

Committee on Superior Court

Minutes

Friday, February 7, 2020
Conference Room 119B
Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Judge David Mackey, chair

Telephonic: Judge David Cunanan, Judge Richard Gordon, Judge Charles Gurtler, Jr., Judge Charles Harrington, William Klain, Judge Kenneth Lee, Judge Danelle Liwski, Scott Mabery, Judge Cathleen Brown Nichols, Ronald Overholt, Megan Spielman, Judge Patricia Starr, 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, Liliana Garcia, Stacy Reinstein, Mark Meltzer

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The February 7, 2020, meeting of Committee on Superior Court (COSC) was called to order at 10:02 a.m. by Judge David Mackey, chair.

Judge Mackey welcomed Judge Patricia Starr, Maricopa County; Judge Danelle Liwski, Pima County; and Judge Renee Bennett, Pima County. They are all Special Division Presiding Judge representatives. He welcomed reappointed member Judge Roger Nelson, Yuma County, and reported that public member Beck Weber has resigned. He asked members to forward suggested public member applicant names to either to himself or Kay for consideration.

Approval of Minutes. The draft minutes from the November 1, 2019, COSC meeting were presented for approval.

Motion: Judge Charles Gurtler moved to approve the November 1, 2019, minutes as presented. **Seconded by:** Todd Zweig. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Legislative Update

Liana Garcia, AOC legislative liaison, stated that the legislature is in the 26th day of session and 1,500 bills have been filed to date. She invited interested members of COSC to call into the Legislative Update call for superior courts held every Friday at 12:30 p.m. She presented the following bills of interest to members of COSC:

H2036 Fentanyl; heroin; carfentanil; mandatory sentencing – mandates mandatory sentences if a person is convicted of possession of fentanyl, heroin, or carfentanil. This legislation is not supported unless amended to focus on drug traffickers.

H2154 Recidivism reduction; evidence-based policies; reports – this bill is of interest to adult probation and focuses on caseload size guidelines, evidence-based practices and reporting. This bill may not move forward this legislative session.

H2235 Record of proceedings; certified reporter – allows the Supreme Court to regulate the use of court reporters in the court. This bill is facing significant pushback from the court reporters' lobby, Trial Lawyers Association and Arizona Attorneys for Criminal Justice. AOC is working with these groups to amend the bill to keep the statutory requirement for the use of court reporters in grand jury proceedings.

H2382 Sentencing; mitigating circumstance; repetitive offenders – requires historical priors to be actual historical priors before being charged that way. Bill was referred to House Judiciary and is expected to pass.

H2402 Criminal conviction; set aside; applicability – would allow the court to issue an order that would allow an individual to show a potential employer or housing representative that the conviction has been set aside and will hopefully remove barriers to employment and housing.

H2422 Coordinated reentry planning services program – this is an appropriations bill that adds the courts to the list of stakeholders who can receive funding for coordinated reentry planning services.

H2581 Dangerous; incompetent person; evaluation; commitment – fills the gap for individuals who are not competent to stand trial and are a danger to the community. The bill is scheduled to be heard in the House Judiciary Committee on Wednesday.

H2624 Human trafficking; civil action; liability – creates a civil cause of action in statute for individuals who are victims of human trafficking to hold their traffickers civilly liable.

H2735 Guilty except insane; court jurisdiction - would repeal the Psychiatric Security Review Board and would revert jurisdiction over those who have been adjudicated guilty except insane back to the superior courts. AOC has spoken with the sponsor of the bill to inform them that this bill presents logistical problems, and additional funding would be needed if this bill passes.

S1164 Severe threat order of protection (STOP) – permits the presiding judge of the superior court to make a judge or commissioner available to issue a severe threat order of protection by telephone during the hours the courts are closed. There are Second Amendment implications that may prevent this bill from passing.

S1507 Administrative review of agency decisions – modifies how much control agencies have over their administrative hearing process. It would shift control of outcomes to the courts and would require a trial de novo with a jury instead of an administrative hearing.

S1664 Civil liability; gun-free zones; mandatory protection from injuries; damages; definitions – a government entity that establishes a gun-free zone is liable for any damages claimed by a person who was harmed by criminal conduct in the gun-free zone if a reasonable person would believe that possession of a firearm could have helped the person defend against the criminal conduct.

