

Advisory Committee on Supreme Court Rules 123 and 125
MEETING MINUTES
July 23, 2012
Conference Room 230
State Courts Building, 1501 W. Washington, Phoenix, AZ 85007

Present: Mike Baumstark, Chair, David Bodney, Yvonne R. Hunter, Judge Carey S. Hyatt, Michael K. Jeanes, Emily Johnston, Gary Krcmarik, Patricia Noland, Patricia Sallen.

Absent/Excused: Judge Robert Carter Olson.

Presenters/Guests: Representative Katie Hobbs, Jennifer Liewer (AOC PIO), Amy Love (AOC), Theresa Barrett (AOC), Therese Martin (Arizona Attorney General's Office), Aaron Nash (Maricopa County Clerk's Office), Jennifer Greene (AOC Legal Services).

Staff: Melinda Hardman (AOC), Kay Radwanski (AOC), Kym Lopez (AOC).

CALL TO ORDER

With a quorum present, the July 23, 2012, meeting of the Advisory Committee on Supreme Court Rules 123 and 125 was called to order by Mike Baumstark, Chair. Members and staff introductions were made around the room.

COMMITTEE RULES OF PROCEDURE AND PROXY FORM

Mr. Baumstark presented the Committee Rules of Procedure and Proxy Form for approval.

MOTION: Gary Krcmarik motioned to approve the Committee Rules of Procedure and Proxy Form as presented.

SECOND: Emily Johnston.

VOTE: Motion passed unanimously.

REVIEW COMMITTEE CHARGE REGARDING RULES 123 AND 125

Mr. Baumstark reviewed the committee charge as set out in Administrative Order 2012-41. The AOC directs the committee to recommend a policy identifying which minute entries in family law and probate cases should be published online vs. available only at a courthouse, and also discuss practices surrounding minute entries and orders in family court. The committee is not discussing civil and criminal law, but is focusing on probate and family law and minute entries and orders as they relate to the charge. He invited members to raise other issues that are closely related to the committee's scope.

BACKGROUND, LEGISLATORS' PERSPECTIVES

Amy Love, AOC legislative liaison, presented examples of online minute entries that a constituent gave to Representative Katie Hobbs. The documents, found on the Web, are easily searchable minute entries that contain the names and birthdates of minor children and information about their mental and physical health. Creditors, school officials, classmates, people caught up in custody proceedings, and others can find this information and use it for

background checks and employment and rental screening, possibly resulting in unintentional harm.

Rep. Hobbs spoke briefly, explaining the reason she and Rep. Tom Forese introduced HB2398 during the last legislative session. The bill would have required courts to redact children's names from a number of family court documents, substituting a letter for the name. After seeing the minute entries provided by her constituent, she was concerned that children identified in them might be vulnerable. The bill was held after it was agreed that the Supreme Court would authorize a committee to determine whether the issue could be resolved by rule change rather than legislation. Rep. Hobbs stated that where we have the ability to limit this information online, we should.

Committee member's comments included:

- Minors' information should not be online.
- In previous reviews of Rule 123, it was decided that the names of minors and victims of sexual assault in criminal cases should not be displayed online at all.
- Publication of this information on the Web is compliant with the rules.
- Some minute entries contain family court orders.
- Specific findings may appear in minute entries because of statutes that require the court to state findings of fact and conclusions of law in support of a decision.
- The committee needs to look at how the orders can be separated from the minute entries and the impact this would cause.
- Pima County has ensured that all confidential information is located in the order, rather than the minute entry, and orders are not posted online.
- Maricopa County has different practices than other superior courts in the state.
- Maricopa County is within the rule regarding what the court posts online.
- Rule 125 defines a minute entry.

REVIEW OF POLICY DEVELOPMENT TO DATE ON ACCESS TO RECORDS, EXISTING RULES AND STATUTES, CURRENT PRACTICES AND PENDING RULE CHANGES BEFORE THE SUPREME COURT

Melinda Hardman and Kay Radwanski presented a review of policy development to date on the subject of access to records. The review included the identification of relevant existing rules and statutes, current practices, and pending rule changes before the Supreme Court. Historical highlights included:

- Rule 123 is the primary source of authority for governing access to judicial records and is the Judicial Branch's counterpart to the Executive Branch's Public Records Law. Rule 123 was originally adopted in the mid 1990s and has been modified several times.
- Rule 123 specifically provides that the records in all courts are presumed to be open; however, public access may be restricted for reasons of privacy or confidentiality or if it is not in the state's best interest.
- The Supreme Court Rule 123 and Data Dissemination Committee, formed in 2008, was asked to consider what images of case documents and data could be made available online. The committee concluded that the release of personal and sensitive data contained in case records should be minimized by implementing a variety of methods including limiting the scope of records available by remote electronic access; limiting remote

electronic access to members of the public who register and pay a fee; further limiting accessibility to only members of the public who are residents of Arizona and who have an Arizona driver's license; and minimizing the release of personal and sensitive data through close adherence to the provisions in Rule 125, governing minute entries.

