

**COMMITTEE ON SUPERIOR COURT
DRAFT MINUTES**

Friday, February 5, 2016; 10:00 a.m.
Conference Room 119 A/B, Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Judge David Mackey, Judge Thomas Fink, Judge Charles Gurtler, Jr., Judge Celé Hancock, Toni Hellon, William Klain, Scott Mabery, Judge Samuel Myers, Judge John Nelson, Judge Michala Ruechel, Judge Joseph Welty

Telephonic: Judge Sally Duncan, Judge Richard Gordon, Judge Kenneth Lee, Judge Cathleen Brown Nichols, Pamela Housh (proxy for Eric Silverberg), Judge Samuel Vederman

Absent/Excused: Judge David Cunanan, William Gibbs, Judge Charles Harrington, Judge Paul McMurdie, Ronald Overholt, Megan Spielman, Judge Randall Warner

Administrative Office of the Courts (AOC): Jennifer Albright, Theresa Barrett, Jerry Landau, Mark Meltzer, Patrick Scott

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The February 5, 2016, meeting of Committee on Superior Court (COSC) was called to order at 10:01 a.m. by Judge David Mackey, chair. Judge Mackey announced that Judge John Nelson is retiring in March and thanked him for his service on COSC.

A. Approval of Minutes from September 11, 2015

The draft minutes from the September 11, 2015, meeting of the COSC were presented for approval. It was noted that in the Legislative Update, the proposed date for sunset of the Foster Care Review Board is 2026, not 2016.

Motion: Judge Charles Gurtler moved to approve the November 6, 2015, minutes as amended.
Seconded: Judge Celé Hancock **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Committee on Time Periods for Electronic Display of Superior Court Case Records. Kay Radwanski, AOC Court Services Division, provided COSC with a brief background of prior committees that focused on records retention or public access to court documents:

2002 – Ad Hoc Committee to Study Public Access to Electronic Court Records studied restrictions on Internet access to protective orders, criminal case records, and individual case information.

2007 – Rule 123 Data and Dissemination Committee was established to examine the issues surrounding the need for statewide consistency in responding to bulk data requests and the expanding role of case management databases in data sharing and public access to court records.

2012 – Advisory Committee on Rule 123 and Rule 125 was established to examine and make recommendations about online access to documents and minute entries in family law and probate cases and those that should be available only at the courthouse.

2013 – Electronic Records Retention and Destruction Advisory Committee was established to examine and make recommendations on the issues surrounding records retention and destruction schedules and access to electronic court records.

2014 – Superior Court Records Retention Schedule Revision Committee was established to review and update the superior court records retention schedule found in [Arizona Code of Judicial Administration \(ACJA\) § 3-402](#). The revised schedule, which applies to both paper and electronic court records, makes it easier for court employees and for technology systems to classify content consistently for retention.

2015 – Committee on Time Periods for Electronic Display of Superior Court Case Records (CTPED) was established to address how long case record information should be available on the Internet. The committee focused on the first 18 record types held by the Superior Court Clerks and asked the following questions when considering the case types:

1. For records with a permanent retention period—
 - a. How long should case records be displayed on the Internet compared to how long the courts must retain the record?
 - b. If finite, what is the recommended duration for that case type?
2. For records that do not have a permanent retention period—
 - a. Should the record be accessible through remote electronic access for the full duration of the retention period or a shorter period of time?
 - b. If a shorter period of time is deemed appropriate, what is the recommended duration for each case type?

Ms. Radwanski explained that CTPED’s policy recommendation is that records should be displayed for the same number of years as they are retained by the courts. CTPED believes that this accomplishes the goal of continuity and consistency statewide and will make court information accessible to the public in accordance with judiciary open records policy. CTPED has filed a petition (R-16-0008) to amend Rule 123, Rules of the Supreme Court, which covers access to public records. This rule amendment would apply to any court retention schedule. Concurrently, CTPED will file a petition to amend the superior court records retention schedule by adding a column that shows the retention period on public access. Initial comments on the rule petition are due April 1, 2016. The CTPED can file an amended petition, if necessary, by May 13, 2016. The second round of comments runs until June 20, 2016, with CTPED’s response time ending July 8, 2016. The CTPED’s term will expire July 30, 2016, The Supreme Court meets in August 2016 for its Rules Agenda meeting. If the petition is adopted, the amended rule will take effect January 1, 2017.

Concerns were raised regarding criminal cases. It was noted that information about a person convicted of criminal trespass will remain online for 50 years, but information about a person who commits murder in a capital case will come offline when the person dies. A question was raised about how the Clerk will know when a capital defendant dies. The retention schedule does not differentiate between capital defendants who die from execution and those who die from other causes while incarcerated. Another member had concerns about case information being too easily accessible on the Internet.

Motion: Judge Nelson moved to support the petition with a caveat that concerns raised by COSC be noted. **Seconded:** Judge Gurtler **Vote:** Passed, 15-1.