B. Update: Mental Health and the Justice System

Stacy Reinstein presented an update on the continuous work the AOC is doing on mental health and the justice system. She shared that the legislative proposals in the interim report are not moving forward this legislative session, however they are researching and collecting data the Arizona Judicial Council requested. There is continuing collaboration with mental health stakeholders and community partners to further the understanding of why the courts

are involved in mental health. Ms. Reinstein outlined the Committee on Mental Health and the Justice System's (MHJS) key priorities and next steps:

- Develop best practice use of Sequential Intercept Models 0-1, early intervention and the development of mental health protocols in each jurisdiction.
- Developing training on mental health for the judiciary. The MHJS committee will be hosting a Mental Health Summit on March 27, 2020 to highlight the innovative work that courts are doing, discuss challenges and learn from each other.
- Improved coordination between the justice system and behavioral health providers in local communities.
- Implementation of best practices and model standards for competency proceedings and restoration to competency programs.
- Improved communication and coordination among the courts handling Title 13, Title 36 and Title 14 proceedings through process improvements, statute and rule changes.
- Address the unique needs and challenges faced in Arizona's rural communities.

Ms. Reinstein announced that in partnership with the Arizona Foundation for Legal Services & Education (Bar Foundation), a new website (www.AZCourtCare.org) was created to help individuals better understand the commitment process and the options available for a person who may be a danger to themselves or others as a result of a mental disorder and is unwilling or unable to accept voluntary treatment. The website provides basic information on:

- What to do in a crisis situation – including calling non-police crisis hotlines, when appropriate.
- The general process that can apply in any county.
- A glossary and collection of acronyms.
- A brochure: “Help for you or a loved one: Options in a crisis situation.”

Judge Mackey shared that Yavapai County is in discussion and working with an architect regarding a new criminal justice facility in Prescott that would include a jail, court and a co-located mental health facility that would be an alternative to jail. He suggested that if any courts were building new facilities, they keep in mind that people who need mental health treatment could easily locate it.

C. 2020 Rule Petitions

Mark Meltzer briefly discussed the following petitions submitted by the Task Force on the Delivery of Legal Services (LSTF):

- **R-20-0030:** Amends several of the ethical rules, one of which as amended would permit giving something of value for a referral.
- **R-20-0034:** Reorganizes Supreme Court Rule 31 regarding the practice of law and the unauthorized practice of law into a manageable package of provisions. The petition also proposes two new vehicles for providing legal services, one of which is the Limited Licensed Legal Professional (LLLLP). The LLLP could provide legal advice to clients and appear in court on their client's behalf. LLLPs are required to be members of the Arizona State Bar in a special category of membership. The petition also allows for the formation Alternative Business Structures (ABS). An ABS is an entity that provides legal services but allows a non-lawyer to have an economic interest or decision-making authority. This petition has a modified comment period with first comments due March 30, 2020.

Mr. Meltzer also presented the following 2020 rule petitions of interest to COSC:

