

Arizona Commission on Access to Justice

Meeting Agenda

February 15, 2017 - 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	<i>Judge Lawrence F. Winthrop, Chair</i>
	Approval of minutes from November 9, 2016 <input type="checkbox"/> <i>Formal Action/Request</i>	
10:05 a.m.	Chairperson's report	<i>Judge Winthrop</i>
10:45 a.m.	Update from the LJC-Resources Sub-Workgroup	<i>Judge Ana Huberman</i>
10:55 a.m.	Update on Access to Justice related rule change petitions <input type="checkbox"/> <i>Formal Action/Request</i>	<i>Julie Graber, AOC</i>
	<ul style="list-style-type: none"> • R-16-0022 - Change of Judge in Eviction Actions • R-17-0016 - Computing Time in Eviction Actions • R-17-0011 - In-House Counsel clean-up • R-16-0041 - Criminal Rules of Procedure 6, 7, 41 and Forms • R-17-0015 - Criminal Rules of Procedure 4.2, 5.1, 5.4, 7.2, 7.4, 26.12, 27.8 	
11:15 a.m.	Update on the AZCourtHelp.org website	<i>Dr. Kevin Ruegg Theresa Barrett</i>

11:30 a.m. Report from the Self-Represented Litigants in Limited Jurisdiction Workgroup

*Mike Baumstark
Judge Janet Barton*

- **R-16-0040** – Mandatory Eviction Action Forms
- **R-17-0020** – Stipulated Judgments in Eviction Actions

12:00 p.m.

☞☞ **Lunch Break** ☞☞

1:00 p.m. On-line dispute resolution software update

*Marcus Reinkensmeyer,
Dir. Court Services Div.,
AOC*

1:30 p.m. Report from *Pro Bono* Service and Funding Workgroup

*Judge Joseph Kreamer,
Workgroup Chair, and
Dr. Kevin Ruegg*

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

Judge Winthrop

Future meeting dates:

May 10, 2017

August 16, 2017

November 8, 2017

Adjournment

2017 Meeting

May 10, 2017

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 9, 2016

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, Judge Janet Barton, Mike Baumstark, Millie Cisneros, Nancy Gray-Eade (proxy for Judge Maria Elena Cruz), Michael Jeanes, Ellen Katz, Judge Joseph C. Kreamer, John Phelps, Janet K. Regner, Kevin Ruegg

Absent/Excused: Judge Thomas Berning, Judge Rachel Torres Carrillo, Steven A. Hirsch, Michael T. Liburdi, Judge James Marner, Lisa Urias, Anthony Young

Presenters/Guests: Pamela Bridge, Shawn Friend, Kevin Groman, Chris Groninger, Laura Guild, Paul Julien, Lara Slifko

AOC Staff: Theresa Barrett, Kathy Sekardi, Julie Graber, Karla Williams

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the November 9, 2016 meeting of the Arizona Commission on Access to Justice (ACAJ) was called to order by Chairperson Judge Larry Winthrop, at 10:04 a.m.

B. Approval of Minutes

The draft minutes from the August 17, 2016 meeting of the ACAJ were presented for approval.

Motion: Judge Joseph Kreamer moved to approve the August 17, 2016 meeting minutes, as presented. **Action:** Approved **Seconded:** Mike Baumstark. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Chairperson's Report

To encourage continued discussions of opportunities to further the commission's charge, Judge Winthrop provided an overview of collaborative efforts between private, public, and governmental entities. Highlights included:

- The "Healthy Together Care Partnership" is a medical-legal partnership between the Arizona Health Care Cost Containment System (AHCCCS) and a Tucson Medicaid provider, which employs medical, legal and social services interventions on behalf of vulnerable members. Judge Winthrop suggested the possibility of making the "Healthy Together Care Partnership" available to all Medicare and Medicaid patients when he met

with Christina Corieri, the Governor's Policy Advisor for Health and Human Services.

- The [ASU Law School Legal Triage and Referral project](#) has been screening approximately 100 contacts each week and referring those contacts to appropriate social service providers, legal aid organizations, and private attorneys. The project is developing relationships with private law firms, corporate law departments, and lawyer professional groups to address veterans, financial management, guardianship, and immigration issues. Judge Winthrop noted a medical-legal partnership was launched based at the Central Arizona Shelter Services.
- Judge Lilia Alvarez and Judge Winthrop made a presentation at the Arizona Utility Partners Summit regarding "Justice for Financially Brittle Families."

