

# FAMILY COURT IMPROVEMENT COMMITTEE

## Minutes

January 13, 2020 10:00 a.m.  
Arizona State Courts Building  
Conference Room 119A/B  
1501 W. Washington Street, Phoenix, AZ 85007

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**Present:** Judge Paul McMurdie (Chair), Brian Bledsoe, Judge Bruce Cohen, Benjamin L. Deguire, Kellie E. DiCarlo, Joi Hollis, PhD. (and proxy for Judge D. Greg Sakall), Judge Elaine Fridlund-Horne, CaSaundra L. Guadalupe, Yvette Asche-Liffick (proxy for Sabrina Lopez), Patricia Madsen, Tracy L., McElroy, Jennifer A. Mihalovich, Judge Michael D. Peterson, Marla Randall, Janet W. Sell, Vance D. Simms

**Telephonic:** Judge R. Erin Farrar, Commissioner Joseph Goldstein, Megan Spielman, Amanda Stanford

**Absent/Excused:** Danna Lopez

**Presenters/Guests:** Cathy Clarich, Manager, Nicole LaConte, Court Specialist, Administrative Office of the Courts (AOC)

**Administrative Office of the Courts (AOC) Staff:** Theresa Barrett, Angela Pennington, Susan Pickard, Kathy Sekardi

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## REGULAR BUSINESS

### Welcome and Opening Remarks

The January 13, 2020, meeting of the Family Court Improvement Committee (FCIC) was called to order at 10:03 a.m. by Judge Paul McMurdie, Chair. Judge McMurdie asked for the members on the phone to announce themselves. The draft minutes from the November 22, 2019, meeting were presented for approval. Commissioner Joseph Goldstein asked that his title in the minutes be corrected.

<p><b>Motion:</b> to approve the minutes as amended. <b>Moved by</b> Janet Sell. <b>Seconded by</b> Benjamin Deguire. Motion passed unanimously.</p>
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## BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

### ARFLP Rule 44 and Proof of Service

Judge Bruce Cohen asked the committee to assign a workgroup to be established later in the day, to draft a rule change petition to amend and clarify Arizona Rules of Family Law Procedure Rule 44(a)(2)(E). During the last rule changes, Rule 44 was amended to state that the party applying for a default decree must attach a copy of the proof of service to the application. At least one judicial officer has interpreted “must” to mean a strict adherence, and vacated a petitioner’s hearing and application,

and required them to refile for the default. Discussion amongst the committee members brought forth the following points:

- The Family Law Rules Task Force did not intend for the application to be defaulted if proof of service was in the court record but not attached.
- Proof of service being attached to the application serves multiple purposes.
  - A reminder to the other party, especially if they want to challenge the service of process.
  - Convenience for the judicial officer.
- Proof of service could be included via the date and manner of service on the application for default.

**Action Item:** Judge Cohen will draft language for a possible petition to be filed later. Judge Elaine Fridlund-Horne volunteered to help Judge Cohen with the draft. The matter will be tabled until the next meeting when the draft will be presented to the committee for approval.

### Avoiding Criminal and Family Court Order Conflicts

Judge Cohen discussed the matter of competing criminal and family court orders. Current rules offer no guidance on priority for conflicting criminal and family court orders. Policy decisions regarding which order takes priority and in which rules the policy should be enumerated need to be made. Any changes would require cooperation between departments, e.g. family court and probation department. During the conversation, the following points were made:

- The priority of payment of competing child support and victim restitution must be addressed.
- Federal law and state case law say that becoming incarcerated is not considered a voluntary event and is grounds for child support modification.
  - Some states allow IV-D agency to administratively terminate a child support order when a person is incarcerated or have statutes that allow suspension by operation of law.
  - Modification of child support for incarcerated persons is important and can affect the probability of child support payment after release.
- Suspension of child support based on incarceration would have to be a legislative change.
  - Notice that modification is possible could be given to the defendant during the presentencing conversation with Probation. This could be done with a rule change.
  - This change has been tried before and met with opposition, but the committee would like to try again.
  - Suspension of child support must occur in a venue which affords the co-parent due process.

