

**COMMITTEE ON SUPERIOR COURT  
MINUTES**

Friday, May 1, 2015  
Conference Room 119 A/B, Arizona State Courts Building  
1501 West Washington Street  
Phoenix, Arizona 85007

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**Present:** Judge Janet Barton, Judge Kyle Bryson, Judge Steven Fuller, Judge Richard Gordon, Judge Charles Gurtler, William Klain, Judge David Mackey, Judge John Nelson, Ronald Overholt, Megan Spielman, Judge Samuel Vederman, Judge Randall Warner

**Telephonic:** Judge Celé Hancock, Scott Mabery, Judge Michala Ruechel, Judge Monica Stauffer

**Absent/Excused:** Judge James Conlogue, Judge David Cunanan, Judge Sally Duncan, William Gibbs, Judge Charles Harrington, Toni Hellon, Judge Colleen McNally, Eric Silverberg

**Guest:** Paul Thomas, Mesa Municipal Court

**Administrative Office of the Courts (AOC):** Jerry Landau, Annemarie Bruno, Kwyn Boggs, David Withey, Eric Ciminski, JL Doyle, Patrick Scott

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

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**I. REGULAR BUSINESS**

**A. Welcome and Opening Remarks**

The May 1, 2015, meeting of Committee on Superior Court (COSC) was called to order at 10:02 a.m. by Judge David Mackey, chair. Judge Mackey thanked Judge Steven Fuller, Judge Janet Barton, and Judge Kyle Bryson for their service to the committee. Judge Barton and Judge Bryson will become presiding judges of their respective courts beginning July 1, 2015. Judge Mackey welcomed Scott Mabery, chair of the Committee on Probation, and Eric Silverberg, court administrator in Cochise County, to COSC.

**B. Approval of Minutes**

The draft minutes from the February 6, 2015, meeting of COSC were presented for approval.

**Motion:** William Klain moved to approve the February 6, 2015, meeting minutes, as presented. **Seconded:** Judge Charles Gurtler **Vote:** Unanimous.

**BUSINESS ITEMS AND POTENTIAL ACTION ITEMS**

**A. Legislative Update**

Jerry Landau, AOC government affairs director, introduced Kwyn Boggs and Annemarie Bruno, the two interns who worked with the Legislative Affairs Group this session. Mr. Boggs reported that the 81-day session was the shortest legislative session since 1968. He stated that of the 1,163 bills introduced to the legislature, 819 died and 344 were

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passed. Of the 344 bills that passed, 324 were signed by the governor, and 20 were vetoed. Ms. Bruno stated that all four of the Arizona Judicial Council bills passed. She also noted that 89 memorandums and resolutions were introduced, 36 of which passed. Mr. Landau continued the update with the following:

**HB2310 – Mental Health Courts Establishment** permits the presiding judges in counties with fewer than 250,000 residents to enter into an agreement to establish a regional mental health court.

**SB1048 – Vexatious Litigants** is a constituent-driven follow-up to a bill passed last year that prohibits the courts from waiving fees for a person who has been found by a court to be a vexatious litigant.

**HB2553 – Sex Trafficking Vacation of Conviction** will allow a court to vacate the conviction of a person convicted of prostitution if the person can prove, within the parameters of the bill, that he or she was trafficked. The person is then considered a crime victim, and victims' right will apply. This applies only to conviction under the Arizona prostitution statute, not municipal prostitution ordinances.

#### **B. Resolving Rule 11 Matters in the Limited Jurisdiction Courts**

Paul Thomas, court administrator, Mesa Municipal Court, explained that Mesa and Glendale municipal courts were pilot courts for the proposed project to allow limited jurisdiction courts to conduct Rule 11 competency hearings. He noted that limited jurisdiction judges are qualified to make Rule 11 rulings as they often preside as pro tem judges in superior court. Mr. Thomas reported that the prosecution and defense bars have supported this process. He noted that for limited jurisdiction courts, defendants' charges typically are for public nuisance-type offenses. This model, which is proposed as optional, will shorten the Rule 11 process primarily in high-volume, urban courts.

Mr. Thomas described the project, explaining that once a Rule 11 motion is filed, the pre-evaluation is by-passed and the process goes straight to evaluation. The evaluation takes place within 30 days, with a stipulation of one evaluation by one doctor, who comes to the court. In the pilot, the doctor was paid \$500 a day, regardless of the number of defendants seen that day. The doctor issues a written report on the same day, the attorneys are notified, and pretrial is scheduled within 10 days. If neither the prosecutor nor the defense attorney objects to the report, the matter moves forward without delay, and the judge then makes a ruling. A Rule 11 matter is typically resolved within 60 days. By contrast, in superior court, a Rule 11 proceeding requires a pre-evaluation and evaluations by two doctors, with the process taking nine months to a year to complete.

Mr. Thomas outlined the benefits as:

- Greatly improved service to defendants and the public
  - Reduced case processing times and improved case management
  - Reduced no-show rates, with the failure-to-appear rate going from 40 percent to 5 percent during the pilot
  - Significant cost savings
  - An excellent response to increasing mental health demands
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Mr. Thomas also mentioned that this pilot project is in alignment with two of Chief Justice Bales' Access to Justice Strategic Agenda goals.

