

Arizona Commission on Access to Justice
MINUTES
November 18, 2015
10:00 a.m. to 2:00 p.m.
State Courts Building, 1501 W. Washington Street
Phoenix, AZ 85007

Present: Judge Lawrence Winthrop, Chair; Kip Anderson; Judge Janet Barton; Mike Baumstark; Judge Thomas Berning; Millie Cisneros; Michael Jeanes; Ellen Katz; Judge Joseph Kreamer; Michael Liburdi; Judge James Marnier; John Phelps; Kevin Ruegg; Judge Rachel Torres Carrillo; Lisa Urias

Telephonic: Judge Maria Elena Cruz; Anthony Young

Presenters/Guests: Pamela Bridge; Judge Dean Fink; Kevin Groman; Maggie Kiel-Morse; Judge Bill Rummer; Cari Gerchick; Chris Groninger; Judge Steven McMurry; Judge Patricia K. Norris; Scott Uthe

Administrative Office of the Courts (AOC): Judge Mark Armstrong (ret.); Dave Byers

AOC Staff: Theresa Barrett; Julie Graber; Nick Olm; Kathy Sekardi

I. REGULAR BUSINESS

A. Welcome, Opening Remarks and Approval of Minutes

With a quorum present, the November 18, 2015 meeting of the Arizona Commission on Access to Justice (ACAJ) was called to order by the Chair, Judge Larry Winthrop, at 10:08 a.m.

Motion: Judge Kreamer moved to approve the August 12, 2015 minutes. **Seconded:** Mike Baumstark
Vote: Unanimous.

B. Chairperson's Report on Presentations and Meetings

Judge Winthrop reported the Arizona poverty rate is 21.2%; which equals 1.7 million people (or one out of every 11 people) living at or below the federal poverty level (\$5,000 for individuals and \$12,000 for a family of four).

Over the past year, Judge Winthrop has been building partnerships with a variety of groups to promote the work of the commission, to raise awareness regarding the needs of self-represented litigants, and to educate and inform people about the Arizona Charitable Tax Credit. The presentations have been made to lawyer groups, bar associations, law firms, public law agencies, various business communities and private foundations.

Action item: Judge Winthrop requested members to identify two groups in the community that they feel comfortable talking to about the Arizona challenges that relate to access to justice issues and the work of the commission, the need for legal services funding, and the promotion of the charitable tax credit. Once the groups are identified and the presentations have been made, members are requested to provide this information to staff.

II. REPORT FROM SRL-FC WORKGROUP

A. Report on the Law4AZ project

Maggie Kiel-Morse reported training for library staff is scheduled in January and February of 2016 for the remaining nine counties as part of the Law4AZ project. Ms. Kiel-Morse asked the commission members to help locate volunteer attorneys who are willing to participate with the Law4AZ training.

Mr. Phelps offered to coordinate with Ms. Kiel-Morse to solicit volunteers and mentioned that the Arizona Foundation for Legal Services and Education (AZFLSE) has developed a *pro bono* portal website, which can also be used to solicit volunteers.

Mr. Young suggested group of *pro bono* lawyers could attend the library training sessions. Logistics of their attendance could be accomplished by a conference call with the *pro bono* directors of AZFLSE, the State Bar, and legal service agencies. He also suggested that *pro bono* attorneys could make use public libraries as a free venue in which to speak with low-income people about public benefits, and as a possible website to post educational videos.

B. Maricopa County Superior Court’s AmeriCorps Project

Judge Dean Fink reported Maricopa County Superior Court received a three-year AmeriCorps grant to have 38 AmeriCorps members (students) in the Law Library Resource Center to assist self-represented litigants gain access to justice by helping them find legal information, walking self-represented litigants to the filing counter, and completing and filing forms. It is anticipated these activities will have a measurable impact on the court calendar by eliminating the need for repeat visits from litigants who did not initially fill out paperwork correctly. AmeriCorps members will receive a stipend and may receive grant monies for school loans or tuition. Initially, the students will only assist with family court and protective order matters. However, with success, it is hoped that the program can expand to other areas of law.

The program has recruited 57 applicants for the 38 positions. Staff will be interviewing applicants in the coming weeks and final selections will be made by the end of November. Orientation is scheduled over the course of a couple days in January, 2016.

C. Report on the updated “Q&R Handbook”

Ms. Kiel-Morse reported that feedback and comments were received from commission and workgroup members and many of the suggestions were incorporated into the current draft. Some of the changes include:

- Handbook is anticipated to be used electronically within a PDF format to make use of bookmarks for user-friendly navigation.
- “Resources” such as links to web pages and reference materials, have been added below the question and response instead of inside the response narrative.
- New section added for fee waivers and deferrals.
- New section added that outlines the Arizona court system.
- New section added that defines legal information versus legal advice.
- Added the list of things court personnel can and cannot do when helping court customers.

