

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, February 7, 2014

10:00 a.m. to 2:00 p.m.

Conference Room 119 A/B

1501 West Washington Street

Phoenix, AZ 85007

Present: Judge Janet Barton, Judge James Conlogue, Judge Sally Duncan, Judge Steven Fuller, Judge Richard Gordon, Judge Charles Gurtler, Judge Charles Harrington, Toni Hellon, Judge Kenneth Lee, Judge Colleen McNally, Judge David Mackey, Judge John Nelson, Ronald Overholt, Virlynn Tinnell (proxy for Sue Hall), Judge Monica Stauffer, Judge Samuel Vederman, Susan Wilson

Telephonic: Judge David Cunanan, Joshua Halversen, Judge Celé Hancock, Judge Michala Ruechel

Absent/Excused: William Klain, Charles Moter, Judge Randall Warner

Administrative Office of the Courts (AOC): Paul Julien, Amy Love, Mark Meltzer, Marcus Reinkensmeyer, Patrick Scott, Jeffrey Schrade, Kathy Waters, Mark Wilson

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The February 7, 2014, 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 November 1, 2013, COSC meeting were presented for approval.

Motion: To approve the November 1, 2013, meeting minutes, as presented. **Moved by** Judge John Nelson. **Seconded by:** Judge James Conlogue. **Vote:** Unanimous.

Before moving on to the business items, Judge Mackey introduced Chief Justice Rebecca White Berch, who thanked the committee members for their assistance in vetting pending legislation, reviewing upcoming code sections, and offering opinions on the effect of various proposals on rural and urban court jurisdictions. The Chief Justice said she valued and appreciated the ideas, commitment, and service of COSC members. Judge Mackey thanked the Chief Justice for the leadership

she demonstrated during her tenure, and committee members acknowledged her with a standing ovation.

II. BUSINESS ITEMS

A. Legislative Update

Amy Love, AOC legislative liaison, gave a brief update on recently introduced legislation and its impact on the courts. She highlighted the following legislation:

- **S1309: Court ordered Services; dependent children** – If the court determines that services supplemental to those provided through the Department of Economic Security are available to dependent children from another source at no cost to the state, the court may order the services on agreement of the provider.
- **H2457: Mental Health, Veterans Courts; Establishment** – Authorizes the presiding judge of superior court in each county to establish a veterans and mental health court.

During discussion, it was noted that assistance and participation from the Veterans Administration (VA), which provides services to veterans, is important to the success of these specialty courts.

- **H 2021: Vexatious Litigants: Designation** – Allows the court to designate a person as a vexatious litigant and allows the presiding judge or a designee to prohibit the person from filing future actions without court permission.

During discussion, it was noted that an administrative order in Maricopa County already allows the presiding judge to deny a filing if the litigant is determined to be vexatious. In recent years, three orders regarding vexatious litigants, all *pro per*, have been issued, and all have been upheld on appeal. Ms. Love is seeking comments on whether this legislation, if it is successful, will be a resource issue for courts, and she has requested a delayed effective date.

- **H2297: Judicially Appointed Psychologists; Complaints** – Would allow the Board of Psychologist Examiners to consider a complaint against a psychologist arising out of a judicially ordered evaluation.
- **H2307: Sentencing Probation** – Allows mandatory sentencing to be suspended if the person is seriously mentally ill or has a history of mental illness and would benefit from supervised probation.

- **H2327: Settlement of Claims of Minor** – Removes the case law requirement that a guardian *ad litem* be appointed to settle a claim on behalf of a minor. A court could appoint a guardian *ad litem* if the net amount of the settlement is \$10,000 or more. The judge would still have to sign off on the settlement.

A question was raised about the necessity of this legislation. Currently, cases under \$10,000 do not require court approval, but the minor has the ability to contest the amount. The court could determine that the amount is inappropriate and could appoint an attorney for the minor at the insurance company's expense. There is a concern that this legislation would cut off the minor's ability to contest the amount of the settlement.

- **H2454: Human Trafficking; Prostitution** – Makes changes to various laws related to human trafficking, particularly in child prostitution cases involving minors who are 15, 16, or 17 years old.

During discussion, it was noted that there is a need to modify detention facilities to provide semi-secure facilities for children who are victims of human trafficking. Presiding judges can enter into agreements with regional or statewide providers to deprogram trafficking mentality by providing shelter care and treatment services.

- **H2460: Probation; Community Supervision; Search; Seizure** – This legislation would require as a condition of probation that the probationer to be subject to search by law enforcement and probation officers with reasonable suspicion.

A point was raised during discussion that courts should be able to set the probation terms. Probation departments are concerned about safety and offender rehabilitation and the appropriate amount of monitoring.

- **H1038: Parenting Time; Child Relocation** – Legislation to clean up semantics of the bill; eliminates the 100-mile rule in relocations. Requires a parenting plan to include a procedure by which a change in the child's residential address may be mediated or resolved. If passed, this bill has a delayed effective date of January 1, 2015.
- **S1061: Paternity** – The bill is intended to clear up and cross reference Title 25 and Title 8 so the family law bench is aware when a child has already been placed and adjudication is not required.

B. ACJA§ 1-302: Education & Training

Jeffrey Schrade, director of the AOC Education Services Division, presented proposed code changes to COJET. The proposed changes would:

- Eliminate the eight-hour COJET credit limit for non-facilitated learning programs and remove eLearning programs, tours, and ride-along programs.
- Add live training and non-facilitated learning definitions and remove the eLearning definition to COJET.
- Require at least six hours of live training each year. Examples of live training are WebEx, conference calls, or a live broadcast transmitted through the AOC broadcast center.

Motion: Approve proposed changes as written. **Moved by** Judge Conlogue. **Seconded by** Judge Kenneth Lee. **Vote:** Unanimous.

C. ACJA § 7-206: Certified Reporter

Mark Wilson, director of the AOC Certification and Licensing Division, discussed proposed changes to ACJA § 7-206, regarding court reporters. Mr. Wilson previously presented this topic to COSC at its November 2013 meeting, at which time the committee tabled the issue. A task force appointed by Chief Justice Berch has been reviewing the proposed changes and has not yet made final recommendations. Mr. Wilson said there have been meetings with stakeholders, and additional public comment has been received. He presented the most recent staff recommendations to the code:

- **Cost to Litigants.** Requires certified court reporter to disclose the cost of services prior to any proceeding. Allows parties to object to the cost if it exceeds that which is normal and customary.
- **Equality to Litigants.** A certified reporter cannot receive compensation unless a copy of the invoice has been provided to all parties.
- **Confidentiality.** Clarifies that a certified court reporter can use third parties to prepare, store, and distribute a transcript without violating confidentiality requirements. Clarifies that transcripts may only be released to the witness, parties, or the witness and the parties' attorneys.
- **Firm Registration.** All firms providing reporting services shall be registered. Registered reporting firms have the same obligations as the certified court reporter. Requires that if a certified court reporter works for a firm providing reporting services, the firm must be a registered reporting firm.
- **Relationships between certified reporters and others.** Allows contracting but requires disclosure of all contractual relationships prior to the proceeding. If there is no contract, the court reporter is required to disclose

any reporting services performed for a party or an attorney during the previous 12 months.

During public comment, John McDonald, Arizona Court Reporters Association (ACRA), expressed concerns regarding some of the definitions in the code sections, thresholds concerning enforcement, and removal of anti-contracting language that is protective of the public. He said ACRA's concerns have been shared with CLD staff. He stated that ACRA does not feel that substituting disclosure requirements and firm registration are sufficient to protect the public.

Mary Meyer elaborated on the differences in the practices of contracted court reporters versus non-contracted court reporters. She stated that the inequity in billing and service provision that is inherently part of contractual arrangements is why ACRA strongly supports keeping the anti-contracting language in the code.

Discussion ensued regarding when and how disclosure is made and whether disclosure is burdensome to reporters and courts, the distinction between freelance and official court reporters, how are violations reported and what triggers enforcement, and a need for refinement of firm registration.

