

Commission on Victims in the Courts

Friday, March 22, 2019; 10:00 a.m.

Conference Room 329/330

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

[Commission on Victims in the Courts Home Page](#)

Time*	Agenda Items	Presenter
10:00 a.m.	Welcome and Opening Remarks	Judge Ron Reinstein, Chair
10:05	Approval of Minutes—October 19, 2018 <input type="checkbox"/> Formal Action/Request	Judge Reinstein
10:10	Parents of Murdered Children (POMC)	Beckie Miller <i>PMOC, Valley of the Sun Chapter</i>
10:30	Never Again Foundation	R. Keith Perkins
11:00	Arizona Coalition for Victim Services (ACVS)	Amy Bock <i>ACVS Chair</i>
11:05	Advancing Technology to Assist Arizona Crime Victims	Chris Groninger <i>Arizona Bar Foundation for Legal Services and Education</i>
11:15	Legislative Update	Jerry Landau <i>AOC Government Affairs Director</i>
11:30	Restitution Workgroup Update	Kirstin Flores
11:35	Case Law Update	Judge Reinstein
11:45	Good of the Order/Call to the Public	
12:00	Adjournment	

Next Meeting

Friday, June 14, 2019; 10 a.m.

Conference Room 119 A/B

Arizona State Courts Building

2019 Meeting Dates

March 22

June 14

October 18

*All times are approximate and subject to change. The committee chair reserves the right to set the order of the agenda. For any item on the agenda, the committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration § 1-202. Please contact *Susan Pickard*, COVIC staff, at (602) 452-3252 with any questions concerning this agenda. Any person with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting Sabrina Nash at (602) 452-3849. Requests should be made as early as possible to allow time to arrange the accommodation.

Arizona Supreme Court
Commission on Victims in the Courts

Friday October 19, 2018

10:00 a.m. to 12:00 p.m.

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 345 A/B

DRAFT

Present: Hon. Ronald Reinstein, Chair; Mr. Michael Breeze; Judge Maria Elena Cruz; Ms. Sydney Davis; Mr. Jon Eliason; Ms. Kindra Fleming (*proxy for Mr. Timothy Agan*); Ms. Kirstin Flores; Ms. Vanessa Helms; Ms. Leslie James; Judge Kellie Johnson; Ms. Christine Kelly; Captain John Leavitt; Mr. Dan Levey; Ms. Barbara Marshall (*proxy for Ms. Elizabeth Ortiz*); Judge Sam Myers; Ms. Debra Olsen; Mr. William Owsley; Mr. Karyn Rasile; Judge Richard Weiss

Telephonic: Ms. Colleen Clase; Ms. Kim Hedrick; Judge Evelyn Marez; Chief Rod McKone; Ms. Laura Penny; Judge Antonio Riojas, Jr.

Absent/Excused: Sgt. James Markey; Ms. Jane Nicoletti-Jones

Presenters/Guests: Ms. Jessica Gattuso; Ms. Jazmyne Landes; Ms. Lois Rees; Ms. Kendall Schaub; Mr. Daniel Torrez; Mr. Randall Udelman; Judge Maria del Mar Verdin (Ret.)

Administrative Office of the Courts: Ms. Theresa Barrett; Ms. Lynn Golden; Ms. Denise Lundin; Ms. Susan Pickard; Ms. Sabrina Nash

I. REGULAR BUSINESS

A. Welcome, Opening Remarks -

The October 2018 meeting of the Commission on Victims in the Courts was called to order by the Honorable Ronald Reinstein, Chair, at 10:05 a.m. The Chair asked the new members to introduce themselves, then asked for a member roll call and introductions of staff, presenters, and guests.

B. Announcements –

Hon. Ronald Reinstein, Chair shared the following announcements –

- 1) Ms. Denise Lundin will be retiring at the end of the year, and this is her last meeting. In addition, Ms. Lynn Golden will pass on support staff duties to a new unit within the Court Services Division. The Chair and Committee wish both the very best. New committee staff were introduced.
- 2) Ms. Sydney Davis spoke on a current production of "The Trial of the Catonsville Nine" that she is performing in at the Herberger Theater Center.

C. Approval of the June 6, 2018 Minutes -

The draft minutes from the June 2018, meeting of the Commission on Victims in the Courts were presented for approval. The chair called for any omissions or corrections to the minutes.

- Motion was made by Ms. Davis to approve the June 6, 2018 meeting minutes. Seconded by Judge Sam Myers. Motion passed, and minutes approved.

II. GUEST SPEAKERS

A. Marsy's Law – Advocating for state and US Constitutional Amendments for Crime Victims' Rights

Judge Maria del Mar Verdin (Ret.) presented information on Marsy's Law, passed in 2008 in California, which deals with protecting crime victims' rights and informing families of victims of crime of the release of defendants. The Marsy's Law organization now works to amend state constitutions that don't offer protection to crime victims.

B. Victim Offender Dialogue (VOD) Program

Mr. Daniel Torrez, ADC Office of Victim Services, presented information on a new program, Victim Offender Dialogue Program (VOD), which is a program that provides an opportunity for eligible victim/survivors to meet with an offender face-to-face in a safe and secure environment with the assistance of a trained facilitator. The VOD Program is voluntary for both the victim and offender/inmate. Participation by an offender in the VOD Program does not impact his/her sentence, parole, or release considerations. This discussion is meant to empower victims, and to allow 1) the victim to tell the offender the full impact of their crime and share information on a loved one, 2) the victim to find out if the offender has changed since incarceration and if he/she is remorseful and accept responsibility for the crime, and to allow the victim to offer the offender forgiveness, helping the victim to move forward and heal.

III. ARIZONA RULES OF CRIMINAL PROCEDURE – RULE 15.3 (out of order) –

Judge Richard Weiss raised an issue presented in Mohave County by the Mohave County Attorney's Office as to whether they could seek a local rule change. They believed the Criminal Rules Restyling Taskforce inadvertently made a substantive change to Rule 15.3 of the Rules of Criminal Procedure that would prevent prosecutors from deposing uncooperative victims, particularly in domestic violence cases. The discussion concluded that they could not seek a Local Rule for something otherwise covered in Rule 15.3, however, they could go through the Supreme Court Rules Petition process. The discussion dealt with whether a domestic violence victim who chose not to cooperate out of fear or unwillingness to participate in legal proceedings should be forced to cooperate through deposition, as opposed to a victim who was not available due to health or distance concerns. Members concluded that they were still victims, whether they chose to participate or not.

IV. RESTITUTION WORKGROUP UPDATE

Ms. Kirstin Flores, Workgroup Chair, presented that the focus of the Restitution Workgroup has been a revision of the judges' Reference Manual for Restitution in Limited Court jurisdiction. Regular meetings by this dedicated sub-committee has resulted in an updated, organized, and efficient guide. We plan to present the Revised Manual to the AOC next month.

V. ARIZONA CASELAW AND COURT OPINIONS UPDATE

Judge Reinstein and Ms. Colleen Clase presented an update on three recent Arizona Court of Appeals opinions impacting victims' rights. E.H. vs Slayton/Conley filed 8/30/18 – held that anyone who fits within the familial categories of victim in murder and cases in which the victim becomes incapacitated is entitled to VBR. State vs Martinez filed 05/24/19 holding that the presentation of victim impact in the form of a video to the judge was not unduly prejudicial in this case. Z.W. vs Foster/Achenbach filed 05/24/18 holding that the use of the term, "alleged victim" in trial did not violate this victim's rights in this case, however, the superior court retains discretion to assess on a case-by-case basis. This case is being taken up for review.

GUEST SPEAKERS (CONTINUED) -

C. Arizona Crime Victim Rights Law Group –

Mr. Randall Udelman, Attorney, and Mr. Dan Levey presented information on the Arizona Crime Victim Rights Law Group, founded by Mr. Udelman.

This organization provides free legal assistance to victims in dealing with the criminal justice system from the time the charging decision is made through the defendant's completion of sentence and after. Some recent issues they've been working on are the delay of a victim's speedy right to trial when a defendant is ordered into a Rule 11 competency evaluative process and perfecting a victim's right to a pre-conviction restitution lien at the time of indictment, which would preserve the status quo. Also, his group is working towards a procedure in which when courts hold review hearings after a probation officer notices the court that restitution is not being timely paid, the victim may attend and present evidence as to why the defendant should uphold his/her payment obligations as outlined in the recent amendments to ARS § 13-804. Finally, there are other tools in the criminal code that allow the court to have continuing jurisdiction in cases of non-payment of restitution and collection may be obtained by victims through writs of garnishment and execution and other methods. The tools are not being taken advantage of enough and he called for the victims-centric community and defense bar to work collectively to increase the restitution collection rate

VI. 2019 POTENTIAL MEETING DATES

Ms. Lynn Golden, COVIC Staff, shared the potential meeting dates for COVIC in 2019 that are available on the Arizona State Courts Building calendar. Information will go out once dates are finalized to firm then up. Expect to be contacted by COVIC Staff regarding final dates soon.