- The 2008 committee concluded that to accommodate the different interests and needs for requesting access to case records, three tiers of remote electronic access were needed.
 - The first tier (Parties, Attorneys, and Arbitrators) allows remote electronic access to case records in all case types in which the person is a party, attorney of record, or arbitrator. Registration is required.
 - The second tier (General Public Registered User) allows registered members of the public who hold an Arizona driver's license to have remote electronic access to civil, criminal, and civil traffic case records, except for sealed or confidential records. Registration and payment of a fee is required, and access is limited to members of the public who hold an Arizona driver's license or a non-operating identification license.
 - The third tier (General Public Non-Registered User) is for unregistered members (everybody) of the public to have access. In juvenile delinquency, mental health, probate, and criminal cases in which a juvenile is alleged to be the victim of a sexual offense, only four data elements would be available: party names, case number, judicial assignment and attorney names. In all other civil, civil traffic, and family law cases, additional information could be provided including a list of documents that are filed, a register of actions, calendars, charges filed, case outcomes, and minute entries. In addition, Court of Appeals and Supreme Court opinions may be posted online.
- The 2008 committee recommended that family law case records be kept off-line for now. Cases that are determined to be high profile will override these access parameters and can be posted online for access by the general public and the media. The 2008 committee's recommendations made no change to the public's right to access to case records at a court facility.
- In 2004, the Minute Entry Reform Workgroup defined a minute entry as a memorialization or narrative of events occurring during court proceedings or a memorialization of matters required to be performed by statute or rule. The in-court minute entry generally includes time and date of proceedings, parties present, persons sworn in, and the judge's decision. A minute entry also can include rulings or orders. In contested custody cases, the judge has to evaluate each of the statutory factors in relation to a particular family. These minute entries can contain information about children's birthdays, the mental or physical health of the parents or the children, references to psychological evaluations, or how a divorce has affected the children.
- Rule 123 makes reference to "case records" and case "information." Both terms include minute entries.
- Protective order case information appears online only for orders that have been served. Courts often assign the same family law case number to a corresponding protective order, thus linking the two together. This can result in information about the protective order being published on the Internet. Federal law prohibits the Internet publication of any information that might lead to the identity and location of the person protected by the order.

- Document images, such as petitions, motions, and other pleadings, are not available on the Internet. Sensitive data sheets in family cases collect information such as social security numbers, driver license numbers, bank numbers, credit card numbers, financial accounts and personal identifying numbers and are not available to the public either on the Internet or in the paper record. Orders of Assignment and Stop Orders of Assignment contain sensitive data and, therefore, have limited availability in any form.

Committee comments included:

- Banks rely on the online minute entries to confirm validity of court orders.
- Courts are not uniform in how they docket protective order cases that are also related to a pending family law case. Some assign a separate case number to the protective order case, while others assign the existing family law case number to the protective order petition.
- Judges often make decisions during in-court proceedings, and these decisions become part of the minute entry.
- If a record is open, anyone can physically go to the court and ask to see the record. Access to family law cases online is much narrower. “Hard” files may contain confidential information if the parties or their attorneys are not careful to exclude it. The sensitive data sheet is kept separate in the hard file. Other documents and confidential information may be sealed by the judge.
- There should be a way to identify orders that should not be published online in the normal minute entry distribution system.
- Amend Rule 125 to state that orders (protection, family, probate) should be excluded from minute entries.
- It was suggested that the committee work on a draft solution to change Rule 125, such as not characterizing matters taken under advisement as minute entries and excluding names of children. It was noted, however, that excluding information from orders creates difficulties for those who need to perform an action directed by the order. The struggle between privacy and public access was acknowledged.
- Minute entries online serve many purposes, such as providing accountability to the public, allowing public access to open records, getting information to those who need it, and saving time for the courts.
- Pursuant to SCR Rule 123 and ARFLP Rule 13, a judge can issue an order limiting access to a case. One solution might be to instruct judges to apprise self-represented parties of this mechanism at the beginning of the case so they can make a request if they wish to do so.
- Docket “under-advisement” opinions differently and make them unavailable to the public online. The information would not be confidential and would still be available, just not online.
- Redefine the term “minute entry.”
- Rule 125 was controversial across the state and the inclusion of court rulings, decisions and notices was added to soften a major change to procedure in some courts.
- Eliminate family court minute entries from tier three. If someone is really interested in seeing a minute entry, the person would have to pay a fee and register.
- A fee has not been established because currently there is no portal for registered users. In Maricopa County, parties have access through the court’s case management system and