Motion: Recommend that COSC rely on the comments provided and support moving the process move forward. **Moved by** Judge Charles Harrington. **Seconded by** Judge Steven Fuller. **Vote:** Unanimous.

D. Judicial College of Arizona - Update

Paul Julien, AOC Education Services Division, provided an update on recent Judicial College presentations. A webcast on revisions to the Rules of Civil Procedure and changes in case management was broadcast statewide on February 4, 2014, and has been placed on the Wendell and Judicial Branch websites. The broadcast has two parts, one for staff and one for judges. He thanked Judge Harrington, Judge Lee, and William Klain for their hard work and input in revising the rules. Mr. Julien also announced the dates for upcoming events: New Judge Orientation (Part I), March 3-7, 2014; the Judicial Conference in Tucson, June 25-27, 2014; New Judge Orientation (Part II) September 8-12, 2014, and the Court Leadership Conference in the Fall - date to be determined. New Judge Orientation features five mentors who are available for the entire week of training. The sessions will be taught by 20 faculty members.

C. 2014 Rules Update

Mark Meltzer, AOC Court Services Division, reported on Rule 28 petitions that have been filed in the new cycle. Petitions highlighted were:

- **R-13-0044** – Civil 67; proposes to delete sections (d), (e), and (f) as arbitrary and discriminatory.
- **R-13-0053** – Civil 55(b)(1); seeks to resolve a conflict between two Court of Appeals decisions regarding a defendant who has defaulted for failure to appear. The proposed State Bar amendment would allow entry of judgment on motion and without a hearing in cases where the amount of claim is liquidated.
- **R-13-0061** – Civil 23; seeks an amendment on class action suits regarding residual funds. The Arizona Foundation’s proposal is for 50 percent of residual fees to be used for providing legal services and access to the justice for low-income Arizona residents.
- **R-13-0004** – Criminal 15.8. In November 2013, the Supreme Court adopted an amendment on an emergency basis that authorized the imposition of sanctions for a prosecutor’s failure to disclose material information to a defendant prior to the withdrawal of a plea. The court continued this petition for further review and comment until May 20, 2014.
- **R-14-0005** – Criminal 24.2. In November 2013, the Supreme Court issued an order that had to do with cases where it was later determined after conviction that the defendant was innocent. Amendment would allow filing of a motion to vacate a judgment of conviction at any time after the entry of judgment and sentence.
- **R-14-0007** – Criminal 32.12 gives convicted felons an opportunity to petition the court for DNA testing of evidence. The proposal would establish a procedure for the courts and the parties to follow upon the making of a request and incorporate the Supreme Court’s holding in State v. Gutierrez regarding post-conviction hearing involving DNA testing.
- **R-14-0010** – Criminal 31.2, 31.4, 31.13, 32.4, and 32.9; deals with capital cases. The petition requests that a post-conviction proceeding in a capital case precede the direct appeal. This petition has a staggered comment deadline. The first deadline is April 15, and the second begins June 13.
- **R-14-0004** – SCR 111; requests that unpublished decisions be allowed to be cited for their persuasive value, although they would be non-precedential and non-binding.
- **R-13-0049** – Commission on Judicial Conduct Rules 9, 17, and 18. The petition proposes a new and confidential admonition sanction limited to those cases where the conduct at issue is an unintentional or technical violation of the Code; the judge has not previously received a disciplinary

sanction for similar misconduct; and the judge has not received a disciplinary sanction for any reason within the previous two years.

Mr. Meltzer also informed the committee that revisions to the Rules of Civil Appellate Procedure are in process, with a comment deadline of April 28.

D. ACJA § 6-208: Use of Conducted Electrical Weapons

Kathy Waters, director of the AOC Adult Probation Services Division, presented a new code section that codifies the use of conducted electrical weapons (commonly known as Tasers) by probation officers. Tasers are to be used only on adults and only by probation officers designated by the chief probation officer as members of special teams that are assisting law enforcement, serving warrants, or focusing on fugitive apprehension.

Motion: Recommend the proposal for adoption as written, with the understanding that there will be changes to section K(2)(a) based upon discussion with AOC Legal Services. **Moved by** Judge Nelson. **Seconded by** Judge Charles Gurtler. **Vote:** Unanimous.

E. ACJA § 6-204.01: Interstate Compact

Kathy Waters, director of the AOC Adult Probation Services Division, presented a proposal for technical amendments to this code section and incorporates Appendix A regarding interstate supervision of incoming offenders. Ms. Waters explained that the interstate compact, dealing with supervision of offenders who come to Arizona from other states, has led to dual supervision in some cases where an offender comes into the state with a parole case and a probation case. The appendix clarifies the responsibilities of the AOC and the Arizona Department of Corrections regarding such offenders. The Arizona State Council approved the policy in Appendix A in 2013.

Motion: Recommendation adoption of the proposal as written. **Moved by** Judge Conlogue. **Seconded by** Joshua Halversen. **Vote:** Unanimous

H. Child Support Guidelines – Quadrennial Review

Marcus Reinkensmeyer, director of the AOC Court Services Division, advised that the Supreme Court is preparing for the quadrennial review of the child support guidelines. Through a competitive bid, a qualified consultant will be hired to review and update the schedules using the current costs of raising children as well as a multi-county case file review. The guidelines will continue to be based on the income shares model. COSC members will be asked to review the consultant's recommendations in September, after a public comment period. The Arizona Judicial Council will be looking to COSC for a recommendation.

During discussion, it was noted that the guidelines do not relate to the actual cost of raising a child, the allocation of property and the effect on child support, the disparity among judges regarding deviation from the guidelines, and the effect of equal parenting time on child support.

Mr. Reinkensmeyer will return to the May COSC meeting to introduce the consultant and to update the committee on the review process.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

None present.

B. Adjournment

Meeting adjourned at 1:11 p.m.

C. Next Committee Meeting Date

Friday, May 2, 2014

10:00 a.m. to 2:00 p.m.

State Courts Building, Room 119A/B

1501 West Washington Street

Phoenix, AZ 85007

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, May 2, 2014

10:00 a.m. to 2:00 p.m.

Conference Room 119 A/B

1501 West Washington Street

Phoenix, Arizona 85007

Present: Sue Hall, Judge Celé Hancock, Judge Charles Harrington, Toni Hellon, William Klain, Judge David Mackey, Judge Colleen McNally, Charles Moter, Judge John Nelson, Ronald Overholt, Judge Michala Ruechel, Judge Monica Stauffer, Judge Samuel Vederman, Judge Randall Warner

Telephonic: Judge Kyle Bryson, Judge James Conlogue, Judge David Cunanan, Judge Richard Gordon, Judge Charles Gurtler, Joshua Halversen,

Absent/Excused: Judge Janet Barton, Judge Sally Duncan, Judge Steven Fuller, Susan Wilson

Guests: Dr. Jane Venohr (by telephone)

Administrative Office of the Courts (AOC): Jerry Landau, Chelsey Stacy, Kathy Sekardi, Eric Ciminski, Stewart Bruner, Theresa Barrett, Mark Meltzer

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The May 2, 2014, meeting of the Committee on Superior Court (COSC) was called to order at 10:05 a.m. by Judge David Mackey, chair.

Judge Mackey acknowledged the service of Judge Kenneth Lee, who most recently served on COSC by virtue of his position as associate presiding judge in Pima County. Judge Mackey thanked Judge Lee for his years of service to COSC, noting that he has been with the committee since 2000. Chief Justice Berch has signed a Certificate of Appreciation and a letter thanking Judge Lee for his service. A card was circulated during the meeting so members could send their thoughts and well wishes to Judge Lee. Judge Mackey then introduced and welcomed Judge Kyle Bryson, the newly appointed associate presiding judge in Pima County, to the committee.

Judge Charles Harrington said that Judge Lee asked him to pass along his comments on how much he has enjoyed his 14 years on COSC and how he will miss the people and issues covered by the committee.

Kay Radwanski, AOC, then provided committee members with a brief overview of the emergency exits in the event of a fire drill or an emergency situation.