Postscript: 2019 dates have been confirmed and sent out to members.

VII. CALL TO PUBLIC

Judge Reinstein made a Call to the Public. Ms. Chis Kelly announced Aaron Nash will be leaving the Maricopa County Clerk's Office to be the new Public Information Officer for the AOC.

VIII. ADJOURNMENT -

- Motion was made by Judge Myers to adjourn. Seconded by Captain John Leavitt. Motion passed. Meeting adjourned at 12:06 p.m.

NEXT COMMITTEE MEETING DATE

**March 15, 2019
10:00 a.m. to 12:00 p.m.
State Courts Building, Room 345 A/B
1501 W. Washington St., Phoenix, AZ 85007**

DRAFT

Commission on Victims in the Courts

Date Action Required:	Type of Action Required:	Subject: Parents Of Murdered Children – chapter programs and services and victim issues
March 22, 2019	<input type="checkbox"/> Formal Action/Request	
	<input checked="" type="checkbox"/> Information Only	
	<input type="checkbox"/> Other	

PRESENTER(S): Beckie Miller, Parents Of Murdered Children, Valley of the Sun Chapter

DISCUSSION: POMC and issues of surviving families of a murder victim

RECOMMENDED MOTION:

OTHER RESOURCES

● **NEW SURVIVORS TAPE:** WE HAVE COPIES OF THE NEW "WE ARE THE SURVIVORS" CD AVAILABLE FOR \$10 PLUS SHIPPING AND HANDLING. YOU CAN LISTEN TO IT ON THE **POMC** WEB SITE WWW.POMC.ORG.

● **ASK THE EXPERTS:** TOO OFTEN SURVIVORS OF HOMICIDE VICTIMS ARE LEFT WITH UNANSWERED QUESTIONS. ON THE **POMC** NATIONAL WEBSITE WWW.POMC.ORG PLEASE CLICK ON ASK THE EXPERTS SECTION TO LEARN MORE ABOUT THIS PROGRAM.

● **BIG TURN OFF:** THIS IS AN ANNUAL EVENT, EACH JANUARY, IN WHICH CITIZENS ARE ASKED TO TURN OFF THEIR TELEVISIONS FOR ONE EVENING DURING PRIME TIME HOURS TO PROTEST THE VIOLENCE ON TELEVISION.

● **MURDER WALL:** A TRAVELING TRIBUTE HONORING THE MEMORIES OF MURDER VICTIMS. A PHOTO ALBUM IS ALSO AVAILABLE WITH EACH PLAQUE. CURRENTLY, THE COST IS \$75 TO ADD YOUR LOVED ONES' NAMES TO THE WALNUT PLAQUES THAT COMPRISE THE MURDER WALL. YOU HAVE TWO PAGES FOR THE PHOTO ALBUM TO ADD INFORMATION, POETRY OR PICTURES.

● **SURVIVORS NEWSLETTERS:** IS AVAILABLE THROUGH NATIONAL ONLINE AS WE HAVE GONE GREEN. WWW.POMC.ORG. IT IS A WONDERFUL WAY TO STAY CONNECTED, KEEP INFORMED ABOUT **POMC** NATIONALLY AND ALSO **SUPPORT** NATIONAL FINANCIALLY.

● **CRIME VICTIMS RIGHTS LEGAL ASSISTANCE PROJECT:** THROUGH ARIZONA VOICE FOR CRIME VICTIMS PROVIDES FREE LEGAL REPRESENTATION FOR CRIME VICTIMS TO ASSERT THEIR RIGHTS IN COURT: (480.600.2661) WWW.VOICEFORVICTIMS.ORG

● **COLD CASE HOMICIDE REGISTRY** WITH THE PHOENIX POLICE DEPARTMENT: WWW.PHOENIX.GOV/POLICE/INVESTIGATIONS/COLDCASE/INDEX/HTML

● **SUPPORT FOR SIBLINGS:** CONTACT AMANDA HARRIS @ 623.866.3189

● **CRIME VICTIM COMPENSATION:** HELP FOR FUNERAL AND OTHER COSTS FOR QUALIFYING VICTIMS OF CRIME. 602.506.4955

PARENTS OF MURDERED CHILDREN, INC., IS A SELF-HELP ORGANIZATION DEDICATED TO THE AFTERMATH OF MURDER. THE SUCCESS OF ITS MISSION DEPENDS UPON THE PARTICIPATION OF THE FAMILIES AND FRIENDS OF THOSE LOST TO MURDER.

WHY WE ARE HERE:

MISSION STATEMENT:

"POMC MAKES THE DIFFERENCE THROUGH ONGOING EMOTIONAL SUPPORT, EDUCATION, PREVENTION, ADVOCACY, AND AWARENESS."

VISION STATEMENT:

"TO PROVIDE SUPPORT AND ASSISTANCE TO ALL SURVIVORS OF HOMICIDE VICTIMS WHILE WORKING TO CREATE A WORLD FREE OF MURDER."

PARENTS OF MURDERED CHILDREN, INC. VALLEY OF THE SUN CHAPTER

"FOR THE FAMILIES & FRIENDS OF THOSE
WHO HAVE DIED BY VIOLENCE"



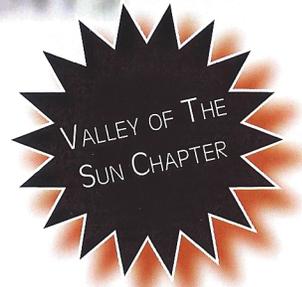
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GLENDALE, AZ 85308-2215
PHONE: 602.254.8818
WWW.POMC.COM/PHOENIX
CHAPTER E-MAIL: BECKIEROSE@AOL.COM

NATIONAL ORGANIZATION OF PARENTS OF MURDERED CHILDREN, INC. (POMC)

635 WEST 7TH STREET, STE. 104 CINCINNATI, OH 45203
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*"For the Family &
Friends of those who have
died by violence."*



www.pomc.com/phoenix

PARENTS OF MURDERED CHILDREN, INC.

POMC PROVIDES ONGOING SUPPORT FOR SURVIVORS BY:

- **MONTHLY NEWSLETTER, "THE JOURNEY"**
- **REGULAR SUPPORT MEETINGS**
- **COURT ACCOMPANIMENT**
- **ANNIVERSARY CARDS**
- **GRIEF WEEKENDS (SPRING AND FALL)**
- **SPEAKER MEETINGS**
- **INFORMATION PACKET / NEW MEMBER**
- **VALLEY OF THE SUN CHAPTER MEMORIAL WALL, "IN THEIR LOVING MEMORIES"**
- **PICTURE BOARD DISPLAY**
- **MEMORIAL CARDS**
- **VALLEY OF THE SUN FACE BOOK PAGE**
<https://facebook.com/POMC-Valley-of-the-Sun>
- **HOLIDAY MEMORIAL VIDEO TRIBUTE**

WE STRIVE TO KEEP THE MEMORY OF OUR LOVED ONES LOST TO VIOLENCE ALIVE THROUGH OUR DECEMBER HOLIDAY MEMORIAL PROGRAM AND OUR NATIONAL DAY OF REMEMBRANCE FOR MURDER VICTIMS COMMEMORATION EVENT.

ON THE SENATE GROUNDS AT THE CAPITOL WE ALSO HAVE A MEMORIAL BENCH, TREE AND STEPPING STONES WITH THE NAMES, AGES, AND MURDER DATES OF LOVED ONES.

GRIEF SUPPORT MEETINGS:

7:00 PM

WEST VALLEY: 4TH TUESDAY
8335 WEST JEFFERSON STREET
PEORIA, ARIZONA 85345

CENTRAL PHOENIX MEETING: 4TH TUESDAY
MOUNTAIN VIEW POLICE PRECINCT
2075 EAST MARYLAND
PHOENIX, ARIZONA 85016
COMMUNITY ROOM

BILINGUAL EAST VALLEY MEETING: 4TH TUESDAY
QUEEN OF PEACE CHURCH
30 WEST 1ST STREET
MESA, ARIZONA 85201
ROOM ST. JOHN 7

*** PLEASE CALL TO MAKE SURE MEETING SITES ARE CURRENT BEFORE ATTENDING: (602.254.8818)**

SPEAKER / INFORMATION MEETING

7:00 PM

2ND TUESDAY EACH MONTH
MOUNTAIN VIEW POLICE PRECINCT COMMUNITY ROOM
2075 EAST MARYLAND
PHOENIX, ARIZONA 85016

(OFF AZ 51 AT 20TH ST. BETWEEN GLENDALE & BETHANY HOME)
(THIS MEETING OFFERS PROFESSIONALS, SUCH AS JUDGES, COUNSELORS, PROSECUTORS, DETECTIVES, MEDICAL EXAMINERS, FUNERAL HOME DIRECTORS, TRAUMA HOSPITAL STAFF AND OTHERS WHO CAN HELP US LEARN TO COPE AND TEACH US HOW TO NAVIGATE THE MAZE OF THE CRIMINAL JUSTICE SYSTEM.)

