

**COMMITTEE ON SUPERIOR COURT  
MINUTES**

Friday, February 1, 2013  
Conference Room 119 A/B

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

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**Present:** Judge Janet Barton, Judge James Conlogue, Judge David Cunanan, Judge Robert Duber, Judge Steven Fuller, Judge Richard Gordon, Judge Charles Gurtler, Sue Hall, Judge Charles Harrington, William Klain, Judge Kenneth Lee, Judge David Mackey, Judge Colleen McNally, Charles Moter, Patricia Noland, Judge Monica Stauffer, Judge Randall Warner, Susan Wilson.

**Present Telephonically:** Judge Carey Hyatt.

**Absent:** Joshua Halversen, Judge Celé Hancock, Judge Michala Ruechel.

**Administrative Office the Court (AOC) Staff:** Kay Radwanski, Kym Lopez.

**Guests:** Thomas Alongi (Community Legal Services), Theresa Barrett (AOC), Kent Batty (Pima County Superior Court), Stewart Bruner (AOC), Cindy Cook (AOC), Judge Kenton Jones (Yavapai County Superior Court), Amy Love (AOC), Brian Pollock (Lewis & Roca, LLP), Judge John Rea (Maricopa County Superior Court), Judge Peter Swann (Court of Appeals, Division I), Cindy Trimble (AOC).

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**I. REGULAR BUSINESS**

**A. Welcome and Opening Remarks**

With a quorum present, the February 1, 2013, 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 new members Judge Janet Barton (Maricopa County) and Chuck Moter (Apache County).

**B. Approval of Minutes**

The draft minutes from the November 2, 2012, meeting of the COSC were presented for approval. Judge Charles Harrington requested that the minutes reflect that he opposed the State Bar's rule petition to revise the Rules of Civil Procedure regarding case management and trial settings based on increased costs, changes that would be needed in the courts' case management systems, and the number of cases a judge would have to touch.

**Motion:** Judge Harrington moved to approve the November 2, 2012, meeting minutes as amended. **Second:** Judge Monica Stauffer. **Vote:** Unanimous.

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

**A. Proposed Amendments to ARFLP Rule 12 Regarding Child Interviews**

Thomas Alongi, chair of the State Bar's Family Practice and Procedures Committee (FPPC), presented proposed amendments to Arizona Rules of Family Law Procedure

(ARFLP) Rule 12 regarding child interviews. Mr. Alongi requested that members submit comments to him by April 1, 2013.

Member comments included:

- Concerns about admonitions to judges in Rule 12(B), which create an underlying assumption that judges need to be told how to do their jobs.
- The provision requiring judges to give lawyers a period of time to respond to an interview is positive.
- The proposal would take away the judge's discretion to seal the record of the interview from parents. An exception should be provided to allow sealing of the record for the health and safety of the child.
- Wording should be changed to read that a record of the interview *may* be available instead of *must* be available.
- A party should be able to request a child interview on written motion or oral motion made in open court.
- The rule change could have a chilling effect on a child's freedom to speak openly. The judge will get greater honesty and candor from the child if the child is free to be candid.
- A judge may have difficulty determining whether to interview a child 14 days prior to a hearing as the judge should hear all evidence before deciding whether it is necessary to interview the child. A child interview should occur only as a last resort.

Mr. Alongi responded to the comments and will take them back to the FPPC.

## **B. Rule Petition to Revise the Rules of Civil Procedure Regarding Case Management and Trial Settings**

Brian Pollock, William Klain, and Judge Peter Swann, members of the State Bar's Civil Practice and Procedure Committee (CPPC), discussed the State Bar's petition (R-13-0017) to revise the Rules of Civil Procedure regarding case management and trial settings. The State Bar filed its Rule 28 petition in January. Mr. Pollock and Mr. Klain discussed the changes that were made to the petition in response to comments received at the November 2, 2012, COSC meeting. Mr. Klain noted that the State Bar's Board of Governors was made aware of concerns raised at the November COSC meeting.

Judge Swann explained that the proposed rule change would give attorneys and litigants a fair expectation of what happens in court. Rule 16 gives a judge the ability to manage the calendar. Judge Swann noted that a civil trial requires immense resources, and if a civil trial has to be continued because the calendar is stacked up, the value is lost to the litigants.

Concerns were raised about the impact on Pima County, where a majority of cases are concluded in 18 months and continuances are rare. A member was concerned that these changes and monitoring will require major changes in Pima County's AGAVE

case management system. Judge Swann said that during its development, this approach was discussed with the presiding judges of several rural counties. The process was recommended to them, and it worked, saving time and money.

It was suggested that if Maricopa County's case processing is driving the rule change, it could adopt a local rule to address the issues. Mr. Klain said the rule change is not an attempt to restrict judges or manage their courtrooms. Rather, the proposal is trying to standardize procedures statewide. He noted that if the petition is adopted, an educational and cultural shift will be required.

The petition is on a staggered comment schedule, with an April 1 deadline for the first round of comments.

### **C. Proposed changes to ACJA § 1-602: Digital Recording of Court Proceedings**

Stewart Bruner, AOC staff to the Commission on Technology, reviewed proposed changes to ACJA § 1-602, "Digital Recording of Court Proceedings." Members are encouraged to submit comments on the ACJA Forum prior to the February 4, 2013, comment deadline.

Mr. Bruner clarified that there are recordings created for public record and recordings created for back-up notes. This code section guides official court records and not recordings made for the purpose of minute entry preparation.

### **D. Legislative Update**

Amy Love, AOC legislative liaison, provided an update on bills of interest to superior court. Currently, more than 700 bills have been filed in the first regular session of the 51<sup>st</sup> Legislature.

### **E. Rule 28 Petitions - Update**

Kay Radwanski, AOC staff to the Committee on Superior Court, gave an update on recently filed Rule 28 petitions of interest to superior court. Unless otherwise indicated, the comment deadline is May 21, 2013; however, some petitions are on staggered schedules with different deadlines. All Rule 28 petitions can be reviewed on the Court Rules Forum.

### **F. Arizona Case Processing Standards for Civil, Criminal, Family Law and Probate Cases in Superior Court**

Cindy Cook, AOC staff to the Committee on Arizona Case Processing Standards; Judge John Rea, Maricopa County; Judge Kenton Jones, Yavapai County, and Kent Batty, Pima County court administrator, discussed proposed case processing time standards and measurements relevant to cases heard in superior court. The Supreme Court is considering the adoption of time standards for case processing for Arizona,

and the Committee on Arizona Case Processing Standards will provide a report to the Arizona Judicial Council (AJC) in December.

The presenters explained that the time standards are aspirational goals with timeframes that are acceptable to the public but achievable by courts. The National Center for State Courts (NCSC) has created model time standards that have been adapted to conform to Arizona statutes and court rules.

During discussion, a concern was expressed that if a measurement becomes an imperative, it will become a drain on the AJACS case management system. There was also a concern that the standards become more than aspirational at election time for judges who are elected and could affect performance standards for judges who are merit selected.

The presenters responded that the steering committee for the Case Processing Standards Committee extensively discussed creating aspirational goals that do not create unreasonable expectations. From a statistical aspect, there is a need to ensure that case management systems can track meaningful events.

Member input on the proposed time standards is requested, and comments can be submitted online on the Case Processing Standards Committee's webpage.

## **G. Planning for the Next Strategic Agenda**

Theresa Barrett, manager of the Court Programs Unit, Court Services Division, announced that the Arizona Judicial Branch has begun the development of its Strategic Agenda 2015-2020. She made a presentation showing how the planning process works, accomplishments in the current Justice 20/20 agenda, and themes and trends identified by NCSC. Ms. Barrett discussed the role members can play in the development of the next strategic agenda and asked members to participate in "brainstorming" so their suggestions can be provided to the AJC at its June meeting.

**Motion:** Judge Conlogue moved that a workgroup be established. **Second:** Judge Gurtler. **Vote:** Unanimous.

Members of the Strategic Agenda Workgroup include: Judge Mackey, chair; Judge Barton, Susan Wilson, Mr. Klain, Judge Randall Warner, and Mr. Moter. The workgroup will develop a formal proposal for members to consider at the May 3 meeting. Suggestions for potential new projects and initiatives must be provided to the AJC's strategic agenda subcommittee by May 8, 2013

Concern was expressed regarding the need for more information and sensitivity to the financial impact on litigants, the cost to litigants of opening a case, and the burden on courts in handling requests for fee waivers and deferrals. Filing fee increases that become effective in March will affect the number of fee waivers requested. The increase is expected to result in more requests for waivers rather than deferrals. Ms.

