

COMMITTEE ON SUPERIOR COURT

Friday, February 5, 2016; 10:00 a.m.
Conference Room 119 A/B, Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Judge David Mackey, Judge Thomas Fink, Judge Charles Gurtler, Jr., Judge Celé Hancock, Toni Hellon, William Klain, Scott Mabery, Judge Samuel Myers, Judge John Nelson, Judge Michala Ruechel, Judge Joseph Welty

Telephonic: Judge Sally Duncan, Judge Richard Gordon, Judge Kenneth Lee, Judge Cathleen Brown Nichols, Pamela Housh (proxy for Eric Silverberg), Judge Samuel Vederman

Absent/Excused: Judge David Cunanan, William Gibbs, Judge Charles Harrington, Judge Paul McMurdie, Ronald Overholt, Megan Spielman, Judge Randall Warner

Administrative Office of the Courts (AOC): Jennifer Albright, Theresa Barrett, Jerry Landau, Mark Meltzer, Patrick Scott

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The February 5, 2016, meeting of Committee on Superior Court (COSC) was called to order at 10:01 a.m. by Judge David Mackey, chair. Judge Mackey announced that Judge John Nelson is retiring in March and thanked him for his service on COSC.

A. Approval of Minutes from September 11, 2015

The draft minutes from the September 11, 2015, meeting of the COSC were presented for approval. It was noted that in the Legislative Update, the proposed date for sunset of the Foster Care Review Board is 2026, not 2016.

Motion: Judge Charles Gurtler moved to approve the November 6, 2015, minutes as amended.

Seconded: Judge Celé Hancock **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Committee on Time Periods for Electronic Display of Superior Court Case Records. Kay Radwanski, AOC Court Services Division, provided COSC with a brief background of prior committees that focused on records retention or public access to court documents:

2002 – Ad Hoc Committee to Study Public Access to Electronic Court Records studied restrictions on Internet access to protective orders, criminal case records, and individual case information.

2007 – Rule 123 Data and Dissemination Committee was established to examine the issues surrounding the need for statewide consistency in responding to bulk data requests and the expanding role of case management databases in data sharing and public access to court records.

2012 – Advisory Committee on Rule 123 and Rule 125 was established to examine and make recommendations about online access to documents and minute entries in family law and probate cases and those that should be available only at the courthouse.

2013 – Electronic Records Retention and Destruction Advisory Committee was established to examine and make recommendations on the issues surrounding records retention and destruction schedules and access to electronic court records.

2014 – Superior Court Records Retention Schedule Revision Committee was established to review and update the superior court records retention schedule found in [Arizona Code of Judicial Administration \(ACJA\) § 3-402](#). The revised schedule, which applies to both paper and electronic court records, makes it easier for court employees and for technology systems to classify content consistently for retention.

2015 – Committee on Time Periods for Electronic Display of Superior Court Case Records (CTPED) was established to address how long case record information should be available on the Internet. The committee focused on the first 18 record types held by the Superior Court Clerks and asked the following questions when considering the case types:

1. For records with a permanent retention period—
 - a. How long should case records be displayed on the Internet compared to how long the courts must retain the record?
 - b. If finite, what is the recommended duration for that case type?
2. For records that do not have a permanent retention period—
 - a. Should the record be accessible through remote electronic access for the full duration of the retention period or a shorter period of time?
 - b. If a shorter period of time is deemed appropriate, what is the recommended duration for each case type?

Ms. Radwanski explained that CTPED’s policy recommendation is that records should be displayed for the same number of years as they are retained by the courts. CTPED believes that this accomplishes the goal of continuity and consistency statewide and will make court information accessible to the public in accordance with judiciary open records policy. CTPED has filed a petition (R-16-0008) to amend Rule 123, Rules of the Supreme Court, which covers access to public records. This rule amendment would apply to any court retention schedule. Concurrently, CTPED will file a petition to amend the superior court records retention schedule by adding a column that shows the retention period on public access. Initial comments on the rule petition are due April 1, 2016. The CTPED can file an amended petition, if necessary, by May 13, 2016. The second round of comments runs until June 20, 2016, with CTPED’s response time ending July 8, 2016. The CTPED’s term will expire July 30, 2016, The Supreme Court meets in August 2016 for its Rules Agenda meeting. If the petition is adopted, the amended rule will take effect January 1, 2017.

Concerns were raised regarding criminal cases. It was noted that information about a person convicted of criminal trespass will remain online for 50 years, but information about a person who commits murder in a capital case will come offline when the person dies. A question was raised about how the Clerk will know when a capital defendant dies. The retention schedule does not differentiate between capital defendants who die from execution and those who die from other causes while incarcerated. Another member had concerns about case information being too easily accessible on the Internet.

Motion: Judge Nelson moved to support the petition with a caveat that concerns raised by COSC be noted. **Seconded:** Judge Gurtler **Vote:** Passed, 15-1.

