

# Committee on Superior Court

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Friday, September 11, 2020; 10:00 a.m.  
 Virtual Meeting  
 Meeting ID: 964 0621 4898  
 Conference Call (Toll-Free): 877-853-5247; 888-788-0099; 833-548-0276; 833-548-0282  
 State Courts Building, 1501 W. Washington, Phoenix, AZ 85007  
[Committee on Superior Court Home Page](#)

Time*	Agenda Items	Presenter
10:00 a.m.	Welcome and Opening Remarks	<i>Judge Charles Gurtler, Chair</i>
	Approval of Minutes—February 7, 2020 <input type="checkbox"/> <i>Formal Action/Request</i>	
10:05 a.m.	Legislative Update <input type="checkbox"/> <i>Formal Action/Request</i>	<i>Liana Garcia, AOC Legislative Liaison</i>
10:25 a.m.	Law4AZ Justice Gap Survey of Courts	<i>Gretchen Hornberger Coconino County Law Library</i>
10:40 a.m.	ACJA §§ 6-105.01 and 6-202.01: Proposals to revise abscond warrant timeframes from 72 hours to 30 days <input type="checkbox"/> <i>Formal Action/Request</i>	<i>Dori Littler Adult Probation Services Division</i>
10:50 a.m.	Final Report of the Committee on Mental Health and the Justice System <input type="checkbox"/> <i>Formal Action/Request</i>	<i>Kent Batty, Chair</i>
11:35 a.m.	The Court’s August 2020 Rules Agenda	<i>Mark Meltzer, AOC Senior Court Policy Analyst</i>
11:55 a.m.	Good of the Order/Call to the Public Adjournment	<i>Judge Gurtler</i>

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

**2021 Meeting Dates**  
 February 5  
 May 7  
 September 10  
 November 5

**\*\*NOTICE\*\***

The Arizona Supreme Court and the Administrative Office of the Courts are taking necessary steps to protect employees and partners and help prevent the spread of the COVID-19 coronavirus in the community. To avoid having people gathered in a room at the same time, the COSC meeting will be held via phone conference. Anyone from the public who wishes to submit comments on any item on the September 11, 2020, agenda or wishes to speak during the Call to the Public should [email](#) comments and requests to COSC Committee Staff by **9:00 a.m.** on **September 11, 2020**.

# Committee on Superior Court

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## Draft Minutes

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

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**Present:** Judge David Mackey, chair

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

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

**Administrative Office of the Courts (AOC):** Theresa Barrett, Liliana Garcia, Stacy Reinstein, Mark Meltzer

**AOC Staff:** Kay Radwanski, Sabrina Nash

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## I. REGULAR BUSINESS

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

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

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

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

## II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

### A. Legislative Update

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

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

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

**H2335 Record of proceedings; certified reporter** – allows the Supreme Court to regulate the use of court reporters in the court. This bill is facing significant pushback from the court reporters' lobby, Trial Lawyers Association and Arizona Attorneys for Criminal Justice. AOC is working with these groups to amend the bill to keep the statutory requirement for the use of court reporters in grand jury proceedings.

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

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

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

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

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

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

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

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

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

## **B. Update: Mental Health and the Justice System**

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

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

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

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

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

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

### C. 2020 Rule Petitions

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

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

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

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

proceeding appears for a court hearing and discusses two options:

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

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

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

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

### III. OTHER BUSINESS

**Good of the Order**

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

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

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



## COMMITTEE ON SUPERIOR COURT

<b>Meeting date:</b>  <b>September 11, 2020</b>	<b>This agenda item is for:</b>  <input checked="" type="checkbox"/> Formal action  <input type="checkbox"/> Information only  <input type="checkbox"/> Other	<b>Subject:</b>  <b>Proposed AJC Legislation</b>
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**From:** Government Affairs Group, AOC

**Presenter:** Liana Garcia

**Description:** Ms. Garcia will present superior court-related bills that have been proposed for inclusion on the Judiciary's legislative agenda. The Arizona Judicial Council will consider submitted bills later this year.