Barrett noted that access to courts is likely to be a priority for the next strategic agenda.

### **III. OTHER BUSINESS**

#### **A. Next Meeting:**

Friday, May 3, 2013, 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 1:36 p.m.

**Committee on Superior Court  
Meeting Minutes  
Friday, May 3, 2013  
10:00 a.m. – 2:00 p.m.  
State Courts Building, 1501 W. Washington, Phoenix, AZ 85007**

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**Present:** Judge Janet Barton, Judge David Cunanan, Judge Robert Duber, Judge Steven Fuller, Judge Richard Gordon, Judge Charles Gurtler, Sue Hall, Judge Celé Hancock, Judge Charles Harrington, Judge Carey Hyatt, George King (proxy for William Klain), Judge Kenneth Lee, Judge David Mackey, Judge Colleen McNally, Charles Moter, Judge John Nelson, Ronald Overholt, Judge Michala Ruechel, Judge Randall Warner, Susan Wilson.

**Present Telephonically:** Judge James Conlogue, Judge Monica Stauffer.

**Absent:** Joshua Halversen.

**Administrative Office the Courts (AOC) Staff:** Kay Radwanski, Kym Lopez.

**Guests:** Theresa Barrett (AOC), Mike Baumstark (AOC), Cindy Cook (AOC), Judge Pamela Gates (Maricopa County), Judge Andrew Gould (Court of Appeals, Division I), Jerry Landau (AOC), Mark Meltzer (AOC), Brian Pollock (Lewis and Roca LLP), Judge John Rea (Maricopa County), Cindy Trimble (AOC).

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**I. Regular Business**

**A. Welcome and Opening Remarks**

With a quorum present, the May 3, 2013, 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 new members Judge John Nelson (Yuma County) and Ron Overholt (Pima County).

**B. Approval of Minutes from February 1, 2013**

The draft minutes from the February 1, 2013, meeting of the COSC were presented for approval.

**Motion:** Judge Charles Harrington moved to approve the February 1, 2013, meeting minutes. **Second:** Judge Charles Gurtler. **Vote:** Unanimous.

**II. Business Items**

**A. Legislative Update**

Jerry Landau, AOC government affairs director, gave an update on bills of interest to superior court. Currently, 1,146 bills have been introduced in the first regular session of the 51<sup>st</sup> Legislature.

HB2608 Elected Officials Retirement Plan (EORP) Closure and Defined

Contribution details:

- Two amendments were recently added.
- Employer will contribute 6 percent to the Elected Officials' Defined Contribution Retirement System (EODC) and Employee will contribute 8 percent.
- Judges and other elected officials who take office after the effective date of the legislation (if it passes), will have two options: (1) Arizona State Retirement System (ASRS) active and inactive members who become officials can remain in ASRS, or (2) New members joining from the private sector will have to join the defined contribution plan.
- The Public Safety Personnel Retirement System (PSPRS) will administer the defined contribution plan.
- HB2608 affects elected officials coming into the system in the future.

**B. Petition to Revise Rules of Civil Procedure Regarding Case Management and Trial Settings**

Judge Kenneth Lee, Judge Harrington, Judge Andrew Gould (Court of Appeals, Division I), and Brian Pollock (Lewis and Roca LLP), discussed the State Bar's petition (R-13-0017) to revise the Rules of Civil Procedure regarding case management and trial settings. In the first round of comments to the petition, four comments were filed, including one in opposition from the Pima County Superior Court.

The State Bar Board of Governors met on April 26, 2013, and declined, by a 9-8 vote, to amend the petition. A second vote of 12-5 favored filing an amended petition. The State Bar's amended petition, which was filed on May 3, 2013, includes a suggestion that the Supreme Court establish a committee to study this issue. Comments to the amended petition are due by June 5, and the State Bar will have until July 3 to reply to comments on the amended petition.

Comments of concern included:

- Increased costs for litigants.
- Increased costs and work for courts and judges.
- Counties should be allowed to adopt local rules to accommodate their differences. A one-size-fits-all procedure for all counties and all cases is the opposite of modern case management.
- Rule 38.1(c) can be expanded and used as a Motion to Set for case management.
- Federal courts face a different situation, with a lower volume of cases but with greater complexity, while state trial courts have a higher volume of less complex cases. Federal courts have law clerks that facilitate scheduling conferences.
- This procedure would not resolve the problems of attorneys being double

booked, mixed calendars, enforcement, or unrealistic sanctions.

- Pima County's method has worked for decades, and the court has no problems with trial dates. Under the proposal, all cases would require scheduled conferences or mediation, overburdening Pima's system and causing an increase in costs and delays in settlement.
- No enforcement is included with the proposal.

Comments in support included:

- The petition addresses a culture of delay in civil cases. Meaningless trial dates are set, there are costs to litigants who have to make travel plans only to have trial postponed, and discovery does not take place. Where this procedure has been used for four years, not a single case has been continued. This procedure removes meaningless Motion to Set dates and creates a real plan for discovery, real trial dates, and eliminates last-minute discovery disputes. Cases are simplified, scheduling orders are easy to prepare, with no increase in the number of hearings.
- Judges can manage cases with a realistic calendar. This procedure allows those involved to prepare earlier, results in more settled cases, is cost effective, sets a roadmap for each case, and is not time intensive.
- Some Maricopa County judges began using this procedure in 2002, and by 2008, nearly all judges in Maricopa County were using this procedure.
- This system is differentiated case management.
- Attorneys are making decisions, and there is enforcement.
- This is helpful to self-represented litigants as it brings them together early in a case and gives them information on what they need to do.
- Rule 38.1(c) has been used as a nine-month delay to do nothing with cases. With this procedure, parties are able to give judges their deadlines. The procedure requires involved parties to make a good faith effort to settle before going to trial.

**Motion:** Judge Randall Warner moved that a vote on the petition be deferred so further study could be done with the goal of crafting a case management rule that has broad support from superior court benches from all counties. **Second:** Judge Robert Duber. **Vote:** Unanimous.

### C. Arizona Case Processing Standards

Cindy Cook, AOC staff to the Committee on Arizona Case Processing Standards; Judge John Rea, Maricopa County; and Judge Pamela Gates, Maricopa County, presented case processing standards for Superior Court Civil, Family Law Dissolution, Family Law Post-Judgment Motions, Criminal Felony, and Criminal Post-Conviction Relief cases.

Judge Rea presented the recommended time standards for Superior Court Civil cases, noting that the executive summary contained in the committee's report will

address previously raised concerns. The executive summary explains that the standards are aspirational goals and are system-wide standards that are not applicable to specific judges. The proposed standards are governed by court rules and represent what is realistically possible.

Judge Rea read the following text from the executive summary:

The Steering Committee does not intend for case processing standards to be used as a basis for disciplining an individual judge for failure to comply with the standards. It would be misleading and unfair to base the performance of any individual judge on case processing standards when the time-to-disposition reports run for case processing standards do not reflect how long a case has been assigned to a particular judge or the complexity of the case assigned. Rather, the standards are being developed as a management tool for the courts to determine how efficiently the cases are being processed through the system as a whole and identify where improvements can be made.

**Motion:** Judge Richard Gordon moved to adopt the civil time standards.  
**Second:** Judge Janet Barton.

**Discussion:** Judge Duber proposed that the motion be amended to include a requirement that the executive summary be contained in the case processing standard consideration. Ms. Cook stated that the executive summary will be a prominent feature. The Arizona Case Processing Standards Committee was informed at its most recent meeting that the Chief Justice had agreed to extend the life of the committee so the standards can be revisited after reports have been written and data has been verified.

**Amendment:** Judges Gordon and Barton accepted Judge Duber's amendment to the motion.

**Discussion:** Concerns were raised about starting time limits upon filing and actions over which the bench has no control. Rural courts that use AJACS do not have reliable reports, and workload studies show their benches to be understaffed. Judge Rea said the standards that are laid out specifically say that certain events are excluded. He noted that Justice Robert Brutinel, chair of the Committee on Arizona Case Processing Standards, has had lengthy conversations with AOC ITD regarding the reporting capabilities of AJACS. Ms. Cook added that AJACS is close to completing time-to-disposition reports for the superior courts. The case processing standards will be used to build reports for the case management systems. The standards address where the measurements should start and stop and what time should be excluded from the measurements.