B. Approval of Minutes

The draft minutes from the February 7, 2014, COSC meeting were presented for approval.

Motion: To approve the February 7, 2014, meeting minutes, as presented. **Moved by** Judge Charles Harrington. **Seconded by** Judge Celé Hancock. **Vote:** Unanimous.

II. BUSINESS ITEMS

A. Legislative Update

Jerry Landau, AOC government affairs director, and Chelsea Stacey, legislative intern, provided an update on the recent legislative session. Mr. Landau said that the five bill proposals authorized by the Arizona Judicial Council all passed. The general effective date is July 24, 2014. Ms. Stacey reviewed the following bills, which were all passed this session:

- **H2021: Vexatious Litigants: Designation** – Allows the court to designate a person as a vexatious litigant and allows the presiding judge or a designee to prohibit the person from filing future actions without court permission. This bill is effective January 1, 2015. The Supreme Court is able to enact any applicable rules that are deemed necessary.
- **H2307: County Attorney; Deferred Prosecution Fund** – Requires the statistical records maintained by the county attorneys to include specific information and requires the annual evaluation of the program to be submitted to the Joint Legislative Budget Committee. Counties are authorized to establish a county attorney deferred prosecution fund.
- **H2310: Criminal Justice Info; Court Reporting** – This AJC bill permits a court to check criminal histories in a family or juvenile case to determine an individual's eligibility for substance abuse and treatment courts. Judge McNally helped write the draft and reworked the language that was approved.
- **H2322: National Instant Criminal Background Checks** – Requires the courts to transmit to the Supreme Court findings on a person who is found incompetent, guilty except insane, for whom a guardianship has ended unless it was for a physical disability only, or a person in need of treatment under Title 36. Courts must send the final minute entries in those cases to the Supreme Court, which will then transmit the information to the Department of Public Safety (DPS). DPS will then enter the information into the National Instant Criminal Background Check System (NICS), which is used by federally registered firearms deals to screen prospective buyers for prohibited possessor status. Mr. Landau said additional language will be drafted for a bill to allow local law enforcement access to this information so that they can act appropriately. This bill takes effect January 1, 2015.
- **H2437: Public Committees; Repeal; Sunset** – This bill, in relation to the Supreme Court, repealed the Child Support Committee and the Domestic Relations Committee. The Community Notification Guidelines Committee was repealed, and notification requirements for sex offenders are now in statute.

Beginning in 2022 and every eight years afterward, the legislature must review the state's participation in the Interstate Commission for Adult Offender Supervision to determine whether to remain in the compact.

- **H2560: Insurance; Self-Evaluation Privilege** – Creates a privilege statute for insurance companies that provides limited ability to use the “insurance compliance self-evaluative audit document” in court.
- **H2562: Probation; Peace Officers; Rights; Investigations** – Governs discipline of law enforcement officers and probation officers, including time limitations, internal investigations, polygraph exams, and appeals. Establishes a peace officers bill of rights that requires employers to make a good faith effort to complete any investigation of misconduct within 180 days. This bill is effective January 1, 2015.
- **H2593: Death; Post Conviction; Appellate Proceedings; Dismissal** – This bill addresses issues raised by the U.S. Supreme Court's decision in *Miller v. Alabama*. A person who is sentenced to life imprisonment with the possibility of release after serving the minimum number of calendar years for the offense that was committed before the person reached 18 years of age is eligible for parole upon completion of serving the minimum sentence, regardless of whether the offense was committed on or before January 1, 1994. If granted parole, the person remains on parole for life unless parole is revoked by statute.
- **H2625: Penalty Assessment; Victims' Rights Enforcement** – Creates a \$2 assessment on all criminal offenses and certain civil penalties, which is not subject to surcharge, for crimes committed on or after January 1, 2015.
- **S1266: Misconduct Involving Weapons; Judicial Officers** – Allows elected or appointed judicial officers (but not hearing officers or part-time *pro tems*) to carry a gun in a courtroom. The presiding superior court judge from each county is authorized to implement rules and policy on allowing a gun in the courtroom. Any judge wishing to carry a gun must meet the competency requirements of the concealed carry permit. However, the law is silent as to who enforces this requirement or how the judicial officer shows concealed carry competency.
- **S1284: Public Safety Officers; Omnibus** - Allows a peace officer who believes that his or her life or safety may be in danger to ask the court to restrict the officer's personal identifying information from superior court records. This is not sealing of records; it is redacting of records. This bill is effective on January 1, 2015.

Mr. Landau said a special legislative session is expected to be called to discuss Child Protective Services, and firefighters are pressing to include pension discussions in the special session. At this point, the focus is on the Public Safety Personnel Retirement System and not the Elected Officials Retirement Plan. The City of Phoenix has a ballot initiative to change to a defined contribution plan for all new employees. There is also a possible 2016 initiative to move all retirement systems to a defined contribution plan.

B. 2014 Child Support Guidelines Quadrennial Review – Preliminary Findings Report

Kathy Sekardi, AOC, introduced Dr. Jane Venohr, research associate at the Center for Policy Research in Denver, Col., who presented telephonically. Dr. Venohr reviewed the federal requirements (45 C.F.R. § 302.56) that required states to have advisory child support guidelines in place by 1987, presumptive guidelines that could be rebutted based on state-determined criteria by 1989, and guidelines review at least once every four years. She outlined the following:

- Arizona has complied with all federal requirements. From 1989 to 2011 Arizona has reviewed, revised, or updated its guidelines seven times, mostly because of new costs or measurements on how much it costs to raise a child.
- The collection of case file review data is being compiled in a cluster sampling from Apache, Maricopa, Pima, and Yavapai counties as these counties make up 80 percent of Arizona's population. These same counties were sampled in the 2008 review, which allows for the comparison of deviation rates across time.
- Preliminary review of findings from 72 percent of sampled cases shows a guidelines deviation rate of 29 percent, the same as in the 2008 review.
- Mother-owed support remained steady at 87 percent, the same as in 2008.
- Essentially equal parenting time increased 15 percent.
- The median monthly gross income is lower for both parents.

Dr. Venohr expects to complete the case file review and prepare a report of her findings by June 2014. Ms. Sekardi said the goal is to present any recommendations to the AJC in September 2014. She then stated that any changes to the guidelines would take effect sometime between January and June 2015. The AOC will be collecting public comment on any proposed changes, and a website has been established to provide more information.

C. Language Access Presentation at State Bar Convention and Judicial Conference and Statewide Training

Judge Nelson reported that Yuma County has developed a language access program that deals with the legal issues and requirements of providing language access, interpreter services and expectations, and how to provide services to remote limited jurisdiction courts. Court representatives from Yuma will be making video presentations to the State Bar of Arizona and at the Judicial Conference in June. They also will travel throughout Arizona making language access presentation during the summer. Yuma County has recruited theater actors to work with court employees to produce 4-5 scenarios that deal with language access issues. These scenarios are based on true events that happened in Yuma. (Names were changed to protect identities.) Judge Nelson expects the language access presentations to be beneficial in helping Arizona court systems and attorneys know what can be expected and how to prepare for a situation where a client or witness need interpreter services for a specific language.

D. Retention, Destruction, and Access to Electronic Court Records

Eric Ciminski, AOC, reported on upcoming changes to the Supreme Court's public access website because of recommendations made by the Records Retention Committee. The AJC adopted the committee's recommendations in December 2013. Changes include:

- Generic local charges will be removed from public access as the current technology design only allows for the description of "local charge" to display instead of the actual charge description. This limitation could cause harm to an individual if the charge is misinterpreted as being of a serious nature without checking with the court for clarification.
- AOC will remove local ordinance violations from the public access website. Courts that maintain their own public access websites may retain local violations if the actual charge description is displayed.
- AOC will remove case records from the public access website that, after December 12, 2013, have reached retention periods found in the records retention schedules. Local courts must remove these case records from their own websites.
- AOC will develop and implement an automatic process for the destruction of AOC-maintained electronic case records per approved retention schedules. Courts operating their own case and document management systems must also destroy electronic case records per the approved retention schedules.
- The AJC approved a two-year implementation period beginning December 2013 to allow time for the computer programming changes necessary to comply.

