

AGENDA

Amended June 9, 2015

ARIZONA JUDICIAL COUNCIL
Camelback Inn
5402 E. Lincoln Drive
Sunshine Meeting Room
Scottsdale, AZ 85253

June 15, 2015

1:00 p.m. Welcome/Opening RemarksChief Justice Scott Bales

Tab No.

- (1) Approval of MinutesChief Justice Scott Bales
- 1:05 p.m. (2) Civil Discovery Rule Reform..... Judge Derek Pullan
- 2:00 p.m. (3) Commission on Technology.....Vice Chief Justice John Pelander
- FY 2016 Project Priorities..... Mr. Karl Heckart
- JCEF Allocations for FY 2016 Mr. Kevin Kluge
- Recommended Changes to the ACAP..... Mr. Karl Heckart
Device Fee Structure for Local Items
- 2:20 p.m. (4) AZ Case Processing Time StandardsMr. Marcus Reinkensmeyer
- 2:35 p.m. (5) Judicial Branch Legislative Update Mr. Jerry Landau
- 2:50 p.m. (6) Arizona Code of Judicial Administration
- § 6-106: Personnel Practices.....Ms. Kathy Waters
- 3:00 p.m. BREAK
- 3:15 p.m. (7) Task Force on the Review of the Role and Mr. Mark Meltzer
Governance Structure of the State Bar of Arizona
- 3:45 p.m. (8) Arizona Foundation for Legal Services Ms. Kevin Ruegg
and Education Projects Ms. Joannie Collins

Family Court Issues:

- 4:15 p.m. (9) International Law and Child Custody Judge David Mackey
- 4:20 p.m. (10) Parenting Coordinator Update Judge Janet Barton
- 5:00 p.m. Call to the Public/Adjourn

Please call Lorraine Smith, staff to the Arizona Judicial Council, at (602) 452-3301 with any questions concerning this Agenda. Any person with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting Susan Hunt at (602) 452-3301. Requests should be made as early as possible to allow time to arrange the accommodation.

ARIZONA JUDICIAL COUNCIL

Request for Council Action

**Date Action
Requested:**

June 15, 2015

**Type of Action
Requested:**

Formal Action/Request

Information Only

Other

Subject:

Approval of Minutes

FROM:

Lorraine Smith, Staff to the Arizona Judicial Council

DISCUSSION:

The minutes from the March 26, 2015 meeting of the Arizona Judicial Council are attached for your review.

RECOMMENDED COUNCIL ACTION:

Approve the minutes as written.

ARIZONA JUDICIAL COUNCIL

Arizona State Courts Building
1501 W. Washington, Suite 119
Phoenix, Arizona 85007

March 26, 2015

DRAFT Meeting Minutes

Council Members Present:

Chief Justice Scott Bales
Jim Bruner
David Byers
Judge Peter Cahill
Judge Rachel Torres Carrillo
Judge Norman Davis
Athia Hardt
Mike Hellon
Yvonne R. Hunter, J.D.
Michael Jeanes
Jack Jewett

Gary Krcmarik
Judge David Mackey
William J. Mangold, M.D., J.D.
Judge John Nelson
Judge Antonio Riojas, Jr.
Judge Sally Simmons
Judge Roxanne Song Ong
Judge Garye Vasquez
(proxy for Judge Peter Eckerstrom)
George Weisz
Judge David Widmaier

Council Members Absent (excused):

Victor Flores
Judge Diane Johnsen

Richard Platt
Janet K. Regner

Administrative Office of the Courts (AOC) Staff Present:

Theresa Barrett
Mike Baumstark
Anne Marie Bruno
Susan Hunt
Jerry Landau
Amy Love
Alicia Moffatt
Heather Murphy

Nick Olm
Kay Radwanski
Marcus Reinkensmeyer
Patrick Scott
Lorraine Smith
Kathy Waters
David Withey
Amy Wood

Presenters and Guests Present:

Judge Brenda Oldham
Vice Chief Justice John Pelander

John Phelps
Judge Larry Winthrop

Chief Justice Scott Bales, Chair, called the meeting to order at 10:00 a.m. in Room 119 at the Arizona State Courts Building, 1501 W. Washington Street, Phoenix, Arizona. The Chair welcomed those in attendance.

Approval of Minutes

The Chair called for any omissions or corrections to the minutes from the December 11, 2014, meeting of the Arizona Judicial Council. There were none.

MOTION: To approve the minutes from the December 11, 2014, meeting of the Arizona Judicial Council, as presented. The motion was seconded and passed. AJC 2015-01.

Attorney Standards for Parent Representation

Judge Brenda Oldham, Presiding Juvenile Judge in Pinal County presented the standards approved by the Committee on Juvenile Courts. She asked for the Council's approval to implement the standards by administrative order or as a court rule. Referring Council members to an updated handout, Judge Oldham explained the Superior Court Presiding Judges voted to change "shall" to "must" and "guidelines" to "standards."

Judge Norm Davis asked how the requirement for affidavits will be enforced. He suggested adding a line or phrase to the State Bar statewide CLE affidavit. Other options were discussed, but the Council did not vote to change the proposed standards in this respect.

MOTION: To approve attorney standards for parent representation with changes approved by the Superior Court Presiding Judges as best practices and implement through Administrative Order and eventually Court Rule. The motion was seconded and passed. AJC 2015-02.

Judicial Branch Budget Update

Mr. Kevin Kluge, CFO and Director of the Administrative Services Division of the AOC provided a budget update. He reported on \$6M in fund sweeps (excess balances) and a \$3.6M reduction in general funds for automation.

Mr. Kluge reported that HB 2088 is a budget fix bill to allow the judiciary to absorb the \$3.6M general fund reduction in multiple spending items. [After the Council meeting, HB 2088 was enacted.]

Authorization to use FARE Funding for Limited Jurisdiction Courts Automation Roll-Out

Mr. Kluge presented the recommendation to use FARE funding (excess revenues) to cover the Limited Jurisdiction Court Automation full roll-out for the next 5 years.

MOTION: To approve the use of excess FARE revenue to supplement automation funding for the rollout of the Limited Jurisdiction Court case management project, as presented. The motion was seconded and passed. AJC 2015-03.

Automation Update (taken out of order)

Mr. Karl Heckart, CIO and Director of the Information Technology Division of the AOC briefed the members on these automation projects:

- Technology refresh project
- General Jurisdiction – AJACS (case management system)
- Limited Jurisdiction – AJACS CMS
- eFiling
- ai SMARTBENCH
- Juvenile - JoltsAZ

Judicial Branch Legislative Update

Mr. Jerry Landau, Director of Governmental Affairs and Ms. Amy Love, Legislative Liaison for the AOC, presented a legislative update.

Mr. Landau reported that the Arizona Judicial Council bills are all moving forward. He reported on resolution and court impact bills and asked for the Council's position on the following bills:

HB 2088: Magistrates; Municipal Courts (budget fix bill)

MOTION: To support HB 2088: Magistrates; Municipal Courts, as presented. The motion was seconded and passed. AJC 2015-04.

HB 2310: Mental Health Courts; Establishment

MOTION: To support HB 2310: Mental Health Courts; Establishment, as presented. The motion was seconded and passed. AJC 2015-05.

HB 2519: Relocation of Child; Parenting Plans

MOTION: To support HB 2519: Relocation of Child; Parenting Plans, as presented. The motion was seconded and passed. AJC 2015-06.

SB 1116: Fines; Fees; Costs; Community Restitution

MOTION: To support SB 1116: Fines; Fees; Costs; Community Restitution, as presented. The motion was seconded and passed. AJC 2015-07 (one opposed)

SB 1439: Judicially Appointed Psychologists; Complaints

MOTION: To support SB 1439: Judicially Appointed Psychologists; Complaints, as presented. The motion was seconded and passed. AJC 2015-08.

Pretrial Update

Ms. Kathy Waters, Director of the Adult Probation Services Division of the AOC, briefed the Council members on pretrial and talked about an additional expansion.

Judge Mackey and Judge Nelson expressed their approval and noted the assessment is working well in their counties.

MOTION: To approve the use of the Public Safety Assessment-Court as a validated pretrial risk assessment to be used in Arizona per Arizona Code of Judicial Administration, as presented. The motion was seconded and passed. AJC 2015-09 (one abstained).

Arizona Commission on Access to Justice

Judge Lawrence Winthrop, Chair of the Arizona Commission on Access to Justice reported on the work of the Commission and shared recommendations from the 3 Commission workgroups.

MOTION: To approve the Access to Justice Commission's recommendations in concept, as presented. The motion was seconded and passed. AJC 2015-10.

International Child Custody

Judge David Mackey provided an update on a matter that was presented during public comment by Mr. Yordy Purnomo at the Council's December meeting.

Judge Mackey stated the Committee on Superior Court (COSC) looked into this matter and determined that these types of relocation cases are being heard throughout the state. He noted that judicial training currently exists from the national judicial training institute entitled "The Hague Child Abduction Convention – International Perspective." Judge Mackey stated this self-paced webinar is free, and Judge Monica Stauffer and Judge Sean Brearcliffe have participated in this webinar and are available to teach for future

judicial education training opportunities. He suggested this could be a new topic for New Judge Orientation (NJO), and reported that Education Services staff are working to provide additional judicial training opportunities.

Mr. Byers suggested the Committee ask the Court to consider a statutory change. Judge Mackey agreed and suggested he could meet with Legislative staff regarding the relocation statute.

Ms. Yvonne Hunter suggested that COSC staff have a conversation with Tim Berg, Chair of the Uniform Laws Commission who may be able to assist.

Chief Justice Bales asked that Mr. Byers check with the National Center for State Courts to see if other jurisdictions have expressly taken this into account in their custody statute.

Mr. Byers stated that NJO may not be the best place to provide training and suggested a domestic relations conference in the future for domestic relations judges to look at these issues.

Call to the Public

The Chair made a call to the public; there was none.

The Chair acknowledged this would be the last meeting for Judge Peter Cahill who will be retiring in June. He thanked Judge Cahill for his service on the Council and presented him with a certificate of appreciation.

The meeting adjourned at 1:40 p.m.

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:

June 15, 2016

Type of Action Requested:

Formal Action/Request

Information Only

Other

Subject:

Civil Discovery Rule Reform

FROM:

Judge Derek Pullan, Utah Fourth District Court

DISCUSSION:

Judge Pullan will present information regarding Utah's civil discovery efforts.

Document can be downloaded at:

[http://www.ncsc.org/~media/Files/PDF/Topics/Civil%20Procedure/Utah%20Rule%2026%20Evaluation%20Final%20Report\(2015\).ashx](http://www.ncsc.org/~media/Files/PDF/Topics/Civil%20Procedure/Utah%20Rule%2026%20Evaluation%20Final%20Report(2015).ashx)

RECOMMENDED COUNCIL ACTION:

Information only

Comment

New Utah Rule 26—A Blueprint for Civil Discovery Reform Under the Federal Rules¹

Utah Supreme Court Committee on the Civil Rules of Procedure

Prepared By: Hon. Judge Derek P. Pullan, 4th District Judge, Utah

February 12, 2014

Introduction

The Federal Civil Rules Committee has proposed comprehensive amendments aimed at civil discovery reform. The most significant question presented is whether proportionality should be the principle that governs the scope of civil discovery.

Proportionality is not new to the federal rules. Rule 1 has always sought the just, speedy, and inexpensive determination of every cause.² Since 1983, the rules have permitted parties and the court to limit discovery that was unreasonable or unduly burdensome.³ Sadly, that provision—buried deep in the middle of Rule 26—was never enforced with the vigor contemplated.⁴ A later effort to give

¹ This written comment supplements the testimony given before the Committee in Phoenix, Arizona by the Hon. Derek P. Pullan, Utah Fourth District Court Judge.

² FED. R. CIV. P.

³ FED. R. CIV. P. 26(b)(2)(C).

⁴ FED. R. CIV. P. 26 advisory committee's note ("The Committee has been told repeatedly that courts have not implemented these limitations with the vigor that was contemplated.").

proportionality teeth was largely ineffective.⁵ In the end, proportionality limitations could never counterbalance the broad language defining the scope of permitted discovery.⁶

The proposed amendment would change that. Parties would be permitted to discover any matter relevant to a claim or defense “and proportional to the needs of the case” in light of certain express considerations—“the amount in controversy, the importance of the issues at stake in the action, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.”⁷

Some have predicted that a proportionality framework will prove unworkable and unfair. They argue that discovery will be curtailed for parties with no or little access to relevant materials. They say that courts will make cost the primary factor in deciding whether discovery should be limited. Because the value of injunctive relief cannot be stated in dollars, parties seeking equitable relief will be shortchanged. The opposition is united in calling for the Committee to steer the ship away from these uncharted waters.

In truth, the Committee is not venturing into the unknown. For more than two years, Utah Rule 26 has allowed litigants to discover relevant material but only if “the discovery satisfies the standards of proportionality.”⁸ The factors to be weighed in deciding proportionality are strikingly similar to those proposed by the Committee.⁹

In the spirit of federalism, Utah is a laboratory with more than two years of experience testing the very proportionality framework under consideration by this Committee. But Utah is not alone. Federal circuit and district courts have implemented pilot programs and

⁵ FED. R. CIV. P. 26(b)(1) (“All discovery is subject to the limitations imposed by Rule 26(b)(2)(C).”).

⁶ See, Favro, Philip J. & Pullan, Hon. Derek P., *New Utah Rule 26: A Blueprint for Proportionality Under the Federal Rules of Civil Procedure*, 2012 MICH.ST. L. REV. 933.

⁷ Proposed FED R. CIV. P. 26(b)(1).

⁸ UTAH R. CIV. P. 26(b)(1).

⁹ UTAH R. CIV. P. 26(b)(2)(A).

local rules using proportionality as the key to managing litigation costs.¹⁰ Twenty-one other states have adopted or are in the process of considering civil discovery reform.¹¹ This is an ideal time for federal rule makers to provide a proportionality-based discovery model and bring uniformity to these grassroots efforts.

The purpose of this written comment is to (1) summarize the key components civil discovery reform in Utah; (2) describe Utah's response to two legitimate criticisms of the proportionality framework; and (3) present survey data collected from Utah attorneys practicing under the new Utah rules.

Key Components of Civil Discovery Reform in Utah

Comprehensive Initial Disclosures

Under new Rule 26, a party must make more comprehensive initial disclosures. The theory is that parties who know more about the case earlier will engage in more focused and efficient discovery efforts.

