

Committee on Superior Court

Friday, February 3, 2017
Conference Room 119 A/B, Arizona State Courts
Building 1501 West Washington Street
Phoenix, AZ 85007

Present: Judge Roger Nelson, Judge Joseph Welty

Telephonic: Judge David Mackey, Judge David Cunanan, Judge Richard Gordon, Judge Charles Gurtler, Toni Hellon, Judge Jason Holmberg, William Klain, Judge Andrew Klein, Judge Kenneth Lee, Judge Cathleen Brown Nichols, Ronald Overholt, Eric Silverberg, Megan Spielman, Judge Randall Warner, Judge Timothy Wright

Absent/Excused: Judge Sally Duncan, Judge Thomas Fink, William Gibbs, Judge Celé Hancock, Judge Charles Harrington, Scott Mabery, Judge Samuel Myers

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

AOC Staff: Kay Radwanski, Karla Williams

I. REGULAR BUSINESS

Welcome and Opening Remarks. The February 3, 2017, meeting of Committee on Superior Court (COSC) was called to order at 10:02 a.m. by Judge David Mackey, chair.

Judge Mackey introduced and welcomed the two newest members of COSC: Judge Roger Nelson, Superior Court in Yuma County, and Judge Andrew Klein, Superior Court in Maricopa County.

Approval of Minutes

The draft minutes from the November 4, 2016, COSC meeting were presented for approval.

Motion: Toni Hellon moved to approve the November 4, 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, provided COSC with an update on the following bills:

H2239: Incompetent; Nonrestorable Defendants; Involuntary Commitment consists of various changes related to defendants who are incompetent to stand trial. If an incompetent defendant is found to be not restorable to competency within 21 months, the state is permitted to request a hearing to determine if the defendant is dangerous, as established by clear and convincing evidence after examination by a mental health expert, and should be involuntarily committed to a secure state mental health facility. The state mental health facility's psychiatrist, psychologist, or other competent professional must evaluate the defendant annually and submit an examination report to the court. The report must contain

specified information including whether the person remains dangerous. If the report indicates that the defendant's status has changed as to competency or dangerousness, the court is required to hold a hearing within 45 days after receiving the report to determine if the defendant is competent or is no longer dangerous. If the defendant is found to be competent, criminal proceedings will resume.

H2240 Alternative Grand Jurors; Service - specifies that alternate grand jurors are sworn in at the time of empanelment but are not designated as permanent jurors.

H2241 Victim's Rights; Pleading Endorsements - provides that if counsel for the victim has filed an appearance, the victim's counsel must be endorsed on all pleadings.

H2246 Arizona Lengthy Trial Fund; Continuation - extends the termination date of the lengthy trial fund ten years to July 1, 2027. The termination date of the additional fee on each filing, appearance, and answer or response fee charged by a Clerk of the Superior Court (which is deposited into the fund) is extended eight years to January 1, 2027.

S1072 Administrative Decisions; Scope of Review - requires the superior court to make a de novo decision of the facts, law, and constitutional issues in an administrative appeal. The AOC is working to remove the need for the superior court to have to make a de novo decision of the facts; this provision would remove all deference to the decision of the administrative law judge. Previously, the court was required to affirm the agency action unless, after reviewing the evidence, the court concluded that the action was not supported, was contrary to law, or was arbitrary and capricious.

S1243 Misconduct Involving Weapons; Public Places - would allow a person who possesses a valid concealed weapons permit to be exempt from the prohibition on carrying a concealed weapon in a public establishment or at a public event. The courts, law enforcement, licensed liquor establishments and educational institutions are exceptions.

Other bills of interest:

H2295 and **H2300** are an effort to abolish the State Bar. If successful, these bills could set up a conflict between the authority of the legislative and the judicial branches.

S1158 and **S1160** are bills that originated with the Fair Justice Task Force. The early response to them is good.

S1161, the court security bill, is moving.

Other discussion: There was brief discussion of the *Hall v. Elected Officials Retirement Plan* (EORP) case. *Hall* is currently on a motion for reconsideration. Mr. Landau stated that the *Hall* decision had a small part in driving the discussion to close the correction officers' retirement fund and replace it with a deferred compensation plan. He noted it brought forth the need to resolve the 23 percent employer contribution cap versus the legacy costs, which exceed the cap.

