

Committee on Mental Health and the Justice System | Minutes

Monday, May 18, 2020

Virtual meeting

10:00 a.m. – 12:00 p.m.

Present (telephonically): Kent Batty (Chair), Mary Lou Brncik, Amelia Cramer, Jim Dunn, Hon. Elizabeth Finn, Hon. Michael Hintze, Natalie Jones, Dianna Kalandros, Cynthia Kuhn, Michael Lipscomb, Proxy for Chief Chris Magnus, James McDougall, Dr. Carol Olson, J.J. Rico, Hon. Barbara Spencer, Christopher Staring, Hon. Fanny Steinlage, Paul Thomas

Absent/Excused: Brad Carlyon, Shelley Curran, Josephine Jones, Kristin McManus, Ronald Overholt, Kristin McManus, Chief Deputy David Rhodes, Michael Shafer

Guests/Presenters: Kathy Bashor, Tamaria Gammage, Hon. Jay Polk

Administrative Office of the Courts (AOC) Staff: Theresa Barrett, Don Jacobson, Stacy Reinstein, Diana Tovar

Regular Business

Approval of Minutes

The draft minutes from April 20, 2020, MHJS meeting were presented for approval. **Motion:** Jim Dunn moved to approve the April 20, 2020, minutes as presented. **Seconded:** Amelia Cramer. Motion was approved unanimously.

Mental Health Cases: Rule Proposal

Judge Jay Polk, Associate Presiding Judge at the Maricopa County Superior Court, presented his proposed changes to Supreme Court Rule 123. The proposed changes address the confidentiality of mental health records. Judge Polk noted that the proposal is to insert, not replace, a new section (d)(3) Mental Health Records that deals with the complex nature of confidentiality concerns with releasing proceeding records related to court ordered evaluations and court ordered treatment plans.

In addition, Judge Polk shared proposed Supreme Court Rule 124. This new rule would deal with the confidentiality of proceedings pursuant, and related, to Title 36 Chapter 5, A.R.S. The proposal, still in draft form, states that proceedings should be closed. He also highlighted exceptions to the rule that would allow the patient's guardians, representatives, safety personnel, and treatment team access to the proceeding records.

Judge Polk outlined the next steps of his proposal which entails meetings with stakeholders such as appellate clerks, lawyers, and trial court clerks to brainstorm and share draft proposals before submitting the petition in January.

Discussion:

A question was raised regarding the differences in the practice of sealing mental health records between the two divisions of the appellate court. Judge Polk replied that there is nothing division

official regarding the practice of sealing records on the Supreme Court level. Is the focus of the rule proposal specific to public access or will the proposal address other individuals particularly county attorneys and other courts in regard to accessing sealed records? Judge Polk noted that proposals are still being drafted and that members comments will be taken into consideration.

Key Issues Workgroup Recommendations

Jim McDougall gave a brief overview of the workgroup's progress on the Interim Report Recommendations: Title 36 Statutory and System Improvements which the committee received prior to the meeting. He addressed the highlights of the workgroup's position on the following three recommendations:

1. Amend the definition of mental disorder.
2. Create and authorize a court order for enhanced services.
3. Amend the definition of persistent or acute disability (PAD) and emergency hospitalization requirements.

Mr. McDougall stated that in the interim report there is a summary of each recommended statutory improvement. He also shared that the group is working on a report that will include five real-life case study examples and their mental health treatment journey while in the justice system.

Motion: Mr. McDougall made a motion to approve the interim report and recommendations.

Seconded: Judge Staring. **Vote:** Motion passed. 17/1/0.

Discussion:

There was discussion about whether the committee was voting to recommend involving community stakeholders, new language, or using tools already in place. Mr. McDougal clarified that the recommendation of the workgroup is to move forward with amending the statute. J.J. Rico shared his no vote explanation for the interim report recommendations specifically with amending the definition of mental disorder. Mr. Rico gave his perspective as the director of the Arizona Center for Disability Law noting the agency's concern regarding adding more groups and exposing possible deficiencies with service.

COVID -19 Continuity of Court Operations During a Public Health Emergency Workgroup Best Practices Recommendations

Stacy Reinstein and Theresa Barrett provided information on the Continuity of Court Operations Workgroup. The workgroup's purpose is to provide best practices and recommendations on court operations and reopening standards during the current pandemic.

Legislative Update

Liana Garcia, AOC Legislative Liaison, provided a brief update on the status of the legislation. Ms. Garcia noted that the House decided to resume operations however, the Senate had not decided if they would reconvene this session. She informed members the Rule 11 bill is still in the queue to be considered.

Committee New/ Updates

Ms. Reinstein announced she would be taking a position with the Department of Economic Security in the Child Care Administration. Ms. Reinstein thanked the committee for the opportunity to work with them and for all she has learned. Ms. Barrett informed the committee she would serve as point of contact for members until such time AOC staff resources were identified to provide ongoing support.

Mr. Batty noted that the committee report is in draft form and an editing group will be created to further expedite revisions. He also mentioned an upcoming television program that will be aired on the ABC network titled “Not Broken” that may be a valuable resource for the committee.

Good of the Order / Call to the Public

No one responded to the call to the public.

Adjournment

The meeting was adjourned at 11:19 a.m. by order of the chair.