

# Task Force to Supplement Keeping the Record by Electronic Means

**June 25, 2019**

12:00 p.m. to 4:00 p.m.

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 230

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**Present:** Honorable Samuel A. Thumma; Mr. Dean Brault; Mr. Rolf Eckel; Honorable Pam Gates; Mr. Ed Gilligan; Mr. Bob James; Ms. Tracy Johnston; Mr. Jacob Jones; Ms. Sheila Polk; and Ms. Kate Roundy

**Telephonic:** None

**Absent/Excused:** None

**Presenters/Guests:** Ms. April Escobedo, Court Reporter; Ms. Leslie Foldy, Foldy Reporting; Ms. Robin Hillyard, County Supervisors Association; Ms. Marylynn LeMoine, Arizona Court Reporters Association; Ms. Cindy Lineburg, Court Reporter; Mr. Richard Plattner, Plattner Verderame, PC; and Ms. Kim Portik, Canyon State Reporting

**Administrative Office of the Courts:** Ms. Cathy Clarich, Ms. Amy Love, Ms. Marretta Mathes, Mr. Marcus Reinkensmeyer, and Ms. Diana Tovar

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## **I. New Business**

### **a. Call to Order, Welcome, Introductions, and Opening Remarks**

The June 25, 2019 meeting of the Task Force to Supplement Keeping of the Record by Electronic Means was called to order by the Chair, Judge Samuel A. Thumma, at 12:02 p.m. The Chair asked for member and staff roll call and introductions. The Chair provided opening remarks related to the Task Force's purpose.

### **b. Adoption of Rules for Conducting Task Force Business**

The Rules for Conducting Task Force Business were reviewed. A motion was made by Judge Pam Gates to adopt the rules, seconded by Ms. Sheila Polk. The motion passed unanimously.

### **c. Background Information**

Mr. Marcus Reinkensmeyer provided background on court reporting as it relates to the 2019-2024 Arizona Supreme Court strategic agenda and the rationale for convening this task force. Mr. Reinkensmeyer indicated that the emphasis is on the need to supplement, not displace, court reporters.

Mr. Bob James discussed the chronic lack of court reporters. The state is currently in a 20 percent vacancy rate for court reporters in the Arizona superior courts. Five counties have no court reporter employment at all, with two counties using remote court reporting technology.

#### **d. Administrative Order 2019-49 and Project Timeline**

Judge Thumma reviewed the contents of Administrative Order 2019-49 and the charge of the Task Force. Judge Thumma reviewed the compressed timeline for this Task Force to complete its work. The Task Force's report and recommendations are due September 1, 2019. Judge Thumma indicated that he anticipates the Task Force will meet 2-3 times to complete its work by this deadline.

#### **e. Member Ideas, Observations, Expectations, and Comments**

Judge Thumma solicited feedback from members regarding what the Task Force can identify regarding issues, concerns, potential solutions, etc.

Mr. Jacob Jones pointed out that it would be helpful to ensure members of this Task Force are well-informed/educated on the matter so that thoughtful discussion and decisions can occur. He also pointed out that it is going to be important to hear what is happening in the smaller counties that is precipitating these concerns and indicated that flexibility is going to be key.

Mr. Rolf Eckel spoke to some of the concerns that smaller counties are facing. Yavapai County currently has 8 positions authorized, but only 5.5 positions filled. He indicated that Yavapai County is required to look at the calendar to triage the cases to determine priority in deciding where a court reporter should be placed.

Ms. Kate Roundy indicated that the newly passed legislation regarding licensing reciprocity may help the issues surrounding the shortage of court reporters. She also discussed a program that the Arizona Court Reporters Association (ACRA) used to have called "Request a Reporter" wherein the court administrator from each county could reach out to ACRA to let them know what they needed, and ACRA would send notification to all the court reporters in the state. This program is no longer in place. Ms. Roundy will follow up as to what happened with this program and why it is no longer in place. Ms. Roundy also commented that there seems to be a preference among some courts in using electronic recording in lieu of a court reporter.

