

**COMMITTEE ON LIMITED JURISDICTION COURTS  
DRAFT MINUTES**

**Wednesday, February 24, 2016**

10:00 a.m. to 12:00 p.m.

Conference Room 119A/B

1501 West Washington Street

Phoenix, Arizona 85007

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**Telephonic:** Judge Antonio Riojas, Chair, Judge Timothy Dickerson, Chief Dan Doyle, Julie Dybas, Judge Maria Felix, Jeffrey Fine, Judge Elizabeth R. Finn, Christopher Hale, Judge Eric Jeffery, Judge Dorothy Little, Judge Arthur Markham, Judge Steven McMurry, Marla Randall, Judge Laine P. Sklar, Judge J. Matias “Matt” Tafoya, Sharon S. Yates

**Absent/Excused:** Judge James William Hazel, Jr.

**Presenters/Guests:** Ellen Crowley, Arizona Supreme Court Staff Attorney’s Office; Theresa Barrett, Jerry Landau, Mark Meltzer, Patrick Scott, Administrative Office of the Courts (AOC)

**Staff:** Susan Pickard, Julie Graber (AOC)

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**I. REGULAR BUSINESS**

**A. Welcome and Opening Remarks**

The February 24, 2016, meeting of the Committee on Limited Jurisdiction Courts (LJC) was called to order at 10:00 a.m. by Judge Antonio Riojas, Chair.

**B. Approval of Minutes**

The draft minutes from the October 28, 2015, meeting of the LJC were presented for approval.

**Motion:** To approve the October 28, 2015, meeting minutes, as presented. **Action:** Approve, **Moved by** Sharon Yates, **Seconded by** Judge Dorothy Little. Motion passed unanimously.

**II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS**

**A. Proposed Supreme Court Rule 28.1, Approval of Local Rules**

Ellen Crowley, Chief Staff Attorney, Arizona Supreme Court Staff Attorney’s Office, presented proposed Supreme Court Rule 28.1, which would implement a procedure for presiding judges to request approval of local rules for superior courts and limited jurisdiction courts. The proposal would require circulation to stakeholders before submission, and extension of the comment period from 30 to 60 days. Ms. Crowley sought feedback from members on the draft rule, which has not yet been submitted as a rule petition.

**Member comments:**

- Members suggested limiting the language to the courts affected by the rule proposal.

## **B. 2016 Rules Update**

Mark Meltzer, AOC staff, discussed rule petitions of interest to LJC that were filed for consideration during the 2016 rules cycle. Checkboxes were added to the meeting handout for members to distinguish petitions that warrant the filing of a formal committee comment, or that merit further discussion by committee members. The deadline for comments is May 20, 2016.

### Civil Procedure

R-16-0010: The rule petition proposes comprehensive revisions to the civil rules and might impact the Justice Court Rules of Civil Procedure.

R-16-0018: Would protect the confidential identity of jurors by allowing jurors to write their juror number and initials in lieu of a full signature.

R-16-0019: Would allow the court to enter a judgment against the fictitiously named defendant if the true name was not known at that time.

### Criminal Procedure

R-15-0038: Would require the trial court to ensure compliance that the state has met its discovery obligations by engaging in a colloquy with the prosecutor.

#### **Member comments:**

- How can the court “ensure” the prosecutor has provided complete discovery. There is no possible way the court can “ensure” the prosecutor has “searched its files” or “the investigating police agency’s files.”
- The issue should be addressed with appropriate sanctions for violations, not the court engaging in a prosecutorial function of ensuring discovery is complete.

**ACTION ITEM:** Judge Jeffery will draft the comment for members’ review prior to submission.

R-16-0007: Would exclude from time limit computations an additional period of 30 days to allow the court and each party sufficient time to schedule and prepare for a trial.

R-16-0024: Would provide an additional circumstance where the court may exonerate a bond and make exoneration of the bond mandatory in both circumstances.

R-16-0031: Would delete Rule 20 because the court’s granting of a judgment of acquittal before the verdict is not reviewable on appeal and double jeopardy bars a retrial on the charge. This pre-verdict acquittal process deprives the State of its right to a jury trial on the charge and denies rights to justice and due process for a crime victim. Mr. Meltzer noted that the new criminal rules task force will be reviewing the issue further.

#### **Member comments:**

- Federal courts allow this to happen right now.

- How does it apply to bench trials? Does it preclude a Rule 20 on a bench trial? A Rule 20 is not always a jury trial.
- It is a waste of court resources and jury time if the judge makes a legal decision that there is not enough to go forward.

**ACTION ITEM:** Judge Riojas will draft the comment for members' review and comment.

Rules of Procedure for Juvenile Court

R-15-0036: Would request a uniform statewide rule on the use of mechanical restraints.

R-15-0042: Would increase the educational stability and graduation rates of children in foster care, and lower their rate of dropping out.

Rules of the Supreme Court

R-16-0003: Would exclude private court reporters and those hired by counsel from being the official record.

R-16-0008: Would make the removal of case management system data and case records from the court's online display pursuant to the applicable records retention schedule mandatory.

R-16-0013: Would make changes to the mission and structure of the State Bar of Arizona.

Rules of Family Law Procedure

R-16-0006: Would allow the signature of a jail or prison official on a return receipt or signature confirmation to constitute sufficient evidence of service of process when the party being served is incarcerated.

Other Rule Petitions that may be of interest

R-16-0022: Would allow litigants in an eviction action to have the same right to a change of judge as other civil litigants in justice and superior court.

**Member comments:**

- Concerns were raised that the rule petition would benefit landlords rather than tenants.
- The impact would be felt in smaller counties.

