



**Minutes**

November 3, 2016

State Courts Building ♦ 1501 West Washington St. ♦ Conference Room 101  
Phoenix, Arizona

**Present:** Dave Byers, Chair, Tom O’Connell, Vice Chair, Kent Batty, Judge Michael Bluff, India Davis, Jeffrey Fine, Judge John Hudson, Bob James, Paul Julien, Doug Kooi, Judge Dorothy Little, Jeremy Mussman, Dianne Post, Judge Antonio Riojas, Judge Lisa Roberts, Judge Thomas Robinson, Leonard Ruiz, MaryEllen Sheppard, Alessandra Soler, Rebecca Steele, Judge Don Taylor, Kathy Waters

**Absent:** Judge Maria Elena Cruz, Ryan Glover, Officer Michael Kurtenbach, Tony Penn

**Presenters/Guests:** Marc A. Adair, Tasha Aikens, Cathy Clarich, Tom Collins, Colleen Clase, Samantha DuMond, Kirstin Flores, Jennifer Greene, Donald Jacobson, Jerry Landau, Heather Murphy, Levi Reed, Rebecca Reiben, Judge Ron Reinstein, Trey Williams, David Withey

**Staff:** Theresa Barrett, Kathy Sekardi, Susan Pickard, Sabrina Nash, Patrick Scott, Administrative Office of the Courts (AOC)

**CALL TO ORDER** - Dave Byers called the meeting of the Task Force on Fair Justice for All to order at 10:00 a.m.

**WELCOME AND OPENING REMARKS** - Mr. Byers welcomed the members back.

**APPROVAL OF MINUTES FROM AUGUST 5, 2016**

**MOTION:** To approved the August 5, 2016, minutes as amended. Motion seconded.

**VOTE:** Passed unanimously

**REPORT ON PRESENTATIONS MADE TO OCTOBER LEADERSHIP CONFERENCE, SUPREME COURT STANDING COMMITTEES AND OTHER ENTITIES** - Mr. Byers thanked the members for taking the time from their busy schedules to present the task force’s recommendations to the following organizations:

- Department of Justice
- National Association of Presiding Judges
- Arizona Criminal Justice Commission
- Arizona Prosecuting Attorneys’ Advisory Council
- Chief of Police Association
- Probation Chief’s Association
- NAACP chapters in Tucson, Maricopa County, and Pinal County
- Maricopa County Bar
- Lorna Lockwood Inn of Court at the University Club
- Arizona Judicial Council
- County Presiding Judges
- Arizona Court Leadership Conference
- Arizona Commission on Access to Justice
- Commission on Minorities in the Judiciary
- Commission on Victims in the Court
- Committee on Limited Jurisdiction Courts
- Committee on Superior Court
- Court Interpreter Advisory Committee
- Adult Management Meeting (AMM)
- Committee on Probation

Mr. Byers noted that overall the report's reception has been positive with one exception. The Commission on Victims in the Court (COVIC) submitted their comments in writing. Mr. Byers stated that those concerns will be addressed during the task force's legislative packet discussion.

**RESULTS FROM THE ARIZONA JUDICIAL COUNCIL (AJC) AND PRESIDING JUDGES MEETINGS** - Mr. Byers reported that the presiding judges endorsed the task force's recommendations and recommended AJC approval. The next day, the AJC approved the recommendations in concept with the exception of decriminalizing littering due to the legislative drafting complexity. The AJC also noted that the comments of the COVIC should be kept in mind during the development of the legislative package.

**UPDATE ON RECOMMENDATIONS IN PROGRESS** – Mr. Byers introduced Don Jacobson. Mr. Jacobson will be managing the implementation of the task force's recommendations. Mr. Byers continued with a report on the efforts that have taken place to-date:

- The Q&A document – AOC staff worked with a committee of judges and court administrators to reformat and reorganize the Q&A to produce the current Municipal Court Governance Roles and Responsibilities document. Members were asked to contact Kathy Sekardi or David Withey with additional changes.
- Funding – Review ongoing.
- Income verification software – One software package has been tested in-house and at Phoenix and Scottsdale Municipal Courts. It did not prove to be sufficiently accurate.
- Notification technology – A Request for Proposal (RFP) will be posted. The request will be made for a statewide contract that any court can use.
- 2017 Judicial Conference – The work of the task force will be presented as a plenary with breakout sessions. Planning is underway to broadcast the plenary session, allowing all court personnel to participate.
- ASU-CLE – Planning for a full day *Fair Justice for All* is underway.

