

Committee on Superior Court

Minutes

Friday, February 2, 2018
Conference Room 119 A/B, Arizona State Courts
Building 1501 West Washington Street
Phoenix, AZ 85007

Present: Judge David Mackey

Telephonic: Judge David Cunanan, Judge Thomas Fink, Judge Richard Gordon, Judge Charles Gurtler, Judge Charles Harrington, Judge Andrew Klein, Judge Kenneth Lee, Scott Mabery, Patricia Muñoz (proxy for Eric Silverberg), Judge Samuel Myers, Judge Roger Nelson, Judge Cathleen Brown Nichols, Judge Michael Peterson, Megan Spielman, Judge Randall Warner, Judge Timothy Wright

Absent/Excused: Judge Sally Duncan, Toni Hellon, Judge Jason Holmberg, William Klain, Karen Kretschman, Ronald Overholt, Judge Joseph Welty

Administrative Office of the Courts (AOC): Jerry Landau (by telephone), David Withey, Jennifer Greene, Theresa Barrett, Mark Meltzer

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The February 2, 2018, meeting of Committee on Superior Court (COSC) was called to order at 10:03 a.m. by Judge David Mackey, chair.

Approval of Minutes

The approval of the draft minutes from the November 3, 2017, COSC meeting was deferred until the May 4, 2018 meeting.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Legislative Update

Jerry Landau, director, AOC Government Affairs, provided COSC with an update on the following bills:

H2119: Attorney Regulation; Assessments; Membership Dues – affirms that the Supreme Court has authority over regulatory functions relating to the practice of law, including regulation of attorneys, permits the court to charge a mandatory assessment from each attorney to support the court’s regulatory functions, and prohibits any other entity in Arizona from collecting mandatory assessments from an attorney.

HB2181: Jury Duty; Hardship; Age Exemption – would allow prospective jurors 70 years of age or older to opt out of jury service. Mr. Landau was not sure this bill would get a hearing.

HB2249: Protective Orders; Filing Requirements - has changed a great deal since initially written by the Arizona Criminal Justice Commission (ACJC). Service of an Order of Protection from the seat of a patrol car has been removed along with the language to change the party designations from plaintiff to petitioner and defendant to respondent. The requirement for

the court to send an order immediately to law enforcement or a constable for service has been taken out to allow the court discretion in determining when it should be forwarded for service. Clarifying language will be added to define who can serve an Order of Protection.

A question was asked about when a defendant's name is entered into the National Crime Information Center (NCIC) database. When a protective order is requested, the defendant's name is entered into the court case management system and the AOC database. Only after the order has been served is the defendant's name entered into the NCIC database.

H2259: Juvenile Court Facilities; Shelters; Use - provides that if appropriate facilities are available to the juvenile court, the presiding judge of the superior court is permitted to authorize juvenile court staff to provide services within the facilities.

H2312 Setting Aside Conviction; Requirements – provides direction and clarification of the current law to the judge, clerk, law enforcement, and the public as to what a person can and cannot do with a conviction that is set aside, who can and cannot see the records, what the judge needs to tell the defendant upon sentencing regarding the right to set aside the conviction, and clarifies what would preclude the defendant from receiving a set-aside. A proposed amendment would require an explanation of why the set-aside application was denied. Gun rights would be restored in a set-aside except in the instance of a serious crime.

HB2356: Juvenile Court; Jurisdiction; Age – would extend jurisdiction past the age of 18 for juvenile court on a motion of the prosecutor. It has been suggested that probation officers and the courts should also have that discretion.

HB 2357: EORP; Employer Contributions – beginning July 1, 2018, would require each EORP employer to make contribution sufficient under the actuarial valuation to meet both normal costs plus an actuarially determined amount required to amortize the unfunded accrued liability over a period of at least 20 years. Asserts an employer's contribution to EORP in combination with member contributions may not be less than the actuarially determined normal cost for that fiscal year.

SB1017: Appellate Review; Municipal; Justice Courts – allows direct right to appeal, from Superior Court to the Court of Appeals on a lower court appeal.

SB1447: Juror Questionnaire; Investigations –allows the jury commissioner or the jury manager to call on law enforcement agencies and the county attorney for assistance in investigating a juror's questionnaire for validity and accuracy.

B. FARE Briefing: Proposed Amendments to ACJA § 5-205 Collections

Candace Atkinson, manager, Consolidated Collections Unit, AOC Court Services Division, provided an overview of the integration of the Compliance Assistance Program (CAP) into the FARE program. The project included renewal of the contract with Conduent, a proposed fee structure for CAP and FARE, changes in program operations, the addition of new projects and expanded services, and proposed ACJA code section revisions.

The proposed fee structure for the CAP program is as follows:

- Presumptive partial payment of \$150.00
- 19.5 percent special collections fee is assessed only on the partial payment amount
- Remainder of the 19.5 percent special collections fee waived
- TTEAP registration renewal will be released
- Driver's license hold may be lifted by the local court
- Collection efforts will be placed on hold

The proposed fee structure for the FARE program:

- The 19.5 percent special collections fee will not be assessed until after the second notice is mailed. 37 percent of litigants will not have the fee assessed
- The \$35 FARE delinquency fee will increase to \$49, with AOC receiving \$38.50 and Conduent receiving \$10.50
- Litigants who go into FARE will save approximately \$52 per case.

The anticipated reductions in collection fee revenues for both the AOC and Conduent is \$1.5 million. The new contract effective date is July 1, 2018. Ms. Atkinson discussed the proposed changes to the Arizona Code of Judicial Administration (ACJA), which include a definition of the FARE and CAP programs, removal of the \$7 general services fee, and the addition of the FARE CAP. She also conveyed that her unit is working to establish an online CAP application, online payment plans, email and text messaging reminders, recurring payments, correctable violations online, and offsite cash payment kiosk locations.