**ACTION ITEM:** Judge McMurry will redraft his previous comment and present it to the committee.

**Motion:** To ask Judge McMurry to redraft his previous comment and present it to the committee. **Action:** Approve, **Moved by** Sharon Yates, **Seconded by** Judge Maria Felix. Motion passed unanimously.

R-15-0035: Would add the requirement to allege each specific act of domestic violence that will be relied upon at the hearing regarding Injunctions Against Harassment or Injunctions Against Workplace Harassment. CIDVC will be filing a comment in support of the rule petition.

**Motion:** To support the rule petition, as presented. **Action:** Approve, **Moved by** Judge Sklar, **Seconded by** Marla Randall. Motion passed unanimously.

R-16-0026: Would expedite service of Orders of Protection by clarifying that courts are permitted to transmit orders electronically to cooperating law enforcement agencies. The benefits include saving time for plaintiffs and instant communication between courts and law enforcement. The deadline for comments is April 1, 2016.

**Member comments:**

- Concerns were raised about putting liability on the court to find the right agency to conduct service.
- If the language is discretionary, why is it needed?
- The consensus of the committee was that additional information was needed before making a motion.

**Motion:** To authorize Judge Riojas to file comments on behalf of LJC on rule petitions R-15-0038, R-16-0031, R-16-0022, and R-15-0035. **Action:** Approve, **Moved by** Sharon Yates, **Seconded by** Judge Dorothy Little. Motion passed unanimously.

**C. Rule 41, Form 2, Rules of Criminal Procedure**

Patrick Scott, AOC Specialist, discussed implementation concerns from courts, probation departments, and law enforcement following the adoption of Form 2, a new standardized warrant form in Rule 41, Arizona Rules of Criminal Procedure, on January 1, 2016. Mr. Scott sought member's feedback. The concerns raised to Mr. Scott include:

- Adding more space to put instructions about the type of bond and conditions of release.
- Including the defendant's social security number or any other identifiers.
- Adding a check box indicating that the defendant is on interstate compact.

Mr. Scott advised members that the AOC has scheduled a meeting on March 4, 2016, with the original workgroup and the stakeholders. The workgroup will discuss the concerns raised and make recommendations to the court about form changes before requiring strict compliance to the rule.

**D. ACJA § 5-206: Fee Waivers and Deferrals**

Patrick Scott, AOC Specialist, reported that a new workgroup was being created to review and amend the language in ACJA § 5-206: Fee Waivers and Deferrals. The goal of the workgroup is to consider incorporating language to clarify that the applicant has qualified for and received assistance from a legal services organization rather than being represented by legal services.

## **E. Legislative Update**

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

### HB2032: speed limits; local authority

Would allow a local authority to modify the speed limit in an area adjacent to or surrounding school grounds or public parks.

### HB2122: tech correction; technical registration board

A strike everything bill would exclude the suspension of a person's driver license as punishment for the failure to appear in court from a photo enforcement citation.

### HB2154: failure to appear; arrest; fingerprinting

Would clarify the procedure for ten-print fingerprinting of certain arrested persons and make violation of promise to appear in court a form of failure to appear in the second degree.

### HB2287: presiding constable; selection; duties

Would require the constables of a county with four or more constables to elect a presiding constable and associate presiding constable for the county.

### HB2288: constables; duties; training; discipline

Would make changes to the duties, training and ethical requirements for constables. The bill is moving forward.

### HB2375: crime victims' rights; facility dog

Would require the court to allow minor victims to have a "facility dog" when testifying in court and permit the court to allow them under other circumstances. The bill is moving forward but there are still issues to resolve.

### HB2376: victim restitution; stipulated amount; hearings

Would specify that the victim has the right to present evidence and make an argument to the court at proceedings to determine the amount of restitution.

### HB2591: civil traffic violations; alternative service

Would prohibit the suspension or revocation of a person's driving privileges following the completion of an alternate service of process for a photo enforcement violation. The bill will share the same fate as HB2122.

### HB2593: intersection; definition

Would define "intersection" for the purposes of traffic and vehicle regulation.

### SB1057: crimes; culpable mental state; requirement

Would specify the culpable mental state required for an offense if one is not expressly prescribed, or expressly prescribe that it is a strict liability offense, for any new statute or ordinance adopted after January 1, 2017. The bill is moving forward.

SB1228: DUI; drugs; ignition interlock requirement

Would eliminate the ignition interlock device (IID) requirement for a driving under the influence (DUI) violation not involving intoxicating liquor and allow the court to require an IID. The fate of the bill is unclear.

SB1241: photo radar prohibition; state highways

Would prohibit the state or local authority from using a photo enforcement system on a state highway.

SB1257: misconduct involving weapons; public places

Would establish specified exemptions for violations of misconduct involving carrying concealed weapons in public establishments or public events. The bill has not moved through COW.

SB1295: DUI; watercraft; medical practitioner; authorization

Would expand the exemption from DUI or OUI if the drug was prescribed by a licensed medical practitioner who is authorized to prescribe the drug. The bill is not supported by prosecutors.

SB1510: judicial productivity credits; calculation; salary

The language regarding the calculation of judicial productivity credits was deleted in a strike everything bill.

Mr. Landau reminded the committee that the legislative conference calls are held each Friday at 11:45 a.m.

**III. OTHER BUSINESS**

**A. Good of the Order/Call to the Public**

None present.

**B. Next Committee Meeting Date**

Wednesday, May 25, 2016

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

State Courts Building, Room 119

1501 West Washington Street

Phoenix, Arizona 85007

The meeting adjourned at 11:19 a.m.