

Committee on Superior Court

Minutes

Friday, February 4, 2022

Virtual Meeting

Remote Appearance: Judge Timothy Wright, Jr., chair, Judge Terry Bannon, Judge Renee Bennett, Ray Billotte, Jeffrey Fine, Judge Pamela Gates, Amy Hunley, Judge Kellie Johnson, William Klain, Judge Joseph Creamer, Steve Lessard, Judge Danelle Liwski, Judge James Marner, Judge Megan McCoy, Judge John Napper, Judge Michael Peterson, Judge Patricia Starr, Judge Randall Warner, Todd Zweig

Absent/Excused: Judge David Cunanan, Judge Thomas Fink, Judge Jason Holmberg, Judge Roger Nelson, Megan Spielman

Presenters: Lindsay Becerra, Shanda Breed, Shanice Edwards, Julie Graber, Dori Littler, Mark Meltzer, Dr. Tess Neal, Laura Ritenour

Administrative Office of the Courts (AOC): Jennifer Albright, Cathy Clarich, Liana Garcia, Michelle Holbrook, Don Jacobson, Jerry Landau, David Svoboda

AOC Committee Staff: Theresa Barrett, Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The February 4, 2022, meeting of Committee on Superior Court (COSC) was called to order at 10:00 a.m. by Judge Timothy Wright, chair. He welcomed four new members: Judge Terry Bannon, Cochise County; Ray Billotte, Maricopa County; Judge Kellie Johnson, Pima County; and Judge Megan McCoy, Mohave County. Jeff Fine, Maricopa County, has been reappointed for a three-year term. Judge Wright thanked Ron Overholt, court administrator for the Pima County Superior Court, for his six years of service to the committee.

Jennifer Albright, senior court policy analyst, AOC Court Services Division, asked for volunteers for an upcoming AOC project. She explained that in the 2021 legislative session, [SB1294](#), regarding the sealing of arrest records, became law. The new law has a delayed effective date of December 31, 2022. To prepare for implementation, there will be a need for forms changes, development of bench cards, and bench book revisions. Ms. Albright noted that the AOC needs to request additional information from the Department of Public Safety before drafting a petition form. Don Jacobson, AOC senior special projects consultant, may follow up at a future COSC meeting to ask for assistance with review of forms.

Approval of Minutes. The draft minutes from the September 10, 2021, COSC meeting were presented for approval.

Motion: Judge John Napper moved to approve the September 10, 2021, minutes as presented. **Seconded:** Steve Lessard. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Court Partnership for Forensic Psychological Science

Dr. Tess Neal, associate professor of psychology, Arizona State University, explained that a proposal to develop a nationally unique postdoctoral fellowship in forensic psychological science is in the early stages. The idea of a post-doctoral program was initially suggested to the Committee on Mental Health and the Justice System in 2020. The plan is to improve the field of forensic psychology statewide and nationally by providing professional training experiences using supervised forensic assessment cases to earn licensure eligibility and develop best practices. The cases will come from a strategic partnership with the Arizona Supreme Court, Maricopa and Pima counties, the Arizona Department of Corrections, the University of Arizona Medical School, and board-certified psychologists in private practice.

Issues to be considered for the success of the program include:

- Providing clarification in statute or in licensure regulations as to whether post-doctoral trainees can testify as experts.
- Developing educational opportunities to educate the bench and system stakeholders about the forensic psychology practice to create more consistency in the use of experts in courts.
- Exploring remote/tele-evaluations and treatment in rural areas.
- Identifying funding streams for the program.

Don Jacobson, AOC senior special projects consultant, stated research is under way regarding the possibility of a Substance Abuse and Mental Health Services Administration (SAMHSA) block funding grant and other funding streams for the program. There would need to be a licensing change to allow postdoctoral forensic psychologists to testify. There was agreement that a model permitting remote treatment would be of great value in the rural counties.

B. Legislative Update

Liana Garcia, AOC Government Affairs director, noted that on day 26 of the legislative session, 1,650 bills have been filed to date. She discussed the following legislative bills that are of particular interest to the superior court:

- **HB 2021: Drug Offenses; Homicide; Sentencing** - establishes the crime “drug trafficking homicide,” a class 1 felony, for transferring a dangerous or narcotic drug and the injection, inhalation, absorption, or ingestion that causes or is a contributing cause of another person’s death. It is expected to pass the House Judiciary Committee.
- **HB2033 Juvenile Offenders; Monetary Sanctions; Repeals** - repeals various provisions allowing or requiring courts to require the parent or guardian of minor child to bear the expense of the child’s public defender, foster care services, diversion programs, probation services, or treatment services while the juvenile is detained or incarcerated. If a juvenile is required to pay a monetary assessment, the juvenile must have the option to satisfy the assessment through community restitution paid at a rate equal to the minimum wage rounded up to the nearest dollar. Passed both the House Judiciary and Appropriations committees.
- **HB 2016 Probation Credits; Work Time Credit** – authorizes the court to adjust the period of a probationer’s supervised work for time credit that equal 25 days for every 30 days a

probationer is engaged in “eligible employment” (defined as an occupation with at least 130 documented wage-earning hours in a 30-day period). Effective January 1, 2023.

- **HB 2119 Civil Rights Restoration; Requirements; Process** – Upon completion of probation for an offense committed outside of Arizona or absolute discharge from a prison in another state or the Federal Bureau of Prisons and the payment of all victim restitution, a person who has not been previously been convicted of a felony offense is eligible for automatic restoration of any civil rights that were lost or suspended because of the conviction. Passed the House and is headed to the Senate.
- **HB 2133 Criminal Justice Monies; Penalty Assessments** - raises the additional penalty assessment from \$2.00 to \$4.00 and cannot be waived, suspended, or delayed. House Judiciary Committee hearing scheduled.
- **HB 2160 Wrongful Arrest; Record Clearance** – requires law enforcement agencies to notify a person who was wrongfully arrested of their right to file a petition in superior court for entry on all records of a notation that the person has been cleared. It also prohibits the clerk of the court from imposing a fee for filing the petition. House Judiciary Committee hearing scheduled.
- **HB 2355 Second Degree Murder; Sentencing** – increases the minimum, presumptive, and maximum sentencing guidelines for a person who is at least 18 years of age or who was tried as an adult and who is convicted of a dangerous crime against children in the first degree involving second-degree murder of a minor who is under 15 years of age. Passed House Judiciary Committee.
- **HB 2413 Jurors; Peremptory Challenges** – establishes the number of peremptory challenges that each party is allowed in criminal or civil actions based on the offense and the court, unless parties agree to fewer challenges. Passed House Judiciary Committee; amended to eliminate civil actions.
- **HB 2417 Family Court; Ongoing Training** - requires the presiding judge of superior court in each county to require all judges, family law referees, court commissioners, and relevant professional personnel of the family court to complete ongoing training once every three years. The training is required to include the latest best practices and research in domestic violence advocacy that are designed to improve the ability of the family court to recognize and respond to cases involving domestic violence. House Judiciary Committee hearing scheduled.
- **HB 2540 Drug offenses; Probation; Undesignated Felony** – authorizes the court to place a defendant who has not previously been convicted of an A1 drug crime felony on probation and refrain from designating the offense as a felony or misdemeanor until probation is successfully completed. Passed House Judiciary Committee.
- **HB 2573 Alternative Prosecution; Diversion; Fund; Appropriation** – appropriates \$20 million from the general fund in FY2022-23 to the newly established Alternative Prosecution and Diversion Program Fund to establish and operate alternative prosecution and diversion programs and to develop, apply, and evaluate best practices. House Judiciary Committee hearing scheduled.
- **HB 2592: Juror Compensation; Superior Court; Appropriation** – monies in the Arizona Lengthy Trial and Digital Evidence Fund must be used pay jurors who serve as petit jurors in the superior court from first day of jury service, instead of only jurors who serve for more than five days. House Judiciary Committee hearing scheduled.
- **HB 2595 Change of Judge; Grounds; Decision** – If a party to a civil action files an affidavit for change of judge that alleges bias and prejudice, the affidavit must be granted as a

matter of right, and the court has no discretion to determine the merits of the affidavit. Amended to mirror court rules; passed House Judiciary Committee as amended.

