

AGENDA

FOR THE

COMMITTEE ON LIMITED JURISDICTION COURTS

Wednesday, April 29, 2015

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

State Courts Building, Conference Rooms 119 A & B
 1501 West Washington Street, Phoenix, Arizona
 Conference Call Number: **(602) 452-3288** or **(520) 388-4330** Access Code: **2439**
<http://arizonacourts.webex.com>

(All times shown on this agenda are approximate.)

Time	Regular Business	Presenter
10:00 a.m.	Call to Order	Judge Antonio Riojas, Chair
10:05	Approval of February 25, 2015 Meeting Minutes - Action Item	Judge Riojas
Business Items and Potential Action Items		
10:15	The Hidden Cost of Pre-Trial Detention	Tom Manos Maricopa County Manager Mary Ellen Sheppard Maricopa County Assistant Manager
11:15	Experience of AJACS Rollout at Apache Junction Municipal Court	Judge James Hazel
11:20	Comment Regarding R-15-0017, Petition to Amend Rules 9.1, 14.3, 26.11 and 41, ARCrP - Action Item	Judge Eric Jeffery
11:45 Working Lunch		
12:00	HB2308 Defensive Driving School	David Withey Administrative Office of the Courts (AOC) Counsel
12:20	HB2553 Sex Trafficking Victims	David Withey AOC Counsel Eric Ciminski AOC eCourt Services Project Director

12:30	Proactive Enforcement / Warrant Mitigation	Jeff Fine
12:50	R-15-0029 regarding ARCrP 32.13 - Action Item	Judge George Anagnost
1:20	Legislative Update	Amy Love AOC Legislative Liaison
1:40	Rule Change Petition Reconsideration <ul style="list-style-type: none"> • R-15-0015, Rules of Procedure for Eviction Actions, Allowing Change of Judge; • R-15-0018, Rules 31, 34, 38, 39 and 42, Rules of the Supreme Court, Practice of Law; • R-15-0028, Rule 31.5, ARCrP, Exercising the Right to Self-Representation on Appeal; and • R-15-0024, Rule 41, ARCrP, regarding Warrant Forms <i>Action Items</i>	Judge Riojas
2:30	Amendments to ACJA § 5-206 Fee Deferrals and Waivers - Action Item	Patrick Scott Court Specialist, AOC
2:40	Personal Information Redaction Affidavit and Instructions	Nick Olm Court Specialist, AOC
2:50	Justice of the Peace Conference	Judge Dorothy Little
2:55	Call to the Public	Judge Riojas
	Adjourn	Judge Riojas

Any agenda item, including the call to the public, may be considered at a time other than what is indicated on this agenda.

The Committee may meet in executive session as permitted by A.C.J.A. § 1-202.

Please contact Susan Pickard at (602) 452-3252 with any questions concerning this agenda.

Persons with a disability may request reasonable accommodations by contacting Julie Graber at (602) 452-3250. Requests should be made as early as possible to allow time to arrange the accommodation.

Please Note the Date of the Next Committee Meeting:

Wednesday, August 26, 2015

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

State Courts Building

1501 West Washington Street, Phoenix, Arizona

**COMMITTEE ON LIMITED JURISDICTION COURTS
DRAFT MINUTES**

Wednesday, February 25, 2015

1:30 p.m. to 4:00 p.m.

Conference Room 119A/B

1501 West Washington Street

Phoenix, Arizona 85007

Present: C. Daniel Carrion, Dan Doyle, Julie Dybas, Jeffrey Fine, Judge MaryAnne Majestic, Judge Steven McMurry, Judge J. Matias “Matt” Tafoya, and Sharon S. Yates

Telephonic: Judge Antonio Riojas (chair), Judge Timothy Dickerson, Judge Maria Felix, Christopher Hale, Judge Eric Jeffery, and Judge Dorothy Little

Absent/Excused: Pete Bromley, Judge James William Hazel, Jr., Judge Arthur Markham, and Marla Randall

Presenters/Guests: John Belatti (City of Mesa), Paul Thomas (Mesa Municipal Court), Judge Rachel Torres Carrillo (West McDowell Justice Court), and Judge Lawrence Winthrop (Arizona Court of Appeals, Division I); and Theresa Barrett, Jennifer Greene, Paul Julien, Jerry Landau, Mark Meltzer, Nick Olm, Marcus Reinkensmeyer, and Patrick Scott, Administrative Office of the Courts (AOC)

Staff: Susan Pickard and Julie Graber, AOC

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The February 25, 2015, meeting of the Committee on Limited Jurisdiction Courts (LJC) was called to order at 1:31 p.m. by Judge Antonio Riojas, Chair.

B. Approval of Minutes

The draft minutes from the October 29, 2014, meeting of the LJC were presented for approval.

Motion: To approve the October 29, 2014, meeting minutes, as presented. **Action:** Approve, **Moved by** Judge MaryAnne Majestic, **Seconded by** Judge Steven McMurry. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Rules Update

Mark Meltzer, AOC staff, discussed rule petitions of interest to LJC that were filed for consideration during the 2015 rules cycle. The deadline for comments is May 20, 2015.

Criminal Procedure

R-14-0030: Was adopted on an expedited basis to comply with *Lopez-Valenzuela v. Arpaio* (9th Circuit Court), which declared A.R.S. § 13-3961(A)(5) unconstitutional.

Although the amendments were effective December 16, 2014, the rule petition is still open for public comment until May 20, 2015.

R-15-0011: Would address problems with the redaction of discovery in criminal proceedings.

R-15-0028: Would address the Arizona Supreme Court's opinion in *Coleman v. Johnsen, et al.*, which requires defendants to give notice of their intent to exercise the right of self-representation on appeal within 30 days after the filing of the notice of appeal.

Member comments:

- Who is responsible to inform the defendant about the right to self-representation on appeal – the attorney or trial court?

R-15-0017: Would provide additional notifications to defendants that they could lose their right to directly appeal a guilty verdict if they voluntarily fail to appear for sentencing.

Member comments:

- A member suggested including crossover language regarding the waiver of appellate counsel in the new proposed form.
- Several members raised issues with providing additional notifications about when defendants *might* lose the right to appeal rather than when they will.

Motion: To draft and file a comment opposing R-15-0017, as discussed. Judge Eric Jeffery will present the proposed comment at the next LJC meeting. **Action:** Approve, **Moved by** C. Daniel Carrion, **Seconded by** Judge Steven McMurry. Motion passed unanimously.

R-15-0026: Would amend current Forms 4(a) and 4(b) to include inquiries about the defendant's military service, homeless status, English proficiency or desire for an interpreter to assist the court with determining eligibility to specialty courts and scheduling interpreter services.

Member comments:

- Members raised concerns that if the defendant said no to an interpreter on the release questionnaire and later changed his/her mind, the judge could deny the appointment of an interpreter later in the case. As such, the information should be used as an aid only.

R-15-0009 (Filed by LJC): Would align criminal and civil traffic procedures. No comments filed.

R-15-0029: Would add new Rule 32.13 that provides a procedure for post-conviction relief in limited jurisdiction courts, and includes an explanatory comment.

Member comments:

- Members agreed that before filing a comment, Judge Anagnost should be invited to discuss his proposal and answer some questions at the next LJC meeting. **ACTION:** Staff will arrange to have Judge Anagnost present at the next meeting.

Other rule petitions

R-15-0015: Proposes two alternatives to provide for a change of judge for eviction cases in limited jurisdiction courts, including Judge McMurry’s previous proposal for a change of judge as a matter of right if it would not cause a day’s delay.

Member comments:

- Judge McMurry expressed serious second thoughts about his proposal due to tenant and landlord issues. He has learned that Community Legal Services and attorneys representing landlords are excited to use this option.
- Would it make a difference if a request was made at 9:00 a.m. or 4:00 p.m.? Might a judge be available earlier in the morning, but not later in the afternoon?
- Members agreed that the rule petition could result in unforeseen consequences with regard to judge shopping and timing of requests, and that a comment should be filed.
- While Judge McMurry did participate in the development of this petition, he is not the petitioner; therefore, he has the ability to file a comment. Judge McMurry stated that he may be presenting a comment regarding this petition at the next meeting.

R-15-0018: Would prohibit non-lawyers from preparing mediation agreements, unless certified as a legal document preparer, but would define serving as a mediator as not being the practice of law.

Member comments:

- Members raised concerns that the rule petition would impact a multitude of mediation and conciliation programs in the courts.

B. Legislative Update

Jerry Landau, AOC Government Affairs Officer, presented the following legislative proposals of interest to limited jurisdiction courts:

HB2088: Mental health; veteran; homeless courts

The language regarding the establishment of mental health, veteran and homeless courts was deleted in a strike everything bill, which updated the use of archaic terminology (e.g., “police courts” was replaced with “municipal courts”).

HB2089: Aggravated assault; judicial officers

A strike everything bill replaced “elected officials” with “judicial officers” in the list of aggravated assaults, and defined “judicial officer.”

HB2204: Criminal restitution order; courts

Would allow a limited jurisdiction court to enter a criminal restitution order at the time the defendant is ordered to pay restitution.

HB2221: Driver license suspension; photo radar

Would require the court to suspend a person's driver license for failure to appear unless the violation is a result of a photo enforcement system. The bill is still moving forward.

HB2294: Courts; approved screening; treatment facilities

Would expand the list of approved treatment facilities to those approved by the U.S. Department of Veterans' Affairs. The bill is still moving forward.

HB2311: Judgment liens; recordation; real property

Would permit judgments to be filed in the county recorder's office instead of the justice courts. The bill would have a significant impact on the courts, which would see a reduction in the filing fees collected.

HB2320: Firearms; permit holders; public places

Would permit a person to carry a deadly weapon at certain public establishments unless security personnel and screening devices are present.

HB2379: Home detention; initial jail term

Would define the initial term of incarceration for certain DUI offenses as the initial sentencing period prior to the suspension of jail time. Glendale is the only city to respond regarding the cost for a city jail.

HB2662: Speed restrictions; penalties

Would designate certain offenses as waste of finite resources when the speed driven is 10 miles or less over the maximum speed limit. The bill could result in loss of revenue for courts and will be reworded to address some confusion.

HB2663: Small claims divisions; permissible motions

Would add a motion for relief from judgment to the list of permissible motions in a small claims action.

SB1035: Domestic violence treatment programs; providers

Would allow the court to approve domestic violence treatment programs pursuant to Supreme Court rules.

SB1064: Service of process; regulation

Would provide alternative service of process by sending a notice by certified mail and posting a notice on the front door or garage door. The bill has been scaled back and is moving forward.

SB1116: Fines; fees; costs; community restitution

Would permit the court to order the defendant to perform community restitution in lieu of the payment for all or part of the fine, fee, or incarceration costs at a rate of \$10 per hour. The bill is moving forward.

SB1295: Fingerprinting; judgment of guilt; records

Would allow the court to obtain a defendant's two fingerprint biometric-based identifier in the case file and require a booking agency to take an arrestee's ten-print fingerprints if the agency cannot determine whether legible fingerprints were taken by the arresting authority to ensure that accurate criminal history records are maintained. The bill is moving forward. There are still issues to address with training, reeducation, and availability in remote areas.

C. Expedited Rule 11 Hearings and Limited Jurisdiction Courts

Paul Thomas, Court Administrator from Mesa Municipal Court, and John Belatti, Prosecutor with the City of Mesa, reviewed current issues in Rule 11 hearings, including resources and speed of case dispositions, and how mental health determinations involving misdemeanor offenses could be facilitated in limited jurisdiction courts in a more expedited manner. Mr. Thomas noted that Superior Court has exclusive jurisdiction in this area; however, limited jurisdiction courts are qualified given the routine nature of these hearings and precedent with juvenile court matters. Additionally, the rulings are based on the doctor's report, which are consistent with the movement toward specialty courts with medical or clinical dispositions. Mr. Belatti discussed how consolidating Rule 11 hearings at the local level and appointing a single magistrate and city prosecutor to a case could enhance access to justice with quicker case dispositions and alleviate problems with resources, case management, and customer service.

Member comments:

- Members agreed that Rule 11 hearings could be facilitated and expedited in limited jurisdiction courts but current rules and statutes would need to be modified. Several questions were raised regarding concurrent and exclusive jurisdiction, restoration to competency program, financial implications, and benefit to smaller counties.
- The presenters will present LJC's comments to the Committee on Superior Court at the May meeting.

Motion: To support further exploration of this proposal, and review possible methods of "extending" Superior Court jurisdiction to qualified limited jurisdiction judges to expedite Rule 11 matters for misdemeanor cases, as discussed. **Action:** Approve, **Moved by** Judge Steven McMurry, **Seconded by** Christopher Hale. Motion passed unanimously.

D. After Hours Warrant Requests

Marcus Reinkensmeyer, AOC Court Services Division Director, reported that Maricopa County Initial Appearance (IA) Court commissioners make determinations and issue warrants for blood draws in real time in an electronic warrant system, 24 hours per day, 7 days a week. Mr. Reinkensmeyer discussed the possibility of expanding this system to other warrant types and beyond Maricopa County by assigning after-hours warrant requests to IA Court commissioners. He sought feedback from members regarding the need for this type of initiative, which would require additional resources and funding, and whether it should be pursued.

Member comments:

- Several members representing rural counties supported such an initiative, which would also result in efficiencies for law enforcement.
- Concern was also voiced about the cost associated with opting in.

E. Supreme Court Rule 123 Proposed Amendments

Jennifer Greene, AOC Assistant Counsel, presented proposed amendments to Supreme Court Rule 123 that would clarify public access to personnel and applicant records by limiting access to job applicant records and by defining records maintained for human resources purposes and high-level administrative positions; mandate the removal of case information on courts' websites in accordance with record retention schedules; and update references to the judicial branch procurement code. The deadline for comment is April 27, 2015.

F. Arizona Commission on Access to Justice (ACAJ) – Self-Represented Litigants in Limited Jurisdiction Courts Workgroup

Judge Rachel Torres Carrillo, West McDowell Justice Court and chair of the Self-Represented Litigants in Limited Jurisdiction Courts (SRL-LJC) workgroup, provided background information regarding the Arizona Commission on Access to Justice and described its purpose, membership, and structure. Judge Carrillo explained that the SRL-LJC workgroup was created to examine and make recommendations on assisting self-represented litigants and revise court rules and practices to facilitate access and the efficient processing of eviction cases. The workgroup's main areas of focus include:

- Simplify and make eviction, and fee waiver and deferral forms more understandable and accessible
- Gather and create informational videos specific to eviction actions
- Provide computers in the court's lobby for use by SRLs with access to smart forms, informational videos, and information in several languages
- Encourage comprehensive training for judges and update the legal information v. legal advice training of court staff with useful scenarios
- Expand assistance of SRLs outside the court setting and explore law school based clinics and VLP clinics in the landlord/tenant area
- Explore the recognition of judges who are role models in dealing with SRLs

Judge Lawrence Winthrop, Court of Appeals, Division I, and chair of the ACAJ, noted that the commission's three workgroups were created to focus on initiatives from Chief Justice Bales' Strategic Agenda, which include improving services for self-represented litigants, encouraging pro bono services, and promoting the tax credit information campaign. The commission will be making its initial recommendations to the Arizona Judicial Council at the March meeting.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

Paul Julien, AOC Education Services, announced that an hour-long video presentation on the disposition of civil offenses by court clerks is now available on the AOC's Learning Management System.

B. Next Committee Meeting Date
Wednesday, April 29, 2015
10:00 a.m. to 3:00 p.m.
State Courts Building, Room 119
1501 W. Washington St., Phoenix, Arizona 85007

The meeting adjourned at 3:43 p.m.

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: April 29, 2015	This agenda item is for: [] Formal Action/Request [X] Information Only [] Other	Subject: The Hidden Cost of Pre-Trial Detention
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Presenter(s): Tom Manos, Maricopa County Manager
Mary Ellen Sheppard, Maricopa County Assistant Manager

Discussion: In October of last year, *The Hidden Cost of Pre-Trial Detention* was presented at the Court Leadership Conference. At the recommendation of Patrick Scott, who attended the session, Mr. Manos and Ms. Sheppard have been invited to present the findings of Alexander M. Holsinger, Ph.D., Professor of Criminal Justice and Criminology, University of Missouri – Kansas City.

Recommended Action or Request (if any): None.

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: April 29, 2015	This agenda item is for: [] Formal Action/Request [X] Information Only [] Other	Subject: Experience of AJACS Rollout at Apache Junction Municipal Court
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Presenter(s): Judge James Hazel

Discussion: Judge Hazel will briefly discuss his court's experience with the AJACS rollout.

Recommended Action or Request (if any): None.

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: April 29, 2015	This agenda item is for: <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: Comment Regarding R-15-0017, Petition to Amend Rules 9.1, 14.3, 26.11 and 41, ARCrP
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Presenter(s): Judge Eric Jeffery

Discussion: During the February 25, 2015 meeting of the Committee on Limited Jurisdiction Courts, the membership approved a motion to draft and file a comment opposing R-15-0017, as discussed. Judge Eric Jeffery will present the proposed comment.