Mr. James briefly discussed the remote court reporting program currently being used by Cochise and Santa Cruz Counties. Mr. Ed Gilligan indicated that in Cochise County, remote court reporting is being used out of necessity, not out of preference. He indicated there are challenges related to the quality of the experience, but one of the advantages over solely a recording is that there is a live interaction taking place when the reporter is actively taking the record from the remote location. He indicated that the preference would be to have a live court reporter present in the courtroom, but Cochise County has been unable to fill court reporter vacancies.

Mr. Gilligan indicated that cost is a factor as well in that there is not an ever-increasing source of revenue that can be pushed to every new project. As such, needs must be prioritized. Mr. Gilligan indicated that flexibility is important and reminded other members to be mindful of the financial limitations that exist. Mr. Reinkensmeyer inquired as to whether other counties are similarly situated. Mr. Gilligan indicated that the problems seem to be similar, except perhaps in Maricopa and Pima Counties, but that there are challenging situations around the state. Everyone is focused on budget, and from a county administration perspective, the effort is to find the most economical way to do things without sacrificing quality. The solutions must be cost-effective, they cannot be sustained.

Administrative Order 2019-49, which created the Task Force, directs that “[t]he Task Force shall submit its recommendations, together with recommended changes to statutes, rules and the Arizona Code of Judicial Administration, by September 1, 2019.” Given this directive, during the meeting, several Task Force members requested a list of the existing authorities related court reporting. This will be made available to members before the next meeting.

Judge Thumma will ask Mark Wilson, Certification and Licensing Division Director, to attend the next meeting to briefly discuss the licensing of court reporters.

Judge Thumma inquired as to whether we know what other states in the same situation have done. AOC staff will reach out to the National Center for State Courts (NCSC) to see if we can gather that information. Ms. Sheila Polk is a member of the National Network of District Attorneys and County Attorneys and will ask the association to send out an inquiry to see what type of responses we get back. Judge Pam Gates indicated that she would inquire similarly of her colleagues at a national conference she is attending next month.

Ms. Polk emphasized the need to ensure equal access when it comes to transcripts, the ability to review the record, etc. Judge Gates indicated that there are times when she will take pieces (30-45 seconds) of the FTR recording to play for the parties, jury, etc., in lieu of having a written transcription. She has also done this during jury deliberations when they ask to review witness testimony since transcription cannot be accomplished in such a short time window.

Judge Thumma inquired about the transcription process in Maricopa County. Mr. Richard Plattner indicated that this is a source of delay in Maricopa County. He also indicated that upon a public records request for the faulty transcripts slips, there have been no such slips turned in by the transcribing companies in the past three years. The transcription manual sets forth what would require a transcriptionist to submit one of these forms.

Mr. Dean Brault spoke to issues surrounding what is being picked up by the microphone, what should be on the record, and what should not be on the record.

Members discussed how transcription services are contracted throughout the state.

Ms. Amy Love indicated that it might be helpful for the group to have court reporter salaries by local jurisdiction. Mr. James will gather this information. Ms. Love also indicated that this group should be mindful of the storage that would accompany electronic recordings, records, documents, etc. Mr. James indicated that this is an area that is largely lacking in statewide consistency.

At the end of the meeting, and after having “volunteered” individuals to follow up on various items, Judge Thumma reviewed the “to-do” list and individuals responsible to undertake those items before the next meeting:

1. Circulate a list of statute provisions, rules of procedure, Arizona Code of Judicial Administration (AOC)
2. Information on Request a Reporter program (Ms. Roundy)
3. Ask that CLD Director Mark Wilson attend the next meeting to briefly discuss licensure (Chair)
4. What other states/jurisdictions may be doing (Chair (NCSC), Mr. Jones (counterparts), Judge Gates (counterparts))
5. Court reporter salaries (Mr. James)
6. Record retention schedule as it relates to retention timeframes when a transcript is prepared versus when it is not prepared (Judge Gates)

## **II. Call to The Public**

The Chair made a call to the public. Ms. Cindy Lineburg spoke to efficiency and the factors that contribute to transcript production.

Ms. Leslie Foldy spoke to the Request a Reporter program and supports bringing the program back.

## **III. Adjournment**

The Chair adjourned the meeting at 2:23 p.m.

**Next Task Force Meeting Date:**

**August 1, 2019**

10:00 a.m. – 2:00 p.m.

