

Committee on Superior Court

Minutes

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

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 Cathleen Brown Nichols, Ronald Overholt, Megan Spielman, Judge Patricia Starr, 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

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 26th 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.

H2235 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) 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 LLLP could provide legal advice to clients and appear in court on their client's behalf. LLLPs 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