Mr. Ciminski said courts that use AOC-maintained systems are not required to do anything. However, courts that operate their own systems will need to design their own electronic record destruction procedures and provide a copy to AOC. The plan must include how and when the records custodian will destroy electronic records for all cases that have already reached the retention periods found in the retention schedules, up to and including December 12, 2013. Courts with technology resource and funding restrictions can apply to the Commission on Technology for additional time to implement the recommendations.

E. ACJA § 5-206: Fee Deferrals and Waivers

Theresa Barrett, AOC, presented the recently AJC-approved revisions to ACJA § 5-206 and provided an update on ongoing work that is occurring as a result of the approved recommendations.

- Section D(3): Minimum Clerk Fee – The clerk fee is assessed once, at the commencement of each action or post-adjudication proceeding, for the application, and it is deferred, waived or due in the same manner as other fees and costs.
- Section E(1)(b): Legal Services – If the applicant is a Legal Services client, fees are postponed until the end of the case. The applicant must still complete the

application and provide an affidavit from Legal Services showing that the applicant is an actual client of Legal Services.

- Section E(2)(a): For a person with an income greater than 150 percent but less than 175 percent of the federal poverty guideline, fees are assessed with a minimum payment due at the time of filing. The minimum payment is determined at the county level.
- Section E(2)(b): For a person with an income greater than 175 percent but less than 225 percent of the federal poverty guidelines, fees are assessed with a minimum payment of no less than 25 percent of the total amount due at the time of filing. The minimum payment for subsequent installments is determined at the county level.
- Section E(4): An applicant may voluntarily elect to pay fees and costs even if qualified for a deferral or waiver.
- Section F(1): An applicant who receives Supplemental Security Income (SSI) must present documentation of SSI eligibility at the time of filing.
- Section F(2): Waiver at the end of the case. Applicants who, at the time of filing, are granted a deferral because their income is below 150 percent of the federal poverty guidelines or they are receiving food stamps or TANF, receive a waiver at the end of the case because by definition the applicant's income and liquid assets are insufficient or barely sufficient to meet the daily essentials of life.

As a result of these changes, direction was given at the AJC meeting to create a task force to review the documentation requirements that will be needed when submitting affidavits, look at ways to simplify the forms, and make recommendations related to training of judicial officers on how to implement the changes to the code.

F. R-14-0017: ARCAP Amendments

Mark Meltzer, AOC, reported on a Rule 28 petition to amend the Arizona Rules of Civil Appellate Procedure (ARCAP). He was tasked with drafting revisions to the ARCAP in November 2014. The rules have not been revised since their adoption in 1978. The revisions are both stylistic and substantive. The task was to make the rules easier to understand as a number of litigants are self-represented or represented by law firms that do not often handle appeals. The elements of restyling the rule were to:

- Use informative headings and subheadings
- Break up long sentences or collapse them into fewer words
- Convert lengthy rules into shorter subparts, making it easier to find particular provisions
- Avoid repetition
- Use plain English
- Avoid legal jargon and ambiguous terminology (for example, replacing the word "shall" with "must," "may," "should," or "will," depending on the context)
- Keep the same rule numbers where possible

- Update the rules to reflect current appellate practices and the increasing use of technology

The first round of comments on the proposed rule changes occurred in April. Based on comments received, an amended petition will be due May 20, 2014. The second round of comments are due June 13, 2014. An amended petition, if necessary, will be due July 7, 2014, and then submitted for the August rules agenda. Mr. Meltzer strongly advised COSC committee members to review the rule changes and provide comments.

Mr. Klain acknowledged the efforts of Mr. Meltzer and the attorneys who helped him in handling such a large undertaking in a short four-month period. He stated that Nevada is updating its appellate rules but has a two-year timeline. He also pointed out several changes pertinent to Superior Court judges, including Rule 9.1, which deals with the suspension of appeal, and provisions that pertain to what to do with an untimely appeal.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

Judge Mackey stated that during the meeting, he received an email from Jerry Landau, advising that SB1309 was signed by the governor on April 30. This bill provides that if appropriate facilities are available to the juvenile court, the superior court presiding judge may enter into an agreement for the use of those facilities by a provider of juvenile shelter or treatment services.

Members also were polled about lunch preferences when committee meetings end at noon. The consensus was that the practice should continue.

No one from the public was present at the Call to the Public.

B. Adjournment

Meeting adjourned at 12:03 p.m.

C. Next Committee Meeting Date

Friday, September 5, 2014
10:00 a.m. to 2:00 p.m.
State Courts Building, Room 119 A/B
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**Committee on Superior Court
MINUTES**

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Telephonic: Joshua Halversen, Judge Celé Hancock, Charles Moter, Judge Monica Stauffer

Absent or Excused: Judge James Conlogue, Judge Charles Harrington, Toni Hellon, Ronald Overholt

Presenters and Guests: Dr. Jane Venohr, Center for Policy Research; Janet Sell, Division of Child Support Services, Office of the Attorney General

Administrative Office of the Courts (AOC): Marcus Reinkensmeyer, Amy Love, Patrick Scott, Melinda Hardman, Kathy Waters, Mark Meltzer

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

Judge David Mackey called the September 5, 2014, meeting of the Committee on Superior Court to order at 10:07 a.m.

B. Approval of Minutes

The draft minutes from the May 2, 2014, meeting were presented for approval.

Motion: Judge Steven Fuller moved to approve the minutes as presented.

Seconded by Judge Charles Gurtler. **Vote:** Unanimous

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Legislative Update

Amy Love, legislative liaison, AOC Government Affairs Group, presented two proposals that will be considered by the Arizona Judicial Council (AJC) at its October meeting.

The first proposal involves the Veterans' Court statute. General Gregg Maxon, AOC, brought to the AOC's attention that the statute authorizes judges to order defendants in DUI or domestic violence cases only to screening and treatment programs approved by the Department of Health Services (DHS) or the probation department. This proposal would add screening and treatment programs approved by the Department of Veterans Affairs (VA).

Motion: Judge Colleen McNally recommended that COSC support the proposal to add VA treatment programs to court-ordered treatment. **Seconded by:** Judge Michala Ruechel **Vote:** Unanimous

The second proposal would amend existing law in Title 13 by classifying assault on a judicial officer as aggravated assault. Current law includes prosecutors, public defenders, peace officers, firefighters, teachers, park rangers and several other types of professions. The Committee on Limited Jurisdiction Courts recently voted to approve this measure.

Members discussed whether the proposal should be broadened to cover additional court employees—specifically court personnel and part-time judicial officers—when they are working within the scope of their duties. Ms. Love stated that she would make note of the suggestion to expand the proposal.

Motion: Judge Janet Barton recommended that COSC support the proposal, with the additional recommendations. **Seconded by:** Judge Gurtler. **Vote:** Unanimous

B. Child Support Guidelines Review: Report and Recommendations Regarding Arizona's Quadrennial Review (*taken out of order*)

Dr. Jane Venohr, research associate, Center for Policy Research in Denver, Colorado, presented two reports outlining her findings regarding Arizona's child support guidelines. The Arizona Supreme Court is directed by state and federal law to conduct a quadrennial review of the guidelines. The federal law also requires the review to include a case file review of deviations and an economic review.

The first report—*Economic Review of Arizona Child Support Schedule*—explained the federal requirements, guideline models, current economic evidence of child-rearing costs, and the steps and assumptions used to develop an updated schedule. Arizona's current schedule is based on the Income Shares model with Betson-Rothbarth 3 (BR3) as the economic basis. Dr. Venohr noted that since the 2010 guidelines review, the Betson-Rothbarth 4 measurement of child-rearing expenditures has been produced. The BR3 considers child-rearing expenditures, while the BR4 considers expenditures and outlays. Dr. Venohr explained the major differences between BR3 and BR4 in her presentation. She also presented information on the earnings of Arizona workers based on education and gender.