State Courts Building Conference Room 119 A/B  
1501 W. Washington, Phoenix, AZ 85007

# Task Force to Supplement Keeping the Record by Electronic Means

**August 1, 2019**

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

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 119A/B

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**Present:** Samuel A. Thumma; Mr. Dean Brault; Mr. Rolf Eckel; Honorable Pam Gates; Mr. Ed Gilligan; Mr. Bill Hughes (proxy for Ms. Sheila Polk); Mr. Bob James; Ms. Tracy Johnston; Mr. Jacob Jones; and Ms. Kate Roundy

**Telephonic:** None

**Absent/Excused:** Ms. Sheila Polk (proxy Mr. Bill Hughes)

**Presenters/Guests:** Ms. Paula Collins, Maricopa County Superior Court; Ms. Danielle Griffin, Griffin Group International; Ms. Pamela Griffin, Griffin Group International; Ms. Robin Hillyard, County Supervisors Association; and Ms. Kim Portik, Canyon State Reporting

**Administrative Office of the Courts:** Ms. Cathy Clarich, Ms. Amy Love, Ms. Marretta Mathes, Mr. Marcus Reinkensmeyer, and Mr. Mark Wilson

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## **I. Regular Business**

### **a. Call to Order, Welcome, Introductions, and Opening Remarks**

The August 1, 2019 meeting of the Task Force to Supplement Keeping of the Record by Electronic Means was called to order by the Chair, Judge Samuel A. Thumma, at 10:03 a.m. The Chair asked for member and staff roll call and introductions. The Chair provided opening remarks related to the Task Force's purpose.

### **b. Approval of Meeting Minutes from June 25, 2019 Meeting**

The Chair entertained a motion to approve the June 25, 2019 meeting minutes as presented. A motion to approve the minutes was made by Mr. Rolf Eckel, seconded by Mr. Jacob Jones. The motion passed unanimously.

### **c. June 25, 2019 Meeting Recap**

The Chair provide a brief recap of the last meeting's discussions:

- The rationale for the formation of this task force;
- Administrative Order 2019-49 establishing this task force, this task force's charge, and the timeline for this task force to complete its work. The report and recommendations are due by September 1<sup>st</sup>;
- Future meeting date schedule. The next meeting will be August 26<sup>th</sup>. This will be the last face-face meeting. August 29<sup>th</sup> will be a telephonic meeting;
- Roadmap: take information we discuss today, gather it and prepare a report comprised of three sections: (1) suggested changes to rules, statutes, and Arizona Code of Judicial Administration, (2) best practices/alternatives, and (3) opportunities for trial courts to prioritize or triage;
- Goal is to get report to group within about 10 days for comment, get it back, and turn it again for discussion at the August 26<sup>th</sup> meeting. A fair amount of time on August 26<sup>th</sup> will be spent on going through the draft report;
- A list of current statutes, rules and code that govern making a court record;
- The shortage of court reporters across the state and several counties' inability to recruit court reporters;
- The Request a Reporter program that ACRA used to have;
- The remote reporting software currently being used in Cochise and Santa Cruz Counties;
- Processes that are being used by other states;
- Ensuring that our recommendations account for equal access;
- The transcription process for Maricopa County and how other counties handle contracting these services;
- Obtaining a listing of court reporter salaries by county; and
- Retention schedules and ensuring that we review the retention schedules if anything from this task force might impact the schedules currently in place.

#### **d. Court Reporter Licensing**

Mr. Mark Wilson, Director of the Certification and Licensing Division (CLD), discussed the licensing process for court reporters and how the newly passed legislation regarding reciprocity may impact the licensing process.

The Certification and Licensing Division is responsible for investigating any applicant who would like to be licensed and investigating any complaint received. There are about 400 certified reporters and about 200 registered firms. Mr. Wilson indicated that he does not believe the reciprocity legislation will make a significant impact on the number of new court reporters entering the market in Arizona, but the new legislation will apply later in August.

## **II. New Business**

### **a. A National Perspective**

Mr. Marcus Reinkensmeyer has researched and been in touch with the National Center for State Courts (NCSC). He reported on NCSC studies related to digital recording and best practices, policy, etc., as well as other states' practices.