- B. Rule 41, Form 2, Rules of Criminal Procedure.** Patrick Scott, AOC Court Services Division, explained that in December 2015, the court approved a new criminal arrest warrant and made its use mandatory effective January 1, 2016. Since then, stakeholders have raised multiple concerns regarding the new arrest form. The AOC, under the direction of the Chief Justice, sent out a memo stating that the implementation of the revised form was being delayed while these concerns are addressed. Mr. Scott said the AOC will convene a number of meetings of the original multi-agency workgroup in the next few months to address stakeholders' concerns.
- C. ACJA § 5-206: Fee Waivers and Deferrals.** Patrick Scott, AOC Court Services Division, explained that there have been inquiries from legal aid agencies regarding how their applications or filings have been treated in various courts. The current language in ACJA § 5-206(E)(1)(b) allows for fee deferral "if the applicant presents an affidavit showing representation by a non-profit legal services organization that has as its primary purposes the provision of legal assistance to indigents, free of charge, in civil matters." AOC's suggested change to the current language would allow for deferral "if the applicant presents evidence that the individual is a client of a non-profit legal services organization that has as its primary purposes the provision of legal assistance to indigents, free of charge, in civil matters." Community Legal Services has proposed language allowing deferral "if the applicant presents evidence that the individual is a client of a non-profit legal services organization. A legal services attorney's name on the pleadings, a notice of appearance, pleading paper from a legal services program, or a statement of receipt of legal services is sufficient evidence of the relationship." Mr. Scott asked COSC to review the suggested revisions and comment on whether they support revising the language or keeping the current language.
- D. Legislative Update.** Jerry Landau, AOC Government Affairs Director, informed COSC that there are still two weeks left to hear bills. He provided an update on the following bills:
- **HB2154 Failure to Appear; Arrest; Fingerprinting** – Many offenders are not fingerprinted when arrested. This bill requires the "booking agency" (defined as the county sheriff or a municipal law enforcement agency) instead of the arresting authority to take legible ten-print fingerprints of all persons arrested for specified offenses.
 - **HB2220 Firearms State Preemption; Independent Contractors** – Removes the ability of a political subdivision to enact or enforce an ordinance or rule regulating independent contractors of the political subdivision who are acting within the course and scope of their employment or contract. For example, it could allow the contractor to bring a weapon to the worksite.
 - **HB2287 Presiding Constable; Selection; Duties** – In each county in which there are four or more constables, the constables shall elect by majority vote one constable to serve as presiding constable. If there is no majority vote, the presiding judge for the county will appoint a presiding constable.
 - **HB2375 Crime Victim's Rights; Facility Dog** – The court is required to afford a victim under 18 years of age the opportunity to be accompanied by a "facility dog" while testifying in court. Members had concerns about proof of insurance, payment for service, and whether this would be mandatory or discretionary. Some people have been confused about the process, believing that the court would provide the facility dog instead of the victim making arrangements for the facility dog.
 - **HB2376 Victim Restitution; Stipulated Amount; Hearings** – The victim has the right to present evidence or information and to make an argument to the court personally or through counsel at any proceeding to determine the amount of restitution.

- **HB2377 Criminal Sentencing; Restoration of Rights** – Allows criminal history to be considered as a factor for sentencing. Primarily clears up the language.
- **HB 2466 Electronic Legal Material** – If an official publisher publishes legal material only in an electronic format, the publisher is required to designate the electronic record as official, authenticate the record, provide for preservation and security of the record in an electronic form or a form that is not electronic, and ensure that the material is reasonably available for public use permanently.
- **S1039** – Provides a person who has served on a jury for 15 consecutive days or more the opportunity to apply to the court for an exemption as a juror for 8 years following that service.
- **S1257 Misconduct Involving Weapons; Public Places** – Permits a person who possesses a valid concealed carry weapons permit to carry a concealed weapon in a public establishment. This does not preempt laws governing “secured facilities.”
- **S1293 Mediation; Confidential Communications; Exception** – Expands the list of communications made during the mediation process that are exempt from confidentiality requirements. A court-appointed mediator who reasonably believes that a minor or vulnerable adult is or has been a victim of abuse, neglect or other “reportable offense” can make a report to a law enforcement officer, the Department of Child Safety, or Adult Protective Services.
- **S1428 Public Safety Personnel Retirement System** – Establishes a method for determining the employer and member contributions to PSPRS for members hired on or after July 1, 2017; modifies the definition of “average monthly benefit compensation” for the purpose of determining PSPRS retirement benefit amounts and the definition of “normal retirement” and applies these changes only to members hired on or after July 1, 2017; increases the PSPRS Board membership to nine, and modifies requirements for board members.
- **S1510 Judicial Productivity Credits; Calculation; Salary** – Requires the Supreme Court to perform annually the calculations in each justice court for the previous 12-month period ending on June 30 and to report the total judicial productivity credits to the applicable board of supervisors by November 1 of each year. Any adjustment to the salary of a justice of the peace will become effective the following January 1.

E. Update on Probate Fee Guidelines Review (taken out of order). Theresa Barrett introduced Jennifer Albright, AOC Court Services Division. Ms. Albright will be taking on the probate fee guidelines review project. Ms. Barrett provided a recap on how the probate fee guidelines were established. ACJA § 3-303 is the controlling authority for probate fee guidelines. The Probate Fee Guidelines Review Committee was established in April 2010 and chaired by Justice Ann Timmer. Tasked with multiple charges, the committee met 18 times in a 13-month period. The committee also had three workgroups and received more than 200 comments on its report and recommendations. Ms. Barrett acknowledged the support she and her staff received from Judge Mackey and Judge Charles Harrington during the original probate fee guidelines review process.

The current review is an opportunity to review and revise the guidelines as needed. The review focuses on whether established fees are reasonable, whether the guidelines assist judicial officers in determining if fees are reasonable, or whether processes are being handled as they were before the guidelines. Since March 2015, AOC staff members have met with presiding judges and received their input, interviewed a number of court accountants, presented to the Arizona Association of Superior Court Administrators and solicited their assistance in disseminating a survey to judges. The survey results are currently being analyzed to determine if follow up phone calls are needed or if the survey should be disseminated again to counties that did not respond. The committee is

planning to establish a fiduciary focus group to get input on the probate fee guidelines, and work has been done with the State Bar of Arizona to develop a survey to be sent to attorneys to get their feedback on how well the guidelines are working.

