

**COMMITTEE ON SUPERIOR COURT  
MINUTES**

**Friday, February 7, 2014**

10:00 a.m. to 2:00 p.m.

Conference Room 119 A/B

1501 West Washington Street

Phoenix, AZ 85007

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**Present:** Judge Janet Barton, Judge James Conlogue, Judge Sally Duncan, Judge Steven Fuller, Judge Richard Gordon, Judge Charles Gurtler, Judge Charles Harrington, Toni Hellon, Judge Kenneth Lee, Judge Colleen McNally, Judge David Mackey, Judge John Nelson, Ronald Overholt, Virlynn Tinnell (proxy for Sue Hall), Judge Monica Stauffer, Judge Samuel Vederman, Susan Wilson

**Telephonic:** Judge David Cunanan, Joshua Halversen, Judge Celé Hancock, Judge Michala Ruechel

**Absent/Excused:** William Klain, Charles Moter, Judge Randall Warner

**Administrative Office of the Courts (AOC):** Paul Julien, Amy Love, Mark Meltzer, Marcus Reinkensmeyer, Patrick Scott, Jeffrey Schrade, Kathy Waters, Mark Wilson

**AOC Staff:** Kay Radwanski, Sabrina Nash

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**I. REGULAR BUSINESS**

**A. Welcome and Opening Remarks**

The February 7, 2014, meeting of the Committee on Superior Court (COSC) was called to order at 10:02 a.m. by Judge David Mackey, chair.

**B. Approval of Minutes**

The draft minutes from the November 1, 2013, COSC meeting were presented for approval.

**Motion:** To approve the November 1, 2013, meeting minutes, as presented. **Moved by** Judge John Nelson. **Seconded by:** Judge James Conlogue. **Vote:** Unanimous.

Before moving on to the business items, Judge Mackey introduced Chief Justice Rebecca White Berch, who thanked the committee members for their assistance in vetting pending legislation, reviewing upcoming code sections, and offering opinions on the effect of various proposals on rural and urban court jurisdictions. The Chief Justice said she valued and appreciated the ideas, commitment, and service of COSC members. Judge Mackey thanked the Chief Justice for the leadership

she demonstrated during her tenure, and committee members acknowledged her with a standing ovation.

## II. BUSINESS ITEMS

### A. Legislative Update

Amy Love, AOC legislative liaison, gave a brief update on recently introduced legislation and its impact on the courts. She highlighted the following legislation:

- **S1309: Court ordered Services; dependent children** – If the court determines that services supplemental to those provided through the Department of Economic Security are available to dependent children from another source at no cost to the state, the court may order the services on agreement of the provider.
- **H2457: Mental Health, Veterans Courts; Establishment** – Authorizes the presiding judge of superior court in each county to establish a veterans and mental health court.

During discussion, it was noted that assistance and participation from the Veterans Administration (VA), which provides services to veterans, is important to the success of these specialty courts.

- **H 2021: Vexatious Litigants: Designation** – Allows the court to designate a person as a vexatious litigant and allows the presiding judge or a designee to prohibit the person from filing future actions without court permission.

During discussion, it was noted that an administrative order in Maricopa County already allows the presiding judge to deny a filing if the litigant is determined to be vexatious. In recent years, three orders regarding vexatious litigants, all *pro per*, have been issued, and all have been upheld on appeal. Ms. Love is seeking comments on whether this legislation, if it is successful, will be a resource issue for courts, and she has requested a delayed effective date.

- **H2297: Judicially Appointed Psychologists; Complaints** – Would allow the Board of Psychologist Examiners to consider a complaint against a psychologist arising out of a judicially ordered evaluation.
- **H2307: Sentencing Probation** – Allows mandatory sentencing to be suspended if the person is seriously mentally ill or has a history of mental illness and would benefit from supervised probation.

- **H2327: Settlement of Claims of Minor** – Removes the case law requirement that a guardian *ad litem* be appointed to settle a claim on behalf of a minor. A court could appoint a guardian *ad litem* if the net amount of the settlement is \$10,000 or more. The judge would still have to sign off on the settlement.

A question was raised about the necessity of this legislation. Currently, cases under \$10,000 do not require court approval, but the minor has the ability to contest the amount. The court could determine that the amount is inappropriate and could appoint an attorney for the minor at the insurance company's expense. There is a concern that this legislation would cut off the minor's ability to contest the amount of the settlement.

- **H2454: Human Trafficking; Prostitution** – Makes changes to various laws related to human trafficking, particularly in child prostitution cases involving minors who are 15, 16, or 17 years old.

During discussion, it was noted that there is a need to modify detention facilities to provide semi-secure facilities for children who are victims of human trafficking. Presiding judges can enter into agreements with regional or statewide providers to deprogram trafficking mentality by providing shelter care and treatment services.

- **H2460: Probation; Community Supervision; Search; Seizure** – This legislation would require as a condition of probation that the probationer to be subject to search by law enforcement and probation officers with reasonable suspicion.

