

Steering Committee on Arizona Case Processing

Thursday, January 24, 2013

10:00 a.m. to 3:00 p.m.

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 106

Approved: 4/25/13

Present: Justice Robert Brutinel, Judge Antonio "Tony" Riojas, Judge Eric L Jeffery, Judge Jill Davis, Judge John Rea, Judge Kenton Jones, Judge Mark Moran-*telephonically*, Judge Pamela Frasher Gates, Judge Peter Cahill, Judge Richard Fields, Judge Rosa Mroz, Judge Sally Simmons, Ms. Sandra Markham, Judge Steven McMurry, Mr. Don Jacobson, Mr. John W Rogers, Mr. Kent Batty, Mr. William "Bill" Verdini, Ms. Michelle Matiski-*telephonically*.

Absent/Excused: Jane Nicoletti-Jones, Mr. James Haas

Presenters/Guests: Jeremy Mussman, Maricopa County Public Defender's Office, C. Daniel Carrion, Maricopa County Public Defender's Office

Staff: Amy Wood, Cindy Cook, Jerri Medina

I. Regular Business

A. Welcome and Opening Remarks

The January 24, 2013 meeting of the Steering Committee on Arizona Case Processing Standards was called to order by Chair, Honorable Robert Brutinel, at 10:01 a.m.

Introductions of committee members and staff.

B. Approval of October 24, 2012 Minutes

The chair called for any omissions or corrections to the minutes from October 24, 2012, meeting; there were none.

- The draft minutes from the October 24, 2012, meeting of the Steering Committee on Arizona Case Processing Standards were presented for approval.
 - Motion was made by Judge Sally Simmons to approve the October 24, 2012 minutes; seconded by Donald Jacobson and passed unanimously.

II. Proposed Arizona Case Processing Standards: Workgroup Updates

A. Superior Court Civil Workgroup: Judge John Rea

1. Superior Court Civil Cases

Discussion: Currently the courts can obtain little to no statistical data on the disposition of cases in the case management systems. This lack of data has made it difficult to develop a standard that is aspirational but still achievable in Arizona. The development of time standards by the steering committee will be a first step towards the creation of a business requirements document that can be utilized statewide by all the case management systems. The work done in this steering committee will be instrumental in the development of these time to disposition reports. The committee will determine when the count will start and end, what time will be excluded from the count and what standards the courts are trying to achieve. At the next meeting the AOC staff will present the courtools reports that have been developed for the AJACS case management system and discuss how these reports can be changed to facilitate the use of case processing standards. The business and IT department at the AOC has started developing a requirements document that could be distributed to all of the different case management systems across the state. The requirements document will ensure that everyone is on the same page and counting the cases the same way.

It was a widely held belief that the proposed standards needed to be aspirational but realistic and that the courts cannot be complacent but need to strive to improve. The committee members suggested that the committee re-convene after the case processing standards have been implemented and conduct a review to determine if adjustments need to be made to the case processing standards.

If judges and court administrators want to dispose of their cases in a more timely manner the calendaring practices in some of the courts will need to improve. The judges need to set firm trial dates and continuances should only be granted when absolutely necessary.

The workgroups and committee are not addressing rule changes at this time but recognize that there are built in time periods in the current rules and some changes may have to be made in the future. For example Rule 4 (i),¹ ARCP and Rule 113(i),² JCRCP on the dismissal of the case after 120 days for lack of service. A new rule petition has been filed this year to amend Rule 38.1, ARCP on the inactive calendar and motion to set.

- Motion was made by Don Jacobson to adopt as recommended time standards for the Superior Court Civil case type presented by the workgroup on page 2 of the Arizona Case Processing Standards Preliminary Recommendations materials hand-out.

¹ Arizona Rules of Civil Procedure

² Justice Court Rules of Civil Procedure

- Seconded by Kent Batty. Motion passed 17-2-0.