**Recommended motion:** The committee may vote to recommend support for a bill, suggest changes to a bill, or take no action on a bill.



## COMMITTEE ON SUPERIOR COURT

<b>Meeting Date:</b>  9/11/20	<b>Type of Action Requested:</b>  <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	<b>Subject:</b>  LAW4AZ JUSTICE GAP SURVEY OF COURTS
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**From:** Coconino County Law Library

**Presenter:** Gretchen Hornberger

**Description of Presentation:** Law4AZ is seeking access-to-justice survey responses from every Court building in Arizona. Survey data will guide Law4AZ's activities to grow public libraries' capacity to connect their customers with legal resources.

**Recommended Motion:** n/a



## COMMITTEE ON SUPERIOR COURT

<b>Meeting Date:</b>  September 11, 2020	<b>Type of Action Requested:</b>  <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	<b>Subject:</b>  ACJA 6-105.01 AND 6-202.01
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**From:** Dori Littler

**Presenter:** Dori Littler

**Description of Presentation:** Members of a statewide workgroup regarding intensive probation supervision in Arizona has recommended a revision to the timeframe allowed in Code to issue warrants for adult intensive probationers. The statutory definition of abscond allows departments 90 days to attempt to locate absconders and, if not located, issue a warrant. The current codes (6-105.01 and 6-202.01) governing the timeframe for abscond warrants regarding adult intensive probationers requires warrants to be issued within 72 hours. The workgroup's recommendation is to change the timeframe from 72 hours to 30 days.

**Recommended Motion:** Approve revisions as presented.



**ARIZONA CODE OF JUDICIAL ADMINISTRATION**  
**Part 6: Probation**  
**Chapter 1: General Administration**  
**Section 6-105.01: Powers and Duties of Officers Evidence-Based Practices**

**Courts shall be governed by section 6-105, except and until approved by the Administrative Director to be governed by section 6-105.01.**

**A. – E. 2. g. (3) [No Changes]**

- (4) If the probationer is on intensive probation supervision and is not located within ~~72 hours~~30 days, the intensive probation officer shall file a petition to revoke probation no later than the next business day and request that the court issue a warrant. The supervising officer shall file the petition to revoke sooner, when required by local departmental policies, the circumstances surrounding the case or the need for community protection.

**E. 2. g. (5) – F. [No Changes]**

**ARIZONA CODE OF JUDICIAL ADMINISTRATION**  
**Part 6: Probation**  
**Chapter 2: Adult Services**  
**Section 6-202.01: Adult Intensive Probation Evidence-Based Practices**

**A. - K. [No Changes]**

**L. 1.-2. a. - s. [No Changes]**

- t. Document efforts to locate and reengage the intensive probationer. If the intensive probationer is not located within ~~72 hours~~ 30 days, the intensive probation officer shall file a petition to revoke probation no later than the next business day and request that the court issue a warrant. The intensive probation officer may file the petition to revoke sooner based on the circumstances surrounding the case and the need for community protection. The probation department's efforts to locate the intensive probationer shall continue until the intensive probationer is apprehended; and

**L. 2. u. – P. [No Changes]**

## COMMITTEE ON SUPERIOR COURT

<b>Meeting Date:</b>  September 11, 2020	<b>Type of Action Requested:</b>  <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	<b>Subject:</b>  FINAL REPORT OF THE COMMITTEE ON MENTAL HEALTH AND THE JUSTICE SYSTEM
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**From:** Donald Jacobson, Senior Special Project Consultant

**Presenter:** Kent Batty, Chair of the Committee on Mental Health and the Justice System

**Description of Presentation:** The Committee on Mental Health and the Justice System has convened since September 2018 to develop and recommend comprehensive, evidence-based best practices and cross-agency protocols to improve the administration of justice for persons with mental illness. Combined, the Committee possesses over 500 years of experience in the legal, judicial, behavioral health, and advocacy fields, and many members have dedicated their careers to serving individuals and families who are living with mental health conditions.