POMC PROVIDES SPEAKERS FOR THE MEDIA AND VICTIM PANELS FOR REQUESTING PROFESSIONALS AND ORGANIZATIONS. ON OCCASION, WE ALLOW THE MEDIA ACCESS TO OUR MEETINGS.

WE ALSO ALLOW PROFESSIONALS, COUNSELORS, VICTIM SERVICE INTERNS, PSYCHOLOGY/DOCTORATE STUDY STUDENTS, ETC., TO ATTEND OUR SUPPORT MEETINGS TO BE EDUCATED TO THE PLIGHT OF VICTIMS AND SURVIVORS OF THIS TRAUMATIC CRIME. OUR SPEAKER/INFORMATION MEETING IS ALWAYS OPEN TO ANYONE, PROFESSIONALS AS WELL AS SURVIVORS.

PROGRAMS

● **PAROLE BLOCK PROGRAMS:** TO DATE, THIS PROGRAM HAS KEPT MORE THAN 1,600 CONVICTED MURDERERS FROM BEING RELEASED EARLY. PAROLE BLOCK WAS BEGUN IN 1990 AND ALL MEMBERS ACROSS THE US WHOSE LOVED ONE'S KILLER IS UP FOR RELEASE/PAROLE CONSIDERATION CAN FILE A PETITION WITH NATIONAL THAT IS SENT NATIONWIDE FOR SIGNATURES PROTESTING THEIR RELEASE.

● **SECOND OPINION SERVICES:** A PROGRAM THAT PROVIDES SECOND OPINIONS ON UNSOLVED OR COMPLICATED CASES BY A NATIONAL BOARD COMPRISED SOLELY OF EXPERTS IN THE MEDICAL, LAW ENFORCEMENT AND INVESTIGATIVE FIELDS.

● **MURDER IS NOT ENTERTAINMENT (MINE) PROGRAM:** THROUGH THIS PROGRAM, POMC RAISES PUBLIC AWARENESS TO THE INSENSITIVITY OF MURDER AS ENTERTAINMENT THROUGH TOYS, GAMES, MURDER MYSTERY WEEKENDS, DRIVE BY SHOOTING FASHIONS, SERIAL KILLER TRADING CARDS AND ANYTHING THAT GLAMORIZES VIOLENCE.

● **SILENCED VOICES:** A PROGRAM BEGUN IN JANUARY 2002 WHICH ADVOCATES FOR THE VIGOROUS INVESTIGATION AND PROSECUTION OF THOSE RESPONSIBLE FOR THE MURDER OF ABUSED CHILDREN. THE FIRST CASE WAS THAT OF BRANDI CONLEY. POMC WAS INSTRUMENTAL IN BRINGING CHARGES AGAINST HER PARENTS.

Commission on Victims in the Courts

Date Action Required:	Type of Action Required:	Subject:
March 22, 2019	<input type="checkbox"/> Formal Action/Request	Never Again Foundation
	<input checked="" type="checkbox"/> Information Only	
	<input type="checkbox"/> Other	

PRESENTER(S): R. Keith Perkins

DISCUSSION: Mr. Perkins will discuss the Never Again Foundation Legal Services (NAF) and its goal of providing therapeutic jurisprudence, using the law to help victims of domestic violence heal. Currently, 75% of NAF clients are children and families of murder victims. These judgments are giving our clients new hope for a better life as well as, healing from the horrific past abuse, and helping them obtain justice.

RECOMMENDED MOTION:

Commission on Victims in the Courts

Date Action Required:	Type of Action Required:	Subject:
March 22, 2019	<input type="checkbox"/> Formal Action/Request	Arizona Coalition for Victim Services (ACVS)
	<input checked="" type="checkbox"/> Information Only	
	<input type="checkbox"/> Other	

PRESENTER(S): Amy Bocks, ACVS Chair

DISCUSSION: The ACVS is a 20-year non-profit in Arizona comprised of victim services providers and community stakeholders focused on networking, improving services to crime victims through education and advocacy, and offering nationally accredited training to service providers at all governmental and non-profit levels who work directly with crime victims.

RECOMMENDED MOTION: n/a

Commission on Victims in the Courts

Date Action Required:	Type of Action Required:	Subject:
March 22, 2019	<input type="checkbox"/> Formal Action/Request	Advancing Technology to Assist Arizona Crime Victims
	<input checked="" type="checkbox"/> Information Only	
	<input type="checkbox"/> Other	

PRESENTER(S): Chris Groninger, Arizona Bar Foundation for Legal Services and Education (Foundation)

DISCUSSION: Chris Groninger will share Information on the technology grant the Foundation was awarded in October 2018.

RECOMMENDED MOTION: None

Commission on Victims in the Courts

Date Action Required:	Type of Action Required:	Subject:
March 22, 2019	<input type="checkbox"/> Formal Action/Request	Legislative Update
	<input checked="" type="checkbox"/> Information Only	
	<input type="checkbox"/> Other	

PRESENTER(S): Jerry Landau, Director or Amy Love Deputy Director, Government Affairs

DISCUSSION: Mr. Landau or Ms. Love will present bills that in the legislative process that may impact victims' rights.

RECOMMENDED MOTION: N/A

Commission on Victims in the Courts

Date Action Required:	Type of Action Required:	Subject:
March 22, 2019	<input type="checkbox"/> Formal Action/Request	COVIC Restitution Workgroup
	<input checked="" type="checkbox"/> Information Only	
	<input type="checkbox"/> Other	

PRESENTER(S): Kirstin Flores or Amy Bocks, AZ Attorney General's Office

DISCUSSION:

Report on the activities and work of the COVIC restitution workgroup.

RECOMMENDED MOTION: n/a

FILED
TENT L. HELLON
CLERK, SUPERIOR COURT
DEC 18 AM 10 19

DEC 18 2018

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. HOWARD FELL

CASE NO. CR20164016-001

BY: ST. GERMAINE, DEBRY

DATE: December 17, 2018

STATE OF ARIZONA
Plaintiff,

vs.

STEVEN ANAYA
Defendant

UNDER ADVISEMENT RULING

IN CHAMBERS UNDER ADVISEMENT RULING RE: MOTION FOR RESTITUTION

The Court held a hearing on the State's Motion for Restitution on November 26, 2018. Defendant Steven Anaya objected to the restitution claim made by the Pima County Crime Victim's Compensation Fund for future loss of financial support. The Victim's Compensation Fund offers a maximum amount of \$25,000 to the victims for each case. Here, an amount of \$9,122.34 was awarded for missed work for the victim's mother, funeral expenses for the wife, counseling for the victim's mother, and gas mileage for attended court hearings for both women. The remaining \$15,877.66 was awarded for future loss of financial support to the victim's wife.

To calculate the future loss of financial support amount, the Victim's Compensation Fund determined the deceased victim's annual salary. It then took the age of the victim's youngest child and determined nine years remained until the child reached eighteen-years-old. The victim's annual salary multiplied by nine equaled a total amount of \$51,900.48. Because \$25,000 was the maximum allowable payout to the victim's family, the difference of \$25,000 and \$9,122.32 was provided to the victim's wife instead of the \$51,900.48.

Defendant asserts that future loss of financial support is not a category that can be awarded for restitution as it too speculative and is a consequential loss. A defendant convicted of a crime must pay restitution to the "victim of the crime or to the immediate family of the victim if the victim has died, in the full amount of the economic loss as determined by the court." A.R.S. § 13-603(C). A claim for restitution is valid when the loss is economic, would not have occurred but for the criminal conduct, and is directly caused by the criminal conduct. *State v. Linares*, 241 Ariz. 416, 418, ¶ 7, 388 P.3d 566, 568 (App. 2017) (citing *Gorman v. City of Phoenix*, 152 Ariz. 179, 182, 731, P.2d 74 (1987)). "Economic loss" is defined in A.R.S. § 13-105(16):

"Economic loss" means any loss incurred by a person as a result of the commission of an offense. Economic loss includes lost interest, lost earnings and other losses that would not have been incurred but for the offense. Economic loss does not include losses incurred by the convicted person, damages for pain and suffering, punitive damages or consequential damages.

* The full amount of a victim's economic loss includes "those losses reasonably anticipated to be incurred in the future as a result of the defendant's actions." *State v. Howard*, 168 Ariz. 458, 460, 815 P.2d 5, 7 (App. 1991).

Kathryn Ore
Law Clerk

UNDER ADVISEMENT RULING

Page 2

Date: December 13, 2018

Case No.: CR20164016-001

However, a defendant's liability only extends to expenses that "flow directly from the defendant's criminal conduct, without the intervention of additional causative factors." *State v. Wilkinson*, 202 Ariz. 27, 29, ¶ 7, 39 P.3d 1131 (2002). Consequential damages may not be ordered in restitution, as they do not flow directly from the criminal activity. *State v. Morris*, 173 Ariz. 14, 16, 839 P.2d 434, 436 (App. 1992).

