

AGENDA

ARIZONA JUDICIAL COUNCIL
Arizona State Courts Building
1501 W. Washington Street
Phoenix, AZ 85007

December 10, 2015

Amended: November 30, 2015 **Room: 119**

9:30 a.m. Welcome Chief Justice Scott Bales

Tab No.

(1) Approval of Minutes Chief Justice Scott Bales

Study / Update Session: (Possible Adoption/Action of Various Reports)

9:35 a.m. (2) Arizona Commission on Access to Justice Judge Larry Winthrop

9:55 a.m. (3) 5th Statewide Equitable Treatment ofDr. John Vivian
Minority Youth Report Card

Action Items:

10:15 a.m. (4) Task Force on the Arizona Rules of Mr. William Klain
Civil Procedure Mr. David Rosenbaum

10:45 a.m. (5) Committee on Time Periods for the Mr. Marcus Reinkensmeyer
Electronic Display of Superior Court Case Records

11:05 a.m. (6) Arizona Code of Judicial Administration (ACJA)
- 2-101: Supreme Court Records Ms. Janet Johnson
Retention and Destruction Schedule (new)
- 2-201: Court of Appeals Records Judge Sam Thumma
Retention and Destruction Schedule (new)
- 6-103: Victims' Rights Requirements for
Probation Personnel (amend) Ms. Kathy Waters

11:20 a.m. (7) Capital Case Oversight Committee Judge Ronald Reinstein (Ret.)

11:40 a.m. Electronic eFiling Schedule Ms. Amy Wood

12:00 p.m. Lunch

- 12:30 p.m. (8) State Bar of Arizona Mission and Governance Mr. John Phelps
- 12:40 p.m. (9) Judicial Branch Legislative Update Mr. Jerry Landau
..... Ms. Amy Love
- 1:25 p.m. Call to the Public / Adjourn

*Please call Lorraine Smith
Staff to the Arizona Judicial Council
with any questions concerning this Agenda
(602) 452-3301*

ARIZONA JUDICIAL COUNCIL

Request for Council Action

**Date Action
Requested:**

December 10, 2015

**Type of Action
Requested:**

Formal Action/Request

Information Only

Other

Subject:

Approval of Minutes

FROM:

Lorraine Smith, Staff to the Arizona Judicial Council

DISCUSSION:

The minutes from the October 22, 2015, meeting of the Arizona Judicial Council are attached for your review.

RECOMMENDED COUNCIL ACTION:

Approve the minutes as written.

ARIZONA JUDICIAL COUNCIL

Little America Hotel
2515 E. Butler Ave., Flagstaff Room
Flagstaff, AZ 86004

October 22, 2015

Draft Meeting Minutes

Council Members Present:

Chief Justice Scott Bales
Judge Janet Barton
Judge Michael Brown
Judge Kyle Bryson
David Byers
Judge Louis F. Dominguez
Victor Flores
Brian Furuya *for Geoffrey Trachtenberg*
Michael Jeanes
Jack Jewett

Judge David Mackey
Gary Krcmarik
William J. Mangold, M.D., J.D.
Judge John Nelson
R. Tony Penn
Judge Antonio Riojas, Jr.
Judge Monica Stauffer
George Weisz
Judge David Widmaier

Council Members Absent (excused):

Jim Bruner
Judge Rachel Torres Carrillo
Judge Peter Eckerstrom

Athia Hardt
Mike Hellon
Yvonne R. Hunter, J.D.

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
Michelle Dunivan, PhD
Susan Hunt
Paul Julien
Jerry Landau
Amy Love

Alicia Moffatt
David Svoboda
Lorraine Smith
Kathy Waters
David Withey
Amy Wood

Presenters and Guests Present:

Justice Robert Brutinel
Judge Elizabeth Finn

Mr. Paul Thomas

Chief Justice Scott Bales, Chair, called the meeting to order at 9:00 a.m. in the Flagstaff Room at the Little America Hotel, 2515 E. Butler Avenue, Flagstaff, Arizona. The Chair welcomed those in attendance.

Approval of Minutes

The Chair called for any omissions or corrections to the minutes from the June 15, 2015, meeting of the Arizona Judicial Council. There were none.

MOTION: To approve the minutes from the June 15, 2015, meeting of the Arizona Judicial Council, as presented. The motion was seconded and passed. AJC 2015-16.

Approval of 2016 Meeting Dates

The Council approved the following meetings dates for 2016: March 24, June 20, October 27, and December 8.

Rule 11

Judge Elizabeth R. Finn, Presiding Judge of the Glendale City Court and Mr. Paul Thomas, Court Administrator at the Mesa Municipal Court presented information on the pilot program for Glendale City Court and Mesa Municipal Court to have their Rule 11 proceedings held at their respective courthouses using city court judges acting as Superior Court *judge pro tempore*s.

Judge Finn stated there is no known opposition to this project, and they hope to launch it in January. She noted that they are recommending a regional center in the future for all Maricopa County courts within their jurisdiction.

Judge Janet Barton stated she supports the pilot project, but raised concern with a total shift of resources from her court to their court which could result in slowing down processes at the Superior Court.

Mr. David Byers stated that if the pilot project works well, we will need to find a way to expand it to other courts, and to keep this in mind as the pilot project proceeds.

Judge Mackey stated the need to look at the whole system, i.e., big picture, court resources, and treatment funds.

MOTION: To approve the Rule 11 Pilot Program, as presented. The motion was seconded and passed. AJC 2015-17.

Judicial Branch Legislative Package

Mr. Jerry Landau, Director of Government Affairs and Ms. Amy Love, Legislative Liaison for the AOC, presented 12 proposals that were received for the upcoming legislative session.

Mr. Landau noted that the Council members would be asked to vote on whether to include or exclude the proposals in the Judicial Branch Legislative package.

2016-01: Temporary order; preliminary injunction

MOTION: To approve and include 2016-01: Temporary order; preliminary injunction, as presented. The motion was seconded and passed. AJC 2015-18.

2016-02: Special needs/adult guardianship

MOTION: To table and exclude 2016-02: Special needs/adult guardianship and to rewrite the proposal to address issues and bring back at the December meeting. The motion was seconded and passed. AJC 2015-19.

2016-03: Guardianship of foreign citizens – Withdrawn

2016-04: FCRB sunset

MOTION: To approve and include 2016-04: FCRB sunset, as presented. The motion was seconded and passed. AJC 2015-20.

2016-05: Adult probation; GPS; term

MOTION: To approve and include 2016-05: Adult probation; GPS; term, as presented. The motion was seconded and passed. AJC 2015-21.

2016-06: Adult intensive probation supervision (Parts A, B, and C)

MOTION: To approve and include Parts A and B of 2016-06: Adult intensive probation supervision, as presented. The motion was seconded and passed. AJC 2015-22.

Discussion: Judge David Mackey noted that the Presiding Judges voted to not move forward with this proposal as there were more important issues to pursue, and it was not a good use of our political capital. He stated that he believes any felony that is committed is a danger to the community.

MOTION: To exclude Part C of 2016-06: Adult intensive probation supervision, as presented. The motion was seconded and passed. AJC 2015-23.

2016-07: Child support; probation and court orders

Discussion: Judge Barton explained her proposal and stated the intent was to ensure that child support goes to the appropriate parties. It was noted that there is some discretion within the existing statutory framework to do this. Judge Barton stated she will do some work to flesh this out in Maricopa County. Mr. Byers added that we may find other statutory things to change once it is fleshed out.

MOTION: To exclude 2016-07: Child support; probation and court orders, as presented. The motion was seconded and passed. AJC 2015-24 (2 opposed).

2016-08: Juvenile court; disposition; commitment (Parts A, B, C, D, E)

Discussion: Mr. Landau noted that Parts B and C were withdrawn. Mr. Byers inquired if this could be handled locally by the juvenile court judges.

MOTION: To approve and include Part A of 2016-08: Juvenile court; disposition; commitment, as presented. The motion was seconded and passed. AJC 2015-25.

MOTION: To exclude Part D of 2016-08: Juvenile court; disposition; commitment, as presented. The motion was seconded and passed. AJC 2015-26.

MOTION: To approve and include Part E of 2016-08: Juvenile court; disposition; commitment, as presented. The motion was seconded and passed. AJC 2015-27.

2016-09: CORP; service credit – Withdrawn

2016-10: Entry on records; stipulation; court order – Withdrawn

2016-11: Title 12 statutes; Rules of Civil Procedure (Parts A and B)

MOTION: To approve and include Part A of 2016-11: Title 12 statutes; Rules of Civil Procedure, as presented and authorize Legislative staff to accomplish this as an add-on without introducing a separate bill. The motion was seconded and passed. AJC 2015-28.

MOTION: To exclude Part B of 2016-11: Title 12 statutes; Rules of Civil Procedure, as presented. The motion was seconded and passed. AJC 2015-29.

2016-12: Juvenile court jurisdiction

MOTION: To table 2016-12: Juvenile court jurisdiction and refer back for additional discussion. The motion was seconded and passed. AJC 2015-30.

Interpreter Credentialing Program

Ms. Amy Wood, Caseflow Management Unit Manager, Court Services Division of the AOC, presented an overview of the proposed program, suggested tier levels, fees, and issues and concerns that have been raised.

Ms. Wood asked for the Council's action on the following:

1. Recommend adoption of the model code of ethics for Arizona's court interpreters

Judge Mackey asked that a disclaimer be added regarding court employees having a conversation in a different language, so that they won't be bound by this code of ethics and refuse to assist in these discussions which sometimes come up on an emergency basis when an interpreter is not available to assist.

Mr. Brian Furuya inquired about the Navajo language. He noted this is a huge issue for the northern counties and asked if that is a program Arizona is developing. Mr. Furuya asked if a scholarship program is contemplated for Navajo interpreters who may have widespread financial difficulties.

MOTION: To approve adoption of the model code of ethics for Arizona's court interpreters with the addition of the language suggested by Judge Mackey as a disclaimer. The motion was seconded and passed. AJC 2015-31.

2. Recommend moving forward with a credentialing program for Arizona's court interpreters

Mr. Gary Krcmarik stated that court administrators are supportive of the program, but some rural court administrators are concerned for their on-staff court interpreters who have worked for the past 10-15 years and may not be able to pass the test. Mr. Krcmarik stated that the courts could be impacted by not having interpreters or paying higher costs. He asked that the AOC provide additional training and resources to these individuals to avoid the same issues courts experienced with court reporters in the past.

Mr. George Weisz asked if there is a shortage of interpreters now, and if based on concerns by the Court Administrators, will this increase the shortage. He asked if interpreters can be requested based on tiers they have passed, and if it would cost less for someone with less tiers completed. Mr. Weisz asked if it is worth doing a pilot first.

Mr. R. Tony Penn expressed concern with the transition period. He suggested providing incentive opportunities for current on-staff interpreters and assisting them towards completion.

Judge Louis F. Dominguez asked about the impact on courts and use of the language line. Ms. Wood stated she plans to reach out to these types of companies and talk with them, educate them about the program, and encourage their Arizona staff to go through this credentialing program.

Mr. Byers noted the National Center for State Courts is working towards national credentialing.

Judge Barton stated interpreters are a huge issue in the courts, and there is a shortage. She stated she is in favor of program, but doesn't want it to result in gamesmanship or attempt by counsel to delay proceedings (preference to those who are more qualified). Judge Barton asked that the program be written in such a way that it eliminates these types of games. She raised concern with the 10% pass rate on one of the tests. Judge Barton asked that we make sure we stretch out the one-year probation/interim period if needed so that interpreters have more than one additional opportunity to retake the test.

Judge Monica Stauffer asked about training and practice opportunities for court employees before testing. Ms. Wood stated there will be reference materials, audio tapes for practices, etc.

MOTION: To approve moving forward with a credentialing program for Arizona's court interpreters, as presented. The motion was seconded and passed. AJC 2015-32.

Judge Mackey asked for more discussion on the proposed fee structure in terms of in-state and out-of-state. Mr. Byers noted that an individual hired as a court employee from out of state is considered an in-state person for fee purposes.

3. Recommended fee structure

MOTION: To approve the recommended fee structure, as presented. The motion was seconded and passed. AJC 2015-33.

Time Standards – Phase IV

Justice Robert Brutinel showed a PowerPoint presentation explaining Phase IV, to include the following areas: misdemeanor, criminal post-conviction relief, family law temporary

orders, eviction actions, and civil local ordinance. Justice Brutinel talked about the 3 previous phases.

Ms. Wood noted that there are problems with collecting juvenile delinquency data in terms of reports and having two different computer systems that are structurally different. She added that counties also have different ways of how they do data entry. Justice Brutinel recommended that the Council approve withdrawing this standard and send it back to the workgroup and see what can be agreed on in terms of data we can actually collect.

Justice Brutinel talked about the civil traffic standard and asked that the Council approve withdrawing the 30-day standard.

Judge Barton asked how the Committee came up with the family law temporary order standard because it is more stringent than what the family court rules require.

MOTION: To approve Phase IV and remove the civil traffic standard, as presented. The motion was seconded and passed. AJC 2015-34.

The Chair stated that he will be setting up a committee that will look at the recommendations coming out in January from a multi-year study supported by the Conference of Chief Justices on civil justice. He noted that there are on-going efforts around the country to identify civil justice reforms.

The Chair explained that the new committee will review these efforts with the thought of identifying possible pilot projects and rules changes for Arizona's courts. He stated the cost of litigation is a very important challenge for our courts. The Chair asked the Council members to contact him if they are willing to serve on this committee or have member recommendations.

Call to the Public

The Chair made a call to the public; there was none.

The meeting adjourned at 11:47 a.m.

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
December 10, 2015	<input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Report from the Arizona Commission on Access to Justice (ACAJ)

FROM:

Judge Lawrence F. Winthrop, Chair of the Arizona Commission on Access to Justice

DISCUSSION:

The Arizona Commission on the Access to Justice has been in existence since August 20, 2014. During the last 16 months important accomplishments have been made while other activities require on-going efforts to promote and nurture relationships with court, bar associations, and community partners.

Judge Winthrop will update the Presiding Judges on the following topics:

1. Maricopa County Court Navigator Program
2. AZCourtHelp – Arizona’s Virtual Access & Resource Center
3. Law4AZ Library Project
4. Legal information v. legal advice – “*Q&R Handbook*”
5. Judicial and judicial staff training regarding self-represented litigants
6. Arizona State Charitable Tax Credit
7. On-going projects

RECOMMENDED COUNCIL ACTION:

No recommendations are being made.

PACS-AMERICORPS PROJECT

Status Update on Maricopa County Superior Court Project

LAW LIBRARY RESOURCE CENTER, MARICOPA COUNTY SUPERIOR COURT

November 9, 2015

PACS-AMERICORPS PROJECT

Status Update on Maricopa County Superior Court Project

Overview of the program

The Maricopa County Superior Court Law Library Resource Center (LLRC) received a state AmeriCorps Grant to have 38 AmeriCorps Members in the LLRC to assist self-represented litigants gain access to justice by helping them find legal information and complete and file forms. The program will initially focus on domestic relations and orders of protection. The Members will work 6-10 hours per week, with the goal being to have 2-4 Members actively assisting self-represented litigants at any given time.

Recent Activity

- The grant has been funded and the LLRC is on track with Court staff training. Recruitment has begun to meet the requirement for Member Service Hours over the course of the grant year.
- Various staff members have attended informational sessions at the Career Department at ASU, and Career Fairs at ASU West and ASU Downtown in October. As of November 6th, over 50 applications had been received for the 38 Member positions.
- Pre-enrollment Orientation is planned for November 10th to speak to all the applicants about the importance of and the requirements for the project.
- All needed administrative infrastructure is being put in place. This includes setting up AmeriCorps software, as well as working with Human Resources to process and pay the Members' living expense stipend. The enrollment software should be fully operational by the time recruitment is completed. Human Resources is in the process of verifying that the processes to be used are compliant with grant requirements. Finance is also providing information regarding compliance.

Future Plans

Enrollment and Training Schedule

Once Pre-Enrollment Orientation is complete, applicants will be personally interviewed. By November 30, 2015 the Members will be selected from the applicants that were interviewed. During December, Members will receive a modified in-processing with the Court.

Training will take place the first two weeks of January.

Training topics will include:

- Introduction to AmeriCorps Service
- Justice and Fairness Basics
- Court Ethics
- Introduction to Protective Orders
- Introduction to Family Law

Members will also shadow staff as staff assists self-represented litigants. The goal is to have Members working independently (but with close supervision and assistance of staff) by the end of January 2015.

Planned duties of Members

Staff of the LLRC, together with Judicial Officers and Court Administration, have identified the duties of the Members going forward as follows:

Information Desk (no more than 2 Members working in this area at a time)

- Give information and directions
- Act as guides for navigation to destination
- Distribute resource information and pamphlets
- Proactively offer to help
 - All who come through security
 - Alternatively, if very busy, select groups
 - Elderly
 - Those with children
 - Obvious disabilities
 - Those who seemed confused by security

Protective Order Center (no more than 2 Members working in this area at a time)

- Distribute resource information and pamphlets
- Refer to Domestic Violence Advocate
- Assist with completion of forms
 - Provide information regarding fillable forms and computer prompts, i.e. definitions
 - Review forms for completeness

- Assist with copying and collating
- Act as guides for navigation to destination
 - Clerk of Court
 - Courtrooms
 - Sheriff's Office for service
- Distribute questionnaires
 - Collect
 - Enter data
- Prepare and send email to stakeholders regarding readiness of litigants
 - Both at DT and Regional Courts for comparison
 - Judges, Commissioners, judicial staff, admin

Self-Service Center (no more than 4 Members working in this area at a time)

- Distribute resource information and pamphlets
- Assist with form selection
 - Review FAQs
 - Review checklists if necessary
- Assist with completion of forms
 - Provide information regarding what the prompts are requesting for ezCourt forms
 - Assist with fillable forms for family and criminal
 - Review forms for completeness
- Assist with copying, collating, getting filed (file stamped) and mailing
- Act as guides for navigation to destination for filing
- Prepare and send email to stakeholders regarding readiness of litigants
 - Both at DT and Regional Courts for comparison
 - Judges, Commissioners, judicial staff, admin

Workshops (no more than 2 Members working in this area at a time)

- Assist with hands on computer workshops
 - Provide one-on-one guidance during workshops to clarify instructor's information
 - Work with litigants afterward to provide information
 - Answer informational questions
 - Review for completeness
- Administer pre- and post-tests to attendees
 - Develop tests

- Enter data from test results
- Workshops to be planned for January and February
 - Dissolution w/out children
 - Dissolution w/ children
 - Service of process
 - Service of process when opposing party cannot be located
 - Injunction against harassment
 - Collection of child support
 - Trial preparation

General (no more than 3 Members working in this area at a time)

- Recruit other (non-member) volunteers
- Recruit and coordinate speakers

“AZCourtHelp” – Arizona’s Virtual Access & Resource Center

ACCESS TO JUSTICE CHALLENGE: Many people cannot afford legal representation in court proceedings. The problem is even more profound in remote and rural areas where geographical barriers, unemployment, transportation issues, and child care concerns are additional burdens faced by litigants. Consequently, the courts must be prepared to assist self-represented individuals in understanding court processes and legal procedures in ways that make it more likely they will pursue self-help if information is easily accessible and meets their needs.

PROJECT VISION: This project will integrate the current Coconino County Law Library space into an expansive physical and virtual resource center. The space will include a small reception area and seating for the public, as well as public access computer terminals for filling-out paperwork, and public information racks for forms packages, referrals and services. The center will be reinforced and supported by an online presence -- a comprehensive webpage that will host a repository of statewide and county-specific self-help videos, low-income service referrals, legal information links, as well as standardized forms and instructions. The physical space will continue to operate as a law library and self-help center; however it will be re-configured to allow room for people to participate in “live” workshops and scheduled clinics. Technology will be incorporated into this project to allow streaming of workshops and interaction with participants.

PROJECT PARTNERS: The Arizona public library system will act as a conduit for public consumption of workshops at local public libraries, even in remote rural counties. Additionally, the community will have an opportunity to learn about and apply for services from the Division of Child Support Services, as another work area will be identified for a caseworker to engage and assist patrons. The physical space will also host a place for volunteer attorneys (from CLS, DNA, SALA, State Bar of Arizona, and local bar association) to meet one-on-one, provide clinics and educational opportunities on a pro bono basis.

Project Milestones:

- Applied for and was awarded an AmeriCorps VISTA grant to assist with implementation of project. The new VISTA member will start working in the center the first week of November.
- The current law librarian was re-classified and promoted to the position of Law Library Coordinator (LLC). The LLC will continue performing all law librarian duties in addition to manage and directly supervise grant members’ activities, including reporting requirements, and will oversee the coordination of the virtual resource center’s projects.
- A task force was established to assist with implementation of the project. Tasks completed:
 - Developed project plan with timeline of deliverables that correspond to the VISTA member’s assignments.
 - Determined delivery methods for training opportunities to be initial focus in Phase 1. (Streaming and live “legal talks.”)
 - “Branded” the center’s name to capture the essence of what the resource can provide to the court community and public.

- Reviewed floor plans of the physical space and brainstormed options for configuration. Obtaining quotes for build-out and expect estimates by November 13.
- Working with AOC ITD to determine technology requirements for streaming live trainings (sending out and for remote sites receiving) and internet functionality for public terminals.
- Conducting outreach to court administrators to identify courts that may be interested as serving for pilot locations for webinars and interactive “legal talks.”
- Exploring collaboration with the Arizona Foundation for Legal Services & Education for website design and site location in order to avoid duplication of court resources and leverage long-standing relationship.
- Formulating research questions for DCSS staff in order to determine if IV-D monies available for funding current staff and new staff to sustain the project.
- Obtained list of equipment and internet connectivity available to Arizona public library partners.
- Identified resources and contact people for VISTA representative. Arranging connections between key stakeholders and making introductions for future relationships.



LAW4AZ: ADVANCING ACCESS TO JUSTICE

ARIZONA STATE LIBRARY, ARCHIVES, AND PUBLIC RECORDS
A DIVISION OF THE SECRETARY OF STATE

PRESENTED BY: MARGARET A. KIEL-MORSE, JD., MLIS



ACCESS TO JUSTICE AND LEGAL INFORMATION

- Access to Justice and Self-Represented Litigants (SRLs)**
- Arizona has 0.58 legal aid attorneys per 10,000 people living in poverty¹
 - Nearly 1 out of 5 Arizonans lives in poverty²
 - 60% of people earning \$50,000 or less attempted to handle their legal issues on their own or were forced to ignore them³
 - Study by the Arizona Bar Foundation found that 75% of persons seeking legal aid were offered only limited assistance or were turned away⁴
 - The District of Arizona had the second highest self-represented filing rate out of all US Bankruptcy Court Districts in 2014⁵
 - 79% of divorce cases in Maricopa County were filed by SRLs in 2013, and judicial officers estimated that less than 10% of SRLs arrive prepared for trial⁶

Access to Legal Information in Public Libraries

- Libraries are trusted and familiar places for seeking information, with statewide data reporting for 2014:
- 27.6 million visits to libraries statewide
- 7.7 million use sessions of public computers
- 1.6 million reference transactions
- Public libraries also requested assistance with legal information:
- 51% of libraries reported that they either offer access to legal information, but need more training, resources, and guidance, OR do not offer access, but would like to⁷
- In a survey of library staff participating in Law4AZ this year:
 - 60% reported they were uncomfortable to very uncomfortable handling legal reference questions
 - 88% reported difficulty in responding to law-related questions
 - Reasons included lack of familiarity with topic and/or the resources, and being unsure of how much assistance to provide⁸

Law4AZ addresses the need to make legal information and the court system more accessible to the public, by providing training for library staff and programming for the public.

BENEFITS OF LAW4AZ

Law4AZ promotes collaboration between the State Library, County Law Libraries, Public Libraries, and the Legal Community.

For Public Library Staff

- ★ Increase knowledge and awareness of legal information resources
- ★ Enhance ability to assist patrons with law-related questions
- ★ Make reputable referrals

For the Public

- ★ Raise awareness of legal information sources available at public libraries
- ★ Learn steps for researching their law-related questions
- ★ Know how to get reputable referrals and apply for legal aid

For the Courts and Legal Community

- ★ Self-represented litigants are better informed
- ★ More accurate filings and better communication enhances efficiency
- ★ Courts and attorneys can participate in their communities

SOURCES:

1. Justice Index, Number of Attorneys for People in Poverty, National Center for Access to Justice, <http://www.justiceindex.org/findings/attorney-access/>
2. U.S. Census Bureau, Poverty Status in the Past 12 Months 2013 Arizona, 2009-2013 5-Year American Community Survey, S1701
3. 2013 Legal Needs Assessment, Arizona Bar Foundation, <http://www.sbarfoundation.org/docs/default-source/2013-legal-needs-assessment.pdf?sfvrsn=2>
4. Voicing a Need for Justice, Arizona Bar Foundation, 2007
5. United States Bankruptcy Court, District of Arizona, <http://www.usbankruptcycourts.com/home/home.cfm>
6. Examining Dissolutions Amongst Self-Represented Litigants, Nicole Zoe Garcia, 2014, <http://www.waacs.org/~/media/Files/PDF/Education%20and%20CARE/2015apers/2014/Dissolutions%20among%20SRLs/Represented%20Litigants.aspx>
7. Arizona Public Library Statistics, 2014, Arizona State Library, Archives, and Public Records
8. Law4AZ Pre-Training Survey for Public Library Staff (2014)
9. Law4AZ Post-Training Survey for Public Library Staff (2014-2015)
10. Law4AZ Public Program Attendee Surveys¹⁰

PART ONE: TRAINING FOR LIBRARY STAFF

The six counties of Coconino, Gila, Graham, Greenlee, Maricopa, and Yuma have participated in training for public library staff since 2014. Training for library staff consisted of three sessions. Session One was conducted in person at a library in each county, by a law librarian from the State Library. Sessions Two and Three were conducted by the same law librarian online in a webinar format. Each session included a lecture portion, group exercises to facilitate discussion, handouts, and practice exercises for the library staff to try on their own.

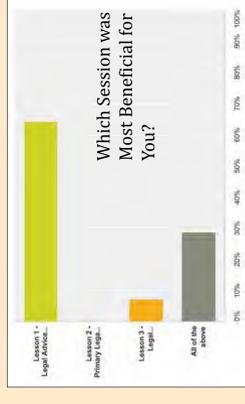
- Session One**
- Introduce the Law4AZ program
 - Meaning of:
 - "legal information"
 - "legal advice"
 - "unauthorized practice of law"
 - "Dos and Don'ts" of legal reference
 - Practice exercises!

- Session Two**
- Overview of Arizona's court system
 - State case law and statutory law
 - How to decipher legal citations
 - Where to find cases and statutes
 - More practice exercises!

- Session Three**
- Online sources for forms, cases, statutes, and more
 - Locate referral sources and walk through legal aid intake online
 - Scenarios to put it all together
 - Even more practice exercises!

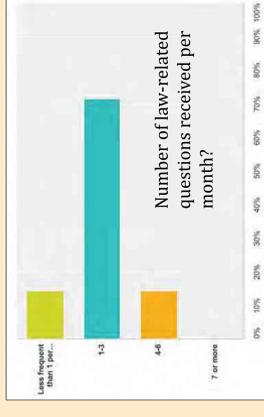
The mission of Law4AZ is to increase access to justice statewide by connecting people to legal information through their public libraries.

Results of Library Staff Surveys Post-Training⁹



Average Rating of Overall Effectiveness of Program: 7.4/8

Average Improvement in Confidence Using Legal Resources: 7/8



64% Have used the skills and resources demonstrated since attending training sessions

100% of participants would recommend the program to other librarians

Results of Public Program Attendee Surveys¹⁰

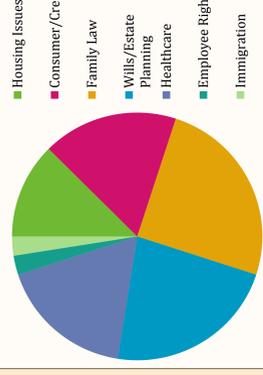
Average Rating of Overall Quality of Program: 6.9/8

70% Reported that their knowledge and understanding of topic was enhanced very much

Remaining 30% reported their knowledge and understanding was enhanced at least somewhat

95% Reported they would be interesting in attending additional programs

Topics of Interest for Future Programs



PART TWO: PROGRAMS FOR THE PUBLIC

LAW4 YOU!
Learn about legal information resources, Lawyer Referral Services, and Legal Aid Organizations

Celebrate Law Day at Your Library!
Stay for a Q&A Session on Basics of Arizona Law
Flagstaff City - Coconino County Public Library
300 West Aspen Ave., Flagstaff
May 6, 2015, 6:30pm-8:30pm

LEGAL AID OF ARIZONA

LAW4 YOU!
Learn about legal information resources, Lawyer Referral Services, and Legal Aid Organizations

Arizona Family Law: Divorce
Join us for a free legal seminar on:
• Process of Divorce
• Establishing Custody
• Determining Child Support

Presented by Attorneys Billie Tarasick of Modern Law and Colby Hayes of Hayes Esquire.
Tuesday, May 5, 2015
6:00 pm - 8:00 pm
Dobson Ranch

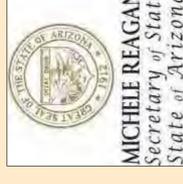
LEGAL AID OF ARIZONA

After each county completed the training in Part One, the State Library assisted the public libraries in setting up attorney panels for the public. The State Library worked with the Arizona Bar Foundation, Legal Aid of Arizona, Community Legal Services, and other community partners to locate attorneys interested in participating.

THANKS TO:

- ★ State Library will continue working with the participating libraries to plan more attorney panels for the public and other workshops on legal information and research.
- ★ State Library will introduce the remaining nine counties to the program, beginning with the training sessions for library staff
- ★ Continuation of this program will help address the legal information needs of underserved rural areas around Arizona.

This project is supported by the Arizona State Library, Archives & Public Records, a division of the Secretary of State, with federal funds from the Institute of Museum and Library Services.



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Q&R Handbook



*How to Respond to Common Questions
from Court Customers*

DRAFT

This Question and Response (Q&R) Handbook is a reference for court personnel to use while helping our customers, the public.

Of course, this handbook cannot anticipate all of the possible questions that court users may ask. When new questions arise, consult your supervisor. There are questions and responses that you may wish to annotate, supplement, or provide additional information that is appropriate for your specific court, with the approval or at the suggestion of your supervisor.

When you are uncertain if you are being asked to give legal advice, please suggest that the one asking the question consult an attorney.

What is legal information?

Legal information is communication of facts about court procedures, timing, and resources. It includes information contained in court records, examples of forms and pleadings, informational pamphlets, copies of statutes and explanation of court rules, procedures, practices and due dates.

What is legal advice?

1. A written or oral statement that interprets some aspect of the law, court rules, court procedures, or recommends a specific course of conduct in an actual or potential legal proceeding.
 2. A written or oral statement that applies the law to an individual person's specific factual circumstances.
 3. A written or oral statement requires the person giving advice to have knowledge of the law and legal principles beyond familiarity with court requirements and procedures.
-

TODAY'S COURT SYSTEM HAS THREE LEVELS

Level 1—Limited Jurisdiction. Justice of the peace courts and municipal (or city) courts have limited jurisdiction, meaning that their authority is restricted to certain cases. The cases these courts decide may be limited by the subject, the amount of money involved, or the sentence that can be imposed. They are non-record courts and do not have to make permanent records of court proceedings, although some courts do.

Level 2—General Jurisdiction. The general jurisdiction court is the Superior Court of Arizona, a statewide trial court. This court hears the widest variety of cases and keeps permanent records of court proceedings. Each county has at least one superior court facility, and it is referred to by its county location—for example, the Superior Court in Maricopa County.

Level 3—Appellate Jurisdiction. The Court of Appeals and the Supreme Court are Arizona's appellate courts. The state appellate courts have jurisdiction to review trials and decisions appealed to them. Most appeals heard by the two divisions of the Court of Appeals come from the superior court, except for death penalty appeals and some cases involving elected officials and disputes between counties, which go directly to the Supreme Court.

To appeal a decision from the Court of Appeals, the appellant must file a petition for review requesting a Supreme Court hearing. The Supreme Court justices evaluate the petitions for review and decide whether they will hear the case. Unlike the Court of Appeals, the Supreme Court is not required to hear every appeal.



WELCOME TO THE ARIZONA COURTS

We will be happy to help you if we can. As we must be fair to everyone, we are allowed to help you only in certain ways.

This is a list of some things court personnel can and cannot do for you:

- We can** explain and answer general questions about how the court works.
 - We can** give you general information about court rules, procedures, and practices.
 - We can** provide you with the number for lawyer referral services, legal aid programs, and other services where you can get legal information.
 - We can** provide court schedules and information on how to get a case scheduled.
 - We can** give you information from your case file that is not restricted.
 - We can** provide you with court forms and instructions that are available.
 - We can** usually answer questions about court deadlines.
-

- We cannot** tell you whether or not you should bring your case to court.
- We cannot** tell you what words to use in your court papers or whether they are correct.
- We cannot** tell you what to say in court.
- We cannot** give you an opinion about what will happen if you bring your case to court.
- We cannot** conduct legal research for you.
- We cannot** talk to the judge for you or let you talk to the judge outside of court.
- We cannot** alter court documents.

Our ability to assist you will depend on the time and resources available as well as the scope of our responsibilities, knowledge and experience.

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SECTION 1 FEE WAIVERS AND DEFERRALS

1-Q. What is a fee deferral or waiver?

1-R. Arizona law requires the court to charge filing fees, service fees and other fees to cover costs. Court fees are due at the time of filing or at the time of requesting service. If you wish to file a civil case (family court, small claims, non-guardianship juvenile, tax, and mental health) and you cannot afford to pay the court fees at the time of filing you may apply for a fee deferral or waiver. The court will review your individual situation as presented in the application, including participation in a qualifying program, income and extraordinary circumstances, to determine if you qualify for a fee deferral or waiver.

Resources:

- [Fee Deferral and Waiver Forms](#)

2-Q. What is the difference between a fee deferral and a fee waiver?

2-R. If the court grants you a deferral, payment may be postponed to the end of the case or you may be required to pay a portion of the fee now and be given additional time to pay the balance. If you are awarded a waiver you will not be required to pay the fees.

Resources:

- [Fee Deferral and Waiver Forms](#)

3-Q. How do I get a fee deferral or fee waived?

3-R. Forms are available online for many courts, or you can access forms on the Arizona Judicial Branch webpage.

Resources:

- [Fee Deferral and Waiver Forms](#)
- Maricopa County [Fee Deferral and Waiver Forms](#)
- Pinal County Justice Courts Fee [Deferral and Waiver Forms](#)

4-Q. What kinds of fees are waived or deferred?

4-R. Filing or answer fees, Constable service fees (with some restrictions), summons or subpoena issuance fees, appeal preparation filing fees, fees for obtaining one certified copy of a temporary order in a domestic relations case and fees for obtaining one certified copy of a final order, judgment or decree in all civil proceedings.

SECTION 2 PROCEDURAL GUIDANCE

1-Q. What proof or evidence do I bring to court with me?

1-R. You can bring whatever witnesses, documents, and other evidence you think support your case. We can't help you decide what to bring. It may be helpful to read the rules regarding evidence for your case type.

Resources:

- [Arizona Court Rules](#) web page
- [Rules of Evidence](#) in Courts in the State of Arizona
- [Rules of Family Law Procedure](#)
- Arizona Revised Statutes [Title 25](#) - Marital and Domestic Relations

2-Q. When do I submit my proof or evidence to court personnel before court?

2-R. Read your court orders carefully to see if the judge ordered you to submit evidence ahead of time in your specific case. Unless you have an emergency hearing, you will almost always need to submit copies of your exhibits to the judge's clerk before the hearing so they can be marked.

Resources:

- [Arizona Court Rules](#) web page
- [Rules of Evidence](#) in Courts in the State of Arizona
- [Rules of Family Law Procedure](#)
- Arizona [Clerks of Superior Court](#)

3-Q. I received an inactive notice – what am I supposed to do now?

3-R. If no action has been taken in your case or you haven't served your court papers, the court might notify you that your case is about to be dismissed. That notice explains your options to stop your case from being dismissed.

4-Q. When am I supposed to file the affidavit of default?

4-R. You can file for default if the other party hasn't responded within 20 days of being served, or 30 days if they were served outside of Arizona.

5-Q. I have a disability that prevents me from filling out this form. Would you fill it out for me?

5-R. We can read you exactly what the form says and fill in the blanks with exactly the words you give us. We can't help you understand what the form means or advise you on what to put in the blanks or what words to use. (If court personnel filled out the form for the customer, please state on the form that you helped them by writing their words on the form exactly as they said them to you.)

6-Q. Where can I find a QDRO (Qualified Domestic Relations Order) form?

6-R. The U.S. Department of Labor web site provides some direction to sample forms and other assistance. A sample of a QDRO form can be found for Pinal County at the link below. Another reference is in the Arizona Legal Forms which most Arizona law libraries will have available.

Resources:

- [U.S. Department of Labor](#)
- [Sample Pinal County QDRO form](#)
- Arizona Legal Forms – Volume 4A, Chapter 10

7-Q. Would you look over this form and tell me if I did it right?

7-R. Court personnel can take a quick look to see if there are any obvious blanks that you've missed. Only an attorney can make sure this is complete and correct, and only an attorney can review *how* you've filled in the blanks.

8-Q. I want to talk to the judge. Where is the office?

8-R. To ask the judge to do something, you need to file a written request with the clerk of court. To ensure that the court process is fair and impartial, the judge isn't allowed to talk to one side without the other side being present.

9-Q. I know I can't talk to the judge, but you're nice – could you please take this message for me?

9-R. Court personnel are not allowed to act on behalf of either side on a case. Court personnel must remain neutral and not give one side an advantage over the other. You may be able to put the request in writing to file in court, with a copy provided to the other side.

10-Q. What is “*ex parte*” communication?

10-R. It is a Latin term that means communication with the court by one side without the presence or knowledge of the other side. In most cases *ex parte* contacts with the judge are not allowed in order to remain neutral.

11-Q. What will the judge say?

11-R. We can't predict what the judge will decide. You can research the laws that might guide the judge's decision in your particular case.

12-Q. How do I file for default?

12-R. You can file for default 20 days after you served the other party (30 days if you served them out-of-state). To file for default, file an Application for Entry of Default and Entry of Default, then mail a copy to the other party. From the day you file the Application, the other party has 10 business days to file a Response, otherwise default will be entered against them, and the case will go forward without their input. The Clerk of Court can tell you the filing fee if there is one. Your local court might have forms and instructions for default.

13-Q. Should I get a lawyer?

13-R. You're not required to have a lawyer. It's up to you to decide whether you want to hire a lawyer. We can't help you decide what's best in your situation. Your local court might provide a phone number for an attorney referral service and your local court might have a list of low-cost or no-cost legal services.

Resources:

- Maricopa County Bar Association Lawyer Referral Service
602-257-4434 - <http://maricopalawyers.org>
- Pima County Bar Association Lawyer Referral Service:
520-623-4625 - <http://www.pimacountybar.org>
- Arizona Foundation for Legal Services & Education:
866-637-5341 - www.azlawhelp.org

14-Q. I can't afford an attorney. Can you tell me what to do?

14-R. If you know what you want to do, we can tell you about procedures, but we can't help you decide what to do or counsel you on your situation. Your local court might have a list of low-cost or no-cost legal services, or go to [azlawhelp.org](http://www.azlawhelp.org).

15-Q. I want a court-appointed attorney assigned. How do I get one?

15-R. You have a right to a court-appointed attorney only in certain types of cases. When you're in court, you can ask the judge to appoint an attorney for you, and the judge will let you know if that's an option in your case.

16-Q. I need a good lawyer. Who is the best?

16-R. We can't recommend a specific lawyer. We can just give you a list of lawyers who work on the type of law you need help with. Your local court might provide a phone number for an attorney referral service, and your local court might have a list of low-cost or no-cost legal services.

Resources:

- Maricopa County Bar Association Lawyer Referral Service
602-257-4434 - <http://maricopalawyers.org>
- Pima County Bar Association Lawyer Referral Service:
520-623-4625 - <http://www.pimacountybar.org>
- Arizona Foundation for Legal Services & Education:
866-637-5341 - www.azlawhelp.org

17-Q. I'm filing this document asking the court to do something. Does that make me the plaintiff on this filing?

17-R. The person who started this case at the very beginning will always be the plaintiff or petitioner, even when, in family law cases, the divorce or paternity action is final. If the parties are coming back to the court and starting a new post-decree or post-order case, the original plaintiff or petitioner will remain the plaintiff or petitioner. (Unless conciliation is filed in a divorce case).

18-Q. What is a warrant?

18-R. A warrant is an order from the court to law enforcement to take someone or something into custody. Some warrant information is forwarded to law enforcement agencies throughout Arizona. For example, the court may order a bench warrant for law enforcement to arrest someone who failed to appear in court, or the court may issue a search warrant for law enforcement to seize and remove property from a person, place, or thing.

19-Q. It says "relief requested" next to this blank on the form. What do I put there?

19-R. That blank is asking you to write in your own words what you're asking the court to do. "Relief requested" is your chance to write in your own words what you're asking the judge to do. Court personnel cannot tell parties what words to use. If you have questions about what you can ask for in a case, you may consult an attorney.

20-Q. What is the difference between a petition and a decree?

20-R. A petition is a request, usually written, that a party files asking the court to do something. A decree is an order from the court detailing the parties' status and obligations.

21-Q. I have asked you several questions and you won't answer them. Why aren't you more helpful?

21-R. Only an attorney is allowed to give you certain kinds of help. We can tell you facts about options, procedures, and forms, but only an attorney can interpret the law or how it applies in your specific case, and only an attorney can help you decide what's best in your situation. Court personnel must remain neutral in all situations. Many questions

would require court personnel to explain or interpret the law or how the law would apply in the party's case. To do so would constitute legal advice, which court personnel may not provide.

22-Q. Where can I find information on Arizona's laws and rules?

22-R. Arizona's statutes (laws passed by the state legislature) are available in any law library and many public libraries. They may also be viewed at the Arizona State Legislature's web site. The *Arizona Rules of Court* contain the procedures that litigants must follow in Arizona courts and are available in any law library and many public libraries.

Resources:

- [Arizona State Legislature statutes](#)
- [Arizona Court Rules](#) web page

**SECTION 3
SCHEDULING AND COURT APPEARANCES**

1-Q. Do I have to be in court today?

1-R. Court personnel may review whatever notice the party has to determine whether the party must appear in court and where the hearing (if any) will be held. Court personnel may also have access to the judicial calendar for the time period in question.

2-Q. Can I reschedule (continue) my hearing to a later date?

2-R. The judge decides whether or not to continue a hearing. You may file a written request with the clerk or court and provide a copy of the request to the other side, and the judge will consider the request.

**SECTION 4
SEALED RECORDS**

1-Q. Can I see a sealed file (for example, an adopted person is seeking information)?

1-R. Court personnel are not authorized to provide sealed records to the public. Local courts and judges may have different requirements, including an informal written request or a formal motion before allowing a court customer to view sealed information. The court customer's written request may include the following:

- Sufficient information for the judge to determine whether such a record exists (e.g. nature of the case; case number; names of parties; dates of possible case filings, judgments or events; date of birth);
- The reason(s) supporting the court customer's right to view the sealed record; and
- The court customer's name, address, and phone number.

SECTION 5 SUBPOENAS

1-Q. What are subpoenas?

1-R. Subpoenas are orders to witnesses to give testimony in court or at a deposition. They are also an order for someone to submit documents to the court or the requesting party.

2-Q. How do I subpoena someone?

2-R. A subpoena is issued by the clerk's office. Some clerks' offices have the subpoena form available, but the clerk's office does not prepare the form. The side wanting the subpoena needs to prepare it, have it issued by the clerk's office, and make arrangements to have it served. The clerk's office can inform you of the current filing fee, if any, for issuing the subpoena.

3-Q. Where can I find a Subpoena Duces Tecum form for a family case?

3-R. The Maricopa County Self-Service Center has this form available online.

Resources:

- [Subpoena Duces Tecum](#)

SECTION 6 DOMESTIC VIOLENCE OR HARASSMENT

1-Q. What's the difference between a restraining order and a protective order?

1-R. A restraining order is simply another term for an Order of Protection or an Injunction Against Harassment, which are protective orders in Arizona. Other states call them restraining orders, protection from abuse orders, and similar names.

Resources:

- Criminal Harassment [A.R.S. § 13-2921](#)
- Injunction Against Harassment [A.R.S. § 12-1809](#)
- Injunction Against Harassment [Forms](#)
- Injunction Against Workplace Harassment [A.R.S. § 12-1810](#)
- Protective order [forms](#) (English, Spanish, Arabic, Chinese, Vietnamese)

2-Q. What is an Order of Protection?

2-R. It is an order used for protection when there is a family relationship or a romantic or sexual relationship between the plaintiff and the defendant. The plaintiff must file a petition stating how an act of domestic violence was threatened or committed against the plaintiff within the last year. If a family or a romantic or sexual relationship do not apply, an Injunction Against Harassment is an alternative if the defendant has committed a series of acts of harassment against the plaintiff. The plaintiff must file a petition and then appear before a judge to explain why an Order of Protection is needed. If the judge finds that the defendant may commit or has committed an act of domestic violence, the judge can issue an Order of Protection that:

- Orders the defendant not to commit acts of domestic violence,

- Gives the plaintiff exclusive use of a house that both people previously shared.
- Prevents the defendant from coming near the plaintiff's house or apartment, place of employment, or school,
- May prohibit the defendant from possessing guns, and
- Includes any other relief necessary for the plaintiff's protection.

The Order of Protection is not in effect until it is personally served on the defendant. Once served, the defendant has a right to a hearing. After a hearing, the judge may order the defendant to obtain counseling.

Resources:

- Arizona Judicial Branch [Domestic Violence](#) webpage
- [Arizona Coalition to End Sexual and Domestic Violence](#) webpage
- [Address Confidentiality Program](#) (Secretary of State)
- [Arizona Rules of Protective Order Procedure](#)

3-Q. What is a domestic violence crime?

3-R. Arizona law currently includes 30 crimes, that when combined with a family or a romantic or sexual relationship, equal domestic violence. Domestic violence includes assault and aggravated assault; harassment and aggravated harassment; aggravated domestic violence; child or vulnerable adult abuse; criminal damage; criminal trespass; dangerous crimes against children; custodial interference; disobeying a court order; disorderly conduct; endangerment; kidnapping; stalking; surreptitious photographing; threats and intimidation; unlawful imprisonment; sexual assault; unlawful distribution of images; neglect, abandonment, or cruel mistreatment of animals; preventing or interfering with use of a telephone in an emergency; telephone harassment; and murder, manslaughter, and homicide.

Resources:

- Domestic violence [A.R.S. § 13-3601](#)

4-Q. What is the relationship test for an Order of Protection?

4-R. The plaintiff and the defendant must have one of the following relationships:

- married now or in the past
- live in the same household now or lived in the same household in the past
- parents of a child in common
- one party is pregnant by the other
- the parties are related by blood or marriage (such as parent, in-law, brother, sister, grandparent, step-parent, step-sibling)
- the parties have a current or previous romantic or sexual relationship

Resources:

- [Things You Should Know About Protective Orders](#) booklet

5-Q. How do I ask for an Order of Protection?

5-R. Fill out the form called a petition provided by the court, and return it to court staff. It's important to know that a copy of the petition will be given to the defendant if an Order of Protection is issued and sent out for service. Although an order may protect more than one person (one plaintiff and other protected persons), it can be issued

against only one person. A separate petition must be completed for each person against whom you want to file.

Each petition must have:

- The defendant's name.
- The defendant's date of birth (or a reasonable estimate).
- A specific statement listing all acts and approximate dates of domestic violence that the defendant has committed against you within the past year. (The one-year requirement may be waived if the defendant is out of state, incarcerated, or good cause is shown.)
- Your address and telephone number so the court can contact you if the defendant requests a hearing. (Upon request, this information will be withheld from the defendant.)

An address, if known, at which the defendant can be legally served with the court's order.

Resources:

- Protective order [forms](#) (English, Spanish, Arabic, Chinese, Vietnamese)

6-Q. How long is the Order of Protection in effect?

6-R. If the judge issues the Order of Protection, the defendant must be served with the order before it will be effective. If it is not served, it will expire one year from the date the judge issued it. Once an order has been served, it will be in effect for one year from the date it was served. A private process server or local law enforcement may serve the order. A law enforcement agency cannot charge a fee for serving an Order of Protection. If hiring a private process server, the plaintiff is responsible for delivering the defendant's copy of the order to the process server and for paying a service fee and mileage.

Resources:

- [Things You Should Know About Protective Orders](#) booklet

7-Q. What if the defendant is in jail?

7-R. If the plaintiff believes that the defendant is in jail, the plaintiff can ask jail staff to serve the defendant. Court staff may be able to direct the plaintiff to the appropriate jail location. If the defendant is in the process of being released, there may not be enough time to have service completed at the jail. If not, the plaintiff has one year in which to serve the defendant by requesting service from a law enforcement agency or hiring a private process server.

8-Q. What do I do if the defendant violates the Order of Protection once it is in effect?

8-R. Violation of the court order is a criminal charge, and law enforcement must be notified. If you are in immediate danger, call 9-1-1.

Resources:

- [Safety plan](#)
- [Safety plan](#) (Spanish)

9-Q. What if the other person contests the order?

9-R. The defendant may request a hearing on the order one time during the year in which it is in effect. A hearing will be held within five days (if exclusive use of the residence has been ordered) or ten business days.

10-Q. What if the plaintiff and the defendant are in the process of divorce?

10-R. If a protective order was issued by a municipal or a justice court and a petition for dissolution or separation of marriage or a maternity or paternity action is filed in superior court, one of the parties must notify the issuing court immediately. The protective order proceedings then will be transferred to superior court and heard with the family court case.

11-Q. What is an Injunction Against Harassment?

11-R. An Injunction Against Harassment is a court order that is issued to prevent one person from harassing another person. The plaintiff must file a petition, explaining specifically how the defendant has harassed the plaintiff and then appear before a judicial officer to explain the reason for the request. If the judge determines that a series of acts of harassment have been committed by the defendant against the plaintiff over a period of time, the judge can issue the order. The injunction is not in effect until it is served on the defendant. Once served, the defendant has a right to a hearing.