B. Justice Court Civil Cases Workgroup: Judge Jill Davis

1. Justice Court Civil Cases

Discussion: Judge Davis presented the workgroup recommendations to fifty justice and municipal judges at the Transportation Conference and most of the comments received were from one part-time pro-tem judge that wanted longer standards. This in turn inspired us to think that the workgroup was on the right track. The workgroup further noted that the statistical data for small counties may be skewed if there are only a couple of cases filed and one case falls outside the standards.

Date of service was discussed for the starting measurement. Workgroup is following national model and starting from date of filing.

- Motion was made by Judge Tony Riojas to adopt recommended time standards for the Justice Court Civil case type presented by the workgroup on page 3 of the Arizona Case Processing Standards Preliminary Recommendations materials hand-out.
- Seconded by Sandra Markham. Motion passed 18-1-0.

2. Justice Court Eviction Actions

Discussion: Most cases move very quickly through the courts in this category with the expectation that 98% would fall within 10 days. There was a concern that cases would not be done within ten days. However, Arizona statute states these cases will be heard within six days with the option to continue for three days. If a case requests a jury trial, they must be set within five days and the number of eviction trials would fall below the 2% mark. This model is strongly based on existing Arizona statutes.

- Motion was made by Judge Kenton Jones to adopt recommended time standards for the Justice Court Civil case type presented by the workgroup on page 4 of the Arizona Case Processing Standards Preliminary Recommendations materials hand-out.
- Seconded by Don Jacobson. Motion Passed unanimously.

3. Civil Small Claims

Discussion: In the national model, evictions, local ordinances and small claims cases are combined into one standard. In order to stay in line with current rules and statutes in Arizona a separate standard was developed for all 3 case types. Small claims cases include civil cases with a dollar amount of \$2,500 or less with no attorneys involved. The public expectation is that these types of cases will be completed in a short amount of time.

- Motion was made by Kent Batty to adopt recommended time standards for the Civil Small Claims case type presented by the workgroup on page

5 of the Arizona Case Processing Standards Preliminary Recommendations materials hand-out.

- Seconded by Judge Sally Simmons. Motion passed unanimously.

4. Civil Local Ordinances

Discussion: A determination was made by the committee that a case with zoning issues could be disposed of within the six month timeframe. In most instances the city or county has worked with the individuals for years before filing a lawsuit. Compliance hearings would occur after disposition and not affect the standards.

- Motion was made by Judge Steven McMurry to adopt recommended time standards for the Civil Local Ordinances case type presented by the workgroup on page 6 of the Arizona Case Processing Standards Preliminary Recommendations materials hand-out.
- Seconded by Sandra Markham. Motion passed unanimously.

C. Municipal and Justice Court Cases Workgroup: Judge Tony Riojas

1. Civil Traffic

Discussion: This is the largest category of cases in the state. The workgroup noted that 60% to 65% of the cases are paid electronically and that there are no inherent delays in the volume of cases being processed. Parking tickets fall under civil local ordinance in some counties, not sure if they fall under traffic in other counties. Photo radar tickets are a small percentage of the cases. Some ideas to shorten the time to disposition are to give the front county clerk the ability to provide 15/30/45 day extensions to the defendant. This practice will cut down on the number of motions filed so that the defendant is allowed to complete traffic school, obtain proof of insurance or travel from out of town. Another way to shorten the time is to assign some of the traffic tickets to civil hearing officers. Some of the counties do experience spikes in the number of filings based on holidays, tourism traffic, first snowfall and enforcement efforts by the police department.

- Motion was made by Kent Batty to adopt recommended time standards for the Civil Traffic case type presented by the workgroup on page 7 of the Arizona Case Processing Standards Preliminary Recommendations materials hand-out.
- Seconded by Don Jacobson. Motion passed unanimously.

2. Protection Orders

Discussion: The Limited Jurisdiction Committee (LJC) had recommended that the pre-issuance hearing be changed to 90% within 14 days instead of 10 days. The committee decided that an intermediate standard may not be needed for pre-issuance hearings and the issue should be re-visited at a later date when more data is available. The pre-issuance hearing is normally utilized for neighbor and roommate disputes.