Defendant was found guilty of first-degree murder for the death of deceased victim. The victim worked for Ford Motor Company and provided for his wife and two minor children. The Court FINDS victim's wife and two children are entitled to the future loss of financial support. The claimed amount flows directly from Defendant's criminal conduct. It is not excessive, speculative, or consequential. Accordingly, IT IS ORDERED Defendant pay restitution in the total amount of \$25,000 to the Victim's Compensation Fund.



HON. HOWARD FELL

cc: Clerk of Court - Criminal Unit
Clerk of Court - Under Advisement Clerk
Deputy County Attorney - Soo Chang Conatser, Esq.
Court-Appointed Defense Counsel - Dawn L Priestman, Esq.
Court-Appointed Defense Counsel - Rebecca E Katz, Esq.

Kathryn Ore
Law Clerk

2019 Rule Petitions
Petitions of Interest to COSC and the LJC

This summary includes petitions that are pending consideration by the Supreme Court in the current rules cycle. The summary excludes petitions concerning State Bar activities, attorney admissions, attorney ethics and the practice of law, judicial ethics, petitions regarding local rules, and petitions continued from the previous rules cycle.

Pending rule petitions are available for your detailed review on the Court’s Rules Forum.

[Click here to access the Rules Forum.](#)

This summary features a checkbox for committee members to identify petitions that might warrant the filing of a formal committee comment, or that merit further committee discussion.

The comment deadline for these rule petitions is May 1, 2019, unless otherwise noted.

Petition Number and Petitioner	Rule	Summary
CIVIL PROCEDURE		
1. R-19-0001 Goldwater Institute, by Timothy Sandefur	Civil Rule 68(g) <input type="checkbox"/>	Petitioner contends that current Rule 68 unjustly penalizes plaintiffs who invoke the courts’ jurisdiction to promote the public interest. The proposed amendments to Rule 68(g) would allow the court to decline to award sanctions against a party who made a good faith, non-frivolous effort to vindicate an important public policy that “would benefit a large number of people,” and prohibit the court from assessing sanctions if the action sought only declaratory or injunctive relief, or nominal damages. <u>But see further</u> R-19-0015, discussed below, which proposes to completely abrogate Rule 68.
2. R-19-0003 Rule 5.4 Study Group, Hon. Sara Agne, Chair	Civil Rule 5.4 <input type="checkbox"/>	This petition would add a definition of “case initiating document” and a new Rule 5.4(i) regarding the filing of a case initiating document under seal. Due possibly to Rule 5.4’s recent adoption, superior court clerks have encountered more parties attempting to file case-initiating documents under seal—a situation that existing Rule 5.4 does not explicitly address. Among other things, the amendments proposed by this petition would require a party who wants to file a case-initiating document under seal to first file a publicly accessible version of the document (i.e., a redacted version), which

2019 Rule Petitions

COSC: May 3, 2019/ LJC: February 20, 2019

		would allow the clerk to assign the matter a case number. A judicial officer would thereafter review the unredacted version and apply the other requirements and considerations specified in Rule 5.4.
3. R-19-0015 State Bar of Arizona	Civil Rule 68 <input type="checkbox"/>	<p>This petition proposes to abrogate Rule 68 (“offer of judgment.”)</p> <p>The State Bar concluded that Rule 68 leads to unjust results because sanctions are imposed even when an offeree reasonably rejects an offer, and because the amount of the sanction is unrelated to the reasonableness of the offeree’s rejection. The State Bar believes that (a) Rule 68 can lead to unjust results by imposing disproportionately harsh sanctions on litigants; (b) Rule 68 does not encourage reasonable settlement behavior, but instead encourages settlement through threat of sanctions, regardless of the reasonableness of a litigant’s behavior; and (c) other means exist that more effectively and fairly encourage settlement.</p> <p>The State Bar studied possible amendments to Rule 68 but concluded that abrogation of the rule was preferable.</p>
4. R-19-0019 State Bar of Arizona	Civil Rule 26(c) <input type="checkbox"/>	<p>Rule 26(c) concerns protective orders regarding discovery. The proposed amendment to Rule 26 would add a new subpart that references Rule 5.4 when the request for a protective order asks for permission to file documents under seal. (“Any request under Rule 26(c) for an order to file a document under seal must state clearly the facts and law justifying filing the document under seal, including, if applicable, why the request satisfies the requirements of Rule 5.4(c)(2). Any sealing order issued under this rule is subject to the requirements of Rule 5.4(c)(3).”)</p>
5. R-19-0031 Attorney Jeffrey Marks	Civil Rule 45 <input type="checkbox"/>	<p>The petition noted that Arizona courts do not retain copies of issued subpoenas, and that other jurisdictions allow lawyers to issue their own subpoenas.</p> <p>The proposed amendment would accordingly allow attorneys to issue their subpoenas directly. In place of the clerk’s signature, the attorney would sign a statement at the end of the subpoena, as an officer of the court, which would include the attorney’s name and bar number and a</p>

		<p>declaration that “this subpoena is fully valid without the signature of the Clerk of the Court.” Subpoenas requested by a self-represented party or a limited scope attorney would still need to be issued by the clerk.</p> <p><u>See further</u> R-06-0025, concerning authorization for the State Bar to issue subpoenas, and Rule 45(a)(3) of the Federal Rules of Civil Procedure, which allows an attorney to issue and sign a subpoena if the attorney is authorized to practice in that court.</p>
CRIMINAL PROCEDURE		
Petition Number and Petitioner	Rule	Summary
<p>6. R-17-0002 Criminal Rules Task Force, Hon. Joseph Welty, Chair</p> <p><i>Closed for comments</i></p>	<p>Criminal Rules</p> <p><input type="checkbox"/></p>	<p>The Court entered an amended Order on January 6, 2019 that granted the petition’s request for technical corrections. The Order corrected a cross-reference in Rule 31.2(a)(3). It also added several Part headings in the Criminal Rules that had been inadvertently omitted (“V. Pleas of Guilty and No Contest,” “VI. Trial,” “VII. Post-Verdict Proceedings,” and “VIII. Appeal and Other Post-Conviction Relief.”)</p>
<p>7. R-18-0035 AZ Prosecuting Attorneys Advisory Council, by Elizabeth Ortiz</p> <p><i>Adopted on an expedited basis and open for comments until May 1, 2019</i></p>	<p>Criminal Rule 15.3</p> <p><input type="checkbox"/></p>	<p>This Court entered an Order on October 24, 2018 adopting the petition’s proposed amendment to Rule 15.3 on an expedited basis, at the request of prosecutors. The petition alleged that the recent restyling of this rule changing “those excluded by Rule 39(b)” to “victims” had the unintended consequence of precluding a prosecutor’s deposition of a victim. The Order reverts the language to what existed before restyling, which has the practical effect of permitting the State to depose a victim.</p>

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<p>8. R-18-0038 Maricopa County Office of the Legal Defender, by Martin Lieberman</p>	<p>Criminal Rule 17.4 <input type="checkbox"/></p>	<p>The petition says, “Concerned that plea offers will be used against them, a risk arising from a Ninth Circuit opinion [<i>Scott v Shriro</i>, 567 F.3rd 573 (2009)], plea bargaining in Maricopa County capital cases has become extraordinarily difficult and unnecessarily expensive. A rule change will help ease the situation by removing the jeopardy that occurs when negotiations fail.” <i>Scott v. Shiro</i> found defense counsel ineffective for, among other things, failing to introduce evidence of the State’s plea offer at the penalty phase of the trial.</p> <p>The proposed amendment to Rule 17.4 would allow the Court to enter an order in a capital case that broadens the protections afforded under Evidence Rule 410 by prohibiting the admission of statements made during plea discussions.</p> <p>Note that petitioner filed an amended petition on January 4, following conversations with the Maricopa County Superior Court, to clarify the language of the proposed rule, as shown in the amended petition.</p>
<p>9. R-19-0006 Capital Case Oversight Committee, Hon. Ronald Reinstein, Chair</p>	<p>Criminal Rule 31.5 <input type="checkbox"/></p>	<p>The petition contends that the Supreme Court is in a better position than the superior court to evaluate counsel who appear on direct capital appeals, and therefore the Supreme Court, rather than the superior court, should appoint counsel on a direct appeal. The proposed amendment to Rule 31.5 would require the Supreme Court to make those appointments.</p> <p>The petition also noted that the superior court is in a better position to evaluate counsel on capital case petitions for post-conviction relief, and therefore the superior court should make those appointments. Although the Supreme Court currently appoints capital PCR counsel, A.R.S. § 13-4041(B) and Criminal Rule 32.4(b)(1) also allow the Supreme Court to authorize the presiding judge of the county where the case originated to appoint counsel.</p>
<p>10. R-19-0007 Uniform Law Commission, by Barbara Atwood & Timothy Berg</p>	<p>Criminal Rule 36 <input type="checkbox"/></p>	<p>The petition proposes to adopt as Rule 36, which is currently reserved, the Model Veterans Treatment Court Rules of Procedure. The Uniform Law Commission approved these rules in 2017 because of growing national concern for veterans who suffer from post-traumatic stress or substance abuse because of their deployment.</p>

