

Post-Conviction Actions Subcommittee

(A subcommittee of the Fair Justice for All Task Force)

Thursday, November 30, 2017; 9:00 a.m. – 11:30 p.m.

MEETING NOTES

Welcome and Opening Remarks

- Jerry Landau called the meeting to order at 9:03 a.m.
- Members who were present, either in person or on the phone, introduced themselves.

Approval of October 19, 2017, Meeting Notes

Jeremy Mussman noted that the discussion regarding the proposed amendments to Rule 15.1 and the excerpt from Rule 609 was missing from the minutes.

Motion: To approved the minutes with an amendment to include the Rule 15.1 discussion. The motion was seconded. **Action:** Passed **Vote:** Unanimous

[Staff reviewed the recording of the October 19, 2017, meeting and found no evidence of the conversation. It is possible that an informal discussion was not captured. The October 19, 2017, meeting notes were not amended.]

Rule 15.1 Disclosures

As a means of addressing the perceived omission noted during the approval of the meeting notes, Mr. Landau opened the discussion about Rule 15.1. Jennifer Greene, AOC Deputy Legal Counsel, noted that it is clear in case law that a witness' set aside conviction should be disclosed as well as convictions that are not set aside. The amendment to section (d) incorporates the case law. During the restyling efforts, the Criminal Rules Task Force also added changes to incorporate case law.

The **consensus** of the members was to include "including convictions set aside pursuant to A.R.S. §13-907" after "defense witness at trial" at the end of Rule 15.1(d).

Review and Vote on Proposed Statutory Amendments (taken out of order)

Mr. Landau discussed the following additional amendments to A.R.S. § 13-907.

1. After a discussion with Rep. Farnsworth's analyst, section M was added. This section also addressed an issue raised by Judge Russell later in the meeting.
2. Section P was amended to clarify that an offense is excluded from set aside only if the person is convicted of an excluded offense, rather than the possible misinterpretation that the person could have been convicted of an excluded offense. The **consensus** of the members was to include the amendment to section P.
3. The exclusion of dangerous offense from set aside was debated at the Task Force on Fair Justice for All meeting on November 27th. The Task Force members voted to include dangerous offense in the list of offenses excluded from set aside.

Concerns/Comments

1. Jeremy Mussman asked Jared Keenan's suggested amendment of "dangerous offense involving a knife or a firearm" narrowing the definition of definition of dangerous offense be mentioned to legislators for their consideration.
2. A sentencing document may not indicate the type of instrument used in the commission of the crime; increasing the judicial officer's burden to find that information. The onus to provide that information would be placed upon the applicant.
3. The interaction between section O's restoration of a person's right to possess a gun or firearm, and dangerous offenses was again noted. If section O is eliminated, then dangerous offense could also be eliminated.
4. Section N needs clarification for cases with multiple defendants when only one defendant is requesting set aside. At issue is ". . .shall not disclose any information regarding the case. . ."
5. The lack of timeframes impacts the data sets used by employers or large apartment complex owners; however, the lack of timeframes increases the possibility of true second chances.

Action Item: Mr. Landau to revise the proposed statute to address the concerns and will forward an updated version to the members.

Rules and Records Workgroup Report and Discussion (taken out of order)

Rule 39. Victims' Rights

Tom O'Connell explained that the amendment adds two proceedings about which the victim has a right to notice to section (b)(7). Those are (J) setting aside a conviction and (K) restoration of civil rights and right to possess a gun or firearm.

Motion: To approve the addition of sections J and K to Rule 39(b). The motion was **seconded**.

Action: Passed **Vote:** 19-0-1

Review and Vote on Proposed Rule 29 Amendments

Mr. O'Connell reviewed Rule 29, as amended on October 19, 2017, by section.

The members reconsidered:

1. Section 5 and the 120-day timeframe making the following amendments:

"At the request of either party or on the court's own motion, the court may set a hearing. If the request is granted, a hearing must be ~~set not more than~~ held within 120 days after the filing of the application, unless good cause for an extension is found. The prosecuting agency must provide post-conviction victim notification of the hearing date, if the victim opted in."

2. Section 6 making the following amendments.

(c) ~~Additional~~ Subsequent Application.

The Subcommittee members wished to place emphasis on victim restitution and established it as a standalone factor for judicial consideration.

(a)(7) Status of victim restitution ~~and other legal financial obligations~~; and

The term “other legal financial obligations” was struck and interpreted to be part of the “sentence,” then sentence was added to (a)(3).

(a)(3) Compliance with probation conditions or sentence;

With that addition, the members agreed to split the remaining part of (a)(3) into its own factor.

(a)(4) Compliance with Department of Corrections rules or regulations;

Motion: To approve Rule 29 as amended today. The motion was **seconded**. **Action:** Passed
Vote: Unanimous

Action Item: Mr. Landau will reorganize the factors of section 6(a) to eliminate randomness.

Mr. Landau noted that traditionally, rule amendments are held until the disposition of the statutory changes is known. In this case, he believes these changes are of benefit without the statute and will attempt to move the rules and forms forward before the 2018 Rules Agenda.

Review and Vote on Proposed Set Aside Forms

Application

Action Item: Mr. O’Connell will develop a disclaimer regarding the restoration of federal gun rights for addition to the application and the order.

Caption (specifically the title)

- Remove “[] Restore Gun Rights.” Inclusion makes the restoration of the right seem optional, when it is statutorily mandated.
- Remove “[] Request for Reconsideration.” The defendant may reapply, if denied.
- Remove “upon Discharge”

SECTION 1. CONVICTIONS

Before he left the meeting, Judge Myers raised a concern about whether Section 1. Convictions should mirror the requirements of rule 29.2(a). If so, and the counts being set aside are from different cases, the place and date of conviction needs to be listed for each count. The date of each offense would be useful to DPS when they receive an order to set aside before they receive the case disposition. The Subcommittee did not envision that multiple cases would be addressed on the application.

SECTION II. SENTENCE COMPLIANCE

This section was amended as follows:

1. [] I completed the conditions of probation. The Probation Department’s order discharging me from probation ~~is in the court file or~~ attached to this form.

32. I have complied with all required terms of probation sentencing (including all probation, employment, classes, community service, restitution, drug/alcohol testing, or other requirements.)

43. I have not complied with all terms of probation sentence. Explain:

24. I received from the Arizona Department of Corrections a Certificate of Absolute Discharge from Imprisonment AND have attached a copy of that Certificate to this petition application, if available.

5. [No Changes]

6. Have you paid all other ~~Legal Financial~~ court-ordered monetary ~~O~~bligations in this case (criminal fines and fees) in full? Yes No

SECTION V. OTHER INFORMATION FOR THE COURT

Add “(Attach copies of any court documents you may have.)” to the end of Item 2.

The rules and forms should be reviewed while taking Arizona Code of Judicial Administration (ACJA) §4-302: Records Retention and Disposition Schedule into account.

Due to time, discussion and voting on this agenda item will be continued at a future meeting.

Juvenile Adjudication Set Aside Workgroup Report and Discussion

Tabled until a future meeting.

Beginning Discussion on Restoration of Rights

Tabled until a future meeting.

Future Meetings/Next Steps

Monday, January 29, 2018

1:30 – 4:30 p.m.

The agenda will include:

- Review and Vote on Forms
- Juvenile Adjudication Set Aside
- Restoration of Rights

Call to the Public

While one person from the public was present, no comment was made.

Adjournment

The meeting adjourned at 11:21 a.m.