AGENDA

FOR THE

COMMITTEE ON LIMITED JURISDICTION COURTS

Wednesday, August 26, 2015
10:00 a.m. to 12:00 p.m.
State Courts Building, Conference Rooms 119 B
1501 West Washington Street, Phoenix, Arizona
Conference Call Number: (**602) 452-3288** or (**520) 388-4330** Access Code: **0832**
https://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 Page 3	**Approval of April 29, 2015 Meeting Minutes** *Action Item*	Judge Riojas
	Business Items and Potential Action Items	
10:10 Page 11	**Language Interpreter Credentialing** *Action Item*	Amy Wood, Manager Case Flow Management Unit Administrative Office of the Courts (AOC)
10:40 Page 27	**Civil Traffic Code 45 – Dismissed on Motion / Request of Arresting Officer** *Action Item*	Judge Dorothy Little
11:10 Page 33	**Evidence Based Pre-Trial Rollout**	Kathy Waters, Director Adult Probation Services, AOC
11:30 Page 35	**Determining Eligibility for Appointed Counsel under Rule 6.4, ARCrP**	David Withey, Chief Counsel AOC
11:40	**Call to the Public**	Judge Riojas
	Next Meeting: Wednesday, October 28, 2015 10:00 a.m. to 3:00 p.m. State Courts Building 1501 West Washington Street, Phoenix, Arizona	
	Adjourn	Judge Riojas

COMMITTEE ON LIMITED JURISDICTION COURTS
DRAFT MINUTES
Wednesday, April 29, 2015
10:00 a.m. to 3:00 p.m.
Conference Room 119A/B
1501 West Washington Street
Phoenix, Arizona 85007

Present: Judge Antonio Riojas (Chair), Pete Bromley, Judge Timothy Dickerson, Dan Doyle, Julie Dybas, Judge Maria Felix, Jeffrey Fine, David Fuller (proxy for C. Daniel Carrion), Christopher Hale, Judge James William Hazel, Jr., Judge Eric Jeffery, Judge Dorothy Little, Judge Steven McMurry, and Sharon S. Yates
Telephonic: Judge J. Matias "Matt" Tafoya
Absent/Excused: Judge MaryAnne Majestic, Judge Arthur Markham, and Marla Randall
Presenters/Guests: Nicole Abarca (Maricopa County Public Defender), Judge George Anagnost (Peoria Municipal Court), C. Daniel Carrion, Tom Manos (Maricopa County Manager), and Mary Ellen Sheppard (Maricopa County Assistant Manager); and Eric Ciminski, Elizabeth Evans, Paul Julien, Jerry Landau, Denise Lundin, Amy Love, Mark Meltzer, Nick Olm, Patrick Scott, and David Withey, Administrative Office of the Courts (AOC)
Staff: Susan Pickard (AOC), Julie Graber (AOC)

I. REGULAR BUSINESS

A. Welcome and Opening Remarks
The April 29, 2015, meeting of the Committee on Limited Jurisdiction Courts (LJC) was called to order at 10:01 a.m. by Judge Antonio Riojas, Chair.

B. Approval of Minutes
The draft minutes from the February 25, 2015, meeting of the LJC were presented for approval.

> **Motion:** To approve the February 25, 2015, meeting minutes, as presented.
> **Action:** Approve, **Moved by** Sharon Yates, **Seconded by** Judge Timothy Dickerson. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. The Hidden Cost of Pre-Trial Detention *(item out of order)*
Tom Manos, Maricopa County Manager, and Mary Ellen Sheppard, Maricopa County Assistant Manager, discussed findings from "The Hidden Cost of Pre-Trial Detention," study that was presented at last October's Court Leadership Conference. To achieve long-term public safety outcomes, Mr. Manos reported that Maricopa County is rethinking the way it handles pre-trial detention. "Smart Justice" practices are helping the County to identify opportunities for improvements through evidence-based decision-making. To this end, Maricopa has focused on reviewing and re-evaluating the current and projected

jail costs, and identifying less costly options to achieve the same or better outcomes. One example is creating a county fund that could post a $50 bond, instead of the county absorbing the $260 for the first incarceration day.

Member comments:

- Maricopa judges reported that low bonds are usually set because the Sheriff's Office requires a bond to transport an inmate. Is the inmate being held in custody for another offense? If so, is the highest bond used or are the bonds totaled? Ms. Sheppard will bring the concerns back to the stakeholders.

Ms. Sheppard discussed the importance of gaining a thorough understanding of who is in our jails, how long they stay, and how often they come back in order to determine the best treatment programs, where to focus services and how to reduce costs. She reviewed the "Smart Justice" principles of allowing low-risk offenders to remain connected to the supports that make them low risk (e.g., home, family, job, and church); and of providing moderate to high-risk offenders with interventions to address the issues that increase recidivism rates like substance abuse, poor self-control, anti-social personality, attitudes and values. Ms. Sheppard explained how these principles are being applied in Maricopa County, what has been learned, and the next steps.

Member comments:

- Why hasn't the county adopted a home detention program when the cities have? Ms. Sheppard noted that the issue has not been raised in a few years and should be brought back to the stakeholders.
- There should be consistency between the cities and the counties so it does not matter where a person was driving; the experience should be the same.

B. Experience of AJACS Rollout at Apache Junction Municipal Court *(item out of order)*

Judge James Hazel shared Apache Junction Municipal Court's experience with the AJACS rollout. The new process emphasizes updating systems immediately rather than waiting until later. AOC staff has been at the court working to identify and resolve any bugs. He reported that the transition has been stressful, yet worthwhile, and recommended cleaning up data before conversion. It is important for judicial leadership to be present during the rollout to work through issues from a judge's standpoint and provide encouragement to staff.

C. Comment Regarding R-15-0017, Petition to Amend Rules 9.1, 14.3, 26.11 and 41, ARCrP *(item out of order)*

On behalf of LJC, Judge Eric Jeffery presented a draft comment in opposition to R-15-0017. The draft comment supports alternative ways of notifying criminal defendants that they may lose the right to appeal under A.R.S. § 13-4033. The draft suggests giving the advisement at the time of arraignment to all persons charged, rather than by including several warnings on multiple forms.