		<p>The petition recognizes that Arizona “has been a leader in the veterans’ treatment court movement”</p> <p>The petition further states,</p> <p>“These proposed rules would provide inclusivity to all veterans by allowing veterans to be admitted into a veterans’ treatment court regardless of the character of their discharge from military service. The rules allow for prosecutorial discretion to determine a veteran’s admission to the veterans’ treatment court and judicial discretion to determine what occurs in a case after a veteran is admitted. Also, the rules make use of local rehabilitation resources by promoting partnerships with a network of substance use disorder treatment programs.</p> <p>“The rules give special consideration to cases of domestic violence with attention to the rights of the victim. Under the rules, if the victim can be reasonably located, the victim or alleged victim must be offered referrals to services of domestic violence providers, as well as information on how to report an allegation of an offense committed by the defendant or a violation by the defendant of the participation agreement.</p> <p>“Finally, the rules allow flexibility by authorizing a court to administer a veterans’ treatment court that can adjudicate both misdemeanor and felony offenses.”</p>
<p>11. R-19-0008 Maricopa County Attorney</p>	<p>Criminal Rules 18.5, 22.5, 32.1</p> <p><input type="checkbox"/></p>	<p>These proposed amendments seek to enhance the protection of juror privacy during and after service in a criminal trial.</p> <p>First, the proposed change to Rule 18.5 specifically prohibits any contact by a party or a party’s representative with prospective, alternate, or seated jurors until they have been discharged.</p> <p>Second, the proposed changes to Rule 22.5 gives criminal trial jurors the power to “opt out” of conversations about the case and protect their privacy in the future. Each juror’s option must be recorded by polling each juror on the record or by using a form that will be filed with the court clerk. If a juror has refused to speak, a party may not</p>

		<p>contact that juror without a court order that is entered under the proposed amendments to Rule 32.1.</p> <p>Finally, the proposed changes to Rule 32.1 would permit the court to enter an order allowing contact with a juror who has refused contact on a showing of good cause. The order must specify the good cause and define the scope of permissible contact.</p>
<p>12. R-19-0012 Rule 32 Task Force, Hon. Joseph Welty, Chair</p> <p><i>This petition has a bifurcated comment period.</i></p> <p><i>Initial comments are due February 22, 2019</i></p> <p><i>Comments in the second round are due May 1, 2019</i></p>	<p>Criminal Rule 32, etc.</p> <p><input type="checkbox"/></p>	<p>The Task Force on Rule 32 of the Arizona Rules of Criminal Procedure was established by A.O. No. 2018-07. That Order authorized the Task Force to propose substantive changes to the process for post-conviction relief.</p> <p>The petition’s most significant proposal is locating within a new Rule 33 all the provisions concerning post-conviction relief for defendants who entered a guilty or no-contest plea, who admitted a probation violation, or who had an automatic probation violation because of a plea to a new offense. This allows “pleading” defendants to have a single, self-contained rule, customized to their procedural circumstances, to guide them through the post-conviction process. This new rule is more understandable because it no longer includes references to of-right defendants. Defendants availing themselves of Rule 33 will have no need to consult Rule 32 and search for the provisions that apply to their cases.</p> <p>Similarly, Rule 32 is self-contained for defendants who seek post-conviction relief after a trial or a contested probation violation hearing, or who have been sentenced to death. Thus, non-pleading defendants will no longer need to sift through of-right provisions that have no application to their situations, as they must do under current Rule 32.</p> <p>The petition also proposed that two additional grounds for relief in Rule 32.1 (and the corresponding grounds in Rule 33) should not be subject to the rule of preclusion. Rule 32.1(b) currently provides as a ground for relief that “the court did not have jurisdiction to render a judgment or to impose a sentence on the defendant.” Rule 32.1(c) affords a defendant sentencing relief if “the sentence imposed exceeds the maximum authorized by law or is otherwise</p>

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		<p>not in accordance with the sentence authorized by law.” Claims under Rule 32.1(b) or (c), or under Rule 33.1(b) or (c), would not be subject to preclusion based on waiver or untimeliness if the claim is made within a reasonable time.</p> <p>The petition proposes a variety of other changes (e.g., concerning notices of change of judge, pre-petition discovery, and notices of no colorable claims), and some changes that are applicable only to capital cases (e.g., regarding relief under Rule 32.1(h), and page limits for capital case petitions for post-conviction relief.)</p>
13. R-19-0013 Maricopa County Attorney	Criminal Rules 5.4, 7.2, 7.4 <input type="checkbox"/>	<p>The petition notes that the Supreme Court modified several criminal rules, effective April 2, 2018, following petition R-17-0005 filed by the Task Force on Fair Justice for All. It further notes that “having worked with the new rules for eight months, it is apparent that the rules need some modifications to make the bail eligibility and preliminary hearing process more efficient....” The petition also recommends stylistic changes to Rule 7.2(b)(4)(C) to break up a large text block and make the rule easier to follow.</p> <p>Rule 5.4 (“holding a defendant to answer”): The proposed amendments would, upon the State’s request, allow a magistrate to find probable cause at a preliminary hearing if either a probable cause or a “proof evident or presumption great” finding was made at a Rule 7.2 bail eligibility hearing.</p> <p>Rule 7.2(b)(4) (“bail eligibility hearing”): The current rule requires a bail eligibility hearing within 7 days after the initial appearance unless the detained defendant moves for a continuance. The proposed amendment would also allow a continuance if “the court finds that extraordinary circumstances exist.” (Examples of extraordinary circumstances cited in the petition included a defendant who was too ill to attend the bail eligibility hearing, or who was not transported to court by the sheriff.)</p> <p>The proposed restyling of Rule 7.2 would create two new subparts under a provision where “the court does not find proof evident or the presumption great,” one titled</p>

		<p>“probable cause found” and the other titled “no probable cause found.” If no probable cause was found, and upon the State’s request, the proposed amendment would require the court to set a Rule 5 preliminary hearing.</p> <p>The proposed amendments to Rule 7.2(b)(4) would delete an existing provision allowing the parties to stipulate before the bail eligibility hearing that a probable cause determination at the hearing satisfies the requirements of Rule 5, because the petitioner notes “defendants have little incentive to stipulate...and few do.” Rather, a new subpart (“effect of findings”) would require the court, upon the State’s request, to “comply with Rule 5.4(a) for all crimes where the court has found proof evident or the presumption great, or probable cause, that the defendant committed the offense.” Petitioner said, “In those cases where the State has presented sufficient evidence on all the charges, the defendant will be held to answer; in more complex cases the State can elect to expedite the bail hearing by only focusing on a few charges and later seek a probable cause determination on all the charges through a different method.”</p> <p>A proposed amendment to Rule 7.4(b), consistent with a proposed amendment to Rule 7.2(b), would strike the words, “subject to the parties’ stipulation under Rule 7.2(b)(4)(C).”</p>
<p>14. R-19-0014 AOC, by David Byers, Administrative Director</p>	<p>Criminal Rule 27.1, 27.3, 27.4</p> <p><input type="checkbox"/></p>	<p>Arizona probation departments are governed by evidence-based practices. The following changes are proposed to ensure the court receives a report and recommendation from the probation department, especially when a change in conditions or early termination is proposed by someone other than the department.</p> <p>The proposed amendments would relocate the definitions of “condition” and “regulation” that are currently in Rule 27.3 to Rule 27.1. The amendments would delete the phrase “or any other person the court designates” in these rules whenever that phrase appears after the term “probation officer.”</p> <p>The amendments would require the probation department to prepare an “investigation report” under Rule 27.3 upon a request for modification from supervised to</p>

		<p>unsupervised probation, and under Rule 27.4 upon any request for termination. The amendments clarify who must be provided with notice of such requests. The court must provide the probationer and the probation department with a copy of an order terminating probation.</p>
<p>15. R-19-0016 Arizona Voice for Crime Victims, by Colleen Clase</p>	<p>Criminal Rule 39, etc. <input type="checkbox"/></p>	<p>This petition proposes to repeal Rule 39, and to instead integrate victims’ rights throughout other applicable rules. The petition says that unlike the rights of the accused or the State, which appear throughout the rules, Rule 39 does not provide proper guidance to trial courts and attorneys on when victims’ rights apply in proceedings under other rules. The petition contends that integrating victims’ rights into the rules will better instruct trial courts and attorneys on what the Victims’ Bill of Rights requires in each situation.</p> <p>The proposed changes concern Rules 1, 4, 5, 6, 7, 8, 10, 15, 16, 17, 18, 19, 26, 27, 31, 32, and 39.</p> <p><u>See also</u> R-18-0001, which included a similar proposal.</p>
<p>16. R-19-0025 AZ Attorneys for Crim. Justice, by David Euchner</p>	<p>Criminal Rule 20(b) <input type="checkbox"/></p>	<p>Rule 20(b) allows a defendant to make or renew a motion for judgment of acquittal or unproven aggravator on any conviction or allegation “no later than 10 days after any verdict is returned.” Petitioner contends there is an anomaly in this rule because it does not permit the judge to entertain such a motion when the jury fails to reach a verdict.</p> <p>Petitioner believes that because “the evidence that was presented in the case is complete” once the jury receives the case, the rule should allow a motion challenging the sufficiency of the evidence even after a jury has hung. Accordingly, the proposed amendment would add, after the words “no later than 10 days after any verdict is returned,” the words “or after the court discharges the jury, whichever is later.”</p>
RULES OF THE SUPREME COURT		
Petition Number and Petitioner	Rule	Summary
<p>17. R-19-0002</p>	<p>SCR 123</p>	<p>This petition seeks amendments to Rule 123(g). The petition requests that in petitions for review filed in the</p>

