

**Committee on Superior Court
MINUTES**

Friday, November 7, 2014 – 10 a.m. to 2:30 p.m.
Conference Room 119 A/B
1501 West Washington Street
Phoenix, Arizona 85007

Present: Judge Janet Barton, Judge Kyle Bryson, Judge James Conlogue, Judge David Cunanan, Judge Steven Fuller, Judge Richard Gordon, Sue Hall, Judge Celé Hancock, Judge Charles Harrington, Toni Hellon, William Klain, Judge David Mackey, Judge John Nelson, Judge Monica Stauffer, Judge Randall Warner, Susan Wilson

Telephonic: Judge Charles Gurtler, Joshua Halversen, Charles Moter, Judge Michala Ruechel

Absent/Excused: Judge Sally Duncan, Judge Colleen McNally, Ronald Overholt, Judge Samuel Vederman

Presenters/Guests: Judge Eric Jeffery, Phoenix City Court; Judge John Rea, Superior Court in Maricopa County; 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): Dave Byers, Jeffrey Schrade, Marcus Reinkensmeyer, Jerry Landau, Kathy Waters, Paul Julien, Mark Meltzer, Theresa Barrett, Kathy Sekardi, Susan Pickard, Nick Olm

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

Judge David Mackey called the November 7, 2014, meeting of the Committee on Superior Court to order at 10:02 a.m.

Judge Mackey thanked departing members Charles Moter, Sue Hall, and Susan Wilson for their dedication, hard work, and service to COSC. Their terms end on December 31, 2014, and none sought reappointment.

He also advised that before COSC would vote on action items, members of the general public who had completed a public comment form on the topic under discussion would be permitted to speak for up to three minutes each.

B. Approval of Minutes

The draft minutes from the September 5, 2014, meeting were presented for approval.

Motion: Judge Charles Gurtler moved to approve the minutes as presented.
Seconded by William Klain. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Proposed Amendments to Rule 3, Rules of Criminal Procedure *(taken out of order)*

Judge Eric Jeffery, Phoenix City Court, appearing on behalf of the Committee on Limited Jurisdiction Courts, discussed a rule change proposal that would repeal the Rules of Procedure in Traffic Cases and Boating Cases and make changes to the Rules of Procedure in Civil Traffic and Civil Boating Violation Cases. While the 13 Rules of Procedure in Traffic and Boating Cases would be eliminated, the substance of current Rule 7, regarding failure to appear on an Arizona Traffic Ticket and Complaint, would be incorporated into Rule 3, Rules of Criminal Procedure.

Discussion. Concerns were raised as to whether the proposed amendment to Rule 3.1(e) should indicate that a warrant should issue if a person *wilfully* fails to appear and whether a warrant must issue *promptly*. Judge Jeffery also addressed a question about proposed Rule 10.2, Rules of Court Procedure for Civil Traffic and Civil Boating Violations, regarding a request for a documentary hearing.

Motion: Judge James Conlogue moved to approve elimination of the set of rules, while acknowledging a concern about the language in Rule 3.1(e). **Seconded by:** Judge Steven Fuller. **Vote:** Unanimous.

B. ACJA § 1-302: Computer/Network Security Training Requirement *(taken out of order)*

Jeffrey Schrade, director, AOC Education Services Division, presented a proposed change to ACJA § 1-302 that would require all judicial branch employees and judges to complete mandatory annual training on computer and network security. The proposed change defines what constitutes computer and network security training and clarifies language regarding concurrent accreditation to state that courses of at least two hours in duration may be accredited for more than one required content area.

Discussion. Comments were raised about the necessity of requiring mandatory annual training for judges on computer and network security and whether there is a difference in the training for judicial officers versus staff. It was suggested that judicial officers would find it easier to complete the training if it is offered during the Judicial Conference. Mr. Schrade clarified that the mandatory computer and network security training can be localized and differentiated and noted that the minimum requirement is 30 minutes.

Motion: Judge Richard Gordon moved to approve the proposed changes as presented. **Seconded by:** Judge Conlogue. **Vote:** Motion passed with four votes in opposition.