Resources:

- Criminal Harassment [A.R.S. § 13-2921](#)
- Injunction Against Harassment [A.R.S. § 12-1809](#)
- Injunction Against Harassment [Forms](#)
- Injunction Against Workplace Harassment [A.R.S. § 12-1810](#)
- Injunction Against Workplace Harassment [Forms](#)

12-Q. What is harassment?

12-R. There are several different types of harassment under Arizona law: criminal harassment, Injunction Against Harassment and Injunction Against Workplace Harassment. You will need to determine which definition applies to your situation and then fill out the correct petition.

For purposes of an Injunction Against Harassment, harassment involves a series of acts that happened over any period of time that are purposefully directed at a specific person. The acts are those that serve no legitimate purpose and would cause a reasonable person to be seriously alarmed, annoyed, or harassed. A single incident, no matter how bothersome, does not constitute harassment for purposes of a protective order.

13-Q. How do I file for an Injunction Against Harassment?

13-R. Fill out the petition provided by the court and return it to court staff. It's important to know that a copy of the petition will be given to the defendant if an Injunction Against Harassment is issued and sent out for service. Although an injunction may protect more than one person (the plaintiff and other protected persons), it can be issued against only one person (the defendant). A separate petition must be completed for each person against whom you want to file.

Each petition must have:

- 1) The defendant's name.
- 2) The defendant's date of birth (or a reasonable estimate).
- 3) A specific statement showing events and dates of the acts constituting the alleged harassment.
- 4) Your address and telephone number so the court can contact you if the defendant requests a hearing. (Upon request, this information will be withheld from the defendant.)
- 5) An address, if known, at which the defendant can be legally served with the court's order.

Resources:

- Injunction Against Harassment [A.R.S. § 12-1809](#)
- Injunction Against Harassment [Forms](#)

14-Q. What if I don't know where the person I am filing against lives?

14-R. If you do not know the defendant's address, you should keep a copy of the injunction. As soon you find out the address, you can contact a private process server or law enforcement so they can try to serve the defendant.

15-Q. How long is the Injunction Against Harassment in effect?

15-R. If the judge issues the Injunction Against Harassment, the defendant must be served with the order before it will be effective. If it is not served, it will expire one year from the date the judge issued it. Once the injunction has been served, it will be in effect for one year from the date it was served. A private process server or local law enforcement may serve the order. If using a private process server, the plaintiff is responsible for delivering the defendant's copy of the order to the process server and paying a service fee and mileage. Unless the relationship between the plaintiff and the defendant is a dating relationship, law enforcement will also charge a fee for service of an Injunction Against Harassment.

16-Q. What do I do if the defendant violates the injunction once it is in effect?

16-R. Violation of the court order is a criminal charge, and law enforcement must be notified. If you are in immediate danger call 9-1-1.

17-Q. What if the other person objects to the injunction?

17-R. The defendant may request a hearing on the injunction one time during the year in which it is in effect. A hearing will usually be held within ten business days from the date requested.

18-Q. What do I do if my child is being harassed by a bully at school?

18-R. Arizona law requires schools to have policies and procedures to prevent students from bullying, harassing, and intimidating other students in schools, on school grounds, on school buses, at school bus stops, and at school-sponsored activities and events. This includes harassment by electronic means on school networks and forums. Each school is required to have a procedure for students, parents and teachers to report, in confidence, bullying behavior to school officials. If the bullying acts threaten or actually cause injury to a person or property, then more severe penalties are called for and carried out under Arizona's criminal laws.

Resources:

- Powers and duties of school district governing boards [A.R.S. § 15-341\(37\)](#)
- Criminal disruption of an educational institution [A.R.S. § 13-2911](#)

19-Q. What is an Injunction Against Workplace Harassment?

19-R. It is an injunction filed by an employer or the owner of a business or operation. It is similar to an Injunction Against Harassment, except that it protects the employer, employees, people coming into the place of business, or employees who are performing official work duties elsewhere. For purposes of an Injunction Against Workplace Harassment, harassment means a single threat or act of physical harm or damage or a series of acts over any period of time that would cause a reasonable person to be seriously alarmed or annoyed.

Resources:

- Injunction Against Workplace Harassment [A.R.S. § 12-1810](#)
- Injunction Against Workplace Harassment [Forms](#)

**SECTION 7
SMALL CLAIMS AND CIVIL CASES**

1-Q. How do I file a small claims case?

1-R. You start a small claims case by filing a Complaint with Justice Court. Your local Justice Court may have forms and instructions.

Resources:

- General information [Justice Courts](#) in Arizona
- [Mohave](#) County Small Claims information and procedures
- Mohave County [Plaintiff flowchart](#)
- Mohave County [Defendant flowchart](#)
- [Pinal](#) County Small Claims information and procedures

2-Q. It says “relief requested” next to a blank on the form. What do I put there?

2-R. “Relief requested” is your chance to write in your own words what you’re asking the judge to do. Court personnel cannot tell parties what words to use. If you have questions about what you can ask for in a case, you may consult an attorney.

3-Q. I have a disability that prevents me from filling out this form. Would you fill it out for me?

3-R. We can read you exactly what the form says and fill in the blanks with exactly the words you give us. We can’t help you understand what the form means or advise you on what to put in the blanks or what words to use. (Court personnel - Please state on the form that you helped the customer by writing their words verbatim on the form).

4-Q. I live in Arizona and the defendant lives in another state. Where do I file?

4-R. You may consult an attorney or refer to Rule 4.2 of *Arizona Rules of Civil Procedure*.

Resources:

- [Rule 4.2](#) of *Arizona Rules of Civil Procedure*

5-Q. I live in this county and the person I want to sue lives in another county. Where do I file?

5-R. You file the Complaint in the county where the defendant lives or does business or where the act or incident took place.

6-Q. What kind of notice do I have to give?

6-R. Your local court might have forms and instructions.

Resources:

- For small claims:
[Rule 4.1](#) of *Arizona Rules of Civil Procedure*
[Rule 4.2](#) of *Arizona Rules of Civil Procedure*
[A.R.S. § 22-513](#)
- For civil lawsuits in Justice Court:
[Rule 113](#) of *Justice Court Rules of Civil Procedure*
- For civil lawsuits in Superior Court:
[Rule 4.1](#) of *Arizona Rules of Civil Procedure*
[Rule 4.2](#) of *Arizona Rules of Civil Procedure*

7-Q. Do I have a potentially winning case?

7-R. We can't predict what the judge will do or advise you on how strong your case is. Only an attorney can give you that service.

8-Q. Once I file my claim, how long before I go to court?

8-R. The party may refer to the instruction packet provided to the party or court personnel may explain the process for a particular court. If there are statistics for your court, refer to those to tell the party how long a case takes on average to conclude in your court.

9-Q. My case was dismissed a year ago. Can I re-file?

9-R. If the case was dismissed "with prejudice," no. If the case was dismissed "without prejudice," yes. The court order that dismissed the case will say whether it was with or without prejudice. You'll also need to make sure you're still within the statute of limitations.

Resources:

- Mohave County information regarding [statute of limitations](#)

10-Q. I received a paper and I don't know what it is. What am I supposed to do?

10-R. To respond appropriately, ask questions to determine what the paper is (the court customer may have to read the paperwork to you). Look at the paper and answer the question if it would be considered legal information. If a professional is needed to

interpret the paper, provide a link to sources of attorney lists. If they need to ask the judge for clarification, provide information on how to file a Motion for Clarification.

Resources:

- Maricopa County Bar Association Lawyer Referral Service
602-257-4434 - <http://maricopalawyers.org>
- Pima County Bar Association Lawyer Referral Service:
520-623-4625 - <http://www.pimacountybar.org>
- Arizona Foundation for Legal Services & Education:
866-637-5341 - www.azlawhelp.org
- Motion for Clarification

11-Q. What is the difference between small claims and a civil case?

11-R. Small claims can be used if you're suing for \$3,500 or less. If you're suing for less than \$10,000, you can file a civil case in Justice Court. Also there are no attorneys allowed in small claims (unless both sides agree), and there are no appeals in small claims. Attorneys and appeals are allowed in civil claims.

12-Q. My friend's dog bit me. Should I sue him?

12-R. We can't help you decide what to do. Only an attorney can provide that service. Once you've decided what you want to do, we can try to help you find forms and explain procedures. Another option is to contact local law enforcement or animal control.

13-Q. I was dating someone and we split up. They have property that belongs to me that they won't let me have (car, furniture, etc.). How do I get my property back?

13-R. If the value of the property is \$10,000 or less, you can look at filing a civil case in Justice Court. If the value of the property is more than \$10,000, you can look at filing a civil complaint in Superior Court. An attorney could tell you if you have other options.

14-Q. Are these the forms I need?

14-R. If you know what you want to do, we can try to connect you with forms and explain procedures. If you're not certain that you have the right forms for your specific situation, only an attorney can help you confirm that.

15-Q. What do I do if I don't have the money to pay the filing fees?

15-R. You can file a request for fee deferral or waiver of fees. The court will determine what fees, if any, are waived or postponed until later in the case.

16-Q. What do I put in my complaint?

16-R. In general, you use the complaint to tell the court in your own words why you're suing someone and what you want the judge to do (for example, you might be asking the judge to order the person to pay you a certain amount of money). To learn what you can ask the judge to do in your specific situation, you can research that question at a law library, or an attorney can advise you.

17-Q. What is the time limit to file a small claims case?

17-R. Time limits in civil actions start from the date the events that gave rise to the action occurred.

Resources:

- Mohave County information regarding [statute of limitations](#)

**SECTION 8
SERVICE**

1-Q. What do I do when I don't know where the other person is to serve him or her?

1-R. The *Arizona Revised Statutes* and court rules explain how to proceed if the other party is refusing or avoiding service, or if the other party is no longer at the last known address. The Service Members Civil Relief Act (SMCRA) is a federal statute that explains the requirements for serving a party who is in the military.

Resources:

- [Rule 4.1](#) of *Arizona Rules of Civil Procedure*
- [SMCRA](#) website
- [Service Members Civil Relief Act Waiver](#) form

2-Q. Can I serve this or do you?

2-R. A small claims summons and complaint may be served by registered or certified mail, return receipt requested. Service is considered to be complete when the defendant signs for it. The return receipt must then be filed with the court, unless there is a permissible exception. Service for other civil cases must be made in person by a sheriff, a sheriff's deputy, or private process server. Some exceptions are set out in Rule 4.1 and 4.2 of *Arizona Rules of Civil Procedure*. See Rules 40-42 of *Arizona Rules of Family Law Procedure* concerning service in family law cases.

Resources:

- [Rule 4.1](#) of *Arizona Rules of Civil Procedure*
- [Rule 4.2](#) of *Arizona Rules of Civil Procedure*
- [Rule 40](#) of *Arizona Rules of Family Law Procedure*
- [Rule 41](#) of *Arizona Rules of Family Law Procedure*
- [Rule 42](#) of *Arizona Rules of Family Law Procedure*

3-Q. How do I serve the papers on someone who is out of state?

3-R. Contact law enforcement or the local courts for a list of process servers or constables in that state. The party may consult an attorney or refer to Rule 4.2 of *Arizona Rules of Civil Procedure*, or Rule 42 of *Arizona Rules of Family Law Procedure*, based on the type of case.

Resources:

- [Rule 4.2](#) of *Arizona Rules of Civil Procedure*
- [Rule 42](#) of *Arizona Rules of Family Law Procedure*

SECTION 9 ANSWERING A CLAIM

1-Q. Where can I find legal information about answering a claim?

1-R. You will find information in the Civil Trial Practice Volume 2, Chapter 13, at a law library, or seek advice from an attorney.

2-Q. I received a small claim notice in the mail. What do I do now?

2-R. Follow the instructions on the notice and perhaps seek advice from an attorney. Court personnel cannot tell you what words to use in your answer.

3-Q. How do I file a counterclaim?

3-R. Court personnel may provide the appropriate forms and indicate where the information should be placed on the form, but cannot suggest what to write or whether a counterclaim should be filed.

4-Q. I was served with this complaint and summons. What do I do now?

4-R. Follow the instructions in the summons and file an answer to the complaint within 20 calendar days (30 calendar days if out of state). Ask court personnel about the current filing fee, if any.

5-Q. What do I do if I'm served with an amended complaint?

5-R. You may file a response or you may contact an attorney for advice.

6-Q. What do I write in my answer?

6-R. You write down the response to a complaint. Court personnel cannot advise what to put in an answer. You may want to consult an attorney.

7-Q. If I did not file my answer in time, and the plaintiff did not file default papers, can I still file my answer?

7-R. Yes. The court will determine the effect of the late filing.

8-Q. When are my 20 days up for filing an answer?

8-R. Start counting the 20 days on the day after service was completed. If you don't know the date of service, court personnel may advise if proof of service was filed with the court.

9-Q. What do I do when I don't know where the other person is?

9-R. Service by publication may be available. *Arizona Revised Statutes* and court rules explain how to proceed if the other party is refusing or avoiding service, or if the other party is no longer at the last known address. The Service Members' Civil Relief Act (SMCRA) is a federal statute that explains the requirements for serving a party who is in the military.

Resources:

- [Rule 4.2](#) of *Arizona Rules of Civil Procedure*
- [SMCRA](#) website

10-Q. How long do I have to file my complaint?

10-R. Many deadlines may apply depending on the type of case and facts involved. *Arizona Revised Statutes* and court rules list additional procedures and requirements, or you may consult an attorney.

11-Q. How do I serve my petition on the opposing party?

11-R. There are various means of service in Rules 4.1 and 4.2 of *Arizona Rules of Civil Procedure*. You may consult an attorney to determine the proper means of service for the party's particular case.

Resources:

- [Rule 4.1](#) of *Arizona Rules of Civil Procedure*
- [Rule 4.2](#) of *Arizona Rules of Civil Procedure*

12-Q. In what city or county do I file my case?

12-R. The answer to this question depends on the type of case being filed, where the litigants live, and where events took place. You may consult an attorney.

13-Q. How do I file an answer?

13-R. Your answer must be in writing and filed within the proper time period after the complaint was served on the party. You must provide a copy to the opposing side.

14-Q. When do I have to file my opposition papers on this motion?

14-R. In civil cases, Rule 7.1 of *Arizona Rules of Civil Procedure* states that the opposing party shall file any answering memorandum within ten (10) days after the motion was filed and served. Rule 6 (e) of *Arizona Rules of Civil Procedure* allows an additional five (5) calendar days when the motion is served by mail. The judge may determine there are grounds for an accelerated ruling, in which case the time for filing may be shortened. The time periods may be different when specific times for motions are otherwise provided by statute, *Arizona Rules of Civil Procedure*, or order of the court. Unless the court orders otherwise, Arizona law requires all papers opposing a motion be filed and served on the opposing party at least ten (10) calendar days before the hearing.

Resources:

- [Rule 7.1](#) of *Arizona Rules of Civil Procedure*
- [Rule 6\(e\)](#) of *Arizona Rules of Civil Procedure*

15-Q. I figured out that I have to file my papers ten days before the hearing, but that day falls on a holiday when the court is closed. What do I do?

15-R. This situation is an exception to the ten-day rule. You must file and serve the papers by the end of court business on the next day that the court is open following the holiday.

SECTION 10 CIVIL

Civil cases involve legal conflicts among individuals, businesses, corporations, partnerships and governmental entities. Most civil cases are the result of personal injury, property damage, medical malpractice and contract disputes. [Arizona Rules of Civil Procedure](#), beginning at Rule 72, explain how and when arbitration may be required in a civil case.

1-Q. I want to file a lawsuit. Can you tell me how to do it?

1-R. Civil actions start by filing a complaint. Additional steps in the rules of procedure are required. A civil case can be complex. Court customers may wish to contact an attorney.

Resources:

- [Forms](#) for civil actions (\$10,000 and under)
- To prepare civil forms in Apache, Cochise, Coconino, Gila, Greenlee, La Paz, Maricopa, Mohave, Pima, Pinal, Santa Cruz and Yuma Counties [AzTurboCourt.gov](#). This website walks users through the process of creating documents required for civil cases.

2-Q. What are subpoenas?

2-R. Subpoenas are orders to give testimony in court or demand documents be submitted to the court or the requesting party.

3-Q. How do I subpoena someone?

3-R. A subpoena is issued by the clerk's office. Some clerk's offices have the subpoena form available, but the clerk's office does not prepare the form. The party wanting the subpoena must prepare it, have it issued by the clerk's office, and make arrangements to have it served. The clerk's office can inform the party of the current filing fee, if any, for issuing the subpoena.

Resources:

- Arizona [Clerks of Superior Court](#)

4-Q. Can I serve a subpoena or do I have to hire someone to do it?

4-R. *Arizona Rules of Civil Procedure* Rule 45(b) allows service by anyone who is at least 18 years of age and not a party to the case.

Resources:

- [Rule 45\(b\)](#) *Arizona Rules of Civil Procedure*

5-Q. How do I serve someone with a complaint?

5-R. Service in the state of Arizona shall be by a sheriff, sheriff's deputy or private process server. A party to an action may also sign an Acceptance or Waiver of Service. *ARCP* Rule 4 and 4.1 cover different types of service, including out of state service.

Resources:

- [Rule 4](#) of *Arizona Rules of Civil Procedure*
- [Rule 4.1](#) of *Arizona Rules of Civil Procedure*

6-Q. What do I do when I don't know where the other person is?

6-R. Service by publication may be available. The *Arizona Revised Statutes* and court rules explain how to proceed if the other party is refusing or avoiding service, or if the other party is no longer at the last known address. The Service Members' Civil Relief Act is a federal statute that explains the requirements for serving a party who is in the military.

Resources:

- [Rule 4.2](#) of *Arizona Rules of Civil Procedure*
- [SMCRA](#) website

7-Q. It says “relief requested” next to this blank on the form. What do I put there?

7-R. “Relief requested” is a party’s opportunity to write in your own words what is requested of the court. Court personnel cannot tell you what words to use. If you have questions about the types of remedies available in the case, you may consult an attorney.

8-Q. I was served with this complaint and summons. What do I do now?

8-R. You should follow the instructions in the summons. If you file an answer, it must be in writing and a copy served on the other party. If you are unsure how to file an answer you may contact an attorney. The clerk can inform you of the current filing fee, if any. See Section 8 entitled “Answering a Claim.”

9-Q. How long do I have to answer a complaint?

9-R. The time to file an answer to a civil complaint is twenty (20) days from the date you are served or accept service, if it is in state. If it is out of state, you have thirty (30) days to file an answer. If the last day falls on a weekend or holiday, you have until the end of the next business day to file.

10-Q. How do I appeal a superior court ruling to the court of appeals?

10-R. You (the appellant) must file a written Notice of Appeal no later than 30 days after entry of the judgment. The local court can inform you of the current filing fee, if any. You must post a \$500.00 bond unless the court sets another bond amount. An Affidavit in Lieu of Bond may be submitted if you are unable to post the bond (*Superior Court Rules of Appellate Procedure*, Rule 10).

Resources:

- [Rule 10](#) *Superior Court Rules of Appellate Procedure - Civil*
- Appeals [Guide](#) for Self-Represented Parties
- Court of Appeals – [Div. 1](#)
- Court of Appeals – [Div. 2](#)

11-Q. How do I file for default?

11-R. You can file an Application for Entry of Default and Entry of Default 20 days after the other party has been served (30 days if they were served out of state). The local court may have forms with instructions available that you can prepare, or you may seek the help of an attorney. The clerk’s office can inform you of the current filing fee, if any. You must send a copy of the Application for Default to the other party. The entry of default does not take effect for 10 business days after filing the application. Service can

occur in several ways. *Arizona Rules of Civil Procedure* Rule 55 and *Arizona Rules of Family Law Procedure* Rule 44 provide specific information.

Resources:

- [Rule 55](#) of *Arizona Rules of Civil Procedure*
- [Rule 44](#) of *Arizona Rules of Family Law Procedure*

12-Q. I got an inactive notice. What am I supposed to do now?

12-R. Inactive notices may be sent when there has been no action taken on a case or if there has been no service on a case. The notice explains options available to you. You must choose the option that best fits the situation. If you are not sure what to do, you may want to consult an attorney.

13-Q. Would you look over this form and tell me if I did it right?

13-R. Court personnel may tell you if you provided all the required information. Court personnel cannot tell you whether the information provided is correct or legally sufficient.

14-Q. When do I have to file my opposition papers on this motion?

14-R. In civil cases, Rule 7.1 of *Arizona Rules of Civil Procedure* states that the opposing party shall file any answering memorandum within ten (10) days after the motion was filed and served. Rule 6 (e) of *Arizona Rules of Civil Procedure* allows an additional five (5) calendar days when the motion is served by mail. The judge may determine there are grounds for an accelerated ruling, in which case the time for filing may be shortened. The time periods may be different when specific times for motions are otherwise provided by statute, *Arizona Rules of Civil Procedure*, or order of the court. Unless the court ordered otherwise, Arizona law requires all papers opposing a motion be filed and served on the opposing party by at least ten (10) calendar days before the hearing.

Resources:

- [Rule 7.1](#) of *Arizona Rules of Civil Procedure*
- [Rule 6\(e\)](#) of *Arizona Rules of Civil Procedure*

15-Q. I figured out that I have to file my papers ten days before the hearing, but that day falls on a holiday when the court is closed. What do I do?

15-R. This situation is an exception to the ten-day rule. You must file and serve the papers by the end of court business on the next day that the court is open following the holiday.

16-Q. I have a disability that prevents me from filling out this form. Would you fill it out for me?

16-R. For qualifying disabilities, court personnel must write exactly what you dictate, being careful not to correct grammar or make any other changes to your words. Court personnel will note on the form that they assisted you, and will record your words verbatim on the form.

17-Q. The judge ruled in my favor in a civil case. How do I collect from the defendant?

17-R. Check with your county court for informational packet. Here are a couple of examples from Maricopa and Yavapai county courts.

Resources:

- Maricopa County Justice Court– [How to Collect a Money Judgment](#)
- Mayer Justice Court – [Collecting Your Judgment](#)

SECTION 11 JUDGMENTS - SMALL CLAIMS

1-Q. I filed a debt collection case against a person. After that, the person filed for bankruptcy. How will the bankruptcy case affect my case against that person?

1-R. Often, the bankruptcy will put a hold on the lawsuit. An attorney can advise you how it will affect your particular case.

2-Q. If I file bankruptcy will my debts go away?

2-R. Bankruptcy law is complicated and it depends on your circumstances. An attorney could advise you. You can read about bankruptcy on these websites.

Resources:

- <http://www.azb.uscourts.gov/filing-without-Rttorney>
- <http://bankruptcy.findlaw.com/>

3-Q. Once a judgment is obtained, how long before I get my money?

3-R. If the person who lost the case doesn't pay you, you can review these websites for your options to collect the money.

Resources:

- Maricopa County Justice Court– [How to Collect a Money Judgment](#)
- Mayer Justice Court – [Collecting Your Judgment](#)

4-Q. Does my judgment ever expire?

4-R. Judgments are usually good for five years. You can research the law or consult with an attorney to learn if a different time period applies to your specific case.

5-Q. How do I garnish the wages of the person who lost this case in order to collect the money the court ordered them to pay me?

5-R. Resources:

- [Garnishment forms and instructions](#)

6-Q. If the person who lost this case has more than one employer, can I garnish their wages at both jobs?

6-R. No. You can only garnish someone's wages at one job at a time.

7-Q. How do I find out where the defendant works?

7-R. One option is a process called a “debtor examination” or “supplemental proceedings.” The purpose of this process is to learn about the defendant’s assets and other information that might help you collect the judgment. An attorney could advise you if there are other options available to you.

Resources:

- Coconino County – [Instructions for supplemental proceedings.](#)

8-Q. I tried a Writ of Execution, but it didn’t work. What do I do now?

8-R. A Writ of Execution is an order to the Constable to serve the defendant and attempt to collect on the judgment. Information could be obtained through a debtor examination after a judgment has been obtained. Court personnel may provide an “if you win packet” for more information. You may want to contact an attorney, as there could be more options available.

9-Q. What is a debtor’s exam?

9-R. This is a process available to someone who has obtained a judgment against another party and has attempted an execution on the judgment, but the judgment debtor still has not paid the debt. In this situation the winning party may file a request for a debtor’s exam. Both parties will have to appear in court where the winning party may question the judgment debtor under oath regarding the amount and location of the judgment debtor’s assets (e.g., bank accounts, real property).

10-Q. Can the losing party make installment payments on the judgment?

10-R. It’s up to the person who won the case whether to accept installment payments.

11-Q. The other party paid me just the judgment and not court costs. How do I collect the court costs?

11-R. View these resources for options to collect the money.

Resources:

- Maricopa County Justice Court– [How to Collect a Money Judgment](#)
- Mayer Justice Court – [Collecting Your Judgment](#)

12-Q. Why can’t the judge just put the defendant in jail?

12-R. Arizona law doesn’t usually let the judge put someone in jail in a civil case.

13-Q. How do I calculate my interest?

13-R. A basic method for calculating interest on a judgment:

Step 1: Multiply \$ (judgment) X (interest) % = (annual interest rate due)

Step 2: Divide (annual rate) by 365 = (daily interest amount)

Step 3: Multiply the daily interest amount times the number of days since the judgment was entered. (Note: every time a payment is made the interest must be refigured.)

14-Q. I paid my judgment in full and the plaintiff has not released it. How do I get the judgment released?

14-R. You can file a request in your own words asking the court to “satisfy the judgment” and include proof that you’ve paid the judgment in full.

Resources:

- [Justice Court Rules of Civil Procedure](#)

15-Q. I paid my judgment, so why don't you satisfy it?

15-R. The court can “satisfy the judgment” only if one of the parties files a request for that. You can file a request in your own words asking the court to “satisfy the judgment” and include proof that you’ve paid the judgment in full.

16-Q. How do I stop a garnishment?

16-R. You can file a Request for Hearing; however, filing this request will not automatically stop a garnishment currently in effect. The Request for Hearing will get you before a judge within five (5) business days, at which point the judge will issue a ruling on any modification to the garnishment. The garnishment will still be in effect until a decision is made by the judge.

Resources:

- [Garnishment forms and instructions](#)

17-Q. Are there any liens on my property?

17-R. You may search the records in the recorder’s office, or have a title company or an attorney conduct a search for them. Court personnel do not provide this service.

18-Q. How do I file a mechanic’s lien?

18-R. This is done in the recorder’s office. Due to potential complications concerning questions of law and notice, you may want to consult with an attorney.

19-Q. How long do I have to file a mechanic’s lien or an action to enforce a mechanics lien?

19-R. In most cases a contractor or subcontractor who is owed money for products or services must file for a mechanic’s lien within 90 days after the last of the materials were furnished or the last of the labor was performed. An action to enforce a mechanic’s lien may be brought within two years from the expiration of the 90 days for filing a claim for the mechanic’s lien. Since the determination of the 90-day filing period may involve complicated legal issues, you may consult an attorney as to the application of these code sections to the party’s case.

Resources:

- Property [A.R.S. §§ 33-981 through 33-1008](#)

SECTION 12

MINORS AS PARTIES IN A SMALL CLAIMS OR CIVIL CASE

1-Q. I’m 15 years old and I haven’t been paid for work I’ve done. How do I sue to get my money?

1-R. Your parent or guardian must file the claim.

Resources:

- [Pima County Justice Court](#) forms and instructions

- [Maricopa County Justice Court](#) forms and instructions
- [Pinal County Justice Court](#) forms and instructions

2-Q. Can I sue a minor?

2-R. No; however, the parent or guardian of the minor may be sued.

**SECTION 13
LANDLORD/TENANT - EVICTION**

This is a complex area of law that court customers may prefer the use of an attorney.

Resources:

- [Arizona Residential Landlord and Tenant Act](#)
- [Rules of Procedure for Eviction Actions](#)
- [AZLawHelp.org](#) – Eviction
- [Landlord and Tenant Rights and Responsibilities](#)

1-Q. Are eviction actions just like other lawsuits?

1-R. No, these cases move faster and require the court to hold a final hearing within a few days. If you want to contest the filing of the case you must do so as soon as possible.

2.-Q. Do I have to have an attorney represent me in an eviction action?

2.-R. No. There are lots of resources available for people who want to represent themselves.

Resources:

- [Arizona Residential Landlord and Tenant Act](#)
- [Rules of Procedure for Eviction Actions](#)
- [AZLawHelp.org](#) – Eviction
- [Landlord and Tenant Rights and Responsibilities](#)

3-Q. Does a three day “notice to quit” include weekends and holidays?

3-R. Yes.

4-Q. What does “calendar days” mean?

4-R. Calendar days include weekends and holidays.

5-Q. Where can I get legal help?

5-R. You can apply for legal services at the Arizona's Access to Justice Online Intake System.

Resources:

- [AZLawHelp.org](#)
- [Arizona's Access to Justice Online Intake System](#)
- [Southern Arizona Legal Assistance](#)
- [Community Legal Services](#)

SECTION 14 RECOVERY OF PERSONAL PROPERTY

1-Q. How do I get my stuff out of my house?

1-R. After the court evicts you, you can file a written request with the court to let you return to the residence to pick up your personal property. You must give a copy of your request to the other party. The court will schedule a hearing to decide what property you can take, when you can pick it up, and under what conditions.

SECTION 15 REAL PROPERTY

1-Q. Can you provide me with a legal description of my property?

1-R. You can get this information from your county's treasurer, assessor, or recorder's office.

2-Q. Is an address good enough when a legal description of real property is needed?

2-R. No, you need to list the official legal description. You can get this information from your county's treasurer, assessor, or recorder's office.

3-Q. How do I get someone's name off my property?

3-R. This could be accomplished by a petition to quiet title. Like most lawsuits, it could become legally complicated. You may wish to seek the assistance of an attorney.

SECTION 16 APPEALS IN CIVIL AND LIMITED JURISDICTION COURTS

1-Q. How long do I have to file an appeal?

1-R. Fourteen (14) days from the date the court mailed the judgment or decision to you. If it is a small claims case, there is no right to appeal. If it is an eviction action, the deadline is five (5) days from the date of mailing. Weekends and holidays are not excluded from the calculation. They must be counted to determine the deadline. If, however, your deadline falls on a Saturday, Sunday or day when the court is closed, the Notice of Appeal is due on the next day the court is open.

Resources:

- [Representing Yourself: A Guide on How to Appeal a Final Order or Judgment from a Justice Court or Municipal Court](#)
- [Forms](#)

2-Q. If I am evicted, do I still have to move and pay the judgment once I file my appeal?

2-R. Yes, unless you post a "supersedeas bond" with the court. A party seeking to appeal a judgment may stay or "suspend" the enforcement of the judgment while the appeal is pending by filing a supersedeas bond. This bond is usually the amount of the judgment and stays with the court while the appeal is in process. For most tenants, filing a

supersedeas bond is the second most important step in appealing a justice court's decision. (The first is filing the "Notice of Appeal" on time.) By paying the "supersedeas bond" to the court, a tenant can temporarily stop the order that he or she be removed from rental housing. If a tenant does not pay the supersedeas bond, he or she will be locked out of the rental home five (5) days after the Judgment of Eviction is entered, or in the case of an "immediate" eviction, 24 hours after the Judgment of Eviction is entered.

Exception for restraining orders: The rules governing the payment of supersedeas bonds do not apply to Orders of Protection and Injunctions Against Harassment ("restraining orders").

3-Q. What do I do to file an appeal?

3-R. Fill out the proper paperwork and pay the filing fee. Read the notice of right to appeal to find out the process of the appeal and what to do next.

Resources:

- [Representing Yourself: A Guide on How to Appeal a Final Order or Judgment from a Justice Court or Municipal Court](#)

4-Q. I have filed an appeal on my eviction. Who do I pay my rent to?

4-R. The monthly rent gets paid to the court and the court will issue a check to the landlord. If you want to remain in your rental home pending your appeal, you must pay the supersedeas bond and then continue to pay your rent into the court on or before the day it is due each month. There is no "grace period" for payment. If you fail to pay rent into the court on time you may be removed from the rental property during the appeal.

Resources:

- [Representing Yourself: A Guide on How to Appeal a Final Order or Judgment from a Justice Court or Municipal Court](#)

5-Q. I have filed my appeal. Now what?

5-R. File an appellant memorandum (and typed transcript if the taped proceedings are more than 90 minutes) within 60 calendar days of the expiration of the deadline to file the Notice of Appeal. The Notice of Right to Appeal explains what an appellant memorandum is.

Resources:

- [Representing Yourself: A Guide on How to Appeal a Final Order or Judgment from a Justice Court or Municipal Court](#)

6-Q. I still don't understand what a memorandum is.

6-R. It is a written explanation of why the court's ruling was legally wrong. It may not exceed 15 pages in length.

Resources:

- [Representing Yourself: A Guide on How to Appeal a Final Order or Judgment from a Justice Court or Municipal Court](#)

7-Q. I filed my appellant memorandum. Now what?

7-R. The opposing side has 30 days to file an appellee’s memorandum (response). Once filed, a Notice to Pay Filing Fees in Superior Court will be sent. Once the fees are paid, the trial court will send the record on appeal to superior court for a decision.

8-Q. Will I get another court date?

8-R. Only if the superior court overturns the trial court’s decision or if the record on appeal cannot be sent.

**SECTION 17
APPEALS IN GENERAL JURISDICTION COURTS**

1-Q. How do I appeal a superior court ruling to the court of appeals?

1-R. The party wanting to appeal (the appellant) may file a written Notice of Appeal no later than 30 days after entry of the Judgment. The local court can inform the party of the current filing fee, if any. You must post a \$500.00 bond unless the court sets another bond amount. An Affidavit in Lieu of Bond may be submitted if you are unable to post the bond.

Resources:

- [Guide for Self-Represented Appellants and Appellees](#)
- [Rule 6](#) of *Arizona Rules of Appellate Procedure - Civil*

2-Q. What does the “due date” heading on the appellate index refer to?

2-R. This is the date the clerk’s appellate unit is required to have the lower court record transmitted to the court of appeals, and is not related to the parties’ obligations.

3-Q. I filed a document with the superior court but it is not included on the appellate index. Why not?

3-R. Most often this occurs because the document was filed after the lower court record was transmitted to the court of appeals. If the appellate court requires the document, it will order the clerk to supplement the record by providing that document.

4-Q. Where do I file the appellate brief?

4-R. Once the Court of Appeals accepts jurisdiction in your case, you must file the Appellate Brief with the Court of Appeals. If you make a mistake and file it with the Superior Court at this point in your case, the Superior Court will deliver it to the Court of Appeals, but this could delay the filing of your Brief with the Court of Appeals by your deadline.

5-Q. What happens at the court of appeals after the lower court record is transmitted?

5-R. This guide explains the procedures in detail.

Resources:

- [Guide for Self-Represented Appellants and Appellees](#)

6-Q. The appellate court ruled on my case. How do I reopen it in the lower court?

6-R. For more information, contact the division of court administration for the case type that was appealed.

SECTION 18 JUVENILE IN LIMITED JURISDICTION COURTS

1-Q. My child got a ticket for curfew violation, possession of tobacco, underage drinking, or truancy. Does my child need to go to court?

1-R. Yes.

Resources:

- [Rule 12](#) of *Arizona Rules of Procedure for the Juvenile Court*

2-Q. Do I have to appear in court with my child?

2-R. A parent or guardian must appear with the juvenile for all criminal or petty offenses.

3-Q. My child received a criminal traffic ticket. Does he or she need to appear in court?

3-R. In most cases, if the juvenile prefers to pay the ticket, he or she may; however, the juvenile will be required to appear in court with a parent or guardian on a class 1 misdemeanor or serious traffic violation.

4-Q. Can I be held liable if my juvenile does not do what the judge says?

4-R. Yes.

5-Q. Can a warrant be issued for my child's arrest?

5-R. At this level of the court, a warrant will not issue for the child; however, the child's license may be suspended until the child turns 18 years of age, at which time the court can issue a warrant for arrest.

6-Q. Can I sue a minor?

6-R. No; however, the parent or guardian of the minor may be sued.

SECTION 19 JUVENILE IN GENERAL JURISDICTION COURTS

1-Q. How can I cancel an adoption?

1-R. Court personnel do not provide any forms. The person may wish to consult an attorney. Adoption laws are in.

Resources:

- Child Safety [A.R.S. §§ 8-101 through 8-173](#)

2-Q. How can I contest an adoption?

2-R. Court personnel do not provide any forms. You may wish to consult an attorney.

3-Q. After a juvenile delinquency record has been destroyed, how do I answer the question “have you ever been convicted?” when completing a job application?

3-R. “Application for Destruction of Records” answers this question. An attorney can provide more information.

Resources:

- Destruction of Juvenile Records [A.R.S. § 8-349](#)

SECTION 20 FAMILY AND DOMESTIC RELATIONS

1-Q. If a marriage license was never recorded would someone have to file for a divorce? Who would know a marriage occurred if there is no record?

1-R. There’s not an easy answer to this question. An attorney could advise you on your specific situation.

2-Q. How does someone file for divorce without an attorney?

2-R. The statutes pertaining to dissolution of marriage are found in *Arizona Revised Statutes*, Title 25. The *Arizona Rules of Family Law Procedure* list additional procedures and requirements. Your court might have a do-it-yourself divorce packet. If not, check to see if your courts will accept the Maricopa County or Pima County packet. These packets explain the steps and include forms. Some courts offer special programs, such as counseling, or require additional steps, such as mediation.

Resources:

- Marital and Domestic Relations A.R.S. [Title 25](#)
- [Arizona Rules of Family Law Procedure](#)
- [Maricopa County forms, instructions, and packets](#)
- [Pima County forms, instructions, and packets](#)

3-Q. How do I file for legal separation?

3-R. Legal separation is filed in the same manner as a petition for dissolution of marriage. Check to see if your courts will accept the Maricopa County or Pima County packet. These packets explain the steps and include forms. Some courts offer special programs, such as counseling, or require additional steps, such as mediation.

Resources:

- Marital and Domestic Relations A.R.S. [Title 25](#)
- [Arizona Rules of Family Law Procedure](#)
- [Maricopa County forms, instructions, and packets](#)
- [Pima County forms, instructions, and packets](#)

4-Q. How do I file for divorce in a covenant marriage?

4-R. You can read about covenant marriage in a brochure that explains when you can file for divorce if you have a covenant marriage. It also explains the extra information you’d need to give the court about your case that might not be in the do-it-yourself forms.

Resources:

- [Covenant Marriage in Arizona](#) brochure

5-Q. How soon after a divorce is final can someone get married again?

5-R. There is no waiting period in Arizona.

6-Q. How do I file for an annulment?

6-R. If you and your spouse have no children together, your court might have a do-it-yourself annulment packet. If not, many courts accept Maricopa County’s packet. These packets explain the steps and include forms. Some courts offer special programs, such as counseling, or require additional steps, such as mediation. If you and your spouse do have children together, you can research what’s required for an annulment in the *Arizona Revised Statutes* and the *Arizona Rules of Family Law Procedure* and write your forms from scratch based on your research, or an attorney could help you. The clerk’s office can inform you of the current filing fee, if any.

Resources:

- [Annulment of a Non Covenant Marriage](#) Forms and instructions
- Marital and Domestic Relations A.R.S. [Title 25](#)
- [Arizona Rules of Family Law Procedure](#)

7-Q. Do I have grounds for an annulment?

7-R. The following information sheet explains when an annulment might apply. You can also research this question in *Arizona Practice: Marriage Dissolution Practice*, section 114, which you can find at or through your local law library. If you’re still unsure, an attorney can advise you. As court staff, we can give you this information, but we aren’t qualified to help you decide how these laws apply to your specific case.

Resources:

- [Annulment information sheet](#)

8-Q. I don’t know if I’m divorced. I haven’t seen my spouse for years. Do I need to get a divorce here?

8-R. To check if you’re already divorced, you can contact the court clerk’s office in the county where the divorce might have happened.

Resources:

- Arizona [Clerks of Superior Court](#)

9-Q. How can I serve someone when I can’t find them?

9-R. Usually, if you can’t find the person, you can serve them by publishing a notice in a newspaper. You can read about the requirements and steps in the “Service of Process” section of the *Arizona Rules of Family Law Procedure*. Your court might have forms and instructions for serving by publication.

Resources:

- [Arizona Rules of Family Law Procedure](#)
- Maricopa County [How to Serve the Court Papers by Publication](#)

10-Q. I just got served with divorce papers. What do I do?

10-R. If you disagree with anything in the divorce papers, you can file a Response to give your input. Your deadline to file the Response is 20 days after you were served (30 days if you were served out of Arizona). If you agree with everything in the divorce papers, you have a few options. The first option is called “Consent Decree.” With this option, you and

the other party fill out a Consent Decree together listing all your agreements. You pay a fee to participate in the case in this way. Often, there is no hearing with a Consent Decree. Your court might have do-it-yourself packets for this option. If not, many courts accept Maricopa County’s packet. These packets explain the steps and include forms. Some courts offer special programs, such as counseling, or require additional steps, such as mediation. If you and the other party don’t agree on all areas of the divorce, you may have a “contested” case. If you and the other party don’t come to a full or agreement, the court may set the matter for a hearing. Another option is called “Default,” which has specific requirements. With default, the other party was served with divorce papers and proof of service has been filed with the clerk of court, and the other party has not filed a written response or answered within the time frame set by law.

Resources:

- Arizona divorce or legal separation [flowchart](#)
- Maricopa County [divorce packets](#)
- Maricopa County [How to Get a Default Decree in Family Court Cases](#)

11-Q. I was served with divorce papers on June 3. Exactly how many days do I have to respond?

11-R. See the table below for how long you have to file a written response to the Petition. Find the date in the “After” column on a calendar. Start counting on the next day. Count off the days in the “Count” column, including weekends and holidays. You must respond by the last date you counted, unless it’s a weekend or court holiday, in which case you must respond by the next workday.

Where were the papers served?	How were the papers served?	Count:	After:
In Arizona, not on an Indian Reservation	Acceptance of Service	20 days	The other party signs the Acceptance of Service
	Certified Mail	20 days	The other party signs the green card
	Process Server	20 days	The other party receives the papers from the process server
	Sheriff	20 days	The other party receives the papers from the sheriff
In Arizona, on an Indian Reservation*	Acceptance of Service	30 days	The other party signs the Acceptance of Service
	Tribally Licensed Process Server	30 days	The other party receives the papers from the process server

Where were the papers served?	How were the papers served?	Count:	After:
	Tribal Law Enforcement	30 days	The other party receives the papers from the officer
Outside of Arizona	Acceptance of Service	30 days	The other party signs the Acceptance of Service
	Certified Mail	30 days	The other party signs the green card
	Process Server	30 days	The other party receives the papers from the process server
	Sheriff or Tribal Law Enforcement	30 days	The other party receives the papers from the officer
	Publication	60 days	The first publication

***If the papers were served on an Indian Reservation in Arizona:** Depending on the facts and circumstances of the case, there *may* be fewer days for you to respond. An attorney can advise you.

12-Q. How do I modify my divorce decree?

12-R. Your court might have a do-it-yourself packet for changing parts of your decree, however property and debt division are generally not subject to modification and you may want to seek the help of an attorney. Many courts accept Maricopa County’s packets, which explain the steps and include forms. Some courts offer special programs, such as counseling, or require additional steps, such as mediation.

Resources:

- Maricopa County [divorce packets](#)

13-Q. Can I dismiss my dissolution or divorce case?

13-R. If you are the Petitioner and service has not been completed, you can submit a Notice of Dismissal. If service has been completed you can file a Motion to Dismiss your divorce. If both of you agree to dismiss your divorce, you can submit a Stipulation to Dismiss your divorce. You can pick up the form from the Self Service Center or you can download the form, complete it, and return it to the court. You will need to determine which form you will need.

Resources:

- Maricopa County [Stipulation to Dismiss](#)

14-Q. How can I get a Consent Decree signed by the court?

14-R. The court enters a consent decree when all parties have agreed on how to resolve everything required for a divorce, legal separation or annulment. You must agree in writing to issues such as division of property and debt, spousal maintenance (if any), legal decision-making, parenting time, and support (if you have children). All parties must sign the written decree. In Maricopa County, after you have waited the required time frames, paid the response fee, and attended the Parenting Information Program (if you have children) you can submit a consent decree by mail or set a hearing on the Internet.

Resources:

- In Maricopa County – Call 602-372-3332 to schedule a time to come to court and have your paperwork signed during a hearing.
- In Maricopa County set hearing on the [ezCourtForms](#) site

15-Q. How can I get a Default Decree signed by the court?

15-R. If no response is filed, you may be able to get divorced by default. You can set a default hearing if the other party has not filed a written response. A default hearing is scheduled when you want a divorce, other judgment or order when the opposing side does not respond in writing to your petition or motion. A default hearing cannot be set for at least 61 days after the date the petition (and other documents) were served on the respondent. If you want to set a default hearing, you must complete the Application and Affidavit of Default and file it with the clerk of the court. You must be sure service of the petition was complete, and that the other party did not file a written response or answer with the court.

At the time you file the Application and Affidavit of Default with the clerk of the court, make sure you have two (2) copies of the Application and Affidavit of Default date-stamped by the clerk. You must mail or hand-deliver one copy to the other party the day that you filed the Application and Affidavit of Default with the clerk of the court. After you have given the other party a copy of the Application and Affidavit of Default you must wait ten (10) court days.

If the other party still does not file a written response or answer in ten (10) court days, you may be able request a default hearing date.

Resources:

- Arizona divorce or legal separation [flowchart](#)
- Maricopa County [divorce packets](#)
- Maricopa County [How to Get a Default Decree in Family Court Cases](#)
- In Maricopa County – Call 602-372-3332 to schedule a time to come to court and have your paperwork signed during a hearing.
- In Maricopa County set hearing on the [ezCourtForms](#) site

16-Q. If I cannot afford to pay the fees, can I have my fees deferred?

16-R. You may fill out an Application for Deferral of your filing or service fees. Your application will be reviewed and if you qualify the court may allow you to make payments for your fees.

Resources:

- Maricopa County [To Request a Deferral or Waiver of Court Fees](#)

17-Q. How can I get documents or exhibits released to me from the exhibits?

17-R. You will need a court order and valid identification (driver's license or other picture I.D.) to remove materials from this section.

18-Q. How long do you keep exhibits?

18-R. There are strict criteria that have to be met in order to return exhibits or dispose of them. There is no set time for a case; only specific criteria that must be met to determine when an individual case is closed. At the conclusion of a hearing, exhibits not offered into evidence or received in evidence by the court, can be returned to the respective parties. If the matter is taken under advisement, exhibits can be returned at the time of ruling. There is a different method of return for exhibits offered into evidence or received in evidence by the court. When a case is determined closed, including such considerations as a final judgment or decree, all appeals times are over, complete, and dismissal of the case, exhibits can be released to the parties or disposal can occur.

Resources:

- In civil cases, [Local Rule of Maricopa County 2.8\(d\)](#) is used to determine that the case is closed for all parties.

19-Q. I filed a motion for temporary orders; how soon will I see the judge?

19-R. It usually takes about 30 days to have a hearing on temporary orders.

20-Q. My child's other parent is not complying with the decree. How do I make the other parent comply?

20-R. To enforce the order, a party may file a Petition for Enforcement, or the party may initiate a contempt proceeding with an Order to Show Cause or Order to Appear, depending on the situation. Your court might have a do-it-yourself packet to enforce the decree. If not, many courts accept Maricopa County's packet. These packets explain the steps and include forms. Some courts offer special programs, such as counseling, or require additional steps, such as mediation.

Resources:

- Maricopa County [divorce packets](#)
- Rules 91 and 92 of the [Arizona Rules of Family Law Procedure](#)

21-Q. What does the judge consider when determining legal decision-making and parenting time?

21-R. Arizona has statutes that have specific factors that the judge follows when deciding the best interests of the children. There are other factors that may not be written in the statutes, but may be important. These factors include but are not limited to the following: The court shall determine legal decision-making, either originally or on petition for modification, in accordance with the best interests of the child. The court shall consider all relevant factors, including:

- The past, present and potential future relationship between the parent and the child.
- The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest.
- The child's adjustment to home, school and community.

- If the child is of suitable age and maturity, the wishes of the child as to legal decision-making and parenting time.
- The mental and physical health of all individuals involved.
- Which parent is more likely to allow the child frequent, meaningful and continuing contact with the other parent. This paragraph does not apply if the court determines that a parent is acting in good faith to protect the child from witnessing an act of domestic violence or being a victim of domestic violence or child abuse.
- Whether one parent intentionally misled the court to cause an unnecessary delay, to increase the cost of litigation or to persuade the court to give a legal decision-making or a parenting time preference to that parent.
- Whether there has been domestic violence or child abuse pursuant to § 25-403.03.
- The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding legal decision-making or parenting time.
- Whether a parent has complied with chapter 3, article 5 of this title.
- Whether either parent was convicted of an act of false reporting of child abuse or neglect under §13-2907.02.

Resources:

- Legal decision-making; best interests of the child [A.R.S. § 25-403](#)

22-Q. I want to see my child more than the court order allows. How do I get more time with my child?

22-R. Your court might have a do-it-yourself packet to change parenting time. If not, many courts accept Maricopa County’s packet. Modification of parenting time may involve complicated issues and you may want to seek the help of an attorney.

Resources:

- Modification of legal decision-making or parenting time [A.R.S. § 25-411](#)
- Maricopa County [forms and instructions](#)

23-Q. My child doesn’t want to return to the other parent’s home at the end of my parenting time. Does my child have to go back?

23-R. Everyone must follow the court order until the judge changes it. Your court might have a do-it-yourself packet to change parenting time. If not, many courts accept Maricopa County’s packet. These packets explain the steps and include forms. Some courts offer special programs, such as counseling, or require additional steps, such as mediation. If someone is in danger, you can call law enforcement.

Resources:

- Maricopa County [forms and instructions](#)

24-Q. How do I move out of state with my child (the other parent is staying here)?

24-R. If your parenting time order says you can’t move, you can ask the court to change that order to let you move. Your court might have a do-it-yourself packet to change parenting time. If not, many courts accept Maricopa County’s packet. These packets explain the steps and include forms. Some courts offer special programs, such as counseling, or require additional steps, such as mediation.

Resources:

- Coconino County - [Moving with Children When There Are Court Orders About the Children](#)
- Maricopa County [forms and instructions](#)

25-Q. I am supposed to pick up my kids this weekend, but the other parent says I won't be allowed to have them. Can the court make the other parent give me the kids?

25-R. The court can't enforce an order unless the other party has actually disobeyed it. If the other parent denies your parenting time, you can ask the court to enforce the parenting time order. Your court might have a do-it-yourself packet for enforcement. If not, many courts accept Maricopa County's packet. These packets explain the steps and include forms. Some courts offer special programs, such as counseling, or require additional steps, such as mediation.