The Committee submitted its interim report recommendations in October 2019, and will submit this final report to the Arizona Judicial Council in October 2020, incorporating its work and progress to date, additional findings, and recommendations. The Committee continues to support all the recommendations made in the interim report. Detailed information on each committee meeting can be found on its website.

Along with its recommendations, the remaining sections of this report include an executive summary, findings, a detailed overview of the Committee's work and progress to date, concluding statements, and an Appendix with proposed best practices and statutory changes, along with constructed personal histories that detail the impact of the mental health and justice systems on individuals, to support the Committee's recommendations for change.

The presentation will provide:

A brief history of the committee and summary of the interim report.

A categorization and summary of the final recommendations.

An outline of immediate actions that can be taken to support the recommendations.

An opportunity to provide feedback.

**Recommended Motion:** Move to support the Final Report and recommendations as made by the Committee on Mental Health and the Justice System.



## COMMITTEE ON SUPERIOR COURT

<b>Meeting Date:</b>  September 11, 2020	<b>Type of Action Requested:</b>  <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	<b>Subject:</b>  THE COURT'S AUGUST 2020 RULES AGENDA
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**From:** Court Services Division

**Presenter:** Mark Meltzer

**Description of Presentation:** The Arizona Supreme Court held its annual rules agenda in August 2020. This presentation will focus on the Court's disposition of rule petitions that might be of interest to COSC members.

**Recommended Motion:** None



## **2020 Court Rules**

This document is a summary of new and amended court rules adopted by Arizona Supreme Court Orders during the Court's August 2020 rules agenda. See the Court's [recent rules amendments webpage](#), which has a hyperlink in each rule petition number (e.g., R-20-0000) that will take you to the Court's Order promulgating a new or amended rule. These Orders contains the full text of additions or changes to those rules.

This summary does not include every rule change the Court made at its August rules agenda. It includes only rule changes that might be of particular interest to COSC. This summary does not include rule changes that primarily affect limited jurisdiction courts, and it excludes most rule changes regarding the practice of law, the admission to practice law, and judicial ethics or performance. See the Court's [August 26, 2020 minutes](#) and the Court's [recent rules amendments webpage](#) for further information concerning rules on these and other topics.

There are several items in this summary noting rule petitions that the Court continued or denied, and those petitions might also be of interest to COSC members.

Unless noted otherwise in this summary, the effective date of the adopted rule changes is **January 1, 2021**.

## Rules of Civil Procedure

**1.**

**R-20-0006**

**Civil Rules 7, 8., 16, 37, 55, and various Rule 84 joint report forms**

This Order makes technical and clarifying changes to certain civil rules. The technical changes primarily correct erroneous cross-references. The clarifying changes include the following:

1. In Rule 8.1(e), adding back a previously removed and modified sentence that says, “from the filing of the complaint unless and until the commercial court assigns the case to a different tier after the Rule 16(d) scheduling conference, cases in the commercial court are deemed to be assigned to Tier 3.”
2. In Rule 37(g), clarifying that these provisions apply to parties and to persons, and adding a modified “reasonable steps to preserve” factor that now says, “the resources and technical sophistication of the party or person subject to a duty to preserve” (currently stated as “the parties’ resources and technical sophistication.”)
3. In Rule 16(h), deleting an outdated reference to a “comprehensive pretrial conference;” in Rule 16(g), permitting a certification of a good faith consultation to be included in the joint report, rather than in a separate certification; and amending Forms 11(a), 12(a), 13(a), and 14(a) [joint reports] by adding language concerning a good faith consultation.

**2.**

**R-20-0018**

**Civil Rule 16.3**

This Order adopts a new civil Rule 16.3 regarding settlements of claims on behalf of minors and adults in need of protection. The new rule directs readers to Probate Rule 53 and provides, “the settlement of a claim brought on behalf of a minor or adult in need of protection is not binding unless a judicial officer approves it as provided in Rule 53 of the Arizona Rules of Probate Procedure.”