The new rule requires that parties disclose:

- “[E]ach fact witness the party may call in its case-in-chief and, except for an adverse party, *a brief summary of the expected testimony.*”¹² and

¹⁰ Favro and Pullan, *New Utah Rule 26: A Blueprint for Proportionality Under the Federal Rules*, 2012 MICH. ST. L. REV. 933, 955-966, describing e-discovery pilot program in the Seventh Circuit, a model e-discovery order in the Federal Circuit, and local proportionality rules in the district of Maryland, the district of New Jersey, and the northern district of California.

¹¹ See, Institute For The Advancement Of The American Legal System, Rule One Initiative, <http://iaals.du.edu/initiatives/rule-one-initiative/action-on-the-ground>.

¹² UTAH R. CIV. P. 26(a)(1)(A)(ii).

- “[A] *copy* of all documents, data compilations, electronically-stored information, and tangible things in [their] possession or control . . . that the party may offer in its case-in-chief.”¹³

Certainly not all information is known at the beginning of a case, but what is known should be shared early.¹⁴ The rule does not require “pre-filed testimony.”¹⁵ But conclusory summaries—e.g. “The witness will testify about the events in question”—are clearly insufficient.¹⁶ Of course, later discovery efforts will identify additional witnesses, documents and things relevant to the case. Therefore, parties are under a continuing duty to supplement.¹⁷

If a party fails to disclose timely, then “that party may not use the undisclosed witness, document or material at any hearing or trial.”¹⁸ This sanction gives the rule teeth and discourages sandbagging.¹⁹ The sanction is imposed under rule 26, not rule 37. Therefore, there is no required showing of bad faith, intentional delay, or persistent dilatory conduct. To avoid the sanction, the non-disclosing party must show good cause for its failure or that not disclosing was harmless.²⁰

Proportionality

As explained, new Utah Rule 26 requires that the cost of discovery be proportional to what is at stake in the litigation. Discovery requests are proportional if “the discovery is reasonable, considering the needs of the case, the amount in controversy, the complexity of the

¹³ UTAH R. CIV. P. 26(a)(1)(B).

¹⁴ The plaintiff’s initial disclosures are due two weeks after the filing of the first answer. A defendant’s initial disclosures are due six weeks after the filing of the first answer, or four weeks after the defendant’s appearance in the case, whichever is later. UTAH R. CIV. P. 26(a)(2)(A)(B).

¹⁵ Comment, Disclosure requirements and timing, UTAH R. CIV. P. 26.

¹⁶ *Id.*

¹⁷ UTAH R. CIV. P. 26(d)(4).

¹⁸ *Id.*

¹⁹ Comment, Disclosure requirements and timing, UTAH R. CIV. P. 26.

²⁰ UTAH R. CIV. P. 26(d)(4).

case, the parties' resources, the importance of the issues, and the importance of the discovery in resolving the issues."²¹ Courts must also consider whether:

- the likely benefits of the proposed discovery outweigh the burden or expense;
- the discovery is consistent with the overall case management and will further the just, speedy, and inexpensive determination of the case;
- the discovery is not unreasonably cumulative or duplicative;
- the information cannot be obtained from another source that is more convenient, less burdensome, or less expensive; and
- the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise, taking into account the parties' relative access to the information.²²

To ensure proportionality in discovery efforts, Utah courts may also order that "the costs, expenses, and attorney fees of discovery be allocated among the parties as justice requires."²³

Three Tiers of Civil Litigation

In a further effort to achieve proportionality, Utah divided litigation into three tiers based on the amount in controversy. The traditional "one-size-fits-all" system of rules is rejected.

²¹ UTAH R. CIV. P. 26(b)(2)(A).

²² UTAH R. CIV. P. 26(b)(2)(B)-(F).

²³ UTAH R. CIV. P. 37(c)(10).

To determine the appropriate tier, the parties total “all monetary damages sought (without duplication for alternative theories) by all parties in all claims for relief in the original pleadings.”²⁴ Parties must plead in to the appropriate tier. A pleading that qualifies for tier 1 or tier 2—both of which specify a damages ceiling—constitutes a “waiver of any right to recover damages above the tier limits specified.”²⁵

For each tier, presumptive limits were placed on deposition hours, interrogatories, requests for production, and requests for admission.²⁶ The presumptive limits “signal to judges, attorneys, and parties the amount of discovery which by rule is deemed proportional to for cases with different amounts in controversy.”²⁷

Extraordinary Discovery—Getting More Than the Presumptive Limits

Parties may obtain discovery beyond the presumptive limits—called “extraordinary discovery”—by stipulation or motion, but only after exhausting the presumptive limits.²⁸ In this way, discovery is staged. Parties who have done some discovery are better equipped to understand what more really needs to be done.

²⁴ UTAH R. CIV. P. 26(c)(4)

²⁵ UTAH R. CIV. P. 8(a).

²⁶ UTAH R. CIV. P. 26(c)(5) includes the following table:

Tier 1	Amount of Damages	Total Fact Deposition Hours	Rule 33 Interrogatories including all discrete subparts	Rule 34 Requests for Production	Rule 36 Requests for Admission	Days to complete standard fact discovery
1	\$50,000 or less	3	0	5	5	120
2	More than \$50,000 and less than \$300,000 or non-monetary relief	15	10	10	10	180
3	\$300,000 or more	30	20	20	20	210

²⁷ Comment, Scope of discovery—proportionality, UTAH R. CIV. P. 26.

²⁸ UTAH R. CIV. P. 26(c)(6).

To obtain “extraordinary discovery”—whether by stipulation or by motion—parties must certify that they have reviewed and approved a discovery budget.²⁹

The Burden of Proving Proportionality Is On The Party Seeking Discovery

Under new Utah Rule 26, “the party seeking discovery *always* has the burden of showing proportionality and relevance.”³⁰ This is so whether proportionality is raised in a motion to compel, motion to quash, motion for protective order, or some other context. In the past, a responding party faced with an unduly burdensome request was shouldered with the burden of seeking a protective order from the court. Reversing this burden is critical to managing discovery costs, especially in light of the exponential growth of retained data.

Still, Utah’s proportionality framework contemplates the balancing of benefits and burdens.³¹ In practical effect, the “burden of proof” analysis under rule 26 is really a designation of who goes first. Many of the proportionality factors are known to the seeking party who can craft proportional requests in the first instance. As to these factors, the requesting party goes first and must show that these factors weigh in favor of obtaining the discovery sought. Only then must the responding party come forward with counterbalancing arguments and proof.

Expedited Process for Discovery Motions

Motions to compel, to quash, or for protection do not toll the time in which standard discovery must be completed.³² Therefore, Utah adopted a rule of judicial administration expediting the process for deciding discovery disputes.³³ The voluminous motion to

²⁹ UTAH R. CIV. P. 26(c)(6)(A)(B).

³⁰ UTAH R. CIV. P. 26(b)(3); 37(b)(2). The burden to prove relevance and proportionality is *always* on the requesting party, whether proportionality is raised in the context of a motion to compel, motion to quash, or motion for discovery sanctions.

³¹ UTAH R. CIV. P. 26(b)(2)(B).

³² Comment, Standard and extraordinary discovery, UTAH R. CIV. P. 26.

compel—which historically ground discovery to a screeching halt—is dead. Today, most discovery disputes are decided quickly, on letter briefing, and with a telephone conference.

Objections To A Proportionality Framework and Utah’s Response

Those objecting to a proportionality framework have raised two issues which merit a specific response.

Cases In Which One Side Has All The Materials

What about cases in which one side has access to all the relevant materials, such as employment cases? In these cases, won’t a proportionality standard unfairly curtail discovery?

Utah included in rule 26 a proportionality factor aimed at addressing this legitimate concern. In determining whether a discovery request is proportional, courts must consider each litigant’s “opportunity to obtain the information . . . taking into account the parties’ relative access to the information.”³⁴

Cases In Which Parties Seek Non-Monetary Relief

What about cases in which parties seek injunctive relief? Won’t these parties be unfairly treated because the value of their claims cannot be stated in dollars?

To determine proportionality, Utah courts do consider the amount in controversy and the expense of discovery.³⁵ But these are only two of many factors placed in the balance. Other factors include the complexity of the case, the resources of the parties, the importance of

³³ UTAH CODE JUD. ADMIN. R. 4-502.

³⁴ UTAH R. CIV. P. 26(b)(2)(F).

the issues, the importance of the discovery in resolving the issues, and the likely benefits of discovery.³⁶ Nothing in Utah rule 26 makes amount in controversy or discovery expense “primary” or presumptively entitled to greater weight than any other factor.

To further address the concern about non-monetary relief cases, Utah simply designated these cases as tier 2 litigation. This equates all non-monetary relief cases with “actions claiming more than \$50,000 but less than \$300,000 in damages.”³⁷

Surveys of Attorneys Practicing In Utah

The National Center for State Courts has surveyed attorneys practicing under Utah’s proportionality framework.³⁸

Preliminary results show that while many attorneys are reserving judgment on the effect of Utah’s rule change, this population is declining. A growing number of attorneys believe discovery reform is having its intended effect. In the most recent survey, 52% of attorneys agreed that the amount of disclosure and standard discovery provided sufficient information to inform assessment of claims made. Another 25% remained neutral on this question, but that number has declined from 45%. Only 14% of attorneys believed that the amount of discovery taken was disproportionate to the legal and factual complexity of the case and the amount in controversy.

Conclusion

Notwithstanding the grand vision of Rule 1, few in the United States would describe civil litigation as “speedy” and “inexpensive.” Burgeoning discovery costs ultimately undermine equal justice under the rule of law. Parties with meritorious claims but modest means are denied access to justice. Specious claims settle to avoid the discovery bill.

³⁵ UTAH R. CIV. P. 26(b)(2)(A)(B).

³⁶ *Id.*

³⁷ UTAH R. CIV. P. 26(c)(3)

³⁸ A summary and unreported survey results are attached as Exhibit A.

Requiring that discovery costs be proportional to what is at stake in the litigation restores balance to a system which aspires to the just, *and* the speedy, *and* the inexpensive determination of *every* cause for all people.

Exhibit A

Unreported Survey Results

Summary of Attorney Opinions About Discovery Rules

Statement	Strongly disagree			Disagree			Neutral			Agree			Strongly Agree		
	81	82	83	81	82	83	81	82	83	81	82	83	81	82	83
The opposing party complied with the automatic disclosure provisions.	19%	17%	18%	14%	17%	19%	40%	24%	24%	27%	39%	31%	1%	4%	7%
The amount of disclosure and standard discovery provided sufficient information to inform assessments of the claims.	11%	9%	9%	14%	13%	15%	45%	37%	25%	27%	38%	46%	3%	4%	6%
The amount of discovery undertaken in this case was proportional to the legal and factual complexity of the case and the amount in controversy.	6%	6%	5%	5%	6%	9%	53%	41%	40%	29%	44%	40%	7%	4%	7%
Compared to similar cases filed before November 1, 2011 ...															
discovery was completed more quickly due to the restrictions imposed by the Rule 26 revisions.	22%	18%	15%	15%	20%	19%	45%	41%	38%	15%	20%	23%	2%	2%	5%
this case was resolved more quickly due to the restrictions imposed by the Rule 26 revisions.	24%	20%	16%	19%	26%	21%	48%	37%	42%	8%	15%	15%	2%	3%	6%
the discovery costs were lower due to the restrictions imposed by the Rule 26 revisions.	22%	21%	17%	21%	24%	19%	48%	34%	40%	8%	20%	18%	2%	2%	5%

Mary Campbell McQueen
President

Tom M. Clarke, Ph.D.
*Vice President of Research and
Chief Information Officer
Williamsburg Office*

To: Tim Shea
From: Paula Hannaford-Agar
Date: December 4, 2012
Re: NCSC Evaluation of Rule 26 revisions

This memorandum documents preliminary findings about the Attorney Survey component of the NCSC evaluation of the revisions to Rule 26 of the Utah Rules of Civil Procedure. The Attorney Survey collects supplemental case-level information and solicits opinions about the Rule 26 revisions from the attorneys of record for eligible cases filed between Jan. 1, 2012 and June 30, 2012. A total of 59,554 civil cases were filed during this period. Eligible cases for the purpose of the Attorney Survey are those in which {1} at least one party was represented by counsel; {2} an Answer was filed; and {3} the case has been fully resolved.

Batch 1 Survey Sample

Respondents to the first batch of the Attorney Survey (Batch 1) were selected from CMS data extracted by Kim Allard and forwarded to the NCSC on Nov. 8, 2012 for cases that met the eligibility criteria and were fully resolved on or before September 30, 2012. The CMS dataset consisted of 11,576 records for 3,445 unique cases and 888 individual attorneys; 243 (2%) records had missing attorney information and were subsequently excluded from the dataset. Sixty-two percent (62%) of the attorneys (5551) were listed as counsel of record for only one case; the remaining 38% of attorneys (337) were listed for two or more cases. The maximum number of cases involving the same attorney was 307. To prevent attorneys from receiving multiple surveys in the same survey batch, one case was randomly selected for those attorneys listed with multiple cases.¹ The resulting list of attorneys to whom the first batch of surveys was distributed consisted of 845 counsel of record in 595 cases. The Batch 1 survey launched on Nov. 14, 2012 and remained open through Nov. 30, 2012. A reminder notice was sent to attorneys who had not completed the survey as of Nov. 26.

Response Rate for Batch 1

The NCSC received responses from 21% of the attorneys (178) involved in 28% of the cases (167). In the vast majority of cases (168), only one attorney responded.² Table 1 shows the caseload composition for civil cases filed during the evaluation period, cases disposed on or before September 30, 2012, and cases in which at least one attorney responded to the survey. Although the response rate for this batch was

¹ Random selection was done by SPSS, the statistical software employed to conduct these preliminary analyses. In subsequent survey batches, attorneys who have responded to three previous surveys will be excluded from further surveys.