Judge Little and Paul Julien indicated that they are already sensing subtle changes in the judiciary. As the members surmised, and as is being experienced in Mohave County, the more a judge works with the Public Safety Assessment (PSA) tool, the more comfortable the judge becomes with making risk assessment decisions.

**PRESENTATION FROM BAIL BOND REPRESENTATIVES** - Attorneys, Marc Adair and Samantha DuMond, who in combination represent a majority of the state's bond companies, discussed the bail bond industry, and its benefits to the criminal justice system and defendants. They noted that for small bond issuance to be feasible, legislative amendments regarding forfeiture are needed. Additionally, they requested that rule amendments be considered to standardize the amount of time that is allowed to find a defendant and the number of continuances that are allowed prior to bond forfeiture (Pima County - 3 weeks/0 continuances versus Maricopa County – up to 6 months with continuances).

**CALL TO THE PUBLIC:** (10:55 a.m.) - Tom Collins, Arizona Citizens Clean Elections Commission (Clean Elections), spoke.

**DISCUSS RULE CHANGE PETITION COMMENTS (R-15-0041) AND RESPONSE TO FILE** - With four comments filed, the comment period for Rule Change Petition R-16-0041 closed October 21. The draft Petitioner’s Reply was presented for review and comments.

**MOTION:** To adopt and file the Petitioner’s Reply as amended. Motion seconded.

**VOTE:** Passed unanimously.

**DISCUSSION:**

- Court processes and procedures regarding a superior court judge releasing another court’s “hold” to directly place a defendant into a substance abuse treatment program has been removed from the petition for further examination.
- The petition does not address the presence of court-appointed counsel and prosecutor at Initial Appearance. This recommendation (#44) also requires additional examination and can be addressed in a later rule change petition.
- Court processes and procedures regarding unsecured bonds can be addressed by training and perhaps an administrative order.
- ARCrP Rule 3.2
  - A proposed change to the current language - “warrant shall state the amount of secured appearance bond,” changing “shall” to “may” was offered. The discussion that followed included:
    - Training should include the ability of a judge to reconsider the bond amount set on the warrant by another court at Initial Appearance and after a risk assessment.
    - Setting a bond amount on a warrant establishes a “get out of booking” process usable by law enforcement. This process directly impacts those who can afford the bond, which likens to the unconstitutionality of bond schedules.

**MOTION:** To establish a workgroup to develop language for inclusion in the Petitioner’s Reply consistent with probation department comments. Motion seconded.

**VOTE:** Passed. 16 - 5 - 0

**DISCUSSION:**

- Stakeholder consultation is needed.
- The process of closing the warrant because the bond was paid and the defendant was released could have the unintended consequence of establishing a cycle of issued and closed warrants.
- Not all courts are using the risk-based assessment and there are differing processes in each county.

**DISCUSS LEGISLATIVE PACKET MODIFICATIONS** - Jerry Landau discussed the changes that have been made to the legislative packet since the August 5<sup>th</sup> meeting. The comments from the members included:

2017-01: Sentencing; fines; fees; probation

- Section 6. § 13-805. Jurisdiction – the proposed amendment now clarifies that the interest rate on a criminal restitution order issued in favor of a victim remains at 10% (no change) while the interest rate on a criminal restitution order issued in favor of the state is reduced to 4%, consistent with civil judgments. Additionally, the proposed amendment would allow the court to waive all or part of the interest upon agreement of the state, victim, and defendant. Judge Ron Reinstein was present and agreed that this would resolve some of the COVIC issues.
- Section 12. § 13-924. Probation; earned time credit; applicability - the proposed amendment removes the requirement that a probationer be current on the payment of monetary obligations (however, must be current on restitution) in order to receive earned time credit.

