

PROMOTING
ACCESS
 TO JUSTICE

Arizona Commission on Access to Justice

Meeting Agenda

February 7, 2018 - 10:00 a.m. to 2:00 p.m.

State Courts Building ♦ 1501 West Washington ♦ Conference Room 119 ♦ Phoenix, Arizona

[ACAJ WEBPAGE](#)  

TIME	AGENDA ITEM	PRESENTER
10:00 a.m.	Welcome and Opening Remarks Introduction of new members Introduction of Chief Justice	<i>Judge Lawrence F. Winthrop, Chair</i> <i>Chief Justice Bales</i>
* Pg. 3	Approval of minutes from November 8, 2017 <input type="checkbox"/> <i>Formal Action/Request</i>	
10:05 a.m.	Chairperson's report	<i>Judge Winthrop</i>
10:20 a.m.	Report on the Justice in Government Project * Pg. 13 <ul style="list-style-type: none"> • First Annual Report of the White House Legal Aid Interagency Roundtable (LAIR) <ul style="list-style-type: none"> ○ Full version ○ Summary 	<i>Karen Lash, American University</i>
10:55 a.m.	Update on Online Dispute Resolution Software * Pg. 33	<i>Marcus Reinkensmeyer,</i> <i>AOC Court Services</i> <i>Division Director</i>
11:35 a.m.	Report from the Self-Represented Litigants in Limited Jurisdiction Courts Workgroup * Pg. 35	<i>Judge Anna Huberman</i>
11:50 a.m.	New Rule Change Petitions * Pg. 37 <ul style="list-style-type: none"> <input type="checkbox"/> <i>Formal Action/Request</i> 	<i>Judge Huberman</i>

The Chair may call items on this Agenda, including the Call to the Public, out of the indicated order. Please contact Kathy Sekardi (602) 452-3253 with any questions concerning this agenda. Persons with a disability may request reasonable accommodations by contacting Julie Graber at (602) 452-3250. Please make requests as early as possible to allow time to arrange accommodations.

11:55 a.m. **Update on Rule Petitions** *Julie Graber, AOC Staff*
* Pg. 47 • **R-16-0022 – Change of Judge in Eviction Actions:**
Adopted on a permanent basis, effective January 1, 2018.

11:55 a.m. **Update on the Public Information and Messaging Workgroup** *Rick DeBruhl*
* Pg. 49 *Heather Murphy*

12:00 p.m. **Update on the AZCourtHelp.org website** *Dr. Kevin Ruegg*
* Pg. 51 *Theresa Barrett, AOC*

☺☺ Lunch Break ☺☺

1:00 p.m. **Report regarding Access to Justice in Tucson and in Federal** *Stacy Butler*
* Pg. 53 **Court**

1:30 p.m. **Report from the Judicial and Attorney Engagement** *Judge Joseph Kreamer*
* Pg. 55 **Workgroup** *Kevin Groman*

1:55 p.m. **Good of the Order / Call to the Public** *Judge Winthrop*

Future meeting dates:
May 23, 2018
September 19, 2018
November 14, 2018

Adjournment

2018 Meeting
May 23, 2018

10:00 a.m. to 2:00 p.m.
State Courts Building, Phoenix, Arizona
Conference Room 119

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**Arizona Commission on Access to Justice
DRAFT MINUTES**

Wednesday, November 8, 2017

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

State Courts Building, 1501 W. Washington Street, Conf. Rm. 119A/B, Phoenix, AZ 85007

Present: Judge Lawrence Winthrop (chair), Kip Anderson (*telephonic*), Judge Janet Barton, Mike Baumstark, Judge Thomas Berning (*telephonic*), Pamela Bridge, Millie Cisneros, Judge Maria Elena Cruz, Judge Anna Huberman, Chris Kelly (*proxy for Michael Jeanes*), Judge Joseph C. Kreamer, Maria Morlacci, John Phelps, Helen Purcell, Janet K. Regner (*telephonic*), Dr. Kevin Ruegg, Anthony Young (*telephonic*)

Absent/Excused: Judge Sean Brearcliffe, Michael T. Liburdi

Presenters/Guests: Allister Adel, Summer Dalton, Kevin Groman, Lara Slifko, Martha McConnell, Judge Paul McMurdie, Heather Murphy, Kay Radwanski, Judge Carol Scott Berry, Dr. Susan Trentham

Administrative Office of the Courts (AOC) Staff: Theresa Barrett, Julie Graber, Kathy Sekardi

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the November 8, 2017, meeting of the Arizona Commission on Access to Justice (ACAJ) was called to order by Judge Lawrence Winthrop, chair at 10:04 a.m.

B. Approval of Minutes

Judge Winthrop presented the September 20, 2017, Arizona Commission on Access to Justice meeting minutes for approval.

Motion: Judge Joseph Kreamer moved to approve the September 20, 2017, meeting minutes, as presented. **Action:** Approved. **Seconded:** Helen Purcell. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Chairperson's Report

Judge Winthrop updated members on access to justice topics.

- Several presentations were made to the Arizona Judicial Council (AJC), Presiding Judges, Phoenix Soroptimists, and In-House Counsel *Pro Bono* Commission.
- Judge Winthrop encouraged members to identify one or two groups where a presentation can be given about the need for meaningful access to justice

and availability of the state income tax credit. A power point presentation, speaking notes, and a tax credit flyer are available for member use.

- Funding for the Legal Services Corporation (LSC) remains uncertain and alternate funding sources are needed.
- The “Last Word” column in the December issue of Arizona Attorney is devoted to the work of the commission and the tax credit.
- The 2017 annual report was released and it has been well-received.
- Step Up to Justice in Tucson was awarded first prize and \$15,000 by the McGuire Center for Entrepreneurship in its first Social Impact Pitch Competition.
- The University of Arizona is hosting an Access to Justice Project Launch on November 15 with students presenting proposed solutions to reduce or eliminate access to justice barriers created by domestic violence, minor guardianship, and reentering society following incarceration.

B. Update from the Committee for an Interim Review of the Child Support Guidelines

Judge Paul McMurdie, Court of Appeals, Division 1, and chair of the Committee for an Interim Review of the Child Support Guidelines, provided some background information regarding the child support guidelines review process, and presented proposed recommendations that incorporate changes to state law, federal regulations, and case law before the 2019 quadrennial review. This interim review is very narrow in scope and only covers non-controversial changes. An online public comments forum was created and a public hearing was held for transparent vetting and feedback. The proposed recommendations will be presented on an expedited basis to the Arizona Judicial Council (AJC) at the December meeting and become effective April 1, 2018. The Committee on Superior Court voted to support the proposed recommendations. Judge McMurdie reviewed the issues that were addressed.

1. The increase in the Arizona minimum wage impacts the self-support reserve, which could result in a 37 percent increase in child support.
2. There is new federal guidance on the imputation of income.
3. There is new federal guidance on incarceration and the ability to pay.
4. The child support order should be rounded to the nearest dollar.
5. There was a global change of terminology to make the guidelines more user-friendly.
6. Additional instructions and an example were added for third-party caregivers.
7. Clarification for calculating appropriate child support was added to those situations when there are multiple children with different parenting plans.
8. Propose that a child support order should not be entered if it is less than the current support payment clearinghouse fee.

Member comments

- Do the guidelines address situations where the remarrying parent is more affluent than the other? The guidelines are based on the federal requirements.
- Was this review sent to the State Bar of Arizona's Family Law section? Why has this review been brought to ACAJ? Judge McMurdie clarified that the review was sent for comments to the State Bar of Arizona. The committee was asked to make a presentation to ACAJ because 80 percent of family law litigants are self-represented litigants navigating the family law courts.
- In 2(H), there is a reference to "physical custody." Should the term be changed to "parenting time"? Yes, the change will be incorporated.
- At the time of sentencing, notification should be given to the parent who is going to prison that there is an option to file a petition to modify child support due to a change in circumstance; otherwise, child support amounts will continue to accrue during incarceration.

