

**COMMITTEE ON LIMITED JURISDICTION COURTS
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.