Additionally, Judge Jeffery's draft comment addresses the inclusion of a finding by the court should the defendant cause a "voluntary" 90-day delay at the time of sentencing. This action by the defendant should cause the defendant to lose or waive his or her appellate rights.

> **Motion:** To fix spelling mistakes and approve and file LJC's comment in opposition to R-15-0007. **Action:** Approve, **Moved by** David Fuller, **Seconded by** Judge Maria Felix. Motion passed unanimously.

D. HB 2308 Defensive Driving School *(item out of order)*

David Withey, AOC Chief Counsel, and Jerry Landau, AOC Government Affairs Officer, discussed HB 2308, Defensive Driving School (DDS). This new law changes the period of eligibility to attend defensive driving school for drivers cited for eligible traffic offenses from two years to one year, effective July 3, 2015. Defensive Driving Schools and the AOC will post notice of the change to DDS eligibility on their web sites; however, there may be drivers who come to court not knowing they are eligible to attend DDS or request a continuance in order to attend DDS. Mr. Landau asked that judges keep in mind the legislative intent to expand drivers' attendance to DDS when deciding whether to grant continuances.

E. HB 2553 Sex Trafficking Victims *(item out of order)*

David Withey, AOC Chief Counsel, and Jerry Landau, AOC Government Affairs Officer, presented a draft emergency rule petition to implement HB 2553, effective July 3, 2015. This new law authorizes a person convicted of prostitution to apply to the court to have the conviction vacated, if the person can show that the offense was a direct result of having been a victim of sex trafficking; allows the court to proceed without a hearing if the prosecutor does not oppose the application; and implements procedures for vacating the conviction, including an order sealing the case file. Mr. Withey noted that HB 2553 only applies to violations of A.R.S. § 13-3214 committed prior to July 24, 2014, and does not apply to convictions related to a municipal ordinance.

Eric Ciminski, AOC eCourt Services Project Director, discussed two options for restricting access to the case records by either 1) sealing the records by court order; or 2) keeping the records confidential by rule. Mr. Ciminski explained that if a case record included a prostitution conviction among other offenses, it could only be sealed in its entirety in the case management system, in this instance the prostitution conviction alone could not. The presenters sought comments from LJC regarding the draft rule, proposed application and order and the identified options for restricting records access.

Member comments:

- How will this legislative change impact the records retention schedule? Although there will be a minute entry vacating the conviction in the court record, the conviction will remain in the law enforcement record.
- Members considered both the options offered for sealing records and preferred option 2 with added language clarifying that the case record consists of the electronic and paper records. Additionally, members recommended including language in both

options that would allow the victim to obtain copies of the record; and would require notations be made in the law enforcement and prosecution records indicating that the conviction was vacated and the applicant was a victim of crime.

- Members expressed concerns that the law only applied to violations of the state statute and suggested adding language that would apply the law to the equivalent municipal ordinances. Mr. Landau advised that unilateral language could not be added to the rule and further legislation would be required to apply to municipal ordinances.

F. Proactive Enforcement / Warrant Mitigation *(item out of order)*

Jeff Fine shared Maricopa County Justice Courts' efforts to develop best practices and innovative strategies that align with Chief Justice Bales' "Advancing Justice Together" and will ensure public resources are used effectively, efficiently, and accountably. Mr. Fine illustrated the benefits of shifting from reactive to proactive strategies. Each year, for example, Maricopa County issues over nine thousand warrants and spends approximately $7,199,263 based on the estimated cost of each executed warrant ($794.27). By implementing the practice of telephoning defendants and leaving messages for them to voluntarily appear at court, they improved appearance rates and, if the court had a valid telephone number, warrant issuance figures could be reduced and save over $5 million annually. Mr. Fine discussed exploring additional strategies such as finding cheaper and more reliable methods of communication (instead of the preferred U.S. Postal Service), and working with other stakeholders and leveraging technological solutions like corporations to design systems that capture email addresses on a statewide basis.

Member comments:

- Pima County uses robo-calls to communicate with parties, and if there is attorney involvement, the person is automatically deleted from the list.
- The costs can vary greatly between the types of interactive voice response (IVR) systems.

G. R-15-0029 regarding ARCrP 32.13 *(item out of order)*

Judge George Anagnost from Peoria Municipal Court presented amended petition R-15-0029. This proposal would add a new subsection, Rule 32.13, providing a post-conviction relief (PCR) procedure in limited jurisdiction (LJ) courts by eliminating the notice of PCR and consolidating into one petition. The petition requires filing within 60 days and cannot be pursued while the case is on direct appeal; and failing to move to withdraw from a plea pursuant to Rule 17.5 would preclude all PCR. The proposed PCR procedure is intended to be less burdensome, and reduce delays and inefficient uses of judicial resources.

Member comments:

- David Fuller expressed serious concerns that the subsection could result in constitutional deficiencies and eliminate protections that help ensure due process and the right to a fair trial if counsel is ineffective and does not file a motion to withdraw from a plea agreement under Rule 17.5. PCR is the last form of appellate review for

some defendants and barring PCR could deprive defendants from equal protection under the law in LJ courts. Although a misdemeanor is not as serious as a felony, the consequences of a misdemeanor conviction could be as bad as a felony conviction for some.

Motion: To support Judge Anagost's amended petition R-15-0029, as discussed. **Action:** Approve, **Moved by** Judge Eric Jeffery, **Seconded by** Judge Dorothy Little. Motion passed with one vote in opposition from David Fuller. The City of Phoenix Public Defender's Office will be filing its own comment in opposition to the amended rule petition.

H. Legislative Update *(item out of order)*

Amy Love, AOC Legislative Liaison, reviewed bills of interest to limited jurisdiction courts that were passed during the 52nd Legislature, First Regular Session and signed by the Governor. The general effective date is July 3, 2015.

HB 2013 – courts; days; transaction of business: Permits a municipal court to transact business on Columbus Day.