Motion: Judge Joseph Kreamer moved to support the proposed child support guidelines recommendations, as presented. **Action:** Approved. **Seconded:** Judge Janet Barton. **Vote:** Unanimous.

C. Report from the Committee on the Impact of Domestic Violence and the Courts

Judge Carol Scott Berry, Phoenix Municipal Court, and chair of the CIDVC Orders, Enforcement and Access Workgroup provided background information on this project, which was originally referred to the Committee on the Impact of Domestic Violence and the Courts (CIDVC) by ACAJ. The project was intended to provide greater access to protective orders for victims of domestic violence to prevent tragedies, remove obstacles, provide safe locations, and to assist Arizona courts in establishing protocols for remote protective orders.

The workgroup developed procedures for using remote access technology to allow domestic violence victims to participate by video in *ex parte* protective order hearings in the form of guides, which provide information about safe Internet communications and transfer of documents, and set out the roles for law enforcement, advocates, and the court. Courts are encouraged to take the lead, determine community resources, establish safe communications between the courts and community resources, and between courts and law enforcement, and establish a law enforcement protocol. To address the needs of all courts, remote processes from Phoenix Municipal Court and Graham County Justice Court were combined. During this project, Judge Wyatt Palmer from Graham County Justice Court, demonstrated this procedure and established in two months a remote process between his court and the Graham County Safe House. Judge Berry identified some issues that may cause a delay in the process, including availability of judges and interpreters. She also reported that CIDVC is developing a plan to

inform courts, advocates, and law enforcement agencies about the guides and to promote use of these procedures.

Member comments:

- Who can an agency contact about establishing a remote petition process? The presiding judge at any court.
- When a court takes the lead and selects an agency, it should look at agencies geographically to cover the most ground.
- Has the procedure been shared with tribal courts? That is a good idea that will be shared with the AOC Legal Department.
- Has there been an increase in filings since the remote procedure has been in place? The remote procedure has not been promoted.
- It is a challenge to meet interpreter demand because interpreters must be certified court interpreters, not family members.
- When filling out the petition, which system is the petitioner using? Petitions are being completed by hand with the advocate and faxed back and forth. A member suggested using the domestic violence prompt system and transmitting into the judge's queue, which would also help law enforcement.
- Concerns were raised that if buy-in is not obtained from all Maricopa courts, workload will increase for a specific court.
- A member suggested moving ahead and presenting to the Committee on Limited Jurisdiction Courts to see if the process would work even if it is only on a pilot basis in a few locations.

D. In-House Counsel *Pro Bono* Commission

Kevin Groman, In-House Counsel *Pro Bono* Commission, provided background information regarding the In-House Counsel *Pro Bono* Commission and discussed efforts to breakdown impediments, such as time is not their own, malpractice insurance protection, and double certification issue; to get the right people involved; and to identify opportunities that are good for the attorney's skill sets.

Judge Winthrop commended the synergy involved when access to justice can be promoted across the business community.

E. Update on Online Dispute Resolution Software

Summer Dalton, AOC manager of the eCourt Services Unit, provided an update on the progress of online dispute resolution (ODR) software. The AOC is moving toward a proof of concept with the goal to run three pilot programs simultaneously. Request for bids are due November 17, 2017, and once a vendor is selected, pilot groups will be identified for family law (Yuma County Superior Court), small claims and traffic case types.

Judge Winthrop reminded members that ODR provides more efficiency and a higher level of participation because it allows the user to manage a case outside

the courtroom from a computer or mobile device when it is convenient for the user.

Member comments:

- Maricopa County Superior Court is considering ODR for post-decree family law and civil debt collection case types.
- A member inquired whether states are using ODR for eviction cases. Ms. Dalton is not aware of any at this time.

F. Report from the Self-Represented Litigants in Limited Jurisdiction Workgroup

Judge Anna Huberman reported on the increased web traffic to the Arizona Judicial Branch's eviction-related webpages, which were redesigned with the user in mind.

- As of September 5, 2017
 - 169 page views and 129 unique page views to the Eviction Actions webpage (where new eviction forms were posted as recommended forms)
 - 59 page views and 46 unique page views to the Legal Info Sheets webpage
- As of November 6, 2017
 - 519 unique page views to the Eviction Actions webpage
 - 218 unique page views to the Legal Info Sheets webpage

The workgroup's next project is to develop eviction video content using GoAnimate software. Scripts have been assigned to workgroup members with a deadline of January 1, 2018, and the goal is to produce and post five or six new videos by April 2018 to AZCourtHelp.org and the Arizona Judicial Branch website.

G. Update on Rule Petitions

Julie Graber, AOC staff, reported on the progress of rule petitions at the August Rules Agenda.

- **R-16-0040** – Mandatory Eviction Action Forms: Continued until the December Rules Agenda.
- **R-17-0020** – Stipulated Judgments in Eviction Actions: Adopted and effective January 1, 2018.
- **R-16-0022** – Change of Judge in Eviction Actions: Continued until the December Rules Agenda.
- **R-17-0016** – Computing Time in Eviction Actions: Adopted and effective January 1, 2018.
- **R-17-0011** – In-House Counsel Clean-Up: Adopted and effective January 1, 2018.
- **R-16-0047** – In-House Counsel Clean-Up: Adopted and effective January 1, 2018.

H. Update on Public Information and Messaging Workgroup

Heather Murphy reminded members about the workgroup’s focus areas, which include promoting AZCourtHelp.org, providing outreach and presentations to the community, and developing opportunities for partnerships. Ms. Murphy reported on the workgroup’s ongoing efforts to develop a monthly series on various legal information topics on KJZZ to mark the 50th Anniversary of the Federal Public Broadcasting Act, and to develop a podcast series moderated by Supreme Court Justices with topics in keeping with the editorial calendar.

Ms. Murphy noted that a statewide memorandum was issued to court administration to add links to AZCourtHelp.org on court websites. A letter will also be drafted to mark the anniversary of AZCourtHelp.org’s launch. She requested that members contact her with stories that would be good to pitch to the media in keeping with the editorial calendar.

I. Update on the AZCourtHelp.org website

Dr. Kevin Ruegg updated members on the progress of the AZCourtHelp.org website. She reported that there have been 28,835 unique users since the launch.

- The website can house content and forms from smaller courts who do not have a website presence.
- New content has been added regarding evictions.
- Fillable fee waiver and deferral forms have been posted.
- Parenting plans have been populated.
- New PowToons videos are being finalized regarding evictions, the cans and cannots of court, to hire or not hire a lawyer, and preparing for court.
- There are two new chat operators: Yavapai and Yuma. The chat function has changed its hours to 9:00 a.m. to 2:00 p.m. when there is the most traffic.

J. Report from Inter-Governmental Collaboration Workgroup

Judge Winthrop reported on the workgroup’s next steps based on input received from the Governor’s Office. He identified two main areas of focus: 1) working with the executive branch to reduce barriers for those reentering the community and workforce to meet employment shortages in construction and trucking; and 2) supporting the Governor’s challenge to do more for domestic violence victims. Judge Winthrop suggested having Karen Lash attend the February 7, 2018 commission meeting to discuss interagency collaboration and the multi-state pilot project.

K. Report from the Judicial and Attorney Engagement Workgroup

Judge Joseph Kreamer noted that the workgroup is meeting on November 16, 2017. Dr. Kevin Ruegg discussed initial findings regarding the 2017-2018 legal needs survey and the various ways information is being gathered to obtain the most complete perspective on the needs and solutions. Dr. Ruegg reminded members that the survey results will help set specific priorities.