From the Trends in States Court document, Mr. Reinkensmeyer provided the highlights:

- Prospect of enhanced digital record, e.g., allowing courts to integrate recording system with other digital applications;
- Digital recording can be cost-effective;
- Opportunity to establish that the proceedings of the court belong to the court;
- This will require a change in the way courts operate, and courts need to be much more thoughtful about that, e.g., to be clear about who will be operating the recording equipment;
- Provided list of states that have transitioned to digital recording, to which Pennsylvania should be added;
- Governance, i.e., who will determine when digital recording will be used, which proceedings digital recordings will be used in, and how this would be implemented;
- Components of a successful program, e.g., have clarity on who creates and controls the court record, determine how the record will be accessed (available on webpage, burn CDs, etc.), determine staffing (centralizing staff, having a code of ethics, etc.), add protocols in the courtroom (such as signage) to let people know that they are in an electronic courtroom, attorneys can appropriately handle sidebars, etc.;
- Need to determine access to the records through administrative orders or through judicial code;
- Make sure everyone knows what their role is and how requests for transcripts will be handled (timing, cost, etc.);
- Utah transcript production: went to largely digital recording, used certified court reporters for all transcription, and reduced transcript delays by almost 100 days for the appellate courts; and
- Trends in centralized recording systems. Florida reports about a \$20,000 cost savings per year per courtroom.

Discussion was held regarding accuracy of transcript due to cross-talking, fail-safe systems, etc.

Mr. Reinkensmeyer reviewed the feedback that Ms. Sheila Polk received on behalf of the National District Attorneys' Association (NDAA) regarding practices in other states. He also gave a brief overview of the *Making the Record Utilizing Digital Electronic Recording* document published by the NCSC.

Ms. Tracy Johnston inquired as to whether there was any data on the cost to maintain or upgrade the equipment, how often, etc. Staff will look into this.

Mr. Jones discussed a model in California in which official court reporter pro tempores are used—a process that is set forth by statute. The position is paid, but it is strictly paid by the parties. The responsibilities are outlined, who pays, provisions on what must be done, etc. There is a list of pre-approved court reporters, or the parties may stipulate to who they want to use. Mr. Jones will provide these materials, and staff will circulate them to the members.

## **b. Court Reporter Perspective**

Ms. Kate Roundy and Ms. Tracy Johnston provided the court reporter perspective regarding existing issues surrounding making the official court record and this task force's charge.

Ms. Roundy reported that their position is that it is best to keep court reporters in the areas set forth in statute. She indicated that failures with digital recording are unpredictable, but predictably random. She provided examples.

Ms. Johnston indicated that it is their position that the current language of Arizona Supreme Court Rule 30 already allows for electronic recording to be used, at the discretion of the court, and therefore changes are not necessary.

Ms. Johnston also raised a concern about where the record would be sent to be transcribed. She also pointed out that grand jury is not always held in a courtroom or courthouse, so equipment would have to be installed in the building a county may use for grand jury proceedings.

Ms. Roundy reported on what is being done nationally to bring court reporters into the market. There are two organizations taking measures to recruit court reporters. The first is the National Court Reporters Association (NCRA). This organization launched a program in October 2016 called Discover Steno that has the A to Z program. This is a free program to anyone interested who can come once a week (3 hours per night) for 6 to 8 weeks, and they can learn the steno keyboard. After 6 to 8 weeks, if the person is interested, the program will help the person find a school. Last year, the program started online. There have been over 2,000 students who have participated in the program.

The second organization is Project Steno formed in 2017. Its mission is to “promote the stenographic court reporting captioning profession throughout social media and community outreach with the goal of building a robust pipeline of students into school and graduating them within 2 years.” This organization offers a similar A to Z program. It has a tuition assistance program, they partner with schools, they provide coaching and mentoring, and they are working with the U.S. government

and are focusing on military spouses. They are also in vocational high schools and career educational programs. In the last two years the program has worked with high schools in four states and launched programs in these high schools.

The Arizona Court Reporters Association (ACRA) is making efforts as well. It has reinstated the Request a Reporter program and has notified its members and outlying counties. The counties can reach out to let ACRA know when they have a trial need, court coverage need, etc., and ACRA will send out an email to its members and post it on its Facebook page. Two requests have been made since the last meeting, one in Yavapai County and one in Greenlee County.