SB 1179 – criminal damage; gangs; criminal syndicates: Reclassifies criminal damage as a Class 5 Felony if the damage is inflicted to promote any criminal street gang.

SB 1048 – vexatious litigants; fees; costs; designation: Prohibits the court from waiving fees for vexatious litigants unless it is a family law action. The bill is effective January 1, 2016.

HB 2294 – courts; approved screening; treatment facilities: Adds the Department of Veterans Affairs to the list of authorized providers for treatment programs.

HB 2089 – aggravated assault; judicial officers: Defines "judicial officer" and classifies an assault on a judicial officer as an aggravated assault if committed while engaged in official duties.

HB 2311 – judgment liens; recordation; real property: Allows a judgment from a justice or municipal court to be filed in the Recorder's office.

SB 1064 – service of process; regulation: Provides alternative service of process for a photo enforcement violation by sending by certified mail and regular mail and posting a notice on the front door or garage door.

SB 1035 – domestic violence treatment programs; providers: Authorizes the Supreme Court to approve, pursuant to court rule, additional domestic violence offender treatment providers. The bill is effective January 1, 2016.

HB 2204 – criminal restitution order; courts: Allows a limited jurisdiction court to enter a restitution order for a victim of a traffic accident involving failure to remain on the scene and resulting in vehicle damage only.

HB 2663 – satisfaction of judgment: Allows a satisfaction of judgment to be filed in a small claims action.

SB 1116 – fines; fees; costs; community restitution: Authorizes a municipal or justice court to order the defendant to perform community restitution credited at a rate of $10 per hour when the defendant is unable to pay the fines, fees, and costs.

I. Rule Change Petition Reconsideration *(item out of order)*
Judge Riojas discussed pending rule petitions and whether LJC wanted to file formal comments.

- R-15-0015 – After some discussion, members agreed that the opportunity to move for a change of judge will cause serious scheduling issues and delays, especially in non-urban courts.

  Motion: To approve the submission of a brief comment to the Rules Forum. **Action:** Approve, **Moved by** Judge Steven McMurry, **Seconded by** Judge Timothy Dickerson. Motion passed unanimously.

- R-15-0018 – Judge McMurry drafted a comment in opposition to the proposed amendment to Rule 31(d)(25) of the Rules of the Supreme Court that would require mediators to either be a member of the bar or a certified document preparer because it would prohibit the current and beneficial practice of justice court mediator programs. Volunteer mediators must complete a mediation training program but few, if any, are bar members or certified document preparers.

  Motion: To support Judge McMurry's opposition to the proposed amendment to Rule 31(d)(25), as discussed. **Action:** Approve, **Moved by** Judge Timothy Dickerson, **Seconded by** Judge Maria Felix. Motion passed unanimously.

- R-15-0028: The committee declined to make a comment.

- R-15-0024: In response to questions regarding mobile warrants, Patrick Scott, AOC Court Specialist, noted that the rule petition is being amended and a revised version will be filed by July 13, 2105, addressing the comments received. The committee declined to make a comment until the rule petition was revised.

J. Amendments to ACJA § 5-206 Fee Deferrals and Waivers *(item out of order)*
Patrick Scott, AOC specialist, presented proposed amendments to ACJA § 5-206, Fee Deferrals and Waivers, which incorporate statutory changes to A.R.S. § 13-302. The changes to this code section included:

- definitions for “vexatious conduct” and “vexation litigant”; and
- adds a new section that prohibits vexatious litigants from receiving fee waivers in certain circumstances, and requires the payment of deferred or waived fees if the litigant is declared a vexatious litigant during the course of a case.

The forms for deferral and waiver will be updated as necessary prior to the January 1, 2016 effective date.

Motion: To approve the proposed code change, as presented. **Action:** Approve, **Moved by** Judge Maria Felix, **Seconded by** Judge Dorothy Little. Motion passed unanimously.

K. Personal Information Redaction Affidavit and Instructions *(item out of order)*
Nick Olm, AOC specialist, provided a brief update regarding the Personal Information Redaction Affidavit and Instructions, which adds former judges to the list of approved officials.

L. Justice of the Peace Conference *(item out of order)*
Judge Dorothy Little announced that the Justice of the Peace Conference will be held September 2−4, 2015, in Prescott, AZ.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public
None present.

B. Next Committee Meeting Date
Wednesday, August 26, 2015
10:00 a.m. to 3:00 p.m.
State Courts Building, Room 119, 1501 W. Washington St., Phoenix, AZ 85007

Meeting adjourned at 1:23 p.m.

COMMITTEE ON LIMITED JURISDICTION COURTS

Date Action Required:	Type of Action Required:	Subject:
August 26, 2015	[X] Formal Action/Request [ ] Information Only [ ] Other	**Language Access Update**

FROM: Amy Wood, Case Flow Unit Manager, Administrative Office of the Courts

PRESENTER(S): Amy Wood

DISCUSSION: A general update on language access will be provided as well as a conceptual overview of an Arizona Credentialing program.

RECOMMENDED MOTION: The Committee on Limited Jurisdiction Courts supports moving forward with an interpreter credentialing program for Arizona Courts.