**3.**

**R-20-0025**

**Civil Rule 23**

These amendments align Arizona Civil Rule 23 (“class actions”) with amendments to Federal Civil Rule 23, which became effective on December 1, 2018. The amendments relate to the procedures for class actions, including (1) notice to potential class members, (2) information parties must provide to the court regarding a proposed settlement, (3) factors the court should consider in determining whether a proposed settlement is fair, reasonable, and adequate, and (4) addressing objections to a proposed settlement.

**4.**

**R-20-0028**

**Civil Rules 12 and 8.1**

Rule 12 is amended by adding a new section (j) titled “good faith consultation certificate.” This new section requires a party who files one of the following motions to accompany the motion with a good faith consultation certificate:

- Rule 12(b)(3) motion for improper venue;
- Rule 12(b)(6) motion for failure to state a claim upon which relief can be granted;
- Rule 12(c) motion for judgment on the pleadings; and
- Rule 12(f) motion to strike.

Because these new Rule 12 provisions also apply in commercial cases governed by Rule 8.1, the Order deleted a now redundant provision in Rule 8.1.

Note that a variety of other Arizona Civil Rules already require a good faith consultation, including discovery motions, motions for sanctions, and motions to seal.

**5.**

**CONTINUED**

**R-20-0012 and R-20-0014**

**FASTAR Rules**

The Fast Trial and Alternative Dispute Resolution Program (“FASTAR”) is a pilot program in Pima County, which began in 2017 and effectively replaced compulsory arbitration for Tier 1 cases in that county. The Supreme Court adopted rules for the program, which R-20-0012 sought to make permanent. Another petition, R-20-0014, proposed more extensive modifications to those rules. The Court continued both petitions pending further orders.

## Rules of Criminal Procedure

**6.**

**R-20-0004**

**Criminal Rules 3.2 and 4.1, Rule 41, Forms 2(a) and 2(b)**

These amendments clarify when a defendant will be required to have an initial appearance following an arrest pursuant to a warrant. A defendant arrested on a felony warrant must not be released upon the posting of bond but in every instance will be required to have an initial appearance after the arrest. However, defendants arrested on misdemeanor warrants may be released upon posting the bond specified in the warrant, without having an initial appearance following the arrest. The arrest warrant forms for felonies and misdemeanors – Rule 41, Forms 2(a) and 2(b) – are modified accordingly. Form 2(a), the felony warrant, includes a line on which the issuing magistrate can recommend the type and amount of a bond, and an explanation for the recommended amount.

**7.**

**ALSO ADOPTED FYI**

**R-20-0005**

**Criminal Rule 17.1(f) and Rule 41, Form 28**

Current and amended Rule 17.1(f) permit telephonic pleas of guilty and no contest in a limited jurisdiction court. Form 28 is the associated form for these pleas.

However, amended Rule 17.1(f) has significantly expanded the use of telephonic pleas in LJ courts (which will now include audio only and audio-video, as well as pleas submitted through an online dispute resolution system.) For example, the amended rule no longer includes a limitation that, to utilize these procedures, a defendant must reside out-of-state or at least 100 miles from the courthouse. The amended rule gives an LJ court discretion to accept a telephonic plea.

**8.**

**DENIED**

**R-20-0015**

**Criminal Rule 22.5**

The petition requested a new rule to provide that after the 10-day time limit in Rule 24.1 had run, a party and a party's representative would be prohibited from contacting trial jurors until the court upon motion found good cause for allowing contact.

**9.**

**CONTINUED**

**R-20-0031**

**Criminal Rule 39 and other Criminal Rules**

This petition proposed to integrate the provisions of current Rule 39 (Victims' Rights) into various other criminal rules. The Court continued the petition pending the work of a restyling committee, which will be formed to integrate selected provisions of Rule 39 with other rules "where they more logically belong and where they will safeguard the rights of victims in the criminal justice system."