- B. Criminal Rule Changes from the Task Force on Fair Justice for All** (taken out of order)
Jennifer Greene, AOC assistant counsel, discussed the changes that resulted from the December 2016 adoption of rule petition **R-16-0041**, which takes effect April 3, 2017. The changes were based on recommendations from the Fair Justice for All Task Force.

Rule 6.1. Rights to counsel; waiver of rights to counsel – would require the appointment of counsel to an indigent defendant, being held on a bond after the initial appearance, to assist

with any requests for modification of conditions.

Rule 7.1 Definitions and applicability of rule – defines bond terms and encourages the use of alternative bonds such as: own recognizance, cash bond, unsecured and secured bonds, or a deposit bond that requires the defendant to pay a percentage of the bond up front. Release decisions will be based on an individualized risk assessment determination. The risk assessment instrument is currently under development. The petition changes to Rule 7 also generated minor changes to Form 6-Release Order and Form 7- Appearance Bond.

Rule 7.7 allows the superior court to suspend or modify bail conditions imposed by a limited jurisdiction court on a superior court probationer appearing on a misdemeanor charge, to allow the probationer to complete a superior court-ordered treatment program. The superior court clerk would notify the limited jurisdiction court when the suspension or modification order has issued. Details on how the notification would be handled are currently being worked out.

David Withey, AOC chief counsel, and Ms. Greene discussed pending rule petition **R-17-0015**, regarding bail eligibility and procedures for orders to show cause for failure to pay fines. The petition originated with the Task Force on Fair Justice for All.

Ms. Greene noted that proposed changes to Rule 16.12 would incorporate local rules regarding issuance of summonses instead of warrants and using notices and reminders before setting an order to show cause. Compliance measures other than incarceration can be used.

Mr. Withey discussed procedures to determine bail eligibility as proposed in Appendix B of the petition. This proposal will be impacted by the success of legislative proposals put forth by the Task Force. The Rules of Criminal Procedure that would be affected by the proposal are Rules 4.2, 5.1, 5.4, 7.2, and 7.4.

1. Rule 4.2(a)(7)(A)-(B). Determine whether there is probable cause to believe that (1) the defendant committed a non-bailable offense; (2) the defendant committed a felony for which release is prohibited because the defendant poses a substantial danger and no release conditions can reasonably assure the safety of others; or (3) the defendant must be released on bail pursuant to Rule 7.2(a).
2. Rule 4.2(a)(7)(C). Schedule a bail eligibility hearing in superior court as required by Rule 7.2(b)(4) for a defendant held not bailable as required by Rule 4.2(a)(7)(A) or (B).
3. Rule 7.2(B)(4). A hearing must be held within seven days of the initial appearance to determine whether a person is non-bailable under Rule 7.2(b)(1) or (b)(2).
4. Rule 7.2(b)(1). Review to determine whether there is proof evident or the presumption great that the person committed a specific non-bailable felony offense described in Ariz. Const. Art. 2, Sec. 22(A)(1) or (2).
5. Rule 7.2(b)(2). Review to determine whether a person charged with any other felony offense is non-bailable.
6. Rule 7.2(b)(3) establishes the considerations the court must use to determine whether the provisions in the preceding step apply.
7. Rule 7.4(a) establishes procedures to be used at the bail eligibility hearing.
8. Rule 7.4(d) should be applied to determine whether the complaint should be dismissed and the defendant discharged.

Judge Mackey polled COSC members to determine if they would like to comment on the proposed petition individually or as a whole. The consensus was that any comments would be made individually. Comments on petition R-17-0015 are due by May 22, 2017.

C. 2017 Rule Petitions

Mark Meltzer, AOC Court Services Division, discussed the following open rule petitions that are of interest to the superior court. Unless specifically noted, the comment deadline is May 22, 2017.

CIVIL RULES

R-17-0006 –eliminates distinctions between management of medical malpractice cases and other types of civil cases.

R-17-0007 – provides procedures for sealing and unsealing documents, thereby filling a gap in the civil rules on this subject. The proposed rule would address such issues as the findings a judge would need to make in the order to file a document under seal; other matters that the order needs to address, such as whether all or only part of the document could be filed under seal; the contents of a stipulation or motion requesting sealing; lodging and serving a document filed under seal; the clerk’s duties; transmission of a sealed document on appeal; and procedures when a request to file under seal is completely or partially denied. The proposed rule also would address such issues as how to reconcile the sealing process with the protective order process of Rule 26(c), and procedures for unsealing a document.