Language Access

Limited Jurisdiction Courts Committee, August 2015

Updates

- ❖Revised Language Access Plans
- ❖Interpreter Information Webpage
- ❖Credentialing of Interpreters
- ❖New Language Access Coordinator

Revised Language Access Plans

- Complaint form and process
- Court ordered services included
- Website accessibility by LEP

Interpreter Information Webpage

- Information for Interpreters
- http://www.azcourts.gov/interpreter/

Credentialing

Strategic Agenda Goal 1:
Develop strategies for increasing the availability and quality of court interpreters and interpreter services…

Quality of interpreters:

- Establish a tiered credentialing program for all individuals providing interpreter services within the courtroom

Considerations

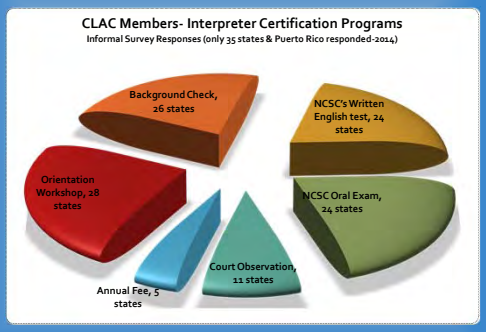
- Assure quality of all language interpreters
- Provide access for rural areas & part-time interpreters
- Consider internal resources required for development of interpreter credentialing program

Arizona's Current Interpreter Staffing

Number of interpreter positions statewide

- Interpreters: 106
- Dual role: 6

Program Elements



Certification Continuum

Many states created programs with various elements from simple to highly structured

Registration
Orientation class
Ethics
Testing optional
Local control

All previous elements PLUS:
Renewal requirements
Background checks
Court observation
Testing required with multiple tiers

All previous elements PLUS:
AOC manages entire program
Oversight board
Disciplinary process
Basic tiers with only one pass rate
Must pass 3 mode exam in one sitting

Program Structure

Foundation (Tier 1):

- Establish ethical standards for all interpreters
- Provide statewide registration method for all languages
- Ensure interpreters have basic understanding of courts, command of English and target language and clear background check
- Assess interpreters level of target language proficiency

Interpreting (Tier 2 -4):

- Incorporate interpreter performance testing component
- Different tiers may be tied to level of performance based on pass rate

Interpreter Credentialing Program Structure

Tier 1

Tier 2 | Tier 3 | Tier 4

Recommendations

Steps for Tier 1:
An Interpreter will:

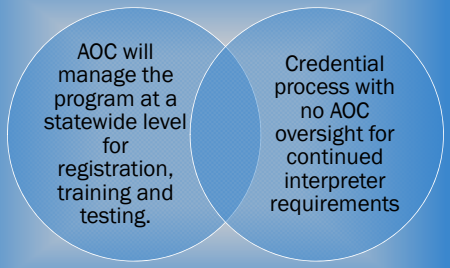
- Submit an application form
- Complete an orientation program-pay fee
- Participate in an online ethics training and sign acknowledgment form
- Take written English test (Pass with 80%)-pay fee
- Complete oral proficiency interview
- Submit to a background check
- Receive registration approval ID number in statewide registry

Recommendations

Steps for Tier 2-4:
Interpreter will:

- Successfully complete all steps in Tier 1
- Prepare for oral examination with online resources
- Register and pay fee for test
- Pass test at a level to be assigned Tier 2, 3, or 4

Expectations for AOC



Expectations for Courts

- Courts to exercise preference for use of qualified interpreters
- Courts to manage complaints locally
- Courts to manage staff interpreters that do not pass oral exam

NCSC's Written Examination

- Written English test (135 multiple choice questions)
- Pass/Fail- criteria (80%) AOC notify interpreter
  - If pass, interpreter moves to background check
  - If fail, interpreters can re-test (establish testing timeframes).

NCSC's Oral Examination

- Testing evaluates 3 oral interpreting skills: sight, consecutive and simultaneous
- Acceptable pass score for CLAC member states: 70% on all 3 areas (10% of testing candidates pass)
- A few states have allowed for less than 70% pass rate with different designations with lowest acceptable rate at 55%
- Impact with reciprocity when working with other states

Budgetary impact

- Programmatic fees for AOC to administer program
- Cost to courts to pay for credentialing costs associated with staff interpreters and bilingual staff
- Costs to freelance interpreter:
  - Classes on ethics; orientation; exam testing fees
  - Professional liability insurance issues

Program Development Timeline

A1

Additional questions or comments?

Court Services Division

- Amy Wood (602)452-3337
  awood@courts.az.gov
- David Svoboda (602) 452-3965
  dsvoboda@courts.az.gov

Proposed Court Interpreter Code of Ethics Canons

1. Accuracy and Completeness
2. Representation of Qualifications
3. Impartiality and Avoidance of Conflict of Interest
4. Professional Demeanor
5. Confidentiality
6. Restriction of Public Comment
7. Scope of Practice
8. Assessing and Reporting Impediments to Performance
9. Duty to Report Ethical Violations
10. Professional Development

Taken from *Court Interpretation: Model Guide for Policy and Practice in the State Courts*

National Center for State Courts, 1995

CODE OF PROFESSIONAL RESPONSIBILITY FOR INTERPRETERS IN THE JUDICIARY PREAMBLE

Many persons who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency or a speech or hearing impairment. It is essential that the resulting communication barrier be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier.[1] As officers of the court, interpreters help assure that such persons may enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively. Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice.

APPLICABILITY

This code shall guide and be binding upon all persons, agencies and organizations who administer, supervise use, or deliver interpreting services to the judiciary. Commentary: The black letter principles of this Model Code are principles of general application that are unlikely to conflict with specific requirements of rule or law in the states, in the opinion of the code's drafters. Therefore, the use of the term "shall" is reserved for the black letter principles. Statements in the commentary use the term "should" to describe behavior that illustrates or elaborates the principles. The commentaries are intended to convey what the drafters of this model code believe are probable and expected behaviors. Wherever a court policy or routine practice appears to conflict with the commentary in this code, it is recommended that the reasons for the policy as it applies to court interpreters be examined.

[1] A non-English speaker should be able to understand just as much as an English speaker with the same level of education and intelligence.

CANON 1: ACCURACY AND COMPLETENESS

Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation.

Commentary:

The interpreter has a twofold duty: 1) to ensure that the proceedings in English reflect precisely what was said by a non-English speaking person, and 2) to place the non-English speaking person on an equal footing with those who understand English. This creates an obligation to conserve every element of information contained in a source language communication when it is rendered in the target language.

Therefore, interpreters are obligated to apply their best skills and judgment to preserve faithfully the meaning of what is said in court, including the style or register of speech. Verbatim, "word for word," or literal oral interpretations are not appropriate when they distort the meaning of the source language, but every spoken statement, even if it appears nonresponsive, obscene, rambling, or incoherent should be interpreted. This includes apparent misstatements.