can view case documents. For Maricopa County, public access to minute entries is available through the Clerk of Court website.

PROBATE COMMITTEE DISCUSSION

Ms. Hardman presented a review of remote electronic access to probate records. Highlights included:

- This committee will be asked to discuss policy regarding whether Arizona courts should make probate documents available online to the general public.
- Probate includes conservatorships, guardianships, and estates.
- In recent years, the Arizona Supreme Court established two different probate committees.
 - The first committee proposed probate rules to help ensure the effective oversight of probate cases and to ensure the protection of elderly, mentally incapacitated, and other vulnerable persons. The rules this committee developed became effective January 1, 2009, and apply to probate proceedings under Title 14.
 - The second committee examined and made recommendations for effective court oversight and monitoring of guardianships, conservatorships, and decedent estates, focusing on professional and non-professional fiduciaries appointed to perform services for vulnerable and incapacitated persons, in order to protect wards and assets under the jurisdiction of the probate court.
- The 2008 SCR 123 committee concluded that a probate committee could better address the specific records concerns of probate cases, including identifying which probate documents should not be available to the public either at the courthouse or online.
- Rule 123 currently only allows parties and their attorneys to have remote electronic access to probate case documents. Only four elements may be posted online for the general public in probate and mental health cases: party names, case numbers, judicial assignment and attorney names.
- The Judicial Branch website does not provide online access to any probate data or documents. Thirteen superior courts link to the Judicial Branch website; therefore, no information about their probate cases is posted online. Two courts post case information containing more than the four minimum data elements identified in Rule 123.
- Probate Rule 7 identifies those documents that are confidential. Some probate documents are not addressed in Rule 7, such as investigative reports that could contain statements about the social and medical history of adult wards or the parents of minor wards. A petition for appointment of a guardian for a minor, which is not confidential, can include allegations as to why the parents of the minor are unfit, and orders terminating minor guardianship sometimes include bank account numbers and the name of a financial institution.
- A Rule 28 petition has been filed by Judges Davis and Mroz from Maricopa County, requesting permission to provide access to probate case documents online. Reasoning offered in support of the petition includes:
 - SCR 123 should be revised to permit remote electronic access to the general public to probate case records - all documents and data. Open access to these records will allow the general public to continue to have confidence in the court system.

- Currently the Court of Appeals and the Supreme Court can post their *opinions* involving probate cases online accessible to everyone; however, the Superior Court cannot publish its probate case *decisions* online.
- Without online access, additional clerk staff is needed to respond to requests for paper copies of probate records.
- Probate case documents should be readily available in the third tier of electronic access, allowing these documents to be available to anyone.
- Many people who want access to probate case documents live outside of Arizona and do not have an Arizona driver's license, excluding them from tier two access.
- SCR 123 currently allows documents to be made available to the parties and their attorneys (tier one electronic access).
- The AOC filed a comment to the petition asking the Supreme Court to postpone a decision on the petition until this committee has had an opportunity to review and make recommendations on the matter.