Ms. Roundy discussed licensing reciprocity. She indicated that since the law passed, people have reached out to ACRA because they no longer must pass the Registered Professional Reporter (RPR) licensing requirements. Ms. Roundy encouraged administrators to ensure that the reciprocity information is included in job announcements and advertising.

Ms. Johnston discussed transcript delays. She indicated that sometimes the delay is the court reporter, but many times it is the transcriptionist. However, she indicated that many times the delay from the court reporter is due to the notification received from staff. There are often problems in the procedure related to the timing of the court reporter receiving notice of an appeal, or with an inaccurate notification because sometimes a minute entry will list one court reporter being present when it is actually someone else, and the correct court reporter never gets notified.

Ms. Johnston also suggested allowing more time for providing transcripts for lengthy trials.

Ms. Roundy suggested ensuring that counties work together to cover courtroom calendars. She suggested inter-county workforce exchange, remote reporting at a dedicated location, etc.

Ms. Roundy spoke to the return on investment of digital recording versus court reporting. She suggested that it is not a cost savings for digital recording because there are costs for the initial purchase of the equipment, court monitors, IT personnel, storage, maintenance, updates to hardware and software, and the cost of transcription.

Judge Pam Gates asked if there was data or information regarding the states that went to digital recording and reverted to using court reporters. Ms. Roundy indicated that they could get that information. Judge Gates emphasized the usefulness of data, information, and “lessons learned” in this area.

Mr. Ed Gilligan expressed concerns about how Arizona will recruit and train its way out of the shortage, as national statistics reflect that the shortage is significant, ranging from 5,000 - 6,000; schools have declining enrollments; since 1999, 200 schools have closed; student are no completing programs. He inquired as to whether there is data regarding the number of people being lost to retirement as compared to the number of people we are licensing each year. The Chair will follow up with Mark Wilson.

Mr. Gilligan also inquired as to how many of the 2,000 people who took part in the learning steno program completed and became stenographers in our courts or furthered their learning in the field.

The Chair inquired about the length of time it takes to complete a court reporting program. Ms. Roundy indicated that it depends, but on average it takes about two years.

Mr. Rolf Eckel inquired as to whether there is any partnering with local community colleges to provide court reporter programs. Ms. Roundy indicated that once a person graduates, they must pass the RPR. She also indicated that there is a program at Gateway Community College and that online schools are popular for court reporting.

Mr. Dean Brault inquired as to the cost of a court reporting program. Ms. Roundy estimated the cost to be about \$25,000 for the program.

### **c. Court Management Perspective**

Mr. Rolf Eckel and Mr. Bob James reported on the court management perspective. Mr. Eckel gave an overview of the Arizona Association of Superior Court Administrators (AASCA). AASCA meets quarterly and a regular agenda item for the past 4 - 5 years has been the lack of court reporters and how courts are handling this. Mr. Eckel spoke to the difficulty in the hiring process due to the amount of time it takes (about 4 months). Procedures have since been put in place for provisional licensing.

Mr. Eckel discussed the history of AASCA's work as it relates to the suggested changes to statutory language. He also discussed AASCA's desire to have a mechanism in place that allows for flexibility for court management to determine what the best way is to collect, record, and maintain the court record, as the record belongs to the court.

Mr. James indicated that the driving force of the committee's work under AASCA was dealing with improving the administration of justice. This has been difficult when dealing with how the record should be captured. Mr. James discussed the

“catch all” provision of Rule 30. Mr. James spoke to the responsibility of the trial court for producing the record, and this responsibility is what gives rise to the need for flexibility and puts the court in the best position to determine the appropriate means by which to produce the record.

Ms. Amy Love inquired as to whether fees related to obtaining the record can be deferred or waived, and who ultimately bears that cost. Ms. Love suggested that any statutory modifications should clarify who will bear the costs under these circumstances.

