**COMMITTEE ON SUPERIOR COURT**
**MINUTES**
Friday, February 6, 2015 10:00 a.m. to 12:00 p.m.
Conference Room 119 A/B
1501 West Washington Street
Phoenix, Arizona 85007

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**Present:** Judge Janet Barton, Judge Kyle Bryson, Judge James Conlogue, Judge David Cunanan, William Gibbs, Judge Charles Gurtler, William Klain, Judge David Mackey, Judge Colleen McNally, Ronald Overholt, Megan Spielman, Judge Randall Warner

**Telephonic:** Judge Richard Gordon, Joshua Halversen, Judge John Nelson, Judge Monica Stauffer

**Absent/Excused:** Judge Sally Duncan, Judge Steven Fuller, Judge Celé Hancock, Judge Charles Harrington, Toni Hellon, Judge Michala Ruechel, Judge Samuel Vederman, Todd Zweig

**Guest:** Yordy Purnomo

**Administrative Office of the Courts (AOC):** Jerry Landau, Mark Meltzer, Theresa Barrett, Jennifer Greene, Patrick Scott, Paul Julien, Jeff Schrade, Anne Marie Bruno, Kwyn Boggs

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

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## I. REGULAR BUSINESS

### A. Welcome and Opening Remarks

The February 6, 2015, meeting of Committee on Superior Court (COSC) was called to order at 10:04 a.m. by Judge David Mackey, chair. Judge Mackey welcomed new members William Gibbs and Todd Zweig. He also thanked Josh Halversen for his six years of service to the committee. Mr. Halversen's term ends March 31, 2015, and he is not seeking reappointment.

### B. Approval of Minutes

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

**Motion:** Judge James Conlogue moved to approve the November 7, 2014, meeting minutes, as presented. **Seconded by:** Mr. William Klain. **Vote:** Unanimous.

## II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

**A. Legislative Update –** Jerry Landau, AOC government affairs director, presented the following update on pending legislation:

**H2089 Aggravated Assault: Elected Officials –** Representative Borrelli introduced a bill that included Supreme Court justices, Court of Appeals, Superior Court judges, and Justices of the Peace. However, it did not include commissioners, hearing officers, and municipal court judges. There is no legislative support for adding other court personnel. Mr. Landau has prepared two amendments to the bill; one is to amend the bill to include judicial officers, and the other is a strike everything amendment.

**H2164 Release; Bailable Offenses; Evidence** – Includes additional factors for courts to consider when determining the method of release or the amount of bail, such as whether the accused has prior convictions for crimes of violence and any other evidence that the accused presents a danger to others in the community. Mr. Landau noted that the bill does not define "crime of violence."

**H2310 Mental Health Courts; Establishment –** Authorizes the presiding judge of the superior court in each county to establish a mental health court. The judge must establish the eligibility requirements for referral to the mental health court. For counties with a population of less than 250,000, the superior court presiding judge may enter into an intergovernmental agreement to establish a regional mental health court.

**H2320 Firearms; Permit Holders; Public Places –** Allows that if there is no armed security at a public building, even if it is posted no firearms, a person with a valid concealed weapons permit cannot be prosecuted for carrying a deadly weapon.

**H2553 Human Trafficking Victim; Vacating Conviction –** Permits a person convicted of prostitution or any other non-dangerous offense to apply to have the conviction vacated if the person can prove to the court that the offense was committed as a direct result of the person being a victim of human trafficking.

**HCR2006 State Officers; Judges; Legislative Removal –** Would amend the state Constitution to allow the Legislature to remove any state officer who is not elected at any time by a 2/3 vote.

**S1048 Vexatious Litigants; Fees; Costs –** Offers an amendment to ensure that if a vexatious litigant is the subject of a domestic relations petition, the superior court is allowed to grant a waiver of court fees.

**S1116 Fines; Fees; Costs; Community Restitution –** Provides the court with the ability to authorize community service restitution in lieu of payment for all or part of a fine. The service performed must be credited toward the fine, fee or incarceration costs at a rate of $10.00 per hour. This bill applies primarily to DUI and substance abuse cases.

**S1439 Judicially Appointed Psychologists; Complaints –** The Board of Psychologist Examiners is no longer prohibited from considering complaints against a judicially appointed psychologist arising out of the court-ordered evaluation, treatment or psycho-education of a person.