- **R-20-0012 and R-20-0014: FASTAR Rules** – These are companion petitions that concern the FASTAR Rules. The Court adopted the Rules of the Fast Trial and Alternative Resolution (FASTAR) for a three-year pilot in Pima County. This petition requests the Court to permanently adopt the FASTAR rules, with modifications. Permanent adoption of these rules would allow the superior court in any county by local rule, administrative order or policy to use these rules.
- **R-20-0018: Civil Rule 16.3** – This is a new civil rule that directs individuals to Probate Rule 53 when they settle a claim of a minor or an injury or wrongful death claim of a protected adult.
- **R-20-0028: Civil Rules 12 and 8.1** – This is a proposal by the Arizona State Bar that would require parties to have a good faith consultation before filing designated motions under Rule 12.
- **R-20-0004: Criminal Rules 3.4 and 4.1, Rule 41, Forms 2(a) and 2(b)** – Would clarify that when a defendant is arrested on a felony warrant, they cannot be released by posting bond but would be required in every instance to have an initial hearing. It would permit a defendant arrested on a misdemeanor warrant to be released upon posting the bond specified in the warrant without having an initial appearance following the arrest. The revised Forms 2(a) and 2(b), arrest warrants, would include a line where the issuing magistrate could recommend a bond and amount. This would provide an explanation for the initial hearing judge on why bond and recommended amount of the bond was set.
- **R-20-0015: Criminal Rule 22.5** – is a new rule that would allow a party, with a court order and for good cause, to contact trial jurors after a case is over. The juror must receive a written notice detailing the juror’s rights during that contact, including the right to terminate the interview.
- **R-20-0003: Supreme Court Rule 39** – Would allow Tribal attorneys to appear in Indian Child Welfare Act (ICWA) cases for the limited purpose of participating in a child custody proceeding governed by ICWA.
- **R-20-0009: Supreme Court Rule 24** – proposes a new Supreme Court Rule to address the ineffectiveness of the United States Supreme Court decision in *Batson v. Kentucky* regarding the discriminatory use of peremptory challenges during jury selection. The new rule would adopt an objective observer test and includes a list of life experiences that have been associated with discrimination.
- **R-20-0011: Rule 404(b), Rules of Evidence** – Would conform Arizona’s rule to an amendment to Federal Rule of Evidence 404(b) expected to become effective on December 1, 2020. In criminal cases in which the state intends to offer evidence of other crimes, wrongs or acts, the state must make disclosure of the acts to the defendant in a timely manner and articulate the permitted purpose for which the evidence will be offered.
- **R-20-0023: Rule 404(d), Rules of Evidence** – Provides that in the prosecution of a crime involving domestic violence, evidence of other crimes involving domestic violence is admissible.
- **R-19-0047: ARPOP Rule 35** – Proposes a new ARPOP Rule 35(f) that would prohibit limited jurisdiction judges from adding minor children as protected persons to an Injunction against harassment if doing so impacts or could impact a family court order.
- **R-19-0048 ARPOP Rule 38** – This proposal, authored by Judge Gerald Williams, seeks codification of a best practice when neither party to a protective order

proceeding appears for a court hearing and discusses two options:

- If the plaintiff or both parties fail to appear, the judge must dismiss the Order of Protection.
- Err on the side of caution and keep the Order of Protection in place if the plaintiff and the defendant both fail to appear at the scheduled hearing.
- **R-20-0002 ARPOP Rule 38** – Authored by the Committee on the Impact of Domestic Violence and the Courts (CIDVC), this proposal would also clarify best practice if only one party, the plaintiff or the defendant fails to appear at a contested hearing.

Mr. Meltzer encouraged COSC members to review and comment on the rule petitions and noted that the comment deadline is May 1, 2020, except for R-20-0034.

Motion: Judge Richard Gordon moved that COSC support Rule Petition R-20-0012.
Seconded by: Judge Charles Gurtler. **Vote:** Unanimous.

Judge Mackey stated that he, with the assistance of Kay Radwanski, would draft the committee's comment in support of R-20-0012 and email it to members for review before submitting.

III. OTHER BUSINESS

Good of the Order

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

Adjournment: The meeting adjourned at 11:25 a.m.

Next Regular Meeting: Friday, May 1, 2020; 10 a.m.
Arizona State Courts Building
Conference Room 119 A/B

Committee on Superior Court

Friday, September 11, 2020
Virtual Meeting

Telephonic: Judge Charles Gurtler, Jr., chair, Judge Renee Bennett, Judge Jeffrey Bergin, Judge David Cunanan, Sarah Douthit, Jeffrey Fine, Judge Thomas Fink, William Klain, Judge Danelle Liwski, Judge Roger Nelson, Judge Cathleen Brown Nichols, Ronald Overholt, Judge Michael Peterson, Megan Spielman, Judge Patricia Starr, Judge Randall Warner, Judge Timothy Wright, Todd Zweig

Absent/Excused: Judge Pamela Gates, Judge Jason Holmberg, Judge Joseph Kreamer, Judge James Marnner

Presenters: Kent Batty, Pima County Consolidated Justice Court; Gretchen Hornberger, Law Library, Superior Court in Coconino County; Liana Garcia, AOC; Dori Littler, AOC; Mark Meltzer, AOC

Administrative Office of the Courts (AOC): Theresa Barrett, Don Jacobson, Jerry Landau, Elise Kulik

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The September 11, 2020, meeting of Committee on Superior Court (COSC) was called to order at 10:00 a.m. by Judge Charles Gurtler, Jr., chair. Judge Gurtler, presiding judge, Superior Court in Mohave County, was appointed as chair upon the July 31, 2020, retirement of Judge David Mackey, presiding judge, Superior Court in Yavapai County. Judge Gurtler acknowledged the many years that Judge Mackey served on COSC and thanked him for his service. He also thanked Judge Richard Gordon, Superior Court in Pima County, for his service to COSC. Judge Gordon's term expired July 31, 2020, and he did not seek reappointment. Judge Gurtler welcomed back reappointed members Judge Michael Peterson, presiding judge, Superior Court in Graham County, and Judge David Cunanan, Superior Court in Maricopa County. He welcomed new member Judge James Marnner, Superior Court in Pima County. Judge Gurtler noted that the Public Member seat is still vacant and asked members for nominations.