F. 2016 Rule Petitions. Mark Meltzer, AOC Court Services Division, provided an update on petitions of interest to the superior court.

- **R-15-0043; Civil Rule 11** – would support the State Bar’s pending petition number R-15-0004 regarding Rule 11, except for R-15-0004’s proposed provision for mandatory sanctions. Regarding the provision on the imposition of sanctions, R-15-0043 proposes replacing the word “shall” with the word “may.”
- **R-16-0010; All Civil Rules** – proposes comprehensive revisions to the civil rules through stylistic and substantive amendments. A detailed, rule-by-rule explanation of these revisions is included in Appendix C to this petition.
- **R-16-0071; Civil Rule 5.1** – would modify Rule 5.1(a) to allow a governmental law office or a public or private law firm that has appeared as counsel of record to substitute or associate another member of that office or firm by filing a notice of substitution or association of counsel. This would avoid the need for another attorney in the same office or firm to file a written application or motion and obtain a court order allowing the substitution.
- **R-16-0018; Civil Rule 49(a)** - would further protect the confidential identity of individual jurors by permitting a jury foreperson, or six or more jurors who agree upon a verdict, to sign the verdict form by writing their juror number and initials in lieu of a full signature.
- **R-16-0007; Criminal Rule 8.4** - would amend Rule 8.4(a) to exclude from time limit computations an additional period of 30 days when the reasons for the delay under Rule 8.4(a) end within 30 days of the time limits of Rules 8.2 and 8.3. The exclusion of an additional 30-day period from the time limits allows the court and parties sufficient time to schedule and prepare for a trial.
- **R-16-0031; Criminal Rules 20, 24.1, 24.2, 24.3 and 24.4** - would delete Rule 20. Rule 20(b), which is a judgment of acquittal after a jury verdict, would be re-located as a new Rule 24.1. (A post-verdict judgment of acquittal is reviewable on appeal.) The remaining sections of current Rule 24 would be re-numbered as Rules 24.2 through 24.5.
- **R-15-0036; Juvenile Rule (not numbered)** – would request adoption of a uniform statewide rule providing that children should “be free of mechanical restraints when appearing in superior court, juvenile division, unless there are no less restrictive alternatives that will prevent flight or physical harm to another person.” Restraints could be used only if the court has determined that the “child is displaying threatening or physically aggressive behavior towards others,” “has expressed an intention to flee,” or “has attempted to flee secure care in the last three months.” The proposed rule would require the court to give the juvenile an opportunity to be heard before the court orders the use of restraints. The court must make written findings of fact in support of an order for restraints.
- **R-15-0042; Juvenile Rules 45 and 58** - would require the child safety worker’s narrative report to address the appropriateness of a child’s school placement, services to help the child achieve his or her educational potential, resolution of school attendance issues, special education services, and grade level progress. The proposed amendments to Rule 58 specify that DCS reports at review hearings address the educational stability of the child.
- **R-16-005; Juvenile Rule 19** - would amend Rule 19 to clarify that the juvenile court, including the court’s probation department, may share juvenile court records, including the social file, with other juvenile probation departments both within and outside of Arizona.

(Half of Arizona counties have combined adult and juvenile probation departments; in the other half, they are separate, and juvenile probation falls under the umbrella of the juvenile court.)

- **R-16-0009; Juvenile Rule 39** – would allow an attorney to request withdrawal from a dependency or termination case in writing, but without further specifications, and would more closely align the requirements for withdrawal under Rule 39 with the civil and family rules.

III. OTHER BUSINESS

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

Adjournment: The meeting adjourned at 12:10 p.m.

Next Meeting: Friday, May 6, 2016; 10 a.m.

Committee on Superior Court

Friday, May 6, 2016

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

Present (in person): Judge Sally Duncan, Judge Thomas Fink

Present (telephonic): Judge David Mackey, Judge David Cunanan, Judge Richard Gordon, Judge Charles Gurtler, Judge Charles Harrington, Judge Celé Hancock, Toni Hellon, William Klain, Scott Mabery, Judge Paul McMurdie, Judge Samuel Myers, Judge Cathleen Brown Nichols, Ron Overholt, Judge Michala Ruechel, Eric Silverberg, Megan Spielman, Judge Samuel Vederman, Judge Randall Warner

Absent/Excused: William Gibbs, Judge Kenneth Lee, Judge Joseph Welty

Guest: Judge Maria Elena Cruz (telephonically)

Administrative Office of the Courts (AOC): Theresa Barrett, Jerry Landau (telephonic), Kathy Waters (telephonic)

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

A. Welcome and Opening Remarks. The May 6, 2016, meeting of Committee on Superior Court (COSC) was called to order at 10:01 a.m. by Judge David Mackey, chair.

B. Approval of Minutes from February 5, 2016

The draft minutes from the February 5, 2016, meeting of the COSC were presented for approval.

Motion: William Klain moved to approve the February 5, 2016, minutes as presented.

Seconded: Judge David Cunanan. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Proposed ACJA § 6-115

Kathy Waters, director of the AOC Adult Probation Services Division, presented the proposed adult and juvenile probation services retention and disposition schedules. In 2015,

court records retention schedules in the Arizona Code of Judicial Administration (ACJA) were revised. It had been determined, however, that adult and juvenile probation records retention schedules should be separate because of automated reporting systems and functions. A proposed code section was presented to the Adult and Juvenile Management meetings for discussion and comment and was approved by the Committee on Probation. Ms. Waters asked COSC to recommend approval of the proposal by the Arizona Judicial Council.

