

**COMMITTEE ON SUPERIOR COURT  
MINUTES**

Friday, February 3, 2012  
Arizona State Courts Building  
Conference Room 119A/B  
1501 W. Washington Street  
Phoenix, AZ 85007

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**Present:** Judge David Mackey, Chair; Judge Eddward Ballinger, Judge Michael Burke, Judge James Conlogue, Judge David Cunanan, Judge Richard Gordon, Sue Hall (*telephonically*), Joshua Halversen (*telephonically*), Judge Celé Hancock, Judge Charles Harrington, Judge Carey Hyatt (*telephonically*), William Klain, Esq. (*telephonically*), Judge Kenneth Lee, Judge Colleen McNally, Patricia Noland, Marcus Reinkensmeyer, Judge Michala Ruechel, Judge Monica Stauffer, Judge Randall Warner, Susan Wilson

**Absent/Excused:** Judge Robert Duber, Tim Hardy, Judge Joseph Lodge

**Presenters/Guests:** Amy Love (AOC), Todd Franks, Esq. (member of the Domestic Relations Committee), Kathy Sekardi (AOC), Janet Sell (Office of the Attorney General), Nancy Swetnam (AOC), Cindy Trimble (AOC), Patrick Scott (AOC), Betty McEntire (Executive Director, Secretary of State's Address Confidentiality Program), Lucy Mason (Assistant Director, Secretary of State's Address Confidentiality Program), Mark Meltzer (AOC), Jennifer Greene (AOC)

**Staff:** Kay Radwanski (AOC), Julie Graber (AOC)

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**I. REGULAR BUSINESS**

**A. Welcome and Opening Remarks**

With a quorum present, the February 3, 2012, meeting of the Committee on Superior Court (COSC) was called to order at 10:03 a.m. by Judge David Mackey, chair. Judge Mackey welcomed members to his first meeting as COSC chair and took a moment to remember Justice Michael Ryan after his untimely passing on January 30, 2012. The chairman thanked Judge James Soto for successfully leading COSC over the last six years and leaving behind a highly regarded committee for him to head. Judge Mackey then discussed his plans and goals to direct the committee going forward.

Judge Mackey reviewed the remaining 2012 COSC meeting dates:

- May 18, 2012
- September 7, 2012
- November 2, 2012

**B. Approval of Minutes**

The draft minutes from the November 4, 2011, meeting of the COSC were presented for approval.

**Motion:** To approve the November 4, 2011, meeting minutes as presented. **Action:** Approve, **Moved by** Judge James Conlogue, **Seconded by** Judge Monica Stauffer. Motion passed unanimously.

## II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

### A. Legislative Update

Amy Love, AOC legislative liaison, discussed proposed legislation that may impact the superior courts and sought input from COSC members.

#### **HB2297: probation; community supervision; violations; revocation**

Mandates that a defendant must commit two or more offenses or condition violations (instead of only one) before community supervision may be revoked or before conditions may be modified by the court or the Board of Executive Clemency. Ms. Love reported concerns that this proposal would undo work already done with the probation's evidence-based practices. This bill will probably not go forward.

#### **HB2398: judicial actions; children; names; redaction**

Requires the court to assign a letter instead of a child's name in orders and minute entries that relate to specific domestic relations cases and specifies who may access the information and under which circumstances this information may be disclosed. Ms. Love indicated that this bill is directed at Maricopa County's online minute entries and was introduced in response to a constituent's concerns about a minute entry containing children's names and dates of birth as well as information about their mental and physical health conditions. Ms. Love stated that the bill as drafted presents a number of problems and the AOC has been working with Rep. Katie Hobbs on finding a resolution. While Rep. Hobbs is open to conversation, she is also intent on obtaining a solution. The AOC would prefer proceeding by rule change rather than by legislation. Ms. Love requested that members forward any feedback directly to her.

#### **HB2432: secured appearance bond exoneration; remission**

Mandates that the surety be relieved from liability if a defendant who failed to appear is surrendered by the surety or bail bonds agent within 30 days and requires the surrender to be reported to the court by affidavit. Ms. Love reported that the language should be amended to allow a judge discretionary authority to extend the time limit that the defendant is allowed to appear before forfeiting the bond. Additional Arizona Bail Bondsmen Association bills related to pretrial services and restricting cash bonds are dead.

#### **HB2556: criminal restitution order**

Expands the court's subject matter jurisdiction relating to criminal restitution orders to include enforcement activities. Ms. Love pointed out that this bill was introduced last year but did not go anywhere and is now being reintroduced by the Attorney General's Office. Jerry Landau is working with the sponsor to address problems in the bill.

#### **SB1080: grand jury; length of term**

Increases the term grand juries serve in counties with less than 200,000 persons from 120 to 180 days. Ms. Love reported that this proposed legislation is moving forward.

**SB1100: adoption; visitation pending final decree**

Adds rights for prospective adoptive parents during the adoption process that relate to the child's placement and to notification of an appeal of the termination of the birth parent's parental rights; limits visitation with a child by a birth parent if that parent's rights have been terminated; and presumes that continued visitation would not be in the best interests of the child. Ms. Love reported that there have been several issues with how to proceed procedurally with the language about the appeal notification of the birth parent's parental rights termination, such as putting the burden on the birth parent and including the adoptive parent as a party. Ms. Love sought input from members.

**SB1142: jurors; Arizona lengthy trial fund**

Modifies the time a juror begins receiving replacement of earnings from the Arizona Lengthy Trial Fund from the fourth day of service to the first day. Ms. Love confirmed that there are sufficient funds in the LTF to afford this proposal.

Sue Hall questioned the potential impact of this proposal. Ms. Love stressed that the five-day trial requirement would still remain; a juror would just be paid back to the first day instead of the fourth day.

**SB1152: homeless court; establishment; jurisdiction**

Allows the presiding judge of the superior court to create a consolidated homeless court for the referral of cases from a municipal or justice court and requires the presiding judge to establish eligibility criteria for referral to the homeless court. Ms. Love anticipated an amendment to remove the requirement that the prosecutor "approve" referrals and replace with "be notified" in criminal cases. This AJC bill is moving forward.

**SB1311: civil actions; justice courts; jurisdiction**

**SCR1032: justice courts; civil action; jurisdiction**

Increases the jurisdictional limit over civil actions in justice of the peace courts from \$10,000 to \$25,000, which is conditional on a constitutional amendment. Ms. Love advised that there would be an amendment to change the limit from \$25,000 to \$15,000.

**SB1371: justices and judges; elections**

**SCR1034: judicial elections**

Repeals merit selection of justices and judges and replaces with election.

**SB1372: appeals court; size; fees distribution**

Reduces the number of judges in the state's Court of Appeals from 22 to 6 and cuts funding to the court from 8.36% to 1%.

A question was raised about the status of SB1371 and SB1372. Ms. Love reported that the bills have just been referred to the Senate Judiciary Committee but are not expected to move in the next week.

**B. SB1246 Child Support; Supreme Court; Factors**

Todd Franks, Esq., member of the Domestic Relations Committee (DRC), presented the DRC's proposed changes to A.R.S. § 25-320(D) relating to child support factors, which are reflected in Senate Bill 1246. After providing some background information and definitions, Mr. Franks explained that the proposed changes are necessary to address anecdotal claims as well as concerns submitted to the DRC that the current language might be inappropriate, but he clarified that the proposed changes are not intended to make any substantive changes to the Child Support Guidelines. Mr. Franks compared the DRC's proposed changes and the Senate bill language to determine whether the DRC's concerns were satisfied. He sought input and feedback from various stakeholders, including COSC, to bring back to the DRC.

1. First anecdotal claim: Superior Court judges disregard the guidelines and make decisions based on their own application of the child support factors in A.R.S. § 25-320(D), resulting in substantial deviation of child support awards. The DRC language clarified that child support factors were intended for the Supreme Court and were not to be considered by the Superior Court when making child support orders. This language satisfied the DRC's concerns. Mr. Franks noted that the bill language moved the proposed language to paragraph Q and now incorrectly states that the *Supreme Court* may not use these factors when making child support orders; however, the Superior Court makes child support orders, not the Supreme Court. He stressed that at a minimum, the bill language must be fixed in paragraph Q so the "Supreme Court" is replaced by the "Superior Court."
2. Second anecdotal claim: Superior Court judges focus exclusively on the "standard of living factor" (A.R.S. § 25-320(D)(3)). The DRC included language in the preamble stating that all relevant factors should be considered comprehensively rather than focusing on a specific factor. Although the DRC language was modified in the bill, it still satisfies the DRC's concerns.
3. Concerns about the current language in A.R.S. § 25-320(D)(3): The DRC had concerns about the appropriateness of the language in this section because the "standard of living factor" is not achievable economically for most families once an "intact home" no longer exists and because the language distinguishes between married couples and paternity cases when in fact the Child Support Guidelines apply to both. Mr. Franks reported that the DRC's proposed changes included expectations for both types of parents, which met the concerns without substantively changing the guidelines. Although the DRC language was modified in the bill, it still satisfies the DRC's concerns.

Judge Ballinger questioned expansion of the standard of living factor to apply to both married parents and paternity cases. He said he understood this factor to be a way to address cases in which huge disparities exist between parents' resources. Mr. Franks responded that the standard of living factor is not really being expanded because there is one set of guidelines that applies the same for divorced parents and for paternity cases. Superior court judges are obligated to follow the Child Support Guidelines in paternity cases. The child support factors are part of the enabling statute for the Supreme Court and

do not apply to judges. Additional concerns were raised about the standard's complexity. There was a suggestion to use more general language such as "the appropriate standard of living for the child should reflect the parent's standard of living."

**C. Update on Probate Project**

Nancy Swetnam, director of the Certification and Licensing Division, updated members on the progress of the Committee on Improving Judicial Oversight (Probate Committee) in implementing its final report and recommendations. Ms. Swetnam outlined proposed rules changes that resulted in part from significant amendments recently adopted with an effective date of either February 1, 2012, or September 1, 2012. She focused on the provisions that will be distributed for public comments in February and March, which will then return to COSC for consideration at the May meeting in anticipation of AJC's meeting in June.

Ms. Swetnam identified two new proposed sections (ACJA § 3-302: Probate Forms and ACJA § 3-303: Fee Guidelines) that correspond to the amendments in Probate Rule 38. The existing forms in Rule 38 will be moved to ACJA § 3-302, which will also incorporate new forms and instructions related to new filing requirements. ACJA § 3-303 will consist of the proposed fee guidelines for attorneys and fiduciaries, which was the subject of much debate in the Probate Committee. Ms. Swetnam reviewed proposed amendments to ACJA § 7-202: Fiduciaries, which are needed to comply with Rule 31, Rules of the Supreme Court, and to specify which authorized actions a licensed fiduciary may take without the assistance of counsel. Ms. Swetnam finally addressed issues related to training requirements that must be in place by the September effective date and affect judicial officers, court investigators, court-appointed counsel and non-licensed fiduciaries. She reported that some questions remain unanswered but assured members that many people are working to have something in place before the September deadline.