Recommended Action or Request (if any): Motion to approve and file the Committee's comment in opposition to R-15-0017, Petition to Amend Rules 9.1, 14.3, 26.11 and 41 of the Arizona Rules of Criminal Procedure as written by Judge Eric Jeffery.

Hon. Eric Jeffery, on behalf of the
Committee on Limited Jurisdiction Courts
C/o Administrative Office of the Courts
1501 W. Washington St., Ste. 410
Phoenix, AZ 85007

IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:) Supreme Court No. R-15-0017
)
Petition to Amend Rules 9.1, 14.3, 26.11,) Comment from the LJC
and 41, Arizona Rules of Criminal Procedure)

This comment is submitted on behalf of the Committee on Limited Jurisdiction Courts (the “LJC”), which authorized the undersigned committee member at its February 25, 2015 meeting to file this comment.

The LJC believes there are alternative ways to notify criminal defendants of the effect of A.R.S. § 13-4033(C) and therefore opposes the rule change as drafted. The LJC suggests a comprehensive review of the rules on this issue, and that the Court consider an advisement to every defendant at arraignment of circumstances that might give rise to a trial in absentia, or the loss of a right to appeal under A.R.S. § 13-4033.

Introduction. A.R.S. § 13-4033 provides for “Appeal rights by a defendant.” The statute states that a defendant may appeal in certain circumstances, i.e., after final judgment or after denial of a motion for new trial. A.R.S. § 13-4033(C) specifically makes an exception to this appeal right.

C. A defendant may not appeal under subsection A, paragraph 1 or 2 if the defendant’s absence prevents sentencing from occurring within ninety days after conviction and the defendant fails to prove by clear and convincing evidence at the time of sentencing that the absence was involuntary.

The petition’s proposed changes would (a) revise four forms with language implicating A.R.S. § 13-4033(C), and (b) add one additional form. These forms are as follows:

1. Release order (form 6)

The proposed change in the form would add this language to the release order:

If convicted, you will be required to appear for sentencing. If you fail to appear, you may lose your right to a direct appeal.

The form further states at the bottom:

If you willfully violate any of these obligations, the court may hold you in contempt and impose a jail sentence, fine or both, and you may lose your right to appeal.

While this language is correct, it only notifies those people who are booked and given a release order by the court. Additionally, the latter portion of the advisement is misleading; violating a release order does not waive the right to

appeal. Only preventing sentencing from occurring within 90 days waives the right to appeal. This statement implies a loss of appeal rights in a way that is not included in the statute.

2. Appearance Bond (form 7)

This proposed form adds language as follows.

If convicted, you will be required to appear for sentencing. If you fail to appear, you may lose your right to a direct appeal.

While including this language on the appearance bond may be helpful, it is only reaching the group of defendants that have posted a bond. The vast majority of defendants are released on their own recognizance. The group of defendants released on bond is very limited.

3. Notice of Rights of review after conviction (form 23)

The modification for this form is as follows, with the addition in bold.

*You do not have a right to direct appeal if you have pled guilty or no contest or have admitted a violation of conditions of probation **or you have failed to appear at sentencing causing the sentencing to occur more than 90 days beyond the date of conviction.***

The additional language on this form would cover only those persons who have attended the trial and received this notice. It does not assist with the issue of those tried in absentia.

4. Entry of Not Guilty and Advisements (form 29)

The proposal adds the following language:

The defendant is advised that, if convicted, the defendant will be required to appear for sentencing. If the defendant chooses not to appear, and the defendant's absence prevents the defendant from being sentenced within ninety days from the conviction, the defendant may lose the right to a direct appeal.

The LJC committee feels that arraignment is the proper time to make the notification of this loss of appeal rights, and the form is generally appropriate. However, the LJC suggests including the statutory language to indicate that this right is waived if a defendant “voluntarily” causes a delay or more than 90 days.

With this in mind, the language might be better as follows:

The Defendant is advised that, if convicted, the defendant is required to appear for sentencing. If the defendant voluntarily does not to appear and causes at least a 90 day delay in sentencing, the defendant loses the right to a direct appeal.

5. Notice of Rights to Appeal: conviction, denial of motion for new trial. (new form 19a)

The proposed form would include new language advising a defendant after a denial of a motion for new trial that

You may not appeal this ruling if your voluntary absence prevents sentencing from occurring within ninety days of the conviction.

It further adds at the bottom of the form (that includes the defendant's signature),

If you fail to appear at your sentencing, you may lose your right to appeal.

This form would be provided to those convicted and sentenced; one can only receive the right to appeal after being sentenced. Therefore it seems to be

procedurally incorrect to place the advisement in a form used after sentencing. The advisement is only valuable if sentencing was delayed by 90 days or more. The form does not make a finding that this absence did in fact occur; it only indicates that you “may” not appeal if your voluntary absence prevented sentencing. If a new form is being proposed, perhaps it should include a finding that is made at the time of sentencing; therefore a defendant would know that he or she has waived the right to appeal by delaying the sentencing time.

Conclusion. The LJC feels that if more notice is needed than the statutory notice, a much more advisable time to notify a defendant would be at the arraignment. The defendant must be present at arraignment and therefore it is a point in time that guarantees the advisement would be given to all persons charged.

Further, the rule should address inclusion of a finding the court should make at the time of sentencing regarding a voluntary 90 day (or more) delay in sentencing. If someone does cause a 90 day delay, shouldn't they be told whether they have lost or waived that right? This rule petition does not contemplate a finding that a defendant lost any appellate rights; rather it provides notice that he or she may lose that right.

Overall the Limited Jurisdiction Committee opposes the rule change as drafted, but it would be supportive of other possible approaches to handling this issue. It does appear that the statute raises an issue for which there is no current

procedural rule or set of rules. The LJC is supportive of working on a more comprehensive set of rules to address this issue.

RESPECTFULLY SUBMITTED this ___th day of May, 2015

By /s/ _____

Hon. Eric Jeffery, on behalf of the
Committee on Limited Jurisdiction Courts
C/o Administrative Office of the Courts
1501 W. Washington Street, Suite 410
Phoenix, AZ 85007

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: April 29, 2015	This agenda item is for: [] Formal Action/Request [X] Information Only [] Other	Subject: HB2308 DEFENSIVE DRIVING SCHOOL
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Presenter(s): David Withey, Counsel, Administrative Office of the Courts (AOC)

Discussion: Mr. Withey will discuss HB 2308 that amended A.R.S. § 28-3392 regarding the length of time between traffic violations for eligibility to attend defensive driving school and implications for the court.

Recommended Action or Request (if any): None.

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: April 29, 2015	This agenda item is for: [] Formal Action/Request [X] Information Only [X] Other – Comments	Subject: SEX TRAFFICKING VICTIMS HOUSE BILL 2553
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Presenter(s): Eric Ciminski, Project Director, eCourt Services, AOC
David Withey, Chief Counsel, AOC

Discussion: David will present a draft emergency rule petition to implement the new statute that will include a form application and order and options for restricting records access. Eric will discuss the petition as it relates to access to case records remotely and at the courthouse. Members' comments written and verbal are requested particularly concerning the form application and orders and records access provisions.

Recommended Action or Request (if any): Provide comments, questions and concerns concerning the draft.

David K. Byers, Administrative Director
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Phoenix, AZ 85007
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IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO AMEND)
RULES 29 & 41 OF THE ARIZONA)
RULES OF CRIMINAL) Supreme Court No. R-15-____
PROCEDURE) (expedited consideration requested)
_____)

Pursuant to Rule 28 of the Rules of the Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to amend Rules 29 and 41, Form 21, of the Arizona Rules of Criminal Procedure. The proposed change will implement a new statutory provision included in Laws 2015, Chapter 219, HB 2553.

I. Background of the Proposed New Rule. House Bill 2553 was passed in the First Regular Session of the Fifty-second Legislature (2015). HB 2553 adds A.R.S. § 13-907.01, which authorizes a defendant convicted of prostitution to apply to the court to have the defendant’s conviction vacated.

II. The Proposed Change to Rules 29 and Rule 41, Form 21.

Rule 29 of the Arizona Rules of Criminal Procedure provides procedures for submitting and processing applications to have a defendant’s conviction vacated,

withdraw a guilty plea, and restore the defendant's civil rights. Form 21 of Rule 41 is a template for defendants to use when applying for relief under Rule 29. The proposed amendments integrate the new basis for vacating a conviction provided by A.R.S. § 13-907.01 into existing Rule 29. The proposed amendment would (1) add a subsection 29.1(b) that provides for a victim of sex trafficking to apply to the court to vacate a conviction of a violation of A.R.S. §13-3214 (prostitution), (2) amend section 29.4 to expressly permit the court to proceed without a hearing if the prosecutor does not oppose an application, and (3) add a subsection 29.6 to require that an order vacating a conviction under A.R.S. § 13-907.01 includes an order sealing the case file. The judicial discretion provided in the amendment to Rule 29.4 to proceed without a hearing absent opposition to an application is consistent with the language of the new statute and good judicial practice. Petitioner also proposes to add a specific checkbox to Form 21 for applicants to indicate relief is sought under A.R.S. § 13-907.01. The proposed amendments are shown in the Appendix to this petition.

III. Preliminary Comments. This petition was presented to the Limited Jurisdiction Courts Committee on April 29, 2015 and to the Committee on Superior Court on May 1, 2015 for comment prior to filing.

IV. Request for Emergency Adoption. HB 2553 has an effective date of July 3, 2015, and action on this rule petition is required before the effective date.

Petitioner accordingly requests expedited adoption of the proposed rule changes with a formal comment period to follow as permitted by Rule 28(G) of the Rules of the Supreme Court.

RESPECTFULLY SUBMITTED this ____ day of May, 2015

By /s/ _____
David K. Byers, Administrative Director
Administrative Office of the Courts
1501 W. Washington Street, Suite 411
Phoenix, AZ 85007
(602) 452- 3301
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Appendix A

(new language is underlined)

Rule 29. RESTORATION OF CIVIL RIGHTS OR VACATION OF CONVICTION

29.1 ~~Notice to Probationers~~Grounds and Notice

a. ~~Probationers. Prior to his or her absolute discharge, a probationer shall receive from his or her probation officer, or the court if there is no probation officer, a written notice of the opportunity~~ A probationer may apply to have his or her civil rights restored, to withdraw his or her plea of guilty or no contest, or to vacate his or her conviction. The probation officer, or the court if there is no probation officer, shall provide a written notice of this opportunity prior to the absolute discharge of each probationer.

b. Sex Trafficking Victims. A sex trafficking victim may apply to the court that pronounced sentence to vacate a conviction of a violation of A.R.S. §13-3214 committed prior to July 24, 2014.

29.2 and 29.3 [no change]

29.4 Response by the prosecutor.

At least 10 days before the date of the hearing the prosecutor may file a written response setting forth any reasons for opposing the application, sending a copy thereof to the applicant and his or her attorney, if any. If the prosecutor does not oppose the application or does not timely respond, the court may grant the application without a hearing and issue an order vacating the conviction.

29.5 [no change]

[Option 1]

29.6 Record sealed.

When a court grants an application submitted by a sex trafficking victim, the court must also order that all records of the conviction vacated be sealed and that notations be made in law enforcement and prosecution records that the conviction

was vacated and the applicant was a victim of a crime. These records may be unsealed by court order for good cause.

[Option 2]

When a court grants an application submitted by a sex trafficking victim, all records of the conviction vacated are confidential subject to disclosure by court order. The court must order that notations be made in law enforcement and prosecution records that the conviction was vacated and the applicant was a victim of a crime.

29.7 Transmission of order.

The clerk shall transmit the order vacating the conviction of a sex trafficking victim to the arresting agency, the prosecutor and the Department of Public Safety.

YOUR COURT NAME & ADDRESS

APPLICANT (Name/Address/Phone):	CASE NO. APPLICATION	APPLICATION TO VACATE CONVICTION FOR A PRIOR OFFENSE UNDER A.R.S. § 13-907.01 AND SUPPORTING DECLARATION
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APPLICANT asks the court to vacate the conviction for the crime of Prostitution, under A.R.S. § 13-3214, committed prior to July 24, 2014. The conviction occurred on _____ in this court. This relief is sought under A.R.S. § 13-907.01. The law provides that any person so convicted may apply to the sentencing court to vacate the conviction. The applicant is entitled to relief if the applicant can establish by clear and convincing evidence that the applicant's participation in the offense was the direct result of having been a victim of sex trafficking pursuant to A.R.S. § 13-1307.

Explain how you were a victim of sex trafficking and, as a direct result, were convicted of prostitution:

If additional information is required, you may attach additional pages on lined paper.

I state under penalty of perjury that the information I have provided on this form is true and correct.

Date: _____ Signature _____
Applicant

CERTIFICATE OF MAILING

I CERTIFY that I delivered or mailed a copy of this application to the prosecutor's office that prosecuted the case at the following address: _____

Date: _____ Signature _____
Applicant

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: April 29, 2015	This agenda item is for: <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: Proactive Enforcement / Warrant Mitigation
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Presenter(s): Jeff Fine

Discussion: Mr. Fine will lead a discussion regarding proactive enforcement and warrant mitigation.

Recommended Action or Request (if any): None.

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: April 29, 2015	This agenda item is for: <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: R-15-0029, Rule 28 Petition Re: Limited Court PCR Procedure, New Subsection Rule 32.13, ARCrP
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Presenter(s): Judge George Anagnost

Discussion: Judge Anagnost has been invited to this meeting of the Committee to discuss his Rule 28 Petition regarding Limited Court Post Conviction Relief Procedure, a new subsection proposed as Rule 32.13 of the Arizona Rules of Criminal Procedure.

Recommended Action or Request (if any): Motion to file a comment supporting the amended version of R-15-0029 as filed.

Hon. George T. Anagnost
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ARIZONA SUPREME COURT

In Re ARCrImP, Rule 32 –)
) **R 15 - 0029**
) **AMENDED**
)
) **Rule 28 Petition Re:**
Post-Conviction Relief) **Limited Court PCR**
) **Procedure, New Subsection**
) **Rule 32.13**
)
_____)

Since the filing of this original petition, various comments from other judges and attorneys have been helpful. This Amended Rule Change Petition is submitted to clarify mostly matters of style to improve uniformity of interpretation and completeness.

In particular, the amended changes: (1) specifically set a page limit for both petition and any state’s response; (2) to better allow for possible rural courts where prosecutors are not directly on site and may need additional time to receive and process pleadings, filing time limits for any state response have been enlarged; and (3) the comment explains that the filing deadline to initiate a LPPCR is analogous to a deadline to file a notice of appeal and is jurisdictional in nature; failure to file a petition timely is a basis to strike the petition; time limits for filing memoranda in contrast may be enlarged for good cause.

_____ **NEW SUBSECTION AS AMENDED** _____

Rule 32.13 Post-Conviction Relief Petition: Limited Court Offenses

The provisions of this subsection shall govern the procedure for seeking post-conviction relief for a person convicted of, or sentenced for, a misdemeanor or petty offense in a court of limited jurisdiction. This subsection shall be interpreted to provide a fair and just outcome but to avoid duplication of judicial resources or redundant issue resolution.

- a. Grounds; Time Limits; Preclusion.** The grounds for relief shall be those set forth in Rule 32.1. A limited court post-conviction relief petition (“LCPCR”) shall be filed no later than sixty days after entry of judgment and sentence. Post-conviction relief shall be precluded as to any issue raised or waived on direct appeal, adjudicated on the merits on appeal or collateral proceeding, except for claims under Rule 32.1 (d), (e), (f), (g), and (h); and provided further, no post-conviction petition shall be filed while petitioner’s case is already pending on appeal. A party failing to move to withdraw from a plea of guilty or no contest pursuant to Rule 17.5 shall also be precluded from post-conviction relief. The court may on motion or sua sponte strike a petition that is not timely filed.

Comment

Limited court offenses categorically involve less serious violations. The sixty-day time limit requires due diligence by any aggrieved party to seek relief without undue delay. Just as significant, if the case is already on appeal, no LCPCR is to be filed; by rule, while a limited court case is on appeal (restitution payable to clerk excepted), the case is already fully stayed, rendering an added LCPCR of marginal use. Finally, some ninety-five percent of criminal offenses in limited courts are resolved by way of plea agreement. Rule 17.5 already provides an avenue of relief from a plea agreement that does not meet constitutional standards. A party failing to seek Rule 17.5 relief is similarly barred from LCPCR.

The petition must be timely filed. This should be interpreted in a similar manner as a notice of appeal. In Arizona, defendants cannot be sentenced in absentia. Absent extraordinary circumstances, as where a party is not advised of the right to file for post-conviction relief after a guilty plea, petitions may be stricken. In contrast, if due to clerical error or inadvertence by the court, a party was not advised of Rule 32 rights, a delayed petition may be allowed.

