

Committee on Superior Court

Minutes

Friday, February 1, 2019
Conference Room 119A
Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Judge David Mackey (chair), Judge Joseph Welty,

Telephonic: Judge David Cunanan, Judge Richard Gordon, Judge Charles Gurtler, Jr., Judge Charles Harrington, William Klain, Judge Kenneth Lee, Scott Mabery, Judge Samuel Myers, Judge Cathleen Brown Nichols, Ronald Overholt, Megan Spielman, Beck Weber, Judge Joseph Welty, Judge Timothy Wright, Todd Zweig

Absent/Excused: Judge Sally Schneider Duncan, Judge Thomas Fink, Judge Jason Holmberg, Judge Andrew Klein, Judge Roger Nelson, Judge Michael Peterson, Judge Randall Warner,

Administrative Office of the Courts (AOC): Theresa Barrett, Jerry Landau, Dori Littler, Mark Meltzer, Kathy Waters

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The February 1, 2019, meeting of Committee on Superior Court (COSC) was called to order at 10:00 a.m. by Judge David Mackey, chair.

Judge Mackey welcomed Beck Weber, new Public Member, and welcomed back reappointed member Ron Overholt to the committee. He thanked Toni Hellon, outgoing Clerk of the Superior Court in Pima County, for her years of service to COSC. He stated that the search will begin to fill the Clerk of the Court-Urban vacancy.

Approval of Minutes

The draft minutes from the November 2, 2018, COSC meeting were presented for approval.

Motion: Judge Joseph Welty moved to approve the November 2, 2018, minutes as presented. **Seconded by:** Judge Charles Harrington. **Vote:** Unanimous.

Approval of Minutes

The draft minutes from the December 7, 2018, COSC meeting were presented for approval.

Motion: Judge Welty moved to approve the December 7, 2018, minutes as presented. **Seconded by:** Judge Harrington. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

- A. Kathy Waters, director, AOC Adult Probation Services Division, presented several proposed changes to the Arizona Code of Judicial Administration. She explained that the issue of probation officer safety and training was brought to light from a lawsuit by a probation officer who was physically unable to complete defensive tactics training and was reassigned to another position. Ms. Waters introduced Dori Littler, manager, Interstate Compact & Administration, APSD, who gave a brief description of each of the following proposals:

ACJA §1-302: Education and Training

The proposal is to change the timeframe required for officers to complete defensive tactics training from one year to as soon as practical, but no later than 90 days from the date of employment.

ACJA §6-106: Personnel Practices

The proposal provides minimum standards, basic model job descriptions, and language for adult and juvenile probation departments. Additional job duties are allowed if needed to do the job successfully.

ACJA §1-302: Safety Training

The proposal is to change the timeframe required for officers to complete defensive tactics training from one year to as soon as practical, but no later than 90 days from the date of employment.

Motion: Scott Mabery moved to support the proposed changes. **Seconded by** Todd Zweig. **Vote:** Unanimous.

- B. **Legislative Update.** Jerry Landau, director, AOC Government Affairs, introduced his intern Joanna Jandali, from the University of Arizona. He then reported on the following bills of interest:

HB2052: Juvenile detention -- A juvenile who is charged with or arrested for a “*dangerous offense*” (defined elsewhere in statute) is no longer prohibited from being detained in a juvenile detention center.

HB2053: Competency valuations; reports – If a mental health examiner determines that a defendant is competent to stand trial because of ongoing treatment with psychotropic medication, the expert’s report is no longer required to address the necessity of continuing that treatment and a description of limitations that the medication may have on competency.

HB2080: Civil rights restoration; application, procedures – The court is required to inform a defendant in writing of the right to the restoration of civil rights on “final discharge.” On final discharge and without filing an application, any defendant who has not previously been convicted of a felony offense must be automatically restored any civil rights that were lost or suspended from the conviction, other than the right to possess a firearm, if the defendant has paid any victim restitution imposed. On final discharge, a person who has been convicted of a felony or who has not paid any victim restitution is permitted to apply to the superior court to have civil rights restored at the discretion of the judicial officer. A person who is convicted of a dangerous offense, serious offense or a violent or aggravated

offense is prohibited from filing for the restoration of the right to possess or carry a firearm.

HB2151: Satisfaction of Judgement -- In civil proceedings and small claims actions, the prevailing party is required to file a satisfaction of judgment with the justice court within 30 days after the judgment has been paid in full. If the prevailing party fails to file a satisfaction of judgment, the opposing party can file a motion to compel satisfaction of the judgment. A justice of the peace may hold a hearing on the motion and may compel the moving party to post a bond with the court in the amount of the judgment.

SB 1219: Domestic violence offenses; firearms transfers – The definition of “*prohibited possessor*” of a firearm is expanded to include any person who has been convicted of a domestic violence offense, or any other offense that involves the use physical force or threatened use of a deadly weapon if the victim and defendant have a domestic relationship, and any person who is subject to an Order of Protection that was issued after the person received notice and had an opportunity to participate in the proceedings. At the time of sentencing, the court is required to inform the “prohibited possessor” that because of the domestic violence conviction, the defendant is prohibited from owning or possessing a firearm and to order the defendant to surrender his or her weapons to law enforcement or a federally licensed firearms dealer within 24 hours of the order. Law enforcement or federally licensed firearms dealers that receive a transferred firearm may dispose of it in accordance with state and federal law.