### **Rules of the Supreme Court ("SCR")**

**10.**

**R-20-0003**

**SCR 39**

The Indian Child Welfare Act ("ICWA") creates a right for tribal governments from any state to participate in Arizona child custody proceedings, but for each appearance in an ICWA case, the tribe currently needs to retain local counsel, or it needs to have its own counsel appear pro hac vice, which also has attendant costs for the application and to associate local counsel. These amendments to Rule 39 ("temporary authorizations to practice law"), section (a) ("pro hac vice"), will allow an attorney who is not a member of the Arizona Bar to appear in an Arizona court on behalf of an Indian tribe for the limited purpose of participating in a child custody proceeding governed by ICWA, provided the tribe has submitted a pleading asking to intervene and participate in the state court proceeding and affirming the child's membership or eligibility for membership in the tribe under tribal law. The motion to appear pro hac vice must be filed with the court where the proceeding is pending.

**11.**

**R-20-0034**

**SCR 31, 32, 33.1 [new], 41, 42 (various ERs), 46-51, 54-58, 60, 75, 76**

These rule amendments were proposed by the Supreme Court's Task Force on the Delivery of Legal Services. The goal of these amended rules is to improve access to justice and to encourage innovation in the delivery of legal services. The rules eliminate the prohibition on nonlawyer investment in law firms and permit the formation of Alternative Business Structures. The rules also provide for a new category of professional, a legal paraprofessional, who will be permitted to give legal advice and appear in court in specified circumstances. These amendments include a variety of regulatory provisions concerning these entities and individuals. There are also numerous

changes to the Rule 42 ERs. Meanwhile, amended and restyled Rule 31 et seq. clarifies the meaning of “practice of law;” provides for the authorized and the unauthorized practice of law; and reorganizes the dozens of exceptions to the general rule currently codified in Rule 31(d).

See further another Task Force petition, R-20-0030, amending certain ERs regarding lawyer advertising.

**12.**

**R-20-0036**

**SCR 94.1**

Rule 94.1 is new. It establishes the Clerks of the Superior Court Conduct Board, whose enumerated purpose is “to establish and maintain high standards of performance and ethical conduct by clerks of the superior court (‘the clerks’) in administering justice and serving the public.” The board has authority over the elected clerk of court in each county for a complaint that alleges “conduct occurring during the clerk’s campaign for office or term in office that rises to the level of ethical violations, significant office mismanagement, or operational problems that have continued after the clerk had been given an opportunity to address them.” Only specified individuals, including the superior court presiding judge, the county’s human resource officer, and the AOC’s administrative director, can file complaints with the board. The range of dispositions and sanctions include dismissal of the complaint; recommendations for mediation, reprimand, or a letter of censure; reporting the conduct to the Chief Justice with a recommendation to limit the clerk’s duties; or referral to the House Speaker for impeachment.

**13.**

**WITHDRAWN**

**R-20-0009**

**SCR 24**

The petition requested the adoption of a new Supreme Court Rule 24 titled “Jury Selection.” The petitioner contended that the rule is needed “to eliminate the unfair exclusion of potential jurors based on race or ethnicity.” The petition observed that the United States Supreme Court’s landmark decision in *Batson v. Kentucky*, 476 U.S. 79 (1986), “has been roundly criticized as ineffectual in addressing the discriminatory use of peremptory challenges during jury selection, largely because it fails to address the effect of implicit bias or lines of voir dire questioning with a disparate impact on minority jurors.”

By its terms, the proposed rule would have applied in all jury trials. The proposed rule would have allowed a party to object to another party’s exercise of a peremptory

challenge and would have required the court to “then evaluate the reasons given to justify the peremptory challenge in light of the totality of circumstances. If the court determines that an objective observer could view race or ethnicity as a factor in the use of the peremptory challenge, then the peremptory challenge shall be denied.”

Petitioner withdrew the petition to allow a State Bar of Arizona joint workgroup composed of both the Civil and Criminal Practice and Procedure Committees to study the proposal, develop a consensus, and submit a new petition in August 2021 aimed at reforming Arizona’s *Batson* procedures.