R-17-0010 - addresses the cost and time required to resolve civil cases in Arizona’s superior courts. The petition accordingly would amend rules relating to case management, discovery, and sanctions.

CRIMINAL RULES

R-16-0046 – would add an addendum to the release questionnaire entitled “intimate partner risk assessment” to the release questionnaire for judicial officers to consider when determining conditions of release or the amount of bail in a domestic violence charge presented to the court.

R-17-0002 – proposes comprehensive revisions to the criminal rules through stylistic and substantive amendments. Notable changes are the addition of Rule 11.8, which provides a separate rule for the determination of a defendant’s mental status at the time of offense, and Rule 20, which would permit a defendant to make a post-verdict motion for acquittal without having made such a motion before the close of evidence. (*Initial comments are due March 14, 2017; second round comments are due May 31, 2017.*)

R-17-0014 –permits a jury foreperson to sign a verdict form by using a juror number and initials in lieu of a signature.

R-17-0024 – proposes amendments designed to promote judicial economy and efficiency in the post-conviction relief process.

R-17-0027– develops a procedure for disclosure of video from officer-worn body cameras.

JUVENILE RULES

R-17-0025 – would implement the new US Department of Interior regulations of the Indian Child Welfare Act (ICWA) through appropriate rule amendments. The petition affects more than 25 juvenile rules. (*Initial comments are due March 17, 2017.*)

Family Law Rules

R-17-0017 – would abolish current Rule 67(C) and proposes a new Rule 67.2 “Uniform Family Law Arbitration Rule.” The petitioners note the advantages and disadvantages of arbitration. The proposal also would require judicial scrutiny of child-related awards , such as legal decision-making and parenting time. The rule includes special protections for children and family members if the arbitrator has a reasonable basis to believe that the child is the subject of abuse or neglect that would require the arbitrator to terminate arbitration and report any findings to the Arizona Department of Child Safety.

R-1700-19 – would request an amendment to ensure that the venue statutes in A.R.S. §12-401(13), A.R.S. §12-502 and A.R.S §25-802 are followed by the parties in family law actions such as the dissolution of marriage or legal separation.

Rules of Procedure for Eviction Actions

Mr. Meltzer asked COSC members to consider three petitions affecting the Rules of Procedure for Eviction Actions: **R-16-0040** (uniform eviction form), **R-17-0016** (calculation of time in for the services of summons and complaints) and **R-17-0020** (stipulation of judgements in eviction cases). He asked COSC members to consider whether these rules apply to eviction cases in the superior court and whether they foresee any issues with the proposed rule changes.

III. OTHER BUSINESS

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

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

Next Meeting: Friday, May 5, 2017; 10 a.m.
Arizona State Courts Building
Conference Room 119 A/B

Committee on Superior Court

Friday, May 5, 2017
Conference Room 119 A/B, Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Judge David Mackey (chair), Judge Richard Gordon, Judge Charles Gurtler, Judge Celé Hancock, Judge Charles Harrington, Toni Hellon, Judge Andrew Klein, Judge Kenneth Lee, Scott Mabery, Judge Roger Nelson, Judge Cathleen Brown Nichols, Eric Silverberg, Judge Randall Warner, Judge Timothy Wright

Telephonic: Judge David Cunanan, Ronald Overholt

Absent/Excused: Judge Sally Duncan, Judge Tom Fink, William Gibbs, Judge Jason Holmberg, William Klain, Judge Samuel Myers, Megan Spielman, Judge Joseph Welty

Administrative Office of the Courts (AOC): Don Jacobson, Jerry Landau, Amy Love, Marcus Reinkensmeyer

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The May 5, 2017, meeting of Committee on Superior Court (COSC) was called to order at 10:04 a.m. by Judge David Mackey, chair. Judge Mackey introduced and welcomed the two newest members of COSC: Judge Roger Nelson, Superior Court in Yuma County, and Judge Andrew Klein, Superior Court in Maricopa County.

Approval of Minutes

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

Motion: Judge Charles Gurtler moved to approve the February 3, 2017, minutes as presented.

Seconded: Judge Roger Nelson. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Interpreter Credentialing

Cathy Clarich, manager, Caseflow Management Unit, presented a review of the deadlines regarding the use of credentialed interpreters. July 1, 2017, is the deadline for courts to show a preference for credentialed contract interpreters if available. New interpreters hired after June 30, 2017, should be credentialed at the Tier 3 level or become credentialed within two years of their hire date. She noted that Justice Andrew Gould is available to assist courts with interpreter and judicial training deadlines.