Motion: Judge Charles Gurtler moved to recommend adoption of the proposed adult and juvenile probation services retention and disposition schedule for probation records.

Seconded: Eric Silverberg. **Vote:** Unanimous.

B. Update on Mandatory Warrant Forms

Theresa Barrett, AOC Court Services Division, provided COSC members with an update on the Mandatory Warrant Forms Workgroup. In early 2016, the workgroup met twice to discuss further revisions to the new warrant forms that were approved by the Supreme Court in December 2015. The workgroup incorporated changes recommended by stakeholders and provided a two-week period for further review and final comments or recommendations. In March 2016, Patrick Scott, AOC, presented the amended warrant forms to the Arizona Judicial Council and the presiding judges for recommended adoption. The revised warrant forms will take effect July 1, 2016. Mr. Scott is the point of contact for any questions about the warrant forms.

C. Legislative Update

Jerry Landau, AOC Government Affairs Director, informed the committee that the legislature had passed a state budget bill for 2016-17 and had sent it to the governor for his consideration.

Budget appropriations for the Judiciary include \$2.4 million for Adult Probation; \$947,000 to IT for new WAD System software, which is interconnection software that connects the courts with the Supreme Court; and \$3 million for dependency case processing and pass-through money for Maricopa County to use for diversion programs. The legislature swept \$5 million from the Judiciary, including \$3.6 million from juvenile treatment and \$500,000 from CASA.

The budget legislation includes a 3 percent salary adjustment, split over two years at 1.5 percent per year, for all judges. The legislature also has passed HB2537, a bill that will add two more justices to the Supreme Court. The bill has been sent to the governor for his consideration.

Other bills of interest include:

- **HB2154 Failure to Appear; Arrest; Fingerprinting** – This bill requires the booking agency (defined as the county sheriff or municipal law enforcement agency), instead of the arresting authority, to take legible ten-print fingerprints of all persons arrested for specified offenses, including domestic violence. Signed by the governor.
- **HB2260 Foster Care Review Board; Continuation** – Continues the Foster Care Review Board until July 1, 2024, retroactive to July 1, 2016. A few amendments were added to this bill. Ready for the governor.
- **HB2375 Crime Victim’s Rights; Facility Dog** – The court is required to allow a victim who is under age 18 the opportunity to have a “facility dog” accompany the victim while testifying in court. The court may allow victims and witnesses who are 18 years of age or older to use facility dogs. A person seeking the use of a facility dog is required to file a notice with the court that includes specified information. This bill is expected to move out of the House of Representatives today to the Governor’s Office.
- **HB2376 Victim Restitution; Stipulated Amount; Hearings** – Under the authority of the Victims’ Bill of Rights in the Arizona Constitution, the victim or the victim’s attorney has the right to present evidence or information in court proceedings to determine restitution. Signed by the governor.
- **SB1039 Jury Service; Grand Jury** – Upon timely application to the court, a person who has served on a grand jury in Arizona is required to be excused temporarily from service as a juror for four years following the last day of that person’s service on the grand jury. This exception does not apply to a person selected as an alternate grand juror. Ready for the governor.
- **SB1257 Misconduct Involving Weapons; Public Places** – This bill would have allowed a person who possesses a valid concealed weapons permit to carry a concealed weapon in a public establishment or at a public event. The bill died, and its sponsor did not ask for reconsideration.
- **SB1293 Mediation; Confidential Communications; Exception** – The list of communications made during the mediation process that are exempt from confidentiality requirements is expanded to include a disclosure made in a report to a law enforcement officer, the Department of Child Safety or Adult Protective Services by a court-appointed mediator who reasonably believes that a minor or vulnerable adult is or has been a victim of abuse, child abuse, neglect, exploitation, physical injury or other reportable offense. Ready for the governor.
- **SB1296 Guardianship; Proceedings; Ward’s Relationships** – A guardian is required to encourage and allow contact between the ward and other persons who have a significant relationship with the ward. A guardian is authorized to limit, restrict or prohibit contact if the guardian reasonably believes the contact will be detrimental to

the ward's health, safety or welfare. A person who has a significant relationship to the ward or the ward may petition the court for an order compelling the guardian to allow the person to have contact with the ward. A guardian is required to notify specified family members of an adult ward, including anyone who has filed a demand for notice, if the ward is admitted to a hospital for more than three days or if the ward has died. Ready for the governor.

- **SB1297 Paternity; Preliminary Injunction** – In an action to establish legal decision-making and parenting time for a child who is born out of wedlock, the clerk of the court is required to issue a preliminary injunction that is directed to each party to the action if the petitioner has filed one of a list of specified documents. The preliminary injunction must contain specified orders, including that both parties are enjoined from harassing the other party, from removing a child of the parties then residing in the state from the court's jurisdiction, or from removing any child of the parties from existing insurance coverage. The preliminary injunction has the force and effect of an order of the superior court signed by a judge and is enforceable by all remedies made available under the law, including contempt of court. This bill is awaiting a third reading in the House.

Mr. Landau indicated that there will be new leadership in the legislature next year as both the current Speaker of the House and the Senate President are running for Congress. He also noted that the Arizona Supreme Court has issued two new decisions on DUI implied consent. He has met with Arizona Department of Transportation officials, who will review their implied consent affidavit and instructions to law enforcement.

III. OTHER BUSINESS

Good of the Order/Call to the Public. No members of the public were present.

Adjournment: The meeting adjourned at 10:33 a.m.

Next Meeting: Friday, September 9, 2016; 10 a.m.