**Amendment:** Judge Lee proposed an amendment that numbers not be published

for a period of two to three years.

**Amendment:** Judge Mackey proposed an amendment that would include a caveat that AJACS is incapable of providing this performance measure at this time. Judge Gordon accepted an amendment that the standards are provisional, subject to change without accurate data from AJACS, and are to be unpublished. Judge Barton declined to second the amended motion, noting that the Freedom of Information Act may prevent nondisclosure.

**Restatement of Original Motion:** Judge Mackey stated that the original motion was to adopt the civil standards with the understanding that the executive summary from the committee's report would be included.

**Motion Withdrawn:** Judge Gordon withdrew the original motion.

Member discussion included concern that, despite a disclaimer, rural counties would still be negatively affected. A suggestion was made to adopt time standards only for counties that have reliable information with other counties to follow later.

Ms. Cook explained that time standards that were proposed a number of years ago but not formally adopted are stricter than what is now being proposed. Other states have experienced the same issue regarding lack of reports and statistical data, but they have moved ahead and created time standards and goals for the future. Arizona can establish case processing standards first and then work on development of reports. Adoption of time standards is crucial to moving Arizona courts forward.

A member questioned whether COSC could give further consideration to time standards in September when more information would be available. Ms. Cook stated that the case processing standards for probate cases are being presented to COSC in September, and the civil standards can be revisited then. The Committee on Arizona Case Processing Standards Steering Committee plans to present the time standards to the Arizona Judicial Committee in October.

**Motion:** Judge Duber moved to adopt the civil time standards with the caveat that data collecting and reporting contained significant inadequacies. **Second:** None.

**Motion:** Judge Gurtler moved to approve the standards as aspirational, upon AJACS being able to provide reliable reporting. **Second:** Judge Nelson.

**Discussion:** Judge Colleen McNally stated that ICIS, Maricopa County's case management tool, also has reporting deficiencies that should be considered.

**Amendment:** Judge Gurtler amended the motion to include all case management systems. **Second to Amendment:** Accepted by Judge Nelson.

**Vote:** 19 in favor; 3 in opposition (Judge Michala Ruechel, Judge Celé Hancock, Judge Monica Stauffer).

Judge Gates presented the case processing standards for family law dissolution or pre-decree cases.

Member comments included:

- The difficulty of meeting a 60-day time standard when an evidentiary hearing is not required until 60 days have passed and that Maricopa County is currently not meeting these time standards.
- The inability of case management systems to pull out cases that have excluded events.
- A preference to defer a vote until reliable data is available for AJACS.
- An interest in having measurements start from the point of service.

It was explained that the Steering Committee discussed service of process as a starting point for measurement but made a determination that service of process would be difficult to measure in the CMS systems. The reports would have to capture a date for the return of service, and there could be numerous returns.

Committee members decided not to take a position regarding the family law dissolution or pre-decree standards.

Judge Gates then presented information on family law post-judgment motion case processing standards.

Committee members decided not to take a position regarding the family post-judgment motion time standards.

Judge Gates next presented information on criminal time standards.

A member asked whether the time standards default to national standards if the committee takes no position.

Judge Gates acknowledged the concern and explained that the Steering Committee reviewed the national model but created case processing standards for Arizona that are consistent with Arizona rules and statutes.

Judge Mackey commented that if the committee is silent, the time standards will move forward without COSC input.

**Motion:** Judge Gordon moved (first motion) to defer any position as to the family law standards until reliable information is produced by AJACS, and (second motion) as to criminal matters that have priority in outlying counties, the

motion is the same as in civil (approve percentages as aspirational with a further vote for the percentages as standards upon AJACS being able to provide reliable reporting in all case management systems). **Second:** Judge Steven Fuller seconded both motions.

**Discussion:** Judge Carey Hyatt asked to modify the motion to include family in the same criminal/civil arena. Judge Gordon declined.

**Vote for first motion:** 18 in favor; 2 in opposition (Judge Ruechel, Judge Hancock). **Vote for second motion:** Unanimous.

Judge Gates presented information on criminal post-conviction relief case processing standards.

Members discussed criminal post-conviction relief, noting an interest in obtaining Maricopa County's data for post-conviction relief. A concern was raised that the case processing standards could not be met if extensions for good cause were granted by the courts. Another delay that would make it difficult to meet the standards is that it takes months to file a proper notice, and notices are never filed on time. It was also suggested that the time for direct appeal be excluded from the measurement.

**Motion:** Judge Gordon moved to refer the standard back to the Arizona Case Processing Standards Steering Committee to consider the comments made by COSC members. **Second:** Judge Hancock. **Vote:** Unanimous.

#### **D. 2013 Rules Update**

Mark Meltzer, AOC staff, discussed the status of rule change petitions that have been filed in the current cycle. The comment filing deadline for most of the petitions is May 21.

Discussion by members focused on R-13-0013: Supreme 122.1, specifically the wording that "no one may photo or record people in the courthouse without their consent." Concern was expressed that no one would know the rule in a courtroom, and lesser actions than being held in contempt of court should be considered for rule violations. Members agreed that a court must use reasonable means to advise court visitors of the rule.

#### **E. Planning for the Next Strategic Agenda – COSC Proposals**

Judge Mackey presented a report from the COSC Strategic Agenda Workgroup with proposals for the next strategic agenda. He noted that the ideas offered were deliberately left unranked.

**Motion:** George King, proxy for William Klain, moved to approve forwarding

the report to the AJC Strategic Agenda Subcommittee. **Second:** Judge Hancock.  
**Vote:** Unanimous.

### **III. Other Business**

#### **A. Next Meeting:**

Friday, September 6, 2013; 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**

Judge Mackey thanked Judge Carey Hyatt for her service to the committee. Judge Hyatt's term ends June 30, 2013, and she is not seeking reappointment.

No persons from the general public were present for the Call to the Public.

Adjourned at 1:44 p.m.

**COMMITTEE ON SUPERIOR COURT  
MINUTES**

**Friday, September 6, 2013**

Arizona State Courts Building, Conference Room 345 A/B  
1501 West Washington Street, Phoenix, AZ 85007

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**Present:** Judge Janet Barton, Judge James Conlogue, Judge David Cunanan, Judge Sally Duncan, Judge Steven Fuller, Judge Richard Gordon, Judge Charles Gurtler, Sue Hall, Joshua Halversen, Judge Charles Harrington, Toni Hellon, William Klain, Judge Kenneth Lee, Judge David Mackey, Judge Colleen McNally, Charles Moter, Judge John Nelson, Judge Michala Ruechel, Judge Monica Stauffer, Judge Samuel Vederman, Judge Randall Warner.

**Telephonic:** Judge Celé Hancock.

**Absent/Excused:** Ronald Overholt, Susan Wilson.

**Presenters/Guests:** Justice Robert Brutinel, Cindy Cook (AOC), Mark Meltzer (AOC), Cindy Trimble (AOC), Amy Love (AOC), Jennifer Greene (AOC), Eric Ciminski (AOC), Denise Lundin (AOC), Paul Julien (AOC), Stewart Bruner (AOC).

**Staff:** Kay Radwanski, Kelly Gray.

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**I. REGULAR BUSINESS**

**A. Welcome and Opening Remarks**

With a quorum present, the September 6, 2013, meeting of the Committee on Superior Court (COSC) was called to order at 9:59 a.m. by Judge David Mackey, chair.

Judge Mackey welcomed new members Judge Samuel Vederman, Judge Sally Duncan, and Toni Hellon, Pima County Clerk of the Court. He recognized and thanked outgoing committee member Judge Robert Duber II for his work on COSC and distributed a thank you card for signature.

**B. Approval of Minutes**

The draft minutes from the May 3, 2013, meeting of the COSC were presented for approval.

**Motion:** William Klain moved to approve the May 3, 2013, COSC minutes. **Seconded by** Judge Monica Stauffer. **Vote:** Unanimous.