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Goldwater Institute, by Timothy Sandefur	<input type="checkbox"/>	Arizona Supreme Court, (a) case names, (b) case numbers, (c) questions presented, and (d) counsel of record be made publicly available online. The petition alleges that at present, this information is made available to the public only at a single computer terminal maintained by the Clerk of the Court on the fourth floor of the State Courts Building in Phoenix. The petition contends that wider access to this information would be especially helpful to those who might file amicus curiae briefs in those cases.
18. R-19-0005 Goldwater Institute, by Timothy Sandefur	SCR 32 <input type="checkbox"/>	<p>Although this summary ordinarily excludes petitions concerning the practice of law, R-19-0005 is included because of its potential impacts. The petition requests amendments to provisions concerning membership in the State Bar of Arizona.</p> <p>The proposed amendments would maintain the current mandatory membership requirement for all lawyers. All lawyers would still be required to fund the cost of, and submit to regulation by, the State Bar acting as a regulator—meaning traditional regulatory functions such as admissions testing, character and fitness, specialty certification, minimum requirements for and oversight of continuing legal education, and attorney discipline.</p> <p>Other functions currently overseen by the State Bar would be turned over to a “Bar Association,” in which membership would be voluntary. This Bar Association would be responsible for all other non-regulatory activities the State Bar currently conducts, or those in which it may choose to conduct in the future, including lobbying. Any lawyer may join this association, but no lawyer would be required to join as a condition of practicing law. The petition proposes no limitations on the services provided by the Bar Association or its membership fee, either in the amount of the fee or how it is used.</p> <p>The amendments would also require the State Bar to provide its members with audited financial statements detailing its expenditure of the mandatory dues.</p>

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<p>19. R-19-0009 CIDVC, Hon. Wendy Million, Chair</p>	<p>SCR 123(d) <input type="checkbox"/></p>	<p>Please see the discussion of this proposed amendment in the Rules of Protective Order Procedure (“ARPOP”) below.</p>
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RULES OF PROCEDURE FOR JUVENILE COURT

Petition Number and Petitioner	Rule	Summary
<p>20. R-19-0028 We the People Court Services, by Martin Lynch</p>	<p>Juvenile Rule 6.2 <input type="checkbox"/></p>	<p>The petition cites to the Constitution, and particularly the Seventh Amendment, as authority for the right to jury trials. The petition proposes content for a new juvenile rule, including the following, to effectuate that right in juvenile proceedings:</p> <p>“(B) Juvenile Court is a court of equity and has broad powers and discretion. In equity, everyone expects fairness and justice as nearly as it may be ascertained by the Judge. Should a litigant believe that a ‘significant Judicial order’ does not reflect fairness and justice, they may petition the court to have that decision reviewed by a Jury. At the discretion of the Judge, a Jury may be brought to hear the entire case or more likely a portion of the case reflected by an individual order.”</p>

RULES OF FAMILY LAW PROCEDURE (“FLR”)

Petition Number and Petitioner	Rule	Summary
<p>21. R-19-0017 State Bar of Arizona</p>	<p>FLR 47.2 <input type="checkbox"/></p>	<p>The petition states that Rule 47.2 (“motions for post-decree temporary legal decision-making and parenting time orders”) does not address the ability to seek post-decree temporary orders for child support. When post-decree parenting time is modified substantially, on a temporary basis, the new “custodial” parent might have an increased financial burden, without a concurrent re-evaluation of child support obligations. Temporary pre-decree support orders are recognized in Rule 47(a), and the rationale for their need in post-decree temporary legal decision-making or parenting time issues is the same.</p> <p>The petition proposes to add the words “child support orders” to the title and text of Rule 47.2. It would also</p>

		add a new sentence that provides, “If the motion requests child support, the party requesting child support shall comply with Rule 91.1.”
22. R-19-0029 We the People Court Services, by Martin Lynch	FLR 2.1 <input type="checkbox"/>	<p>This petition requests an amendment to the Family Law Rules that is similar to the language of, and the rationale for, Petitioner’s requested amendment to the Juvenile Rules in petition number R-19-0028 above. Newly proposed Family Rule 2.1, titled “Juries in Family Court; Demand; Waiver,” would include the following text:</p> <p>“(B) Family Court is a court of equity and has broad powers and discretion. In equity, everyone expects fairness and justice as nearly as it may be ascertained by the Judge. Should a litigant believe that a ‘significant Judicial order’ does not reflect fairness and justice, they may petition the court to have that decision reviewed by a Jury. At the discretion of the Judge, a Jury may be brought to hear the entire case or more likely a portion of the case reflected by an individual order.”</p>

RULES OF PROTECTIVE ORDER PROCEDURE (“ARPOP”)

Petition Number and Petitioner	Rule	Summary
23. R-19-0009	Various ARPOP Rules + SCR 123 <input type="checkbox"/>	<p>This petition proposes amendments to ARPOP Rules 7, 10, 20, 23, 24, 25, 26, 31, 32, 33, 36, and 42, and to Supreme Court Rule 123(d).</p> <p>House Bill 2249 was enacted in 2018 and becomes effective on January 1, 2020. The legislation modified statutes governing orders of protection and injunctions against harassment. The proposed rule amendments implement those modifications. The proposed amendments would also clarify, or correct omissions in, the current rules, including Rules 10, 23, 25, 26, 36, and 42.</p> <p>One of the most significant changes in protective order procedure resulting from this legislation will shift, from the plaintiff to the court, the responsibility for providing law enforcement with papers for service. The plaintiff could no longer control if, when, and how service is made.</p>

		<p>As soon as practicable after serving the order, law enforcement would inform the plaintiff that service is complete. If service is not accomplished within fifteen days, law enforcement will be required to follow up with the plaintiff regarding the status of service and to ask for additional information that might improve the chances of service. An amendment to ARPOP 31 would require the court to transmit the petition and order to the appropriate law enforcement agency on the same date the court enters the order; if the court makes a finding on the record of extenuating circumstances, the court may delay transmission for no more than 72 hours.</p> <p>Another major change in HB2249 is that it makes the Arizona Supreme Court—rather than each county sheriff—the central repository for orders of protection and injunctions against harassment. (The exception is the Emergency Order of Protection, for which each county sheriff will continue to be the repository.) The legislative revisions further obligate the issuing court—rather than each county sheriff—to register each served order with NCIC within 24 hours. The petition notes that the AOC IT Division is in the process of building a central case registry, part of which will be a database with protective order case information from every limited and general jurisdiction court in Arizona. When an order is served, the issuing court must update its case information system. The AOC will receive the service information from the issuing court and then transmit data to NCIC to meet the statutory requirement.</p> <p>Other rule amendments resulting from this legislation would:</p> <ul style="list-style-type: none">- require the courts to keep the plaintiff’s address and contact information confidential, regardless of whether the defendant knows that information; and- require law enforcement to register an emergency order of protection (“EOP”) with NCIC, instead of notifying the county sheriff about issuance of the EOP. The EOP will last for 72 hours or until the end of the next judicial business day, whichever is longer. Currently, the EOP expires at the end of the next
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		<p>judicial business day. The revision also will require a judicial officer to document issuance of an EOP.</p> <p>An amendment to ARPOP 42 would clarify that a protective order is final and appealable and, therefore, not subject to Rule 54(c), Rules of Civil Procedure, or Rule 78(c), Rules of Family Law Procedure.</p> <p>The proposed amendment to Supreme Court Rule 123(d) (“access to case records”) would delete from a current provision concerning protective orders the words, “for as long as a plaintiff has the ability by law to have a protective order served....”</p>
<p>24. R-19-0021 Coalition to Stop Abuse of Civil Harassment Law, by Mike Palmer</p>	<p>ARPOP 14</p> <p><input type="checkbox"/></p>	<p>Rule 14 provides that the court may not charge a filing fee for a notice of appeal from an order of protection or an injunction against harassment. However, the rule permits a party to be charged the cost of preparing the record. Petitioner contends that charging a party the cost of preparing the record for an appeal is tantamount to charging a fee to appeal. Petitioner would strike the current phrase that allows that charge and substitute the words, “nor should a party be charged the cost of preparing the record.”</p> <p>Petitioner also contends that if the plaintiff’s address and contact information in an injunction against harassment case is sealed (as might be required by a future statute), that the defendant will be unable to directly serve copies of motions and other filings on the plaintiff. This would require the defendant to pay a Rule 14 service fee with every filing. Petitioner proposes amending Rule 14, so the court could not charge a service fee for “postage and handling to mail a litigant’s paperwork to the plaintiff.”</p>
<p>25. R-19-0022 Coalition to Stop Abuse of Civil Harassment Law, by Mike Palmer</p>	<p>ARPOP 25(b)</p> <p><input type="checkbox"/></p>	<p>Rule 25(b) requires a petition for an injunction against harassment to allege “a series of specific acts....” The current rule further says that “a series of acts means at least two events.”</p> <p>Petitioner contends that two events do not establish a pattern, and consequently, injunctions against harassment are sometimes issued improvidently. Petitioner would amend the above provision by changing the word “two</p>