² Of the 10 cases in which multiple attorneys responded, 6 included both the plaintiff and defense counsel; 3 included multiple attorneys for the plaintiff; and 1 included multiple attorneys for the defendant.

somewhat less than expected (and hoped for), the caseload composition of Batch 1 respondent cases are roughly proportional to the caseload composition of the original survey sample, suggesting that the respondents comprise a reasonable reflection of the eligible cases and are not unduly biased by strong opinions to participate (or opt out) in the survey on the part of the respondents. The number of attorneys representing plaintiffs was more than double the number representing defendants. The original dataset used to develop the survey list did not indicate which party the attorneys represented, so we are unable to determine whether this difference existed in the original sample or whether plaintiff attorneys responded in significantly higher numbers. About half of the difference in plaintiff versus defense counsel response rates occurred in domestic cases (custody/support, divorce/annulment, and paternity), which generally have disproportionately high self-represented defendants.³ Self-represented litigants are not included in the survey, so the difference in plaintiff/defense response rates may be partially attributable to this factor.

Case Type	Cases filed 1/1/2012 to 6/30/2012		Cases disposed between 1/1/2012 and 9/30/2012		Batch 1 Respondent Cases		Plaintiff / Petitioner	Defendant/ Respondent
Asbestos Civil Rights	1	0.0%	0	0.0%	0	0.0%	-	-
Condemnation	11	0.0%	0	0.0%	0	0.0%	-	-
Contracts	89	0.1%	2	0.3%	2	1.2%	1	1
Custody/Support	2,719	4.6%	75	12.6%	19	11.4%	15	6
Debt Collection	764	1.3%	20	3.4%	4	2.4%	3	1
Divorce/Annulment	42,701	71.7%	196	32.9%	48	28.7%	34	14
Malpractice	9,624	16.2%	215	36.1%	52	31.1%	41	14
Paternity	234	0.4%	3	0.5%	1	0.6%	1	-
Personal Injury	1,055	1.8%	26	4.4%	11	6.6%	9	2
Property Damage	1,575	2.6%	41	6.9%	23	13.8%	12	13
Property Rights	282	0.5%	6	1.0%	3	1.8%	4	-
Water Rights	374	0.6%	8	1.3%	2	1.2%	2	1
Wrongful lien	40	0.1%	2	0.3%	1	0.6%	1	-
Wrongful Termination	59	0.1%	0	0.0%	0	0.0%	-	-
	16	0.0%	1	0.2%	1	0.6%	-	1
TOTAL	59,544		595		167		123	53

Table 2 shows how the cases in the survey were disposed. Respondents reported that 12% of the cases were still pending; the disposition date included in the dataset indicated the date on which the case was transferred (4 cases), assigned to arbitration (2 cases), bifurcated (2 cases), suspended due to defendant bankruptcy (2 cases), removed to federal court (1 case), or unspecified (11 cases). For cases that were confirmed as fully disposed, the average filing-to-disposition time was 139 days (compared to 482 days in the baseline sample). Approximately three-quarters (76%) of the fully disposed cases in this batch resolved before discovery was completed, which limits their usefulness for evaluating the impact of the restrictions associated with the new discovery tiers. Future survey batches should produce a greater proportion of cases in which discovery was completed before the case fully resolved. None of the cases in Batch 1 involved motions or stipulations related to discovery.

³ See Table 7 in Memorandum to Tim Shea from Paula Hannaford-Agor (February 24, 2012).

	Number of cases {%	
Case withdrawn by plaintiff/petitioner	8	5%
Case dismissed by court	3	2%
Default judgment for defendant/respondent	8	5%
Settlement by parties before discovery completed	113	64%
Settlement by parties after discovery completed	11	6%
Summary judgment	11	6%
Case still pending	22	12%
Total	177	

Table 3 shows initial opinions about various aspects of the Rule 26 revisions. These reflect mixed views about the revisions, but it should be kept in mind that these cases resolved relatively quickly and may not accurately reflect the views of attorneys in cases that resolve at later stages of litigation. A more representative sample of opinions should result from the analyses of subsequent survey batches.

	Percentage Responding				
	Strongly disagree	Disagree	Neutral	Agree	Strongly Agree
The opposing party complied with the automatic disclosure provisions.	19%	14%	40%	27%	1%
The amount of disclosure and standard discovery provided sufficient information to inform assessments of the claims.	11%	14%	45%	27%	3%
The amount of discovery undertaken in this case was proportional to the legal and factual complexity of the case and the amount in controversy.	6%	5%	53%	29%	7%
Compared to similar cases filed before November 1, 2011...					
discovery was completed more quickly due to the restrictions imposed by the Rule 26 revisions.	22%	15%	45%	15%	2%
this case was resolved more quickly due to the restrictions imposed by the Rule 26 revisions.	24%	19%	48%	8%	2%
the discovery costs were lower due to the restrictions imposed by the Rule 26 revisions.	22%	21%	48%	8%	2%

Only 22 of 155 respondents (14%) answered the question concerning the expedited discovery dispute procedures, and only 16 (10%) offered an opinion on the adequacy of the Statement of Discovery Issues/Statement in Opposition for informing the District Court about the disputes. The remaining

respondents did not experience discovery disputes in the case. Two-thirds (68%) of respondents offering an opinion about the timeliness of the Rule 10-1-306 procedures were neutral with most of the remainder negative (27%). Half (50%) of the respondents offering an opinion about the adequacy of briefs submitted to the court in discovery disputes were negative and 44% were neutral. The NCSC is compiling the 68 written comments about the Rule 26 revisions separately to include with a later analysis. However, from my preliminary review, the comments are fascinating and many of them offer thoughtful insights about the impact of the new rules on particular types of cases (especially debt collection and domestic cases). If you and the committee members are interested, I will happily compile the comments into a document with the case number removed to preserve respondent confidentiality.

Overall, we are pleased with the success of this first batch of surveys. We have some minor formatting revisions to the online survey that we would like to do before the next batch to screen out cases that are still pending and to facilitate subsequent data cleaning. As long as it is acceptable to you, and convenient to Kim Allard, we would like to continue running the survey batches on a quarterly basis through mid-2014 on the following schedule:

Eligible cases disposed between ..•	Survey Launch
10/1/12 and 12/31/12	February 2013
1/1/13 and 3/31/13	April 2013
4/1/13 and 6/30/13	July 2013
7/1/13 and 9/30/13	October 2013
10/1/13 and 12/31/13	February 2014
1/1/14 and 3/31/14	April 2014
4/1/14 and 6/30/14	July 2014

In July 2014, we'll also request data comparable to the 2008 baseline data on the evaluation cases to conduct our analyses of the impact of the Rule 26 revisions on in-court events and timelines. Relevant data from the Attorney Survey will be merged with the CMS data to provide a fuller picture of the impact. We will provide status updates about the surveys as we move forward.

Let me know if you have questions about any information from the first survey batch or concerns about the plans to move forward.

Best wishes,

Paula Hannaford-Agar
Project Director



A nonprofit organization improving justice through leadership and service to courts

Mary Campbell McQueen
President

Tom M. Clarke, Ph.D.
*Vice President of Research and
Chief Information Officer
Williamsburg Office*

To: Tim Shea
From: Paula Hannaford-Agar
Date: February 22, 2013
Re: NCSC Evaluation of Rule 26 revisions

This memorandum documents preliminary findings about the Attorney Survey component of the NCSC evaluation of the revisions to Rule 26 of the Utah Rules of Civil Procedure. The Attorney Survey collects supplemental case-level information and solicits opinions about the Rule 26 revisions from the attorneys of record for eligible cases filed between Jan. 1, 2012 and June 30, 2012. A total of 59,554 civil cases were filed during this period. Eligible cases for the purpose of the Attorney Survey are those in which (1) at least one party was represented by counsel; (2) an Answer was filed; and (3) the case has been fully resolved.

Batch 2 Survey Sample

Respondents to the second batch of the Attorney Survey (Batch 2) were selected from CMS data extracted by Kim Allard and forwarded to the NCSC on January 31, 2013 for cases that met the eligibility criteria and were fully resolved between October 1 and December 31, 2012. The CMS dataset consisted of 10,572 records for 1,189 unique cases and 723 individual attorneys; 201(2%) records had missing attorney information and were subsequently excluded from the dataset. The minimum number of cases per attorney was two (292 or 40% of the attorneys); the remaining 60% of attorneys (431) were listed for three or more cases. The maximum number of cases involving the same attorney was 469. To prevent attorneys from receiving multiple surveys in the same survey batch, one case was randomly selected for those attorneys listed with multiple cases.¹ The resulting list of attorneys to whom the first batch of surveys was distributed consisted of 723 counsel of record in 1,106 cases. The Batch 2 survey launched on Feb. 4, 2013 and remained open through Feb. 15, 2013. A reminder notice was sent to attorneys who had not completed the survey as of Feb. 11.

Response Rate for Batch 2

The NCSC received responses from 19% of the attorneys (139) involved in 27% of the cases (124). While the survey was underway, the NCSC received email messages from two attorneys indicating that although the CMS system had recorded them as attorneys of record in the case, they had subsequently left employment with their previous law firms and were no longer involved in those cases. As time passes, we can expect greater numbers of such attorneys in future batches of the Attorney Survey.

¹ Random selection was done by SPSS, the statistical software employed to conduct these preliminary analyses. In subsequent survey batches, attorneys who have responded to three previous surveys will be excluded from further surveys.

In all but the vast majority of cases (168), only one attorney responded.² Table 1 shows the caseload composition for civil cases filed during the evaluation period, cases disposed between October 1 and December 31, 2012, and cases in which at least one attorney responded to the survey. The caseload composition for Batch 2 respondent cases are roughly proportional to the caseload composition of the original survey sample, suggesting that the respondents comprise a reasonable reflection of the eligible cases and are not unduly biased by strong opinions to participate (or opt out) in the survey on the part of the respondents. The number of attorneys representing plaintiffs was more than triple the number representing defendants. We are unable to determine whether this difference existed in the original sample or whether plaintiff attorneys responded in significantly higher numbers. Unlike the Batch 1 respondents, in which domestic cases appeared to have the largest differential between plaintiff and defense response rates, the Batch 2 respondents show no immediately discernible pattern.

Case Type	Cases filed 1/1/2012 to 6/30/2012		Cases disposed between 10/1/2012 and 12/31/2012		Batch 2 Respondent Cases		Plaintiff / Petitioner	Defendant/ Respondent
Asbestos Civil Rights	1	0.0%	0	0.00	0	0.00	-	-
Condemnation	11	0.0%	0	0.00	0	0.00	-	-
Contracts	89	0.1%	0	0.00	0	0.0%	-	-
Custody/Support	2,719	4.6%	128	17.9%	35	25.2%	31	4
Debt Collection	764	1.3%	16	2.2%	7	5.0%	4	3
Divorce/Annulment	42,701	71.7%	179	25.1%	26	18.7%	17	9
Malpractice	9,624	16.2%	230	32.2%	35	25.2%	27	7
Paternity	234	0.4%	7	1.0%	4	2.9%	2	2
Personal Injury	1,055	1.8%	35	4.9%	2	1.4%	1	-
Property Damage	1,575	2.6%	98	13.7%	26	18.7%	20	6
Property Rights	282	0.5%	4	0.6%	0	0.0%	-	-
Water Rights	374	0.6%	12	1.7%	4	2.9%	3	1
Wrongful Lien	40	0.1%	0	0.00	0	0.00	-	-
Wrongful Termination	59	0.1%	5	0.7%	0	0.00	-	-
	16	0.0%	0	0.00	0	0.00	-	-
TOTAL	59,544		714		139		105	32

Table 2 shows how the cases in the survey were disposed. Respondents reported that 11% of the cases were still pending.³ For cases that were confirmed as fully disposed, the average filing-to-disposition time was 348 days (compared to 482 days in the baseline sample). Nearly two-thirds (61%) of the fully disposed cases in this batch resolved before discovery was completed, which limits their usefulness for evaluating the impact of the restrictions associated with the new discovery tiers, but as expected this rate was less than the Batch 1 rate (75%). Future survey batches should produce a greater proportion of cases in which discovery was completed before the case fully resolved.

² Of the 13 cases in which multiple attorneys responded, 5 included attorneys for both the plaintiff and defendant, 7 included multiple attorneys for the plaintiff, and 1 included multiple attorneys for the defendant.

³ Beginning with Batch 2, the Attorney Survey was reformatted to confirm initially that the case had been fully resolved. Attorneys who reported that the case was still pending received a message thanking them for their participation, but were not asked to complete the rest of the survey.

Table 2: Disposition Type	
	Number of cases (%)
Case withdrawn by plaintiff/petitioner	2 1%
Case dismissed by court	0 0%
Default judgment for defendant/respondent	4 2%
Settlement by parties before discovery completed	65 37%
Settlement by parties after discovery completed	22 12%
Summary judgment	11 6%
Other disposition	12 7%
Case still pending	19 11%
Total	177

The Batch 2 survey responses included a small handful of cases involving discovery motions. In three cases (2 divorce/annulment and 1 personal injury), a party entered a motion to increase the discovery tier; in all three cases the motion was granted. In two cases (1 divorce/annulment and 1 debt collection), the parties entered a stipulation for extraordinary discovery; the trial judge denied or modified the stipulation in the divorce/annulment case, but approved the stipulation in the debt collection case. In two cases (a divorce/annulment and a personal injury case), a party entered a motion for extraordinary discovery; the motion was granted in the personal injury case, but denied in the divorce/annulment case. In seven cases, a party entered a motion to compel discovery, which was granted in six of the cases, but denied in one case. In three cases, a party entered a motion for a protective order, all of which were granted.

Table 3 shows initial opinions about various aspects of the Rule 26 revisions. These reflect mixed views about the revisions, but they are somewhat more positive than the Batch 1 respondent views.

Table 3: Respondent Opinions About the Impact of Rule 26 Revisions (101 responses)					
	Percentage Responding				
	Strongly disagree	Disagree	Neutral	Agree	Strongly Agree
The opposing party complied with the automatic disclosure provisions.	17%	17%	24%	39%	4%
The amount of disclosure and standard discovery provided sufficient information to inform assessments of the claims.	9%	13%	37%	38%	4%
The amount of discovery undertaken in this case was proportional to the legal and factual complexity of the case and the amount in controversy.	6%	6%	41%	44%	4%
Compared to similar cases filed before November 1, 2011...					
discovery was completed more quickly due to the restrictions imposed by the Rule 26 revisions.	18%	20%	41%	20%	2%
this case was resolve dmore quickly due to the restrictions imposed by the Rule 26 revisions.	20%	26%	37%	15%	3%
the discovery costs were lower due to the restrictions imposed by the Rule 26 revisions.	21%	24%	34%	20%	2%

Thirty-two (32) of 139 respondents (23%) answered the question concerning the expedited discovery dispute procedures, and 24 (17%) offered an opinion on the adequacy of the Statement of Discovery Issues/Statement in Opposition for informing the District Court about the disputes. The remaining respondents did not experience discovery disputes in the case. Nearly half (47%) of respondents offering an opinion about the timeliness of the Rule 10-1-306 procedures were neutral with most of the remainder negative (41%). Half (50%) of the respondents offering an opinion about the adequacy of briefs submitted to the court in discovery disputes were neutral and slight more than one-third were negative (38%). The NCSC is compiling the 43 written comments about the Rule 26 revisions separately to include with a later analysis.

let me know if you have questions about any information from the second survey batch.