Judge Stauffer inquired as to when the training would take place. According to Ms. Swetnam, Education Services is working to provide training by video for non-licensed fiduciaries and electronic training for court investigators that will be in place and available before September 1. She expected the judicial training to be available at the Judicial Conference and indicated that COJET is looking at perhaps offering the training but no decision has been made. Ms. Nolan suggested including probate registrars, which Judge Harrington supported as well. Judge Harrington advised that he just met with Paul Julien, Education Services, who is assembling the components of the judicial training program, which will be included at the Judicial Conference.

**D. Secretary of State's Address Confidentiality Program**

Patrick Scott, AOC specialist, described the Secretary of State (SoS)'s Address Confidentiality Program and discussed the impact of the new provisions on the courts along with some of the policies that were developed in an ad hoc workgroup he staffed to address implementation issues. Mr. Scott explained that a new law mandated the SoS to establish and maintain the program in order to provide a substitute address to victims of domestic violence, sexual offenses and stalking to maintain confidentiality of their location. Mr. Scott announced that a statewide memo will be sent out at the beginning of

May in advance of the program's May 31, 2012, implementation date with questions and answers about the program.

Mr. Scott provided further details about the program's provisions and how they will affect the courts and business processes. Program participants are responsible to notify the courts about their participation in the program unless a participant notifies the SoS that he or she is a party to a family court matter, in which case the SoS will send notification to the court. A program participant may provide their confidential address card when coming to the court, which the court must accept, copy, and use. Mr. Scott clarified that a participant's actual address may be obtained by the court on an expedited basis only if it is necessary for court business. Once the address is released to the court, the address must be maintained as confidential by the court, and it may be sealed in the court's record. Mr. Scott warned that that address is not a public record and it is a class 1 misdemeanor to release it knowingly. He underscored the importance for courts to have a policy in place regarding requests for release and recommended that anytime a request is made for release of the participant's real address, it must be on court letterhead and go to the program director in order to protect the courts.

Mr. Scott reviewed implementation concerns that were discussed in his workgroup. Patricia Noland, who participated in the workgroup, raised concerns about the timeliness of notices when they are sent by "snail mail" and encouraged electronic distribution of court documents to SoS. Mr. Scott related other concerns voiced in the workgroup regarding proper party notification when dealing with family court notices. The workgroup suggested that notices go back to the clerk instead of the court because the clerk is the record keeper and that an email inbox be setup so SoS could notify the clerk of any new program participants. Mr. Scott then addressed the question about whether the program satisfied the rules of service. When he reviewed the program step-by-step, he noted that the new law designated SoS as the agent, and under the law, an agent has the authority to accept service. Mr. Scott then concluded that SoS is the agent under the new law and can accept service, which satisfies the rules of service. Mr. Scott finally alerted members to a new requirement that calls for redaction of a participant's actual address from court documents filed up to 90 days prior to the application date. This requirement applies to all government agencies and will affect clerks and courts.

Betty McEntire, SoS executive director, reacted favorably to the electronic distribution suggestion and indicated that SoS is open to discussion before finalizing any details. Several members anticipated issues, such as a court knowing a participant moved and that SoS would be unable to forward the documents to the participant. According to Mr. Scott, SoS will notify the court when that occurs and will return the piece of mail to the court. He noted that if a participant fails to notify the SoS of a change of address, he or she will no longer be part of the program. After the court receives notification, Mr. Scott indicated that courts would proceed as they normally do to effectuate service on parties.

**E. Rule 28 Petitions Filed**

Mark Meltzer, AOC senior policy analyst, presented an overview of rule petitions that relate to the superior court and that have been filed in the current rules cycle for

consideration during the 2012 Supreme Court rules agenda in August. He encouraged members to participate in the rulemaking process and invited the committee to discuss the submission of comments on particular rule petitions of interest. The deadline to file comments is May 20, 2012. All of the rule petitions can be reviewed on the Court Rules website. Members wishing to file comments on new rule petitions should visit the [Court Rules Forum](#).

**Civil Rules of Procedure**

R-11-0017  
 R-11-0018  
 R-11-0031  
 R-11-0032  
 R-11-0034  
 R-11-0035  
 R-11-0037  
 R-11-0038  
 R-11-0042  
 R-11-0044  
 R-12-0008  
 R-12-0021  
 R-12-0022

**Other rules of interest**

R-12-0001  
 R-12-0002  
 R-12-0006  
 R-12-0020

**Criminal Rules of Procedure**

R-11-0016  
 R-11-0027  
 R-11-0040  
 R-11-0045  
 R-12-0004  
 R-12-0009  
 R-12-0015  
 R-12-0016

**Rules of Evidence**

R-11-0039

**Probate Rules**

R-12-0014

**Rules of Procedure in Juvenile Courts**

R-12-0012

**Rules of the Supreme Court**

R-11-0024  
 R-11-0033  
 R-11-0046  
 R-12-0003  
 R-12-0017

**Protective Order Procedure**

R-11-0043  
 R-12-0007  
 R-11-0043  
 R-12-0023  
 R-12-0013

Mr. Meltzer reported that the biggest category of rule petitions this year was civil rules, and he reviewed the civil rules petitions that were more controversial. Mr. Klain shared several positions that were taken by the State Bar of Arizona’s Civil Practice Procedure Committee (SBA committee).

1. **Civil Rules of Procedure**

**R-11-0031:** Simplifies service of process on a governmental subdivision and allows service on an administrative assistant or on one member of a public entity’s governing group rather than on every member.

Many comments have been received on the Court Rules Forum supporting this petition. Mr. Klain said the proposed rule change could create further problems, and the SBA committee will be suggesting a different approach.

**R-12-0008:** Addresses service-related issues from the AZ Process Servers Association; defines “suitable age and discretion” as appearing 15 years of age; service at a planned community by leaving a copy with the guard; substituted service at a usual place of business by leaving a copy with the person who appears to be in charge.

Mr. Klain indicated that the SBA committee just approved a comment opposing this petition. There is substantial case law defining suitable age and discretion, and appearing as 15 years of age overlooks developmental problems and other

factors. Leaving a copy with the guards at a guarded community does not ensure the party will actually receive notice. Finally, using a method of service that is available post-case initiation and applying it to the initial process of service is problematic as well. He indicated the SBA committee is unlikely to support this petition.

R-11-0034: Makes extensive and complex changes to Rule 56 on motions for summary judgment. A new subsection H would allow summary dispositions on the court's own initiative. The Arizona rule would conform more fully to federal law.

Mr. Klain commented that the standards for summary judgment have not changed, and new subsection H codifies already existing Arizona case law. The petition is intended to curb abuses and unreasonable delay tactics. The petition was a bit controversial but the SBA committee ended up supporting it.

R-11-0017: Allows litigators to interact freely with their experts by extending work-product communications.

Mr. Klain reported that after a close vote, the SBA committee drafted comments supporting the petition. He was unsure whether the Board of Governors (BOG) would support their comments.

R-12-0022: Implements the Uniform Interstate Depositions and Discovery Act and would require a process for litigants to conduct depositions and obtain discovery if the other party is located out of state.

Mr. Klain indicated that the review process is in its initial phases and a subcommittee is reviewing the proposal. He expected that the petition will likely be supported with some suggested revisions to ensure it conforms to Arizona's civil rules.

R-11-0018: Changes line requirements in documents from 28 lines to 22 to enhance readability.

One comment was filed opposing this petition. Mr. Klain indicated that the SBA committee prepared a draft comment opposing the petition that will be heard by BOG next week. He did not anticipate any controversy.

R-11-0037: Requires a response to an amended pleading only when it is reasonably required. The SBA committee is finalizing its comment opposing the petition.

For each of the following petitions, Mr. Klain either indicated the SBA committee would support or did not intend to take a position, or he did not state a position on the petition.

R-11-0032: Changes the timing when the master must file the conflicts affidavit. The SBA committee supported the petition.

R-11-0035: Eliminates "discharge in bankruptcy" as an affirmative defense that is waived if it is not pled in an answer. No SBA committee position was stated.

R-11-0038: Clarifies that the entry of default is automatic upon filing the application for default. The SBA committee worked with Judge Davis on this petition and prepared a comment supporting the petition.

R-11-0042: Eliminates the requirement to file an ADR report within 90 days after defendant appears. Mr. Klain commented that this requirement is widely ignored. Otherwise, no SBA committee position was stated.

R-11-0044: Removes requirement that parties file depositions upon written questions. The SBA committee is not taking a position.

R-11-0045: This is a clean-up petition that will allow for electronic filing of a document. No SBA committee position was stated.

R-12-0021: Changes the word “registered” to “certified” for private process servers who meet specific criteria. The SBA committee is not taking a position.

Mr. Meltzer provided a synopsis of rule petitions filed regarding criminal, probate, evidence and juvenile courts procedure rules.

## 2. Criminal Rules of Procedure

R-11-0016: Mr. Meltzer thought this petition might be of interest concerning the application of preclusion and the court’s lack of jurisdiction.

R-11-0027: Changes the word “amends” to “supplements” regarding allegations of enhancements.

R-11-0040: Would further protect juror privacy.

R-12-0004: This petition from COVIC was presented to COSC at the November meeting and would require the use of initials in lieu of a full name in cases where the victim was a juvenile at the time of the offense or was an adult victim of a sexual offense. Comments are due by April 2, 2012.

R-12-0009: Corrects inconsistency about notary requirement in Form 25 and Rule 32.5.

R-12-0015: Adds a deadline to file a motion for new finding of probable cause.

R-12-0016: Allows justice courts to handle deferred prosecution cases without superior court involvement.

## 3. Rules of Evidence

R-11-0039: Clean up petition on the Rules of Evidence. Adds change to Rule 508 regarding truthfulness of character and specific instances of conduct.

## 4. Rules of Procedure in Juvenile Courts

R-12-0012: Makes changes to juvenile rules to allow e-filing in appellate court.

## 5. Probate Rules

R-12-0014: Allows appearance by videoconference for hearings such as status conference, which would be especially good for court-appointed attorneys.