To better ensure proper notice to defendant, court forms concerning plea agreements, changes of plea, or findings of guilt after trial should be modified to state time limits under this rule.

b. Commencement of Proceedings; Contents; Length; Response. A LCPCR shall be commenced by the filing of a Post-Conviction Relief Petition. The petition shall set forth in concise terms: the offense and sentence imposed, the relief requested, and the legal basis supporting the request. No supplemental petition shall be filed except by leave of court. The petition shall not exceed eighteen pages, inclusive of attachments, exhibits, and any appendices. Exhibits already in the court file shall not be attached and shall be referred to by incorporation but relevant portions may be set out in the petition. New matters such as affidavits or exhibits shall be limited to the issues raised. The state may file a response within thirty days, with enlargement of time for good cause. The state's response shall not exceed eighteen pages, inclusive of attachments, exhibits, and any appendices. Failure to file a response shall not be deemed a confession of error. No reply shall be permitted.

Comment

This rule seeks to balance the interests of the state, the rights of any victim, and the purpose of finality against the accused's right to a fair trial and due process. The first change in process is that, for a limited court PCR, the process is initiated with the filing of the actual petition, not a "Notice of Post-Conviction Relief" and subsequent memorandum. This two-step process is combined. The substantive PCR petition is filed at the outset. For misdemeanor and petty offenses, the content of the petition need not set forth papers and pleadings already within the judicial knowledge of court file and should not require extensive elaboration. The state may, but is not obligated

to respond; no reply is to be filed. Further adjudication of a limited court matter may then receive further appellate review at the superior court level or beyond as permitted by existing rules.

c. Limited Transcript Use; Right to Court Appointed Counsel

Conditional on Original Charges. For matters where the proceedings are less than ninety minutes duration and for which there is an audio recording was made, no transcript shall be required. Petitioner shall be provided a copy of any audio and may refer to portions of the proceedings in the petition. For matters exceeding ninety minutes, petitioner shall provide only those portions of the transcript relevant to the issues raised. If indigent, petitioner may obtain a waiver of any audio copy or transcript costs. A petitioner shall not be eligible for court appointed counsel for PCR relief if the original offense charged did not mandate jail or probation or if jail or probation were not imposed in the original judgment or sentence. A court may appoint counsel in the interests of justice however. A party seeking court appointed counsel shall request same in writing accompanied with a court financial statement form, at least twenty-five days before the deadline to file a post-conviction relief petition and the court shall rule on same within five calendar days of filing.

Comment

This subparagraph accomplishes various objectives: first, where an audio recording is available (by rule not mandated for certain proceedings such as change of pleas), for summary matters under ninety minutes, reference to the audio recording suffices; second, unlike the other provisions of Rule 32,

this subparagraph on court appointed counsel corrects an imbalance. If petitioner was not exposed to jail or probation in the underlying case, that status quo should obtain for post-conviction relief purposes to avoid unintended betterment, unless in the interests of justice the court finds independent grounds to provide court appointed counsel for petitioner. Petitioner's request for court appointed counsel is required at an early stage of the sixty-day time limit to promote due diligence in seeking relief and to improve the reviewing process at the outset and avoid delay.

d. Oral Argument and Evidentiary Hearings. A party by written motion may request oral argument, which may be granted if the court determines additional argument would assist in its determination. A party seeking an evidentiary hearing shall set forth same in a separate pleading, not to exceed five pages, stating what evidentiary matters are clearly shown to be necessary for a fair adjudication of the petition. Granting oral argument or an evidentiary hearing shall be within the court's discretion. A court may also set an oral argument or evidentiary hearing sua sponte.

Comment

This provision on oral argument and evidentiary hearing is based on reason. Petitioner, as proponent, has the burden to identify grounds for an evidentiary hearing that will genuinely advance the content of a good faith petition; the evidentiary hearing should not be a fishing expedition. It should also be kept in mind that, as noted, most limited court matters result in written pleas such that the purpose of an evidentiary hearing to re-litigate

the court's written file will have a smaller scope, especially recalling the explicit availability of Rule 17.5. A court may also set hearings sua sponte.

e. Summary Disposition; No Motion for Rehearing; Format;

Distribution; Notices. After review of the petition, any response, oral argument, and evidentiary hearing matters, if any, the court may enter appropriate orders on the motion, including denial of the petition. No motion for rehearing or reconsideration shall be filed. All other review of the petition and its merits shall be by available appellate procedure. Document format and distribution of copies of pleadings to the court, the prosecutor, and any victim shall be in accordance with the general rules of criminal procedure.

Comment

As noted above, given the nature and mitigated severity of risk of misdemeanors and petty offenses, and the competing social values involved, the merits of any petition should be addressed in accordance with due process but not at the expense of delay or inefficient use of judicial resources. From the outset of any criminal matter, both parties, the state and the defendant, have an obligation to understand the consequences of any disposition being challenged but still be bound by adjudications that meet the standards of Arizona's comprehensive criminal rule procedures. Thus, for limited court matters, summary disposition is appropriate; motions for rehearing add little to the trial court's consideration of the issues and, unlike felonies, no rehearing or reconsideration is warranted. Rule 32 has provisions for potential notice to the attorney general and county attorney.

Distribution under this subsection need only be to the immediate parties as necessary.

As set forth in the original rule change petition, post-conviction relief is an important part of providing due process to a criminal defendant. At the same time, the nature of offenses, the interests at stake, and the rights of victims must also be given consideration. Conforming post-conviction relief to the substantive aspects of limited court matters may assist in attaining those goals.

Respectfully submitted this 7th of April, 2015,

Hon. George T. Anagnost

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: April 29, 2015	This agenda item is for: <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: Legislative Update
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Presenter(s): Amy Love, Legislative Liaison

Discussion: Ms. Love will provide an update on the 52nd Legislature, First Regular Session.

Recommended Action or Request (if any): None.

ARIZONA JUDICIAL COUNCIL
Limited Jurisdiction Courts Committee
April 2015
Review of the 2015 Legislative Session

Chapter 28/HB2013: courts; days; transaction of business (Rep. Coleman)

Permits a municipal court to transact business on the second Monday of October (Columbus Day) upon approval of the presiding judge if the city or town is open for the transaction of business on the second Monday of October.

Section enacted: A.R.S. §22-409

Chapter 41/SB1179: criminal damage; gangs; criminal syndicates (Sen. Smith)

Criminal damage is a Class 5 Felony if the damage is inflicted to promote, further or assist any criminal street gang or criminal syndicate with the intent to intimidate and the damage is not otherwise classified as a Class 4 Felony.

Section amended: A.R.S. §13-1602

Chapter 51/HB2289: repetitive offenders; sentencing (Rep. Farnsworth)

A person who is convicted of multiple felony offenses that are consolidated for trial purposes or are not historical prior felony convictions, are sentenced as a first time felony offender for the first offense, a category one repetitive offender for the second offense, and a category two repetitive offender for the third and subsequent offenses.

A sentence imposed pursuant to A.R.S. §13-708, subsection A, B or C results in the revocation of the convicted person's release and runs consecutive to any other sentence from which the person was temporarily released from, unless the conviction from which parole or probation was granted was granted under the jurisdiction of another state.

Sections amended: A.R.S. §13-703 and 13-708

Chapter 61/SB1048: vexatious litigants; fees; costs; designation (Sen. Kavanagh)

Prohibits the court from waiving court fees or costs in civil actions filed by a designated vexatious litigant unless the action is for a dissolution of marriage, legal separation, annulment or establishment, enforcement or modification of child support.

The court is required to order an applicant to pay deferred or waived court fees and costs if the applicant is found to be a vexatious litigant during the pendency of the action.

Allows a party to make an amended request to declare another party a vexatious litigant at any time if the court either determined that the party is not a vexatious litigant and the requesting party has new information that is relevant to the determination or the court did not rule on the original request during the pendency of the action, even if there is not a pending case in the court.

Sections amended: A.R.S. §12-302 and 12-3201

Delayed effective date: Effective January 1, 2016

Chapter 73/HB2294: courts; approved screening, treatment facilities (Rep. Farnsworth)

Authorizes the court to order a defendant convicted of DUI or Boating OUI into a program for alcohol or drug screening, education and treatment that is offered by the US Department of Veterans Affairs in addition to those approved by the Department of Health Services or a probation department. Authorizes the court to order a defendant convicted of misdemeanor domestic violence into a program for DV treatment that is provided by the US Department of Veterans Affairs.

Allows a person applying for reinstatement of a driver license as a result of an Administrative Per Se suspension for DUI to complete alcohol or drug screening at a facility approved by DHS, a probation department or the US Department of Veterans Affairs.

Sections amended: A.R.S. §5-395.01, 13-3601.01, 28-1387 and 28-1445

Chapter 74/HB2301: historical prior felony conviction; sentencing (Rep. Farnsworth)

Amends the definition of “historical prior felony conviction” having to do with a third or greater felony conviction to include any felony conviction that is committed in another state that is a felony in that state. A person’s felony conviction from another state is considered when determining the category of repetitive offender.

Sections amended: A.R.S. §13-105 and 13-403

Chapter 79/SB1073: public records; redaction; former judges (Sen. Smith)

Adds former judges and United States Immigration Court judges to the list of officials that may request their personal information be kept confidential and removed from public records.

Sections amended: A.R.S. §11-483, 11-484, 16-153, 28-454, 39-123 and 39-124

Chapter 95/HB2089: aggravated assault; judicial officers (Rep. Borrelli)

Classifies an assault on a judicial officer as an Aggravated Assault if committed while engaged in the official’s duties or occurs as a result of those duties. Defines “judicial officer” as a Supreme Court justice, judge, justice of the peace, commissioner, and hearing officer.

Adds the “scope of employment” limitations to occupations listed in statute where the provision is currently not included.

Section amended: A.R.S. §13-1204

Chapter 100/HB2164: release; bailable offenses; evidence (Rep. Borrelli)

Expands the list of statutory considerations for determining the method of release or the amount of bail to include: prior arrests or convictions for a serious offenses and violent or aggravated felony both in and out of the state, evidence of dangerousness to others, and the results of a risk or lethality assessment in a domestic violence charge if presented to the court.

Sections amended: A.R.S. §13-3906 and 13-3967

Chapter 109/HB2304: aggravated assault; simulated deadly weapon (Rep. Farnsworth)

An assault with a simulated deadly weapon is added to the list of offenses that constitute an Aggravated Assault, classified as a Class 3 Felony.

An Aggravated Assault based upon causing serious physical injury to another, using a deadly weapon or dangerous instrument, or when taking or attempting to take a peace officer's firearm knowing or having reason to know the person is a peace officer and while the officer is engaged in the execution of any official duties is a Class 2 Felony if the victim is under the age of 15. Note: a person under fifteen cannot be certified as a peace officer so that portion of the statute has no applicability.

Section amended: A.R.S. §13-1204

Chapter 110/HB2311: judgment liens; recordation; real property (Rep. Farnsworth)

Allows a certified copy of a judgment of a justice or municipal court to be filed directly with the county recorder to become a lien on a judgment debtor's real property (current law requires justice or municipal court judgments be given to a superior court and then filed as a superior court judgment). With this change in law, both filing methods will be available for justice or municipal court judgments. Applies to judgments filed from and after December 31, 2015.

Sections amended: A.R.S. §33-961 and 33-962

Chapter 118/HB2345: motorcycles; all-terrain vehicles; cycles; equipment (Rep. Fann)

Removes the restrictions on the placement of motorcycle and all-terrain vehicle (ATV) handlebars when operating a motorcycle or ATV. Removes the requirement that a motorcycle or ATV operated with a passenger on board be equipped with handrails for the passenger. Operation of a motorcycle or ATV with a passenger still requires the vehicle to be equipped with a seat and footrests for the passenger.

Section amended: A.R.S. §28-964

Chapter 122/HB2396: wildlife; guides; firearms (Rep. Pratt)

Removes the prohibition on persons acting as a wildlife guide from only carrying a revolver or pistol.

Section amended: A.R.S. §17-362

Chapter 137/SB1063: obstructing a highway; public thoroughfare (Sen. Kavanagh)

The offense of Obstructing a highway or public thoroughfare is expanded to include intentionally activating a pedestrian to stop the passage of traffic on the highway or thoroughfare and solicit for a donation or business.

The existing statute, recklessly interfering with the passage of a public highway is amended to include the condition that the person has no legal privilege to do so.

Section amended: A.R.S. §13-2906

Chapter 138/ SB1064: service of process; regulation (Sen. Kavanagh)

Alternative or substitute service of process for a photo enforcement violation must be sent by certified mail with an additional copy by regular mail and a notice must be posted on the front door of the business or residence and, if present and accessible, a residence's garage door.

Moves provisions relating to private process servers from Title 11 to Title 12.
Moves provisions relating to photo enforcement within Title 28.
Sections amended: A.R.S. §11-445, 28-1593 and 28-1602

Chapter 146/ SB1094: aggressive solicitation; offense (Sen. Kavanagh)

Establishes the offense of Aggressive solicitation, a petty offense, for a person to solicit any money, any other thing of value or solicit the sale of goods or services: (1) within 15 feet of a bank entrance or exit of an automated teller machine without permission to be there from the bank or the owner of the property on which the ATM is located or (2) Doing any of the following in a public area; (a) intentionally, knowingly or recklessly making any physical contact with another person in the course of the solicitation without the person's consent, (b) approaching or following a person being solicited in a manner that is intended or likely to cause a reasonable person to fear imminent bodily harm, damage to or loss of property or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation, (c) continuing to solicit the person after the person being solicited has clearly communicated a request for the solicitation to stop, (d) intentionally, knowingly or recklessly obstructing the safe or free passage of the person being solicited or requiring the person to take evasive action to avoid physical contact with the person making the solicitation, or (e) intentionally, knowingly or recklessly using obscene or abusive language and gestures that are intended to cause a person to fear imminent bodily harm or are intended to intimidate the person being solicited into responding affirmatively to the solicitation.

Defines: "Automated Teller Machine," "Bank," "Public area," and "Solicit."

Section amended: A.R.S. §13-2905
Section enacted: A.R.S. §13-2914

Chapter 160/SB1295: fingerprinting; judgment of guilt; records (Sen. Smith)

At the time of sentencing a person convicted of specified felony offenses the court may obtain and record the defendant's two fingerprint biometric-based identifier in the court case file or permanently any fingerprint to the document or order, not just the defendant's right index fingerprint.

Sections amended: A.R.S. §13-607, 13-3903 and 41-1750

Chapter 173/HB2236: ATV and motorcycle passengers (Rep. Shope)

The operator of a motorcycle cannot carry passengers unless the motorcycle is designed to carry more than one person. If the motorcycle is designed for more than one person, the passenger may only ride on the permanent and regular seat or on another seat firmly attached to the motorcycle. The operator of an all-terrain vehicle (ATV) cannot carry additional passengers unless the ATV is equipped to carry more than one person.

Section amended: A.R.S. §28-892

Chapter 194/SB1035: domestic violence treatment programs; providers (Sen. Ward)

Grants authority for the Supreme Court to approve, pursuant to court rule, domestic violence offender treatment programs for misdemeanor domestic violence offenders.

Delayed effective date: January 1, 2016

Section amended: A.R.S. §13-3601.01

Chapter 209 /HB2299: sexual offenses; definitions; defenses (Rep. Farnsworth)

For the purposes of Title 13, Chapter 14, defines "position of trust" as a person who is or was the minor's parent, step-parent, adoptive parent, legal guardian, foster parent, teacher, coach or instructor (employee or volunteer), clergyman, priest, or a person engaged in a sexual or romantic relationship with the minor's parent, adoptive parent, legal guardian, foster parent, or stepparent. Also defines "teacher" as a certificated teacher or any other person who provides instruction to pupils in any school district, charter school or accommodation school, the Arizona School for the Deaf and Blind or a private school in this state.

Creates a list of criteria to be considered when determining a current or previous sexual or romantic relationship

It is not a defense to prosecution for sexual abuse that the other person consented if the other person was 15, 16, or 17 years of age and the defendant was in a position of trust.

Sexual conduct with a minor is a Class 2 Felony if the victim is at least 15 years of age and the defendant is or was in a position of trust.

Sections amended: A.R.S. §13-501, 13-1401, 13-1404 and 13-1405

Chapter 219 /HB2553 sex trafficking victim; vacating conviction (Rep. Steele)

A person convicted of prostitution prior to July 24, 2014 may apply to the court that pronounced sentence seeking to vacate the conviction. The court must grant the application and vacate the conviction if found by clear and convincing evidence that the person's participation in the offense was a direct result of being a victim of sex trafficking as defined in §13-1307. Note, this provision does not apply to a conviction for a municipal prostitution ordinance. If the prosecutor does not oppose the application the court may vacate the conviction without a hearing.

On vacating the conviction the court shall: (a) release the applicant from all penalties and disabilities resulting from the conviction, (b) enter an order that a notation be made in the court file and in the law enforcement and persecution records that the conviction was vacated and that the person was a victim of a crime (important for victims' rights purposes) and (c) transmit the order vacating the conviction to the arresting agency, the prosecutor and the Department of Public Safety.

