Committee on Superior Court

DRAFT MINUTES
Friday, September 9, 2016
Conference Room 119 A/B, Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Judge David Mackey, Judge David Cunanan, Judge Charles Gurtler, Jr., Judge Charles Harrington, Toni Hellon, Judge Jason Holmberg, William Klain, Judge Kenneth Lee, Scott Mabery, Judge Paul McMurdie, Eric Silverberg, Megan Spielman, Judge Randall Warner, Judge Joseph Welty, Judge Timothy Wright

Telephonic: Judge Thomas Fink, Judge Richard Gordon, Judge Cathleen Brown Nichols, Ronald Overholt

Absent/Excused: Judge Sally Duncan, William Gibbs, Judge Celé Hancock, Judge Samuel Myers

Guests: Judge Larry Winthrop, Court of Appeals, Division 1; Adam Shelton, ASU extern

Administrative Office of the Courts (AOC): Jennifer Albright, Theresa Barrett, Stewart Bruner, Jerry Landau, Mark Meltzer, Marcus Reinkensmeyer, Kathy Sekardi

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The September 9, 2016, meeting of Committee on Superior Court (COSC) was called to order at 10:03 a.m. by Judge David Mackey, chair.

Judge Mackey welcomed two new members—Judge Jason Holmberg and Judge Timothy Wright—and thanked reappointed members Judge Sally Duncan, Toni Hellon, Bill Klain, and Judge Randall Warner for their continued service to COSC. He thanked and bid farewell to Judge Michala Ruechel and Judge Samuel Vederman, whose terms on COSC have expired. He also congratulated Ron Overholt on his promotion to court administrator for Pima County. He then directed COSC members to the last page of the agenda and asked them to note the 2017 meeting dates on their calendars as soon as possible.

Approval of Minutes from May 6, 2016
The draft minutes from the May 6, 2016, meeting of the COSC were presented for approval.

Motion: Eric Silverberg moved to approve the May 6, 2016, minutes as presented. **Seconded:** Judge Charles Gurtler. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Legislative Update

Jerry Landau, AOC government affairs director, explained that seven proposals from the Arizona Judicial Council (AJC) are expected to go to the legislature next session. One comes from the limited jurisdiction courts and deals with criminal littering (2017-05, which was not

discussed), four are from the Fair Justice for All Task Force, one is from the Committee on Court Security, and one is from the Adult Probation Department.

1. Fair Justice for All Task Force

   2017-01–Sentencing; fines; fees; probation – Allows a person charged with a misdemeanor to perform community restitution without being placed on probation, adds civil penalties and surcharges to the list of financial obligations for which the court may order community restitution, allows a judge to waive or mitigate part of the civil penalty, fine, surcharge, or fee if the cost causes financial hardship, and expands the community restitution program to superior court.

   Motion: Judge Richard Gordon moved to support this proposal. Seconded: Judge Paul McMurdie. Vote: Unanimous.

   2017-02–Driving; violations; restricted license; penalties – Authorizes specified restrictions to be placed on a person's driving privileges in lieu of the suspension of the person's license (allowing the person to drive to and from work, to and from school, to and from a dependent child's school or appointments, or to seek medical treatment) and allows a judge to waive court-ordered financial obligations related to driving under the influence, pursuant to law. No discussion or action taken.

   2017-03–Bailable offenses; hearing; schedule – Eliminates the bond schedule for criminal traffic cases that limited jurisdiction courts are required to prepare, permits a hearing to determine if a person should be held without bond based on being a danger to the community, removes the statutory timeframes for holding a hearing on the motion as well as the requirement that the case be placed on an expedited calendar.

   Motion: Judge McMurdie moved to support the proposal. Seconded: Judge Randall Warner. Vote: Unanimous.

   2017-04–Competency examination; jurisdiction – Allows the presiding judge of the superior court to authorize a limited jurisdiction court to exercise jurisdiction over competency hearings in that court upon the agreement of both judges.

   Motion: Judge McMurdie moved to support with the addition of designee language. Seconded: Judge Timothy Wright. Vote: Unanimous.

2. Court Security Standards Committee

   2017-06–Court Security Fund - This proposal recommends improvements to court security in response to the recent shootings in court buildings locally and nationwide. It proposes statewide standards for the courts, expands the authorized use of filing fee monies distributed by the Board of Supervisors to a local law library fund to allow for improvements, maintenance, or enhancements to courthouse security, directs any excess defensive driving school fees not distributed the Department of Public Safety crime labs to a newly established statewide court security fund, requires the Administrative Office of the Courts to use the monies in the statewide court security fund to meet minimum standards of courthouse security adopted by the AJC. These monies will not revert to the general fund and are exempt from lapsing.

Discussion ensued regarding the use of the law library funds for court security, the security needs of metropolitan versus rural courts, and fixed versus shared court facilities.