B. Legislative Update (taken out of order)

Jerry Landau, AOC government affairs director, noted that the legislature completed the

budget this morning, and it is on its way to the Governor's Office. Mr. Landau noted that the following programs of interest to AOC were funded:

- Probation was awarded \$.5 million. The funds are not earmarked for any specific function.
- Court of Appeals Divisions I and II were also funded. Division II Court of Appeals was a late addition to the AOC funding request.
- A full-time Water Master was funded to handle ongoing water rights cases.
- Funding for court security was added to the budget reconciliation bill, with funding coming from the Judicial Collection Enhancement Fund (JCEF). The legislature authorized the spending of \$.75 million in JCEF funds.
- The Department of Child Safety (DCS) Court-Ordered Removal Project, which takes effect in July 2018, was not funded because there was an estimated cost not an actual cost. However, the bill set up the requirements for court-ordered removal of a child and included language that DCS confer with AOC on technology and staffing requirements. DCS is required to report back to the Joint Legislative Budget Committee and the DCS Safety Oversight Committee by January 1, 2018.

Mr. Landau noted that the big budgetary issues this year were teacher funding, ESI vouchers, the Get 'Em distribution, and changes to the Pima, Pinal and Maricopa County sheriffs' offices.

He also provided information about the following bills:

- **HB2050:** Administrative Procedure; Declaratory Judgement—not moving forward as there are no more rule committee meetings scheduled this session.
- **HB2239:** Incompetent; Non-restorable Defendants; Involuntary Commitment—need to compare to Rule 11.
- **HB2240:** Alternate Grand Jurors; Service – seems to be current practice.
- **HB2241;** Victim's Rights; Pleading Endorsement—possible changes
- **HB2246:** Arizona Lengthy Trial Fund; Continuation—the legislature extended the lengthy trial fund then swept the money from it.

Mr. Landau was asked to comment on Legal Zoom legislation that may be making a comeback during the 2018 legislative session. He explained that Legal Zoom introduced legislation that seeks a statutory protocol allowing electronic wills and trusts to be signed electronically. Mr. Landau sent the legislation to presiding judges for comment and review. There were issues with the legislation, and it did not move forward.

C. Update on Adoption of Court Security Standards (taken out of order)

Don Jacobson, senior special project consultant, explained that Administrative Order 2017-15 was signed on February 8, 2017, adopting the recommendations of the Court Security Standards Committee (CSSC). The standards will be phased in over time in all Arizona courts. These recommendations are minimum security standards. It is anticipated that justice and municipal courts may have difficulty meeting some of the proposals as they may share facilities, meet part-time, or have no facilities. The security standards are divided into the following categories:

- Governance and Administration
- Entryway Screening
- In-Custody Defendants
- Facilities, Alarms and Equipment

- Training

Mr. Jacobson noted that the Court Security Standards Committee has been extended to assist with the implementation of the committee's recommendations. He acknowledged that some courts will have financial challenges but noted that exceptions may be requested. Courts should, however, relay the court security standards to their funding authorities for budgetary discussion. Starting in 2018, the first phase is *Governance and Administration*, which requires Arizona's counties and courts to establish court security committees and to complete a self-assessment of current security measures.

D. Fair Justice Updates

Don Jacobson, senior special project consultant, provided an update regarding the progress of the Fair Justice for All recommendations.

Sentencing Reforms:

- An administrative order on facilitating the processing of financial obligations has been submitted to Chief Justice Scott Bales for consideration.
- Proposed amendments to Rule 37, Rules of Procedure in Civil Traffic and Civil Boating Violation Cases, have been adopted (R-17-0034). The Arizona Traffic Ticket and Complaint (ATTC) has been amended to include:
 - Data fields for a defendant's email address, cell phone number, and preferred language, if an interpreter is needed,
 - A notice regarding the availability of financial hardship relief, and
 - A notice that provision of a cell phone number grants permission for the court to send text notifications. (A statewide system is being readied for procurement.)
- A statewide ticket processing website is under consideration
- The Court Assistance Program (CAP) is active in Glendale, Phoenix, Tucson, and Scottsdale.
- The Fines Reduction Program (FRP) rolled out in Yuma County
- While access to the data resources of the Department of Economic Security and the Department of Revenue are being investigated, guidelines and bench cards have been created to assist judges in determining ability to pay and willfulness of non-payment.
- State v. Rogers says that the 10% Clean Elections Fund portion, a voter initiative, cannot be reduced once the fine has been imposed. Guidance is anticipated.
- The development of a matrix that indicates what can be mitigated dependent upon the charge, whether the sentence is mandatory or non-mandatory, and whether community restitution can be applied is being considered.
- R-16-0026 regarding "Plea by Mail" or "Plea without Appearance" is under consideration.
- Timing for notification to the Motor Vehicles Department about driver license suspension is not delineated in statute or rule.