Mr. Meltzer reviewed rule petitions that affect the Rules of the Supreme Court with emphasis on the following petition:

## 6. Rules of the Supreme Court

R-12-0017: This petition from Judges Davis and Mroz requests that probate records be available to the public by remote electronic access and that proper identification should not be required to obtain remote access.

Ms. Noland, who was a member of the Rule 123 committee, commented that courts are not ready to allow public access to probate records from a technology standpoint. Furthermore, the purpose of requiring a driver's license to obtain access was to ensure that there was no unlawful access to probate records given the sensitive information contained in them. She reminded members about the individual who had his home loan application denied because of mental health information available online, which led to the probate records access shutdown in Maricopa County. Ms. Noland supported access to these records within the courthouse but clarified that parties are allowed remote electronic access to their own cases. Judge David Cunanan, who handles probate cases in Maricopa County, supported remote electronic access because it is a great inconvenience for the public to have to come to the courthouse, especially since access used to be allowed and safeguards are implementable to ensure records are properly redacted. Judge Mackey questioned whether all counties were ready. He also had concerns about going live even though Yavapai County is doing its best to ensure that records do not contain sensitive information.

R-12-0003: Clarifies provisions in Rule 123 regarding access to judicial records and adds prostitution and obscenity to Title 13.

R-11-0024: Shifts the burden to the lienholder to take action within a specific amount of time in personal injury cases where the attorney must hold the lienholder's proceeds until a determination is made by the lienholder but that determination may be part of a long bureaucratic process.

R-11-0033: Defines the ethical duties of the prosecutor when defendant may be wrongfully convicted.

R-11-0046: Allows law firms to use trade names; using the name of a deceased partner may be deceptive.

R-12-0018: Eliminates all of the categories for bias and prejudice in the comment in ER 8.4 to make the rule more inclusive.

Mr. Meltzer discussed rule petitions that relate to Rules of Protective Order Procedure.

## 7. Protective Order Procedure

R-11-0043: Requires a court that has issued a protective order to mail a copy of the proof of service to plaintiff within 24 hours of the court's receipt to ensure timely notice. Kay Radwanski, AOC senior policy analyst, who also staffs the CIDVC committee, commented that several issues were identified with this petition when it was presented to CIDVC. First, the petition's goal of timely notice would not be achieved because it could take nearly two weeks for the victim to receive notice when all the required days are counted. Second, it places a burden on the court to do extra copy and mailing, which may not be the best use of court resources if the petition's goal is not met. The process server,

whether a law enforcement agency or a private process server, would be the best party to provide the timely notice.

R-12-0007: Raises a constitutional issue on the criminalization of firearms possession.

R-12-0013: This petition from CIDVC, which prohibits public disclosure of a protective order prior to service of the protective order, was previously vetted at a COSC meeting.

R-12-0023: Raises issues previously rejected by the Supreme Court last year. This petition will be brought to CIDVC for comments on February 14, 2012.

Finally, Mr. Meltzer drew attention to other rules that may be of interest:

8. Other rules of interest

R-12-0001: Clarifies alternatives for review of informal sanctions.

R-12-0002: Allows law students to sit for a bar exam in February of their third year to obtain their results by the time they graduate.

R-12-0006: This petition from RCiP.LJC, which requests adoption of a new set of justice court rules of civil procedure, was previously vetted at a COSC meeting. First-round comments are due by March 16, 2012.

R-12-0020: Permits spouses of military personnel temporarily stationed in Arizona to apply for admission on motion if certain requirements are met.

Judge Mackey advised members that they can comment individually if they wish and that any proposals for the committee to take action must be submitted before the next meeting on May 18, 2012.

### III. OTHER BUSINESS

**A. Next Meeting Date**

Friday, May 18, 2012

10:00 a.m. – 2:00 p.m.

Arizona State Courts Building

Conference Room 119 A/B

**B. Good of the Order/Call to the Public**

**Motion:** To adjourn, **Action:** Adjourn, **Moved by** Patricia Noland.

Motion passed unanimously.

Adjourned at 12:03 p.m.

**COMMITTEE ON SUPERIOR COURT  
MINUTES**

Friday, May 18, 2012  
Arizona State Courts Building  
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1501 W. Washington Street  
Phoenix, AZ 85007

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**Present:** Judge David Mackey, Chair, Judge Eddward Ballinger, Judge Michael Burke, Judge James Conlogue, Judge David Cunanan, Judge Richard Gordon, Sue Hall, Judge Celé Hancock, Judge Charles Harrington, Judge Carey Hyatt, William Klain, Esq. (by proxy with George King), Judge Joseph Lodge, Judge Colleen McNally, Patricia Noland, Marcus Reinkensmeyer (by proxy with Phil Knox), Judge Monica Stauffer, Susan Wilson.

**Absent/Excused:** Judge Robert Duber, Joshua Halversen, Tim Hardy, Judge Kenneth Lee, Judge Michala Ruechel, Judge Randall Warner.

**Guests:** Theresa Barrett (AOC), Ashley Dammen (AOC), Anne Hunter (AOC), Paul Julien (AOC), Jerry Landau (AOC), Mark Meltzer (AOC), Carol Mitchell (AOC), Nina Preston (AOC), Lisa Price (licensed fiduciary, Arizona Fiduciaries Association), Nancy Swetnam (AOC), David Withey (AOC).

**Staff:** Kay Radwanski (AOC), Julie Graber (AOC).

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**I. REGULAR BUSINESS**

**A. Welcome and Opening Remarks**

With a quorum present, the May 18, 2012, meeting of the Committee on Superior Court (COSC) was called to order at 10:00 a.m. by Judge David Mackey, chair. Judge Mackey welcomed Phil Knox, proxy for Marcus Reinkensmeyer, and George King, proxy for William Klain. Judge Mackey congratulated Judge David Cunanan on his recent appointment to the Maricopa County Superior Court bench. Finally, he thanked Mr. Reinkensmeyer and Judge Michael Burke for their service and contributions to COSC on their last meeting day.

Judge Mackey reviewed the remaining 2012 COSC meeting dates:

- September 7, 2012
- November 2, 2012

**B. Approval of Minutes**

The draft minutes from the February 3, 2012, meeting of the COSC were presented for approval.

**Motion:** To approve the February 3, 2012, meeting minutes as presented, **Action:** Approve. **Motion passed unanimously.**

## II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

### A. Legislative Update *(Item taken out of order)*

Jerry Landau, AOC government affairs director, reported on bills of interest that passed during the 50<sup>th</sup> Legislature, Second Regular Session. The legislative session recently concluded with a general effective date of August 2, 2012. He also thanked members for their assistance and feedback during the session. Mr. Landau highlighted the following bills:

#### **HB2373: sentencing; first, second degree murder**

Repeals the ability to sentence to life with the possibility of release after 25 years for first-degree murder except if the person is convicted of felony murder or is under the age of 18 at the time the offense is committed.

#### **HB2556: criminal restitution order**

Allows the superior court to enter a criminal restitution order at the time of sentencing rather than at the conclusion of the case. The bill was problematic in that it required the creation of an actual process between the clerks' offices and the probation departments and between the payors and recipients of restitution. The bill was delayed to allow for changes to automation and to be able to upload software so the probation departments could view what was paid through the clerks' offices and vice versa, thereby avoiding double payments. Delayed effective date: April 1, 2013.

#### **SB1127: child custody factors**

Changes "custody" to "legal decision making" and "visitation" to "parenting time." Delayed effective date: January 1, 2013.

Mr. Landau reported that his office is working with the AOC's Court Services Division on the 2012 Legislative Year-End Report, which will be available on <http://www.supreme.state.az.us/legupdate>. The following summaries of adopted and vetoed bills were also included in the packet:

<b><u>Adopted Bills:</u></b>				<b><u>Vetoed Bills:</u></b>	
SB1128	HB2373	SB1142	SB1365	SB2433	HB2729
HB2130	HB2377	SB1151	SB1438		
SB1225	HB2264	SB1246			

Judge Eddward Ballinger inquired about the effort to abolish retirement accounts for officials and whether this was an issue that would be coming back. Mr. Landau confirmed that the push to move all officials into ASRS or into a defined contribution plan (e.g., 401k) did not progress but expected the issue to return depending on the November ballot initiative regarding judicial selections. In addition, Mr. Landau looked ahead to likely changes in the legislature's makeup with the addition of at least 25 new members. Patricia Noland stressed the need for courts to be ready to disseminate accurate information to the legislature about actual cost-savings for the state.

**B. Probate Court Committee Recommendations** (*Item taken out of order*)

Nancy Swetnam, AOC director of the Certification and Licensing Division, and Ashley Dammen, AOC project specialist, updated members on the progress of the Committee on Improving Judicial Oversight and Processing of Probate Court Matters (Probate Court Committee) in implementing its final report and recommendations since the last COSC meeting. In anticipation of AJC's June meeting, they also presented for COSC's consideration and recommendation proposed amendments to the Rules of Probate Procedure that incorporated comments received during the public comment period .

**ACJA § 3-302: Probate Forms**

Ms. Dammen presented proposed changes to ACJA § 3-302, Forms 1-4, and an update on the conservator account Forms 5-10. She noted that ACJA § 3-302 will take effect on September 1, 2012, and the required conservator account forms, the other preferred forms, and the existing forms listed in ACJA § 3-302 will need to be used starting September 1, 2012. Ms. Dammen surveyed the public comments that resulted in revisions to the code section.

The first comment regarding Form 2 questioned whether there was a statutory authority for the \$10,000 "free pass" for adult wards. Ms. Dammen inquired from members whether there should be a statutory provision or none at all. Judge Cunanan commented that a statutory provision would hamper the ability to administer the estate effectively and that the decision should be discretionary and done on a case-by-case basis. The next public comment suggested clarification of the term "remuneration" to ensure that in certain circumstances, a specific placement may be done when it is in the ward's best interest. As a result, "remuneration" was replaced with "compensation," and language was included to allow said specific placement if the conservator documents the reasoning for selecting such placement and obtains court approval. Maricopa County recommended the addition of separate orders for minors, which resulted into new Forms 3M and 4M. Conforming changes were also made to several forms (e.g., "account" was replaced with "account report period" in Forms 2, 3 and 4). Ms. Dammen reported that the conservator account forms and instructions (Forms 5-10) have raised much concern due to their complexity and that the forms and instructions are still being reviewed and revised to simplify them based on the comments and the feedback from stakeholders but without substantial changes to the content and format.