Mr. Schrade also mentioned the Capital Case training scheduled for November 21-22, 2014, at the Judicial Education Center. Forty judges from nine counties have enrolled in

the training. He also congratulated Kay Radwanski for completing the Arizona Court Management program.

C. Proposed Standards for Mental Health Courts. *(taken out of order)*

Marcus Reinkensmeyer, director, AOC Court Services Division, presented the Mental Health Courts Advisory Committee's (MHC) proposed standards for mental health courts. The purpose of the standards is to provide guidance to existing and new programs. The MHC worked in collaboration with the National Center for State Courts to come up with the proposed standards, which are:

- **Mental Health Court Team** – Works collaboratively with specific roles for every member of the team, outlines responsibilities in a Memorandum of Understanding, and receives education and training.
- **Referral, Eligibility, and Assessment** – Must use pre-defined criteria when determining eligibility; identify potential participants at the earliest time in the criminal justice process; establish general program parameters; communicate the benefits of participation and the legal consequences of not complying with the case plan; a pre-adjudication participant must be advised of terms of participation, and a post-adjudication participant must willingly agree to accept probation over other sentencing options; and defense counsel should be involved.
- **Program Structure** – Facilitates a participant's progressing through the phases of the program, successfully completing the program after meeting all the MHC requirements, and plans for the participant's transition out of MHC.
- **Court Proceedings** – A participant appears before the same judge throughout program; the judge should serve on the MHC for at least two years; the MHC team meets prior to each court session; a review hearing is to be held after staffing; and the participant must be provided the opportunity to state his or her perspective at the review hearing.
- **Treatment** – The MHC team prepares a written case plan for each participant; the case plan is based on evidence-based assessments, provides for quality treatment services from appropriately licensed professionals, and details a participant's responsibilities and actions that might result in termination from the program.
- **Case Plan Adjustments, Incentives, and Sanctions** – Develop policies and procedures for case plan adjustments, incentives and sanctions; consistency in application while taking into consideration a participant's circumstances; adjustments to case plans should precede sanctions or termination; and jail sanctions should be certain, immediate, short in length, and used sparingly.
- **Confidentiality of Records** – MHC records must be protected by legal consent requirements and disclosed only on a need-to-know basis to aid in case planning; must develop a legal release form compatible with HIPAA and other federal laws; and must follow the Supreme Court Records Retention and Destruction Schedule.
- **Sustainability** – Promote public awareness; solicit feedback from all stakeholders; monitor performance measures; implement changes to improve operations and outcomes; and collect data needed to monitor accountability, efficiency and effectiveness.

Motion: Judge Conlogue moved to approve the MHC Standards, while noting a concern about post-program recidivism. **Seconded by:** Judge John Nelson.
Vote: Unanimous.

D. Legislative Update. Jerry Landau, director, AOC Government Affairs, presented the four legislative proposals that the Arizona Judicial Council authorized to move forward:

- **Courts; transaction of business** (Elizabeth Evans, AOC, and Judge Jim Hazel, Apache Junction Municipal Court). Permits a Justice of the Peace court to transact business on the second Monday of October if approved by the presiding judge of the county and if the county board of supervisors designates the Friday after the fourth Thursday in November as a legal holiday in place of the second Monday in October. Permits a municipal court to transact business on the second Monday of October upon approval of the presiding judge if the city or town council designates the Friday after the fourth Thursday in November as a legal holiday in place of the second Monday in October.
- **Court ordered treatment; veterans** (Gregg Maxon, AOC). Adds screening and treatment for alcohol, drugs, and domestic violence through a facility approved by the Department of Veterans Affairs to the list of programs the court may order in a DUI or a domestic violence case. Currently the court may only order DUI and DV defendants into programs approved by the Department of Health Services or probation.
- **Aggravated assault, judicial officers** (Judge Gerald Williams, North Valley Justice of the Peace Court, and Judge Norman Davis, Superior Court in Maricopa County). Classifies an assault on a judicial officer, clerk of court, or court staff as a Class 6 aggravated assault if it occurs during or as a result of the person's execution of duties.
- **Juvenile court; hearings** (Judge Colleen McNally and Lori Ash, Superior Court in Maricopa County). Authorizes the juvenile court to schedule preliminary protective hearings up to five days later than the current timeframes outlined in statute. Requires the Department of Child Safety to provide notice of all periodic review hearings to any foster parent with whom a child resided within the last six months, excluding receiving homes.