In her recommendations for an updated schedule, she noted that:

- It is appropriate to consider updating the guidelines schedule to 2014 price levels and current tax rates, as the current schedule relies on 2008 price levels.
- A policy decision would need to be made about whether to use BR3 or BR4 as the economic basis. The BR4 study is the most current, but it suggests decreases and has been known to understate actual child-rearing expenditures.
- Some states only accept increases and retain existing amounts when the BR amount is less than the existing amount.

The second report—*Arizona Child Support Guidelines Review: Findings from the Case File Data*—deals with the federal requirement to collect and analyze case file data to determine the extent of deviation from guidelines. Dr. Venohr analyzed 677 cases from four counties and found that the deviation rate remained the same—26 percent—since the last review. She found an increase in modifications, more cases between never-married parents, and more families at the lower end of the income scale.

Recommendations based on the case file reviews are:

- Update the self-support reserve to \$1,115 a month.
- In orders for two or more children, provide the order amounts for when the oldest child emancipates.
- Add more specificity to the essentially equal provision as there seems to some inconsistency in how guidelines users are defining what is “essentially equal” in terms of parenting time.
- Increase the threshold for the reasonable cost of medical insurance.
- Add more specificity on how the child’s uncovered medical costs should be shared, either prorated or divided equally between the parents.
- Create consistency between how tax exemption for the child is awarded between the parents and the parent ordered to provide medical insurance for the child. The Affordable Health Care Act assigns the responsibility of providing the child’s medical insurance to the parent who claims the child as a tax exemption.
- Expand data collection and analysis to include payment data and whether the parents are divorced or never married.

Without taking action on Dr. Venohr’s recommendations, the committee moved onto the next presentation from the Attorney General’s Office regarding the Self-Support Reserve and temporary child support orders for the unemployed.

C. Child Support Guidelines Review: Recommendation for Changes to Child Support Guidelines Paragraph 15—Self-Support Reserve Test. (*taken out of order*)

Janet Sell, unit chief counsel, Division of Child Support Services (DCSS), Office of the Attorney General, presented a proposed change to the Self-Support Reserve (SSR) used in Arizona’s child support guidelines. In explaining the issue regarding the SSR, Ms. Sell noted that Arizona’s minimum wage of \$7.90 per hour is higher than the federal minimum wage of \$7.25 per hour. The SSR is based on the federal poverty level, and the difference between the Arizona and federal minimum wage rates

misaligns Arizona with the SSR. This difference currently results in a maximum minimum wage order of 34 percent of the parent's monthly income.

Studies have shown that support orders above 20 percent result in lower compliance with orders, payment inconsistency, and arrears accrual. The proposed change would raise the self-report reserve threshold from \$903 to \$1,095, bringing the maximum minimum wage order to 20 percent of the parent's monthly income. The application of the self-support reserve would continue to be discretionary. Ms. Sell acknowledged that Dr. Venohr's recommendation is to raise the SSR to \$1,115 per month. She said the Attorney General's Office would support that recommendation.

The committee asked Ms. Sell to explain her next proposal before taking any action regarding the SSR.

D. Child Support Guidelines Review: Recommendations for Changes to Child Support Guidelines Paragraph 20—Deviations.

Ms. Sell requested a proposed change to the Child Support Guidelines that would give courts discretion, when appropriate, to deviate from a minimum wage order for a limited time to allow an unemployed obligor an opportunity to find employment without accruing large arrears while unemployed. She noted there is a difference in payment compliance when an obligor is attributed a minimum wage compared to an obligor who is actually earning minimum wage. The deviation should be temporary—not permanent—as a permanent deviation might act as a disincentive to find work.

During discussion, it was noted that judges are required to attribute minimum wage and not take into account unemployment benefits, which may be less.

Judge Mackey made a Call to the Public on the child support guidelines discussion, but no one from the public was present. He noted that the committee was under no obligation to act immediately and could revisit the issues at the November meeting.

Motion: Judge John Nelson moved to adopt Dr. Venohr's recommendation to increase the SSR to \$1,115 per month and to adopt the Attorney General's proposal regarding temporary deviation from the child support guidelines for unemployed obligors. **Seconded by:** Judge Barton. **Action:** Motion withdrawn.

Kathy Sekardi, AOC, explained the process for this quadrennial review. Dr. Venohr's reports have been published on the Judicial Branch website, and public comment has been invited. The webpage features a test calculator based on BR4 and with an SSR of \$973 that can be used to compare current orders that are based on BR3 and a lower SSR. The public comment period will close after eight weeks. COSC members will then be asked to review the comments received and make recommendations on the guidelines. Those recommendations then would be opened up for public comment. The Arizona Judicial Council will make final recommendations to the Supreme Court. An effective date could be anywhere between January 1-June 30, 2015.

In response to a question about whether temporary deviations would result in more litigation, Ms. Sell explained that, under the proposal from the Attorney General's Office, the order will set an amount and duration for the deviation and would not require additional hearings.

After hearing an explanation of the review procedure, the consensus among members was to take these issues back to their courts and, as part of their due diligence, seek comment from their benches and clerks' offices.

Motion: Judge Celé Hancock moved to table a vote on any of the child support proposals until after the public comment period and to revisit the issues at the November 7, 2014, COSC meeting. **Seconded by:** Judge Monica Stauffer. **Vote:** Unanimous.

E. ACJA § 5-206 Fee Waiver and Deferral and Administrative Directive 2014-22

Patrick Scott, Court Services Division, AOC, presented revisions to ACJA § 5-207, regarding fee deferral and waiver. He noted that a drafting error has been corrected and was approved by the AJC in June. The correction now makes the provision regarding the minimum clerk fee applicable to all courts, not just superior courts. The revisions have been approved by the Arizona Judicial Council. Application forms are available on the Judicial Branch website and are being translated into Spanish.

F. Draft Revisions to ACJA § 3-402, Superior Court Records Retention and Disposition

Judge Pamela Gates, Superior Court in Maricopa County and chair of the Superior Court Records Retention Revision Committee, presented draft revisions to the Superior Court Records Retention Schedule. She explained that the committee's goal was to restyle, simplify, and clarify the retention schedule so those persons responsible for managing court records have a clear definition as to when records should be retained or destroyed.

Judge Gates highlighted these changes to the retention schedule:

- Addition of a new General Provisions section, which clarifies that when the schedule differ from statute, then statute applies.
- Clarified when the Arizona Library, Archives and Public Records (LAPR) will receive certain documents to be permanently retained there or when the documents are able to be destroyed by the individual courts.
- Clarified that a sealed file will remain sealed in perpetuity absent a court order lifting the seal, whether it is with LAPR or the court.
- Removed probation records from the schedule with the understanding that there will be a new probation retention schedule.
- A column was added to the schedule that explains the instances in which a record will be retained permanently by the court and when it will be transferred to LAPR for permanent retention.

Judge Gates stated that public comments have been received and will be reviewed at the next meeting of the Superior Court Records Retention Schedule Revision Committee. If there are no changes, the revision committee will then present the proposed schedule to the AJC in October. If approved, the schedule is likely to take effect on January 1, 2015.

In response to a question, Melinda Hardman, AOC, explained that retention of a juvenile delinquency file is currently tied to the juvenile's birthday, with a record being eligible for destruction after the juvenile's 30th birthday. The courts do not organize records according to a party's birth date. The proposed schedule will allow for destruction of the case after 25 years, which will take the case past a juvenile's 30th birthday as a juvenile offender is typically age eight or older. Judge Gates pointed out that some decisions were based on technological capacity.

A concern was raised about juvenile records being held for only 25 years, particularly with respect to capital cases. It was argued that all records should be available to a capital defendant, who may have had a strong involvement with the juvenile court system prior to involvement in the adult system. Ms. Hardman said the committee did consider that and recommended the 25-year retention period, partly because that period is longer than the current retention period. Judge Gates said she would take the comment back to the committee.