Prohibits a vacated prostitution conviction of from qualifying as a historical prior felony conviction and from being alleged for any purpose pursuant to §13-703. A person whose conviction is vacated may state that the person has never been arrested, charged or convicted of the crime that is the subject of the conviction, including in response to questions on employment, housing, financial aid or loan applications, unless applying for employment which requires a fingerprint clearance card..

Section enacted: A.R.S. §13-907.01

Chapter 228/SB1189: firearm possession; setting aside conviction (Sen. Ward)

If a judgment of guilt is set aside, the person's right to possess a gun or firearm is restored. Does not apply to a person who was convicted of a serious offense.

Section amended: A.R.S. §13-907

Chapter 237/ HB2203: post-conviction release hearings; recordings; free (Rep. Boyer)

Requires any electronic recordings made during a post-conviction or post-adjudication release hearings to be provided for victims free of charge.

Sections amended: A.R.S. §8-395 and 13-4414

Chapter 238/ HB2204: criminal restitution order; courts (Rep. Boyer)

Authorizes a limited jurisdiction, as well as a superior court to enter a criminal restitution order in favor of each person who is entitled to restitution for the unpaid balance of any restitution order.

The court is authorized to order a defendant to allocate all or a portion of a fine as restitution for a victim of a traffic accident that involves failure to stop or remain at the scene of an accident that resulted only in damage to a vehicle.

Sections amended: A.R.S. §13-805 and 13-809

Chapter 244/HB2480: weights and measures department; transfer

Sunsetts the Department of Weights and Measures and divides all of its responsibilities between the Department of Agriculture and the Department of Transportation (ADOT).

In pertinent part, moves four violations of state law or rule from Title 41 (Weights and Measures) to Title 3 (Department of Agriculture) and Title 28 (Department of Transportation). Violation of 41-2091(O), a Class 2 Misdemeanor, is moved to 28-9503(H). Violation of 41-2111(C), a Class 2 Misdemeanor, is moved to 28-9521(C). Violation of 41-2113(A), a Class 1 Misdemeanor, is moved to 3-3473(A). Violation of 41-2113(B), a Class 2 Misdemeanor is moved to 3-3473(B).

Sections moved: 41-2051, 41-2062, 41-2063, 41-2064, 41-2065, 41-2066, 41-2067, 41-2068, 41-2069, 41-2081, 41-2082, 41-2083, 41-2083.01, 41-2085, 41-2086, 41-2091, 41-2092, 41-2093, 41-2094, 41-2095, 41-2096, 41-2097, 41-2111, 41-2112, 41-2113, 41-2114, 41-2115, 41-2116, 41-2121, 41-2122, 41-2123, 41-2124, 41-2124.01, 41-2125, 41-2126, 41-2127, 41-2128, 41-2132, 41-2133, 41-2134, and 41-2135

Sections amended: 3-102, 3-3401, 3-3413, 3-3414, 3-3418, 3-3431, 3-3433, 3-3434, 3-3451, 3-3453, 3-3454, 3-3471, 3-3472, 3-3473, 3-3475, 3-3492, 3-3493, 3-3494, 3-3495, 3-3496, 3-3512, 3-3513, 3-3515, 9-499.18, 28-364, 28-5602, 28-5605, 28-5936, and 41-112

Sections enacted: 28-9501, 28-9502, 28-9503, 28-9504, 28-9521, 28-9522, 28-9523, 28-9524, 28-9525, and 28-9523

Sections repealed: 41-2052, 41-2061 and 41-3021.02

Delayed Effective Date: July 1, 2016

Chapter 249/ HB2663: satisfaction of judgement (Rep. Cobb)

A satisfaction of judgment may be filed in a small claims action.
Section amended: A.R.S. §22-505

Chapter 269/SB1116: fines, fees; costs; community restitution (Sen. Ward)

In a municipal or justice court, if a defendant is sentenced to pay a fine, a fee, assessment or incarceration costs and the court finds the defendant is unable to pay all or part of the fine, fee, assessment or incarceration costs, the court may order the defendant to perform community restitution in lieu of the payment for all or part of the fine, fee, assessment or incarceration costs. The amount of community restitution shall be equivalent to the amount of the fine, fee or incarceration costs by crediting any service performed at a rate of \$10 per hour.
Delayed effective date: January 1, 2016
Sections amended: A.R.S. §13-810 and 28-1389

Chapter 270/SB1185: landlord tenant; guest removal (Sen. Griffin)

Permits a law enforcement officer at the request of a tenant or a landlord who is entitled to possession of the premises to remove a guest who knowingly remains on the premises without permission of the tenant or landlord and not listed on the lease.
Section enacted: A.R.S. §33-1378

Chapter 276/HB2088: magistrates; municipal courts (Rep. Borrelli)

Replaces “police courts” with “municipal courts” and “police magistrates” with “judges” throughout statute. Removes “dogs” from the definition of personal property.
Reallocates the \$3.6M general fund cut in the FY2016 judiciary budget to 19 line items within the Supreme Court and Superior Court. The recently passed budget allocated the entire cut to the Supreme Court automation line item.
Sections amended: A.R.S. §1-215, 11-952, 12-1578.01, 12-1598.06, 22-375, 36-2021 and 42-1122
2015 Laws amended: Chapter 8, Section 59; relating to courts

Chapter 279 /HB2211: auto cycles; motorized quadricycles (Rep. Petersen)

In pertinent part, a motorized quadricycle cannot be operated at a speed above 15mph. Prohibits a motorized quadricycle from operation on a highway that has a posted speed limit of more than 35mph. Does not prohibit a motorized quadricycle from crossing a highway with a posted speed limit of more than 35mph.
Defines “motorized quadricycle.”
Sections amended: A.R.S. §28-101, 28-966 and 28-2157

Chapter 281/ HB2308: eligibility; defensive driving school

The number of months a person must wait before being eligible to take defensive driving school for a new violation is decreased from 24 to 12 months. The 12 months is calculated from the day of the prior violation which the person was authorized to attend defensive driving school.
Section amended: A.R.S. §28-3392

Chapter 294/ HB2609: reciprocal driver license agreements (Rep. Gray)

In pertinent part, requires ADOT to issue a driver license or non-operating identification license that allows boarding of federally regulated commercial aircraft, or access to restricted areas in federal facilities, nuclear power plants or military facilities, upon request of an applicant. The voluntary I.D. is valid for no more than 8 years and may not contain radio frequency identification technology. Requires ADOT to adopt rules to implement the voluntary I.D. The director of ADOT will determine the application fee.

Sections enacted: A.R.S. §28-413 and 28-3175

Sections amended: A.R.S. §28-3002 and 28-6991

Chapter 298/SB1046: criminal trespass; classifications (Sen. Pierce)

Criminal trespass in the first degree by knowingly entering or remaining unlawfully in or on a critical public service facility is increased from a Class 6 to a Class 5 Felony.

Section amended: A.R.S. §13-1504

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: April 29, 2015	This agenda item is for: <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: Rule Change Petition Reconsideration
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Presenter(s): Judge Antonio Riojas, Chair

Discussion: During the presentation of the Rules Update on February 25th, members had comments and concerns (some serious) about a couple of Rule Petitions; however no motion was made regarding whether to support, oppose or comment. The LJC is asked to reconsider the following petitions for comment.

- R-15-0015 – Petition to Amend the Rules of Procedure for Eviction Actions, and
- R-15-0018 – Petition to Amend Rules 31, 34, 38, 39 and 42, Rules of the Supreme Court.

Additionally, Judge MaryAnne Majestic volunteered to draft a comment regarding R-15-0028, but there was no motion. It is not clear if the comment drafted regarding R-15-0017 by Judge Jeffery addresses the issues regarding the right of self-representation on appeal.

- R-15-0024 – Petition to Amend Rule 41, Rules of Criminal Procedure.

In order to address motions to comment efficiently, staff has made arrangements to submit comments via the Rules Forum’s Quick Reply during this meeting.

Recommended Action or Request (if any):

- Motion to submit quick reply in support opposition to R-15-0015
- Motion to submit quick reply in support opposition to R-15-0018
- Motion to submit quick reply in support opposition to R-15-0028
- Motion to submit quick reply in support opposition to R-15-0024

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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

Supreme Court No. R-

**PETITION TO AMEND THE
RULES OF PROCEDURE FOR
EVICTION ACTIONS**

PETITION

Pursuant to Rule 28, Ariz. R. Sup. Ct., the State Bar of Arizona respectfully petitions this Court to adopt a procedure allowing for a change of judge as a matter of right and for cause in eviction actions. After hearing presentations by parties interested in the processing of eviction actions, the State Bar proposes two different rules for the Court's consideration. One is based on the existing Justice Court Rules of Civil Procedure; the other is narrower and perhaps more tailored to the time-sensitive demands of eviction actions.

Background

Justice Court eviction actions, one of the most common civil cases heard in Justice Court, are the only type of civil action that has no change-of-judge rule.

1 For eviction cases in Superior Court, the change-of-judge provision in Rule
2 42(f), Ariz. R. Civ. P., applies and permits change of judge as a matter of right and
3 for cause. Rule 1, Rules of Procedure for Eviction Actions.

4 For other civil matters in Justice Court, the Justice Court Rules of Civil
5 Procedure, adopted effective January 1, 2013, include Rule 133(d), which provides
6 for a change of judge as a matter of right and for a change of judge if the party
7 believes the party will not have a fair and impartial trial before the justice of the
8 peace. The Justice Court Rules of Civil Procedure do not apply to evictions. Rule
9 101(b).

10 Changes of judge are permitted in orders of protection and injunctions against
11 harassment cases because pursuant to Rule 1(A)(2) of the Arizona Rules of
12 Protective Order Procedure, the Arizona Rules of Civil Procedure apply to those
13 cases, unless specifically inconsistent with the rules. Thus, as relevant here, Rule
14 42(f) applies to those cases, as well. For civil traffic and boating cases, Rule 7 of
15 the Rules of Procedure in Civil Traffic and Civil Boating Violation Cases provides
16 that a change of judge as a matter of right does not apply in these cases except for
17 cases consolidated with a criminal matter.

18 When the State Bar of Arizona proposed the Rules of Procedure for Eviction
19 Actions in 2008, its petition (R-07-0023) proposed a change-of-judge rule. The
20 petition was the product of the State Bar Landlord/Tenant Task Force, which
21 included justices of the peace and attorneys who represent tenants and landlords, as
22 well as members of the State Bar's Legal Services Committee, whose mission is
23 working on access-to-justice issues for low-income Arizonans. Despite the
24 recommendation from this diverse task force, the Court did not include the change-
25 of-judge rule when it adopted the final eviction-action rules, effective January 1,

1 2009.

2 In 2013, the State Bar submitted another petition (R-13-0047) again proposing
3 the change-of-judge rule using the rule originally proposed in 2008. This Court
4 denied the petition.

5 Because of the significance of this issue, the State Bar again presents this issue
6 for the Court's consideration.

7 **Need for Proposed Rule**

8 Tenants have a property interest in their residences. *Greene v. Lindsey*, 456
9 U. S. 444, 451-52 (1982). *See also Foundation Development Corp. v. Loehmann's*,
10 163 Ariz. 438, 442, 788 P.2d 1189, 1193 (Ariz. 1990) (recognizing common law
11 right of tenant's property interest in rental). Eviction proceedings that deprive
12 tenants of that property must comply with the due process requirements of the 14th
13 Amendment to the United States Constitution. *Greene*, 456 U.S. at 455.

14 For low-income persons, an eviction case threatens their only means of
15 shelter. The inability to find other housing on short notice can lead to the disruption
16 of children's education, interruption of employment, dislocation from health care
17 providers, loss of personal belongings and homelessness. In addition, the eviction
18 process may lead to monetary judgments. Thus, the consequences of eviction cases
19 make them very important to tenants and the community at large who may be called
20 upon to assist the displaced tenants.

21 Although eviction cases have shorter statutory time frames than some of the
22 other civil cases heard in Justice Court, these time frames are not a sufficient reason
23 to deny the litigants a right to change judge. If a tenant or a landlord believes that
24 he or she cannot get a fair trial before a justice, then they should be allowed as other
25 litigants are, to request a change of judge. The change-of-judge requests can be

1 handled like other continuances for cause. As an example, many Justice Courts
2 already continue cases to another date for a trial if a tenant appears on the court date
3 noted in the summons and has a defense. *See* Rule 11(c) of the Rules of Procedure
4 for Eviction Actions (continuances may be granted “on the request of a party for
5 good cause shown or to accommodate the demands of the court’s calendar”);
6 Arizona Residential Landlord and Tenant Act, A.R.S. § 33-1377(C). The same or
7 similar practice could apply to a change-of-judge request.

8 **Consistency with the Statutory Scheme and Time Standards**

9 Objections to the now-denied 2013 change-of-judge rule petition suggested
10 that a change of judge is impractical in rural areas or in stand-alone Justice Courts.

11 Rural precincts heard only a fraction of the approximately 84,000 eviction
12 actions filed in Justice Courts statewide in fiscal 2013. More than 64,000 of evictions
13 were filed in Maricopa County and another 14,000 were filed in Pima County.¹ This
14 leaves approximately 6,000 evictions throughout the rest of the state, and even as to
15 those evictions, the vast majority end in default. Thus, this rule affects only that
16 small minority of tenants who contest the eviction.

17 In addition, the speedy timeframes of eviction actions are not unique.
18 Changes of judge are permitted in time-sensitive applications for orders of protection
19 and injunctions against harassment in Justice Court. *See* Rule 1(A)(2), Arizona
20 Rules of Protective Order Procedure (declaring that the Arizona Rules of Civil
21 Procedure apply to those cases “when not inconsistent with these rules”). Even in
22 Superior Court, where the change of judge applies in all cases except cases in Tax
23

24
25 ¹ See <http://www.azcourts.gov/statistics/AnnualDataReports/2013DataReport.aspx>
for case activity reports for limited jurisdiction courts.

1 Court, Rule 42(f)(1)(A), Ariz. R. Civ. P., the exercise of a peremptory challenge to
2 a judicial officer can delay a request for injunctive relief under Rule 65, Ariz. R. Civ.
3 P., particularly in rural counties with limited benches.

4 A peremptory judicial challenge also would not be inconsistent with case-
5 processing standards. The provisional resolution standard is to resolve 98 percent of
6 eviction actions within 10 days.² If there is an adverse impact as the result of a
7 change-of-judge rule, the Court can anticipate that the impact would be relatively
8 small, given the paucity of eviction trials and the heavy volume of default judgments.

9 **Proposals**

10 The State Bar offers two proposes for a change-of-judge rule in eviction
11 actions in Justice Court.

12 **1. Proposal One: Add new Rule 9(c) allowing for change of judge as a** 13 **matter of right**

14 This proposal originated with the State Bar's Legal Services Committee,
15 which is a broad cross-section of attorneys, including the executive directors of the
16 state's three legal-services programs. It is based on Rule 133(d), Justice Court Rules
17 of Civil Procedure, which provides for a change of judge as a matter of right and for
18 a change of judge if the party believes the party will not have a fair and impartial
19 trial before the justice of the peace:

20 **Rule 9(c): Motion for Change of Judge**

21 For purposes of this subsection, a lawsuit has only two sides. A
22 party or a side, if there is more than one plaintiff or one defendant in a
23 lawsuit, may request a change of judge as a matter of right orally or in

24 ² See <http://www.azcourts.gov/Portals/22/admorder/Orders13/2013-95.pdf> for
25 Administrative Order No. 2013-95 setting out provisional case-processing standards
for courts.

1 writing. The party or side must request a change of judge as a matter
2 of right in the precinct where the lawsuit is pending. The request must
3 state that the party or side has not previously requested a change of
4 judge in this lawsuit, that the party or side has not waived the party's
5 right to change of judge, and that the request is timely. A request is
6 timely if it is made prior to or at the time of the first court appearance
7 or upon reassignment of the matter to a new judge for trial. A party
8 waives a right to a change of judge if the judge has ruled on any
contested motion or issue, or if the trial has started. When a proper and
timely request for a change of judge as a matter of right is orally
requested or filed, the court must transfer the lawsuit to a new judge
within the county for further proceedings.

9 If a party believes that the party will not have a fair and impartial
10 trial before a justice of the peace, then the party must proceed as
11 provided in Arizona Revised Statutes § 22-204, except that any request
12 must be made by the date of the first court appearance and five days'
notice is not required.

13 The remaining subparts of current Rule 9 would be redesignated to conform to this
14 addition.

15 The first paragraph is taken from current Justice Court Rule 133(d) with minor
16 changes to reflect the practice in Justice Court. Similarly, the second paragraph
17 concerning change of judge for cause is taken from the last sentence in Rule 133(d)
18 but with modifications to reflect the practice in Justice Court and changes
19 subsequently made to A.R.S. § 22-204 in 2013.