A point was raised during discussion that courts should be able to set the probation terms. Probation departments are concerned about safety and offender rehabilitation and the appropriate amount of monitoring.

- **H1038: Parenting Time; Child Relocation** – Legislation to clean up semantics of the bill; eliminates the 100-mile rule in relocations. Requires a parenting plan to include a procedure by which a change in the child's residential address may be mediated or resolved. If passed, this bill has a delayed effective date of January 1, 2015.
- **S1061: Paternity** – The bill is intended to clear up and cross reference Title 25 and Title 8 so the family law bench is aware when a child has already been placed and adjudication is not required.

**B. ACJA§ 1-302: Education & Training**

Jeffrey Schrade, director of the AOC Education Services Division, presented proposed code changes to COJET. The proposed changes would:

- Eliminate the eight-hour COJET credit limit for non-facilitated learning programs and remove eLearning programs, tours, and ride-along programs.
- Add live training and non-facilitated learning definitions and remove the eLearning definition to COJET.
- Require at least six hours of live training each year. Examples of live training are WebEx, conference calls, or a live broadcast transmitted through the AOC broadcast center.

**Motion:** Approve proposed changes as written. **Moved by** Judge Conlogue. **Seconded by** Judge Kenneth Lee. **Vote:** Unanimous.

**C. ACJA § 7-206: Certified Reporter**

Mark Wilson, director of the AOC Certification and Licensing Division, discussed proposed changes to ACJA § 7-206, regarding court reporters. Mr. Wilson previously presented this topic to COSC at its November 2013 meeting, at which time the committee tabled the issue. A task force appointed by Chief Justice Berch has been reviewing the proposed changes and has not yet made final recommendations. Mr. Wilson said there have been meetings with stakeholders, and additional public comment has been received. He presented the most recent staff recommendations to the code:

- **Cost to Litigants.** Requires certified court reporter to disclose the cost of services prior to any proceeding. Allows parties to object to the cost if it exceeds that which is normal and customary.
- **Equality to Litigants.** A certified reporter cannot receive compensation unless a copy of the invoice has been provided to all parties.
- **Confidentiality.** Clarifies that a certified court reporter can use third parties to prepare, store, and distribute a transcript without violating confidentiality requirements. Clarifies that transcripts may only be released to the witness, parties, or the witness and the parties' attorneys.
- **Firm Registration.** All firms providing reporting services shall be registered. Registered reporting firms have the same obligations as the certified court reporter. Requires that if a certified court reporter works for a firm providing reporting services, the firm must be a registered reporting firm.
- **Relationships between certified reporters and others.** Allows contracting but requires disclosure of all contractual relationships prior to the proceeding. If there is no contract, the court reporter is required to disclose

any reporting services performed for a party or an attorney during the previous 12 months.

During public comment, John McDonald, Arizona Court Reporters Association (ACRA), expressed concerns regarding some of the definitions in the code sections, thresholds concerning enforcement, and removal of anti-contracting language that is protective of the public. He said ACRA's concerns have been shared with CLD staff. He stated that ACRA does not feel that substituting disclosure requirements and firm registration are sufficient to protect the public.

Mary Meyer elaborated on the differences in the practices of contracted court reporters versus non-contracted court reporters. She stated that the inequity in billing and service provision that is inherently part of contractual arrangements is why ACRA strongly supports keeping the anti-contracting language in the code.

Discussion ensued regarding when and how disclosure is made and whether disclosure is burdensome to reporters and courts, the distinction between freelance and official court reporters, how are violations reported and what triggers enforcement, and a need for refinement of firm registration.

**Motion:** Recommend that COSC rely on the comments provided and support moving the process move forward. **Moved by** Judge Charles Harrington. **Seconded by** Judge Steven Fuller. **Vote:** Unanimous.

**D. Judicial College of Arizona - Update**

Paul Julien, AOC Education Services Division, provided an update on recent Judicial College presentations. A webcast on revisions to the Rules of Civil Procedure and changes in case management was broadcast statewide on February 4, 2014, and has been placed on the Wendell and Judicial Branch websites. The broadcast has two parts, one for staff and one for judges. He thanked Judge Harrington, Judge Lee, and William Klain for their hard work and input in revising the rules. Mr. Julien also announced the dates for upcoming events: New Judge Orientation (Part I), March 3-7, 2014; the Judicial Conference in Tucson, June 25-27, 2014; New Judge Orientation (Part II) September 8-12, 2014, and the Court Leadership Conference in the Fall - date to be determined. New Judge Orientation features five mentors who are available for the entire week of training. The sessions will be taught by 20 faculty members.