Kay Radwanski, COSC staff, reviewed virtual meeting procedures. She also explained that anyone from the public can attend the meeting by telephone and can submit a request to speak during the Call to the Public by emailing committee staff prior to the meeting. However, if a person emails a comment but does not speak during the Call to the Public, the emailed comment will not become part of the meeting record. The procedures for requesting to participate in the Call to the Public are published at the end of the COSC agenda and on the committee website.

Approval of Minutes. The draft minutes from the February 7, 2020, COSC meeting were presented for approval.

Motion: William Klain moved to approve the February 7, 2020, minutes as presented. **Seconded:** Judge Peterson. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Legislative Update

Liana Garcia, AOC legislative liaison, announced that four bills from the 2020 legislative session will be resubmitted in the 2021 session if approved by the Arizona Judicial Council. Bills being considered again are:

- **2021-01 Lengthy Trial Fund; Digital Evidence** – renames and expands the purpose of the Arizona Lengthy Trial Fund to pay for the storage and display of digital evidence to the jury and court at trials and related proceedings.
- **2021-02 Competency Examination; Records; Appointments** – modifies and streamlines the statutes governing Rule 11 filings in criminal court. This change would allow courts to appoint one or more experts to examine the defendant and report to the court as to the defendant's competency in misdemeanor cases and would have no effect on the current process for felony charges.
- **2021-03 Court Rules; Electronic Signatures; Court Documents** – permits the Supreme Court to allow electronic signatures on court documents that require a sworn written declaration, verification, certificate, statement, oath, or affidavit.
- **2021-07 Records Confidentiality; Hearing Officer** - adds hearing officers, defined as a civil traffic violation hearing officer, along with former prosecutors, members of the Commission on Appellate Court Appointments, and municipal court commissioners to the list of persons who may petition the superior court to prohibit the general public for accessing records relating to the person as maintained by the department of transportation, the county treasurer, assessor, and recorder, including voter registration records.

Motion: Judge Timothy Wright moved to support the four bills. **Seconded:** Judge Roger Nelson. **Vote:** Unanimous.

Ms. Garcia presented four new bills for COSC's consideration:

- **2021-09 Judgment of Guilt; Fingerprints** – would provide flexibility to the court in determining how the defendant's fingerprints will be added to the court record at sentencing.

Motion: Judge Wright moved to support. **Seconded:** Judge Nelson. **Vote:** Unanimous.

- **2021-10 Clerk's Salary Increase** – would set the salaries of the Clerks of Superior Court at 70 percent of a superior court judge's salary for Maricopa and Pima counties and 60 percent of a superior court judge's salary in the remaining 13 counties. The increase would take effect at the start of the Clerks' new terms in January 2023. The Clerks' salaries are paid by their respective counties. Their last increase was in January 2007.

Motion: Judge Tom Fink moved to support. **Seconded:** Judge Cathleen Brown Nichols. **Vote:** Unanimous.

- **2021-14 Probation Officers; Peace Officer Status** – would change the statutory language in A.R.S. § 13-2508 Resisting Arrest and § 13-1204 Aggravated Assault to include adult probation officers when acting in their capacity as peace officers. The statutory amendment would clarify that a person who resists arrest by a probation officer would be subject to the same consequences as if resisting a peace officer.

Motion: Judge Wright moved to support. **Seconded:** Sarah Douthit. **Vote:** Unanimous.

- **2021-15 Intensive Probation; Terms** – would modify, streamline, and clarify the Intensive Probation statutes to conform to evidence-based practices in supervision to promote rehabilitation, public safety, and positive outcomes for high-risk, high-need probationers.

Motion: Judge Patricia Starr moved to support. **Seconded:** Jeff Fine. **Vote:** Unanimous.