Best wishes,

Paula Hannaford-Agar
Project Director



A nonprofit organization improving justice through leadership and service to courts

Mary Campbell McQueen
President

Tom M. Clarke, Ph.D.
*Vice President of Research and
Chief Information Officer
Williamsburg Office*

To: Tim Shea
From: Paula Hannaford-Agar
Date: June 12, 2013
Re: NCSC Evaluation of Rule 26 revisions

This memorandum documents preliminary findings about the Attorney Survey component of the NCSC evaluation of the revisions to Rule 26 of the Utah Rules of Civil Procedure. The Attorney Survey collects supplemental case-level information and solicits opinions about the Rule 26 revisions from the attorneys of record for eligible cases filed between Jan. 1, 2012 and June 30, 2012. A total of 59,554 civil cases were filed during this period. Eligible cases for the purpose of the Attorney Survey are those in which (1) at least one party was represented by counsel; (2) an Answer was filed; and (3) the case has been fully resolved.

Batch 3 Survey Sample

Respondents to the third batch of the Attorney Survey (Batch 3) were selected from CMS data extracted by Kim Allard and forwarded to the NCSC on April 3, 2013 for cases that met the eligibility criteria and were fully resolved between January 1 and March 31, 2013. The CMS dataset consisted of 4,267 records for 425 unique cases and 674 individual attorneys; 177 (4%) records had missing attorney information and were subsequently excluded from the dataset. The minimum number of cases per attorney was two (262 or 38% of the attorneys); the remaining 62% of attorneys (420) were listed for three or more cases. The maximum number of cases involving the same attorney was 99. To prevent attorneys from receiving multiple surveys in the same survey batch, one case was randomly selected for those attorneys listed with multiple cases.¹ The resulting list of attorneys to whom this batch of surveys was distributed consisted of 674 counsel of record in 420 cases. The Batch 3 survey launched on May 6, 2013 and remained open through May 17, 2013. A reminder notice was sent to attorneys who had not completed the survey as of May 10.

Response Rate for Batch 3

The NCSC received responses from 22% of the attorneys (146) involved in 31% of the cases (129). While the survey was underway, the NCSC received an email message from one attorney indicating that although recorded as attorney of record in the case by the CMS record, he/she had never been involved in the case listed.

¹ Random selection was done by SPSS, the statistical software employed to conduct these preliminary analyses. In subsequent survey batches, attorneys who have responded to three previous surveys will be excluded from further surveys.

In the vast majority of these cases (116), only one attorney responded.² Table 1 shows the caseload composition for civil cases filed during the evaluation period, cases disposed between January 1 and March 31, 2013, and cases in which at least one attorney responded to the survey. The caseload composition for Batch 3 respondent cases are roughly proportional to the caseload composition of the original survey sample, suggesting that the respondents comprise a reasonable reflection of the eligible cases and are not unduly biased by strong opinions to participate (or opt out) in the survey on the part of the respondents. The number of attorneys representing plaintiffs was almost double the number representing defendants. In the original sample from Batch 3, about 58% of the cases were for defendants/respondents, but through data cleaning procedures (removing duplicate attorneys, etc.), the restructured data contained only 38% of defendant party type. The latter data were used to develop the random sample of attorneys who received the survey, explaining the variation in party type between the original data and the resulting survey responses. Many of the defendants that were removed from the original dataset were from contract, debt collection, and personal injury cases.

Case Type	Cases filed 1/1/2012 to 6/30/2012		Cases disposed between 1/1/2013 and 3/31/2013		Batch 3 Respondent Cases		Plaintiff / Petitioner	Defendant/ Respondent
	Count	Percentage	Count	Percentage	Count	Percentage		
Asbestos	1	0.0%	0	0.0%	0	0.0%	-	-
Civil Rights	11	0.0%	0	0.0%	0	0.0%	-	-
Condemnation	89	0.1%	1	0.2%	1	0.9%	2	-
Contracts	2,719	4.6%	60	14.1%	17	15.7%	13	9
Custody/Support	764	1.3%	10	2.4%	2	1.9%	2	-
Debt Collection	42,701	71.7%	123	28.9%	21	19.4%	13	6
Divorce/Annulment	9,624	16.2%	142	33.4%	30	27.8%	20	13
Malpractice	234	0.4%	3	0.7%	1	0.9%	1	-
Paternity	1,055	1.8%	30	7.1%	10	9.3%	9	2
Personal Injury	1,575	2.6%	44	10.4%	21	19.4%	12	14
Property Damage	282	0.5%	3	0.7%	3	2.8%	2	1
Property Rights	374	0.6%	8	1.9%	2	1.9%	1	1
Water Rights	40	0.1%	0	0.0%	0	0.0%	-	-
Wrongful Lien	59	0.1%	1	0.2%	0	0.0%	-	-
Wrongful Termination	16	0.0%	0	0.0%	0	0.0%	-	-
TOTAL	59,544		425		108		75	46

Table 2 shows how the cases in the survey were disposed. Respondents reported that 15% of the cases were still pending.³ For cases that were confirmed as fully disposed, the average filing-to-disposition time was 312 days (compared to 417 days in the baseline sample). Slightly more than half (55%) of the

² Of the 13 cases in which multiple attorneys responded, 5 included attorneys for both the plaintiff and defendant, 3 included multiple attorneys for the plaintiff, 2 included multiple attorneys for the defendant, and one included an attorney for the plaintiff and multiple attorneys for the defendant. One case was still pending and did not yet specify plaintiff/defendant representation. The last case had disagreement in status between responding attorneys with one representing the defendant and one stating the case was still pending; the latter did not complete the survey since the case had supposedly not yet been disposed.

³ Beginning with Batch 2, the Attorney Survey was reformatted to confirm initially that the case had been fully resolved. Attorneys who reported that the case was still pending received a message thanking them for their participation, but were not asked to complete the rest of the survey.

fully disposed cases in this batch resolved before discovery was completed, limiting their usefulness for evaluating the impact of the restrictions associated with the new discovery tiers, but as expected this rate was less than both Batch 1 and 2 rates of 75% and 61% respectively. It is evident that a greater proportion of cases finishing discovery before disposition is represented in Batch 3 and should continue to grow as the survey moves forward.

Table 2: Disposition Type		
	Number of cases	
Case withdrawn by plaintiff/petitioner	0	0%
Case dismissed by court	2	1%
Default judgment for defendant/respondent	0	0%
Settlement by parties before discovery completed	66	45%
Settlement by parties after discovery completed	33	23%
Summary judgment	10	7%
Bench Trial	1	1%
Other disposition	12	8%
Case still pending	22	15%
Total	146	

With the first three batches of surveys completed, it is possible to start comparing the overall data to the original 2008 data to see if we are meeting our original expectations. After charting the length of disposition time by month for the aggregated batches, it is clear that we have started to taper off in the number of respondents. The first nine months of data has a much higher count of disposed cases than the subsequent six months. This falls in line with the 2008 original data as the case disposition time peaked around month four. In terms of specific case types, some differences are appearing between what we expected to see and what the data show. Batch 3 (9-15 months after case filing), for example, had a heavy load of contract cases disposed, but the 2008 data shows a skewed distribution towards earlier months of five and under; we thus had expected to see a greater caseload for contracts within the first batch rather than the third. Personal injury cases are also peaking a little later than the 2008 data predicted with a greater level of disposed cases from Batch 3 than the previous batches. Many of the other distributions are currently following similar trends to the 2008 data, but we will continue to compile and analyze any differences as more survey batches come in.

The Batch 3 survey responses included a small handful of cases involving discovery motions. There were no cases in which a party entered a motion to increase the discovery tier in Batch 3. In four cases (1 divorce/annulment, 2 debt collection, and 1 personal injury), the parties entered a stipulation for extraordinary discovery; out of the four, the trial judge approved the stipulation for only one of the debt collection cases. In two cases (a divorce/annulment and a personal injury case), a party (representing plaintiff and defendant respectively) entered a motion for extraordinary discovery; the motion was granted in both of the cases. In four cases (contracts, personal injury, divorce/annulment, and debt collection), a party entered a motion to compel discovery, which the trial judge granted only in the personal injury case. Additionally, two cases (property damage and divorce/annulment) had a motion entered for a protective order, of which the latter was granted.

Table 3 shows initial opinions about various aspects of the Rule 26 revisions. These reflect mixed views about the revisions, but they have migrated to more positive perceptions than appeared in Batch 1 or 2. While the percentages of attorneys in agreement with the opinions remain similar to Batch 2, more have claimed strong agreement in Batch 3.

Table 3: Respondent Opinions About the Impact of Rule 26 Revisions (103 responses)					
	Percentage Responding				
	Strongly disagree	Disagree	Neutral	Agree	Strongly Agree
The opposing party complied with the automatic disclosure provisions.	18%	19%	24%	31%	7%
The amount of disclosure and standard discovery provided sufficient information to inform assessments of the claims.	9%	15%	25%	46%	6%
The amount of discovery undertaken in this case was proportional to the legal and factual complexity of the case and the amount in controversy.	5%	9%	40%	40%	7%
Compared to similar cases filed before November 1, 2011...					
discovery was completed more quickly due to the restrictions imposed by the Rule 26 revisions.	15%	19%	38%	23%	5%
this case was resolved more quickly due to the restrictions imposed by the Rule 26 revisions.	16%	21%	42%	15%	6%
the discovery costs were lower due to the restrictions imposed by the Rule 26 revisions.	17%	19%	40%	18%	5%

Thirty-three of 103 respondents (32%) answered the question concerning the expedited discovery dispute procedures, and 24 (23%) offered an opinion on the adequacy of the Statement of Discovery Issues/Statement in Opposition for informing the District Court about the disputes. Over half (55%) of respondents offering an opinion about the timeliness of the Rule 10-1-306 procedures were neutral with most of the remainder negative (36%). More than half (58%) of the respondents offering an opinion about the adequacy of briefs submitted to the court in discovery disputes were also neutral, and slightly more than one-fifth were negative (21%). Compared to Batch 2, the perceptions have improved with more attorneys claiming neutral or positive positions. The NCSC is compiling the 58 written comments about the Rule 26 revisions separately to include with a later analysis.

Let me know if you have questions about any information from the third survey batch. Best wishes,

Paula Hannaford-
Agar
Project
Director

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
June 15, 2015	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Commission on Technology (COT) Update

FROM:

Vice Chief Justice John Pelander, COT Chair
Mr. Karl Heckart, AOC ITD Director, CIO
Mr. Kevin Kluge, AOC ASD Director/Chief Financial Officer

DISCUSSION:

Vice Chief Justice Pelander and Mr. Karl Heckart will brief members on activities at the recent COT annual meeting, including the project prioritization decided by COT as background to the content of the Judicial Collections Enhancement Fund (JCEF) automation budget request. Karl will then brief Council members on COT's recommended changes to the ACAP device fee structure for local items on the network to take effect in FY 2017, the first change since FY 2005

ACJA § 1-109 specifies that COT recommends the amount of JCEF monies to be available for automation grant requests and projects, while ACJA § 5-102(C)(3) gives the AJC approval authority over non-automation allocations of the AOC Administrative Director. Typically, the COT Chair requests approval of specific automation funding for operations, ongoing programs, and new projects to ensure the Council sets aside sufficient monies from JCEF in the upcoming fiscal year.

Mr. Kevin Kluge, AOC's Chief Financial Officer, will brief the Council on the JCEF revenues, on-going commitments, comparison of revenue to expense, and the projected year-end fund balance, subject to action of the Legislature.

RECOMMENDED COUNCIL ACTION:

Approve the changes to the ACAP device fee structure to take effect in FY 2017, as recommended by Commission on Technology.

Approve the JCEF automation budget, as recommended by the Commission on Technology. Approve the JCEF non-automation court programs budget and the JCEF probation budget, as recommended by the AOC Administrative Director and as appropriated by the Legislature.

////////////////////////////////////
Commission on Technology's strategic information technology projects with committed resources for FY2016-2018 are:

- Deploy New eFiling Engine
- Deploy Judge Automation
- Launch eAccess
- Build Online Citation Payment
- JOLTSaz Deployment
- AJACS - AZTEC Replacement
- AJACS - GJ eFiling & Enhancements
- NICS Reporting
- FARE - Infrastructure Port
- Time Standards Reporting
- eWarrant Pilot
- Data Destruction
- Appellate CMS
- Disaster Recovery Move

Commission on Technology's New Pricing for AJIN-Attached Devices

Description	Annual Cost	Detail
Desktop or Scanner	\$750	AOC provided
Network Printer	\$750	AOC provided or consuming bandwidth
Laptop	\$1250	AOC provided
Firewall	\$750	AOC provided
Wireless Radio	\$750	AOC provided
Video Remote Router	\$1620	Regardless of connected devices
Local Printer	\$35	Limited to local print only
Local Server	\$85	Incl. anti-virus subscription
All Other Local Items	\$35	Charged by IP address

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
June 15, 2015	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Arizona Case Processing Time Standards

FROM:

Mr. Marcus Reinkensmeyer, Director of the Court Services Division of the AOC

DISCUSSION:

Mr. Reinkensmeyer will present on behalf of Justice Robert Brutinel who is the Chair of the Arizona Case Processing Standards Steering Committee. He will discuss the Committee's recommendation that the case processing time standards for five case types be adopted as final.