		to “three,” i.e., the provision would say, “A series of acts means at least three events.”
26. R-19-0023 Coalition to Stop Abuse of Civil Harassment Law, by Mike Palmer	ARPOP 25(g) <input type="checkbox"/>	The petition requests the Court to abrogate section (g) (“firearms”) in Rule 25, which concerns injunctions against harassment. (Petitioner noted that it is the sixth petition to make this request.) The petition contends that this rule provision does not reflect the intent of the Legislature in adopting A.R.S. § 12-1809, which deals with injunctions against harassment. The petition also contends that the rule provision is unconstitutional.
27. R-19-0024 Coalition to Stop Abuse of Civil Harassment Law, by Mike Palmer	ARPOP 38 <input type="checkbox"/>	This petition seeks to change the standard of proof at a hearing on a protective order from the current standard, preponderance of the evidence, to the higher standard of clear and convincing evidence. Petitioner contends that this higher standard applies to the prosecutor’s seizure of assets in a civil forfeiture case, and that an equivalent standard should apply in a contested protective order proceeding at which defendant’s firearms could be seized.

RULES OF PROBATE PROCEDURE

Petition Number and Petitioner	Rule	Summary
28. R-18-0039 Probate Rules Task Force, Hon. Rebecca Berch, Chair <i>Adopted on an emergency basis effective January 1, 2019, and open for comments until May 1, 2019</i>	Probate Rule 28.2 (subsequently renumbered 28.1) <input type="checkbox"/>	At its August 2018 Rules Agenda, the Court entered Rules Order No. R-18-0018 and modified Civil Rule 38(b). The modified Civil Rule, which became effective on January 1, 2019, provided that parties are deemed to have waived a right to trial by jury “only if they affirmatively waive that right.” This new Civil Rule would apply in probate proceedings. However, many individuals who are the subject of guardianship and conservatorship proceedings lack the capacity to knowingly and intelligently waive that right. Rather than waive a jury trial, as new Civil Procedure Rule 38(b) would require, Probate Rule 28.1 requires a party to a guardianship petition — and a party to a conservatorship petition, to the extent the right to a jury exists — to affirmatively demand a jury trial. In the absence of a demand, the alleged incapacitated person would have a trial to the court.

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		<p>The Court adopted this rule on an emergency basis, effective January 1, 2019. It is open for comments until May 1, 2019.</p> <p><u>See further</u> R-18-0044 below, which proposes Rule 29. Proposed Rule 29 would require a demand for a jury trial in any probate case in which the right exists.</p>
<p>29. R-18-0044 Probate Rules Task Force, Hon. Rebecca Berch, Chair</p>	<p>All Probate Rules</p> <p><input type="checkbox"/></p>	<p>The Court’s Administrative Order No. 2017-133 established a Task Force on the Arizona Rules of Probate Procedure and ordered a comprehensive review of the Probate Rules. Like the current Probate Rules, the proposed rules must be construed with the Civil Rules and applicable statutes.</p> <p>Although these proposed rules are based on the current Probate Rules, there are significant changes, both stylistic and substantive. The most obvious change is a reorganization and renumbering of the rules. The proposed rules are organized by subject matter and presented in the order in which events occur in a probate proceeding. Some provisions have been added, and some former provisions have been abrogated, relocated, consolidated, or bifurcated. The proposed rules have also been restyled. They add informative titles and subheadings to make rules and sections easier to locate, and they use clearer language, uniform formatting, and consistent terminology.</p> <p>The proposed rules include substantive changes, such as:</p> <p>Rule 9, dealing with sealing and unsealing court documents, is entirely new and incorporates Rule 5.4 of the Arizona Rules of Civil Procedure by reference.</p> <p>Rule 12 (existing Rule 11) requires that a request for telephonic attendance or testimony can be oral as well as written. A request must be made “in a timely manner considering the circumstances at the time the request was made,” rather than requiring a party to file a written motion by a specified deadline.</p> <p>Rule 13 (existing Rule 6) requires the use of specific probate information and change of contact information</p>

		<p>forms, rather than detailing the content of those forms in the body of a rule.</p> <p>Rule 14 (existing Rule 16) requires the clerk to file any application (including any accompanying will) regardless of whether the application is granted. In addition, if the registrar denies the application, the registrar must file a statement explaining the reasons for the denial.</p> <p>Rule 15 (existing Rule 17) changes the deadline for filing a written objection (a response) to a petition from three court days before the initial hearing on the petition to seven calendar days before the initial hearing. In the alternative, the objecting party may make an oral objection at the initial hearing, but then must file a written response within fourteen calendar days thereafter, unless the court sets a different deadline.</p> <p>Rule 17 describes who must attend the initial hearing on a petition and the procedures for that hearing. Rule 17 replaces existing Rule 12, which described non-appearance hearings. (The proposed rules eliminate use of the phrase “non-appearance hearing.”)</p> <p>Rule 29 replaces Civil Rule 38 and requires a party who has a right to a jury trial in a probate proceeding to file a timely written demand for a jury.</p> <p>Rule 32, which replaces existing Rule 15.1, describes the role of a statutory representative and the process for requesting the appointment of a statutory representative. (Consistent with the 2009 amendment of A.R.S. § 14-1408, the proposed rules use the term “statutory representative” instead of “guardian ad litem.”)</p> <p>Rule 42 (existing Rule 10(E)) includes a new provision describing the role of an attorney appointed for the subject person of a guardianship or protective proceeding.</p> <p>Rule 45 (existing Rule 30(A) and (B)) requires a conservator to use the simplified accounting form (rather than the more complex accounting form) unless the court orders otherwise.</p>
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		<p>Rule 47 (combining existing Rules 24 and 36) expressly authorizes the court to grant a guardian inpatient psychiatric treatment authority without notice. The proposed rule also adds a new form titled “Supplemental Order to Guardian with Inpatient Psychiatric Treatment Authority and Acknowledgement.”</p> <p>Rule 53 (existing Rule 37) clarifies when court approval of the settlement of a claim of a minor or an adult in need of protection is required to make the settlement binding on the minor or adult in need of protection. It also clarifies which judicial officer may approve the settlement. In addition, it describes alternatives—other than establishing a conservatorship—that are available to the court in these proceedings.</p> <p>The substantive changes are too numerous to list in this summary, but they are detailed in the rule petition that is available on the Court Rules Forum.</p>
<p>30. R-19-0027 We the People Court Services, by Martin Lynch</p>	<p>Probate Rule 27.1</p> <p><input type="checkbox"/></p>	<p>This petition is comparable to R-19-0028 and R-19-0029, a juvenile and a family rule petition, respectively, noted above.</p> <p>The proposed amendment in R-19-0027 would provide, in part:</p> <p>“(B) Probate Court is a court of equity and has broad powers and discretion. In equity, everyone expects fairness and justice as nearly as it may be ascertained by the Judge. Should a litigant believe that a “significant Judicial order” does not reflect fairness and justice, they may petition the court to have that decision reviewed by a Jury. At the discretion of the Judge, a Jury may be brought to hear the entire case or more likely a portion of the case reflected by an individual order.”</p>
<p>JUSTICE COURT CIVIL RULES (“JCRC”) (“JCRCP”)</p>		
<p>Petition Number and Petitioner</p>	<p>Rule</p>	<p>Summary</p>
<p>31. R-18-0021 Committee on Improving Small</p>	<p>JCRCP 101(b) and Small Claims Rules [new]</p>	<p>This petition was filed by a committee established by Administrative Order No. 2016-115. The petition proposes a new set of rules to expedite the small claims process and make it more comprehensible and accessible</p>