B. Law4AZ Justice Gap Survey of Courts

Gretchen Hornberger, Coconino County Law Library, requested support for the Law4AZ Justice Gap Survey. She explained that this project is a collaboration between the Secretary of State’s Office and the state library system. The Law4AZ project sends volunteer law librarians around the state to train public librarians on how to help patrons find useful law-related information. The goal of this project is to equip public libraries to help connect patrons with legal resources.

Phase one is creation of a justice gap map, which will measure the level of access to justice of individuals across Arizona. Data collected will include demographics, literacy, proximity of legal resources, and answers provided in the survey by the courts. Phase two will focus on locations where the justice gap is the greatest and taking legal resources to those areas.

Ms. Hornberger said that a statewide memo to the courts will go out in the next month, and she asked for COSC’s help in spreading the word about the survey and encouraging their courts to reply to the survey.

C. ACJA §§ Proposals to Revise Abscond Warrant Timeframes

Dori Littler, Adult Probation Services Division, outlined proposals to amend ACJA §§ 6-105.01 and 6-202.01. She noted that both were posted for comment and no comments were received. Ms. Littler explained that the rationale to go from 72 hours to 30 days is to allow a probation officer more time to locate an absconder before seeking a warrant for the person’s arrest.

Motion: Sarah Douthit moved to support both proposed amendments. **Seconded:** Judge Wright. **Vote:** Unanimous.

D. Final Report of the Committee on Mental Health and the Justice System (MHJS)

Kent Batt, chair of the Committee on Mental Health and the Justice System, provided COSC with a brief history of the committee’s creation beginning with the Fair Justice for All Task Force (FJ-TF), then as an FJ-TF subcommittee on mental health, and finally to an AOC committee. The mission of the MHJS is to develop and recommend comprehensive, evidence-based best practices and cross-agency protocols to improve the administration of civil and criminal justice for individuals with mental illness. The MHJS issued an interim report in October 2019, which provided recommendations in the following eight areas: legislation, policy and procedure, training and education, data resources and analysis, court improvement, community services and supports, diversion and early intervention, access to technology, and accountability. From those eight areas, the committee has made the following recommendations:

- Evaluate the impact of court’s implementation of the Sequential Intercept Model and use data to make recommendations on how policies, practices, and funding can be improved and redirected to high-need areas.
- Develop a framework to educate judges and court staff in understanding trauma, behavioral health, and de-escalation techniques for people with mental health conditions.
- Develop a task force to create mental health rules for improving consistency, clarity, and coordination among the various courts that oversee matters involving individual and families living with mental illness.

- Support the creation of justice system behavioral health positions in each county for both superior and limited jurisdiction courts to ensure continuity of care for individuals involved in Rule 11, Title 36, and Title 14 processes. The behavioral health professional will act as a clinical liaison.
- Amend the definition of *mental disorder* in A.R.S. § 36-501 by convening a multi-disciplinary team of individuals to ensure that all persons living with mental disorders co-occurring with dementia, traumatic brain injury, or an intellectual disability can get needed treatment while protecting their rights.
- Advocate for statutory change to strengthen judicial authority to order defined services for individuals identified as not having received consistent, sustained, or proper treatment for their mental illness and who continue to cycle in and out of the criminal justice, probate, and civil mental health systems.
- Use telehealth for mental health evaluations and restoration-to-competency processes, provided practices noted by the committee are in place. The AOC should pursue a statewide contract for providers to deliver specific teleservices.
- Improve the uniform quality of mental health evaluators in Title 36 processes, in restoration-to-competency processes, and in serious mental illness determinations. Mechanisms include up-to-date training in best practices; standardized reporting formats; clear expectations; and periodic, regular evaluations.

Mr. Batty mentioned that Judge Jay Polk is reviewing the civil rules on mental health to help judges incorporate them into criminal and probate proceedings. The MHJS Committee also:

- Recognized that children and families dealing with mental illness have a need for processes and resources, too.
- Noted the need for a data depository that would allow judges to contact courts that have had interaction with the individual to obtain additional information to help with their decision-making.
- Recommended a standing mental health committee.
- Recognized the need to increase access to mental health services for misdemeanants.

Motion: Judge Nichols moved to support the MHJS Committee’s recommendations and report.
Seconded by: Judge Liwski. **Vote:** Unanimous.