Bail Reforms:

- Research is ongoing regarding development of on-line payment and submission of proof site.
- Appointment of Counsel at Initial Appearance – Petition R-16-0041 has been filed to amend Rule 6.1(b)(1), Arizona Rules of Criminal Procedure. Resource solutions for smaller jurisdictions are being considered.
- Criminal bond schedules are being eliminated.
- Guidance regarding the use of public safety assessment results and presumptive release conditions is being discussed.

- Payment schedules are being developed for those wishing to plead without appearance.
- Expand use of lesser-used bond types.
- Expand use of public safety assessment; researching automation for courts that do not have the resources to conduct these assessments.

Mr. Jacobson noted that educational and training sessions will be offered at the Judicial Conference and to the presiding limited jurisdiction court judges. Additionally, targeted training will be conducted with judges pro tempore and on-call and part-time judges who conduct Initial Appearance hearings.

E. Proposed Amendments to ACJA § 5-205 Collections

Brittany Pelly, deputy manager, Consolidated Collections Unit, discussed proposed amendments to ACJA § 5-205 and asked for COSC's support on the proposal. She explained that the main intent of the changes to this section is to reflect the way the Fines, Fees and Restitution Enforcement Program (FARE) currently operates and to give courts more tools for collecting delinquent court obligations based on recent local programs that have proven to be effective.

Significant changes discussed:

- Establishes guidelines and an approval process for courts to develop and implement Compliance Assistance Programs (CAP).
- Expands the definition of Fine Reduction Program (FRP) to include criminal traffic charges and fines (excluding violations of A.R.S. §§ 28-1381, 28-1382, 28-8282 and 5-395).
- Removes references to the FARE Advisory Committee, which no longer exists.
- Clarifies requirements for contracting with other private vendors.
- Clarifies the assessment of the \$7 General Service Fee, 19% Special Collections Fee, and \$10 installment payment plan fee.
- Removes language pertaining to priority of payments for FARE fees. This policy is being clarified in the amendments to the Priority of Offender Payments code sections (ACJA §§ 3-401 and 4-301), which is part of this package.

In response to questions, Ms. Pelly said the proposal is not to waive the \$35 delinquency fee or the 19% special collections fee.

Concerns were raised about the effect of FARE participation and housing eligibility. It was noted that as part of Veterans Court and the veterans' stand down, FARE participation makes a person ineligible for housing, so withdrawal from the FARE program is part of that. Ms. Pelly also distinguished between community *service* and community *restitution* on payment of fines and fees. She said that if a person can perform community *restitution* instead of paying fines, the current practice is to recall the case from FARE. She will look into coordinating that function in the AJACS case management system, as it does not allow manual adjustment.

Motion: Judge Andrew Klein moved to support changes to ACJA §§ 3-401 and 4-301, leaving § 5-205 for a later time. **Seconded:** Judge Celé Hancock. **Vote:** Unanimous.

F. AZCourt Help Demo

Cathleen Cole, web content management specialist, Arizona Bar Foundation, and Kathy Sekardi, AOC senior court policy analyst, provided a presentation and a demonstration of the new AZCourtHelp.org website. The site was launched on January 11, 2017.

Ms. Sekardi gave a brief background on the creation of the project, a partnership among the Arizona courts, Department of Economic Security, the Attorney General, and AmeriCorps. The

purpose of the project, mainly funded by a Vista grant, is to increase access to justice through building awareness of court processes and enhancing support resources across Arizona. The project has two parts; a virtual resource center and AZCourtHelp. The Virtual Resource Center currently broadcasts live legal talks to Kingman, Prescott, Sedona, and Tuba City from Flagstaff. AZCourtHelp is a one-stop information shop.