### **III. Member Discussion**

The Chair reviewed the deliverables:

- AOC staff will look into getting updated data from the NCSC;
- Mr. Jones will provide materials regarding California’s pro tempore model for circulation;
- Judge Gates will look into whether other information is available regarding California, New Mexico, Texas, Iowa as to why they reverted from digital recording; and
- The Chair will follow up with Mark Wilson on the incoming and outgoing active court reporters

Discussion was held regarding how to address waivers/deferrals in the report and in statutory changes.

The Chair made mention to ensuring that the concept of treating the time to produce transcripts the same for every proceeding is captured.

The Chair reviewed the next meeting dates and plans for moving forward with drafting the report. The report will be divided into three main sections: (1) recommended changes to statutes, rules, and Arizona Code of Judicial Administration, (2) current efforts to fill in gap in court reporting services, and (3) best practices.

Members discussed what issues they want to highlight, what suggestions they have, and what cautions they want the report to include.

Recommendations should include making updates to bench books.

The member identified the following statutes and rules:

- 38-424 – on its face, it appears that the second clause overrides the first clause in that if a party requests a court reporter, the court has no other option than to grant the request;

- 12-223 – case law does not seem to allow the court to excuse the court reporter from certain proceedings;
- Local Rules – need to review local rules to at least bring to local courts' attention;
- Rule 15.3 ARCrP – permits the parties to have a deposition using someone other than a court reporter;
- 12.7, ARCrP – Court reporter's record of grand jury transcript;
- ACJA §1-603 – content of grand jury transcript;
- 21-312 – grand jury;
- Supreme Court Rule 123(e)(10);
- 18.3, ARCrP – grand jury; and
- 12-221

Mr. Jones suggested keeping the rules that govern taking and recording depositions unchanged. He also indicated that in the event a proceeding is permitted to be recorded by electronic means only, if the record needs to be transcribed, there should be a recommendation about how that would be transcribed and who would transcribe it. Mr. James indicated that this could fall to flexibility with allowing the local court to decide, as he does not want to dictate to the trial court who can transcribe a record. He is, however, supportive of making recommendations. Mr. Reinkensmeyer indicated that NCSC's report suggests that there should be some type of governance if this approach is taken, e.g., administrative order, code of administration, etc.

Ms. Johnston suggested that page rates, ARS 12-224, which have not changed since 1978, should be looked at to give pay increases and stay competitive as opposed to spending money on digital recording. Mr. Dean Brault indicated that the page rate for transcripts should also be reviewed.

Mr. Eckel suggested that we recommend shortening the time for licensing to streamline the process.

#### **IV. Call to The Public**

The Chair made a call to the public. There were none.

#### **V. Adjournment**

The Chair adjourned the meeting at 1:32 p.m.

#### **Next Task Force Meeting Date:**

**August 26, 2019**

10:00 a.m. – 2:00 p.m.

State Courts Building Conference Room 345 A/B

1501 W. Washington, Phoenix, AZ 85007

# Task Force to Supplement Keeping the Record by Electronic Means

**August 26, 2019**

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

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 345A/B

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**Present:** Samuel A. Thumma; Mr. Dean Brault; Mr. Rolf Eckel; Honorable Pam Gates; Mr. Ed Gilligan; Mr. Bob James; Ms. Tracy Johnston; Mr. Jacob Jones; Ms. Sheila Polk; and Ms. Kate Roundy

**Telephonic:** None

**Absent/Excused:** None

**Presenters/Guests:** Ms. Paula Collins, Maricopa County Superior Court; Ms. Pam Griffin, Griffin Group International; Ms. Cindy Lineburg, Court Reporter; Ms. Mary Meyer; and Mr. Richard Plattner, Plattner Verderame, PC

**Administrative Office of the Courts:** Ms. Cathy Clarich, Ms. Marretta Mathes, and Mr. Marcus Reinkensmeyer

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## **I. Regular Business**

### **a. Call to Order, Welcome, Introductions, and Opening Remarks**

The August 26, 2019 meeting of the Task Force to Supplement Keeping of the Record by Electronic Means was called to order by the Chair, Judge Samuel A. Thumma, at 10:08 a.m. The Chair asked for roll call. The Chair provided opening remarks related to the Task Force's charge, actions taken after the August 1, 2019 meeting and actions to be taken by September 1, 2019.