Lisa Price, licensed fiduciary and member of the Arizona Fiduciaries Association, criticized the proposed forms as too difficult, time-consuming, voluminous, and unnecessarily complex, even for experienced practitioners. She did not support the budget and accounting forms, saying most cases are not complex and deal only with household budgets. She suggested instead the use and submission of a one-page summary budget form. Finally, Ms. Price reported that licensed fiduciaries do not feel their comments have been heard and taken seriously by the Probate Committee. Ms. Swetnam responded that several meetings have been held for licensed fiduciaries and regarded the volume of paper that was shown as misleading because most of it consists of worksheets. Additionally, if the AJC were to adopt the proposed changes, the Probate Committee intended to provide assistance to licensed fiduciaries and the public over the summer

months. Judge Charles Harrington, who was a member of the Probate Committee, provided some background about the accounting forms, which were intended to provide uniformity and consistency to probate proceedings statewide and remedy the current situation where a multitude of different forms are being filed. He acknowledged that these forms were also the subject of much debate in the committee, and that while some complained about the level of complexity, others contemplated the possibility that people could get used to the forms by doing them a few times. He concluded that these forms were worth a try.

**Motion:** To approve proposed revisions to ACJA § 3-302, as presented, with the request that the Probate Committee return to COSC within one year to provide an update on the implementation of the forms, **Action:** Approve, **Moved by** Judge Harrington, **Seconded by** Judge James Conlogue. Further discussion ensued. Ms. Noland expressed concern about the resources and time necessary to manage the forms' level of complexity and suggested one form for simple cases and another form for complex cases. Sue Hall suggested the creation of a website with FAQs to help point people in the right direction. Ms. Swetnam agreed and confirmed the use of such tools in other states' models.

**Motion passed unanimously with one abstention.**

#### **ACJA § 3-303: Professional Services: Statewide Fee Guidelines and Competitive Bids**

Ms. Swetnam updated members on new code section ACJA § 3-303, which applies statewide fee guidelines to the reasonable compensation of professionals in Title 14 proceedings (i.e., court-appointed fiduciaries, guardians ad litem and attorneys) for services rendered, and is intended to provide assistance to parties by presenting the general compensation factors and compulsory billing standards that judges must consider when reviewing hourly rates and charges and determining reasonable compensation. Ms. Swetnam noted that the fee guidelines were placed in the Arizona Code of Judicial Administration to provide flexibility when implementing and revising them as needed in the future. The fee guidelines will take effect September 1, 2012.

Ms. Swetnam reported that there was a lot of discussion on whether these standards were mandatory or discretionary, and she clarified that the fee guidelines are mandatory in that judges must utilize and apply them consistently when reviewing fees; however, judges must also exercise discretion and weigh the totality of the circumstances on a case-by-case basis. Consequently, references to "points of reference" were taken out to provide clarification. Another comment questioned why a professional's compensation at the hourly rate did not include reimbursement of in-state mileage. Ms. Swetnam did not recall whether this detail was considered by the committee. She then discussed the blank chart in the appendix, which would provide the usual and customary fees for services in the relevant community and be based on a survey of licensed fiduciaries. The AOC would be responsible to compile, review and maintain the information, and post it on the public website. Ms. Swetnam stressed that there are still several issues to be decided (e.g., frequency of updates, fee differences between counties).

Judge Ballinger questioned the usefulness of statewide guidelines and inquired whether countywide guidelines were considered given that average fees will vary between counties. Ms. Swetnam responded that the chart would provide a range of fees from smaller to larger counties, which could be broken down by county at a later time. Judge Mackey drew attention to the amount of work needed for the AOC to gather and keep this information current. Judge Harrington supported both the fee guidelines and the chart but questioned what constituted the relevant community when an attorney travels to different county. George King anticipated possible scenarios where a party might challenge a determination if each compensation factor is not specifically addressed in the determination and queried whether any guidance would be provided on the way determinations are made. Ms. Swetnam indicated that some of these issues could be dealt with in the judges' training.

Ms. Price commented that the meaning of the guidelines as "mandatory standards" under (B)(3) was confusing despite Ms. Swetnam's prior explanation. Moreover, while the guidelines do not establish "predetermined times to perform specific tasks" in paragraph (C), fiduciary services are broken down by types of tasks with some timelines in (D)(3)(c). Ms. Price therefore recommended that the timelines under (D)(3)(c) be removed.

**Motion:** To approve proposed revisions to ACJA § 3-303 as presented, with the request that the Probate Committee review the meaning of the guidelines as mandatory standards; review the chart in the appendix and determine whether the guidelines should be on a statewide or countywide basis; and report back to COSC on the implementation of the guidelines. **Action:** Approve. **Moved by:** Judge Harrington, **Seconded by:** Judge Monica Stauffer. Discussion ensued. Judge Richard Gordon inquired further about the reasons why in-state mileage would not be a reimbursable expense for professionals. While Judge Harrington did not remember the issue of mileage being discussed in the Probate Committee, he did not think it was fair so he amended his prior motion to include the ability for professionals to charge for both time and reasonable charge for mileage. Judge Stauffer accepted the amendment and seconded the amended motion. Discussion ensued. Judge Cunanan supported the Probate Committee's work but also raised concerns about the necessary resources and time to manage these guidelines for judges, clerks, and courts, especially in counties that do not have court accountants.

*Motion to approve proposed revisions to ACJA § 3-303, as discussed, and to allow professionals to charge for both time and reasonable charge for mileage; and with the request that the Probate Committee review the meaning of the guidelines as mandatory standards; review the chart in the appendix and determine whether the guidelines should be on a statewide or countywide basis; and report back to COSC on the implementation of the guidelines.*

**Motion passed: 11-4-1**

#### **ACJA § 7-202: Fiduciaries**

Ms. Swetnam presented proposed changes to ACJA § 7-202, which would implement, effective September 1, 2012, both statutory amendments enacted by the passage of SB1499 and court rule changes based on the recommendations from the Probate

Committee. Additionally, she reviewed proposed revisions to the Code of Conduct for licensed fiduciaries that were modeled after examples from other states and entities, and referred members to the drafter's notes inserted throughout the document. Ms. Swetnam noted a final provision that did not originate from the Probate Committee, which would adjust the licensing fees since they have not been increased since January 2007 and are significantly less than the amount paid by other professionals regulated by the Supreme Court. The proposed changes are currently posted on the ACJA Forum for public comment through June 5, 2012.

Ms. Swetnam discussed the most significant and controversial provision, which would authorize licensed fiduciaries to perform certain services, such as preparing and filing certain documents, without the assistance of an attorney as provided by rule and statutory requirements. She noted that the list of services a fiduciary could perform has been the subject of much debate because some wanted the list to be expanded to reduce costs to the estate while others stressed that an attorney must be responsible for reviewing and filing these documents with the court. The list focuses on the documents a fiduciary, when serving as a guardian, conservator or personal representative, is required to prepare for the court, for example, the annual conservator account. She provided examples where the annual conservator account was not filed timely because the attorney was unable to review and file it on time. Ms. Swetnam put forward language modeled after the legal document preparer program, which would authorize licensed fiduciaries to practice law and file certain documents in court in a very limited manner. She identified the more problematic services as those involving the fiduciary preparing petitions such as the petition for appointment of guardian, conservator or personal representative, and queried whether some services might be going too far or might create legal issues. Ms. Swetnam announced that a meeting was scheduled on May 23, 2012, to discuss these issues with the fiduciary community.

Judge Harrington emphasized that an attorney is not always needed when an older person just needs to have someone take care of the person's finances; however, he urged attorney involvement regarding the petition for appointment of guardian, conservator or personal representative because of the suspicion that surrounds the form and the conservator accounts because of the critical nature of these filings. Finally, he contended that the requirement as written that fiduciaries not employ friends or family to provide services for a fee would cause problems in smaller communities and obtaining the court's authorization would require a very expensive evidentiary hearing. While Ms. Swetnam said she could appreciate what happens in smaller communities, she said she has also witnessed significant issues resulting from conflicts of interest. She said that is why the language, "unless otherwise authorized by the court," was added to ensure the ward's best interest, and she pointed out that other states have much harsher language. Judge Cunanan echoed Judge Harrington's comments but differentiated between appointment issues, which should require a neutral party, and care and maintenance issues, which should not.

Ms. Price asked for clarification about whether the additional forms that accompany petitions are considered part of or separate from the petitions. According to the "Duties to

the Court” in (J)(1)(c)(1), fiduciaries must notify the court of “significant change to the well-being” but Ms. Price inquired about the meaning of “significant change” and how the court should be notified of these changes.

**Motion:** To approve the proposed changes to ACJA § 7-202, as presented, with the request that the Probate Committee take COSC’s comments into consideration. **Action:** Approve. **Moved by:** Judge Harrington, **Seconded by:** Judge Celé Hancock. Discussion ensued. Judge Conlogue commented that only attorneys should file petitions. Judge Harrington agreed with the comment and amended his motion to include that petitions are required to be filed by attorneys. Judge Hancock seconded the amended motion.

*Motion to approve the proposed changes to ACJA § 7-202, as discussed; to require petitions to be filed by attorneys; and with the request that the Probate Committee take COSC’s comments into consideration. Motion passes unanimously.*

### **Court Investigator Training**

Ms. Swetnam reviewed new provisions under Rule 10 that will require, starting September 1, 2012, individuals seeking appointment as a court investigator to complete the training course prescribed by the Supreme Court and to file the certificate of completion issued by the Supreme Court with the court making the appointment. She updated members on the committee’s progress developing the components of the training, which will be considered by the AJC in June before the training is provided over the summer months.

Ms. Swetnam discussed several topics that will need to be addressed in the training to comply with A.R.S. § 14-5308, *Court appointed investigators; qualifications; duties*, which specifies the background needed (i.e., social work, law, and nursing), and the responsibilities, which raise confidentiality issues that will be included as part of the curriculum; and with SB1499, which added a provision that prohibits an entity or person closely related to a court appointed investigator to be appointed as an attorney, professional or fiduciary in the same case. She pointed out that the committee is looking to other states as to their training curriculum. She welcomed suggestions from COSC members regarding the components of the training; the length and delivery method of the program; and any topics that would benefit judges or courts. Comments may be forwarded directly to Ms. Swetnam at [nswetnam@courts.az.gov](mailto:nswetnam@courts.az.gov).

### **C. ACJA § 7-204; Private Process Servers**

Ms. Swetnam also updated members regarding a pending rule petition change that would amend Rules 4(d) and 4(e) of the Arizona Rules of Civil Procedure, by striking the “registration” requirements for private process servers in the rules and placing these in ACJA § 7-204, which regulates private process servers. She noted that the comment period will close shortly but no public comments have been received. If the amendments are adopted, they will take effect January 1, 2013. Ms. Swetnam also presented proposed amendments to ACJA § 7-204, which has not been revised in some time, that incorporate best practices in the regulatory arena, including residency requirements, certification factors, and disciplinary sanctions, which would, for instance, remove the Arizona residency requirement in keeping with other professions under the authority of the

Supreme Court, lower the age requirement from 21 to 18 years of age, and require a high school education.