Motion: Judge Timothy Wright moved to approve the proposed amendments to ACJA § 5-205 as presented. **Seconded:** Judge Cathleen Brown Nichols. **Vote:** Unanimous.

C. 2018 Rule Petitions

Mark Meltzer, AOC Court Services Division, discussed open rule petitions of interest to the superior court. Unless specifically noted, the comment deadline is May 21, 2018.

Rules of Family Law Procedure

R-17-0054 – The Task Force on Arizona Rules of Family Law Procedure filed a motion, which was granted, to extend the time for filing its rule petition until the end of March 2018. The purpose of the extension is to allow pre-vetting of the draft family law rules and to allow time to incorporate the informal vetting comments into the final petition.

There was discussion about whether Rules 91, 92, and 94 have a clear connection to the enforcement of post-decree and post-judgment proceedings. Mr. Meltzer noted the length and complexity of Rule 91, explaining that it has been divided into parts that relate to specific types of petitions for clarity and ease of use. The point was made that judges need direction regarding the contempt process in post-decree enforcement.

Civil Rules

R-17-0050 – asks the Supreme Court to reconsider the proposals made by the Committee on Civil Justice Reform concerning Rules 11 and 26, which were omitted from the court's order adopting the committee's proposed rules. The petitioners filed a supplemental petition on January 9, 2018, that proposes the following addition to Rule 11 (c)(1): *"The sanction otherwise required by this rule is not applicable if the party seeks in good faith to vindicate a constitutional right. It is an abuse of discretion to fail to impose an appropriate sanction when the standards of this rule are met."*

R-18-0007 - asks to federalize Rule 26(b) so that expert drafts in communication between the expert and counsel would not be discoverable or disclosable.

R-18-0018 – presumes that a jury trial is desired, with the parties able to affirmatively waive the right to a jury trial by filing a written stipulation after the action is commenced.

Criminal Rules

R-18-0001 – proposes to abrogate Rule 39 and place the rights enumerated in Rule 39 into the prospective rules, allowing victims meaningful participation in the daily working of the process and providing comprehensive guidance to criminal justice professions using the constitutional and statutory mandates already in existence.

R-18-0012 – contains substantive changes to permit a limited jurisdiction court to order restoration treatment if the defendant is found incompetent but restorable; clarifying language to delineate the differences between what a limited jurisdiction court and the superior court may do if a defendant is found incompetent but not restorable; and provides clarifications to timeframes for the restoration of competency treatment orders.

Rules of Evidence

R-18-0063 – would conform Arizona’s rule on the residual exception to the rule against hearsay to a pending change in the federal rule, which becomes effective on December 1, 2018. There is a written notice requirement in the revised rule.

R-18-0008 – The Digital Evidence Task Force has proposed changes to the criminal, juvenile, eviction, and evidence rules to add the term “electronically stored information” to the rules, among other requests.

Rules of the Supreme Court

R-18-0002 – revises the rule on rulemaking to simply and directly inform the public on how a person can file a rule petition and a comment to a petition. Notable changes include prioritizing electronic filing as the primary means of filing, retaining paper filing in the Clerk’s Office for those without Internet access, amending the date for submitting comments to May 1, allowing the court time during the summer to review petitions and comments, and changing the date of Annual Rules Agenda to August or September of each year to allow scheduling flexibility.

R-18-0004 – would permit a person who is not an active member of the State Bar to represent any entity that is not an issuing public corporation before any court in this state and in any proceeding, including but not limited to any quasi-judicial hearing, any administrative, agency, hearing officer, or board hearing, rehearing, or appeal, any small claims procedure or proceeding, and in any fee arbitration proceeding. It would also allow any presiding officer to assess an appropriate sanction against any party or attorney who has engaged in unreasonable, groundless, abusive, or obstructionist conduct.

R-18-0005 – clarifies that the rules apply to all juvenile records, provide more case type information differentiating public and non-public cases, and stylistic language changes. The most extensive changes are in Juvenile Rule 47, which gives juvenile court participants, the clerk of the court, and the superior court more detail on the kind of access to juvenile court matters individuals can expect based on their roles in the case or relative to the children in the case.

R-18-0009 – would resolve the “ethical conundrum” for attorneys that arises due to Arizona’s legalization of medical marijuana. The proposed amendment is modeled on language adopted by Connecticut.

R-18-0010 – gives courts the discretion to deny requests for certified court reporters in proceedings where a certified reporter is not required by statute or by Rule 30(b)(3) and there is no certified reporter available. In those instances, the court can order electronic recording of the proceeding, which should not impact the parties because the proceedings can be transcribed from the electronic recording by an authorized transcriber. The timeframe to request a certified reporter has been increased to five days before the proceeding to allow courts more time to accommodate the request for a certified reporter when possible.

Rules of Civil Appellate Procedure

R-18-0017 – creates a process for setting a bond and objecting to the bond. Bond is

defined as including types of court-ordered security other than a supersedeas bond. The setting of the amount of the bond in a case involving monetary damages would allow the court also to consider damages, costs, attorney fees, and prejudgment interest that is included in the judgment. Execution on a judgement and proceedings to enforce it would be stayed for 15 days after its entry unless or until a bond or other security is posted.

Other Rules of Interest

R-18-0011 – expressly provides that an administrative appeal resulting from a Superior Court decision should first be made to the Court of Appeals rather than the Supreme Court.