### **b. Approval of Meeting Minutes from August 1, 2019 Meeting**

The Chair asked for any corrections to the August 1, 2019 meeting minutes. Ms. Tracy Johnston requested a correction to page 8 related to transcript page rates, so that the minutes read "Ms. Johnston suggested that page rates for transcripts in A.R.S. § 12-224 (which have not changed since 1978) be looked at . . ." The Chair entertained a motion to approve the August 1, 2019 meeting minutes, subject to Ms. Johnston's correction request. A motion to approve the minutes was made by Judge Pam Gates, seconded by Mr. Rolf Eckel. The motion passed unanimously.

### **c. Administrative Order 2019-49 and Meeting Overview**

The Chair reviewed Administrative Order 2019-49 as it relates to the Task Force's charge and deadlines; reviewed the next Task Force meeting details; reviewed the report structure: summarized the report revisions based on the comments and feedback received; and reviewed the deliverables from the last Task Force meeting.

## **II. New Business**

### **a. Report and Recommendations Discussion**

Discussion was held regarding the draft report and recommendations, beginning with section one of the report and draft Appendix 2. Mr. Richard Platter, public member, pointed out that "court reporter" was not changed to "certified reporter" in all places. This update will be made. Mr. Plattner also discussed the need to ensure that there are controls in place for courts to adequately implement processes and capture the record by electronic means. Mr. Plattner also raised concerns about the lack of standards for transcriptionists.

The Chair explained that this Task Force's charge is a continued start for the Arizona Judicial Council to consider. Drafting policy changes is outside the scope of the charge of this Task Force. Judge Gates suggested that perhaps the Task Force should include in its letter to the Chief Justice some suggestions for future work surrounding these topics, e.g., authority to revoke local court discretion to make records by electronic means and review of the Arizona Manual for Transcript Procedures. Judge Gates also noted that, in revising the suggested rules changes based on today's discussion, comments to the rules should be reviewed to ensure that they coincide.

Mr. Jacob Jones expressed concern about having a "hole in the record" that cannot be reconstructed and suggested placing additional emphasis on the need to use courtroom monitors when using electronic recording.

Ms. Sheila Polk expressed concerns related to determining what the official court record is when a party is permitted to bring their own court reporter to a proceeding. Discussion was held regarding identifying the official record if there is a court reporter brought in by one or both parties. Discussion was also held regarding who bears the cost of the court reporter. Verbiage will be added to indicate that the official record will be the record as designated by the court, and that the party bringing the court reporter will bear the associated costs.

Discussion was held regarding timely requests for a court reporter made pursuant to Arizona Supreme Court Rule 30(b)(1). Verbiage will be added to the comment to indicate that the rule is not intended to limit a court's ability to grant an untimely request for a court reporter. Discussion was held regarding adding "other certified reporter" to Rule 30(b)(3)

and (4). Verbiage will be added to the comment to indicate that the court may approve the use of other certified reporters.

Discussion was held regarding grand jury proceedings. Verbiage will be added to ARS § 21-411 to ensure that exhibits are secured.

Some members expressed concern about not requiring a court reporter in proceedings where current law requires a court reporter. Other members suggested leaving it to the discretion of the local jurisdiction and have a comment that reminds courts to consider the unique factors of these proceedings when determining how the record should be captured. The discussion also included the focus of the Task Force and the directive of the Administrative Order.

Discussion was held regarding the timing for transcript production and the requirement for a written request to produce the transcripts set forth by the revisions to Arizona Rule of Criminal Procedure 12.7. The verbiage will be revised to address these concerns. Judge Gates noted that Arizona Rule of Criminal Procedure 12.9 needs to be reviewed in conjunction with the revisions to Rule 12.7.

#### **b. Vote**

The Chair entertained a motion to adopt bullets two and three of the executive summary of the Task Force's recommendations (page four), and sections two and three of the August 21, 2019 report and recommendations (beginning on page 10 through page 19) and related text, subject to slight revision based on today's discussion. A motion was made by Mr. Eckel and seconded by Ms. Polk. After concern expressed about the manner of how an initial vote passing the motion was taken, Ms. Polk requested that the vote be retaken. The vote was retaken, and the motion passed by majority vote with seven voting in favor and two voting against, with the Chair not voting.