Ms. Swetnam highlighted new provisions to the private process server program, noting that the program is unique in that the administration of the program is done locally by the Clerks of the Superior Court and presiding judges, not through the Supreme Court's Certification and Licensing Division. She reported working closely with the Clerks and private process servers to address and resolve issues with the program, specifically with the wallet-sized identification cards issued to the certified private process servers. Versions that featured a pasted-on picture were not being accepted. She described the improvements implemented in new, more professional-looking cards that process servers can wear and display. Ms. Swetnam then focused on issues that will be brought to the presiding judges' meeting in June regarding a current provision in which presiding judges may grant provisional certification to process servers while waiting for the fingerprinting; however, she did not recommend such provision based on best practices and because it would create liability for the court if provisional certification were granted to a sex offender. She added that this type of provisional certification is not done for any other profession. Finally, Ms. Swetnam requested feedback and input from COSC members regarding any issues that the courts are experiencing with process servers or any other topic to add before bringing to public comment because she is not aware of the complaints given that the program is not administered through her office.

Ms. Noland commended the proposed amendments for stopping the practice of process servers who have their certification revoked in one county then applying for a new certification in another county because the AOC will maintain a centralized master list, which Clerks will be able to use to view and check the status of certifications. She noted that provisional certifications have not been an issue in her county. On the other hand, Judge Mackey reported how the provisional certification was used by some process servers as a way to avoid the required continuing education, so he stopped granting provisional certifications to those who fail to do the training. According to Ms. Swetnam, the proposed amendments attempt to address the issue of process servers avoiding the continuing education requirements by allowing their certification to expire. Judge Stauffer inquired about the reasons for changing the minimum age from 21 to 18 years of age. Ms. Swetnam explained that currently there is no baseline without an educational requirement. If the educational requirement were high school as the baseline, the person would be 18 years of age. In addition, this change is modeled after examples from other states. Ms. Swetnam indicated that the effective date of the initial certification is the date that the judge signs the order. The certification expires at midnight every three years from date of issuance, so the certification would be in effect from 5/31/12 to 5/31/15. If the renewal application is submitted by the expiration, the certificate remains in place until a decision has been made. Ms. Hall raised an issue when process servers let their certification expire and then apply again, and she asked whether there was a grace period. Ms. Swetnam expressed concern about possible legal ramifications if a process server served a party without a valid certificate. With regard to a renewal application submitted late, Ms. Noland pointed to language suggesting that a judge may allow up to 12 months

of grace period and that alternatives would be available to the presiding judge, such as sanctions or continuing education requirements.

**D. ACJA § 1-307; Judge Pro Tempore and Commissioner Financial Disclosure**

David Withey, AOC legal counsel, presented proposed revisions to ACJA § 1-307, which would apply the duty to file financial disclosure statements uniformly to judges pro tempore, commissioners, and juvenile hearing officers in accordance with the purposes of financial disclosure statutes and the Code of Judicial Conduct. Mr. Withey highlighted the current filing duties under A.O. 95-1, which apply only to full-time judges pro tempore; the Code of Judicial Conduct, which exempt only part-time judges pro tempore; and the Secretary of State, which exempt only judges pro tempore for the 12 months prior to appointment. He reviewed the proposed code section changes, which would provide consistency and uniformity by requiring judges pro tempore to file the disclosure for the previous 12 months *upon appointment*; by adding *commissioners* and *juvenile hearing officers* since they are included in the definition of “judge” in the Code of Judicial Conduct, and therefore subject to the filing requirements; and by removing *part-time* judges pro tempore since they are already exempted in the Code of Judicial Conduct. Mr. Withey requested approval of the code section as presented.

**Motion:** To recommend approval of the code section, as presented. **Action:** Approve. **Moved by:** Judge Conlogue, **Seconded by:** Judge Harrington. No further discussion. Motion passed unanimously.

**E. Rule 123 Discipline Records Amendment**

Mr. Withey, AOC legal counsel, also reviewed the proposed amendment to Rule 123, Rules of the Supreme Court, regarding public access to disciplinary records that COSC supported in November, and he sought formal action regarding new proposed rule language. He explained that the changes were introduced to address concerns from *Phoenix Newspaper, Inc.*, about lack of access to closed records that may be of public interest in a high-profile case.

Mr. Withey explained that the original proposal addressed recent statutory changes and clarified the meaning of public access to court employee discipline records as expressly opening specific records of official action and closing all other employee disciplinary records. He proposed adding a new document to the list of records already accessible to the public that would consist of the official disciplinary action taken by a court employer and would include the written reprimand, warning, suspension, loss of pay, demotion, and termination; and the employee response. Mr. Withey sought re-affirmation of COSC’s previous approval. He reported that the Committee on Probation (COP) questioned whether the statutory language applied to law enforcement; however, he contended it applied across the board. COP did not approve the opening of these disciplinary records.

Mr. Withey then discussed a second provision that would close all other supporting files of disciplinary matters (e.g., investigation files), except for good cause as determined by the presiding judge under Rule 123(f). Mr. Withey explained that the good cause

provision was incorporated as a compromise with *Phoenix Newspaper, Inc.*, and would place the burden on the person seeking access to the supporting document. He inquired whether COSC would approve this provision with or without a good cause exception. COP supported the original language proposed without the good cause exception.

**Motion:** To approve the committee's prior action and allow access to closed records on showing of good cause. **Action:** Approve. **Moved by:** Judge Conlogue, **Seconded by:** Ms. Noland. Discussion ensued. Mr. Knox requested further information about COP's position and its specific concerns about the good cause exception. Mr. Withey responded that COP only supported closing the records without a good cause exception. Some of the concerns included: possible risks to officers by opening up closed records and disruption in the workplace should fellow employees learn about action taken. Concerns were raised about fellow employees hearing about action taken, especially in smaller communities where it may end up published in the newspaper, possible abuse of the good cause exception, and public perception issues if a disciplinary action is not taken over fears it might become known to the public.

**Motion failed 1-13.**

Mr. Withey then asked COSC members if they would consider changing their prior approval of closing all documents and whether there should be latitude for good cause. No further action was taken.

**F. Update: COVIC Rule 28 Petition R-12-0004**

Carol Mitchell, AOC staff to the Commission on Victims in the Courts (COVIC), updated members on the progress of COVIC's Rule 28 petition, which is intended to provide a statewide standard and to protect the identities of victims of sexual offenses and victims who were juveniles at the time of the offense. She reminded members that COSC endorsed the concept of this rule petition at the last February meeting with further recommendations. In response to the comments received from COSC and other stakeholders, COVIC created a workgroup that revised the petition and incorporated proposed changes in keeping with the feedback. Ms. Mitchell presented the workgroup's proposed amendments to the rule petition, which replaced the victim's initials with a more effective victim identifier (e.g., victim 1) and added a confidential victim information data sheet and a waiver of these rules for victims, usually for families of the murdered victims. She reported that two comments were posted on the Rules Forum: the first one supported the rule petition and the second, from *The Arizona Republic*, criticized the rule as overbroad and theorized that it would lead to less accurate reporting. The workgroup, however, believes these privacies are needed to protect vulnerable victims. These proposed amendments were approved by COVIC and COP, and COVIC intends to file an amended petition by May 21, 2012. Ms. Mitchell requested comments or amendments for future consideration from COSC.

Ms. Noland discussed how the topic of protecting victims' information initially surfaced while redoing Rule 123 and access to electronic records (over an eight-year period). With more and more electronic records available on courts' websites, and wanting to protect certain names and parties, she recalled how indictments were locked down to prevent

dissemination of the descriptive details and the victims' information contained therein. However, this effort was unsuccessful due in part to a lack of support and a failure to cooperate within the court community to protect the victims' information. Ms. Noland commended COVIC's good solutions and supported this rule petition, which addressed previous issues. Mr. King suggested including the language only in Rule 123 to avoid expanding the rule book. Ms. Mitchell indicated that she would bring the comments back to the workgroup for consideration.

**Motion:** To approve the proposed amendments to COVIC's rule petition. **Action:** Approve. **Moved by:** Ms. Noland, **Seconded by:** Judge Conlogue. No further discussion. **Motion passed unanimously.**

#### **G. Committee on the Impact of Wireless Mobile Technologies and Social Media on Court Proceedings**

Mark Meltzer, AOC senior court policy analyst, introduced the new Committee on the Impact of Wireless Mobile Technologies and Social Media on Court Proceedings (Wireless Committee), which was established by Chief Justice Berch on March 7, 2012 (see Administrative Order 2012-22). Mr. Meltzer described the committee's background and membership as well as its charge to provide direction to the courts and court community on the possession and use of technology in court proceedings. He provided an overview of new technologies and social networking sites as well as supporting data that illustrated their impact throughout society and on the way people communicate and obtain information.

Mr. Meltzer demonstrated how the use of this new technology and media relates to and carries major implications for courts in instances where camera phones (with video capabilities) make their way into courtrooms, creating security concerns, and when jurors violate admonitions by conducting research on the internet, posting tweets or comments on Twitter or Facebook during deliberations and court proceedings, which could result in a mistrial, an overturned decision, or the need for evidentiary hearings, as evidenced in recent Arizona cases. He stressed the importance of looking at how new technology and media is used to respond appropriately and provide the right direction to judges, court personnel, and security officers. Mr. Meltzer highlighted some of the questions and issues that the Wireless Committee will be examining:

- How to address security issues associated with mobile technologies used to take photographs and videos in the courtroom?
- Have pictures ever been taken without the judge's or security officer's knowledge?
- What are the best trial practices to warn jurors effectively against using media: extensive or brief voir dire; preliminary instructions about internet and social media use or not?
- How do judges know if admonitions were in fact violated?
- What types of consequences should be imposed on violations?

Mr. Meltzer plans to return to the September COSC meeting with work product for members to review and advised that the Wireless Committee would submit

recommendations to the AJC in November. The Wireless Committee's next meeting is on June 7, 2012.

### **III. OTHER BUSINESS**

#### **A. Next Meeting Date**

Friday, September 7, 2012  
10:00 a.m. – 2:00 p.m.  
Arizona State Courts Building  
Conference Room 345 A/B

#### **B. Good of the Order/Call to the Public**

No public in attendance.

Adjourned at 12:57 p.m.