Judge Winthrop expects this document will be helpful when educating the judiciary and judicial staff regarding dealing with self-represented litigant issues. A suggestion was made to sponsor a statewide WebEx event to present this material to the judiciary.

A member inquired as to how the public are educated about what court staff can and can’t do. Staff responded by saying that an administrative order (A.O. 2007-28) requires signage be prominently displayed at court service counters, self-service centers, and law libraries open to the public.

Motion: Ms. Ruegg moved to approve the Q&R Handbook and recommend that this document be vetted through the Arizona Judicial Council. **Seconded:** John Phelps **Vote:** Unanimous.

D. Report on the Simpla Phi Lex Project

Judge Fink reported Pima County Commissioner Dean Christoffel developed the Simpla Phi Lex project that transformed family law documents into forms and instructions that are easier to read and understand. University of Arizona law students were partnered with graduate students in the English department to work on this award-winning project.

Judge Fink has established a sub-workgroup to further develop the Simpla Phi Lex products into a generic statewide instructions product.

E. Report on the Arizona's AZCourtHelp Virtual Access and Resource Center

Ms. Kiel-Morse reported a task force was established to develop a project plan for the new AZCourtHelp resource center. The Coconino County Law Library Self-Help Center will house the physical space. The remodeling plans include configuring a modular classroom space to use for workshops and clinics. A comprehensive webpage is planned that will be a discovery tool and a repository for statewide and county-specific self-help videos. There are plans for live video streaming of workshops and clinics so participants have the benefit of asking questions and getting feedback immediately.

An AmeriCorps Vista Grant allowed Coconino County to hire a Program Coordinator who will research and report to the task force on best practices for developing the webpage and what content to provide. The coordinator will also reach out to community organizations and get input regarding the needs of the community and their constituents. The proposed timeline to launch the resource center and webpage is late summer of 2016.

III. REPORT FROM SRL-LJC WORKGROUP

A. Presentation of best practices for ensuring access to justice for self-represented litigants

Judge Steven McMurry, Presiding Justice of the Peace in Maricopa County, presented information about a program that was recently offered to justice court judiciary regarding the best practices for ensuring access to justice for self-represented litigants. The best practices were developed by a committee of Maricopa County Justice Courts Justices of the Peace along with input from the National Center for State Courts.

The best practices were developed by focusing on fairness from the perspective of the self-represented litigant. Although the best practices have not been adopted, they are persuasive and are being followed by Justices of the Peace.

Judge Winthrop noted that it is not improper for judges to accommodate self-represented litigants and there has not been an instance where a judge has ever been admonished for delivering legal information to self-represented litigants in any manner.

B. Report on the Forms Sub-workgroup and Resources Sub-workgroup

Judge Carrillo's reported that over the past year, the Forms Sub-workgroup held numerous meetings to edit forms and information packets for eviction matters and vetted the drafts to various stakeholders. The sub-workgroup has developed ten different forms and packets:

1. 5 Day Notice to Vacate (failure to pay rent)
2. 5 Day Notice to Vacate (health and safety violations)
3. 10 Day Notice to Move (material breach)
4. 10 Day Notice to Move (repeat material or health and safety breach)
5. Immediate Notice to Move (material and irreparable breach)

6. General Information About Landlord and Tenant Rights and Options Before You Come to Court
7. General Information for Tenants Who Have Been Served with Eviction Court Pleadings
8. General Information for a Landlord Filing an Eviction Action in Justice Court
9. Complaint and Summons
10. Judgment

Paul Julien established a group to develop video scripts for landlord/tenant issues. Production is expected to commence in January, 2016. The working titles are:

- o “So You Just Got Served Eviction Paperwork”
- o “So You’re Thinking of Renting an Apartment or Home”
- o “So You’re Thinking of Filing an Eviction Action”

The Justice Courthouses have signs posted that inform the public about requesting fee waiver and deferral form applications at the clerk windows. Justice Court clerks are also being trained to inform the public about the fee waiver and deferral forms.

It was suggested that the commission or one of its workgroups explore developing forms that tenants can use in landlord/tenant matters.

Motion: Judge Carrillo moved to have the commission approve the drafts of the forms and information packets in concept with the understanding that the forms will be reviewed by Arizona State University English Department to alter them to a fifth grade reading level and for the AOC to seek resources to have the documents translated into Spanish. **Seconded:** Mike Baumstark **Vote:** Unanimous.