L. Report from County Bar Associations

Dr. Susan Trentham, Pima County Bar Association, and Allister Adel, Maricopa County Bar Association, highlighted several bar programs and discussed their respective bar's interests in access to justice. The presenters welcomed the opportunity for Judge Winthrop to come speak at their Foundations about the commission's work and access to justice issues.

M. Pro Bono Survey from the American Bar Association

John Phelps and Rick DeBruhl compared national and state results from the *Pro Bono* Survey conducted by the American Bar Association (ABA). The presenters noted that the ABA defined *pro bono* very broadly in the survey. They also discussed cultural and statutory barriers to performing *pro bono* hours. Highlights included:

- 39 percent of Arizona attorneys and 48 percent nationally reported not performing any *pro bono* hours.
- 72 percent of Arizona attorneys and 80 percent nationally performed less than 50 hours per year.
- Attorneys under the age of 29 do the least *pro bono* while attorneys over 65 do the most. Women do more *pro bono* early in their career while men do more later in their career.
- The top three practice areas for doing more *pro bono* include family law, criminal law, and estate/probate.
- The top three reasons for limited *pro bono* include lack of time, family and personal concerns, and lack of skills, while CLE credit, judge solicitation, and limited scope are reasons to do more.
- Limited scope representation represents the biggest area for growth opportunity but there are often questions regarding the ethical aspects of limited scope representation.

Member comments

- A possible area of improvement includes educating public attorneys about what they can do and how to do it, which should then be followed up with office leadership.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

None present.

Dr. Kevin Ruegg reported that the Foster Care Review Board is experiencing an extreme shortage of volunteers to serve on county boards.

B. Next Meeting Date
Wednesday, February 7, 2018
10:00 a.m. to 2:00 p.m.
State Courts Building, Room 119
1501 W. Washington Street
Phoenix, AZ 85007

Adjourned at 1:58 p.m.



Support Access to Justice through the Arizona Charitable Tax Credit

Roughly 25% of Arizonans have an income stream that qualifies them for free civil legal aid services. But, for every 3 people in Arizona who realize they have a legal problem and contact a legal aid office, **2 must be turned away because of a lack of resources.**



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Charitable Tax Credit donations directly reduce the amount you owe and let you direct where your funds go!

You can help more people receive services by designating where \$400 (single) or \$800 (married filing jointly) of your taxes owed go! **Give to an approved legal aid agency** (see other side) and the amount you give will reduce the tax you owe.

That simple.



For more information on the Charitable Tax Credit visit the Arizona Department of Revenue at www.azdor.gov. This credit is in addition to the school tax credits. Please consult your tax advisor for details

2017-2018 Participating Civil Legal Aid Partners
Approved by the Arizona Department of Revenue

Arizona Justice Project

Arizona Legal Women and Youth Services

Christian Legal Aid of Arizona

Community Legal Services, Inc.

Defenders of Children

DNA People's Legal Services

Florence Immigrant and Refugee Rights Project

Never Again Foundation

Southern Arizona Legal Aid, Inc.

Step Up To Justice

Tucson Family Advocacy Program (SALA)

William E. Morris Institute for Justice

I am joining the Campaign– Justice with Arizona Charitable Tax Credit!

Donate online at www.azflse.org/legalaid

Donate by April 15th and you'll have the added satisfaction of knowing your money is helping Arizona's working poor get the legal assistance they need to solve housing, health care and benefits challenges. You no longer need to itemize deductions to claim this credit!

Arizona Commission on Access to Justice

Meeting Date: February 7, 2018	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Report on the Justice in Government Project
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From: Karen Lash, American University

Presenters: (Same)

Discussion: Ms. Lash will discuss the Justice in Government Project and how states can use approaches developed by the White House Legal Aid Interagency Roundtable (LAIR) and adapt them to state government. Arizona is one of several states participating in a pilot project to identify those state programs that help low-income and other vulnerable populations that currently do not include legal aid as partners, but could improve effectiveness if they did. Often policymakers are not aware that many existing federal block grants administered by the state expressly allow – and often encourage -- including civil legal aid services among the social services provided.

Recommended motion: None.

Justice in Government Workgroup
Summary and Next Steps

November, 2017

Thank you so much for participating in an energizing and thought-provoking meeting about how we might work together to further shared goals as it relates to access to justice, improving state government and advancing the economic interests of Arizona.

Over the last month, we have identified specific issues and potential collaborative projects where strategically increasing civil legal aid opportunities and resources can advance Governor Ducey's top priorities, and to document gaps in existing services that currently hinder progress towards achieving those policy goals. As noted in our meeting, two specific examples include: 1) helping job seekers with criminal records secure employment, which in turn can assist statewide economic growth by reducing qualified worker shortages in key industries; and 2) taking steps to break the cycle of violence and improve public safety by helping victims of domestic violence and other crimes. Intergovernmental collaboration to address both of these issues not only advances Governor Ducey's priorities but also increases access to justice.

1. Removing obstacles to employment for jobseekers with criminal records.

"I'm announcing an effort of the Governor's Office, to engage the faith and non-profit communities in being advocates for our citizens leaving prison and transitioning back into society."¹

Arizona has identifiable worker shortages in several industries, including construction and trucking.² A recent article reports that about 75 percent of Arizona contractors polled say they are having a "hard time" filling hourly construction jobs, and one of the contributing factors is information they discover in a background check.³

Having any sort of criminal record can be a significant barrier to entry/re-entry into the work force. National studies indicate that about 1 in 3 American adults have a criminal record.⁴ An estimated 1.5 million Arizona adults have arrests or convictions on their records.⁵

¹ Governor Doug Ducey, State of the State Address (Jan. 9, 2017).

² See *2017 Workforce Survey Results: Arizona*, The Associated General Contractors of America (2017), https://www.agc.org/sites/default/files/Files/Communications/2017_Workforce_Survey_Arizona.pdf; Casey Kuhn, *Construction Skilled Labor Shortage Persists in Arizona*, KJZZ 91.5 (Aug. 30, 2017), <https://kjzz.org/content/526322/construction-skilled-labor-shortage-persists-arizona>; Ryan Randazzo, *Trucker Shortage Means Thousands of Available Jobs*, AZCENTRAL (Nov. 27, 2015), <http://www.azcentral.com/story/money/business/jobs/2015/11/29/trucker-shortage-hiring-jobs-employment-trucking-arizona/75674426>.

³ See Catherine Reagor, *Arizona Doesn't Have Enough Construction Workers; Contractors Paying Higher Wages*, AZCENTRAL (Aug. 29, 2017), <http://www.azcentral.com/story/money/business/jobs/2017/08/29/arizona-shortage-of-construction-workers-contractors-paying-higher-wages/609418001>; Kuhn, *supra* note 2.

⁴ See Jo Craven McGinty, *How Many Americans Have a Police Record? Probably More Than You Think*, WALL ST. J. (Aug. 7, 2015), <https://www.wsj.com/articles/how-many-americans-have-a-police-record-probably-more-than-you-think-1438939802>.

⁵ Ariz. Exec. Order No. 2017-07 (Nov. 6, 2017) (The establishment of Arizona as a Second Chance Employer)

Employment is one of the most significant indicators of success in decreasing recidivism, helping families become self-sufficient and increasing public safety.⁶ In the hiring process, however, many employers have access to and routinely use data mining practices to check government records, which in turn can reveal past convictions, even those from many years earlier and/or concerning what may simply be a youthful “mistake”: an often remote and relatively minor, victimless offense, including unresolved traffic and parking tickets. The availability of such records can make it very difficult—if not impossible—for many people to secure employment,⁷ or even equal access to housing. Rigid hiring protocols, particularly in the public sector, not only exacerbate worker shortage problems for employers, but also frustrate the “second chance” opportunity our justice system presumes is available for those who have paid their debt to society, and the policy objectives Governor Ducey seeks to advance.