E. Proposed Amendments to Rule 74, Arizona Rules of Family Law Procedure, Regarding Parenting Coordinators

Judge Janet Barton, Superior Court in Maricopa County, discussed proposed changes to Rule 74, Arizona Rules of Family Law Procedure (ARFLP). She explained that parenting coordinators are appointed by the court or used by parties in family court cases to resolve or make recommendations regarding post-decree parenting time or legal decision-making issues. Concerns that led to formation of the Parent Coordinator Workgroup are fees, lack of an appeal process for litigants, the qualifications of parenting coordinators, and their scope of authority. The Parenting Coordinator Workgroup has proposed the following:

- **Fees** – A courts cannot appoint a parenting coordinator (PC) on its own motion unless first determining that the parents can afford the PC's fees. When determining affordability, the court must consider all financial assets, liabilities, and obligations. If a parent cannot afford the fees, the court cannot appoint a parenting coordinator unless the other parent agrees to pay all of the PC's fees. A PC must fully disclose

and explain all charges and fees prior to the first substantive meeting. If circumstances change to the extent that one or both of the parents can no longer afford the PC's fees, the parents can file a motion with the court asking the court to discharge the PC even if the PC's term has not yet expired.

- **Lack of resources for parents who have complaints** – Allows a parent, at any time during the PC process, to file a motion with the court regarding any alleged impropriety or unethical conduct by the PC. Allows a parent to file an objection with the court regarding any recommendation made to the court by the PC.
- **A qualified parent coordinator can be** an attorney licensed to practice in Arizona; a psychiatrist licensed to practice medicine or osteopathy in Arizona; a psychologist licensed to practice psychology in Arizona; a person licensed by the Arizona Board of Behavioral Health Examiners; professional staff of a court's conciliation services department; or a person otherwise deemed appropriate by the court's presiding judge.
- **Power and scope of duties and responsibilities** – A PC cannot change an existing court order but can make recommendations concerning the implementation, clarification, modification, and enforcement of a court order regarding legal decision-making or parenting time. In the case of time-sensitive situations or imminent risk to the child, a PC can make a binding temporary decision. The PC's decision and any additional recommendations must be submitted to the assigned judge and each parent or counsel, if represented, on the same day the decision is transmitted to the court but no later than five business days afterward. If the PC intends to talk to third parties who may have relevant information about the case—such as doctors, teachers, therapists, or other caretakers—or entities from which the PC intends to obtain documents, the PC must notify each parent and the court in writing. A PC may recommend that the court order ancillary services such as physical or psychological assessments and alcohol or drug monitoring and testing.

Discussion. Regarding appointment of “a person otherwise deemed appropriate” as a PC, it was suggested that the wording be changed to presiding judge, the presiding judge's designee, or the judge assigned to the case. After public comment, Judge Barton clarified that the workgroup intends to review the appointment order for PCs at a future date.

Call to the Public. The following members of the general public spoke on this topic:

- Michael Espinoza
- Deborah Pearson
- Heath Chapman
- Darla Hyche
- Lisa Hyche
- Brent Miller
- Alfred Trujillo
- Karen Barnes
- David Alger

F. Proposed Changes to ACJA § 6-113 Firearms

Kathy Waters, director, AOC Adult Probation Division, presented proposed changes to ACJA § 6-113. The code modification would identify a warrant officer or a fugitive apprehension officer as a specialized non-case carrying officer assigned full-time to the duties of locating and arresting individuals on warrant status; define firearms as either a handgun or a long gun (rifle); replace the term *firearm* with *handgun*, and distinguish

who can carry a long gun and what the training, authorization, temporary suspension, or revocation of authorization would entail. Ms. Waters stated that if COSC approves the proposed changes to the code, the Committee on Probation will meet telephonically to approve the changes prior to the AJC meeting.