Resources:

- Maricopa County [forms and instructions](#)

26-Q. Will I get to talk to the judge about my family court emergency?

26-R. That is up to the judicial officer on a case-by-case basis.

27-Q. Does an unwed mother automatically have sole legal decision-making authority of the children?

27-R. Legal decision-making authority and parenting time are determined by court order. If there is no court order, law enforcement agencies, schools, and doctors may have different and conflicting policies on how they determine which parent has legal decision-making authority. To establish legal decision-making authority and parenting time, the local superior court may have forms with instructions available that the party can prepare, or the party may seek the help of an attorney. The clerk's office can inform the party of the current filing fee, if any.

28-Q. How do I remove the "presumed father" from the birth certificate when it turns out that he is not the biological father?

28-R. Your court might have a do-it-yourself packet to establish paternity. If not, many courts accept Maricopa County's packet. These packets explain the steps and include forms. Some courts offer special programs, such as counseling, or require additional steps, such as mediation. Parties are encouraged to seek advice and assistance from an attorney. Legal services may be available locally for those who cannot afford to hire a private attorney.

Resources:

- Maricopa County [forms and instructions](#)
- [Arizona Department of Health Services](#) – paternity information

29-Q. How do I add a father's name to the birth certificate?

29-R. Adding the father's name to the birth certificate requires filing an Acknowledgment of Paternity. Acknowledgment of Paternity forms can be found at all birthing hospitals, the Office of Vital Records, the Arizona Department of Economic Security's Division of Child Support Services offices and many of the county registrar's offices health

department Office of Vital Records. You can also work with the courts to file for voluntary paternity or file for paternity, legal decision-making authority and related matters together. Your court may have a do-it-yourself packet. If not, many courts accept Maricopa County's packet.

Resources:

- Arizona Department of Health Services Vital Records – [Corrections & Amendments to Birth Certificates](#)
- Division of Child Support Services – [Voluntary Acknowledgement](#) form
- Maricopa County [To Establish Voluntary Acknowledgement](#)

30-Q. If the father is on the birth certificate, does he still need to petition the court for paternity orders as well as parenting time and legal decision making?

30-R. Is his paternity being challenged? If not, then probably not. Even if paternity has been legally established and the father is on the birth certificate, the father has no legal right to parenting time or decision-making until the court orders parenting time or legal decision-making. Your county superior court may have more information or forms on this particular circumstance.

Resources:

- Maricopa County [forms and instructions](#)
- Presumption of paternity [A.R.S. § 25-814](#)

31-Q. The father of my children agrees that he is the father. How can we get an order from the court?

31-R. If the father's name is on the birth certificate you may not need a court order. If both parents agree who the biological father is, you can sign a statement called an Acknowledgment of Paternity. These forms are available at all birthing hospitals, the Office of Vital Records, the Arizona Department of Economic Security's Division of Child Support Services offices and many of the county registrar's offices.

You can also establish court ordered paternity by competing paperwork and filing it with the court. A court order to change a birth certificate must have the child's birthday on it. If you have a court order for paternity, the order may be filed with the Office of Vital Records directly by the court, the agency that petitioned the court for the order, or one of the parents may deliver it in person. If you decide to bring a court order to the Office of Vital Records in person, you must bring a certified copy of the court order with you.

Resources:

- Arizona Department of Health Services Vital Records – [Corrections & Amendments to Birth Certificates](#)
- Division of Child Support Services – [Voluntary Acknowledgement](#) form
- Maricopa County [To Establish Voluntary Acknowledgement](#)

32-Q. Where can I get help completing the Parent's Worksheet to establish or modify a child support order?

32-R. The Arizona Supreme Court maintains an online child support calculator. If you do not have exact figures, you can estimate the information input on the worksheet. You should be prepared to explain to the court the numbers used.

Resources:

- Arizona statewide online [child support calculator](#)

33-Q. Can I get a child support order without getting a legal separation or divorce?

33-R. If the parties have never been married, yes. You may file a petition directly with the court; a private attorney may file on your behalf; or the local Division of Child Support Services may help you establish a support order, as well as paternity, if that is an issue in the case. If you are currently married, you will need to contact an attorney or research the *Arizona Revised Statutes* to determine if child support can be ordered without filing a separation or divorce proceeding in court. For information regarding child support while married, contact the Division of Child Support Services.

Resources:

- Arizona [Division of Child Support Services](#)

34-Q. Please describe legal decision-making and parenting time.

34-R. Children are your first priority when making decisions concerning their lives. Research tells us that children of separated or divorced parents do better if both parents stay actively involved in their lives. Remember, conflict is not good for your children. The way you and the other parent act may affect them. The more you and the other parent can deal with each other without conflict, the better it will be for your children. As part of the divorce process, parents or the judge will decide if major decisions regarding the children's health, education, and religion can be made by one or both parents.

In most cases, the children will likely spend time with each parent after the divorce. Arrangements regarding when and how the children will spend time with each parent are referred to as parenting time.

Resources:

- [Things You Should Know About Legal Decision-Making and Parenting Time](#)

35-Q. What does the judge consider when determining legal decision-making and parenting time?

35-R. Arizona has statutes that have specific factors that the judge follows when deciding the best interests of the children. There are other factors that may not be written in the statutes, but may be important. These factors include but are not limited to the following: The court shall determine legal decision-making, either originally or on petition for modification, in accordance with the best interests of the child. The court shall consider all relevant factors, including:

- The past, present and potential future relationship between the parent and the child.
- The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest
- The child's adjustment to home, school and community.
- If the child is of suitable age and maturity, the wishes of the child as to legal decision-making and parenting time.

- The mental and physical health of all individuals involved.
- Which parent is more likely to allow the child frequent, meaningful and continuing contact with the other parent. This paragraph does not apply if the court determines that a parent is acting in good faith to protect the child from witnessing an act of domestic violence or being a victim of domestic violence or child abuse.
- Whether one parent intentionally misled the court to cause an unnecessary delay, to increase the cost of litigation or to persuade the court to give a legal decision-making or a parenting time preference to that parent.
- Whether there has been domestic violence or child abuse pursuant to § 25-403.03.
- The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding legal decision-making or parenting time.
- Whether a parent has complied with chapter 3, article 5 of this title.
- Whether either parent was convicted of an act of false reporting of child abuse or neglect under § 13-2907.02.

Resources:

- Legal decision-making; best interests of the child [A.R.S. § 25-403](#)

36-Q. What are the types of legal decision-making in Arizona?

36-R. You may want to look at the definitions for legal decision-making.

- “Legal decision-making” means the legal right and responsibility to make all nonemergency legal decisions for a child including those regarding education, health care, religious training and personal care decisions. For the purposes of interpreting or applying any international treaty, federal law, a uniform code or the statutes of other jurisdictions of the United States, legal decision-making means legal custody.
- "Joint legal decision-making" means both parents share legal decision-making and neither parent's rights are superior, except with respect to specified decisions as set forth by the court or the parents in the final judgment or order. “Parenting time” means the schedule of time during which each parent has access to a child at specified times. Each parent during their scheduled parenting time is responsible for providing the child with food, clothing and shelter and may make routine decisions concerning the child’s care.
- "Sole legal decision-making” means one parent has the legal right and responsibility to make major decisions for a child.

Resources:

- Definitions [A.R.S. § 25-401](#)

37-Q. How can I find out more information regarding legal decision-making and parenting-time?

37-R. The Arizona Supreme Court has more general information about legal decision-making and parenting time in this brochure.

Resources:

- [Things You Should Know About Legal Decision-Making and Parenting Time](#)

38-Q. What is the Parenting Information Class (PIP)?

38-R. Parent Information Program (PIP) is a mandatory class that provides information to divorcing parents, or parents involved in other domestic relations actions, concerning what their children may be experiencing during this emotionally difficult period. There are certain agencies that provide PIP classes in person and online.

39-Q. If we agree on joint legal decision-making what paperwork do we need to complete?

39-R. You will need a parenting plan, signed by both parents that includes:

- A designation of the legal decision-making as joint or sole as defined in §25-401.
- Each parent's rights and responsibilities for the personal care of the child and for decisions in areas such as education, health care and religious training.
- A practical schedule of parenting time for the child, including holidays and school vacations.
- A procedure for the exchanges of the child, including location and responsibility for transportation.
- A procedure by which proposed changes, disputes and alleged breaches may be mediated or resolved, which may include the use of conciliation services or private counseling.
- A procedure for periodic review of the plan's terms by the parents.
- A procedure for communicating with each other about the child, including methods and frequency.
- A statement that each party has read, understands and will abide by the notification requirements of A.R.S. § 25-403.05, subsection B.

Resources:

- [Things You Should Know About Legal Decision-Making and Parenting Time](#)
- [Planning for Parenting Time Arizona's Guide for Parents Living Apart](#)
- Sexual offenders; murderers; legal decision-making and parenting time [A.R.S. § 25-403.05, subsection B](#)

40-Q. Is Arizona a community property state?

40-R. Arizona is a community property state because of our state law. Community property generally means that spouses equally share ownership of anything purchased, acquired, or paid for during the marriage no matter who uses the property, who paid for the property or what name a title is under.

41-Q. What are examples of community property and debts?

41-R. Examples of community property include: real estate, home furnishings, vehicles, bank accounts, investment accounts, credit card debts, student loans, car payments, and some retirement plans. All property or debt that either spouse acquires during the marriage is likely considered community property or debt unless it can be proven that certain property was acquired as a gift or inheritance.

42-Q. Under what circumstances can spousal maintenance be paid?

42-R. Generally, the parties can agree or the court can order spousal maintenance be paid by one spouse to another. The court will follow the state law (A.R.S. § 25-319) when determining if spousal maintenance is appropriate:

A. In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse for any of the following reasons if it finds that the spouse seeking maintenance:

1. Lacks sufficient property, including property apportioned to the spouse, to provide for that spouse's reasonable needs.
2. Is unable to be self-sufficient through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home or lacks earning ability in the labor market adequate to be self-sufficient
3. Contributed to the educational opportunities of the other spouse.
4. Had a marriage of long duration and is of an age that may preclude the possibility of gaining employment adequate to be self-sufficient.

43-Q. How do I appear after default is entered against me?

43-R. *Arizona Rules of Family Law Procedure* list these procedures and requirements. The local superior court may have forms with instructions available that you can prepare, or you may seek the help of an attorney. The clerk's office can inform you of the current filing fee, if any.

Resources:

- [Arizona Rules of Family Law Procedure](#)
- Maricopa County [How to Get a Default Decree in Family Court Cases](#)

44-Q. How do I amend a motion?

44-R. *Arizona Rules of Family Law Procedure* list these procedures and requirements. The local superior court may have forms with instructions available that you can prepare, or you may seek the help of an attorney. The clerk's office can inform you of the current filing fee, if any.

Resources:

- [Arizona Rules of Family Law Procedure](#)

45-Q. My child and former in-law are divorced and now I'm being kept from seeing my grandkids. How can I get to see them?

45-R. This is called grandparent's visitation. The local superior court may have forms with instructions available that you can prepare, or you may seek the help of an attorney. The clerk's office can inform you of the current filing fee, if any.

Resources:

- Maricopa County establish [grandparents visitation](#) packet

46-Q. How can I get my parental rights restored?

46-R. Restoration of parental rights is a complex matter and court personnel do not provide forms. You may wish to contact an attorney.

47-Q. How can I get my children back?

47-R. If the Department of Child Safety (DCS) has removed your child from your home, you will be served with a Notice of Hearing. A court hearing will be set within seven (7) days. Any requests to the court must be made in writing. The local court can provide forms

for dependency petitions and service, requests for review of temporary custody (only in dependency) and requests for appointment of an attorney or court interpreter. Other forms are available at local court websites and self-service centers.

48-Q. How do I tell the court what witnesses I'm bringing to a hearing?

48-R. *Arizona Rules of Family Law Procedure* provides these requirements. The local superior court may have forms with instructions available that you can prepare, or you may seek the help of an attorney. The clerk's office can inform you of the current filing fee, if any.

Resources:

- [Arizona Rules of Family Law Procedure](#)

49-Q. How do I get a protective order (order of protection or injunction against harassment)?

49-R. Most protective orders can be filed in any justice court, municipal court, or superior court. However, when there is an active case between parties pending in superior court in family court, the petition must be filed in the superior court under your active case number. The protective order must be served on the other party by a process server or law enforcement officer before it is effective. The order will remain in effect for one year from the date it is served on the other party. If you are seeking an order of protection at the Superior Court in Maricopa County, you must go to the Family Violence Prevention Center located at the courthouse.

50-Q. I was dating someone and we split up. They have property that belongs to me that they won't let me have (car, furniture or other property). How do I get my property back?

50-R. This situation is a civil matter. If the value of the property is \$10,000 or less, you may file a small claims case in justice court. If the value of the property is more than \$10,000, you may file a civil complaint in superior court. For other options that may be available, you may want to speak with an attorney.

51-Q. How is child support determined in Arizona?

51-R. The current Arizona Child Support Guidelines follow the Income Shares Model. An income shares model is a model that takes into consideration the income of both parents. The guidelines allow for the children to be supported at the same level as when the parents and child were living together. Each parent contributes his or her proportionate share of the total child support amount. The Arizona Supreme Court and the Self Service Center also offer a free online child support calculator that may help you determine if a change in the child support amount is appropriate

Resources:

- Arizona statewide online [child support calculator](#)
- Arizona [Child Support Guidelines](#)

52-Q. What are IV-D services?

52-R. Title IV-D (Title IV-D of the Social Security Act) services are for any person with legal decision-making of a child who needs help to establish a child support or medical

support order, any parent who already has a support order who needs help to collect support payments, or any noncustodial parent can apply for IV-D child support. If you are receiving public assistance from Temporary Assistance for Needy Families (TANF), or Medicaid or federally-assisted Foster Care programs, you have been automatically referred to the Division of Child Support Services (DCSS) for services.

Resources:

- Arizona [Division of Child Support Services](#)

53-Q. How do I apply for Title IV-D services?

53-R. You must contact the Division of Child Support Services (DCSS). DCSS is a Division of the Department of Economic Security (DES) that is charged with the statewide administration and operation of the Child Support Enforcement Program as established by Title IV-D of the Social Security Act.

Resources:

- Arizona [Division of Child Support Services](#)

**SECTION 21
NAME CHANGE**

1-Q. How do I change my name?

1-R. You may file an application in the superior court in your county of residence, listing reasons for the change and the name to be adopted. The court may enter judgment that your adopted name be substituted for your original name. You are required to contact the state vital records department of your birth with the court order.

Resources:

- Arizona Supreme Court [name change forms](#) and instruction
- A.R.S. [Title 12](#) Courts and Civil Proceedings

2-Q. How do I change a minor's name when the other parent won't sign the request?

2-R. When the other parent does not agree with the request to change a minor's name, you must provide Notice of Hearing Regarding Application for Change of Name. The local superior court may have forms with instructions available; you can prepare your own application or seek the help of an attorney. The clerk's office can inform you of the current filing fee, if any.

Resources:

- Arizona Supreme Court [name change forms](#) and instruction
- A.R.S. [Title 12](#) Courts and Civil Proceedings

3-Q. How can I view the electronic court record?

3-R. Maricopa County - You can access the public information portion of the court and clerk's computer system by visiting the Customer Service Center at 601 W. Jackson (Phoenix), the Southeast Court at 222 E. Javelina (Mesa), the Northwest Court at 14264 W. Tierra Buena Lane (Surprise), or the Northeast Court at 18380 N. 40th Street, Suite 120 (Phoenix). You will find computer terminals that access the Integrated Court Information System (iCIS), which allows search capability of both iCIS cases and

information available in the L-Index (an archival listing of past cases and documents, with minimal identifying information). This means you can view case, party, docket, and judgment information from the computer terminal. You can also access and print scanned images of documents.

You can access documents anywhere through the Electronic Court Record (ECR) for those cases you, as a registered user, are directly related to. Attorneys are able to access images on cases where they are on the case record, and individual parties will have access to cases where you are the party of record. The system will not allow access to sealed cases, sealed documents, or Mental Health cases. One time registration to authenticate user identity is required and can be found at <https://ecr.clerkofcourt.maricopa.gov/login.aspx>. An Arizona driver's license is required for online authentication. Please be aware that copies printed from the ECR website are not considered certified. Certified copies of records must be obtained on paper, either in person or by mail from the clerk's office.

SECTION 22

PROBATE – MENTAL HEALTH

Probate cases present a challenge to courts across the country. They require a high degree of oversight to protect and prevent mistreatment of protected individuals and their property. The term “Probate Court” is used generically to reference the court that hears not only estate probate and intestate matters but also a variety of other cases that traditionally involve filings in the areas of guardianship, conservatorship, elder fraud, and physical abuse.

1-Q. Do I have to open an estate for a dead relative?

1-R. If you have a legal right to claim the property, and the value of all personal property is less than \$75,000 or the value of the real property is less than \$100,000, you may be able to file an Affidavit for Collection of All Personal Property or Affidavit for Transfer of Title to Real Property. If value of the personal property exceeds \$75,000 or the value of the real property exceeds \$100,000, you may qualify for an informal probate. Forms for filing are available in some self-service centers and some superior courts. You should consult an attorney to determine if you have a legal right to the property or if the estate has to be probated and to help guard against undesired and unexpected consequences. The clerk's office can inform the party of the current filing fee, if any.

Resources:

- [Affidavit for Transfer of Real Property](#)
- [Affidavit for Collection of All Personal Property](#)
- Maricopa County [Probate](#) cases webpage

2-Q. How do I get title changed on property that belonged to my relative (husband, wife, father, mother, etc.) who is now deceased?

2-R. If the value of the estate is less than \$100,000, you may file an Affidavit for Transfer of Title to Real Property. Self-service centers or superior courts may have forms available online. If the value of the real property exceeds \$100,000, you may qualify to file an informal probate. You should consult an attorney to determine if the estate has to be

probated and to help guard against undesired and unexpected consequences. The clerk's office can inform you of the current filing fee, if any.

Resources:

- [Affidavit for Transfer of Title to Real Property](#)
- Maricopa County [Probate](#) cases webpage

3-Q. My spouse died. How do I get his or her last paycheck?

3-R. For wages, you can file an affidavit at any time with the employer of the deceased and collect the deceased's wages if they are not more than \$5,000. If more than \$5,000, a probate case may be filed.

Resources:

- Trusts, Estates, and Protective Proceedings [Title 14](#), Arizona Revised Statutes

4-Q. My spouse died. How do I get the money out of his or her savings or checking account or any other personal property?

4-R. If the value of the personal property is less than \$75,000, you may file an Affidavit for Collection of All Personal Property. If the value of the personal property exceeds \$75,000, you may qualify to file an informal probate. Forms for filing an informal probate are available in some self-service centers and some superior courts. You should consult an attorney to determine if you have a legal right to the property or if the estate has to be probated and to help guard against undesired and unexpected consequences. The clerk's office can inform you of the current filing fee, if any.

5-Q. Do you have my will?

5-R. The local superior court clerk can tell you whether your will is being stored in the clerk's office. The local county recorder's office can tell you if the will is recorded in its office.

6-Q. How can I get someone committed because he is a threat to himself or others?

6-R. You should contact the Arizona Department of Health Services, Division of Behavioral Health Services at 602-364-4558, or the Federal Mental Health Services Administration Treatment Referral Routing Service at 1-800-662-HELP (4357). Through either agency, you can request to be connected to the Regional Behavioral Health Authority in your region to inquire about completing an Application for Involuntary Evaluation.

7-Q. Do I need an attorney to file a guardianship and conservatorship?

7-R. It is possible for you to file a guardianship and conservatorship on your own, but due to legal complexities and potential liability, you may wish to consult an attorney. The local court or self service center may have forms and instructions. The clerk's office can inform you of the current filing fee, if any.

Resources:

- Arizona Supreme Court [Probate](#) webpage

8-Q. How do I establish guardianship and conservatorship of an adult?

8-R. The local superior court may have forms with instructions available that you can prepare, or you may seek the help of an attorney. The clerk's office can inform you of the current filing fee, if any.

9-Q. As a guardian (or conservator), do I have to file an annual report?

9-R. Yes. *Arizona Revised Statutes*, Title 14, lists additional procedures and requirements in this area.

Resources:

- Arizona Supreme Court [Probate](#) webpage
- Trusts, Estates, and Protective Proceedings [Title 14](#) Arizona Revised Statutes

10-Q. How do I prepare a guardian's report?

10-R. The local superior court may have forms with instructions available that the party can prepare, you may seek the help of an attorney. The clerk's office can inform the party of the current filing fee, if any.

Resources:

- Arizona Supreme Court [Probate](#) webpage
- Maricopa County [Probate](#) cases webpage

11-Q. Who do I call for a bond?

11-R. Some courts provide lists of bonding companies. Bonding companies can also be found online or in the phone book. Maricopa County suggests you contact your insurance agent as well.

SECTION 23

CRIMINAL

In Limited and General Jurisdiction Courts

1-Q. What is the procedure for entering a plea to a criminal charge?

1-R. There are three possible pleas to a criminal charge:

- Plea of Not Guilty - The defendant denies guilt and the State must prove the criminal charge(s) against him or her. The State is represented by the city or county prosecutor's office.
- Plea of Guilty - The defendant admits that he or she committed the acts charged in the complaint, that the acts are prohibited by law and that he or she has no legal defense for such acts.
- Plea of No Contest - This plea, also known as *nolo contendere*, means the defendant is not admitting guilt and not denying it. The defendant is saying that he or she does not wish to contest the State's charges. Upon a plea of no contest, the judicial officer may find the defendant guilty and enter a judgment of guilt.

2-Q. What happens at a trial on criminal charges or complaints?

2-R. Depending on the alleged offense, a defendant may be entitled to a trial by jury. The defendant is entitled to hear all testimony introduced against him or her. A defendant

has the right to cross-examine any witness who testifies against him or her, to testify on his or her own behalf and a Constitutional right not to testify. If the defendant chooses not to testify, a refusal cannot and will not be used against the defendant in determining his or her guilt or innocence. However, if a defendant chooses to testify, the prosecutor will have the right to cross-examine the defendant. A defendant may call witnesses to testify on his or her behalf and has the right to have the court issue subpoenas for witnesses to ensure appearance at the trial.

3-Q. What will be my sentence?

3-R. The judge imposes the sentence. Court personnel cannot guess, as different facts and law may apply to each case.

4-Q. What happens at the arraignment?

4-R. The process may vary depending on the court. The accused may be advised of his or her rights, charges and consequences of convictions and asked to enter a plea of guilty, not guilty or no contest. In some courts the judge may enter a not guilty plea on behalf of the accused and remind the accused of the need to attend all hearings.

5-Q. What happens after I enter a plea at arraignment?

5-R. Once you have decided on your plea you must enter a plea with the judge at your arraignment. Unless the case involves a victim who has asked to be present, no witnesses will be present at arraignment and no testimony will be taken. At an arraignment, the judge will not grant a request to dismiss any charges. You must enter a plea to the charges against you.

- If a plea of guilty or no contest is entered you may be sentenced immediately following the judge's acceptance of your plea or you may be sentenced at a later date.
- If a plea of not guilty is entered, a pre-trial disposition conference will be scheduled followed by a trial setting. You must decide, if you have not already done so, whether to employ an attorney to represent you.
- You may be represented only by yourself or an Arizona licensed attorney. In some circumstances, a court-appointed attorney may be provided you.

If you cannot afford an attorney and wish representation, you may request that an attorney be appointed to represent you. An examination of your financial status will be made to determine if you are entitled to a court-appointed attorney. If eligible, you may be ordered to pay a portion of the attorney's cost.

6-Q. How do I post bond?

6-R. Procedures vary. Contact the local court or jail for locations and hours for posting bond. Some courts or agencies accept cash, money orders, bank checks (cashier's checks), personal checks, MasterCard, Visa or other major credit cards. Some agencies will only accept the exact amount of cash or a money order. Call first.

7-Q. I do not have the money to post bond. How can I find a bail bond agency?

7-R. Some courts provide lists of bonding companies. Bonding companies may also be found in the yellow pages or search online for bail bond agencies.

8-Q. What happens at a pre-trial conference?

8-R. A defendant or the defendant's attorney will be given an opportunity to meet with a prosecutor to review the facts supporting the State's criminal charges against him or her. At the pre-trial conference, a defendant is entitled to review a copy of the complaint, any written police reports or any other evidence that the State intends to use at the trial. Witnesses do not attend the pre-trial disposition conference and no testimony is taken. However, victims do have the right to be present if they request to do so.

- A defendant has three options at the pre-trial conference:
 - (a) Change his or her plea to guilty and accept the prosecutor's settlement offer, which contains the recommended sentence he or she will receive upon acceptance by the judge;
 - (b) Reject the prosecutor's offer and change his or her plea of not guilty to a guilty or no contest plea and accept the sentence determined by the judge;
 - (c) Maintain his or her plea of not guilty and have the case set for a trial date.

9-Q. Can I reschedule (continue) my hearing to a later date?

9-R. Only the judge can continue a hearing. You may file a written request with the clerk and provide a copy of the request to the other parties (or the prosecuting attorney in a criminal case) for the judge to consider the request.

10-Q. Can I plead by telephone?

10-R. If authorized by the court and the case is a misdemeanor, a telephonic plea may be available provided you are an out of state resident or you reside more than 100 miles from the court.

11-Q. How do I get unsupervised probation?

11-R. Probation is determined by the judge. You would in most cases be represented by counsel who could make the request to the court on your behalf. You may also talk to the probation officer who is preparing a pre-sentence report and ask the probation officer to recommend that, if appropriate. If you are representing yourself, you may request that the court impose unsupervised probation at the time of sentencing. The final decision is up to the judge.

12-Q. How do I clear my record and get my rights restored?

12-R. If you are a first-time offender, convicted of a single felony count, you do not need to petition the court for restoration of civil rights. Civil rights are automatically restored upon successful completion of all aspects of sentencing, including payment of all court ordered fines, fees and restitution. The right to possess firearms requires petitioning the sentencing court. The judge will determine whether or not to grant the request. If you served time in prison, two years must have passed since the date of absolute discharge before becoming eligible to file for restoration of civil rights. To restore civil rights, the party may apply to the sentencing court to vacate the judgment of guilt, dismiss charges and restore civil rights in Arizona. The Certificate of Absolute Discharge must be included with your application.

13-Q. My relative got arrested. Who do I talk to?

13-R. If your relative has an attorney, you may contact your relative's attorney. Court personnel may provide public information, such as upcoming court dates and how to post

bond. In some cases, the arresting agency can provide terms of release or other information and may be able to accept bond.

14-Q. I posted bond for someone. How and when can I get my money back?

14-R. The bond will be exonerated (released) after the conclusion of the case or when ordered by the court. The court must have a current mailing address to return money, which usually occurs within a few days of the exoneration order.

15-Q. What victim services are available?

15-R. Victim services are available through the local county attorney's office. Victims' services vary between courts and agencies and based on misdemeanor or felony crimes may be available through the prosecutor's office involved in the case, the law enforcement agency involved in the case, or an outside agency. A victim advocate can explain the judicial system, act as a link between the prosecutor and the victim, give current case status information, assist in obtaining orders of protection, make referrals for counseling, food, shelter, and escort victims while they testify or appear at hearings.

16-Q. What is a public defender?

16-R. A public defender is an attorney who represents a person who is accused of a crime who cannot afford to hire an attorney. Some counties have public defender offices that have a number of attorneys on staff. Some counties may contract with private attorneys to provide services to the accused who cannot afford to hire an attorney.

17-Q. Will the county attorney represent me?

17-R. The county attorney and other prosecutorial agencies usually represent the State and its municipalities in criminal cases. For more information, the party may contact the county attorney or prosecuting agency.

18-Q. Can you appoint an attorney for me?

18-R. Only a judge can appoint an attorney, and only in certain cases. In most civil and domestic cases, attorneys are not appointed.

19-Q. What is a warrant?

19-R. A warrant is an order from the court to law enforcement to take someone or something into custody. Some warrant information is forwarded to law enforcement agencies throughout Arizona. For example, the court may order a "bench" warrant for law enforcement to arrest someone who failed to appear in court, or the court may issue a search warrant for law enforcement to seize and remove property from a person, place, or thing.

20-Q. What are the different warrants?

20-R. There are several different times in criminal cases when warrants may be issued by the court: at the beginning of a case, during a case if a defendant fails to appear, or after sentencing when a defendant fails to comply with a court order.

Criminal arrest warrants may be issued when there is reasonable case to suspect an individual of a misdemeanor or felony crime.

Arrests result in being held in jail until a bond is paid or until the defendant is brought to court from the jail to see a judge. The judge will decide if bond is continued or if the defendant can be released on his or her own recognizance, meaning the defendant remains personally responsible for appearing, but is not required to post a bond.

When a person fails to appear for a scheduled court date, a warrant is issued. The defendant may be arrested and may be required to post a bond and another court date will be set. If a defendant knows ahead of time that he or she cannot attend court at the scheduled time, the defendant may request a continuance. The defendant must appear unless the continuance is granted by a judicial officer. The defendant may contact his or her attorney, if one has been appointed or retained, or appear as soon as possible in court to ask the judge to quash (end) the warrant and to reset the court date. The judge decides whether to require bond.

A warrant may be issued if a person placed on probation violated his or her probation, or if the defendant failed to comply with any other order the court imposed at sentencing.

21-Q. What attorney should I call to handle my case? Who would be good?

21-R. Court personnel cannot advise a party whether the party should hire a lawyer, nor may they recommend a specific lawyer. Some courts provide a list of local attorneys and there may be a list of local resources of attorneys who will work for a reduced fee or no fee.

Resources:

- Maricopa County Bar Association Lawyer Referral Service
602-257-4434 - <http://maricopalawyers.org>
- Pima County Bar Association Lawyer Referral Service:
520-623-4625 - <http://www.pimacountybar.org>
- Arizona Foundation for Legal Services & Education:
866-637-5341 - www.azlawhelp.org

22-Q. I cannot afford to hire an attorney. How do I get one appointed?

22-R. You may request the court to appoint an attorney when you make the first court appearance. You will have to complete a financial affidavit to determine whether or not you qualify for a court appointed attorney. In some cases, the court may appoint an attorney to represent you, even if you do not want an attorney, if the court determines it is in your best interest or if the case is too complex for you to self-represent. In other cases, when you wish to self-represent, the court may appoint an attorney as advisory counsel. The court may order you to pay a monthly amount towards the costs of your attorney either during the case or, if you are convicted, after you have been sentenced.

23-Q. What have I been charged with?

23-R. Court personnel may show you the public record file if it is not confidential or sealed.

24-Q. What sentence will I get if I plead guilty?

24-R. The judge imposes the sentence. Court personnel cannot guess, as different facts and law may apply to each case. However, certain offenses have mandatory sentences,

meaning a judge cannot order a lesser sentence than is required. Other offenses allow a judge to use discretion to determine the appropriate sentence. If a charge has a mandatory sentence, the judge will inform you of that during the sentencing proceeding.

25-Q. When do I have to pay my fine?

25-R. The terms and schedule for paying fines and other obligations are set by the judge at the time of sentencing. If you have lost the paperwork, the information may be available in the public record or from the probation office, if applicable.

**SECTION 24
CRIMINAL
In General Jurisdiction Court**

1-Q. Will you give me an extension to pay my fine?

1-R. Usually only a judge may grant an extension. You may file a request in writing with the clerk who will then process the request to the judge for consideration. In some cases, probation officers have the authority to grant extensions. You may check with the probation officer first.

2-Q. How do I get unsupervised probation?

2-R. Probation is determined by the court. You would in most cases be represented by an attorney who may make the request to the court. You may also talk to the probation officer who is preparing a pre-sentence report and ask the probation officer to recommend that option. If you are representing yourself, you may make the request at the time of sentencing. The final decision is up to the judge.

3-Q. How do I get a copy of my grand jury minutes or presentence investigation?

3-R. For a copy of grand jury transcripts, a request must be made in writing to the judge who presided over the case, providing a specific reason to support the request. Presentence investigations are public record after they are filed with the clerk of the court's office. Copies are available from the clerk.

4-Q. How do I appeal my case?

4-R. In superior court, you may only appeal a criminal case under certain circumstances. The party's Notice of Rights of Review after Conviction will tell you what may be appealed. If you do not have the right to appeal, you may file for post-conviction relief. The Notice of Rights of Review after Conviction provides the procedure for filing post-conviction relief.

SECTION 25 JURY SERVICE

1-Q. Where does the jury commissioner obtain names of prospective jurors?

1-R. The list of names used to summon people for jury service is created by combining the county's voter registration list and Arizona Department of Transportation records. Names are randomly selected from that master jury list.

2-Q. I have been called to serve three times in the past five years and none of my friends have ever been called. Why don't you pick some other people?

2-R. Names are randomly selected to summon potential jurors. Since that process is random, some people may be selected more often than others.

3-Q. Some people would volunteer for jury service if you'd let them. Why don't you?

3-R. The jury office adheres to the random selection process set forth in the law. Arizona law does not allow people to volunteer for jury service.

4-Q. I can no longer fulfill my duties as a juror. Can't you take my name off your list?

4-R. Under certain circumstances, such as permanent mental or physical disability, jury staff can permanently remove a name from its records. Prospective jurors must explain their situation in writing and return it to the jury office with any required supporting documentation. Since April 13, 2005, people who receive a jury summons to an Arizona court who are at least 75 years of age may be excused upon written request. Eligible citizens who wish to be excused should mark this option on their summons and return it to the jury office.

5-Q. I am not a citizen of the United States but I would still like to serve as a juror. Why can't I?

5-R. Arizona law disqualifies non-citizens, non-residents, convicted felons whose civil rights have not been restored, and people under 18 years of age from jury service.

6-Q. Is jury service mandatory?

6-R. Yes, the United States Constitution and the Arizona State Constitution guarantee the right to trial by jury. Failure to attend as directed may subject the person to penalties provided by law, including a fine up to \$500 and being rescheduled for jury service.

Resources:

- Arizona Revised Statutes [Title 21](#)

7-Q. How long will I have to serve as a juror?

7-R. If selected to serve on a jury for a trial, service is complete at the conclusion of the trial. Generally, jury service is also complete for those who are not selected to serve on the first day.

8-Q. Are there ever any instances when I may have to serve longer?

8-R. Jurors have to serve the length of the trial. Trials usually end within three to five days. During the jury selection portion of the case, the judge presiding over the trial will state the estimated length of that particular trial.

Resources:

- Arizona Supreme Court [Jury Service Information](#) webpage

9-Q. I served on a jury three years ago. Do I have to serve again already?

9-R. Yes. Jurors who appeared for service but were not chosen for a trial are exempt from serving again for a period of time determined by the jury commissioner, generally ranging from one to two years. Jurors who served on a jury panel for a trial in Arizona are exempt from serving again for two years. If it has been more than two years since serving as a juror, citizens are required to appear for jury service again, regardless of how many times they have served in the past.

Resources:

- Arizona Supreme Court [Jury Service Information](#) webpage

10-Q. How do I request to be excused from jury service?

10-R. Prospective jurors who are otherwise qualified to serve may be excused from jury service for certain reasons and hardships. The jury summons or local jury office can provide the specific reasons or hardships and explain the supporting documentation needed with the request to be excused. Each request is reviewed individually. Potential jurors are encouraged to complete the juror questionnaire truthfully, to the best of their knowledge. Failure to do so is against the law. Jury service is a citizen's civic duty and responsibility.

Resources:

- Arizona Supreme Court [Jury Service Information](#) webpage

11-Q. I know that I will not be selected for a jury because of what I do for a living. Why not excuse me now and save time?

11-R. Many courts try civil and criminal cases, both of which require juries. The random selection process prevents jurors from knowing in advance what trial or the type of trial for which they will be selected. Jury office staff cannot excuse potential jurors based on what they do for a living. However, peace officers wishing to be excused may review the requirements explained in A.R.S. Title 21, and send the necessary documentation to the jury office.

Resources:

- Arizona Supreme Court [Jury Service Information](#) webpage

12-Q. I am unable to judge anyone because of my moral or religious beliefs. May I be excused?

12-R. Arizona law does not provide an excuse from jury service for moral or religious beliefs; jury service is still required. Prospective jurors may tell the judge about their beliefs during the jury selection process.

13-Q. Does my employer have to pay me for serving as a juror?

13-R. No. Arizona law does not require employers to compensate their employees while they are on jury service. Many employers support the jury system and provide jury service benefits and will continue employee wages while they serve as a juror. Each employer may have a policy answering this question.

14-Q. Can my employer prevent me from serving as a juror?

14-R. Arizona law prohibits an employer from discharging or in any manner discriminating against an employee for taking time off to serve as a juror if the employee, prior to taking time off, gives reasonable notice to the employer of the requirement to serve as a juror. Jurors who experience problems with their employers should contact the jury office for assistance.

Resources:

- Arizona Revised Statutes [Title 21](#)

15-Q. I live closer to a different court than the one where I've been summoned. Why can't my service be transferred there?

15-R. Arizona law requires that jurors be selected randomly from the court's jurisdiction. Prospective jurors must appear at the court to which they were summoned.

16-Q. How late will I be at the courthouse?

16-R. The hours of operation for most courts are 8:00 a.m. to 5:00 p.m. Prospective jurors should make arrangements to remain the entire day.

17-Q. What about getting a postponement?

17-R. Courts realize prospective jurors may have been summoned at an inconvenient time and in most instances are willing to reschedule service to a more convenient time. Review the jury summons or contact the local jury office for information on postponing jury service.

Resources:

- Arizona Supreme Court [Jury Service Information](#) webpage

18-Q. Will I be compensated for jury service?

18-R. Yes, jurors who appear only on the first day will be compensated for their mileage. Jurors selected to serve on a trial will receive compensation for every day the trial lasts, plus mileage. Courts differ in how often they compensate jurors for jury service (daily, weekly, or bi-weekly).

19-Q. My jury summons asks if I have been convicted of a felony and if my civil rights have been restored. How do I find out if I was convicted, if it was a misdemeanor or a felony, and how do I know if my civil rights have been restored?

19-R. You may check with the records department of the court where you were sentenced to see what the conviction was on the sentencing minute entry or order. Persons are "convicted" when sentenced to a felony or if the charge is left "undesigned." If the conviction was a first-time felony, and all terms of the sentence are completed (monies paid, probation, etc.) then civil rights and the right to sit on a jury are automatically restored. If the conviction was a second-time felony (or more), you must

apply to have civil rights restored. If the sentencing minute entry or order reflects “undesigned felony” (still a felony conviction), the judge has the option to designate the offense a misdemeanor after the party has completed all aspects of the sentence. If the judge chooses to do this, the judge will mark “misdemeanor” on the bottom of the discharge. If the judge chooses not to designate the felony a misdemeanor, you may ask the sentencing judge to do this. The discharge can also be found at the records department of the court where the person was sentenced.

SECTION 26 CALCULATING NUMBER OF DAYS

Rules of Civil Procedure 6(a). Computation

In computing any period of time specified or allowed by these rules, by any local rules, by order of court, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. When the period of time specified or allowed, exclusive of any additional time allowed under subdivision (e) of this rule, is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall not be included in the computation. When the period of time is 11 days or more, intermediate Saturdays, Sundays and legal holidays shall be included in the computation. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday.

Rules of Civil Procedure 6(e). Additional time after service by mail

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party, and the notice or paper is served by mail, five calendar days shall be added to the prescribed period. This rule has no application to the distribution of notice of entry of judgment required by Rule 58(e).

Rules of Criminal Procedure 1.3. Computation of Time

In computing any period of time of more than 24 hours prescribed by these rules, by order of court, or by an applicable statute, the day of the act or event from which the designated period of time begins to run is not to be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which case the period shall run until the end of the next day which is neither a Saturday, Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sunday, and legal holidays shall be excluded in the computation. Whenever a party has the right or is required to take some action within a prescribed period after service of a notice or other paper and the notice or paper is served by a method authorized by Rule 5(c)(2)(C), (D), or (E), *Arizona Rules of Civil Procedure*, five calendar days shall be added to the prescribed period. Mailing pursuant to *Arizona Rule of Civil Procedure* 5(c) (2) (C) includes every type of service except same day hand delivery.

DRAFT

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Court Services Division

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Question & Response (Q&R) Handbook
How to Respond to Common Questions from Court Customers

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MARICOPA COUNTY JUSTICE COURTS BEST PRACTICES

SUBJECT: Ensuring Access to Justice for Self-Represented Litigants
in Civil Cases

EFFECTIVE: August 26, 2015

- 1.0 **RATIONALE:** Judges should ensure access to justice by attempting to make sure that people get their day in court by having an opportunity to be heard and by explaining that otherwise admissible evidence should not be excluded due to an insignificant procedural problem. Most self-represented litigants want to trust the process and the judge. Thus, an explanation of questions, descriptions of procedures and of the law, and clarifications of what will happen next are welcomed. If decisions are based upon the merits of a case, and not because a self-represented litigant was unfamiliar with procedural rules, confidence in the judicial branch can be maintained.
- 2.0 **PURPOSE:** The purpose of any “best practice” is to foster excellence regarding case processing, form development and control, and other operating procedure throughout the Maricopa County Justice Court system (“MCJC”). Implementation of a “best practice” is strongly recommended to promote consistency and efficiency throughout the MCJC but is voluntary by any individual Justice of the Peace (“JP”) Court.
- 3.0 **ISSUE:** There has been a paradigm shift away from a trial court judge strictly enforcing every court rule against a self-represented litigant (and simply holding them to an identical standard as an attorney) to encouraging judges to inform self-represented litigants of proper procedures. Much of this new judicial philosophy has already been incorporated into the Rules of Procedure for Eviction Actions and into the Justice Court Rules of Civil Procedure. Even so, this type of judicial discretion is especially challenging because it requires the judge to balance competing interests. A judge should ensure that any leniency

that compromises the court's impartiality should not occur.

4.0 **LEGAL AUTHORITY:** In accordance with the Arizona Code of Judicial Conduct, Rule 2.2, Impartiality and Fairness, a "judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." Comment 4 to that Rule confirms that a judge may "make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard." Judges have the obligation to ensure that all parties are heard and the right to be heard is meaningless unless that right is full and complete. In addition, Rule 2.8(B) of the Code of Judicial Conduct requires that a judge shall be patient, dignified, and courteous to litigants. *See also, Turner v. Rogers*, 131 S.Ct. 2507 (2011)(Held 14th Amendment's due process clause requires state assistance to unrepresented litigants in a child support case when the possible outcome includes incarceration); "Proposed Best Practices for Cases Involving Self-Represented Litigants," American Judicature Society; Goals 1 and 4 of the Arizona Supreme Court's Strategic Plan, "Advancing Justice Together." *See generally, R. Engler, Ethics in Transition: Unrepresented Litigants and the Changing Judicial Role*, 22 Notre Dame Journal of Law, Ethics & Public Policy 367 (2008).

5.0 **SUGGESTED BEST PRACTICES:** When a self-represented litigant appears, a judge should consider implementing the following best practices:

BEGINNING A PROCEEDING:

1. Record all interactions with self-represented litigants.

Note: Rule 1(L) of the Arizona Rules of Protective Order Procedure states that a judge shall, where practicable, record all hearings, including ex parte proceedings. In addition, an audio record would assist a court in determining whether to allow a withdrawal of a guilty plea pursuant to Rule 17.5 of the Arizona Rules of Criminal Procedure.

2. Make sure the parties understand what is to be decided at the current proceeding.

OOP Example: "Today I have to decide whether to leave in place an Order of Protection that prohibits the defendant from contacting the plaintiff in certain ways and from visiting certain locations. That is all that I am going to decide. [I am not going to determine child custody, parenting time, who is a better parent, or who is a better person.] Do both sides understand that?"

Civil Pre-trial Conference Example: "The purpose of a pre-trial conference

is to check in on the status of a case and see what needs to happen next. We can briefly discuss whether the case can be settled today and if it can, great. If not, I need to explain what a motion for summary judgment is. Did both sides exchange a disclosure statement?"

3. Outline the procedure to be followed at the hearing, including the responsibility for the burden of proof.

Civil Case Example: *"I don't expect that either side is an expert in hearing procedures, so I want to give you a brief overview of what is going to happen today. (1) Both sides will have an opportunity to make an opening statement. An opening statement is a brief overview of what you think the evidence will be. It is not your time to tell me everything you think I need to know about the case. (2) After both sides have made opening statements, the Plaintiff will go first. You can call yourself as a witness and can call other people as witnesses. You can also offer documents and photographs into evidence. (3) After you are through with your initial testimony, the Defendant will have a chance to ask you questions. The same is true for any other witnesses you call. (4) This is called cross-examination. You may be familiar with it from TV police shows. However, when you are asking questions to the other side, you must just ask questions. You cannot argue, debate, start to give your own version of the facts, or do anything you see on afternoon TV judge shows. Nobody is going to yell at each other. You just ask questions. (5) After the Plaintiff is through with her case, the Defendant's case will proceed in the same manner. You can call yourself as a witness, offer documents or photographs into evidence, and then she will ask questions of you and of your witnesses. (6) After both sides have presented their evidence, both sides have a chance to tell me why they think their side should prevail. That is called closing argument. The Plaintiff will go first, followed by the Defendant, and then the plaintiff gets the last word because she has the burden of proof. That's called a rebuttal argument. Does either side have any questions?"*

4. Indicate the time available for the hearing.

Example: *"I will let you know in advance that we have only thirty minutes for this whole hearing. Please understand that, at times, I may have to keep us moving to ensure that we get to everything we need to and to properly hear from both of you."*

5. Explain the governing law or explain the elements of the case in a manner that helps the parties focus their testimony.

Example: *"In order to grant an Injunction against Harassment, I need to find at least two specific examples of harassment that happened within the*

last year. That means behavior that would cause a reasonable person to be seriously alarmed, annoyed, or harassed."

6. Use simple language and invite questions.

Eviction Example: *"Your landlord is claiming that you have not paid rent for July. Is that true? [If tenant says, yes] Why? [Listen for anything that sounds like a potential defense (e.g. It's been really hard since he cut off the electricity, etc.)]. All kinds of people cannot pay their rent for all kinds of reasons that are not their fault. That does not make you a bad person; but it does entitle the landlord to a judgment against you today."*

7. Clarify that the judge's questions and interruptions have no purpose other than getting to the facts.

Example: *"If I ask a question or shape the discussion, it is not to cut you off or to help you. I am just trying to get to the facts we need to decide the issue before us. It does not mean anything about how I feel about the case."*

8. Pay attention and look like you are paying attention.

Note: *If you take notes or refer to books or information on a computer screen during a proceeding, explain what you are doing so that the litigants understand that they have your attention.*

MANAGING EVIDENCE:

1. Permit narrative testimony by a self-represented litigant.

Example: *"You don't have to ask yourself questions and then give answers. Just tell me, what happened from your perspective?"*

2. Ask questions to get to evidence.

OOP Example: *"In order to consider an Order of Protection, I need to find a specific relationship and then an act or threatened act of domestic violence. First, tell me about your relationship with the Defendant."*

3. Ask questions concerning the nature of the evidence and avoid not admitting evidence for overly technical reasons (e.g. foundation or authentication).

Note: This area is especially tricky and what may be appropriate in one context may not be appropriate for another.

Example: *"I see that you are offering a photograph. Can you tell me where the photograph came from, who took it, and what it shows? Is that what the plumbing looked like after the repairs were made?"*

4. Probe for details and for clarification.

Example: *"Can you help me understand what happened by telling me a bit more about that conversation? How did it start? What did he say? How did you respond?"*

5. Maintain control of the courtroom with courtesy and respect, and help litigants stay focused on matters relevant to the judge's decision.

Example: *"Sir, I think you may be telling me things that are not directly relevant to this case, and please stop making disparaging comments about the Defendant. That is not appropriate behavior for a courtroom and it makes it harder for me to listen and to consider the points you are making. It is not helpful to me in deciding the case because I need specific acts of conduct, not generalizations. Please just focus on what happened on that Friday between the two of you."*

6. Clarify the relevance of testimony when it is uncertain.

Example: *"Why do you think the behavior of the Defendant's girlfriend will help me decide whether to issue a Protective Order against the Defendant? Can you tell me instead about the conduct of the Defendant?"*

7. A judge in a bench trial determines the facts and applies the law to those facts. As such, the judge can consider any evidence that does not draw an objection and can either admit or reject evidence. However, there is an additional option. The judge can admit evidence that may not appear to comply with the Rules of Evidence and in so doing, can give that potentially questionable evidence the weight the judge sees fit.

8. When appropriate, tell litigants when they have failed to establish an important element, and then provide an opportunity to fill the gap. In some cases, it may be appropriate for the judge to consider telling litigants when they have failed to establish an important element of their claim or defense, and then, provide an opportunity to fill the gap. For example, it is often appropriate to ask a self-represented landlord whether they provided a five-day notice. Before telling a litigant this type of information there are several factors to consider (e.g. whether the other party is represented by an attorney, whether it is a bench or a jury trial, whether doing so is objectively fair, etc.).

Example: "Sir, the only evidence that you have given about the nature of your injuries is your testimony that when it rains, your knee hurts a little. That is not, itself, very strong evidence. Do you have any other evidence about your injuries?"

9. Provide a final opportunity for litigants to add to their testimony or to present additional evidence.

Example: "You will still have an opportunity to make a closing argument; but is there any additional evidence you would like me to consider? Do you have any additional documents or photographs? Do you have any additional witnesses?"

10. When necessary, the judge should remind the parties that the judge must be neutral and fair.

Example: "I can't help you present your case; but this is a time to ask questions and you need to ask questions. You will have a time to testify and give your own version of these events; but now, you can only ask questions. I am neutral and don't have a stake in the outcome of this case."

CONCLUDING THE PROCEEDING:

1. Announce the decision, if possible, from the bench.

Eviction Example: "I find that the tenant did not pay rent and did not have a valid reason to withhold rent under Arizona law. In some states you can 'rent strike' or just stop paying all of your rent if you are having problems with your landlord. In Arizona, you can't do that. Now let me explain what your options are now that I am granting judgment for the Plaintiff."

2. Explain the decision and consider acknowledging the positions and strengths of both sides.

Example: "Let me explain my decision to you. The Plaintiff did establish that the Defendant was negligent in repairing her car. She did establish that she is entitled to \$1,500.00 for the costs of the additional repairs. However, the Plaintiff did not establish that she was entitled to expenses for the limousine service that she had used while her vehicle was being repaired."