The Governor’s Office has recently taken two significant steps to address this issue. First, a preliminary survey to determine individual agency application/hiring practices concerning use of prior conviction data was sent to those agencies involved in issuing occupational licenses. If the agency could not identify a legitimate state interest in seeking such information, the Governor’s staff indicated appropriate action would be taken to eliminate requiring the applicant to provide such information. Second, the Governor has now issued Executive Order 2017-17, establishing Arizona as a “Second Chance Employer.” Unless required by existing state or federal law, the Arizona Department of Administration and the various state agencies involved in the hiring

⁶ *Id.*

⁷ Jahna Berry, *Criminal Pasts Haunt Desperate Job Seekers*, THE ARIZ. REPUBLIC (June 13, 2012), <http://archive.azcentral.com/arizonarepublic/news/articles/20120613criminal-pasts-haunt-desperate-job-seekers.html>.

process are prohibited from requiring an applicant to disclose a criminal record, either in the written application or in an initial interview. Thereafter, as appropriate, the potential state employer can inquire about the existence of such a record. This approach is consistent with equal access to justice. Strengthening “second chance” opportunities for these job applicants not only fulfills the presumptive rehabilitation promise of our justice system, but also helps employers fill worker shortages and expand growth in our economy.

If otherwise qualified Arizonans can’t get jobs, they can’t meet the financial needs of their families and, as noted above, the likelihood of recidivism is increased. In turn, the burden on government to provide public safety, emergency food, shelter and medical care is likewise increased. Such outcome also impedes Governor Ducey’s twin economic policy goals of growing the economy and helping qualified people with records secure meaningful employment. At the same time, employers are also missing out on a huge pool of prospective qualified employees, which is a barrier to solving unmet hiring needs. Ironically, some studies even show that, by comparison, people with criminal records can be *more* productive employees.⁸

Arizona does not allow expungement of criminal convictions; however, the law does provide that a court may, for good cause, vacate or set aside a criminal conviction. The majority of people eligible for some version of clearing, sealing, or setting aside their criminal record, however, fail to do so either because they aren’t aware of what the law allows, or they don’t know how to apply for such assistance. Madeline Neighly of the nonpartisan Council of State Governments Justice Center

⁸ Lewis Lustman, *Could a Job Candidate with a Criminal Record Turn out to be Your Best Employee?*, HIRERIGHT (July 18, 2016), <http://www.hireright.com/blog/2016/07/could-a-job-candidate-with-a-criminal-record-turn-out-to-be-your-best-employee>.

explained in a recent televised segment that “[a] lot of people might be eligible [for an expungement], but they might not know They might not have access to the paperwork or someone to walk them through the process. They usually need civil legal aid.”⁹

While the Governor has not yet explicitly identified setting aside convictions in appropriate cases as a specific policy goal, it is uncontested that assisting the many individuals who are eligible for such a set aside would significantly reduce barriers to potential employment, and thus advance not only equal access to justice but also the economic goals identified by the Governor’s Office.

Community Legal Services has already started offering community clinics to assist Arizona residents in this regard. In 2016 alone, CLS helped 159 individuals with this process. So far this year, CLS has helped over 400 individuals either learn about the process or has actually assisted them in seeking to vacate or set aside a criminal conviction. In addition, over the last 19 months, volunteer lawyers have answered 142 questions dealing with qualification and the process for securing a set aside of a prior conviction. This nascent effort by Arizona’s legal aid and private attorney volunteer community demonstrates that, with only minimal outreach, the demand for legal help with past criminal records is growing. The data highlights the critical assistance Arizonans need to obtain set asides, and the value of legal aid in helping our citizens move forward with securing a productive future.

With proper support, Arizona’s civil legal aid programs can help achieve the Governor’s goals to address the worker shortages and assist qualified job applicants by helping those eligible obtain a criminal record

⁹ Rebecca Beitsch, *Here’s Why Many Americans Don’t Clear Their Criminal Records*, PBS (June 8, 2016), <http://www.pbs.org/newshour/rundown/heres-why-many-americans-dont-clear-their-criminal-records>.

set aside; by helping remove errors or duplications from “rap” sheets; by helping to reinstate a revoked or suspended driver’s license; by removing potential barriers to applying for an occupational license; and by helping modify child support orders consistent with ability to pay and avoiding a prospective employer’s need to implement wage garnishment.

It should also be noted that providing legal help to citizens as they try to work through the administrative process or court procedures also reduces the communication issues and inefficiencies associated with applicants attempting to represent themselves in any of these proceedings.

Next steps: We propose exploring potential collaborations between Arizona’s civil legal aid programs and any of the 47 local offices making up the Arizona@Work state workforce development network. This could be particularly appropriate in light of studies that show the connection between legal help that mitigates the impact of a criminal record and improvement in job prospects,¹⁰ as well as the recent U.S. Department of Labor Workforce Innovation and Opportunity Act (WIOA) rule that not only allows—but in fact expressly urges—states to add legal aid to the supportive services “necessary to enable an individual to participate” in WIOA activities.¹¹ A pilot program of this kind has the added benefit of providing yet another innovative workforce solution to

¹⁰ See, e.g., Jeffrey Selbin et al., Unmarked? Criminal Record Clearing and Employment Outcomes, 108 J. CRIM. L. & CRIMINOLOGY 1 (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2486867.

¹¹ Workforce Innovation and Opportunity Act, 81 Fed. Reg. 56072, 681.570 (Aug. 19, 2016), <https://www.gpo.gov/fdsys/pkg/FR-2016-08-19/pdf/2016-15975.pdf>. The Department of Labor’s preamble to the final rule implementing titles I and III of WIOA states, the Department concurs “that legal aid can uniquely address certain barriers to employment,” as enumerated by the commenter. Therefore, the Department has included legal aid services under § 680.900 and made a corresponding change to the list of supportive services allowable in the youth program in § 681.570. *Id.* at 56158.

the existing excellent services and resources the state now provides for job seekers to identify, prepare for and keep the right job.

We also note that an excellent opportunity exists in Arizona to collaborate with and enhance other potential avenues of assistance concerning job seekers with criminal records. For example, the Clean Slate Clearinghouse—a new DOJ and DOL funded tool created by the Council for State Governments—helps support juvenile and adult criminal record clearance around the country by giving policymakers the information they need to compare their state’s record clearance policies to those of other states and to learn about best practices.¹² For example, Indiana has recently experienced good results utilizing this approach. It might be useful to study systemic changes undertaken in Indiana and other states that could likewise help further the Governor’s stated goals concerning providing a meaningful “second chance” while also addressing employment and economic development issues.

2. Break the cycle of violence and improve public safety by helping victims of domestic violence.

“I encourage Arizonans to stand with me as we send the unwavering message that domestic violence can stop.”¹³

The Arizona Coalition to End Sexual and Domestic Violence website documents the tragic reality that, in Arizona, someone dies in a domestic violence related incident every three days. Governor Ducey in his 2016 “Light Arizona Purple” remarks noted that domestic violence in

¹² See *About the Clean Slate Clearinghouse*, CLEAN SLATE CLEARINGHOUSE, <https://cleanslateclearinghouse.org/about> (last visited Nov. 8, 2017).

¹³ Governor Doug Ducey, *2017 Lighting Arizona Purple*, GOVERNOR’S OFFICE OF YOUTH, FAITH AND FAMILY, <http://domesticviolence.az.gov> (last visited Nov. 8, 2017).