- Motion was made by Judge Pamela Gates to adopt amended recommended time standards that exclude an intermediate standard for pre-issuance hearings for the Protection Order case type presented by the workgroup on page 8 of the Arizona Case Processing Standards Preliminary Recommendations materials hand-out.
- Seconded by Judge Kenton Jones. Motion passed unanimously.

3. Criminal Misdemeanor

Discussion: The Limited Jurisdiction Committee (LJC) stated that there are a number of cases where the time is extended because of informal diversions (e.g. case will be dismissed at next pre-trial hearing if fine is paid). May need to discuss the creation of event codes in the case management systems so that the time can be excluded for formal and informal diversions.

- Motion was made by Judge Sally Simmons to adopt recommended time standards including amended measurement for the Criminal Misdemeanor case type presented by the workgroup on page 9 of the Arizona Case Processing Standards Preliminary Recommendations materials hand-out.
- Seconded by Judge Richard Fields. Motion passed unanimously.

4. Criminal DUI Misdemeanor

Discussion: The Committee recommended that Arizona stay with the current DUI standards and that the following reasons for differing from the national model are added to the background information: The DUI misdemeanor case processing standard in Arizona exceeds the national standard for several reasons. First, there are substantial penalties involved, and a large number of these cases go to trial. Second, the discovery process is lengthy because of expert testimony and the required technical testing and re-testing of blood and breath by the crime labs. Third, the number of offenses for driving under the influence of prescription drugs has increased, and physician testimony must be included in the discovery process

- Motion was made by Judge Peter Cahill to adopt recommended time standards, including amended measurement and reasons for deviation from the national model for the Criminal DUI Misdemeanor case type presented by the workgroup on page 10 of the Arizona Case Processing Standards Preliminary Recommendations materials hand-out.
- Seconded by Don Jacobson. Motion passed unanimously.

D. Criminal Workgroup: Judge Richard Fields

1. Criminal Felony

Discussion: The steering committee has suggested that the proposed standards be reviewed at a later date to ensure that the standards are not set so high as to be

unachievable by the courts. It was also suggested that we track the felony cases filed in justice court before they are transferred into the superior court.

- Motion was made by Judge Sally Simmons to adopt recommended time standards including amended measurement for the Criminal Felony case type presented by the workgroup on pages 11 and 12 of the Arizona Case Processing Standards Preliminary Recommendations materials hand-out.
- Seconded by Judge Peter Cahill. Motion passed unanimously.

2. Criminal Post-Conviction Relief

Discussion: The percentage was lowered in this case type because the Arizona courts have a higher trial rate than the national average. For example, Pima County had a trial rate of 9.16%. The motion for post conviction relief based on a trial takes more time to review than those based on plea agreements. The trial post conviction relief motion requires more preparation as it includes more testimony and evidence to be reviewed. The time to disposition will also be delayed if an evidentiary hearing is required or a claim for ineffective assistance of counsel is alleged because the court must appoint counsel under Rule 32.5, Ariz. R. Crim. P.³

- Motion was made by Judge Sally Simmons to adopt recommended time standards for the Criminal Post-Conviction Relief case types presented by the workgroup on page 13 of the Arizona Case Processing Standards Preliminary Recommendations materials hand-out.
- Seconded by Sandra Markham. Motion passed unanimously.

E. Family Law Workgroup: Judge Pam Gates

1. Family Law- Dissolution/Divorce/Allocation of Parental Responsibility Cases

Discussion: The workgroup increased the time to disposition in these cases but still has some reservations as to whether these standards will be achievable by the courts. The findings in family law cases are often complex and lengthy.

After the reports are written and more data has been obtained, the committee would like to re-visit the standards to determine if these are standards that can be achieved by the courts and if not make adjustments.

Members of the steering committee suggested that we change the name from “Arizona case processing standards” to Arizona case processing goals.” Standard is an absolute and has a more negative connotation if not met. Goals are more aspirational. The committee needs to develop standards that will push the courts to do better, since none of the courts strive for mediocrity.

