

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, May 2, 2014

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

Conference Room 119 A/B

1501 West Washington Street

Phoenix, Arizona 85007

Present: Sue Hall, Judge Celé Hancock, Judge Charles Harrington, Toni Hellon, William Klain, Judge David Mackey, Judge Colleen McNally, Charles Moter, Judge John Nelson, Ronald Overholt, Judge Michala Ruechel, Judge Monica Stauffer, Judge Samuel Vederman, Judge Randall Warner

Telephonic: Judge Kyle Bryson, Judge James Conlogue, Judge David Cunanan, Judge Richard Gordon, Judge Charles Gurtler, Joshua Halversen,

Absent/Excused: Judge Janet Barton, Judge Sally Duncan, Judge Steven Fuller, Susan Wilson

Guests: Dr. Jane Venohr (by telephone)

Administrative Office of the Courts (AOC): Jerry Landau, Chelsey Stacy, Kathy Sekardi, Eric Ciminski, Stewart Bruner, Theresa Barrett, Mark Meltzer

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The May 2, 2014, meeting of the Committee on Superior Court (COSC) was called to order at 10:05 a.m. by Judge David Mackey, chair.

Judge Mackey acknowledged the service of Judge Kenneth Lee, who most recently served on COSC by virtue of his position as associate presiding judge in Pima County. Judge Mackey thanked Judge Lee for his years of service to COSC, noting that he has been with the committee since 2000. Chief Justice Berch has signed a Certificate of Appreciation and a letter thanking Judge Lee for his service. A card was circulated during the meeting so members could send their thoughts and well wishes to Judge Lee. Judge Mackey then introduced and welcomed Judge Kyle Bryson, the newly appointed associate presiding judge in Pima County, to the committee.

Judge Charles Harrington said that Judge Lee asked him to pass along his comments on how much he has enjoyed his 14 years on COSC and how he will miss the people and issues covered by the committee.

Kay Radwanski, AOC, then provided committee members with a brief overview of the emergency exits in the event of a fire drill or an emergency situation.

B. Approval of Minutes

The draft minutes from the February 7, 2014, COSC meeting were presented for approval.

Motion: To approve the February 7, 2014, meeting minutes, as presented. **Moved by** Judge Charles Harrington. **Seconded by** Judge Celé Hancock. **Vote:** Unanimous.

II. BUSINESS ITEMS

A. Legislative Update

Jerry Landau, AOC government affairs director, and Chelsea Stacey, legislative intern, provided an update on the recent legislative session. Mr. Landau said that the five bill proposals authorized by the Arizona Judicial Council all passed. The general effective date is July 24, 2014. Ms. Stacey reviewed the following bills, which were all passed this session:

- **H2021: 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. This bill is effective January 1, 2015. The Supreme Court is able to enact any applicable rules that are deemed necessary.
- **H2307: County Attorney; Deferred Prosecution Fund** – Requires the statistical records maintained by the county attorneys to include specific information and requires the annual evaluation of the program to be submitted to the Joint Legislative Budget Committee. Counties are authorized to establish a county attorney deferred prosecution fund.
- **H2310: Criminal Justice Info; Court Reporting** – This AJC bill permits a court to check criminal histories in a family or juvenile case to determine an individual's eligibility for substance abuse and treatment courts. Judge McNally helped write the draft and reworked the language that was approved.
- **H2322: National Instant Criminal Background Checks** – Requires the courts to transmit to the Supreme Court findings on a person who is found incompetent, guilty except insane, for whom a guardianship has ended unless it was for a physical disability only, or a person in need of treatment under Title 36. Courts must send the final minute entries in those cases to the Supreme Court, which will then transmit the information to the Department of Public Safety (DPS). DPS will then enter the information into the National Instant Criminal Background Check System (NICS), which is used by federally registered firearms deals to screen prospective buyers for prohibited possessor status. Mr. Landau said additional language will be drafted for a bill to allow local law enforcement access to this information so that they can act appropriately. This bill takes effect January 1, 2015.
- **H2437: Public Committees; Repeal; Sunset** – This bill, in relation to the Supreme Court, repealed the Child Support Committee and the Domestic Relations Committee. The Community Notification Guidelines Committee was repealed, and notification requirements for sex offenders are now in statute.

Beginning in 2022 and every eight years afterward, the legislature must review the state's participation in the Interstate Commission for Adult Offender Supervision to determine whether to remain in the compact.