R-18-0020 – would require any eviction complaint to specify whether the rental is subsidized housing, the total rent per month, and the rent for which the tenant is responsible. Judgment under Rule 13 could be entered only for the unpaid rent that the tenant is obligated to pay.

R-18-0021 – proposes a concise set of rules to govern procedures in small claims cases. A summons served on a defendant will include a hearing date at which the defendant must appear, but the defendant is not required to file an answer to the summons. The comment period for this rule petition has been modified as follows: Comments to the petition are due March 16, 2018; an amended petition may be filed by April 27, 2018; comments to an amended petition are due June 1, 2018; and the petitioner may file a reply by July 6, 2018.

III. OTHER BUSINESS

Good of the Order

Members discussed the volume of substantial and stylistic changes to the Rules of Civil Procedure over the past few years, the ability of technology to keep up and process the tiered systems required for mandatory electronic filing, and allowing the Arizona State Bar and the bench time to assimilate the substantial changes made the previous couple of years. Judge Mackey discussed a couple of options for responses from COSC: drafting a letter to the Rules Forum and circulating it as a response from COSC to the 2018 civil rule petitions or leave the discussion as a motion and decision from COSC.

Motion: Judge Randall Warner moved that COSC file a comment to each of the pending 2018 rule petitions asking the Supreme Court to refrain from amending the Rules of Civil Procedure for one year. **Seconded:** Judge Charles Harrington. **Vote:** Motion carried, one member opposed.

Members also were reminded to begin thinking about suggestions for the next strategic agenda.

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

Adjournment: The meeting adjourned at 11:45 a.m.

Next Meeting: Friday, May 4, 2018; 10 a.m.
Arizona State Courts Building, Conference Room 119 A/B
1501 W. Washington, Phoenix, AZ 85007

Committee on Superior Court

Friday, May 4, 2018

Conference Room 119 A/B, Arizona

State Courts Building, 1501 West Washington Street

Phoenix, AZ 85007

Present: Judge David Mackey (chair), Judge David Cunanan, Judge Richard Gordon, Judge Charles Gurtler, Jr., Judge Charles Harrington, Toni Hellon, William Klain, Judge Samuel Myers, Judge Roger Nelson, Ronald Overholt, Judge Michael Peterson, Judge Randall Warner, Judge Joseph Welty, Judge Timothy Wright, Todd Zweig

Telephonic: Judge Andrew Klein, Judge Kenneth Lee, Judge Cathleen Brown Nichols, Megan Spielman

Absent/Excused: Judge Sally Schneider Duncan, Judge Thomas Fink, Judge Jason Holmberg, Karen Kretschman, Scott Mabery

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

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The May 4, 2018, meeting of Committee on Superior Court (COSC) was called to order at 10:01 a.m. by Judge David Mackey, chair.

Judge Mackey introduced and welcomed new member Todd Zweig, Superior Court in Pinal County. Mr. Zweig was appointed as the Court Administrator-Rural representative.

Approval of Minutes

The draft minutes from the November 3, 2017, COSC meeting were presented for approval.

Motion: Judge Charles Gurtler moved to approve the November 3, 2017, minutes as presented. **Seconded by** William Klain. **Vote:** Unanimous.

Approval of Minutes

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

Motion: Judge Gurtler moved to approve the February 2, 2018, minutes as presented. **Seconded by** Judge Michael Peterson. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Judicial Branch Sexual Harassment Policy

Jennifer Greene, AOC assistant counsel, presented a proposed discrimination and harassment policy and asked COSC to support it. She explained that the judicial policy on sexual harassment in the workplace was first issued in 1992 to provide a consistent policy statement and direction for all Arizona courts. She stated that the proposed change to the

current policy would extend to all types of harassment and discrimination in the workplace and would require each local court to review its policy to ensure compliance.

Discussion focused on harassment and electronic communications, the need for a definition of retaliation, and duty to report retaliation. Also discussed were definitions of *disciplinary action* and *severe disciplinary action* and the consequences for false reporting of harassment or discrimination.

Motion: Judge Timothy Wright moved to approve the policy with the changes suggested by COSC. **Seconded by** Judge Gurtler. **Vote:** Unanimous.

B. Restyled Family Law Rules

Judge Mark Armstrong (ret.) provided a brief background on the Task Force on the Rules of Family Law Procedure and discussed the following substantive changes to the rules.

- **Rule 5.1** provides that if pending family law and dependency proceedings concern the same parties, the juvenile division has jurisdiction over the children.
- **Rules 6 and 6.1** set the provisions for requesting a change of judge.
- **Rule 9** – includes exception for domestic violence and adds a new section (c) with requirements for a “good faith consultation certificate.”
- **Rules 10 and 10.1** address representation of children and court -appointed advisor
- **Rule 12** requires the recording of judicial interviews of children.
- **Rule 22** allows the court to transfer a case to the proper venue upon 10 days’ notice.
- **Rule 47** provides for the scheduling of a resolution management conference when a party files a motion for temporary orders.
- **Rule 69** requires that any agreement be in writing and signed by the parties personally or by counsel on the party’s behalf. An agreement under this rule is not binding on the court until it is submitted to and approved by the court.
- **Rule 73** clarifies that a family law conference officer is strictly a facilitator and no longer has the authority to make recommendations.
- **Rule 76** deals with the resolution management conference.
- **Rule 76.1** governs the scheduling of conferences, conference statements, and pretrial statements (*new rule*).
- **Rule 78** includes provisions formerly found in Rule 81, which is now reserved. To be appealable, a judgment must include language under **Rule 78(b)** or **78(c)**.
- **Rule 83** no longer contains a reference to “new trial” because in a family case, the granting of a motion under this rule does not result in a new trial. Motion is extended to 25 days.
- **Rule 84** expressly provides that it does not extend the time for filing a notice of appeal, that it may not be combined with a Rule 83 motion, and that under Rule 84, the court may not open the judgment or accept additional evidence as it can under Rule 83.
- **Rule 85** requires the court to correct a clerical mistake or a mistake arising from oversight or omission.
- **Rules 91.1-91.6** contain applicable provisions to specific types of modification or enforcement actions (*new rules*).
- **Rule 92** eliminates willfulness as an element of contempt but states that the absence of willfulness is a defense to contempt.
- **Rule 94(d)** requires an arrestee to be brought before a magistrate within 24 hours.