- **HB 2604 Commission; Review of Laws** – establishes a nine-member commission to study and review all penal laws that involve illicit controlled substances, DUI laws, or that relate to the operation of motor vehicles to make recommendations to the legislature whether to repeal or revise any law identified by the commission as not serving its intended purpose. House Judiciary Committee hearing scheduled.
- **SB 1076 Child Placement; Relative Search; Notice** – establishes a list of actions that the Department of Child Safety (DCS) is required to take in the search to identify adult relatives or persons with a significant relationship with a child taken into temporary custody. DCS is also required to provide adult relatives or persons with a significant relationship to the child with notice and specified information options to participate in the care or placement of the child. Senate Health Committee hearing scheduled.
- **SB 1114 Court-Ordered Treatment; Case Records; Confidentiality** – establishes that case records of and case information regarding a court proceeding brought under statutes governing court-ordered mental health evaluation and court-ordered mental health treatment are not open to public access or inspection. It authorizes the Arizona Supreme Court to adopt rules to govern the access to the case records and case information. Passed Senate Judiciary Committee.
- **SB 1191 Civil Action; Virtual Court Appearances** – would mandate virtual or remote appearances in all civil actions. Bill has died.
- **SB 1298 Government Mask Mandate; Prohibition** – prohibits a governmental entity from imposing any requirement to wear a mask or face covering, except where long-standing workplace safety and infection control measures that are unrelated to COVID-19 are required. Senate Government Committee hearing scheduled.
- **SB 1383 Dissolution of Marriage; Annulment** – establishes a process to terminate a legal separation and restore the status of the parties to legally married. If all parties reach a comprehensive settlement of all issues before either party initiates formal dissolution of marriage or legal separation proceedings, the parties may jointly elect to proceed with the dissolution or legal separation as a summary consent decree proceeding, with a reduced fee. Passed Senate Judiciary Committee.
- **SB 1477 Voter Registration, Felonies; Clerk; Database** – The clerk of the superior court is required to transmit monthly to the Secretary of State, without charge a record of every felony conviction in that county within the preceding month. The Secretary of State is required to use the record for the sole purpose of cancelling the names of convicted felons from the statewide voter registration database and must notify the appropriate county recorder who is required to cancel the convicted felon's voter registration. Senate Government Committee hearing scheduled.

Ms. Garcia has created an election bills tracking list. She will pare it down to the bills most likely to move in the legislature and will send the link to the tracking list to Kay Radwanski to share with COSC members.

C. Proposed Revisions to ACJA § 6-207: Uniform Conditions of Supervised Probation

Dori Littler, administrative manager, AOC Adult Probation Services Division, stated that a workgroup of judges, chief probation officers, public defenders, county attorneys, AOC legal, and clerks was established to review the Uniform Conditions of Supervised Probation and propose revisions to ACAJ § 6-207. The workgroup presented its proposed revisions to the

Committee on Probation (COP) in November 2021 and the presiding judges in December 2021, and both groups approved them. The revisions simplify language in the rule and update the Financial Judgment and Order and Appendix A - Uniform Conditions of Supervised Probation forms. Shanda Breed, director, AOC Adult Probation Services Division, stated that the Uniform Conditions of Supervised Probation were last revised in 2009 and are in need of updating. The workgroup worked hard to clarify and simplify them.

Discussion: Steve Lessard questioned the unintended consequences of requiring a defendant to be incarcerated in the county jail as an immediate sanction. He suggested that probation chiefs should discuss statewide consistency in imposing the sanctions and the appropriate use of the sanctions for technical violations. He stated for the record that he believes that immediate sanction should not be a part of the conditions of probation.

Motion: Judge Danelle Liwski moved to support adoption of the proposed amendments to ACJA § 6-207. **Seconded:** Todd Zweig. **Vote:** Unanimous

D. Proposed ACAJ § 1-508: Required Data Elements

Laura Ritenour, specialist, AOC Court Services Division, provided information on a proposed code section—ACJA § 1-508: Required Data Elements. The Arizona Judicial Council (AJC) approved a set of recommended required data elements from the Steering Committee on Data-Based Court Performance and Data Standards at its October 2021 meeting. The proposed code section will govern the courts' implementation and reporting of the required data elements as adopted by the AJC. The proposal includes the following:

- Required data elements will be collected pursuant to a phased implementation schedule.
- Policies and procedures will be established on use and entry, including training and data quality review.
- The Arizona Required Data Elements checklist must be completed annually.
- Extension of time for implementation may be submitted.

The proposed code is open for comment on the [ACJA Web Forum](#) through February 28, 2022.

Ms. Ritenour was asked how information could be drawn from existing systems and how the information will be used for analysis, decision-making, and planning purposes. She was also asked where protective orders fall in the data elements (civil/criminal). She said she will consult with the Information Technology Division for answers.

Motion: Mr. Fine moved to support adoption of the proposed adoption of ACJA § 1-508. **Seconded:** Judge Napper. **Vote:** Unanimous

E. Fee Waiver and Deferral Forms

Julie Graber, specialist, AOC Court Services Division, presented proposed changes to fee waiver and deferral forms for the committee's review and comment. In response to concerns raised by legal aid providers about inconsistent court procedures regarding fee waiver and deferral (FWD) applications, the AOC established the Fee Waiver and Deferral Workgroup. Its purpose is to make recommendations to improve consistency in practices and assist the AOC

in developing training resources to be used by courts to ensure compliance. The FWD Workgroup established a sub-workgroup to review existing forms to simplify them and make them user friendly for litigants and court staff. The sub-workgroup has also been working on infographics and Legal Info Sheets. Comments on the materials can be forwarded to Ms. Graber or to Judge Stephen McCarville.

F. 2022 Rule Petition Cycle

Mark Meltzer, senior court policy analyst, AOC Court Services Division, provided an overview of court rule petitions that have been filed in the current cycle. The petitions are available for review and comment on the [Rules Forum](#) through May 2, 2022.