C. Probate Rules Task Force (taken out of order)

Judge Mackey provided a brief history of probate rule changes and highlighted the following:

- **Rule 3** - Distinguish between a “*probate proceeding*” and a “*probate case*.” Recognized that a “*probate case*” may include “*probate proceedings and non-probate proceedings*.”
- **Rule 12** – Modified telephonic appearance rule with the recognition that today’s practices are in favor of telephonic and video appearances as a cost-cutting measure for uncontested matters. Adopted language allowing flexibility when the request needs to be made; allows for oral requests that are made in a timely manner, taking into consideration the circumstances at the time the request is made.
- **Rule 17** – No longer uses the term “*non-appearance hearing*”; clarifies that parties must be present at hearings unless the court orders otherwise.
- **Rules 27 and 28** – Revised and added rules concerning the management of contested probate proceedings.
- **Rule 32** - Revised the rule on guardian *ad litem* to reflect court appointment of a representative under A.R.S. § 14-1408, which refers to such appointment as a “*statutory representative*.”
- **Rule 36** – Modified language regarding restrictions on assets to be restrictions on authority; includes a comment regarding suggested restriction language rather than required restriction language.
- **Rule 47** - Clarified and consolidated current Rules 24 and 36 regarding inpatient psychiatric treatment authority.
- **Rule 53** - Clarifies when and how to obtain court approval for the settlement of claims of minors or adult protected persons, and options for holding settlement proceedings other than in conservatorships.

Comments to the rule petition are due by May 1, 2019. Since COSC’s next regular meeting is May 3, a suggestion was made to meet by telephone to decide what comment, if any, the

committee may want to file. It was agreed that the committee will meet by telephone at noon on Friday, April 12, 2019, to discuss the petition and decide what comment, if any, will be filed.

D. Rule Petition-Rule 32, Rules of Criminal Procedure

In January 2018, the Task Force on Rule 32 of the Arizona Rules of Criminal Procedure, was established. The task force was directed to “identify possible substantive changes that improve upon the objectives of Rule 32 and the postconviction relief process.” Significant changes proposed are:

- The addition of a new Rule 33 that would contain all the provisions concerning post-conviction relief for defendants who entered a guilty or no-contest plea, who admitted a probation violation, or who had an automatic probation violation because of a plea to a new offense. The new Rule 33 allows “pleading” defendants to have a single, self-contained rule, customized to their procedural circumstances, to guide them through the postconviction process.
- Another significant proposal concerns preclusion. The task force concluded that two additional grounds for relief in Rule 32.1 (and the corresponding grounds in Rule 33) should not be subject to the rule of preclusion. Rule 32.1(b) currently provides as a ground for relief that “the court did not have jurisdiction to render a judgment or to impose a sentence on the defendant.” Rule 32.1(c) affords a defendant sentencing relief if “the sentence imposed exceeds the maximum authorized by law or is otherwise not in accordance with the sentence authorized by law.”

The task force recommends changes so that claims under Rule 32.1(b) or (c) or under Rule 33.1(b) or (c) would not be subject to preclusion based on waiver or untimeliness. Proposed Rules 32.2(b) and 33.2(b) would further provide that when a defendant raises a claim that falls under 32.1(b) through (h) or 33.1(b) through (h), he or she must explain the reasons for not raising the claim in a previous notice or petition or for not raising the claim in a timely manner. If the notice does not provide reasons why defendant did not raise the claim in a previous notice or petition, the court may summarily dismiss the notice.

Motion: Judge Sam Myers moved to support the adoption of the proposed changes.
Seconded by: Judge Cathleen Brown Nichols **Vote:** Unanimous

III. OTHER BUSINESS

Good of the Order (taken out of order).

Judge Mackey asked Kay Radwanski, AOC specialist and staff to COSC, to discuss the rule petition concerning protective orders. Ms. Radwanski stated, in the interest of full disclosure, that she also staffs the Committee on the Impact of Domestic Violence and the Court (CIDVC), which filed the petition. CIDVC filed rule petition R-19-0009 to make amendments to the Arizona Rules of Protective Order Procedure (ARPOP) in response to legislation that takes effect January 1, 2020. The most significant change is that the court will become responsible for transmitting an issued order to law enforcement for service. A proposed rule would require the court to send it to the appropriate agency on the same day it is issued, unless there are extraordinary circumstances. If such circumstances exist, the judge would be required to state the reason on the record, and the court could hold the order for 72 hours before sending it to the appropriate law enforcement agency.

An enhancement to the protective order petition process is creation of a web portal. A person requesting a protective order will complete paperwork in the portal. The information will be stored in the portal for 90 days, during which time the person is strongly encouraged to speak with a victim's advocate to develop a safety plan before going to court and filing.

The rule petition is available for comment until May 1, 2019.

Call to the Public. No one from the public was present.

Adjournment: The meeting adjourned at 11:48 a.m.

