sending state shall transmit all signed forms within 5 business days.

(b) A receiving state shall assume responsibility for supervision of an offender who is granted reporting instructions during the investigation of the offender’s plan of supervision upon the offender’s arrival in the receiving state. The receiving state shall submit an arrival notice to the sending state per Rule 4.105.

(c) A sending state shall transmit a completed transfer request for an offender granted reporting instructions no later than the 7th business day following the granting to the offender of the reporting instructions.

(d)
(1) If the receiving state rejects the transfer request for an offender granted reporting instructions, or if the sending state fails to send a completed transfer request by the 7th business day following the granting of reporting instructions, the sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request, direct the offender to return to the sending state within 15 business days of receiving notice of rejection or failure to send a transfer request. The receiving state retains authority to supervise the offender until the offender’s directed departure date from the receiving state or issuance of the sending state’s warrant.

(2) If the offender does not return to the sending state as ordered, the sending state shall initiate the retaking of the offender by issuing a warrant that is effective in all states without limitation as to specific geographic area, no later than 10 business days following the offender’s failure to appear in the sending state.
**Justification:**

This wording change would make the language consistent with the proposed amendment to rule 3.103, 2015_WEST_3103.

*The following information is drafted by the Rules Committee*

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**Effect on other rules, advisory opinions or dispute resolutions:**

[Effect]

**ICOTS impact:**

[ICOTS Impact]

**Scope and Metric**

[How will compliance be measured. How many cases will this effect]

**Rules Committee action:**

[Rules Committee Action]

**Effective date:**

[Effective Date]