- **R-21-0045** – proposes amendments to Civil, Criminal, Justice Court Civil, and Eviction rules on jury selection. The amendments in R-21-0045 were proposed by the Jury Task Force’s Statewide Jury Selection Workgroup, which was charged with assessing whether additional rule changes might be appropriate in the wake of the abolition of peremptory strikes that went into effect on January 1, 2022.
- **R-20-0044** – adds Juvenile Rule 419. The intent of this new rule is to facilitate the termination of child support payments upon entry of an adoption decree for the child identified in the child support order. Three new rules—349, 350, and 419—are open for comment until May 1, 2022. In December 2021, the Supreme Court adopted proposed changes to the juvenile rules, revised forms, and new tables.
- **R-22-0011** – Rules of Civil Procedure. Makes substantial modifications to Rule 17 and proposes a new Rule 17.1 regarding the appointment of a guardian *ad litem* for an incapacitated person or an adult in need of protection for reasonable cause.
- **R-21-0051** – Rules of Criminal Procedure. Addresses issues originally proposed in petition R-21-0022 to modify bail and release provisions to ensure that cash bonds do not cause unnecessary pretrial detention. The current petition provides for an earlier mandatory determination on whether to modify release conditions for misdemeanor defendants and an opportunity to request similar modifications in felony proceedings.
- **R-22-0002** – Rules of Criminal Procedure. Requires a magistrate to determine if specific facts in relation to a nighttime or a no-knock search warrant would endanger the safety of any person or the destruction of evidence and must ensure the application has been approved by a supervising law enforcement officer in the affiant’s agency.
- **R-22-0003** – Rules of Criminal Procedure. Amends Rule 27.6 and requires a trial court to make a release determination of a summoned probationer that would assure the probationer’s appearance and protect the victim, any other person, or the community.
- **R-22-0009** – Rules of the Supreme Court. Proposes adoption of a new Rule 124 that permits courts to allow documents that require a sworn written declaration, verification, certificate, statement, oath, or affidavit to be signed with an electronic signature. There are concerns with this proposal regarding consistency with other descriptions of electronic signatures and the interplay between Rule 124 and Civil Rule 11 and the use of electronic signatures.
- **R-21-0040** – Rules of Family Law Procedure. Would authorize electronic signatures in family law cases. There are the same concerns regarding this petition as there is for R-22-0009.

- **R-21-0050** - Rules of Family Law Procedure. Proposes amendments to Rules 34(c) and 76(b) to conform the rules to the consultation exemption for self-represented litigants in cases where there may be an issue of domestic violence.
- **R-22-0005** – Rules of Family Law Procedure. Would direct a family court to state when it has fully resolved a post-decree motion or petition, thereby putting the parties on notice that the time to take any appeal has begun. It also includes in the definition a provision that “a final decision on a post-judgment petition is a judgment.”
- **R-22-0006** – Rules of Family Law Procedure. Would allow a court to accept for filing any of the documents identified under Rule 14(a) without notarization if the document is accompanied by a photocopy of the filer’s driver license or other government-issued identification card. The applicant may redact a protected address from the driver’s license or other government issued identification. It would also permit the clerk to maintain the photocopy of the license or identification as a confidential record with limited availability.
- **R-22-0007** – Rules of Family Law Procedure. Would permit a motion to set a case for trial to advise the court if the party agrees to proceed with an informal family law trial.
- **R-22-0015** – Rules of Family Law Procedure. Proposes to level the playing field for family court proceedings by providing as much direction as reasonable and protect the due process rights of the parties by addressing all issues to be contested at trial.
- **R-22-0008** – Rules of Probate Procedure. Requires the conservator at the time of filing the inventory to attach to the inventory statements from each bank or securities account showing the balance of each account on the date of the conservator’s appointment, an appraisal for each parcel of real property listed, and an appraisal for each item of personal property by an outside source.
- **R-22-0019** – Rules of Probate Procedure. Restores a tool that courts and the AOC’s Certification and Licensing Division use to monitor and enforce conservator’s actions for the benefit of protected persons.
- **R-22-0004** – Small Claims. Requires the judgment creditor to file the satisfaction of judgment within 30 days after the judgment has been paid in full and would allow any party to file a motion to vacate judgment.

III. OTHER BUSINESS

Good of the Order/Call to the Public: No one from the public was on the call, and no requests to speak were emailed to staff.

Adjournment: The meeting adjourned at 12:00 p.m.

Next Regular Meeting: Friday, May 6, 2022; 10 a.m.
Virtual Meeting

Committee on Superior Court

Minutes

Friday, May 6, 2022 Virtual Meeting

Remote Appearance: Judge Timothy Wright, chair, Judge Renee Bennett, Ray Billotte, Judge David Cunanan, Jeffrey Fine, Judge Thomas Fink, Amy Hunley, Judge Kellie Johnson, Judge Danelle Liwski, Judge Megan McCoy, Judge Scott McCoy (proxy), Judge Michael Peterson, Megan Spielman, Judge Patricia Starr, Todd Zweig

Absent/Excused: Judge Terry Bannon, Judge Pamela Gates, Judge Jason Holmberg, William Klain, Judge Joseph Creamer, Steve Lessard, Judge James Marner, Judge John Napper, Judge Roger Nelson, Judge Randall Warner

Presenters: Liana Garcia, director, AOC Government Affairs; Aaron Nash, director, AOC Certification and Licensing Division; Kathleen Schaben, chair, CIPAC Workgroup; David Svoboda, language access specialist, AOC

Administrative Office of the Courts (AOC): Mariann Nystrom, Craig Washburn

AOC Committee Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The May 6, 2022, meeting of Committee on Superior Court (COSC) was called to order at 10:03 a.m. by Judge Timothy Wright, chair.

Approval of Minutes. The draft minutes from the February 4, 2022, COSC meeting were presented for approval.

Motion: Jeffrey Fine moved to approve the February 4, 2022, minutes as presented.

Seconded: Judge Patricia Starr. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Legislative Update

Liana Garcia, director, AOC Government Affairs, updated the committee on legislative bills of particular interest to the superior court. She reported that the legislature is engaged in budget negotiations, and she is hopeful the session will end in June.

The following bills have been signed into law by the governor:

- **HB 2119 Civil Rights Restoration; Requirements; Process** – Upon completion of probation for an offense committed outside of Arizona or absolute discharge from a

prison in another state or the Federal Bureau of Prisons and the payment of all victim restitution, a person who has not been previously been convicted of a felony offense is eligible for automatic restoration of any civil rights that were lost or suspended because of the conviction.

- **H2161—Parental rights; schools; educational records.** This state, political subdivisions, any other governmental entity, and any official of any governmental entity acting under color of law are prohibited from interfering with or usurping the fundamental right of parents to direct the upbringing, education, health care, and mental health of their children. A parent is authorized to bring suit against a governmental entity or official based on any violation of the statutory rights of parents and to raise a violation as a claim or a defense.
- **H2272—Insurance; secondary sources.** A secondary source on insurance does not constitute the law or public policy of Arizona and is not authoritative if the secondary source purports to create, eliminate, expand, or restrict a cause of action, right or remedy, or if it conflicts with the U.S. Constitution, state Constitution, state law, Arizona's case law precedent, or other common law that may have been adopted by Arizona.
- **H2322—Hazing; hazing paraphernalia; offense.** A person commits hazing, a class 1 (highest) misdemeanor, by intentionally, knowingly, or recklessly, for the purpose of pre-initiation activities, pledging, initiating, holding office, admitting, or affiliating a minor or a student into an "organization" (defined) or for the purpose of continuing or enhancing membership or status in an organization, causes or forces a minor or student to engage in or endure any of a list of specified actions, including violating a federal or state criminal law and enduring physical, mental, or sexual brutality. If hazing results in a person's death, the criminal classification is increased to a class 4 (lower mid-level) felony. Also establishes the crime of hazing planning or organizing, a class 2 (mid-level) misdemeanor.
- **H2372—Animal cruelty; release conditions.** If a judicial officer orders the release of a person who is currently serving a term of probation for a violation of animal cruelty and who is charged with a new violation of animal cruelty, on the person's own recognizance or on the execution of bail, the judicial officer is required to impose a condition of release that prohibits the person from possessing or having contact with any animal.
- **H2583—DUI; data collection; study committee.** Establishes a 14-member Driving Under the Influence (DUI) Data Collection Study Committee to gather information to understand current DUI-related data collection and recommend data collection processes, systems, and funding to centralize DUI-related reporting and collection. The committee is required to submit a report of its findings and recommendations to the governor and the legislature by December 16, 2022. The committee self-repeals October 1, 2023.
- **H2604—Emergency Orders of Protection; superior court.** An Order of Protection (OP) expires two years, increased from one year, after service on the defendant. Applies to an OP that is served from and after the effective date of this legislation. An Emergency Order of Protection (EOP) expires seven calendar days after issuance, instead of either at the close of the next day of judicial business or 72 hours after issuance, whichever is longer.
- **H2695—Forfeiture; substitute assets; post-deprivation hearing.** After a person is convicted of an offense for which forfeiture applies, a court is authorized to order the person to forfeit "substitute assets" (defined elsewhere in statute). If a victim of the alleged crime that gave rise to the forfeiture files a claim to seized property, the court is no longer required to grant a claimant's motion to release the forfeited property due to a