E. August 2020 Agenda Rules Agenda

Mark Meltzer, senior court policy analyst, provided a summary of new and amended court rules adopted by the Arizona Supreme Court during the August 2020 Rules Agenda. He noted that the effective date of the adopted rule changes is January 1, 2021.

Rules of Civil Procedure:

- **R-20-0018 Civil Rule 16.3** – adopts a new civil rule 16.3 regarding the settlement of claims on behalf of minors and adults in need of protection and directs readers to Probate Rule 53 that states, *“the settlement of a claim brought on behalf of a minor or adult in need of protection is not binding unless a judicial officer approves it as provided in the Rule 53 of the Arizona Rules of Probate Procedure.”*
- **R-20-0012 and R-20-0014 FASTAR Rules** – the Court continued both petitions pending further orders due to the COVID-19 pandemic.

Rules of Criminal Procedure:

- **R-20-0004 Criminal Rules 3.2, 4.1 and Rule 41, Forms 2(a) and 2(b)** – clarifies when a defendant is required to have an initial appearance following an arrest pursuant to a warrant. A defendant arrested on a felony warrant will not be released, even if bond is posted, without an initial appearance after the arrest. Defendants arrested on misdemeanor warrants may be

released without an initial appearance after the specified bond amount is posted. Forms 2(a) and 2(b) are modified accordingly. Form 2(a), the felony warrant, includes a line where the issuing judge can recommend the type and amount of a bond and an explanation for the amount.

- **R-20-0005 Criminal Rule 17.1(f) and Rule 41, Form 28** – permit telephonic pleas of guilty and no contest in limited jurisdiction courts and eliminates the limitation that a defendant must reside out-of-state or 100 miles from the courthouse.
- **R-20-0031 Rule 39 and other criminal rules** – proposes to integrate the provisions of current Rule 39 (Victims’ Rights) into various other criminal rules. The Court continued this petition pending further consideration.

Rules of the Supreme Court:

- **R-20-003 SCR 39** – deals with the Indian Child Welfare Act (ICWA) and would allow an attorney who is not a member of the Arizona Bar to appear in an Arizona court on behalf of an Indian tribe for the limited purpose of participating in a child custody proceeding governed by ICWA, provided the tribe has submitted a pleading asking to intervene and participate in the state court proceeding and affirming the child’s membership or eligibility for membership in the tribe under tribal law. The motion to appear *pro hac vice* must be filed with the court where the proceeding is pending.
- **R-20-0034 SCR 31, 32, 33.1(new), 41, 41(various ERs), 45-51, 54-58, 60, 75, 76** – these amended rules improve access to justice and encourage innovation in the delivery of legal services. The rules eliminate the prohibition on nonlawyer investment in law firms and permit the formation of alternative business structures. Creates a new category of professional, a legal paraprofessional, who will be permitted to give legal advice and appear in court in specified circumstances.
- **R-20-0036 SCR 94.1** - is a new rule that establishes the Clerks of the Superior Court Conduct Board, which will establish and maintain high standards of performance and ethical conduct by Clerks of Superior Court. Only specified individuals, including the superior court presiding judge, the county’s human resource officer, and the AOC’s administrative director can file complaints with the board.

Rules of Protective Order Procedure:

- **R-20-0002 Rule 38**—establishes procedures when one or both parties fail to appear at a contested hearing when the party has received proper notice.
- **R-19-0047 Rule 35**—was referred to the Family Court Improvement Committee, with a recommendation requested for the December 2020 rules agenda. This proposal would prohibit a limited jurisdiction court from including children on an Injunction Against Harassment (IAH) if the children are part of a family court case, even if the parties to the injunction are not the same parties involved in the family court case. The limited jurisdiction court could issue an IAH affecting the plaintiff and the defendant, but any matters related to the children would have to be heard in the superior court.
- **R-20-0038 Rules 23 and 38**—has been adopted on an emergency basis, is open for comment, and will appear on the December 2020 rules agenda. This proposal conforms the court rules with the requirements of [SB1441](#), which was passed during the recent legislative session. SB1441 requires a plaintiff who is granted exclusive use of a shared residence by an Order of Protection (OP) to file written notice with the issuing court if the plaintiff moves out of the residence while the OP is still in effect. The defendant can then request a hearing. The Plaintiff’s and Defendant’s Guide Sheets and the Hearing Request form have been updated, and a new Notice Regarding Exclusive Use of a Shared Residence has been approved. Courts implemented these forms on August 25, 2020.