Judge Armstrong noted that the deadline for filing comments is June 1, 2018, and the

task force's deadline to file a reply is July 6, 2018. The restyled family law rules will go on the Supreme Court's rules agenda in August, and if approved, will take effect January 1, 2019.

Motion: Judge Richard Gordon moved to support the proposed revisions to the Rules of Family Law Procedure. **Seconded:** Ron Overholt. **Vote:** Unanimous.

C. Legislative Update

Jerry Landau, AOC Government Affairs director, reported that the legislative session had ended and the Judicial Branch was successful in its budget negotiations. He noted that \$1.1 million was allocated to Probation for growth and other compensation. The court received funding for CASA's tele-court automation while \$2 million was swept from the drug treatment fund. He noted that this expected to be the last year for sweeps. Justice and superior courts will see a six percent increase in filing fees effective immediately upon signature of the governor. Time was requested to allow the AOC time to reprogram automation for the increase in filing fees. Other bills of interest include:

S1519: Stop Orders would permit a person to obtain a Severe Threat Order of Protection, available 24 hours a day. A weaker version of this bill passed the Senate but died and did not move forward. Funding for school safety was pulled and added to the budget.

H2238: Administrative Decisions; Review; Scope will require the court to decide all questions of law without deference to any previous determination that may have been made on the question. *Signed by the governor.*

HB2312: Setting Aside Conviction; Requirements – The Clerk of the Court is prohibited from charging a filing fee for an application to have a judgment of guilt set aside. Establishes a list of factors the court must consider when determining whether to set aside a conviction. A conviction that is set aside may be alleged as an element of an offense or used as a prior conviction. *Signed by the governor.*

HB2249: Protective Orders; Filing Requirements will require the court, after granting an Order of Protection, to provide the order to a law enforcement agency or constable for service or to an entity that is authorized to serve process. Establishes which agency or entity can serve the defendant based on which court issued the protection order and requires that agency or entity to provide confirmation of service to the plaintiff as soon as practicable but no later than 72 hours. When an Order of Protection or an Injunction Against Harassment or Workplace Harassment is filed, the court is required to register the order with the National Crime Information Center. The Supreme Court is required to maintain a central repository for Orders of Protection and injunctions. *Signed by the governor, effective January 1, 2020.*

Kay Radwanski reported that the Committee on the Impact of Domestic Violence and the Courts (CIDVC) will review the Arizona Rules of Protective Order Procedure (ARPOP) to determine if changes will be needed to conform the rules to the revised statutes. CIDVC will also determine if any changes need to be made to the approved mandated protective order forms. The AOC IT Division obtained grant funds to move the current protective order database to a new platform as the Supreme Court has been designated as the holder of record and repository for all protective orders.

H2259: Juvenile Court Facilities; Shelters; Use provides that if appropriate facilities are available to the juvenile court, the superior court presiding judge is permitted to authorize juvenile court staff to provide services within the facilities. *Signed by the governor.*

HB2356: Juvenile Court; Jurisdiction; Age would extend jurisdiction past the age of 18 for juvenile court on a motion of the prosecutor. It has been suggested that probation officers and the courts should also have that discretion. *Ready for the governor.*

HB2564: Court Fees; EORP; State Contribution requires the county treasurer or a justice of the peace to transmit six percent of the fees collected to the Elected Officials' Retirement Plan to fund a portion of the employer's contribution to ensure the fund is actuarially sound. *Will be a 2018 ballot initiative.*

SB 1211: Sentence; Life Imprisonment; Parole Eligibility would allow a person convicted of first-degree murder and sentenced to life with possibility of parole after serving a minimum number of calendar years pursuant to a plea agreement that contained a stipulation to parole eligibility is eligible for parole after serving the minimum number of calendar years specified in the sentence. If granted parole, the person is required to remain on probation for life unless parole is revoked. *Signed by the governor.*

SB1249: Campaign Finance Violations; Appeal –The imposition of a penalty for campaign finance violations may be appealed to the superior court instead of the Office of Administrative Hearings as an appealable agency action. *Signed by the governor, effective January 1, 2019.*

D. Proposed Changes to ACJA Sections – Adult Probation

Kathy Waters, director, AOC Adult Probation Services Division, reported on adult probation growth. She stated adult probation in Arizona is funded as a capacity-driven system, except for Maricopa County, which is county funded. For the past three years based on capacity, Adult Probation has requested funding for ten new probation officers to focus on re-entry.

Dori Littler, manager, Interstate Compact and Administration, explained that the proposed changes to the Arizona Code of Judicial Administration (ACJA) have been supported by the Committee on Probation. She highlighted proposed changes to the following code sections:

ACJA 6-201.1 – Standard Probation Evidence Based Practice – The main revision is to add reentry language and clean up inconsistencies between the standard and IPS codes.

Motion: Mr. Overholt moved to approve the proposed code changes with the incorporated comment revisions included. **Seconded:** Judge Gurtler **Vote:** Unanimous.