³ Arizona Rules of Criminal Procedure

The judge's have expressed some concern as to what the consequences will be if the courts or a particular judge fail to achieve the case processing standards. The development of case processing standards are a starting point for the courts so they can judge how they are doing and if any improvements can be made. The committee believes the standards will be used as a management tool for the whole court not as a weapon against individual judges. Reports will be written for the case management systems based on these case processing standards and will be utilized to evaluate how the courts are performing on a statewide basis. If the standards are too aspirational the standards can be adjusted accordingly. The standards should not be utilized as a rule governing individual cases or creating rights for individual litigants.

There are a large number of self-represented litigants in family court and the workgroup believes it would not be helpful to implement a rule change that shortens the time for service.

- Motion was made by Kent Batty to adopt recommended time standards for the Family Law Dissolution case type presented by the workgroup on page 14, 15 and 16 of the Arizona Case Processing Standards Preliminary Recommendations materials hand-out.
- Seconded by Judge Peter Cahill. Motion passed unanimously.

2. Family Law Post-Judgment Motions

Discussion: A significant percentage of post-decree petitions involve more than one issue. Single issue petitions to modify child support or spousal maintenance will likely be resolved in 180 days. There was very little statistical information available on the number of post decree motions that involve child support only.

- Motion was made by Judge Sally Simmons to adopt recommended time standards for the Family Law Post-Judgment case types presented by the workgroup on page 17 and 18 of the Arizona Case Processing Standards Preliminary Recommendations materials hand-out.
- Seconded by Judge McMurry. Motion passed 18-1-0.

F. Probate Workgroup: Judge Rosa Mroz

1. Probate Administration of Estates & Probate Guardianship/Conservator

Discussion: A survey was sent to the probate presiding judge in every county to see if any information could be gathered on the number of decedent estates and guardianship/conservatorship cases filed and the disposition rate for each. The courts were unable to obtain statistics from their case management systems. Except for Greenlee County the courts were only able to provide an estimate of the number of cases filed and the disposition rates. The estimates received from the courts were scattered but based on the number of counties that had low percentages, the national

model time standards did not seem achievable and the workgroup struggled with the development of a realistic standard for Arizona.

Based on the lack of information available the workgroup wanted to defer the development of standards until a careful study with concrete data could be completed. However, the committee does not want the lack of statistical data to preclude the development of case processing standards for decedent estates and guardianship/conservatorship cases. These two case types are important and should be treated the same as all the other case types. We need to adopt a standard and then monitor the cases to see if the standards need to be revised.

Since the standards cannot be deferred, the workgroup will research the statistical data available and make a determination as to the appropriate standard for decedent estates and guardianship/conservatorship cases.

The proposed case processing standards for lowering the percentage on the administration of estates and guardianship/conservatorship cases are located on page 19 and 20 in the Arizona Case Processing Standards Preliminary Recommendations materials handout.

The workgroup is also tasked with reviewing the measurement for the administration of estates and clarifying when the decedent's estate is closed and the measurement will stop. In some counties the case may show a disposition when the letters are issued. In other counties the disposition occurs when the closing statement or final distribution or accounting is filed.

Most guardian/conservators are not attorneys and the courts have no problem assigning guardian/conservators to the cases. The biggest obstacle is locating the guardian/conservator and getting them to attend hearings so the probate process can be finalized. The smaller counties do not have the resources to track down the guardian/conservators.

Judge Rosa Mroz will be rotating off the probate assignment in Maricopa and Andy Kline will be rotating on as her replacement.

- Motion was made by Don Jacobson to send this back to the workgroup for further research on the statistical data, clarify what would be the appropriate measurement for the courts and make a determination as to the appropriate standard for decedent estates and guardianship/conservatorship cases.
- Seconded by Judge Richard Fields. Motion passed unanimously.

2. Probate Mental Health Cases

Discussion: These case types are statutorily driven and the national model time standards comply with Arizona law.

- Motion was made Kent Batty to adopt recommended time standards for the Probate Mental Health case types presented by the workgroup on page 21 of the Arizona Case Processing Standards Preliminary Recommendations materials hand-out.
- Seconded by Judge Sally Simmons. Motion passed unanimously.