RECOMMENDED COUNCIL ACTION:

Motion: To recommend that the Arizona Supreme Court adopt final case processing time standards for the following case types:

- ✓ Probate Administration of Estates
- ✓ Probate Guardianship/Conservatorship
- ✓ Probate Mental Health cases
- ✓ Misdemeanor (1 Tier only)
- ✓ Justice Court Civil cases

ARIZONA CASE PROCESSING TIME STANDARDS SUMMARY CHART

SUPERIOR COURTS			
CASE TYPE	STANDARD	CALCULATION OF TIME	EXCLUDED TIME ¹
CIVIL CASES (Effective Date January 1, 2015)	60% w/in 180 days 90% w/in 365 days 96% w/in 540 days	Filing of initial complaint through disposition (e.g., dismissal, judgment). Note: Start counting on the day the case number is received/case is opened in Superior court.	<ul style="list-style-type: none"> • Pre-adjudication special actions/appeals • Bankruptcy • Servicemembers Civil Relief Act
FELONY CASES (Effective Date January 1, 2015)	65% w/in 90 days 85% w/in 180 days 96% w/in 365 days	Filing of first charging document (e.g., information, indictment or complaint) through disposition (e.g., dismissal, acquittal or judgment and sentencing). Note: Start counting on the day the case number is received/case is opened in Superior court.	<ul style="list-style-type: none"> • Warrants • Rule 11 mental competency • Pre-adjudication diversions Specialty courts/programs • Pre-adjudication special actions/appeals
FAMILY LAW DISSOLUTION AND ALLOCATION OF PARENTAL RESPONSIBILITY (Effective Date July 1, 2015)	75% w/in 180 days 90% w/in 270 days 98% w/in 365 days ✓ All pre-adjudication family law cases such as: establishment of child support, parenting time, and legal decision-making; paternity; annulment; dissolution; legal separation... are included.	The date of filing to the date of disposition by entry of judgment/decreed or order.	<ul style="list-style-type: none"> • Pre-adjudication special actions/appeals • Bankruptcy • Servicemembers Civil Relief Act • Conciliation Court - (Petition for Stay filed) • Pending juvenile
PROBATE ADMINISTRATION OF ESTATES	50% w/in 360 days 75% w/in 540 days 95% w/in 720 days ✓ Formal and informal probate and affidavit of succession to real property cases are included.	Filing of application/petition for appointment of personal representative or probate of a will through closing of decedent's estate (e.g., filing of closing statement, complete settlement or order approving final distribution or accounting). OR Filing of Affidavit of	<ul style="list-style-type: none"> • Pre-adjudication special actions/appeals • Bankruptcy

¹ Periods of case inactivity beyond the court's control, known as excludable time, may be subtracted from the time to disposition calculations.

ARIZONA CASE PROCESSING TIME STANDARDS SUMMARY CHART

SUPERIOR COURTS			
CASE TYPE	STANDARD	CALCULATION OF TIME	EXCLUDED TIME ¹
		Succession to Real Property to the date the probate registrar stamps the Affidavit.	
PROBATE GUARDIANSHIP/ CONSERVATORSHIP	80% w/in 90 days 98% w/in 365 days. ✓ Guardianship/ conservatorship of a minor are excluded. ✓ The appointment of temporary guardian/ conservators and appointment of guardian ad litem are excluded ✓ Orders appointing limited guardian are included.	Filing of petition for appointment of guardian/ conservator through denial of the petition or issuance of a court order appointing a fiduciary on a non-temporary basis.	No excluded time
PROBATE MENTAL HEALTH CASES	98% w/in 15 days ✓ Petitions for court ordered evaluation are excluded. ✓ Petition for court ordered treatment are included.	Filing of petition through disposition (e.g., patient released or issuance of a court order for treatment).	No excluded time.

ARIZONA CASE PROCESSING TIME STANDARDS SUMMARY CHART

JUVENILE CASES			
CASE TYPE	STANDARD	CALCULATION OF TIME	EXCLUDED TIME ¹
DELINQUENCY AND STATUS OFFENSE (Report created in JOLTS) (Effective Date January 1, 2015)	<u>Youth in detention:</u> 75% within 30 days 90% within 45 days 98% within 75 days <u>Youth not in detention:</u> 75% within 60 days 90% within 90 days 98% within 135 days	Filing of petition through disposition.	<ul style="list-style-type: none"> • Warrants • Rule 11 mental competency • Pre-adjudication diversions Specialty courts/programs
NEGLECT AND ABUSE (DEPENDENCY) (Report created in JOLTS) (Effective Date July 1, 2015)	<u>Adjudication Hearing:</u> 98% within 100 days	<u>Adjudication Hearing:</u> Date of filing through a finding of dependency.	No excluded time
NEGLECT AND ABUSE (DEPENDENCY) (Report created in JOLTS) (Effective Date January 1, 2015)	<u>Permanency Hearing:</u> 98% of children under 3 years of age within 180 days/6 months of removal. 98% of all other cases within 360 days of removal	<u>Permanency Hearing:</u> Date of removal through permanent plan determination.	No excluded time
TERMINATION OF PARENTAL RIGHTS (Report created in JOLTS) (Effective Date January 1, 2015)	90% within 120 days 98% within 180 days ✓ Adoption cases are excluded.	Filing of Motion/Petition for Termination of Parental Rights through entry of dismissal or order of termination.	No excluded time

ARIZONA CASE PROCESSING TIME STANDARDS SUMMARY CHART

JUSTICE AND MUNICIPAL COURTS			
CASE TYPE	PROVISIONAL STANDARD	CALCULATION OF TIME	EXCLUDED TIME¹
MISDEMEANOR DUI (Effective Date January 1, 2015)	85% within 120 days 93% within 180 days ✓ Criminal misdemeanor cases are excluded. ✓ Criminal traffic cases are excluded. ✓ Criminal local ordinance cases are excluded.	Filing of complaint through disposition (e.g., dismissal, acquittal or judgment and sentencing).	<ul style="list-style-type: none"> • Warrants • Rule 11 mental competency • Pre-adjudication diversions Specialty courts/programs • Pre-adjudication special actions/appeals
CIVIL TRAFFIC (Effective Date July 1, 2015)	65% within 30 days 80% within 60 days 95% within 90 days ✓ Civil local ordinance cases are excluded. ✓ Photo-Radar tickets are excluded. ✓ Parking tickets are excluded.	Filing of Arizona Traffic Ticket and Complaint (ATTC) or by long-form complaint through disposition (e.g., dismissal, judgment).	<ul style="list-style-type: none"> • Pre-adjudication special actions/appeals • Pre-adjudication diversions Specialty courts/programs • Servicemembers Civil Relief Act
MISDEMEANOR	98% within 180 days ✓ Criminal traffic cases are included. ✓ Petty offenses are included. ✓ Criminal local ordinance cases are included. ✓ DUI cases are excluded; these cases have separate case processing goals.	Filing of complaint through disposition (e.g., dismissal, acquittal or judgment and sentencing).	<ul style="list-style-type: none"> • Warrants • Rule 11 mental competency • Pre-adjudication diversions Specialty courts/programs • Pre-adjudication special actions/appeals
JUSTICE COURT CIVIL CASES	75% within 180 days 90% within 270 days 98% within 365 days	Filing of initial complaint through disposition (e.g., dismissal, judgment).	<ul style="list-style-type: none"> • Pre-adjudication special actions/appeals • Bankruptcy Servicemembers Civil Relief Act

Note: Contact the Administrative Office of the Courts for further specifications. Business requirements for the time to disposition summary and detail report and the age of active pending caseload summary and detail report have been developed for every case type listed above.

Time Standards Timeline

Phase 1



- Phase 1 Case Types:**
- Felony
 - Civil
 - Juvenile Permanency Hearing
 - Termination of Parental Rights
 - Delinquency
 - DUI

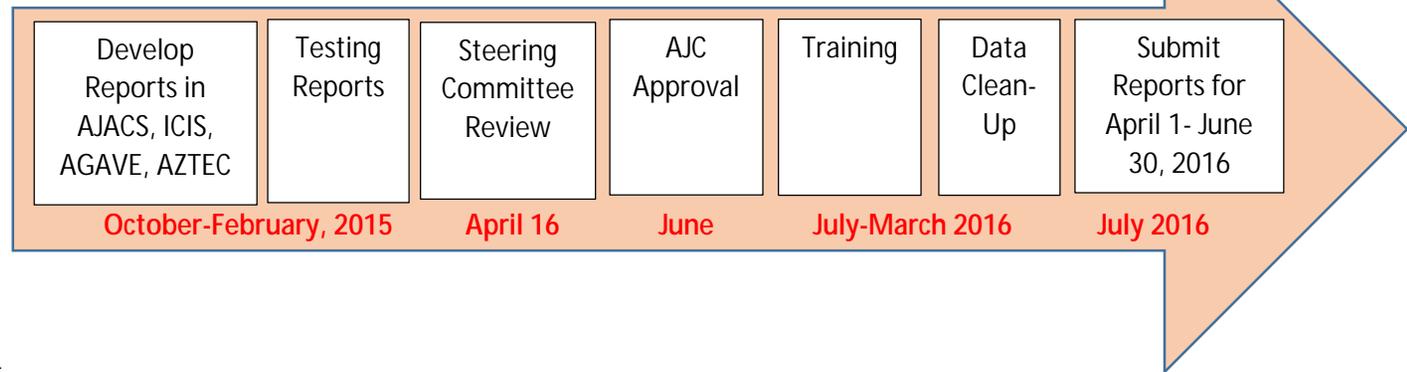
Phase 2

- Phase 2 Case Types:**
- Juvenile Adjudication Hearings
 - Dissolution
 - Traffic



Phase 3

- Phase 3 Case Types:**
- Probate Estate Administration
 - Probate Mental Health Cases
 - Probate Guardianship/Conservatorship
 - Misdemeanor
 - Justice Civil



July 2015 through December 2016: Phases 4 and 5

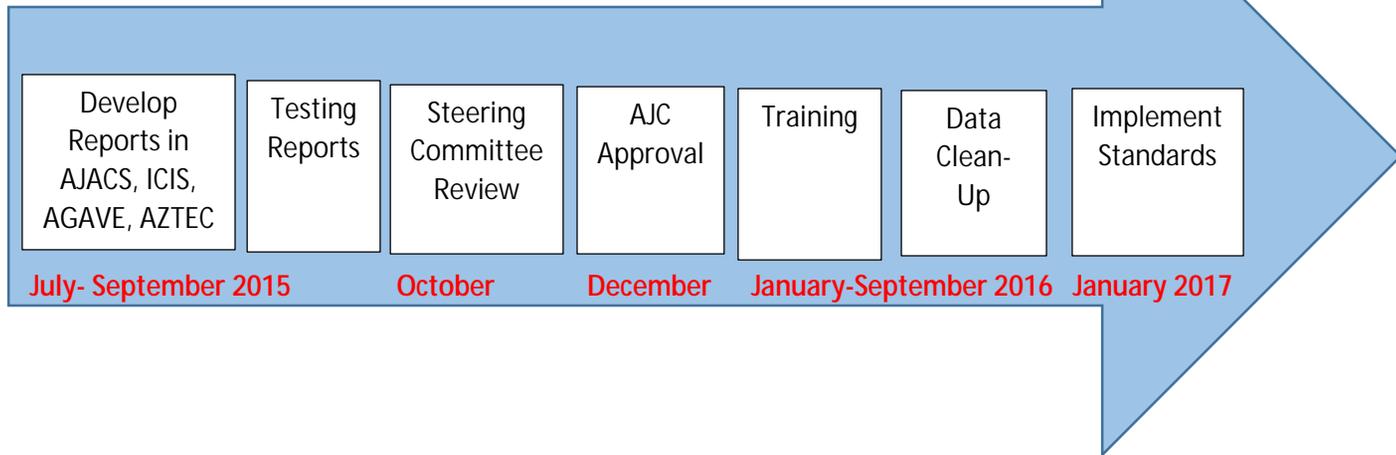
Case Types: Small Claims, Civil Local ordinances, Evictions, Criminal Post-Conviction Relief, Family Law Temporary Orders, Family Law Post-Judgment Motions, Protection Orders, Ex Parte, Contested, Pre-Issuance.

Time Standards Timeline

Phase 4 Case Types:

- Small Claims
- Civil Local Ordinances
- Evictions
- Criminal Post-Conviction Relief
- Family Law Temporary Orders

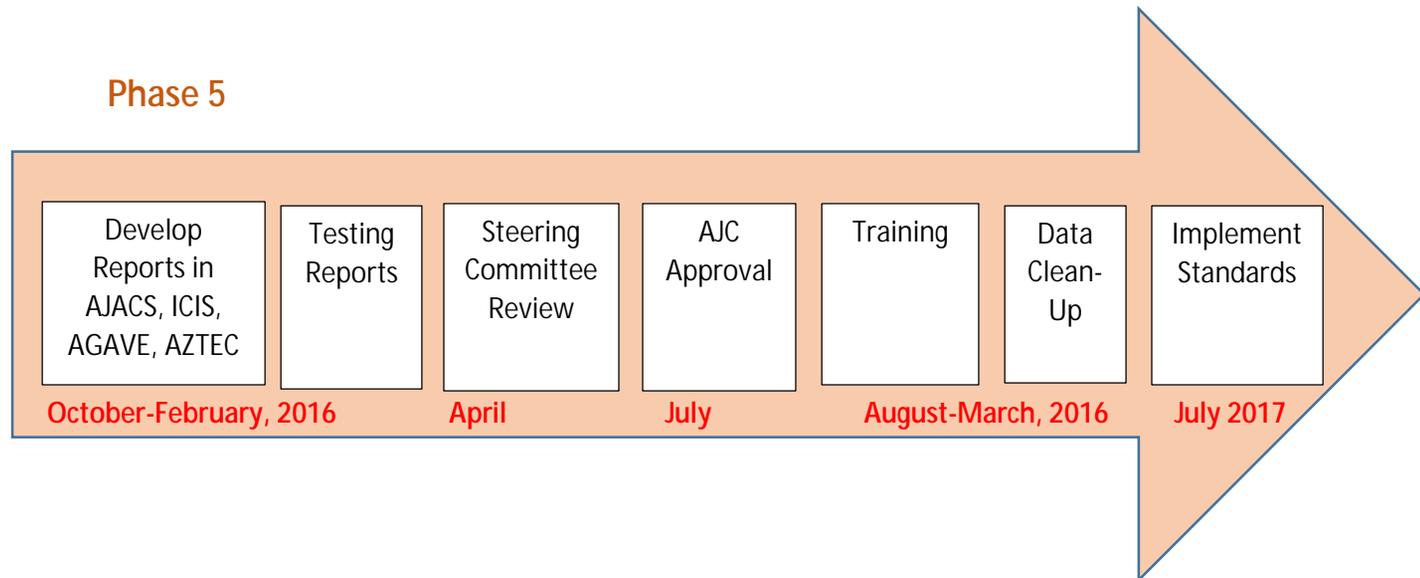
Phase 4



Phase 5

Phase 5 Case Types:

- Family Law Post-Judgment Motions
- Protection Orders (All Courts)
 - Ex parte
 - Contested
 - Pre-issuance



**ARIZONA JUDICIAL COUNCIL
LEGISLATIVE UPDATE
JUNE 2015**

AJC Bills

Chapter 28/HB2013: COURTS; DAYS; TRANSACTION OF BUSINESS (Rep. Coleman)

Permits a municipal court to transact business on the second Monday of October (Columbus Day) upon approval of the presiding judge if the city or town is open for the transaction of business on the second Monday of October.