**II. BUSINESS ITEMS**

**A. Arizona Case Processing Standards**

Justice Robert Brutinel, chair of the Arizona Case Processing Standards Steering Committee, discussed the provisional set of case processing time standards that were developed for Arizona. The Steering Committee was established in 2012 to review the national case processing time standards and recommend case processing standards appropriate for Arizona. The recommended

standards are aspirational but still achievable. However, the standards will not be used to rate a judge's performance or to judge individual cases.

Justice Brutinel said the standards will not be submitted to the Arizona Judicial Council (AJC) for final approval until reliable data is available from the case management systems used in superior courts. When this process is complete, the Steering Committee will ask AJC to adopt final standards. In the interim, the Steering Committee will provide a progress report to the AJC in October 2013.

Justice Brutinel said the Steering Committee found the process of developing final standards challenging because of the lack of statistical data, and, therefore, is recommending provisional standards that, with more data gathering, will be useful measurement tools. In previous meeting, COSC members were concerned about standards being put in place when the courts have no statistical data to determine how well they are currently processing their cases.

In recognition of these concerns, the Steering Committee will ask AJC to approve a process for development of case processing standards for Arizona. The provisional set of case processing standards will be used to develop case management reports. The courts will validate and clean up the data in the case management systems. The data clean-up process could also reveal missed business processes that should be adjusted. The provisional standards then will be reviewed, along with actual data from the case management systems, so the committee can determine whether the standards are realistic. Finally, the revised case processing standards will be presented to the AJC for adoption.

Justice Brutinel noted that the statistical reports can be useful tools for presiding judges to employ for monitoring efficiency and also for providing support for requests for increased court resources.

A concern was raised about the effect on practitioners who are handling complex cases – whether attorneys are aware that standards are being developed, if there is a way to opt out of the standards, and the need for buy-in from the bar. Mr. Klain, the State Bar's representative to COSC, said the State Bar is mindful of the Steering Committee's work, although individual attorneys may not be aware. The issue comes down to case management, and attorneys will do what is required.

Justice Brutinel pointed out that the Steering Committee meetings have been publicly noticed. He emphasized that the standards are not intended to affect decisions on individual cases but are to be used as a tool to gauge court efficiency. The two issues are unrelated as one relates to case management (timely resolution of individual cases) and the other to case processing (gauging how all cases are being processed through the courts).

A Clerk of Court representative said that court clerks appreciate the committee's efforts and welcome the standardization of reports and data this project will bring. It was recommended that reports be a "day forward" type to ensure accuracy.

A concern was expressed about time delays, especially before service has been completed. Although judges actively manage their cases, delays caused by the parties could skew the numbers for a smaller court and could cause a judge's decision-making process to be altered with the knowledge that a report may be coming that does not accurately reflect the progress of the case. Justice Brutinel noted that the Steering Committee considered those factors when formulating the standards.

**Motion:** Judge James Conlogue moved that the provisional standards not be presented to the AJC until every superior court has reliable case data retrieval system that will accurately measure the standards. **Seconded by:** Judge John Nelson.

When asked his opinion of the motion, Justice Brutinel said he was looking for support of the process of validating data and creating a set of standards that accurately reflect the practices in Arizona courts and not present them until that happens.

**Amended Motion:** Mr. Klain moved to amend the motion as follows: That the provisional standards not be presented to the AJC until every superior court has a reliable case data retrieval system that will accurately measure the standards. In addition, COSC supports the process of validating the data and creating a set of standards that accurately reflect the practice in Arizona courts. Judges Conlogue and Nelson accepted the amendment. **Vote:** Unanimous.

#### **B. Rule Petition R-13-0017 (Case Management and Trial Setting)**

Mark Meltzer, AOC senior court policy analyst, Court Services Division, discussed R-13-0017; Rules for Civil Case Management. The State Bar filed a Rule 28 petition in January 2013, proposing alterations to the case management and trial setting provisions of the Rules of Civil Procedure. On May 3, the State Bar filed an amended rule petition. At its May 3 meeting, COSC heard a presentation by members of the bench and the Bar regarding the amended petition. COSC proposed that the matter be studied further.

The Supreme Court formed a task force and hired a consultant from the National Center for State Courts (NCSC). A drafting subcommittee met throughout July to draw up an amended proposal that would address the diverse viewpoints represented on the task force. The task force met on August 2, reviewed the subcommittee's draft, and unanimously agreed on proposed amendments. On August 8, the task force filed a report and a new Appendix A on the Rules Forum. On September 6, the Supreme Court adopted the proposed rule changes and recommended forms, with no further comment period. The amended rules take effect April 15, 2014.

Mr. Meltzer said a survey showed that statewide, motions to set a case for trial are rare. Trials often are set during Rule 16(b) conferences. However, both approaches are efficient in resolving cases. The NCSC consultant recommended a consistent, uniform statewide process; simplicity; differentiated case management; early judicial supervision; elimination of the inactive calendar; predictable dates and deadlines, and flexible scheduling of settlement conferences and trial dates. The rule changes allow judges broad discretion in case management and freedom to process cases in the most effective way.

Highlights include:

- New Rule 16(b), entitled “Joint Report and Proposed Scheduling Order,” requires the parties to confer in good faith on, and jointly file with the court, both a joint report and a proposed scheduling order setting forth specific dates for the principal pretrial deadlines. The forms must be filed 60 days after any defendant has filed an answer or 180 days after the complaint was filed, whichever is first. Mr. Meltzer emphasized that “confer” does not mean that the parties must meet face to face. Each defendant has 180 days to prepare a proposed scheduling order. These rules do not apply to family law cases as they are governed by their own rules.
- A new subparagraph (3) of Rule 16(b) addresses differentiated case management. Parties must file their joint report and proposed scheduling order on Supreme Court-approved forms as set forth in Rule 84. The forms are entitled Expedited Case, Standard Case, and Complex Case. At the request of any party, a court may designate any case as expedited, standard, or complex. The comment to Rule 16(b)(3) allows for use of any appropriate case management system that ensures that the court will be able to conduct each trial on the date it has been set.
- Rule 16(c) addresses scheduling orders. The trigger for entry of a scheduling order is “as soon as practicable” after receiving the joint report and the proposed scheduling order; an alternate deadline is the holding of a scheduling conference instead of a comprehensive pretrial conference. The scheduling order sets calendar deadlines for key events. It also sets a trial date or sets a date for a trial setting conference under new Rule 16(f). Mr. Meltzer pointed out that settlement conferences are highly preferred but not mandatory under the new rule. A comment to Rule 16(c) emphasizes that courts should avoid overlapping trial settings that would then require continuances. The goal is to conduct each trial on the date set.

“Active” and “inactive” calendar language was removed from Rule 38.1. Rather, cases in which the joint report and proposed scheduling order have not been filed within 270 days of the commencement of the action will be placed on a dismissal calendar. A case that remains on the dismissal calendar for 60 days will be dismissed without prejudice unless the forms are filed or the case is continued on the dismissal calendar by court order.

These are the final rules, except for one change in Rule 16 that omitted a requirement that the joint report will be ready for trial. The requirement is in the form already; it was simply omitted from the rule. Mr. Meltzer expects an amended order to be issued shortly to correct the oversight.

#### **B. FY 2015-2019 Judicial Branch Strategic Agenda Update**

Cindy Trimble, AOC audit officer, discussed the FY2015-2019 Judicial Branch Strategic Agenda. She is working with Vice Chief Justice Scott Bales and the AJC Strategic Agenda Subcommittee on the plan, which is tentatively entitled “Justice for All Arizona: Courts Serving Communities.”

In early 2013, Ms. Trimble solicited ideas and suggestions from COSC and other AJC subcommittees. The next step was to synthesize the information into a well-rounded and thoughtful plan. Ms. Trimble presented a draft version that is a work in process. Emerging themes focus on access to justice, evidence-based practices, improving processes, training and workforce development, and proactive communication with the public. Ms. Trimble will present

the first initial draft to the AJC in October, a second draft in December if needed, and a final draft to the AJC in March 2014 for implementation on July 1, 2014.

The current goals – Promoting Access to Justice; Protecting Children, Families, and Communities; Improving Court Processes to Better Serve the Public; Enhancing Professionalism and Efficiency within the Judicial System, and Improving Communications and Community Participation – are serving as placeholders for main ideas; however, they may be placed in a different order.