**S1447 Foreign Country Money Judgments; Enforcement –** Establishes a procedure for courts to recognize a foreign country's judgment and whether the judgments fit the perimeter of the statutes.

**SCR1002 Supreme Court; Procedural Rules; Amendment –** Would allow the 2016 election ballot to ask whether to amend the state Constitution to make state Supreme Court rules relative to all procedural matters in any court subject to amendment by the Legislature by joint resolution or by the people by initiative or referendum.

**B. Petition to Amend Supreme Court Rule 123** – Jennifer Greene, assistant counsel, AOC Legal Services, explained that the petition to amend Rule 123 addresses several issues, including inquiries from unsuccessful applicants regarding information provided by former or current employers and references. The proposed amendments to Rule 123 would:

1. Clarify public access to personnel and applicant records;
2. Mandate that courts remove case information from their websites in accordance with current record retention schedules; and
3. Update references to the Judicial Branch procurement code.

Ms. Greene noted that comments are due by April 27, 2015. If the petition is amended, it will be filed by May 20, and a second round of comments will be open until June 15, 2015.

**Discussion:** A concern was expressed regarding release of information about a request for qualifications (RFQ). Ms. Greene noted that the rule does not protect an RFQ but a county procurement code may address that as well as scoring notes taken by interviewers. Another member questioned whether the rule amendment could increase litigation from aggrieved applicants who do not have access to hiring records that deal with their grievance. With the member's permission, Ms. Greene said she will post his comments to the Rules Forum. Judge Mackey reminded committee members that they may comment individually or as a committee on the Rules Forum.

**C. Proposed ACJA § 3-405: Protecting Peace Officers' Identifying Information in Superior Court Records** – Patrick Scott, AOC specialist, Court Services Division, explained that this proposed amendment to the Arizona Code of Judicial Administration would allow certified peace officers to petition the presiding judge of superior court to prohibit the public from accessing records maintained by the clerk of superior court that contain the peace officers personal identifying information. "Personal identifying information" means the officer's residential address, telephone number, and contact information as stated in the court records.

**Motion:** Mr. Klain moved to recommend adoption of the amendment. **Seconded by:** Judge Conlogue. **Vote:** Unanimous.

**D. 2015 Rule 28 Petitions** – Mark Meltzer, AOC specialist, Court Services Division, informed COSC that a task force on the Arizona Rules of Civil Procedure was established by administrative order in November 2014. The charge of the task force is to align Arizona's rules, where possible, with the federal rules and to clarify the rules. During discussion, Mr. Klain said that the task force meets every month, and meetings are open to the public. The proposed changes, which are primarily stylistic, should be drafted by the end of June, and after further vetting, a rule petition is expected to be filed in January 2016.

Mr. Meltzer provided an update on other pending Rule 28 petitions.

**R-14-0030** – Criminal Rule 7.2. This petition, adopted on an expedited basis, took effect December 16, 2014, but it remains open for comment until May 20, 2015. The proposed rule change is needed to comply with the Ninth Circuit's ruling in Lopez-Valenzuela v. Arpaio, 770 F.3d 772 (9th Cir. 2014), *stay denied*, 574 U.S. ____ (2014) and to promote uniform statewide implementation of this change in the law. The Ninth Circuit found unconstitutional the provisions of an Arizona law that prohibit bail or pretrial release for undocumented immigrants arrested for a range of felonies, regardless of the arrested person's flight risk or dangerousness.

**R-15-0028** – Criminal Rule 31.5 would give a defendant the right of self-representation on appeal by filing a written notice to the courts within 30 days of filing a notice of appeal.

**R-15-0017** - Criminal Rules 9.1, 14.3, 26.11, and 41 would assure that criminal defendants are given proper notice that they lose their right to directly appeal a guilty verdict if they prevent sentencing from occurring by voluntarily failing to appear for sentencing within 90 days after conviction.

**R-15-0024** – Criminal Rule 41 (forms) requests that the court remove the eight existing warrant forms from the rule and approve a new, single warrant form as mandatory for use by Arizona courts.

**R-15-0013** – Juvenile Rule 44 would provide procedures for disclosure and discovery of information in dependency and termination cases.

**R-14-0028** – SCR Rule 45 would require the State Bar's ads for mandatory continuing legal education seminars to disclaim that the course "will improve any attorney's competence or protect the public."