ACJA -6-202.01 – Adult Intensive Probation Evidence Based Practices – Revision will result in consistency to the language among sections by defining “*every thirty days, every four weeks, once monthly*” to every month and clean up any inconsistencies between the standard and IPS codes.

Motion: Judge Randall Warner moved to approve the proposed rule change with the incorporated comment revisions included. **Seconded:** Judge Peterson **Vote:** Unanimous.

ACJA 6-204-01 – Interstate Compact Probation Evidence Based Practices – This change will clean up the compact and make it more user friendly by referencing applicable sections of statute, ACJA, and Compact rules.

Motion: Judge Sam Myers moved to approve the proposed rule change with the incorporated comment revisions included. **Seconded:** Mr. Zweig. **Vote:** Unanimous.

ACJA 6-211 – Intercounty Transfers – Proposed changes to this section, which deals with inter-county transfer of adult probationers, will clarify ambiguous or inconsistent language in the code.

Motion: Judge Warner moved to approve the proposed rule change with the incorporated comments included. **Seconded:** Judge Wright. **Vote:** Unanimous.

E. Strategic Agenda 2019-2024

Cindy Trimble, AOC Executive Office, provided an overview of the strategic planning process and asked COSC members for suggestions for the next strategic plan.

Judge Mackey proposed that COSC form a workgroup and authorize it to develop ideas for consideration and to forward them to Ms. Trimble by the June 4, 2018, deadline. Judge Mackey designated Judge Gordon as chair of the workgroup. Judges Warner, Peterson, and Myers and Mr. Overholt volunteered to participate in the workgroup.

Motion: Judge Mackey proposed formation of the workgroup, with authorization to submit suggestions on behalf of COSC. **Seconded:** Judge Gordon. **Vote:** Unanimous.

III. OTHER BUSINESS

Good of the Order (taken out of order)

Judge Mackey brought to the committee's attention that he serves on a committee to review, restyle, and rewrite the probate rules. One of the topics being discussed is whether to incorporate applicable civil rules by reference or to restate them into the probate rules. The committee is divided on restyling from the perspective of the attorney or the self-represented litigant. Judge Mackey asked COSC members for their thoughts so he could take their opinions back to the probate rules committee for consideration.

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

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

Next Meeting: Friday, September 7, 2018; 10 a.m.
Arizona State Courts Building
Conference Room 119 A/B

Committee on Superior Court

Friday, September 7, 2018
Conference Room 119 A, Arizona
State Courts Building, 1501 West Washington Street
Phoenix, AZ 85007

Present: William Klain

Telephonic: Judge David Mackey (chair), Judge David Cunanan, Judge Thomas Fink, Judge Richard Gordon, Judge Charles Gurtler, Jr., Judge Charles Harrington, Toni Hellon, Judge Andrew Klein, Judge Kenneth Lee, Judge Samuel Myers, Judge Roger Nelson, Judge Cathleen Brown Nichols, Ronald Overholt, Judge Michael Peterson, Judge Randall Warner, Judge Timothy Wright, Todd Zweig

Absent/Excused: Judge Sally Schneider Duncan, Judge Jason Holmberg, Scott Mabery, Megan Spielman, Judge Joseph Welty

Guests: Judge Jay Polk

Administrative Office of the Courts (AOC): Theresa Barrett, Jennifer Greene, Jodi Jerich, Jerry Landau, Amy Love, Mark Meltzer,

AOC Staff: Julie Graber, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The September 7, 2018, meeting of Committee on Superior Court (COSC) was called to order at 10:04 a.m. by Judge David Mackey, chair.

Judge Mackey welcomed everyone and asked them to identify themselves as most members were attending telephonically. He stated that Karen Kretschman had resigned from the committee and asked committee members to forward names of potential public members for consideration to Kay Radwanski by the end of September.

Approval of Minutes

The draft minutes from the May 4, 2018, COSC meeting were presented for approval.

Motion: Mr. Klain moved to approve the May 4, 2018, minutes as presented. **Seconded by** Judge Cunanan. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Updating Local Court Rules to Conform to 2017 and 2018 Amendments to Arizona Rules of Civil Procedure

Jodi Knobel Feuerhelm, chair, Civil Practice & Procedure Committee, State Bar of Arizona, presented a proposal to form a workgroup to review and make recommendations regarding changes to local court rules in response to the 2017 and 2018 amendments to the Arizona Rules of Civil Procedure. She stated that most of the changes were stylistic, but also included some substantive changes. Ms. Feuerhelm mentioned that the Civil

Practice & Procedure Committee of the State Bar would like to offer its assistance to help with the reviewing of local rules of practice and making recommendations on possible changes to the align the county's court rules to the amended Rules of Civil Procedure.

Judge Charles Gurtler requested the State Bar's assistance with review of Mohave County's local rule modifications, currently pending before the Supreme Court. Judge Mackey offered to try to get Ms. Feuerhelm on the agenda for the October 23, 2018, meeting of the superior court presiding judges.

B. Changes to Garnishment Forms

Jennifer Greene, AOC deputy legal counsel, and Jodi Jerich, AOC analyst, presented proposed change to the garnishment forms, specifically to eliminate the requirement that the forms require a notarized signature. Instead, the garnishee would sign "under oath or affirmation." Ms. Jerich stated that that court rule and statute appear to permit the proposed change. She also said that the State Bar was asked to solicit comments from attorneys regarding this change. Although there was limited response from attorneys, the overall response received was that it was a good change from a cost and efficiency standpoint. She noted that the proposed change to the garnishment forms received a favorable response from the Limited Jurisdiction Court Committee.

