



**Arizona State Courts Building
1501 West Washington
Phoenix, Arizona**

Friday, January 24, 2025

MEETING MINUTES

Present: Doug Cole, Vice-Chair, Benjamin Blink, Hon. Dean Fink, Daniel Frias, Hon. Patrick Gard, Hon. Stacy Krueger, Elizabeth Lorenz, Rose Marquez, Sheryll Prokop, Jon Savary, Kathryn Townsend, Henry Varga, and Hon. Randall Warner

Present via Zoom: John Burton, Patricia Dean, Hon. Danelle Liwski, Jane Oh, Scott Overton, Stephen Portell, William Tanner, Hon. Garye Vasquez, and Hon. David Weinzweig

Absent: Will Auther, Chair, David Byrne, Terry Crites, Ann Halaby, Eric Hammons, Ellen Poole, Elizabeth Rueter, and Gioia Sanderson

Staff: Blanca Moreno Calles, Lisa Hauser, and Emma Morgan

Call to Order

Doug Cole, Vice-Chair, called the meeting to order at 9:31 a.m. He shared that Chair Will Auther was unable to attend the meeting and he would preside over it in his absence. Vice-Chair Cole welcomed all the Commission members present and noted a quorum for the record.

Approval of Minutes

Vice-Chair Cole asked if any member wished to submit changes or additions to the drafted minutes of the meeting on November 15, 2024. **A motion to approve the November 15 draft minutes as submitted was made.** The motion was seconded and passed unanimously.

Update from Workgroup on Training Materials for Superior Court Staff

Vice-Chair Cole asked Benjamin Blink to provide an update of the changes made to the training materials for superior court staff. Mr. Blink explained that the workgroup looked at the materials and their main goal was to make changes to help increase the response rate. The workgroup decided to make changes to the instructions and emphasized that all eligible respondents are expected to receive a survey. Additionally, the workgroup included a script that staff could read when distributing the surveys. Mr. Blink also mentioned that Judge Danelle Liwski met with the State Bar Board of Governors to explain the JPR process and to encourage sessions among the state bar to discuss the importance and confidentiality of the surveys. He suggested that the Commission continue to investigate how to increase the survey return rate and monitor if the written materials are helping in any way with the return rate. It was also suggested that the commission continue to communicate with court staff to understand the workflow within the

courtroom and to continue educating staff and the public about the JPR process.

Patricia Dean mentioned that she was part of the court commissioners' conference team and while discussing the surveys, she discovered that commissioners have been told that they can not speak about the survey process in the courtroom. Ms. Calles clarified that Commissioners go through a similar JPR process but the county and presiding judges of each county decide the procedures of their survey distribution process.

Discussion and Possible Decision Concerning Attorney Surveys of Superior Court Judges Under Rule 5(b)(1)(d)(i)

Vice-Chair Cole mentioned that the meeting materials included questions submitted by court staff regarding the attorney surveys. He asked Blanca Moreno Calles to provide an update on training for superior court staff. Ms. Calles gave an overview of the training provided to date and the most common questions asked during the training. She mentioned that the biggest question for staff was how to comply with the rules and capture attorney emails to receive a survey if they filed a motion on any fully briefed issue within 60 days before the survey period. Vice-Chair Cole opened the floor for discussion and asked if the judicial members could expand on the issues raised by staff. Judge Dean Fink mentioned that as the probate presiding judge, several orders had his signature though they were more administrative than related to a specific case. Vice-Chair Cole reminded the Commission that the current rule petition submitted to the Court could be amended if the Commission felt this part of the rules warranted an amendment. Judges from Pinal, Coconino, and Pima counties provided additional input on the rule. Judge Stacy Krueger suggested that Coconino would benefit from having staff training in November instead of waiting until January to start tracking and collecting emails of those attorneys who file motions but do not appear in the courtroom instead of backtracking. Judge Liwski agreed with notifying staff that attorneys listed in administrative-type orders would not receive a survey. Ms. Lisa Hauser, Deputy Counsel mentioned that as she went through the list of questions, the rule of thumb she was using was if there was a possibility in any of the situations listed for the judge to do something that would be of significance to a litigant even if it was administrative in nature.

Vice-Chair Cole asked the Commission to go through the questions submitted by staff and provide a response that Ms. Calles would distribute to staff for their reference during the survey period.