Interpreters should never interject their own words, phrases, or expressions. If the need arises to explain an interpreting problem (e.g., a term or phrase with no direct equivalent in the target language or a misunderstanding that only the interpreter can clarify), the interpreter should ask the court's permission to provide an explanation. Interpreters should convey the emotional emphasis of the speaker without reenacting or mimicking the speaker's emotions, or dramatic gestures.

Sign language interpreters, however, must employ all of the visual cues that the language they are interpreting for requires -- including facial expressions, body language, and hand gestures. Sign language interpreters, therefore, should ensure that court participants do not confuse these essential elements of the interpreted language with inappropriate interpreter conduct.

The obligation to preserve accuracy includes the interpreter's duty to correct any error of interpretation discovered by the interpreter during the proceeding. Interpreters should demonstrate their professionalism by objectively analyzing any challenge to their performance.

CANON 2: REPRESENTATION OF QUALIFICATIONS

Interpreters shall accurately and completely represent their certifications, training, and pertinent experience.

Commentary:

Acceptance of a case by an interpreter conveys linguistic competency in legal settings. Withdrawing or being asked to withdraw from a case after it begins causes a disruption of court proceedings and is wasteful of scarce public resources. It is therefore essential that interpreters present a complete and truthful account of their training, certification and experience prior to appointment so the officers of the court can fairly evaluate their qualifications for delivering interpreting services.

CANON 3: IMPARTIALITY AND AVOIDANCE OF CONFLICT OF INTEREST

Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest.

Commentary:

The interpreter serves as an officer of the court and the interpreter's duty in a court proceeding is to serve the court and the public to which the court is a servant. This is true regardless of whether the interpreter is publicly retained at government expense or retained privately at the expense of one of the parties.

The interpreter should avoid any conduct or behavior that presents the appearance of favoritism toward any of the parties. Interpreters should maintain professional relationships with their clients, and should not take an active part in any of the proceedings. The interpreter should discourage a non-English speaking party's personal dependence.

During the course of the proceedings, interpreters should not converse with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official functions. It is especially important that interpreters, who are often familiar with attorneys or other members of the courtroom work group, including law enforcement officers, refrain from casual and personal conversations with anyone in court that may convey an appearance of a special relationship or partiality to any of the court participants.

The interpreter should strive for professional detachment. Verbal and non-verbal displays of personal attitudes, prejudices, emotions, or opinions should be avoided at all times.

Should an interpreter become aware that a proceeding participant views the interpreter as having a bias or being biased, the interpreter should disclose that knowledge to the appropriate judicial authority and counsel.

Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest. Before providing services in a matter, court interpreters must disclose to all parties and presiding officials any prior involvement, whether personal or professional, that could be reasonably construed as a conflict of interest. This disclosure should not include privileged or confidential information.

The following are circumstances that are presumed to create actual or apparent conflicts of interest for interpreters where interpreters should not serve:

1. The interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceedings;

2. The interpreter has served in an investigative capacity for any party involved in the case;

3. The interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;

4. The interpreter or the interpreter's spouse or child has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that would be affected by the outcome of the case;

5. The interpreter has been involved in the choice of counsel or law firm for that case should disclose to the court and other parties when they have previously been retained for private employment by one of the parties in the case.

Interpreters should not serve in any matter in which payment for their services is contingent upon the outcome of the case.

An interpreter who is also an attorney should not serve in both capacities in the same matter.

CANON 4. PROFESSIONAL DEMEANOR

Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

Commentary:

Interpreters should know and observe the established protocol, rules, and procedures for delivering interpreting services. When speaking in English, interpreters should speak at a rate and volume that enable them to be heard and understood throughout the courtroom, but the interpreter's presence should otherwise be as unobtrusive as possible. Interpreters should work without drawing undue or inappropriate attention to themselves.

Interpreters should dress in a manner that is consistent with the dignity of the proceedings of the court.

Interpreters should avoid obstructing the view of any of the individuals involved in the proceedings. However, interpreters who use sign language or other visual modes of communication must be positioned so that hand gestures, facial expressions, and whole body movement are visible to the person for whom they are interpreting are encouraged to avoid personal or professional conduct that could discredit the court.

CANON 5: CONFIDENTIALITY

Interpreters shall protect the confidentiality of all privileged and other confidential information.

Commentary:

The interpreter must protect and uphold the confidentiality of all privileged information obtained during the course of her or his duties. It is especially important that the interpreter understand and uphold the attorney-client privilege, which requires confidentiality with respect to any communication between attorney and client. This rule also applies to other types of privileged communications.

Interpreters must also refrain from repeating or disclosing information obtained by them in the course of their employment that may be relevant to the legal proceeding.

In the event that an interpreter becomes aware of information that suggests imminent harm to someone or relates to a crime being committed during the course of the proceedings, the interpreter should immediately disclose the information to an appropriate authority within the judiciary who is not involved in the proceeding and seek advice in regard to the potential conflict in professional responsibility.

CANON 6: RESTRICTION OF PUBLIC COMMENT

Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential.

CANON 7: SCOPE OF PRACTICE

Interpreters shall limit themselves to interpreting or translating, and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

Commentary:

Since interpreters are responsible only for enabling others to communicate, they should limit themselves to the activity of interpreting or translating only. Interpreters should refrain from initiating communications while interpreting unless it is necessary for assuring an accurate and faithful interpretation.

Interpreters may be required to initiate communications during a proceeding when they find it necessary to seek assistance in performing their duties. Examples of such circumstances include seeking direction when unable to understand or express a word or thought, requesting speakers to moderate their rate of communication or repeat or rephrase something, correcting their own interpreting errors, or notifying the court of reservations about their ability to satisfy an assignment competently. In such instances they should make it clear that they are speaking for themselves.

An interpreter may convey legal advice from an attorney to a person only while that attorney is giving it. An interpreter should not explain the purpose of forms, services, or otherwise act as counselors or advisors unless they are interpreting for someone who is acting in that official capacity. The interpreter may translate language on a form for a person who is filling out the form, but may not explain the form or its purpose for such a person.