Ms. Cole demonstrated the AZCourtHelp website and its navigation. She noted that new features are constantly being added to the site. The website can be easily translated using Google Translate, which is conspicuously placed on each page. Ms. Cole requested that courts assist in educating the public on the availability of this resource.

III. OTHER BUSINESS

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

Adjournment: The meeting adjourned at 1:58 p.m.

Next Meeting: Friday, September 8, 2017

Committee on Superior Court

Friday, September 8, 2017
Conference Room 119 A/B, Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Judge David Mackey, Jonathan Bearup (proxy for Ronald Overholt), Judge Cathleen Brown Nichols, Judge David Cunanan, Judge Thomas Fink, Judge Charles Gurtler, Toni Hellon, William Klain, Eric Silverberg, Judge Randall Warner, Judge Timothy Wright

Telephonic: Judge Richard Gordon, Judge Andrew Klein, Judge Kenneth Lee, Judge Michael Peterson, Megan Spielman

Absent/Excused: Judge Sally Duncan, William Gibbs, Judge Charles Harrington, Judge Jason Holmberg, Scott Mabery, Judge Sam Myers, Judge Roger Nelson, Judge Joseph Welty

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

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The September 8, 2017, meeting of Committee on Superior Court (COSC) was called to order at 10:02 a.m. by Judge David Mackey, chair.

Judge Mackey welcomed new COSC member Judge Michael Peterson, who attended telephonically, and he acknowledged the reappointment of Judges Richard Gordon, David Cunanan, and Charles Harrington. He also recognized and thanked Judge Celé Hancock from Yavapai County for the work and help that she put in while serving on the committee.

Approval of Minutes from May 5, 2017

The draft minutes from the May 5, 2017 meeting of the COSC were presented for approval. Judge Mackey proposed deferring action on the May minutes until the November 3, 2017, meeting because of their late distribution.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Orders of Protection/Injunctions Against Harassment: Statewide Study

Marc Peoples, criminal justice systems improvement manager, Arizona Criminal Justice Commission (ACJC), presented the recommendations resulting from ACJC's Order of Protection Statewide Assessment. ACJC's goal is to reinvent the Order of Protection and Injunction Against Harassment process: by improving protection, safety, and efficiency by streamlining the issuance, service and NCIC entry process; increasing the number of orders in NCIC by increasing service; and reducing domestic violence injury and death.

Discussion. Comments from members touched on the following topics: judicial discretion regarding the length of protective orders, automatic service of protective orders and potential harm to the plaintiff, the use of lethality assessments in civil cases and their confidentiality. Members also encouraged Mr. Peoples to be sensitive to policy changes and their effect on urban

and rural counties to avoid unintended consequences.

Judge Mackey thanked Mr. Peoples for his presentation and advised him that the committee would take the recommendations under review but not take a position until final proposals are presented to members.

B. Suggested Additions to Garnishment Hearing Request Form

Judge Gerald Williams, North Valley Justice Court, appeared telephonically to present proposed changes to the statewide garnishment forms. He noted an ongoing issue in justice courts is that some self-represented litigants believe that when they appear for the garnishment hearing, they can re-litigate their case. He explained that earlier this year, the Committee on Limited Jurisdiction Courts (LJC) discussed the need to amend the “Request for Hearing on Garnishment Form 11 (earnings). The current court form has a box that can be checked that indicates that *“the judgement creditor does not have a valid case against me because”*; after this statement, there are two blank lines for a self-represented party to complete. After collaborating with LJC and the AOC, the following language is proposed at the beginning of the form: *“Attention defendant/debtor: you will not be able to challenge the factual basis for the judgement at the garnishment hearing.”* A checkbox has also been added that allows the debtor to state that the amount being held would cause the debtor or the debtor’s family to suffer extreme financial hardship. The form has procedures that would allow the judgement creditor to agree with the reduction of the wage garnishment and the court to vacate the hearing.

Motion: Judge Thomas Fink moved to support the changes to the Request for Hearing on Garnishment Form 11. **Seconded:** Judge Charles Gurtler. **Vote:** Unanimous.

C. Legislative Update

Amy Love, deputy director, AOC Government Affairs, presented the AJC legislative package proposals of interest. They are a repackaging of last year’s proposals that resulted from the recommendations of the Task Force on Fair Justice for All.