**R-15-0006** – ARFLP 74 addresses multiple issues concerning parenting coordinators, such as fees, qualifications, the necessity of appointing a parenting coordinator, the manner of appointment and selection of the parenting coordinator, and the term of service.

**R-15-0019** – ARFLP 67.1 proposes to implement the Uniform Collaborative Law Rule in Arizona.

**R-15-0010** – ARPOP (all rules) proposes to "restyle, simplify, and clarify the entire set of ARPOP rules. The changes include new definitions and a provision on address confidentiality.

**R-14-0029** – JPR Rules, Rule 2 would eliminate legislative members and having a judge as the chair.

**R-15-0018** – Changes to Supreme Court Rules 31, 34, 38, 39, and 43 include a proposal that a mediator who prepares a written mediation agreement must be an active member of the State Bar or be certified as a legal document preparer.

Discussion ensued regarding petition R-15-0018. Rule 31 currently includes an exemption for court-employed and court-appointed mediators, but the proposal would strike that exemption. It was noted that if court employees or court appointees who provide mediation services are prohibited from preparing agreements, court mediation centers would be effectively closed down, unless the court employees are licensed attorneys or certified document preparers. Members agreed that this proposal would severely impact the courts' ability to provide mediation services, which are used heavily in domestic relations cases.

Judge Janet Barton said that the Maricopa County Superior Court is likely to file a comment, and she will share a draft with COSC. Noting that COSC is uniquely situated to make a comment, Judge Conlogue proposed that COSC file a written comment objecting to the change to Rule 31. The comment will be considered further at the May 1 COSC meeting.

**Motion:** Judge Conlogue moved that COSC file a written comment objecting to the change to Rule 31. **Seconded by:** Judge Monica Stauffer. **Vote:** Unanimous.

**E.** **International Law and Child Custody** – Judge Mackey explained that this topic was raised at the December Arizona Judicial Council meeting when Mr. Yordy Purnomo made a public comment about problems he is having with his ex-wife about joint legal decision-making over their child. He had told the AJC that his ex-wife, with a court's permission, had taken their child, a U.S. citizen, to Indonesia. Indonesia is not a signatory to the Hague Convention, and Mr. Purnomo has had limited contact with the child since then and has been unable to force the child's return to the United States. At the AJC meeting, Chief Justice Scott Bales referred the issue to COSC for review.

Judge Mackey noted that COSC's charge as a committee, according to ACJA § 1-105, is the development and implementation of policies designed to improve the quality of justice,

access to the court, and efficiency in court operations as well as to recommend uniform administrative policies and procedures to improve judicial administration. Based on this premise, Judge Mackey suggested that the committee consider the following:

1. Whether Mr. Purnomo's concern is a statewide issue that impacts the Superior Court?
2. Can policies be developed or implemented to improve the quality of justice, access to the courts, and efficiency in court operations regarding international law and child custody?
3. Would training on issues of international law and child custody improve judicial administration?

Jeff Schrade, director, AOC Education Services Division, and Paul Julien, AOC judicial education officer, were present to discuss judicial training on international law and child custody. Mr. Schrade provided information on a national judicial training institute set for March 2-April 2, 2015, titled "The Hague Child Abduction Convention – International Perspective." The program is a self-paced webinar, and there are no fees for participation. Regarding New Judge Orientation (NJO), Mr. Julien explained that NJO typically does not deal with transnational issues. He noted that with the shrinking of the globe, it is an issue that should be included and could be covered in NJO and by bench briefings.

**Discussion:** During discussion, it was acknowledged that international custody cases do arise, and there is a vast disparity in the way different countries participate in the Hague Convention. A member noted that the factors a judge must consider in legal decision-making are established in statute by the Legislature, which means legislators would need to amend the statute to include international custody issues. It was explained to Mr. Purnomo that he would have to work with legislators on any statutory changes. The courts can focus on providing additional family law training on the Hague Convention and international law and child custody.

## III. OTHER BUSINESS

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

Mr. Julien informed COSC members of the upcoming NJO training from March 2-6. He said approximately 25 new judges, mostly from Maricopa County, have enrolled.

### B. Next Meeting Date

Friday, May 1, 2015; 10:00 a.m.
Arizona State Courts Building, Room 119 A/B
1501 West Washington Street
Phoenix, Arizona 85007

The meeting adjourned at 12:00 p.m.