2017-02: Driving; violations; restricted license; penalties

- Section 1. § 28-603. Driver license or permit; restrictions – consolidates all sections of Title 28 regarding license restriction into one section.
- Section 13. § 28-3473 and Section 14. 28-3473.01 – address driving on a suspended, canceled, revoked or refused license; classification; restricted privilege to drive is criminal unless it is suspended for failure to appear or failure to pay and then it is civil.
- Delayed effective date was a compromise between the Motor Vehicle Department (MVD) and Mr. Landau.

**ACTION ITEM:** A member requested further examination of underage drinking and driving in relation to this proposed bill.

2017-03: Bailable offenses; hearing; schedule

Mr. Landau requested the task force's guidance in the drafting of the legislation in this bill. He requested a formal action regarding 1.) changing the bond schedule to a deposit schedule; and 2.) whether to split serious/dangerous criminal traffic from criminal traffic where there was not a victim, making the former non-bondable and the later bondable with a deposit schedule.

**MOTION:** To postpone any action on this discussion until the December meeting and establish a workgroup to develop recommended language. Motion seconded.

**VOTE:** Passed unanimously.

A member questioned the removal of the 24-hour hearing from § 13-3961. Mr. Landau noted that the process is fully included in the rule to be discussed later in the meeting.

2017-04: Competency examination; jurisdiction

Provides for increased jurisdiction for limited jurisdiction courts with respect to competency hearings.

**DISCUSS CLARIFICATION OF SENDING NOTIFICATIONS PRIOR TO INCARCERATION FOR FAILURE TO PAY FINES.**

This agenda item was taken out of order. Jeff Fine began the discussion about A.R.S. § 28-1525 and § 13-810.

At issue in § 28-1525 are the \$125 warrant fee for failure to pay warrants and existing local ordinances to recover costs associated with warrants. Mr. Fine identified the following options:

1. The \$125 fee becomes the warrant recovery fee for all warrants, making it equitable across the board with the proceeds being disbursed for more than constable funding.
2. Proposed that the \$125 fee be stricken as it unfairly impacts defendants who have failed to pay, whether willfully or not.
3. Determine if ordinances trump statute or vice versus.

**ACTION ITEMS:** Jerry Landau was asked to speak with the Arizona Association of Counties (AAOC), and MaryEllen Sheppard was asked to speak with Maricopa County to gather information.

David Withey was asked to review the Attorney General's opinion regarding which fee should be charged - the state or local fee.

This discussion will be an item on the December agenda to determine if correcting this issue is within the task force's charge.

At issue in § 13-810 are 1.) the authority of a court to issue a summons or warrant for non-payment without undertaking some type of effort to compel voluntary appearance, 2.) formal contempt hearings, 3.) due process during a court's determination of willful non-payment, and 4.) the use of contempt procedures for restitution when a defendant is on active probation and the requirement of representation.

**ACTION ITEM:** Mr. Byers established a workgroup to examine § 13-810 and associated civil rules for potential amendments, and identified volunteers for the three new workgroups.

Mr. Fine introduced Tasha Aikens, U.S. Department of Justice, Phoenix Office.

#### **DISCUSS RULES CONCERNING NOT-BAILABLE DETERMINATIONS (SIMPSON HEARINGS)**

This agenda item was taken out of order. David Withey reviewed Rule 4.2 and the associated Arizona constitutional provisions using a flowchart that was part of the meeting materials. Member comments included:

- Timing of hearings for bondable versus non-bondable defendants
- When does appointment of counsel occur?
- The amount of time needed for notice of defendant's attorney
- The amount of time needed for disclosure

**MOTION:** To establish a workgroup for further examination. Motion seconded.

**VOTE:** Passed unanimously.

**CALL TO THE PUBLIC:** Colleen Clase, Senior Attorney, Arizona Voice for Crime Victims spoke.

Meeting adjourned at 2:22 p.m.

**NEXT MEETING:** December 13, 2016