Judge Winthrop reminded members to promote the Arizona Charitable Tax Credit and shared an updated flyer and outline presentation for those who would like to present to a group. He highlighted the following legislative changes impacting the program:

- The amount that can be donated that qualifies for the credit was doubled.
- Contributions made through April 15, 2017, can now be applied to either the current or preceding taxable year.
- The school tax credit and foster care tax credit can be claimed as separate credits.

Finally, Judge Winthrop reported on statistics from the latest census, which are improving but reflect Arizona's challenging demographics. Statistics of interest that were noted:

- The national poverty rate fell from 15.5 percent in 2014 to 14.7 percent in 2015.
- The Arizona poverty rate decreased from 18.2 percent to 17.4 percent.
- The poverty rate in the Phoenix, Scottsdale, and Mesa area fell from 17.2 percent to 16.2 percent.

B. Report from *Pro Bono* Service and Funding Workgroup

Judge Kreamer noted that one of the goals of the workgroup is to move forward a model *pro bono* policy proposal with the State Bar of Arizona's (SBA) Board of Governors that would allow a public attorney to provide *pro bono* services. He also shared that the Public Lawyer *Pro Bono* Conference, co-sponsored by the Arizona Attorney General's Office, will take place on February 24, 2017. Chief Justice Bales and Attorney General Brnovich are confirmed speakers.

Judge Kreamer then reported on efforts of the *Pro Bono* Service and Funding Workgroup. Highlights included:

- Judge Kreamer and Kevin Groman will be meeting with Judge Randall Warner about a proposal that would allow in-house counsel to provide mediation services on a *pro bono* basis in Superior Court.

- An unintended consequence has been identified from the recent change to Rule 38(B), *Rules of the Supreme Court*, which now requires a secondary registration for in-house counsel who want to do *pro bono* service. Kevin Groman will be working with the Arizona Foundation for Legal Services & Education (AZFLSE) and Ellen Katz to draft a rule change petition requesting the removal of this unintended barrier on an expedited basis.
 - The consensus of the commission was to support the rule petition fully.
- Judge Kreamer will provide more details at the next commission meeting about the progress of the law firm *pro bono* network and the efforts to reach out to law firms to develop resources and to continue past efforts.
- John Phelps discussed the SBA’s initiatives regarding *pro bono* services in light of its new mission statement centered on protecting the public and its declining *pro bono* statistics from year to year.
 - In Arizona, only 1,400 out of the 24,000 attorneys reported *pro bono* hours. Ethics rules establish a 50-hour aspirational goal but the average is only 21 hours.
 - The SBA is looking at possibly launching a mobile online platform supported by a dedicated team within the SBA that would coordinate opportunities between members and the public across a full spectrum; create visibility; and take back ownership of the SBA’s responsibilities. The Board of Governors will vote on whether to support funding for this “Public Service Center” at their December 9, 2016 meeting.
 - Judge Winthrop raised a potential issue regarding the interactive software that connects potential attorneys to clients and whether it constitutes the unauthorized practice of law. The Federal Trade Commission and U.S. Department of Justice have weighed in on exempting websites from the practice of law in this [article](#).
- The next workgroup meeting is scheduled on December 9, 2016, at 12:00 p.m. at AZFLSE.

C. Update on the AZCourtHelp.org website

Kevin Ruegg updated members on the progress of the [AZCourtHelp.org](#) website, which was launched in a “soft opening” on October 1, 2016. The official launch is scheduled for January, 2017. Dr. Ruegg noted that the website provides increased access to information for users, satisfies legal needs on demand, and reflects increased coordination between courts. She sought members’ assistance with spreading the word about this collaborative project.

Dr. Ruegg demonstrated the website’s features:

- Feedback button
- Hide screen for domestic violence victims
- Automatic translation and “enhancements” for legal terms were noted.
- Increased font to meet ADA compatibility
- Listen feature for visually-impaired users

- Chat function with law librarians to allow users to type legal information inquiries that law librarians will answer when available
- Find my court
- Mobile friendly capability
- Glossary allows to mouse over terms that are highlighted in the text to view a definition.

Dr. Ruegg noted that Legal Talks started in August and are being led by representatives from different government agencies, legal aid, and other partners. Topics for Legal Talks included guardianship, divorce and custody, child support, and adoption. The clinics are being recorded for possible use in developing other types of educational videos for posting to the site in both English and Spanish. Upcoming Legal Talks will be featured on an event calendar.