**C. Follow-Up to HB2553: Sex Trafficking Victim; Vacating Conviction** (taken out of order)

David Withey, AOC chief legal counsel, presented a draft emergency rule petition to implement HB2553. The proposed amendment to Rules 29 and 41 (Form 21), Rules of Criminal Procedure, establishes procedures for submitting and processing applications for vacating a conviction, withdrawing a guilty plea, and restoring a defendant's civil rights. A sex trafficking victim may apply to the court that pronounced sentence to vacate the conviction if the offense was committed prior to July 24, 2014. The new law applies only to convictions based on the state prostitution statute.

Under the proposed rule, the prosecutor may file a written objection at least 10 days before the date of the hearing. If the prosecutor does not oppose the application or respond timely, the court may grant the application without a hearing and issue an order vacating the conviction. The petition also provides that the court must order that all records of the vacated conviction be sealed and notation be made in law enforcement and prosecution records that the conviction was vacated and the applicant is a crime victim.

Eric Ciminski, AOC, explained that from an electronic standpoint, if one charge is sealed, the entire case is sealed. As there is currently no way to separate a charge from a conviction, the entire case will be shielded from public access.

**D. Update: International Law and Child Custody**

Judge Mackey reported on his recent presentation to the Arizona Judicial Council (AJC) about issues relating to international law and child custody. He conveyed to the AJC at its March meeting that more judicial training would be beneficial and that legislative changes might be needed. In response, the AJC asked COSC to take another look at the issue to determine whether it could be resolved statutorily or through a rule change. Chief Justice Scott Bales recommended contacting the National Center for State Courts to see if other jurisdictions have taken international law and child custody into account in their custody statutes. Dave Byers, AOC administrative director, suggested exploring the possibility of a family law conference for domestic relations judges.

Mr. Withey explained that ARS § 25-408 (H) provides factors for determining whether a relocation of the child is in the child's best interest. He specifically referred to subsection (H)(4)—the likelihood that a parent with whom the child will reside after the relocation will comply with parenting time orders. He also pointed out subsection (H)(5)—whether the relocation will allow a realistic opportunity for parenting time with each parent.

Judge Monica Stauffer recently participated in training on the Hague Convention and child custody, which she said was invaluable. She recommended training for family court judges to increase their awareness of the extensive rules and processes among Hague Convention countries.

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Judge Mackey will report members' comments to the AJC in June.

**E. ACJA § 6-106 Personnel Practices**

JL Doyle, AOC, presented proposed revisions to ACJA § 6-106: Personnel Practices. The first modification is a technical change to conform to ACJA § 6-111 to conduct annual criminal history and MVD records checks of all probation department employees who need to operate state, county, or personal vehicles in the execution of their duties. The second substantive change relates to employee drug testing. In keeping with current drug use trends in Arizona, ecstasy, oxycodone, and heroin will be added to list of drugs tested for and PCP will be removed.

**Motion:** Judge Gurtler moved to approve the proposed changes to ACJA § 6-111 as presented. **Seconded:** Judge John Nelson **Vote:** Unanimous

**F. Update: Arizona Commission on Access to Justice (ACAJ)**

Judge Janet Barton, Superior Court in Maricopa County, presented a brief background on the ACAJ. Among the ACAJ workgroups, Judge Barton co-chairs the Self-Represented Litigant – Family Court Workgroup (SRL-FC) with Janet Fisher of the Arizona State Library. One of the workgroup's primary projects is the Court Navigator Pilot Project, which is being piloted in California. The California Court Navigator Pilot Project, funded by AmeriCorps, uses college students to work the self-service and resource centers to help litigants fill out forms, get them to the filing counters, and conduct informational classes on various topics for litigants. Judge Barton said that Arizona State University has written a letter of support for the project and has agreed to commit college students to work the center.

Other workgroup projects include:

- Partnering with public libraries to create resource centers to assist self-represented litigants and working with superior courts in rural counties to collaborate with larger counties with pilot locations.
- Simplifying instructions, standardizing forms, and making them available to each county's superior court.
- Developing a physical and virtual service center in a rural county to host and provide family court educational programs, such as webinars and regularly scheduled classes.

**G. Amendments to ACJA § 5-206 Fee Deferrals and Waivers**

Patrick Scott, AOC, presented proposed amendments to ACJA § 5-206: Fee Deferrals and Waivers. He explained that the AOC has drafted an amendment to incorporate statutory changes involving vexatious litigants. SB 1048 amended the fee deferral and waiver statute, ARS § 13-302, to include a provision prohibiting vexatious litigants from being eligible for fee waivers in certain circumstances and requiring the court to order payment of fees that were deferred or waived in a case if the litigant is declared vexatious.

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**Motion:** Judge Bryson moved to approve the proposed amendments as presented.  
**Seconded:** Judge Randall Warner **Vote:** Unanimous

**H. COSC Comment to Rule 28 Petition R-15-0018 (Amending Rule 31, SCR)**

Judge Mackey explained that a proposed change to Rule 31 (d)(25)(A), Rules of the Supreme Court, would require that a person who drafts a mediated agreement be either a licensed attorney or a certified legal document preparer. He noted that the proposed change would greatly impact the courts and at the February 2015 COSC meeting, the committee discussed and agreed to draft a comment. Kay Radwanski, AOC staff to COSC, drafted a comment for the committee to review and then possibly file.

**Motion:** Judge Warner moved to file the comment as presented. **Seconded:** Judge Bryson **Vote:** Unanimous

**OTHER BUSINESS**

**I. Good of the Order/Call to the Public**

No one from the public was present.

- J. Next Meeting:** Friday, September 11, 2015; 10 a.m.  
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The meeting adjourned at 11:50 a.m.

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