Next Regular Meeting: Friday, May 3, 2019; 10 a.m.
Arizona State Courts Building,
Conference Room 119 A/B

Committee on Superior Court

Minutes

Friday, April 12, 2019 (Special Meeting)
Conference Room 332
Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Jeff Fine

Telephonic: Judge David Mackey (chair), Judge David Cunanan, Judge Charles Gurtler, Jr., Judge Charles Harrington, William Klain, Judge Andrew Klein, Judge Kenneth Lee, Scott Mabery, Judge Roger Nelson, Judge Cathleen Brown Nichols, Ronald Overholt, Judge Michael Peterson, Megan Spielman, Judge Patricia Starr (proxy for Judge Sam Myers), Judge Randall Warner, Judge Timothy Wright

Absent/Excused: Judge Sally Schneider Duncan, Judge Thomas Fink, Judge Richard Gordon, Judge Jason Holmberg, Beck Weber, Judge Joseph Welty, Todd Zweig

Presenters: Judge Jay Polk, Judge Patricia Norris (Ret.)

Administrative Office of the Courts (AOC): Theresa Barrett, Stacy Reinstein

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The April 12, 2019, special meeting of Committee on Superior Court (COSC) was called to order at 12:03 p.m. by Judge David Mackey, chair.

Judge Mackey welcomed new member Jeff Fine, Clerk of the Superior Court in Maricopa County.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

R-18-0044 – Petition to Amend Rules of Probate Procedure

Judge Patricia Norris provided a brief background on the Probate Rules Task Force, including its charge. She outlined five guiding principles that the task force followed:

1. Rules that were identical to statutory requirements were not repeated in the revised rules. Occasionally a statute was kept in the revised rules if the statute was complicated or overlooked by practitioners.
2. Rules not consistent with current laws were brought into compliance with substantive changes.

3. The revised rules now specify which set of procedural rules apply to related non-probate proceedings.
4. Rule adjustments were made to consider liberty interests and due process considerations.
5. Probate has a high number of self-represented litigants, and that motivated the simplification of the rules using plain language. Rules were also reorganized by subject such as case beginning, conservatorship, guardianship, trusts and accounting.

Judge Jay Polk explained that the task force was divided into three workgroups, with each taking a section of the rules. Outlined below are significant changes to the probate rules:

- Rule 45 deals with accounting and budget in conservatorships. The task force determined the needs of most probate cases can be met with the use of the short accounting form. Both the accounting and budget forms are being revised to make them easier to complete by professionals and self-represented litigants,
- Rule 12 deals with telephonic appearances and current timeline. Rule revised to state that requests can be made in a timely manner unless a local rule states otherwise. Judicial officers are given the discretion to decide if the request is made in a timely manner.
- Rule 6 deals with when a non-probate action can be filed under the probate case number. A specific provision was added that authorizes the court to sever a non-probate action from the probate case.
- Rule 32 deals with the terminology in statute. Current statute states the court may appoint a “*representative*.” The task force eliminated *guardian ad litem* and replaced it with *statutory representative* to reflect long-existing statutory language.
- Rules 27 deals with the management of contested probate proceedings.
- Rule 28 handles disclosure and discovery in probate cases. Recent changes in the Rules of Civil Procedure do not translate well in probate cases, so a determination was made to create a separate disclosure and discovery process for probate cases.
- Rule 16 requires the Clerk of the Court to file any application and accompanying will, regardless of whether the application is granted. If denying the application, the Clerk must file a statement explaining the denial of application, which will preserve a record to prevent fraud.
- Rule 11 deals with the service of hearing notices. Under statute, the notice of the hearing must be served by U.S. mail. This rule clarifies that if a petition requests a money judgement against someone, then the hearing notice must be personally served on that person.
- Rule 15 extends the time for filing a written objection to a petition to 7 calendar days prior to the hearing. If the objecting party makes an oral objection at the initial hearing, the objecting party would need to file a written objection within 14 days after making the oral objection unless the court sets a different deadline.
- Rule 29 maintains the presumption that a jury trial must be affirmatively requested. It maintains the process of requesting a jury trial in all guardianship, conservatorship, and probate proceedings.
- Rule 47 expressly authorizes the court to grant a guardian inpatient psychiatric treatment authority without notice.
- Rule 53 clarifies how and when court approval of a settlement of a claim belonging to a minor or adult in need of protection is required to make the settlement binding on a minor or adult in need of protection and which judicial officer may approve the settlement if it does not exceed \$10,000. If the settlement exceeds \$10,000, a

superior court judge or judge *pro tem* must approve the settlement in a probate proceeding brought under Title 14.

- Rule 9 deals with the sealing and unsealing of documents. Currently, there is no probate rule that deals with this issue, Civil Rule 5.4 is incorporated by into this rule by reference.
- Rule 17 clarifies that parties must be present at initial hearings on a petition unless the court has otherwise ordered that they need not appear.
- Rules 20, 22, 23 are new rules that describe conferences, settlement conferences and evidentiary hearings, when evidence can be presented, and who is responsible for giving notice.

Judge Polk, Judge Norris, Judge Mackey, and Mark Meltzer, staff to the task force, were all thanked for the work the task force has done on the probate rules.