Member comments:

- Judge Winthrop noted that the Legal Talks project is consistent with the objective of increasing collaboration across governmental branches to meet the needs of the public (e.g., the Arizona State Library, Archives, and Public Records, the Department of Economic Security, and the Attorney General’s Office). This type of project could bring more agency participation if the value of providing services in this way can be shown.

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

Rule Petition R-16-0040 regarding mandatory eviction forms: Mike Baumstark provided an update on rule petition R-16-0040, which was circulated to Supreme Court standing committees and stakeholders.

- Committee on Superior Court supported the filing of the rule petition provided that the eviction forms are not mandatory for use in forcible detainer actions after trustee sales are brought in superior court.
- Committee on Limited Jurisdiction Courts recommended that the forms be model forms for one year before making them mandatory.

Three comments were filed in support and six were in opposition. Mr. Baumstark summarized the comments filed in opposition:

- The proposed rule exceeds the authority of the Supreme Court under the Arizona Constitution and applicable statutes.
- Mandating the use of notices and forms deprives Arizona Realtors and their clients of the right to use established and proven forms.
- “Full participation” by all parties is being questioned and accordingly some participants allege the workgroup’s decision-making was unfair.
- The proposed notices and forms are legally deficient, confusing, and misleading.

He then discussed the reply and explained the next steps in the process. Specifically, he noted the forms and notices are being revised to make them easier

to understand and legally correct in response to the comments filed. For example, the references to commercial property and mobile homes were removed. The rule petition will be considered at the December Rules Agenda.

Member questions/comments:

- Why are we not addressing mobile home evictions? Answer: Due to the legal nuances, mobile home evictions need to be addressed separately and should be the next project.
- Why are the eviction forms mandatory when they are not dictated in other areas of law? Answer: There is precedent for the Supreme Court mandating forms (e.g., domestic violence and probate forms).
- There is no guidance provided if someone files an eviction action on another form – which elements must be included? Answer: It was clarified that there is a provision in the rule for the court to accept a form or notice if it contains the required information. The intent of the rule petition was not to promote undue delay or let people stay in the dwelling units longer.
- Should “upon showing of good cause” be removed from the rule language? Answer: The intent was for judicial officers to have some discretion to accept a notice or pleading rather than require the tenant to make an affirmative showing.
- Finally, some members suggested delaying the implementation date, moving with a pilot court to take on the forms and notices for a few months, and encouraging courts to use the forms as model forms. Judge Winthrop reminded members that the rule petition was designed to provide tenants with useful information when being served with an eviction, available options, and access to more information.

Proposed rule change regarding stipulated judgments: Judge Winthrop shared with members that he vetted the proposed rule change to Committee on Limited Jurisdiction Courts (LJC). He explained the proposed change would require judicial officers to determine whether tenants who sign a stipulated judgment understand what they are signing (i.e., tenants acknowledge the debt, agree to leave the premises, and waive the right to appeal). LJC members reported that it is the current practice in all counties except Maricopa. Judge Winthrop inquired whether the commission should support moving forward with drafting a rule petition.

Member comments:

- Some members questioned the need for a statewide rule when the issue is perceived only in Maricopa County.
- While members agreed that current eviction practices should be changed, some raised concerns about the impact of the proposed rule change on judicial officers and eviction calendars. There are usually 60 eviction actions scheduled for each hour. Members requested statistics on the number of tenants appearing in person and the number of stipulated judgments in each eviction calendar.

- Several members suggested obtaining input and possible alternatives from Justices of the Peace before filing a rule petition but others felt it would cause unnecessary delay.
- As a result of discussion, this matter was tabled to the afternoon's item regarding Community Legal Services' Justice Court Project.

E. Effective Public-Private Collaboration: Arizona Domestic Violence Legal Assistance Project

Chris Groninger, Director of Strategic Initiatives for the Arizona Foundation for Legal Services & Education, provided an overview and history of the Arizona Domestic Violence Legal Assistance Project (DVLAP) and described its funding, partnerships, goals and objectives, and legal services provided by attorneys, paralegals and lay legal advocates. She shared that currently domestic violence shelter providers, legal services agencies and their volunteer lawyer programs, and the Arizona Department of Economic Security, work together to assist victims of domestic violence obtain direct legal assistance and address longer term safety and economic sufficiency issues. In addition, the project aims to recruit, train, mentor, and support volunteer attorneys with the long-term goal of continued *pro bono* participation. Volunteer attorneys obtain free continuing legal education opportunities, recognition and awards, tailored volunteer opportunities, case support, logistical resources, and case screening. Ms. Groninger reported on the statistics for fiscal year 2016:

- Volunteer attorneys provided legal assistance to more than 7,000 victims of domestic violence and donated over 2,000 *pro bono* hours
- 148 new volunteers were recruited
- Since 2000 volunteer attorneys have donated \$11,500,000 in service

Member questions/comments:

- Are victims of domestic violence limited to the same means test as legal aid services? Answer: There is a higher income threshold for victims of domestic violence (250% of federal poverty level).
- Is there a population not served by the project? Answer: The volunteer lawyer programs fill any gap.

F. Community Legal Services Justice Court Project

Pamela Bridge, Director of Litigation and Advocacy at Community Legal Services (CLS), described CLS's Justice Court Eviction Calendar Project, which took place last summer in collaboration with six Maricopa County Justice Courts and volunteer law students.

- Students wore nametags, sat at a table outside the courtroom, and provided free tenant informational documents color-coded in English and in Spanish to help tenants navigate through the eviction process.
- One student was allowed in the courtroom to sit in the jury box and take a survey of the evictions called to measure the effectiveness of the materials and whether there were any systemic problems that could be fixed.

Ms. Bridge reviewed the survey results:

- 50 percent of the tenants who used the materials raised a valid defense or a valid counterclaim.
- 50 percent of those who used the materials were not evicted that day.
- The other 50 percent had their cases dismissed or set for trial to a different date.

Given the project's usefulness for self-represented litigants, she sought assistance from the commission in replicating the project on a statewide basis. She noted that the project would not be as effective if students were not present as navigators.

Member questions/comments:

- What was the court's response to the project? Answer: Judge McMurry welcomed the project and would like the students to return.
- What was the feedback from the Justices of the Peace? Answer: It was very positive.
- How many students were there? At each eviction calendar, there were at least two students at the table and one in the courtroom.
- How many tenants appeared versus failed to appear? In the six courts, over eight weeks, students observed the following:
 - 1740 were defaulted for not showing up.
 - 790 tenants appeared in person, which averaged 16 per week per court (This number was not for full trials but rather initial statements by the parties in which the judges decided if judgment could be awarded initially to one side or if the case needed to be set for trial.)
 - 96 stipulated judgments, which averaged two per week per court.

Motion: Mike Baumstark moved to engage the Resources Sub-Workgroup and neutral experts in looking at the tenant informational documents and the best way to use them, as discussed. The group will consist of: Judge Janet Barton, Pamela Bridge, Millie Cisneros, Paul Julien, Judge Todd Lang, Judge Anna Huberman and Judge Bill Rummer. **Action:** Approve, **Seconded:** Judge Joseph Kreamer. **Vote:** Unanimous.

Discussion about proposed rule change regarding stipulation judgments (item was tabled in the morning)

Ms. Bridge stressed that addressing concerns surrounding stipulated judgments is the most important priorities facing CLS and low-income tenants. Although the proposal would place a burden on judicial officers by requiring interaction with the tenants to determine if they understand what they are signing, the number of stipulated judgments is low and would only require a one-minute conversation. If tenants take the time to show up to court, Ms. Bridge argued we should make sure they understand what they are signing. Ms. Bridge further acknowledged that the issue is localized in Maricopa County.

Member comments:

- The commission should move forward in a meaningful collaborative manner with the Justices of the Peace by reaching out to them and soliciting workable scenarios as an alternative to the rule petition or in addition to any rule change.
- There should be two comment periods if a rule petition is filed.
- The commission requested statistics about the number of stipulated judgments during eviction calendars.

Motion: Mike Baumstark moved to proceed with filing a rule change petition on stipulated judgments before January 10, 2017; to reach out to Justices of the Peace before the end of the year through Judge Barton to obtain input on the proposal; and to gather official statistics about the number of stipulated judgments, as discussed. **Action:** Approve, **Seconded:** Judge Joseph Kreamer. **Vote:** Unanimous.

Action Item: Ms. Bridge will share her summary report with the commission.

III. OTHER BUSINESS

A. Good of the Order/Call the Public

Kevin Groman expressed gratitude that the commission is taking action regarding access to justice issues.

B. Next Commission Meeting Date

February 15, 2017, 10:00 a.m. to 2:00 p.m.
Arizona State Courts Building, Conference Room 119A/B

Judge Winthrop noted that May 17, 2017, Commission meeting will be rescheduled to May 10 or May 31, 2017.