The interpreter should not personally serve to perform official acts that are the official responsibility of other court officials including, but not limited to, court clerks, pretrial release investigators or interviewers, or probation counselors.

CANON 8: ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE

Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority.

Commentary:

If the communication mode or language of the non English-speaking person cannot be readily interpreted, the interpreter should notify the appropriate judicial authority.

Interpreters should notify the appropriate judicial authority of any environmental or physical limitation that impedes or hinders their ability to deliver interpreting services adequately (e.g., the court room is not quiet enough for the interpreter to hear or be heard by the non-English speaker, more than one person at a time is speaking, or principals or witnesses of the court are speaking at a rate of speed that is too rapid for the interpreter to adequately interpret). Sign language interpreters must ensure that they can both see and convey the full range of visual language elements that are necessary for communication, including facial expressions and body movement, as well as hand gestures.

Interpreters should notify the presiding officer of the need to take periodic breaks to maintain mental and physical alertness and prevent interpreter fatigue. Interpreters should recommend and encourage the use of team interpreting whenever necessary.

Interpreters are encouraged to make inquiries as to the nature of a case whenever possible before accepting an assignment. This enables interpreters to match more closely their professional qualifications, skills, and experience to potential assignments and more accurately assess their ability to satisfy those assignments competently.

Even competent and experienced interpreters may encounter cases where routine proceedings suddenly involve technical or specialized terminology unfamiliar to the interpreter (e.g., the unscheduled testimony of an expert witness). When such instances occur, interpreters should request a brief recess to familiarize themselves with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, interpreters should inform the presiding officer.

Interpreters should refrain from accepting a case if they feel the language and subject matter of that case is likely to exceed their skills or capacities. Interpreters should feel no compunction about notifying the presiding officer if they feel unable to perform competently, due to lack of familiarity with terminology, preparation, or difficulty in understanding a witness or defendant.

Interpreters should notify the presiding officer of any personal bias they may have involving any aspect of the proceedings. For example, an interpreter who has been the victim of a sexual assault may wish to be excused from interpreting in cases involving similar offenses.

CANON 9: DUTY TO REPORT ETHICAL VIOLATIONS

Interpreters shall report to the proper judicial authority any effort to impede their compliance with any law, any provision of this code, or any other official policy governing court interpreting and legal translating.

Commentary:

Because the users of interpreting services frequently misunderstand the proper role of the interpreter, they may ask or expect the interpreter to perform duties or engage in activities that run counter to the provisions of this code or other laws, regulations, or policies governing court interpreters. It is incumbent upon the interpreter to inform such persons of his or her professional obligations. If, having been apprised of these obligations, the person persists in demanding that the interpreter violate them, the interpreter should turn to a supervisory interpreter, a judge, or another official with jurisdiction over interpreter matters to resolve the situation.

CANON 10: PROFESSIONAL DEVELOPMENT

Interpreters shall continually improve their skills and knowledge and advance the profession through activities such as professional training and education, and interaction with colleagues and specialists in related fields.

Commentary:

Interpreters must continually strive to increase their knowledge of the languages they work in professionally, including past and current trends in technical, vernacular, and regional terminology as well as their application within court proceedings.

Interpreters should keep informed of all statutes, rules of courts and policies of the judiciary that relate to the performance of their professional duties.

An interpreter should seek to elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues, and reading current literature in the field.

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting:	This agenda item is for:	Subject:
August 26, 2015	[X] Formal Action/Request [ ] Information Only [ ] Other	**MVD CODE 45**

Presenter(s): Judge Dorothy Little

Discussion: Judge Little will discuss the use of MVD Code 45 that, in the absence of State representation, may have been interpreted to allow law enforcement to file a "motion" to withdraw, cancel, or dismiss citations.

Recommended Action or Request (if any): Should Code 45 be eliminated as an acceptable disposition code?

Problem Statement Relating to MVD CODE 45

There are courts across the State that allow law enforcement to file a "motion" to withdraw, cancel, or dismiss citations. Generally this is due to officer error, for example the officer inadvertently wrote the passenger a moving violation and the driver received the no seat belt violation, or some other error that the officer or supervisor has identified.

Currently, in the civil traffic processing manual there are instructions to staff as to how to use code 45.

The State is not represented in civil traffic violations. In fact, most prosecutors do not participate in prosecution of civil traffic nor will they file ANY motion relating to these violations.

Is it fair to require a defendant who has been wrongfully cited to appear in court for a hearing 20, 30, 50, or more miles away?

Some defendants, who may be wrongfully charged, may not recognize the gravity of the situation and fail address an issue that results in a suspended license or other complications. Is there a practice or standing motion that other courts have received from a prosecutor to give the judge authority to take action on certain cases?

Civil Traffic Manual

The following information is from the "Civil Traffic processing manual" which was distributed by the AOC several years ago

CHAPTER 1: NEW CASE	
SECTION 1.5: INVALID VIOLATION CODE CITED	EFFECTIVE : 8/01/04 REVISED :

Reference(s)/Authority
Civil Traffic Rules 8, 9, Criminal Rule 13.5

1. If a violation code is rejected by the automated system, research the code's validity. The code may be incorrect or the automated system may be in error.

   AZTEC courts contact the AOC Support Center at 1-800-720-7743 or (602) 542-9156 if needed

2. If research reveals the violation code is:
   - Valid or correct as written, contact the appropriate system administrator for system correction.
   - Invalid, flag the violation and take the case to the judicial officer. The judicial officer may correct the code to conform to the descriptive text. If the judicial officer cannot determine the exact offense or if amendment changes a civil violation to a criminal offense, the judicial officer shall dismiss the violation.

   If your system will not accept an invalid code, your administrator may set up a generic code option (such as XXX) in the database so that if the judge is not immediately available, you can continue with data entry, flagging the case for follow up with the judicial officer at a later time.