Committee comments included:

- Most documents filed in a probate case are confidential and could not be placed online, so there is a narrower group of records under the present rule that are even possible to post.
- There is no exception that allows for posting of minute entries in probate matters. Should a minute entry be allowed to be posted online?
- Only four elements may be posted online for the general public: party names, case numbers, judicial assignment, and attorney names. Is this enough or too much information to be posted online?
- Should the docket be allowed to be posted online?
- Maricopa County and Pima County differentiate juvenile, probate, and mental health cases with different case numbers.
- Is there more interest in protecting a minor's information?
- In Pima County, a document that is confidential or sealed will have a docket code indicating that it was filed but the image will not be shown. In the hard file, confidential documents are sealed in an envelope or are scanned and destroyed so that only the people with authorized access can look at them. Regardless of the medium, confidential documents cannot be viewed. The front of the envelope is scanned and the copy placed in the file so a person knows the document exists. If a person wanted to see the document, the person would have to ask a judge to allow it.
- Because of the interest in probate cases, particularly how estate assets are consumed, the committee may need to propose other rule changes, weighing privacy interests against the public interest.
- People may want to view the information in probate cases, because they may have a claim against that estate. The decedent's name should be public as well as the docket (a list of all documents).
- The register of actions (docket) should be available online in guardianship, conservatorship, and decedents' estate cases.
- There is concern that a mental health case could stigmatize an individual if information about the case is available to the public online without sufficient information presented to determine the outcome of the case.

ACTION ITEMS PRESENTED BY THE CHAIR

- More research needs to be done on Title 36 mental health law.
- Develop language for consideration that would expand online access to records in guardianship, conservatorship, estates cases; consider allowing online posting of the register of actions.
- Conduct further discussion of minute entries (i.e., pros, cons, and exceptions).
- Research whether release of a minor's name is permissible under current rules.
- Patricia Noland will provide examples of Pima County minute entries.
- Conduct a survey of courts to see how minute entries are handled and whether they include orders.
- Draft language incorporating ideas discussed by the committee.
- Discuss questions raised by the committee with Judge Robert Carter Olson; summarize that discussion and share with committee members.

Meeting adjourned at 1:40 p.m.

Next Meeting: August 27, 2012
10:00 a.m. – 2:00 p.m.
Arizona State Courts Building
Conference Room 230

Advisory Committee on Supreme Court Rules 123 and 125
MINUTES
August 27, 2012
Conference Room 230
State Courts Building, 1501 W. Washington, Phoenix, AZ 85007

Present: Mike Baumstark, Yvonne R. Hunter, Judge Carey S. Hyatt, Michael K. Jeanes, Gary Krcmarik, Judge Robert Carter Olson, Patricia Sallen.

Absent/Excused: Patricia Noland, David Bodney, Emily Johnston.

Guests: Aaron Nash (Maricopa County Clerk's Office), Therese Martin (Attorney General's Office), Jennifer Greene (AOC).

Staff: Melinda Hardman (AOC), Kay Radwanski (AOC), Kym Lopez (AOC).

CALL TO ORDER

With a quorum present, the August 27, 2012, meeting of the Advisory Committee on Supreme Court Rules 123 and 125 was called to order by Mike Baumstark, Chair. Members and staff introductions were made around the room.

APPROVAL OF DRAFT MINUTES

The draft minutes of the July 23, 2012, meeting of the Advisory Committee on Supreme Court Rules 123 and 125 were presented for approval.

MOTION: Yvonne Hunter moved to approve the July 23, 2012, draft meeting minutes as presented. **SECOND:** Gary Krcmarik. **VOTE:** Motion passed unanimously.

ISSUES AND PROPOSED MODIFICATIONS TO SCR 123

Family Law and Protective Orders

Kay Radwanski reviewed the committee's task of deciding what family law information can be published online and whether amendments to Rule 123 are necessary.

Discussion ensued, with a focus on current Maricopa County practice in which published minute entries includes under-advisement rulings. Under-advisement rulings often include findings of fact and conclusions of law in contested matters, offering the most potential for inclusion of sensitive information.

Noting that publication of minute entries online provides a service to both in-state and out-of-state individuals seeking information about a case, Maricopa County is considering development of an internal procedure to prevent sensitive information from being published online in a family law minute entry. A minute entry would be prepared in the same manner it is now, except that matters taken under advisement would be coded to prevent them from being published online. An implementation date for this procedure has not been determined, and judges would need training on it. Maricopa County believes it can implement this new process without changing

Rule 123. Additionally, Maricopa County is striving to develop a procedure for assigning a sub-code to protective order cases (Orders of Protection and Injunctions Against Harassment) that are filed into existing family court cases to keep the protective order information from being published online.

A member questioned how the courts should control the information the public can access, asking at what point the judiciary shifts from being a public court to a publisher of information for the public. It was noted that courts attempt to be as transparent and public as possible without jeopardizing an individual's private information. The public's interest is not served by publishing private information, and with advances in technology, there is a greater concern for the privacy of an individual. It was acknowledged that privacy issues are not violated if only basic information is published online.