**COMMITTEE ON SUPERIOR COURT  
MINUTES  
September 7, 2012  
Conference Room 345 A/B  
State Courts Building, 1501 W. Washington, Phoenix, AZ 85007**

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**PRESENT:** Judge David Mackey, Judge Eddward Ballinger, Judge James Conlogue, Judge David Cunanan, Judge Robert Duber, Judge Richard Gordon, Joshua Halversen, Tim Hardy, Judge Charles Harrington, Judge Carey Hyatt, William Klain, Judge Kenneth Lee, Judge Michala Ruechel, Susan Wilson, Judge Steven J. Fuller, Judge Charles W. Gurtler, Jr., Judge Randall Warner

**BY TELEPHONE:** Sue Hall, Judge Monica Stauffer

**ABSENT:** Judge Celé Hancock, Judge Joseph Lodge, Judge Colleen McNally, Patricia Noland

**PRESENTERS:** Stewart Bruner (AOC), Amy Love (AOC), Carol Mitchell (AOC), Mark Meltzer (AOC), Paul Julien (AOC)

**GUESTS:** Cindy Cook (AOC), Theresa Barrett (AOC), Jennifer Liewer (AOC), Patrick Scott (AOC)

**STAFF:** Kay Radwanski (AOC), Kym Lopez (AOC)

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**I. REGULAR BUSINESS**

**A. Welcome and Opening Remarks**

With a quorum present, the September 7, 2012, meeting on the Committee on Superior Court (COSC) was called to order at 10:05 a.m. by Judge David Mackey, chair. Judge Mackey welcomed Phil Knox, proxy for Judge Colleen McNally, and Sandra Markham, proxy for Patricia Noland. Judge Mackey welcomed new members Judge Charles Gurtler and Judge Steven Fuller.

**B. Approval of Minutes**

The draft minutes from the May 18, 2012, meeting of the COSC were presented for approval.

**Motion:** Judge James Conlogue moved to approve the May 18, 2012, meeting minutes as presented. **Second:** Josh Halversen. **Vote:** Unanimous.

**II. BUSINESS ITEMS/POTENTIAL ACTIONS ITEMS**

**A. Legislative Update**

Amy Love (AOC), reported on 2013 legislative proposals. Ms. Love highlighted the following proposals:

**2013-1: Probation; PCR** (affecting Title 13)

Permits the Superior Court, in addition to the municipal court, to collect probation services fees.

Increases from 200 to 500 the number of hours appointed counsel may bill for post-conviction relief in capital cases. No change is sought for the hourly rate of \$100. Allows up to 18 months from the filing of the first notice of post-conviction relief to file a petition, up from 60 days in current law. Authorizes a designee of the trial court to compensate a PCR attorney from county funds.

A question was asked as to the reason to allow up to 18 months for filing first notice as currently it is 60 days. Ms. Love said that Judge Davis explained in his proposal for this bill that the timelines currently in statute are unrealistic since petitions cannot be filed within 60 or even 120 days or close to 200 hours of counsel time. On average, it takes more than a year to complete a petition for post-conviction relief. The Superior Court is seeking to amend the timeline as well as the number of hours for counsel to be closer to the reality of the capital post-conviction relief process.

**2013-2: Driving under the influence; fees; waiver** (affecting Title 13)

Permits the court to convert fines, fees, or incarceration costs into a community restitution order at a conversion rate of one hour for every \$10 owed in a manner approved by the court. No amount of restitution may be converted into community restitution hours.

In response to a question as to why this provision would be limited to only DUIs as compared to any sort of criminal offense, Ms. Love stated that the issue of conversion of DUI fines into restitution orders was identified through operational reviews. Patrick Scott (AOC) explained that under A.R.S. § 28-1389, the imposition and the payment of fines are mandatory with no allowance for waiver or suspension of those impositions, including surcharges. However, other statutes, such A.R.S. § 28-1601 do give the court the ability to waive or suspend fines and surcharges.

A question was asked whether this provision would pertain only to misdemeanor DUI charges or if it would apply to felony charges as well. The proposal is directed specifically toward limited jurisdiction courts.

**2013-3: Criminal code; conforming changes** (affecting Title 13)

A.R.S. § 8-382 – adds a definition of “criminal offense” to the victim’s rights provisions of Title 8 (juveniles) to conform to changes in the Title 13 victim’s rights definition enacted last session. Expands the definition of “criminal offense” to cover all misdemeanors and violations of a local criminal ordinance.

A.R.S. § 13-105 – in the definition of “historical prior felony conviction” referring to out-of-state convictions, changes the language “use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of death or serious injury” to the term “dangerous offense” to conform to the rest of the criminal code. In legislation enacted last session, the no-longer-used language was, in fact, used.

A.R.S. § 13-703 – rounds two sentencing provisions in the category one repetitive conviction subsection, Class 6 mitigated (.3 years to .25 years), Class 6 maximum (1.8 years to 2 years) and rounds one sentencing provision in the category two repetitive offense subsection, Class 3 mitigated (3.3 years to 2.25 years) in order to conform to the rest of the sentencing code where the sentencing ranges are in full, half or quarter years.

**Motion:** Judge Harrington moved to approve all three legislative proposals for the upcoming session. **Second:** Judge Lee. **Vote:** 15-1, with two abstentions. Judge Duber explained his vote for the record, noting a concern that waiver and conversion of DUI fees into community service could have the consequence of imposing fees that go unpaid and imposing community service that is not completed, resulting in files that would have to be kept open.

**A. Proposed ACJA Code Section for Images of Case Documents**

Stewart Bruner (AOC) presented a draft ACJA code section for images of case documents. He explained that the technical design of the courts’ remote public access systems is predicated on document-level access and security, not access to the entire case file as a whole. However, at a Commission on Technology (COT) meeting, COT members discussed whether courts should be permitted to combine electronically, into one composite case file, both e-filed documents and those filed at the counter. To solicit input from affected courts, COT members directed Mr. Bruner to draft a new code section that specifies common treatment of electronic documents.

Discussion ensued regarding:

- Destruction of electronic records and the limitations of infinite storage of 1.5 million cases a year. Mr. Bruner noted the tension between indefinite storage

and accessibility to documents and the perceived harm from selling access beyond the approved document retention periods. The cost of retention is being shifted to the AOC through a central document repository.

- Reasons why electronic documents cannot be kept indefinitely. If a case is kept forever, confidential parts of it will have to be redacted forever. Policies regarding who receives access to what records for how long will need to be in place before a vendor opens the door to the repository to begin selling the documents.
- Sale of documents. Rule 123 allows certain types of documents to be sold to holders of an Arizona driver's license or MVD-issued identification. The court has selected a vendor to sell data and documents through an e-commerce front-end with access to the central case index and central document repository that provide the back-end fulfillment.

Mr. Bruner invited COSC members to provide their comments at <http://azdnn.dnnmax.com/Forum/tabid/111/view/topics/forumid/46/Default.aspx>, but stated that higher-level policies for electronic case records must be decided and communicated in advance of any approval of the code section. He will return to COSC to review those higher policies once they have been drafted.

**B. Update: Committee on the Impact of Wireless Mobile Technologies and Social Media on Court Proceedings**

Mark Meltzer (AOC) updated members on the Impact of Wireless Mobile Technologies and Social Media on Court Proceedings Committee, highlighting the committee's work to date.

The wireless committee has proposed a single admonition to jurors for use in both civil and criminal cases. The admonition includes an oath, an admonition for civil and criminal cases, and a "smart" juror card.

The committee also is proposing revisions to Rule 122, Rules of the Supreme Court. Rule 122.1, which is new, applies to the use of portable electronic devices. The draft language expresses the policy decisions the committee has made concerning the use of these devices in the courthouse. Rule 122 revisions address photography in the courtroom, requiring anyone who wants to use a camera in the courtroom to submit a request and allowing the judge to approve a request for more than one camera. Mr. Meltzer provided copies of the current Rule 122 and a marked-up version of proposed changes in the meeting materials.

Discussion ensued regarding:

- A possible inconsistency between the last sentence of Rule 122(c) and the first sentence of Rule 122(d). Mr. Meltzer stated that typically the process is that the judge who is going to conduct the proceeding receives a request, the judge's staff e-mails or faxes the request to parties and gets their input about whether there will be objections. If there is an objection, the judge holds a hearing. If the judge intends to deny the request or to restrict use in any way, then the judge, at the court's initiative, must conduct the hearing, and at that hearing the party will have an opportunity to object if a party chooses to do so.
- Whether the rule should state that the judge must notify all parties if someone has asked to use a camera.
- Whether use of the word "journalist" in Rule 122(m) implies favoritism of the media.
- The requirement in Rule 122(c) that a person wishing to use a camera in the courtroom must "file" a written request with the case number on it. When a request is submitted with a case number on it, there is a possibility it could be considered a filing and then be subject to record retention schedules. It was suggested that the word "file" be changed to "submit."
- A suggestion that "fair trial" be changed to "fair proceeding" in Rule 122(e)(1).
- The length and depth of the admonition. A concern was raised that a two-page single-spaced admonition may have more information than is necessary. It was noted that mistrials have occurred not because jurors were given insufficient information but rather because they disregarded it. Mr. Meltzer explained that the committee hopes the admonition is clearer, straightforward, understandable, and comprehensive.

**C. Update: Advisory Committee on Supreme Court Rules 123 and 125**

Kay Radwanski presented an update on the Advisory Committee on Supreme Court Rules 123 and 125. The committee is to make policy recommendations regarding the Internet publication of minute entries and orders in family law and probate cases. The committee was created in response to legislation that was proposed last session that would have affected the identification of children in family law orders and minute entries. The committee also is discussing family law cases and protective order cases and how they are affected by federal law regarding Internet publication of certain protective order information.

**D. November 2012 Meeting Date**

Members discussed whether the November 2012 meeting date should be moved from the 2<sup>nd</sup> to the 9<sup>th</sup>. Members agreed to keep the meeting on November 2.

**E. General Jurisdiction New Judge Orientation; 2012 Family Law Conference; Probate Training**

Paul Julien (AOC) provided information about the upcoming New Judge Orientation-General Jurisdiction, set for September 10-14, 2012; the Family Law Conference on November 28, 2012; and probate training for judges, attorneys, and unlicensed fiduciaries.

He also explained that the benchbooks are available online on Wendell and are no longer distributed in print form. The annual benchbook update has begun, with a goal of incorporating all recent changes in statutes and court rules. Anyone interested in reviewing any of the benchbooks should contact Mr. Julien.