Motion: Judge Randall Warner moved to support the proposed probate rule petition as presented. **Seconded by:** Judge Timothy Wright. **Vote:** Unanimous. Note: Judge Mackey did not vote because of his role on the Probate Rules Task Force.

III. OTHER BUSINESS

Good of the Order

Judge Cathleen Brown Nichols reminded COSC that amended Rule 32 petition ([R-19-0012](#)) is available for review and comments until May 1, 2019.

Call to the Public. No one from the public was present.

Adjournment: The meeting adjourned at 1:06 p.m.

Next Meeting: Friday, May 3, 2019; 10 a.m.
Arizona State Courts Building
Conference Room 119A/B

Committee on Superior Court

Minutes

Friday, May 3, 2019
Conference Room 119A
Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Judge David Mackey (chair), Jeff Fine, Judge Richard Gordon, Judge Charles Gurtler, Jr., George King (proxy for Bill Klain), Judge Kenneth Lee, Scott Mabery, Megan Spielman

Telephonic: Judge David Cunanan, Judge Charles Harrington, Judge Roger Nelson, Judge Cathleen Brown Nichols, Judge Patricia Starr (proxy for Sam Myers), Ron Overholt, Judge Michael Peterson, Judge Randall Warner, Beck Weber, Todd Zweig

Absent/Excused: Judge Sally Schneider Duncan, Judge Thomas Fink, Judge Jason Holmberg, Judge Andrew Klein, Judge Joseph Welty, Judge Timothy Wright,

Guests: Kent Batty; Michael Nitz, Maricopa County Superior Court; Martin Lynch

Administrative Office of the Courts (AOC): Theresa Barrett, Stuart Bruner, Candace Atkinson, Michele Gillich, Jerry Landau, Stacy Reinstein, Robert Roll

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The May 3, 2019, meeting of Committee on Superior Court (COSC) was called to order at 10:03 a.m. by Judge David Mackey, chair.

Four members are leaving the committee. Judge Sally Duncan's term with COSC expires June 30, and she is not seeking reappointment. Three members who serve by virtue of other positions they hold also will be leaving COSC. Scott Mabery, chair of the Committee on Probation, is retiring at the end of June. Judge Joseph Welty, associate presiding judge, will take over as presiding judge of the Maricopa County Superior Court effective August 29, 2019. Judge Kenneth Lee is stepping down as associate presiding judge in the Pima County Superior Court. Judge Mackey thanked them all for their participation on the committee. An appointment packet is on its way to the Chief Justice for review.

Approval of Minutes

The draft minutes from the February 1, 2019, COSC meeting were presented for approval.

Motion: Judge Charles Gurtler, Jr. moved to approve the February 1, 2019, minutes as presented. **Seconded by:** Judge Kenneth Lee. **Vote:** Unanimous.

Approval of Minutes

The draft minutes from the April 12, 2019, COSC meeting were presented for approval.

Motion: Judge Gurtler, Jr. moved to approve the April 12, 2019, minutes as presented.
Seconded by: Judge Lee. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Legislative Update (taken out of order)

Jerry Landau, director, AOC Government Affairs, noted that the following bills have passed and have been signed by the governor: competency evaluations, juvenile justice legislation on set-aside and destruction of records, civil rights restoration, and electronic wills. The court security legislation, which would provide court and judicial personnel with law enforcement responsibilities and access to criminal history records, has run into difficulty. He said he has drafted a compromise that removes the ability to arrest and changes the wording to “detain for a limited amount of time” and will resubmit. He also mentioned that the legislature is still working through the budget, giving the Judicial Branch partially what was asked for but does not fully fund probation or CORP.

After Mr. Landau’s legislative update, Judge Mackey noted that SB1250, which amends the Injunction Against Harassment (IAH) statute, was signed by the governor on April 2, 2019, and will take effect January 1, 2020. A person who has been subjected to one act of sexual violence (defined in statute) will be able to request an IAH based on one incident.

B. Update: AZ Protective Order 2020 Project (taken out of order)

Michele Gillich, project manager, AOC-ITD, and Robert Roll, data warehouse/integration manager, AOC-ITD, provided an outline of the protective order petition portal that is in development. Ms. Gillich noted the following impact because of legislation (HB2249) passed in 2018 with a delayed effective date of January 1, 2020:

- The Supreme Court will become the official holder of record for Orders of Protection, Injunctions Against Harassment, and Injunctions Against Workplace Harassment.
- AOC will electronically submit all issued Orders of Protection to law enforcement agencies for service the same day of issuance but no later than 72 hours if there are extenuating circumstances.
- Law enforcement must continue to make attempts to serve the order within a year of its issuance. There is no limit on the number of service attempts.
- AOC will electronically submit all served orders to NCIC.

Discussion: Members discussed various case management issues (e.g., related family court cases, judicial assignment, choice of court, availability in e-bench, access to advocates, etc.). Questions were also raised about the petition process in the portal and its impact on the courts. Ms. Radwanski stated that she is working with the AOC-ITD on the project. Testing of the petition portal is anticipated in July 2019; Glendale Municipal Court will pilot the portal in September 2019.