**Motion:** Mr. Joshua Halversen moved that COSC support the draft of the FY 2015-2019 Judicial Branch Strategic Agenda as written, with the caveat that it may change after consultation with Justice Bales. **Seconded by:** Judge Conlogue. **Vote:** Unanimous.

### C. Legislative Update

Amy Love, AOC legislative liaison, discussed the AJC legislative proposals for the 2014 session.

- 2014-02: Veterans' court; establishment; eligibility - Permits the presiding judge of a superior court to establish a veterans' court and create eligibility criteria for appropriate referrals. Allows a justice of the peace or municipal court judge to refer a case to the veterans' court. The originating court maintains jurisdiction and is required to notify the prosecutor of the case's referral. Authorizes any judicial officer in the county where the offense occurred to adjudicate the referred case.

**Discussion:** The jurisdictional issue was discussed, specifically whether it is more feasible to have the superior court, which will administer the new veterans' court, assume jurisdiction of the case. Ms. Love said this court is based on the homeless court model. A member noted that the jurisdictional issue is not a problem in current veterans' courts operating in the state.

**Motion:** Judge Conlogue moved to support establishment of the veterans' court. **Seconded by:** Judge Celé Hancock. **Vote:** Unanimous.

- 2014-03: Prescription information; probation officers - Requires the Arizona Board of Pharmacy, upon written request by a probation department, to release a probationer's prescription information to the probation officer. Applies only to individuals under supervised probation. The written request must state that the information is necessary during the period of probation for the purposes of case management and supervision. A written request is valid for six months and may be renewed. Amends A.R.S. § 36-2604.

**Discussion:** Members discussed the usefulness of this information to probation departments and specialty courts versus privacy and safe access issues. It was suggested that this proposal could curb "doctor shopping" currently being seen by probation departments. It was reported that the Committee on Probation, which supports the proposal, discussed the access to information issue. Probation officers already have access to the information on an event-by-event basis. This proposal would allow multiple checks during a six month period, providing a long-term view of a probationer's prescription drug use rather than a one-day snapshot. Probation officers do not have unfettered access to the information currently or under the new

proposal. A supervisor at the probation office requests the information from the Board of Pharmacy. Under the current system, a probation department can request the information on multiple occasions but must make a request each time. It was suggested that efforts be made to ensure draft language is HIPAA compliant.

**Motion:** Sue Hall moved to remain neutral on the bill. **Seconded by:** Judge Conlogue. **Vote:** 20-1, motion carried.

- 2014-04: Physician assistants; excused jury service - Authorizes a prospective juror to provide the court with a medical excuse statement from a physician assistant. Amends A.R.S. § 21-202.

**Discussion:** It was noted that most counties currently allow this practice as state law permits physician assistants to have signature authority for doctors. Concerns were raised about abuse of the law and its necessity if counties already allow this practice. It was pointed out that this would solidify some jury service practices with existing laws, making the jury service requirements more substantive.

**Motion:** Judge Kenneth Lee moved that COSC support this legislative proposal. **Seconded by:** Judge Conlogue. **Vote:** Unanimous.

- 2014-05: Issuance of warrants; authority - Authorizes court staff to issue writs, processes, subpoenas, and warrants, including fiduciary arrest warrants, and child support arrest warrants. (Currently, only the Clerk of the Court has this authority.) Amends A.R.S. §§ 12-202, 13-4142, 14-5701, 25-681.

**Discussion:** A question was raised as to the need for the legislation as most Clerk of the Court courtroom employees are deputized to issue warrants. The proposed legislation, drafted at the request of the Superior Court in Maricopa County, is aimed at improving court efficiency. Other counties would not be affected by the change; it allows for a more fluid process if a court chooses to utilize other courtroom staff for this purpose.

Concerns were brought up about data entry and the potential for errors and improper data entry into vital fields if other courtroom staff are allowed to enter the data into the system. A suggestion was made to amend the proposal to allow the presiding judge to decide whether to authorize other courtroom staff to issue warrants. A population provision to allow the larger counties to employ this procedure was suggested. However, such a limitation would bar smaller counties from using the procedure.

**Motion:** Judge Conlogue moved that COSC not support the legislative proposal as written. **Seconded by:** Judge Hancock. **Vote:** None.

**Amended Motion:** Judge Richard Gordon proposed an amendment to the motion to include a provision for each county to have the ability to create its own rule for exceptions or additions. Judge Conlogue rejected the amendment. **Not Seconded.**

A member asked what type of amendments the committee would support. It was suggested that Maricopa County pursue an administrative order, not a local rule change as a rule change would need to go through the formal rule petition process before the Supreme Court.

**Motion:** Judge Conlogue called for the question on his motion that COSC not support the proposal as written. **Seconded by:** Judge Hancock. **Vote:** 15-6; motion carried.

During the lunch break, Judge Janet Barton contacted Judge Norman Davis, presiding judge, Maricopa County, to get more information about the legislative proposal. She clarified that Maricopa County's system provides the Clerk of the Court employee with warrant data; the clerk then physically enters the data into another database that issues the warrant. Re-entry of the data has resulted in errors, with some warrants not being issued in a timely manner. The court software/database system has the ability to allow the user (designated staff in the courtroom) to press a key that will trigger the software to transfer the required data to a warrant form automatically. The proposed legislation would allow Maricopa County to use its technology to prevent errors on warrants and improve efficiency.

The court is not seeking to change the way other counties issue warrants, but the legislation would allow more flexibility in Maricopa County (or any other) when a Clerk of the Court employee is not available in the courtroom. Judge Barton reported that Michael Jeanes, Clerk of the Court for Maricopa County, is non-committal about the proposal.

No additional motion was entertained by the committee.

- 2014-06: Access to background checks; superior court - Grants superior courts access to criminal justice information for the purposes of determining an individual's eligibility for problem solving courts and court programs. The director of the Department of Public Safety (DPS) is authorized to facilitate the exchange of information using the Arizona Criminal Justice Information System or the central state repository. Amends A.R.S. § 41-1750.

**Motion:** Judge Conlogue moved to support the bill. **Seconded by:** Judge Charles V. Harrington. **Vote:** Unanimous.

- 2014-08: Lengthy jury trial fund - (Reinstates repealed language.) Requires the court to impose an additional fee for each filing, appearance, and answer or response fee charged by a clerk of superior court. Directs the Supreme Court to deposit the funds into the Arizona Lengthy Trial Fund. Allows the state treasurer to invest and divest monies and establishes that the monies earned from investment will be credited to the fund. Allows the court to offer exemptions. Contains a repeal date of December 31, 2023. Extends the repeal date of § 21-222; Arizona lengthy trial fund, from July 1, 2014, to June 30, 2024. Contains an emergency clause. Amends A.R.S. § 12-115.

**Motion:** Mr. Halversen moved to support the legislation. **Seconded by:** Judge Nelson **Vote:** Unanimous.

Ms. Love also discussed proposals from two other state agencies. First, the Arizona Criminal Justice Commission (ACJC) has prepared draft legislation regarding the National Instant Criminal Background Check System (NICS). The law would require, among other provisions, that information regarding a person's right to possess a firearm be updated in a mental health repository maintained by the Supreme Court. This information includes appointment of a guardian, findings of incompetence, and the granting of a petition to restore the right to possess a firearm. If enacted, the law would direct the Supreme Court to transmit information regarding a person's right to possess a firearm to DPS. The bill proposes a delayed effective date of January 2, 2015. This would bring Arizona in line with federal law related to the NICS database.

There were questions about the criminal penalties for an incompetent person who possesses a firearm, as prison may not be the best solution. Patrick Scott, AOC, clarified that this legislation would require a specific finding by the court and would apply only to mental disabilities. A finding of mental incapacity would make the individual a prohibited possessor. A mental health database would be developed to allow the court and law enforcement access to the needed information. The database would contain information about individuals ordered for treatment under Title 36, found incompetent and in need of a guardian under Title 14, or found incompetent under Criminal Rule 11.

Second, the State Bar of Arizona is supporting legislation regarding peace officer transport. If enacted, the law would permit a guardian with mental health treatment authority to petition the court for an order directing a peace officer to transport the ward to a level one behavioral health facility or hospital for inpatient treatment or evaluation.

**D. AJCA § 1-402: Procurement Code for the Judicial Branch**

Jennifer Greene, AOC assistant general counsel, discussed proposed changes to the Judicial Branch Procurement Code.