Mr. Fine commented that he had spoken with Judge Elizabeth Finn, Glendale City Court, regarding

the new form and whether a hearing request related to the notice would be limited in scope to the issue of the residence or whether the defendant could also contest the merits of the OP, as the statute is unclear on this point. He said Judge Finn felt the issues are separate.

Regarding the federal firearms prohibition known as “Brady,” Kay Radwanski, AOC, explained that Brady could apply to a hearing on the residence if the parties are intimate partners as defined by federal law. The federal law—18 USC § 922(g)(8)—is not concerned with the topic of a hearing, simply whether the parties are intimate partners and there was a hearing of which the defendant received actual notice and had an opportunity to participate. Revisions to Hearing Request form and the Defendant’s Guide Sheet highlight the effect of a hearing and the potential effect on the right to possess a firearm while the OP is in effect.

III. OTHER BUSINESS

Good of the Order

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

Adjournment: The meeting adjourned at 11:56 a.m.

Next Regular Meeting: Friday, November 6, 2020; 10 a.m.
Arizona State Courts Building
Conference Room 119 A/B (subject to change)

Committee on Superior Court

Minutes

Friday, November 6, 2020

Virtual Meeting

Telephonic: Judge Charles Gurtler, Jr., chair, Judge Renee Bennett, Judge Jeffrey Bergin, Judge David Cunanan, Sarah Douthit, Jeffrey Fine, Judge Thomas Fink, Judge Jason Holmberg, William Klain, Judge Danelle Liwski, Judge Roger Nelson, Judge Cathleen Brown Nichols, Ronald Overholt, Judge Michael Peterson, Judge Patricia Starr, Judge Randall Warner, Judge Timothy Wright, Todd Zweig

Absent/Excused: Judge Pamela Gates, Judge Joseph Kreamer, Judge Roger Nelson, Judge James Marner, Megan Spielman

Presenters: Liana Garcia, AOC Government Affairs; Jerry Landau, director, AOC Government Affairs; Jeff Schrade, director, AOC Education Services Division; Don Jacobson, senior special project consultant, AOC

Administrative Office of the Courts (AOC): Theresa Barrett, Elise Kulik

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The November 6, 2020, meeting of Committee on Superior Court (COSC) was called to order at 10:00 a.m. by Judge Charles Gurtler, Jr., chair. Kay Radwanski provided committee members with Zoom housekeeping information. She also discussed how members of the public can address the committee during the meeting. Judge Gurtler noted that at the last meeting, some members indicated they were having trouble with the audio and were emailing their comments, which were not making it into the record. He asked that members make their comments orally so that they can be included in the meeting record.

Approval of Minutes. The draft minutes from the September 11, 2020, COSC meeting were presented for approval.

Motion: Judge Randall Warner moved to approve the September 11, 2020 minutes as presented.

Seconded: Judge Jeffrey Bergin. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Legislative Update

Liana Garcia, legislative liaison, AOC Government Affairs, reported that the Arizona Judicial Council has approved legislative proposals discussed at the September COSC meeting. Regarding the election, she said it appears as though the Republican party will maintain a majority in both the House and Senate by a one-seat margin. Ms. Garcia stated that both Proposition 207 (Smart and Safe) and Proposition 208 (education funding) passed with a large majority. She said she expects some criminal justice reforms to pass this session.

Both the House and Senate caucuses have voted for their respective leadership for the upcoming legislative session.

The Senate leadership is:

- Sen. Karen Fann, president
- Sen. Sonny Borrelli, majority whip
- Sen. Rick Gray, majority leader
- Sen. David Bradley, assistant minority leader

The House of Representatives leadership is:

- Rep. Russell Bowers, speaker of the house
- Rep. Leo Biasiucci, majority whip
- Rep. Ben Toma, majority leader
- Rep. Reginald Bolding, Jr., minority leader
- Rep. Travis Grantham, speaker pro tempore

B. Proposition 207, Smart and Safe

Jerry Landau, director, AOC Government Affairs, told members that Proposition 207, the marijuana legalization initiative, will take effect on November 30, 2020, but expungement will have a delayed effective date of July 12, 2021. He explained that the Smart and Safe Initiative Taskforce was established by the Arizona Supreme Court to discuss Proposition 207, including seven specialized working groups. The group will work to amend the Rules of Criminal Procedure and update sentencing charts, forms, and expungement. Civil violations will be heard in limited jurisdiction courts, and depending on the county and the case, could shift from superior court to justice court or over to municipal court.