C. Status Update: Mental Health & Justice System (MHJS) (taken out of order)

Kent Batty, chair, MHJS, provided a status update on the committee’s activities and outlined the following three legislative proposal recommendations:

- **Definition of Mental Disorder** – a disorder that substantially impairs a person’s emotional processes, thought, cognition, memory or behavior. The mental disorder may be related to, caused by or associated with a psychiatric or neurologic condition, injury or disease, and may co-occur with a substance use disorder.

- **Enhanced Services Proposal** – would permit the courts to order enhanced services for a defendant/patient who has been taken to a hospital emergency room, psychiatric hospital or crisis center for evaluation, stabilization or treatment, who is arrested, charged with a crime or detained in jail, or is a threat to themselves or others at least twice without their approval or consent.
- **Amendments to Persistent or Acute Disability Disorder (PADS) definition** - would identify the probability of causing harm to others because of not being treated and would allow screeners and evaluators to immediately hospitalize a person under ARS § 36-524 and 36-526 regardless of the category presented if the emergency standard is met.

D. Updates to ACJA § 5-205 (collections) and AO 2017-80

Candace Atkinson, manager, Consolidated Collections Unit, AOC-CSD, discussed changes to the FARE program that will allow the program to be more accessible to litigants and help bring them into compliance with the courts. The proposed changes are outlined below:

- Mandate a \$9 fee assessment for all cases referred by non-FARE entities to assist with the cost of administering the FARE and Debt Set-Off programs.
- Substitute the FARE Advisory Committee with a FARE Advisory Workgroup to meet as needed.
- Require all AJACS courts to employ the Auto-Tip function to ensure case balances are correct and updated weekly.
- Amend Administrative Order 2017-80 to expand payment options for court-ordered financial obligations to include: cash, credit or debit card, money orders, off-site cash payment vendor, and web payment website – www.azcourtpay.com.

Discussion: Members had concerns about the convenience fee for online payments and the \$9.00 assessment fee. Members decided that further discussion is needed. As a result, no motion was offered, and COSC members neither approved nor opposed the proposal.

E. Digital Evidence Portal Concept

Stewart Bruner, COT/Technical Advisory Council (TAC) staff, AOC-ITD, discussed TAC's priorities for creating an electronic portal and electronic repository for digital evidence:

- Identify a standard set of formats and technical protocols for submission, viewing and archival preservation.
- Create a set of minimum technical requirements to be used by individual courts to decide where to store digital evidence—locally or centrally.
- Amend applicable ACJA sections to specifically include digital evidence and related standards.
- Develop best practices, policies and procedures to increase the success of adopted digital evidence management solutions.

Jennifer Albright, senior court policy analyst, AOC-CSD, provided a brief history on the Digital Evidence Task Force (DETF) and its recommendations. She outlined DETF's implementation priorities:

- Adopt formal technical requirements for digital evidence management and storage options.
- Develop the means for courts to correctly accept and use digital evidence in the courtroom.
- Provide input on technical resources needed to effectively and consistently receive, use, manage, store, retain, preserve, and make publicly accessibly digital evidence.
- Determine if digital evidence should be stored onsite, offsite or in the cloud and managed centrally or locally.

- Continue to monitor as technology and practices evolve over time.

She shared that many details must be worked out, and she and Mr. Bruner will be asking for the courts' input as they progress with the digital evidence portal concept.

Discussion focused on management of sensitive evidence, whether sensitive evidence should be accepted in paper format only, if other courts in other states allow for digital evidence, technology integration, bandwidth issues for rural counties, and internet security.

III. OTHER BUSINESS

Good of the Order (*taken out of order*).

Call to the Public. Martin Lynch addressed the committee.

Adjournment: The meeting adjourned at 12:48 p.m.

Next Regular Meeting: Friday, September 6, 2019; 10 a.m.
Arizona State Courts Building
Conference Room 119 A/B

Committee on Superior Court

Minutes

Friday, September 6, 2019
Conference Room 119A/B
Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Judge David Mackey (chair), Judge David Cunanan, Sarah Douthit, Jeff Fine, Judge Pamela Gates, Judge Charles Gurtler, Jr., William Klain, Judge Joseph Kremer, Judge Roger Nelson, Judge Michael Peterson, Judge Randall Warner, Judge Timothy Wright, Todd Zweig

Telephonic: Judge Jeffery Bergin, Judge Cathleen Brown Nichols, Ron Overholt

Absent/Excused: Judge Thomas Fink, Judge Richard Gordon, Judge Charles Harrington, Judge Jason Holmberg, Judge Andrew Klein, Judge Samuel Myers, Megan Spielman, Beck Weber

Administrative Office of the Courts (AOC): Jennifer Albright, Theresa Barrett, Kent Batty, Dave Byers, Cathy Clarich, Don Jacobson, Jerry Landau, Dori Littler, Amy Love, Mark Meltzer, Terri Munn, Marcus Reinkensmeyer, Stacy Reinstein, Jeff Schrade, Justice Ann Timmer, Craig Washburn

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The September 6, 2019, meeting of Committee on Superior Court (COSC) was called to order at 10:04 a.m. by Judge David Mackey, chair.

