

**COMMITTEE ON SUPERIOR COURT  
MINUTES**

Friday, November 6, 2015  
Conference Room 119 A/B, Arizona State Courts Building  
1501 West Washington Street, Phoenix, AZ 85007

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**Present:** Judge David Mackey, Judge David Cunanan, Judge Thomas Fink, Judge Richard Gordon, Judge Charles W. Gurtler, Jr., Judge Celé Hancock, Judge Charles V. Harrington, William G. Klain, Scott Mabery, Judge John Nelson, Judge Cathleen Brown Nichols, Ronald Overholt, Eric Silverberg, Judge Samuel Vederman, Judge Randall Warner, Judge Joseph Welty

**Absent/Excused:** Judge Sally Duncan, William Gibbs, Toni Hellon, Judge Kenneth Lee, Judge Paul McMurdie, Judge Sam Meyers, Judge Michala Ruechel, Megan Spielman

**Presenters/Guests:** Kathy McCormick, ADR program manager, Superior Court in Yavapai County; David Rosenbaum, Esq., Osborn Maledon

**Administrative Office of the Courts (AOC):** Theresa Barrett, Stewart Bruner, Eric Ciminski, Amy Love, Denise Lundin, Susan Pickard, Kathy Waters, David Withey, Amy Wood

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

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**I. REGULAR BUSINESS**

**Welcome and Opening Remarks.** The November 6, 2015, meeting of Committee on Superior Court (COSC) was called to order at 10:03 a.m. by Judge David Mackey, chair.

**A. Approval of Minutes from September 11, 2015**

**Motion:** Eric Silverberg moved to approve the September 11, 2015, meeting minutes, as presented. **Seconded:** Judge Charles Gurtler **Vote:** Unanimous.

**II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS**

**A. Legislative Update.** Jerry Landau, AOC government affairs director, and Amy Love, AOC legislative liaison, presented an update on the following pending legislation:

- **Temporary order; preliminary injunction** – Judge Paul McMurdie authored this proposal, and it has the support of the AJC. Current law requires the Clerk of the Court to issue a preliminary injunction in actions to establish paternity, legal decision making and parenting time, insurance coverage for a child, or permit a party to remove a child from the jurisdiction of the court. This proposal will apply some of these injunctions to cases where the parties were never married in an effort to reduce emergency petitions and temporary order requests.
- **FCRB sunset** – extends the Foster Care Review Board for another ten years until July 1, 2016.
- **AJC 8-41-352** – affecting juvenile and adult probation, was reviewed by the AJC and it was withdrawn for consideration.

Mr. Landau noted that the primary issue in the legislature this year is expected to be the state budget.

**B. Mediators and Mandatory Reporting.** Kathy McCormick, ADR program manager, Superior Court in Yavapai County, addressed COSC regarding an issue that arose after a recent Court of Appeals Division 1 opinion in Grubaugh v. Blomo. In that case, the COA determined that Arizona's mediation process holds confidentiality to a high standard. Ms. McCormick stated that since the opinion was issued, several court-appointed attorney mediators in Yavapai County have advised that they will not report child or vulnerable adult abuse, citing confidentiality concerns.

Ms. McCormick noted that Arizona statute does not make mediators mandatory reporters, but court-appointed mediators have operated under a policy for many years that they will report child or vulnerable adult abuse allegations that are brought out in mediation sessions. She offered three proposals for consideration:

- Include a statement in the *Agreement to Participate in Mediation* acknowledging the parties' agreement that a court-appointed mediator must report allegations of child abuse, vulnerable adult abuse, serious threat of physical harm or death to self or others, actual violence or danger to self or others to DCS or police.
- Amend ARS §§ 13-3620 and 46-454 to include court-appointed mediators as mandatory reporters.
- Change ARS § 12-2238(B) to create an exception that would allow a court-appointed mediator, applying a reasonable belief standard, to report child or vulnerable adult abuse to a peace officer or DCS.

During discussion, the need for care in changing mandatory reporting to permissive reporting in statute was noted as mediation is used in multiple case types. After further discussion, the consensus was to change the language in the Agreement to Participate in Mediation but proceed cautiously in changing statute.

**Motion:** Judge Randall Warner presented a two-part motion that first asked Ms. McCormick to review a legislation solution that modifies ARS § 12-2238, and second, stated that COSC endorses as a temporary solution dealing with these matters by agreement of the parties involved. **Seconded:** Judge Gurtler **Vote:** Unanimous.

**C. Access to Presentence Report.** David Withey, AOC chief legal counsel, explained that there is a lack of clarity as to when a presentence report becomes a public document or at what point it can be disclosed to the defendant in the context of clemency proceedings. He stated that once the presentence report has been used and filed with Clerk of the Court, it is also sent to the Department of Corrections (DOC) pursuant to Rule 123, Rules of the Supreme Court, and Rule 26.6, Rules of Criminal Procedure. DOC has interpreted Rule 123 to mean that the presentence report is confidential, while the criminal rule makes the report a public document.

Mr. Withey noted that Rule 123 provides for the Pretrial Services work product to be confidential until it has been used in court. He said that the criminal rule needs to be read in conjunction with Rule 123. He explained that the Attorney General's Office is reluctant to provide the presentence report at a clemency hearing until it has been confirmed that certain information (such as mental health reports) has been sealed. He will be taking this concern to the presiding judges at their December meeting.