In terms of the family bench questions, Judge Fink shared that if a judge was communicating with attorneys on a committee or the communication was directed to a specific attorney, those attorneys should receive a survey. Mass communication to attorneys would not warrant a survey.

Civil bench judges submitted a list of specific questions which were discussed individually by the Commission and the decision on whether attorneys should receive a survey is provided below.

- Minute entries assigning a commission to handle an Application for Default. *No*
- Minutes entries placing a case on the dismissal calendar after receiving a Notice of Settlement. *No, unless this is the only communication.*
- Minute entries issued indicating "no action" will take place regarding a specific filing. *No*
- Scheduling orders. *If the parties are not in agreement or the judge has to make a decision, yes.*
- Minute entries setting any type of hearing or Trial Setting Conference. *No*
- Orders signed after receiving a Stipulation. *Yes*
- Orders extending deadlines. *No, unless stipulated.*

- Orders granting unopposed motions or motions where the opposing side has not yet been served. *No*
- Orders issued upon a notice of bankruptcy filing. *No*

Superior court staff and judges submitted individual questions not specific to a bench. The Commission discussed each question and provided the following guidance for each.

- Critical Covered period in December where paper matters are completed and ruled on before the survey period begins. *If the matter was ruled on before the survey period began, the rule would not apply, and those attorneys would not get a survey.*
- Law enforcement officers show up to get warrants granted by judges, they swear in, but no case is filed because it is all pre-indictment. Should they get a survey? *Yes, a litigant/witness survey.*

The Commission shared different opinions regarding paraprofessionals appearing in front of judges representing litigants and if they should be receiving an attorney survey or a litigant/witness survey. Some members identified that attorneys listed in the rule should be interpreted as a literal definition and only attorneys should receive an attorney survey. Other members felt that paraprofessionals would be able to answer the legal ability questions on the attorney survey. Due to a lack of consensus, John Savary suggested taking a vote on the issue. **Henry Varga moved to treat the paraprofessional category as litigants/witnesses.** The motion was seconded and passed by a majority vote.

Vice-Chair Cole moved on to the question regarding rule 39 students appearing in front of a judge with an attorney and asked if they should receive a survey and, if so, which survey. **Judge Randall Warner moved to treat rule 39 students as paraprofessionals and hand them a litigant/witness survey.** The motion was seconded and passed by a majority vote.

Discussion and Possible Decision Under JPR Rule 5(b)(1)(E)(ii), Concerning the Evaluation of Supreme Court Justices by COA and Superior Court Judges

Vice-Chair Cole asked Judge Warner if he could provide some background on this agenda item. Judge Warner said he had mentioned this as an idea to fix the low response rate for Supreme Court Justices. He had suggested allowing every judge in the state or trial and appellate judges to provide a survey response for justices as most of a judge's interaction with the Supreme Court was not related to cases but instead from the committees they served, the rules they approved and the strategic agenda. Judge Warner mentioned that he was waiting for more follow-up discussion and did not have additional information on the subject. Vice-Chair asked if the subject could be tabled for the April meeting and further review of the JPR Rules if such a change would require a rule change. Mr. Varga mentioned that if this was to move forward, he would like to see the responses separated by judges who are attorneys and non-attorney judicial officers in a separate category. Judge Warner suggested getting input from the Supreme Court before moving forward with this subject.

Discussion on Updated Data Report Format Adjusted to the New Rating Scale on New Surveys and Possible Decision to Approve it.

Vice-Chair Cole shared that an administrative issue directly related to this agenda item had been raised. During the approval of the new surveys, the legal ability question was inadvertently approved to be part of the survey for superior court staff but not on the surveys for appellate staff. Vice-Chair Cole asked if there was any objection with directing staff to correct the superior court staff survey and remove the legal ability question. No member objected.

Vice-Chair Cole asked Ms. Calles to provide background on the information presented to the Commission. Ms. Calles mentioned that she had reached out to the Docking Institute to provide samples of the data reports for the Commission's consideration and include the new rating scale on the surveys. Docking Institute provided two report samples for the Commission's consideration for the appellate data reports and mentioned that the superior court reports would be updated based on what the Commission approved. Docking Institute suggested separating each survey respondent group instead of combining frequencies for the staff attorney surveys under attorneys and staff since they share questions in both respondent groups. Another recommendation was to include a chart to go along with the composite report approved by the Commission the previous year. Judge Garye Vasquez mentioned that he would prefer to not separate the staff attorneys from the two other respondent groups because they are a small group that might be easily identifiable. Vice-Chair Cole asked if there was any other discussion or if the Commission preferred to table this for further research and consideration and add it to the April meeting. The Commission agreed to table for the following meeting.