Another concern was voiced about the 25-year timeline for general stream adjudication case records as some of these cases are still going on after 25 years. Judge Gates noted that a provision was carved out that a record may be held until the reference value has been served. She said she would convey the concern to the records retention committee and discuss whether there should be a carve-out for cases where there is on-going litigation. It was recommended that the retention be 25 years from the date a final non-appealable order is entered, instead of 25 years from the date the case was filed.

Motion: Judge Randall Warner recommended that AJC approve the Superior Court Records Retention and Disposition Schedule as presented, subject to the comments offered by COSC members. **Seconded by:** Judge Sally Duncan. **Vote:** Unanimous.

G. ACJA § 6-105.01: Powers and Duties of Officers Evidence Based Practices

Kathy Waters, Adult Probation Services Division, AOC, presented changes to ACJA § 6-105.01 and requested committee support of these modifications. She explained that A.R.S. §12- 256 was amended this past legislative session and expanded the arrest authority of probation officers from counties with a population of two million or more to all of the counties. A.R.S. § 12- 256 also expanded the duties of adult probation officers enabling them to serve warrants, make arrests, and to bring alleged pretrial conditioned release violators before the court. A probation officer enforcing pretrial release conditions has the authority of a peace officer in the performance of the officer's duties.

Motion: Judge Nelson moved to approve the proposed changes. **Seconded by:** Judge Gurtler. **Vote:** Unanimous.

H. ARCAP Amendments

Mark Meltzer, Court Services Division, AOC, informed the committee that the Supreme Court has adopted simplified rules for filing civil appeals in Arizona's courts. Over the next few years, the Supreme Court intends to comprehensively review other rules, such as those for criminal and civil procedures, with goal of making them user friendly for lawyers, self-represented parties, and court personnel.

Mr. Meltzer highlighted several of the ARCAP rule changes:

- **Rule 1(c) Construction** states that these rules should be used and interpreted by the courts and the parties to achieve the just, speed, and inexpensive resolution of appeals.
- **Rule 2** contains a definition of a judgment and also states that entry of a judgment occurs when filed by the superior court clerk.
- **Rule 3(b) Suspension of an Appeal:** An appellate court may, for good cause, suspend an appeal and re-vest jurisdiction in the superior court to allow the court to consider and determine specified matters.
- **Rule 5(a) Computing Time** provides that the time rules 6(a) and 6(e) of the Arizona Rules of Civil Procedure apply to the ARCAP rules.
- **Rule 5(b) Modifying Timelines** cautions that neither an appellate court nor a superior court may extend the time for filing a notice of appeal, except as provided by Rule 9(f).

III. OTHER BUSINESS

A. Good of the Order:

- The 2015 meeting dates are February 6, May 1, September 11, and November 6.
- Judge Mackey acknowledged Susan Wilson's six years of service to COSC as its Public Member and thanked her for her contributions. Ms. Wilson's term expires in December. He also asked COSC members for nominations for the Public Member seat and asked them to forward names to Kay Radwanski.
- Mr. Klain advised COSC about the Business Court Advisory Committee (BCAC) and its plan to propose, as a pilot project in Maricopa County, formation of a commercial division of the superior court. BCAC will be make its recommendation to the Arizona Judicial Council in December.

B. Next Meeting Date

Friday, November 7, 2014; 10:00 a.m.
Arizona State Courts Building, Room 119 A/B
1501 West Washington Street
Phoenix, AZ 85007

The meeting adjourned at 1:21 p.m.

**Committee on Superior Court
MINUTES**

Friday, November 7, 2014 – 10 a.m. to 2:30 p.m.
Conference Room 119 A/B
1501 West Washington Street
Phoenix, Arizona 85007

Present: Judge Janet Barton, Judge Kyle Bryson, Judge James Conlogue, Judge David Cunanan, Judge Steven Fuller, Judge Richard Gordon, Sue Hall, Judge Celé Hancock, Judge Charles Harrington, Toni Hellon, William Klain, Judge David Mackey, Judge John Nelson, Judge Monica Stauffer, Judge Randall Warner, Susan Wilson

Telephonic: Judge Charles Gurtler, Joshua Halversen, Charles Moter, Judge Michala Ruechel

Absent/Excused: Judge Sally Duncan, Judge Colleen McNally, Ronald Overholt, Judge Samuel Vederman

Presenters/Guests: Judge Eric Jeffery, Phoenix City Court; Judge John Rea, Superior Court in Maricopa County; Dr. Jane Venohr, Center for Policy Research; Janet Sell, Division of Child Support Services, Office of the Attorney General

Administrative Office of the Courts (AOC): Dave Byers, Jeffrey Schrade, Marcus Reinkensmeyer, Jerry Landau, Kathy Waters, Paul Julien, Mark Meltzer, Theresa Barrett, Kathy Sekardi, Susan Pickard, Nick Olm

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

Judge David Mackey called the November 7, 2014, meeting of the Committee on Superior Court to order at 10:02 a.m.

Judge Mackey thanked departing members Charles Moter, Sue Hall, and Susan Wilson for their dedication, hard work, and service to COSC. Their terms end on December 31, 2014, and none sought reappointment.

He also advised that before COSC would vote on action items, members of the general public who had completed a public comment form on the topic under discussion would be permitted to speak for up to three minutes each.

B. Approval of Minutes

The draft minutes from the September 5, 2014, meeting were presented for approval.

Motion: Judge Charles Gurtler moved to approve the minutes as presented.
Seconded by William Klain. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Proposed Amendments to Rule 3, Rules of Criminal Procedure *(taken out of order)*

Judge Eric Jeffery, Phoenix City Court, appearing on behalf of the Committee on Limited Jurisdiction Courts, discussed a rule change proposal that would repeal the Rules of Procedure in Traffic Cases and Boating Cases and make changes to the Rules of Procedure in Civil Traffic and Civil Boating Violation Cases. While the 13 Rules of Procedure in Traffic and Boating Cases would be eliminated, the substance of current Rule 7, regarding failure to appear on an Arizona Traffic Ticket and Complaint, would be incorporated into Rule 3, Rules of Criminal Procedure.

Discussion. Concerns were raised as to whether the proposed amendment to Rule 3.1(e) should indicate that a warrant should issue if a person *wilfully* fails to appear and whether a warrant must issue *promptly*. Judge Jeffery also addressed a question about proposed Rule 10.2, Rules of Court Procedure for Civil Traffic and Civil Boating Violations, regarding a request for a documentary hearing.

Motion: Judge James Conlogue moved to approve elimination of the set of rules, while acknowledging a concern about the language in Rule 3.1(e). **Seconded by:** Judge Steven Fuller. **Vote:** Unanimous.

B. ACJA § 1-302: Computer/Network Security Training Requirement *(taken out of order)*

Jeffrey Schrade, director, AOC Education Services Division, presented a proposed change to ACJA § 1-302 that would require all judicial branch employees and judges to complete mandatory annual training on computer and network security. The proposed change defines what constitutes computer and network security training and clarifies language regarding concurrent accreditation to state that courses of at least two hours in duration may be accredited for more than one required content area.

Discussion. Comments were raised about the necessity of requiring mandatory annual training for judges on computer and network security and whether there is a difference in the training for judicial officers versus staff. It was suggested that judicial officers would find it easier to complete the training if it is offered during the Judicial Conference. Mr. Schrade clarified that the mandatory computer and network security training can be localized and differentiated and noted that the minimum requirement is 30 minutes.

Motion: Judge Richard Gordon moved to approve the proposed changes as presented. **Seconded by:** Judge Conlogue. **Vote:** Motion passed with four votes in opposition.

Mr. Schrade also mentioned the Capital Case training scheduled for November 21-22, 2014, at the Judicial Education Center. Forty judges from nine counties have enrolled in

the training. He also congratulated Kay Radwanski for completing the Arizona Court Management program.