The citation should NOT be sent back to law enforcement for correction and the law enforcement officer does not have standing (authority) to amend the citation

Code 45 Dismissed at the request of the arresting officer
Use when the judicial officer grants dismissal on a written request of the citing officer.

I requested the AOC run a "query" as to how widely this code is used. There were approximately 3,871 times this code was utilized across the state.

I am aware the AOC also has instructed staff during AZTEC training to enter all violations on a citation, even if the officer has crossed through a violation and wrote void or cancel before submitting a violation. If an officer attempts to void a violation, the staff has a dummy code to enter and record a code 45. Is it possible all of these instances are due to officer error?

Rule Petition History

I am also including a comment relating to a rule change petition from 2008, this information was provided by Patrick Scott of the AOC.

> "Judge Lusk filed a rule petition in 2008 to allow law enforcement to withdraw a complaint if there had been a machine malfunction or other defect, R-08-009. The court denied the petition, so we know they don't approve of the practice. Below you can see one of the responses to that petition by Judge LaFleur."

Comments on proposed changes to Rule 9 Rules of Procedure in Civil Traffic Violation Cases

The judges at our court have reviewed the proposed amendment to Rule 9 of the Rules of Procedure in Civil Traffic Cases and are unanimous in our opinion that the proposed rule should not be adopted. My objection is based on the following concerns.

Unauthorized Practice of Law

The Petitioner correctly notes that a law enforcement officer does not have standing to amend a traffic complaint after it is filed with a court. Although the petition references Guideline 2 from the Court Implementation Guide, reference to Supreme Court Rule 31 reaches the same conclusion. Among the activities defined as practicing law are: preparing any document in any medium intended to affect or secure legal rights for a specific person or entity Rule 31 (a) (2) (A) (1); representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration and mediation Rule 31(a) (2) (A) (3); and, preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity. Rule 31 (a) (2) (A) (4). The unauthorized practice of law includes 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 33(d). Rule 31 (a) (2) (B) (1). The only persons allowed to practice law in Arizona are active members of the state bar, unless one of the exemptions under Rule 31 (d) apply, none of which are applicable to law enforcement personnel under the proposed rule. The proposed rule would have law enforcement officials, the vast majority of whom are not members of the state bar, filing materials with courts and taking actions that affect the disposition of traffic cases. The fact that some government attorneys choose to not be involved in civil traffic cases does not sanction the unauthorized practice of law.

Complaint Withdrawal is Not Appropriate

The concept of withdrawing a complaint is without precedent or merit. Once any pleading, let alone the complaint commencing a case, is filed with a court it cannot be withdrawn and undone. The court assigns a case number and opens a file. Within that file motions are made and under certain circumstances are withdrawn by the party making the motion. Withdrawal in this sense does not include physically withdrawing the action, does not undo the filing of the case or immediately resolve the merits of the case. To use a cliché, the filing of a case is ringing a bell and it cannot be un-rung by unilaterally determining it should have not been rung in the first place. The procedure for such complaints is a motion to dismiss, filed by the proper legal representative.

Improper Complaint Disposition and Administrative Difficulties

What would courts do with the cases that were "withdrawn?" A.R.S. 28-1558 (B) requires:
On the deposit of the original or a copy of the traffic complaint with a court having jurisdiction over the alleged offense or with its traffic violations bureau, the original or copy of the traffic complaint may be disposed of only by trial in the court or other official action by a judge of the court or a hearing officer, including forfeiture of the bail or by the deposit of sufficient bail with or payment of a fine or civil penalty to the traffic violations bureau by the person to whom the traffic complaint was issued.

Withdrawal by a law enforcement agency is not one approved methods to dispose of a traffic citation and it is submitted that even if a rule authorized the procedure, this can be construed as official misconduct under A.R.S. 28-1558 (C) that makes it official misconduct to dispose of a traffic complaint in a manner not authorized under the statute.

Additionally, once cases are filed courts have to file the final adjudication with the Motor Vehicle Division within 10 days under A.R.S. §1559 (B). The Division does not have a way to report withdrawn traffic citations.

The process would be an administrative burden for courts. Court time and resources would be needlessly expended tracking the withdrawn cases to assure any sanction payments were refunded and defensive driving school records cleared, along with refunds to defendants in these cases.

If it was determined non-lawyer, law enforcement officials could file materials with courts, that withdrawal could be accomplished without violating the clear provisions of Title 28 and a method devised to minimize expenditure of court resources, the proposed rule change is still not appropriate. The proposed language eliminates the current subsection (d) of Rule 9 that authorizes correction of conflicts between the written description of a violation and the statutory designation. This is an extremely valuable provision in civil traffic cases and no basis is shown for elimination of the provision.

Assuming the designation of subsection (d) and elimination of the current provision was inadvertent, the proposed rule is overly broad and vague. The proposed language is not limited to electronically generated complaints, but simply civil traffic complaints, including those issued by law enforcement officers. This concept is carried forward in subsection (d) (2) where "device" is used without limitation to electronic traffic control systems. Lidar and radar speed detection instruments are devices, as are vehicle speedometers. This allows law enforcement the opportunity to review every citation for an undetermined period of time. The net result would be

to encourage sloppy law enforcement. The ability to withdraw mistakes is the ability to cover up inefficiency without any independent review or consequences.

Existing Procedure

Finally, if an actual problem could be quantified, the solution already exists in motions to dismiss from the State, either on an individual basis or under a standing or continuing motion. This procedure has the proper party filing the proper motion, creating a record of what occurred and facilitating reporting of adjudications.

Respectfully submitted,

Gary J. LaFleur
Judge, Chandler Municipal Court

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting:	This agenda item is for:	Subject:
August 26, 2015	[ ] Formal Action/Request [x] Information Only [ ] Other	**Evidence Based Pretrial in Arizona Courts**

Presenter(s): Kathy Waters, Director, Adult Probation Services Division

Discussion: Ms. Waters will present information about the Arizona Pretrial Statewide rollout.