Mr. Landau provided the following facts about Proposition 207:

For persons at least 21 years of age: the bill decriminalizes possession of 1 ounce or less of marijuana.

- Possessing an amount greater than 1 oz of marijuana, but not more than 2.5 of (which not more than 12.5 grams is in the form of marijuana concentrate) will become a petty offense.
- Petty offense for smoking marijuana in a public or open space.

For persons under 21 years of age: Violation for possessing, transporting, or transferring 1 oz or less of marijuana (which not more than five grams is in the form of marijuana concentrate):

- First violation shall pay civil penalty of not more than \$100 and court has discretion to order up to four hours of drug education or counseling.
- Second violation is guilty of petty offense, and at its discretion, the court may order up to eight hours of drug education or counseling.
- Third or subsequent violation: guilty class 1 misdemeanor.

The proposition does not allow an individual to consume marijuana products while driving, operating, or riding in the passenger seat or compartment of an operating motor vehicle, boat, vessel, aircraft, or another vehicle used for transportation while impaired to the slightest degree. A provision to allow for expungement of marijuana arrests and charges will go into effect July 21, 2021.

Regarding offenses being charged on the Arizona Traffic Ticket and Complaint for civil charges and whether a bill will be created to allow or to create a new filing document, Mr. Landau clarified that according to the Arizona Supreme Court's Task Force on the Delivery of Legal Services, their preliminary view suggests there is no legal authority to file a non-traffic civil violation on a traffic ticket. He added that the following steps may need to be taken: 1) ask the legislature to amend ARS § 13-3903; 2) amend the court rules to allow it; or 3) change traffic tickets to include a box for civil marijuana violations. Further discussion will take place.

C. ACJA § 5-308: Court Security Guards Not Eligible for Certification

Jeff Schrade, director, AOC Education Services, briefed the committee on the Arizona Code of

Judicial Administration (ACJA) proposed amendment to section 5-308: Court Security Guards not eligible for certification. Mr. Schrade stated that current code sections do not apply to court security who are not employed by a court and who are ineligible to be certified Court Security Officers (CSOs). He said the Court Security Standards Committee (CCSC) recommended that contract court security should follow the same standards and training requirements that apply to certified CSOs. He noted that the proposal would apply standards and training requirements to court security who are ineligible to be certified because they are not employed by a court. Court security included under the proposal are contractors, volunteers, and law enforcement. Training for a contract security officer would consist of a modified version of the court security academy, which would cover topics not covered by the Department of Public Safety (DPS), such as screening, the use of force, customer service, fairness, and diversity.

Motion: Jeff Fine moved to support the proposed amendment. **Seconded:** Judge Timothy Wright. **Vote:** Unanimous.

D. ACJA §§ 3-402 and 4-302: Court Records Retention and Disposition Schedule for Court Security Records

Don Jacobson, AOC senior special project consultant, provided a review of additional sections for ACJA §§ 3-402 (Superior Court) and 4-302 (Limited Jurisdiction Courts) related to a court records retention and disposition schedule for court security records. He stated that the amendments are needed to handle the large volume of body camera video surveillance that the courts must retain.

He noted that current language does not provide specific guidance for the retention and disposition of critical court security related documents. Listed below are the recommendations for each critical court security related issue:

- Incident reports – five years. Exception: retain throughout the life of an open investigation.
- Use of force – ten years. Exception: retain permanently if report involves death or serious bodily injury.
- Misconduct complaints – three years from receipt of complaint.
- Security/Bodycam video – 14 days from recording date. Exception: if footage is part of an ongoing investigation or incident, then retain in conjunction with the incident report retention schedule.

Motion: Judge Wright moved to support ACJA §§ 3-402 and 4-302 Court Records Retention and Disposition Schedule for Court Security Records. **Seconded:** Todd Zweig. **Vote:** Unanimous

III. OTHER BUSINESS

Good of the Order

Judge Gurtler reminded members of the need for a public member and asked them to send recommendations to Ms. Radwanski.

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

Adjournment: The meeting adjourned at 11:15 a.m.

Next Regular Meeting: Friday, February 5, 2021; 10 a.m.
Arizona State Courts Building
Conference Room 119 A/B (subject to change)