As to the proposed modification to SCR 123(g)(1)(D)(ii) regarding family law and protective orders, it was suggested that federal law limitations on Internet publication of certain information be restated but not expanded. Law enforcement officers needing access to confidential information about a party can obtain additional information through law enforcement databases that are not available to the public. Members agreed to mirror the language from the U.S. Code in the proposed SCR 123 modifications. The addition of this language gives some flexibility and complies with the law.

A member suggested that language be included in the rule that would allow some family law documents to be posted online when technology is available that can redact specific information from them. Certain information could be blocked rather than taking the entire record offline.

It was also suggested that the committee recommend that family law case dockets be available for viewing online as long as information regarding a protective order is redacted. It was noted that the defendant's name is not redacted from the docket when a protective order is issued. Currently, Tier 1 users are authorized to see the image of a protective order in their own case; Tier 2 users must register and pay a fee to see document images, except for protective orders, in others' cases; and Tier 3 users are unable to view protective orders. Tier 2 users have access to certain civil case records but not juvenile, paternity, family law, or protective orders.

Currently, under SCR 123, family law case information may be provided online but not rulings, orders, or decisions. A member noted that clerks should not have to make legal decisions as to whether a statement from the court should be placed in a document titled as a minute entry or a document titled as a ruling, order, or decision, etc.

A member noted that the purpose of publishing records online is to let people know there is important information available in a case. Courts should have an open court and open records policy. Training would be beneficial in preventing confidential information from being published online. A member raised a concern that judges might be criticized for making decisions about

what information goes into a minute entry that will be published online and what information goes into an order that will not be published online. It was suggested that minute entries setting forth decisions made during court hearings be published online while those setting forth decisions taken under advisement be coded differently to keep the under-advisement decisions from being published online.

Rule 125(b) provides that a court order or ruling is a record of any out-of-court decision. This can be emphasized in Rule 123 if it is modified to provide that an out-of-court ruling cannot be published online. If a different code is designated for an out-of-court ruling, the document can be labeled as an order instead of a minute entry to make the distinction clear. Maricopa County feels this proposal has the flexibility to allow the court to meet its electronic delivery needs, but Maricopa County would prefer to leave the language of the rule as is.

Probate Law (Title 14)

SCR 123 currently allows only four data elements to be posted online in probate cases: party names, case number, judicial assignment, and attorney names. The docket or register of actions may not be posted online. Attorneys and parties have access to documents in their own cases through Tier 1.

Currently in probate matters, which consist of guardianships, estates, and trusts, the name of a minor can be published online because the minor's name is part of the case title. Committee members agreed that the minor's name should be available as published information. There is concern that an adult's name linked with a guardianship or conservatorship might hold a stigma for the adult. A member noted that a request to seal the file can be made to keep the adult's name confidential and offline. The committee concluded that an adult's name in a guardianship or conservatorship case can continue to be made available online.

The docket or register of actions is a listing of documents filed and actions taken in a case. Out-of-state family members do not have access to documents filed in probate cases because they generally are not Tier 1 users. If a probate case docket cannot be posted online, any county currently publishing it online would have to stop that practice. The example was given that an out-of-state reporter, who previously received remote electronic access to the docket – contrary to Rule 123 - would have to fly to Arizona, appear before the court and pay a filing fee, requesting to be named as an interested person in the case, to obtain access to this information online. If the policy recommendation is that the probate docket cannot be accessed online, the ability to easily monitor what is happening in a case would be precluded. A member suggested that the register of actions could be published in estate cases but not in other types of probate cases. The pending rule petition filed by Judges Davis and Mroz seems to also request remote electronic access to probate case documents.

The consensus of the committee is that the four data elements that SCR 123 currently allows to be posted online in probate cases should not be expanded. Online access should not be provided to probate case dockets, minute entries, or documents.

Michael Jeanes noted that Maricopa County probate case minute entries had been posted online for ten years, until recently, without any problem.

Mental Health Law (Title 36)

Mental health cases, although often handled in probate court, are not probate cases governed by the probate rules. These cases are governed by a separate set of statutes – Title 36. SCR 123 currently allows only four data elements to be posted online in mental health cases: party names, case number, judicial assignment, and attorney names. The federal HIPPA law regarding access to medical records does not apply to courts. A question arose as to whether that means the court can publish medical information and records in a way that others cannot.

