

**COMMITTEE ON LIMITED JURISDICTION COURTS
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.