3. Make sure that the litigants understand the decision and what is expected of them, taking the opportunity to encourage the litigants to explain any problems that they might have complying.

OOP Example: *"It is very important that you understand what I have just ordered. Do you understand that you are to have no contact with the Plaintiff except by e-mail or by text message? Now let me emphasize that this order is not something for you two to disregard on your own. Plaintiff, if in the future you want the Defendant to be able to contact you in different ways, then you would need to come in to court to have the order modified or dismissed. Do both of you understand?"*

4. Where relevant, inform the litigants of what will be happening next in the case and what is expected of them.

Eviction Example: *"All kinds of people cannot pay their rent for all kinds of reasons. This does not make you a bad person, but it does mean that the landlord will get a judgment against you today. You may or may not have to move, but you need to know whether the landlord is willing to work with you or not. If not, then you need to immediately start looking for a new place to live because five days from today, the landlord can file what is called a writ of restitution. When I sign it, it is an order for a constable to remove you from the residence. Five days is not very much time to find a new place to live, but it is much better than the five minutes that the constable will give you. So you need to know today, if possible, whether your landlord is willing to work with you. You also have a right to appeal this case and there is a handout available at our front counter that explains those rights. You only have five days to file a notice of appeal. Do you have any questions?"*

5. Thank the parties for their participation and acknowledge their efforts.

Example: *"I want to end by thanking you both for your professionalism. This case had the potential to get very ugly but it didn't."*

- 6.0 IMPLEMENTATION: The above best practice was recommended on August 26, 2015. The practice may be implemented immediately and remain effective until superseded or abolished.



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ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
December 10, 2015	<input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Equitable Treatment of Minority Youth, Fifth Statewide Report Card, 2015

FROM:

The Commission on Minorities in the Judiciary in the person of Dr. John Vivian, Arizona Department of Juvenile Corrections and Commission member.

DISCUSSION:

Arizona is required, by federal law, to maintain and report data on disproportionate minority contact (DMC) on an ongoing basis and to make efforts to reduce any disparity that may exist. Arizona had been monitoring DMC on a statewide level for over a decade and partnered with local jurisdictions to combat DMC in our courts.

This is the 5th Arizona Statewide Report Card on the Equitable Treatment of Minority Youth. These reports have challenged juvenile court judges, court administration, county attorneys, and many other judicial employees and community leaders, to ensure all youth in the Arizona juvenile justice system are provided with fair and equitable justice.

The purpose of this report is to analyze each major decision-point in the juvenile justice continuum to determine whether all youth are receiving similar treatment. It is our intent that this report be used as a tool by juvenile court leadership teams and policy makers to prioritize and focus their efforts in creating fair outcomes for all children who have contact with Arizona's juvenile courts.

The Commission on Minorities in the Judiciary would like to thank Helen Gandara and John Raeder with the Governor's Juvenile Justice Commission for their commitment efforts in addressing DMC statewide. Additionally David Redpath of the Administrative Office of the Courts, and Commissioners Dr. John Vivian of the Arizona Department of Juvenile Corrections, the Honorable Maria Montano-Aviles and Professor Paul D. Bennett of the University of Arizona, James E. Rogers College of Law are to be commended for their work with producing this report and work presenting these findings with jurisdictions statewide.

RECOMMENDED COUNCIL ACTION:

This topic is on the agenda for informational purposes only, and no formal action is requested.



ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
COMMISSION ON MINORITIES

Equitable Treatment of Minority Youth



Fifth Statewide Report Card-2015

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Message from the Commission

Arizona is required, by federal law, to maintain and report data on disproportionate minority contact (DMC) on an ongoing basis and to make efforts to reduce any disparity that may exist. Arizona had been monitoring DMC on a statewide level for over a decade and partnered with local jurisdictions to combat DMC in our courts.

One notable accomplishment is the collaboration between the Governor’s Juvenile Justice Commission and the Commission on Minorities in the Judiciary in combining efforts to reduce the incidence of DMC by establishing the Arizona Statewide DMC Committee. As a result, Arizona partnered with Arizona State University to examine the data in detail and explore the factors that may contribute to the DMC, and the report of its findings, *Arizona Juvenile Justice System: Disproportionate Minority Contact Assessment*, was published in 2014. The Commission on Minorities in the Judiciary then reached out to the Presiding Juvenile Court Judge of each county, and their court leadership teams should be commended for their courage and commitment in paying critical attention to procedural fairness.

This is the 5th Arizona Statewide Report Card on the Equitable Treatment of Minority Youth. These reports have challenged juvenile court judges, court administration, county attorneys, and many other judicial employees and community leaders, to ensure all youth in the Arizona juvenile justice system are provided with fair and equitable justice. The report indicates improvements in some areas and things remaining unchanged in other areas, with a few decisions points getting worse.

The purpose of this report is to analyze each major decision-point in the juvenile justice continuum to determine whether all youth are receiving similar treatment. It is our intent that this report be used as a tool by juvenile court leadership teams and policy makers to prioritize and focus their efforts in creating fair outcomes for all children who have contact with Arizona’s juvenile courts.

The Commission on Minorities in the Judiciary would like to thank Helen Gandara and John Raeder with the Governor’s Juvenile Justice Commission for their commitment efforts in addressing DMC statewide. Additionally David Redpath of the Administrative Office of the Courts, and Commissioners Dr. John Vivian of the Arizona Department of Juvenile Corrections, the Honorable Maria Montano-Aviles and Professor Paul D. Bennett of the University of Arizona, James E. Rogers College of Law are to be commended for their work with producing this report and work presenting these findings with jurisdictions statewide.

Respectfully submitted,

Judge Maurice Portley
Chair, Commission on Minorities in the Judiciary

Executive Summary-2015

This report is a result of the 2002 Equitable Treatment of Minority Youth report produced by the Arizona Supreme Court Commission on Minorities in the Judiciary (COM). One of the recommendations issued in that report was to create an annual report card to assess progress on the reduction of over-representation of minority youth in the juvenile justice system. The decision has been modified to produce a report card every third year.

According to the Office of Juvenile Justice and Delinquency Prevention, measuring disproportionate minority contact is like taking vital signs, it alerts one to potential problems and helps focus efforts. This report card is intended to be used as one would a general physical, to detect change and recommend appropriate action.

This report addresses the 2002 Equitable Treatment of Minority Youth recommendation by highlighting decision points from referral to the juvenile court through disposition. The first report serves as a baseline for the second, third, fourth and fifth report cards. The intent is to illustrate the current situation, provide a basis for future comparison, highlight areas of special concern and compare these results with prior report cards. It is important to note that offense severity and prior offense history are not included in the analysis of these reports. Tables illustrating **Relative Rate Index (RRI's)** at various decision points across four years and by county are included in the appendix of this report.

While Arizona is enjoying unprecedented declines in the number of youth entering the system, minority youth are not fairing as well as White youth in the Arizona juvenile justice system. The following provides a summary of the results of this report.

All Youth:

- Juvenile delinquency activity is decreasing
- Only 3.25% of court-age youths were referred to juvenile court in FY2013
- Minority youth are under-represented in diversion cases
- Only 17.93 % of all referrals are brought to detention, this is a downward trend over the last 4 years.
- Very little difference in rates of adjudication among all groups of youth
- Minority youth are more likely to be Direct Filed in adult court

African American Youth:

- In the 2004 report, were referred at a rate that was 2 times higher than would be expected based on their proportion in the population. The following four reports indicate this has dropped to 1.8 times.
- Were Committed to ADJC and brought to detention are higher rates.
- The most significant finding continues to be the rate of Direct Filing in Adult Court. The overall rate of Direct Filing for African American youth ranged from 2.92-5.62 over the 4 cohorts examined.

Hispanic Youth:

- Are under-represented at the referral decision point however they were over-represented in being brought to detention
- Had higher rates of being petitioned and ending up on Juvenile Intensive Probation Services (JIPS).
- Were Direct Filed in Adult Court at 3.55 times higher than White youth—an increase from the 2010 Report Card.
- Are about even to the White youth on being adjudicated
- Had higher rates for being committed to ADJC.

American Indian Youth:

- Although they are over-represented at being referred and brought to detention, they are more likely to be released.
- The Direct Filed data shows a decrease from the 2006 Report card with an RRI of 1.56. Transferred youth show under-representation for the American Indian youth, but this rate involves an extremely small number.
- They are under-represented on Diversion, ADJC and Penalty Only.

Arizona Has a History of Addressing Disproportionate Minority Contact

Arizona has a long history of focusing on DMC in the juvenile justice system.

- 1991 – 1994** Arizona was selected as one of five states to address DMC through an initiative sponsored by the Office of Juvenile Justice and Delinquency Prevention (OJJDP).
- 1993** The Arizona Juvenile Justice Advisory Council published the first Equitable Treatment of Minority Youth report.¹ This report assessed the over-representation of minority youth in the juvenile justice system in Maricopa and Pima counties.
- 1998** OJJDP published DMC: Lessons Learned From Five States² and includes Arizona as one of the five states.
- 2000** The Arizona Supreme Court created the Building Blocks Initiative to address DMC in Maricopa County.
- 2001** Pima County Juvenile Court publishes A Comparative Analysis of Minority Over-Representation in the Pima County Juvenile Justice System, 1990 versus 2000.
- 2002** The Arizona Supreme (COM published the second Equitable Treatment of Minority Youth report.³ This report assessed the progress made from 1990 to 2000 in Maricopa and Pima counties and recommended that an annual report card be developed.
- 2004** COM published the First Annual Arizona Statewide Report Card.⁴ This document examined the proportion of youth by race and ethnic group at various decision points in the Justice System. It also examined the information using the Relative Rate Index.
- 2004** Pima County selected by the Annie E. Casey Foundation as a Juvenile Detention Alternatives (JDAI) site, Disproportionate Minority Contact is included in the initiative.
- 2006** COM published the Second Arizona Statewide Report Card.
- 2008** COM published the Third Arizona Statewide Report Card.
- 2009** The Governor's Juvenile Justice Commission and COM collaborate to establish the Statewide DMC Committee and commence to review individual county's DMC data and meet with each county's court leadership team to discuss their DMC data and to promote and support efforts to focus on areas of concern.
- 2010** COM publishes the Fourth Arizona Statewide Report Card. The information in this report is statewide and includes all fifteen Arizona counties. The population is a group of juveniles referred to the juvenile justice system in calendar year (CY) 2008 and followed through late July of 2009 rather than using different juveniles at each decision point. This is the Fourth Report Card and is comparable to the first three as the analysis procedures and decision points remain constant.
- 2013** Arizona partner's with Arizona State University to produce "Arizona's Juvenile Justice System: Disproportionate Minority Contact Assessment" which was a five year analysis and file review to systematically assess what might be causing DMC in Arizona.
- 2015** COM publishes the Fifth Arizona Statewide Report Card.

The information in this report is statewide and includes all fifteen Arizona Counties. The population is a group of juveniles referred to the juvenile justice system in calendar years (CY) 2010 and 2011 and Fiscal Years (FY) 2012 and 2013. These youth are followed through the entire court process to accurately represent outcomes for each cohort. This is the Fifth Report Card and is comparable to the first four as the analysis procedures and decision points remain constant. New this year is the appendix in which trend data is presented as well as county specific data.

JUVENILE VS. REFERRAL LEVEL DATA

- Data is presented for juveniles referred in Table 1. Each number represents one juvenile. The population data comparison is the only place that juvenile level data is presented.
- All subsequent data is presented based on total referrals. This means that if a juvenile is referred to the juvenile court three times in a given year, each referral is reported separately.

TWO TYPES OF INFORMATION PRESENTED

This report provides two types of information: percentages and relative rates.

- Percentages show the proportion of that racial/ethnic group that appears at a particular decision point (referral, detention, petition, etc.) based on the preceding decision point.
- Relative Rates (RRI) offer a comparison to White youth. This allows for an assessment of the degree of over-representation of minority youth in the juvenile justice system (see **What is the Relative Rate Index?**)

It is important to realize that while the percentages may suggest differences, the RRI scores will indicate whether DMC may exist. This can happen because the proportions may look large, but when compared to the proportions for White youth, a truer picture of disparity is presented. This is the main advantage of using RRI scores in addition to percentages.

FOUR GROUPS OF JUVENILES – 19 MONTHS

The population for this report is all juveniles referred in Fiscal Year (FY) 2013. Additionally the appendix will display the same data for the preceding three years with four cohorts in and trend lines. The four years examined will be calendar years (CY) 2010 and 2011 and fiscal years FY 2012 and 2013. The juveniles referred in each of those years represent a cohort that was followed for up to 19 months until their referrals were disposed of. African American, White, Hispanic and American Indian youth are presented in this report. "Other" and "Unknown" race designations were not included in the breakouts or the totals.

Any juvenile court activity that occurred after August of 2014 was not captured for this report. Therefore, while most of the referrals are followed through disposition, some were still pending action as of August 2014.

What is the Relative Rate Index (RRI)?

The Relative Rate Index (RRI) is a measure of over/under-representation used by the Office of Juvenile Justice and Delinquency Prevention. **It is designed to be an "early warning sign" measure, not an outcome.** It should be used to point out problems so that the systems attention can be more effectively focused.

The RRI is a comparison of rates of occurrence for racial/ethnic groups.

A rate of occurrence is the number of cases of a juvenile justice event (for example, referral) in terms of another event (for example, juvenile population).

The RRI is calculated by taking the rate of occurrence of referrals for one race/ethnicity divided by the rate of occurrence of referral for another race/ethnicity (for this report, the base group is always White). The RRI score is not calculated for any group whose proportion of the population is less than 1%.

For example, the rate of referral for Hispanics based on the Hispanic juvenile population (.0492) is divided by the rate of referral for Whites based on the White juvenile population (.0463).

This calculation provides a relative rate index (RRI) of 1.1 (with rounding) for Hispanic Youth (compared to the base RRI of 1.0 for White youth). This suggests that Hispanic youth are only slightly more likely to be referred to Juvenile Court than White youth.

An RRI of greater than one indicates some degree of over-representation, likewise an RRI less than one points to a degree of under-representation and warrants further attention.

DECISION POINTS REVIEWED

A decision point is one step in the juvenile justice process. This report reviews the following decision points (see the Glossary for further explanation):

- Referral (paper or physical/detention)
- Diversion, Petition Filed, No Petition Filed,
- Direct filed in adult court
- Adjudicated, transferred to adult court, or non-adjudication
- Dispositions (penalty only, Department of Juvenile Corrections, or probation (standard or intensive))

All of the data on the decision points are collected either in the Juvenile On-Line Tracking System (JOLTS) or on the Integrated Court Information System (ICIS) for Maricopa County.

In 2013, 28,837 juveniles were referred to the Juvenile Court in Arizona. This represents 3.25% of the population of Arizona's juveniles age 8 – 17 who are African American, White, Hispanic, Asian or American Indian.⁵

- For the most recent population data, White youth made up 43% of all youth age 8 to 17 in Arizona. Hispanics accounted for slightly over 42% and African Americans, American Indians and Asians each accounted for 5.32%, 5.17% and 3.12% respectively of the population.
- The RRI indicates that the rate of referral for African Americans is 1.8 times than that of Whites and that the rates of referral for Asians (0.3) and Hispanics (0.8) are less than that that of White youth and while American Indians (1.0) were referred at the same rate as Whites.

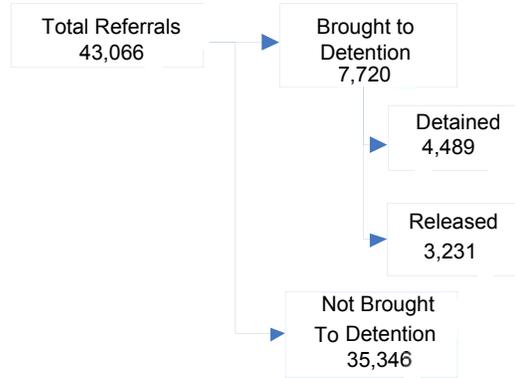
Table 1. Arizona Population and Referrals: Youth aged 8 – 17 years of age by Race for Calendar Year 2013⁶

	Number		Percentage		RRI Score ⁷
	Arizona Population	Juveniles Referred ⁵	Arizona Population	Juveniles Referred	
Total Juveniles	906,445	28,837	100.00%	100%	--
White	394,628	13,176	43.6	46.7	1
African American	48,254	2,834	5.3	9.8	1.8
Asian	28,269	232	3.12	0.8	0.3
Hispanic	388,453	10,960	42.9	38.0	0.8
American Indian	46,841	1,635	5.2	5.6	1

MOST REFERRALS NEVER BROUGHT TO DETENTION

In 2013, the 28,837 juveniles referred accounted for 43,066 referrals. In Arizona, about 4 out of every 5 referrals are not brought to detention (paper referral). In 2013, 58.1% of those brought to Detention were detained. This is a lower percentage than in previous year and is indicative that the Juvenile Detention Alternatives Initiative (JDAI) the Arizona Court System has implemented in many of its counties

has been successful in ensuring only the appropriate kids are being detained for the right reasons. This is a positive outcome as one of the goals of this initiative is to reduce the inappropriate and unnecessary use of detention. In Arizona, great strides have been made to reduce this percentage over the last 4 years as Arizona has actively sought alternatives to detention while maintaining public safety.



- **Minorities show a higher rate of being brought to detention. However of those brought to detention centers White youth are actually detained at a higher rate than minorities; Asian American Youth show the highest rate of being released.**

Table 2: Brought to Detention or Not

	Total Juvenile Referrals	White Referrals	Asian Referrals	African American Referrals	Hispanic Referrals	American Indian Referrals
Total Referrals	43,066	19,007	322	4,486	16,761	2,490
Percentage						
Not Brought to Detention	82.07%	85.17%	84.47%	79.45%	79.37%	81.08%
Brought to Detention	17.93%	14.83%	15.53%	20.55%	20.63%	18.92%
Detained	58.15%	59.77%	42.00%	46.64%	59.57%	62.21%
Released	41.85%	40.23%	58.00%	53.56%	40.43%	37.79%
RRI						
Paper Referral	--	1	0.9	0.9	0.9	0.9
Brought to Detention	--	1	1.05	1.39	1.39	1.28
Detained	--	1	0.7	0.78	1	0.97
Released	--	1	1.44	1.33	1	0.94

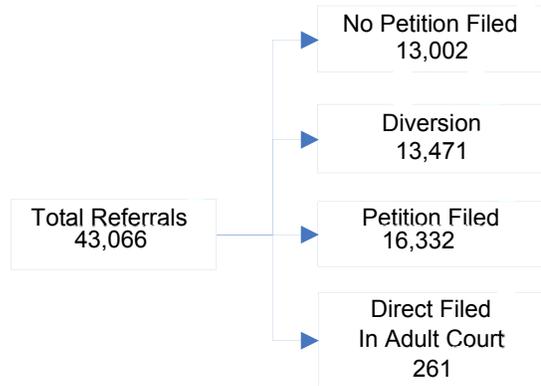
* Percentages are of the total referrals for that racial/ethnic group

Of the 18% of referrals that resulted in a juvenile going to detention (physical referral):

- In 2013, almost 6 out of every 10 juveniles brought to a detention facility due to a referral were detained at the initial screening.
- The RRI scores (1.05-1.39) indicate that minority youth were over-represented in the group *brought* to detention.
- Once brought to detention, the RRI scores (.7-.97) indicate that minority groups of juveniles were less likely to be detained. This positive outcome was not seen in previous report cards this may be attributed to the increased utilization of objective detention screening tools implemented across the state to assist in the detention decision.

To Formally Process in Court or Not?

Referrals may result in formal court processing (Petitions or Direct File to Adult Court) or informal court processing (Diversion or No Petition Filed). It is possible for a referral to be diverted and then be filed as a petition if the consequence (sanction) is not completed. Of the 43,066 referrals filed in 2013, there were only petitions filed on 16,368 (28.2%).



➤ **Minority Youth were more likely to petitioned and Direct Filed on than White youth.**

Table 3: Formal and Informal Court Processing

	All Juvenile Referrals	White Referrals	Asian Referrals	African American Referrals	Hispanic Referrals	American Indian Referrals
Total Referrals	43,066	19,007	322	4,486	16,761	2,490
Percentage						
No Petition	30.19%	30.30%	23.29%	29.22%	26.97%	28.79%
Diversion	31.28	32.91	45.34	27.6	31.35	23.17
Petition Filed	37.92	33.54	31.06	41.82	40.83	45.7
Direct Filed	0.6	0.24	0.31	1.36	0.86	0.36
RRI						
No Petition	--	1	0.7	0.88	0.81	0.92
Diversion	--	1	1.38	0.84	0.95	0.7
Petition Filed	--	1	0.93	1.25	1.22	1.36
Direct Filed	--	1	1.28	5.62	3.55	1.49

* Percentages are of the total referrals for that racial/ethnic group.

* Column percentages may not sum to 100%. Some referrals in the “No Petition” group may be pending decision.

➤ Diversion is a process that allows juveniles to avoid formal court processing if one or more conditions are completed and the juveniles accept responsibility for the offenses. Of the 43,066 referrals filed in

2013, 13,471 (31.3%) were diverted. In general, African American, Hispanic and American Indian youth referrals were under-represented at the Diversion decision point with RRIs ranging from 0.7 to 0.95, while Asian youth were afforded the opportunity more often than white youth with an RRI of 1.38. African American, Asian, Hispanic and American Indian youth are also under-represented at the No Petition point. The converse of this is all minority groups other than Asians were over-represented on the Petition Filed decision point (RRI Range 1.22-1.36). All minority youth were more likely to be direct filed in adult court than White youth with African American youth most likely to be direct filed on with a rate that is over 5 times that of White youth. This is a future challenge for Arizona and an area to target moving forward.

➤ **Referrals for Minority Youth were More Likely to be Filed as Petitions.**

A petition is filed when a juvenile is alleged to be delinquent or incorrigible and formal court processing is warranted. Of the 43,066 referrals filed in 2013, 16,332 (37.92%) resulted in petitions filed in juvenile court. The actual number of petitions is less than this because multiple referrals may be contained in a single petition.

- 41.82% of African American referrals filed in 2013 resulted in a petition. This compares to 40.83% for Hispanic youth, 45.70% for American Indian youth, 31.06% for Asian youth and 33.54% for White youth.
- The RRI score paints a picture that suggests that the referrals of minority youth are more likely to be filed as petitions than White youth (.93-1.36).

➤ **Minority Youth Referrals were More Likely to be Direct Filed in Adult Court**

A juvenile aged 15 or older must be directly filed into adult court if accused of murder, forcible sexual assault, armed robbery, or other specified violent offenses. A juvenile will also be directly filed if previously convicted in adult court or if the juvenile has two prior felony adjudications and is arrested for a third felony. Finally, a juvenile who is 14 and a chronic offender or who is 14 or older and has committed one of a specified set of offenses may be directly filed in adult court at the discretion of the county attorney.

The direct filings in Arizona having been decreasing dramatically in number of the last five years, close to a 50% decline. Less than one percent (261 or 0.61%) of the total referrals in 2013 resulted in a direct file to adult court. Nonetheless, the decline in total numbers of youth effected hasn't stemmed the significant over-representation exists at this decision point.

The rates of Direct Filing for Asian, Hispanic and American Indian youth referrals was higher (1.28, 3.55 and 1.49, respectively) than for White youth. African American youth referrals had a Direct Filing rate 5.62 times higher than White youth. These findings are the most serious DMC findings in the state and invite an further examination. While the number of youth involved is smaller than most decision points, making the relative rates across races more easily impacted by a small number of cases, adult charging is likely to have the greatest impact on the youth's future.

FOLLOWING THE PETITION

This section of the report looks at three general categories of outcome that follow a petition: adjudicated, transfer to adult court (pending a transfer hearing), and non-adjudication.



Table 4: Post Petition Decisions

	All Juvenile Referrals	White Referrals	Asian Referrals	African American Referrals	Hispanic Referrals	American Indian Referrals
Petition Filed	16,332	6,375	100	1,876	6,843	1,138
Percentage						
Adjudicated	65.03%	65.65%	61	57.52%	68.04%	68.28%
Transferred	0.08	0.08	0	0.11	0.07	0.18
RRI						
Adjudicated	--	1	0.93	0.88	1.01	1.04
Transferred	--	1	0	1.36	0.92	2.24

* Percentages are of the total referrals for that racial/ethnic group.

Of the 16,332 petitions filed in FY 2013, 5,697 (34.88%) were not adjudicated. Adjudication is the juvenile equivalent of a “conviction” in adult court. Of the 16,332 referrals resulting in petitions filed, 65.03% (10,621) were adjudicated. There were no major differences in the rates of adjudication between White and Minority youth. Rates of adjudication were lower for Asian, American Indian and African American youth while the Hispanic rate of adjudication was very comparable to that of White youth (1.01). This finding is a positive one for Arizona’s courts as it demonstrates in the court room, where there rules of evidence and representation for the youth exists, minority youth can expect similar outcomes to White youth.

➤ **American Indian Youth Petitions were less likely to Fall Under “Non Adjudication.”**

In addition to adjudication and transfer to adult court, a petition may result in no further action taken. This is generally called “dismissed,” in which case the juvenile is not adjudicated delinquent. These cases can also involve situations in which a juvenile has turned 18, is transferred to another jurisdiction, has absconded, plead to another charge or the court rules there is insufficient evidence to merit an adjudication. In addition, when multiple charges are pending, one charge can be dismissed while another receives a disposition.

- The RRI scores suggest that American Indians (0.92) and Hispanics (0.99) had a slightly lower non-adjudication rate than White youth. On the other hand, African American (1.24) and Asian youth (1.14),, had a higher rate of non-adjudication as White youth, which is positive outcome for these youth.

- African Americans had the highest proportion of non-adjudication (42.38%) and Native American youth had the lowest (31.6%).

The county attorney may request that a juvenile be transferred to adult court following the filing of a petition in juvenile court. Of the 16,322 petitions filed in juvenile court, 14 (0.08%) referrals resulted in a transfer to adult court request. As the total number of youth transferred is less than 1% of the petitions filed the comparison of the rates provides little value.

DISPOSITION OPTIONS

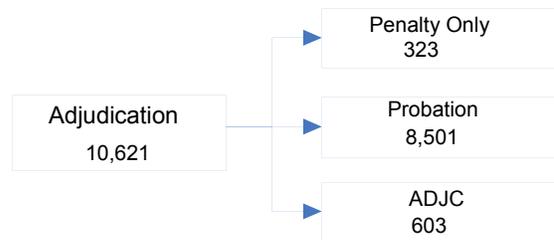


Table 5: Disposition Decisions

	All Juvenile Adjudications	White Adjudications	Asian Adjudications	African American Adjudications	Hispanic Adjudications	American Indian Adjudications
Adjudicated	10,621	4,185	61	1,079	4,519	777
Percentage						
Probation	80.04	81.51	72.13	73.49	78.54	82.37
Standard	61.12	64.87	65.57	62.19	56.83	64.09
JIPS	19.53	17.54	6.56	18.07	22.04	18.66
ADJC	5.68	5.07	4.92	8.71	6.02	2.83
RRI						
Probation	--	1	0.88	0.97	0.96	1.01
Standard	--	1	1.01	0.96	0.88	0.99
JIPS	--	1	0.37	1.03	1.26	1.06
ADJC	--	1	0.97	1.72	1.19	0.56

* Percentages are of the total referrals for that racial/ethnic group.

➤ **Little Difference in the Rates of Receiving Probation for White and Minority Youth**

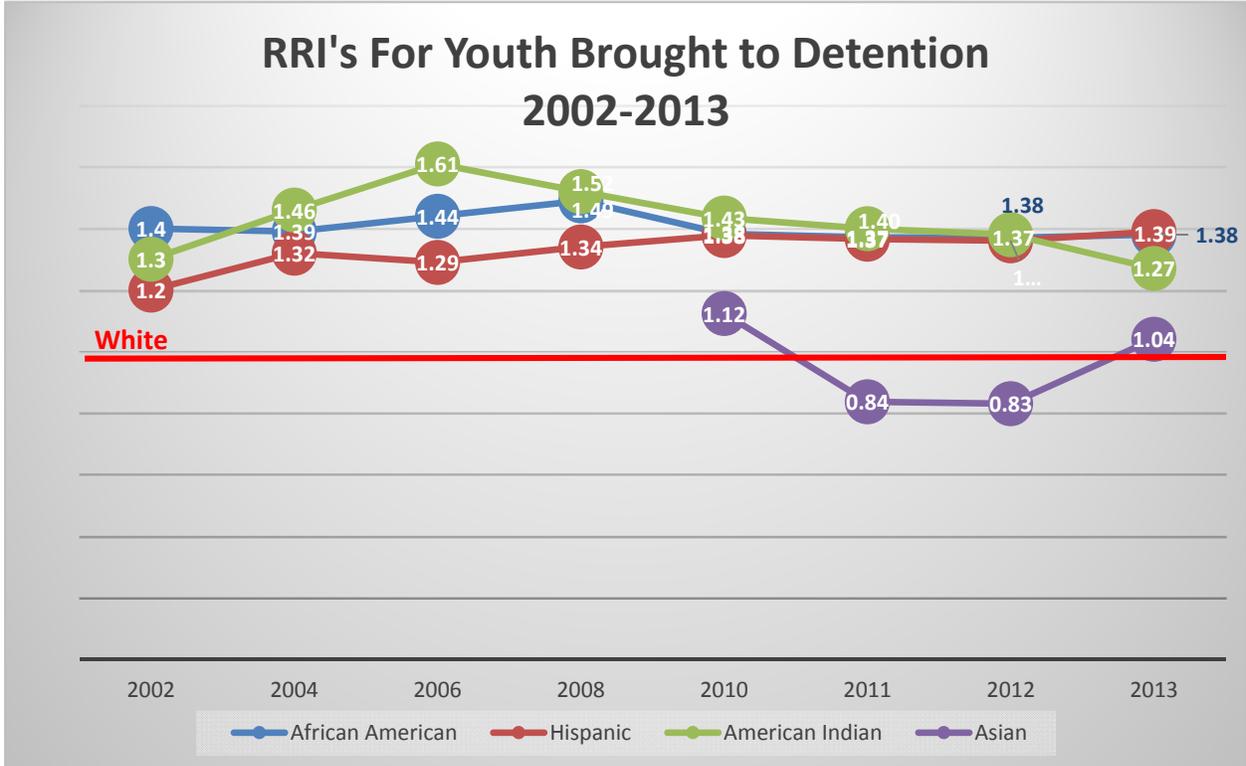
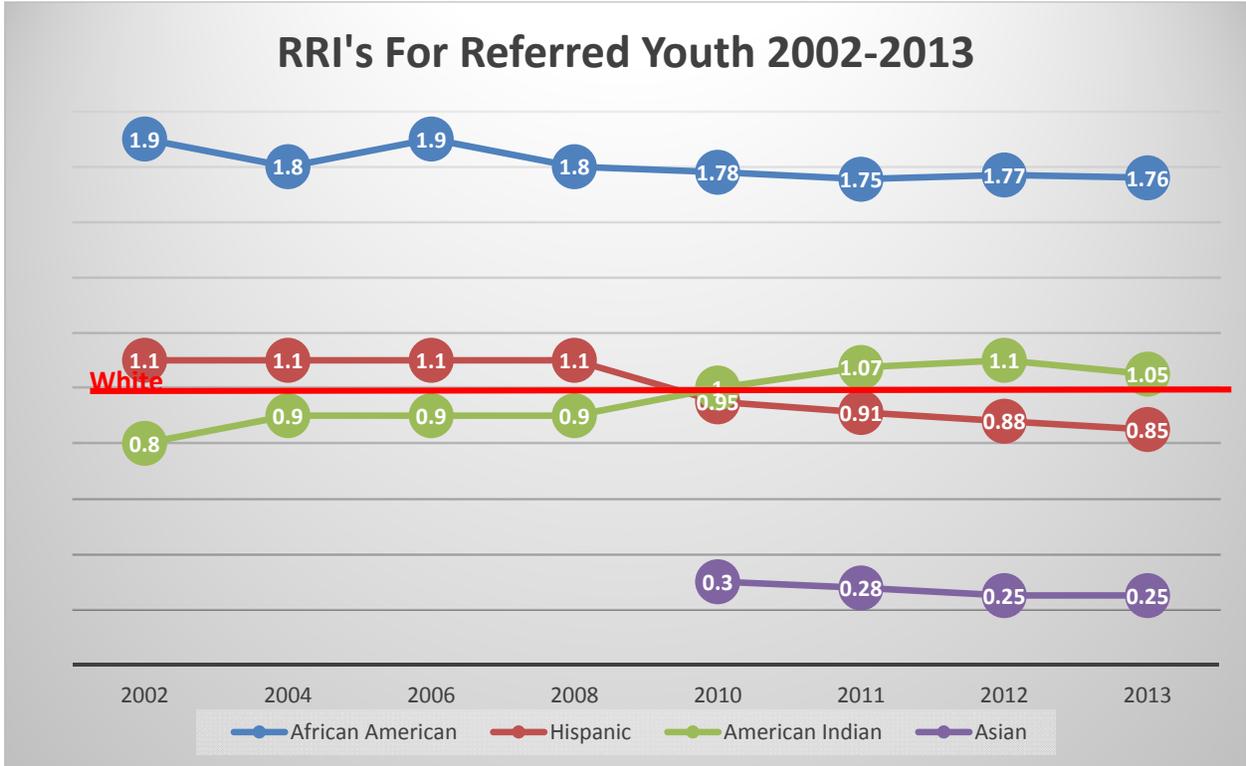
Four-fifths (80 %) of the adjudicated referral dispositions were to probation. The RRI scores indicate that all minority are less likely to receive a disposition of probation than white youth. Hispanics and American Indian youth are less likely to receive Standard Probation and are more likely to be placed on JIPS than their white counterparts.

➤ **African American and Hispanic Youth Referrals Committed to ADJC at a Higher Rate than White and American Indian Youth Referrals.**

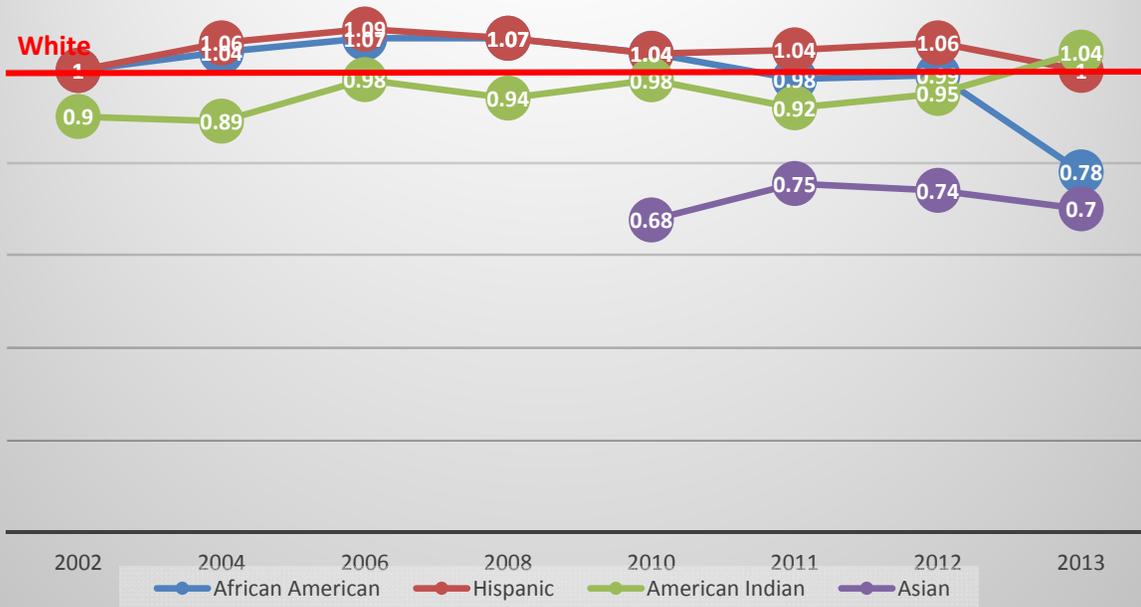
Disposition to the Arizona Department of Juvenile Corrections (ADJC) is governed by statute and the Arizona Code of Judicial Administration. Only 5.6% of the adjudicated referrals from FY2013 involved commitments to ADJC.

- African American (RRI=1.72) and Hispanic (RRI=1.19) youth referrals had a higher rate of commitment to ADJC than White youth referrals. The percentages support this as well (8.7%, 6.0% and 5.1% respectively).
- Asian youth (4.9% and an RRI of 0.91) and American Indians (2.8% and an RRI of 0.56) had a lower rates of referral to ADJC.

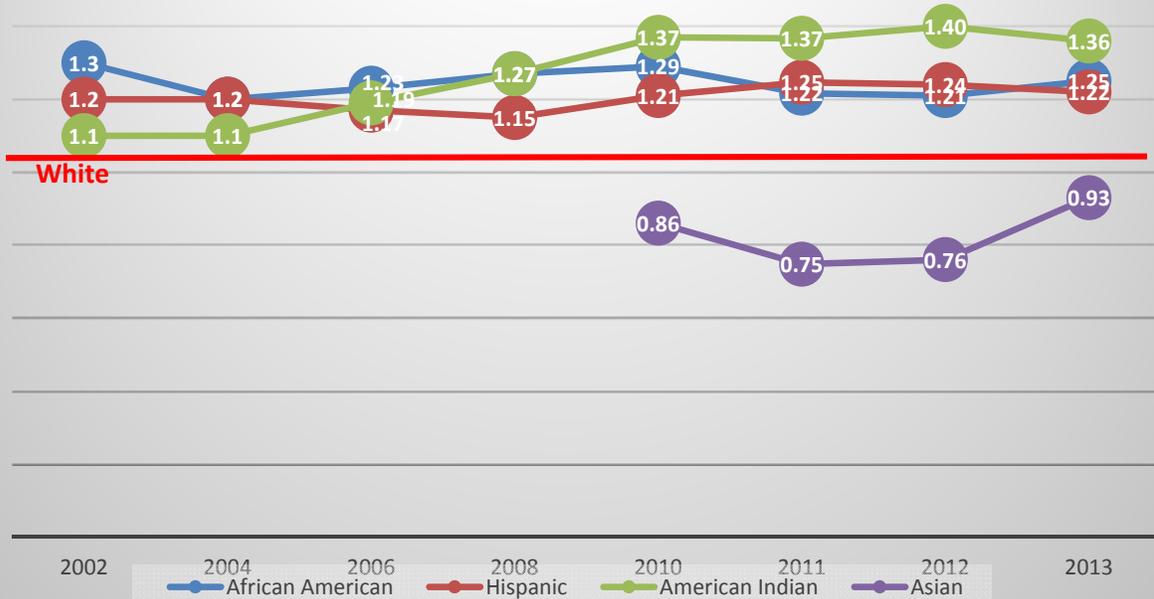
APPENDIX A: SELECT TRENDLINES 2002-2013

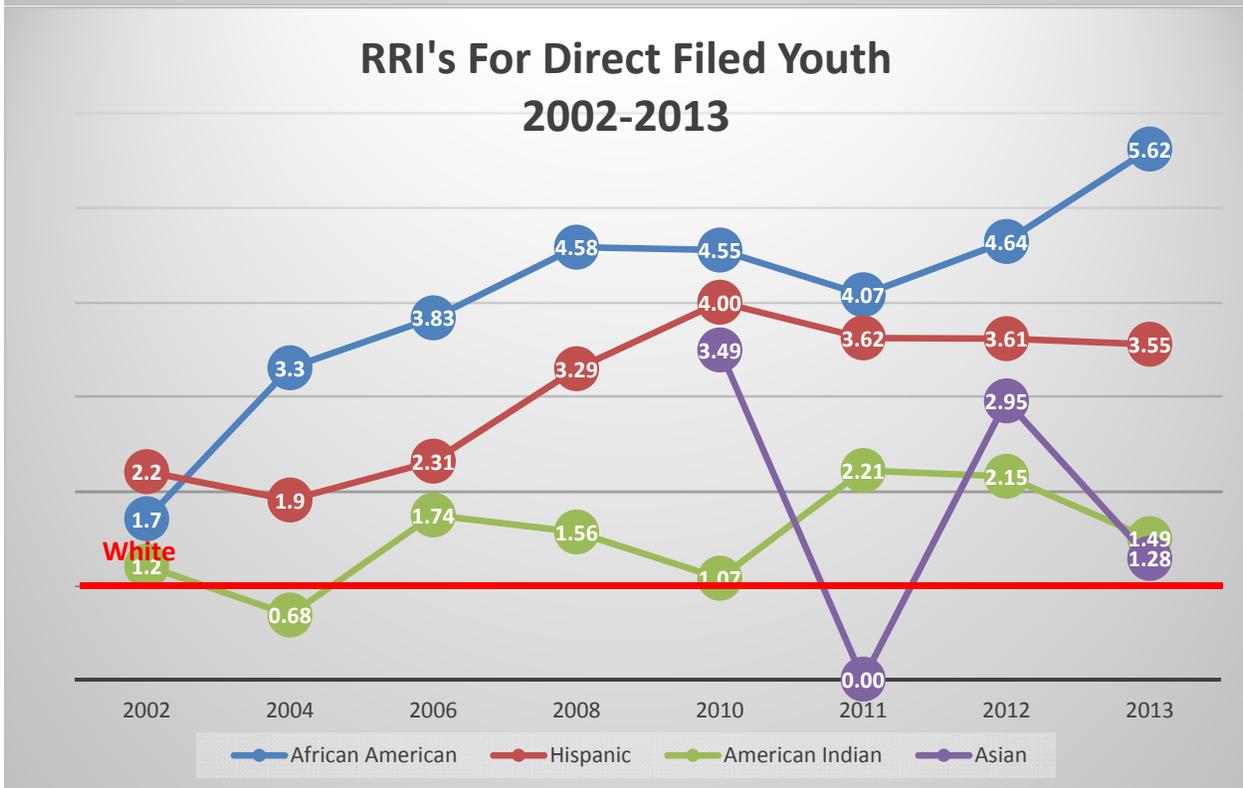
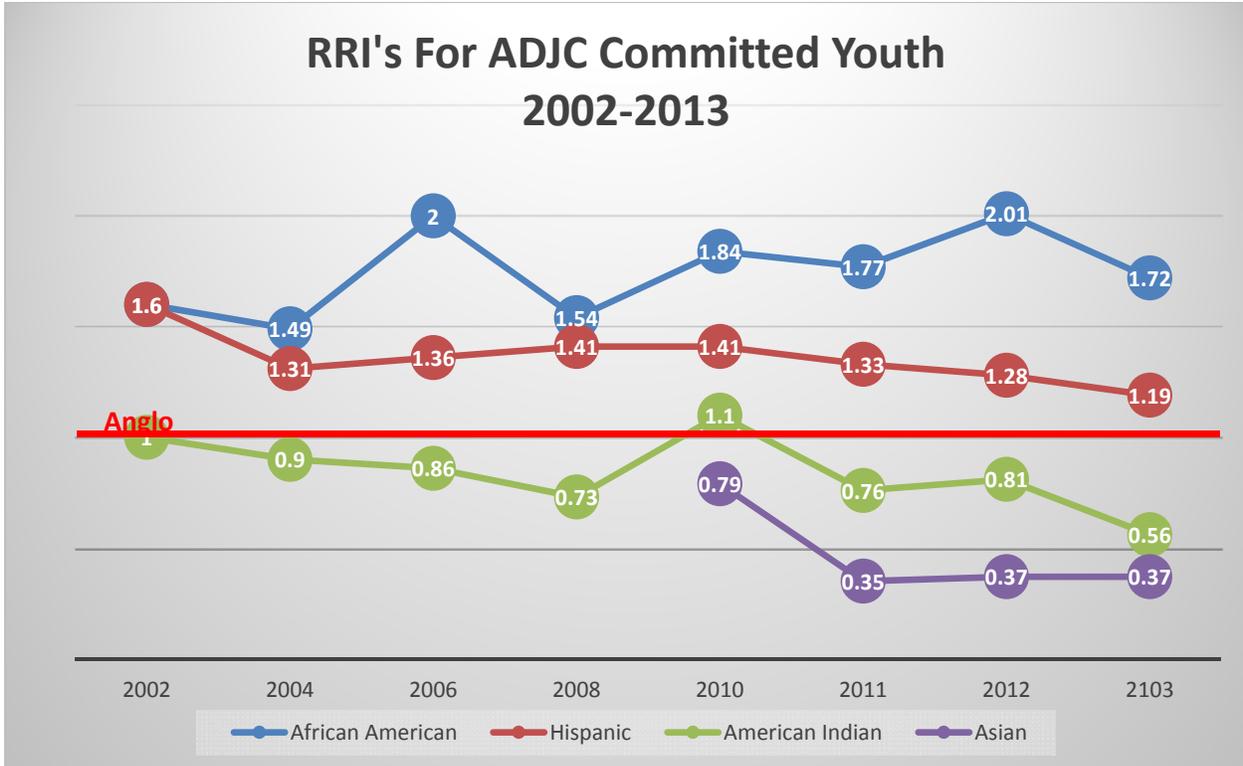


RRI's For Detained Youth 2002-2013



RRI's For Petitioned Youth 2002-2013





APPENDIX B: SELECT COUNTY SPECIFIC RRI'S

TABLE 1:

RRI's of Juveniles Referred FY2013 by County					
	Asian	African American	Hispanic	American Indian	White
Arizona	0.25	1.76	0.85	1.05	1.00
Apache	4.17	0.20	0.52	0.06	1.00
Cochise	0.34	1.11	0.62	1.50	1.00
Coconino	0.25	2.00	1.04	1.21	1.00
Gila	1.58	0.97	0.55	0.37	1.00
Graham	0.00	*	0.48	0.54	1.00
Greenlee	0.00	0.00	0.28	0.52	1.00
La Paz	0.00	0.65	0.40	0.00	1.00
Maricopa	0.22	2.05	0.82	1.76	1.00
Mohave	0.13	*	0.37	0.73	1.00
Navajo	0.24	*	0.85	0.47	1.00
Pima	0.36	1.95	1.03	1.48	1.00
Pinal	0.48	2.26	0.85	1.27	1.00
Santa Cruz	0.00	*	1.83	0.00	1.00
Yavapai	0.39	1.28	0.69	1.55	1.00
Yuma	0.58	1.85	1.00	2.41	1.00

*LESS THAN 5 CASES IN THE CELL, MAKING THE RRI SPURIOUS.

TABLE 2:

RRI's Juveniles With Petitions Filed FY2013 by County					
	Asian	African American	Hispanic	American Indian	White
Arizona	0.93	1.25	1.22	1.36	1.00
Apache	*	*	0.65	0.93	1.00
Cochise	1.71	1.15	0.98	*	1.00
Coconino	*	1.50	1.31	1.34	1.00
Gila	*	1.33	1.15	1.09	1.00
Graham	*	1.49	1.03	1.28	1.00
Greenlee	*	*	1.10	*	1.00
La Paz	*	*	0.71	*	1.00
Maricopa	1.00	1.50	1.45	1.46	1.00
Mohave	0.00	1.17	1.39	1.55	1.00
Navajo	0.00	0.94	1.13	1.10	1.00
Pima	1.40	1.22	1.09	1.02	1.00
Pinal	0.73	*	1.14	1.33	1.00
Santa Cruz	*	1.75	0.92	*	1.00
Yavapai	0.40	1.39	1.08	1.25	1.00
Yuma	0.77	1.01	0.96	1.35	1.00

*LESS THAN 5 CASES IN THE CELL, MAKING THE RRI SPURIOUS.

DISCUSSION

In general, this report suggests that over-representation exists ranging from a limited to a significant extent within certain parts of Arizona's juvenile justice system. There are some minor differences across the last 11 years presented in the Appendix, however overall much remains the same with minor movement. The most significant over-representation to of minority populations exists at the deep end involvement with the juvenile justice system, with commitments to ADJC and the Direct filing of youth in Adult Court. This fifth report card was developed using the same process and procedures that mirror the first four reports and thus the outcomes can be compared across time. Four new years of data are presented in the appendix this year.

Limitations of State Data

It is important to note that offense severity and prior offense history were not included in this analysis. Thus, no comparisons between juveniles with similar offenses or prior histories were conducted. It is recognized that using state data for this report has some limitations. Differences in the various counties due to ethnic diversity tends to be blurred when the report is state based. It is encouraged that each county conduct its own review of the over-representation issue experienced in their local. The Commission on Minorities has prepared County data for the counties to consume this year.

Referrals

African American youth continue to be referred at a rate slightly under 2 times than would be expected by their representation in the overall juvenile population (50 per 1,000 youth). Asian youth were the least likely to be referred (8 per 1,000). White youth, the baseline upon which the RRI scores are generated, were referred at a rate of 33 per 1,000 youth.

The Relative Rate Index (RRI) score provides a statistical comparison of each minority group to White youth. The RRI scores bear out the over-representation for African American youth (1.8). At the State level, American Indian and Hispanic youth evidence no over-representation at the referral stage. Both the percentages and the RRI suggest that, at the state level, the juvenile courts began with a disproportionate number of African American youth before any court/probation decisions were made.

Physical versus Paper Referrals

Across the state, the majority of juvenile referrals come to the juvenile court as paper referrals. Less than one-fifth of the juveniles are even brought to detention. Instead, over 4/5 of juvenile referrals are sent directly to the court or county attorney. Of the referrals that bypass detention, White youth are the most likely to initially avoid detention (85.2%).

In Arizona, just under four in ten juveniles who are brought to detention are released after screening. This is a significant improvement from previous years. This improvement can be attributed to the work occurring in the JDAI initiative and in the implementation of the mandatory use of and objective detention screening instrument through the Arizona Detention Standards. Eighty-five percent of the state's juvenile population reside in JDAI participating counties which are: Cochise, Gila, Maricopa, Pima, Pinal, Santa Cruz and Yuma.⁸

Hispanic and African American youth are brought to detention at a higher rate (RRI = 1.38) than other groups yet show the equal likelihood or increased likelihood of release at screening (RRI's of 1.0 and 1.33).

Decision made Post-Referral

Referrals to the juvenile court can be diverted or not filed at all, filed as a petition, or direct filed in adult court. In general, the pattern that began with referral is carried through these decisions. African

American and Hispanic and American Indian youth referrals are direct filed in adult court and filed as petitions in juvenile court at a higher rate than White youth referrals.