20 **2. Proposal Two: Add new Rule 9.1 allowing for change of judge under**
21 **certain conditions**

22 This proposal, suggested by Encanto Justice of the Peace C. Steven McMurry,
23 who also is presiding judge of the Maricopa County Justice Courts, would allow a
24 litigant to request a change of judge for right only if it would not cause delay:
25

1 Rule 9.1

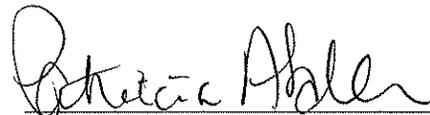
2 If, because other judges are readily available, it can be granted without
3 causing a day's delay in the proceeding, a single request for a change
4 of judge as a matter of right shall be granted.

5 While parties could argue about what constitutes "readily available," this
6 proposal would address concerns about delaying the processing of time-sensitive
7 cases. The State Bar Board of Governors was advised that this provision would not
8 cause delay or the inability to comply with case time-processing standards.

9 **Conclusion**

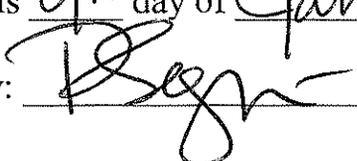
10 The State Bar requests that the Court adopt a mechanism so that litigants in
11 eviction cases, like other litigants in civil cases heard in Justice Court and eviction
12 litigants in Superior Court, have the right to a change of judge. Toward that end, it
13 offers two proposals. Either removes the current disparity.

14
15 RESPECTFULLY SUBMITTED January 9, 2015.

16
17 

18 Patricia A. Sallen
19 Deputy General Counsel
20 John Furlong
21 General Counsel

22 Electronic copy filed with the
23 Clerk of the Arizona Supreme Court
24 this 9th day of January, 2015.

25 by: 

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SUPREME COURT OF ARIZONA

In the Matter of:) Arizona Supreme Court
) No. R- _____
PETITION TO AMEND RULES 31, 34,)
38, 39, and 42, Rules of the Supreme Court)
)
_____)

Pursuant to Rule 28, Rules of the Supreme Court, the Committee on the Review of Supreme Court Rules Governing Professional Conduct and the Practice of Law respectfully petitions this Court to adopt amendments to Rules 31, 34, 38, 39, and 42, Rules of the Supreme Court, as proposed in the attached Appendix A, showing changes in legislative format.

I. Background and Purpose of Proposed Amendments

The Arizona Supreme Court established the Committee on the Review of Supreme Court Rules Governing Professional Conduct and the Practice of Law (“Committee”) by Administrative Order 2014-66 entered June 17, 2014. The Court created the Committee in recognition that the changing practice of law in the last decade poses new ethical questions that necessitate review of certain court Rules governing the practice of law. The Court tasked the Committee with examining and updating the current Rules to ensure

that the public is protected and the Rules do not impose unnecessary barriers to the delivery of legal services. The Committee was also asked to consider making changes proposed by the American Bar Association's Commission on Ethics 20/20.

The Committee met several times from July to December 2014; a list of the members is attached as Appendix B. The Committee invited and received input from State Bar of Arizona sections and other stakeholders and established an email address for that purpose (changingpracticeoflaw@azbar.org). The Committee considered a variety of different tools to address the implications of the modern practice of law, including educational and member services programs, advisory opinions, and Rule changes.

The Committee recommends a combination of changes to Rule text and to Rule Comments. When recommending a change in conduct, the Committee has recommended a change to the text of the applicable Rule or Rules. Many recommendations, however, involve providing guidance about the application of existing Rules in a contemporary law practice. In those instances, the Committee has recommended an explanatory Comment.

II. Proposed Amendments

A. Rule 31. Regulation of the Practice of Law

Representatives of the State Bar of Arizona's ADR Section attended two of the Committee's working sessions and submitted a memorandum, approved by the Section's Executive Committee, proposing changes in Rule 31 to clarify the status of mediators. The Committee considered the Section's proposed changes to Rule 31 and modified them slightly. These changes would clarify that mediation is not the practice of law, and that

mediators who are not active members of the State Bar and who prepare written mediation agreements resolving all or part of a dispute or other legal documents must be certified legal document preparers.

B. Rule 34. Application for Admission

Time-in-Practice Requirement

The ABA 20/20 Commission recommended that the time-in-practice requirement in the ABA Model Rule for Admission by Motion be shortened from five of the past seven years to three of the past five years.

Based on information received from the Supreme Court's Character & Fitness Committee and statistical information regarding the experience level of lawyers who receive disciplinary sanctions, the Committee concluded that the 20/20 Commission's proposed change in the time-in-practice requirement would not have any material impact on the competence of applicants or the protection of the public. The Committee therefore recommends that Arizona adopt the proposed change in the time-in-practice requirement.

Admission on Motion

The Commission recommended that each jurisdiction conform its admission on motion rule to the Model Rule. The Committee reviewed Arizona's current restrictions on admission on motion in Rule 34(f) and compared them to the Model Rule. The Committee also reviewed documents reflecting Arizona's initial decision to adopt admission on motion and changes made to the Model Rule at that time. In some cases, the Committee found that the differences between Rule 34(f) and the Model Rule were

not significant enough to warrant a change. In other cases, the Committee concluded that the changes Arizona made to the Model Rule when it adopted admission on motion were warranted and should be retained. The Committee recommends retaining the requirement that the applicant be licensed in a state that permits Arizona lawyers to be admitted on motion. Retention of this provision would serve the public interest by ensuring that the applicant's home state employs the same type of rigorous screening used by the Arizona Supreme Court in admitting qualified persons to the practice of law.

The Committee recommends deleting provisions of Rule 34(f)(3) that define the "active practice of law" to require that an applicant spend at least 1,000 hours engaged in the active practice of law for each of the time-in-practice years and derive at least 50% of non-investment income from the practice of law. The Committee concluded that those restrictions could prejudice lawyers, particularly young lawyers, whose law practice opportunities and income may have been adversely affected by economic developments.

Practice Pending Admission on Motion

The ABA 20/20 Commission recommended adoption of - and the ABA House of Delegates ultimately approved - a new Model Rule on Practice Pending Admission, which would allow a lawyer admitted in another jurisdiction who needs to relocate or commence practice in another jurisdiction to begin practicing law in that other jurisdiction while the lawyer's admission on motion is pending. The Commission asserted that these changes are warranted by "[c]ontinually evolving technology, client demands and a national (as well as global) legal services marketplace," which "have

fueled an increase in cross-border practice as well as a related need for lawyers to relocate to new jurisdictions.”

The Committee concluded that the adoption of a practice-pending-admission Rule for applicants seeking admission by motion would not likely have any material impact on the competence of applicants or the protection of the public. The Committee had concerns about Model Rule provisions that would allow an applicant to begin practicing law in Arizona as many as 45 days before submitting an application for admission on motion. After considering Colorado’s version of the Model Rule, which requires the submission of an application before practice may commence, the Committee proposes an amendment to Rule 34 that would allow for practice pending admission by admission-on-motion applicants but would require that the application be received and deemed complete by the Committee on Character and Fitness before practice could commence.

The proposed amendment also differs from the Model Rule in other respects. Specifically, it does not include Model Rule provisions allowing for practice pending admission by those seeking admission by transfer of uniform bar exam results or for foreign legal consultants. The Committee distinguished admission-on-motion applicants because they must demonstrate practice experience while applicants in other categories do not.

Pro Hac Vice Admission

The ABA 20/20 Commission added a section to the Model Rule on Pro Hac Vice Admission that would permit lawyers admitted in a non-United States jurisdiction to appear pro hac vice. The Committee considered this recommendation, how other

jurisdictions have responded to the report, and the provisions of Rule 38. The Committee concluded that there is not a compelling need for Arizona to modify its Rules to permit foreign lawyers to appear pro hac vice and therefore does not recommend that Arizona adopt that portion of the Model Rule.

The 20/20 Commission also amended the Model Rule to require pro hac vice applicants to pay an assessment to a jurisdiction's client protection fund. Because Arizona-applicants' clients can collect from Arizona's Client Protection Fund and Arizona-admitted attorneys must pay into the Fund, the Committee recommends adopting this portion of the Model Rule.

Finally, the Committee recommends modifying the restriction in Rule 38(h) on pro hac vice admission by registered in-house counsel in two respects: (1) permitting registered in-house counsel to seek pro hac vice admission to represent their corporate client in Arizona court proceedings, which the current rule does not allow; and (2) removing the current requirement that registered in-house counsel obtain pro hac vice admission before providing pro bono services through an approved legal services organization under Rule 38(e). The Committee saw no need to preclude registered in-house counsel from seeking pro hac vice admission on behalf of their corporate employer; they already may engage in all other aspects of law practice. The Committee also concluded that requiring pro hac vice admission for Rule 38(e) services was an unnecessary impediment to pro bono representation by in-house counsel.

C. Rule 38. Special Exceptions to Standard Examinations and Admission Process

The Committee recommends that Rule 38 be revised to make it clearer and more understandable, to broaden the practice of in-house counsel, to move certification oversight from the State Bar to the Supreme Court, and to adjust language concerning the temporary admission of military spouses.

First, the Committee recommends that the pro hac vice provisions be moved to Rule 39, leaving Rule 38 to address other exceptions to standard admissions procedures. The pro hac vice admission is conceptually different from the other provisions because it allows non-members to practice before the Arizona courts only in specific cases. Consequently, and because the pro hac vice provisions are used more regularly than the other exceptions, the Committee proposes that the provisions be set forth by themselves in Rule 39. It suggests deleting the current Rule 39 – the so-called “Katrina Rule” – as unnecessary if the Court adopts the proposals for amending ER 5.5. The Katrina Rule allows lawyers who are displaced due to a major disaster to relocate to this jurisdiction and practice the law of their home jurisdiction. The ER 5.5 proposals clarify that non-members may establish a presence in this jurisdiction to practice the law of another jurisdiction in which they are licensed. This would cover lawyers from other jurisdictions displaced by major disasters.

Second, as noted previously, the Committee suggests that in-house counsel be able to appear on behalf of their employers in court or elsewhere if counsel complies with the pro hac vice provisions. To encourage lawyers to provide access to justice to those unable to pay for legal representation, registered in-house counsel should be able to appear in

court without complying with the pro hac vice provisions when representing pro bono clients through legal services organizations.

Third, the Committee recommends that the Court rather than the Bar decide who is granted in-house registered status. Currently, in-house counsel who are not members of the State Bar may, through registration, be allowed to do everything related to the practice of law other than appear in court. As a result, the registration procedure is more akin to admissions and should be housed in the Court's admissions office. Similarly, the Committee recommends revising the provision allowing the State Bar Board of Governors to waive practice-related criteria. Even if the Court is not inclined to relocate the in-house counsel registration function to the Court's admissions office, this change should be adopted. Only the Supreme Court should be able to waive practice-related criteria.

Fourth, the Committee has proposed language to clarify that a military spouse must complete fifteen hours of Arizona education each year. The Committee also recommends eliminating the requirement that the Bar maintain a separate list of temporarily admitted military spouses. The requirement is unnecessary as the Bar maintains a list by virtue of issuing a bar number to the military spouse.

Fifth, and finally, the Committee proposes adding practice pending admission to Rule 38, as it provides an exception to standard admissions procedures, and it suggests moving the in-house counsel process to subsection (a).

D. Rule 39. Admission Pro Hac Vice

The proposed amendments to Rule 39 address pro hac vice admission, which was previously addressed in Rule 38. As mentioned in conjunction with the prior discussion of Rule 38, the Committee recommends that Rule 39 require attorneys admitted pro hac vice to make payments to the Client Protection Fund. This change conforms to the Model Rule and is better designed to protect the public as clients of pro hac vice attorneys can collect from the fund.

The Committee also suggests clarifying language to Rule 39. It proposes to change “non-resident” attorneys to the more accurate “non-member” attorneys. It also added subsection (l), which consolidates concepts already in the Rules.

E. Rule 42. Arizona Rules of Professional Conduct

The Supreme Court has already adopted many of the Model Rule changes proposed by the ABA 20/20 Commission. The Committee proposes additional changes relating to technology, globalization of the practice of law, and possible impediments to the changing nature of the practice.

1. ER 1.5. Fees

The existing Rules of Professional Conduct contemplate that lawyers may affiliate in “firms,” by which the Rules mean long-term arrangements where the same lawyers work together in an ongoing association. (*See, e.g.*, ER 1.10(c) (defining “firm”).) Thus, various Rules attach consequences to the affiliation of a lawyer with a firm, such as imputation of conflicts or duties based on the role of the lawyer as a supervisor or subordinate within that firm structure. (*See* ER 1.10, 5.1, 5.2.) Lawyers who are not

affiliated with the same firm may cooperate in the representation of a client, but may divide fees only if they assume joint responsibility for the entire representation. (ER 1.5(e)(1).)

Alternative forms of legal teams are becoming increasingly popular in the legal profession. A client may engage a law firm to represent it in a particular matter, but ask or allow the firm to use other entities or individuals not employed by the firm to conduct research, review documents, or assemble electronic documents for production in discovery. A lawyer may wish to affiliate with other lawyers for a particular matter, because those lawyers have skills or experience needed for that matter, without entering into a long-term partnership with the other lawyer across multiple matters.

These alternative forms of lawyer teams can be beneficial for clients, providing greater flexibility and efficiency and giving the client access to teams of lawyers and other professionals assembled to meet the needs of their particular matter. But they also carry risks. Without a single entity agreeing to assume responsibility for the entire representation, it is possible that work will not get done, quality will not get checked, or nonlawyers involved in the matter will not understand or comply with ethical requirements, such as confidentiality.

The Supreme Court has already adopted ABA Ethics 20/20 recommendations to revise the Comments to ER 5.3 to accommodate new forms of lawyer teams. The revisions make clear that the lawyer's obligation to supervise nonlawyers assisting with a matter extend to both nonlawyers employed by the lawyer's firm and those employed

by other entities, such as external personnel engaged to assist with document assembly or review.

The Committee recommends amending ER 1.5 to facilitate alternative forms of lawyer teams by removing an obstacle not necessary to protect clients and by reiterating the necessity of following core ethical principles regardless of the form the lawyer team takes. The Model Rule allows lawyers not affiliated in the same firm to share fees based on the proportion of work completed or in another proportion as long as each agrees to assume joint responsibility for the entire representation. Conversely, Arizona's ER 1.5(e)(1) currently provides that lawyers not affiliated with the same firm may not share fees unless each lawyer agrees to assume joint responsibility for the entire representation. This makes assembling teams of lawyers not affiliated with the same firm more difficult, as a lawyer brought in to provide expertise on a narrow issue forming only part of a larger project may reasonably be unwilling to agree to be jointly responsible for the entire representation. Affiliation of lawyers with needed expertise is otherwise encouraged by the Rules, particularly the Rule regarding competence, which encourages lawyers to get assistance when they do not personally possess the necessary expertise to handle a particular matter. (*See* ER 1.1 cmt. 2.)

Consequently, the Committee recommends amending ER 1.5 to permit a division of fees between lawyers not in the same firm if (1) the division is proportionate to the services performed by each lawyer, unless each lawyer assumes joint responsibility of the representation, (2) the client agrees in writing to the divisions of fees and responsibilities, and (3) the total fee is reasonable. The Committee had an extensive discussion about the

possibility that gaps in responsibility may occur under this Rule but elected not to change the proposed language in light of the requirement that the client agree to the division. It thought that this would force both counsel and client to thoroughly discuss and decide the scope of each attorney's representation. The Committee highlights the issue for the Court, however, so that it may consider whether the potential gap should be foreclosed by, for example, having at least one attorney responsible for all aspects of the representation.

2. ER 1.6. Confidentiality of Information

Under the Model Rule version of ER 1.6, most of which Arizona has adopted, the lawyer's duty of confidentiality extends to all information "relating to the representation." The Rule has been construed to prohibit a lawyer from disclosing even publicly available information without obtaining the client's express permission, or being impliedly authorized to do so.

Lawyers have reasons to want to disclose information "relating to" a client representation when that disclosure would do no harm to the client and would instead advance the overall interests of clients. For example, potential clients may wish to have information about the lawyer's experience handling similar cases or to review samples of the lawyer's work as part of deciding which lawyer to hire. In other industries, public information about a company's past work is widely and easily available, and clients may not understand why a lawyer wishing to follow Rule 1.6 would be reluctant to similarly disclose past work. Alternatively, a lawyer may wish to disclose information about the outcome of similar cases in which the lawyer has been involved, as a part of helping the

client to understand the lawyer's recommendations about how to proceed in the client's case.

In practice, ER 1.6 appears to be honored more in the breach. Many lawyers react to its breadth by doubting that it could actually mean what it says and acting accordingly. The effect is to disadvantage those lawyers who scrupulously follow the Rule and render enforcement difficult.