Arizona affects one in four women and one in seven men. He further noted:

*Every 44 minutes in Arizona, one or more children bears witness to domestic violence. Every 36 minutes in Arizona, a police officer responds to a domestic violence dispute where a child is present. Every 19 minutes in Arizona, an arrest is made as a result of a domestic violence incident. Every 12 minutes in Arizona, a domestic violence victim calls the Department of Economic Security to request emergency shelter, information, or a referral. And every five minutes in our state, a law enforcement officer responds to a domestic violence call.*¹⁴

Requests for domestic violence-related legal assistance far exceed current legal aid capability, particularly in the rural areas of our state. The gap between the need for and timely access to legal help is especially troubling in light of research that shows having access to legal assistance is the most critical factor in breaking the cycle of violence.¹⁵ And, without question, the social costs of domestic violence extend far beyond the private costs borne by victims and their immediate families. When victims have help obtaining protective orders, and securing child

¹⁴ Governor Doug Ducey, *2017 Lighting Arizona Purple*, OFFICE OF THE GOVERNOR DOUG DUCEY (Oct. 3, 2016), <https://azgovernor.gov/governor/news/2016/10/remarks-governor-ducey-lights-arizona-purple>.

¹⁵ See, e.g., Denise A. Grab & Jennifer S. Rosenberg, *Supporting Survivors: The Economic Benefits of Providing Civil Legal Assistance to Survivors of Domestic Violence*, INSTITUTE FOR POLICY INTEGRITY (July 2015), <http://policyintegrity.org/files/publications/SupportingSurvivors.pdf>; Amy Farmer & Jill Tiefenthaler, Explaining the Recent Decline in Domestic Violence, https://www.cga.ct.gov/jud/tfs/20160729_Task%20Force%20to%20Improve%20Access%20to%20Legal%20Counsel%20in%20Civil%20Matters/Reference%20Materials/Explaining%20the%20Decline%20in%20Domestic%20Violence.pdf.

custody and child support, violence is reduced and financial hardships avoided. Public assistance dollars are conserved by reducing demand on emergency shelter, financial assistance and health care services.

Additionally, it is well documented that domestic violence and its collateral consequences directly impact the business community. As reported by *Forbes* magazine, not only does domestic violence cause personal suffering, but it also costs more than \$8 billion annually in reduced productivity, increased absenteeism, and higher medical costs.¹⁶

By a significant margin, victims of domestic and/or family violence are the largest category of individuals receiving services from Arizona Crime Victims Fund grantees. In Arizona's most recent report to the U.S. Department of Justice, the number of "Domestic and/or Family Violence" victims is more than 7 times greater than the number of burglary victims and more than 17 times the number of victims of DUI/DWI incidents.¹⁷ Nevertheless, only a fraction of the Domestic and/or Family Violence victims served receive legal help. Without ready access to legal assistance, most victims of domestic violence across Arizona are forced to represent themselves.

As reported in our work group meeting, Arizona has for the last 20 years been a national leader in providing legal services for domestic violence victims. The program success has been limited only by the financial resources available. The most recent Arizona Department of Economic Security fiscal year report for the collaborative Domestic

¹⁶ Robert Pearl, M.D., *Domestic Violence: The Secret Killer That Costs \$8.3 Billion Annually*, *Forbes* (small caps) (Dec. 5, 2013), <https://www.forbes.com/sites/robertpearl/2013/12/05/domestic-violence-the-secret-killer-that-costs-8-3-billion-annually/#343a60264681>.

¹⁷ *AZ Annual State Performance Report: Oct. 1, 2015 – Sept. 30, 2016*, VICTIM ASSISTANCE FORMULA GRANT PROGRAM (last modified Feb. 17, 2017), <https://ojp.gov/ovc/grants/VOCA-Victim-Assistance-FY-2016-State-Performance-Report/az.pdf>.

Violence Legal Assistance Project (DVLAP) demonstrates the impact that funding legal services can make in the lives of Arizona's domestic violence victims. In that fiscal year alone, and leveraging an approximate \$1 million grant, the DVLAP provided legal assistance for nearly 9,000 victims across the state. At a minimal cost of about \$122 per person, DVLAP provided the critical first step in helping these victims begin to rebuild their lives. The legal assistance provided went beyond the immediate needs of protection orders, and extended to the multiple other areas of daily life where a crime victim needs to reestablish his or her life. Over 50% of the legal assistance provided related to family law issues; however, there were over 700 cases that also had issues involving protecting individual rights; over 300 cases related to consumer protection issues; nearly 400 cases relating to obtaining or restoring public benefits; over 600 cases related to housing issues; and over 300 clients had issues dealing with obtaining or restoring access to health care. Victims of domestic violence also had issues with access to education, juvenile law or employment, and legal aid helped over 100 clients in each category resolve those legal challenges. Even with these impressive statistics, we know that thousands more Arizonans in need go without essential legal help.

Arizona's track record over the last 20 years in providing legal aid services for victims of domestic violence, even with limited funding, demonstrates the actual and potential impact that providing legal services can have for these victims and in the community at large.

Next steps: We propose exploring statewide legal aid victim services models that could close the gaps and ensure legal help is available to crime victims throughout Arizona. Arizona's distributed share of the U.S. Department of Justice fiscal year 2017's Crime Victims Fund is nearly \$40 million, a dramatic increase over the amount the

state received just a few years ago.¹⁸ Tapping into even a fraction of those funds, combined with the Justice Department's new final rule encouraging expanded legal assistance to crime victims,¹⁹ present a unique opportunity to ensure statewide critically-needed legal aid services to victims of domestic violence, and also provide a collaborative platform to assist other victims of crime in Arizona, including children, the elderly, disabled individuals and veterans.

Thank you for your willingness to participate in this collaborative effort. We will soon be reaching out to each of you to set a convenient date and time for our next meeting.

¹⁸ *2017 Crime Victims Fund Allocations*, OVC FORMULA CHART (2017), <https://ojp.gov/ovc/grants/Crime-Victims-Fund-Assistance-Allocations-2017.pdf>.

¹⁹ U.S. DEP'T OF JUSTICE, NEW VOCA ASSISTANCE RULE MEANS MORE SERVICES, MORE FUNDS FOR VICTIMS (Dec. 31, 2016), <https://www.justice.gov/archives/opa/blog/new-voca-assistance-rule-means-more-services-more-funds-victims>.



EXPANDING ACCESS TO JUSTICE, STRENGTHENING FEDERAL PROGRAMS

FIRST ANNUAL REPORT OF THE WHITE HOUSE LEGAL AID INTERAGENCY ROUNDTABLE

NOVEMBER 2016



White House Legal Aid Interagency Roundtable Members

Administrative Conference of the United States (ACUS)
Consumer Financial Protection Bureau (CFPB)
Corporation for National and Community Service (CNCS)
Equal Employment Opportunity Commission (EEOC)
Federal Communications Commission (FCC)
Federal Trade Commission (FTC)
Legal Services Corporation (LSC)
National Science Foundation (NSF)
Office of Management and Budget (OMB)
Social Security Administration (SSA)
U.S. Agency for International Development (USAID)
U.S. Department of Agriculture (USDA)
U.S. Department of Education (ED)
U.S. Department of Health and Human Services (HHS)
U.S. Department of Homeland Security (DHS)
U.S. Department of Housing and Urban Development (HUD)
U.S. Department of the Interior (DOI)
U.S. Department of Justice (DOJ)
U.S. Department of Labor (DOL)
U.S. Department of State (State)
U.S. Department of the Treasury (Treasury)
U.S. Department of Veterans Affairs (VA)

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EXECUTIVE SUMMARY

This Nation was founded in part on the promise of justice for all. Equal access to justice helps individuals and families receive health services, housing, education, and employment; enhances family stability and public safety; and secures the public's faith in the American justice system. Equal access to justice also advances the missions of an array of Federal programs, particularly those designed to lift Americans out of poverty or to keep them securely in the middle class. But gaps in the availability of legal aid—including legal representation, advice, community education, and self-help and technology tools—for America's poor and middle class threaten to undermine the promise of justice for all and constitute a crisis worthy of action by the Federal Government.