C. Proposed Standards for Mental Health Courts. *(taken out of order)*

Marcus Reinkensmeyer, director, AOC Court Services Division, presented the Mental Health Courts Advisory Committee's (MHC) proposed standards for mental health courts. The purpose of the standards is to provide guidance to existing and new programs. The MHC worked in collaboration with the National Center for State Courts to come up with the proposed standards, which are:

- **Mental Health Court Team** – Works collaboratively with specific roles for every member of the team, outlines responsibilities in a Memorandum of Understanding, and receives education and training.
- **Referral, Eligibility, and Assessment** – Must use pre-defined criteria when determining eligibility; identify potential participants at the earliest time in the criminal justice process; establish general program parameters; communicate the benefits of participation and the legal consequences of not complying with the case plan; a pre-adjudication participant must be advised of terms of participation, and a post-adjudication participant must willingly agree to accept probation over other sentencing options; and defense counsel should be involved.
- **Program Structure** – Facilitates a participant's progressing through the phases of the program, successfully completing the program after meeting all the MHC requirements, and plans for the participant's transition out of MHC.
- **Court Proceedings** – A participant appears before the same judge throughout program; the judge should serve on the MHC for at least two years; the MHC team meets prior to each court session; a review hearing is to be held after staffing; and the participant must be provided the opportunity to state his or her perspective at the review hearing.
- **Treatment** – The MHC team prepares a written case plan for each participant; the case plan is based on evidence-based assessments, provides for quality treatment services from appropriately licensed professionals, and details a participant's responsibilities and actions that might result in termination from the program.
- **Case Plan Adjustments, Incentives, and Sanctions** – Develop policies and procedures for case plan adjustments, incentives and sanctions; consistency in application while taking into consideration a participant's circumstances; adjustments to case plans should precede sanctions or termination; and jail sanctions should be certain, immediate, short in length, and used sparingly.
- **Confidentiality of Records** – MHC records must be protected by legal consent requirements and disclosed only on a need-to-know basis to aid in case planning; must develop a legal release form compatible with HIPAA and other federal laws; and must follow the Supreme Court Records Retention and Destruction Schedule.
- **Sustainability** – Promote public awareness; solicit feedback from all stakeholders; monitor performance measures; implement changes to improve operations and outcomes; and collect data needed to monitor accountability, efficiency and effectiveness.

Motion: Judge Conlogue moved to approve the MHC Standards, while noting a concern about post-program recidivism. **Seconded by:** Judge John Nelson.
Vote: Unanimous.

D. Legislative Update. Jerry Landau, director, AOC Government Affairs, presented the four legislative proposals that the Arizona Judicial Council authorized to move forward:

- **Courts; transaction of business** (Elizabeth Evans, AOC, and Judge Jim Hazel, Apache Junction Municipal Court). Permits a Justice of the Peace court to transact business on the second Monday of October if approved by the presiding judge of the county and if the county board of supervisors designates the Friday after the fourth Thursday in November as a legal holiday in place of the second Monday in October. Permits a municipal court to transact business on the second Monday of October upon approval of the presiding judge if the city or town council designates the Friday after the fourth Thursday in November as a legal holiday in place of the second Monday in October.
- **Court ordered treatment; veterans** (Gregg Maxon, AOC). Adds screening and treatment for alcohol, drugs, and domestic violence through a facility approved by the Department of Veterans Affairs to the list of programs the court may order in a DUI or a domestic violence case. Currently the court may only order DUI and DV defendants into programs approved by the Department of Health Services or probation.
- **Aggravated assault, judicial officers** (Judge Gerald Williams, North Valley Justice of the Peace Court, and Judge Norman Davis, Superior Court in Maricopa County). Classifies an assault on a judicial officer, clerk of court, or court staff as a Class 6 aggravated assault if it occurs during or as a result of the person's execution of duties.
- **Juvenile court; hearings** (Judge Colleen McNally and Lori Ash, Superior Court in Maricopa County). Authorizes the juvenile court to schedule preliminary protective hearings up to five days later than the current timeframes outlined in statute. Requires the Department of Child Safety to provide notice of all periodic review hearings to any foster parent with whom a child resided within the last six months, excluding receiving homes.

E. Proposed Amendments to Rule 74, Arizona Rules of Family Law Procedure, Regarding Parenting Coordinators

Judge Janet Barton, Superior Court in Maricopa County, discussed proposed changes to Rule 74, Arizona Rules of Family Law Procedure (ARFLP). She explained that parenting coordinators are appointed by the court or used by parties in family court cases to resolve or make recommendations regarding post-decree parenting time or legal decision-making issues. Concerns that led to formation of the Parent Coordinator Workgroup are fees, lack of an appeal process for litigants, the qualifications of parenting coordinators, and their scope of authority. The Parenting Coordinator Workgroup has proposed the following:

- **Fees** – A courts cannot appoint a parenting coordinator (PC) on its own motion unless first determining that the parents can afford the PC's fees. When determining affordability, the court must consider all financial assets, liabilities, and obligations. If a parent cannot afford the fees, the court cannot appoint a parenting coordinator unless the other parent agrees to pay all of the PC's fees. A PC must fully disclose

and explain all charges and fees prior to the first substantive meeting. If circumstances change to the extent that one or both of the parents can no longer afford the PC's fees, the parents can file a motion with the court asking the court to discharge the PC even if the PC's term has not yet expired.

- **Lack of resources for parents who have complaints** – Allows a parent, at any time during the PC process, to file a motion with the court regarding any alleged impropriety or unethical conduct by the PC. Allows a parent to file an objection with the court regarding any recommendation made to the court by the PC.
- **A qualified parent coordinator can be** an attorney licensed to practice in Arizona; a psychiatrist licensed to practice medicine or osteopathy in Arizona; a psychologist licensed to practice psychology in Arizona; a person licensed by the Arizona Board of Behavioral Health Examiners; professional staff of a court's conciliation services department; or a person otherwise deemed appropriate by the court's presiding judge.
- **Power and scope of duties and responsibilities** – A PC cannot change an existing court order but can make recommendations concerning the implementation, clarification, modification, and enforcement of a court order regarding legal decision-making or parenting time. In the case of time-sensitive situations or imminent risk to the child, a PC can make a binding temporary decision. The PC's decision and any additional recommendations must be submitted to the assigned judge and each parent or counsel, if represented, on the same day the decision is transmitted to the court but no later than five business days afterward. If the PC intends to talk to third parties who may have relevant information about the case—such as doctors, teachers, therapists, or other caretakers—or entities from which the PC intends to obtain documents, the PC must notify each parent and the court in writing. A PC may recommend that the court order ancillary services such as physical or psychological assessments and alcohol or drug monitoring and testing.

Discussion. Regarding appointment of “a person otherwise deemed appropriate” as a PC, it was suggested that the wording be changed to presiding judge, the presiding judge's designee, or the judge assigned to the case. After public comment, Judge Barton clarified that the workgroup intends to review the appointment order for PCs at a future date.

Call to the Public. The following members of the general public spoke on this topic:

- Michael Espinoza
- Deborah Pearson
- Heath Chapman
- Darla Hyche
- Lisa Hyche
- Brent Miller
- Alfred Trujillo
- Karen Barnes
- David Alger

F. Proposed Changes to ACJA § 6-113 Firearms

Kathy Waters, director, AOC Adult Probation Division, presented proposed changes to ACJA § 6-113. The code modification would identify a warrant officer or a fugitive apprehension officer as a specialized non-case carrying officer assigned full-time to the duties of locating and arresting individuals on warrant status; define firearms as either a handgun or a long gun (rifle); replace the term *firearm* with *handgun*, and distinguish

who can carry a long gun and what the training, authorization, temporary suspension, or revocation of authorization would entail. Ms. Waters stated that if COSC approves the proposed changes to the code, the Committee on Probation will meet telephonically to approve the changes prior to the AJC meeting.

Motion: Judge Nelson moved to approve the proposed code changes as presented.
Seconded by: Judge Conlogue. **Vote:** Unanimous.