**C. 2014 Rules Update**

Mark Meltzer, AOC Court Services Division, reported on Rule 28 petitions that have been filed in the new cycle. Petitions highlighted were:

- **R-13-0044** – Civil 67; proposes to delete sections (d), (e), and (f) as arbitrary and discriminatory.
- **R-13-0053** – Civil 55(b)(1); seeks to resolve a conflict between two Court of Appeals decisions regarding a defendant who has defaulted for failure to appear. The proposed State Bar amendment would allow entry of judgment on motion and without a hearing in cases where the amount of claim is liquidated.
- **R-13-0061** – Civil 23; seeks an amendment on class action suits regarding residual funds. The Arizona Foundation’s proposal is for 50 percent of residual fees to be used for providing legal services and access to the justice for low-income Arizona residents.
- **R-13-0004** – Criminal 15.8. In November 2013, the Supreme Court adopted an amendment on an emergency basis that authorized the imposition of sanctions for a prosecutor’s failure to disclose material information to a defendant prior to the withdrawal of a plea. The court continued this petition for further review and comment until May 20, 2014.
- **R-14-0005** – Criminal 24.2. In November 2013, the Supreme Court issued an order that had to do with cases where it was later determined after conviction that the defendant was innocent. Amendment would allow filing of a motion to vacate a judgment of conviction at any time after the entry of judgment and sentence.
- **R-14-0007** – Criminal 32.12 gives convicted felons an opportunity to petition the court for DNA testing of evidence. The proposal would establish a procedure for the courts and the parties to follow upon the making of a request and incorporate the Supreme Court’s holding in State v. Gutierrez regarding post-conviction hearing involving DNA testing.
- **R-14-0010** – Criminal 31.2, 31.4, 31.13, 32.4, and 32.9; deals with capital cases. The petition requests that a post-conviction proceeding in a capital case precede the direct appeal. This petition has a staggered comment deadline. The first deadline is April 15, and the second begins June 13.
- **R-14-0004** – SCR 111; requests that unpublished decisions be allowed to be cited for their persuasive value, although they would be non-precedential and non-binding.
- **R-13-0049** – Commission on Judicial Conduct Rules 9, 17, and 18. The petition proposes a new and confidential admonition sanction limited to those cases where the conduct at issue is an unintentional or technical violation of the Code; the judge has not previously received a disciplinary

sanction for similar misconduct; and the judge has not received a disciplinary sanction for any reason within the previous two years.

Mr. Meltzer also informed the committee that revisions to the Rules of Civil Appellate Procedure are in process, with a comment deadline of April 28.

**D. ACJA § 6-208: Use of Conducted Electrical Weapons**

Kathy Waters, director of the AOC Adult Probation Services Division, presented a new code section that codifies the use of conducted electrical weapons (commonly known as Tasers) by probation officers. Tasers are to be used only on adults and only by probation officers designated by the chief probation officer as members of special teams that are assisting law enforcement, serving warrants, or focusing on fugitive apprehension.

**Motion:** Recommend the proposal for adoption as written, with the understanding that there will be changes to section K(2)(a) based upon discussion with AOC Legal Services. **Moved by** Judge Nelson. **Seconded by** Judge Charles Gurtler. **Vote:** Unanimous.

**E. ACJA § 6-204.01: Interstate Compact**

Kathy Waters, director of the AOC Adult Probation Services Division, presented a proposal for technical amendments to this code section and incorporates Appendix A regarding interstate supervision of incoming offenders. Ms. Waters explained that the interstate compact, dealing with supervision of offenders who come to Arizona from other states, has led to dual supervision in some cases where an offender comes into the state with a parole case and a probation case. The appendix clarifies the responsibilities of the AOC and the Arizona Department of Corrections regarding such offenders. The Arizona State Council approved the policy in Appendix A in 2013.

**Motion:** Recommendation adoption of the proposal as written. **Moved by** Judge Conlogue. **Seconded by** Joshua Halversen. **Vote:** Unanimous

**H. Child Support Guidelines – Quadrennial Review**

Marcus Reinkensmeyer, director of the AOC Court Services Division, advised that the Supreme Court is preparing for the quadrennial review of the child support guidelines. Through a competitive bid, a qualified consultant will be hired to review and update the schedules using the current costs of raising children as well as a multi-county case file review. The guidelines will continue to be based on the income shares model. COSC members will be asked to review the consultant's recommendations in September, after a public comment period. The Arizona Judicial Council will be looking to COSC for a recommendation.

During discussion, it was noted that the guidelines do not relate to the actual cost of raising a child, the allocation of property and the effect on child support, the disparity among judges regarding deviation from the guidelines, and the effect of equal parenting time on child support.

Mr. Reinkensmeyer will return to the May COSC meeting to introduce the consultant and to update the committee on the review process.

### **III. OTHER BUSINESS**

#### **A. Good of the Order/Call to the Public**

None present.

#### **B. Adjournment**

Meeting adjourned at 1:11 p.m.

#### **C. Next Committee Meeting Date**

Friday, May 2, 2014

10:00 a.m. to 2:00 p.m.

State Courts Building, Room 119A/B

1501 West Washington Street

Phoenix, AZ 85007