*~President Barack Obama
Presidential Memorandum Establishing WH-LAIR*

Civil legal aid—free legal assistance to low-income and underserved individuals—increases access to justice and alleviates poverty and inequality. With legal aid, a woman may obtain a protection order and escape domestic violence, a homeless veteran may secure stable housing, and a young adult may get their old criminal record expunged and get a job. Though not always appreciated or utilized, legal aid is a critical element of the Federal government's efforts to reduce poverty, protect the most vulnerable among us, and strengthen our communities.

Recognizing the power of legal aid, the White House Legal Aid Interagency Roundtable (WH-LAIR) agencies have been working together since 2012 to integrate legal aid into myriad Federal programs, policies, and initiatives. Co-chaired by the Attorney General and the Director of the White House Domestic Policy Council and staffed by DOJ's Office for Access to Justice, WH-LAIR has engaged Federal grantees, legal aid providers, and Federal agency staff to raise awareness about how legal aid advances Federal priorities. The impressive results include clarifying the scope of dozens of Federal grant programs to include the provision of legal aid that further program goals in the areas of health care, domestic violence, citizenship, homelessness, reentry, and more; developing new training and technical assistance to grantees and legal aid providers; and generating new research about the impact of civil legal aid. WH-LAIR also launched the [WH-LAIR website](#) and [Toolkit](#), online resources that provide information about civil legal aid as well as Federal funding opportunities and other resources.

In September 2015, President Obama signed a Presidential Memorandum that formally established the interagency collaboration as a White House initiative. The Memorandum expanded WH-LAIR's mandates to include advancing evidence-based research and data collection of civil legal aid and indigent defense, promulgating best practices, and assisting the United States with implementing Goal 16 of the United Nation's 2030 Agenda for Sustainable Development—which calls on countries to ensure "equal access to justice for all."

This Report is WH-LAIR's first annual report to the President. Part I provides an overview of civil legal aid and WH-LAIR; Part II details WH-LAIR agencies' efforts to improve their programs by incorporating legal aid; and Part III outlines WH-LAIR's plans for the future.

The Report demonstrates that the 22 members of WH-LAIR have taken significant steps to integrate civil legal aid into their programs designed to serve low-income and vulnerable individuals, where doing so can improve their effectiveness and increase access to justice. The strategies that agencies deploy to advance WH-LAIR's mission largely fall into four categories: 1) leveraging resources to strengthen Federal programs by incorporating legal aid; 2) developing policy recommendations that improve access to justice; 3) facilitating strategic partnerships to achieve Federal enforcement and outreach objectives; and 4) advancing evidence-based research, data collection, and analysis. WH-LAIR agencies' efforts in these areas include:

Leveraging resources to strengthen Federal programs by incorporating legal aid

- HHS clarified that legal aid is included in the range of "enabling services" that HHS-funded health centers can provide to meet communities' primary care needs.
- HUD funds fair housing enforcement organizations, including legal aid programs, to assist people who believe they have been victims of housing discrimination.
- Treasury's Internal Revenue Service (IRS) supports legal clinics that provide representation for little to no cost for low-income individuals seeking to resolve disputes with IRS to ensure fairness and integrity in the tax system.
- SSA, ED, and HHS provide legal aid to people with disabilities through the Protection and Advocacy System (P&A) programs and also fund technical assistance to P&A programs providing legal aid.
- CNCS and DOJ fund legal aid lawyers and staff through Elder Justice AmeriCorps to help elder abuse victims and justice AmeriCorps to assist unrepresented immigrant children who have crossed the U.S. border without a parent or legal guardian.
- DOI helps support tribal courts and provides free trainings to tribal judges, prosecutors, and defenders—which include legal aid providers—to strengthen tribal justice systems.

Developing policy recommendations that improve access to justice

- ACUS and DOJ co-chair WH-LAIR's Working Group on Self-Represented Parties in Administrative Hearings, which explores best practices for administrative hearing procedures involving self-represented individuals to increase fairness, accuracy, and efficiency.
- DOL issued the 2016 Workforce Innovation and Opportunity Act final rules, which list legal aid among the services American Job Centers can provide to help youth, adults, and dislocated workers secure employment.
- HHS's Office of Child Support Enforcement outlines opportunities to support self-help strategies for certain legal needs in its proposed rule to modernize the nation's child support program.

- VA issued a directive to advise VA medical facilities on how to refer homeless veterans to legal aid providers for assistance with legal matters, such as child support, outstanding warrants and fines, and to provide office space to legal service providers when possible.
- State, USAID, and DOJ are promoting the creation of the first global network of criminal legal aid providers.

Facilitating strategic partnerships to achieve enforcement and outreach objectives

- FTC developed the Legal Services Collaboration, a nationwide partnership with legal aid, to inform FTC's law enforcement priorities and allow the agency to alert local communities about scams and respond to local concerns.
- CFPB collaborates with legal aid to broaden the reach of the Your Money, Your Goals Toolkit, which helps individuals and families work through short- and long-term financial issues.
- DOJ, DOL, and FTC credit their collaborations with legal aid for enforcement actions ending discriminatory school discipline practices, ensuring language access for injured low-income workers and court users, and helping to shut down illegal practices by car dealers and bogus "work-at-home" scammers.
- EEOC and DOL are working to strengthen their respective collaborative partnerships with civil legal aid providers who can inform the agencies of relevant issues to enhance their enforcement and outreach activities.

Advancing evidence-based research, data collection, and analysis

- DOJ chairs WH-LAIR's Working Group on Access to Justice Indicators and Data Collection, which works to identify national indicators to track the United States' progress in achieving access to justice consistent with Goal 16 of the 2030 Agenda for Sustainable Development.
- NSF sponsored a workshop to advance practitioner-scholar partnerships on access to justice-related research projects, and DOJ, in collaboration with NSF, hosted a Civil Legal Aid Research Workshop to help create a research agenda on Federal priorities at the intersection of civil legal aid, public safety, and criminal justice.
- VA surveys veterans, VA staff, and community participants each year to identify the needs of homeless veterans including their legal needs.
- LSC is undertaking a new national legal needs survey to update the Justice Gap studies of 2005 and 2009.

These are just some of the many WH-LAIR agency actions that expand access to civil legal aid, improve program effectiveness, and enhance the quality of life for families and communities. Although much has been accomplished, there is more work to be done to maximize the performance of Federal programs and ensure meaningful access to justice for all in America.

White House Legal Aid Interagency Roundtable Agencies & Civil Legal Aid Programs in Action

Legal aid helps to create a stable and loving family

“Timmy,” a four-year-old boy, had never known a parent other than his 53-year-old grandmother, “Sandra,” who cared for him on her own since he was one. On Timmy’s behalf, Sandra was receiving Temporary Assistance for Needy Families (TANF) program funds from the Mason County, West Virginia, Department of Health and Human Resources Office. In 2013, she contacted Legal Aid of West Virginia (LAWV) to request help formally adopting her grandson. Through LAWV’s WV WORKS Legal Support Project, which receives funds from the state’s TANF program, a staff attorney took on the adoption case and helped complete the adoption in 2014. Sandra and Timmy were overjoyed that Timmy’s permanent home would be with his loving “ma-ma.”