Motion: Judge Nelson moved to approve the proposed code changes as presented.
Seconded by: Judge Conlogue. **Vote:** Unanimous.

G. Business Court Advisory Committee

Judge John C. Rea, Superior Court in Maricopa County, and COSC member William Klain presented on the Business Court Advisory Committee (BCAC) and its goal to look at processes to allow businesses to adjudicate their disputes in a prompt and economical way. The BCAC has come up with the following recommendations:

- A Supreme Court administrative order that would permit the Superior Court in Maricopa County to establish a three-year pilot commercial court, commencing on July 1, 2015. The order would include a provision in the administrative order regarding a four-year extension of the terms of the Business Court Advisory Committee and its members to allow the committee to monitor and evaluate the performance of the commercial court. The committee membership would be expanded to include judges assigned to the commercial court.
- Entry of a corresponding administrative order by the Superior Court in Maricopa County that would establish the pilot commercial court and assign judges to it.
- Adoption of a proposed change to Rule 8.1, Rules of Civil Procedure, that would define a “commercial case”; specify the types of cases eligible for the commercial court; and provide procedures for judicial management of commercial cases. This recommendation proposes mandatory scheduling conferences and includes new forms for joint reports and scheduling orders in commercial cases.
- Adoption by a Maricopa County administrative order of a protocol concerning disclosure and discovery of electronically stored information in a commercial case and modifying its civil cover sheet.
- Creation of an online repository of the decisions of the commercial court judges.

Motion: Judge Conlogue moved to support a pilot program as proposed.
Seconded by: Judge Celé Hancock. **Vote:** Unanimous.

H. Proposed Revisions to the Arizona Rules of Protective Order Procedure (ARPOP):

Kay Radwanski, AOC specialist and staff to the Committee on the Impact of Domestic Violence and the Courts (CIDVC), introduced proposed revisions to the Arizona Rules of Protective Procedure (ARPOP). CIDVC established a workgroup earlier this year to review the rules and recommend modifications to restyle, simplify, and clarify them, in keeping with the *Advancing Justice Together* strategic agenda. She noted that there are only 10 rules but with 49 subparts, which can make rule citation cumbersome. The proposal restructures the rules into 10 parts with 42 shorter rules, with the reorganization designed to follow the chronological progression of a case. Other changes include:

- Words of authority have been simplified, such as changing *shall* to *must*.

- As the statutory definitions of harassment for Orders of Protection, Injunctions Against Harassment, and Injunctions Against Workplace Harassment all differ, the proposed rules include a definition of each type of harassment for each type of order.
- The term *custody* has been changed to *legal decision-making* in accordance with legislative changes to Title 25.
- A rule was added to clarify that a plaintiff staying in a domestic violence shelter cannot be asked to disclose the address of the shelter but must provide an alternative address for court contact. Also, a participant in the Address Confidentiality Program may ask the court to use the participant's substitute address as the participant's residential, work, or school address in court records pertaining to a protective order.
- A rule was added to clarify that if a plaintiff has signed a petition outside the presence of a judicial officer or another authorized person, the judicial officer should ask the plaintiff, on the record, to confirm the authenticity of the signature on the petition.
- The evidence rule was modified at the request of the Arizona Supreme Court Advisory Committee on the Rules of Evidence to make it conform to the same evidentiary standard used in ARFLP when strict compliance with the Arizona Rules of Evidence is not required.

Discussion: A member asked a question about the definition of harassment as it applies to an Injunction Against Harassment. While harassment for purposes of an IAH requires a series of acts, A.R.S. § 12-1809 also says a judge can order an IAH if good cause exists to believe that irreparable harm may occur if the order is not issued. Ms. Radwanski stated that she would take comments regarding the definition of harassment in an Injunction Against Harassment and a question regarding the definition of *ex parte* back to CIDVC for further clarification prior to presenting the AJC.

Call to the Public. Deborah Pearson spoke on this topic.

Motion: Judge Gordon moved to approve the proposed code changes as presented. **Seconded by:** Judge Kyle Bryson. **Vote:** Unanimous.