B. Rule 41, Form 2, Rules of Criminal Procedure. Patrick Scott, AOC Court Services Division, explained that in December 2015, the court approved a new criminal arrest warrant and made its use mandatory effective January 1, 2016. Since then, stakeholders have raised multiple concerns regarding the new arrest form. The AOC, under the direction of the Chief Justice, sent out a memo stating that the implementation of the revised form was being delayed while these concerns are addressed. Mr. Scott said the AOC will convene a number of meetings of the original multi-agency workgroup in the next few months to address stakeholders' concerns.

C. ACJA § 5-206: Fee Waivers and Deferrals. Patrick Scott, AOC Court Services Division, explained that there have been inquiries from legal aid agencies regarding how their applications or filings have been treated in various courts. The current language in ACJA § 5-206(E)(1)(b) allows for fee deferral "if the applicant presents an affidavit showing representation by a non-profit legal services organization that has as its primary purposes the provision of legal assistance to indigents, free of charge, in civil matters." AOC's suggested change to the current language would allow for deferral "if the applicant presents evidence that the individual is a client of a non-profit legal services organization that has as its primary purposes the provision of legal assistance to indigents, free of charge, in civil matters." Community Legal Services has proposed language allowing deferral "if the applicant presents evidence that the individual is a client of a non-profit legal services organization. A legal services attorney's name on the pleadings, a notice of appearance, pleading paper from a legal services program, or a statement of receipt of legal services is sufficient evidence of the relationship." Mr. Scott asked COSC to review the suggested revisions and comment on whether they support revising the language or keeping the current language.

D. Legislative Update. Jerry Landau, AOC Government Affairs Director, informed COSC that there are still two weeks left to hear bills. He provided an update on the following bills:

- **HB2154 Failure to Appear; Arrest; Fingerprinting** – Many offenders are not fingerprinted when arrested. This bill requires the "booking agency" (defined as the county sheriff or a municipal law enforcement agency) instead of the arresting authority to take legible ten-print fingerprints of all persons arrested for specified offenses.
- **HB2220 Firearms State Preemption; Independent Contractors** – Removes the ability of a political subdivision to enact or enforce an ordinance or rule regulating independent contractors of the political subdivision who are acting within the course and scope of their employment or contract. For example, it could allow the contractor to bring a weapon to the worksite.
- **HB2287 Presiding Constable; Selection; Duties** – In each county in which there are four or more constables, the constables shall elect by majority vote one constable to serve as presiding constable. If there is no majority vote, the presiding judge for the county will appoint a presiding constable.
- **HB2375 Crime Victim's Rights; Facility Dog** – The court is required to afford a victim under 18 years of age the opportunity to be accompanied by a "facility dog" while testifying in court. Members had concerns about proof of insurance, payment for service, and whether this would be mandatory or discretionary. Some people have been confused about the process, believing that the court would provide the facility dog instead of the victim making arrangements for the facility dog.
- **HB2376 Victim Restitution; Stipulated Amount; Hearings** – The victim has the right to present evidence or information and to make an argument to the court personally or through counsel at any proceeding to determine the amount of restitution.

- **HB2377 Criminal Sentencing; Restoration of Rights** – Allows criminal history to be considered as a factor for sentencing. Primarily clears up the language.
- **HB 2466 Electronic Legal Material** – If an official publisher publishes legal material only in an electronic format, the publisher is required to designate the electronic record as official, authenticate the record, provide for preservation and security of the record in an electronic form or a form that is not electronic, and ensure that the material is reasonably available for public use permanently.
- **S1039** – Provides a person who has served on a jury for 15 consecutive days or more the opportunity to apply to the court for an exemption as a juror for 8 years following that service.
- **S1257 Misconduct Involving Weapons; Public Places** – Permits a person who possesses a valid concealed carry weapons permit to carry a concealed weapon in a public establishment. This does not preempt laws governing “secured facilities.”
- **S1293 Mediation; Confidential Communications; Exception** – Expands the list of communications made during the mediation process that are exempt from confidentiality requirements. A court-appointed mediator who reasonably believes that a minor or vulnerable adult is or has been a victim of abuse, neglect or other “reportable offense” can make a report to a law enforcement officer, the Department of Child Safety, or Adult Protective Services.
- **S1428 Public Safety Personnel Retirement System** – Establishes a method for determining the employer and member contributions to PSPRS for members hired on or after July 1, 2017; modifies the definition of “average monthly benefit compensation” for the purpose of determining PSPRS retirement benefit amounts and the definition of “normal retirement” and applies these changes only to members hired on or after July 1, 2017; increases the PSPRS Board membership to nine, and modifies requirements for board members.
- **S1510 Judicial Productivity Credits; Calculation; Salary** – Requires the Supreme Court to perform annually the calculations in each justice court for the previous 12-month period ending on June 30 and to report the total judicial productivity credits to the applicable board of supervisors by November 1 of each year. Any adjustment to the salary of a justice of the peace will become effective the following January 1.