Judge Mackey welcomed new committee members: Judge Jeffrey Bergin, Pima County, Judge Joseph Kremer, Maricopa County, Judge Pam Gates, Maricopa County, and Sarah Douthit, Coconino County, Adult Probation. He also recognized reappointed members: Judge Timothy Wright, Gila County, Judge Jason Holmberg, Pinal County, Judge Randall Warner, Maricopa County, and William Klain, State Bar representative.

Approval of Minutes

The draft minutes from the May 3, 2019, COSC meeting were presented for approval.

Motion: Judge Charles Gurtler moved to approve the May 3, 2019, minutes as amended to show that Todd Zweig attended telephonically. **Seconded by:** William Klain. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Task Force on Delivery of Legal Services: Final Report and Recommendations

Justice Ann Timmer, vice chief justice, Arizona Supreme Court, presented COSC with the draft recommendations from the task force. She noted that the report contained recommendations related to new tiers of limited scope legal services providers, changes to Arizona's ethical rules related to alternative business structures, and changes to the Arizona Certified Legal Document Preparer program. Justice Timmer stated that task force's next

steps are to take the report's recommendations to the Arizona Judicial Council in October 2019 and draft necessary rule petitions prior to December 31, 2019.

Discussion: regarding legal document preparers and potential harm to clients, disbarred attorneys preparing legal documents, cost to clients, non-attorneys owning law firms, non-attorneys possible focus on financial gain.

Motion: Jeff Fine moved to support the legal services concept with the noted concerns of the committee. **Seconded by:** Judge Gurtler. **Vote:** Unanimous.

B. Rule Agenda Update (taken out of order)

Mark Meltzer, senior court policy analyst, AOC, highlighted the following:

- New probate rules and forms have been adopted and will go into effect January 1, 2020.
- Rule 5.4: sealing of records - requires the filing of a redacted version of the complaint that a party wishes to have sealed, triggering the assignment of a case number. The party then submits the unredacted version to the court for judicial determination to seal.
- Petitions R-19-0015: Rule 68(g) regarding "offers of judgement," and R-19-0031, which would have allowed attorneys to issue subpoenas under Rule 45, were both denied.
- Rule 5(d) requires service of the following documents with the complaint: a copy of the lease and any addendums related to the eviction action, and in actions for non-payment, an accounting of charges and payments for the past six months.
- Changes to the Arizona Rules of Protective Order Procedure: the Arizona Supreme Court becomes the central repository for Orders of Protection, Injunctions Against Harassment, and Injunctions Against Workplace Harassment effective January 1, 2020. The issuing court is now responsible for getting an issued Order of Protection to law enforcement or a constable for service on the same date the court enters the order. A judge may find extenuating circumstances and delay transmission for service for up to 72 hours.

C. Arrest Warrant Workgroup (taken out of order)

Jerry Landau, director, AOC Government Affairs, explained that the Arrest Warrant Workgroup was created to address warrant-related issues and provide recommendations.

- A defendant is arrested pursuant to a warrant with a predetermined bond amount, can the defendant be released once bond is paid without an initial appearance?
Recommendation: Rule change that states if the offense for which the bond warrant was issued is a misdemeanor, the defendant may be released once the bond has been paid. On a felony warrant, the defendant must see a judge on an initial appearance and determine if bond is warranted.
- If a defendant is arrested in a county other than the one where a warrant was issued, should the arresting officer transport the defendant to the county where the warrant was issued or where the defendant was arrested?
Recommendation: Recommend a change in statute to allow a person be taken to a judge in the county where the warrant was issued or to a local judge with the caveat that the initial appearance occur within 24 hours after arrest; if not, the defendant must be released from custody.
- Can a monetary bond be forfeited if the defendant fails to meet conditions of release other than failure to appear?
Recommendation: The workgroup is still working on this issue because the warning on the arrest warrant appears to say yes while case law and rules seem to say no.

AOC Legal is still reviewing the authorities on this issue.

- Justices of the peace are not being notified of non-supervening indictments; therefore, the preliminary hearing is still on the court calendar.

Recommendation: Have the clerk provide notice to the justice court.

Mr. Landau asked if this was an issue in any other county. He also stated that he would welcome feedback on any of the issues discussed and pass them along to the workgroup for consideration.

D. Legislative Update (taken out of order)

Jerry Landau, director, AOC Government Affairs, mentioned that the 2021 budget may be discussed in the fourth quarter of this year as the governor wants to get an earlier start. He then discussed the following legislation:

- **2020-02: set aside; restoration of rights** - Removes civil traffic criminal speeding, driving on a suspended license and reckless driving from the list of offenses that cannot be set aside and clarifies that all victim restitution must be paid in full before a person's rights can be automatically restored on final discharge, and the Clerk of Court is no longer required to notify DPS if a person's civil rights are automatically restored.

Motion: to support legislation. **Vote:** Unanimous.

- **2020-03 long term order of protection** - Permits the court to issue an order of protection for a period of eighty-four months if the court finds such an order is necessary for the protection of the alleged victim and other specifically designated persons.

Motion: Judge Randall Warner moved to support the concept but would like to revisit the issue. **Seconded by:** Judge Gurtler. **Vote:** Unanimous.