Motion: Judge Wright moved to provide a favorable response subject to judicial officer review within the next two weeks. **Seconded:** Judge Gurtler. **Vote:** Unanimous.

C. Legislative Update

Jerry Landau, AOC Government Affairs director, presented the following legislative proposals, which were submitted for consideration from the courts. Based on COSC's recommendations, the proposals may be advanced to the superior court presiding judges and the Arizona Judicial Council (AJC)

2019-01: Court security officer; powers and duties – permits the presiding judicial officer of each court to appoint and prescribe the duties of court security officers to insure the safe transaction of the business of the court. Court security officers certified by the Supreme Court have the authority of a peace officer in the performance of the officer's duties but are not eligible for new enrollment in CORP or PSPRS.

Motion: Judge Warner proposed that COSC support the proposed legislation. **Seconded:** Mr. Zweig. **Vote:** Unanimous.

2019-03: Mental health report; expert – mental health examiners appointed to conduct Rule 11 evaluations would no longer be required to address the necessity of continuing treatment with psychotropic medication or describe competency limitations caused by the medication if the examiner determines the defendant is competent by virtue of on-going treatment with the medication.

Discussion: Members discussed the difficulty of getting psychiatrists to work with the courts on competency hearings, especially in rural counties. This challenge necessitates the initial use of psychologists as mental health experts to prescreen during competency hearings. There was a request for additional time to get legislation to local criminal bench judges for review and comment.

Motion: Judge Gurtler moved to reconsider the proposed legislation at the November COSC meeting. **Seconded:** Mr. Klain. **Vote:** Unanimous.

2019-09: Electronic wills – prohibits a devisee or anyone related to the devisee by blood, marriage, or adoption from acting as a witness to the execution of a will unless the will is self-proving whereby the signatures of the testator and witness are notarized.

Note: This legislation passed last session, but proponents have agreed to a delayed effective date of July 1, 2019, to allow all parties to review the statute, check for technical changes, and review what the National Conference of Commissions on Uniform State Law will propose on its uniform electronic wills act. Mr. Landau stated that Judge Jay Polk has been working on this legislation for the last two years. He asked Judge Polk, who was present at the meeting, to outline the two types of changes he proposed in this legislation. Judge Polk noted that the first change consists mostly of technical amendments to correct or clarify language. The second change is substantive and would reduce opportunities for fraud and undue influence in the creation and execution of wills.

Discussion: Members discussed a variety of issues, including the potential for fraud, undue influence, definition of an electronic signature, signature authenticity for biometric signatures pre/post death, and an extension of the effective date.

Motion: Judge Gurtler moved to approve the technical changes to the electronic wills legislation. **Seconded:** Judge Lee **Vote:** Unanimous.

Motion: Judge Gordon moved to support Judge Polk's legislative proposal to require both witnesses to be disinterested signers for both paper and electronic wills. **Seconded:** Judge Lee **Vote:** Unanimous.

Motion: Judge Harrington moved that COSC would like to see a good faith effort made to extend the effective date of the legislation to January 1, 2020. **Seconded:** Judge Gordon. **Vote:** Unanimous.

D. Update COSC Strategic Agenda Workgroup (taken out of order)

Judge Richard Gordon, Superior Court in Pima County, reported on the Strategic Agenda Workgroup, which was authorized to provide recommendations for the 2019-2024 Strategic Agenda on COSC's behalf. He outlined the following recommendations:

Promoting Access to Justice

- Continue the revamping of law libraries statewide, making them user friendly with on-site help for the public.
- Continue the implementation of case tiers as an effort toward differentiated case management.

Protecting Children, Families and Communities

- Conduct a study analyzing potential human and technology-based solutions to address the slowness and difficulty with juvenile dependency hearings and court scheduling.
- Expand the successful Dependency Alternative Program (DAP) statewide.
- Expand Conciliation Court services, as courts rely heavily on Conciliation Court offerings.

Improving Court Processes

- Use technology to improve administrative efficiency and maximize use of judicial resources to assist and enhance the court and the public experience.

- Continue to maintain the security of the courts and their IT systems.

Enhancing Professionalism

- Create a series of computer-based judicial education programs covering all the areas a judge may encounter such as: civil, criminal, family, juvenile, and probate, supported by written materials that a judge can use to refresh the judicial training received during new judge orientation.
- Expand the FASTAR project, which gives lawyers jury trial experience and provides the parties involved an expedited way of getting their day in court.
- Provide specific training to judges on how to deal with the challenges connected to self-represented litigants.

Judge Mackey thanked Judges Gordon, Michael Peterson, and Warner and Ron Overholt for their work in putting together COSC's recommendations for the next strategic agenda. He then asked Theresa Barrett, AOC Court Services, if she had information on when the recommendations would be considered and whether they would be sent to committees for vetting before finalization. Ms. Barrett said she understands the Arizona Judicial Council (AJC) will review a draft document of the recommendations at its October meeting. Any changes would then be incorporated into the draft and presented to AJC in December for final approval and implementation July 2019. Ms. Barrett said she will contact Cindy Trimble, AOC Executive Office, for more information on the progress of the 2019-2024 Strategic Agenda.

E. Probate Rules Task Force

Judge Mackey reported on the Probate Rules Task Force. The administrative order establishing the task force directs the it to identify potential changes to conform to modern usage and to clarify and simplify language. He thanked Mark Meltzer and Jodi Jerich, AOC staff, for their assistance with the task force and its workgroups. He explained that the task force is making substantive changes to the rules to make them easily comprehensible both to practitioners and self-represented litigants. The task force's goal is to file a rule petition in January 2019; if the petition is adopted, the rule changes would take effect in January 2020.