E. Update on Probate Fee Guidelines Review (taken out of order). Theresa Barrett introduced Jennifer Albright, AOC Court Services Division. Ms. Albright will be taking on the probate fee guidelines review project. Ms. Barrett provided a recap on how the probate fee guidelines were established. ACJA § 3-303 is the controlling authority for probate fee guidelines. The Probate Fee Guidelines Review Committee was established in April 2010 and chaired by Justice Ann Timmer. Tasked with multiple charges, the committee met 18 times in a 13-month period. The committee also had three workgroups and received more than 200 comments on its report and recommendations. Ms. Barrett acknowledged the support she and her staff received from Judge Mackey and Judge Charles Harrington during the original probate fee guidelines review process.

The current review is an opportunity to review and revise the guidelines as needed. The review focuses on whether established fees are reasonable, whether the guidelines assist judicial officers in determining if fees are reasonable, or whether processes are being handled as they were before the guidelines. Since March 2015, AOC staff members have met with presiding judges and received their input, interviewed a number of court accountants, presented to the Arizona Association of Superior Court Administrators and solicited their assistance in disseminating a survey to judges. The survey results are currently being analyzed to determine if follow up phone calls are needed or if the survey should be disseminated again to counties that did not respond. The committee is

planning to establish a fiduciary focus group to get input on the probate fee guidelines, and work has been done with the State Bar of Arizona to develop a survey to be sent to attorneys to get their feedback on how well the guidelines are working.

F. 2016 Rule Petitions. Mark Meltzer, AOC Court Services Division, provided an update on petitions of interest to the superior court.

- **R-15-0043; Civil Rule 11** – would support the State Bar’s pending petition number R-15-0004 regarding Rule 11, except for R-15-0004’s proposed provision for mandatory sanctions. Regarding the provision on the imposition of sanctions, R-15-0043 proposes replacing the word “shall” with the word “may.”
- **R-16-0010; All Civil Rules** – proposes comprehensive revisions to the civil rules through stylistic and substantive amendments. A detailed, rule-by-rule explanation of these revisions is included in Appendix C to this petition.
- **R-16-0071; Civil Rule 5.1** – would modify Rule 5.1(a) to allow a governmental law office or a public or private law firm that has appeared as counsel of record to substitute or associate another member of that office or firm by filing a notice of substitution or association of counsel. This would avoid the need for another attorney in the same office or firm to file a written application or motion and obtain a court order allowing the substitution.
- **R-16-0018; Civil Rule 49(a)** - would further protect the confidential identity of individual jurors by permitting a jury foreperson, or six or more jurors who agree upon a verdict, to sign the verdict form by writing their juror number and initials in lieu of a full signature.
- **R-16-0007; Criminal Rule 8.4** - would amend Rule 8.4(a) to exclude from time limit computations an additional period of 30 days when the reasons for the delay under Rule 8.4(a) end within 30 days of the time limits of Rules 8.2 and 8.3. The exclusion of an additional 30-day period from the time limits allows the court and parties sufficient time to schedule and prepare for a trial.
- **R-16-0031; Criminal Rules 20, 24.1, 24.2, 24.3 and 24.4** - would delete Rule 20. Rule 20(b), which is a judgment of acquittal after a jury verdict, would be re-located as a new Rule 24.1. (A post-verdict judgment of acquittal is reviewable on appeal.) The remaining sections of current Rule 24 would be re-numbered as Rules 24.2 through 24.5.
- **R-15-0036; Juvenile Rule (not numbered)** – would request adoption of a uniform statewide rule providing that children should “be free of mechanical restraints when appearing in superior court, juvenile division, unless there are no less restrictive alternatives that will prevent flight or physical harm to another person.” Restraints could be used only if the court has determined that the “child is displaying threatening or physically aggressive behavior towards others,” “has expressed an intention to flee,” or “has attempted to flee secure care in the last three months.” The proposed rule would require the court to give the juvenile an opportunity to be heard before the court orders the use of restraints. The court must make written findings of fact in support of an order for restraints.
- **R-15-0042; Juvenile Rules 45 and 58** - would require the child safety worker’s narrative report to address the appropriateness of a child’s school placement, services to help the child achieve his or her educational potential, resolution of school attendance issues, special education services, and grade level progress. The proposed amendments to Rule 58 specify that DCS reports at review hearings address the educational stability of the child.
- **R-16-005; Juvenile Rule 19** - would amend Rule 19 to clarify that the juvenile court, including the court’s probation department, may share juvenile court records, including the social file, with other juvenile probation departments both within and outside of Arizona.

(Half of Arizona counties have combined adult and juvenile probation departments; in the other half, they are separate, and juvenile probation falls under the umbrella of the juvenile court.)

- **R-16-0009; Juvenile Rule 39** – would allow an attorney to request withdrawal from a dependency or termination case in writing, but without further specifications, and would more closely align the requirements for withdrawal under Rule 39 with the civil and family rules.

III. OTHER BUSINESS

Good of the Order/Call to the Public. No one from the public was present.

Adjournment: The meeting adjourned at 12:10 p.m.

Next Meeting: Friday, May 6, 2016; 10 a.m.