Conversely, the former are sent through the diversion process proportionately less than the latter. While this could suggest that minority youth are not given the same opportunities to avoid formal court processing, there are certain criteria that juveniles must meet in order to be eligible for diversion.⁹ The lack of review of offense severity further limits any conclusion about what are the forces that are causing this phenomenon. Regardless of the cause, the courts are in possession of this data have an obligation to educate others on it in an effort to mitigate and eliminate this issue for future generations.

The Direct Filing process gives one cause for major concern. African American and Hispanic youth are direct filed at a much higher rate than White youth. RRI of 5.26 and 3.55 indicate concern in this area.

Transfers to adult court do not have the same degree of over-representation as direct filings, but there is evidence of over-representation at this decision point, particularly for African American and Hispanic youth referrals. The number of youth currently processed in this manner is very small, 14 referrals in this study. The direct file process is the main pathway to the Adult Court for juveniles. The American Indian and Asian representation here is too small to award significance. This decision point has a mix of mandatory and discretionary decisions.

Dispositions

In general, juveniles in Arizona are overwhelmingly placed on probation following adjudication. More than four-fifths of all adjudicated juvenile referrals are dispositioned to either standard or intensive probation (JIPS). All groups cluster at around the same rate of being placed on probation. Intensive is higher for Hispanic and lower for American Indian youth. Juveniles in all groups were more likely to receive dispositions of standard probation with under one in five referral dispositions being to JIPS.

Alternatively, African American and Hispanic youth referrals were proportionately more represented in commitments to the Arizona Department of Juvenile Corrections (ADJC), RRI = 1.72 and 1.19 for these groups. With Hispanics decreasing while the African American decision point has increased since the last report.

Population Estimates

A note must be made regarding the population estimates used as the basis for the Relative Rate Index. It is a very difficult task to confirm consistency in the population estimates in Arizona for the racial/ethnic characteristics and 8 to 17 age group. The baseline for the juvenile populations come from estimates compiled at the National Center for Juvenile Justice.

Relative Rate Index

One of the advantages of the RRI analysis is that the comparison of youth is based on a previous decision point and not always on base population rates. Some discussion can take place as to which previous decision point should be used as the basis for the ratio. For instance, if one examines Probation, what is the basis used for the comparison, referrals, petitions or adjudications. This document uses adjudications as that is the decision point that allows sentencing and thus a choice for probation or some other disposition. As you can see, we have attempted to “reset” the bar at each decision point so they can viewed independently. Listed is the ratio information used to compute the RRI scores:

Referrals (Juveniles Referred : Population), Detention (Paper or Brought : All Referrals), (Detained or Released : Brought to Detention), Court Processing (No Petition, Petition or Diversion : All Referrals) (Direct Filed : Referrals), Post-Petition (Adjudicated, Transferred or Non Adjudicated : Petitioned), Disposition (Penalty Only, Probation, ADJC : Adjudicated), (Standard or JIPS : Probation).

GLOSSARY OF JUVENILE JUSTICE TERMS

Adjudication: The proceeding in which the juvenile is found to be delinquent. In some respects, an “adjudication” for a delinquent offense is the juvenile court’s equivalent of a “criminal conviction” in adult court.

Arizona Department of Juvenile Corrections (ADJC): The ADJC is operated by the executive branch and is the juvenile counterpart of the Department of Corrections. ADJC operates facilitates and programs primarily aimed at more serious juvenile offenders committed to their care and custody by the juvenile courts. ADJC operates secure correctional facilities, community-based after care programs, and juvenile parole.

Delinquent Juvenile: A delinquent juvenile is a juvenile who commits an illegal offense. If the same offense had been committed by an adult, the offense would be a criminal act.

Detention: Juvenile detention is defined as the temporary confinement of a juvenile in a physically restricting facility. Juveniles are typically held in detention pending court hearings for purposes of public safety, their own protection, or as a consequence for misbehavior. This report is concerned with detention as a result of a referral and not as a consequence.

Disposition: Disposition refers to the process by which the juvenile court judge decides the best court action for the juvenile. It is comparable to “sentencing” in the adult system.

Direct Filed in Adult Court: A.R.S. §13-501 mandates that the “county attorney shall bring criminal prosecution against a juvenile in the same manner as an adult if the juvenile is 15, 16, or 17 years of age and is accused of any of the following offenses”: first degree murder; second degree murder; forcible sexual assault; armed robbery; any other violent offenses defined as aggravated assault, aggravated assault with a deadly weapon, drive by shooting, and discharging a firearm at a structure; a felony offense committed by a juvenile who has two prior and separate adjudications; and any offense joined to the other offenses. The county attorney also has statutorily defined discretion for direct filing.

Diversion: Diversion is a process by which formal court action (prosecution) is averted. The diversion process is an opportunity for youth to admit their misdeeds and to accept the consequences without going through a formal adjudication and disposition process. By statute, the county attorney has sole discretion to divert prosecution for juveniles accused of committing any incorrigible or delinquent offense.

Juvenile Intensive Probation (JIPS): Arizona Revised Statutes (A.R.S. §8-351) defines JIPS as “a program ... of highly structured and closely supervised juvenile probation...which emphasizes surveillance, treatment, work, education and home detention.” A primary purpose of JIPS is to reduce the commitments to the Arizona Department of Juvenile Corrections (ADJC) and other institutional or out-of-home placements. Statute requires that all juveniles adjudicated for a second felony offense must be placed on JIPS, committed to ADJC, or sent to adult court.

Non Adjudication: Includes cases where the petition is filed but the case may be dismissed or the juvenile turns 18 or is transferred to another jurisdiction or absconds.

No Petition Filed: Includes judicially adjusted complaints (typically juveniles assigned a consequence), absconders, complaints where there is insufficient evidence to continue, victim refusals to prosecute, and other reasons a petition might not be filed.

Penalty Only: A disposition involving only fines, fees, restitution, and/or community work service.

Petition: A “petition” is a legal document filed in the juvenile court alleging that a juvenile is a delinquent, incorrigible, or a dependent child and requesting that the court assume jurisdiction over the youth. The petition initiates the formal court hearing process of the juvenile court. The county attorney,

who determines what charges to bring against the juvenile, prepares the delinquent or incorrigibility petition.

Referral: Referral can be made by police, parents, school officials, probation officers or other agencies or individuals requesting that the juvenile court assume jurisdiction over the juvenile's conduct. Referrals can be "paper referrals" issued as citations or police reports or "physical referrals" as in an actual arrest and custody by law enforcement. Juveniles may have multiple referrals during any given year or over an extended period of time between the ages of 8-17. Multiple referrals typically signal high risk, even when the referrals are for numerous incorrigible or relatively minor offenses.

Standard Probation: A program for the supervision of juveniles placed on probation by the court. These juveniles are under the care and control of the court and are supervised by probation officers.

Transfer to Adult Court: Adult court has been defined in statute as the appropriate justice court, municipal court or criminal division of Superior Court with jurisdiction to hear offenses committed by juveniles. Statute specifies that juveniles who commit certain offenses, are chronic felony offenders, or have historical prior convictions, must be prosecuted in the adult court and if convicted, are subject to adult sentencing laws.

End Notes

¹Equitable Treatment of Minority Youth: A Report on the Over-Representation of Minority Youth in Arizona Juvenile Justice System. Published by the Arizona Juvenile Justice Advisory Council, Minority Youth Issues Committee. Dr. P. Bortner et al, July 1993.

² Devine, Coolbaugh, and Jenkins, NCJ 173420

³Equitable Treatment of Minority Youth in the Arizona Juvenile Justice System: A Follow-up to the 1993 Equitable Treatment Report Published by the Commission on Minorities, 2002.

⁴ Equitable Treatment of Minority Youth: First Annual Arizona Statewide Report Card 2004 Published by the Commission of Minorities. For information see website:
<http://www.supreme.state.az.us/courtserv/ComMinorities/2004ReportCard.pdf>

⁵The “other” and “unknown” race/ethnicity categories are not included. The actual total of juveniles referred is 29,382.

⁶The figures for 2013 are the most recent data available for the state of Arizona. Data was obtained from the National Center for Juvenile Justice. Computations for the “at risk” population, (i.e., 8-17 year old youth) along with race and ethnicity come from the NCJJ’s Easy Access to Juvenile Populations.

⁷RRI – Relative Rate Index – a comparison of the rate of referral for each race/ethnicity to the rate of referral for White youth. Over-representation occurs with scores greater than 1. Under-representation is indicated by scores less than one. The RRI is not calculated when the race/ethnic group is less than 1% of the population.

⁸The Annie E. Casey Foundation launched the JDAI in December of 1992 and funds the efforts of juvenile jurisdictions around the nation. For more information, see their website: www.aecf.org

⁹The county attorney determines which juveniles are eligible for diversion based on statutorily established criteria. In addition, the juvenile must admit responsibility and either pay restitution, pay a fine, or participate in community work service or some type of programming.

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
December 10, 2015	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Task Force on the Arizona Rules of Civil Procedure

FROM:

William Klain and David Rosenbaum
Co-chairs, Task Force on the Arizona Rules of Civil Procedure

DISCUSSION:

The Chief Justice established this Task Force in November 2014 by entry of Administrative Order number 2014-116. The Order directed the Task Force to review the current rules of civil procedure, and to file a rule petition requesting rule amendments in January 2016.

Mr. Klain and Mr. Rosenbaum will provide an overview of the project. They will discuss what the Task Force has accomplished thus far, and what it intends to do in the future.

RECOMMENDED COUNCIL ACTION:

The Task Force would like to indicate in its pending rule petition that the petition has the support of the Council. The presenters accordingly request a motion to that effect.

Task Force on the Arizona Rules of Civil Procedure (“TF.ARCP”)

ARIZONA JUDICIAL COUNCIL

DECEMBER 10, 2015

A.O. 2014-116: Established the Task Force on November 24, 2015

The A.O. directed the Task Force to:

Review the ARCP and identify possible changes to conform to modern usage, to clarify and simplify language, and to avoid unintended variation from language in counterpart federal rules

Propose changes that promote access to the courts and the resolution of cases without unnecessary cost, delay, or complexity

Seek input from interested persons and entities

Submit a rule petition by January 2016

TF.ARCP's 17 members

Four judges (from COA-1 and the Superior Court in Maricopa, Pima, and Coconino Counties)

Nine attorneys (from two public entities and a legal aid organization, and from large and small law firms in Maricopa, Pima, and Yavapai Counties; and who have personal injury and commercial practices that represent both plaintiffs and defendants)

A Clerk of the Superior Court

A law school professor of civil procedure

Co-chairs: William Klain and David Rosenbaum

TF.ARCP progress

Meetings: The Task Force has met 15 times

Workgroups: At the first Task Force meeting, the civil rules were divided among four workgroups for intensive study

The workgroups have met 40 times Workgroups reported their recommendations at Task Force meetings.

Time: This = more than 2,000 hours of individual time in Task Force and workgroup meetings

+ 100's of additional hours outside of meetings doing research, drafting, reviewing documents

Examples of TF.ARCP issues

Stylistic changes

Substantive changes

Divergence versus uniformity between federal and Arizona rules

Electronically stored information (“ESI”)

Usefulness of new rule provisions

Integration with pending rule petitions

General guidelines

Where no good reason exists to depart from newly restyled language of a federal rule, the Task Force is adopting the restyled federal wording verbatim.

This includes, for example, renumbering Rule 56(f) as 56(d)

General guidelines

Where there are good reasons for an Arizona rule to differ from a corresponding federal rule, the Arizona rule maintains those differences.

However, even in these circumstances, and to enhance the clarity of the Arizona rule, its wording has been revised and its structure has been reorganized pursuant to restyling conventions.

General guidelines

If an Arizona rule has recently undergone substantive revisions, the Task Force has been reluctant to revisit the substance.

General guidelines

The Task Force has attempted to identify and eliminate archaic practices and traps, such as the requirements to verify certain pleading elements.

General guidelines

E-discovery is getting considerable attention.

The Task Force recommends revisions to Rule 26.1 and Rule 37 to meet the realities of identifying, handling and producing electronic data in a rational, cost-effective fashion, and in a manner consistent with the new Commercial Court's e-discovery processes.

Vetting the rules

By September, the Task Force had a complete set of revised rules.

This document (more than 200 pages) is the “vetting draft.” (The vetting draft is available for review at <http://www.azcourts.gov/cscommittees/Task-Force-on-the-Arizona-Rules-of-Civil-Procedure>)

On September 15, the TF.ARCP distributed the vetting draft to about two dozen stakeholder organizations.

On September 16, the State Bar of Arizona distributed the draft to about 18,000 active and judicial members.

Vetting the rules

The September distributions included a cover letter from the chairs that invited comments on the vetting draft.

Comments were received from organizations (e.g., the Attorney General, the Chamber of Commerce, the Pima County Bar), and from individual judges and attorneys.

In October, November, and December, the TF.ARCPC held 3 meetings with members of the State Bar's Civil Practice and Procedure Committee to consider the CPPC's comments on the vetting draft.

Illustration: Current Rule 1

Current Arizona rule

Rule 1. Scope of rules

These rules govern the procedure in the superior courts of Arizona in all suits of a civil nature whether cognizable as cases at law or in equity. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

Current federal rule (with 2015 amendments)

Rule 1. Scope and Purpose

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

Illustration: Proposed Rule 1

Rule 1. Scope and Purpose

These rules govern the procedure in all civil actions and proceedings in the superior court of Arizona. They should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.

Illustration: Current Rule 6(b)

Rule 6(b). Enlargement

When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(d), (g) and (l), and 60(c), except to the extent and under the conditions stated in them, unless the court finds (a) that a party entitled to notice of the entry of judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and (b) that no party would be prejudiced, in which case the court may, upon motion filed within thirty days after the expiration of the period originally prescribed or within 7 days of receipt of such notice, whichever is earlier, extend the time for taking such action for a period of 10 days from the date of entry of the order extending the time for taking such action.

Illustration: Proposed Rule 6(b)

(b) Extending Time.

- (1) *Generally.* When an act may or must be done within a specified time, the court may, for good cause, extend the time:
 - (A) with or without motion or notice if the court acts, or the request is made, before the original time or its extension expires; or
 - (B) on motion made after the time has expired if the party failed to act because of excusable neglect.
- (2) *Exceptions.* A court may not extend the time to act under Rules 50(b), 52(b), 59(d), (g) and (l), and 60(c) except as those rules allow. Additionally, on motion, a court may extend the time to act under these rules for 10 days after the entry of the order extending the time, if:
 - (A) the moving party files the motion within 30 days after the specified time to act expires under these rules or within 7 days after the party received notice of the entry of the judgment or order triggering the time to act under these rules, whichever is earlier;
 - (B) the court finds that the moving party was entitled to notice of the entry of judgment or the order, but did not receive notice from the clerk or any party within 21 days after its entry; and
 - (C) the court finds that no party would be unfairly prejudiced by extending the time to act.

Roadmap

December 17, 2015	Final TF.ARCPC meeting of 2015
January 2016	Filing of a rule petition
April 2016 [tent.]	End of first comment period
May 2016 [tent.]	Filing of an amended rule petition
June 2016 [tent.]	End of second comment period
July 2016 [tent.]	Filing of a reply re: the rule petition
August 2016 [tent.]	Supreme Court's rules agenda
January 1, 2017	Probable effective date of new rules

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
December 10, 2015	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Committee on Time Periods for Electronic Display of Superior Court Case Records

FROM:

Marcus Reinkensmeyer, CTPEDSCCR Chair, Court Services Division Director

DISCUSSION:

Administrative Order 2015-68 established the Committee on Time Periods for Electronic Display of Superior Court Case Records (CTPEDSCCR) in August 2015. Members include two superior court judges, one superior court administrator, a county prosecutor, a public defender, two private attorneys, two Clerks of Court, a professor from the University of Arizona Civil Rights Restoration Clinic, and a representative from the Attorney General's Office.

The committee was asked to make recommendations on how long certain types of superior court case records should be made available to the public on the Internet. The intent is to promote statewide consistency on the courts' case lookup websites. The committee's recommendations do not affect the length of time that court records are available to the public at courthouses.

The committee focused on Records Series #1-18 on the Superior Court Records Retention and Disposition Schedule. The first 18 case types on the schedule are those that are held by the Clerk of the Court. Some record types are retained by the courts for a significant amount of time (50 years or more) and then are transferred for permanent retention to the Arizona State Library, Archives and Public Records (LAPR). Other record types are held for varying time periods by the courts and then are destroyed at the end of the retention period.

The committee was asked to consider, for both permanent and non-permanent records, whether the records should be accessible through remote electronic access for the full retention period with the court or whether they should be available for a lesser amount of time. Rule 123, Rules of the Supreme Court, currently is permissive and allows Clerks to remove records with lengthy retention periods after 25 years. The rule, in its current form, works against the goal of statewide consistency in management of this information.

Among the ideas the CTPEDSCCR considered were the public's right to know versus the privacy of individuals named in court records and the "right to be forgotten," a concept that has been adopted in the European Union. The committee also discussed intentional inconvenience and practical obscurity—both notions that private information in public records is effectively protected from disclosure as the result of practical barriers to access. For example, removing case information from the Internet and requiring the public to travel to the courthouse to view it creates an intentional inconvenience.

The committee met three times to discuss these concepts as they apply to the case types in Records Series #1-18. While there was consensus on most case types, criminal cases generated the most discussion. It was noted that the existence of a criminal record impacts a defendant's life, long after a sentence has been served. Persons with criminal convictions face discrimination in employment and housing, for example. At the same time, a landlord who is screening a potential tenant can complete a simple background check with a quick online search of court records.

Ultimately, after thoughtful and careful deliberation, the committee could find no reason to require removal of records from court websites any earlier than the time the records are either transferred to LAPR permanently or destroyed.

At its final meeting, the committee recommended the filing of a Rule 28 petition to amend Rule 123 and also to file a petition to amend ACJA § 3-402, Superior Court Records Retention and Disposition Schedule. The proposed change to Rule 123 will require courts (superior and limited jurisdiction) to remove records from public access websites in accordance with their respective records retention schedules. The modification of ACJA § 3-402 will add a column (similar to the Limited Jurisdiction Records Retention and Disposition Schedule) indicating when specific records must be removed from court public access websites.

RECOMMENDED COUNCIL ACTION:

Support the filing of (1) a Rule 28 petition to amend Rule 123 to require courts to remove records from public access websites in accordance with the applicable records retention schedule and (2) a petition to amend ACJA § 3-402, Superior Court Records Retention and Disposition Schedule, adding a column to indicate when specific records must be removed from court public access websites.

Group 1 (50+ years with court; permanent retention at LAPR)							
	1-2. Civil	3-4. Family	6-7. Mental Health	8-9. Probate	11-12. Criminal	13. Criminal capital	14. Juvenile adoption, severance, dependency
Retention with court	50 years	50 years	50 years	75 years	50 years	At D's death	100 years from final disposition
Court public access	50 years	50 years	50 years	75 years	50 years	At D's death	n/a

Group 2 (Variable retention with court; no transfer to LAPR)				
	5. Orders of Protection	15. Juvenile Delinquency	16. Juvenile abortion	17. Juvenile traffic (superior court)
Retention with court	50 years	After ARS § 8-349 satisfied or 25 years following year case filed	7 years after final disposition or 5 years from minor's 18 th birthday	Until minor reaches age 19
	50 years	(After ARS § 8-349 satisfied or 25 years following year case filed)	n/a	Until minor reaches age 19

Group 3 (Shorter retention with court, special case type)	
10. General stream adjudication	18. Lower court appeals
Latter of 25 years from year filed or 5 years from date of final non-appealable order	5 years after superior court disposes of case
Latter of 25 years from year filed or 5 years from date of final non-appealable order	5 years after superior court disposes of case

Permanent, available to public in whole or part
 Not permanent, available to public in whole or part
 Confidential by rule or statute

Rule 123, Rules of the Supreme Court

(a) through (f) [no changes]

(g) Remote Electronic Access to Case Records

(1) through (4) [no changes]

(5) Removing case records from online access.

(A) Courts or clerks of court ~~may~~ must remove case management system data and case records from online display as provided in ~~once the~~ applicable records retention schedule ~~period is met~~.

(B) ~~For cases scheduled to be retained more than 25 years, courts or clerks of court may remove case management system data and case records from online display after 25 years, provided the data and records are then retained through an electronically preserved method. In place of the records, the court or clerk of court shall display a notice online which directs the viewer to contact the court or clerk for access to the case record. The public access website through which case management system data and case records is available must include a disclaimer on the limits of the case records displayed.~~

(6) through (8) [no changes]

(h) through (j) [no changes]

(language to be removed is shown in strikethrough; new language is underlined)

Records Series #	Records Series Title	Retention Period with Court	LAPR Retention	<u>Retention Period on Arizona Supreme Court and Local Court Public Websites</u>	Remarks
CASE FILES HELD BY THE CLERK OF COURT					
1.	CIVIL CASE FILES, FILED ON OR BEFORE DECEMBER 31, 1959	50 years from the year the case was filed. However, clerks who wish to retain these files in their local office permanently and make them available to the public may retain these files.	Permanent	<u>50 years from the year the case was filed.</u>	Clerks may transfer these case files to LAPR at any time.
2.	CIVIL CASE FILES, FILED ON OR AFTER JANUARY 1, 1960	50 years from the year the case was filed	Permanent	<u>50 years from the year the case was filed.</u>	Clerks must transfer these case files to LAPR after 50 years.
3.	FAMILY LAW CASE FILES, including paternity, and all other matters arising out of Title 25, A.R.S., FILED ON OR BEFORE DECEMBER 31, 1959	50 years from the year the case was filed. However, clerks who wish to retain these files in their local office permanently and make them available to the public may retain these files.	Permanent	<u>50 years from the year the case was filed.</u>	Clerks may transfer these case files to LAPR at any time.
4.	FAMILY LAW CASE FILES, including paternity, and all other matters arising under Title 25, A.R.S., FILED ON OR AFTER JANUARY 1, 1960	50 years from the year the case was filed	Permanent	<u>50 years from the year the case was filed.</u>	Clerks must transfer these case files to LAPR after 50 years.

Records Series #	Records Series Title	Retention Period with Court	LAPR Retention	<u>Retention Period on Arizona Supreme Court and Local Court Public Websites</u>	Remarks
5.	ORDER OF PROTECTION CASE FILES	50 years from the year the case was filed	N/A	<u>50 years from the year the case was filed.</u>	Clerks of court wish to separate order of protection case files from injunction against harassment and injunction against workplace harassment case files. Injunction against harassment and injunction against workplace harassment case files are to be treated as civil case files.
6.	MENTAL HEALTH CASE FILES FILED ON OR BEFORE DECEMBER 31, 1959	50 years from the year the case was filed. However, clerks who wish to retain these files in their local office permanently and make them available to the public may retain these files.	Permanent	<u>50 years from the year the case was filed.</u>	Clerks may transfer these case files to LAPR at any time.

Records Series #	Records Series Title	Retention Period with Court	LAPR Retention	<u>Retention Period on Arizona Supreme Court and Local Court Public Websites</u>	Remarks
7.	MENTAL HEALTH CASE FILES FILED ON OR AFTER JANUARY 1, 1960	50 years from the year the case was filed	Permanent	<u>50 years from the year the case was filed.</u>	Clerks must transfer these case files to LAPR after 50 years.
8.	PROBATE CASE FILES, including guardianships, conservatorships, decedents' estates, trusts, and related matters, as well as proceedings to challenge or enforce the decision of one authorized to make health care decisions for a patient, FILED ON OR BEFORE DECEMBER 31, 1959	75 years from the year the case was filed. However, clerks who wish to retain these files in their local office permanently and make them available to the public may retain these files.	Permanent	<u>75 years from the year the case was filed.</u>	Clerks may transfer these case files to LAPR at any time. Pursuant to Rule 94(h)(2), Rules of the Supreme Court, the clerk may destroy any voucher filed in support of an account by a trustee, personal representative, or any litigant. Under this rule, the destruction may occur 5 years after the fiscal year received.

Records Series #	Records Series Title	Retention Period with Court	LAPR Retention	<u>Retention Period on Arizona Supreme Court and Local Court Public Websites</u>	Remarks
9.	PROBATE CASE FILES, including guardianships, conservatorships, decedents' estates, trusts, and related matters, as well as proceedings to challenge or enforce the decision of one authorized to make health care decisions for a patient, FILED ON OR AFTER JANUARY 1, 1960	75 years from the year the case was filed	Permanent	<u>75 years from the year the case was filed.</u>	Clerks must transfer these case files to LAPR after 75 years. Pursuant to Rule 94(h)(2), Rules of the Supreme Court, the clerk may destroy any voucher filed in support of an account by a trustee, personal representative, or any litigant. Under this rule, the destruction may occur 5 years after the fiscal year received.

Records Series #	Records Series Title	Retention Period with Court	LAPR Retention	<u>Retention Period on Arizona Supreme Court and Local Court Public Websites</u>	Remarks
10.	GENERAL STREAM ADJUDICATION CASE FILES	25 years from the year the case was filed or 5 years from the date of the final non-appealable order, whichever is later	Permanent	<u>25 years from the year the case was filed or 5 years from the date of the final non-appealable order, whichever is later</u>	
11.	CRIMINAL CASE FILES, except capital felony case files, FILED ON OR BEFORE DECEMBER 31, 1959	50 years from the year the case was filed. However, clerks who wish to retain these files in their local office permanently and make them available to the public may retain these files.	Permanent	<u>50 years from the year the case was filed.</u>	Clerks may transfer these case files to LAPR at any time.
12.	CRIMINAL CASE FILES, except capital felony case files, FILED ON OR AFTER JANUARY 1, 1960	50 years from the year the case was filed	Permanent	<u>50 years from the year the case was filed.</u>	Clerks must transfer these case files to LAPR after 50 years.
13.	CRIMINAL CAPITAL FELONY CASE FILES	On the death of the defendant	Permanent	<u>On the death of the defendant</u>	Clerks must transfer these case files to LAPR on the death of the defendant.

Records Series #	Records Series Title	Retention Period with Court	LAPR Retention	<u>Retention Period on Arizona Supreme Court and Local Court Public Websites</u>	Remarks
14.	JUVENILE ADOPTION, SEVERANCE, AND DEPENDENCY CASE FILES	100 years from the granting, denial, dismissal, or expiration of the matter as to all children	Permanent	N/A	Clerks must transfer these case files to LAPR after 100 years.
15.	JUVENILE DELINQUENCY CASE FILES	After satisfaction of A.R.S. § 8-349 or 25 years following the year the case was filed	N/A	<u>After satisfaction of A.R.S. § 8-349 or 25 years following the year the case was filed</u>	
16.	JUVENILE ABORTION CASE FILES	7 years after the ruling on the petition, motion, or final appeal, or 5 years after the date of the minor's 18 th birthday, whichever is later	N/A	N/A	
17.	JUVENILE TRAFFIC CASE FILES, when filed in the superior court	Until the minor reaches age 19	N/A	<u>Until the minor reaches age 19</u>	
18.	APPEAL FROM A LOWER COURT CASE FILES, both civil and criminal	5 years after the superior court issues its order disposing of the case	N/A	<u>5 years after the superior court issues its order disposing of the case</u>	

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
December 10, 2015	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Arizona Code of Judicial Administration

FROM:

Janet Johnson, Arizona Supreme Court, Clerk of the Court

DISCUSSION:

The current Supreme Court Records Retention and Destruction schedule adopted by Administrative Order 2001-45 does not address the electronic record or documents. The revised draft schedule attempts to remedy this issue. The electronic record is also addressed in light of an Electronic Records Retention and Destruction Advisory Committee initiative to mandate automatic destruction/transfer to State Library/Archives of records at the end of the retention period.

The proposed code section was posted to the ACJA Forum on November 4, 2015. Notification of the posting and deadline for comments was sent to all State Bar Section Executive Councils, Dr. Melanie Sturgeon of the State Library, Archives and Public Records and the Chief Judges and Clerks of Court of the Court of Appeals. No comments were received as of the deadline, November 20, 2015.

RECOMMENDED COUNCIL ACTION:

Recommend adoption of new code section 2-101.

**Proposed Modifications to the Arizona Supreme Court Records Retention and Destruction
Schedule
December 2015**

Electronic Records

The current Supreme Court Records Retention and Destruction schedule adopted by Administrative Order 2001-45 does not address the electronic record or documents. The revised draft schedule attempts to remedy this issue. The electronic record is also addressed in light of an Electronic Records Retention and Destruction Advisory Committee initiative to mandate automatic destruction/transfer to State Library/Archives of records at the end of the retention period.

Destruction of Some Denied/Declined Cases

The most significant change in the proposed schedule is the destruction of denied petitions for review or any other denied/declined case type with the exception of criminal, habeas corpus and workers' compensation cases. Currently, denied petitions for review and other denied/declined cases of all types are permanent. Under the proposed schedule, in all denied petitions for review or any other denied/declined case type except criminal, habeas corpus and workers' compensation, the case file and case data will be destroyed 5 years after the decision to deny review. The docket (case number, case type, party name, case decision, date of destruction and the original listing of documents/orders filed in the case) will be maintained in the destroyed cases to document that a case had been filed and was denied/declined.

COA Record

Under the current schedule for granted civil and criminal cases, the COA docket, caption, service pages, spreadsheet, case decision, fee deferral and waiver, and if the case was a Special Action in COA, the petition, response and reply filed in the COA are maintained. Under the revised schedule this information will not be maintained in the Supreme Court record except the final decision of the COA, filed with the petition for review in the Supreme Court.

Oral Argument Reels and Cassettes

The Supreme Court Clerk's Office maintains reels and cassette tapes of oral arguments (OA) dating back several years. The retention of these reels and cassette tapes was not addressed in the current schedule. Going forward, the proposed schedule provides that OA recordings are permanent and therefore, it is recommended that the reels and cassette tapes should also be permanent.

Historically Significant and Landmark Cases

Historically Significant and Landmark cases are not addressed in the current schedule. Some years ago, an effort was undertaken with Library and Archives to identify and preserve cases designated as historically significant and landmark. This section in the draft schedule is patterned after the recently adopted Superior Court schedule.

Applicability

Finally, Section C. 9 provides that the new schedule is applicable to cases filed on and after the effective date of the new schedule. Although this requires two separate schedules be maintained until the "old" cases run through the cycle, it does provide a clean starting point for the new schedule.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 2: Appellate Courts
Chapter 1: Supreme Court
Section 2-101: Records Retention and Destruction Schedule

A. Definitions. In this section the following definitions apply:

“Case Data” means the electronic information about a case, but not images of documents, maintained by the clerk or the court, generally found in a case management system, and often posted to the web or the court’s website.

“Case file” means all documents and other material filed with the clerk of the court in an action or proceeding either in paper or electronic format, and includes items such as CDs, DVDs, and transcripts. Case file includes case data.

“Docket” means the case number, case type, party name, case decision, date of destruction and the original listing of documents/orders filed in the case.

“State Library, Archives and Public Records (LAPR)” means the division of the Arizona Secretary of State that is the archives for Arizona state government, which is mandated by law to collect, preserve and make available to the public and all branches of government, permanent public records, historical manuscripts, photographs, and other materials that contribute to the understanding of Arizona history.

B. Authority. Az. Const. Art. 6 §§ 3 and 7 authorize the supreme court to administer the courts of this state. Rule 29, Rules of the Supreme Court, requires the clerk to transfer its permanent case file records to LAPR in accordance with retention and disposition schedules adopted by the supreme court.

C. General Provisions.

1. Permanent records. As set forth below, at the end of the retention period with the court, the clerk must transfer to LAPR all records, regardless of format, that have a retention period designated as permanent, unless otherwise instructed by LAPR. The clerk shall work with LAPR’s established requirements for transfer.
2. Electronic case files and case data. At the end of the retention period set forth below, the clerk shall destroy electronic case files and case data not designated as having a retention period of *permanent*. Dockets in all cases are permanent. Electronic case files designated as having a retention period of permanent must be transferred to LAPR at a time when LAPR has the capacity to accept electronic records.
3. Paper case files and administrative records. At the end of the retention period set forth below, the clerk may destroy case files that are primarily in paper format and may destroy

other records, regardless of format, not designated as having a retention period of permanent. Paper case files and other records designated as having a retention period of permanent shall be transferred to LAPR.

4. Microfilm. Until national standards for the long-term preservation of electronic records are in place, records transferred to LAPR pursuant to the provisions of this schedule shall be in paper.
5. No duty to migrate to new technology. The clerk is not responsible for migrating to new technology any material filed in an action or proceeding that is recorded in a format, such as CD and DVD that must be read by a computer.
6. Conflicting authority. To the extent that the retention periods specified in this schedule vary from any statutory provision, the longer period of retention, whether in statute or the schedule applies.
7. Sealed files. A case file or portions of a case file sealed by order of the court must remain sealed in perpetuity, unless otherwise ordered by the court.
8. Destruction of non-permanent records. When a paper case file or other paper record is eligible for destruction, the clerk shall take proper precautions to protect the privacy of the individuals identified in the case file or other record and destroy the complete case file or other record by shredding, burning, or pulverizing the physical case file or other record. Electronic images of case file documents, data or other records shall be deleted from all electronic repositories in which they reside, including servers and hard drives. The court may keep a list, containing minimal information, such as case number, case type, party name, case decision and date of destruction, capturing any case files or other records destroyed, so that the court will know that a case file or other record has been destroyed and has not been merely misplaced or never existed.
9. Effective date. The provisions of this code section are applicable to cases filed on and after the effective date of the code section. Cases filed prior to the effective date are governed by the provisions of Administrative Order 2001-45.

D. Retention and Disposition Schedule. Unless otherwise stated within the schedule, ten years after a case is terminated or a mandate is issued, case files shall be transferred to LAPR. Sealed items shall be transferred to LAPR in numerical case number but designated as SEALED on the box index. The clerk shall retain and dispose of supreme court records according to the following schedule:

1. Denied petitions for review (or any other denied/declined) case type except denied criminal petitions for review, habeas corpus and denied civil petitions for review dealing with workers compensation and habeas corpus, filed on and after the effective date of this code shall be destroyed five years after final disposition of the case. The electronic docket shall be maintained. The case file excluding the docket for denied/declined cases shall be destroyed

five years after final disposition of the case.

2. Direct Civil Appeals (e.g. Election, appeals transferred from the Court of Appeals, Certified Questions, Original Complaints):
 - a. Denied/dismissed case files, excluding the docket shall be destroyed five years from the date of the final disposition.
 - b. Granted/Jurisdiction accepted cases and Original Complaints shall be permanent.
 - c. Record on Appeal: Original documents filed in another court/agency shall be returned at the time of termination or mandate (paper only). Document copies shall be destroyed. Rule 24(c), Rules of Civil Appellate Procedure.
3. Extraordinary-Matters (E-Matters):
 - a. Unless granted, the case file, excluding the docket, shall be destroyed five years from the date of the final case disposition.
 - b. Granted case files are permanent.
4. Habeas Corpus: The case file shall be permanent.
5. Petition for Review – Civil, excluding Petitions for Review in Industrial Commission Cases (CVPR IC) and Petitions for Review in Habeas Corpus Cases (CVPR HC):
 - a. Denied cases and Improvidently Granted Petitions for Review, excluding the docket, shall be destroyed five years from the date of the final case disposition.
 - b. Granted Cases: The case file shall be permanent.
 - c. Denied CVPR IC Cases: The case file shall be permanent.
 - d. Denied CVPR HC Cases: The case file shall be permanent.
 - e. Record on Appeal: As provided in Rule 24(c) Rules of Civil Appellate Procedure, original paper documents filed in another court/agency shall be returned at the time of termination or mandate. Document copies shall be destroyed.
6. Petition for Review – Criminal:
 - a. All cases shall be permanent.

- b. Record on Appeal: As provided in Rule 31.23(a)(5), Rules of Criminal Procedure, original paper documents filed in another court/agency shall be returned at the time of termination or mandate. Document copies shall be destroyed.
7. Special Action, including Miscellaneous (M) cases:
 - a. Declined case files, excluding the docket shall be destroyed five years from the date of the final case disposition.
 - b. Accepted case files shall be permanent.
 - c. M cases involving appointment as a Capital Case Attorney are permanent.
8. Transfer Requests:
 - a. Denied case files, excluding the docket shall be destroyed five years from the date of the final case disposition.
 - b. Granted case files shall be permanent.
9. Water Cases: All case files are permanent and possibly historic.
10. Judicial Conduct:
 - a. Declined case files, excluding the dockets shall be destroyed five years from the date of final case disposition.
 - b. Accepted case files are permanent.
 - c. Record on Appeal: Original paper documents filed in the Commission on Judicial Conduct (CJC) are returned to the CJC at the time of termination or mandate. Document copies shall be destroyed. Rule 24(c), Rules of Civil Appellate Procedure. If the record is electronic, procedures for electronic purging shall apply.
11. Statewide Grand Jury: Applications for impanelment of a State Grand Jury and designation of an assignment judge from the attorney general and orders signed by the chief justice, shall be destroyed five years from the date of the order.
12. State Bar (Appeals – 59(a), Reinstatements – 65, Resignations – 32(c)(11), Admission by Motion – 36(h), Petition for Review – 36(h), Conditional Admissions – 36(g), Full-time Law School Faculty Members – 38(c), Clinical Law Professors – 38(d)(4), Legal Services Organization Volunteer – 38(e), Legal Services Employee – 38(f), Legal Organization – 38(f)(1), Attorneys Employed by Indigent Defense Offices – 38(g), Recommendation for Admission – 36(c), Subpoena – 36(a)):

- a. All case files are permanent.
 - b. Record on Appeal: Original paper documents filed in another court/agency are returned to that court/agency at the time of termination or mandate. Document copies shall be destroyed. Rule 24(c) Rules of Civil Appellate Procedure. If the record is electronic, procedures for electronic purging shall apply.
13. State Bar Rule 38 Certifications for Students: Certification documents (paper or electronic) shall be destroyed five years from the date of application.
14. Supreme Court Rule 28: All case files are permanent. Paper documents shall be transferred to LAPR 15 years from the date of the decision/determination. Paper Rule 28 Petition files must be boxed separately from other case files prior to transfer to LAPR.
15. Direct Criminal Appeals (Death Penalty) and Petitions for Review of Post-Conviction Relief related to these cases:
- a. Case files are permanent.
 - b. Supreme Court Case Documents (Conviction and Sentence Affirmed): Death penalty case files shall be retained in the Clerk's Office until execution of sentence or earlier death. At that time, the case file shall be prepared for transfer to LAPR.
 - (1) Record on Appeal: The record on appeal, including court reporter transcripts (with the exception of the grand jury transcript) shall be retained in the Clerk's Office until execution of sentence or earlier death. At that time, certified copies of the instruments and minutes shall be destroyed. Original (paper) instruments and minutes shall be returned to the Superior Court consistent with Rule 31.23(a)(5), Rules of Criminal Procedure. Original (paper) Grand Jury transcripts and Juror Questionnaires shall be returned to the Superior Court at the time of the mandate. Copies shall be destroyed.
 - (2) Grand Jury transcripts returned to the trial court, must be identified as "Confidential: Grand Jury Transcripts" and placed in a sealed envelope. Copies of Grand jury transcripts and juror questionnaires must be destroyed.
 - (3) Original exhibits shall be returned to the trial court at the time of mandate for direct criminal appeals and at the time of case termination for related post-conviction relief proceedings.
 - c. Supreme Court Case Documents (Conviction and Sentence Reversed): All records are held in the Clerk's Office for a minimum of ten years unless the Court is earlier informed that the defendant was re-sentenced to life or released. Upon notice that the defendant was resentenced to life or released, the record may be prepared for transfer to LAPR.
 - (1) Record on Appeal: When conviction and sentence is reversed: The record on appeal, including court reporter transcripts (with the exception of the grand jury transcript)

shall be retained in the Clerk's Office until notification that defendant was re-sentenced to life or released. At that time certified copies of the instruments and minutes shall be destroyed. Original (paper) instruments and minutes shall be returned to the Superior Court. Grand Jury transcripts and Juror Questionnaires shall be returned to the Superior Court at the time of the mandate or destroyed if copies.

- (2) Original exhibits shall be returned to the trial court at the time of mandate for direct criminal appeals and at the time of case termination for related post-conviction relief proceedings.
- d. Supreme Court Case Documents (Remand to Superior Court): All records are held in the clerk's office until the superior court proceedings related to the remand are complete. Refer to D. 15. b or c depending on the superior court decision.

Record on Appeal: The record on appeal, including court reporter transcripts (with the exception of the grand jury transcript) shall be retained in the Clerk's Office unless transfer requested by the Superior Court. At that time, certified copies of the instruments and minutes shall be retained. Original instruments and minutes shall be returned to the Superior Court consistent with Rule 31.23(a)(5), Rules of Criminal Procedure. Original Grand Jury transcripts and Juror Questionnaires shall be returned to the Superior Court.

16. Grand Jury Transcripts: Regardless of case type, Grand Jury Transcripts shall not be imaged or electronically reproduced.
17. Original Attorney Rolls and Bar Admissions by Affidavit: Permanent, retain in Clerk's Office.
18. Lawyer Advertising and Solicitations: Destroy ten years after date of receipt.
19. Service of Subpoenas Rule 36(a)(3): Previously issued by the Clerk's office under Rule 36(e)(2), Rules of the Supreme Court. Destroy ten years after date of issuance.
20. State Bar Examination Files: Destroy ten years after the date of the exam.
21. Any other documents/matters related to the following: (1) Committee on Character and Fitness, (2) any aspect of the admission and discipline of attorneys, or (3) the State Bar of Arizona that are required by rule or law and are deposited with the Clerk of the Supreme Court: Destroy ten years after date of admission.
22. Copies of Certificates of Good Standing, related memoranda, correspondence, and documents. Rule 74, Rules of the Supreme Court: Destroy three years after date of issuance.
23. Original signed minutes, opinions, memorandum decisions, and orders. This includes administrative orders, Pro Tem orders, judicial assignment orders, and certifications pursuant to § 12-128.01: Retain in Clerk's Office permanently, subject to re-evaluation every 25 years.

24. Oral argument calendars, audio records, and agenda minutes: Permanent.
25. Financial records such as purchase request; copy cost receipts; financial reconciliations; and grant files (unless a different period is required by grantor): Destroy five years after fiscal year prepared.
26. Administrative/business files maintained by the Clerk of the Court including, but not limited to, contracts, procurement, claims processing records, vendor, automation, special projects and general management matters: Destroy five years after expiration of contract or agreement.
27. Final monthly, fiscal year, and calendar year statistical reports and revenue survey reports: Destroy ten years after date of report.
28. General and miscellaneous correspondence received, including miscellaneous prisoner correspondence that is not filed into a specific docketed case; file copies of outgoing general and miscellaneous correspondence not filed into a specific docketed case: Destroy five years after date of receipt/issuance.
29. Other documents filed or deposited in the custody of the Clerk's Office or otherwise received by the Clerk's Office that are not related to appellate litigation nor to other categories listed in this retention schedule and which are not required by rule or law to be preserved: Destroy one year after date of receipt.
30. Continuing education files (COJET): As required by ACJA § 1-302.

E. Historically Significant and Landmark Cases. The clerk shall comply with the following procedures for designating and transferring cases deemed historically significant or landmark:

1. Designation of a case as historically significant.
 - a. Purpose. Certain cases filed in Arizona courts may be identified as historically significant because of the unique legal issue or controversy involved, the prominence of one or more of the parties to the action, or because of other high-profile or newsworthy reasons. When there is a reason to believe that a case falls into this category, the following procedures shall be followed.
 - b. Procedure for designating a case as historically significant. A motion to request that a case be designated historically significant shall be filed either by a member of the public or on the court's own motion. The motion shall identify one or more reasons the case should be designated historically significant. The chief justice shall decide the motion. If the motion is denied, the chief justice shall identify the reason for the denial. The clerk shall file the order granting or denying the motion for historically significant designation with the case.

- c. Processing and transferring. If the motion is granted, the clerk shall, within 90 days of final disposition, transfer the case file and a print-out of the docket from the case management system to LAPR for permanent retention. LAPR will accept diagrams, maps, photographs, and any other paper-based materials. LAPR will not accept three dimensional objects, clothing, or security-sensitive exhibits such as weapons, drugs, money, and bio-hazardous materials. Identification of the case as historically significant shall be prominently noted on the print-out of the docket from the case management system transferred with the case to LAPR.

2. Designation of a case as landmark.

- a. The following factors shall be considered in deciding whether a case is a landmark case:

- (1) The frequency with which the case has been cited;
- (2) Whether the case has been designated as historically significant;
- (3) Whether the case caused a change in policies or laws;
- (4) Whether the case affected a large portion of the community or was controversial;
- (5) Whether the case is generally viewed by the community as important;
- (6) Whether the case involved a famous or notorious individual or was the subject of a well-known book or film; and
- (7) Any other relevant factor.
- (8) Any case that has been the subject of a published opinion of the United States Supreme Court and has statewide or national impact shall be designated as a landmark case.

- b. Procedure for designating a case as landmark:

- (1) The Arizona Historical records Advisory Board shall designate a case as landmark under section (E)(2)(a)(1)-(8), above in consultation with a committee convened by the Board for this purpose. The committee shall consist of Board members, retired appellate court judges or justices, law professors, historians, or other like persons who have objective, informed views about the long-term significance and effect of eligible published appellate opinions. The committee shall meet periodically to review all published appellate opinions no less than five years and no more than nine years after issued to determine whether any of these cases should be designated as landmark.
- (2) No more than ten years after an appellate opinions is issued, and with the Board's approval, the director of the Division of Arizona History and Archives shall provide written notice of landmark designation to the clerk of the superior court in the county of origin, the clerk of the appropriate division of the court of appeals, and the clerk of the supreme court who shall apply the process for transferring the case to LAPR.

- c. Processing and transferring. When a case has been designated as landmark, the clerk shall file notice of this designation in the case. The clerk shall immediately transfer the

case and a print-out of the docket from the case management system to LAPR for permanent retention. LAPR will accept diagrams, maps, photographs, and any other paper-based materials. LAPR will not accept three dimensional objects, clothing, or security-sensitive exhibits such as weapons, drugs, money, and bio-hazardous materials. Identification of the case as landmark shall be prominently noted on the print-out of the docket from the case management system transferred with the case to LAPR.

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:

December 10, 2015

Type of Action Requested:

- Formal Action/Request
 Information Only
 Other

Subject:

ACJA 6-103: VICTIMS' RIGHTS REQUIREMENTS FOR PROBATION PERSONNEL

FROM:

Ms. Kathy Waters, Director of the Adult Probation Services Division of the AOC, presenting for Adult and Juvenile Probation Services

DISCUSSION:

Modifications to current Arizona Code of Judicial Administration (ACJA) to clarify role of probation officers and requirements for victim's notifications. Proposed changes to ACJA after public comments were received.

RECOMMENDED COUNCIL ACTION:

Approval requested

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Proposal Cover Sheet

Section 6-103: Victims' Rights Requirements for Probation Personnel

1. Effect of the proposal:

- To conform the definition of “Delinquent act” and the Applicability section to A.R.S. § 8-201.
- Clarifies that the notification rights set forth in the ACJA section 6-103 applies to opted in victims pursuant to A.R.S. § 13-4417 and A.R.S. § 8-398.
- To provide clarifying language as to when probation departments need to notify opted-in victims versus the obligations of the court to notify.
- To add the requirements for departments to have a provision for communicating with limited-English speaking victims.

2. Significant new or changed provisions: Deletes sections for court actions and guides probation actions.

3. Committee actions and comments: Approved with no changes by Committee on Probation, Committee on Superior Court, Commission on Victims and Committee on Juvenile Court.

4. Controversial issues: None

5. Recommendation: Adopt with proposed changes.

EXHIBIT 1

dsanders 123

Posts:

11 May 2015 09:46 AM

At E.4.l., change

Provide notice to the victim prior to filing a:

to

Provide notice to the victim when filing a:

Probationers are often arrested without a warrant on the basis of serious violations. A petition to revoke must be filed immediately. A delay in filing of three to seven days in order to verify victim notification would not be practical. Notification at the same time as the filing of the PTR could be done.

Exhibit 2

Arizona Code of Judicial Administration Maricopa County Adult Probation Feedback Section 6-103

The Maricopa County Adult Probation Department (MCAPD) recognizes the importance of victim notification and works diligently to keep opted-in victims notified. However, the MCAPD believes victim notification needs to be at appropriate times to ensure victim and officer safety. In addition, the sustainability of any non-statutory notification requirements needs to be considered given current funding limitations. Below are MCAPD comments and concerns pertaining to the proposed changes.

All of Sections E.4.1-q require clarification as to the requirements pertaining to opted-in victims.

1. **Section D.3:** Identify language assistance resources for communicating with limited-English speaking victims.
This addition appears reasonable.

2. **Section E.4.1.1:** Provide notice to the victim prior to filing a petition to revoke probation.

The requirement to provide notice prior to the filing of a petition to revoke directly contradicts the unchanging portion under section E.1.B.3&4 where it states that opted-in victims will be notified **after** a petition to revoke probation has been filed.

Further, this section states “victim” and does not specify “opted-in victim”. Per the definition of victim in the beginning of the Code, this newly added section would apply to notification of ALL victims. If the intention is for it to apply to only opted-in victims, then it should explicitly state that. If it is intended to apply to all victims, then this would pose a concern as not all victims wish to have continued involvement in these cases, in addition to workload.

Additionally, the new section under E.4.1.1 poses several concerns:

- 1) Prior notification would be unreasonable time-wise, especially when filing a warrantless petition to revoke (when an arrest is made when no warrant was filed, typically conducted if the probationer poses a danger to himself/herself or others, or if he or she was arrested for a new felony, serious misdemeanor, or weapons offense). If prior notification is required, we would be in violation of Code whenever an emergency

Exhibit 2

Arizona Code of Judicial Administration Maricopa County Adult Probation Feedback Section 6-103

situation necessitating a warrantless arrest occurs. Warrantless arrests consist of approximately 38% of all petitions to revoke (fiscal year 2015 to date). Requiring advance notification in such circumstances could jeopardize community and officer safety.

- 2) We are curious to know the purpose of the prior notification. It seems that notification once the PTR is granted would be sufficient.
- 3) There is always the chance the Judicial Officer may deny the request for the PTR, so advance notification to the victim that one is being filed is not reasonable. Notification should be made once the PTR is granted.
- 4) Advance notification would also increase workload, especially if required for all victims as the proposed Code currently reads. Should the Court deny the petition to revoke, additional notification would also be required, further adding to the workload.
- 5) Statute clearly requires notification when “a petition to revoke probation alleging the defendant absconded from probation has been filed with the Court” and “any violation of any term of probation that results in the filing with the Court of a petition to revoke”. Statute is clearly past tense, after the PTR has been filed. Our policy language follows these expectations and reads that we have to notify the victim of any PTR after filing.
- 6) Notification to a victim in advance of filing the PTR could pose a safety concern for officers/staff as many victims, such as in DV cases, remain in contact with the probationers and could alert them of the PTR. This would take away the element of surprise and expose our officers to greater risk.
- 7) This prior notice would require us to provide non-public records to the victim.