During discussion, Judge Gurtler said the feedback he received from his local probate bar is that the accounting form for conservatorship does not work well for probate matters. Many practitioners and self-represented litigants use Quicken® software; therefore, an accounting form that mimics Quicken® would be useful. Judge Mackey agreed to take the suggestion to the task force for consideration.

III. OTHER BUSINESS

Good of the Order

Judge Cathleen Brown Nichols informed the committee that she is a member of the Criminal Rule 32 Task Force. The task force, which is addressing issues regarding post-conviction relief, has met three times to date.

Judge Mackey pointed out the 2019 meeting dates on the agenda and asked members to put these dates on their calendars as soon as possible.

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

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

Next Meeting: Friday, November 2, 2018; 10 a.m.
Arizona State Courts Building
Conference Room 119 A/B

Committee on Superior Court

Friday, November 2, 2018
Conference Room 119 A/B, Arizona
State Courts Building, 1501 West Washington Street
Phoenix, AZ 85007

Present: Judge Charles Gurtler, Jr.

Telephonic: Judge David Mackey (chair), Judge David Cunanan, Judge Richard Gordon, William Klain, Judge Andrew Klein, Judge Kenneth Lee, Judge Charles Harrington, Toni Hellon, Judge Samuel Myers, Judge Roger Nelson, Judge Cathleen Brown Nichols, Ronald Overholt, Judge Michael Peterson, Megan Spielman, Judge Randall Warner, Judge Joseph Welty, Judge Timothy Wright, Todd Zweig

Absent/Excused: Judge Sally Schneider Duncan, Judge Thomas Fink, Judge Jason Holmberg, Scott Mabery

Administrative Office of the Courts (AOC): Jerry Landau, Jennifer Greene, Don Jacobson

AOC Staff: Theresa Barrett, Sabrina Nash

I. REGULAR BUSINESS

II.

Welcome and Opening Remarks. The November 2, 2018, meeting of Committee on Superior Court (COSC) was called to order at 10:04 a.m. by Judge David Mackey, chair.

Judge Mackey noted that Theresa Barrett was staffing the meeting in Kay Radwanski's absence. He reminded members that the committee is in need of a public member and asked for recommendations.

Approval of Minutes

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

Motion: Judge Kenneth Lee moved to approve the September 7, 2018, minutes as presented.
Seconded by: Judge Timothy Wright. **Vote:** Unanimous.

III. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Court Security Improvement Grant and Court Security Standards Implementation Updates

David Svoboda AOC language access coordinator, provided an update on court security grants. He announced that a statewide memo will go out announcing that the grant process is currently open, and applications (paper and electronic versions) are being accepted until February 28, 2019. It is anticipated that award announcements will be made prior to the end of the fiscal year (June 2019), with money being awarded in mid to late July 2019. He recommended that courts submitting applications work with potential vendors to ensure the quote provided takes into consideration that the money will not be awarded until late July 2019. He reminded members that applications need

to be routed through their county court security committee. Combined applications for more than one court need to be itemized by item and by court. He also reviewed the grant review and award process:

- applications are received
- reviewed for completeness
- ranked based on the need of the court and merit of request
- reviewed by a panel to prioritize grants

Mr. Svoboda said the total grant amount for this is \$700,000 with the possibility of additional revenue streams becoming available.

Jennifer Albright, AOC senior policy analyst, discussed the following:

- Fiscal year 2020 begins the implementation of the third phase of the Court Security Standards that require courts to have entryway screening devices such as X-ray machines and wands based on the tiered needs of the court.
- “First Amendment Auditors” who have visited courts trying to record people and activities in the courts or generally creating a disturbance have raised questions from the courts on how to prevent these disturbances. It is recommended that signage be in place to inform the public what is and is not permitted in the courthouse or courtrooms.
- The SharePoint online Incident Report Form, created by Don Jacobson, has been revised with dropdown buttons to make it easier to pull data for individual courts, the county, or the AOC for reports. Yavapai County will test the form to ensure its smooth rollout. Yavapai County will have a set of instructions on how to complete the form, types of incidents to report, and links to training on completing the form for the person filling out the incident report.

Judge Mackey commented that at the Presiding Judges’ meeting last month, David Withey provided guidance for presiding judges on how to deal with “First Amendment Auditors”. He offered guidelines that include ways to defuse conflict by offering to provide them with courthouse or courtroom tours, reminding them that they need permission to film people, and that they cannot film security procedures.

B. **Legislative Update.** Amy Love, AOC deputy government affairs director, reported on two bills of interest:

2019-03: Mental Health Report; Expert: Mental health examiners appointed to conduct Rule 11 evaluations are no longer required to address the necessity of continuing treatment with psychotropic medication or describe competency limitations caused by the medication if the mental health examiner determines the defendant is competent due to ongoing treatment with the medication.

Motion: Judge Charles Gurtler moved to support the proposal. **Seconded by** Judge Michael Peterson. **Vote:** Unanimous.

2019-10: Detention Center; Dangerous Offenses: would allow courts discretion to order juveniles charged with a dangerous offense to be detained in a juvenile detention facility instead of in an adult jail.

Members discussed whether the juvenile, criminal, or presiding judge would make the decision on where the juvenile was housed, as the proposed legislation is silent on this

issue. Ms. Love stated it is not the intent of the proposed legislation to change the current decision-making practices of the counties.

Motion: Scott Mabery moved to support the legislation. **Seconded by** Judge Wright. **Vote:** Unanimous.

Ms. Love discussed potential legislation from Judge Kathleen Quigley on juvenile post-adjudication. She also said that Jerry Landau is asking for comment on the following restoration of civil rights drafts:

Restoration of Civil Rights; Draft 1– Current law cleaned up with automatic restoration of civil rights upon discharge for Prop 200 felony offenses. Restoration of gun rights are separate.