- **H2560: Insurance; Self-Evaluation Privilege** – Creates a privilege statute for insurance companies that provides limited ability to use the “insurance compliance self-evaluative audit document” in court.
- **H2562: Probation; Peace Officers; Rights; Investigations** – Governs discipline of law enforcement officers and probation officers, including time limitations, internal investigations, polygraph exams, and appeals. Establishes a peace officers bill of rights that requires employers to make a good faith effort to complete any investigation of misconduct within 180 days. This bill is effective January 1, 2015.
- **H2593: Death; Post Conviction; Appellate Proceedings; Dismissal** – This bill addresses issues raised by the U.S. Supreme Court's decision in *Miller v. Alabama*. A person who is sentenced to life imprisonment with the possibility of release after serving the minimum number of calendar years for the offense that was committed before the person reached 18 years of age is eligible for parole upon completion of serving the minimum sentence, regardless of whether the offense was committed on or before January 1, 1994. If granted parole, the person remains on parole for life unless parole is revoked by statute.
- **H2625: Penalty Assessment; Victims' Rights Enforcement** – Creates a \$2 assessment on all criminal offenses and certain civil penalties, which is not subject to surcharge, for crimes committed on or after January 1, 2015.
- **S1266: Misconduct Involving Weapons; Judicial Officers** – Allows elected or appointed judicial officers (but not hearing officers or part-time *pro tems*) to carry a gun in a courtroom. The presiding superior court judge from each county is authorized to implement rules and policy on allowing a gun in the courtroom. Any judge wishing to carry a gun must meet the competency requirements of the concealed carry permit. However, the law is silent as to who enforces this requirement or how the judicial officer shows concealed carry competency.
- **S1284: Public Safety Officers; Omnibus** - Allows a peace officer who believes that his or her life or safety may be in danger to ask the court to restrict the officer's personal identifying information from superior court records. This is not sealing of records; it is redacting of records. This bill is effective on January 1, 2015.

Mr. Landau said a special legislative session is expected to be called to discuss Child Protective Services, and firefighters are pressing to include pension discussions in the special session. At this point, the focus is on the Public Safety Personnel Retirement System and not the Elected Officials Retirement Plan. The City of Phoenix has a ballot initiative to change to a defined contribution plan for all new employees. There is also a possible 2016 initiative to move all retirement systems to a defined contribution plan.

B. 2014 Child Support Guidelines Quadrennial Review – Preliminary Findings Report

Kathy Sekardi, AOC, introduced Dr. Jane Venohr, research associate at the Center for Policy Research in Denver, Col., who presented telephonically. Dr. Venohr reviewed the federal requirements (45 C.F.R. § 302.56) that required states to have advisory child support guidelines in place by 1987, presumptive guidelines that could be rebutted based on state-determined criteria by 1989, and guidelines review at least once every four years. She outlined the following:

- Arizona has complied with all federal requirements. From 1989 to 2011 Arizona has reviewed, revised, or updated its guidelines seven times, mostly because of new costs or measurements on how much it costs to raise a child.
- The collection of case file review data is being compiled in a cluster sampling from Apache, Maricopa, Pima, and Yavapai counties as these counties make up 80 percent of Arizona's population. These same counties were sampled in the 2008 review, which allows for the comparison of deviation rates across time.
- Preliminary review of findings from 72 percent of sampled cases shows a guidelines deviation rate of 29 percent, the same as in the 2008 review.
- Mother-owed support remained steady at 87 percent, the same as in 2008.
- Essentially equal parenting time increased 15 percent.
- The median monthly gross income is lower for both parents.

Dr. Venohr expects to complete the case file review and prepare a report of her findings by June 2014. Ms. Sekardi said the goal is to present any recommendations to the AJC in September 2014. She then stated that any changes to the guidelines would take effect sometime between January and June 2015. The AOC will be collecting public comment on any proposed changes, and a website has been established to provide more information.

C. Language Access Presentation at State Bar Convention and Judicial Conference and Statewide Training

Judge Nelson reported that Yuma County has developed a language access program that deals with the legal issues and requirements of providing language access, interpreter services and expectations, and how to provide services to remote limited jurisdiction courts. Court representatives from Yuma will be making video presentations to the State Bar of Arizona and at the Judicial Conference in June. They also will travel throughout Arizona making language access presentation during the summer. Yuma County has recruited theater actors to work with court employees to produce 4-5 scenarios that deal with language access issues. These scenarios are based on true events that happened in Yuma. (Names were changed to protect identities.) Judge Nelson expects the language access presentations to be beneficial in helping Arizona court systems and attorneys know what can be expected and how to prepare for a situation where a client or witness need interpreter services for a specific language.

D. Retention, Destruction, and Access to Electronic Court Records

Eric Ciminski, AOC, reported on upcoming changes to the Supreme Court's public access website because of recommendations made by the Records Retention Committee. The AJC adopted the committee's recommendations in December 2013. Changes include:

- Generic local charges will be removed from public access as the current technology design only allows for the description of "local charge" to display instead of the actual charge description. This limitation could cause harm to an individual if the charge is misinterpreted as being of a serious nature without checking with the court for clarification.
- AOC will remove local ordinance violations from the public access website. Courts that maintain their own public access websites may retain local violations if the actual charge description is displayed.
- AOC will remove case records from the public access website that, after December 12, 2013, have reached retention periods found in the records retention schedules. Local courts must remove these case records from their own websites.
- AOC will develop and implement an automatic process for the destruction of AOC-maintained electronic case records per approved retention schedules. Courts operating their own case and document management systems must also destroy electronic case records per the approved retention schedules.
- The AJC approved a two-year implementation period beginning December 2013 to allow time for the computer programming changes necessary to comply.