The proposed changes were presented to the presiding judges and to the Committee on Limited Jurisdiction Courts. Only one comment has been received, and the Superior Court of Maricopa County had a few suggestions that will likely be incorporated into the final document. The presiding judge in each superior or limited jurisdiction court can choose to use these procurement rules or local procurement rules. Courts are not mandated to use these rules. The code section applies to the Supreme Court, the AOC, the Court of Appeals, the Commission on Judicial Conduct, and the commissions on appellate and trial court appointments.

**Motion:** Judge Nelson moved to approve the proposed changes to the Procurement Code. **Seconded by:** Mr. Halversen. **Vote:** Unanimous.

**E. eAccess and eBench**

Eric Ciminski, AOC eAccess and eBench project director, and Denise Lundin, AOC business analyst, discussed eAccess and eBench.

**eAccess.** The eAccess project will provide a statewide public access web portal to allow users access to case information using the Internet. The portal will provide case information, documents, bulk data subscriptions, customized data queries, and reports on-line for a fee. The

portal infrastructure supports document and data access by government entities and organizations serving a public purpose. Government entities that enter into a Memo of Understanding will have free access. This is a public-private partnership with a company called AMCAD. Initial rollout for superior court documents for civil and criminal cases is set for the fourth quarter in 2013.

The project's guiding principles are to provide efficient access to court documents and data, ensure security of confidential information, and leverage the investment in the creation and maintenance of digital records. Benefits include 24/7 access to on-line records and increased operational efficiency in courts. eAccess will eventually be self-sustaining, funded by user and subscription fees.

A user will gain entry to the eAccess portal by creating an account, placing documents in a "cart," and paying for them at checkout. The user will see only a small portion of the document before purchase in order to confirm it is the document the user wants to buy. After purchase, the user will have access to the full document. Two fee schedule types – per-document purchase and subscriptions – are offered. The vendor will receive part of the fees. Monies collected above the vendor contract are shared with the court and Clerk of the Court. The fees are structured to create a cost-neutral project. The certification fee will be passed to the Clerk of the Court monthly.

Parties to a case should access their documents through AZTurboCourt, not the eAccess portal. The portal is not currently meant to offer free access documents to parties on the case, although it could be a future option. A person researching a case to which he or she is not a party would use the eAccess portal for document access. Documents are not text searchable.

Concerns were expressed about:

- Whether there will be a way to "pull back" documents from the portal. It was observed that courts are generally operating under policies and procedures that assume there is a hindrance to obtaining court documents (e.g., going to the courthouse). A time may come when policies regarding privacy and public records are inconsistent with pros and cons of on-line access. Further, on-line access may result in an increase in motions to seal in civil cases. Finally, *pro se* litigants and even counsel have mistakenly attached sensitive documents to pleadings.

In response, it was explained that Rule 123, Rules of the Supreme Court, which controls access to court documents, balances the public's right to information and protection of sensitive information. Rule 123 allows the judge or parties by motion to remove information from public access. The eAccess project is well researched and guided by Rule 123. Further, only documents from July 2010 forward will be available on-line.

- Clerks of Court, who are ultimately responsible for court documents, still have reservations about this project. In response, the AOC has included the clerks heavily in this project and has tried to alleviate their concerns. Many counties have different levels of security (sealed, confidential, etc.) that still must be addressed.

- Potential identity theft as court documents sometimes have social security numbers, bank account numbers, etc., attached in violation of court rules. Currently, thieves may be deterred because they must physically go to the courthouse and sign for public records. In response, it was pointed out the AOC blocks access to AOC servers from known identity-theft havens.
- Hacking. Although the AOC has protections against hacking, a lawyer who has an account may be hacked through the lawyer's system. Also, there is no way to protect information placed in a pleading in violation of the rules. In response, it was noted that the AOC will have the ability to pull documents housed on AOC servers, but once a document is downloaded by a user, the AOC has no control of it. Regarding hacking, the AOC's data is stored on a secure server that has numerous zones and firewalls.

**eBench.** eBench is a software tool to assist judges with case management. In May 2013 AOC contracted with Mentis Technology Solutions to provide a software program called aiSmartBench® that will allow judges to more easily work with digital documents. The project will also save time and improve courtroom efficiency and eliminate the need for paper case files. A statewide license was purchased for this project so all courts may use this tool.

The Superior Court in Pima County will be the first to use the software, then the Arizona Court of Appeals, Division 1, followed by AJACS superior courts (with Yavapai County being first), and finally the AJACS limited jurisdiction courts. A 30-week implementation process is anticipated. Methodology and architecture may differ among courts, but from the user's perspective, the tool is the same. Users can access the software from the office, remotely from home, and on Windows®-based mobile devices as authorized by a court.

#### **F. Judicial Education Update**

Paul Julien, AOC judicial education officer, discussed various judicial education topics.

Committee on Judicial Education and Training (COJET). Justice Ann Timmer has been appointed to lead COJET, with Judge Andrew Gould (Appeals Court, Div. One) as vice chair. Judge Roxanne Song Ong has stepped down, and Judge Karen Adams' term expires this year.

Judicial Conference. The 2014 Judicial Conference will be June 25-27, 2014, in Tucson. The Judicial Education Office will be sending a survey in the near future to the judiciary asking for suggestions for topics and presenters at the meeting.

General Jurisdiction New Judge Orientation. GJ-NJO is set for September 23-26, 2013. Judge Joseph Welty, presiding criminal court judge, Maricopa County, and Judge Annette Warner, a retired judge from Pima County, will chair the orientation, which will have 31 attendees.

Resources. The JCA Publications Board has published a draft version of the 2013 Probate Bench Book. The draft was prepared with assistance from Judge Kyle Bryson, Judge Robert Carter Olsen, Commissioner Julia Connors, Judge Harrington, Judge Mackey, Judge Rosa Mroz, Judge Nelson, Judge Jay Polk, and Commissioner Richard Nothwehr. More than 50 judges in Arizona handle probate matters, and the board is looking to build uniformity through the development of

the bench book. Although this is a draft version, the board felt that distributing it to superior court judges in this form could be beneficial. The board welcomes suggestions and comments.

### **III. OTHER BUSINESS**

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

No one from the public was present.

- B. Meeting Dates for 2014:** Friday, February 7, 2014  
Friday, May 2, 2014  
Friday, September 5, 2014  
Friday, November 7, 2014

**C. Adjournment**

**Motion:** Judge Conlogue moved to adjourn the meeting. **Seconded by:** Judge Michala Ruechel. **Vote:** Unanimous.

Adjourned at 1:34 p.m.

**D. Next Meeting Date**

Friday, November 1, 2013, 10:00 a.m. to 2:00 p.m.  
Arizona State Courts Building, Conference Room 119 A/B  
1501 West Washington Street  
Phoenix, AZ 85007

**COMMITTEE ON SUPERIOR COURT  
MINUTES**

**Friday, November 1, 2013**

Conference Room 119A/B  
1501 West Washington Street  
Phoenix, AZ 85007

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**Present:** Judge Janet Barton, Judge James Conlogue, Judge David Cunanan, Judge Sally Duncan, Judge Steven Fuller, Judge Charles Gurtler, Judge Celé Hancock, Toni Hellon, William Klain, Judge David Mackey, Judge Colleen McNally, Charles Moter, Judge John Nelson, Ronald Overholt, Judge Michala Ruechel, Judge Monica Stauffer, Susan Wilson

**Telephonic:** Judge Richard Gordon, Sue Hall, Joshua Halversen, Judge Charles Harrington, Judge Kenneth Lee

**Absent/Excused:** Judge Samuel Vederman, Judge Randall Warner

**Presenters/Guests:** Tom Alongi, Esq.; Cassandra Wallace, ASU School of Law

**Administrative Office of the Courts (AOC):** Jerry Landau, Karl Heckart, Patrick McGrath, Carol Mitchell, Tom O'Connell, Marcus Reinkensmeyer, Mark Meltzer, Mark Wilson, Theresa Barrett

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

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**I. REGULAR BUSINESS**

**A. Welcome and Opening Remarks**

With a quorum present, the November 1, 2013, meeting of the Committee on Superior Court (COSC) was called to order at 10:02 a.m. by Judge David Mackey, chair.