Restoration of Civil Rights; Draft 2 – Automatic restoration of civil rights on all felonies upon discharge, not limited to Prop 200 offenses.

Members discussed whether restoration of civil rights would be retroactive for all felony convictions, set-asides, and restoration of gun rights; whether unpaid fines and fees would impair restoration of rights; and whether automatic restoration of rights applies only to Prop 200 felony offenses or to all felony offenses.

Motion: Judge Gurtler moved to support the Post Conviction Actions Task Force’s ongoing work on set-asides and the restoration of civil rights. **Seconded by** Judge Cathleen Brown Nichols. **Vote:** Unanimous.

Judge Mackey noted that at the last COSC meeting the committee supported the proposed probate changes to electronic will provisions.

IV. OTHER BUSINESS

Good of the Order. Kathy Waters, AOC Adult Probation, explained the purpose for a pending Rule 28 petition that will be filed and then open for comment in January 2019. Historically, if Adult Probation is recommending a modification of condition, an early termination of probation, or placement on unsupervised probation, Probation initiates a report and provides supporting documents to the court. She stated that Rules 27.3 and 27.4 do not prohibit a private attorney or a probationer from initiating requests to the court on their own to modify, terminate, or change their probation. Adult Probation will be proposing a change to Rules 27.3 and 27.4 that will include language to require courts to request an investigative report by Adult Probation prior to changing the conditions of probation.

Judge Mackey reminded committee members that the 2019 COSC meeting dates are listed on the agenda and asked them to put the dates on their calendars.

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

Adjournment: The meeting adjourned at 11:32 a.m.

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

Committee on Superior Court

Friday, December 7, 2018 (Special Meeting)
Conference Room 412
Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Telephonic: Judge David Mackey (chair), Judge David Cunanan, James Giacomino (proxy for Toni Hellon), Judge Richard Gordon, Judge Charles Harrington, William Klain, Judge Andrew Klein, Judge Samuel Myers, Judge Cathleen Brown Nichols, Megan Spielman, Judge Randall Warner, Judge Joseph Welty, Judge Timothy Wright, Todd Zweig

Absent/Excused: Judge Sally Schneider Duncan, Judge Thomas Fink, Judge Charles Gurtler, Jr., Judge Jason Holmberg, Judge Kenneth Lee, Scott Mabery, Judge Roger Nelson, Ronald Overholt, Judge Michael Peterson

Administrative Office of the Courts (AOC): Jerry Landau (by telephone), Theresa Barrett, Aaron Nash, Kathy Sekardi

AOC Staff: Kay Radwanski

I. WELCOME AND OPENING REMARKS.

Judge David Mackey, chair, opened a special telephonic meeting, with a quorum, at 12:03 p.m.

II. ACTION ITEM

Jerry Landau, chair of the Post-Conviction Actions Task Force, and AOC government affairs director, presented draft legislation on the automatic restoration of civil rights for all felony offenders. Currently, automatic restoration of the right to vote, hold public office, or serve on a jury is available only to first-time felony offenders.

Mr. Landau reported that the task force discussed and debated the draft legislation over several meetings. By an 11-9 vote (with the chair not voting), the task force decided to recommend the proposal for full and automatic restoration to the Arizona Judicial Council (AJC). For those who voted against it, the concern was whether there should be judicial discretion for subsequent offenders and also whether this is a policy decision for the Legislature, not the Judiciary.

According to Mr. Landau, restoration of rights would be contingent on full payment of victim restitution. Task force members who supported the draft noted that the offender has served his or her sentence and deserves restoration of civil rights. Rights should be restored automatically, rather than requiring the defendant to request a hearing. The judge would not need to make a ruling, but paperwork may be needed for notification to others. The defendant would be given notice, either in writing or by the judge, at the time of sentencing. Rules and forms about rights

and responsibilities also would require updating.

Committee members asked questions concerning:

- The need for judicial involvement if fines have not been paid in full. Some Clerks have noted that if a defendant's rights are restored or the conviction set aside, the defendant rarely pays unpaid fines.
- Whether the Judiciary should stay away from legislative policy matters. It was noted that even an automatic process creates additional work for courts and that it may be appropriate for the Judiciary to take a position on this because it affects the courts' workloads.
- Notice to victims regarding proceedings. Mr. Landau explained that if civil rights restoration is discretionary (if restitution has not been paid), the victim has right to be present and the county attorney must provide notice of the hearing to the victim. This would apply only to victims who have opted into post-conviction notification.
- Whether a minute entry is a sufficient writing if the application is denied. Mr. Landau said that the intent was that if the judge issues a minute entry, then it is a writing that satisfies the requirement.

MOTION: Judge Joseph Welty moved that COSC recommend that AJC move forward with the proposed legislation for automatic restoration of civil rights for all felony offenders.

Seconded: Judge Samuel Myers. **Roll call vote:** 3-10 (with Chair not voting). **Motion failed.**

MOTION: Judge Richard Gordon moved that the Judiciary go forward with clean up of the statute and court rules while leaving the policy decision to the Legislature. **Seconded:** Judge Cathleen Brown Nichols. **Vote:** Unanimous (with Chair not voting). **Motion passed.**

Mr. Landau also mentioned a draft bill from the Maricopa County Sheriff's Office regarding the re-arrest in the courtroom of a defendant who has been sentenced and remanded to custody. As the proposal was not distributed to the committee, members took no action on it.

III. OTHER BUSINESS

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

Adjournment: The meeting adjourned at 12:49 p.m.

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