Motion: Mr. Silverberg moved to support the court security proposal. **Seconded:** Toni Hellon. **Vote:** 9-7 agreed to support this proposal; 2 members abstained.

3. Adult Probation

2017-07–IPS wages; distribution – Current law requires the chief adult probation officer to collect paychecks from probationers and establish accounts from which the chief adult probation officer must make payments for restitution, probation fees, fines and other payments. The introduction of direct deposit, check cards, and other payment options have made it difficult for adult probation departments to comply with the requirement of collecting paychecks from offenders. The proposed amendment would reflect current wage distribution practices and require the probation officer to monitor the probationer's income to ensure compliance with court-ordered financial obligations.

Motion: Scott Mabery moved to support the proposal. **Seconded:** Judge McMurdie. **Vote:** Unanimous.

B. Fair Justice for All Task Force

Judge Don Taylor, chief presiding judge, Phoenix Municipal Court, and a member of the Fair Justice for All Task Force, presented a summary of the task force's recommendations that are necessary to effectuate statewide changes and to reform the current criminal justice system. He outlined core values and introduced a two-component solution to achieve justice for all by creating reasonable sanctions and implementing pretrial bail reform.

Judge Taylor reviewed the average cost of a traffic ticket and illustrated how a small ticket can become a big problem later and have catastrophic consequences for low-income individuals. Although there should be consequences if a person breaks the law, criminal fines and penalties should not promote a cycle of poverty by imposing excessive amounts or unduly restricting people's ability to be gainfully employed. Judge Taylor highlighted the following principles to create reasonable sanctions as the first part to achieving justice for all:

1. Judges need discretion to set reasonable penalties–Legislative changes are needed for judges to mitigate mandatory minimum fines, fees, surcharges, and penalties for those upon whom they would cause undue economic hardship.
2. Provide convenient payment options and reasonable time payment plans–Test techniques that make it easier for defendants to make payments.
3. Provide alternatives to paying a fine–Allow judges additional discretion to convert fines into restitution hours and apply to sentences imposed by superior courts.
4. Employ practices that promote voluntary appearance–Implement an interactive messaging system that reminds defendants of court dates and missed payments.
5. Suspension of a driver's license should be a last resort–The first offense of driving on a suspended license should be a civil violation rather than a criminal offense.
6. Non-jail enforcement alternatives should be available–Restitution court and the FARE program provide non-jail and less costly compliance alternatives.
7. Special needs offenders should be addressed appropriately–People suffering from mental illness or drug addiction should be handled differently.

He noted that even short periods of pretrial incarceration cause collateral damage in terms of loss of employment, economic hardship, loss of place of residence, and inability to care for children or family, as well as the likelihood to commit new crimes before trial.

The second part to achieving justice for all is to implement pretrial reforms by eliminating money for freedom to the greatest extent possible and shifting from bail and bond to risk-based release criteria.

8. Detaining low- and moderate-risk defendants causes harm and higher rates of new criminal activity–Eliminate the use of non-traffic criminal bond schedules.
9. Only defendants who present a high risk to the community or individuals who repeatedly fail to appear in court should be held in custody–Amend the Arizona Constitution to expand the use of detention without the requirement for money bail.
10. Money bond is not required to secure appearance of defendants–The bond should be actual cash with the amount paid returned to the defendant if charges are not filed, the person is found innocent, or if no violations of the release conditions occur.
11. Release decisions must be individualized and based on a defendant's level of risk–Expand the use of the Public Safety Assessment (PSA), a validated pretrial risk assessment tool, to limited jurisdiction courts.

Motion: Judge Kenneth Lee moved to support the recommendations in the final report and the filing of a rule petition to implement the recommendations. **Seconded:** Judge Charles Harrington. **Vote:** Unanimous.

C. Arizona Commission on Access to Justice – Report on Rule Change Petition R-16-0040

Judge Lawrence Winthrop, Court of Appeals, Division 1, provided a brief history of the Arizona Commission on Access to Justice (ACAJ) and its charge of "Advancing Justice Together: Courts and Communities" by making recommendations on how to best assist self-represented litigants and revising court rules and practices to facilitate access. The ACAJ's Self-Represented Litigant in Limited Jurisdiction Courts Workgroup (SRL-LJC WG) worked with justice court managers, judicial staff, and tenant and landlord attorneys, all with subject-matter expertise in landlord-tenant matters, to create forms for use statewide. On July 6, 2016, a rule change petition (R-16-0040) was filed on behalf of the ACAJ that would require litigants statewide to use court-approved eviction action forms and authorizes the AOC administrative director to approve, modify, or delete eviction action forms as may be appropriate. The proposed rule is being circulated to appropriate groups for review and comment. The deadline to reply to comments is November 4, 2016. It is anticipated that the Supreme Court will consider this petition at its rules agenda meeting in December.

Motion: William Klain moved to support the petition, provided the forms are not mandatory for use in forcible detainer actions after trustee sales brought in superior court. **Seconded:** Judge David Cunanan. **Vote:** Unanimous.