- finding that the property is the only reasonable means for the defendant to pay for legal representation in a related criminal or forfeiture proceeding. Statute governing post-deprivation hearings does not prevent the state from returning any property to the property owner and does not prevent the filing of a racketeering lien or a restitution lien.
- **H2696—Mandatory sentences; children; trafficking; smuggling.** Increases the minimum, presumptive, and maximum sentences for a person who is at least 18 years of age or who was tried as an adult and who is convicted of a dangerous crime against children in the first degree involving continuous sexual abuse of a child. A person convicted of knowingly trafficking a person for forced labor or services, sexual extortion, human smuggling, participating in a human smuggling organization, causing a spouse to become a prostitute, detention of a person in a house of prostitution, luring a minor for sexual exploitation, or the unlawful sale or purchase of children is not eligible for suspension of sentence, probation, pardon, or release from confinement on any basis, except as specifically authorized in statute, until the sentence imposed by the court has been served or commuted. Expands the list of actions that constitute the crime of participating in a human smuggling organization.
 - **H2709—Victim’s right to privacy; exception.** The requirement for a law enforcement agency or a prosecution agency to redact a victim's identifying information from records pertaining to the criminal case does not apply to the victim's address if the address appears in any body-worn camera footage, photographs, or other visual or audio depictions and there is evidence that the defendant knows the victim's address because of any of a list of specified relationships. A court is authorized to order the victim's identifying and locating information to be disclosed in a specific case if it is necessary to protect the defendant's constitutional rights or when the information is not reasonably able to be redacted because of undue burden or expense.
 - **S1050—Neglected children; definition.** For the purpose of Title 8 (Child Safety), the definition of “neglect” is modified to mean the inability or unwillingness of a parent, guardian, or custodian of a child to provide that child with supervision, food, clothing, shelter, or medical care if that inability or unwillingness causes substantial risk of harm, instead of unreasonable risk, to the child’s health or welfare.
 - **S1069—Juvenile dependency; child placement.** This bill makes various changes to statute relating to juvenile dependency. A person who attends an adoption hearing is prohibited from disclosing the content of testimony provided at the hearing, instead of from disclosing any information about the hearing. The court is required to appoint an attorney for a child in delinquency proceedings that commence with a petition or that may involve detention, instead of in all delinquency proceedings. If a child in a permanent guardianship proceeding is the subject of a pending dependency petition not filed by the Department of Child Safety (DCS), the court is required to notify DCS of the motion for permanent guardianship within 14 days after filing, and DCS is authorized to conduct an investigation into the allegations in the dependency petition. DCS has 10 days to inform the court and the parties of its position on the guardianship. If DCS objects to the motion for permanent guardianship, DCS is authorized to take action necessary to protect the health and safety of the child.
 - **S1073—Juveniles; adjudication; disposition; probation.** Various changes to statutes relating to juvenile offenses. Modifies the list of factors the court is required to consider when determining whether a juvenile who is charged with specified felony offenses be detained in a juvenile detention center or an adult facility. A juvenile probation officer is

added to the list of persons that may be part of a juvenile intensive probation team. A one-person juvenile intensive probation team is authorized and may supervise up to 15 juveniles at one time. The frequency of contact that a juvenile intensive probation team must have with the juvenile's school, employer, or treatment program is changed to routine contact instead of weekly contact. The court is required to appoint an attorney for a child in delinquency proceedings that commence with a petition or that may involve detention, instead of in all delinquency proceedings.

- **S1079—Child placement; procedural time limits.** Procedural time limits established in DCS statutes cannot be waived, extended, or continued unless necessary for the full, fair, and proper presentation of evidence. A continuance of a procedural time limit cannot be granted if the delay is not in the best interest of the child. A continuance beyond 30 days can be granted only on a finding of extraordinary circumstances. The court is prohibited from extending the procedural time limits for more than a total of 60 days within any 12-month period, unless the court makes a written finding that substantial evidence exists that the additional time is in the best interest of the child. If the court determines that an extension was because of a party's disclosure violation or lack of due diligence, the court is authorized to impose sanctions on that party.
- **S1157—Asbestos claims; required information; liability.** In any action involving a personal injury claim arising from exposure to asbestos, a plaintiff is required to file a sworn statement within 30 days after any asbestos action is filed. The sworn statement is required to specify the facts that provide the basis for each claim against each defendant and must include a list of specific information. On motion by a defendant, the court is required to dismiss a plaintiff's claim without prejudice if the plaintiff fails to comply with these requirements or dismiss the claim as to any defendant whose product or premises is not identified in the required disclosures. Applies to personal injury claims arising from exposure to asbestos that are filed on or after the effective date of this legislation.
- **S1323—Third party rights; adopted child.** For the purpose of statute allowing a person other than a legal parent to petition the superior court for visitation with a child in specified circumstances, a child who is adopted may be treated as if born in lawful wedlock only if the child is adopted jointly by parents who married to one another.
- **S1399—Adoption; religious discrimination; prohibition.** Among other provisions, state government or any private person who sues under or attempts to enforce a law, rule, or regulation adopted by the state or a political subdivision is prohibited from taking any discriminatory action against a person that advertises, provides, or facilitates adoption or adoption services or foster care or foster care services on the basis that the person has provided or declines to provide those services based on or in a manner consistent with the person's religious belief or exercise of religion.

The following bills are still in process:

- **H2033 (now H2746)—Juvenile offenders; monetary sanctions; repeal.** Deletes various provisions allowing or requiring the court to require the parent or guardian of a minor child to bear the expense of the child's public defender, foster care services, diversion programs, probation services, or treatment or services while detained or incarcerated. Repeals various fees related to juvenile offenses. Passed House. Held in Senate Judiciary.
- **H2116—Probation Credits; Work Time Credit.** Authorizes the court to adjust the period of a probationer's supervised work for time credit that equal 25 days for every