Mr. Ciminski said courts that use AOC-maintained systems are not required to do anything. However, courts that operate their own systems will need to design their own electronic record destruction procedures and provide a copy to AOC. The plan must include how and when the records custodian will destroy electronic records for all cases that have already reached the retention periods found in the retention schedules, up to and including December 12, 2013. Courts with technology resource and funding restrictions can apply to the Commission on Technology for additional time to implement the recommendations.

E. ACJA § 5-206: Fee Deferrals and Waivers

Theresa Barrett, AOC, presented the recently AJC-approved revisions to ACJA § 5-206 and provided an update on ongoing work that is occurring as a result of the approved recommendations.

- Section D(3): Minimum Clerk Fee – The clerk fee is assessed once, at the commencement of each action or post-adjudication proceeding, for the application, and it is deferred, waived or due in the same manner as other fees and costs.
- Section E(1)(b): Legal Services – If the applicant is a Legal Services client, fees are postponed until the end of the case. The applicant must still complete the

application and provide an affidavit from Legal Services showing that the applicant is an actual client of Legal Services.

- Section E(2)(a): For a person with an income greater than 150 percent but less than 175 percent of the federal poverty guideline, fees are assessed with a minimum payment due at the time of filing. The minimum payment is determined at the county level.
- Section E(2)(b): For a person with an income greater than 175 percent but less than 225 percent of the federal poverty guidelines, fees are assessed with a minimum payment of no less than 25 percent of the total amount due at the time of filing. The minimum payment for subsequent installments is determined at the county level.
- Section E(4): An applicant may voluntarily elect to pay fees and costs even if qualified for a deferral or waiver.
- Section F(1): An applicant who receives Supplemental Security Income (SSI) must present documentation of SSI eligibility at the time of filing.
- Section F(2): Waiver at the end of the case. Applicants who, at the time of filing, are granted a deferral because their income is below 150 percent of the federal poverty guidelines or they are receiving food stamps or TANF, receive a waiver at the end of the case because by definition the applicant's income and liquid assets are insufficient or barely sufficient to meet the daily essentials of life.

As a result of these changes, direction was given at the AJC meeting to create a task force to review the documentation requirements that will be needed when submitting affidavits, look at ways to simplify the forms, and make recommendations related to training of judicial officers on how to implement the changes to the code.

F. R-14-0017: ARCAP Amendments

Mark Meltzer, AOC, reported on a Rule 28 petition to amend the Arizona Rules of Civil Appellate Procedure (ARCAP). He was tasked with drafting revisions to the ARCAP in November 2014. The rules have not been revised since their adoption in 1978. The revisions are both stylistic and substantive. The task was to make the rules easier to understand as a number of litigants are self-represented or represented by law firms that do not often handle appeals. The elements of restyling the rule were to:

- Use informative headings and subheadings
- Break up long sentences or collapse them into fewer words
- Convert lengthy rules into shorter subparts, making it easier to find particular provisions
- Avoid repetition
- Use plain English
- Avoid legal jargon and ambiguous terminology (for example, replacing the word "shall" with "must," "may," "should," or "will," depending on the context)
- Keep the same rule numbers where possible

- Update the rules to reflect current appellate practices and the increasing use of technology

The first round of comments on the proposed rule changes occurred in April. Based on comments received, an amended petition will be due May 20, 2014. The second round of comments are due June 13, 2014. An amended petition, if necessary, will be due July 7, 2014, and then submitted for the August rules agenda. Mr. Meltzer strongly advised COSC committee members to review the rule changes and provide comments.

Mr. Klain acknowledged the efforts of Mr. Meltzer and the attorneys who helped him in handling such a large undertaking in a short four-month period. He stated that Nevada is updating its appellate rules but has a two-year timeline. He also pointed out several changes pertinent to Superior Court judges, including Rule 9.1, which deals with the suspension of appeal, and provisions that pertain to what to do with an untimely appeal.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

Judge Mackey stated that during the meeting, he received an email from Jerry Landau, advising that SB1309 was signed by the governor on April 30. This bill provides that if appropriate facilities are available to the juvenile court, the superior court presiding judge may enter into an agreement for the use of those facilities by a provider of juvenile shelter or treatment services.

Members also were polled about lunch preferences when committee meetings end at noon. The consensus was that the practice should continue.

No one from the public was present at the Call to the Public.

B. Adjournment

Meeting adjourned at 12:03 p.m.

C. Next Committee Meeting Date

Friday, September 5, 2014
10:00 a.m. to 2:00 p.m.
State Courts Building, Room 119 A/B
1501 West Washington Street
Phoenix, AZ 85007