A.R.S. § 36-509(B) provides that information and records obtained in the course of evaluation, examination or treatment and submitted in a court proceeding are confidential. It is unclear whether this section of the statute applies to health care entities or to courts. Current practice in the courts is that when these documents are brought to the court for filing, they are placed in an envelope labeled *confidential* and put into the file. A.R.S. § 36-509(B) also provides that information and records submitted in a court proceeding that are not clearly identified by the parties as confidential are public records.

A member asked what adjudicatory function is being served by publishing the four mental health case data elements online. What harm is done to the public interest or otherwise if the committee were to recommend that no mental health case information be published online? It was noted that this is a special area of the law where the individual named in the case title has not done anything wrong but has gotten sick. The information published online will always remain online even if the person is rehabilitated. It was noted that if this information is not published online, it is possible that interested family members would not know the mental health case exists.

The inclination of the committee is to protect the privacy of the individuals who find themselves in mental health proceedings. A guest noted that the prior Rule 123 Committee had recommended allowing the four data elements to be published online in case anyone wanted to challenge the case and request that the court overturn its order. If a case number and case names are sealed by the judge, a person would not know that the case exists. It was suggested that the committee take a more in-depth look at Title 36. The committee can include in its report to AJC an explanation that while mental health cases are not specifically set forth in the charge of the committee, the committee discussed mental health cases and recommended against posting these four data elements online for general public access. Other members stated that they did not know enough about mental health cases to make an informed recommendation.

Miscellaneous

Ms. Hardman proposed an edit to SCR 123(g)(1)(D)(i) to resolve any confusion surrounding the term *closed* (meaning confidential) and *closed* (meaning disposed of or concluded). A member noted that whether a case is identified as confidential or closed does not make the statement in the rule clearer and suggested that the phrase be removed completely. The section would then provide: “the following data elements in juvenile delinquency, mental health, probate, and criminal cases in which a juvenile is alleged to be the victim” The members agreed this language was preferable.

Ms. Hardman also proposed a change to SCR 123(g)(C) to provide that “Members of the public who hold an Arizona driver license, non-operating identification license, *or other acceptable form of identification, as determined by the Administrative Director, and complete registration pursuant to ACJA § 1-604*, may be provided remote electronic access” The rule currently reads: “Members of the public who hold an Arizona driver license or non-operating identification license may be provided remote electronic access... .” A member explained that the AJC is currently negotiating with a vendor to provide a PACER-like system in Arizona, which would allow broader access to court data and documents across the state. The vendor of this system, once selected, is expected to offer greater sophistication in registering individuals and identifying persons who are permitted to receive access to court data and documents. Consensus was not reached, so this proposed change will be discussed further at the next meeting.

The Chair advised that members should be prepared to stay beyond 2:00 p.m. at the next meeting.

CALL TO THE PUBLIC

No response.

ACTION ITEMS PRESENTED BY CHAIR

- Prepare a draft petition and appendix proposing SCR 123 modifications to allow certain family law minute entries to be published online. Present this proposal at the committee’s next meeting.
- Construct language to change Rule 123(g)(C)(i).

Meeting adjourned at 1:45 p.m.

Next Meeting: October 18, 2012

10:00 a.m. – 2:00 p.m.

Arizona State Courts Building

Conference Room 119B

Advisory Committee on Rules 123 and 125, Rules of the Supreme Court
MEETING MINUTES
October 18, 2012
Conference Room 119B
State Courts Building, 1501 W. Washington, Phoenix, AZ 85007

Present: Mike Baumstark - Chair, David Bodney, Judge Carey S. Hyatt, Michael K. Jeanes, Gary Krcmarik, Judge Robert Carter Olson, Patricia Sallen.

Telephone: Emily Johnston.

Absent/Excused: Yvonne R. Hunter, Patricia Noland.

Guests: Aaron Nash (Maricopa County Clerk's Office).

Staff: Kay Radwanski (AOC), Melinda Hardman (AOC), Kym Lopez (AOC).

CALL TO ORDER

With a quorum present, the October 18, 2012, meeting of the Advisory Committee on Supreme Court Rules 123 and 125 was called to order by Mike Baumstark, Chair. Member and staff introductions were made around the room. Mr. Baumstark reviewed the charge of the committee.