- 30 days a probationer is engaged in “eligible employment” (defined as an occupation with at least 130 documented wage-earning hours in a 30-day period). Effective January 1, 2023. Passed House. Passed Senate Judiciary and Rules committees.
- **H2130—Recreational users; property.** Among other provisions, a landowner, easement holder, lessee, tenant manager, or occupant of private or public land is not liable for damages in any civil action for unknown conditions on the land. Passed House 31-28. Passed Senate Judiciary and Rules committees.
 - **H2228—County jails; education programs; appropriation.** Each county that operates a county jail is required to offer an education program to serve all prisoners who are 21 years of age or younger who do not have a high school diploma or a general equivalency diploma and who are confined in the county jail, instead of prisoners who are under 18 years of age and prisoner with disabilities who are 21 years of age or younger. Appropriates \$114,000 from the general fund in FY2022-23 to the Superintendent of Public Instruction to distribute to county school superintendents for county jail education programs. Passed House 49-10. Passed Senate Appropriations.
 - **H2253—Threshold amount; fentanyl.** Establishes a statutory drug threshold amount of nine grams for fentanyl or fentanyl mimetic substances. This bill passed the House as a bill that outlines requirements for filing a personal injury claim involving asbestos exposure. It was subject to a “strike everything” amendment in the Senate and now relates to fentanyl. Passed Senate Judiciary and Rules committees.
 - **H2326—Criminal justice data collection.** Unless prohibited by federal or state law, the Arizona Criminal Justice Commission (ACJC) must require all superior court probation departments in Arizona to submit a list of information about each person who is in Arizona in violation of a federal immigration law and who is convicted of a misdemeanor or felony offense and placed on supervised probation. The information must be made available to the public on the ACJC’s website. This bill has been amended in the Senate.
 - **H2355—Second degree murder; sentencing.** Increases the minimum, presumptive, and maximum sentencing guidelines for a person who is at least 18 years of age or who was tried as an adult and who is convicted of a dangerous crime against children in the first degree involving second degree murder of a minor who is under 15 years of age. Passed House. Passed Senate Judiciary and Rules committees.
 - **H2453—Governmental entities; mask requirement; prohibition.** A "governmental entity" (defined) is prohibited from imposing any requirement to wear a mask or face covering anywhere on the governmental entity's premises, except where long-standing workplace safety and infection control measures that are unrelated to COVID-19 may be required. Passed House. Passed Senate Government and Rules committees.
 - **H2572—DNA collection; testing; felony arrests.** This bill is now a striker on H2102. The arresting authority is required to secure a sufficient sample of cells for DNA testing and extraction from any person arrested for a felony offense. Passed Senate Judiciary with striker amendment.
 - **H2573 Alternative Prosecution; Diversion; Fund; Appropriation.** Appropriates \$20 million from the general fund in FY2022-23 to the newly established Alternative Prosecution and Diversion Program Fund to establish and operate alternative

prosecution and diversion programs and to develop, apply, and evaluate best practices. Passed House. Passed Senate Appropriations.

- **H2592: Juror Compensation; Superior Court; Appropriation.** Monies in the Arizona Lengthy Trial and Digital Evidence Fund must be used pay jurors who serve as petit jurors in the superior court from first day of jury service, instead of only jurors who serve for more than five days. Passed House. Passed Senate Appropriations.
- **H2722—Strategic actions; public participation.** Statute governing "legal actions" (defined) that involve a party's exercise of the right of petition is expanded to include actions involving a party's right of free speech, the right to freely associate, or the right to peaceably assemble. Passed House. Passed Senate Judiciary with amendments.
- **H2723—Civil case assignment; judges.** This bill is being amended to apply only to Maricopa and Pima counties. The assignment of a civil trial case to a judge must be done by either automated means or a formula that is approved by the Supreme Court and is required to be done in a random manner so that the assignment is unpredictable and provides an equal distribution of cases among the civil trial divisions in the superior court. A superior court judge is prohibited from selecting or refusing to accept an assigned case unless extraordinary circumstances exist or a court rule requires or prohibits the assignment. Passed House. Passed Senate Judiciary.
- **S1114—Court-ordered treatment; case records; confidentiality.** Unless otherwise provided by law, court rule or court order, the case records of and case information regarding a court proceeding brought under statutes governing court-ordered mental health evaluation and court-ordered mental health treatment are not open to public access or inspection. The court is permitted to authorize the release of these case records and case information for good cause shown. The Supreme Court is authorized to adopt rules to govern the access to the case records and case information. Passed Senate. Passed House Judiciary.
- **S1210—Mentally ill; transportation; evaluation; treatment.** Among other provisions, when a court, a person, an evaluation agency, or a mental health treatment agency is allowed to authorize, request, or order the apprehension and transportation of a proposed patient by a peace officer to an evaluation agency or mental health treatment agency, the court, person, or agency is allowed to authorize the apprehension and transportation by an "authorized transporter" (defined as an ambulance company or transportation provider contracted with a municipality or county to provide safe behavioral health transportation) if available if there are reasonable grounds to believe that the patient or proposed patient may be safety apprehended and transported without the assistance of a peace officer. Passed Senate. Passed House Health and Human Services with amendments.
- **S1310—Incompetent defendants; dangerous; involuntary commitment.** Among other provisions, establishes the Arizona Office of Public Safety Guardianships to initiate and administer public safety guardianships ordered by the court for an "incapacitated incompetent person" (defined as an incapacitated person who has been found by a court to be incompetent to stand trial and who meets other specified qualifications). Passed Senate. Passed House Judiciary.
- **S1383 Dissolution of Marriage; Annulment.** Among other provisions, establishes a process to terminate a legal separation and restore the status of the parties to legally

married. If all parties reach a comprehensive settlement of all issues before either party initiates formal dissolution of marriage or legal separation proceedings, the parties may jointly elect to proceed with the dissolution or legal separation as a summary consent decree proceeding, with a reduced fee. Passed Senate. Passed House with amendments. House adopted conference report; awaiting Senate adoption of amendments.

- **S1392—State hospital; placement; court-ordered treatment.** During any period of court-ordered treatment, the medical director of the local mental health treatment agency assigned to supervise and administer the patient's treatment program is authorized to file a motion requesting the court to amend the treatment order to place the patient for treatment at the Arizona State Hospital (ASH). After a hearing, if the court finds that specified conditions apply, the court is authorized to amend the original treatment order authorizing the placement of the patient at the ASH. Passed Senate. Passed House Judiciary with amendments.
- **S1477 Voter Registration, Felonies; Clerk; Database.** The Clerk of the Superior Court is required to transmit monthly to the Secretary of State, without charge a record of every felony conviction in that county within the preceding month. The Secretary of State is required to use the record for the sole purpose of cancelling the names of convicted felons from the statewide voter registration database and must notify the appropriate county recorder who is required to cancel the convicted felon's voter registration. Passed Senate. Pass House Government & Elections.
- **S1514—Health care institutions; visitation.** Among other provisions, a hospital is required to provide notice of its visitation policy to each patient or the patient's representative. Visitation policies are required to allow for the patient to be constantly accompanied by at least two visitors of the patient's choosing, and the patient must be free to change the identity of these visitors as often as the patient wishes. Passed Senate. Passed House Judiciary.
- **S1565—Supreme Court; attorney licensing.** The Supreme Court is required to license attorneys for the practice of law in Arizona and must adopt rules to carry out this requirement. Attorneys cannot be required to be a member of any organization to become or remain licensed. Passed Senate 16-12. Passed House Judiciary.
- **S1566—State Bar; attorney charges; damages.** As originally filed, if an attorney who is the subject of the charge prevails in an "attorney discipline matter" (defined), the State Bar of Arizona is responsible to the attorney for any attorney fees and court costs. Failed Senate; passed on reconsideration. Passed House Appropriations with amendments.
- **S1653—Lifetime injunction; crime victim.** At the time of sentencing, on the request of the victim or the prosecutor, the court is required to issue an injunction that prohibits the defendant from contacting the victim if the defendant is convicted of a dangerous offense, a serious offense or violent or aggravated felony, or a felony offense that is a sexual offense or an offense of sexual exploitation of children. The injunction is effective immediately and is valid for the defendant's natural lifetime. A victim is authorized to submit a petition to the court requesting an injunction against a defendant who was sentenced for one of the specified offenses before the effective date of this legislation. Passed Senate. Passed House Judiciary and is likely to be amended.