The Committee therefore recommends narrowing the scope of ER 1.6 to focus on maintaining the confidentiality of the information whose confidentiality is most essential to client interests. The specific proposed language draws on the language of other states' ethics Rules, particularly New York's, which uses an approach based on the Model Code that preceded the Model Rules. The Code approach protected information that was either (1) confidential or (2) even if not confidential, of such a kind that disclosure would harm the client's interests.

3. ER 1.10. Imputation of Conflicts of Interest: General Rule

The Committee's review of ER 1.10 focused on: (a) the changes proposed in the pending Petition to Amend ER 1.10 (Supreme Court No. R-13-0046) (hereafter, "Petition No. R-13-0046"), which the Supreme Court referred to this Committee for consideration; (b) changes to the text of ER 1.10 to clarify that information contained solely in documents or electronically stored information maintained by a firm will not be imputed to lawyers in the firm for purposes of ER 1.10(b), so long as the firm adopts screening procedures to restrict access to the information; and (c) related changes to the Comments to ER 1.10. The Committee also recommends a corrective change to ER 1.0, Comment [8] to add a

missing reference to ER 1.10, as proposed in Petition No. R-13-0046. A summary of the proposed changes is set forth below.

(a) ER 1.10(b)

ER 1.10(b) addresses imputation of conflicts when a lawyer has terminated association with a firm, and the firm proposes to represent a person with interests that are “materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm.”

The current Rule states that the firm can undertake that representation *unless* (1) the matter is the same or substantially related to the former representation, and (2) “any lawyer remaining in the firm has information protected by ERs 1.6 and 1.9(c).” Lawyers in the firm arguably “have” information in firm records, including closed client files and electronic records that may be maintained for a variety of reasons under the firm’s record retention policies. This creates an overbroad application that would preclude representation even when no lawyer currently in the firm was involved in the former client’s representation, simply because the firm itself maintains stored electronic or other records.

The changes proposed by the Committee are intended to address this ambiguity in the current Rule. The proposed amendment provides that such information will not be imputed to the remaining lawyers in the firm if the firm adopts screening procedures that are reasonably adequate to prevent access to the information by those lawyers.

Comment [5], addressing ER 1.10(b), has been modified to provide guidance on the screening measures that should be considered, particularly with respect to electronically stored information (such as research databases) that may contain information on work performed for former clients of the firm.

(b) ER 1.10(d)

The proposed changes to ER 1.10(d) and the related Comments are based in part on changes proposed by the State Bar of Arizona in Petition No. R-13-0046. The Committee recommends a number of modifications to the State Bar’s proposal, set forth below, which are directed at providing greater protections for clients and additional guidance on the required notice and screening procedures.¹

The Committee recommends deletion of ER 1.10(d)(1). This is the so-called “litigation exception,” which does not allow for screening when the laterally moving lawyer had a “substantial role” in a matter pending before a tribunal. This portion of the Committee’s proposal is the same as that contained in Petition No. R-13-0046 and also conforms to the ABA Model Rule. The Committee concluded that there is no reasoned

¹ Petition No. R-13-0046 also proposed adding additional notice requirements to ERs 1.11, 1.12 and 1.18, addressing screening in the context of former government lawyers, former adjudicative officers, and prospective clients. The Committee recommends maintaining the current notice provisions of ERs 1.11, 1.12 and 1.18, which are identical to the ABA Model Rule provisions. The notice and screening requirements of ERs 1.11, 1.12, and 1.18 reflect an underlying policy decision that the Rules should facilitate the transition of government lawyers and adjudicative officers who desire to leave public service for private practice. Similarly, prospective clients are not accorded the same status under the ABA Model Rules as existing clients. The notice provisions of ERs 1.11, 1.12 and 1.18 have been in effect for some time and appear to have achieved the proper balance of client and lawyer interests.

basis for disallowing screening for lawyers handling litigation matters when screening is allowed in all other contexts. Thus, under the current rule, the lead lawyer involved in a major transaction for a client may be allowed to move laterally to a firm that represents the opposing party in a transaction, so long as an adequate screen is put in place. Yet, a litigator with a comparable role in a litigation matter would be precluded from going to the new firm as screening would not be permitted. The proposed amendment eliminates this *per se* bar, while providing additional client protections in the form of more detailed notice requirements. The use of screening measures is now well-established in modern law practice, reflecting a recognition that screening is effective and provides adequate protection for clients in most instances. (As discussed below, the Committee's proposed additions to Comment [9] caution that screening may not be adequate to protect the client in all circumstances.)

The Committee's proposed amendment to ER 1.10(d)(2) expands on the State Bar Petition's proposal, which simply requires that the client get written notice "of the particular screening procedures adopted and when they were adopted." The proposed amendment tracks the corresponding language in ABA Model Rule 1.10, except that the Committee proposes deleting the requirement that the notice shall include "a statement that review may be available before a tribunal" (which appears in the ABA Model Rule).²

² The corresponding provision in ABA Model Rule 1.10(a)(2)(ii) provides that the notice "shall include a description of the screening procedures employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures...."

No other ethical rule requires a lawyer to advise a client regarding the client's right to obtain legal review of the lawyer's "compliance" with an ethical rule. Moreover, the statement is potentially misleading, as review by a tribunal may not be available in all contexts; the issue generally would arise in the context of a motion to disqualify counsel in a pending litigation matter, which is not strictly a "review" of the lawyer's compliance with ER 1.10(d) and may consider other factors as established in case law. The Committee proposes instead to add the following sentence to Comment [9]: "Lawyers should be aware that even where screening procedures have been adopted that comply with this Rule, tribunals may consider other factors in ruling upon motions to disqualify a lawyer from pending litigation."

The Committee also proposes adding a new subparagraph (d)(3), to reinforce that screening procedures must be "reasonably adequate under the circumstances to prevent material information from being disclosed to the firm and its client." This language is not contained in the State Bar's proposal in Petition No. R-13-0046 or in the ABA Model Rules, and is intended to provide additional protection to clients. As discussed below, a corresponding addition to Comment [9] makes clear that there may be some circumstances when screening will not be adequate to protect the client's interest.

(c) ER 1.10 Comments

Along with these changes to the text of ER 1.10, the Committee recommends several modifications to the explanatory Comments to ER 1.10(d), to provide additional guidance to lawyers on the new screening and notice requirements.

The Committee recommends a new Comment [9], addressing the factors that should be considered in implementing adequate screening and to emphasize that screening will not always be appropriate. The proposed Comment provides that in evaluating the adequacy of screening procedures, “relevant circumstances may include the size of the matter in relation to the overall business of the firm,” and “the number of lawyers in the firm that are actively involved in the matter that is the subject of the screening measures,” among other considerations. The proposed addition cautions that “[t]here may be some circumstances where, taking all factors into account, screening procedures will not be reasonably adequate to guard against inadvertent disclosure of protected information.” The language proposed is taken in part from Comment [7] to ABA Model Rule 1.10, but has been expanded. It has no counterpart in Petition No. R-13-0046.

A new Comment [10] is proposed to provide guidance to lawyers on the requirement of ER 1.10(d)(2) that the screened lawyer shall be “apportioned no part of the fee” from the screened matter. The proposed language is taken verbatim from Comment [8] of the corresponding ABA Model Rule, and provides: “Paragraph (d)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but the lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.” It has no counterpart in Petition No. R-13-0046.

A new Comment [11] is proposed to provide guidance to lawyers on the content of the required notice. The language proposed is taken in part from Comment [9] to ABA Model Rule 1.10. It has no counterpart in Petition No. R-13-0046.

A new Comment [12] is proposed to cross-reference ERs 5.1 and 5.3 and to reinforce the ethical responsibility of lawyers with managerial responsibility to adequately supervise subordinate lawyers and nonlawyer employees in implementing screening procedures. This reminder is particularly appropriate in the case of screening measures for electronically stored information, which likely will be implemented by technical personnel with specialized training. Proposed Comment [12] also provides guidance to lawyers and firms in the event of a breach of screening procedures. The proposed language reads: “The requirements of ERs 5.1 and 5.3 should be considered in implementing screening procedures under this Rule. If the screened lawyer or the firm become aware that the screening procedures have been violated or are ineffective, reasonable steps should be taken to remedy the deficiencies and prevent prejudice to the impacted client.” It has no counterpart in Petition No. R-13-0046.

(d) ER 1.0, Comment [8]

Petition No. R-13-0046 proposed a corrective change to Comment [8] to ER 1.0 that should be adopted. The proposal adds a reference to ER 1.10 in Comment [8] addressing screening, as follows (addition in bold): “This definition [of screening] applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under ERs **1.10**, 1.11, 1.12 or 1.18.”

4. ER 3.4. Fairness to Opposing Party and Counsel

The 20/20 Commission made a number of changes to the ethics Rules to reference “electronic information” or “electronically stored information.” That change did not get made in Comment [2] to ER 3.4, which still refers to “computerized information.” The Committee recommends changing the language to conform to the other ABA 20/20 changes, so that the Comment refers to “electronically stored information” instead of “computerized information.” This technical amendment would eliminate confusion (and disputes) arising from using different terminology in different Rules to refer to the same thing.

5. ER 5.5. Unauthorized Practice of Law

The Committee recommends changes to ER 5.5 to (1) more effectively address the virtual practice of law and (2) clarify what qualifies as the “temporary” practice of law permitted by the safe harbor provisions of ER 5.5(c). The Committee has considered opinions issued by the State Bar’s Unauthorized Practice of Law Committee relating to the provision of legal services in, or from, Arizona by non-Arizona lawyers. It also considered how other jurisdictions, notably Florida, as reflected in *Gould v. Harkness*, 470 F. Supp. 2d 1357 (S.D. Fla. 2006), and Colorado have defined the practice of law. The question in *Gould* was whether, under Florida’s expansive definition of the practice of law, a New York admitted lawyer could advertise and provide legal services in Florida that were limited to New York law matters. The district court affirmed summary judgment in favor of the Florida Bar that Gould was engaged in the unauthorized practice of law. Colorado takes a narrower approach, defining the practice of law to involve legal services that involve Colorado law.

The Committee concluded that in defining what constitutes the practice of law in Arizona, the appropriate focus is whether a lawyer is providing legal services to Arizona residents that involve the application of Arizona law. Unlike the Florida Bar, the Committee does not believe that non-Arizona lawyers who either permanently reside here, or live in Arizona for part of the year, should be prohibited from exclusively practicing the law of another jurisdiction, federal law, or tribal law. As long as the non-Arizona lawyer is not practicing Arizona law, there does not appear to be valid public-protection reasons requiring that the non-Arizona lawyer be licensed in Arizona. Requiring non-Arizona lawyers to disclose in their advertising and other communications that they are not members of the Arizona Bar and that their practice is limited to law other than Arizona law would adequately protect the public.

The Committee also concluded that a focus on the nature of the legal services provided is more easily applied than a Rule based on whether a lawyer has a “systematic and continuous presence,” which is difficult to define in an increasingly virtual world.

Lastly, the Committee concluded that the Model Rule Comments regarding the temporary practice of law, which were not adopted when Arizona adopted ER 5.5, should be revised and added to ER 5.5 to provide better guidance on the safe harbor provisions of ER 5.5(c).

5. Proposals Regarding Government Law Practice

The Rules of Professional Conduct currently contain Comments hinting at “special considerations” that “may” affect the application of the Rules to government lawyers. *See* Preamble cmt. [19]; ER 1.13 cmt. [9]. The Committee recommends amending

Comments to ER 1.13, ER 3.5, and ER 4.2 to augment existing Comments and to provide additional guidance to government lawyers on three frequently arising issues: (1) identifying the client in the governmental context, (2) advising government entities acting in a quasi-judicial capacity and restricting *ex parte* contact, and (3) providing additional guidance on the scope of an authorized exception to ER 4.2. None of these Comments is intended to change what behavior is permissible under the Rules. Instead, they are intended to provide useful guidance to government lawyers on application of existing Rules to their practice.

Respectfully submitted this 9th day of January, 2015.

/s/
Hon. Ann A. Scott Timmer
Chair, Committee on the Review of
Supreme Court Rules Governing
Professional Conduct and the Practice of
Law

Appendix A

Rules of the Supreme Court:

Rule 31. Regulation of the Practice of Law

(a) Supreme Court Jurisdiction Over the Practice of Law

1. *Jurisdiction.* Any person or entity engaged in the practice of law or unauthorized practice of law in this state, as defined by these rules, is subject to this court's jurisdiction.

2. *Definitions.*

A. "Practice of law" means providing legal advice or services to or for another by:

(1) preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;

(2) preparing or expressing legal opinions;

(3) representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration and mediation;

(4) preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or

(5) negotiating legal rights or responsibilities for a specific person or entity.

B. "Unauthorized practice of law" includes but is not limited to:

(1) engaging in the practice of law by persons or entities not authorized to practice pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 38(a);
or

(2) using the designations "lawyer," "attorney at law," "counselor at law," "law,"

“law office,” “J.D.,” “Esq.,” or other equivalent words by any person or entity who is not authorized to practice law in this state pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 38(a), the use of which is reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in this state.

C. “Legal assistant/paralegal” means a person qualified by education and training who performs substantive legal work requiring a sufficient knowledge of and expertise in legal concepts and procedures, who is supervised by an active member of the State Bar of Arizona, and for whom an active member of the state bar is responsible, unless otherwise authorized by supreme court rule.

D. “Mediator” means an impartial individual who is appointed by a court or government entity or engaged by disputants through written agreement, ~~signed by all disputants,~~ to mediate a dispute. Serving as a mediator is not the practice of law.

E. “Unprofessional conduct” means substantial or repeated violations of the Oath of Admission to the Bar or the Lawyer's Creed of Professionalism of the State Bar of Arizona.

(b) Authority to Practice. Except as hereinafter provided in section (d), no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar.

(c) Restrictions on Disbarred Attorneys' and Members' Right to Practice. No member who is currently suspended or on disability inactive status and no former member who has been disbarred shall practice law in this state or represent in any way that he or she may practice law in this state.

(d) Exemptions. Notwithstanding the provisions of section (b), but subject to the limitations of section (c) unless otherwise stated:

1. In any proceeding before the Department of Economic Security or Department of Child Safety, including a hearing officer, an Appeal Tribunal or the Appeals Board, an individual party (either claimant or opposing party) may be represented by a duly authorized agent who is not charging a fee for the representation; an employer, including a corporate employer, may represent itself through an officer or employee; or a duly authorized agent who is charging a fee may represent any party, providing that an attorney authorized to practice law in the State of Arizona shall be responsible for and

supervise such agent.

2. An employee may designate a representative, not necessarily an attorney, before any board hearing or any quasi-judicial hearing dealing with personnel matters, providing that no fee may be charged for any services rendered in connection with such hearing by any such designated representative not an attorney admitted to practice.

3. An officer of a corporation or a managing member of a limited liability company who is not an active member of the state bar may represent such entity before a justice court or police court provided that: the entity has specifically authorized such officer or managing member to represent it before such courts; such representation is not the officer's or managing member's primary duty to the entity, but secondary or incidental to other duties relating to the management or operation of the entity; and the entity was an original party to or a first assignee of a conditional sales contract, conveyance, transaction or occurrence that gave rise to the cause of action in such court, and the assignment was not made for a collection purpose.

4. A person who is not an active member of the state bar may represent a party in small claims procedures in the Arizona Tax Court, as provided in Title 12, Chapter 1, Article 4 of the Arizona Revised Statutes.

5. In any proceeding in matters under Title 23, Chapter 2, Article 10 of the Arizona Revised Statutes, before any administrative law judge of the Industrial Commission of Arizona or review board of the Arizona Division of Occupational Safety and Health or any successor agency, a corporate employer may be represented by an officer or other duly authorized agent of the corporation who is not charging a fee for the representation.

6. An ambulance service may be represented by a corporate officer or employee who has been specifically authorized by the ambulance service to represent it in an administrative hearing or rehearing before the Arizona Department of Health Services as provided in Title 36, Chapter 21.1, Article 2 of the Arizona Revised Statutes.

7. A person who is not an active member of the state bar may represent a corporation in small claims procedures, so long as such person is a full-time officer or authorized full-time employee of the corporation who is not charging a fee for the representation.

8. In any administrative appeal proceeding of the Department of Health Services, for

behavioral health services, pursuant to A.R.S. § 36-3413 (effective July 1, 1995), a party may be represented by a duly authorized agent who is not charging a fee for the representation.

9. An officer or employee of a corporation or unincorporated association who is not an active member of the state bar may represent the corporation or association before the superior court (including proceedings before the master appointed according to A.R.S. § 45-255) in the general stream adjudication proceedings conducted under Arizona Revised Statutes Title 45, Chapter 1, Article 9, provided that: the corporation or association has specifically authorized such officer or employee to represent it in this adjudication; such representation is not the officer's or employee's primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation or association; and the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation. Notwithstanding the foregoing provision, the court may require the substitution of counsel whenever it determines that lay representation is interfering with the orderly progress of the litigation or imposing undue burdens on the other litigants. In addition, the court may assess an appropriate sanction against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct.