Perhaps simple revisions to E.1.B.3&4 could be made to state: 3. Any violation of any term of probation that results in the Court granting a petition to revoke probation. 4) That a petition to revoke probation alleging that the defendant absconded from probation was granted by the Court.

This would eliminate the need for this proposed section.

Exhibit 2

Arizona Code of Judicial Administration Maricopa County Adult Probation Feedback Section 6-103

2. **Section E.4.I.2:** Provide notice to the victim prior to filing a petition to terminate probation for full terminations, early terminations, and earned time credit terminations.

Again the clarification of all victims or just opted-in victims is needed. Victims' Rights were designed to give victims a voice in proceedings and to address safety concerns. Giving prior notice for these terminations may lead the victim to believe that if they object, they may be able to prevent the termination. Code currently requires notification to opted-in victims of "any proceeding in which the court is asked to terminate the probation or intensive probation..." and per our policies, opted-in victims are already given notice of the full termination, early termination or ETC termination request and are provided time to respond to the Court if they have comments. It seems this section is redundant to Section E.1.A.1.

3. **Section E.4.m:** Provide notification to the victim of the outcome of a petition to revoke probation.

If section E.4.I.1 is determined to be satisfied under E.B.3&4, then this section would not be required as the officer would have the result at the time the victim is notified that a PTR was filed.

Perhaps simple revisions to E.1.B.3&4 could be made to state: 3. Any violation of any term of probation that results in the Court granting a petition to revoke probation. 4) That a petition to revoke probation alleging that the defendant absconded from probation was granted by the Court.

4. **Section E.4.n:** Provide notice to the victim of any modifications of level of intensive probation supervision provided under A.R.S. 13-917 (A) or any reduction in standard probation supervision for maximum or medium to minimum supervision or any modifications from supervised probation to unsupervised probation.

The addition of notification when a probationer is modified from standard probation to unsupervised probationer appears appropriate.

However, there are several concerns with this proposal:

- 1) IPS modifications of level are handled by mass modifications and do not require a hearing. Notifying a victim of every level change is a significant workload issue that will delay and complicate the modification process, especially if the victim objects.

Exhibit 2

Arizona Code of Judicial Administration Maricopa County Adult Probation Feedback Section 6-103

- 2) Statute only requires we notify the victim on “any hearing on a proposed modification of the terms of probation or intensive probation”. Our policy is consistent. The actual terms of probation do not change with a level change.
- 3) Rule 123 also appears to apply here as there is no Statute requirement that we must modify on “any modification”.
- 4) Requiring notification of standard probation supervision from maximum or medium to minimum is a significant workload issue. The conditions of probation are not changing—the probationer remains on supervised probation.
- 5) Notifying victims of supervision level poses a safety concern. Our supervision levels assist us in dictating contact standards and having the public privy to that information could compromise the safety of our staff. The supervision level does not change the fact the probationer remains on supervised probation, and does not change the conditions or expectations of compliance, so the supervision level should have no impact on the victim. Per Rule 27.11, a level change does not “substantially impact” the victim. (“modifications of probation or intensive probation terms that will substantially impact the probationer’s contact with or safety of the victim or that affects restitution or incarceration status”)

Suggested verbiage: Provide notice to the victim of any modifications from intensive probation supervision to standard probation (pursuant to A.R.S. 13-917 (A)) or from standard probation to unsupervised probation.

5. **Section E.4.o:** Provide notice to the victim when the probationer is incarcerated as a condition of probation, as well as when a petition to enact a discretionary jail sanction of 30 or more days is implemented. The notice of incarceration shall also include the release date.
This section of proposed Code changes is not required by Statute. This proposed change appears to be geared towards Problem Solving Courts, in which the opted-in victim is made aware of the potential use of discretionary jail during the supervision of the probationer, so this section appears unnecessary.
Other concerns:

Exhibit 2

Arizona Code of Judicial Administration Maricopa County Adult Probation Feedback Section 6-103

- 1) Clarification is required regarding the notification of any length of incarceration as a condition of probation, or just incarceration periods greater than 30 days.
- 2) Problem Solving Courts often use short stints of discretionary jail as a swift corrective action and longer stints to assist probationers with stabilization and placement into various treatment programs. Because the use of discretionary jail is so frequent, this will likely place an unnecessary burden on officers. It is very difficult to provide a victim notification regarding an exact release date in every case. For example, in Drug Court, the bench may take a probationer into custody to serve 60 days discretionary jail with the option of early release to treatment or other programming. Typically the Court will set a review hearing and re-evaluate treatment availability and/or other factors and the defendant may be released on the review hearing date or within a few days after the review hearing date. Similar circumstances occur in DUI Court, SMI Court and JTOP. Since discretionary jail in Problem Solving Courts serves as part of the Court program and both officers as well as the Court remain involved in the case during the incarceration period it seems unnecessary to notify the victim.
- 3) The Judicial Officer typically determines if a probationer is to be taken into custody at the time of Court and no petitions are submitted. These decisions are often made quickly and on the spot. If it is determined this change is needed, it is requested the notification be required for any incarceration periods greater than 60 days.

Suggested verbiage: Provide notice to the victim when the probationer is incarcerated for more than 60 days as either a condition of probation or when a discretionary jail sanction is implemented. The notice of incarceration shall also include the anticipated release date, noting to the victim the date may change as the incarceration period continues.

6. **Section E.4.p:** Provide notice to the victim when a term of incarceration that has been deferred is either deleted or further deferred. This addition does not appear necessary as it is covered under E.1.B.1.

Suggestion: revise E.1.B.1 to state: Any proposed modification to and subsequent outcome of any term of probation if the modification affects

Exhibit 2

**Arizona Code of Judicial Administration
Maricopa County Adult Probation Feedback
Section 6-103**

restitution or incarceration status or the defendant's contact with or safety of the victim.

7. **Section E.4.q:** The probation officer shall provide notice to the victim when the probationer leaves or returns to the county or state pursuant to Arizona Rules of Criminal Procedure 27.11(4), ACJA 6-211, or through Interstate Compact for Adult Offender Supervision.
This addition appears consistent and reasonable.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 6: Probation
Chapter 1: General Administration
Section 6-103: Victims' Rights Requirements for Probation Personnel

A. Definitions. In this section unless otherwise specified, the following definitions apply:

“Court” means the superior court or any court of limited jurisdiction.

“Criminal Offense” means “conduct that gives a peace officer or prosecutor probable cause to believe that a felony, a misdemeanor, a petty offense or a violation of local criminal ordinance has occurred,” as provided by A.R.S. § 13-4401(6).

“Delinquent act” means an act to which this article applies pursuant to § 8-381 as provided in A.R.S. § 8-382(9) committed by a juvenile that if committed by an adult would be either (1) a misdemeanor offense involving physical injury, the threat of physical injury or a sexual offense; or (2) a felony offense, in accordance with A.R.S. §§ 8-381 and 382.

“Victim” means a person against whom the criminal offense or delinquent act has been committed, including a minor, or if the person is killed or incapacitated, the person’s spouse, parent, child, grandparent or sibling, any other person related to the person by consanguinity or affinity to the second degree or any other lawful representative of the person, except if the person or the person’s spouse, parent, child, grandparent, sibling, other person related to the person by consanguinity or affinity to the second degree or other lawful representative is in custody for an offense or is the accused.

B. Applicability. Pursuant to Az. Const. Art. 2, § 2.1 and Art. 6, § 3 and A.R.S. §§ 13-603, 13-804, 13-4401 et seq., and A.R.S. §§ 8-381 through 8-420, the following requirements shall govern the administration of victims’ rights by adult and juvenile probation departments. Specifically A.R.S. § 8-381 provides: “This article applies to acts that are committed by a juvenile and that if committed by an adult would be either: 1. A misdemeanor offense. 2. A felony offense. 3. A petty offense. 4. A violation of a local criminal ordinance.”

The notification rights set forth in this code section apply to victims who have requested notice pursuant to A.R.S. § 13-4417 and A.R.S. § 8-398.

C. [No changes]

D. General Duties of Probation. Adult and juvenile probation departments shall:

1. Maintain the confidentiality and security of all victim information, including but not limited to, addresses, telephone numbers, place of employment, social security number or other locating information; and
2. Provide training concerning victim sensitivity, victim trauma and victims’ rights in orientation for all probation department personnel.

3. Identify language assistance resources for communicating with limited-English speaking victims.

E. Duties of Adult Probation. Adult probation departments shall:

1. Pursuant to A.R.S. § 13-4415(B), provide notice to a victim in the following circumstances ~~develop a process to furnish victims who request notice with timely notification of the following:~~

~~A. On request of a victim who has provided an address or other contact information, the court shall notify the victim of any of the following:~~

~~1. A probation revocation disposition proceeding or any proceeding in which the court is asked to terminate the probation or intensive probation of a person who is convicted of committing a criminal offense against the victim.~~

~~2. Any hearing on a proposed modification of the terms of probation or intensive probation.~~

~~3. The arrest of a person who is on supervised probation and who is arrested pursuant to a warrant issued for a probation violation.~~

B. On request of a victim who has provided a current address or other current contact information, the probation department shall notify the victim of the following:

1. Any proposed modification to any term of probation if the modification affects restitution or incarceration status or the defendant's contact with or the safety of the victim.

2. The victim's right to be heard at a hearing that is set to consider any modification to be made to any term of probation.

3. Any violation of any term of probation that results in the filing with the court of a petition to revoke probation.

4. That a petition to revoke probation alleging that the defendant absconded from probation has been filed with the court.

5. Any conduct by the defendant that raises a substantial concern for the victim's safety.

2. Provide the notices required by E(1) when:

- a. A hearing is set to consider any modification to any term of probation.

- b. Filing a petition to revoke probation, including a petition to revoke alleging the defendant has absconded.

3. Provide notice to the victim when the probationer is incarcerated as a condition of probation, as well as when a petition to enact a discretionary jail sanction of 30 or more days is implemented. The notice of incarceration shall also include the anticipated release date, noting the date may change as the incarceration period continues.

4. Provide notice to a victim of modifications from intensive to standard probation or from supervised probation to unsupervised probation.
5. Provide notice to the victim when the probationer leaves or returns to the county or state pursuant to Arizona Rules of Criminal Procedure 27.11(4), ACJA §6-211, or through the Interstate Compact for Adult Offender Supervision.
26. Develop a standardized presentence report format, in conjunction with the superior court, which addresses the emotional, economic and physical losses of victims;
37. Monitor the payment of restitution by working with the clerk of the court to establish a process by which supervising probation officers are provided with accurate and timely information concerning the collection of court-ordered restitution;
48. Require probation staff to:
 - a. through b. **[No changes]**
 - ~~c. Pursuant to A.R.S. § 13-4426:

 - A. The victim may present evidence, information and opinions that concern the criminal offense, the defendant, the sentence or the need for restitution at any aggravation, mitigation, presentencing or sentencing proceeding.
 - B. At any disposition proceeding the victim has the right to be present and to address the court.~~
 - d. Pursuant to A.R.S. § 13-4427:
 - A. The victim has the right to be present and be heard at any probation revocation disposition proceeding or any proceeding in which the court is requested to terminate the probation or intensive probation of a person who is convicted of committing a criminal offense against the victim.
 - B. The victim has the right to be heard at any proceeding in which the court is requested to modify the terms of probation or intensive probation of a person if the modification will substantially affect the person's contact with or safety of the victim or if the modification involves restitution or incarceration status.
 - ec. Document all victim notifications and attempts to notify the victim;
 - fd. Respond to all queries by victims, providing accurate information in accordance with supreme court rules governing public access to judicial records;

- ~~ge.~~ Within the scope of their duties, minimize contact between victims and victims' family and the probationer and probationer's family;
- ~~hf.~~ Emphasize and address the probationer's responsibility to satisfy any court-ordered restitution at each scheduled visit and immediately address any arrearage in court-ordered restitution with the probationer;
- ~~ig.~~ Notify the court having jurisdiction upon finding that the probationer has become in arrears in an amount totaling two full court-ordered monthly payments of restitution. This notification shall consist of a petition to modify, petition to revoke, or memorandum to the court outlining the reasons for the delinquencies and expected duration thereof. A copy of the memorandum shall be provided to the victim, if the victim has requested notice of restitution modifications; and
- ~~jh.~~ Request court extension of probation pursuant to A.R.S. §13-902(C):

When the court has required, as a condition of probation, that the defendant make restitution for any economic loss related to the defendant's offense and that condition has not been satisfied, the court at any time before the termination or expiration of probation may extend the period within the following limits:

1. For a felony, not more than five years.
2. For a misdemeanor, not more than two years.

- ~~ki.~~ As provided by A.R.S. § 12-253(7), "Bring defaulting probationers into court when in the probation officer's judgment the conduct of the probationer justifies the court to revoke suspension of the sentence."

- (1) If the probationer is on standard probation supervision and is not located within 90 days, the supervising probation officer shall file a petition to revoke probation, seek a criminal restitution order pursuant to A.R.S. § 13-805(~~AC~~)(1)(2) for a probationer who is an absconder as defined in A.R.S. § 13-105(1), and request that the court issue a warrant. The supervising officer shall file the petition to revoke sooner, when required by local departmental policies, the circumstances surrounding the case or the need for community protection.
- (2) **[No changes]**
- (3) When a petition to revoke is filed prior to the expiration of 90 days, the probation officer shall seek a criminal restitution order upon the expiration of 90 days, pursuant to A.R.S. § 13-805(~~AC~~)(1)(2), for a probationer who is an absconder as defined in A.R.S. § 13-105(1).

F. through G. [No changes]

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 2: Appellate Courts
Chapter 2: Court of Appeals
Section 2-201: Records Retention and Destruction Schedule

A. Definitions. In this section the following definitions apply:

“Case Data” means the electronic information about a case, but not images of documents, maintained by the clerk of the court of appeals or the court, generally found in a case management system, and often posted to the web or the court’s website.

“Case File” means all documents and other material filed with the clerk of the court of appeals in an action or proceeding either in paper or electronic format, and includes items such as CDs, DVDs and transcripts. Case file includes case data.

“Clerk” means the clerk of court for the relevant Division of the Arizona Court of Appeals and any employee or representative of that clerk of court authorized to take action as set forth in this schedule.

“Docket” means the case number, case type, party name, case decision, date of destruction and the original listing of documents/orders filed in the case.

“State Library, Archives, and Public Records (LAPR)” means the division of the Arizona Secretary of State that is the archives for Arizona state government, which is mandated by law to collect, preserve and make available to the public and all branches of government, permanent public records, historical manuscripts, photographs and other materials that contribute to the understanding of Arizona history.

“Final Disposition” means issuance of the mandate or order terminating the case.

B. Authority. Arizona Supreme Court Rule 29(B)(1) authorizes the clerk to provide for the destruction of documents, records, instruments, books, papers, depositions, exhibits and transcripts in any action or proceeding in the court of appeals or otherwise filed or deposited in the clerk’s custody. Arizona Supreme Court Rule 29(B)(2) provides that, for case file records that must be maintained permanently, the clerk shall transfer the original record to LAPR pursuant to records retention and disposition schedules adopted by the Arizona Supreme Court, retaining original digital records scheduled for permanent preservation until LAPR is able to accept them. Arizona Supreme Court Rule 29(B)(3) provides that other court documents listed on approved records retention and disposition schedules may be maintained and destroyed in accordance with such approved retention and disposition schedules. *See also* Ariz. Rev. Stat. § 12-120.09 (2015) (duties of clerk, records and certified copies); Ariz. R. Sup. Ct. 29(E) (destruction notice).

C. General Provisions.

1. Permanent records. As set forth below, at the end of the retention period with the court, the clerk shall transfer to LAPR all records, regardless of format, that have a retention period designated as permanent, unless otherwise instructed by LAPR. The clerk shall work with LAPR's established requirement for transfer.
2. Electronic case files and case data. At the end of the retention schedule set forth below, the clerk shall destroy electronic case files and case data not designated as having a retention period of permanent. Electronic case files designated as having a retention period of permanent must be transferred to LAPR at a time when LAPR has the capacity to accept electronic records.
3. Paper case files and administrative records. At the end of the retention period set forth below, the clerk may destroy case files that are primarily in paper format and may destroy other records, regardless of format, not designated as having a retention period of permanent. Paper case files and other records designated as having a retention period of permanent shall be transferred to LAPR.
4. Microfilm. Until national standards for the long-term preservation of electronic records are in place, records transferred to LAPR pursuant to the provisions of this schedule shall be in paper.
5. No duty to migrate to new technology. The clerk is not responsible for migrating to new technology any material filed in an action or proceeding that is recorded in a format, such as CD and DVD that must be read by a computer.
6. Conflicting authority. To the extent that the retention periods specified in this schedule vary from any statutory provision, the longer period of retention, whether in statute or the schedule applies.
7. Sealed files. A case file or portions of a case file sealed by order of the court must remain sealed in perpetuity, unless otherwise ordered by the court.
8. Destruction of non-permanent records. When a paper case file or other paper record is eligible for destruction, the clerk shall take proper precautions to protect the privacy of the individuals identified in the case file or other record and destroy the complete case file or other record by shredding, burning, or pulverizing the physical case file or other record. Electronic images of case file documents, data or other records shall be deleted from all electronic repositories in which they reside, including servers and hard drives. The court may keep a list, containing minimal information, such as case number, case type, party name, case decision and the date of destruction, capturing any case files or other records destroyed, so that the court will know that a case file or other record has been destroyed and has not been merely misplaced or never existed.

9. Effective date. The provisions of this code section are applicable to cases filed on and after the effective date of the code section. Cases filed prior to the effective date are governed by the provisions of Administrative Order 1999-79.

D. Retention and Disposition Schedule. Unless otherwise stated within the schedule, ten years after a case is terminated or a mandate is issued, case files shall be transferred to LAPR. Sealed items shall be transferred to LAPR in numerical case number but designated as SEALED on the box index. The clerk shall retain and dispose of court of appeals records according to the following schedule:

1. Habeas Corpus: The case file shall be permanent.
2. Special Action:
 - a. Declined case files, excluding the docket, shall be destroyed five years from the date of the final case disposition.
 - b. Accepted case files shall be permanent.
3. Petition for Special Action – Industrial Commission:
 - a. Declined case files, excluding the docket, shall be destroyed five years from the date of the final case disposition.
 - b. Accepted case files shall be permanent.
4. Petition for Post-Conviction Relief:
 - a. Declined case files, excluding the docket, shall be destroyed five years from the date of final disposition.
 - b. Accepted case files shall be permanent.
5. Direct Appeals:
 - a. Dismissed cases files, excluding the docket, shall be destroyed five years from the date of the final disposition.
 - b. All other direct appeals, including any Original Complaints, shall be permanent.
 - c. Record on Appeal: Original documents filed in another court/agency shall be returned at the time of termination or mandate (paper only). Document copies shall be destroyed. Rule 24(c), Arizona Rules of Civil Appellate Procedure, and Rule 31.23(a)(5), Arizona Rules of Criminal Procedure.

6. Original signed minutes, opinions, memorandum decisions, and substantive orders (including administrative orders, Pro Tem orders, and judicial assignment orders). Retain in clerk's office permanently, subject to re-evaluation every 25 years.
7. Oral argument calendars and audio records: Destroy after ten years after date of occurrence.
8. Financial records such as purchase requests; receipts for payment; financial reconciliations; and grant files (unless a different period is required by grantor): Destroy five years after fiscal year prepared.
9. Administrative/business files maintained by the clerk including, but not limited to, contracts, procurement, claims processing records, vendor, automation, special projects and general management matters: Destroy five years after expiration of contract or agreement.
10. Final monthly, fiscal year and calendar year statistical reports and revenue survey reports: Destroy ten years after date of report.
11. General and miscellaneous correspondence, including miscellaneous prisoner correspondence that is not filed into a specific docketed case; file copies of outgoing general and miscellaneous correspondence not filed into a specific docketed case: Destroy five years after date of receipt/issuance.
12. Other documents filed or deposited in the custody of the clerk's office or otherwise received by the clerk's office that are not related to appellate litigation nor to other categories listed in this retention schedule and which are not required by rule or law to be preserved: Destroy one year after date of receipt.
13. Continuing education files (COJET): As required by ACJA § 1-302.

E. Historically Significant and Landmark Cases. The clerk shall comply with the following procedures for designating and transferring cases deemed historically significant or landmark:

1. Designation of a case as historically significant.
 - a. Purpose. Certain cases filed in Arizona courts may be identified as historically significant because of the unique legal issue or controversy involved, the prominence of one or more of the parties to the action, or because of other high-profile or newsworthy reasons. When there is a reason to believe that a case falls into this category, the following procedures shall be followed.
 - b. Procedure for designating a case as historically significant. A motion to request that a case be designated historically significant shall be filed either by a member of the public or on the court's own motion. The motion shall identify one or more reasons the case should be designated historically significant. The chief judge shall decide the

motion. If the motion is denied, the chief judge shall identify the reason for the denial. The clerk shall file the order granting or denying the motion for historically significant designation with the case.

- c. Processing and transferring. If the motion is granted, the clerk shall, within 90 days of final disposition, transfer the case file and a print-out of the docket from the case management system to LAPR for permanent retention. LAPR will accept diagrams, maps, photographs, and any other paper-based materials. LAPR will not accept three dimensional objects, clothing, or security-sensitive exhibits such as weapons, drugs, money, and bio-hazardous materials. Identification of the case as historically significant shall be prominently noted on the print-out of the docket from the case management system transferred with the case to LAPR.

2. Designation of a case as landmark.

- a. The following factors shall be considered in deciding whether a case is a landmark case:

- (1) The frequency with which the case has been cited;
- (2) Whether the case has been designated as historically significant;
- (3) Whether the case caused a change in policies or laws;
- (4) Whether the case affected a large portion of the community or was controversial;
- (5) Whether the case is generally viewed by the community as important;
- (6) Whether the case involved a famous or notorious individual or was the subject of a well-known book or film; and
- (7) Any other relevant factor.
- (8) Any case that has been the subject of a published opinion of the United States Supreme Court and has statewide or national impact shall be designated as a landmark case.

- b. Procedure for designating a case as landmark:

- (1) The Arizona Historical Records Advisory Board shall designate a case as landmark under section (E)(2)(a)(1)-(8), above in consultation with a committee convened by the Board for this purpose. The committee shall consist of Board members, retired appellate court judges or justices, law professors, historians, or other like persons who have objective, informed views about the long-term significance and effect of eligible published appellate opinions. The committee shall meet periodically to review all published appellate opinions no less than five years and no more than nine years after issued to determine whether any of these cases should be designated as landmark.
- (2) No more than ten years after an appellate opinions is issued, and with the Board's approval, the director of the Division of Arizona History and Archives shall provide written notice of landmark designation to the clerk of the superior court in the county of origin, the clerk of the appropriate division of the court of appeals, and

the clerk of the supreme court who shall apply the process for transferring the case to LAPR.

- c. Processing and transferring. When a case has been designated as landmark, the clerk shall file notice of this designation in the case. The clerk shall immediately transfer the case and a print-out of the docket from the case management system to LAPR for permanent retention. LAPR will accept diagrams, maps, photographs, and any other paper-based materials. LAPR will not accept three dimensional objects, clothing, or security-sensitive exhibits such as weapons, drugs, money, and bio-hazardous materials. Identification of the case as landmark shall be prominently noted on the print-out of the docket from the case management system transferred with the case to LAPR.

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
December 10, 2015	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	2015 Report of the Capital Case Oversight Committee

FROM:

Hon. Ronald Reinstein (ret.)
Chair of the Capital Case Oversight Committee

DISCUSSION:

Administrative Order 2013-115 extended the term of the Capital Case Oversight Committee to December 31, 2015, and directed the Oversight Committee to submit annual progress reports to the Arizona Judicial Council. Judge Reinstein will present to the Council the Oversight Committee's 2015 report.

The 2015 report makes four recommendations to the Court, specifically, that the Court:

- A. Continue to monitor capital case data.
- B. Support efforts to secure reasonable compensation for capital PCR counsel.
- C. Plan for, participate in, and encourage education and training for capital case stakeholders.
- D. Enter an Order that either extends or disbands the Oversight Committee.

RECOMMENDED COUNCIL ACTION:

Judge Reinstein on behalf of the Oversight Committee requests the Council to approve the 2015 report and recommendations.

Progress Report
of the
Capital Case Oversight Committee
to the
Arizona Judicial Council

December 2015



ADVANCING JUSTICE TOGETHER | 2014-2019

Members of the Capital Case Oversight Committee

Chair: Hon. Ronald Reinstein

Judge of the Superior Court (ret.)

Mr. James Belanger

Coppersmith, Schermer, and Brockelman, PLC

Hon. Kent Cattani

Court of Appeals, Division One

Ms. Donna Hallam

Staff Attorney, Arizona Supreme Court

Ms. Kellie Johnson

Office of the Pima County Attorney

Mr. Dan Levey

Executive Director, Parents of Murdered Children

Mr. Marty Lieberman

Maricopa County Legal Defender

Mr. James Logan

Director, Maricopa Officer of Public Defense Services

Mr. William Montgomery

Maricopa County Attorney

Mr. Daniel Patterson

Office of the Legal Advocate

Ms. Sheila Polk

Yavapai County Attorney

Mr. Natman Schaye

Arizona Capital Representation Project

Hon. Joseph Welty

Superior Court in Maricopa County

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Executive summary. On December 18, 2013, by Administrative Order number 2013-115 (Appendix 11), the Chief Justice extended the term of the Capital Case Oversight Committee (“Oversight Committee”) for two years. This Order required the Oversight Committee to submit annual reports to this Council, and in December 2014, the Oversight Committee submitted an interim report.

The Oversight Committee has a long history. The Committee’s predecessor was the Capital Case Task Force (“Task Force”). Administrative Order 2007-18 established the Task Force on February 12, 2007. That Order noted an “unprecedented number of capital cases currently awaiting trial in Maricopa County.” The Order directed the Task Force “to examine the issues relevant to the availability of adequate resources for processing capital cases in Maricopa County and in the appellate courts of Arizona and make recommendations for rule and statutory amendments that would promote efficient resolution of these cases in light of the pending caseload....”

The Task Force represented stakeholders from diverse capital case perspectives, and included a blue-ribbon list of members. The Chair of the Task Force was Supreme Court Justice Michael Ryan. Its members included the Hon. Ann Scott Timmer, then the vice-chief judge of Division One of the Court of Appeals; Kent Cattani, who was then the Arizona Attorney General’s chief counsel for capital litigation; and Judge Ronald Reinstein of the Superior Court in Maricopa County. The Task Force presented its report to the Arizona Judicial Council in September 2007.

The Task Force report made a number of recommendations. Its concluding recommendation was that the Arizona Supreme Court establish a committee to monitor capital caseload reduction efforts in Maricopa County. The Task Force envisioned this committee would hold meetings and “assure interested parties that there will be a cooperative environment in which to share information, air concerns, and facilitate development of any formal policies deemed necessary.” (Task Force report at pages 23-24.) The Supreme Court accordingly established the Capital Case Oversight Committee on December 6, 2007, by the entry of Administrative Order 2007-92. (Appendix 11.) Justice Ryan served as chair of this Committee until his passing in 2012; thereafter and to the present, Judge Reinstein has been chair.

The Oversight Committee submitted written reports to this Council in 2008, 2009, 2010, 2012, 2013, and 2014. The Oversight Committee's 2008 report addressed the formidable volume of capital cases in Maricopa County. Successive Oversight Committee reports confirmed a substantial reduction in the number of Maricopa County's capital cases. Here are three examples of findings and expectations included in the 2007 Task Force report, with comparisons to data eight years thereafter:

1. As of August 27, 2007, there were 149 pending capital cases in Maricopa County (Task Force report at page 3.)
 - As of September 30, 2015, there were 67 pending capital cases in Maricopa County. (Appendix Table 1.) This represents a 55% reduction – a reduction of more than half – in the number of capital cases pending eight years ago.
2. The Maricopa County Attorney filed 46 death penalty notices in FY 2006 and 34 notices in FY 2007. (Task Force report at page 5, footnote 4.) The 2007 Task Force report anticipated that in the future, the Maricopa County Attorney would file 35 to 45 capital cases each year. (Task Force report at page 5.)
 - The number of new notices of intent to seek the death penalty actually filed in successive 12-month periods between October 2008 and September 2015 were, respectively, 18, 32, 26, 24, 19, 18, and 12 notices. (Appendix Table 2.) This is an average of 21 notices per year. At no time did the actual number of notices reach the “35 to 45” range that was estimated in 2007.
3. The 2007 Task Force report indicated that the then-current number of capital cases would have a “ripple effect” on the criminal justice system as these cases moved out of the superior court on direct appeal. (Report at page 5.)
 - As of November 2008, there were 17 direct appeals of capital convictions pending before the Arizona Supreme Court. (2008 Oversight Committee report at page 9.) By October 2009, that number had increased to 23 capital appeals. (2009 Oversight Committee report at page 12, footnote 22.) But as of September 2015, there were ten pending direct capital appeals. (The Supreme Court

has issued five opinions in capital cases in the twelve months since the Oversight Committee's 2014 report, as well as five opinions in the twelve months preceding the 2014 report.)

The expectations in the 2007 Task Force report of ever-increasing capital case volumes at the trial and appellate levels never came to pass.

This report will summarize what happened over the eight years since 2007, and attempt to put those events in an historical perspective. This report concludes with four recommendations:

- A. This Court should continue to monitor capital case data.
- B. This Court should support efforts to secure reasonable compensation for capital PCR counsel.
- C. The Court should plan for, participate in, and encourage education and training for capital case stakeholders.
- D. The Court should enter an Order that either extends or disbands the Oversight Committee.

The Oversight Committee's focus has been on capital case volume, the efficiency and effectiveness of court procedures, court and human resources, and similar issues. It has never concerned itself with, nor was it charged to consider, the merits of capital punishment or the policy underlying the death penalty. The Oversight Committee did not discuss whether the death penalty was equitably applied, or whether any particular case warranted a death sentence. Although the existence of capital punishment or its application in certain circumstances have been debated in other forums and jurisdictions, those issues are not within the Oversight Committee's purview.

Sources of data. Capital case data in Arizona over past decades has not been uniformly collected or integrated for analysis. A major exception was the 2002 report of the Arizona Attorney General's Capital Case Commission. (The report is located at <https://www.azag.gov/ccf/final-report>) Three Supreme Court justices (Justices Ryan, Feldman, and Moeller) were among the two dozen members of the Commission. Dr. Peg Bortner, a professor at the Center for Urban Inquiry, College of Public Programs, Arizona State University, meticulously compiled and prepared more than one hundred pages of capital case data, and analyzed that data based on a broad number of criteria. Some of that data is

included in this report (Appendix 10), but much of Dr. Bortner's 2001-2002 data now has less relevance as a result of *Ring v. Arizona*, 536 U.S. 584 (2002) and statutory changes to Arizona's capital case sentencing procedure in 2002.

Since 2008, the Capital Case Oversight Committee has compiled some basic capital case data from Maricopa County and statewide. The data contained in Tables 1 through 9 of this report was derived from that effort. Other data in this report was extracted from publicly accessible websites, such as the Arizona Department of Corrections' death row webpage.

The 2007 capital case crisis. One might surmise that the precipitating factor for the 2007 capital case crisis in Maricopa County was the filing of an inordinately high number of death notices. (A first degree murder case becomes a capital case when the State files a timely notice of intent to seek the death penalty.) But a review of the data renders that surmise doubtful.

Dr. Bortner's data, Appendix 10, indicates that for the five-year period 1995-1999, a total of **230 death notice cases** were filed in Maricopa County.

➤ This is an average of **46 cases** annually.

The Maricopa County Superior Court statistician maintained an inventory of capital cases for the period 2003 to 2008 on a fiscal year (July 1 to June 30) basis. The statistician's numbers in the years leading up to the crisis showed capital case filings as follows:

2003-04	31 cases
2004-05	32 "
2005-06	46 "
2006-07	32 "
2007-08	32 "

5-year total: 173 cases, or **about 35 cases** annually

Given that prosecutors filed fewer, not more, death notices during the five years preceding the capital case crisis than during a comparable, previous five-year period, the number of filings from 2003 to 2008 did not appear to precipitate the crisis. If not, then what did?

Jury sentencing. As a result of *Ring* and Arizona’s new capital case sentencing statutes that became effective in 2002, juries were empowered to determine whether the sentence in an alleged capital case should be life, or death. Formerly, judges alone made that determination. A capital case is therefore a three-stage proceeding. In the first phase, a jury determines if a defendant is guilty of first degree murder. During the second phase, the same jury decides whether the State has proven its allegations of statutory aggravating factors. In the third and final phase, also known as the sentencing or penalty phase, the jury considers whether to return a verdict of death or life.

Exhibit 13 of Dr. Bortner’s Data Set II (Appendix 10) showed the length of time from indictment to sentence in death notice cases in Maricopa County between 1995 and 1999. The exhibit indicates that median range was about **2.5 years** (1.9 years from indictment to trial, plus 6.4 months from verdict to sentence. This data set did not include the actual length of trials, which would need to be added.)

Between October 2008 and September 2015, the Maricopa County Superior Court conducted 67 trials. (Appendix 9.) Excluding about a dozen mistrials (often because the jury was unable to reach a verdict in the penalty phase) and trials following appellate remands (which would skew the result), the average length of time between arraignment and sentence was **4.08 years**, or about 49 months (N = 52 cases).

But rather than characterizing death penalty cases as “moving slower” through a “clogged” court system, the Oversight Committee submits that these cases take longer simply because there is more to do before and during trial than there was two decades ago.

Before trial, and under applicable statutes, cases, and standards, defendants in capital cases undergo testing for intelligence, competency, and sanity. Mitigation specialists make ongoing requests to obtain records, going back to the defendant’s childhood or even to the time of defendant’s birth. There is a need to access and review records from schools, health care providers, employers, the military, courts, and penal institutions, some of which might never have been digitized and may be archived long ago and stored in boxes in remote warehouses that may be difficult to locate. It is also necessary for the defense to locate and interview witnesses who may live out-of-state or out of the country, and to find, retain, and prepare appropriate expert witnesses. And as before *Ring*,

counsel need to be fully prepared for what might be a complex guilt phase trial. Trial preparation should be thorough, deliberate, and paced. Good trial preparation takes more time than inadequate preparation.

Trials also take longer than they did in the 1990s. Before *Ring*, the jury was discharged after a verdict in the guilt phase. The jury now remains for, and counsel must be fully prepared for, the aggravation and penalty phases of a capital trial, which may last for weeks if not months. (Footnote 10 of the Oversight Committee's 2008 report noted that the length of an entire capital jury trial in Maricopa County, including the penalty phase, was 84 days.) Jury trials, including deliberations following each stage of the proceeding, inherently require more time.

Meanwhile, the prosecutor is dealing with similar requirements as the defense. The prosecutor also needs to contact relevant witnesses and experts for the case in chief and for rebuttal during all three stages of the trial. Pretrial proceedings may include lengthy plea bargaining between counsel. And the court must take the time, and have the resources, to effectively and fairly manage this complex criminal litigation.

So the answer to the question of what precipitated the capital case crisis might in hindsight focus on the multi-faceted and time-consuming process for jury sentencing that was implemented more than a decade ago. This is now the elemental nature of death penalty cases.

Oversight Committee accomplishments. The capital case crisis did not develop quickly. But true to what was envisioned by the 2007 Task Force, the Oversight Committee offered an environment where interested parties had “a cooperative environment in which to share information, air concerns, and facilitate development of any formal policies deemed necessary.” (When the term of the Oversight Committee was extended by the Court pursuant to Administrative Order 2013-15, its nine exclusively Maricopa County members were joined by four new members, two from Pima County, one from Yavapai County, and a private practitioner from Maricopa County.)

(1) *Data collection protocols.* It became apparent early in the life of the Oversight Committee that the superior court, prosecutors, and defender agencies collected capital case data differently. As an example, these stakeholders sometimes distinguished the number of pending cases as “active,” “remands,” or

“potential.” (A case that was pending for competency restoration may or may not have been counted as “active.” In a “potential” case, a death notice had not been filed, but it might be anticipated.) If a defendant was convicted of capital murder and immediately sentenced, but sentencing on any non-capital counts was deferred, there was not uniform treatment of the date of case termination. Some stakeholder reports referred to capital “cases,” but this overlooked the fact that one case might have more than one “defendant.” On the other hand, one defendant could have multiple capital cases. Some stakeholders kept data on a calendar year basis, while others kept data by fiscal year.

Accordingly, Justice Ryan directed the Maricopa stakeholders who kept data to meet and discuss standards for capital case data management. This resulted in the stakeholders’ agreement on a data reporting protocol. (The protocol was included in Appendix B to the Oversight Committee’s 2008 report; it was subsequently revised as shown in Appendix B of the Oversight Committee’s 2009 report.)

(2) *Rule petitions.* The Oversight Committee supported the Task Force recommendation to amend Rule 15.1(i) of the Arizona Rules of Criminal Procedure. This recommendation resulted in the filing of R-07-0019 in November 2007.

Before the proposed amendment, Rule 15.1 required the prosecutor to file a notice of intent to seek the death penalty within sixty days after a defendant’s arraignment. The old rule allowed a stipulated extension for thirty days. Under the amended rule, which the Court adopted effective January 1, 2009, the time for the prosecutor to file a notice of intent to seek the death penalty could be extended by stipulation for an additional sixty days, and thereafter, upon stipulation and with court approval, for a longer period. (The amended rule requires the prosecutor to consult with the victim before entering into any such stipulation.) In the words of the rule petition, “additional time afforded by this stipulation may help the defense team identify mitigating evidence that could persuade a prosecutor not to seek a death sentence, thereby conserving judicial and capital defender resources.” The amended rule also provides that a case will be treated as a capital case – requiring the appointment of two attorneys and a mitigation specialist – upon the filing of any stipulation to extend the time for filing a notice.

The Oversight Committee filed two other rule petitions in 2008.

The Clerk of the Supreme Court automatically files a notice of post-conviction relief on behalf of a defendant whose death sentence is affirmed on direct appeal. Post-conviction proceedings in the superior court can be as complex and time consuming as pre-judgment proceedings, and require similar, systematic case management by the assigned judge. R-08-0042, adopted by the Court effective January 1, 2010, amended Rule 32.7 and required the trial court to hold an informal conference in the case within 90 days after the appointment of counsel on the first notice of post-conviction relief.

Another issue associated with capital cases, particularly post-conviction proceedings, involved defense counsel's preservation for successor counsel of a defendant's file. In R-08-0041, the Oversight Committee proposed an amendment to Rule 6.3 that expressly required defense counsel to maintain the records "in a manner that will inform successor counsel of all significant developments relevant to the litigation" and to provide to successor counsel the client's "complete records and files, as well as all information regarding every aspect of the representation." The Court adopted the proposed amendment effective January 1, 2010.

The Oversight Committee also filed a rule petition in 2010, R-10-0012, which proposed an amendment to Rule 8.2(a)(4) – the "speedy trial" rule for capital cases – and that became effective on January 1, 2011. The amendment extended the speedy trial time limit from *18 months from the date of arraignment*, to *24 months from the date a notice of intent to seek the death penalty is filed*. The Oversight Committee's expectation was that with this rule amendment, counsel would have adequate time to fully prepare each case for trial. As a practical matter, there has not been strict adherence to either the old or the new time limit, but the new limit is at least more realistically aligned with the time required for counsel preparing a capital case for trial.

(3) Screening for qualified counsel. A capital case proceeds through three levels of the state court system: first, through the superior court, for trial; then, following a death sentence, to the Supreme Court on direct appeal; and then back to the superior court on an automatic petition for post-conviction relief. In what may be an anomaly, the superior court appoints counsel for the appeal to the Supreme Court, and the Supreme Court appoints counsel for post-conviction proceedings in superior court.

A recurring issue following conviction is the effectiveness of defense counsel. Basic qualifications for defense counsel in a capital case are set out in

Rule 6.8. But those requirements are quantitative rather than qualitative. The Oversight Committee, and those who make these appointments, believed that more comprehensive screening of counsel's qualifications was warranted. The need to appoint counsel cannot be adequately satisfied if the appointed attorney is not qualified for a death penalty case.

In 1996, and to assure that each appointee would provide high quality legal services, the Arizona Supreme Court established an advisory committee to screen private counsel's applications for appointment in post-conviction proceedings. But the Court disbanded this advisory committee in 2001.

In 2010, the Oversight Committee considered a presentation from the California Supreme Court's Automatic Appeals Monitor. The California Monitor advised that California requires an applicant for appointment in a capital post-conviction proceeding to submit writing samples that demonstrate an ability to analyze complex legal issues, and to submit references, who the Monitor actually contacts. The Monitor declines to appoint busy trial attorneys to a capital PCR because that attorney, although qualified, may not have the time required for post-conviction work. He requires that appointed counsel submit progress reports to the court while a PCR is pending, and he also requires that appointed counsel consult with another experienced attorney during the course of a collateral proceeding. He noted that previously appointed attorneys may have "life-changing experiences" that cause them to become unsuitable for appointment, or that they may rely on the work product of subordinates rather than doing the work themselves, and the Monitor accordingly screens for those issues.

The Oversight Committee thereafter discussed different proposals for screening capital counsel, including a formal "screening committee" (that would be established by administrative order), or an informal and flexible "advisory panel" (that would gather information and have candid and confidential discussions about each applicant.) The Oversight Committee unanimously recommended the advisory panel proposal. Although this proposal was not adopted by the Court, the Oversight Committee's chair has worked closely during the past two years with the Court's capital staff attorney to carefully evaluate applications for appointment as PCR counsel, using many of the California Monitor's screening techniques. Also during that time, a small Oversight Committee cadre has revised the Court's application form to make the information supplied by each attorney applicant more comprehensive and meaningful.

These recent actions by members of the Oversight Committee have contributed to there being an adequate number of competent counsel available for appointments on capital PCR proceedings. In 2009, there were 18 defendants awaiting the appointment of counsel on a capital PCR. By October 2013, this number had been reduced to six; a year later, there was no backlog of defendants awaiting the appointment of counsel. As of the writing of this report, the number stands at “two,” but it’s expected that an appointed lawyer will soon be appointed in those cases, and then every capital defendant in Arizona will have PCR counsel.

The Oversight Committee’s 2010 report recommended that county public defenders be considered for appointment on capital PCRs. (2010 Report at page 14.) It’s noteworthy that public defender agencies in Maricopa County have recently accepted PCR appointments. As a practical matter, this arrangement is more cost-effective for the county than the appointment of private counsel. But regardless of the economics, the agencies’ acceptance of appointments also facilitates the timely appointment of qualified PCR counsel. Many of the PCRs now pending in superior court are cases that were affirmed on appeal subsequent to the peak of the 2007 crisis. Maricopa County alone has 29 capital defendants with pending petitions for post-conviction relief.

Coincidentally, in January 2012, the Maricopa County Superior Court entered Administrative Order 2012-008, superseded by Administrative Order 2012-118 entered on August 10, 2012. The Orders require a formal evaluation by a “*Capital Defense Review Committee*” of applications for appointment of capital case counsel by the trial court. The Orders encompass appointments as a capital defendant’s lead trial counsel, trial co-counsel, and appellate counsel. A.O. 2012-118 provides that all capital counsel eligible for appointment through the Maricopa County Office of Public Defense Services receive an evaluation every three years of his or her qualifications, and have approval of the presiding criminal judge for appointment on a capital case.

False starts. The past eight years have also witnessed well-intentioned attempts to deal with the capital case crisis that have fallen short.

(1) *Mitigation discovery masters.* Mitigation is often the most compelling evidence to persuade a capital case jury that a life sentence should be imposed. The mitigation effort is frequently the most time-consuming portion of pretrial investigation and discovery.

The mitigation discovery master concept was initiated in Maricopa County in April 2007 by the superior court's entry of Administrative Order 2007-50. The mitigation discovery master was an experienced criminal judge, other than the one assigned to the case, who facilitated the mitigation investigation with appropriate orders. The concept allowed the master to confer *ex parte* with the defense team to eliminate, when possible, obstacles to uncovering mitigation evidence.

The mitigation discovery master concept was not always satisfactory. First, it required two judges on a single case, and it therefore had a greater cost of judicial resources. Second, it did not sit well with victims, who were customarily excluded from pretrial mitigation proceedings in which only the defense appeared before a judge. And third, it did not appear that mitigation discovery masters appreciably shortened the time needed by defense counsel to prepare for trial.

In early 2009, the Maricopa County Superior Court adopted a new capital case management approach. That approach dispensed with mitigation discovery masters and relieved them of their duties. The capital case judge assigned to the case thereafter handled all discovery issues, and if an *ex parte* discovery hearing was necessary, a party was required to proceed under Rule 15.9(b).

(2) *State Capital Post-Conviction Public Defender.* The Legislature established this new executive office in 2007 by enactment of Title 41, Chapter 42, A.R.S. §§ 41-4301, et. seq. The office began operations in November 2007. The intent of this legislation was that, like a public defender office in the trial court, the Post-Conviction Defender would be appointed on capital PCRs statewide. This would not only be economically advantageous; it would also facilitate an experienced, specialized practice and become a knowledge resource for other capital defense counsel.

By November 2008, the Post-Conviction Defender had four PCR cases. But the office encountered fiscal difficulties shortly thereafter, primarily caused by budget cuts, staff reductions, and furloughs. The enacting legislation had a 2012 sunset provision. The Legislature's budget for fiscal year 2013 included a repeal of the statutes establishing the office. Maricopa County's Office of the Public Advocate absorbed the majority of the State Defender's five pending cases, as well as most of its staff.

(3) *R-14-0010.* This rule petition, filed by the Arizona Attorney General, requested amendments to various rules of criminal procedure. The petition

essentially requested that a post-conviction proceeding in a capital case precede, rather than follow, a direct appeal. The petition was prompted in part by a United States Supreme Court opinion, *Martinez v. Ryan*, 132 S. Ct. 1309 (2012). (Arizona requires a defendant to raise a claim of ineffective assistance of trial counsel in post-conviction proceedings, rather than on direct appeal. *Martinez v. Ryan* held that the ineffectiveness of defendant's post-conviction counsel in challenging the effectiveness of trial counsel could provide cause for excusing the defendant's failure to raise trial counsel's ineffectiveness in state court.)

The Oversight Committee discussed this rule petition at a meeting in March 2014. Oversight Committee members were profoundly and intractably divided on a recommendation concerning this rule petition. Some took the view that this new procedure would serve justice by facilitating earlier evidentiary hearings, when witness memories were fresher and before evidence was lost, rather than delaying them for the years it took to conclude a direct appeal. Others viewed it as an unnecessary cost of millions of dollars for a post-conviction proceeding, because a conviction might first be reversed on direct appeal and avoid the need for, and the expense of, a PCR. Accordingly, the Committee provided no formal comment to the Court. This is perhaps the only issue on which the Oversight Committee has been unable to develop consensus. And although at its August 2014 rules agenda the Court reopened the matter and asked for data or studies in capital cases jurisdictions with a review procedure similar to the one proposed by the Attorney General, it appeared that scant, if any, such data existed, and the Oversight Committee was again unable to file a comment.

A turning point. If this report had to identify a single turning point in ameliorating the capital case crisis, it would be the Oversight Committee's March 5, 2009 meeting. At this meeting, the then-presiding criminal judge of the Maricopa County Superior Court publicly announced a new approach for capital case management. The presiding criminal judge advised that he intended to enforce the requirement of then-existing Rule 8.2(a)(4), which required capital cases to proceed to trial within eighteen months from arraignment. He also stated that all twenty-six judges in Maricopa County's criminal division would be qualified to try capital cases, and that one of these judges would be available for any capital case that was ready for trial. No case would be continued because of the unavailability of a judge or a courtroom. A Maricopa County Administrative Order, Number 2009-023, included a requirement that upon the filing of a notice of intent to seek the death penalty, the presiding criminal judge would issue a

capital case assignment and scheduling order. The order, among other things, required IQ, competency, and sanity prescreening evaluations; set a firm trial date; required any continuances of the trial date to be heard by the presiding criminal judge; and required disclosures within the times set by applicable criminal rules. The order also set an initial case management conference, and required the parties to jointly submit written status reports to the court.

In a seven-month interval between March and September 2009, 33 capital cases were resolved, more than a dozen by jury verdict. However, defense attorneys contended that the new case management approach required some of these cases to proceed to trial before they were ready, and without being fully prepared. In any event, by January 2010, the number of pending capital cases in Maricopa County had dipped below 100 (in February 2009 there were 131 cases; in January 2010, there were 97 cases). By the end of 2010, the number had been reduced to 68 cases. The number has since remained in a range of 60-70 pending capital cases during any given month. (Appendix Table 1.)

The turnaround is also noteworthy in light of the fact that during calendar year 2010, there were three Maricopa County Attorneys. (The elected County Attorney resigned in April 2010 to run for statewide office. He was replaced by an interim County Attorney, who was defeated in a primary election in September, and succeeded by a new County Attorney, who was elected in November.) The interim county attorney ordered a review of every death-noticed case then pending in Maricopa County, and he withdrew some death notices following that review.

Continuing education. Prosecutors and defense counsel customarily have separate training under the auspices of their respective organizations, rather than conducting joint training.

In November 2014, the AOC's Education Services Division in partnership with the Superior Court in Maricopa County conducted a two-day statewide training for judges on Processing Capital Cases. A total of 34 judges attended. Another 21 judges, including Judges Kent Cattani, Andrew Hurwitz, and Ronald Reinstein, (along with attorneys and experts) served as faculty. The program received an overall participant evaluation of 4.9 out of 5.0. Topics at this program included case management, discovery and mitigation management, common mitigation issues, pretrial motions, jury selection, the three phases of a capital trial, settlement conferences, sentencing, media issues, appellate issues,

and post-conviction relief. (The program sessions are available in video on Wendell, the judicial intranet site. A capital case bench book and resource materials from previous capital case training sessions are also available on Wendell.)

In September 2015, the General Jurisdiction New Judge Orientation program included two criminal sessions with preliminary information on capital cases. The program was attended by 31 new general jurisdiction judges. Judges Reinstein, Myers, and Welty served as faculty for these sessions, which were also highly rated by the participants.