The following bills have failed, but Ms. Garcia cautioned that there are mechanisms for bringing failed bills back for reconsideration:

- **H2081—Risk management; liability; state agencies.** Modifies the list of exclusions from state insurance against loss. Increases the limits on claims for liability damages made against state insurance. This bill originally had to do with law enforcement video recordings and redactions.
- **H2595—Change of Judge; Grounds; Decision.** If a party to a civil action files an affidavit for change of judge that alleges bias and prejudice, the affidavit must be granted as a matter of right, and the court has no discretion to determine the merits of the affidavit.

The general effective date for legislation that has passed will be 90 days from when the legislature adjourns (*sine die*).

In response to a question, Ms. Garcia noted that S1310 is a question of public policy and has due process implications. Other versions of it have been introduced in past sessions but were unsuccessful. Regarding H2604, Kay Radwanski, AOC staff, explained that the Committee on the Impact of Domestic Violence and the Courts (CIDVC) will review protective order forms and the Rules of Protective Order Procedure to ensure that courts will be ready to implement this bill.

B. Modifications to ACJA § 7-203: Confidential Intermediary

Aaron Nash, director, AOC Certification and Licensing Division (CLD), presented a proposal to amend section 7-203 of the Arizona Code of Judicial Administration (ACJA). He provided background information on the Confidential Intermediary Board, which regulates approximately 35 individuals who are certified to attempt contact between birth parents and adopted children.

The proposed modifications were posted on the ACJA Forum and were open for public comment through April 25, 2022. Changes were made to the original proposal based on stakeholder and public feedback. Including those changes, the proposed amendments to ACJA § 7-203 correct typographical errors and update language; eliminate statutory language where practical, leaving references to the applicable statutes; reduce the size of the regulatory board from 11 to 7; and provide the board discretion to meet as needed, rather than mandating two meetings per year. A proposal to switch the program from annual rolling renewals has been removed. CLD now recommends returning to the procedure of having all certificates expire October 31 in even-numbered years. It is also being recommended that the term “discharge summaries” be replaced with “finalization reports” to provide consistent language throughout the code.

Motion: By Judge Kellie Johnson to support the proposed ACJA modifications as presented. **Seconded:** Judge Renee Bennett. **Vote:** Unanimous

ACJA § 7-201: General Requirements

Mr. Nash also asked for COSC support to amendments to ACJA § 7-201, which applies to fiduciaries, confidential intermediaries, defensive driving schools and instructors, certified reporters, legal document preparers, alternative business structures, and legal paraprofessionals. The amendments are intended to expedite certification and licensure for

those with no deficiencies in their background checks and applications. This will also improve CLD productivity and the delivery of legal services in Arizona.

Currently, CLD cannot present an applicant to an Arizona Supreme Court regulatory board or committee for initial approval until there has been “a final review of the application...” (ACJA 7-201(E)(1)(a)(7)). Review is not final until an applicant’s fingerprint results have been returned to and reviewed by CLD. In the past, the Department of Public Safety returned fingerprint results in as little as four weeks, but in 2021, results were taking up to 12 weeks.

CLD recommends a new subsection 7-201(E)(1)(a)(11), inserting a process for contingent approval. Stating that CLD “may” prepare and forward a recommendation to a board gives CLD the discretion to place an applicant on a board agenda before fingerprint results have been reviewed—for example, for applicants who have been regulated for some other purpose and who have no apparent history of discipline. As is current practice, applicants would not be certified or licensed until they clear the background/fingerprint review.

Motion: By Ray Billotte to support the proposed ACJA modifications as presented.

Seconded: Judge Michael Peterson. **Vote:** Unanimous

C. Continuing Education Requirements for Court Interpreters

Kathleen Schaben, chair, Court Interpreter Program Advisory Committee (CIPAC) Workgroup, and David Svoboda, language access specialist, AOC, requested support for a proposal to implement continuing education requirements for credentialed interpreters. A new ACJA § 7-301: Continuing Education Requirements for Credentialed Court Interpreters was presented for consideration. The presenters provided a detailed history of interpreter credentialing in Arizona, explaining credentialing program elements and tiers, the purpose of continuing education, and the specific requirements included in the proposal. Credentialed interpreters would have to meet compliance requirements every two years.

The proposal has been shared with the two statewide interpreter associations, and both have been supportive. Ms. Schaben and Mr. Svoboda will take the proposal to other relevant committees and continue discussions with stakeholders prior to seeking approval from the Arizona Judicial Council (AJC). If AJC adopts the proposal, systems will be developed to implement it.

Motion: By Judge Starr to support the proposal as presented. **Seconded:** Ray Billotte.

Vote: Unanimous

III. OTHER BUSINESS

Good of the Order/Call to the Public: No one from the public was on the call, and no requests to speak were emailed to staff.

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

Next Regular Meeting: Friday, September 9, 2022; 10 a.m.
Virtual Meeting

Committee on Superior Court

Minutes

Friday, September 9, 2022

Virtual Meeting

Remote Appearance: Judge Timothy Wright, Jr., chair, Ray Billotte, Jeff Fine, Judge Pamela Gates, Amy Hunley, William G. Klain, Steve Lessard, Judge Danelle Liwski, Judge James Marner, Judge Megan McCoy, Judge Lilliana Ortega, Judge Michael Peterson, Judge Randall Warner, Todd Zweig

Absent/Excused: Judge Terry Bannon, Judge Renee Bennett, Judge Thomas Fink, Judge Kellie Johnson, Judge John Napper, Megan Spielman, Judge Patricia Starr

Presenters: Stevan Borozan, Liana Garcia, Kristi Hageman, Elise Kulik, Judge Stephen McCarville, Richard McHattie, Mark Meltzer, Michael Nimtzt, Brittany Pelly

Administrative Office of the Courts (AOC): Samuel Davis, Michael Malone

AOC Committee Staff: Theresa Barrett, Marcy Morris, Sabrina Nash, Kay Radwanski

I. REGULAR BUSINESS

Welcome and Opening Remarks. The September 9, 2022, meeting of Committee on Superior Court (COSC) was called to order at 10:00 a.m. by Judge Timothy Wright, Jr., chair.

Judge Wright welcomed new member Judge Lilliana Ortega (Santa Cruz County) and reappointed members Judge Randall Warner (Maricopa County) and William G. Klain, Arizona State Bar representative. Judge Wright noted Judge Pamela Gates is a member by virtue of her appointment as the associate presiding judge for the Maricopa County Superior Court. Judge Danelle Liwski is a committee member by virtue of her position as associate presiding judge for the Superior Court in Pima County. Judge Wright also acknowledged and thanked members who have left the committee. They include Judge Joseph Kreamer (Maricopa), Judge Roger Nelson (Yuma), Judge David Cunanan (Maricopa), and Judge Jason Holmberg (Pinal). Sabrina Nash, who helped support COSC, has moved on to new assignments, and Marcy Morris was introduced as her replacement.

Approval of Minutes. The draft minutes from the May 6, 2022, COSC meeting were presented for approval.

Motion: Judge Michael Peterson moved to approve the May 6, 2022; minutes as presented.

Seconded: Judge Liwski. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Legislative Update

Liana Garcia, AOC director of government affairs, informed members that the legislature wrapped up the 2022 session in the end of June. She then presented four legislative proposals of interest to COSC for the upcoming session. The Arizona Judicial Council will

ultimately decide whether these proposals should be part of the Judicial Branch's 2023 legislative package.

- Certificate of Second Chance, A.R.S. § 13-905. This proposal is intended to improve court operations and provide clarity as to when a certificate of second chance will be issued. Ms. Garcia explained that the proposal includes only technical and conforming changes.

Motion: Steve Lessard moved to support the proposal as presented. **Seconded:** Judge Ortega. **Vote:** Unanimous.

