

**Committee on Superior Court
MINUTES**

Friday, September 5, 2014 10:00 a.m.
Conference Room 119 A/B
1501 West Washington Street
Phoenix, Arizona 85007

Present: Judge Janet Barton, Judge Kyle Bryson, David Cunanan, Judge Sally Duncan, Judge Steven Fuller, Judge Richard Gordon, Judge Charles Gurtler, Sue Hall, William Klain, Judge David Mackey, Judge Colleen McNally, Judge John Nelson, Judge Michala Ruechel, Judge Samuel Vederman, Judge Randall Warner, Susan Wilson

Telephonic: Joshua Halversen, Judge Celé Hancock, Charles Moter, Judge Monica Stauffer

Absent or Excused: Judge James Conlogue, Judge Charles Harrington, Toni Hellon, Ronald Overholt

Presenters and Guests: Dr. Jane Venohr, Center for Policy Research; Janet Sell, Division of Child Support Services, Office of the Attorney General

Administrative Office of the Courts (AOC): Marcus Reinkensmeyer, Amy Love, Patrick Scott, Melinda Hardman, Kathy Waters, Mark Meltzer

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

Judge David Mackey called the September 5, 2014, meeting of the Committee on Superior Court to order at 10:07 a.m.

B. Approval of Minutes

The draft minutes from the May 2, 2014, meeting were presented for approval.

Motion: Judge Steven Fuller moved to approve the minutes as presented.

Seconded by Judge Charles Gurtler. **Vote:** Unanimous

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Legislative Update

Amy Love, legislative liaison, AOC Government Affairs Group, presented two proposals that will be considered by the Arizona Judicial Council (AJC) at its October meeting.

The first proposal involves the Veterans' Court statute. General Gregg Maxon, AOC, brought to the AOC's attention that the statute authorizes judges to order defendants in DUI or domestic violence cases only to screening and treatment programs approved by the Department of Health Services (DHS) or the probation department. This proposal would add screening and treatment programs approved by the Department of Veterans Affairs (VA).

Motion: Judge Colleen McNally recommended that COSC support the proposal to add VA treatment programs to court-ordered treatment. **Seconded by:** Judge Michala Ruechel **Vote:** Unanimous

The second proposal would amend existing law in Title 13 by classifying assault on a judicial officer as aggravated assault. Current law includes prosecutors, public defenders, peace officers, firefighters, teachers, park rangers and several other types of professions. The Committee on Limited Jurisdiction Courts recently voted to approve this measure.

Members discussed whether the proposal should be broadened to cover additional court employees—specifically court personnel and part-time judicial officers—when they are working within the scope of their duties. Ms. Love stated that she would make note of the suggestion to expand the proposal.

Motion: Judge Janet Barton recommended that COSC support the proposal, with the additional recommendations. **Seconded by:** Judge Gurtler. **Vote:** Unanimous

B. Child Support Guidelines Review: Report and Recommendations Regarding Arizona's Quadrennial Review (*taken out of order*)

Dr. Jane Venohr, research associate, Center for Policy Research in Denver, Colorado, presented two reports outlining her findings regarding Arizona's child support guidelines. The Arizona Supreme Court is directed by state and federal law to conduct a quadrennial review of the guidelines. The federal law also requires the review to include a case file review of deviations and an economic review.

The first report—*Economic Review of Arizona Child Support Schedule*—explained the federal requirements, guideline models, current economic evidence of child-rearing costs, and the steps and assumptions used to develop an updated schedule. Arizona's current schedule is based on the Income Shares model with Betson-Rothbarth 3 (BR3) as the economic basis. Dr. Venohr noted that since the 2010 guidelines review, the Betson-Rothbarth 4 measurement of child-rearing expenditures has been produced. The BR3 considers child-rearing expenditures, while the BR4 considers expenditures and outlays. Dr. Venohr explained the major differences between BR3 and BR4 in her presentation. She also presented information on the earnings of Arizona workers based on education and gender.

In her recommendations for an updated schedule, she noted that:

- It is appropriate to consider updating the guidelines schedule to 2014 price levels and current tax rates, as the current schedule relies on 2008 price levels.
- A policy decision would need to be made about whether to use BR3 or BR4 as the economic basis. The BR4 study is the most current, but it suggests decreases and has been known to understate actual child-rearing expenditures.
- Some states only accept increases and retain existing amounts when the BR amount is less than the existing amount.

The second report—*Arizona Child Support Guidelines Review: Findings from the Case File Data*—deals with the federal requirement to collect and analyze case file data to determine the extent of deviation from guidelines. Dr. Venohr analyzed 677 cases from four counties and found that the deviation rate remained the same—26 percent—since the last review. She found an increase in modifications, more cases between never-married parents, and more families at the lower end of the income scale.