G. Juvenile Workgroup: Judge Peter Cahill

1. Delinquency and Status Offense, Neglect and Abuse, and Termination of Parental Rights

Discussion: The Arizona standards for all 3 juvenile case types are either faster or comport with the national standards because juvenile cases have strict timelines included in Arizona rule of law. In juvenile cases, compliance with timelines has improved outcomes for children and families and the judicial system as a whole.

The workgroup recommends that Arizona stay consistent with the rules and statutes and start measuring from the date a parent or guardian is served. Both parents do not have to be served for the courts to proceed with the case.

No standard for adoption cases to be developed. The national model did not develop a standard for adoption cases. The workgroup developed a proposed standard but after further consideration unanimously decided not to adopt a standard for adoption cases. Everyone agreed that adoption cases need to be completed in an expedient manner but there are so many variables in these cases that a standard for completion could cause many unintended consequences. There are several different types of adoptions CPS adoptions, private adoptions, step parent adoptions, relative adoptions, foreign adoptions, etc.

No standard for Title 8 or Title 14 minor guardianship/ conservatorship cases to be developed, the timelines are set out by rule and statute in Arizona.

- Motion was made Judge Peter Cahill to adopt recommended time standards for the Delinquency and Status Offense, Juvenile Neglect and Abuse, and Juvenile Termination of Parental Rights case types presented by the workgroup on pages 22, 23 and 24 of the Arizona Case Processing Standards Preliminary Recommendations materials hand-out.
- Seconded by Judge Sally Simmons. Motion passed unanimously.

III. Overview of Terms and Concepts

The Steering Committee Overview document included in your packet gives a good summary of some of the concepts and terms that have been discussed today. Please review and let me know if you disagree with any of these statements.

Excluded time is laid out in this overview document. There will be one change made to the document pending juvenile cases will be removed from the list of time that is not excluded and added to the list of excluded time. The national model time standards

state that it is important for the courts to control the case at the earliest stages and this includes the service of process. In Arizona a case will be dismissed if not served within 120 days. This time should be included in the count when determining the appropriate standards for Arizona.

There is one exception to the date of service being utilized as a measuring point and that is the case type of Juvenile Neglect and Abuse. The national model time standards start the count from the date of removal on the adjudication and permanency hearing. In Arizona, the workgroup has proposed that the Adjudication Hearing will be at the date of "service on a parent or guardian" instead of the date of removal so that the standards are consistent with the rules and statutes.

At the next meeting we will discuss the reports to be created for the case management systems and start the process of writing a final report. An executive summary will be included in the report that addresses some of the committees concerns on the use of these case processing standards as a management tool.

The probate workgroup will conduct more research and make a final decision on the appropriate case processing standards and measurements. A report will be sent out to the steering committee members, please review and provide feedback.

Justice Brutinel recognizes the tremendous amount of time and work that has been put into these recommendations and wanted to express his appreciation.

These revised preliminary recommendations will be presented to the standing committees. A link to the Arizona Case Processing Standards website will be provided to the courts, state and local bars and legal community and they will be invited to comment on the preliminary recommendations starting February 15, 2013. If there is anyone that you want feedback from, please forward this information to them for comments on our website.

Additionally, as we receive comments from the courts and legal community we will be contacting the chair and members of the workgroups to help draft a response to the comments.

Judge Cahill volunteered to do the presentation tomorrow at the COVIC meeting. Judge Rea will present both family law and civil case processing standards along with Judge Mroz for probate and Kent Batty for criminal at the next COSC meeting.

IV. Old Business

A. None

V. Call to Public

A. Good of the Order/Call to the Public

No one came forward to address the committee at this time.

VI. Adjourn

A. **Motion: To adjourn at 1:45pm.** Motion was seconded and passed.

B. Next Committee Meeting Date:

Thursday, April 25, 2013

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

State Courts Building, Room 119 A/B

1501 W. Washington St., Phoenix, AZ 85007