- Clerk of Court, Justices of the Peace and Superior Court Judges - E Qual, A.R.S. § 16-317. This proposal would expand the list of elected offices that are eligible to gather online petition signatures to include the Clerks of Court, justices of the peace, constables, and superior court judges. Ms. Garcia said she had presented the proposal to the justices of the peace, but they chose to opt out of the proposal and did not wish to have it apply to them.

During discussion, it was noted that signature gathering is a political issue and not within COSC's purpose area. The consensus was that COSC should take a neutral position on this proposal and defer to the Arizona Judges' Association.

Motion: Judge Gates moved that COSC should decline to state an official position on this proposal. **Seconded:** Judge Warner. **Vote:** Unanimous.

- Fee Waivers and Deferrals. A.R.S. § 12-302. This proposal would increase the threshold for fee deferral if an applicant's income fell in the range of 150% to 225% of poverty level. It also adds government assistance programs that, with an affidavit or supporting documentation, would qualify for fee waiver.

Motion: Jeff Fine moved to support the proposal as presented. **Seconded:** Judge Gates. **Vote:** Unanimous.

- Pretrial Financial Affidavit. A.R.S. § 13-3967. This proposal affects the information the court would consider when setting conditions for release on bailable offenses before trial. Specifically, it would remove a requirement that the court consider information about the accused person's family ties, employment, financial resources, character, and mental condition.

This proposal, submitted by the Maricopa County Adult Probation Department, was presented to COSC for informational purposes only, and no position was taken on it. The rationale for the proposal is that this specific information is self-reported by the arrestee, is inconsequential, and has been difficult to gather the COVID-19 pandemic.

During discussion, some members noted that proposal would remove a frequently referenced piece of the pre-trial report that defense attorneys rely on to advocate for their client's release. Also, this information has been historically relied upon by judges and would impact judicial decision-making by eliminating factors a judge considers when setting release conditions.

Mr. Lessard, chair of the Committee on Probation (COP), noted that the proposal was discussed at length by COP members. They had concerns about the subjectivity of assessing the character and mental condition of an individual at that point in the process. There was a preference to use the pre-trial risk assessment tool. Mr. Lessard noted that there is a risk of getting a mental health assessment wrong in a conversation with the arrestee.

Todd Zweig added that the considerations at a bail hearing are the likelihood that the person will reoffend while on bail and whether the person will return to the court for the next appearance. He said that according to research, the factors about family ties, employment, financial resources, character, and mental condition do not impact those considerations.

B. Clerk 360 Overview and Demonstration

Clerk of Court Jeff Fine, Superior Court in Maricopa County, and two members of his team provided an overview of the Clerk 360 website used by his office. He explained that the new system uses business intelligence (BI) and comprises the strategies and technologies used by enterprises for the data analysis and management of business information. Common functions of business intelligence technologies include reporting, online analytical processing, analytics, dashboard development, data mining, process mining, complex event processing, business performance management, benchmarking, text mining, predictive analytics, and prescriptive analytics.

The presentation included a demonstration of the application's reporting capabilities and how by using spreadsheets, the system can create charts, graphs, or different visuals for sharing data collected by the court. Mr. Fine also shared how his office developed queries to assess business processes.

Michael Nimtz provided an overview of the real time capabilities of the dashboard's ability to review documents, either electronic or manual, that are scanned to redact information and to eliminate the need for data entry into automated systems. He shared that Clerk 360 has document management, financial management, and payment systems. It also provides employee systems options.

Richard McHattie provided a live demonstration of the types of reporting available for supervisors and employees to illustrate how the system uses real-time data to create table views. He also showed how the system could pull from the data platform for employees and filter information by job levels and categories. Mr. McHattie said the system has been live for about two weeks.

C. ACJA § 5-306: Court Security-Firearms-Provisional Court Security Officer (CSO) Arming

Stevan Borozan, court security training specialist, AOC Education Services Division, shared that in January 2020, CSOs were required to complete specialized firearms training for armed duty. The COVID-19 public health emergency caused some CSO firearms programs to be cancelled or vastly reduced the number of attendees able to participate in live offerings. To address these capacity challenges, Administrative Directive 2020-07 was issued in April 2020. This directive allowed provisional arming of CSOs who have recent firearms certification in an equivalent law enforcement, military, or Arizona security guard role. The provisional arming process has been a practical enhancement of CSO training timelines. This code change proposal will formally adopt the language of Administrative Directive 2020-07

into the Arizona Code of Judicial Administration (ACJA) to allow provisional arming of CSOs to continue.

Motion: Judge Liwski moved to support the proposal as presented. **Seconded:** Mr. Zweig
Vote: Unanimous.

D. FARE Program: ACJA § 5-205 Collections Code Amendment

Brittany Pelly, manager, Consolidated Collections Unit, gave an overview of proposed amendments to ACJA § 5-205. She noted the proposal is intended primarily to update the FARE code section to reflect the way the program currently operates and to give courts clarification on the administration and applicability of the FARE fees.

Significant new or changed provisions include:

- Statutory authorities for interception of winnings from event wagering, lottery, and fantasy sports is added and defined.
- Adds a provision for when a case can be recalled or removed from FARE.
- Adds a provision requiring periodic review of delinquent cases and referral to FARE.
- Clarifies the processes for the Traffic Ticket Enforcement Assistance Program (TTEAP) and the FARE Compliance Assistance Program (CAP).
- Amends and clarifies provisions related to distributing FARE revenues.
- Adds a definition of attempt, related to the FARE vendor's efforts to contact the defendant regarding delinquent obligations.

Motion: Mr. Fine moved to support the proposal as presented. **Seconded:** Mr. Lessard **Vote:** Unanimous.

E. ACJA § 5-206 Fee Deferrals and Waivers

Judge Stephen McCarville (Ret.), chair of the AOC Fee Waiver and Deferral Workgroup, presented a proposal to amend ACJA § 5-206. He indicated some changes are proposed to align the code with court practices, while others are intended to provide clarification and promote consistent court practices.

The proposed changes include:

- Allowing applications to be submitted in writing or by verbal avowal in all courts.
- A verification letter from a non-profit legal services organization shows that the applicant is receiving legal assistance, not representation.
- Orders for deferral or waiver are effective until a final judgment is entered in a case; and
- The court does not need to wait until a case concludes to grant a waiver if the applicant's financial situation is unlikely to change in the foreseeable future.

Motion: Judge Liwski moved to support the proposal as presented. **Seconded:** Mr. Klain.
Vote: Unanimous.

E. Report: August Rules Agenda

Mark Meltzer, senior court policy analyst, Court Services Division, summarized new rules and amendments that the Supreme Court adopted at its August 23, 2022, rules agenda meeting. The following petitions were discussed:

- R-21-0045. Order amending on a permanent basis the Rules of Civil Procedure and other rules to modify, among other things, the rules pertaining to jury questionnaires, voir dire, and challenges for cause, effective immediately.