**B. Approval of Minutes**

The draft minutes from the September 6, 2013, COSC meeting were presented for approval.

**Motion:** To approve the September 6, 2013, meeting minutes, as presented. **Moved by** Charles Moter. **Seconded by** Judge Monica Stauffer. **Vote:** Unanimous.

**II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS**

**A. Legislative Update**

Jerry Landau, AOC, introduced Cassandra Wallace, extern from ASU School of Law. He then presented the following information on upcoming legislation.

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- **2014-A National Instant Criminal Background Check System.** (NICS) is a national system that checks available records for information on persons who may be disqualified from possessing firearms. This legislation is an effort by the Arizona Criminal Justice Commission to comply with federal law that mandates that certain persons cannot purchase firearms from a registered dealer and also establishes a national database that dealers can access to check if a potential buyer is a prohibited purchaser. Criteria for entering individuals' names into the NICS database include:
  - Title 36 – Currently, the names of persons who are subject to court-ordered mental health evaluation or treatment under Title 36 are entered into NICS and can be removed from the system after a hearing per statute.
  - Indictment and information – Federal law requires the name of any person under indictment or information to be entered into NICS. That would require a change in court rule. Mr. Landau said language is being drafted and will be discussed.
  - Criminal Rule 11 - Discussion ensued regarding whether all Rule 11 (defendant competency) cases be put in the system or only those involving defendants who are found incompetent. Under the draft proposal, a person subject to Rule 11 would be included in the NICS database but would be removed once Rule 11 no longer applies.
  - Guardianship - Federal law calls for a person who is under guardianship for mental incapacity to be listed in the NICS system; however, Arizona guardianship orders do not distinguish between guardianships for mental incapacity and those for physical incapacity. The consensus was that for accurate compliance with federal law, differentiation must be made between the two types of guardianships.

**Motion:** To table action on the bill. **Moved by** Judge James Conlogue. **Seconded by** Judge Steven Fuller. **Vote:** Unanimous.

- **2014-E Criminal Restitution Orders.** The initial proposal by the Arizona Association of Superior Court Clerks was to repeal the requirement enacted last April requiring the court to enter a criminal restitution order if the defendant absconds from probation. There are dual tracks: (1) Probation oversees payment of restitution, and (2) a victim can seek restitution via a criminal restitution order on an absconder, leaving the case technically still open. The new compromise proposal states that if the person is sentenced and absconds and unless declined by the victim, the court shall issue a criminal restitution order in favor of the restitution to the victim only and not to the monetary obligations.

No motion was made regarding this proposal.

- **2014-I Indigent Defense.** ARS § 13-4015 Legal Service Administration is proposed by the County Supervisors Association to require each county to appoint an administrator to oversee expenses for indigent legal services. The bill would require attorneys who represent indigent defendants to submit requests for expert witnesses, expert witness costs, or scientific testing to the administrator. The administrator would decide whether the requested services are reasonably necessary and then determine reasonable
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compensation for them. If the administrator denied the request, the attorney could appeal the matter to court. The county could then join and argue against the cost.

**Discussion:** Members' concerns included the ethical responsibility of lawyers versus the responsibility of the courts, the impact on Criminal Rule 8 regarding speedy trial rights, and separation of powers.

**Motion:** To oppose the bill in its entirety. **Moved by** Judge Sally Duncan. **Seconded by** Judge Celé Hancock. **Vote:** Unanimous.

## **B. AJACS Case Flow Management Reports Status**

Karl Heckart, AOC, and Patrick McGrath, AOC, gave a brief overview of caseflow management reports and updated the committee on the conversion to AJACS 3.7 software.

- The ITD staff is working diligently with the courts to address any data corruption issues that may have occurred during the transfer process from AZTEC to AJACS. Some data clean-up issues can be addressed through training.
- An amended case status history table script was developed to correct a problem in one AJACS version that prevented updating of the case status history table. The case status history table is critical when counting days, counting excluded days, time to disposition, etc. The report pulls from the history table to count the number of days a case takes from filing to disposition or when it is reopened to re-adjudication.
- A script is in testing regarding case status mapping. Many case status codes in AZTEC are no longer valid in AJACS. Case status codes are being standardized, and a script was created to map previous statuses into the new standardized case status codes.
- Eight new case management reports are available. When AJACS Version 3.9 becomes available, five more reports will become available, for a total of thirteen.
- Version 3.9 roll-out is expected in early 2014 after completion of user-acceptance testing.

## **C. Language Access Update**

Carol Mitchell, AOC, updated the committee on recent activity, critical priorities, and future plans regarding language access. Some the recent activities included:

- Work continues on creation of two-way video remote interpreting systems, where the court can see the interpreter and the interpreter can see what is happening in the courtroom. This also allows for American Sign Language interpretation in the courts. The AOC has created a remote video conferencing suite on the second floor of the State Courts Building that allows interpreters to be in Phoenix while providing interpretation services to a remote location. The process saves the courts and the interpreters time and money. The plan is to continue to increase the number of two-way remote video interpreting locations statewide. Currently, Maricopa, Cochise, Mohave, and Yuma counties have remote video interpreting capability.
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- Courts should review their language access plans each year and ensure that court staff are aware of available language access resources.
- The AOC is currently in the process of having superior court forms that have been identified as vital translated into Spanish. Maricopa County Superior Court has done extensive work in translating forms into Spanish. The AOC is furthering that effort by working toward a set of generic forms and instructions that all courts can use. Justice court and municipal court forms will be translated at a later date. The translated forms are being posted to the Judicial Branch website (<http://www.azcourts.gov>) so all courts can access them. Courts should ensure that their websites have an active link that directs court customers to the translated forms.

#### D. ACJA §§ 6-106, 6-112, and 6-113

David Sanders, chair of the Staff Safety Advisory Committee, Committee on Probation, presented modification of three sections of the Arizona Code of Judicial Administration (ACJA).

- **ACJA § 6-106 Personnel Changes.** The proposed change is to add the definition of *human performance evaluation*. An applicant who has been given a conditional offer of employment in Probation must undergo a human performance evaluation to ensure the applicant will be able to pass the defensive tactics academy once hired. Concentra was asked to work with officers in the field to develop strength, range-of-motion, and agility guidelines that would be needed to pass the academy.

**Motion:** To approve the proposed revisions. **Moved by** Judge Richard Gordon.

**Seconded by** Judge Conlogue. **Vote:** Unanimous.

- **ACJA § 6-112 Use of Force.** Proposed modifications clarify wording and definitions.
    - The term *continuum of control* would be eliminated. Instead, force options would be employed based on a reasonable response to the situation the officer encounters.
    - Conducted Electrical Weapon (CEW) (a generic term for Taser) is being proposed as a force option for officers who are specifically designated to work on a warrants team, where the use of force is more apt to be proactive rather than defensive. CEWs will be used only by armed adult probation and surveillance officers.
    - It is recommended that a written incident report on the use of force be generated by the third business day after the incident instead of the next business day. Concerns were voiced about the possibility of outside influences in the intervening time between the incident and the writing of the report. Mr. Moter, who chairs the Committee on Probation (COP), said these concerns were addressed by COP. He said the focus is on an accurate report, not risk management. It was suggested to retain the language “as soon as possible” in the code, along with “no later than the close of the third business day.” The chief probation officer or the director of juvenile court services may request an exception or extension of the written incident report from the administrative director of the AOC.
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**Motion:** To approve the proposal with the suggested revisions regarding the timeline on written incident report. **Moved by** Mr. Moter. **Seconded by** Josh Halversen. **Vote:** Three opposed, motion carried.

- **ACJA § 6-113 Firearm Standards.** The proposal includes revisions in definitions, technical changes, and language changes to provide consistency with other code sections.

Members discussed whether the phrase “other than time in service” should be added to ACJA § 6-113(G)(6)(s), relating to denial, revocation, or temporary suspension of a probation officer’s authorization to carry a firearm. Concern focused on whether a recently hired officer would be eligible to carry a firearm. New officers must complete certain prerequisites prior to attending the firearms academy, which itself is a prerequisite to being authorized to carry a firearm. As these prerequisites take at least five months to complete before attending the academy, a newly hired officer would not be immediately authorized to carry a firearm. Mr. Sanders indicated that this had been a controversial discussion at COP; however, the majority of COP members agreed on the proposal.