Update on Rule Petitions Filed by the Commission and by Kathryn Townsend: Information on Upcoming Deadlines: Possible Decision to File Comment

Vice-Chair Cole asked Ms. Hauser to provide information regarding the rule petition filed as agreed by the Commission in their November meeting. Ms. Hauser mentioned that she filed the rule petition with the Court, and it was assigned as R-25-006, the comment period was open until May 1st. Commission member Kathryn Townsend filed two additional rule petitions, R-25-0015 and R-25-0027, which were also open for comment until May 1st. All three petitions were provided to the Commission as part of their materials. She asked if the Commission would like to submit a comment on any of the petitions as opposed to individual comments or if they preferred to wait until the April meeting.

Judge Vasquez expressed that more time would be needed to consider the petitions filed by Ms. Townsend. He disagreed with petition No. R-25-0027 based on expert opinions provided to the Commission, particularly on the reliability of low response rates. He also mentioned that since the Commission had already voted against receiving the conference team reports, he believed the Commission needed to either oppose petition R-25-0015 or reconsider its stance on the decision. Ms. Townsend shared that her first petition informed the court about the Commission's vote on the conference team reports. She provided the petition for the Court's consideration because most judges she had spoken to were unaware that the Commission did not receive the reports, and she was advocating for more information. She also expressed concerns for the future of merit selection and how the current survey system was vulnerable due to low response rates undermining confidence in the data. Ms. Townsend shared that she spoke to statisticians outside of the Commission's consultants and her intent was for the Court to explore alternative methods for gathering performance feedback.

After further discussion regarding the three petitions filed the Commission felt more time was needed to thoroughly read and consider the petitions and what next steps should be taken. **Judge Fink moved to file an objection to rule petition R-25-0015 based on the Commission's vote regarding the conference team report.** The motion was seconded. Ms. Townsend noted that the rule petition identified two separate issues and wished to clarify if Judge Fink's motion encompassed both issues or only the consideration of Rule 8. **Judge Warner provided an amendment to Judge Fink's motion to state that the Commission will inform the Supreme Court that it has already voted for the JPR conference team process to remain confidential and therefore opposes the petition to the extent it would allow the conference team reports to be confidential even in limited circumstances.** The commission did not take a position on the rest of the rule petition R-25-0015. The amendment was seconded. Vice-Chair Cole called for

a vote on the amendment to Judge Fink's motion. The amendment was passed by a majority vote. Vice-Chair Cole called for a vote on the amended motion. The amended motion was passed by a majority vote.

Ms. Townsend asked if it was okay to request a roll call of the vote on the amended motion. Vice-Chair Cole agreed and asked Ms. Calles to call on the Commissioners for their vote. The results of the vote were:

Doug Cole – yes
Benjamin Blink – no
John Burton – yes
Patricia Dean – yes
Dean Fink – yes
Daniel Frias – yes
Patrick Gard – no
Stacy Krueger – yes
Elizabeth Lorenz – yes
Rose Marquez – yes
Scott Overton – yes
Sheryll Prokop – yes
Jon Savary – no
William Tanner – no
Kathryn Townsend – abstain
Henry Varga – yes
Garye Vasquez – yes
Randall Warner – yes
David Weinzwieg – abstain

Judge Liwski, Jane Oh, John Overton, and Stephen Portell disconnected from the meeting before the vote.

Judge Warner noted for the record that he would like to give real thought to rule petition R-25-0027 even if was a radical change from the way the survey has always been done. One reason the Commission has been able to accomplish wide surveying on 200 plus judges was by using their staff, which was a flaw in the system and caused inconsistencies among judges. He urged the Commission to have a real conversation about it. Ms. Townsend mentioned that the petition identified five methods of surveys, some less expensive and one included identifying the non-response bias at least once and correcting for it.

CALL TO THE PUBLIC

Vice-Chair Cole called for comment from the public. No public was present.

NEXT MEETING DATE/MEETING LOCATION

April 25, 2025, at 9:30 a.m.
Arizona State Courts Building
1501 W. Washington St. Phoenix, AZ

ADJOURNMENT

At 11:34 a.m., it was moved that the meeting be adjourned. The motion was seconded and passed unanimously.