PRELIMINARY DECISIONS

Family law orders and rulings

The committee consensus is to make no changes to Rule 125. Maricopa County has implemented a procedural change (to be in place no later than 12/31/12) by which under-advisement rulings will be separated from in-court rulings and will not be posted on the court's website. The only minute entries that will be posted are those that are related to an open-court hearing.

A suggestion was made to require a disclaimer on court websites stating there may be other types of orders connected to a case. This disclaimer could be stated in a comment to Rule 123 explaining that although orders from the bench may be published as minute entries, there may be other orders that are not published online and are only available at the courthouse.

Federal law on Internet publication of protective order information

Language mirroring federal law will be used in the rule.

Probate

Four data elements (party names, case number, judicial assignment, and attorney names) are allowed to be published. The committee was not inclined to expand online publication of probate case information.

PETITION LANGUAGE

Mr. Baumstark presented the draft rule petition and appendix for the committee's review. It was recommended that the wording in Rule 123(C)(i) be changed to read: *Members of the public may be provided remote electronic access, pursuant to ACJA § 1-604, to all of the following categories of case records unless sealed or otherwise made confidential by rule or law:*

The committee agreed with all other changes indicated in the draft.

MENTAL HEALTH

Members discussed mental health cases and the extent to which case information should be available online. Highlights included:

- Committee consensus is that only the four data elements (party names, case number, judicial assignment, and attorney names) should be available as Rule 123 currently allows.
- There is concern as to whether the four data elements will always be available online. For example, if a person is involved in a Title 36 hearing and is found to be competent, this information would still be available online.
- An effort is being made to remove the stigma around “mental health.” Limiting case information to four data elements is a protection being provided to this segment of the population but not to people who are subject to guardianships and conservatorships. By treating mental health cases differently, the stigma about mental health issues may be perpetuated.
- The public assumes that health care information is private. Health care information is confidential, but making information available about mental health appears to be in conflict with that assumption.
- Research conducted since last meeting: Legal stated that HIPPA laws do not apply to the courts.
- It was proposed that the petition should make reference to discussion of the extent to which mental health case information should be accessible online and the committee’s decision that the four data elements should continue to be available.
- Attorneys and legal services organizations often use case information to determine what clients they choose to represent. If they do not have access to case information, they will not be able to rely on that information in determining whether to take on a new client.

APPROVAL OF MINUTES

The August 27, 2012 meeting minutes were presented for approval.

MOTION: Gary Krcmarik motioned to approve the August 27, 2012 minutes as presented.

SECOND: Judge Robert Olsen.

VOTE: Approved unanimously.

RULE PETITION

The rule petition must be filed by January 10, 2013, and needs to be taken before the Arizona Judicial Council (AJC) at its December meeting. The committee agreed to circulate the petition

by e-mail for final comments. The consensus of the committee was that Mr. Baumstark can incorporate any final changes or comments received and then file the rule petition on behalf of the committee.

MINUTE ENTRY

Maricopa County has made a procedural change on how minute entries are handled in their court. While no rule change is necessary, Maricopa County is changing its practice to address this issue and comply with the rules.

Meeting adjourned at 11:27 a.m.

Advisory Committee on Rules 123 and 125, Rules of the Supreme Court
DRAFT MEETING MINUTES
April 22, 2013
State Courts Building, 1501 W. Washington, Phoenix, AZ 85007

Present: Mike Baumstark - Chair, David Bodney, Yvonne Hunter, Judge Carey Hyatt, Michael Jeanes, Emily Johnston, Patricia Sallen.

Absent/Excused: Gary Krcmarik, Judge Robert Carter Olson.

Guests: Eric Ciminski (AOC), Denise Lundin (AOC), Therese Martin (AZ Attorney General's Office), Aaron Nash (Maricopa County Clerk's Office).

Staff: Kay Radwanski (AOC), Melinda Hardman (AOC), Kym Lopez (AOC).

I. CALL TO ORDER

A. Welcome and Opening Remarks

With a quorum present, the April 22, 2013, meeting of the Advisory Committee on Supreme Court Rules 123 and 125 was called to order by Mike Baumstark, Chair. Mr. Baumstark reviewed the actions since the last meeting. The committee had approved the petition as well as the revisions to Rule 123 and 125. The recommendations were presented to AJC at their December meeting. The AJC approved the filing of the petition changes and included in that petition was the recommendation to the court that the committee completes the process in two-steps and has two comment cycles. The first comment period closed on April 1 with responses due to the court on May 8. The second comment period to address the first comments closes on June 5 and is due to the court on July 3. The rule changes will then go into effect in January 2014.