Recommendations based on the case file reviews are:

- Update the self-support reserve to \$1,115 a month.
- In orders for two or more children, provide the order amounts for when the oldest child emancipates.
- Add more specificity to the essentially equal provision as there seems to some inconsistency in how guidelines users are defining what is “essentially equal” in terms of parenting time.
- Increase the threshold for the reasonable cost of medical insurance.
- Add more specificity on how the child’s uncovered medical costs should be shared, either prorated or divided equally between the parents.
- Create consistency between how tax exemption for the child is awarded between the parents and the parent ordered to provide medical insurance for the child. The Affordable Health Care Act assigns the responsibility of providing the child’s medical insurance to the parent who claims the child as a tax exemption.
- Expand data collection and analysis to include payment data and whether the parents are divorced or never married.

Without taking action on Dr. Venohr’s recommendations, the committee moved onto the next presentation from the Attorney General’s Office regarding the Self-Support Reserve and temporary child support orders for the unemployed.

C. Child Support Guidelines Review: Recommendation for Changes to Child Support Guidelines Paragraph 15—Self-Support Reserve Test. (*taken out of order*)

Janet Sell, unit chief counsel, Division of Child Support Services (DCSS), Office of the Attorney General, presented a proposed change to the Self-Support Reserve (SSR) used in Arizona’s child support guidelines. In explaining the issue regarding the SSR, Ms. Sell noted that Arizona’s minimum wage of \$7.90 per hour is higher than the federal minimum wage of \$7.25 per hour. The SSR is based on the federal poverty level, and the difference between the Arizona and federal minimum wage rates

misaligns Arizona with the SSR. This difference currently results in a maximum minimum wage order of 34 percent of the parent's monthly income.

Studies have shown that support orders above 20 percent result in lower compliance with orders, payment inconsistency, and arrears accrual. The proposed change would raise the self-report reserve threshold from \$903 to \$1,095, bringing the maximum minimum wage order to 20 percent of the parent's monthly income. The application of the self-support reserve would continue to be discretionary. Ms. Sell acknowledged that Dr. Venohr's recommendation is to raise the SSR to \$1,115 per month. She said the Attorney General's Office would support that recommendation.

The committee asked Ms. Sell to explain her next proposal before taking any action regarding the SSR.

D. Child Support Guidelines Review: Recommendations for Changes to Child Support Guidelines Paragraph 20—Deviations.

Ms. Sell requested a proposed change to the Child Support Guidelines that would give courts discretion, when appropriate, to deviate from a minimum wage order for a limited time to allow an unemployed obligor an opportunity to find employment without accruing large arrears while unemployed. She noted there is a difference in payment compliance when an obligor is attributed a minimum wage compared to an obligor who is actually earning minimum wage. The deviation should be temporary—not permanent—as a permanent deviation might act as a disincentive to find work.

During discussion, it was noted that judges are required to attribute minimum wage and not take into account unemployment benefits, which may be less.

Judge Mackey made a Call to the Public on the child support guidelines discussion, but no one from the public was present. He noted that the committee was under no obligation to act immediately and could revisit the issues at the November meeting.

Motion: Judge John Nelson moved to adopt Dr. Venohr's recommendation to increase the SSR to \$1,115 per month and to adopt the Attorney General's proposal regarding temporary deviation from the child support guidelines for unemployed obligors. **Seconded by:** Judge Barton. **Action:** Motion withdrawn.

Kathy Sekardi, AOC, explained the process for this quadrennial review. Dr. Venohr's reports have been published on the Judicial Branch website, and public comment has been invited. The webpage features a test calculator based on BR4 and with an SSR of \$973 that can be used to compare current orders that are based on BR3 and a lower SSR. The public comment period will close after eight weeks. COSC members will then be asked to review the comments received and make recommendations on the guidelines. Those recommendations then would be opened up for public comment. The Arizona Judicial Council will make final recommendations to the Supreme Court. An effective date could be anywhere between January 1-June 30, 2015.

In response to a question about whether temporary deviations would result in more litigation, Ms. Sell explained that, under the proposal from the Attorney General's Office, the order will set an amount and duration for the deviation and would not require additional hearings.

After hearing an explanation of the review procedure, the consensus among members was to take these issues back to their courts and, as part of their due diligence, seek comment from their benches and clerks' offices.

Motion: Judge Celé Hancock moved to table a vote on any of the child support proposals until after the public comment period and to revisit the issues at the November 7, 2014, COSC meeting. **Seconded by:** Judge Monica Stauffer. **Vote:** Unanimous.

E. ACJA § 5-206 Fee Waiver and Deferral and Administrative Directive 2014-22
Patrick Scott, Court Services Division, AOC, presented revisions to ACJA § 5-207, regarding fee deferral and waiver. He noted that a drafting error has been corrected and was approved by the AJC in June. The correction now makes the provision regarding the minimum clerk fee applicable to all courts, not just superior courts. The revisions have been approved by the Arizona Judicial Council. Application forms are available on the Judicial Branch website and are being translated into Spanish.

F. Draft Revisions to ACJA § 3-402, Superior Court Records Retention and Disposition

Judge Pamela Gates, Superior Court in Maricopa County and chair of the Superior Court Records Retention Revision Committee, presented draft revisions to the Superior Court Records Retention Schedule. She explained that the committee's goal was to restyle, simplify, and clarify the retention schedule so those persons responsible for managing court records have a clear definition as to when records should be retained or destroyed.