IV. BARRIERS TO ACCESS TO JUSTICE FOR TENANTS IN EVICTION CASES

Pamela Bridge, Community Legal Services, presented the following issues:

The first issue is an ethical concern regarding court procedures that allow a landlord attorney an opportunity to question a tenant in the courtroom before the judge has taken the bench. Many tenants are nervous and confused and simply leave the courthouse, which may result in a default judgment against the tenant; or the tenant may have signed a stipulated judgment believing that court personnel assisted, when in fact, it was the opposing landlord attorney. Ms. Bridge believes it is crucial for judges to be on time for court and for judges to sign stipulated judgments only if the tenant is present at the hearing to provide an opportunity for the judge to question the tenant about the stipulations proposed in the judgment.

Second, Ms. Bridge stated that judges would benefit from more training in the area of housing subsidies in order to make informed and accurate decisions in these cases. Ms. Bridge explained that many problems faced by tenants occur when a subsidy agency has contracted with a private landlord to pay directly to the landlord part or all of a tenant’s rent on behalf of the tenant. The contract usually states that the landlord cannot evict the tenant if the agency is late paying rent to the landlord. If the agency is late paying the rent it is a dispute between the landlord and the agency, not between the landlord and tenant. Yet, landlords continue to file eviction actions for the full amount of rent, which results in tenants being evicted. Ms. Bridge has reached out to the Arizona Department of Housing and the Housing and Urban Development (HUD), which have already agreed to collaborate with her organization to assist with judicial training needs.

Third, there are concerns about handling non-payment of rent cases where inhabitation issues may exist. Ms. Bridge stated that self-represented litigants are unable to navigate through the complex area

of injunctions against landlords for inhabitability issues and suggested that the *Rules for Procedure for Eviction Actions* (Rule 13(b)(4)) should be revised to assist tenants through the process.

Ms. Bridge then requested this commission to:

1. Sponsor workgroups to review these specific concerns.
2. Recommend trainings for judges by Continuing Legal Education (CLE), Court Ordered Judicial Education and Training (COJET) or at each respective court's bench meetings.
3. Explore making rule changes regarding stipulated judgments and tenant actions against landlords.

A member commented that Southern Arizona Legal Aid receives these same complaints and suggested that statewide training for judges would be beneficial.

After inquiry from Mr. Byers, Ms. Katz stated she expects a rule petition allowing a change of judge in eviction cases to be proposed again. Mr. Byers added that this rule petition has previously been rejected by the Arizona Supreme Court for a multitude of reasons and asked the commission to examine the issue further.

The chair stated that the issues presented by Ms. Bridge are within the parameters of this commission's charge. He further commented that conducting trainings at the judicial conference and at bench meetings would be beneficial to the judiciary.

Motion: Ms. Cisneros moved to have the commission support a training on these issues at the judicial conference in June of 2016 and have the commission sponsor that presentation. **Seconded:** Mr. Jeanes **Vote:** Unanimous.

V. PRESENTATION ON RULE PETITION R-14-0027

Judge Mark Armstrong (ret.) informed members this rule change petition proposes a revision to Rule 11 of the *Arizona Rules of Procedure for Eviction Actions*. The proposed change envisions telephonic appearance by parties and witnesses in eviction actions.

Judge Armstrong noted the Maricopa County Justices of the Peace submitted a comment opposing this rule petition and proposed a different rule petition. Ellen Katz, on behalf of the William Morris Institute for Justice (WMIJ), filed a proposal opposing both of the proposed rule petition changes.

Accordingly, the Arizona Supreme Court continued this petition at their last rules agenda meeting in August, 2015, to provide an opportunity to develop language agreeable to all stakeholders. Judge Armstrong drafted new language for the petition based on model language in the *Arizona Rules of Protective Orders Procedure* to facilitate discussions during the extended comment period.

A member stated this petition has been vetted through the task force of legal service attorneys who handle eviction cases. The consensus of the vetting was this proposal is better than the previous proposals, but there are still some concerns.

Judge Armstrong noted this rule change petition is an ongoing process and he is open to further suggestions.

VI. PRO BONO SERVICE AND FUNDING WORKGROUP REPORT

A. Report on the Arizona Charitable Tax Credit Campaign Efforts

Judge Winthrop informed members he distributes the Charitable Tax Credit flyer developed by the Arizona Foundation for Legal Services & Education (AZFLSE) when presenting to various bar foundations and organizations around the state. The flyer identifies seven non-profit organizations that qualify for the charitable tax credit. He clarified that the charitable tax credit is separate and apart from the school tax credit, meaning both donations and tax credits will count.