Section enacted: A.R.S. §22-409

Chapter 73/HB2294: COURTS; APPROVED SCREENING, TREATMENT FACILITIES (Rep. Farnsworth)

Authorizes the court to order a defendant convicted of DUI or Boating OUI into a program for alcohol or drug screening, education and treatment that is offered by the US Department of Veterans Affairs in addition to those approved by the Department of Health Services or a probation department. Authorizes the court to order a defendant convicted of misdemeanor domestic violence into a program for DV treatment that is provided by the US Department of Veterans Affairs.

Allows a person applying for reinstatement of a driver license as a result of an Administrative Per Se suspension for DUI to complete alcohol or drug screening at a facility approved by DHS, a probation department or the US Department of Veterans Affairs.

Sections amended: A.R.S. §5-395.01, 13-3601.01, 28-1387 and 28-1445

Chapter 95/HB2089: AGGRAVATED ASSAULT; JUDICIAL OFFICERS (Rep. Borrelli)

Classifies an assault on a judicial officer as an Aggravated Assault if committed while engaged in the official's duties or occurs as a result of those duties. Defines "judicial officer" as a supreme court justice, judge, justice of the peace, commissioner, and hearing officer.

Adds the "scope of employment" limitations to occupations listed in statute where the provision is currently not included.

Section amended: A.R.S. §13-1204

Chapter 276/HB2088: MAGISTRATES; MUNICIPAL COURTS (Rep. Borrelli)

Replaces “police courts” with “municipal courts” and “police magistrates” with “judges” throughout statute. Removes “dogs” from the definition of personal property.

Reallocates the \$3.6M general fund cut in the FY2016 judiciary budget to 19 line items within the Supreme Court and Superior Court. The recently passed budget allocated the entire cut to the Supreme Court automation line item.

Sections amended: A.R.S. §1-215, 11-952, 12-1578.01, 12-1598.06, 22-375, 36-2021 and 42-1122

2015 Laws amended: Chapter 8, Section 59; relating to courts

Resolutions

HCR2002: JUDICIAL ELECTIONS; SIXTY PERCENT (Rep. Lovas)

Refers to the 2016 ballot a proposed amendment to the Arizona Constitution requiring a “yes” vote from at least 60% of the voters for justices and judges to be retained in office.

Article affected: Article VI, Section 39 and 39

HCR2006: STATE OFFICERS; JUDGES; LEGISLATIVE REMOVAL (Rep. Petersen)

Refers to the 2016 ballot a proposed amendment to the Arizona Constitution permitting the state legislature to remove any state officer, judge of the court of appeals or the superior court who is not elected, or justice of the Arizona Supreme Court at any time by a 2/3 vote.

Article affected: Article VIII, Part 2

SCR1002: SUPREME COURT; PROCEDURAL RULES; AMENDMENT (Sen. Kavanagh)

Refers to the 2016 ballot a proposed amendment to the Arizona Constitution subjecting Supreme Court procedural rules to amendment by the legislature through joint resolution or by the people through initiative or referendum.

Article affected: Article VI, Section 5

Court Impact Bills

HB2076: SUPREME COURT JUSTICES; NUMBER (Rep. Petersen)

Increases the number of Supreme Court justices from five to seven.

Title affected: 12

HB2629: SUPREME COURT; ATTORNEY LICENSING (Rep. Kern)

Requires the Supreme Court to license attorneys and adopt rules that include: minimum qualifications for licensure, testing requirements, background investigation before obtaining a license, disciplining attorneys and disbaring attorneys.

An attorney is not be required to be a member of any organization (State Bar) in order to become or remain an attorney.

Title affected: 12

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
June 15, 2015	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	ACJA § 6-106 Personnel Practices

FROM:

Kathy Waters, Director, Adult Probation Services Division, AOC

DISCUSSION:

The following revisions are proposed:

Subsection J Continuing Employment Requirements – changes MVD Records Checks to ACJA § 6-111 Fleet Requirements

Subsection L Drug Testing and Appendix A Model Policy for Drug Testing – revises the drugs for which an officer will tested, in order to remain current and consistent with drug use trends.

RECOMMENDED COUNCIL ACTION:

Approve as written

**ARIZONA CODE OF JUDICIAL ADMINISTRATION
Proposal Cover Sheet**

Section 6-106: Personnel Practices

1. Effect of the proposal:

Subsection J Continuing Employment Requirements – changes MVD Records Checks to ACJA § 6-111 Fleet Requirements

Subsection L Drug Testing and Appendix A Model Policy for Drug Testing – revises the drugs for which an officer will tested, in order to remain current and consistent with drug use trends.

2. Significant new or changed provisions: Conforms MVD records checks to ACJA 6-111 and ADOA Fleet Rule and changes drugs for which an employee may be tested.

3. Committee actions and comments:

April 10, 2015	Committee on Probation	Passed Unanimously
May 1, 2015	Committee on Superior Court	Passed Unanimously
May 14, 2015	Committee on Juvenile Court	Passed Unanimously

4. Controversial issues: None

5. Recommendation:

Approve as written

Comments and Responses to ACJA Section 6-106: Personnel Practices

PARAGRAPH	COMMENT	RESPONSE
	No Comments Received	

ARIZONA CODE OF JUDICIAL ADMINISTRATION

Part 6: Probation

Chapter 1: General Administration

Section 6-106: Personnel Practices

A. through I. [No changes]

J. Continuing Employment Requirements.

1. Each department shall, at a minimum:

a. through e. **[No changes]**

f. Conduct criminal history and MVD records checks of all probation employees every two years, at minimum. For department employees that have need to operate a state, county or personal vehicle in the execution of their duties, conduct annual MVD reviews pursuant to ACJA 6-111.

g. **[No changes]**

2. through 3. **[No changes]**

K. [No changes]

L. Drug Testing. The AOC, in conjunction with the Committee on Probation (COP) shall determine methodologies for drug testing. The department shall adopt and integrate policies and procedures for pre-employment, random sampling and reasonable suspicion drug screening for illegal substances which conforms to the model policy established by the AOC. This model policy is attached and incorporated as Appendix A, “Model Policy for Drug Testing”.

1. **[No changes]**

2. An AOC approved vendor shall conduct employee drug tests for the illegal use of the following drugs, or classes of drugs:

a. Cannabis;

b. Cocaine;

c. Opiates;

d. Amphetamines/Methamphetamine;

e. ~~Phenylelidine (PCP)~~ Ecstasy (MDMA);

f. Alcohol (only for pre-employment and reasonable suspicion testing)-;

g. Oxycodone;

h. Heroin.

3. [No changes]

M. [No changes]

**Section 6-106: Personnel Practices
APPENDIX A**

MODEL POLICY FOR DRUG TESTING

I. through VII. [No changes]

VIII. Testing Procedures.

A. Tests shall be conducted by an approved provider for the illegal use of the following drugs, or classes of drugs:

1. Cannabis;
2. Cocaine;
3. Opiates;
4. Amphetamines/Methamphetamine;
5. ~~Phencyclidine (PCP)~~ Ecstasy (MDMA);
6. Alcohol (only for pre-employment and reasonable suspicion testing);₂
7. Oxycodone;
8. Heroin.

B. The employee shall be notified prior to the testing for any additional drugs or classes of drugs.

C. Urine samples shall be rendered for testing within three hours of arrival at the laboratory.

IX. through XI. [No changes]

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:

June 15, 2015

Type of Action Requested:

Formal Action/Request
 Information Only
 Other

Subject:

Update on the "Mission and Governance" Task Force

FROM:

Mark Meltzer, AOC Court Services Division
Task Force Staff

DISCUSSION:

By entry of an administrative order on July 29, 2014, the Chief Justice established the Task Force on the Review of the Role and Governance Structure of the State Bar of Arizona.

The Task Force met seven times thereafter (and in addition, held a series of workgroup meetings). After considerable study and discussion, the Task Force prepared a draft report to the Arizona Supreme Court. The Task Force would like comments on the draft report prior to submitting it to the Court on September 1, 2015.

This presentation will update the Council on the work of this Task Force, summarize Task Force recommendations, and request comments.

RECOMMENDED COUNCIL ACTION:

Formal action is not requested.

Report of the Task Force
on the
Review of the Role and Governance Structure
of the State Bar of Arizona

September 1, 2015



ADVANCING JUSTICE TOGETHER | 2014-2019

Members of the “Mission and Governance” Task Force

Chair:

Hon. Rebecca White Berch, Arizona Supreme Court

Members:

Paul Avelar, Institute for Justice, Arizona Chapter

Betsey Bayless, Maricopa Integrated Health Systems

Bennie Click, Chief of Police, City of Dallas (ret.)

Lattie Coor, Ph.D., Center for the Future of Arizona

Amelia Craig Cramer, Pima County Attorney’s Office

Whitney Cunningham, Aspey Watkins & Diesel, PLLC

Christine Hall, Ph.D., HAPPYJOBS

Chris Herstam, Lewis Roca Rothgerber

Joseph Kanefield, Ballard Spahr, LLP

Edward Novak, Polsinelli PC

Gerald Richard, Gerald Richard Consulting, LLC

Jose de Jesus Rivera, Haralson Miller Pitt Feldman & McAnally PLC

Martin Shultz, Brownstein Hyatt Farber Schreck

Hon. Sarah Simmons, Superior Court in Pima County

Grant Woods, Grant Woods Law

State Bar of Arizona Staff Consultant:

John Phelps, Executive Director

AOC Staff:

Theresa Barrett, Mark Meltzer, Sabrina Nash, Nickolas Olm

Table of Contents

Page

Members of the Task Force

Table of Contents

Part I: Executive Summary and Summary of Task Force Recommendations

Part II: The State Bar of Arizona

Part III: Mission of the State Bar of Arizona

- A. Generally
- B. An integrated bar

Part IV: Governance of the State Bar of Arizona

- A. Description of the current board
- B. Election of board members currently
- C. Appointment of board members currently
- D. *North Carolina State Board of Dental Examiners v. FTC.*
- E. Advantages and disadvantages of the board's current composition
- F. Workgroup suggestions
- G. Recommended Task Force options for the board's composition
- H. Voting by active, out-of-state members
- I. Ex officio board members, advisors and liaisons
- J. Terms of board members
- K. Qualifications of board members
- L. Removal of board members
- M. Officers of the board
- N. Fiduciary responsibilities of the board

Part V: Implementation of Task Force Recommendations

Part VI: Conclusion

Appendices

- A. Administrative Order No. 2014-79
- B. Recent changes to Supreme Court Rule 32
- C. Article by Daniel Suhr, "Right-Sizing Bar Association Governance" (2012)
- D. Demographic and "per governor" tables
- E. Summary table of Task Force revisions to Supreme Court Rule 32
- F. Proposed revisions to Supreme Court Rule 32: clean version
- G. Implementation tables
- H. Proposed revisions to Supreme Court Rule 32: comparison version

Part I: Executive Summary

Arizona Supreme Court Administrative Order No. 2014-79 (see Appendix A) established the Task Force on the Review of the Role and Governance Structure of the State Bar of Arizona (the “Mission and Governance” Task Force, or “Task Force”). The Order directed the Task Force to review the Rules of the Supreme Court on the mission and governance structure of the State Bar of Arizona (“SBA”) and to make recommendations concerning the SBA’s mission and governance.

The members of this Task Force have distinguished credentials and a wealth of governance experience. Its members include five former presidents of the SBA. Other Task Force members have served on the SBA’s governing board. Task Force members also include a former Arizona Secretary of State and a former Arizona Attorney General, former Arizona gubernatorial chiefs of staff, a past-president of Arizona State University, and leaders of public and private organizations.

The Supreme Court supervises the SBA, and in furtherance of that responsibility, recognized the need for a periodic review of the SBA’s mission and governance. Times change. The SBA’s original structure and objectives may have been adequate when the SBA was much smaller, but they are no longer optimal today. The Task Force understands that human nature resists change, but change is an essential element of keeping pace with the progress of time. The Task Force therefore recommends a number of meaningful reforms to better the State Bar of Arizona as an organization, and to benefit those who the SBA serves.

The first Task Force recommendation is to clarify the SBA’s mission. The Report recommends that Supreme Court Rule 32 make clear that the SBA’s primary mission is protecting and serving the public. This mission encompasses improving the legal profession and serving its members, and advancing the administration of justice and the rule of law. The Task Force additionally recommends that the SBA continue to exist as an “integrated” bar, which requires that all practitioners be members. The Task Force further recommends increased emphasis on the fiduciary responsibilities of board members.

Regarding governance, the Task Force recommends reducing the size of the SBA’s governing board to promote its efficiency and accountability. The Task Force Report presents three governance alternatives for the Court’s consideration. The Task Force recommends an accompanying reduction in the number of SBA officers, who are selected by the board.

Most of the recommendations in this report require amendments to Supreme Court Rule 32, which sets forth guidance on the “Organization of the State Bar of

Arizona.” Task Force recommendations would also require amendments to certain SBA by-laws, which are not included with this report.

The recommendations summarized below, and further explained in the following pages of this report, acknowledge that the SBA’s past and current governors, officers, volunteers, and staff perform worthwhile work with integrity and dedication. Task Force members are grateful for all that these people have done, and for the work that they continue to do.