Regarding ACJA § 6-113(G)(6)(m) concerning use of marijuana, it was suggested that the language be changed from “illegally used marijuana” to “any marijuana use.” It was noted that state law allows use of medical marijuana but federal law does not. Therefore, federal funding could be at risk if the prohibition is not clearly stated.

**Motion:** To approve amendment of the code section, including the proposed amendments. **Moved by** Mr. Halversen. **Seconded by** Judge Michala Ruechel. **Vote:** Unanimous.

#### **E. ACJA § 6-52X Evidence Based Pretrial Services**

Tom O’Connell, AOC, presented a new code section that calls for expanding and improving the use of evidence-based practices to determine pretrial release conditions for low-risk offenders. The code section provides the scope, requirements, and procedures for Arizona courts to establish and operate pretrial services consistent with evidence-based practices. The goal is to have the new code, which applies to both superior and lower jurisdiction courts, approved before the legislative session begins.

A question was raised regarding a provision that requires pretrial services staff to inform the court of violations of pretrial release conditions. A suggestion was made to change to the wording to “nontechnical/significant” violations.

Mr. Moter noted that other concerns, such as cost, have been discussed. It is the intent to implement the code by local practice, pursuant to local policy and allocated resources. A delayed implementation date is planned.

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**Motion:** To approve the proposal with the suggestion that collaboration continue with probation departments and pretrial services providers to work out the language for a final version. **Moved by** Judge Conlogue. **Seconded by** Judge Stauffer. **Vote:** Unanimous.

#### **F. Prospective Rule Petitions - State Bar Family Practice and Procedures Committee**

Tom Alongi, Esq., chair of the State Bar's Family Practice and Procedures Committee (FPPC), discussed two petitions being circulated by the FPPC. Comments regarding these petitions should be directed to Mr. Alongi before November 18 so he can meet deadlines for submitting proposals to the State Bar Rules Committee and its Board of Governors.

- **Rule 57, ARFLP.** The Rules of Civil Procedure and the Rules of Family Law Procedure differ regarding audio or audio-video depositions. Under current family law rule, an audio or audio-video deposition is not allowed without stipulation of the parties or by order of the court. The proposed change to Rule 57, ARFLP, removes the requirement for obtaining a stipulation or a court order to electronically record a deposition.

In discussion, Judge Janet Barton noted that in a civil case, video depositions are done to preserve testimony, particularly if a witness is seriously ill or resides in another state. In family court, however, the process is ripe for gamesmanship, with the possibility that parents will ask each other personal questions and then show the video to the parties' children. An inequality also can be created when one party has an attorney and the other is self-represented. She said requests to conduct videotaped depositions are rare, and such requests are not a burden for the court. Mr. Klain noted that a video deposition can be helpful in evaluating a witness's demeanor and for impeachment purposes. The consensus, however, was that the risks are different in family court and that judges do not find it burdensome to issue such orders. It also presents an opportunity to set boundaries for the parties.

- **Rules 83 and 84, ARFLP.** This petition would join motions for reconsideration of judicial rulings to new provisions governing requests for clarification and place them into new Rule 84. Existing Rule 84 would be repealed, and the right to request amended judgment would be integrated into Rule 83 as an alternative form of relief. This way, litigants would have two paths to choose from when debating whether to challenge a judgment: a simple motion for reconsideration or clarification (filed within 30 days) or a formal motion for a new trial or amended judgment (filed within 15 days).

Judge Barton noted that the motion for clarification needs a time limit because the judge who issued the order could have rotated onto another bench. In such a case, one judge would be asked to interpret and clarify another judge's decision.

#### **G. Advisory Committee to Develop Policies for Retention and Destruction of Electronic Records**

Marcus Reinkensmeyer, AOC, presented the report of the Electronic Records Retention & Destruction Advisory Committee. The committee has been meeting since April to address

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questions concerning whether destruction of electronic case documents and data should be mandatory or permissive, the adequacy of current records retention time periods when applied to electronic records, consistency of policies regarding the length of time that case documents and data are available to the public online across court levels and from court to court within the same level, and whether originals or copies of documents or data that have reached their destruction period should be retained for research and analysis purposes, and, if so, whether those records should continue to be publicly available or released only pursuant to court order.

Mr. Reinkensmeyer explained that electronic records are being saved in perpetuity by local courts. While the federal courts have mandatory destruction policies for electronic records, state courts do not. There are concerns that people can be harmed by outdated information being available online. Also, electronic records retention has a staff impact, creates a huge database with accompanying security concerns, and has associated costs for enterprise-sized storage. The committee's recommendations are explained in detail in the report.

During discussion, COSC members had questions specifically about juvenile records. The concern is that in a capital case, every record associated with the defendant may be needed to establish mitigating factors. The result, however, would be that juvenile records would need to be retained indefinitely. The current schedule allows for destruction of the record on the juvenile's 30<sup>th</sup> birthday. The ERR&D Committee is proposing that the electronic record be destroyed 25 years from the date the case is filed.

**Motion:** To approve the concepts in the report of the Electronic Records Retention & Destruction Advisory Committee. **Moved by** Judge Barton. **Seconded by** Judge Charles Gurtler. **Vote:** One opposed, motion carried.

## **H. Rules Agenda Update**

Mark Meltzer, AOC, reported on the Supreme Court's Rules Agenda. The Court disposed of 58 Rule 28 petitions during its August meeting. Three petitions were continued:

- **R-13-0004** [R15.8] currently provides for a sanction if the prosecutor does not disclose material evidence within 30 days of a plea deadline. A workgroup was established and is working toward consensus on an alternate proposal that will be considered November.
  - **R-13-0033** [Rule 42, ER 3.8] would incorporate the ABA's amendment to Model Rule 3.8, which provides ethical guidance for prosecutors regarding the possible conviction of an innocent person. This 2011 rule petition has been exhaustively examined. The Supreme Court took the unusual step of requesting comments on the questions of what criteria should trigger a prosecutor's ethical duty to investigate claims of innocence, what would a reasonable investigation entail, what if the conviction were not in the prosecutor's jurisdiction, and what if the person who learns of the information is not the prosecutor but another attorney. The Supreme Court will consider the comments at its November rules meeting.
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- **R-12-0042** [Civil Rule 7.1] Litigants often agree to extensions of time on briefing schedules without informing the court of this agreement. Agreement must be filed with the court five days before a scheduled hearing and before a response is due.

### **I. ACJA § 7-206: Certified Reporter**

Mark Wilson, AOC, presented proposed amendments to ACJA § 7-206 regarding certified court reporters. He discussed concerns that were raised on the business operations of court reporting firms and freelance certified court reporters who accept assignments through reporting firms. The debate has centered mostly on the means and methods surrounding the production of transcripts and not whether the transcript is accurate, complete, timely produced and that there is equity in the transcript costs billed to each party. The changes proposed to this code remove the contracting related provisions and shift the focus to the accountability of certified reporters and the existing standards of ethics, impartiality, fairness, equity in billing and invoicing, and the professionalism of the individual responsible for the veracity of the transcript.

Numerous comments were submitted on the ACJA forum, many from court reporters complaining about other court reporters who do not maintain sufficient control over billing practices, do not properly controlling the process used to create transcripts, and who are unhappy with the relationships some court reporters are forming with national court reporting firms.

During public comment, John McDonald, the Arizona Court Reporters Association (ACRA), spoke against the proposed changes. He said that ACRA does not consider the proposed changes a fine tuning of the current rules but rather a wholesale change, with an entire section of rules being eliminated.. He stated that it is not just court reporters who object to the proposed changes but also others in the legal community, including members of the bar. He asked what problem is being solved, and he said the summary that was provided to COSC members is inadequate.

Marty Herder also spoke during the public comment. He pointed out that the Chief Justice has appointed a task force to look into this issue and report their findings to the AJC.

**Motion:** To table the AOC proposal until the after the task force has reported to the AJC.

**Moved by** William Klain. **Seconded by** Judge Hancock. **Vote:** Unanimous.

### **III. OTHER BUSINESS**

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

None present.

#### **B. Adjournment**

The meeting adjourned at 2:10 p.m.

#### **C. Next Committee Meeting Date**

Friday, February 7, 2014; 10:00 a.m. to 2:00 p.m.  
State Courts Building, Conference Room 119A/B  
1501 West Washington Street, Phoenix, AZ 85007

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