B. Report on Intel’s Outreach Efforts to Other Corporate Counsel

Scott Uthe, Intel Corporation, reported that contact has been made with the *pro bono* coordinators and Mr. Uthe informed the commission of the following:

- Avnet does not have a *pro bono* coordinator and their corporate counsel have discretion on where and to whom *pro bono* work is provided.
- Discussions with U-Haul are ongoing as to what *pro bono* services will be provided.
- AZ Public Service has reinstated, along with Volunteer Lawyers Programs (VLP), a collaborative program that supports “attorney-for-the-day” counseling.
- Salt River Project will start clinics in January, 2016, to draft wills for underserved clients.

C. Report on the Ongoing Efforts of the *Pro Bono* Service Workgroup and Outreach Efforts

Judge Joe Kreamer and Dr. Kevin Ruegg reported that funds are needed to support the *pro bono* legal service organizations in Arizona. Interest on Lawyers’ Trust Accounts (IOLTA), which funds legal service organizations, has been decreasing steadily over the past few years. This workgroup is working on meeting those challenges for funding.

Legal service organizations are making it as seamless as possible to present corporate counsel and attorneys with volunteer opportunities. Between the Volunteer Lawyers Programs (VLPS) in Maricopa County and from Southern Arizona Legal Aid, there have been almost 4,000 requests for services. The VLPs make the connection between those seeking service and volunteers willing to provide service. There were an additional 120 volunteer lawyers added in the last ten months and additional outreach efforts are ongoing to recruit more volunteers.

Finally, it was shared that recently a steering committee that is comprised of legal service organization directors, the William E. Morris Institute for Justice, and the AZFLSE, examined frontline access to justice issues. This group identified a need for a one-stop portal that attorneys can access to find ways to volunteer. The result of their examination was development of a portal called Online Arizona Justice (probono.azbf.org). Dr. Ruegg will keep commission members posted on implementation of the portal.

VII. REPORT ON NON-LAWYER REPRESENTATION ISSUES

Judge Kreamer reports a significant gap between people that cannot afford attorneys and people who do not qualify for free legal aid. This “modest means gap” needs to be addressed and non-lawyer representation is a possible solution.

Judge Kreamer then shared information regarding the Washington State Limited Liability Legal Technician (LLLT) program. He noted the following:

- Among other things, LLLTs obtain relevant facts for clients; inform clients of possible implications of the law; prepare clients for court, perform legal research and draft legal documents. LLLTs are only assisting with family law matters at this time.
- Qualifications for LLLTs include: an Associate’s degree or higher; complete 45 hours of the core curriculum through the ABA legal program; complete 3,000 hours of paralegal

- experience under the supervision of a lawyer; pass the legal technician exam and ethics exam.
- The LLLT board in Washington State oversees and creates standards for the LLLT program.

Judge Kreamer further noted the challenge with the Washington program is there are not enough people willing to qualify and complete the program due to the costs and time involved. It was noted that Oregon is in the process of creating a system similar to Washington's LLLT program; however, Oregon is considering requiring even more hours of training than the Washington program requires.

It is Judge Kreamer's assessment that when looking at legal services and non-legal representation, navigator programs (such as Maricopa County, New York, and in part Arizona's legal document preparer program), have far more success for one-time help situations. Accordingly, he recommended to continue monitoring other states' programs to identify what is and is not working.

VIII. REPORT ON THE TOWN HALL DISCUSSION

Judge Patricia Norris, Court of Appeals Division 1, and Chris Groninger reported on the recent Town Hall held on August 28, 2015:

This Town Hall focused on the Domestic Violence Legal Assistance Project. Attorneys for legal service groups and lay legal advocates from various constituent groups were invited to the Town Hall to discuss certain emerging issues, to make specific recommendations, and to develop metrics on the domestic violence program.

A member inquired as to whether the town hall addressed the issues of domestic violence for undocumented persons. The member's concern was that a number of agencies funded by LSC have restrictions, as LSC does not allow services for undocumented persons. Ms. Groninger indicated the issue was discussed and expects the pilot project to include the presence of an advocate in those areas of the state that have an increase of undocumented victims.

Judge Winthrop suggested following-up by discussing perspectives and recommendations for the program with the judicial community and to report findings back to the commission. The commission members can then discuss and determine if a formal rule or administrative regulation would benefit the lay legal advocate program.

VIII. OTHER BUSINESS

A. Good of the Order/Call to the Public

There was no response to a call to the public.

B. Adjournment

Meeting adjourned at 1:48 p.m.

C. Next Commission Meeting Date

February 17, 2016

10:00 a.m. to 2:00 p.m.

State Courts Building, Conference Room 119A/B

1501 W. Washington

Phoenix, Arizona 85007