Judge McMurdie stated that the committee will discuss the establishment of a workgroup to address this issue later in the meeting.

### Sealing a Record versus Deeming the Record Confidential

Judge Cohen is advocating for the development of a “hand-off” process to have records transferred more easily between family and juvenile courts and for the designation of “Confidential” versus “Sealed” for certain records. Rule 13(e) of the Arizona Rules of Family Procedure can be interpreted

to allow this easier access. He also supports a discussion on expanding the family rule to include some of the provisions set forth in Rule 7 of the Arizona Rules of Probate Procedure. Points made:

- Having all the records would aid the judge in making more accurate analysis of a case.
  - Fewer court actions means more expedient cases.
  - Ensures due process for all parents and DCS.
    - Gives all parties an opportunity to ask for modified orders.
    - In cases where a best interests attorney was assigned, the juvenile court judge would be aware of the family court judge's concerns if findings were handed-off with the dependency petition.
  - Other concerns for hand-offs between family and juvenile court include:
    - adoptions;
    - termination of parental rights;
    - establishing paternity in a dependency case; and
    - termination of child support by operation of law.
- Smaller courts may transfer cases, other courts consolidate cases. A statewide approach would be best.
  - Statewide approach could be a best practice achieved by training or a rule change.

At the request of Judge Cohen, Lori Ford, a public person spoke specifically to this topic.

### Family Court Judicial Training

Judge Michael Peterson, in conjunction with Judge Fridlund-Horne gave a presentation on effective Resolution Management Conferences and the importance of training judges to manage family law cases. Judge Peterson asked the committee for input, feedback, and advice on an appropriate curriculum for training. The Judges would like to conduct a half to full day training in each county. It was suggested that the training also cover conciliation and mediation.

Judge McMurdie would like to discuss developing the materials with the education provisions of the subcommittee for statewide implementation.

### Online Dispute Resolution

Cathy Clarich and Nicole LaConte, AOC, presented the results of the Online Dispute Resolution pilot programs. They also asked the committee for input regarding potential case types and policies for statewide rollout or individual court rollout and feedback on the execution of the pilot program. The committee did not have any comments or questions at this time, but Judge McMurdie stated the issue would be assigned to one of the workgroups for additional input and feedback.

**Action Item:** Ms. Clarich will coordinate with staff to send the PowerPoint to the committee and receive any information the committee provides.

### Top Issues and Workgroups

During the November 22<sup>nd</sup> meeting, the members provided Judge McMurdie and staff a comprehensive list of the issues they wished to see the committee address. After that meeting, the issues were sorted into workgroups. Judge McMurdie explained the different workgroups to the committee and asked each member about their participation preferences.

Judge McMurdie clarified that the Family Court Improvement Committee (FCIC)/ Committee on the Impact of Domestic Violence and the Courts (CIDVC) collaborative workgroup would be managed by CIDVC. He noted that the members who serve on both committees would also be serving on the collaborative workgroup.

Some members agreed to follow up with staff to provide names of those whose expertise could be valuable and who might agree to participate on the workgroups.

A member asked Judge McMurdie for guidance on what the workgroups should be doing until their first meetings. Judge McMurdie asked the chairs to meet with their groups ahead of time, discuss what issues they would like to address and prepare them for presentation to the whole committee.

## OTHER BUSINESS

### Announcements/Call to the Public

- Judge McMurdie asked the committee to read the report, “Designing Divorce” by IAALS, Institute for the Advancement of the American Legal System which was provided in the meeting materials.
- Patricia Madsen asked if the committee would be able to evaluate and respond or comment on any of the upcoming legislation. Judge McMurdie asked staff to forward any pertinent information she receives about family law legislation to the rest of the committee.

<p><b>Action Item:</b> Staff will ask the legislative liaison staff to put the committee on their rotation for regular updates.</p>
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- Malinda Sherwyn and “Patti”, public persons addressed the committee.

### Next Meeting

Tuesday, **May 5, 2020**; 10 a.m.  
Arizona State Courts Building, Conference Room 119 A/B  
1501 W. Washington, Phoenix, AZ 85007

The meeting adjourned at 1:31 pm.