G. Business Court Advisory Committee

Judge John C. Rea, Superior Court in Maricopa County, and COSC member William Klain presented on the Business Court Advisory Committee (BCAC) and its goal to look at processes to allow businesses to adjudicate their disputes in a prompt and economical way. The BCAC has come up with the following recommendations:

- A Supreme Court administrative order that would permit the Superior Court in Maricopa County to establish a three-year pilot commercial court, commencing on July 1, 2015. The order would include a provision in the administrative order regarding a four-year extension of the terms of the Business Court Advisory Committee and its members to allow the committee to monitor and evaluate the performance of the commercial court. The committee membership would be expanded to include judges assigned to the commercial court.
- Entry of a corresponding administrative order by the Superior Court in Maricopa County that would establish the pilot commercial court and assign judges to it.
- Adoption of a proposed change to Rule 8.1, Rules of Civil Procedure, that would define a “commercial case”; specify the types of cases eligible for the commercial court; and provide procedures for judicial management of commercial cases. This recommendation proposes mandatory scheduling conferences and includes new forms for joint reports and scheduling orders in commercial cases.
- Adoption by a Maricopa County administrative order of a protocol concerning disclosure and discovery of electronically stored information in a commercial case and modifying its civil cover sheet.
- Creation of an online repository of the decisions of the commercial court judges.

Motion: Judge Conlogue moved to support a pilot program as proposed.
Seconded by: Judge Celé Hancock. **Vote:** Unanimous.

H. Proposed Revisions to the Arizona Rules of Protective Order Procedure (ARPOP):

Kay Radwanski, AOC specialist and staff to the Committee on the Impact of Domestic Violence and the Courts (CIDVC), introduced proposed revisions to the Arizona Rules of Protective Procedure (ARPOP). CIDVC established a workgroup earlier this year to review the rules and recommend modifications to restyle, simplify, and clarify them, in keeping with the *Advancing Justice Together* strategic agenda. She noted that there are only 10 rules but with 49 subparts, which can make rule citation cumbersome. The proposal restructures the rules into 10 parts with 42 shorter rules, with the reorganization designed to follow the chronological progression of a case. Other changes include:

- Words of authority have been simplified, such as changing *shall* to *must*.

- As the statutory definitions of harassment for Orders of Protection, Injunctions Against Harassment, and Injunctions Against Workplace Harassment all differ, the proposed rules include a definition of each type of harassment for each type of order.
- The term *custody* has been changed to *legal decision-making* in accordance with legislative changes to Title 25.
- A rule was added to clarify that a plaintiff staying in a domestic violence shelter cannot be asked to disclose the address of the shelter but must provide an alternative address for court contact. Also, a participant in the Address Confidentiality Program may ask the court to use the participant's substitute address as the participant's residential, work, or school address in court records pertaining to a protective order.
- A rule was added to clarify that if a plaintiff has signed a petition outside the presence of a judicial officer or another authorized person, the judicial officer should ask the plaintiff, on the record, to confirm the authenticity of the signature on the petition.
- The evidence rule was modified at the request of the Arizona Supreme Court Advisory Committee on the Rules of Evidence to make it conform to the same evidentiary standard used in ARFLP when strict compliance with the Arizona Rules of Evidence is not required.

Discussion: A member asked a question about the definition of harassment as it applies to an Injunction Against Harassment. While harassment for purposes of an IAH requires a series of acts, A.R.S. § 12-1809 also says a judge can order an IAH if good cause exists to believe that irreparable harm may occur if the order is not issued. Ms. Radwanski stated that she would take comments regarding the definition of harassment in an Injunction Against Harassment and a question regarding the definition of *ex parte* back to CIDVC for further clarification prior to presenting the AJC.

Call to the Public. Deborah Pearson spoke on this topic.

Motion: Judge Gordon moved to approve the proposed code changes as presented. **Seconded by:** Judge Kyle Bryson. **Vote:** Unanimous.

- I. 2014 Rules Update:** Mark Meltzer, AOC specialist, provided an update on Rule 28 petitions that were adopted by the court during the August rules agenda.
- **R-13-0044** – Civil Rule 67 deletes sections (d), (e), and (f) as arbitrary and discriminatory.
 - **R-14-0005** – Criminal Rule 24.2 permits the state to file a motion to vacate judgment at any time after the entry of judgment and sentence if the defendant was convicted of an offense that the defendant did not commit or the conviction was based on erroneous application of the law.
 - **R-14-0006** – Criminal Rule 12.5 allows for a law enforcement officer to accompany an in-custody witness appearing before a grand jury without the prosecutor having to file a motion with the court.
 - **R-14-0007** – Criminal Rule 32.12 gives a convicted felon an opportunity to petition the court for DNA testing of evidence. The proposal would establish a procedure for the courts and parties to follow in making a request and incorporate the Supreme

Court's holding in State v. Gutierrez regarding post-conviction hearing regarding DNA testing.

- **R-13-0060** – Rule 42 amends the State Bar Ethical Rules relating to technology and globalization of the practice of law, “including the benefits and risks associated with relevant technology.”
- **R-13-0054** – Rule 12, ARFLP, clarifies that a request for an *in camera* interview of a minor child who is the subject of a legal decision-making or parenting time dispute must be submitted by written motion.
- **R-14-0026** – Probate requires that every order appointing a guardian must specify whether the appointment is solely due to the ward's physical incapacity.

J. Child Support Guidelines: Report and Recommendations Regarding Arizona's Quadrennial Review

Theresa Barrett, manager, Court Programs Unit, Court Services Division, and Kathy Sekardi, AOC specialist, presented on the quadrennial child support guidelines review. Ms. Barrett provided an overview of the quadrennial review process to date, and Ms. Sekardi presented a summary of the public comments received on the quadrennial review findings.

Ms. Sekardi noted that public comments fell into three categories. The first category is non-guideline issues, such as the litigant's personal experiences with family court, a request for statutory changes that would extend the support for adult children attending college, concerns from self-represented litigants about attorney costs, concerns regarding the challenges of child support enforcement proceedings, and criticism regarding the review process. The next category deals with the substantive proposal comments, such as increasing the gross income cap to \$50,000 per month, a suggestion that the equal parenting time calculation be done differently, the Attorney General's Offices proposal to allow the court to deviate from a minimum wage order for a limited time where appropriate to give an unemployed obligor time to seek employment and to avoid arrears during the limited time period. There were also comments about the Affordable Care Act and how it could affect the guidelines. The last category of comments dealt with the financial aspect of the guidelines. There were mixed comments from both obligees and obligors in support of and against the proposed guideline revisions.

Dr. Jane Venohr, research associate at the Center for Policy Research in Denver presented telephonically. She said that Arizona's current schedule is based on the income shares model with Betson-Rothbarth 3 (BR3) as the economic basis. Dr. Venohr noted that since the 2010 guidelines review, the Betson-Rothbarth 4 (BR4) measurement of child-rearing expenditures has been produced. The BR3 considers child-rearing expenditures, while the BR4 considers expenditures and outlays.

Ms. Sekardi recommended that COSC approve the updated BR3 schedule and increase the self-report reserve threshold from \$903 to \$1,115. She also asked COSC to recommend that COSC continue to compile all the substantive proposals during the technical review until further studies on the issues can be undertaken.

Discussion: In response to a question about whether COSC intended to consider the Attorney General's Office proposal to deviate from a minimum wage order for a limited time to allow an unemployed obligor an opportunity to find employment without accruing large arrears, Janet Sell, Attorney General's Office, said the AG's Office supports the recommended technical changes to the child support guidelines. She also asked that a task force be created to review issues such as the deviation proposal, federal tax exemption, and the effect of the Affordable Care Act.

Call to the Public: The following members of the general public spoke on this topic.

- Michael Espinoza
- Darla Hyche
- Deborah Pearson
- Lisa Hyche

Motion: In a non-binding vote, as a quorum was no longer present, Judge Conlogue moved to approve the recommended changes to the guidelines, with a caveat that the study of the substantive proposals continue. **Seconded by:** Judge Barton. **Vote:** Unanimous.

III. OTHER BUSINESS

Good of the Order

Next Meeting Date:

Friday, February 6, 2015; 10 a.m.
Arizona State Courts Building, Room 119 A/B
1501 West Washington Street
Phoenix, AZ 85007

The meeting adjourned at 2:30 pm.