D. Court Security Standards Committee

Marcus Reinkensmeyer, director of the AOC Court Services Division, outlined the charge of the Court Security Standards Committee (CSSC), which was to assess court security, develop statewide standards, and develop security training for court personnel. Jennifer Albright, AOC Court Services Division, detailed how court security was assessed with a statewide survey that measured security practices currently in place in the courts and what security measures the courts would like to implement. Based on the responses to the survey and best practices, the CSSC developed five categories of standards:

1. Court security and emergency preparedness
2. Court security manual
3. Court self-assessment
4. Response to negative events
5. Incident and threat reporting

Mr. Reinkensmeyer then discussed proposed three-tier funding for court security. The proposed court security standards, funding recommendations, and an implementation timeline will be presented to the AJC upon completion of the CSSC's final report, he noted.

Discussion ensued regarding the use of the law library funds for court security, the security needs of metropolitan versus rural courts and fixed court facilities versus shared facilities. Other funding options were also discussed.

Motion: Judge Lee moved to support the court security standards and funding recommendations with the notation of concerns raised regarding funding, individual court needs, and the implementation timeline. **Seconded:** Judge Gurtler. **Vote:** Unanimous.

E. Proposed Amendments to ACJA § 7-206: Certified Reporter

Mark Wilson, director of the AOC Certification and Licensing Division, explained that some of the superior courts are having difficulty recruiting certified reporters. One reason is the amount of time it takes to perform background investigations. Each applicant must be fingerprinted and undergo a criminal background investigation. Fingerprint requests are taking four to six weeks to be processed. The proposed amendment to ACJA § 7-206 would allow individuals, not yet certified but currently employed or about to be employed by a superior court to receive a Conditional Initial Certification that would allow employment by a superior court while the criminal background investigation is being completed.

Motion: Mr. Silverberg moved to support the proposed amendments to ACJA § 7-206. **Seconded:** Judge Gurtler. **Vote:** Unanimous.

F. Proposed Revisions to ACJA § 1-507: Protection of Case Records in Paperless Court Operations

Stewart Bruner, AOC IT Division, discussed two proposed revisions to ACJA § 1-507. The first change deals primarily with wording changes to incorporate cloud storage technology for storage arrays, virtual servers, and virtual tape technology. These would cover protection of electronic records in paperless court operations and gateway access to the tertiary copies that prevent direct access to the storage media from systems being backed up. The other change deals with removal of language requiring certification requirements for technical staff operating the server and database environments that store electronic records. It would permit substitution of in-house skills assessment, professional experience, or formal education.

Motion: Judge Warner moved to support the proposed amendments. **Seconded:** Mr. Silverberg. **Vote:** Unanimous.

G. Task Force on Arizona Rules of Criminal Procedure

Judge Joseph Welty, Maricopa County Superior Court, provided a brief background on the Criminal Rules Task Force. At their first meeting, task force members adopted the restyling protocol established by the Civil Rules Committee last year. Four workgroups then began

redrafting assigned rules of criminal procedure. To date, the workgroups have met 40 times. All of the rules have been restyled, and half of them have been approved by the task force. The goal is to get a working draft to various committees for their input by the end of the year.

H. Update on the Annual Rules Agenda

Mark Meltzer, AOC Court Services Division, reported that the Supreme Court considered 46 rule petitions at its rules agenda meeting on August 29, 2016. All of the adopted rule petitions take effect January 1, 2017, unless otherwise noted. Petitions of interest to superior courts include:

R-16-0010 Task Force on the Arizona Rules of Civil Procedure proposed comprehensive stylistic and substantive revisions to the civil rules. This petition was adopted as modified.

R-16-0017 Civil Rule 5.1(a) was modified to allow a governmental law office, 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 rule was adopted as modified and renumbered as Rule 5.3(a)(2).

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. This rule was adopted as modified and renumbered as Rule 49(d)(2).

R-16-0007 Criminal Rule 8.4 seeks to amend Rule 8.4(a) to exclude from time limit computations an additional 30-day period 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. This would allow the court and the parties sufficient time to schedule and prepare for a trial.

R-16-0024 Criminal Rule 7.5 would add an additional circumstance "where the defendant was released or transferred to the custody of another government agency, preventing the defendant from appearing in court" and make exoneration of the bond mandatory in both circumstances.

R-15-0036 Juvenile Rule (not numbered) would provide 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." The proposed rule would require the court to provide the juvenile with the opportunity to be heard without restraints. The court must make written findings of fact in support of an order for restraints. Adopted as modified (Rule 12).

R-16-0034 ARCAP 5(a) eliminated the five calendar days currently added to the time for responding to an appellate filing that is served electronically.

III. OTHER BUSINESS

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

Adjournment: The meeting adjourned at 1:23 p.m.

Next Meeting: Friday, November 4, 2016; 10 a.m.
Arizona State Courts Building, Conference Room 119 A/B