- **2020-04 child support; termination of parental rights** - Terminates a person's obligation to provide child support concurrently with an order terminating the person's parental rights, rather than upon a final order of adoption. **Note:** legislation has been withdrawn.
- **2020-05 competency; records; appointment** - Parties to a criminal case are required to provide all available medical and criminal history records to the examining mental health experts within three days of the expert's appointment by the court.

Motion: Judge Mackey moved to support. **Seconded by:** Judge Joseph Kreamer. **Vote:** Unanimous.

- **2020-06 mental disorder; definition** - A disorder that substantially impairs a person's emotional processes, thought, cognition, memory, or behavior. The mental disorder may be related to, caused by, or associated with a psychiatric or neurologic condition, injury or disease, and may co-occur with a substance use disorder.

Motion: Sarah Douthit moved to support definition. **Seconded by:** Judge Cathleen Brown Nichols. **Vote:** Unanimous.

- **2020-07 enhanced services; court order for treatment** - Would permit the courts to order enhanced services for a defendant who has been taken to a hospital emergency room, psychiatric hospital or crisis center for evaluation, stabilization or treatment, or who is arrested, charged with a crime, detained in jail, or is a threat to themselves or others.

Motion: Judge Gurtler moved to support. **Seconded by:** Judge Nichols. **Vote:** Unanimous.

- **2020-08 persistent and acutely disabled; definition** - would identify the probability of causing harm to others because of not being treated and would allow screeners and evaluators to immediately hospitalize a person under ARS § 36-524 and 36-526 regardless of the category presented if the emergency standard is met.

Motion: Judge Nichols moved to support. **Seconded by:** Ms. Douthit. **Vote:** Unanimous.

E. ACJA §§ 1-108 and 1-302

Jeff Schrade, director, AOC Education Services Division, stated that the proposed code changes were posted for a month for review and no comments were received. ACJA § 1-108 would add a judicial assistant or training coordinator from an urban court and a court reporter or training coordinator from a rural court to the Committee on Judicial Education and Training. The changes to ACJA § 1-302 would correct a grammatical issue in definition, establish a start time for orientation training for limited jurisdiction judges and extend the mandatory training completion date to six months, add court security to the list of topics to be covered in judicial employee orientation, and remove the hour requirement from required officer safety training for all probation and surveillance officers.

Motion: Judge Kreamer moved to support. **Seconded by:** Judge Roger Nelson. **Vote:** Unanimous.

F. Task Force to Supplement Keeping of the Record by Electronic Means

Marcus Reinkensmeyer, director, AOC Court Services Division, briefly discussed nationwide trends and the shortage of court reporters. Judge Gates, Maricopa Superior Court, explained the task force was tasked with developing recommended changes to Arizona statutes, rules, and the Arizona Code of Judicial Administration to permit courts to use and prevent delays in resolving disputes in trial courts and on appeal. She outlined the proposed recommendations in the report.

Motion: Mr. Klain moved to support the report and recommendations. **Seconded by:** Judge Nelson **Vote:** Unanimous.

G. Committee on Mental Health and the Justice System: Interim Report and Recommendations

Kent Batty, chair, MHJS Committee, outlined the preliminary findings and recommendations of the Committee on Mental Health and the Justice System.

Motion: Judge Kreamer moved to support the interim report and recommendations. **Seconded by:** Ms. Douthit. **Vote:** Unanimous.

H. ACJA § 6-206 Adult Probation services fund, probation fees account

Dori Littler, AOC Adult Probation Services, indicated that the proposed code change would prohibit probationers' state-based benefits or income-based public assistance from being used to pay probation fees.

Motion: Ms. Douthit moved to support change. **Seconded by:** Mr. Zweig. **Vote:** Unanimous.

III. OTHER BUSINESS

Good of the Order

Call to the Public. No members of public present.

Adjournment: The meeting adjourned at 2:39 p.m.

Next Regular Meeting: Friday, November 1, 2019; 10 a.m.
Arizona State Courts Building
Conference Room 119A/B

Committee on Superior Court

Minutes

Friday, November 1, 2019
Conference Room 119A
Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Jeffery Fine, Judge Thomas Fink, Judge Pamela Gates, Judge Charles Gurtler Jr., Ron Overholt

Telephonic: Judge David Mackey (chair), Judge Jeffrey Bergin, David Cunanan, Sarah Douthit, Judge Richard Gordon, Judge Joseph Kreamer, Judge Cathleen Brown Nichols, Judge Michael Peterson, Megan Spielman, Judge Patricia Starr (proxy for Judge Samuel Myers), Judge Randall Warner, Judge Timothy Wright, Todd Zweig

Absent/Excused: Judge Jason Holmberg, William Klain, Judge Andrew Klein, Scott Mabery, Judge Roger Nelson, Beck Weber

Administrative Office of the Courts (AOC): Michele Gillich, Teri Munn, Jennifer Jones, Jeff Schrade, Jennifer Greene, Theresa Barrett, Cathy Clarich, Marcus Reinkensmeyer,

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The November 1, 2019, meeting of Committee on Superior Court (COSC) was called to order at 10:02 a.m. by Judge David Mackey, chair.