**F. Language Access in the Courts**

As courts are required to develop formal, written language access plans that describe court services for non-English speaking court users, Carol Mitchell (AOC) highlighted the important elements of submitted plans and reminded courts of available resources and potential educational projects to assist in enhancing language access services.

Ms. Mitchell encouraged courts to identify languages most frequently encountered in the courts and track the number of requests for languages other than English. She reminded members of the need to ensure that language interpreters are available and be aware that Language Line is always available. She recommended that each court review its language access plan every year.

**III. OTHER BUSINESS**

**A. Next Meeting Date**

Friday, November 2, 2012  
10:00 a.m. – 2:00 p.m.  
Arizona State Courts Building  
Conference Room 345A/B

**B. Good of the Order/Call to the Public**

No public in attendance.

Adjourned at 12:05 p.m.

**COMMITTEE ON SUPERIOR COURT  
MINUTES**

Friday, November 2, 2012

Conference Room 345 A/B

State Courts Building, 1501 W. Washington, Phoenix, AZ 85007

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**Present:** Judge Eddward Ballinger, Judge James Conlogue, Judge David Cunanan, Judge Robert Duber II, Judge Steven Fuller, Judge Charles Gurtler, Sue Hall, Judge Charles Harrington, Michael Jeanes (proxy for Patricia Noland), William Klain, Judge Kenneth Lee, Judge Colleen McNally, Judge Michala Ruechel, Judge Monica Stauffer, Judge Randall Warner, Susan Wilson.

**Present Telephonically:** Judge Richard Gordon, Joshua Halversen.

**Absent:** Judge Celé Hancock, Tim Hardy, Judge Carey Hyatt, Judge Joseph Lodge, Judge David Mackey.

**Guests:** Patrick Scott (AOC), Jerry Landau (AOC), Brian Pollack (Lewis & Roca, LLP), Melinda Hardman (AOC), J.L. Doyle (AOC), Jennifer Jones (AOC), Anne Hunter (AOC), Mark Meltzer (AOC), Cameron Janati (Arizona Association of Certified Process Servers).

**Staff:** Kay Radwanski (AOC), Kym Lopez (AOC).

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**I. REGULAR BUSINESS**

**A. Welcome and Opening Remarks**

With a quorum present, the November 2, 2012, meeting of the Committee on Superior Court (COSC) was called to order at 10:03 a.m. by Judge Colleen McNally, acting chair. Judge McNally welcomed Michael Jeanes, proxy for Patricia Noland.

**B. Approval of Minutes**

The draft minutes from the September 7, 2012, meeting of the COSC were presented for approval.

**Motion:** Judge James Conlogue moved to approve the September 7, 2012, meeting minutes as presented. **Second:** Judge Steven Fuller. **Vote:** Unanimous.

**II. BUSINESS ITEMS/POTENTIAL ACTIONS ITEMS**

**A. Legislative Update**

Jerry Landau, AOC government affairs director, reported on 2013 legislative proposals. Mr. Landau highlighted the following proposals:

**Post-conviction relief (Maricopa County Superior Court)** (affecting Title 13)

In a capital post-conviction relief case, the court is required to approve all reasonable attorney fees and costs for appointed counsel. Current law requires approval of

attorney fees for over 200 hours of work. The court may appoint a designee to review and approve the fees and costs. The Arizona Judicial Council has approved moving forward.

A member raised concerns as to the need for a statute and the limitation on judicial discretion. Mr. Landau stated that the main part of the statute is the fee, which is not touched by this change. He agreed that a statute is not required for approval of the attorney's work but noted it is simpler to correct or modify a process rather than to repeal a statute.

**Probate omnibus (Administrative Office of the Courts) (affecting Title 14)**

In a guardianship or conservatorship case, this bill permits the superior court to order alternative dispute resolution or arbitration prior to the appointment of a fiduciary. It removes the statutory requirement that the conservator's annual accounting be filed with the court on the anniversary of the date the person qualified as conservator, and it permits the court to order fingerprints and background checks of proposed guardians and conservators and sets forth the necessary process.

**Criminal code; conforming changes (Criminal Justice System) (affecting Titles 8 and 13)**

This adds a definition of "criminal offense" to include all felonies, misdemeanors, and violations of a local criminal ordinance to the victim's rights provisions of Title 8 (juveniles) to conform to the changes in the Title 13 victim's rights definition enacted last session. In the criminal code definition of "historical prior felony conviction," referring to out-of-state convictions, it changes the language "use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of death or serious injury" to the term "dangerous offense" in order to conform to other provisions of the criminal code. Rounds two criminal code sentencing provisions in the category one repetitive conviction subsection, Class 6 mitigated (.3 years to .25 years), Class 6 maximum (1.8 years to 2 years) and rounds one sentencing provision in the category two repetitive offender subsection, Class 3 mitigated (3.3 years to 3.25 years) in order to conform to other portions of the sentencing code where the sentencing ranges are in full, half or quarter years.

Mr. Landau requested feedback on the proposal to move sentences to half-year increments instead of quarter-year increments. This change would promote uniformity and simplicity in sentencing.

**Motion:** Judge Robert Duber moved to consider the first two proposals separately. **Second:** Judge Monica Stauffer. **Vote:** Unanimous.

**Motion:** Mr. Jeanes moved to accept the first post-conviction relief proposal. **Second:** Judge Michaela Ruechel. **Vote:** 14-3, with one abstention.

**Motion:** Mr. Jeanes moved to accept the second probate omnibus proposal. **Second:** Judge Conlogue. **Vote:** Unanimous.

## **B. Rule Petition Case Management and Trial Settings**

Brian Pollock, Lewis & Roca, LLP, and William Klain presented for discussion a draft petition to revise the Rules of Civil Procedure regarding case management and trial settings. The draft petition has not yet been approved and adopted by the State Bar, but if the Board of Governors authorizes it, it will be filed as a Rule 28 petition with the Arizona Supreme Court in January 2013. The Supreme Court would then consider the petition at its annual rules agenda in late summer 2013.

Mr. Klain said the inactive and active calendar trial settings have run their course in terms of usefulness and in reflecting the reality of today's practices. The draft petition, he said, proposes a better way to consult with judges and practitioners and to implement sound case management policies and procedure. Mr. Pollack offered the proposal for informational purposes and asked members to circulate it in their communities and benches around the state for comments.

The substantive changes would affect Rules 16, 38.1, and 37 regarding case management and trial setting. Motions to Set and Certificates of Readiness would be replaced by a system requiring parties to meet and confer regarding case management. The parties would propose a scheduling order for the judge's consideration. The Active Calendar would be eliminated, and trial dates would be set during a trial setting status conference. Absent exceptional circumstances, parties would have to participate in settlement conferences or mediation before getting a trial setting. The Inactive Calendar would be kept in place but would be renamed the "Dismissal Calendar."

A provision was included in Rule 16(b) to ensure that parties cannot use the scheduling order procedure to lengthen the amount of time for discovery or to circumvent disclosure rules. The scheduling order rules include deadlines for service of initial disclosure, expert disclosure, propounding of written discovery, disclosure of non-experts, completion of expert depositions and discovery, final supplementation of Rule 26.1 disclosures, and a deadline for holding a Rule 16.1 settlement conference or private mediation.

The following questions were addressed:

- In the absence of a joint scheduling order, is the court required to provide any notice or does the case go onto the dismissal calendar without further notice? Mr. Pollack stated the court must provide notice. Recent case law, American Asphalt v. CMX, says that the notice must be contemporaneous; in other words, when the case is placed on the Inactive Calendar (or the Dismissal Calendar as proposed), notice must be given. The proposed rule change would not alter that.
- Do these changes give more control over case management to lawyers and less control to judges? Mr. Pollack explained that control remains with the court to the extent that the court wants to exercise that control. Mr. Klain stated that proposed

Rule 16(f) says that absent exceptional circumstances, a trial date shall not be set unless until the parties certify they have engaged in good faith in a settlement conference or private mediation.

- What is the practical difference for parties who wait until a case goes on the Dismissal Calendar and then move right before the deadline for a Rule 16 conference? Case law requires a showing of good cause to avoid dismissal. According to Mr. Pollock, under the rule change, the middle step would be skipped and instead a scheduling order would be proposed. Without a showing of good cause, whether the proposed scheduling order is submitted five months or nine months after the case has commenced, the schedule should have a deadline for completing discovery 13 months after the filing of the case.
- With the rule change, would the model time standards that Arizona may adopt be able to be met? Mr. Pollock said the proposal does not take away the court's ability to set a Rule 16 scheduling conference. The scheduling order put in place early in the case would not have a trial date; it would have a trial setting status conference date to set the trial.
- Would a court have to touch every civil case filed each year, rather than the small percentage that currently reach the Motion to Set stage? Most cases are either settled or dismissed within nine months, with the court having to handle only cases with Motions to Dismiss. Mr. Pollock stated that compulsory arbitration will continue as it does currently, scheduling orders would not be done, and that if a party appeals, Rule 77 would govern. If 90 percent of cases are resolved within a nine-month period and many of those cases are under the proposed rule change, they will be resolved in the same way without a scheduling order ever being submitted to the court. A specific percentage cannot be determined at this time.

Mr. Pollock asked members to contact either Mr. Klain or him with suggestions or issues with specific parts of the proposal for discussion in a more informal process. He noted that if a rule petition is filed, the State Bar will request a staggered comment period.

Judge Harrington voiced opposition based on the increase in costs, the changes in the court's case management system and the number of cases a judge would have to touch.

Judge Lee noted that although he is now a member of the State Bar's Civil Practice and Procedure Committee, he was not a CPPC member when the proposal was drafted. He said he has concerns about the proposal and wanted it to be understood that he did not participate in its drafting.

Judge Ballinger commented that the consensus appears to be that COSC does not support the proposal as written and he would like that position to be communicated to the Board of Governors. Mr. Pollock said he would share those concerns as the

Board of Governors was aware of the presentation to COSC and would be expecting a report. Mr. Pollock thanked members for their comments, noting that while there is opposition, the feedback is appreciated.

### **C. Adult Intensive Probation Evidence-Based Practices**

J. L. Doyle, AOC Adult Probation Services, presented a proposed revision to ACJA § 6-202.01. The proposal will add supervision contact levels for adult probation departments using the waiver (ARS § 13-919), add criteria for the AOC to consider in granting a waiver request, and eliminate redundancy and consolidate subsections that had been repeated through the code section. Contact levels under the waiver mirror the contact levels under two-person teams. The proposal was available for public comment for 30 days, and no negative comments were received. The Committee on Probation unanimously approved the proposal as written.