Summary of Task Force Recommendations

1. **Rule 32:** *The Task Force recommends amending Supreme Court Rule 32 to clarify that the primary mission of the State Bar of Arizona is to protect and serve the public, and secondarily, to serve its members. The Task Force also recommends “restyling” and reorganizing sections of Rule 32 for clarity and readability.*
2. **Integrated bar:** *The Task Force recommends that the State Bar of Arizona continue to be an integrated bar – that is, one in which membership is required to practice law in this state, and that provides a panoply of benefits for the public good.*
3. **Composition of the board:** *The Task Force supports the current system under which attorneys elect some members of the governing board and other board members are appointed.*

However, the Task Force recommends reducing the board’s size (currently 31 members) to either 15 or 18 members. To accomplish this reduction, the Task Force recommends eliminating ex-officio board members, discontinuing the board seat dedicated to the president of the Young Lawyers Section, and establishing new (and fewer) electoral districts.

A smaller board can be composed in various ways by using different proportions of elected and appointed members. The Task Force presents three options for composing the governing board. One of the three suggested options features a board in which the majority of members would be elected by active Arizona attorneys. The other two options feature a majority of appointed board members.

Four “public” members are currently appointed by the SBA board; the Task Force recommends that they instead be appointed by the Supreme Court. The Task Force supports current rule provisions allowing the Supreme Court to appoint three “at-large” board members.

To preserve continuity of the board's leadership and its institutional knowledge, the Task Force recommends that board members serve staggered terms. Implementation of the governance recommendations in this report would achieve equal and predictable election and appointment cycles. These recommendations include an implementation table, shown in Appendix G, for each of the three suggested governance options.

The proposed changes to Supreme Court Rule 32 required by these recommendations, as well as changes to Rule 32 resulting from other recommendations proposed below, are shown in Appendix F.

- 4. *Qualifications, term limits, and removal of board members:*** *The Task Force recommends adding a requirement that attorneys who serve of the board, whether as an elected or appointed member, have a clean disciplinary record during a five-year period preceding their board service.*

Elected board members should serve no more than three consecutive three-year terms, and should then sit-out a full term before seeking reelection to additional terms. The Task Force recommends that Rule 32 include a process for removing board members for good cause.

- 5. *Officers:*** *The leadership track of the board should consist of three officers -- a president, a president-elect, and a secretary-treasurer -- rather than the current five officers. Appointed as well as elected trustees would be eligible to hold office. The Task Force recommends that an officer serve no more than a single term of one-year during any nine-year period of board service.*
- 6. *Fiduciary duties:*** *To emphasize the fiduciary role of the board, the Task Force recommends changing the name of the SBA's "Board of Governors" to the "Board of Trustees." The Task Force also recommends that Rule 32 include an oath for board members. Board members should be required to take this oath upon commencement of board service. As a condition of serving on the board, board members should participate in an orientation that specifically addresses their fiduciary duties.*

Appendix E: Summary Table of Task Force Revisions to Supreme Court Rule 32

Unless otherwise noted, the following recommendations are for the Arizona Supreme Court.

Rec # Report Pg.	Recommendation	Rule 32	Provision
Part III: Mission			
#1 Pg. 9	The Arizona Supreme Court should amend Rule 32(a) to clarify that the SBA's primary mission is to protect and serve the public.	32(a)(3)	"The primary mission of the State Bar of Arizona is to protect and serve the public. This mission includes responsibilities to improve the legal profession, and to advance the rule of law and the administration of justice."
#2 Pg. 9	Restyle and organize Rule 32(a).	32(a)	All
#3 Pg. 10	The SBA should continue as an integrated bar association.	32(a)(2)	"Every person licensed in this state to engage in the practice of law must be a member of the State Bar of Arizona in accordance with the rules of this Court."
Part IV: Governance			
#4 Pgs. 12, 15	The board should have a greater proportion of appointed board members.	32(e)	See recommendations #7, 8, and 9 below.
#5 Pg. 15	The ASC should appoint public members who are nominated by the board.	32(e)(3)(A)	"Public trustees are nominated by the board and appointed by the Supreme Court for terms of three years and begin board service at a time designated by the Court."
#6 Pg. 16	Adopt a 3-year election and appointment cycle.	32(e)(1)	"The State Bar shall implement this Rule in a manner that provides for the election and appointment of approximately one-third of the board every year."

Rec # Report Pg.	Recommendation	Rule 32	Provision
#7 Pg. 16	Option X: 15 member board with 6 elected members from 4 districts and 9 appointed members (3 public + 6 at-large).	32(e)	"The board is composed of <u>six elected trustees and nine appointed trustees</u> , as provided by this Rule." [Etc.]
#8 Pg. 16	Option Y: 18 member board with 6 elected members from 4 districts and 12 appointed members (6 public + 6 at-large).	32(e)	"The board is composed of <u>six elected trustees and twelve appointed trustees</u> , as provided by this Rule." [Etc.]
#9 Pg. 17	Option Z: 18 member board with 11 elected members from five districts and 7 appointed members (4 public + 3 at-large).	32(e)	"The board is composed of <u>eleven elected trustees and seven appointed trustees</u> , as provided by this Rule." [Etc.]
#10 Pg. 19	Allow active out-of-state members of the SBA to vote in SBA board elections.	32(e)(2)(D)	"Active out-of-state members may vote in the district of their most recent Arizona residence or place of business, or if none, in the Maricopa County District. "
#11 Pg. 18	The immediate past president should serve a 1-year term as an advisor to the board.	32(f)(4)	"The immediate past president of the board will serve a one-year term as an advisor to the board."
#12 Pg. 19	Discontinue the board seat of the Young Lawyers Section president.	Not included	Not included in Rule 32.
#13 Pg. 20	Discontinue the ex officio board membership of the law school deans.	Not included	Not included in Rule 32.
#14 Pg. 20	Continue service of an associate justice as a liaison to the board.	Unwritten policy	Not included in Rule 32.
#15 Pg. 20	All elected board members have a limit of 3 terms of 3 years each, and may not be a candidate for a fourth term until 3 years have passed after the ninth year.	32(e)(2)(F)	"An elected trustee may serve three consecutive terms, but may not be a candidate for a fourth term until three years have passed after the person's last year of service."

Rec # Report Pg.	Recommendation	Rule 32	Provision
#16 Pg. 21	An attorney member of the board must have a clean disciplinary history for 5 years preceding board service.	32(e)(2)(B)	"Every elected trustee must have been an active State Bar member, and have had no record of formal discipline, for five years prior to election to the board."
#17 Pg. 21	An attorney member of the board who is the subject of a formal disciplinary complaint must be recused from serving on the board pending disposition of the complaint.	Add to SBA by-laws	Not included in Rule 32.
#18 Pg. 21	A board member may be removed for good cause by a two-thirds vote of the board.	32(e)(5)	"A trustee of the board may be removed for good cause by a vote of two-thirds or more of the trustees cast in favor of removal. Good cause for removal exists if a trustee undermines board meetings or compromises the integrity of the board. Expression of unpopular views does not constitute good cause. Good cause also includes, but is not limited to, conviction of a felony or a crime involving moral turpitude, imposition of a formal discipline sanction, repeatedly ignoring the duties of a trustee, or disorderly activity during a board meeting. A board trustee so removed may file within thirty days of the board's action a petition pursuant to Rule 23 of the Arizona Rules of Civil Appellate Procedure requesting that the Supreme Court review the board's determination of good cause. The Supreme Court will expedite consideration of the petition."

Rec # Report Pg.	Recommendation	Rule 32	Provision
#19 Pg. 22	The board should elect 3 officers: a president, president-elect, and secretary-treasurer. An appointed member can serve as an officer.	32(f)(1)	"The board will elect its officers. The officers are a president, a president-elect, and a secretary-treasurer. An elected or appointed trustee may serve as an officer."
#20 Pg. 22	An officer is elected to a 1-year term in that office.	32(f)(2)(C)	"Each officer will serve a one-year term."
#21 Pg. 22	An officer may not be elected to a particular office for a second term within any 12 year period.	32(f)(2)(D)	"An officer may not be elected to a second term for any office that the trustee has held during the preceding nine, or fewer, consecutive years of service on the board."
#22 Pgs. 21, 22	A board member's term of board service should be automatically extended to complete the officer track.	32(f)(2)(E)	"The term of an trustee chosen as president or president-elect is automatically extended until completion of a term as president, if that officer's term as a trustee expires in the interim without reelection or reappointment to the board, or if the term is limited under Rule 32(e)(2)(F). In this event, there shall not be an election or appointment of a new trustee for the seat held by the president or president-elect until the person has completed his or her term as president, and then the election or appointment of a successor trustee shall be for a partial term that otherwise remains in the regular three-year cycle under Rule 32(e)(1)."

Rec # Report Pg.	Recommendation	Rule 32	Provision
#23 Pg. 22	The immediate past president should lead a process to recruit and vet the best candidates for officer positions.	32(f)(4)	"The board advisor, with the assistance of two or more trustees of the advisor's choosing, will lead a group to recruit, recommend, and nominate candidates for the offices of president-elect and secretary-treasurer at the next annual convention."
#24 Pg. 23	Change the name from board of governors to board of trustees.	32(b)(1) and 32(e)	"Board' means Board of Trustees of the State Bar of Arizona." "The governing board of the State Bar of Arizona is a board of trustees."
#25 Pg. 23	Provide an oath for all board members upon assuming board duties.	32(e)(4)	Every elected and appointed trustee must take an oath upon commencing their service as trustee. The oath must be include a pledge to faithfully and impartially discharge the duties of a trustee of the Board of Trustees of the State Bar of Arizona to the best of the member's ability, and to uphold the member's fiduciary responsibilities as a trustee.
#26 Pg. 23	Include fiduciary responsibilities in the orientation of board members.	Not included	--

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
June 15, 2015	<input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Arizona Foundation for Legal Services & Education Projects

FROM:

Dr. Kevin S. Ruegg, Executive Director/CEO
Joannie D. Collins, Chief Administrative Officer
Arizona Foundation for Legal Services & Education

DISCUSSION:

The Arizona Foundation for Legal Services & Education will share pertinent information regarding the youth focused education programs including our Law Related Education Academy which provides professional development training for police, probation and educators as well as our newly redesigned LawForKids.org.

RECOMMENDED COUNCIL ACTION:

N/A

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
June 15, 2015	<input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	International Law and Child Custody

FROM:

Honorable David Mackey, Chair, Committee on Superior Court

DISCUSSION:

The Committee on Superior Court (COSC) discussed the issue of international law and child custody at its February and May 2015 meetings. The issue was first raised at the December 2014 AJC meeting by a public commenter. He told AJC members that he has joint legal-decision making with his ex-wife, but she was permitted to take their child, a U.S. citizen, to Indonesia. Indonesia is not a signatory to the Hague Convention, and the Arizona court order is unenforceable there. He asked for a clear-cut policy regarding international custody involving U.S. citizens who are in non-Hague Convention countries.

COSC discussed the issue in February, and Judge Mackey reported on the COSC's discussion at the March AJC meeting. COSC members had focused on A.R.S. § 25-403, which specifies the factors that judges must consider when making legal decision-making and parenting time decisions in a child's best interests. The factors do not specifically mention international custody law, and COSC concluded that legislative action would be needed to modify the factors. COSC also supported the idea of judicial education. Two superior court judges recently participated in a national judicial training institute titled "The Hague Child Abduction Convention – International Perspective."

At the March AJC meeting, COSC was asked to explore the issue further to determine whether a rule change would be appropriate to gather more information from the Uniform Laws Commission and the National Center for State Courts (NCSC). The possibility of a future family law conference also was suggested.

A query was sent through an NCSC listserv requesting information about how other states handle international law issues, but it yielded no useful information. COSC also considered the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which was developed by the National Uniform Laws Commission. Arizona adopted the UCCJEA in 2000. The UCCJEA directs that for purposes of custody analysis, a foreign country is to be treated as though it were a state.

At the May COSC meeting, David Withey, AOC Chief Legal Counsel, reported on his review of applicable Arizona statutes and court rules. He said he had concluded that the factors present in A.R.S. § 25-408, which addresses relocation, are applicable regardless of whether relocation would be to somewhere within the United States or to a foreign country.

He noted that in determining a child's best interest, a judge must consider all relevant factors—not just factors listed in statute. The judge would also need to consider, among the factors listed, the likelihood that the parent with whom the child resides after relocation will comply with parenting time orders and whether the relocation allows a realistic opportunity for parenting time with each parent.

Mr. Withey said:

“Quite arguably the enforceability of the court’s parenting time orders previously held to be the child’s best interest is relevant to the determination of whether a proposed relocation is in the child’s best interest. Also, arguably factor 4 provides a specific basis for consideration of a country’s participation in the Hague Convention. The opportunity for the relocating parent to simply ignore the court’s parenting time orders reasonably affects whether a parent will comply with those orders. Further, under factor 5 the relocation may not provide a “realistic opportunity of parenting time” if the parent not relocated cannot enforce parenting time orders.

This reading of Arizona statutes is consistent with one factor in the non-exhaustive list factors (no one of which is alone dispositive) set forth by the Supreme Court of Rhode Island in [*Dupre v. Dupre*, 857 A.2d 242, 259 \(R.I.2004\)](#) about which the parties disputing relocation of a child should present evidence which states:

(7) In cases of international relocation, the question of whether the country to which the child is to be relocated is a signatory to the Hague Convention on the Civil Aspects of International Child Abduction will be an important consideration.”

Based on Mr. Withey’s analysis, COSC members concluded that a family law conference would be helpful, specifically a session that deals with international law and child custody and the analysis that would follow under Arizona law. COSC would encourage the Education Services Division to consider organizing a family law conference in the near future.

RECOMMENDED COUNCIL ACTION:

Information only

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
June 15, 2015	<input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Parenting Coordinator Rule Petition Review Committee Update

FROM:

Hon. Janet Barton, Chair
Parenting Coordinator Rule Petition Review Committee

DISCUSSION:

In 2014, the Chief Justice established an ad hoc workgroup to review Supreme Court Rule 74 related to parent coordinator fees, qualifications, and scope of authority, and to propose rule revisions, as needed. The workgroup filed a Rule 28 petition (Supreme Court R-15-0006) to restyle, simplify, and clarify Rule 74, Arizona Rules of Family Law Procedure, with the support of the Arizona Judicial Council. The **Parenting Coordinator Rule Petition Review Committee** (PCRPRC) was established by Administrative Order No. 2015-13 to:

1. Review comments filed on the workgroup's pending Rule 28 petition;
2. File an amended petition making changes the Committee decides should be made by May 20, 2015; and
3. File a reply to the second round of comments by July 13, 2015, if necessary.