Judge Mackey recognized Judge Charles Harrington, who recently retired. Judge Harrington has been a member of COSC since July 1, 2002. Judge Mackey also announced that Judge Andrew Klein is retiring in 2020, and Judge Samuel Myers is not seeking reappointment to COSC in 2020. Judge Mackey welcomed Judge Patricia Starr as proxy for Judge Myers.

Approval of Minutes

The draft minutes from the September 6, 2019, COSC meeting were presented for approval.

Motion: Ron Overholt moved to approve the September 6, 2019, minutes as presented.
Seconded by: Judge Michael Peterson. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. AZPOINT Project Update

Michelle Gillich, architecture project manager, IT Division, AOC, shared that bugs in the AZPOINT petition portal have been worked out, and she has been given approval to move forward to the pilot phase. Next week Glendale City Court will begin testing the AZPOINT portal. Glendale City Court will run a double entry taking the petition from the test application and recreating it in the AJACS case management system. If all goes well the production pilot will begin November 25, 2019. It will be released statewide on

November 18, for the courts to test. Marc Peoples, ACJC project manager, has been testing with law enforcement and victim advocates this week. She noted that an improvement was made to the application with the addition of a floating “save” button to allow an applicant to quickly save the information should they need to exit the application quickly. Ms. Gillich stated that the team will be accepting feedback until December 11, at which time comments will be evaluated to determine if issued need to be addressed immediately or are enhancements that can be made after January 1, 2020. The next application in development is the service portal that law enforcement will use to receive documents for service on the defendant. Law enforcement is currently training on the service portal. API web services are under development and will be tested in December.

B. Proposed Court Security Code Sections – ACJA §§ 5-301-5-307

Marcus Reinkensmeyer, director, Court Services Division, AOC, provided a brief background on the following proposed court security code sections:

ACJA § 5-301 Court Security Standards – creates framework for court security policy-making regarding the security of court facilities, personnel, and the public.

ACJA § 5-302 Court Security Officers Powers and Duties – provides guidelines for the use of force by court security officers to detain individuals, details use of force options, and the reporting requirements.

ACJA § 5-303 Personnel Practices – establishes minimum personnel requirements for armed and unarmed court security officers such as pre-employment or reasonable suspicion drug testing, background checks, and fingerprinting. Armed officers are also required to undergo psychological evaluation.

ACJA § 5-304 Court Security Officer Training and Certification – establishes the certification and training standards for court employees who are engaged primarily as security officers, off-duty police officers, and contracted security personnel. It is anticipated that all court security officers will be trained by January 2021. Court-employed security officers must complete training within 90 calendar days.

ACJA § 5-305 Use of Force – provides guidelines for the use of force by court security officers, details of force options, reporting requirements.

ACJA § 5-306 Firearms – standardizes uniform practices and governs the authority of a court security officer to use a firearm while on duty. The presiding judge may require a polygraph if deemed necessary. A firearms training academy is in the conceptualization stage and will not be a reality until possibly next year.

ACJA § 5-307 Conducted Electrical Weapons (CEW) – establishes protocols for the use of CEWs and governs the administration and authority of an officer to use a CEW for official court security.

Mr. Reinkensmeyer stated that the proposed code changes are expected to be presented to the Arizona Judicial Council in December.

Motion: Mr. Overholt moved to support the proposed code sections in concept, subject to further input from various committees and the Superior Court Administrators Association. **Seconded by.** Todd Zweig. **Vote:** Unanimous

C. Proposed Amendments to ACJA § 1-401: Minimum Accounting Standards

Teri Munn, court financial specialist, AOC, discussed the objectives of a workgroup that focused on the Minimum Accounting Standards. The workgroup's objectives were to look at language uniformity, identify sections that were hard to understand, effectively account for the needs and flexibility of courts with limited staffing, and allow for current and future electronic practices. Ms. Munn stated that proposed code was posted to the ACJA forum on September 17 and has been open for 45 days. No comments have been posted to the forum to date. She noted that the proposed changes were presented to the Committee on Probation (COP) in October; COP members requested postponement of a vote until their next meeting in January 2020 because the comment period has not closed.

Sarah Douthit, on behalf of the COP, asked COSC to delay the vote because several counties will be affected by the changes requiring probation officers to accept cash payments from probationers. She said larger probation departments need time to provide feedback on accepting cash.

Motion: Jeff Fine moved to support the proposed changes, noting COP's concerns. **Seconded by.** Judge Pamela Gates. **Vote:** Unanimous

D. ACJA § 6-201.01 Standard Probation and ACJA § 6-202.01 Adult Intensive Probation

Dori Littler, interstate compact and administrative manager, Adult Probation, AOC, explained that the proposed revisions would establish procedures for probation departments to comply with A.R.S. § 13-610 (DNA Collection) and A.R.S. § 13-805 C.1.2. (Criminal Restitution Orders). Ms. Littler shared that the proposed changes were posted on the ACJA Forum, with only two comments were received. The Committee on Probation moved to support the code changes as presented at their October meeting.

Motion: Ms. Douthit moved to support the proposed changes as presented. **Seconded by.** Mr. Zweig **Vote:** Unanimous

III. OTHER BUSINESS

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

Adjournment: The meeting adjourned at 10:55 a.m.

Next Regular Meeting: Friday, February 7, 2020; 10 a.m.
Arizona State Courts Building