Ms. Doyle explained that departments currently have no criteria by which to deny a waiver. A department can deny a waiver and have a reason, but the reason can always be challenged. The department is trying to set parameters that make sense, infuse evidence-based practices, and to supervise offenders based on risk and need.

**Motion:** Judge Conlogue moved to approve the revision as written. **Second:** Judge Charles Gurtler. **Vote:** 15-1.

### **D. Private Process Servers**

Anne Hunter, AOC Certification and Licensing Division, discussed proposed changes to ACJA § 7-204 (Private Process Servers) and § 7-205 (Defensive Driving).

The proposed amendments to ACJA § 7-205 contain provisions regulating defensive driving schools and instructors, including certification requirements, codes of conduct, fee schedules, and continuing education policies. They establish certification and curriculum requirements for a teenage driver school and guidelines for judges to use when considering a request for a law enforcement officer to be certified as a defensive driving instructor. The proposal also establishes advertising restrictions, adds language clarifying the process for positively identifying students enrolled in an on-line class, and adds language clarifying the appropriate appearance and format of fees on schools' websites. The proposed amendment also increases the reinstatement application fee from \$100 to \$1,000 for a defensive driving school and eliminates the requirement that an instructor teach a minimum number of classes during a certification renewal cycle. Finally, the amendment deletes the fee distinction in regard to the length of time from initial certification to renewal.

Stakeholders, including school owners, the Defensive Driving Board, and the board's rules subcommittee have reviewed the proposal. The proposed changes are currently posted on the website for public comment and will be posted for 30 days, ending on

November 9, 2012. The Limited Jurisdiction Court Committee (LJC) voted to recommend to the Arizona Judicial Council (AJC) to adopt the proposal as written.

During discussion, Ms. Hunter noted that:

- Classes for teens will be in-person, discussion-type classes.
- Defensive driving schools are not restricted to in-state providers only.
- There are no requirements nor are there any reports on the differences between on-line learning versus classroom learning. A member noted that justices of the peace have received comments that that the on-line schools are more effective because students must pass a test and retake it if they fail. Students who attend the classroom do not have to take a test and reportedly have spent the time reading newspapers or sleeping.
- The definition of an instructor is the same for both on-line and in-classroom schools, although on-line classes are more of a curriculum. However, students can submit questions on-line that will be answered by certified instructors.
- There has been discussion about fingerprinting instructors because they may be teaching minors, but no policies have been finalized yet.

**Motion:** Judge Ruechel moved to adopt. **Second:** Judge Conlogue. **Vote:** Unanimous.

Proposed amendments to ACJA § 7-204, regarding private process servers, incorporate best practices in the regulatory arena, including residency requirements, factors to consider when reviewing an application for certification, and disciplinary sanctions. These changes have been reviewed and discussed among stakeholders, including private process servers, the courts, and the Arizona Association of Certified Process Servers. The proposal has been circulated for public comment and will be forwarded to AJC for review.

LJC recommended that the amendments include a pre-certification training requirement. This also was mentioned in the public comments. Ms. Hunter said pre-certification training was considered; however, it is believed that the examination given is adequate to assess the knowledge and the skills of a private process server. Once certified or licensed, there is a requirement for annual continuing education credit. Ms. Hunter noted that LJC voted to reject the proposed additions to section (E)(5)(b)(4). This additional language was modeled after section 7-201, General Requirements, and was included in the proposed changes in order to align this program better with other regulated professions. It also will be better aligned with ARS § 13-904(e), which states that a person whose civil rights have been restored may not be disqualified for certification solely because of a prior conviction of a felony or misdemeanor unless the offense has a reasonable relationship to the functions of the employment or occupation for which the licensed permit or certificate is sought.

Cameron Janati, Arizona Association of Certified Process Servers legislative liaison, asked for removal of any proposed revision that would distance the professional

community from the best representation they provide to the courts, the legal profession, and the public daily. Mr. Janati asked members to strongly consider dismissal of the following proposed changes to section 7-204: 1) omitting required references in application materials; 2) eliminating the residency requirement; 3) requiring documentation of continuing education activity that is comprised of eight or more hours in one day; and 4) easing conditions for a convicted felon to become a certified process server. The association also feels pre-certification training is needed.

Discussion ensued regarding:

- The ability of a convicted felon to become a process server. It was suggested that if a felon's rights have been restored, the judge should consider whether there is a relationship between the felony and the ability to be a process server. This is addressed in ACJA § 7-201(B)(4).
- Removal of the requirement to provide references. Mr. Jeanes, who participated on the committee that developed the proposal, said the value of the references was questioned as the applicant is the one who decides which references to submit.
- Pre-certification training. Mr. Jeanes said the committee found pre-certification training unnecessary if an applicant had the ability to pass the test to become a process server. He said pre-certification creates a burden for the courts, the Clerks, and the AOC. The AOC would have to review the curriculum and certify the classes as is done for defensive driving school, and the Clerks would then have to make sure the training had been completed.
- Procedures for retaking the test upon failure. Mr. Jeanes explained that there is a process for taking the test and procedures for retaking it. Retakes are limited, and different versions of the test are given. A person may take the test a second time, but a third attempt requires the approval of the presiding judge.
- Out-of-state and in-state residency. Mr. Jeanes said the committee did not believe it was appropriate to limit certification to only in-state individuals. In rural areas, particularly those that border other states, there may be no certified process servers in Arizona. However, there may be process servers nearby in the border states. A judge's authority over the process server, regardless of the person's residence, is the same if the person is certified in Arizona under Arizona code.

**Motion:** Mr. Jeanes moved to adopt the proposal as drafted. **Second:** Judge Lee. **Vote:** Unanimous.

#### **E. Changes to the 2012 Minimum Accounting Standards Checklist**

Jennifer Jones, AOC Court Services Division, highlighted changes to the 2012 Minimum Accounting Standards (MAS) checklist. MAS E.1 requires each court and court department that handles money to complete the Annual MAS Compliance Checklist. Courts are encouraged to submit the checklist in electronic format. The required checklist will be posted on the Arizona Judicial Branch website in mid-December.

#### **F. Advisory Committee on Supreme Court Rules 123 and 125**

Melinda Hardman, AOC Court Services Division, and Kay Radwanski, AOC Court Services Division, updated COSC members on the Advisory Committee on Supreme Court Rules 123 and 125. At its October 18, 2012, meeting, the committee authorized its chair, Mike Baumstark, to file a rule change petition affecting Rule 123. The petition will request changes regarding family law minute entries and protective orders. The committee is not recommending any changes regarding access to probate and mental health records. The committee's report, which is in rule petition form, will be presented to AJC on December 13, 2012. A draft of the appendix to the petition was presented for review and comment by COSC members.

Discussion ensued regarding:

- A preference for ruling from the bench to avoid having to generate an order and the protocol for exhibits. Ms. Radwanski said the change to Rule 123 covers only minute entries, which include orders from the bench. Documents and exhibits are not posted online.
- Changes in technology for counties that post all minute entries online. Mr. Jeanes said, Maricopa County will change its practice of posting all minute entries, both in-court and under-advisement rulings by December 31, 2012. Under-advisement minute entries will go in a separate track and will not be posted online, but minute entries for matters decided in court will be posted online. This process will not change a judge's access to minute entries nor will it affect the work process between the superior court and the Clerk's Office.

#### **G. Recommendations of the Committee on the Impact of Wireless Mobile Technology and Social Media on Court Proceedings**

Mark Meltzer, AOC Court Services Division, reviewed the committee's report and recommendations it will propose to the AJC in December 2012. The committee has drafted revisions to the jury admonition, a new proposed Supreme Court Rule 122.1 that describes permissible uses of portable electronic devices in the courtroom and courthouse, and revisions to Supreme Court Rule 122 concerning the use of cameras in the courtroom. The proposed rules have been presented to the Committee on Limited Jurisdiction Courts, the Commission on Victims in the Courts (COVIC), the Association of Superior Court Administrators, and the presiding judges.

Discussion ensued regarding:

- Concerns that the proposed changes diminish a judge's ability to manage the courtroom and are too "one size fits all."
- Defining "journalist" and understanding why the Rule 122 allows journalists to be treated differently than other segments of the population. It was noted that differentiating between journalists and bloggers can be difficult. Mr. Meltzer stated that Rule 122(m) remains because the professional media wanted explicit authorization for journalists to use personal audio recorders in the courtrooms.

Rule 122.1 permits the public to use portable electronic devices to retrieve or store information and that could include audio recording. A member suggested changing the word “journalist” to “person,” which would give journalists explicit authority as they would then be encompassed within the definition of a person. Mr. Meltzer noted the suggestion and will take it back to the committee. It also was suggested that the phrase “unless otherwise prohibited” be added. Without that restrictive phrase, the rule could be read to allow the recording of a juvenile hearing.

- The prohibition on photographing the prosecutor, jurors, and others. Mr. Meltzer said a provision will be added to Rule 122.1(c). A question was asked regarding responsibility for removing a prohibited photograph from social media. Mr. Meltzer said the person who took the photograph would be responsible for removing it, and the court has oversight to ensure that the photograph is removed. However, a photograph can be deleted on a device but still reside on a remote server, in a cloud, as an email attachment, or may have been posted on an Internet page. The court, through appropriate questioning of the person who took the photograph, can determine whether the photo has been removed. It was suggested that the court advise a person who takes a prohibited photo that if the court subsequently learns that the person was not truthful and the photograph is still available, the person can be found in contempt.

**Motion:** Mr. Jeanes moved approval and asked Mr. Meltzer to take COSC’s comments to the full committee on November 7, 2012. **Second:** Mr. Klain.  
**Vote:** 14-2.

#### **H. Report: Supreme Court’s 2012 Rules Agenda Meeting**

Mr. Meltzer reviewed action taken by the Supreme Court at its 2012 Rules Agenda meeting. The minutes are available online, and but for one exception, the effective date of these newly adopted rules and rule amendments is January 1, 2013.

It was noted that the State Bar has filed a petition to amend ARCAP Rule 9 to temporarily suspend an appeal and revest jurisdiction in the trial court, allowing it to address administrative acts that need to be completed before the appeal can proceed.

#### **I. State Bar Family Law Practice and Procedure Committee – Proposed Rule 28 Petitions**

Because of miscommunication over the time for his presentation, Tom Alongi, chair of the State Bar’s Family Practice and Procedures Committee, was unable to deliver his presentation.

### **III. OTHER BUSINESS**

- A. Next Meeting:** Friday, February 1, 2012, 10:00 a.m. – 2:00 p.m.  
Arizona State Courts Building, Conference Room 119 A/B

**B. Good of the Order/Call to the Public**  
None

Adjourned at 1:18 p.m.