B. Approval of Minutes

The October 18, 2012 meeting minutes were presented for approval. **Motion:** Emily Johnston motioned to approve the October 18, 2012 minutes of the Advisory Committee on Rules 123 and 125, Rules of the Supreme Court as presented. **Second:** Michael Jeanes. **Vote:** Approved unanimously.

II. BUSINESS ITEMS

A. Discussion of Comments to Rule Petition

The Committee on the Impact of Domestic Violence

A comment was received from the Committee on the Impact of Domestic Violence (CIDVC), who stated they agreed with the petition in its entirety.

The Arizona Association of Superior Court Clerks

A comment was received from the Arizona Association of Superior Court Clerks (AASCC). The AASCC supports the petition but has offered a new proposal to allow the posting of the docket in criminal cases in which a defendant is charged with an offense listed in A.R.S. Title 13, chapters 14, 32, 35 or 35.1 or in which the victim was a juvenile at the time of the offense. This comment addresses an area which this committee did not amend.

The chair is proposing to add to Rule 123(g)(1): (E) (at the end)...,and • in the above-described criminal cases only, the docket or register of actions, but not access to documents, so long as the names of victims do not appear in the docket or the register of actions.

All documents are still available at the courthouse.

A member suggested to add the words 'remote electronic' between the words 'not access' and the word 'other' before the word documents (reading "...but not remote electronic access to other documents") so people casually reading the rule can understand it.

Committee members gave tentative approval for this proposal.

The State Bar of Arizona

A comment was received from the State Bar of Arizona. The State Bar requests an amendment that would allow licensed Arizona attorneys to have access to family law minute entries that would otherwise be unavailable to the public (those issued outside of open court hearings).

The chair is proposing to add to Rule 123(g)(1): (B) *Members of the State Bar of Arizona*. In addition to access provide by subsection A, attorneys who are members of the State Bar of Arizona may be provided remote electronic access to all case records that are not sealed or confidential by law, as authorized by the Arizona Code of Judicial Administration (ACJA).

A document access database portal which will allow the verification of Arizona attorneys with bar numbers is being built by Eric Ciminski through AMCAD.

There is concern that lawyers could find themselves under pressure from clients who recognize that lawyers have remote electronic access. Members suggested the following safeguards:

- Create a rule that secondary use of information is not allowed.
- Lawyers would have to hit an 'I agree to the terms' button to continue into the system.
- Create an opportunity to review ethics rules and a way to pursue discipline every time a lawyer sign into the system.
- Keep track of who was in what record and what they were doing in the record.

A member suggested to add the word ‘active’ before the word ‘member’ (reading... “attorneys who are active members”).

Committee members gave tentative approval for this proposal.

Suggestion from retired Judge Jim McDougal

Counties other than where an order of involuntary commitment is ordered don’t have access to the information because the information has closed access. It is suggested that there be a way for other counties to access the information. Currently, the wording states “...The terms of such access shall be set forth in a memorandum of understanding between the entity or organization and the custodian that includes provisions for safeguarding the confidentiality of any closed records.”

The chair is proposing to add to Rule 123(g)(1): (C) ...or the administrative director...(after the word ‘custodian’).

Members agreed to use the wording ‘governmental entity’ in place of ‘entity or organization’ and the wording ‘director of the administrative office may enter into a memorandum of understanding with the governmental entity as authorized by the Arizona Code of Judicial Administration (ACJA)’ after the words ‘custodian or the’ (reading... “The terms of such access shall be set forth in a memorandum of understanding between the governmental entity and the custodian or the director of the administrative office may enter into a memorandum of understanding with the governmental entity as authorized by the Arizona Code of Judicial Administration (ACJA) that includes provisions for safeguarding the confidentiality of any closed records.”)

Motion: Yvonne Hunter motioned to accept the new wording. **Second:** David Bodney. **Vote:** Approved unanimously.

B. Approval to File Amended Petition

Motion: Yvonne Hunter motioned to have Mike Baumstark finalize and file the rule petition. **Second:** Patricia Sallen. **Vote:** Approved unanimously.

Emily Johnston requested that the record reflect that her vote on anything doesn’t reflect the policy of the Board of Governors’.

III. OTHER BUSINESS

A. Call to the Public

None.

Meeting adjourned at 11:30 a.m.