Judge Gates highlighted these changes to the retention schedule:

- Addition of a new General Provisions section, which clarifies that when the schedule differ from statute, then statute applies.
- Clarified when the Arizona Library, Archives and Public Records (LAPR) will receive certain documents to be permanently retained there or when the documents are able to be destroyed by the individual courts.
- Clarified that a sealed file will remain sealed in perpetuity absent a court order lifting the seal, whether it is with LAPR or the court.
- Removed probation records from the schedule with the understanding that there will be a new probation retention schedule.
- A column was added to the schedule that explains the instances in which a record will be retained permanently by the court and when it will be transferred to LAPR for permanent retention.

Judge Gates stated that public comments have been received and will be reviewed at the next meeting of the Superior Court Records Retention Schedule Revision Committee. If there are no changes, the revision committee will then present the proposed schedule to the AJC in October. If approved, the schedule is likely to take effect on January 1, 2015.

In response to a question, Melinda Hardman, AOC, explained that retention of a juvenile delinquency file is currently tied to the juvenile's birthday, with a record being eligible for destruction after the juvenile's 30th birthday. The courts do not organize records according to a party's birth date. The proposed schedule will allow for destruction of the case after 25 years, which will take the case past a juvenile's 30th birthday as a juvenile offender is typically age eight or older. Judge Gates pointed out that some decisions were based on technological capacity.

A concern was raised about juvenile records being held for only 25 years, particularly with respect to capital cases. It was argued that all records should be available to a capital defendant, who may have had a strong involvement with the juvenile court system prior to involvement in the adult system. Ms. Hardman said the committee did consider that and recommended the 25-year retention period, partly because that period is longer than the current retention period. Judge Gates said she would take the comment back to the committee.

Another concern was voiced about the 25-year timeline for general stream adjudication case records as some of these cases are still going on after 25 years. Judge Gates noted that a provision was carved out that a record may be held until the reference value has been served. She said she would convey the concern to the records retention committee and discuss whether there should be a carve-out for cases where there is on-going litigation. It was recommended that the retention be 25 years from the date a final non-appealable order is entered, instead of 25 years from the date the case was filed.

Motion: Judge Randall Warner recommended that AJC approve the Superior Court Records Retention and Disposition Schedule as presented, subject to the comments offered by COSC members. **Seconded by:** Judge Sally Duncan. **Vote:** Unanimous.

G. ACJA § 6-105.01: Powers and Duties of Officers Evidence Based Practices

Kathy Waters, Adult Probation Services Division, AOC, presented changes to ACJA § 6-105.01 and requested committee support of these modifications. She explained that A.R.S. §12- 256 was amended this past legislative session and expanded the arrest authority of probation officers from counties with a population of two million or more to all of the counties. A.R.S. § 12- 256 also expanded the duties of adult probation officers enabling them to serve warrants, make arrests, and to bring alleged pretrial conditioned release violators before the court. A probation officer enforcing pretrial release conditions has the authority of a peace officer in the performance of the officer's duties.

Motion: Judge Nelson moved to approve the proposed changes. **Seconded by:** Judge Gurtler. **Vote:** Unanimous.

H. ARCAP Amendments

Mark Meltzer, Court Services Division, AOC, informed the committee that the Supreme Court has adopted simplified rules for filing civil appeals in Arizona's courts. Over the next few years, the Supreme Court intends to comprehensively review other rules, such as those for criminal and civil procedures, with goal of making them user friendly for lawyers, self-represented parties, and court personnel.

Mr. Meltzer highlighted several of the ARCAP rule changes:

- **Rule 1(c) Construction** states that these rules should be used and interpreted by the courts and the parties to achieve the just, speed, and inexpensive resolution of appeals.
- **Rule 2** contains a definition of a judgment and also states that entry of a judgment occurs when filed by the superior court clerk.
- **Rule 3(b) Suspension of an Appeal:** An appellate court may, for good cause, suspend an appeal and re-vest jurisdiction in the superior court to allow the court to consider and determine specified matters.
- **Rule 5(a) Computing Time** provides that the time rules 6(a) and 6(e) of the Arizona Rules of Civil Procedure apply to the ARCAP rules.
- **Rule 5(b) Modifying Timelines** cautions that neither an appellate court nor a superior court may extend the time for filing a notice of appeal, except as provided by Rule 9(f).

III. OTHER BUSINESS

A. Good of the Order:

- The 2015 meeting dates are February 6, May 1, September 11, and November 6.
- Judge Mackey acknowledged Susan Wilson's six years of service to COSC as its Public Member and thanked her for her contributions. Ms. Wilson's term expires in December. He also asked COSC members for nominations for the Public Member seat and asked them to forward names to Kay Radwanski.
- Mr. Klain advised COSC about the Business Court Advisory Committee (BCAC) and its plan to propose, as a pilot project in Maricopa County, formation of a commercial division of the superior court. BCAC will be make its recommendation to the Arizona Judicial Council in December.

B. Next Meeting Date

Friday, November 7, 2014; 10:00 a.m.
Arizona State Courts Building, Room 119 A/B
1501 West Washington Street
Phoenix, AZ 85007

The meeting adjourned at 1:21 p.m.