2018-02: Criminal offenses; monetary obligations—would allow the court to mitigate, but not completely waive, a fine if it would cause a financial hardship to the person convicted or to the person’s immediate family. It adds civil penalties and surcharges to the list of financial obligations for which a court may order community restitution in lieu of payment after finding that the defendant is unable to pay all or part of the monetary obligation. Expands the community restitution program to superior court, reduces the annual interest that accrues on a criminal restitution order in favor of the state from ten percent to four but leaves the interest in a criminal restitution order in favor of the victim at ten percent. Authorizes limited and general jurisdiction courts to write off all or part of any debt due the court because of a misdemeanor or felony conviction from the court’s accounting system if 20 years have elapsed from the date the of the fine. This legislation has a delayed effective date of January 1, 2019.

2018-03: Probation; community restitution—adds community restitution, education, or treatment to the list of sentences that may be imposed by the court for misdemeanor offenses and directs the court to fix the number of community restitution hours that must be performed. Permits either the court or the person’s probation officer to determine the program of education or treatment but limits the length of time a person may be sentenced to the term of probation permitted under law. It also allows a probationer to be eligible for the earned time credit if restitution payments are current and the probationer is in compliance with all other monetary obligations. This legislation has a delayed effective date of January 1, 2019.

2018-04: Release procedures; bail—requires a hearing to determine if a person should be held without bond, based upon being a danger to the community, to be conducted within seven days of the initial appearance. Removes the requirement that the case be placed on an expedited

calendar and any trial be given priority. In a traffic case, a bond schedule is prohibited if the person is charged with a criminal traffic offense involving serious injury as well as death.

2018-06: Probate practice; procedure—makes a conforming change to the probate code replacing a reference to the Rules of Civil Procedure with a reference to the Rules of Probate Procedure. This legislation may be tacked on to other Title 14 legislation.

2018-07 Mitigation of fine; community restitution waiver—permits a judge to mitigate, but not completely waive, a fine or civil traffic penalty if the payment would cause a hardship on the person or the person's immediate family. Outlines criteria for the court to consider when determining mitigation, permits mitigation following the imposition of sentence or a civil penalty, and requires any surcharge to be reduced proportionally if mitigation occurs. Permits a judge to waive all or part of mandatory community restitution because of the medical condition of the defendant unless the community restitution is ordered in lieu of incarceration. This legislation has a delayed effective date of January 1, 2019.

Discussion ensued regarding fine mitigation and how it would work. Don Jacobson, AOC special project consultant, said that two bench cards were created for all courts after Administrative Order 2017-81 was adopted. The bench cards contain suggested guidelines for the mitigation of fines based on the federal poverty level guidelines for families and are available on Wendell. If proposed legislation passes, the bench cards will be updated with a comprehensive schedule.

Motion: Judge Fink moved to support the 2018 legislative proposals. **Seconded:** Judge Gurtler. **Vote:** Unanimous.

D. Draft Report – Task Force on Court Management of Digital Evidence

Judge David Cunanan and Judge Charles Gurtler presented the draft recommendations of the Task Force on Court Management of Digital Evidence. Both judges are members of the task force. The task force's recommendations range from standardizing formats and technical protocols, to findings that would allow non-standard formats to storage, courtroom presentation, public access, and education and training. Judge Cunanan and Judge Gurtler asked the committee to review the report and provide any suggestions or recommendations to the task force. The task force's final report is due October 1, 2017, and will be presented to the Arizona Judicial Council at its October meeting.

Motion: Judge Cathleen Brown Nichols moved to support the work of the Task Force on Court Management of Digital Evidence. **Seconded:** Judge Timothy Wright **Vote:** Unanimous.

E. Discussion: Implementing Fair Justice Initiatives

Judge Timothy Wright, Gila County Superior Court, began the discussion on implementing the Fair Justice for All Task Force initiatives by asking for input from committee members on any pilots or plans they had for implementation of the initiatives. There was general discussion regarding pretrial release, funding for the initiatives, fine mitigation, and using Veterans Court as a model.

Other discussion: Judge Mackey facilitated a discussion of *United States v. Sanchez-Gomez*, 859 F.3d 649 (9th Cir. 2017), regarding routine shackling of pretrial detainees. Judge Mackey asked whether any counties have developed a policy with respect to shackling, given the *Sanchez-Gomez* decision. Judge Mackey asked that as AOC policy is developed, the information be shared.

III. OTHER BUSINESS

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

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

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