**14.**

**DENIED WITH A COMMENT**

**R-20-0022**

**SCR 28(g)(3)**

To increase transparency, this proposed rule amendment would have required the Court’s action on rule petitions to “include an explanation of the reasons for the Court’s action and the votes for or against of each justice.”

Although the Court denied this petition, its August 25 minutes say that “nothing in Rule 28...prevents the Court from explaining its reasons for rejecting a specific proposal if the Court concludes an explanation would be helpful. The Court will endeavor in future rule petition cycles to exercise its discretion and explain its reasoning when it would be helpful to do so.”

**Rules of Evidence**

**15.**

**R-20-0011**

**Evidence Rule 404(b)**

The amendment conforms Arizona’s rule to an amendment to Federal Rule of Evidence 404(b). The primary purpose of the federal and Arizona amendments to is to ensure fairness to criminal defendants by imposing a heightened notice requirement when prosecutors seek to admit evidence of other crimes, wrongs, or acts in criminal prosecutions. (Note that the words “wrongs or acts” have been added to the title of Rule 404 after the words “other crimes,” i.e., “other crimes, wrongs, or acts.”

Arizona Rule of Evidence 404(b) (“other crimes, wrongs, or acts”) is separated into three subparts, with newly added subpart titles. Subpart (1) (with the new title, “prohibited

uses”) and subpart (2) (with the title, “permitted uses”) track the text of current Rule 404(b). The major change is a new subpart (3), with the proposed title, “notice in a criminal case.” The provision provides:

In all criminal cases in which the state intends to offer evidence of other crimes, wrongs, or acts under Rule 404(b), the state must:

(A) make disclosure to the defendant as to such acts as required by Rule 15.1, Rules of Criminal Procedure, no later than 45 days prior to the final trial setting or at such later time as the court may allow for good cause; and

(B) articulate in the disclosure the permitted purpose for which the state intends to offer the evidence and the reasoning that supports the purpose. The defendant must make disclosure as to rebuttal evidence pertaining to such acts as required by Rule 15.2, no later than 20 days after receipt of the state’s disclosure or at such other time as the court may allow for good cause.

### **Family Law Rules (“FLR”)**

**16.**

**R-20-0016**

**FLR 37**

This current family rule on substitution of parties allows the representative of an incompetent person to be treated as a party in a Title 25 proceeding, but it does not currently allow a party’s representative to continue with the proceeding if the person is determined to be incapacitated pursuant to A.R.S. §§ 14-5401 to 5433. Current FLR 37(b) is titled “incompetency,” and the title of this section is accordingly changed to “incompetency or incapacity.” The amendment adds the word “incapacitated” to the text of section (b), i.e., “incompetent or incapacitated....”

**17.**

**R-20-0033**

**FLR 44**

The amendment concerns a current requirement in FLR 44(a) (“application for default”) that directs the party seeking default to attach to the default application a copy of the proof or acceptance of service. The petition contended that a proof of service should already be in the court’s file and failing to attach the proof to the application should not be fatal to the default application. The amended language to Rule 44(a)(2)(E) is therefore as follows:

(E) [the application] establishes that service of process has been effectuated by either (i) attaching a copy of the proof or acceptance of service on the party in default, or (ii) if proof or acceptance of service appears in the court record, by setting forth in the application the date and manner of service on the party in default; and ...

## Arizona Rules of Protective Order Procedure (“ARPOP”)

**18.**

**R-20-0002**

**ARPOP 38**

This rule amendment settles conflicting practices on how the court should treat a party’s failure to appear at a contested protective order proceeding.

Rule 38 is titled “contested hearing procedures.” An amendment to Rule 38(a) (“requesting a hearing”) clarifies that a defendant is entitled to “only” one hearing, which must be requested in writing. A new sentence says, “A defendant waives the right to contest the protective order if the defendant fails to appear at the requested hearing or for other good cause shown. [See A.R.S. §§ 13-3602(L), 12-1809(H), 12-1810(G).]”