(Photo: LSC)

Trafficking victim gains a financial fresh start with legal aid

At risk of homelessness, 18-year-old “Becky” moved in with her boyfriend “Jimmy.” Though he initially treated her nicely, Jimmy soon forced her to have sex with other men for money, and work at legal brothels and strip clubs in Nevada and Houston. Eventually Becky escaped, and Jimmy was arrested for his part in a domestic sex trafficking ring. Although finally freed, Becky soon began receiving letters from the IRS for unpaid Federal taxes on nearly \$300,000 in the earnings from the legal brothels and strip clubs. Becky turned to Lone Star Legal Aid’s Low Income Taxpayer Clinic, a program funded in part with a grant from the IRS, and its lawyer helped Becky document her experience as a trafficking victim who never received any funds. This legal assistance helped eliminate Becky’s tax debt and enabled a financial fresh start to help her recover from years of trafficking.



(Photo: Francesca Yerks)

Lawyer’s help clears barriers for working mom

Francesca, a 21-year-old single mother of two children, received a job offer to work at a major bank’s call center. But when a background check revealed a three-year-old municipal ticket for retail theft, she lost the offer. When she was 18, she got the ticket for taking clothing valued at \$20 from a former employer. She knew it was a mistake and vowed not to do it again. She paid the fine thinking that the municipal ticket would not create a criminal record. The recipient of DOL’s Face Forward grant referred Francesca to their legal aid partner, Legal Action of Wisconsin, for help. Within a month, a legal aid attorney got Francesca’s municipal ticket case reopened and dismissed. After the attorney submitted proof of the dismissal to the state criminal investigation bureau, which cleared Francesca’s criminal background report, the bank hired Francesca. After less than eight months on the job, Francesca earned a raise.

Hear Francesca tell her story:
<https://blog.dol.gov/2016/11/03/the-ticket-to-new-life/>



Arizona Commission on Access to Justice

Meeting Date: February 7, 2018	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Update on Online Dispute Resolution Software
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From: Marcus Reinkensmeyer, Court Services Division Director

Presenters: (Same)

Discussion: Mr. Reinkensmeyer will update the Commission on the progress of online dispute resolution software.

Recommended motion: None.

Arizona Commission on Access to Justice

Meeting Date: February 7, 2018	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Report from the Self-Represented Litigants in Limited Jurisdiction Courts Workgroup
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From: Judge Anna Huberman, Chair

Presenters: (Same)

Discussion: The workgroup met on January 25, 2018. The presenter will discuss strategic planning focus:

- The eviction action webpage and Legal Info Sheets webpage have been translated into Spanish. The workgroup will report on webpage hits to the English and Spanish webpages.
- The workgroup is focusing on developing eviction-related videos that will be available on azcourts.gov and AZCourtHelp.org.

Recommended motion: None.

Arizona Commission on Access to Justice

Meeting Date: February 7, 2018	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: New Rule Change Petition
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From: Judge Anna Huberman

Presenters: (Same)

Discussion: The presenter will report on the following rule petition:

- R-18-0020 – Subsidized Housing Disclosure Requirements in Eviction Actions

Recommended motion: None.

1 Lisa M. Panahi, Bar No. 023421
2 General Counsel
3 State Bar of Arizona
4 4201 N. 24th Street, Suite 100
5 Phoenix, AZ 85016-6288
6 (602) 340-7236

7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

Supreme Court No. R-18-

10 **PETITION TO AMEND THE**
11 **RULES OF PROCEDURE FOR**
12 **EVICITION ACTIONS**

PETITION

13 Pursuant to Rule 28, Ariz. R. Sup. Ct., the State Bar of Arizona respectfully
14 petitions this Court to amend the Rules of Procedure for Eviction Actions, Rules 5(a)
15 and (b), to add pleading requirements to the complaint if the rental unit is subsidized
16 housing. The proposed amendments include a disclosure in the pleading regarding
17 rent apportionment between the tenant and the public housing entity. This Petition
18 also seeks to amend Rule 13(a) to require that the court ensure proper disclosure in
19 this respect.
20

21 **I. Background and Purpose of the Proposed Rule Amendment**

22 **A. Current Rules**

23 In 2008, the Arizona Supreme Court approved the Rules of Procedure for
24
25

1 Eviction Actions. The rules have limited information on subsidized housing. The
2 only current specific reference is in Rule 4(f):

3
4 **f. Compliance with Laws and Regulations Governing**
5 **Subsidized Rent.** The parties shall comply with all
6 federal and state laws and regulations governing
7 subsidized rent. (emphasis in original).

8 The pleading requirements do not refer to subsidized housing. Rule 5(b) sets
9 forth the pleading requirements for an eviction complaint, yet the rule is silent on a
10 landlord’s duty to disclose whether or not the tenant receives a housing subsidy.

11 Rule 5(c) applies to cases in which complainant seeks monetary relief,
12 including unpaid rent. Although the rule requires the landlord to state how rent is
13 calculated, this rule is also silent on disclosure of information regarding subsidized
14 rent.
15

16 Rule 13(a) sets forth the criteria reviewed by the court prior to entering a
17 judgment, and is also silent on consideration of subsidized housing.
18

19 **B. The Importance of Subsidized Housing Units in Arizona**

20 The purpose of subsidized housing is to provide safe, habitable, and affordable
21 housing for low-income individuals and families. While there are several types of
22 subsidized housing programs, the federal government’s largest subsidized housing
23 program is the “Housing Choice Voucher” program – or what is commonly referred
24
25

1 to as “Section 8” housing. U.S. DEP’T OF HOUSING & URBAN DEVELOPMENT,
2 HOUSING CHOICE VOUCHERS FACT SHEET (n.d.),
3 www.hud.gov/topics/housing_choice_voucher_program_section_8.
4

5 Under the Section 8 program, a public housing agency (PHA) issues a family
6 or individual a housing voucher to assist in the payment of rent for a habitable
7 residence. *Id.* Additionally, the PHA sets payment standards based on the cost of a
8 moderately-priced rental unit in the locality. *Id.* For tenants receiving such housing
9 assistance, the amount of rent and utilities paid by the tenant is generally limited to
10 30% of the tenant’s adjusted monthly income. *Id.* If the unit rent is greater than the
11 payment standard, then the tenant pays the additional amount. *Id.* The PHA
12 subsidizes the difference. *Id.* As an example, a disabled tenant whose income is
13 \$800 per month will typically be responsible to pay approximately \$240 per month
14 for rent (30% of \$800). In turn, the PHA will be responsible for the payment
15 standard minus \$240, or the gross rent minus \$240, whichever is less. *See id.*
16
17
18

19 In Arizona, over 45,000 households are federally subsidized tenants, not
20 counting public housing units operated by state and local governments. CENTER ON
21 BUDGET & POLICY PRIORITIES, ARIZONA FACT SHEET: FEDERAL RENTAL
22 ASSISTANCE (Mar. 30, 2017), [https://www.cbpp.org/sites/default/files/atoms/files/4-](https://www.cbpp.org/sites/default/files/atoms/files/4-13-11hou-AZ.pdf)
23 [13-11hou-AZ.pdf](https://www.cbpp.org/sites/default/files/atoms/files/4-13-11hou-AZ.pdf).
24
25

1 **C. Tenant is not Responsible for the Subsidized Portion of Rent.**

2 Under the housing voucher program, tenant is not obliged to the pay the public
3 entity's portion of the rent and should not be sued for the subsidized portion of
4 unpaid rent. *See, e.g., HOUSING CHOICE VOUCHERS FACT SHEET, supra.* Nor should
5 the landlord obtain possession of the unit if tenant has met his or her obligations to
6 pay tenant's portion of the rent. The tenant should not be adversely affected by the
7 housing program's failure to pay its apportionment of the subsidized rent.
8
9