COSC took no action on this issue.

- D. Task Force on the Arizona Rules of Civil Procedure: Vetting Draft.** William Klain and David Rosenbaum, task force co-chairs, presented a draft of proposed changes to the Arizona Rules of Civil Procedure.

Mr. Klain explained that the task force, established by Administrative Order 2014-116, was charged to review Arizona's Rules of Civil Procedure. The task force was to identify changes to conform the rules to modern usage, clarify and simplify language, avoid unintended variation from language in federal counterpart rules, to promote changes that promoted better access to the courts, and to resolve cases without undue complexity and cost. The task force divided into four workgroups, with each working on different sections of the Rules of Civil Procedure throughout the course of one year.

During the past year, the full task force met 12 times and the workgroups met 41 times. Mr. Rosenbaum explained that the task force adopted the federal Rules of Civil Procedure wherever possible; however, if an Arizona rule differed significantly from the federal rule, the Arizona rule was fine-tuned and kept in place. He then discussed some of the substantive changes and the reasoning behind them.

Mr. Klain noted that the vetted rules were sent out to various legal stakeholders for comment. The petition to amend the rules will be filed in January 2016 and will be open for comment throughout the spring. If approved, the recommended changes will take effect in January 2017.

**Motion:** Judge John Nelson moved to approve. **Seconded:** Judge Celé Hancock. **Abstained:** Mr. Klain. **Vote:** Unanimous, with one abstention.

- E. ACJA § 6-103: Victims' Rights Requirements.** Kathy Waters, director, AOC Adult Probation Services Division, explained that amendments to ACJA § 6-103 would conform the definition of "delinquent act" and the Applicability section in A.R.S. 8-201. The proposal would clarify the duties of probation personnel and the rights that are applied to victims who opt to be notified. This proposal would clarify the timing of when probation personnel are responsible to notify victims who have opted in versus the obligations of the courts to notify the victims. It also would add the requirement for probation departments to have a plan for communicating with limited-English speaking victims.

The Commission on Victims in the Courts (COVIC) and the Committee on Probation (COP) both have seen the proposal. The Committee on Juvenile Courts (CJC) will have an opportunity to comment on it at its upcoming November meeting.

**Motion:** Judge Nelson moved to approve. **Seconded:** Scott Mabery. **Vote:** Unanimous.

- F. ACJA § 5-209: Court-Approved Domestic Violence Offender Treatment Programs.** Kay Radwanski, on behalf of Judge Wendy Million, chair of the Domestic Violence Offender Treatment Workgroup, explained that SB1035, which was signed into law in 2015, authorizes courts to approve domestic violence offender treatment program beginning in January 2016. After the bill was signed, a workgroup was formed to develop rules for a code section to establish standards for the courts to use in approving programs not otherwise approved by the Arizona Department of Health Services (ADHS), a probation department, or the U.S. Department of Veterans Affairs. The workgroup included limited jurisdiction court judges, prosecutors, non-profit victim advocates, a superior court probation officer, a retired licensed behavioral health professional, and a representative from ADHS.

The workgroup discussed a number of issues, including:

- Differentiating among types of offenders (e.g., siblings, roommates, intimate partners) and allowing non-intimate partners to attend programs other than domestic violence offender treatment
- Clarifying which probation departments can approve programs
- Acknowledging the concerns of rural counties that may not have readily accessible DHS-approved programs in their areas
- Considering logistical challenges, primarily in rural areas, for first-time offenders in meeting the ADHS requirement of attending 26 weekly classes
- Considering the possibility of allowing persons in remote locations to participate in weekly programs by Skype or video conference
- Adding psycho-education for intimate partners that would permit delivery by advocates are not licensed behavioral health specialists.

On October 28, 2015, Judge Wendy Million presented the workgroup's draft to the Limited Jurisdiction Committee (LJC), where LJC members expressed the following concerns:

- A need for greater judicial discretion on sending defendants to domestic violence offender treatment programs
- Concerns about logistics and traveling distance to approved programs
- Cost to a defendant of attending a program, as ADHS does not regulate the cost and the law requires a defendant to bear the cost
- The number of required sessions
- Requirement that an alternative provider have a year of experience or training in domestic violence

**G. Update: Interpreter Credentialing Program.** Amy Wood, manager, Caseflow Management, and David Svoboda, language access specialist, provided an update on the interpreter credentialing program. Ms. Wood explained that she presented the proposed credentialing program to the Arizona Judicial Counsel (AJC) along with the concerns raised by COSC. The AJC voted to recommend the adoption of the program, adopt the Interpreter Code of Ethics, and adopt fees relating to the credentialing program

Ms. Wood updated the committee on changes to the program based on AJC recommendations:

- The tier two temporary credential was extended from one year to 18 months.
- There is a delayed effective date for showing preference for contract interpreters.
- A distinction was drawn between contract interpreters and staff interpreters (an employee of the court). A staff interpreter who interprets as part of his or her job is now required to become credentialed within a three-year period.
- In-state cost to complete the credentialing program will be \$555.00.
- The out-of-state cost is significantly higher to discourage interpreters from neighboring states to come to Arizona to get the credential and then leave.

### III. OTHER BUSINESS

**Good of the Order/Call to the Public.** No one from the public was present.

**Adjournment:** The meeting adjourned at 12:25 p.m.

**Next Meeting:** Friday, February 5, 2016; 10 a.m.