Arizona State Courts Building, Conference Room 119 A/B

Committee on Superior Court

Friday, September 9, 2016
Conference Room 119 A/B, Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Judge David Mackey, Judge David Cunanan, Judge Charles Gurtler, Jr., Judge Charles Harrington, Toni Hellon, Judge Jason Holmberg, William Klain, Judge Kenneth Lee, Scott Mabery, Judge Paul McMurdie, Eric Silverberg, Megan Spielman, Judge Randall Warner, Judge Joseph Welty, Judge Timothy Wright

Telephonic: Judge Thomas Fink, Judge Richard Gordon, Judge Cathleen Brown Nichols, Ronald Overholt

Absent/Excused: Judge Sally Duncan, William Gibbs, Judge Celé Hancock, Judge Samuel Myers

Guests: Judge Larry Winthrop, Court of Appeals, Division 1; Adam Shelton, ASU extern

Administrative Office of the Courts (AOC): Jennifer Albright, Theresa Barrett, Stewart Bruner, Jerry Landau, Mark Meltzer, Marcus Reinkensmeyer, Kathy Sekardi

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The September 9, 2016, meeting of Committee on Superior Court (COSC) was called to order at 10:03 a.m. by Judge David Mackey, chair.

Judge Mackey welcomed two new members—Judge Jason Holmberg and Judge Timothy Wright—and thanked reappointed members Judge Sally Duncan, Toni Hellon, Bill Klain, and Judge Randall Warner for their continued service to COSC. He thanked and bid farewell to Judge Michala Ruechel and Judge Samuel Vederman, whose terms on COSC have expired. He also congratulated Ron Overholt on his promotion to court administrator for Pima County. He then directed COSC members to the last page of the agenda and asked them to note the 2017 meeting dates on their calendars as soon as possible.

Approval of Minutes from May 6, 2016

The draft minutes from the May 6, 2016, meeting of the COSC were presented for approval.

Motion: Eric Silverberg moved to approve the May 6, 2016, minutes as presented. **Seconded:** Judge Charles Gurtler. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Legislative Update

Jerry Landau, AOC government affairs director, explained that seven proposals from the Arizona Judicial Council (AJC) are expected to go to the legislature next session. One comes from the limited jurisdiction courts and deals with criminal littering (2017-05, which was not

discussed), four are from the Fair Justice for All Task Force, one is from the Committee on Court Security, and one is from the Adult Probation Department.

1. Fair Justice for All Task Force

2017-01–Sentencing; fines; fees; probation – Allows a person charged with a misdemeanor to perform community restitution without being placed on probation, adds civil penalties and surcharges to the list of financial obligations for which the court may order community restitution, allows a judge to waive or mitigate part of the civil penalty, fine, surcharge, or fee if the cost causes financial hardship, and expands the community restitution program to superior court.

Motion: Judge Richard Gordon moved to support this proposal. **Seconded:** Judge Paul McMurdie. **Vote:** Unanimous.

2017-02–Driving; violations; restricted license; penalties – Authorizes specified restrictions to be placed on a person’s driving privileges in lieu of the suspension of the person’s license (allowing the person to drive to and from work, to and from school, to and from a dependent child’s school or appointments, or to seek medical treatment) and allows a judge to waive court-ordered financial obligations related to driving under the influence, pursuant to law. **No discussion or action taken.**

2017-03–Bailable offenses; hearing; schedule – Eliminates the bond schedule for criminal traffic cases that limited jurisdiction courts are required to prepare, permits a hearing to determine if a person should be held without bond based on being a danger to the community, removes the statutory timeframes for holding a hearing on the motion as well as the requirement that the case be placed on an expedited calendar.

Motion: Judge McMurdie moved to support the proposal. **Seconded:** Judge Randall Warner. **Vote:** Unanimous.

2017-04–Competency examination; jurisdiction – Allows the presiding judge of the superior court to authorize a limited jurisdiction court to exercise jurisdiction over competency hearings in that court upon the agreement of both judges.

Motion: Judge McMurdie moved to support with the addition of designee language. **Seconded:** Judge Timothy Wright. **Vote:** Unanimous.

2. Court Security Standards Committee

2017-06–Court Security Fund - This proposal recommends improvements to court security in response to the recent shootings in court buildings locally and nationwide. It proposes statewide standards for the courts, expands the authorized use of filing fee monies distributed by the Board of Supervisors to a local law library fund to allow for improvements, maintenance, or enhancements to courthouse security, directs any excess defensive driving school fees not distributed the Department of Public Safety crime labs to a newly established statewide court security fund, requires the Administrative Office of the Courts to use the monies in the statewide court security fund to meet minimum standards of courthouse security adopted by the AJC. These monies will not revert to the general fund and are exempt from lapsing.

Discussion ensued regarding the use of the law library funds for court security, the security needs of metropolitan versus rural courts, and fixed versus shared court facilities.

Motion: Mr. Silverberg moved to support the court security proposal. **Seconded:** Toni Hellon. **Vote:** 9-7 agreed to support this proposal; 2 members abstained.

3. Adult Probation

2017-07–IPS wages; distribution – Current law requires the chief adult probation officer to collect paychecks from probationers and establish accounts from which the chief adult probation officer must make payments for restitution, probation fees, fines and other payments. The introduction of direct deposit, check cards, and other payment options have made it difficult for adult probation departments to comply with the requirement of collecting paychecks from offenders. The proposed amendment would reflect current wage distribution practices and require the probation officer to monitor the probationer's income to ensure compliance with court-ordered financial obligations.

Motion: Scott Mabery moved to support the proposal. **Seconded:** Judge McMurdie. **Vote:** Unanimous.