10. An officer or full-time, permanent employee of a corporation who is not an active member of the state bar may represent the corporation before the Arizona Department of Environmental Quality in an administrative proceeding authorized under Arizona Revised Statutes. Title 49, provided that: the corporation has specifically authorized such officer or employee to represent it in the particular administrative hearing; such representation is not the officer's or employee's primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation; the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation; and the corporation has been provided with a timely and appropriate written general warning relating to the potential effects of the proceeding on the corporation's and its owners' legal rights.

11. Unless otherwise specifically provided for in this rule, in proceedings before the Office of Administrative Hearings, or in fee arbitration proceedings conducted under the auspices of the State Bar of Arizona Fee Arbitration Committee, a legal entity may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such

person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

12. In any administrative appeal proceeding relating to the Arizona Health Care Cost Containment System, an individual may be represented by a duly authorized agent who is not charging a fee for the representation.

13. In any administrative matter before the Arizona Department of Revenue, the Office of Administrative Hearings relating to the Arizona Department of Revenue, a state or county board of equalization, the Arizona Department of Transportation, the Arizona Department of Economic Security, the Department of Child Safety, the Arizona Corporation Commission, or any county, city, or town taxing or appeals official, a taxpayer may be represented by (1) a certified public accountant, (2) a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), or (3) in matters in which the dispute, including tax, interest and penalties, is less than \$5,000.00 (five thousand dollars), any duly appointed representative. A legal entity, including a governmental entity, may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

14. If the amount in any single dispute before the State Board of Tax Appeals is less than twenty-five thousand dollars, a taxpayer may be represented in that dispute before the board by a certified public accountant or by a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1).

15. In any administrative proceeding pursuant to 20 U.S.C. § 1415(f) or (k) regarding any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education for a child with a disability or suspected disability, a party may be represented by an individual with special knowledge or training with respect to the problems of children with disabilities as determined by the administrative law judge, and who is not charging the party a fee for the representation.

The hearing officer shall have discretion to remove the individual, if continued representation impairs the administrative process or causes harm to the parties represented.

16. Nothing in these rules shall limit a certified public accountant or other federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), from practicing before the Internal Revenue Service or other federal agencies where so authorized.

17. Nothing in these rules shall prohibit the rendering of individual and corporate financial and tax advice to clients or the preparation of tax-related documents for filing with governmental agencies by a certified public accountant or other federally authorized tax practitioner as that term is defined in A.R.S. § 42-2069(D)(1).

18. Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with ER 5.3 of the rules of professional conduct. This exemption is not subject to section (c).

19. Nothing in these rules shall prohibit the supreme court, court of appeals, superior courts, or limited jurisdiction courts in this state from creating and distributing form documents for use in Arizona courts.

20. Nothing in these rules shall prohibit the preparation of documents incidental to a regular course of business when the documents are for the use of the business and not made available to third parties.

21. Nothing in these rules shall prohibit the preparation of tax returns.

22. Nothing in these rules shall affect the rights granted in the Arizona or United States Constitutions.

23. Nothing in these rules shall prohibit an officer or employee of a governmental entity from performing the duties of his or her office or carrying out the regular course of business of the governmental entity.

24. Nothing in these rules shall prohibit a certified legal document preparer from performing services in compliance with Arizona Code of Judicial Administration, Part 7, Chapter 2, Section 7-208. This exemption is not subject to paragraph (c) of this rule, as long as the disbarred attorney or member has been certified as provided in § 7-208 of the

Arizona Code of Judicial Administration.

25. ~~Nothing in these rules shall prohibit~~ Aa mediator, as defined in these rules, who is an active member of the state bar may ~~from facilitating a mediation between parties,~~ preparing a written mediation agreement resolving all or part of a dispute or other legal documents. ~~, or filing such agreement with the appropriate court, provided that:~~

~~(A) the mediator is employed, appointed or referred by a court or government entity and is serving as a mediator at the direction of the court or government entity; or~~

~~(B) the mediator is participating without compensation in a non-profit mediation program, a community-based organization, or a professional association.~~

~~In all other cases,~~ Aa mediator who is not an active member of the state bar and who prepares a written mediation agreement resolving all or part of a dispute or other legal documents ~~or provides legal documents~~ for the parties without the supervision of an attorney must be certified as a legal document preparer in compliance with the Arizona Code of judicial Administration, Part 7, Chapter 2, Section 7-208.

26. Nothing in these rules shall prohibit a property tax agent, as that term is defined in A.R.S. § 32-3651, who is registered with the Arizona State Board of Appraisal pursuant to A.R.S. § 32-3642, from practicing as authorized pursuant to A.R.S. § 42-16001.

27. Nothing in these rules shall affect the ability of lawyers licensed in another jurisdiction to engage in conduct that is permitted under ER 5.5 of the rules of professional conduct.

28. In matters before the Arizona Corporation Commission, a public service corporation, an interim operator appointed by the Commission, or a non-profit organization may be represented by a corporate officer, employee, or a member who is not an active member of the state bar if:

(A) the public service corporation, interim operator, or non-profit organization has specifically authorized the officer, employee, or member to represent it in the particular matter,

(B) such representation is not the person's primary duty to the public service corporation, interim operator, or non-profit organization, but is secondary or incidental to such person's duties relating to the management or operation of the public service corporation, interim operator, or non-profit organization, and

(C) the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

Notwithstanding the foregoing provisions, the Commission or presiding officer may require counsel in lieu of lay representation whenever it determines that lay representation is interfering with the orderly progress of the proceeding, imposing undue burdens on the other parties, or causing harm to the parties represented.

29. In any landlord/tenant dispute before the Arizona Department of Fire, Building and Life Safety, an individual may be represented by a duly authorized agent who is not charging a fee for the representation, other than reimbursement for actual costs.

30. A person licensed as a fiduciary pursuant to A.R.S. § 14-5651 may perform services in compliance with Arizona code of judicial administration, Part 7, Chapter 2, Section 7-202. Notwithstanding the foregoing provision, the court may suspend the fiduciary's authority to act without an attorney whenever it determines that lay representation is interfering with the orderly progress of the proceedings or imposing undue burdens on other parties.

31. Nothing in these rules shall prohibit an active member or full-time employee of an association defined in A.R.S. §§ 33-1202 or 33-1802, or the officers and employees of a management company providing management services to the association, from appearing in a small claims action, so long as:

(A) the association's employee or management company is specifically authorized in writing by the association to appear on behalf of the association;

(B) the association is a party to the small claims action.

Rule 34. Application for Admission

(a) Methods of admission to the practice of law in Arizona. Persons desiring to be admitted to the practice of law in the State of Arizona may apply for admission by one of three methods: (1) admission by Arizona uniform bar examination, (2) admission on

Hon. Diane M. Johnsen, Chief Judge
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Telephone: (602) 542-4821
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IN THE SUPREME COURT OF ARIZONA

In the Matter of)	Arizona Supreme Court
)	No. _____
PETITION TO AMEND RULE 31.5,)	
ARIZONA RULES OF CRIMINAL)	PETITION TO AMEND
PROCEDURE)	RULE 31.5, ARIZONA RULES
)	OF CRIMINAL PROCEDURE
_____)	

Pursuant to Rule 28, Rules of the Arizona Supreme Court, Petitioner asks the Court to adopt amendments to Rule 31.5, Arizona Rules of Criminal Procedure, as proposed in the Attachment hereto. The proposal is intended to address the Arizona Supreme Court’s opinion in *Coleman v. Johnsen, et al.*, 235 Ariz. 195, 330 P.3d 952 (2014), which held that the Arizona Constitution guarantees the right to self-representation on appeal, but that “defendants must give notice of their intent to exercise that right within thirty days of the filing of the notice of appeal.” 235 Ariz. at ___ ¶ 1, 330 P.3d at 953.

The proposal first modifies the title of Rule 35.1, from “Appeals by indigents” to “Appointment of counsel for appeal; waiver of right to appellate counsel.” It also

adds paragraphs (e), (f), and (g) to Rule 31.5:

- Paragraph (e) provides for appointment of new counsel by either the trial court or the court of appeals if the defendant's counsel withdraws.
- Paragraph (f) sets forth the process for waiver of the right to counsel. It requires filing of a written notice of waiver no later than thirty days after filing of the notice of appeal. This provision contemplates that the notice of waiver may be filed in the trial court before a notice of appeal is filed, or in the court of appeals within thirty days after the notice of appeal is filed. It also provides for the appointment of advisory counsel.
- Paragraph (g) permits a defendant to file a notice of withdrawal of a waiver of the right to appellate counsel at any time, but doing so does not entitle the defendant to repeat any proceeding that has been previously held or waived.

Petitioner respectfully requests that the Court adopt the proposed amendments as reflected in the Attachment to this Petition.

DATED this ____ day of January, 2015.

Diane M. Johnsen, Chief Judge
Arizona Court of Appeals, Division One

ATTACHMENT*

ARIZONA RULES OF CRIMINAL PROCEDURE

* * *

Rule 31.5. ~~Appeals by indigents~~ Appointment of counsel for appeal; waiver of right to appellate counsel

a.-d. [No change in text.]

e. Appointment of Counsel. If a defendant's appointed counsel is permitted to withdraw, the trial court or Appellate Court shall appoint new counsel for a defendant legally entitled to such representation on appeal.

f. Waiver of Right to Counsel. A defendant may waive the right to appellate counsel by filing a written notice no later than thirty days after filing of the notice of appeal. If the notice of waiver is given before the notice of appeal is filed, it must be filed in the trial court. If the notice of waiver is given after the notice of appeal is filed, it must be filed in the Appellate Court. If the court ascertains that the defendant knowingly, intelligently, and voluntarily desires to forego the right to appellate counsel, the defendant shall be allowed to represent himself or herself on appeal. When a defendant waives the right to appellate counsel, the court may appoint advisory counsel during any stage of the appellate proceedings. Advisory counsel shall be given notice of all matters of which the defendant is notified.

g. Withdrawal of Waiver. A defendant may withdraw a waiver of the right to appellate counsel at any time by filing written notice of such withdrawal. The defendant will not be entitled to repeat any proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel.

* * *

* Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

David K. Byers, Administrative Director
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IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:

PETITION TO AMEND)	
RULE 41 OF THE)	Supreme Court No. R-15-_____
ARIZONA RULES OF)	
CRIMINAL PROCEDURE)	(Modified Comment Period
_____)	Requested)

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to adopt the attached proposed amendment to Rule 41, Form 2, of the Rules of Criminal Procedure. The amendment to Form 2 is set forth in the accompanying Appendix A.

I. Background and Purpose of the Proposed Rule Amendment.

One of the goals enumerated in Goal One of the 2014-2019 Strategic Agenda for Arizona's Courts is expanding electronic access to court documents and data with appropriate protections for security and privacy. In addition, one of

the goals enumerated in Goal Three is expanding the e-warrants project to other justice system entities.

Technological advances including electronic document management systems and electronic submittal of citations create efficiencies in case management, document retrieval and storage, and public access. However, the lack of a single standard warrant form in the Arizona Rules of Criminal Procedure leads to technological inefficiency for many of the Arizona courts and law enforcement agencies that are planning or implementing new technologies. In addition to criminal warrants, a court may issue a failure to appear (fiduciary) and a failure to pay (child support) warrant.

In October of 2003, Judge George Anagnost, Presiding Judge of the Peoria Municipal Court, filed a rule petition urging elimination of all forms referenced in the Rules of Criminal Procedure (R-03-0029). The Supreme Court at its June 2004 rules agenda continued the matter and formed a committee, the Supreme Court Criminal Forms Review Committee, to consider whether the forms should be revised and retained in the Rules of Criminal Procedure or transferred to the Arizona Code of Judicial Administration. The Committee filed an amended petition in November 2006 asking the Court to approve combining the two arrest warrant forms into a single warrant for use in all courts.

After the Criminal Forms Committee's amended petition was filed, the Court referred the matter to the Committee on Limited Jurisdiction Courts (LJC) for further consideration. After several meetings with the Criminal Forms Committee, LJC filed a Comment recommending additional revisions. Specifically, LJC recommended Warrant Forms 2(a)-(g) for the most common arrest events including rule violations.

Since their adoption by the Court, these forms have been modified multiple times by individual judges within the courts. The net result of multiple versions of the same forms leads to confusion and data entry problems for law enforcement agencies, rejections for lack of required data elements and inaccurate criminal histories for citizens.

Petitioner, therefore, respectfully requests that the Court remove the existing warrant forms from the rule and approve the new single warrant form in Appendix A as mandatory for use by the courts in Arizona. All the information that is collected on the current forms is included in the proposed new form. For example, the new form contains a section that requires a selection for the reason for issuance of the warrant. Only one reason will apply per warrant. The selections offered reflect those categories that are available in booking systems used statewide by law enforcement. The form also has a section for entry of the date of the offense, the associated Arizona Revised Statutory citation, and the criminal classification of the

offense for the charges enumerated in the complaint, indictment, or information, if applicable. The latter is required for entry into criminal history. The single warrant form would also be utilized in fiduciary and child support cases.

II. Pre-Petition Comments. For the past three years, the Administrative Office of the Courts (AOC) has been collaborating with the Arizona Criminal Justice Commission, Department of Public Safety and Arizona Prosecuting Attorney's Association, as well as multiple members of various political subdivisions statewide to examine opportunities to improve criminal history, automated data exchanges, and officer safety. One of the deficiencies that has been identified is the variability and inconsistency amongst all of the stakeholders in processing warrants. Due to the lengthy history of the e-warrant project and the involvement of a broad spectrum of stakeholders statewide, the petitioner has not circulated this proposal for pre-petition comments. As an alternative, in October of 2014, the AOC formed an ad hoc Warrant Workgroup of knowledgeable stakeholders to determine if amending and consolidating the forms in the Rule of Criminal Procedure was appropriate. The consensus of the Workgroup was that one warrant form is optimal and, furthermore, making the form mandatory for use statewide is critical to improving the warrant process. It should be noted, the proposed warrant form (Appendix A) is a close facsimile to the form proposed in 2004 by the Supreme Court Criminal Forms Review Committee.

II. Request for Modified Comment Period. Although petitioner has already received comments from some stakeholders, additional public comments may address items that this petition overlooks or otherwise improve the proposed amendments. Petitioner therefore requests that the Court allow a modified comment period to accommodate filing of an amended petition after an initial round of public comments. Petitioner suggests the following dates:

- March 1, 2015: First round of comments due
- April 1, 2015: Amended petition due
- May 20, 2015: Second round of comments due
- June 30, 2015: Reply due

Wherefore petitioner respectfully requests that the Supreme Court amend Form 2 of Rule 41 as set forth in Appendix A.

RESPECTFULLY SUBMITTED this ____ day of _____, 2015.

By /s/_____
David K. Byers, Administrative Director
Administrative Office of the Courts
1501 W. Washington St., Ste. 411
Phoenix, AZ 85007
(602) 452-3301
Projects2@courts.az.gov

APPENDIX A

Proposed Rule Change

Arizona Rules of Criminal Procedure

Rule 41. Forms (Appendix)

Form 2 (a-h) [delete]

Insert

Form 2 [new see next page]

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: April 29, 2015	This agenda item is for: <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: AMENDMENTS TO A.C.J.A. § 5-206 FEE DEFERRALS AND WAIVERS
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Presenter(s): Patrick Scott

Discussion:

Chapter 61, Laws 2015, [SB1048](#) amended the fee deferral and waiver statute, A.R.S. § 13-302, to include provision prohibiting vexatious litigants from being eligible for fee waivers in certain circumstances. The changes also require the court to order payment of fees that were deferred or waived in a case if the litigant is declared a vexatious litigant during the pendency of the case. The Administrative Office of the Courts, Court Services Division, has drafted an amendment to A.C.J.A. § 5-206 to incorporate the statutory changes by the addition of a new Section Q in the code. Additionally, definitions for “vexatious conduct” and “vexatious litigant” are added in Section A. Definitions.

The forms for deferral and waiver will be updated as necessary prior to the effective date of July 3, 2015.

Recommended Action or Request (if any):

Approve proposed code change as drafted.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 5: Court Operations
Chapter 2: Programs and Standards
Section 5-206: Fee Deferrals and Waivers

A. Definitions. The following definitions apply to this section:

“Applicant” means a person who asserts the condition of being unable to pay court fees and costs and requests a deferral or waiver of that obligation.

“Application” means a request for deferral or waiver at any point before the end of a case.

“Arizona Department of Corrections (ADOC) inmate” means an incarcerated felon confined to a facility operated by Arizona State Department of Corrections.

“Day” means calendar day including holidays and weekends.

“Deferral” means “either postponement of an obligation to pay fees or establishment of a schedule for payment of fees” as provided in A.R.S. § 12-302(M)(1).