<p>Claims Case Processing, Hon. Steven McMurry, Chair</p> <p><i>The Court has entered an Order permitting Petitioner to file a third amended petition by May 24, 2019 and allowing public comments on that petition until June 28, 2019. The Court will consider the petition at its August 2019 agenda.</i></p>	<p><input type="checkbox"/></p>	<p>to self-represented litigants. Petitioner filed a second amended petition with modifications to the proposed rules on September 19, 2018.</p> <p>The proposed small claims rules would</p> <ul style="list-style-type: none">- require the court to set a hearing date upon the filing of a complaint, and to write the hearing date on the summons.- include a one-page “notice” to the plaintiff and the defendant, which summarizes the parties’ rights and responsibilities. The plaintiff would be required to attach the notice to the summons that is served on the defendant, and to provide proof of service of the notice to the court.- require service of the complaint within 30 days after the filing date. If the plaintiff is unable to serve within 30 days, the plaintiff could contact the court and request an extension of the time for service.- eliminate the requirement that defendant must file an answer. However, a defendant who files a counterclaim would be required to file an answer, and the court may require the defendant to file an answer “if justice so requires.”- eliminate the process for obtaining a default judgment. Plaintiff would be required to attend a court hearing to obtain a judgment. The hearing must be held between 60 and 75 days of the initial filing date. <p>The amendment to JCRCP 101(b) as initially proposed would have expressly provided that the Justice Court Civil Rules are not applicable to small claims cases. The proposed amendment to JCRCP 101(b) in the amended petition would allow the application of JCRCP Rule 140 concerning the entry of default judgments “if the court is exempt from applying the Arizona Rules of Small Claims Procedure under Rule 21 of those rules.”</p> <p>Rule 21, which was added by the amended petition, would exempt application of these rules, except the rule on dismissal, in a consolidated justice court with more than three precincts operating on a blended calendaring system, upon receiving an order from the presiding superior court judge that the rules do not apply.</p>
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<p>32. R-18-0045 Maricopa County Justice Courts, by James Morrow, Administrator</p>	<p>JCRCP 101 and 102 <input type="checkbox"/></p>	<p>The petition notes that due to the large number of self-represented litigants in justice courts, successful judgment creditors often fail to file a satisfaction of judgment after the judgment has been paid. In some instances, the oversight is not recognized until several years have passed and after the judgment creditor has moved.</p> <p>The proposed amendment to Rule 102 would be a new section (e) and would provide:</p> <p>“e. Satisfaction of Judgments. Once a judgment has been satisfied by the payment of the monetary award, the party in whose favor the judgment was entered shall file a Satisfaction of Judgment with the court that entered it and serve a copy on the judgment debtor. The duty to file the satisfaction of judgment is on the prevailing party and not on the attorney who represented the party. In the event that a prevailing party fails to satisfy a judgment rendered and cannot be located with a showing of reasonable diligence, the judgment debtor may file a motion to compel satisfaction of judgment and the court may, after an opportunity for a hearing, order that the judgment shall be deemed satisfied.”</p> <p>By an amendment to Rule 101, the provisions of Rule 102(e) would apply to judgments in small claims cases.</p>
<p>33. R-19-0020 Hon. Sara Agne, Andrew Jacobs, and Amanda Weaver</p>	<p>JCRCP 123, 124, 125, and 126 <input type="checkbox"/></p>	<p>This petition proposes to align the limits on discovery in Justice Court with the limits in Tier 1 cases in the Arizona Rules of Civil Procedure, thereby eliminating the anomaly that cases in Justice Court (i.e., those seeking less than \$10,000) would have significantly more discovery than cases concerning greater sums in the Superior Court. The petitioners believe that curing this anomaly would make discovery proportional across all Arizona civil courts, consistent with this Court’s recent,</p>

		<p>proportionality-driven establishment of lower discovery limits in Civil Rule 26.2.</p> <p>The proposed limits would affect Rule 124 on depositions, Rule 125 on interrogatories, Rule 125 on requests for production, and Rule 126 on requests for admissions. The proposed limits are 5 total hours of fact witness depositions, 5 interrogatories, 5 requests for production, and 10 requests for admissions.</p>
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OTHER RULE PETITIONS THAT MIGHT BE OF INTEREST

Petition Number and Petitioner	Rule	Summary
<p>34. R-18-0036 Sarah Lemelman and Charles Adornetto</p>	<p>SCRAP: Civil Rules 4, 8, and 12</p> <p><input type="checkbox"/></p>	<p>The Justice Court Rules of Civil Procedure have replaced the Arizona Rules of Civil Procedure, but the Rules of Superior Court Appellate Procedure—Civil, which concern appeals from justice court, were never updated to reflect that change. Accordingly, the petition proposes the following changes:</p> <p>in SCRAP 4(e), references to</p> <ul style="list-style-type: none"> - ARCP 50(b) would become JCRCP 134(b) - ARCP 52(b) would become JCRCP 135 - ARCP 59(l) would become JCRCP 138(c) - ARCP 59(a) would become JCRCP 138(a) <p>in SCRAP 8(a), references to</p> <ul style="list-style-type: none"> - ARCP 5 would become JCRCP 120 - ARCP 6(e) would become JCRCP 115(c) <p>in SCRAP 12(d), references to</p> <ul style="list-style-type: none"> - ARCP 58 would become JCRCP 139 and 140 - the “Arizona Rules of Civil Procedure” would become the “Justice Court Rules of Civil Procedure”
<p>35. R-18-0041 Advisory Committee on Rules of Evidence Hon. Mark Armstrong and</p>	<p>Ariz. Rules of Evidence 807</p> <p><input type="checkbox"/></p>	<p>The petition requests an amendment to the comment to Rule 807 (“residual exception”).</p> <p>The Court amended Rule 807 in R-18-0003, effective January 1, 2019, to conform to changes in Federal Rule of Evidence 807 (FRE 807) that were anticipated to become effective December 1, 2018. The comment to the amended rule accordingly stated that “Rule 807 was</p>

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<p>Hon. Samuel Thumma, Co-Chairs</p>		<p>amended to conform to the changes made to Federal Rule of Evidence 807 that took effect on December 1, 2018.” However, the federal courts added a year to the process so that the changes to FRE 807 did not take effect on December 1, 2018. Instead, the federal changes are projected to take effect on December 1, 2019. The proposed amendment to the comment would therefore use the latter date, rather than the former one.</p>
<p>36. R-18-0042 Hon. Patti Starr and Barbara Vaught</p>	<p>JRAD 13 <input type="checkbox"/></p>	<p>A.R.S. § 12-913 authorizes appellate jurisdiction for final decisions, orders, judgments or decrees entered by the superior court following judicial review of administrative decisions under Arizona’s Administrative Review Act.</p> <p>Effective January 1, 2018, the JRAD (Arizona Rules of Procedure for Judicial Review of Administrative Decisions) were comprehensively revised. Those revisions reversed the previous presumption that the Civil Rules apply to administrative appeals. The revised JRAD expressly states the Civil Rules “do not apply” except as otherwise provided. (JRAD 1(b).)</p> <p>The recent revision has resulted in uncertainty about what rulings by the superior court are appealable. That is because the current JRAD do not specify what type of rulings by the superior court are appealable, and Civil Rules 54(b) and (c) no longer apply to these cases.</p> <p>To resolve that uncertainty, the proposed amendments to JRAD 13 would provide, “No final decision, order, judgment, or decree issued in a superior court action to review a final administrative decision may be appealed unless it complies with Arizona Rule of Civil Procedure 54(b) or (c).”</p> <p>The proposed amendments also would modify the words “the final decision” in the current rule to say instead that the ARCAP applies to appeals from “a final decision, order, judgment, or decree,” which tracks the language of A.R.S. § 12-913.</p>
<p>37. R-19-0018 State Bar of Arizona</p>	<p>RPEA 5 and 10 <input type="checkbox"/></p>	<p>The petition alleges: “When the complaint is filed, the rules only require that the landlord attach a copy of the notice to vacate. The parties typically have entered into a written lease that includes significant contractual terms</p>

		<p>such as the rate of the rent, any late fees, any concessions provided to the tenant, and applicable rules of conduct. But the Rules do not require the landlord to attach a copy of the lease or payment history ledger to the complaint.</p> <p>“Although the Arizona Residential Landlord and Tenant Act requires a landlord to give the tenant a copy of the lease, A.R.S. § 33-1321(C), legal services agencies report that many tenants do not receive, or maintain, a copy of their lease. A tenant without a copy of the lease is likely unprepared for appearing at an eviction hearing....</p> <p>“Since the lease is the contractual basis for the eviction, it is relevant and should be of record in virtually every case. Similarly, since the dates, manner of payment, and amounts of rental payments may be at issue, those accounting records should also be available pre-hearing and introduced into evidence. This would be preferable to the practice of simply referring to that data at the hearing by the landlord or the landlord’s attorney.”</p> <p>The proposed amendments to Rule 5(d) of the Rules of Procedure for Eviction Actions would require service of the following documents with the complaint:</p> <ol style="list-style-type: none">1. a copy of the lease and any addendums;2. in actions for non-payment of rent, a copy of the accounting of charges and payments for the preceding six months; and3. in actions other than for non-payment of rent, the documents and exhibits the plaintiff intends to present at trial. <p>If the plaintiff fails without good cause to comply with these requirements, the court may take appropriate action, including granting a continuance, excluding undisclosed evidence, and sanctioning the plaintiff, including the sanction of dismissing the complaint.</p> <p>Because these documents would automatically be provided with the complaint, RPEA Rule 10 (“disclosure”) would be modified so that a defendant would not be required to request them.</p>
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