B. Fair Justice for All Task Force

Judge Don Taylor, chief presiding judge, Phoenix Municipal Court, and a member of the Fair Justice for All Task Force, presented a summary of the task force's recommendations that are necessary to effectuate statewide changes and to reform the current criminal justice system. He outlined core values and introduced a two-component solution to achieve justice for all by creating reasonable sanctions and implementing pretrial bail reform.

Judge Taylor reviewed the average cost of a traffic ticket and illustrated how a small ticket can become a big problem later and have catastrophic consequences for low-income individuals. Although there should be consequences if a person breaks the law, criminal fines and penalties should not promote a cycle of poverty by imposing excessive amounts or unduly restricting people's ability to be gainfully employed. Judge Taylor highlighted the following principles to create reasonable sanctions as the first part to achieving justice for all:

1. Judges need discretion to set reasonable penalties–Legislative changes are needed for judges to mitigate mandatory minimum fines, fees, surcharges, and penalties for those upon whom they would cause undue economic hardship.
2. Provide convenient payment options and reasonable time payment plans–Test techniques that make it easier for defendants to make payments.
3. Provide alternatives to paying a fine–Allow judges additional discretion to convert fines into restitution hours and apply to sentences imposed by superior courts.
4. Employ practices that promote voluntary appearance–Implement an interactive messaging system that reminds defendants of court dates and missed payments.
5. Suspension of a driver's license should be a last resort–The first offense of driving on a suspended license should be a civil violation rather than a criminal offense.
6. Non-jail enforcement alternatives should be available–Restitution court and the FARE program provide non-jail and less costly compliance alternatives.
7. Special needs offenders should be addressed appropriately–People suffering from mental illness or drug addiction should be handled differently.

He noted that even short periods of pretrial incarceration cause collateral damage in terms of loss of employment, economic hardship, loss of place of residence, and inability to care for children or family, as well as the likelihood to commit new crimes before trial.

The second part to achieving justice for all is to implement pretrial reforms by eliminating money for freedom to the greatest extent possible and shifting from bail and bond to risk-based release criteria.

8. Detaining low- and moderate-risk defendants causes harm and higher rates of new criminal activity–Eliminate the use of non-traffic criminal bond schedules.
9. Only defendants who present a high risk to the community or individuals who repeatedly fail to appear in court should be held in custody–Amend the Arizona Constitution to expand the use of detention without the requirement for money bail.
10. Money bond is not required to secure appearance of defendants–The bond should be actual cash with the amount paid returned to the defendant if charges are not filed, the person is found innocent, or if no violations of the release conditions occur.
11. Release decisions must be individualized and based on a defendant’s level of risk– Expand the use of the Public Safety Assessment (PSA), a validated pretrial risk assessment tool, to limited jurisdiction courts.

Motion: Judge Kenneth Lee moved to support the recommendations in the final report and the filing of a rule petition to implement the recommendations. **Seconded:** Judge Charles Harrington. **Vote:** Unanimous.

C. Arizona Commission on Access to Justice – Report on Rule Change Petition R-16-0040

Judge Lawrence Winthrop, Court of Appeals, Division 1, provided a brief history of the Arizona Commission on Access to Justice (ACAJ) and its charge of “Advancing Justice Together: Courts and Communities” by making recommendations on how to best assist self-represented litigants and revising court rules and practices to facilitate access. The ACAJ’s Self-Represented Litigant in Limited Jurisdiction Courts Workgroup (SRL-LJC WG) worked with justice court managers, judicial staff, and tenant and landlord attorneys, all with subject-matter expertise in landlord-tenant matters, to create forms for use statewide. On July 6, 2016, a rule change petition (R-16-0040) was filed on behalf of the ACAJ that would require litigants statewide to use court-approved eviction action forms and authorizes the AOC administrative director to approve, modify, or delete eviction action forms as may be appropriate. The proposed rule is being circulated to appropriate groups for review and comment. The deadline to reply to comments is November 4, 2016. It is anticipated that the Supreme Court will consider this petition at its rules agenda meeting in December.

Motion: William Klain moved to support the petition, provided the forms are not mandatory for use in forcible detainer actions after trustee sales brought in superior court.

Seconded: Judge David Cunanan. **Vote:** Unanimous.

D. Court Security Standards Committee

Marcus Reinkensmeyer, director of the AOC Court Services Division, outlined the charge of the Court Security Standards Committee (CSSC), which was to assess court security, develop statewide standards, and develop security training for court personnel. Jennifer Albright, AOC Court Services Division, detailed how court security was assessed with a statewide survey that measured security practices currently in place in the courts and what security measures the courts would like to implement. Based on the responses to the survey and best practices, the CSSC developed five categories of standards:

1. Court security and emergency preparedness
2. Court security manual
3. Court self-assessment
4. Response to negative events
5. Incident and threat reporting

Mr. Reinkensmeyer then discussed proposed three-tier funding for court security. The proposed court security standards, funding recommendations, and an implementation timeline will be presented to the AJC upon completion of the CSSC's final report, he noted.

Discussion ensued regarding the use of the law library funds for court security, the security needs of metropolitan versus rural courts and fixed court facilities versus shared facilities. Other funding options were also discussed.

Motion: Judge Lee moved to support the court security standards and funding recommendations with the notation of concerns raised regarding funding, individual court needs, and the implementation timeline. **Seconded:** Judge Gurtler. **Vote:** Unanimous.