On the horizon. The reduction in the number of pending capital cases in Maricopa County also resulted in a reduction in the number of pending capital cases statewide. (Seven counties – Coconino, Gila, Graham, Greenlee, LaPaz, Navajo, and Santa Cruz – have not had a capital case during the past eight years.) The statewide number of capital cases pending trial fell from 155 cases in July 2008 to 83 cases in September 2012. Maricopa’s number during that time period dropped from 127 cases to 63 cases (a 50% reduction). Pima County also had a substantial reduction, from fourteen cases in 2008 to five cases in 2012 (a 64% reduction). And Yuma County went from five cases in 2008 to one case in 2012 (an 80% reduction.)

Two counties had an increase in their capital caseloads. Yavapai County went from three cases in 2008 to five cases in 2012, and seven cases in 2013. However, by 2015, Yavapai County had reduced its pending capital cases to three. Pinal County had three capital cases in 2008, which increased to five cases in 2012 and seventeen cases in 2014. It reduced that number to fourteen cases in 2015. None of the death noticed cases in Yavapai or Pinal County during the past eight years have concluded with a sentence of death. Death sentences in Arizona over the past eight years have occurred in only three counties: Maricopa, Mohave, and Pima. (Appendix Table 7.)

Although the total number of filings has dropped during the past eight years, the analysis a prosecutor undertakes before filing a death notice remains the same: whether there is sufficient evidence to show guilt and aggravating factors beyond a reasonable doubt, and whether the totality of circumstances justify death as a just punishment. Prosecutors and others would likely agree that there is no “magic number” of death notices. The filing of a death notice is contextual and solely within the discretion of elected prosecutors.

Another issue on the horizon is the outcome of post-conviction proceedings. Of the 67 pending capital cases in Maricopa County in September 2015, four cases (or about six percent) are penalty phase retrials following a death sentence. Two of these cases were remands from federal court; two other cases derived from orders in post-conviction proceedings in state court. And at its October 29, 2015 meeting, a federal public defender reported that the Ninth Circuit remanded to the district court for evidentiary hearings more than a dozen Arizona cases on the basis of *Martinez v. Ryan (supra)*. Penalty phase retrials, which are costly financially and, for the victims, emotionally, often result from the ineffective assistance of trial counsel. The lesson from these experiences is that properly qualified, trained, diligent, and fairly compensated defense counsel are essential in death penalty cases.

Extend or disband the Oversight Committee. Several of the previous reports to the Arizona Judicial Council considered whether to extend or disband the Oversight Committee, and the issue presents itself again in 2015.

One member believes that the capital case crisis is a past event, and accordingly, the term of the Oversight Committee does not need to be extended. That member suggested that stakeholders can meet informally, outside the structure of a formal committee, and that courts can track their own capital case data. A couple members believe that a committee that meets once a year, as this Committee has done for the past two years, has only marginal value, and at the very least, if this Committee merits an extension, it should meet a few times annually.

A large majority of members felt that the Oversight Committee has continuing relevance. First, these members believe there are continuing issues. There has been a recent increase in the number of capital cases in Pinal County, and there appears to be a shortage of qualified mitigation specialists. The Attorney General's office has not yet sponsored another bill or introduced another rule petition that would require capital post-conviction proceedings to precede direct appeals, as it has done during the past two years, but that office continues to discuss a reintroduction of these changes. A restyling of the Arizona Rules of Criminal Procedure is anticipated, and the Oversight Committee might have an interest in reviewing and commenting on the associated rule petition. And there routinely seems to be developments in the Arizona Legislature, the Ninth Circuit, and other federal courts that impact Arizona death penalty litigation.

The majority submits that the Oversight Committee appears to be the only statewide forum where a cross-section of stakeholders can discuss issues and share concerns associated with capital litigation. When this Committee considered its existence in 2013, one member stated that the Oversight Committee should continue as long as Arizona has a death penalty. A judge member commented during the October meeting that extending the term of the Oversight Committee will enable it to look at new capital case issues as they arise, even if there are no particular issues before the Committee now.

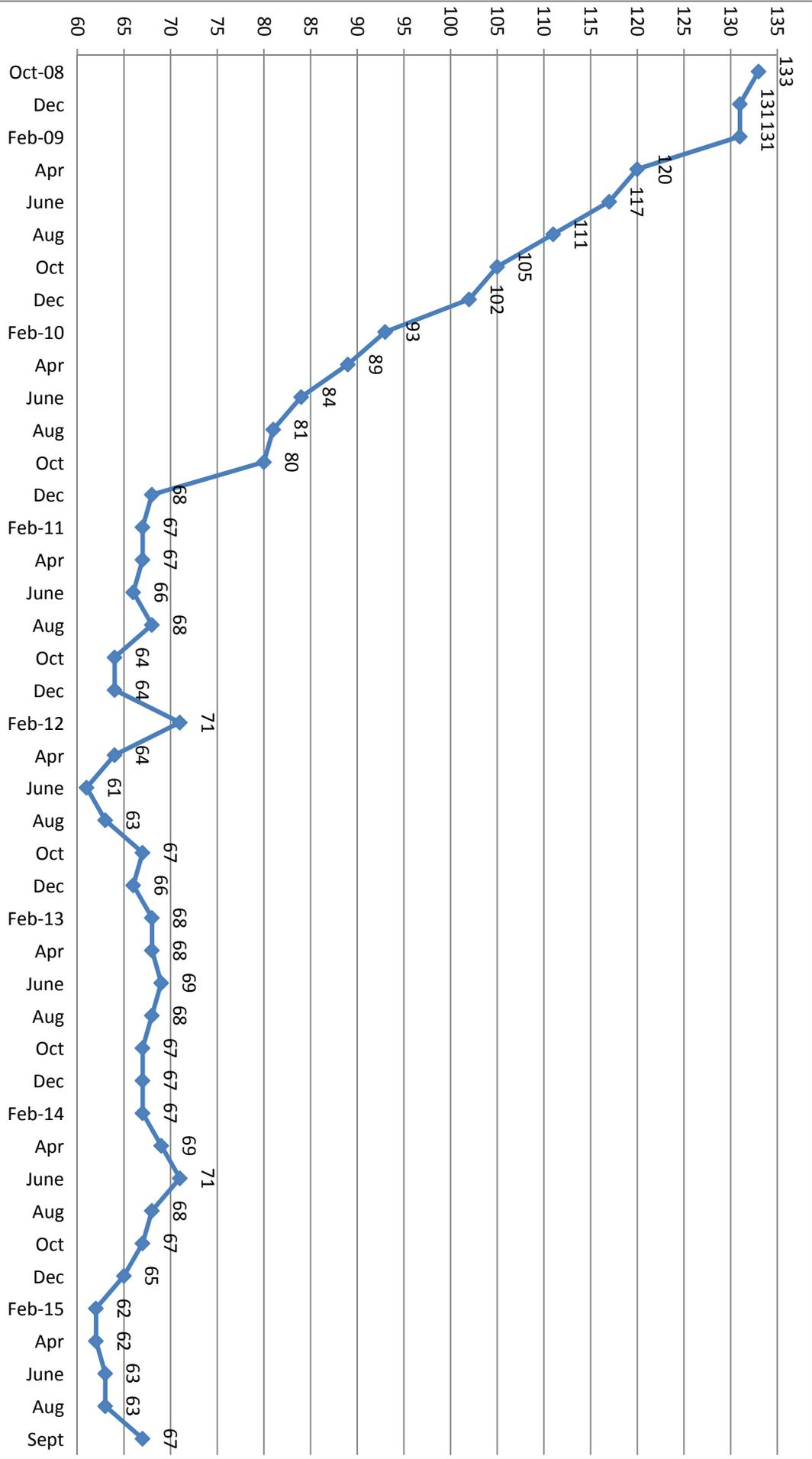
Recommendations. The Oversight Committee has four recommendations.

- A. *This Court should continue to monitor capital case data.* This does not need to be done under the supervision of the Oversight Committee. But someone should be routinely collecting capital case data, first, for research and study purposes, but also, to discern trends and to alert the trial and appellate courts of any anticipated changes in capital case volumes.
- B. *This Court should support legislative efforts to secure reasonable compensation for capital defense counsel in post-conviction proceedings.* This recommendation has been ingrained in every report that the Oversight Committee has submitted to this Council. The statutory rate of \$100 per hour (A.R.S. § 13-4041) appears to be too low to attract the best and most capable capital defense counsel.
- C. *The Court should plan for, participate in, and encourage education and training for capital case stakeholders.* Specialized and ongoing training is essential for prosecutors, defense counsel, mitigation specialists, and judges.
- D. *The Court should enter an Order that either extends or disbands the Oversight Committee.* The Oversight Committee met once in 2014, and once this year. Although a minority of its members believes that the Oversight Committee should be disbanded, the great majority of members support its continuation.

Appendices

1. Chart: Number of Capital Cases Pending Trial in the Maricopa County Superior Court, by Month: October 2008 through September 2015
2. Table: Maricopa County Capital Case Recap: October 2008 to September 2015 (7 years)
3. Chart: Maricopa: Combined data summary for twelve month periods
4. Table: Capital cases pending trial in Arizona by county: 2008 to 2015
5. Chart: Number of Capital Cases Pending Trial Outside Maricopa County
6. Table: Number of Capital Cases Pending Trial Statewide
7. Table: Number of Defendants Sentenced to Death Statewide
8. Table: Number of Executions in Arizona
9. Table: Disposition and time to disposition after trial of death noticed cases in Maricopa County (October 2008 to September 2015)
10. Charts and Tables: Dr. Bortner data, 2001-2002
11. Administrative Orders numbers 2007-42 and 2013-115

#1: Number of Capital Cases Pending Trial in the Maricopa County Superior Court, by Month: October 2008 through September 2015



Maricopa County
Seven-year capital case recap

#2: Maricopa County Capital Case Recap: October 2008 to September 2015 (7 years)

MONTH	# OF NEW CASES	# OF ACTIVE CASES TERMINATED	DEFENDANTS SENTENCED TO DEATH
October 2008	3	1	0
November	2	2	0
December	1	3	0
January 2009	1	2	1: Prince [<i>Ring</i>]
February	2	2	0
March	0	7	1: Hausner
April	2	5	1: Lehr [<i>Ring</i>]
May	0	4	1: Delahanty
June	0	3	1: Gallardo
July	3	4	1: Grell [<i>Ring</i>]
August	3	5	2: Cota, Hardy
September	1	5	1: Manuel
12 month sub-total	18	43	9
October	3	7	0
November	1	5	1: Van Winkle
December	7	6	1: Patterson
CY 2009 sub-total	23	55	11
January 2010	1	6	1: Medina
February	0	5	2: Boyston, Ovante
March	1	5	0
April	2	2	2: Joseph, Martinez
May	2	6	1: Parker
June	5	6	0
July	5	5	0
August	3	6	1: Fitzgerald
September	2	4	0
12 month sub-total	32	63	9
24 month sub-total	50	106	18
October 2010	4	3	2: Gomez, Rose
November	1	6	0
December	1	8	1: Hernandez
CY 2010 sub-total	27	62	10
January 2011	3	5	0
February	3	2	1: Burns
March	2	3	0
April	1	0	0
May	3	3	2: Naranjo, Reeves
June	1	2	0
July	1	0	0

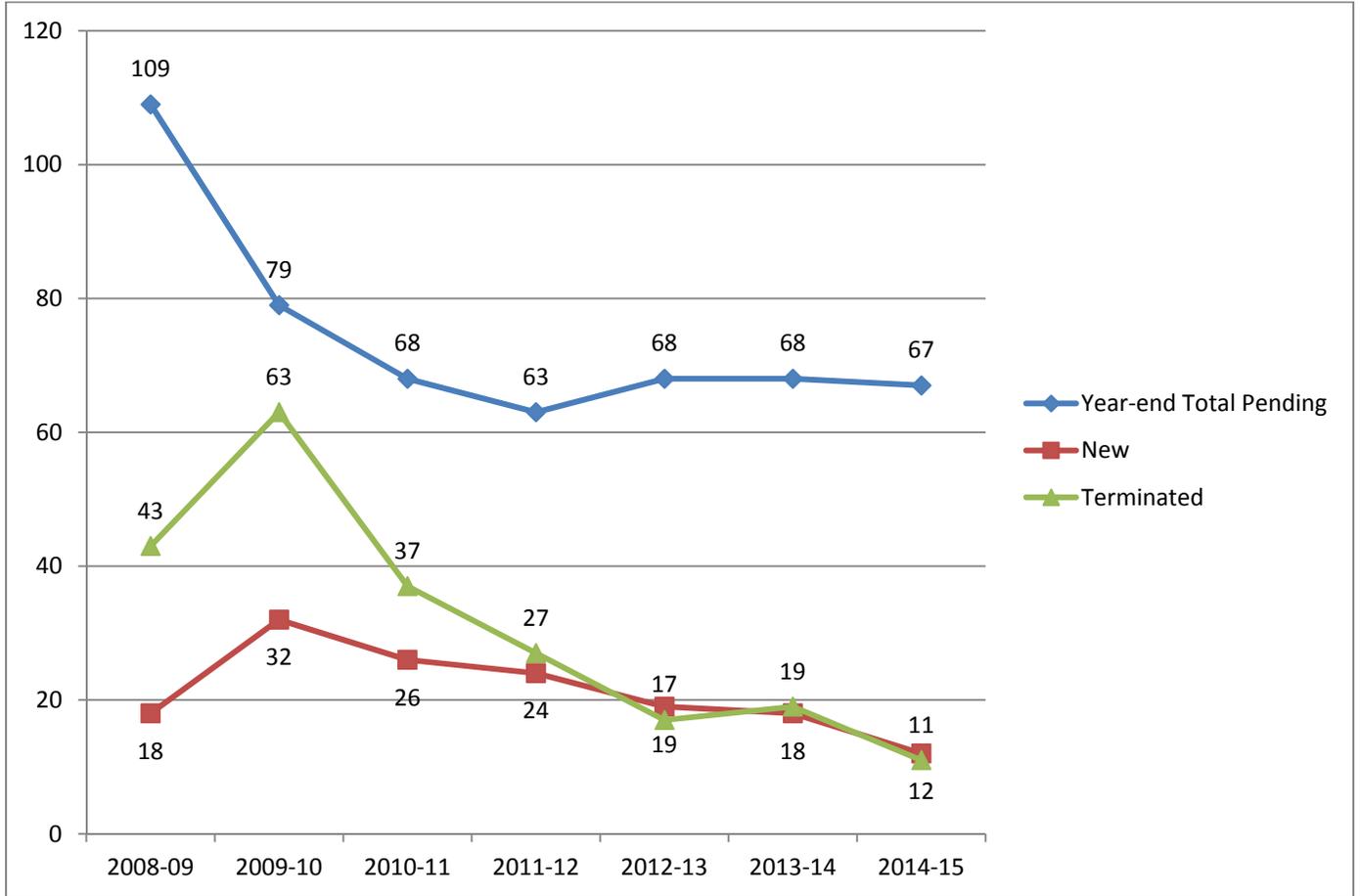
*Maricopa County
Seven-year capital case recap*

MONTH	# OF NEW CASES	# ACTIVE CASES TERMINATED	DEFENDANTS SENTENCED TO DEATH
August 2011	4	3	0
September	2	2	1: Miller
12 month sub-total	26	37	7
36 month sub-total	76	143	25
October 2011	2	6	1: Benson
November	2	2	1: Goudeau
December	1	1	0
CY 2011 sub-total	25	29	6
January 2012	6	1	0
February	3	1	0
March	1	6	0
April	0	2	0
May	1	1	0
June	0	3	0
July	2	1	0
August	2	1	1: Lynch
September	4	2	1: Anthony
12 month sub-total	24	27	4
48 month sub-total	100	170	29
October 2012	1	0	0
November	1	2	0
December	1	1	1: Leteve
CY 2012 sub-total	22	21	3
January 2013	3	1	0
February	2	2	1: Escalante-Orozco
March	1	1	0
April	1	1	0
May	4	3	0
June	1	1	0
July	4	2	0
August	0	3	1: Gunches
September	0	0	0
12 month sub-total	19	17	3
60 month total	119	187	32
October 2013	0	2	1: V. Guarino
November	2	1	0
December	2	2	0
CY 2013 sub-total	20	19	3

*Maricopa County
Seven-year capital case recap*

MONTH	# OF NEW CASES	# ACTIVE CASES TERMINATED	DEFENDANTS SENTENCED TO DEATH
January 2014	0	0	0
February	0	1	0
March	2	0	0
April	1	0	0
May	3	2	0
June	4	3	0
July	1	1	0
August	0	3	1: Hulseley
September	3	4	1: Sanders
12 month sub-total	18	19	3
72 month sub-total	137	206	35
October 2014	0	1	1: Acuna Valenzuela
November	0	0	0
December	0	2	0
CY 2014 sub-total	14	17	3
January 2015	2	5	1: Hidalgo
February	0	0	0
March	2	1	0
April	2	3	0
May	1	0	0
June	0	1	0
July	0	1	1: Rushing
August	1	0	0
September	4	0	0
12 month sub-total	12	11	3
84 month total	149	220	38

#3: Maricopa: Combined data summary for twelve month periods



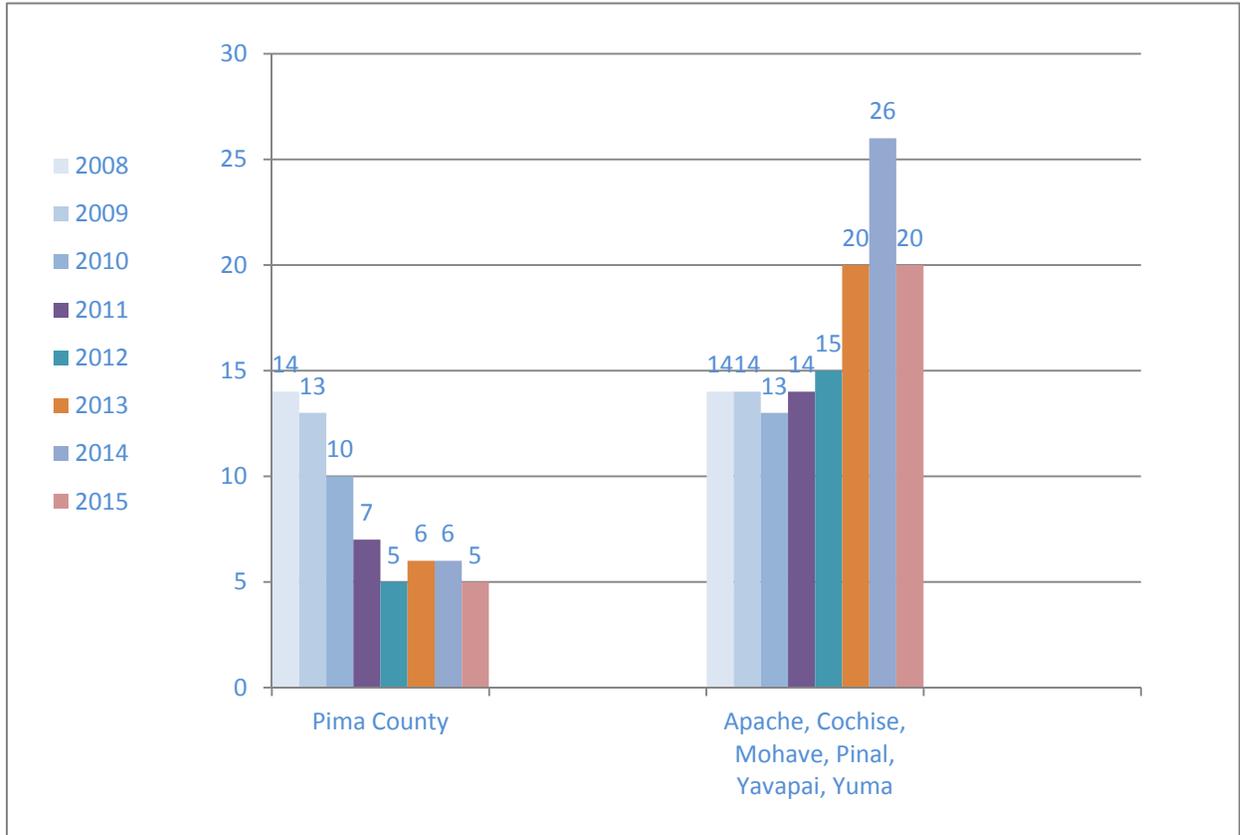
#4: Capital cases pending trial in Arizona by county: 2008 to 2015

Each of these surveys was conducted in September, with the exception of 2008, which was conducted in July.

<u>County</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
Apache	1	1	0	0	0	0	0	0
Cochise	0	0	1	3	3	2	1	0
Coconino	0	0	0	0	0	0	0	0
Gila	0	0	0	0	0	0	0	0
Graham	0	0	0	0	0	0	0	0
Greenlee	0	0	0	0	0	0	0	0
La Paz	0	0	0	0	0	0	0	0
Maricopa	127	109	79	68	63	68	68	67*
Mohave	2	3	2	1	1	0	0	2
Navajo	0	0	0	0	0	0	0	0
Pima	14	13	10	7	5	6	6	5
Pinal	3	4	5	5	5	10	17	14
Santa Cruz	0	0	0	0	0	0	0	0
Yavapai	3	2	2	2	5	7	7	3
Yuma	5	4	3	3	1	1	1	1
TOTAL	155	136	102	89	83	94	100	92

*Maricopa had 63 pending cases at the end of August 2015. Four new death notices were filed in September 2015.

#5: Number of Capital Cases Pending Trial Outside Maricopa County



#6: Number of Capital Cases Pending Trial Statewide

<u>Date</u>	<u># of Cases</u>
July 2008	155
Sept 2009	136
Sept 2010	102
Sept 2011	89
Sept 2012	83
Sept 2013	94
Sept 2014	100
Sept 2015	92

#7: Number of Defendants Sentenced to Death Statewide

<u>Year</u>	<u># of Defts</u>	<u>Source by County</u>
2008	5	Maricopa (5)
2009	15	Maricopa (11), Pima (3), Mohave (1)
2010	10	Maricopa (10)
2011	8	Maricopa (6), Pima (2)
2012	4	Maricopa (3), Pima (1)
2013	4	Maricopa (3), Mohave (1)
2014	3	Maricopa (3)
2015 [9 months]	2	Maricopa (2)
2008-2015	51	Maricopa (43), Pima (6), Mohave (2)

#8: Number of Executions in Arizona

<u>Year</u>	<u># of Executions</u>
2001-2006	0
2007	1
2008	0
2009	0
2010	1
2011	4
2012	6
2013	2
2014	1
2015 [9 months]	0
2001-2015	15

#9: Disposition and time to disposition after trial of death noticed cases in Maricopa County (October 2008 to September 2015)

Excludes *Ring* remands [see the bottom of page 2 for *Ring* retrials]

1. Hausner	death	715 days
2. Maldonado	not guilty	1912
3. Orbin	M-1	1849 [life]
4. Delahanty	death	1342
5. Cota	death	2013
6. Martinez	mistrial [hung]	--
7. Gallardo	death	916
8. Boyston	mistrial	--
9. Dietman	life	1073 [natural life]
10. Hardy	death	1431
11. Calvillo	life	1081
12. Manuel	death	1741
13. Armbruster	mistrial	1577 [stipulated plea]
14. Baker	life	2101 [by plea]
15. Lawton	M-2 verdict	578
16. Patterson	death	1340
17. VanWinkle	death	547
18. Medina	death	-- [after remand]
19. Boyston [retrial]	death	2167
20. Fitzgerald	mistrial	--
21. Reeves	mistrial	--
22. Ovante	death	573
23. Henderson	mistrial	2449 [plea after notice withdrawn]
24. Vasquez	nat life	1327
25. Joseph	death	1610
26. Fish	mistrial	888 [natural life]
27. Enriquez	life	1362
28. Parker	death	1438
29. Martinez [retrial]	death	1447
30. Hunt	mistrial	1608 [natural life]
31. Bland	life	757 [natural life]
32. Fitzgerald [retrial]	death	1940
33. Sermeno	life	1495
34. Ficklin	life	1894
35. Rose	death	1159
36. Gomez	death	3833 [after remand]
37. Reeves [retrial]	mistrial	-- [panel released (threat during jury selection)]
38. Burns	death	1473
39. Hernandez	death	929

40. Naranjo	death	1490
41. Reeves [retrial]	death	1424
42. Goudeau	death	1770
43. Benson	death	1192
44. Martinson	mistrial	2925 [after state withdrew notice]
45. J. Martinez	mistrial	--
46. Miller	death	1582
47. Black	nat life	782 [sentenced per stipulation]
48. Herrera	mistrial	1779 [State then withdrew notice]
49. Anthony	death	1386
50. Lynch	death	4161 [after remand]
51. Leteve	death	975
52. Escalante-Orozco	death	1956
53. Arias	mistrial	--
54. Tomlinson	mistrial	-- [mistrial 4/13; in 9/14, p/g to M-2]
55. J. Martinez [retr.]	nat life	2152 [sentenced per stipulation]
56. Cano	acquitted	1487 [bench trial]
57. Gunches	death	3373 [after remand]
58. V. Guarino	death	1311
59. Sanders	death	1814
60. Hulsey	death	2279
61. Acuna Valenzuela	death	1145
62. Arias [retrial]	mistrial	2404 [natural life after second penalty phase]
63. Martinez	pending	--
64. Hidalgo	death	1381
65. Licon	pending	--
66. Rushing	death	1637
67. Edwards	pending	--
68. Riley	pending	--

Exclude mistrials (15) and pending (4) = 68 – 19 = 49 verdicts

% of death verdicts v. total number of verdicts = 35/49 = 71%

% of death verdicts v. total number of trials = 35/64 = 55%

% of acquittals v. total number of trials = 2/64 = 3%

Time to disposition: (exclude mistrials [8], remands [4], and pending [4]) = 1492 days = 4.08 years
[N = 52 cases]

Ring trials (4):

Prince: death

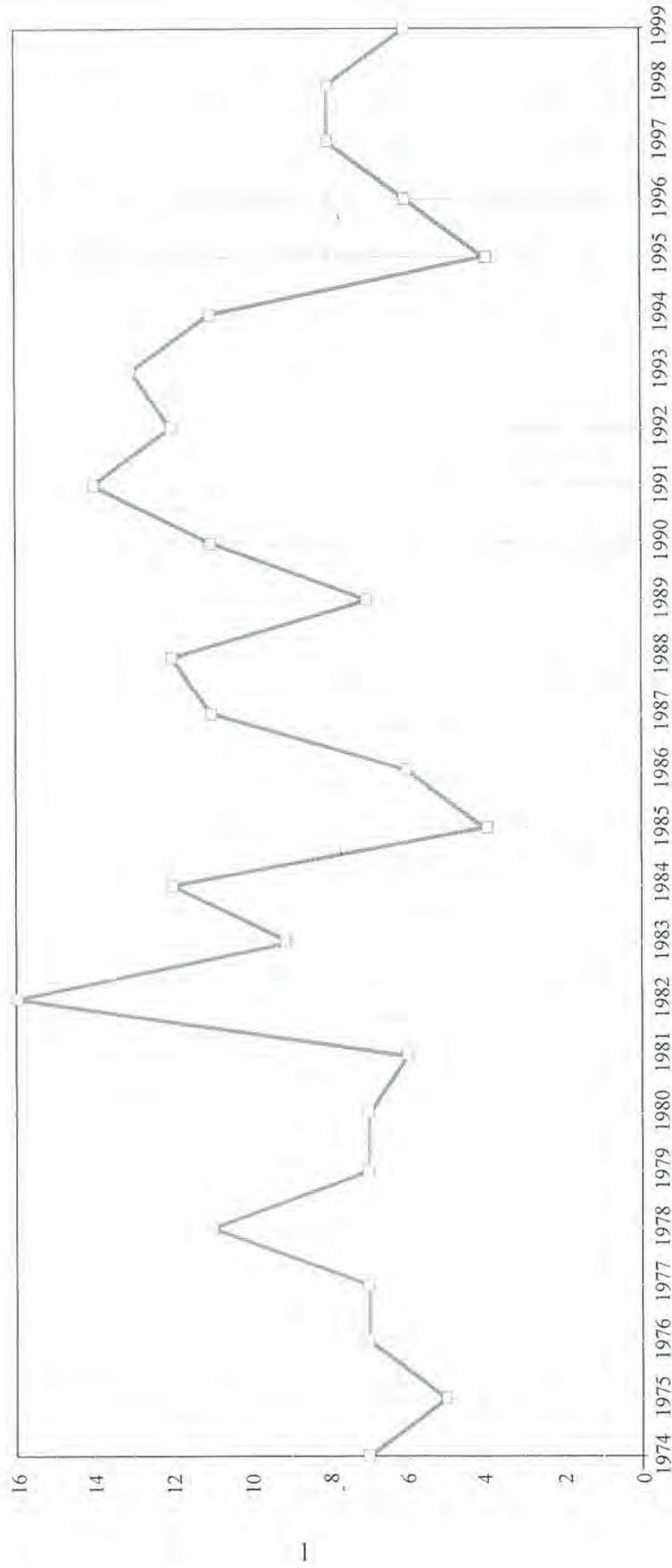
Lehr: death

Grell: death

Lamar: natural life sentence following two mistrials [this was the last Ring sentencing, June 2010]

Appendix 10
Dr. Bortner Data
2001-2002

Exhibit 1. Arizona Death Sentences by Year, 1974–1999
(N = 227)*



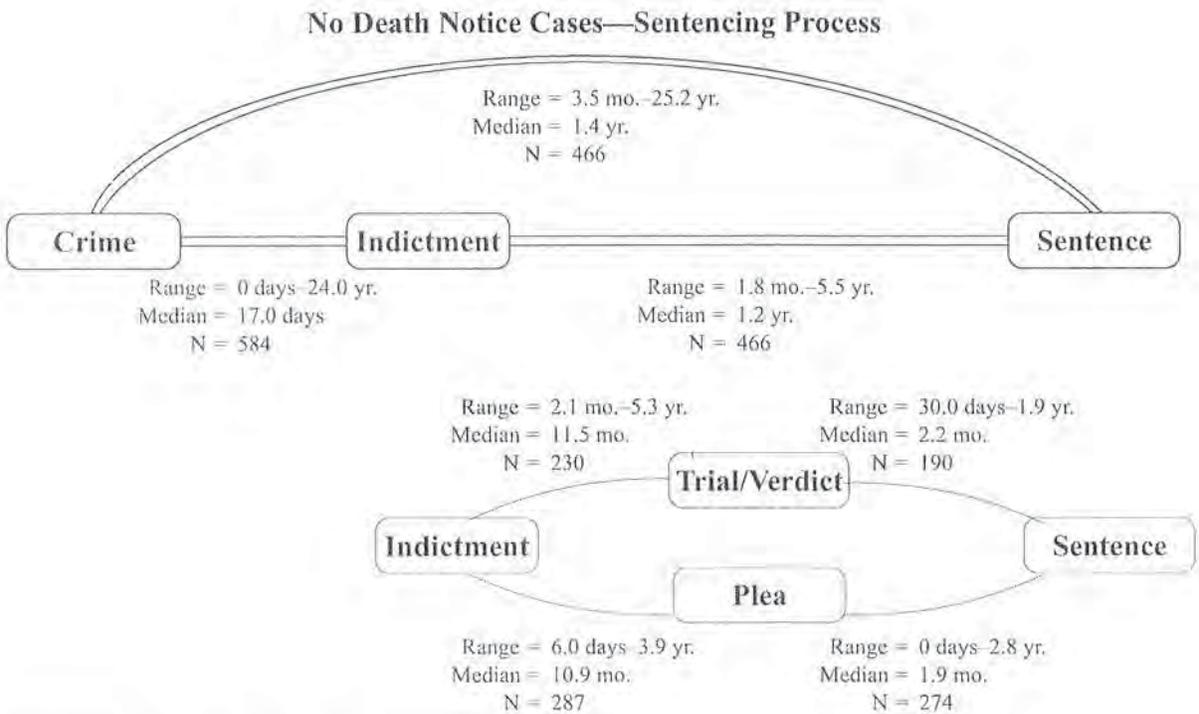
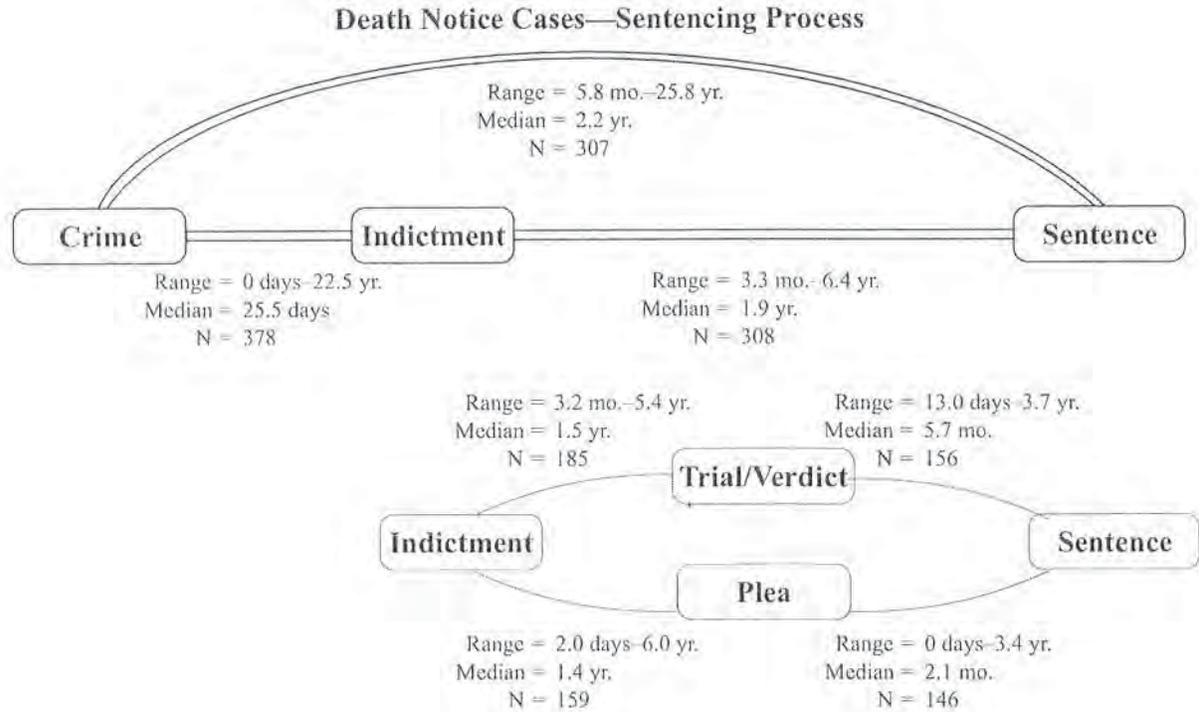
*Three death sentences from January 1–July 1, 2000, included in the data set are not depicted here.

Exhibit 3. County Comparison: Processing of First-degree Murder Indictments, 1995–1999

	Maricopa County	Pima County	Outlying Counties	Arizona
First-degree Murder Indictments	N=524	N=313	N=134	N=971
Death Notice Cases (% of First-degree Murder Indictments)	230 43.9%	97 31.0%	54 40.3%	381 39.2%
Death Notice Trials (% of Death Notice Cases)	106 46.1%	57 58.8%	32 59.3%	195 51.2%
Death Notice Trials with Lesser Included Offense Convictions ^a (% of Death Notice Trials)	13 12.3%	9 15.8%	5 15.6%	27 13.8%
Death Notice Trials with First-degree Murder Convictions (% of Death Notice Trials)	75 70.8%	42 73.7%	26 81.3%	143 73.3%
Death Sentences after Trial (% of Death Notice Cases with First-degree Murder Conviction after Trial)	11 14.7%	11 26.2%	7 26.9%	29 20.3%
Death Sentences after Plea Agreements (% of Death Sentences)	2 15.4%	—	—	2 6.5%
No Death Notice Cases (% of First-degree Murder Indictments)	294 56.1%	216 69.0%	80 59.7%	590 60.8%
No Death Notice Trials with First-degree Murder Convictions (% No Death Notice Trials)	47 45.2%	42 41.2%	14 48.3%	103 43.8%
No Death Notice Trials with Lesser Included Offense Convictions (% No Death Notice Trials)	35 33.7%	37 36.3%	11 37.9%	83 35.3%
Not Guilty All Indictment Counts (% Indictments)	21 4.0%	18 5.8%	1 0.7%	40 4.1%

^aThese are convictions for second-degree murder, manslaughter, and negligent homicide.

Exhibit 12. Major Time Intervals for Arizona Death Notice Cases and No Death Notice Cases Resulting from First-degree Murder Indictments, 1995–1999



The median is the middle value in the ranked distribution of values.
 The range indicates the lowest to the highest values.

**Exhibit 12. Remands, Reversals, and Modifications:
Arizona Death Sentence Cases, 1974–July 1, 2000, 1974–1989, and 1990–July 1, 2000**

	Conviction-related Remands and Reversals			Sentence-related Remands and Modifications			Total		
	1974– 1989	1990– 2000	1974– 2000	1974– 1989	1990– 2000	1974– 2000	1974– 1989	1990– 2000	1974– 2000
Direct Appeal	23	16	39	33	16	49	56	32	88
Post-conviction Relief	4	7	11	11	4	15	15	11	26
Habeas	1	4	5	1	5	6	2	9	11
Solely <i>Watson</i> ^d	N/A	N/A	N/A	16	N/A	16	16	N/A	16
Total	28	27	55	61	25	86	89	52	141

^dIn *Lockett v. Ohio*, 438 U.S. 586 (1978), the United States Supreme Court held that the Eighth and Fourteenth Amendments require that the sentencer not be precluded from considering as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death. Applying *Lockett*, in *State v. Watson*, 120 Ariz. 441 (1978), the Arizona Supreme Court struck the portion of Arizona's death penalty statute that limited consideration of mitigating circumstances, and remanded the case to allow the defendant to present any mitigating circumstances tending to show why the death penalty should not be imposed.

Exhibit 13. County Comparison: Major Time Intervals for Processing of First-degree Murder Indictments, 1995–1999

	Maricopa County		Pima County		Outlying Counties	
	Range	Median	Range	Median	Range	Median
Death Notice						
Crime to indictment	3.0 days– 22.5 yrs.	28.0 days	0 days– 6.3 yrs.	20.0 days	6.0 days– 8.4 yrs.	1.0 mo.
Indictment to plea	3.5 mos.– 6.0 yrs.	1.8 yrs.	2 days– 2.8 yrs.	8.2 mos.	28.0 days– 4.0 yrs.	1.3 yrs.
Plea to sentence	15.0 days– 3.4 yrs.	2.4 mos.	0 days– 1.5 yrs.	2.3 mos.	0 days– 7.2 mos.	1.2 mos.
Indictment to trial	7.9 mos.– 3.9 yrs.	1.9 yrs.	3.2 mos.– 3.0 yrs.	11.6 mos.	4.5 mos.– 5.4 yrs.	1.5 yrs.
Verdict to sentence	15.0 days– 3.7 yrs.	6.4 mos.	13.0 days– 1.0 yr.	5.8 mos.	18.0 days– 1.3 yrs.	5.3 mos.
Indictment to sentence	5.5 mos.– 6.4 yrs.	2.2 yrs.	6.0 mos.– 3.9 yrs.	1.3 yrs.	3.3 mos.– 4.0 yrs.	1.8 yrs.
Crime to sentence	7.6 mos.– 25.8 yrs.	2.5 yrs.	6.3 mos.– 6.8 yrs.	1.7 yrs.	5.8 mos.– 10.6 yrs.	1.9 yrs.
No Death Notice						
Crime to indictment	0 days– 24.0 yrs.	19.0 days	0 days– 17.6 yrs.	17.0 days	1.0 days– 5.4 yrs.	14.0 days
Indictment to plea	1.7 mos.– 3.9 yrs.	1.1 yrs.	14.0 days– 3.1 yrs.	7.9 mos.	6.0 days– 3.0 yrs.	9.5 mos.
Plea to sentence	0 days– 2.8 yrs.	2.1 mos.	0 days– 2.0 yrs.	1.7 mos.	0 days– 2.2 yrs.	1.4 mos.
Indictment to trial	2.1 mos.– 4.5 yrs.	1.2 yrs.	2.7 mos.– 2.5 yrs.	9.1 mos.	4.0 mos.– 5.3 yrs.	9.9 mos.
Verdict to sentence	1.0 mos.– 8.7 mos.	2.9 mos.	1.0 mos.– 1.9 yrs.	1.9 mos.	1.1 mos.– 4.2 mos.	1.9 mos.
Indictment to sentence	2.9 mos.– 4.3 yrs.	1.5 yrs.	2.0 mos.– 3.1 yrs.	11.4 mos.	1.8 mos.– 5.5 yrs.	1.0 yrs.
Crime to sentence	5.1 mos.– 25.2 yrs.	1.8 yrs.	4.9 mos.– 8.9 yrs.	1.1 yrs.	3.5 mos.– 5.6 yrs.	1.2 yrs.

Note: The range indicates the lowest to highest values. The median is the middle value in the ranked distribution of values and provides an “average” time. Extreme time intervals at the high end of the range reflect unusual circumstances, such as unapprehended suspects, extradition from another jurisdiction, or reindictments.

Appendix 11
Administrative Orders
Numbers 2007-92 and 2013-115

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
ESTABLISHMENT OF THE) Administrative Order
CAPITAL CASE OVERSIGHT) No. 2007 - 92
COMMITTEE)
)
_____)

The Supreme Court established the Capital Case Task Force on February 12, 2007 by Administrative Order No. 2007-18, to address the unprecedented number of capital cases then awaiting trial in Maricopa County. The Task Force reported its findings and recommendations to the Arizona Judicial Council on October 24, 2007. The number of capital cases that were pending in February has not diminished, despite the superior court's introduction of several promising improvements in capital case management, and despite the fact that Maricopa County government has begun to address some of the resource concerns related to capital case processing. The Task Force has recommended that the Supreme Court appoint an on-going committee to monitor capital caseload reduction efforts in Maricopa County.

In accordance with Arizona Code of Judicial Administration § 1-104, the chief justice may establish advisory committees to the Arizona Judicial Council to assist the Council in carrying out its responsibilities. Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the Capital Case Oversight Committee is established as follows:

1. **Purpose.** The Committee, acting as an advisory committee to the Arizona Judicial Council, shall:

- Study and recommend measures to facilitate capital case reduction efforts,
- Make recommendations for adequate notice to the Supreme Court to assist the Court in making the necessary modifications to its staffing levels and judicial assignments to ensure the timely processing of appeals, and
- Develop recommendations for any formal policies deemed necessary.

2. **Membership.** The initial membership is attached as Appendix A. The chief justice may appoint additional members as needed or desired. Terms of the Committee members shall expire on December 31, 2008.

3. **Meetings.** At the discretion of the Committee chair, meetings may be scheduled, canceled, or moved. All meetings shall comply with the public meeting policy of the Arizona Judicial Branch, Arizona Code of Judicial Administration § 1-202.

4. **Reports.** The Presiding Judge in Maricopa County and the Committee shall each submit a progress report to the Arizona Judicial Council in December 2008.

5. **Administrative Support.** The Administrative Office of the Courts shall provide administrative support and staff for the Committee, who may, as feasible, conduct or coordinate research as requested by the Committee.

Dated this 6th day of December, 2007.

RUTH V. MCGREGOR
Chief Justice

Attachment: Appendix A

Appendix A

Capital Case Oversight Committee

Membership

Hon. Michael D. Ryan, Chair
Arizona Supreme Court

Dan Levey
Advisor to the Governor for Victims

Hon. Anna Baca
Presiding Criminal Judge
Superior Court in Maricopa County

Marty Lieberman
Director, Arizona State Capital
Post-Conviction Defender's Office

Phil J. MacDonnell
Chief Deputy
Maricopa County Attorney

James Logan
Director, Maricopa County
Office of Public Defender Services

Kent Cattani
Chief Counsel, Capital Litigation
Arizona Attorney General

Paul Prato
Attorney Manager
Maricopa Public Defender

Donna Hallam
Staff Attorney
Arizona Supreme Court

Ronald Reinstein
Retired Judge
Superior Court in Maricopa County

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
EXTENSION OF THE TERM OF THE)	Administrative Order
CAPITAL CASE OVERSIGHT)	No. 2013 - <u>115</u>
COMMITTEE)	(Amending Administrative
)	Order No. 2013-15)
)	
)	

On December 6, 2007, this Court entered Administrative Order No. 2007-92, which established the Capital Case Oversight Committee. The purposes of this advisory committee included monitoring and facilitating efforts to reduce the number of capital cases in the Maricopa County Superior Court, which had reached a crisis level in 2007; and making policy recommendations to improve the judicial administration of capital cases in Arizona.

The December 2013 Report of the Oversight Committee noted that the number of pending capital cases in the Maricopa County Superior Court is about half of what it was when the Committee was established, and it concluded that the crisis that gave rise to the creation of the Committee in 2007 had abated. However, the 2013 Report also noted a modest increase in the number of pending capital cases statewide. The Oversight Committee requested a two-year extension of its term to allow it to continue to monitor the volume of capital cases in Arizona, to address other issues affecting capital cases that are detailed in the 2013 Report, and to serve as a forum for further enhancements in the judicial administration of capital cases. After due consideration of the Oversight Committee's request,

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the term of the Capital Case Oversight Committee is extended to December 31, 2015, as follows:

1. **Purpose.** The Oversight Committee shall continue to identify issues affecting the administration of capital cases and to propose recommendations to improve the judicial administration of these cases.

2. **Membership.** Terms of current Committee members shall expire on December 31, 2015.

3. **Meetings.** The Oversight Committee shall meet only as necessary, and meetings may be scheduled, cancelled, or moved at the discretion of the Committee chair. All meetings shall comply with the public meeting policy of the Arizona Judicial Branch, Arizona Code of Judicial Administration § 1-202.

4. **Reports.** The Committee shall submit progress reports to the Arizona Judicial Council in December 2014 and December 2015.

5. **Administrative Support.** The Administrative Office of the Courts shall provide administrative support and staff for the Committee, who may, as feasible, conduct or coordinate research as requested by the Committee.

Dated this 18th day of December, 2013.

REBECCA WHITE BERCH
Chief Justice

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
December 10, 2015	<input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	State Bar of Arizona Mission and Governance

FROM:

John Phelps
Executive Director
State Bar of Arizona

DISCUSSION:

Arizona Supreme Court Administrative Order No. 2014-79 established the Task Force on the Review of the Role and Governance Structure of the State Bar of Arizona. The Order directed the Task Force to review applicable Supreme Court Rules regarding the State Bar's mission and governance, and to recommend appropriate amendments to those rules.

In June 2015, Task Force staff presented the Task Force's preliminary recommendations to the AJC. The final report of the Task Force was submitted to the Supreme Court on September 1, 2015.

Mr. Phelps will provide an update on the final report of the Task Force, and the State Bar's response to the report.

RECOMMENDED COUNCIL ACTION: Information only

State Bar Mission & Governance Task Force

Arizona Judicial Council

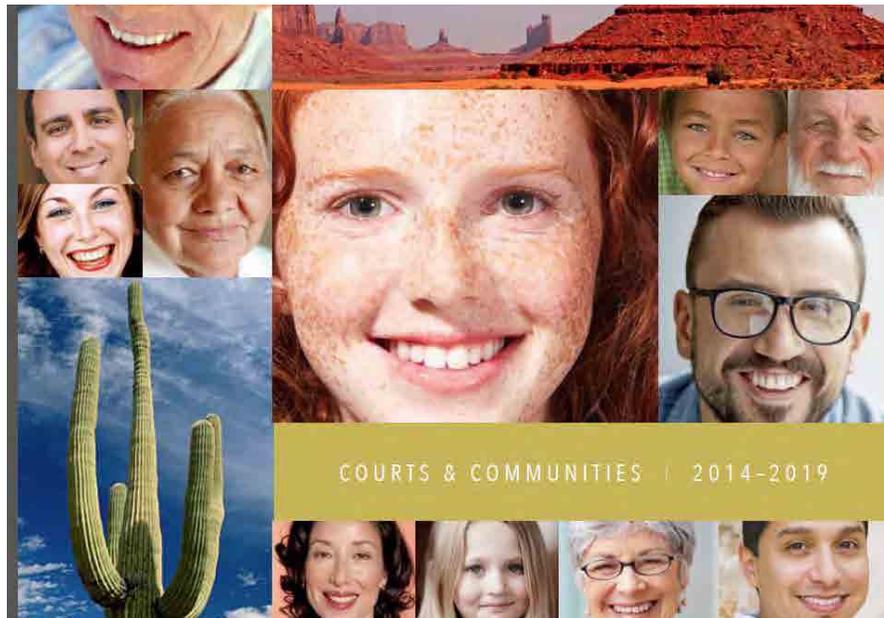
10 December 2015



Arizona Supreme Court Strategic Agenda



- » Review the current Supreme Court Rules establishing the State Bar to assess how well the current governance structure allows the State Bar to fulfill its mission of protecting the public and improving the legal profession.



Agenda

- Charter
- Membership
- Report
- State Bar Response

Report of the Task Force
on the
Review of the Role and Governance Structure
of the State Bar of Arizona

September 1, 2015



ADVANCING JUSTICE TOGETHER | 2014-2019

Charter

- Does the mission of the State Bar need to be clarified or modified?
- Is the governance structure adequate to efficiently and effectively govern and carry out the duties of the Board?
- Are Supreme Court Rules in the following areas related to Board structure and governance duties adequate to best serve the Board's primary mission of protecting the public?
 - i. Qualifications for membership on the Board of Governors;
 - ii. Appointment, election and removal of members of the Board of Governors;
 - iii. Term limits for members of the Board of Governors;
 - iv. Election process; v. Board of Governors size and composition
 - vi. State Bar leadership structure and composition.

Task Force Composition

- Chair: Justice Rebecca White Berch
- Staff Consultant: John Phelps
- Members:
 - Paul Avelar
 - Ben Click
 - Lattie Coor
 - Amelia Craig Cramer
 - Whitney Cunningham
 - Christine Hall
 - Chris Herstam
 - Joseph Kanefield
 - Ed Novak
 - Gerald Richard
 - José Rivera
 - Marty Schultz
 - Hon. Sarah Simmons
 - Grant Woods
 - Betsey Bayless

Final Report & Recommendations

- 1. Rule 32: Amend to clarify that the primary mission of the State Bar of Arizona is to **protect and serve** the public and, secondarily, to serve its members
- 2. Integrated Bar: Continue to be integrated and supervised by the Arizona Supreme Court and that membership in the integrated bar be a requirement for practicing law in this state

Integrated, Unified, Mandatory Bar

- Inns of Court origin
- Standards and compliance movement
- Professional responsibilities
- Adopted in 31 states and DC

Final Report & Recommendations, cont.