Recommended Action or Request (if any): N/A

ARIZONA PRETRIAL SERVICES

Kathy Waters, Director, Adult Probation Services Division, AOC

Strategic Agenda - "Advancing Justice Together"

Chief Justice Bales Strategic Agenda - Goal 2 -"Advancing Justice Together" includes:

"Improve and expand the use of evidence-based practices to determine pre-trial release conditions for low-risk offenders."

COSCA WHITE PAPER (2012 - 2013)

- Conference of State Court Administrators, Policy Paper on Evidence Based Pretrial Release:
  - "…economic status (is) a significant factor in determining whether a defendant is released pending trial, instead of such factors as risk of flight and threat to public safety."
  - "In short, 'for the poor, bail means jail.'"

PRETRIAL FOUNDATIONAL CONCEPTS

- Pretrial Justice
  - Honoring
    - Presumption of innocence
    - Right to bail that is not excessive
    - Legal and constitutional rights afforded person awaiting trial
  - Balancing individual rights with
    - Need to protect public
    - Assure court appearance

"In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception" U.S. v. Salerno (1987)

PRETRIAL FOUNDATIONAL CONCEPTS

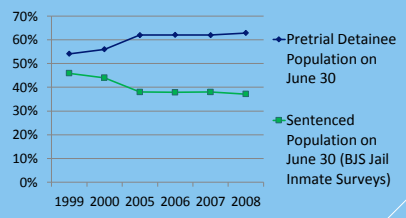
Questions for Judicial Officers when setting release conditions:

- What are the chances that a recently arrested defendant, if released before trial, will commit a new crime, a new violent crime, or fail to appear for court?

Purpose of Pretrial:

- Assist the court in making informed pretrial decisions
- To effectively supervise defendants
- Ensure the defendants meet courts obligations
- Uphold the legal and constitutional rights of defendants

WHO IS IN JAIL?



61% of jail inmates are awaiting trial (2012)

CALL FOR REFORM

PRETRIAL - APPLYING THE RESEARCH

- Provide current research regarding evidence based pretrial practices to courts in Arizona.
- Expand the use of validated research based risk assessments.

IMPLEMENTATION

- Work with each jurisdiction to ensure evidence based pretrial practices are being followed.
- Expand the use of validated research based risk assessments and the establishment of pretrial services in adult probation departments
- Establish a model for limited jurisdiction courts.

PRETRIAL RISK ASSESSMENTS

Andrews, D.A., Bonta, J. and Wormith, J.S. (2006). "The Recent Past and Near Future of Risk and/or Need Assessment." Crime and Delinquency, 52(1):7–27

Harris, P.M. (2006). "What Community Supervision Officers Need To Know About Actuarial Risk Assessment and Clinical Judgment." Federal Probation 70(2)

GOVERNANCE DOCUMENTS FOR PRETRIAL SERVICES

- Adoption of the new ACJA 5-201 "Evidence Based Pretrial Services" in January 2014 via Admin. Order 2014-12.

- Sets the Governance for Pretrial for all courts in Arizona incorporating research and evidence based practices.
- Requires Courts operating pretrial services use a pretrial risk assessment tool approved by the Arizona Judicial Council to assist in determining a defendant's likelihood of committing a new crime or failing to appear for court while on pretrial release
- Authorized the pilot use of the PSA Assessment. Recently AJC also authorized use of the PSA to all jurisdictions in Arizona.

Public Safety Assessment -PSA

- Developed by the Laura and John Arnold Foundation (LJAF)
- Uses non-interview dependent factors
- Separately predicts failure to appear (FTA) and new criminal activity (NCA)
- Predicts risk of new violent criminal activity (NVCA)

PUBLIC SAFETY ASSESSMENT (PSA)

- Public Safety Assessment (PSA)
  - Risk assessment tool used during the pretrial stage of the criminal justice system
  - Non-interview based tool
    - Separately predict failure to appear (FTA) and new criminal activity (NCA)
    - For the first time, predict new violent criminal activity (NVCA)

PUBLIC SAFETY ASSESSMENT (PSA)

- PSA Risk Factors
  1. Age at current arrest
  2. Current violent offense
     2a. *Current violent offense & 20 years old or younger*
  3. Pending charge at the time of the offense
  4. Prior misdemeanor conviction
  5. Prior felony conviction
     5a. *Prior conviction*
  6. Prior violent conviction
  7. Prior pretrial failure to appear in past two years
  8. Prior pretrial failure to appear older than two years
  9. Prior sentence to incarceration

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Public Safety Assessment (PSA)

ARIZONA PILOT SITES

- Pinal County
- Mohave County
- Yuma County
- Mesa Municipal Court
- Gila County

APPROVAL TO INCLUDE PSA UNDER ACJA 5-201

March 2015: Received approval by the Council to allow the PSA be adopted as a validated pretrial risk assessment to be used in Arizona per ACJA

NEXT STEPS

- AOC is working with the Arnold Foundation on statewide training and implementation of the PSA in Arizona.
- Prepare remaining counties for use of PSA and pretrial services.
  - Maricopa - Implemented July 2015
  - Yavapai and Coconino - Implementation in process
- Ongoing education of stakeholders in Arizona.

COMMITTEE ON LIMITED JURISDICTION COURTS

Date of Meeting:	This agenda item is for:	Subject:
August 26, 2015	[ ] Formal Action/Request [X] Information Only [ ] Other	**Determining Eligibility for Appointment of Counsel under Rule 6, R.Crim.Pro.**

Presenter(s): David Withey, Chief Counsel, AOC

Discussion:

Some questions have come to the AOC regarding the requirement in Criminal Rule 6.4(b) that "the defendant must be examined under oath regarding the defendant's financial resources by the judge, magistrate, or court commissioner responsible for determining indigency."

Recommended Action or Request (if any):

Many, if not most, judges may not go beyond an examination of the defendant's financial questionnaire (Form 5(a)) in determining eligibility for appointed counsel. We would like to discuss with the Committee whether there is a need for:

(1) A more extensive commentary in the LJC Benchbook or Reference Manual explaining the process and factors to be considered in deciding whether to appoint counsel for the defendant, and

(2) Amendments to the current Financial Questionnaire form