### **III. Call to The Public**

The Chair made a call to the public. There were none.

### **IV. Adjournment**

The Chair adjourned the meeting at 1:55 p.m.

#### **Next Task Force Meeting Date:**

**August 29, 2019**

9:00 a.m. – 10:00 a.m.

Telephonic

State Courts Building, Conference Room 230 for Public Attendees  
1501 W. Washington, Phoenix, AZ 85007

# Task Force to Supplement Keeping the Record by Electronic Means

**August 29, 2019**

9:00 a.m. to 10:00 a.m.

1501 W. Washington St. Phoenix, AZ 85007

State Courts Building, Telephonic for Task Force Members

Conference Room 230 for Public Members

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**Present:** Samuel A. Thumma, Chair; Ms. Marretta Mathes, AOC; and Mr. Marcus Reinkensmeyer, AOC

**Telephonic:** Mr. Dean Brault; Mr. Rolf Eckel; Honorable Pam Gates; Mr. Ed Gilligan; Mr. Bob James; Ms. Tracy Johnston; Mr. Jacob Jones; Ms. Sheila Polk; Ms. Kate Roundy; Ms. Cathy Clarich, AOC; and Ms. Amy Love, AOC

**Absent/Excused:** None

**Public Member:** Mr. Richard Plattner, Plattner Verderame, PC (telephonic)

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## **I. Regular Business**

### **a. Call to Order & Roll Call**

The August 29, 2019 meeting of the Task Force to Supplement Keeping of the Record by Electronic Means was called to order by the Chair, Judge Samuel A. Thumma, at 9:05 a.m. The Chair asked for roll call. The Chair provided opening remarks regarding meeting minutes and the draft report and recommendations.

## **II. New Business**

### **a. Report and Recommendations Revisions and Vote**

The Chair provided an overview of the changes to Appendix 2 based on the task force's August 26, 2019 meeting.

Discussion was held regarding the proposed change to Arizona Supreme Court Rule 30(b)(4) as it relates to transcription and the official record. The Chair clarified the intent of the verbiage used in this rule. Verbiage will be added to clarify that a record made by an authorized transcriber as defined in Rule 30(a)(2)(b) or (c) is deemed prima facie a correct reflection of the record.

Discussion was held regarding A.R.S. § 21-411(A). Verbiage will be added to sentence four to indicate that the electronic record, or a portion of the electronic record, may be

denied to the defendant upon a showing of extraordinary circumstances by a prosecuting officer.

A motion was made by Judge Pam Gates to approve Appendix 2 as circulated on August 27, 2019, subject to the changes articulated during today's discussion, which are a modification to Rule 30(b)(4) and A.R.S. § 21-411. The motion was seconded by Mr. Rolf Eckel. Further discussion was held regarding A.R.S. § 21-411. Language will be added to A.R.S. § 21-411(B) to allow, along with the foreman or acting foreman, a clerk of superior court, the presiding judge of the superior court or an individual designated by the presiding judge of the superior court, to swear in the person who transcribes the reporter's notes or electronic record.

A motion to amend Judge Gates' motion was made by Ms. Sheila Polk to preserve current law regarding how grand jury proceedings are transcribed and the timelines for transcription but allowing for electronic recording of grand jury proceedings. The motion was seconded by Mr. Dean Brault. The motion passed by majority vote with seven voting in favor and two voting against, with the Chair not voting.

The Chair later called for a vote on Judge Gates' motion as amended to approve revisions to Appendix 2 as circulated, with changes discussed to Rule 30(b)(4), A.R.S. § 21-411 and resulting changes to Arizona Rule of Criminal Procedure 12.7. The motion as amended passed by majority vote with six voting in favor and three voting against, with the Chair not voting.

The Chair entertained a motion to adopt section one of the report and recommendations with editorial prerogatives given. A motion was made by Mr. Eckel. The motion was seconded by Judge Gates. The motion passed by majority vote with six voting in favor and three voting against, with the Chair not voting.

### **III. Call to The Public**

The Chair made a call to the public, before the votes on the motion as amended and on the motion to adopt section one of the report and recommendations. There were none.

### **IV. Adjournment**

The Chair adjourned the meeting at 9:59 a.m.