- I. 2014 Rules Update:** Mark Meltzer, AOC specialist, provided an update on Rule 28 petitions that were adopted by the court during the August rules agenda.
- **R-13-0044** – Civil Rule 67 deletes sections (d), (e), and (f) as arbitrary and discriminatory.
 - **R-14-0005** – Criminal Rule 24.2 permits the state to file a motion to vacate judgment at any time after the entry of judgment and sentence if the defendant was convicted of an offense that the defendant did not commit or the conviction was based on erroneous application of the law.
 - **R-14-0006** – Criminal Rule 12.5 allows for a law enforcement officer to accompany an in-custody witness appearing before a grand jury without the prosecutor having to file a motion with the court.
 - **R-14-0007** – Criminal Rule 32.12 gives a convicted felon an opportunity to petition the court for DNA testing of evidence. The proposal would establish a procedure for the courts and parties to follow in making a request and incorporate the Supreme

Court's holding in State v. Gutierrez regarding post-conviction hearing regarding DNA testing.

- **R-13-0060** – Rule 42 amends the State Bar Ethical Rules relating to technology and globalization of the practice of law, “including the benefits and risks associated with relevant technology.”
- **R-13-0054** – Rule 12, ARFLP, clarifies that a request for an *in camera* interview of a minor child who is the subject of a legal decision-making or parenting time dispute must be submitted by written motion.
- **R-14-0026** – Probate requires that every order appointing a guardian must specify whether the appointment is solely due to the ward's physical incapacity.

J. Child Support Guidelines: Report and Recommendations Regarding Arizona's Quadrennial Review

Theresa Barrett, manager, Court Programs Unit, Court Services Division, and Kathy Sekardi, AOC specialist, presented on the quadrennial child support guidelines review. Ms. Barrett provided an overview of the quadrennial review process to date, and Ms. Sekardi presented a summary of the public comments received on the quadrennial review findings.

Ms. Sekardi noted that public comments fell into three categories. The first category is non-guideline issues, such as the litigant's personal experiences with family court, a request for statutory changes that would extend the support for adult children attending college, concerns from self-represented litigants about attorney costs, concerns regarding the challenges of child support enforcement proceedings, and criticism regarding the review process. The next category deals with the substantive proposal comments, such as increasing the gross income cap to \$50,000 per month, a suggestion that the equal parenting time calculation be done differently, the Attorney General's Offices proposal to allow the court to deviate from a minimum wage order for a limited time where appropriate to give an unemployed obligor time to seek employment and to avoid arrears during the limited time period. There were also comments about the Affordable Care Act and how it could affect the guidelines. The last category of comments dealt with the financial aspect of the guidelines. There were mixed comments from both obligees and obligors in support of and against the proposed guideline revisions.

Dr. Jane Venohr, research associate at the Center for Policy Research in Denver presented telephonically. She said that 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 (BR4) measurement of child-rearing expenditures has been produced. The BR3 considers child-rearing expenditures, while the BR4 considers expenditures and outlays.

Ms. Sekardi recommended that COSC approve the updated BR3 schedule and increase the self-report reserve threshold from \$903 to \$1,115. She also asked COSC to recommend that COSC continue to compile all the substantive proposals during the technical review until further studies on the issues can be undertaken.

Discussion: In response to a question about whether COSC intended to consider the Attorney General's Office proposal 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, Janet Sell, Attorney General's Office, said the AG's Office supports the recommended technical changes to the child support guidelines. She also asked that a task force be created to review issues such as the deviation proposal, federal tax exemption, and the effect of the Affordable Care Act.

Call to the Public: The following members of the general public spoke on this topic.

- Michael Espinoza
- Darla Hyche
- Deborah Pearson
- Lisa Hyche

Motion: In a non-binding vote, as a quorum was no longer present, Judge Conlogue moved to approve the recommended changes to the guidelines, with a caveat that the study of the substantive proposals continue. **Seconded by:** Judge Barton. **Vote:** Unanimous.

III. OTHER BUSINESS

Good of the Order

Next Meeting Date:

Friday, February 6, 2015; 10 a.m.
Arizona State Courts Building, Room 119 A/B
1501 West Washington Street
Phoenix, AZ 85007

The meeting adjourned at 2:30 pm.