E. Proposed Amendments to ACJA § 7-206: Certified Reporter

Mark Wilson, director of the AOC Certification and Licensing Division, explained that some of the superior courts are having difficulty recruiting certified reporters. One reason is the amount of time it takes to perform background investigations. Each applicant must be fingerprinted and undergo a criminal background investigation. Fingerprint requests are taking four to six weeks to be processed. The proposed amendment to ACJA § 7-206 would allow individuals, not yet certified but currently employed or about to be employed by a superior court to receive a Conditional Initial Certification that would allow employment by a superior court while the criminal background investigation is being completed.

Motion: Mr. Silverberg moved to support the proposed amendments to ACJA § 7-206. **Seconded:** Judge Gurtler. **Vote:** Unanimous.

F. Proposed Revisions to ACJA § 1-507: Protection of Case Records in Paperless Court Operations

Stewart Bruner, AOC IT Division, discussed two proposed revisions to ACJA § 1-507. The first change deals primarily with wording changes to incorporate cloud storage technology for storage arrays, virtual servers, and virtual tape technology. These would cover protection of electronic records in paperless court operations and gateway access to the tertiary copies that prevent direct access to the storage media from systems being backed up. The other change deals with removal of language requiring certification requirements for technical staff operating the server and database environments that store electronic records. It would permit substitution of in-house skills assessment, professional experience, or formal education.

Motion: Judge Warner moved to support the proposed amendments. **Seconded:** Mr. Silverberg. **Vote:** Unanimous.

G. Task Force on Arizona Rules of Criminal Procedure

Judge Joseph Welty, Maricopa County Superior Court, provided a brief background on the Criminal Rules Task Force. At their first meeting, task force members adopted the restyling protocol established by the Civil Rules Committee last year. Four workgroups then began

redrafting assigned rules of criminal procedure. To date, the workgroups have met 40 times. All of the rules have been restyled, and half of them have been approved by the task force. The goal is to get a working draft to various committees for their input by the end of the year.

H. Update on the Annual Rules Agenda

Mark Meltzer, AOC Court Services Division, reported that the Supreme Court considered 46 rule petitions at its rules agenda meeting on August 29, 2016. All of the adopted rule petitions take effect January 1, 2017, unless otherwise noted. Petitions of interest to superior courts include:

R-16-0010 Task Force on the Arizona Rules of Civil Procedure proposed comprehensive stylistic and substantive revisions to the civil rules. This petition was adopted as modified.

R-16-0017 Civil Rule 5.1(a) was modified to allow a governmental law office, public or private law firm that has appeared as counsel of record to substitute or associate another member of that office or firm by filing a notice of substitution or association of counsel. This rule was adopted as modified and renumbered as Rule 5.3(a)(2).

R-16-0018 Civil Rule 49(a) would further protect the confidential identity of individual jurors by permitting a jury foreperson or six or more jurors who agree upon a verdict to sign the verdict form by writing their juror number and initials in lieu of a full signature. This rule was adopted as modified and renumbered as Rule 49(d)(2).

R-16-0007 Criminal Rule 8.4 seeks to amend Rule 8.4(a) to exclude from time limit computations an additional 30-day period when the reasons for the delay under Rule 8.4(a) end within 30 days of the time limits of Rules 8.2 and 8.3. This would allow the court and the parties sufficient time to schedule and prepare for a trial.

R-16-0024 Criminal Rule 7.5 would add an additional circumstance “where the defendant was released or transferred to the custody of another government agency, preventing the defendant from appearing in court” and make exoneration of the bond mandatory in both circumstances.

R-15-0036 Juvenile Rule (not numbered) would provide that children should “be free of mechanical restraints when appearing in superior court, juvenile division, unless there are no less restrictive alternatives that will prevent flight or physical harm to another person.” The proposed rule would require the court to provide the juvenile with the opportunity to be heard without restraints. The court must make written findings of fact in support of an order for restraints. Adopted as modified (Rule 12).

R-16-0034 ARCAP 5(a) eliminated the five calendar days currently added to the time for responding to an appellate filing that is served electronically.

III. OTHER BUSINESS

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

Adjournment: The meeting adjourned at 1:23 p.m.

Next Meeting: Friday, November 4, 2016; 10 a.m.
Arizona State Courts Building, Conference Room 119 A/B

Committee on Superior Court

Friday, November 4, 2016
Conference Room 119A, Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Judge Sally Duncan, Judge Charles Gurtler, Scott Mabery, Judge Joseph Welty

Telephonic: Judge David Mackey, Judge David Cunanan, Judge Thomas Fink, Judge Richard Gordon, Judge Charles Harrington, Toni Hellon, Judge Jason Holmberg, Judge Kenneth Lee, Eric Silverberg, Judge Randall Warner, Judge Timothy Wright

Absent/Excused: William Gibbs, Judge Celé Hancock, William Klain, Judge Paul McMurdie, Judge Samuel Myers, Judge Cathleen Brown Nichols, Ronald Overholt, Megan Spielman

Administrative Office of the Courts (AOC): Theresa Barrett, Amy Love, Kathy Waters

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The November 4, 2016, meeting of Committee on Superior Court (COSC) was called to order at 10:32 a.m. by Judge David Mackey, chair.

Judge Mackey congratulated Judge Paul McMurdie on his appointment to the Arizona Court of Appeals and thanked him for his service to COSC.

Approval of Minutes from September 9, 2016

The draft minutes from the September 9, 2016, meeting of the COSC were presented for approval.