“Fees and costs”, as provided in A.R.S. § 12-302(H), means:

1. Filing fees.
2. Fees for issuance of either a summons or subpoena.
3. Fees for obtaining one certified copy of a temporary order in a domestic relations case.
4. Fees for obtaining one certified copy of a final order, judgment or decree in all civil proceedings.
5. Sheriff, marshal, constable and law enforcement fees for service of process if any of the following applies:
 - (a) The applicant established by affidavit that the applicant has attempted without success to obtain voluntary acceptance of service of process.
 - (b) The applicant’s attempt to obtain voluntary acceptance of service of process would be futile or dangerous.
 - (c) An order of protection or an injunction against harassment in favor of the applicant and against the party sought to be served exists and is enforceable.
6. The fee for service by publication if service is required by law and if the applicant establishes by affidavit specific facts to show that the applicant has

exercised due diligence in attempting to locate the person to be served and has been unable to do so.

7. Court reporter's fees for the preparation of court transcripts if the court reporter is employed by the court.

8. Appeal preparation and filing fees at all levels of appeal and photocopy fees for the preparation of the record on appeal pursuant to sections 12-119.01, 12-120.31 and 12-2107 and section 12-284, subsection A.

"Further deferral" means "the establishment of a schedule for payment of fees" as provided in A.R.S. § 12-302(M)(2).

"Non-ADOC inmate" means an incarcerated felon confined to facilities in Arizona other than operated by the Arizona State Department of Corrections or to a facility outside of Arizona.

"Permanently unable to pay" means "the applicant's income and liquid assets are insufficient or barely sufficient to meet the daily essentials of life and the income and liquid assets are unlikely to change in the foreseeable future" as provided in A.R.S. § 12-302(D).

"Special commissioner" means a person appointed by the presiding judge to determine an applicant's eligibility for a deferral or waiver.

"Supplemental application" means the form used to request waiver or further deferral at the conclusion of a case.

"Vexatious conduct" as provided in A.R.S. § 12-3201(E), means:

1. "Vexatious conduct" includes any of the following:

(a) Repeated filing of court actions solely or primarily for the purpose of harassment.

(b) Unreasonably expanding or delaying court proceedings.

(c) Court actions brought or defended without substantial justification.

(d) Engaging in abuse of discovery or conduct in discovery that has resulted in the imposition of sanctions against the pro se litigant.

(e) A pattern of making unreasonable, repetitive and excessive requests for information.

(f) Repeated filing of documents or requests for relief that have been the subject of previous rulings by the court in the same litigation.

"Vexatious litigant" means a pro se litigant whom the court finds to have engaged in vexatious conduct.

"Waiver" means the court has determined that the applicant is not required to pay the fees unless the applicant's financial circumstances have changed during the action.

B. through P. [no changes]

Q. ~~Cases Filed by Inmates~~ Vexatious Litigants.

1. **Postponement.** The court may grant a vexatious litigant’s application for fee deferral if the court approves the filing of a new pleading, motion or other document, and the litigant meets the eligibility requirements of this code.
2. **Waiver.** As provided in A.R.S. § 12-302(K)((3), the court shall not grant a waiver of court fees or costs in “ [c]ivil actions other than cases of dissolution of marriage, legal separation, annulment or establishment, enforcement or modification of child support filed by a pro se litigant who has been previously declared a vexatious litigant by any court.”
3. **Determination Pending Completion of Litigation.** As provided by A.R.S. § 12-302(M), “[i]f an applicant who is granted a deferral or waiver is found to be a vexatious litigant by any court during the pendency of the action, the court shall order the applicant to pay the deferred or waived fees and costs.”

Q R. through (V) [renumber]

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: April 29, 2015	This agenda item is for: <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: Update on the change to the Personal Information Redaction Affidavit and Instructions
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Presenter(s): Nickolas Olm

Discussion: none unless questions

Recommended Action or Request (if any): none; informational only

**AFFIDAVIT IN SUPPORT OF APPLICATION TO RESTRICT PUBLIC ACCESS TO
ADDRESS AND TELEPHONE NUMBERS IN SPECIFIED PUBLIC RECORDS
PURSUANT TO A.R.S. §§11-483, 11-484, 12-290, 16-153, AND/OR 28-454
(FOR USE BY PUBLIC EMPLOYEES OR OFFICIALS THOSE LISTED IN ITEM 3 ONLY)**

**PLEASE READ THE INSTRUCTIONS BEFORE COMPLETING THIS FORM AND
PRINT ALL REQUIRED INFORMATION IN BLACK INK**

1. I, _____, (Full Legal Name) make the following statements under oath:
2. I submit this affidavit pursuant to (*check only the types of records you are seeking to protect*):
 - (*For County Recorder records*) A.R.S. §11-483, and request that the court order sealed for five years my residential address and phone number appearing in instruments and writings recorded by the County Recorder and the unique identifiers and recording dates contained in indexes of recorded instruments maintained by the County Recorder.
 - (*For County Assessor records*) A.R.S. §11-484, and request that the court order sealed for five years my residential address and phone number appearing in instruments, writings and information maintained by the County Assessor.
 - (*For County Treasurer records*) A.R.S. §11-484, and request that the court order sealed for five years my residential address and phone number appearing in instruments, writings and information maintained by the County Treasurer.
 - (*For voter registration records*) A.R.S. §16-153, and request that the court order sealed for five years my residential address and phone number and voting precinct number and those of any individuals identified in item 12 below that appear in voter registration records.
 - (*For Motor Vehicle Division records*) A.R.S. §28-454, and request that the court order sealed my residential address and phone number and those of any individuals identified in item 14 below that appear in Motor Vehicle Division records. I understand that the order to seal MVD records has no automatic expiration. Address Confidentiality Program Participant records are not eligible for sealing under this provision.
3. I am employed as eligible because I am a(n) (*check the description that applies to you*):

<input type="checkbox"/> Address Confidentiality Program Participant <input type="checkbox"/> Border Patrol Agent <input type="checkbox"/> Code Enforcement Officer <input type="checkbox"/> Commissioner <input type="checkbox"/> Corrections or Detention Officer <input type="checkbox"/> Corrections Support Staff <input checked="" type="checkbox"/> <u>Department of Child Safety Employee</u> <input type="checkbox"/> Executive Clemency Board Member <input type="checkbox"/> Firefighter assigned to the Department of Public Safety Counterterrorism Center <input type="checkbox"/> Former Public Official	<input type="checkbox"/> Judge or <u>Former Judge</u> <input type="checkbox"/> Justice <input type="checkbox"/> Law Enforcement Support Staff <input type="checkbox"/> National Guard Member supporting a Law Enforcement Agency <input type="checkbox"/> Peace Officer or Peace Officer's Spouse <input type="checkbox"/> Probation Officer <input type="checkbox"/> Prosecutor <input type="checkbox"/> Public Defender <input type="checkbox"/> Spouse or minor child of a Deceased Peace Officer
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as provided in A.R.S. §§11-483 (N), -484(K), 12-290, 16-153(K), or 28-454(K).

4. I am employed by **or was formerly employed by** (organization name):

5. My current job title and duties include:

6. I believe that my life or safety, or that of my family or other persons living at my residence, is in danger of physical harm for the following reasons:

7. *(Optional – complete this item ONLY if you need immediate record protection)* I request immediate action for the following reasons:

8. Restricting public access to the records I selected in item 2 above will serve to reduce the danger I described in item 6 for the following reasons:

9. My primary residential address and telephone number are:

Street Address, City, State, Zip Code

Phone Number

10. (For County Recorder/Assessor/Treasurer records only) The identifying numbers relating to my primary residential address are:

Parcel Number: _____ Book & Map Number: _____

Full Legal Description: _____

11. (For County Recorder/Assessor/Treasurer records only) The document locator number and date of recordation of each instrument for which I request public access restriction pursuant to A.R.S. §§11-483 and/or -484 are as follows. I have attached a copy of pages from each document that show the document locator number, and either my full legal name and primary residential address or my full legal name and telephone number:

Document Locator Number _____ Date of Recordation _____

12. (For voter registration records only -- see the instruction sheet for more information)

The following are the names and birth dates for each registered voter who resides with me and whose voter registration records should also be redacted. I have informed these individuals that I have applied to have their addresses protected and that they will need to vote by mail in the future in order to keep this information out of the public record. I have also informed them that if they vote in-person at a polling location, they will be required to vote a provisional ballot. I have checked the box for each voter who is requesting to be added to the Permanent Early Voting List (PEVL) to automatically receive an early ballot by mail, and I have attached their completed voter registration forms so they can be added to the PEVL.

Full Legal Name _____ Month/Day/Year of Birth _____ add to PEVL

Full Legal Name _____ Month/Day/Year of Birth _____ add to PEVL

Full Legal Name _____ Month/Day/Year of Birth _____ add to PEVL

Full Legal Name _____ Month/Day/Year of Birth _____ add to PEVL

Full Legal Name _____ Month/Day/Year of Birth _____ add to PEVL

INSTRUCTIONS:
AFFIDAVIT IN SUPPORT OF APPLICATION TO RESTRICT PUBLIC ACCESS
TO PERSONAL INFORMATION
(FOR USE BY THOSE LISTED BELOW)

USE THIS FORM IF:

1. You are eligible to apply for the relief afforded by either under A.R.S. §§ 11-483, 11-484, 12-290, 16-153 and/or 28-454 as a(n):

- | | |
|--|--|
| • <u>Address Confidentiality Program Participant</u> | • <u>Judge or Former Judge</u> |
| • <u>Border Patrol Agent</u> | • <u>Justice</u> |
| • <u>Code Enforcement Officer</u> | • <u>Law Enforcement Support Staff</u> |
| • <u>Commissioner</u> | • <u>National Guard Member supporting a Law Enforcement Agency</u> |
| • <u>Corrections or Detention Officer</u> | • <u>Peace Officer or Peace Officer's Spouse</u> |
| • <u>Corrections Support Staff</u> | • <u>Probation Officer</u> |
| • <u>Department of Child Safety Employee</u> | • <u>Prosecutor</u> |
| • <u>Executive Clemency Board Member</u> | • <u>Public Defender</u> |
| • <u>Firefighter assigned to the Department of Public Safety Counterterrorism Center</u> | • <u>Spouse or minor child of a Deceased Peace Officer</u> |
| • <u>Former Public Official</u> | |

AND

2. You can show facts sufficient to establish that either your life or safety or the life or safety of your family or other person living at your primary residence is in danger of physical harm and that granting the public access restrictions specified in these statutes will reduce this danger.

TO COMPLETE THIS FORM YOU WILL NEED:

- A. To restrict public access to your home address and phone number in property-related records maintained by the County Recorder, Assessor or Treasurer:
- The full legal description and book, map, and parcel number of your home.
 - The document locator number and date of recordation of each document on file with these agencies that you want to protect, and
 - A copy of the pages from each such document that show the document locator number and your full name and address or your full name and telephone number.
- B. To restrict public access to your home address and phone number in voter registration records:
- The full legal name and date of birth of everyone with whom you reside whose voting records you wish to have protected. In some circumstances, you also may need to attach new voter registration forms (see information under item 12 below).
- C. To restrict public access to your home address and phone number in Motor Vehicle Division (MVD) records:
- The date of birth and driver's license number or state identification number for yourself and anyone with whom you reside whose MVD records you wish to have protected, this may include business entities that use your home address to conduct their affairs.

HOW TO COMPLETE THE AFFIDAVIT FORM:

TYPE OR PRINT NEATLY USING **BLACK INK**. THIS IS AN OFFICIAL MANDATORY FORM, DO NOT ALTER THE FORMAT, PAGINATION, OR LINE NUMBERING, OR SUBMIT THIS FORM AS A DOUBLE-SIDED DOCUMENT. You may add extra pages if needed to provide complete information under any item.

All applicants must fill in items 1 - 6, item 7 (if applicable), 8 and 9. Determine which type(s) of records you want to protect, and

- A. Complete items 10 and 11 and include the required attachments if you want to restrict public access to your property-related records maintained by the County Recorder, County Assessor, and County Treasurer.
- B. Complete item 12 if you want to restrict public access to your voting records; you also may need to include new voter registration forms (see instructions below).
- C. Complete items 13 and 14 if you want to restrict public access to your MVD records.

Match each numbered item in the instructions with the same numbered item on the affidavit.

1. Fill in your full legal name.
2. Check the box for each type of record you are seeking to protect.
3. Check the box that describes your job.
4. Provide the name of the law enforcement or other public agency that employs **or employed** you.
5. Provide your job title, a description of your duties, **and how you qualify under statute**.
6. Explain why you believe your life or safety or that of someone who lives with you is in danger of physical harm.
7. If you want the court to act immediately on your affidavit, explain why immediate protection is needed. Applicable statutes provide that in the absence of a request for immediate action supported by facts justifying an earlier consideration, the presiding judge may rule on the application at the end of each quarter.
8. Explain why the danger you described in item 6 will be reduced by restricting public access to your home address and phone number in the public records you identified in item 2.
9. Fill in your home address and phone number. This must be the address of your primary residence, not a secondary property you own or use only occasionally.
10. If you want to protect property-related records maintained by the County Recorder, Assessor, and/or Treasurer, provide the parcel number, book, map, and full legal description of your primary residence.
11. If you want to protect property-related records maintained by the County Recorder, Assessor, and/or Treasurer, provide the document locator number and recording date of each instrument to be redacted. The document locator number is also known as the recording number.

PLEASE NOTE: Item 11 requires you to attach a copy of any page from each of the documents you listed that displays your name and primary residential address or your name and phone number. Do not include records that identify only your spouse or some other owner of the property where you reside. To assist the County Recorder, please hand-write on each of these copies the “document locator number” also known as the recording number of the document. You are responsible for ensuring that all your records are listed and attached. The County cannot redact any documents that you have not identified in your affidavit.

12. You have the option of requesting that your household members’ addresses and phone numbers be protected from public access in voting records. To do this, fill in the full name and birth date of each person to be protected on the lines provided. Check the box next to each name if you want to add these individuals to the Permanent Early Voting List. You may be required to attach a completed voter registration form for yourself and these individuals (see below for more information):

PLEASE NOTE: There are two circumstances in which new voter registration forms need to be attached to this affidavit:

A. If addresses are changing from what is currently on the voter registration form. The elections office needs to be able to contact voters by mail; therefore, if there is an address change you need to attach to your affidavit a new voter registration form for each person in the household whose information will be protected. The new registration forms must include a home address (which will be redacted). You have the option to provide an alternate “mailing” address on the voter registration form such as an office address or P.O. Box. If no alternate address is listed, your election materials will be mailed to the residence address on file. *Do not use your employer’s mailing address for any members of your household, if your employer has not agreed to accept mail on their behalf. If a mailing from the elections office is returned by the Post Office for incorrect address, the household members’ names will be moved to an “inactive” voter list, and they may no longer receive election materials by mail, including mail-in ballots.*

B. If you want to add yourself or your household members to the Permanent Early Voter List (PEVL). If your request for protection is granted you should always vote by mail in the future to maintain that protection. Should you go to the polls to vote, you will have to vote a provisional ballot, and a publicly-accessible record of voter information will be created which the registrar will not be able to protect. The PEVL is a way for voters to automatically receive an early ballot by mail for all elections in which the county voter registration rolls are used to prepare the voter list. A new voter registration form is necessary to be added to the PEVL. *Participation in the PEVL is merely a convenience for voters and is **not a requirement** for receiving record protection.*

13. If you want to protect your MVD records, provide your name, birth date, and driver’s license number or state identification number. PLEASE NOTE: your MVD record cannot be redacted without your driver’s license or state identification number.

14. You have the option of requesting that your household members’ addresses and phone numbers be protected from public access in MVD records, including legal entities such as a corporation, partnership, or trust that uses your home address and may be the registered owner of a motor vehicle. Type or print the full name, birth date, and driver’s license or state identification number of each person whose records you want to protect. For legal entities, provide the name and the customer number issued by MVD to that entity. If any household members you list are employed as peace officers, they should complete their own affidavits to ensure that MVD will restrict public access to their photograph pursuant to A.R.S. § 28-454(I).

WHEN YOU HAVE COMPLETED THE AFFIDAVIT:

Date and sign the affidavit in the presence of a notary public. The affidavit must be filed with the presiding superior court judge of the county in which you reside. Give your affidavit with all necessary attachments to the commanding officer or supervisor responsible for filing it on your behalf.

PLEASE BE ADVISED this process is designed to protect your primary residential address and phone number in a limited class of public records ONLY. If your application is granted, your home address and phone number may still be publicly-accessible in other public records and commercially-available databases.

The length of time your information can be protected will vary depending on the agency involved. You are urged to read all applicable statutes and contact each of the participating agencies directly to determine the consequences and on-going responsibilities associated with restricting public access to your information.

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting: April 29, 2015	This agenda item is for: <input type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input checked="" type="checkbox"/> Other	Subject: INVITATION
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Presenter(s): Dorothy Little

Discussion: Announcement of the Justice of the Peace conference to be held September 2, 3, & 4th in Prescott

Recommended Action or Request (if any): No action