The Committee shall submit its recommended forms to the Supreme Court by December 1, 2015.

Judge Barton will provide an update on the first comment period, that ended April 27th, and the resulting Amended Petition.

RECOMMENDED COUNCIL ACTION:

This topic is on the agenda for informational purposes only, and no formal action is requested; however, Judge Barton would appreciate comments and recommendations from the Council.

The Honorable Janet Barton, Chair
Parenting Coordinator Rule Petition Review Committee
1501 W. Washington St., Ste. 410
Phoenix, AZ 85007
(602) 452-3252
SPickard@courts.az.gov

IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:

PETITION TO AMEND RULE 74)	
OF THE RULES OF FAMILY LAW)	Supreme Court No. R-15-0006
PROCEDURE)	
)	Amended Petition
_____)	

Petitioner files the Amended Petition pursuant to this Court’s prior order authorizing a modified comment period.

Upon consideration of the comments received, agreement on the part of the Parenting Coordinator Rule Petition Review Committee, and in the interest of brevity and clarity, Petitioner requests that Rule 74 be repealed in its entirety and replaced with the proposed rule in Appendix 1.

Introduction.

The Rules Forum reflects the filing of 22 comments during the first comment period, which ended April 27, 2015.

As directed by Administrative Order 2015-13, the committee met to discuss the submitted comments and hear from stakeholders and members of the public.

Much of the discussion during the May 11, 2015, meeting centered on the various comments that recommended limiting the circumstances under which a court could appoint a parenting coordinator. The clear consensus from the comments received by lawyers who practice in family court, lawyers who serve as parenting coordinators, judges who sit or have sat on the family bench, and family court litigants was that the court should limit appointments to circumstances where the parties can afford a parenting coordinator and either stipulate to the use of a parenting coordinator or the court finds that the parents' conflict has demonstrably harmed the child. A comment that discusses this approach at length is the one jointly submitted by the Honorable Peter B. Swann, Court of Appeals, Division 1; Honorable Sally Duncan, Superior Court in Maricopa County; and William G. Klain, Lang & Klain, P.C. Support for this approach resonated strongly with the committee.

With the committee's consensus on appointment of a parenting coordinator "by stipulation only,"¹ the other submitted comments, and the continued focus on

¹ As noted above, at least one of the comments recommended that court appointment was appropriate if the parents' conflict had demonstrably harmed the child. The committee believed that if such harm had occurred or was occurring, it would be better addressed by the filing of a petition to change legal decision-making than the appointment of a parenting coordinator.

direction given by Justice Rebecca White Berch to the Ad Hoc Parenting Coordinator Workgroup, Rule 74 has been completely revised.

The revised proposal is premised on the policy that a parenting coordinator will be appointed only when the parents agree to it, agree to be bound by the parenting coordinator's decision (provided that decision does not exceed the scope of the parenting coordinator's authority) and are aware of the costs and the scope and powers of the parenting coordinator's appointment. The rule also establishes that the parenting coordinator has a nontraditional dual role—first as a mediator to assist the parents in reaching agreement and second as an arbitrator if agreement is not achieved.

The committee met on May 18, 2015, to review the most recent draft and finalize it. Members of the public were present and were permitted to comment on it. They also were advised that another comment period will open on the Rules Forum, during which they can address comments to the Supreme Court.

Conclusion. Petitioner therefore requests that the Court open this newly amended petition for comments.

RESPECTFULLY SUBMITTED this 20th day of May, 2015.

By /s/ Janet Barton
The Honorable Janet Barton, Chair
Parenting Coordinator Rule Petition Review
Committee

APPENDIX 1

1 **A. Purpose of Parenting Coordination.** Parenting coordination is a child-focused
2 alternative dispute resolution process. The overall objective of parenting
3 coordination is to assist parents with implementation, compliance, and timely
4 conflict resolution regarding their parenting plan, in order to protect and sustain safe,
5 healthy, and meaningful parent-child relationships.

6 **B. Appointment of a Parenting Coordinator.** The court may appoint a third party
7 as a parenting coordinator in proceedings under Title 25, A.R.S., at any time after
8 entry of a legal decision-making or parenting time order only if each parent has
9 agreed to the appointment by written stipulation or orally on the record in open court.

10 The stipulation must state:

- 11 1. that each parent understands how the parenting coordinator bills for services
12 and the parents can afford the parenting coordinator's services;
- 13 2. the manner in which the parenting coordinator's fees will be allocated
14 between the parents;
- 15 3. the method by which the parenting coordinator will be selected or the name
16 of the agreed-upon parenting coordinator;
- 17 4. that the parents agree to the release of documents the parenting coordinator
18 deems necessary to the performance of the parenting coordinator's services;
- 19 5. the term of the appointment; and

APPENDIX 1

1 6. that the parents agree to be bound by decisions made by the parenting
2 coordinator that fall within the scope of the parenting coordinator's authority and
3 relate to issues submitted to the parenting coordinator for decision.

4 Nothing in this rule is intended to prevent parents from requesting, or a court from
5 appointing, parent coordination assistance through the court's conciliation court
6 services, if available. Parents obtaining parenting coordinator services through the
7 court's conciliation court services must agree to parts 4 through 6 above.

8 **C. Selection of a Parenting Coordinator.** A parenting coordinator appointed by
9 the court must qualify as a parenting coordinator under paragraph D. A person
10 appointed as a parenting coordinator cannot serve in any other function or role in the
11 case. When each parent and the parenting coordinator agree, a person who is serving
12 or has already served in a legal, treatment, evaluative, or therapeutic role in the case
13 can be appointed as the parenting coordinator.

14 **D. Persons Who Can Serve as a Parenting Coordinator.** The following persons
15 can serve as a parenting coordinator:

- 16 1. an attorney who is licensed to practice law in Arizona;
- 17 2. a psychiatrist who is licensed to practice medicine or osteopathy in Arizona;
- 18 3. a psychologist who is licensed to practice psychology in Arizona;
- 19 4. a person who is licensed to practice independently by the Arizona Board of
20 Behavioral Health Examiners;

APPENDIX 1

1 5. professional staff of a court's conciliation services department; or

2 6. a person with education, experience, and expertise who is deemed qualified
3 by the court's presiding judge or a designee.

4 The court can set additional requirements for service as a parenting coordinator.

5 **E. Term of Service.** The term of the parenting coordinator will be designated in the
6 order of appointment.

7 **1. Initial Term.** A parenting coordinator's initial term cannot exceed one year
8 unless each parent and the parenting coordinator agree to a longer term.

9 **2. Reappointment.** The parenting coordinator cannot be reappointed at the end
10 of the term unless each parent and the parenting coordinator agree to the
11 reappointment in writing or orally on the record in open court.

12 **3. Replacement of the Parenting Coordinator.** Both parents can agree to
13 replace the existing parenting coordinator by stipulating to the replacement in
14 writing or orally on the record in open court. The stipulation that replaces the
15 parenting coordinator is subject to the statements required in paragraph B, above.

16 **4. Resignation.** The parenting coordinator can resign upon notice to each parent
17 and order of the court.

18 **5. Discharge.** Both parents can jointly agree to discharge the parenting
19 coordinator during the term of appointment. If only one parent wishes to
20 discharge the parenting coordinator, that parent must file a motion with the court

APPENDIX 1

1 that establish good cause for the requested relief. Simply disagreeing with one
2 or more of the parenting coordinator's decisions does not constitute good cause
3 for discharging the parenting coordinator.

4 **F. Fees.**

5 **1. Disclosure of Fees.** The parenting coordinator must fully disclose all fees and
6 charges to each parent before services requiring payment can begin.

7 **2. Adjustment to Allocation of Fees by Parents.** Both parents may agree to a
8 change in the allocation of fees by amending the agreement in writing with the
9 parenting coordinator. Without the parents' agreement, a parenting coordinator
10 cannot reallocate fees based on a change in a parent's financial circumstances.

11 **3. Sanctions and Reallocation of Fees.** In instances where one parent is using
12 parenting coordinator services excessively or to harass the other parent, a
13 parenting coordinator can recommend, as a sanction, an adjustment to the
14 allocation of the parenting coordinator's fees. The parenting coordinator must
15 submit a written recommendation to the court and each parent or counsel, if
16 represented, explaining in detail the reason for the recommended fee reallocation.

17 **G. Confidentiality.** Parenting coordination is not a confidential process. Therefore,
18 the communications between the following are not confidential:

- 19 1. between each parent and the parenting coordinator;
- 20 2. between the child and the parenting coordinator;

APPENDIX 1

1 3. between the parenting coordinator and other relevant parties to the parenting
2 coordination process; and

3 4. with the court.

4 Counsel cannot attend parenting coordinator meetings with their client unless each
5 parent and the parenting coordinator agree or if ordered by the court. The parenting
6 coordinator can meet with counsel separately to obtain information relevant to the
7 issue before the parenting coordinator.

8 **H. Scope of Appointment and Authority.** The court order appointing the
9 parenting coordinator must specify the scope of the appointment.

10 1. A parenting coordinator's scope of appointment can include:

11 a. helping the parents identify disputed issues, reduce misunderstandings,
12 clarify priorities, explore possibilities for compromise, develop methods of
13 collaboration in parenting, and comply with legal decision-making authority
14 and parenting time orders;

15 b. making decisions regarding implementation, clarification, and minor
16 adjustments to parenting time orders;

17 c. making decisions on parenting challenges not specified in the parenting
18 plan that the parents are unable to resolve. By way of example only, these
19 challenges can include disagreements about: pick-up and drop-off locations,
20 dates and times; holiday scheduling; discipline; health issues; personal care

APPENDIX 1

1 issues; school and extracurricular activities; choice of schools; and managing
2 problematic behaviors;

3 d. interviewing and requesting documentation from anyone who has relevant
4 information necessary to resolve the matter currently before the parenting
5 coordinator; and

6 e. recommending that the court order the parents or child to participate in
7 ancillary services, to be provided by the court or third parties, including but
8 not limited to physical or psychological examinations or assessments,
9 counseling, and alcohol or drug monitoring and testing.

10 2. A parenting coordinator must attempt to facilitate agreement on disputed
11 issues between the parents in a timely manner. If the parents are unable to reach
12 agreement, the parenting coordinator will decide any disputed issues within the
13 scope of the parenting coordinator's authority in a timely manner.

14 3. A parenting coordinator cannot make a decision that will:

15 a. affect child support, spousal maintenance, or the allocation of property or
16 debt;

17 b. change legal decision-making authority, except as stated in paragraph I;

18 or

19 c. substantially change parenting time, except as stated in paragraph I.
20

APPENDIX 1

1 I. Emergency Authority and Procedure.

2 1. If based upon the parenting coordinator's personal observation, the parenting
3 coordinator determines that a parent's functioning is impaired and the parent is
4 either incapable of fulfilling the court-ordered legal decision-making or parenting
5 functions, or will expose the child to an imminent risk of harm, and it is in the
6 best interest of the child to do so, a parenting coordinator is authorized to make
7 an emergency change in the court's legal decision-making or parenting time
8 orders.

9 2. When making an emergency decision, the parenting coordinator must notify
10 the assigned judge and each parent or counsel, if represented, in writing by the
11 next business day. The parenting coordinator must use a form substantially
12 similar to the Parenting Coordinator's Report in Rule 97 of these rules. The report
13 must include the reason for the emergency decision.

14 3. The court must hold a hearing on the emergency decision within 10 calendar
15 days after receiving the parenting coordinator's emergency decision.

16 4. At the hearing, the court must approve and adopt, modify, or reject the
17 parenting coordinator's emergency decision. The court must also decide what
18 additional hearings, if any, are needed and set those additional hearings.

APPENDIX 1

1 **J. Report.** The parenting coordinator’s decision on an issue must be written in a
2 form substantially similar to the Parenting Coordinator's Report in Rule 97 of these
3 rules. The parenting coordinator must:

- 4 1. mail or transmit the report to the assigned judge—but not the clerk of the
5 court—no later than five business days after receipt of all information necessary
6 to make a decision; and
- 7 2. mail or transmit a copy of the report to each parent or counsel on the same day
8 it is mailed or transmitted to the court.

9 **K. Court Action.** The court, upon receipt of the parenting coordinator’s report, must
10 file the report. If the report contains confidential or private information, it must be
11 filed in a manner that prevents the public from accessing the report, pursuant to Rule
12 13(D) of these rules.

13 Except as otherwise provided in paragraph I, upon receipt of the report, the court can
14 do any of the following:

- 15 1. adopt the decision as an order of the court;
- 16 2. reject the decision and report in whole or in part as outside the scope of the
17 parenting coordinator’s authority and affirm the current court order; or
- 18 3. set a hearing regarding the decision.

19 The court may use the Order Regarding Parenting Coordinator's Report in Rule 97
20 of these rules for purposes of this paragraph.

APPENDIX 1

1 **L. Objection.** Provided that the parenting coordinator acted within the scope of
2 authority pursuant to this rule and the appointment order, the parenting coordinator's
3 decision is binding. If a parent believes that the parenting coordinator's decision
4 exceeds the scope of the parenting coordinator's authority, the parent may object to
5 the parenting coordinator's decision by filing a pleading with the court entitled
6 **Objection.** The objection must be filed within 10 business day of the receipt of the
7 parenting coordinator's report. The objection must explain in detail the reasons why
8 the parent believes the parenting coordinator exceeded the scope of authority and
9 whether a hearing is requested on the parent's objection.

10 **M.Action on Parent's Objection.** If either parent files an objection, any court
11 action will remain in effect pending resolution of the objection.

12 **N. Complaints about Unethical or Unprofessional Conduct by Parenting**
13 **Coordinators.** Complaints about alleged unethical or unprofessional conduct by
14 the parenting coordinator should be submitted to the parenting coordinator's
15 applicable licensing or regulatory board. If the parenting coordinator is not subject
16 to a licensing or regulatory board, the complaint should be brought to the court's
17 attention.

18 **O. Immunity.** The parenting coordinator has immunity in accordance with Arizona
19 law as to all acts undertaken pursuant to and consistent with the appointment order
20 of the court.

APPENDIX 1

- 1 **P. Applicability.** No court is required to employ or use parenting coordinators; but
- 2 in the event the court appoints a parenting coordinator, these rules apply.
- 3 **Effective date.** This rule applies to any appointment or reappointment of a
- 4 parenting coordinator that occurs on or after the effective date of the 2016
- 5 amendment of the rule.