A new section (e) titled “appearance at the contested hearing” contains three subparts, as follows:

*(1) Defendant fails to appear.* If the plaintiff appears for the contested hearing and the defendant fails to appear, and the defendant received actual notice of the hearing, the protective order will remain in effect.

*(2) Plaintiff fails to appear.* If the defendant appears for the contested hearing and the plaintiff fails to appear, and the plaintiff received actual notice of the hearing, the protective order will be dismissed.

*(3) Neither party appears.* If neither party appears for the contested hearing, and each party received actual notice, the hearing will be vacated, and the protective order will remain in effect.

A new section (f) (“procedure”) provides procedures if both parties appear and a contested hearing is conducted. Those procedures are set out in subparts (f)(1) through (f)(5) and correspond with current sections (e) (“parties’ right to be heard”), (f) (“oath or affirmation”), (g) (“standard of proof”), (h) (“basis for continuing, modifying, or revoking protective orders,” and (i) “service of modified protective order,” which are deleted.

**19.**

**EMERGENCY ADOPTION: EFFECTIVE August 25, 2020, and opened for PUBLIC COMMENTS until October 1, 2020**

**R-20-0038**

**ARPOP 23 and 28**

These rule amendments and revisions to official forms implement the changes to A.R.S. §§ 13-3602 and -3624 made by SB 1441, which establish notice requirements and hearing rights when the protective order petitioner is awarded exclusive possession of the parties' residence and later vacates the residence before expiration of the protective order.

Rule 23 ("order of protection"), section (h) ("relief") includes this new sentence: "if the plaintiff moves out of the residence while the order is in effect, the plaintiff must file a written notice with the court within five days after moving. Upon receipt, the court must provide a copy of the notice to the defendant and advise of the right to request a hearing pursuant to A.R.S. § 13-3602(L)."

Rule 38 ("contested hearing procedures", section (b) ("scheduling the hearing"), includes this new sentence: "If exclusive use of a residence is awarded to the plaintiff, the court, on request of a party, may hold additional hearings at any time if there is a change in circumstances related to the primary residence. *See* A.R.S. §§ 13-3602(L)."

The Court will consider whether to adopt these rule amendments on a permanent basis at its December 2020 rules agenda.

**20.**

**CONTINUED TO THE DECEMBER 2020 RULES AGENDA**

**R-19-0047**

**ARPOP Rule 35**

The proposed amendment to Rule 35 ("legal decision making and parenting time") would forbid a court that issues an injunction against harassment orders from including minor children, if doing so would or might impact a family court order or action involving the same children. The Court referred this petition to the Family Court Improvement Committee, a standing committee of the AJC, for further review. The Court continued the petition to its December 2020 rules agenda.

## **MULTIPLE RULE SETS**

**21.**

**CONTINUED TO THE DECEMBER 2020 RULES AGENDA**

**R-20-0013**

**Various rule sets**

This petition affects multiple rule sets, including Supreme Court rules, ARCAP, ARPOP, civil, criminal, family, and juvenile rules. The premise for these changes is that during recent years, there has been a significant decrease in the number of court reporters. (For example, the petition notes that in 2019, there were 27 vacancies in the 138 court reporter positions in Arizona’s superior court.)

The proposed rule amendments would allow courts to supplement the use of court reporters by expanding courts’ ability to use electronic recording technology to make a record of court proceedings. In Supreme Court Rule 30 (“verbatim recording of judicial proceedings”), section (b) (“use of court reporting resources”), subpart (2) would be modified to say, “In the absence of a certified reporter, the record will be made using an electronic recording system to record the proceeding as established by local rule.” A party to a superior court proceeding may request a certified reporter, and even when the court is using an electronic recording system, a party has the right to provide a certified reporter to also record the proceeding. The proposed comment to amended SCR 30 expands on factors the court should consider when deciding how to make a verbatim record of court proceedings.

For consistency with statutes and the ACJA, the amendments would change “court reporter” to “certified reporter.”