Motion: Judge Charles Gurtler moved to approve the September 9, 2016, minutes as presented. **Seconded:** Toni Hellon. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Amendments to ACJA § 6-201.01: Standard Probation Evidence Based Practices and ACJA §6-202.01: Adult Intensive Probation Evidence Based Practices

Kathy Waters, AOC Adult Probation Services Division, stated that amendments to ACJA § 6-201.01: Standard Probation Evidence Based Practices would change the every six-month assessment to once a year. This change would provide probation officers with the ability to manage their probationers more effectively and provide probationers with additional time to adhere to their probation before being reassessed and found non-compliant. Other changes were made to the language to be consistent with the language in ACJA §6-202.01.

Amendments to ACJA §6-202.01: Adult Intensive Probation Evidence Based Practices deal with how intensive probationers are supervised. Recommended changes would require probation officers to make initial contact with a probationer at his or her residence to verify information given and determine suitability of residence. Other changes include the recommendation that probation officers not recommend incarceration solely due to non-payment of court ordered financial obligations and that

policies and procedures are in place to require a probation officer to develop yearly case plans for probationers denoting the most recent completed assessment. The assessment also should be updated to show completed goals and supervision strategies based on the probationer's risk and the needs.

Motion: Judge Sally Duncan moved to support amendments to ACJA § 6-201.01 and ACJA §6-202.01. **Seconded:** Judge Gurtler. **Vote:** Unanimous.

B. Legislative Update

Amy Love, AOC legislative liaison, stated that the following legislation she presented at the Arizona Judicial Council (AJC) and Presiding Judges meetings in Flagstaff last week was previously vetted by COSC.

2017-01 Probation, Court Ordered Obligation Fines and Fees – modifies the requirements of various court-ordered financial obligations, increases judicial discretion with respect to sentencing, permits debt removal from court accounting systems under specified limited circumstances, and provides for changes in the calculation of imprisonment terms due to pre-trial incarceration. Ms. Love mentioned that the reduction of interest rate from ten percent to four percent on criminal restitution orders has caused some concern with the Commission on Victims in the Courts (COVIC).

2017-03 Bond Schedule – replaces the criminal traffic bond schedule in limited jurisdiction courts with a deposit schedule, modifies the process related to a bond hearings in superior court where a person is initially held without bond.

2017-04 Competency – provides for increased jurisdiction of limited jurisdiction courts regarding competency hearings if approved by the superior court presiding judge.

2017-06 Court Security Fund – creates a new statewide Court Security Fund consisting of monies appropriated by the legislature, with monies used to fund courthouse security at the local and state levels and requires the Administrative Office of the Courts to administer the fund.

2017-07 (will be rolled into 2017-01) – modernizes statutory language with respect to probation monitored supervision of payments to reflect current wage distribution practices, such as direct deposit, and monitors the probationer's income to ensure compliance with court-ordered financial obligations.

2017-08 Guardianship – would create a hybrid Title 8 guardianship that would allow the Department of Child Safety, the parents, and the courts to stipulate to a permanent guardianship prior to adjudication of a dependency.

C. Update from the Criminal Rules Task Force

Judge Joseph Welty informed COSC that the Criminal Rules Task Force has had eleven full-day meetings and anticipates completing more six rules by its November 18, 2016, meeting. A draft of the proposed rule changes will be sent out by the Arizona State Bar for informal comment. The informal comments will be reviewed prior to the rules being sent out for formal comment in January. Judge Welty noted that substantive changes have been made regarding the use of *shall* versus *may* or *must*, forms of pleading, fonts, and uniformity of practice. Substantive changes to some of the timeframes in Rule 32 have been suggested to match existing practice. Substantive changes are proposed only if the changes are necessary to conform to practice or case law. Judge Welty also stated that an appendix will provide an explanation of each proposed rule change.

Motion: Judge Timothy Wright moved to acknowledge and support the work of the Criminal Rules Task Force. **Seconded:** Judge Thomas Fink. **Vote:** Unanimous.

III. OTHER BUSINESS

Good of the Order (taken out of order)

Judge Mackey provided an update on topics presented at the October AJC and PJ meetings. He reported that:

Court Reporter Certification—Mark Wilson, director of the AOC Certification and Licensing Division, presented the proposed amendment to ACJA § 7-206 that would allow individuals, not yet certified but currently employed or about to be employed by a superior court, to receive a Conditional Initial Certification that would allow employment by a superior court while the criminal background investigation is completed. The proposal was unanimously approved by both the AJC and PJs.

Case Records in Paperless Court Operations—Stewart Bruner, AOC IT Division, presented two proposed revisions. The first one deals primarily with wording changes to incorporate cloud storage technology for storage arrays, virtual servers, and virtual tape technology. This proposal was approved by both the AJC and PJs without comment. The other proposal deals with removal of language requiring Microsoft certification requirements for technical staff operating the server and database environments that store electronic records. Substitution of in-house skills assessment, professional experience, or formal education would be permitted. The proposal regarding Microsoft certification was recommended by the AJC, which supported the need for certified technical staff to operate the server and database environments that store electronic records. The presiding judges supported the proposal but felt there was a need for AOC to help smaller counties with finding and retaining certified staff.

Court Security Standards—Marcus Reinkensmeyer, director of the AOC Court Services Division, outlined the charge of the Court Security Standards Committee (CSSC). The CSSC was asked to assess court security, develop statewide standards, and develop security training for court personnel. The AJC and PJs approved the concept of court security but had concerns regarding the cost of implementation to county finances and deferred action until the December meeting. The AJC and PJs supported state legislation to support the use of the library fund for court security needs by a 9-7 vote.

Call to the Public. Martin Lynch spoke to the committee.

Adjournment: The meeting adjourned at 11:43 a.m.

Next Meeting: Friday, February 3, 2017; 10 a.m.
Arizona State Courts Building, Conference Room 119 A/B