10
11 **II. Tenants' Property Interests and Due Process Considerations.**

12 Tenants have a property interest in their residences. *Greene v. Lindsey*, 456
13 U. S. 444, 451-52 (1982); *see also Foundation Development Corporation v.*
14 *Loehmann's*, 163 Ariz. 438, 442, 788 P.2d 1189, 1193 (Ariz. 1990) (recognizing
15 common law right of tenant's property interest in rental). Eviction proceedings that
16 deprive tenants of that property must comply with the due process requirements of
17 the Fourteenth Amendment to the United States Constitution. *Greene*, 456 U.S. at
18 455. Moreover, tenants also have a property interest in their subsidized housing
19 benefits because they are in the class of persons the program is intended to benefit.
20
21 *Ressler v. Pierce*, 692 F.2d 1212, 1215, (9th Cir. 1982).
22
23

24 It is well recognized that for low-income persons, an eviction action may
25 threaten their only means of shelter. *See, e.g., Chester Hartman & David Robinson,*

1 *Evictions: The Hidden Housing Problem*, 14 HOUSING POLICY DEBATE 461 (2003),
2 <https://www.innovations.harvard.edu/sites/default/files/10950.pdf>. The inability to
3 find other housing on short notice can lead to the disruption of children's education,
4 interruption of employment, dislocation from health care providers, loss of personal
5 belongings, and homelessness. In addition, the eviction process may lead to
6 monetary judgments. These monetary judgments make it difficult for tenants to
7 secure new rental housing. Thus, eviction cases are highly consequential to tenants
8 and especially low-income tenants, who often lack back-up resources. The result of
9 an eviction may be homelessness.

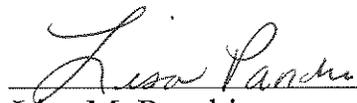
12
13 If a landlord requests and obtains a judgment for a public entity's portion of
14 the rent when the tenant is not responsible for that portion of the rent, the tenant is
15 adversely affected. The tenant may lose not only their housing, but their Section 8
16 certification as well, thereby affecting their ability to secure housing in the future.

17
18 **CONCLUSION**

19
20 Because of the severe consequences that a tenant receiving a housing subsidy
21 could face if held responsible for a default on payment of the subsidized portion of
22 tenant's rent, the rule changes proposed in this Petition are necessary to streamline
23 the pleading requirements for landlords bringing an eviction action against a tenant
24 whose housing is subsidized. This effort is made to ensure protection of these tenants
25

1 from the loss of home and their government subsidy through no fault of their own.
2 The Petition also seeks to create proper court oversight in eviction proceedings to
3 ensure that landlords are only seeking possession of rental units and monetary
4 judgments from the portion of the rent that tenant is obliged to pay. Therefore, the
5 State Bar respectfully requests the Court approve this Petition.
6

7
8 RESPECTFULLY SUBMITTED this 10th day of January, 2018.
9

10
11 
12 _____
13 Lisa M. Panahi
14 General Counsel

15 Electronic copy filed with the
16 Clerk of the Arizona Supreme Court
17 this 10th day of January, 2018.

18 by: 
19 _____
20
21
22
23
24
25

Appendix

(Please note: deletions are reflected by ~~strikethrough~~ and additions are reflected by underline.)

Rules of Procedure for Eviction Actions

Rule 5. Summons and Complaint: Issuance, Content and Service of Process

a. [No change in text.]

b. Complaint. The complaint shall:

(1)-(7) [No change in text.]

(8) State whether or not the rental is a subsidized housing unit and, if it is, state the total rent per month and specify the amount of rent per month that is the tenant's responsibility.

(9) Current Rule 5(b)(8) would be renumbered 5(b)(9).

c. Complaint for Monetary Damages. If the complaint seeks a money judgment for rent, late charges, or other fees, charges or damages permitted by law, the complaint shall also state:

(1)-(7) [No change in text.]

(8) If the rental is a subsidized housing unit, the landlord must state the total amount of the rent per month, the tenant's portion of the monthly rent and the total amount of the tenant's portion of the rent that the tenant owes.

Rule 13. Entry of Judgment and Relief Granted

a. Items to Review. Except for stipulated judgments entered pursuant to Rule 13(b)(4), in each eviction action the court shall:

(1)-(4) [No change in text.]

(5) Determine whether the rental is subsidized. If the court determines the rental is subsidized, determine whether there is unpaid rent that the tenant is obligated to pay as the tenant's portion of the rent.

Arizona Commission on Access to Justice

Meeting Date: February 7, 2018	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Update on Rule Petitions
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From: Julie Graber, AOC staff

Presenters: (Same)

Discussion: The presenter will update the commission on the following rule petitions:

- R-16-0022 – Change of Judge in Eviction Actions

Recommended motion: None.

Arizona Commission on Access to Justice

Meeting Date: February 7, 2018	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Update on the Public Information and Messaging Workgroup
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From: Rick DeBruhl, State Bar of Arizona, Heather Murphy, AOC Director of Communications, and Judge Lawrence Winthrop

Presenters: (Same)

Discussion: The presenters will discuss the workgroup's strategic planning focus.

- The workgroup is working on building a repository of podcasts facilitated by a Supreme Court Justice. The topics of the podcast will be based on the Event Calendar.

Recommended motion: None.

Arizona Commission on Access to Justice

Meeting Date: February 7, 2018	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Update on the AZCourtHelp.org website
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From: Dr. Kevin Ruegg, Arizona Bar Foundation, and Theresa Barrett, manager of AOC's Court Programs Unit

Presenters: (Same)

Discussion: Dr. Ruegg will inform the members about the Google Analytics and demonstrate the website's new features. Ms. Barrett will update regarding marketing efforts.

Recommended motion: Informational only.



Google Analytic Results
Jan. 11, 2017 to December 31, 2017

Sessions	Users	Page views	Hits
53,285	42,419	183,370	2,750,550

Devices Used
Desktop – 54%
Mobile - 40%
Tablet – 6%
Acquisition
Organic Search – 39%
Referral – 36%
Direct – 23%
Social Media – 1%
Google Ads – 1%

Top Website Referrals
1 – AZLawHelp.org
2 – AZCourts.gov
3 – Courts.yavapai.us
4 – Superiorcourt.maricopa
5 – Co.greenlee.az.us
Most Popular Times/Days
11:00am – 3,527
1:00pm – 3,525
10:00am – 3,516
Tuesday – 8,877
Wednesday – 8,752

Top 10 Cities	
City	Sessions
Phoenix	14,921
Tucson	3,194
Mesa	1,704
Los Angeles	1,683
Tempe	1,076
Scottsdale	1,045
Kingman	956
Chandler	804
Glendale	761
Gilbert	714

Top Four Pages Viewed
8,832 views



1) Form Finder

4,627 views



2) Court Records

4,037 views



3) Browse By Topic

3,863 views



4) FAQ: PreTrial Info

To contribute content or provide feedback - Cathleen.Cole@azflse.org

Arizona Commission on Access to Justice

Meeting Date: February 7, 2018	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Report regarding Access to Justice in Tucson and Federal Court
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From: Stacy Butler, U.S. District Court

Presenters: (Same)

Discussion: Ms. Butler will report on the following topics:

- Step Up to Justice, which is a new non-profit legal aid provider in Tucson
- Teaching an access to justice course at the University of Arizona Law School
- Improving access to justice in the federal district court in Tucson

Recommended motion: None.

Arizona Commission on Access to Justice

Meeting Date: February 7, 2018	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Report from the Judicial and Attorney Engagement Workgroup
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From: Judge Joseph Kreamer, Maricopa County Superior Court, and Kevin Groman, In-House Counsel *Pro Bono* Commission

Presenters: (Same)

Discussion: The workgroup will meet on March 9, 2018.

The presenters will discuss the workgroup's strategic planning focus, including engaging public lawyers, engaging law firms, and judicial engagement. In addition, the presenters will provide an update on the In-House Counsel *Pro Bono* Commission meeting.

Recommended motion: None.