- 3. Composition of the Board: Reduce the board's size (currently 30 members) to 15-18 members; staggered terms
- 4. Board qualifications, term limits, and removal: Clean disciplinary record during a five-year period preceding board service; elected term limited-- no more than three consecutive three-year terms; removal process for good cause

Final Report and Recommendations cont.

- 5. Officers: Reduce from five to three officers—president, president-elect, secretary-treasurer; all board members eligible to hold office
- 6. Fiduciary duties: Change name to “Board of Trustees;” board members should participate in an orientation that specifically addresses fiduciary duties

Final Report and Recommendations, cont.

- 7. Board of Legal Specialization: Amend rules to provide Supreme Court supervision over State Bar's Board of Legal Specialization

Current Board of Governors

31 Board Members

Rule 32: 26 voting members

18 lawyers elected from districts

1 lawyer elected from YLD

4 public appointed by Board

3 appointed by Court

Practice & Policy: 4 nonvoting and 1 Court Liaison

3 law school deans

Past president

Junior justice

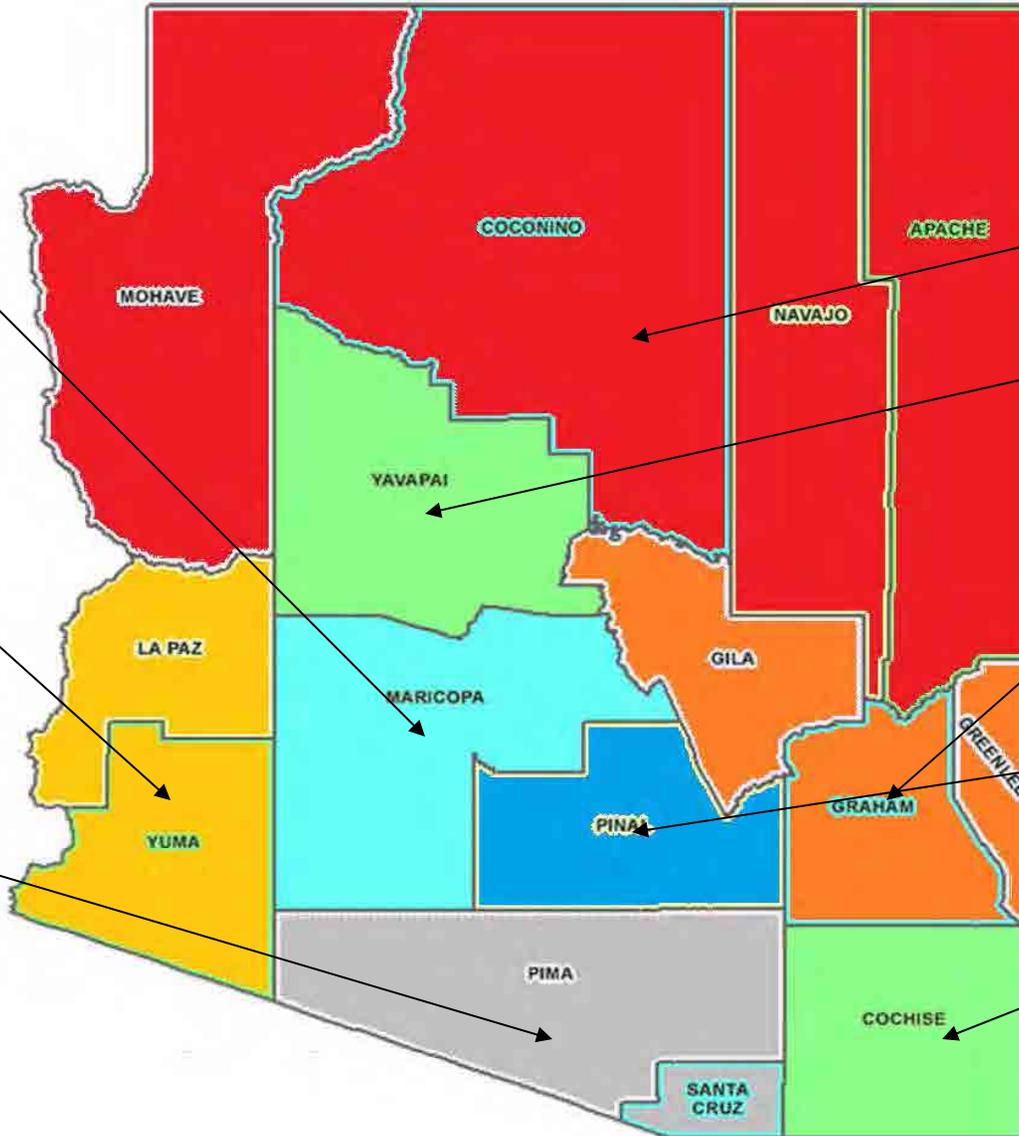
Current: 19 Elected, 7 Appointed

#6 (9)

#7 (1)

#5 (3)

4 Public
3 At Large
1 YLD



#1 (1)

#2 (1)

#3 (1)

#8 (1)

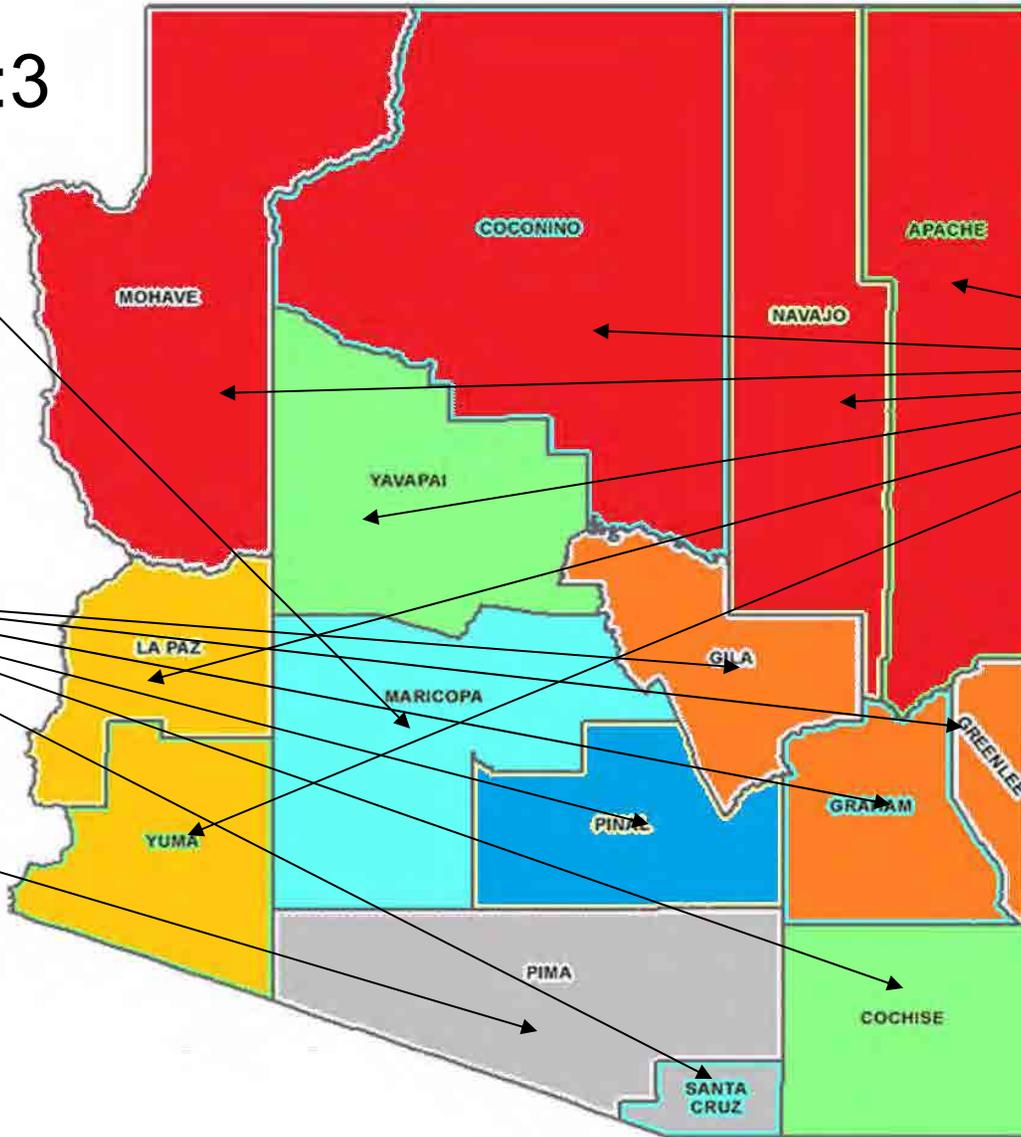
#4 (1)

Option X: 6 Elected, 9 Appointed

Maricopa:3

D2:1

Pima:1



D1:1

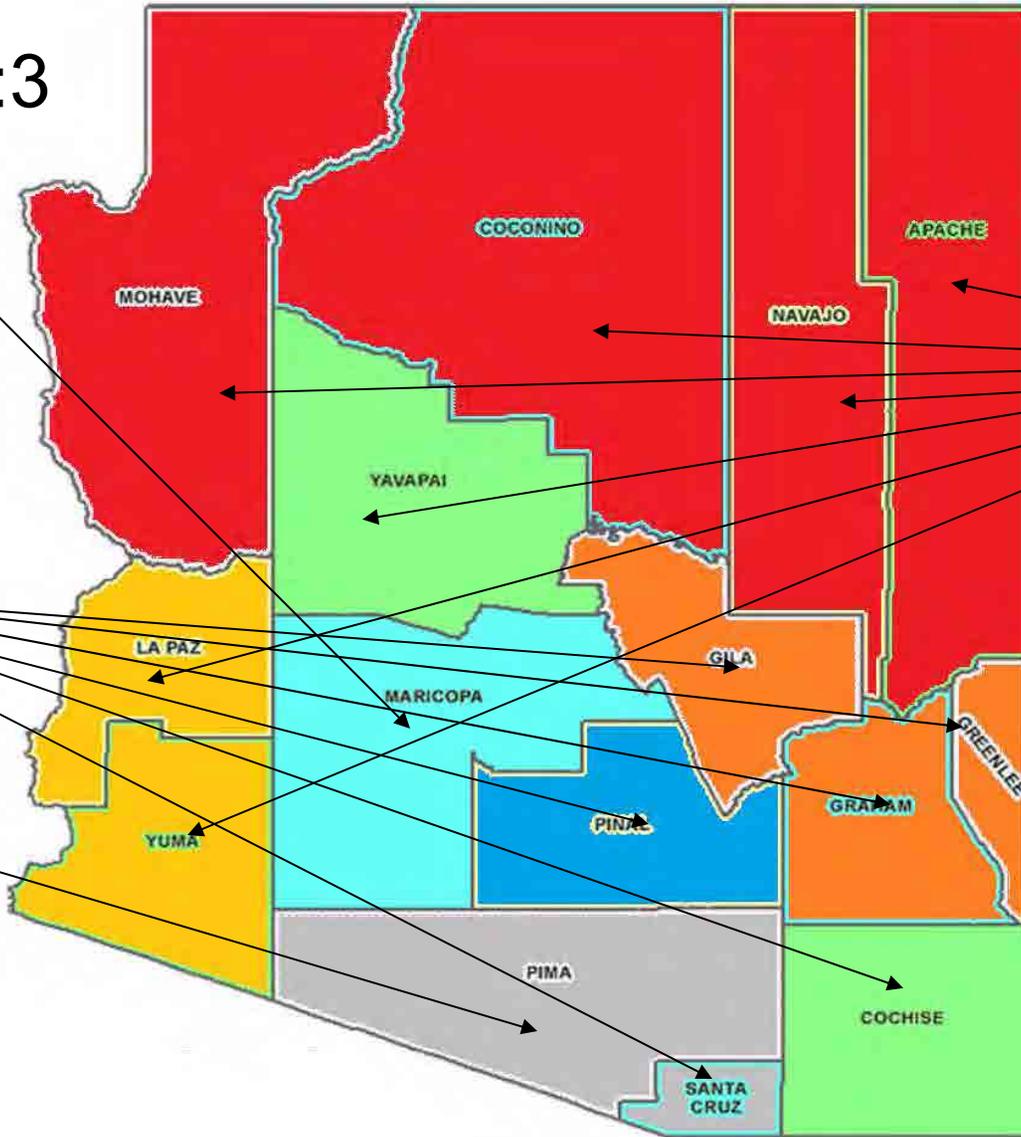
3 Public
6 At Large

Option Y: 6 Elected, 12 Appointed

Maricopa:3

D2:1

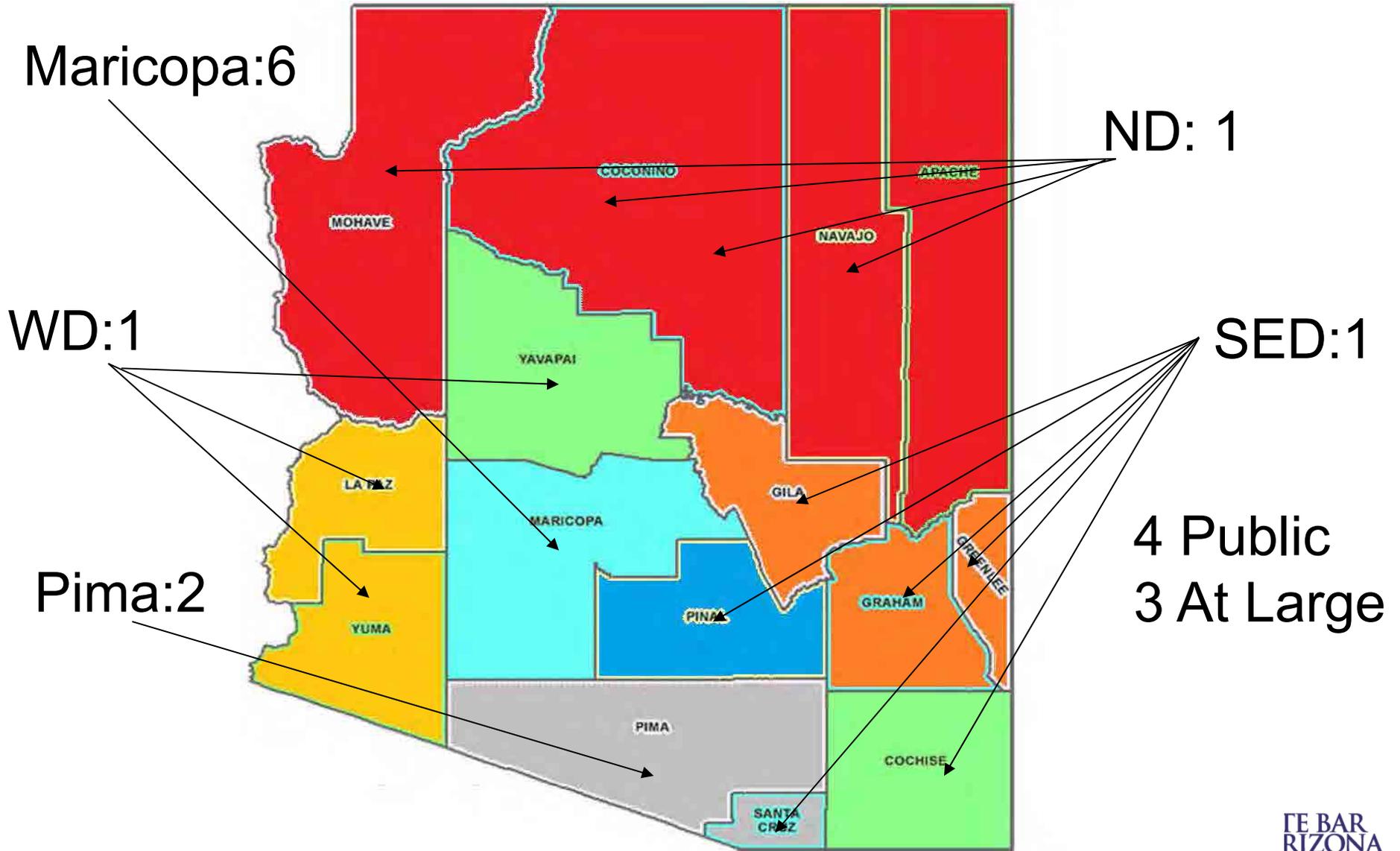
Pima:1



D1:1

6 Public
6 At Large

Option Z: 11 Elected, 7 Appointed

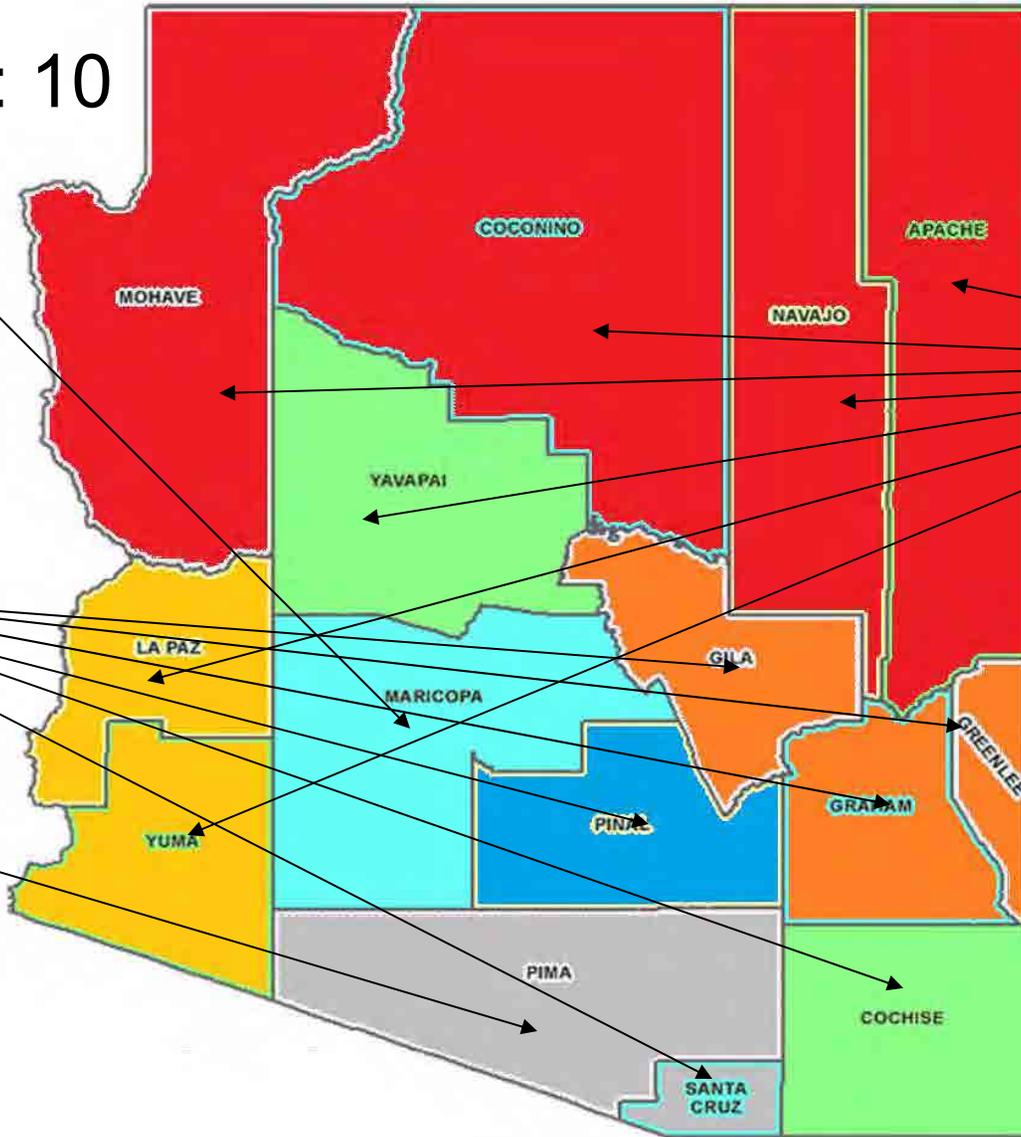


SBA Response: 19 Elected, 7 Appointed

Maricopa: 10

D2:1

Pima: 4



D1:3

4 Public
3 At Large
1 YLD

SBA Response, cont.

- Reject “trustees”
- Reject Supreme Court approval of public members



Report of the Task Force
on the
**Review of the Role and Governance Structure
of the State Bar of Arizona**

September 1, 2015



ADVANCING JUSTICE TOGETHER | 2014-2019

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MEMBERS OF THE “MISSION AND GOVERNANCE” TASK FORCE

Chair:

Hon. Rebecca White Berch, Arizona Supreme Court

Members:

Paul Avelar, Institute for Justice, Arizona Office

Betsey Bayless, *President Emeritus*, Maricopa Integrated Health Systems

Bennie Click, Chief of Police, City of Dallas (Ret.)

Lattie Coor, Ph.D., Chairman and CEO, Center for the Future of Arizona

Amelia Craig Cramer, Chief Deputy, Pima County Attorney’s Office

Whitney Cunningham, Aspey Watkins & Diesel, PLLC

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Martin Shultz, Brownstein Hyatt Farber Schreck

Hon. Sarah Simmons, Superior Court in Pima County

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Nickolas Olm, Spec. III, AOC Court Services Division

Sabrina Nash, Admin. Asst. II, AOC Court Services Division

PART I: EXECUTIVE SUMMARY

Arizona Supreme Court Administrative Order No. 2014-79 (see Appendix A) established the Task Force on the Review of the Role and Governance Structure of the State Bar of Arizona (the “Mission and Governance Task Force,” or “Task Force”). The Order directed the Task Force to review the Rules of the Supreme Court on the mission and governance structure of the State Bar of Arizona (“SBA”) and to make recommendations concerning the SBA’s mission and governance.

The members of this Task Force have distinguished credentials and a wealth of governance experience. Its members include five former presidents of the SBA. Other Task Force members have served on the SBA’s governing board, some in leadership positions. Task Force members also include a former Arizona Secretary of State and a former Arizona Attorney General, former Arizona gubernatorial chiefs of staff, a past-president of Arizona State University, and leaders of public and private organizations.

The Supreme Court oversees the SBA. Times change, and the entry of A.O. 2014-79 recognizes that what might have been appropriate for the Bar’s mission and governance decades ago may not be optimal today. This review was not occasioned by perceived problems with the current system, but rather in an attempt to follow best practices. After considerable study and discussion of the SBA’s mission and current governance structure and rules, the Task Force makes recommendations that sharpen the focus of the Bar’s mission and provide for more efficient Bar governance. These recommendations also take into consideration the 2015 opinion of the United States Supreme Court in *North Carolina State Board of Dental Examiners v. FTC*, which concerns oversight of a profession by a governmental entity.

Most of the recommendations in this report require amendments to Supreme Court Rule 32, which provides for the “Organization of the State Bar of Arizona.” Task Force recommendations that also require amendments to certain SBA by laws are not included with this report.

The recommendations summarized below, and further explained in the following pages of this report, acknowledge that the SBA’s past and current governors, officers, volunteers, and staff perform worthwhile work with integrity and dedication. Task Force members are grateful for all that these people have done and for the work that they continue to do.

The recommendations in this report represent the views of a majority of Task Force members. A member has submitted a dissenting view, which is included in Appendix J.

Summary of Task Force Recommendations

1. **Rule 32:** *The Task Force recommends amending Supreme Court Rule 32 to clarify that the primary mission of the State Bar of Arizona is to protect and serve the public and, secondarily, to serve its members. The Task Force also recommends restyling and reorganizing sections of Rule 32 for clarity and readability. Appendix F shows the provisions of Supreme Court Rule 32 as proposed by this report.*
2. **Integrated Bar:** *The Task Force recommends that the State Bar of Arizona continue to be integrated and supervised by the Arizona Supreme Court and that membership in the integrated bar be a requirement for practicing law in this state.*
3. **Composition of the Board:** *The Task Force supports the current system under which some members of the governing board are elected by attorneys and other board members are appointed.*

However, the Task Force recommends reducing the board's size (currently 30 members) to either 15 or 18 members. To accomplish this reduction, the Task Force recommends eliminating ex officio board members, discontinuing a board seat dedicated to the President of the Young Lawyers Section, and establishing fewer electoral districts.

A smaller board can be composed in various ways by using different proportions of elected and appointed members. The Task Force presents three options for composing the governing board. One of the suggested options features a board on which the majority of members would be elected by attorneys. The other two options propose a board on which a majority of members would be appointed by the Arizona Supreme Court.

To preserve continuity of the board's leadership and its institutional knowledge, the Task Force recommends that board members serve staggered terms. Implementation of the governance recommendations in this report would achieve equal and predictable election and appointment cycles. These recommendations include implementation tables, shown in Appendix G, for each of the three suggested governance options.

4. **Qualifications, term limits, and removal of board members:** *The Task Force recommends adding a requirement that attorneys who serve on the board, whether as elected or appointed members, have a clean disciplinary record during a five-year period preceding their board service.*

Elected board members should have a term limit. Board members should serve no more than three consecutive three-year terms, and should then sit-out a full term before seeking reelection to additional terms. The Task Force recommends that Rule 32 also include a process for removing a board member for good cause.

Excerpt for the AJC: 12.10.2015

5. **Officers:** *The leadership track of the board should consist of three officers – a president, a president-elect, and a secretary-treasurer – rather than the current five officers. Appointed as well as elected board members should be eligible to hold office.*
6. **Fiduciary duties:** *To emphasize the fiduciary role of the board, the Task Force recommends changing the name of the SBA’s “Board of Governors” to the “Board of Trustees.” As a condition of serving on the board, board members should participate in an orientation that specifically addresses their fiduciary duties.*
7. **Board of Legal Specialization:** *In response to North Carolina State Board of Dental Examiners v. FTC, the Task Force proposes rule amendments that would provide Supreme Court supervision over the State Bar’s Board of Legal Specialization.*

PART II: THE STATE BAR OF ARIZONA

A voluntary bar. The Arizona Bar Association was Arizona's first organized bar. It was formed in 1895, just 24 years after establishment of the territorial Supreme Court. Membership in the Arizona Bar Association was voluntary.

An integrated bar. The State Bar Act, passed in 1933, established the State Bar of Arizona. Under the Act, those engaged in the practice of law in Arizona were required to be SBA members. At that time, Arizona had approximately 650 attorneys and two dozen judges, only a third of whom had been members of the previous voluntary bar organization.

Supreme Court Rules. The Supreme Court adopted court rules governing the SBA and the practice of law in 1973. Those rules maintained the SBA as an integrated bar and mandated that attorneys be members as a requirement of practicing law in Arizona. The Supreme Court and the Legislature exercised joint oversight over the practice of law until the "sunset" of the State Bar Act in 1983. Thereafter, and continuing to the present, the Arizona Supreme Court has exclusively regulated the practice of law in Arizona.¹ Supreme Court Rule 31(a)(1) specifically provides:

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

The current State Bar. The State Bar of Arizona now has more than 17,500 active members and an additional 5,000 members who are judges, retired or inactive members, or in-house counsel.

The SBA currently has about 100 employees, more than \$12 million in assets, and an annual budget exceeding \$14 million. Approximately one-half of the SBA's budget is devoted to attorney regulation. In 2013, the discipline system fielded almost 3,500 inquiries and handled more than 700 formal attorney misconduct investigations, resulting in 136 sanctions and 300 cases of diversion and member assistance. The SBA

¹ "This court has long recognized that under article III of the Constitution 'the practice of law is a matter exclusively within the authority of the Judiciary. The determination of who shall practice law in Arizona and under what condition is a function placed by the state constitution in this court.' *In re Smith*, 189 Ariz. 144, 146, 939 P.2d 422, 424 (1997) (quoting *Hunt v. Maricopa County Employees Merit Sys. Commission*, 127 Ariz. 259, 261-62, 619 P.2d 1036, 1038-39 (1980) (citations omitted)). The court's authority over the practice of law is also based on the creation of an integrated judicial department and the revisory jurisdiction of this court as provided in article VI, sections 1 and 5(4) of the Arizona Constitution." *In re Creasy*, 198 Ariz. 539, 12 P.3d 214 (2000).

that year also addressed nearly 100 complaints against non-lawyers concerning the unauthorized practice of law.

The SBA offers widely used member services, such as the following, that are designed to ensure professionalism and competence on the part of its attorney members and assist with the Bar's primary responsibility of protecting the public: (1) The "ethics hotline" fields about 2,500 calls annually (or about 10 calls each business day). (2) A continuing legal education department presents nearly 200 seminars every year, about one-fourth of which concern ethics. (3) Nearly 2,000 SBA members attend the Bar's annual convention, which features dozens of education sessions. (4) SBA sections regarding particular areas of the law serve more than 2,000 members and conduct about 160 programs annually. (5) More than two dozen SBA committees deal with specific substantive matters of law, such as court rules and jury instructions, or with broader issues such as the mentoring of new attorneys and law office technology. (6) A law office assistance program helps lawyers improve law office management skills, and a trust account hotline responds to hundreds of inquiries each year regarding trust account management. (7) SBA publications include a directory, which helps the public and other lawyers locate licensed Arizona attorneys. (8) A monthly magazine, the *Arizona Attorney*, educates attorneys about recent court rulings, discipline actions, and key topics affecting the practice of law.

The SBA conducts other activities that also directly benefit the public. Every year, the SBA receives approximately 100 claims for reimbursement from the Client Protection Fund, which holds funds in trust from an annual assessment on SBA members. Those funds go to pay about \$300,000 annually to claimants whose attorneys caused them financial harm. Moreover, the SBA's conservatorship program assures that clients receive their files when their attorneys die, disappear, or become disabled without having a succession plan in place. The SBA also offers, without charge, a voluntary arbitration program to expeditiously resolve fee disputes between clients and their counsel. In addition, the SBA sponsors Law Day legal clinics, provides legal services to veterans and active duty service men and women, organizes programs benefitting the homeless, and provides a "diversity pipeline" that introduces high school and elementary students to law careers.

In summary, the programs described above protect the public by educating attorneys and by making them more capable, competent, and professional. These programs also serve the public interest by providing remedies for individuals who have been harmed by their counsel and by increasing the public's access to legal services and our justice system.

PART III: MISSION OF THE STATE BAR OF ARIZONA

A. Rule 32(a). Supreme Court Rule 32(a)(1) establishes the organization known as the State Bar of Arizona. This rule also details the mission of the SBA in a cumbersome, 266-word sentence.

In addition to being difficult to read, the Task Force believes the current Rule 32(a) fails to identify and express the SBA's core mission. Task Force members unanimously believe that the SBA's primary mission is to protect and serve the public. Activities undertaken by the SBA require the board to ask the predicate question, "Does this activity in some way protect or serve the public?" The SBA's functions derive from affirmative answers to that question. The SBA has responsibilities to improve the legal profession, to promote attorney competency, to enhance the administration of justice, and to assure that everyone, regardless of income, has access to the legal system, all of which derive from the bar's fundamental mission of protecting and serving the public.

Current Rule 32(a)(1) would make considerably more sense if the rule began with a statement that the SBA's core mission is protecting and serving the public. The other substantive elements of the rule become more focused and meaningful when preceded by a straightforward acknowledgement of that purpose. The Task Force therefore recommends amending Rule 32(a) to clearly express the SBA's core mission.² The Task Force also recommends restyling and reorganizing Rule 32(a) to make it easier to read and understand.³

B. An integrated bar. Attorneys understand that an "integrated" state bar (also referred to as a "unified" or a "mandatory" bar) is one a person must join in order to practice law in that state. Less understood are the reasons for having an integrated bar. Simply put, the bar is integrated with, and an integral part of, the Supreme Court.

² The SBA has adopted a concise mission statement that includes in its first eight words an emphasis on this core mission:

The State Bar of Arizona serves the public and enhances the legal profession by promoting the competency, ethics, and professionalism of its members and enhancing the administration of and access to justice.

³ The proposed restyling of Rule 32(a) makes changes to paragraph 1 of the current rule, entitled "establishment of state bar," but omits in its entirety paragraph 2 of this rule, which is entitled "precedence of rules." The Task Force believes that paragraph 2 should either be deleted from the rule as unnecessary or moved to the rules concerning admission to the bar.

The functions of an integrated bar relate to, and assist in, the administration of the judicial branch of government. *See Bridegroom vs. State Bar*, 27 Ariz. App. 47, 550 P.2d 1089 (1976).

An integrated bar benefits not only the Court and the bar, but the public as well. The Court has adopted ethical rules for the protection of the public, and the bar's regulatory function assists the Court in enforcing those rules. But what is equally important is that the bar works proactively to assure that its attorney members comply with the rules. The bar educates its members on professionalism and ethics and provides an ethics hotline so that attorneys may receive advice on specific ethics questions. It assists attorneys with trust account regulations and law office management. It promotes the competence of its members by establishing sections in specific areas of practice and by educating members in substantive matters of law. The bar is not required to provide these services to fulfill its regulatory function, yet these services promote attorney competence, and they therefore play an important role in consumer protection and serving the public interest.

A review of current Supreme Court Rule 32(a) confirms the bar's functions and duties. The rule directs the SBA to "advance the administration of justice," to "aid the courts in carrying on the administration of justice," to foster "high ideals of integrity, learning, and competence" and to encourage "practices that will advance and improve the honor and dignity of the legal profession." The SBA's convention, committees, and sections, as well as other programs, further these objectives. While the members of the legal profession benefit from these programs, those activities also serve the broader needs of society.

The above-mentioned concepts in Rule 32(a) have a direct link with the Arizona Rules of Professional Conduct, the Supreme Court's ethics rules that every attorney must follow. The preamble to those rules recognizes that "a lawyer . . . [is] a public citizen having special responsibility for the quality of justice." The preamble continues,

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.

The SBA's responsibilities set forth in Rule 32 go hand-in-hand with lawyers' duties under the ethical rules. The bar is the organization that effectuates those duties for its members. An integrated bar has intrinsic value. It includes a vision that lawyers do not practice in isolation. Rather, every individual attorney has a relationship with the

bar and the judicial system and is a partner in fulfilling the worthy objectives described above.

The integrated bar provides an essential connection between its members, the courts, and the community. A voluntary bar operates independently of the Supreme Court, and without court supervision. It lacks a critical connection with the court. By contrast, an integrated bar is interdependent with the court; they function as the hand and the glove. For example, the SBA was instrumental in proposing recent changes to the attorney discipline system to make it more efficient and fair, which the Court adopted. An integrated bar brings technical expertise and real-world experience in the practice of law to the governance and regulation of attorneys. It is a catalyst for an effective system of justice, and a keystone in the rule of law.

Arizona has had an integrated bar since the SBA was established in 1933, but recent legislative efforts have attempted to change this arrangement. In 2013, a bill was introduced to make membership in the State Bar of Arizona optional. That bill quickly died, but HB 2629, introduced in the First Regular Session of 2015, had a similar objective, and unlike the 2013 bill, HB 2629 advanced out of a House committee. HB 2629 eventually failed, but the full House vote that defeated the bill was a close one.

These recent bills perceive the SBA as a union or a labor organization with mandatory membership, and contrary to Arizona's constitutional declaration that Arizona is a right-to-work state.⁴ These bills misconstrue the nature, purpose, and function of the SBA. Labor organizations exist primarily to bargain with employers for their members' benefit, for such things as compensation, working conditions, vacations, hours, leave time, overtime, and pensions. But the SBA does not bargain with law firms or the public for any of these employment-related benefits. Rather, the SBA serves the public by upholding and enforcing attorneys' responsibilities to the public and advancing

⁴ See Ariz. Const. art. 25 (Right to Work). Nonetheless, the United States Supreme Court has upheld the validity of integrated state bar associations. See, e.g., *Keller v. State Bar of Calif.*, 496 U.S. 1, 4 (1990) ("We agree that lawyers admitted to practice in the State may be required to join and pay dues to the State Bar, but disagree as to the scope of permissible dues-financed activities in which the State Bar may engage."). With a few specified exceptions, dues-financed political or ideological activities are expressly prohibited by Article XIII of the SBA's bylaws. The SBA's bylaws also provide a process for challenging speech or activities perceived to be impermissible. The process involves arbitration and, if a challenge is upheld, it requires a refund of improperly spent bar dues. By comparison, a voluntary bar, one in which membership is not required to practice law, is free to engage in political and ideological activities.

our system of justice. It is sui generis, a unique thing, and comparisons with other professional boards or vocational unions attempt to liken apples to carrots.

The most common complaint from attorneys about a mandatory bar is that they pay for services that may not benefit them individually or that they may not use.⁵ It is true that an Arizona attorney does not need to utilize any non-regulatory bar services; those services are optional. That is, attorneys can forego reading the monthly magazine or decline to attend SBA continuing legal education programs or the annual bar convention (although the foregoing services are self-supporting and do not require the expenditure of dues). But other services – such as the client protection fund, the member assistance and law office management programs, and the conservatorship program – require the financial support of every attorney to be effective. The duty to protect the public is not owed just by the attorneys who become disabled, who mismanage a law office, or who cheat a client. All attorneys bear a responsibility to protect the public. An integrated bar assures that every attorney – not just half or even ninety percent of attorneys, but every attorney – shares the cost of that responsibility. These invaluable services will cease to exist with the demise of the integrated bar because no voluntary bar in Arizona offers them.

Most states have integrated bars. A minority of states use other models, which Task Force members have discussed. Arizona has had an integrated bar for more than eighty years. Although like any institution the SBA can be improved, the Task Force believes the integrated model well serves the courts, attorneys, and people of Arizona. The Task Force therefore recommends that the SBA continue to be an integrated bar association.

⁵ States that have voluntary bar associations by and large do not have lower overall bar dues. They charge both a mandatory regulatory assessment and separate voluntary bar dues, which together often exceed the annual membership fee in the State Bar of Arizona. An integrated bar benefits from economies of scale (for example, in human resources, technology, office expenses, and rent) that might require duplication if there were separate regulatory and voluntary entities.

Appendix D: Demographic and “per board member” tables

(1) Demographic table

Arizona population and the number of active SBA members, by county

County	Population (2014 U.S. census est.)	% of statewide population	Active SBA members (July 2014)	% of in-state active attorneys	% of total active attorneys
Apache	71,828	1.0	31	0.2	0.2
Cochise	127,448	1.9	102	0.7	0.6
Coconino	137,682	2.0	240	1.6	1.3
Gila	53,119	0.8	45	0.3	0.3
Graham	37,957	0.6	24	0.2	0.1
Greenlee	9,346	0.1	3	0.1	0.1
La Paz	20,231	0.3	22	0.1	0.1
Maricopa	4,087,191	60.7	11,581	75.9	65.1
Mohave	203,361	3.0	143	0.9	0.8
Navajo	108,101	1.6	80	0.5	0.4
Pima	1,004,516	14.9	2,320	15.2	13.0
Pinal	401,918	6.0	204	1.3	1.1
Santa Cruz	46,695	0.7	49	0.3	0.3
Yavapai	218,844	3.3	274	1.8	1.5
Yuma	203,247	3.0	142	0.9	0.8
Subtotal (in-state)	--	--	15,260 (in-state)	--	85.8
Subtotal (out-of-state)	--	--	2,533 (out-of-state)	--	14.2
Total	6,731,484	100%	17,793	100%	100%

Court of Appeals, Division One (except Maricopa):

- Population: 963,294 [14.3%]
- Active attorneys: 932 [6.1% of in-state active, 5.2% of total active]

Court of Appeals, Division Two (except Pima):

- Population: 676,483 [10.0%]
- Active attorneys: 427 [2.8% of in-state active, 2.4% of total active]

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(2) “Per board member” tables

The following tables show the number of people and attorneys “represented” by one elected board member in the district. The population and attorneys shown in these “per board member” tables is a fraction of a district’s total, as shown in the demographic table above, if a district has more than one board member.

The board’s current composition with eight election districts, and 18 elected governors, has one elected governor for every:

District	Counties	Population	Attorneys	# of board members
1	Mohave, Navajo, Coconino, Apache	520,972	494	1 governor
2	Yavapai	218,844	274	1 governor
3	Gila, Graham, Greenlee	100,422	72	1 governor
4	Cochise	127,488	102	1 governor
5	Pima, Santa Cruz	350,403	790	3 governors
6	Maricopa	454,132	1,287	9 governors
7	La Paz, Yuma	223,478	164	1 governor
8	Pinal	401,918	204	1 governor

Option X and Y proposals with a single “statewide” election district, and six elected trustees, would have one elected trustee for every:

District	Counties	Population	Attorneys	# of board members
Statewide	All	1,121,914	2,543	6 trustees

Option X and Y proposals with four election districts, and six elected trustees, would have one trustee for every:

District	Counties	Population	Attorneys	# of board members
Div. One (except Maricopa)	Mohave, Navajo, Coconino, Apache, Yavapai, La Paz, Yuma	963,294	932	1 trustee
Div. Two (except Pima)	Gila, Graham, Greenlee, Cochise, Santa Cruz, Pinal	676,483	427	1 trustee
Maricopa	Maricopa	1,362,397	3,860	3 trustees
Pima	Pima	1,004,516	2,320	1 trustee

Option Z proposal with five election districts, and eleven elected trustees, would have one elected trustee for every:

District	Counties	Population	Attorneys	# of board members
North	Mohave, Navajo, Coconino, Apache	520,972	494	1 trustee
West	Yavapai, La Paz, Yuma	442,322	438	1 trustee
Southeast	Gila, Graham, Greenlee, Cochise, Santa Cruz, Pinal	676,483	427	1 trustee
Maricopa	Maricopa	681,199	1,930	6 trustees
Pima	Pima	502,258	1,160	2 trustees

ARIZONA JUDICIAL COUNCIL

Date Action Requested:	Type of Action Requested:	Subject:
December 10, 2015	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Legislative Proposals

FROM:

Jerry Landau, Government Affairs Director
Amy Love, Legislative Liaison

DISCUSSION:

2016 Legislative Proposals – Cause/Effect and Implementation

RECOMMENDED COUNCIL ACTION:

Council may vote to include or not include in the Legislature a Judicial Branch proposal or to support, oppose or take no action on proposals from other entities presented to the Council.

2016 Arizona Judicial Council Legislative Proposal

2016-02 Special needs/adult guardianship

If a family court order regarding legal decision making, parenting time, or visitation has been previously entered for an alleged incapacitated person, any petition for appointment of guardian of the incapacitated person must include the most recent family court order.

Outlines who must be appointed guardian or co-guardian if the petition for guardianship is filed within two years of the incapacitated person's eighteenth birthday, with good cause exemptions. Requires a parent with sole legal decision making at the time the incapacitated person turned eighteen be appointed as guardian while parents with shared legal decision making at the time the child reached the age of majority must be appointed co-guardians. Permits the court to make other co-guardian appointments if in the best interests of the incapacitated person and clarifies that neither co-guardian has rights that are superior to the others.

Authorizes the court to order a person who engages in unreasonable conduct in a guardianship proceeding to pay the parent or relative for some or all of the professional fees and expenses caused by the unreasonable conduct.

Amends the guardian appointment priorities that the court considers in order to prioritize a parent or relative of the incapacitated person who has lived with the incapacitated person for more than six months before the filing of the petition above a parent of the incapacitated person, including a person nominated by will or other writing signed by the deceased parent.

A guardian is required to make a good faith effort to maintain the ward's significant relationships and ensure that the ward has reasonable, frequent and meaningful access to family and friends. Notice of death or hospitalization of the ward must be given to the ward's family within 24 hours.

Title affected: 14

Justice System Stakeholders – Proposed Legislation

2016-B Judicial productivity credits (Justice of the Peace Association)

Amends the judicial productivity credits formula and the compensation for a justice of the peace based upon those credits.

The formula changes include:

1. Inclusion of small claims filings heard by a volunteer hearing officer under civil filings category.
2. In criminal and traffic cases, counts not complaints filed are considered in the formula.
3. Reference to juvenile traffic violations in the “civil filings” paragraph is removed as they are counted the same as the applicable adult filings.
4. DUI cases are weighted more heavily than minor traffic.
5. Additional credits are earned for protective order filings.

Additional salary categories based upon judicial productivity credits are added:

700-899 judicial productivity credits equals 75 percent (of a superior court judge’s salary).

900-1,199 judicial productivity credits equals 80 percent.

1200 or more judicial productivity credits equals 85 percent.

(Comparison chart below)

Changes the bi-annual calculation of judicial productivity credits to an annual calculation to be completed by June 30 each year. The productivity credits are then reported to the applicable board of supervisors within one-hundred and twenty days after June 30 of each year. Judicial Productivity Credits are calculated and reported in subsequent twelve month period. Salary adjustments take effect the following January 1.

Prohibits the reduction of a salary of a justice of the peace during each term of office unless there is a division of a judicial precinct.

The salary of a justice of the peace, in the event of a division of a judicial precinct, will be set at the highest salary of any of the justices of the peace whose precinct is affected by the division, until the annual adjustment at the end of the first full fiscal year after the precincts are divided.

Increases the maximum judicial productivity credits required to add a new precinct from twelve hundred to sixteen hundred credits.

Includes definitions for “civil”, “civil traffic violation”, “felony”, “misdemeanor” and “protective order”.

Justice System Stakeholders – Proposed Legislation

Justice of the Peace Compensation Schedule

<u>JUDICIAL PRODUCTIVITY CREDITS</u>	<u>PERCENTAGE OF SUPERIOR COURT SALARY:CURRENT</u>	<u>PERCENTAGE OF SUPERIOR COURT SALARY:PROPOSED</u>
24 AND LESS	25 PERCENT	35 PERCENT
25-49	35 PERCENT	45 PERCENT
50-99	45 PERCENT	50 PERCENT
100-149	50 PERCENT	55 PERCENT
150-199	55 PERCENT	60 PERCENT
200-499	65 PERCENT	65 PERCENT
500-699	70 PERCENT	70 PERCENT
700-899	70 PERCENT	75 PERCENT
900-1199	70 PERCENT	80 PERCENT
1200 OR MORE	70 PERCENT	85 PERCENT

Title affected: 22

2016-C Failure to appear; fingerprinting (Criminal Justice Commission)

Combines the two Failure to appear in the second degree statutes into one in order to avoid confusion. One statute applies to all misdemeanors, the other to a written promise to appear (traffic citation).

Requires the Sheriff to fingerprint all person arrested or summoned into court for an offense that requires fingerprinting (felony or misdemeanor involving DUI, domestic violence or sex crimes) for purposes of criminal history, except that if the person is arrested for a misdemeanor by a municipal law enforcement agency or summoned into a municipal court the arresting or citing agency is required to fingerprint the defendant. Current law requires the arresting agency to fingerprint.

Title affected: 13, 41

Justice System Stakeholders – Proposed Legislation

2016-D: public safety employees; omnibus (Fraternal Order of Police)

Authorizes probation officers, surveillance officers and juvenile detention officers (among others not related to the judiciary) to participate in the emergency services cancer insurance policy program. The premium is an employee cost and the county determines whether or not to enter the program.

Title affected: 12, 38

2016-F: constables; duties; training; discipline (Constable's Association)

A constable within the county is required to serve and return all criminal summonses and subpoenas that are directed or delivered to the constable by a justice of the peace of the county. Current law requires the constable to serve and return all process, notices and warrants.

The Constable Ethics and Standards Board is authorized to suspend a constable with or without pay. Grants the Board the authority to compel the attendance of a constable when hearing evidence.

Authorizes the board to refer an investigation of a constable to the county attorney in the county in which conduct occurred for a determination of criminal charges. Allows the constable to seek judicial review of any final order suspension pursuant to the Administrative Procedures Act in the Superior Court of the County in which the constable is elected or appointed. The constable has twenty calendar days after a constable is suspended from performing the constable's duties to seek the review.

Title affected: 22

2016-G: presiding constable; selection; duties (Constable's Association)

Creates the positions of presiding constable and associate presiding constable in each county that has four or more constables. The selection of these positions is by majority vote of the constables in each county. Constables elected to each position will serve a two-year term. If the constables do not select a presiding constable or associate presiding constable before February 1, 2017 or are unable to reach a majority within thirty days after a vacancy exists, the presiding judge of the superior court of the county appoints a new presiding or associate presiding constable.

Permits the removal of a presiding constable or associate presiding constable upon a majority vote of the current constables within the county.

The presiding constable's duties include: (1) serving as the liaison between the constables within the county and the county manager and other county departments; (2)

Justice System Stakeholders – Proposed Legislation

assigning deputy constables within the county; (3) assigning and managing clerical staff for constables within the county; and (4) in a constable's absence, assigning court orders that need service to other constables within the county.

The associate presiding constable performs the duties of the presiding constable during the absence or inability to act of the presiding constable.

Title affected: 22

2016-H: criminal code; omnibus (AOC, APAAC)

The annual criminal code cleanup bill.

Makes conforming changes to some of the sentencing statutes whose structure was modified by legislation passed last year.

In the statutes addressing restoration of civil rights, clarifies it does not necessarily need to be the presiding judge or the sentencing judge or judges successor who can rule on the application.

Removes the provision of the Aggravated Assault statute classifying assault on a peace officer under fifteen years of age.

Makes a conforming change to the statute, Failure to stop or provide driver license or evidence of identity. One of the statute's provision requires a driver who is not licensed and who fails or refuses to provide evidence of identity on request. The statute was previously amended in response to an Arizona Court of Appeals, Division One case from 2003 to specifically list the evidence of identity. The statute contains a similar requirement for a passenger. The proposal inserts the same list of evidence of identity when requested from the passenger, inadvertently omitted when the driver requirement was added.

Title affected: 12, 13, 41

2016-I Resources for Juvenile Dependency Representation (County Supervisors Association)

Requests general fund assistance for counties to provide mandated attorney services for indigent defendants in juvenile dependency matters.

2016-J Transferred Youth Holding (County Supervisors Association)

Permits the detaining of pre-trial youth in detention centers instead of county jails when the juvenile is charged as an adult. Current law requires that a juvenile charged as an adult be held in the county jail. The sight and sound requirement of federal regulation as well as establishing a separate area for juveniles results in additional cost to the county.

Title affected: 8 and 13