- R-22-0037. Rules of the Supreme Court—order amending on an emergency basis the Rules of the Supreme Court to implement statutes enacted in the 2021 and 2022 legislative sessions, effective September 24, 2022.
- R-22-0027. Rules of Procedure for Eviction Actions—to preclude the imposition of a filing fee for filing an answer in an eviction case.
- R-22-0030. Rules of Protective Order Procedure (ARPOP)—to conform the rules to statutory changes that, among other things, extend the duration of an Order of Protection from one year to two years. An Order of Protection (OP) served before September 24, 2022, will be in effect for one year from the date of service; an OP served on or after September 24, 2022, will be in effect for two years from the date of service.
- R-22-0031. Rules of Family Law Procedure—provides a process for a summary consent decree; allows the court to enter a stipulated order for terminating a decree of legal separation.
- R-22-0034. Rules of Procedure for the Juvenile Court—Following the August 2022 Rules Agenda, the Supreme Court entered an order amending, on an emergency basis, 14 juvenile court rules to implement statutory changes adopted during the 2021 and 2022 legislative sessions.
- R-22-0004. Rules of Procedure for Eviction Actions—allows the tenant to file a motion to vacate the judgment after it has been satisfied. This allows the tenant to restore credit and get new housing.
- R-22-0035. Rules of Criminal Procedure—The petition proposes to integrate victims’ rights provisions by adding a new section (v) to about 40 criminal rules. The comment period is open until October 3, 2022. (Staff note: This petition was not on the August 23 agenda, but it is included in this summary for the reader’s information. Another integration petition, R-20-0031, was on the August 23 agenda and was continued to the December agenda.)
- R-22-0011. Rules of Civil Procedure—to more precisely define the appropriate parties to an action; clarify who may bring an action on behalf of (or defend an action against) a minor.
- R-22-0003. Rules of Criminal Procedure—These Rule 27.6 amendments concern release determinations of a person arrested on a probation violation. In the superior court, the release determination is made under Rule 7.2(c)(1)(A). The release determination in a limited jurisdiction court includes a detailed provision to assure the defendant’s appearance and protect the victim and the community, as well as consideration of whether there is a reasonable probability that the defendant will receive a sentence of incarceration.
- R-22-0005. Rules of Family Law Procedure—made changes to the ARFLP rules to better define “judgment” and clarify when post-judgment rulings are appealable, effective immediately.
- R-22-0006. Rules of Family Law Procedure—adopted changes to ARFLP to provide an alternative means of verification for filings that must be verified, effective January 1, 2023.
- R-22-0010. Rules of Family Law Procedure—a new rule resolution statement was added to provide “a specified, detailed position” that the party proposes to resolve all disputed issues in the case “without argument in support of the position.”
- R-22-0015. Rules of Family Law Procedure—amendments intended to provide additional time to settle on pretrial statements and procedures for the statement’s preparation and adopting a new rule requiring the submission of a Notice of Issues at least 20 days before trial, effective January 1, 2023. R-22-0008.
- R-20-0044. Rules of the Juvenile Court—Three new rules previously adopted on an emergency basis have been adopted on a permanent basis, effective January 1, 2023.

- R-22-0002. Rules of Criminal Procedure—New Rule 2.6 contains requirements for issuing no-knock warrants and nighttime warrants. The rule also requires the issuing court to collect and forward search warrant data to the AOC. An administrative directive with further details concerning data collection and reporting will be issued later this year.

III. OTHER BUSINESS

Good of the Order/Call to the Public: No one from the public was on the call, and no requests to speak were emailed to staff.

Motion: Mr. Klain made a motion to adjourn. **Seconded:** Mr. Lessard. Vote: Unanimous.

Adjournment: The meeting adjourned at 11:59 a.m.

Next Meeting:

Friday, November 4, 2022; 10:00 a.m.
Conference Room 119 A/B
Arizona State Courts Building
1501 W. Washington, Phoenix, AZ 85007

2023 Meeting Dates

February 3
May 5
September 8
November 3

Committee on Superior Court

Minutes

Friday, November 4, 2022

Virtual Meeting

Present: Judge Timothy Wright, chair, Judge Renee Bennett, Ray Billotte, Jeffrey Fine, Judge Thomas Fink, Amy Hunley, Judge Kellie Johnson, Steve Lessard, Judge Danelle Liwski, Judge John Napper, Judge Michael Peterson, Judge Patricia Starr, Judge Randall Warner, Todd Zweig

Absent/Excused: Judge Terry Bannon, Judge Pamela Gates, William Klain, Judge James Marner, Judge Megan A McCoy, Judge Liliana Ortega, Megan Spielman

Presenters: Liana Garcia, Donald Jacobson, Carol Mitchell

Administrative Office of the Courts (AOC): Theresa Barrett, Michael Malone

AOC Staff: Kay Radwanski, Diana Tovar

I. REGULAR BUSINESS

Welcome and Opening Remarks. The November 4, 2022, meeting of the Committee on Superior Court (COSC) was called to order at 10:00 a.m. by Judge Timothy Wright.

Approval of Minutes. The draft minutes from September 9, 2022, COSC meeting were presented for approval.

Motion: Judge Michael D. Peterson moved to approve the September 9, 2022, minutes as presented. **Seconded:** Ray Billotte. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Proposals to Rule 11 Task Force Interim Report and Legislative Proposals (taken out of order)
Donald Jacobson, chair, Task Force on Rule 11 of Arizona Rules of Criminal Procedure and Related Matters and Senior Special Projects Consultant, AOC, presented the Rule 11 Task Force Interim Report and legislative proposals.

The purpose and charge of the Rule 11 Task Force was to:

- Review the current practice of evaluation of competency and restoration to competency to stand trial in misdemeanor criminal cases to determine if the current Rule 11 process for handling cases should be changed or replaced.
- Determine if there are more effective alternatives to evaluating misdemeanor defendants who repeatedly fail to appear other than an in-custody evaluation process.
- Determine if there are alternative practices that should be considered to provide restoration or treatment when an individual is found not competent yet restorable.

Comments of support were shared.

Motion: Judge John Napper moved to support the implementation of the recommendations of the Task Force on Rule 11 of Arizona Rules of Criminal Procedure and Related Matters and associated legislative proposals. **Seconded:** Judge Peterson. **Vote:** Unanimous

B. Additional 2023 Legislative Proposals

Liana Garcia, director, AOC Government Affairs, updated the committee on a proposed legislative bill of interest to the superior court.

- Assisted Outpatient Treatment Deferral. The goal of this proposal is to stop the continuing cycle of persons with mental health issues committing misdemeanors and simply being released with no treatment plans.

Discussion: Discussion ensued. Concerns were expressed about the bill language regarding compliance with court orders. Ms. Garcia stated that the legislative team is currently drafting language that would create an avenue for a person who has committed a misdemeanor to be assigned a guardian *ad litem* when shown that the person would benefit from assisted outpatient treatment and be given a less restrictive option for treatment than currently provided in Title 36. A member suggested that Rule 11 reports be admissible in the courtroom so the court can rely on the report as a threshold matter and begin civil procedures with fewer obstacles. In addition, members shared input over which court would hear the complaint first. Members shared that establishing a clear direction could resolve criminal cases of persons living with mental illness, avoid unnecessary jail time, help those persons start treatment, and maintain continuity of care in a timely manner.

C. ACJA § 3-303: Fee Guideline Review Report 2022

Carol Mitchell, senior court policy analyst, AOC, shared information on Arizona Code of Judicial Administration § 3-303, which outlines the statewide fee guidelines for judicial officers to use in determining reasonable compensation for eligible individuals involved in probate matters. The code section mandates a review to be done to ensure the guidelines and general compensation factors continue to reflect billing practices that are reasonable and in line with A.R.S. §14-5109. A formal report was prepared for the Arizona Judicial Council that provides a summary of survey results collected from judicial officers, attorneys, fiduciaries, and court accountants.

III. OTHER BUSINESS

Good of the Order: None.

Call to the Public: No members of the public were present.

Adjournment: The meeting adjourned at 10:58 a.m.

Next Meeting: Friday, February 3, 2023; 10 a.m.
Arizona State Courts Building
Conference Room 119 A/B