The meeting adjourned at 1:51 p.m.

Potential Reorganization of New A2J Workgroups

1. Public Information and Messaging Workgroup

- This workgroup will create and manage a media plan.
- Establish and maintain a speaker's bureau on access to justice issues and opportunities and Commission recommendations and plans.
- Evaluate and update website information through the AOC.
- Promote the state tax credit.
- Design and work on the annual report.

2. Judicial and Attorney Engagement Workgroup

- Create, coordinate, and sponsor CLE programs for private and public attorneys on access to justice importance and issues, including limited scope representation and other pro bono opportunities.
- Evaluate potential for coordinating statewide legal service triage programs
- Make recommendations on engaging retired lawyers and judges in pro bono clinics and projects.
- Create, coordinate, and sponsor COJET programs for judges on access to justice issues, including ethical parameters and dealing with self-represented litigants.

3. Limited Jurisdiction Courts Workgroup

- Continue to focus on self-represented litigant issues, including continuing work on eviction-related issues.
- Consider a "navigator" project in the Maricopa County consolidated justice courts concerning housing and debt collection cases.

4. Inter-Governmental Collaboration Workgroup

- Encourage and facilitate communication and collaboration among and between agencies, particularly as it relates to the impact that civil legal aid can provide in effective delivery of services and in meeting collective goals.
- Evaluate existing state programs in Massachusetts and California, and the federal model (Dept. of Justice/White House Legal Aid Inter-Agency Roundtable (LAIR)), and make recommendations as appropriate to encourage the creation of an Arizona model.
- Develop a strategy for engaging appropriate legislative leaders on access to justice issues and opportunities.

Rule Petitions – Table of Contents

Arizona Commission on Access to Justice

1. R-16-0040 – Mandatory Eviction Action Forms

The rule change would require litigants statewide to use court-approved eviction action forms. An order was filed continuing the petition and reopening the matter for comments.

Comments due: February 17, 2017

2. R-17-0020 – Stipulated Judgments in Eviction Actions (Filed on 1/9/17)

The new Rule 13(b)(4) would permit courts to accept stipulated judgments only when the court finds that both parties personally appear before the court; the conditions of Rule 13(a)(1)-(2) have been satisfied; the form to which the defendant stipulated contains the specific warning in RPEA 13(b)(4); the parties understand the terms contained in the document they signed; and all parties have initialed the warning language in (b).

Comment Schedule:

April 30, 2017: First round of comments due

May 28, 2017: Amended petition due

June 18, 2017: Second round of comments due

July 16, 2017: Reply due

State Bar of Arizona

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

The rule petition would permit a change of judge as a matter of right and for cause in eviction actions in Justice Court. An order was filed adopting the rule with an amendment (new subsection c added to Rule 9) on a one-year experimental basis, effective January 1, 2017. The amendment will be reopened for comment on the issue of whether or not the experiment should be extended or made permanent.

Comments due: July 14, 2017

4. R-17-0016 – Computing Time in Eviction Actions (Filed on 1/9/17)

The proposed rule would provide the same information on computing time periods to eviction court litigants as other civil litigants in Justice Court and Superior Court.

Comments due: May 22, 2017

**5. R-17-0011 – In-House Counsel Clean Up of Supreme Court Rule 38(e)
(Filed on 1/5/17)**

The rule petition would correct minor errors and clarify some ambiguities relating to in-house counsel registration with the State Bar.

Comments due: May 22, 2017

FAIR Justice for All

6. R-16-0041 – Criminal Rules of Procedure 6, 7, 41 and Forms

An order was filed to implement recommendations of the FAIR Justice for All Task Force by amending Rules 3, 6, and 7, and substituting new Forms 6 and 7, Rule 41, Rules of Criminal Procedure.

Effective Date: April 3, 2017

7. R-17-0015 – Criminal Rules of Procedure 4.2, 5.1, 5.4, 7.2, 7.4, 26.12, 27.8

The proposed changes would amend the rules to provide options to courts when convicted defendants who have failed to pay their monetary sanctions in a timely fashion and to make changes in bail determination proceedings for dangerous felony defendants.

Comments due: May 22, 2017

Arizona Commission on Access to Justice

R-16-0040 – Mandatory Eviction Action Forms

R-17-0020 – Stipulated Judgments in Eviction Actions (Filed on 1/9/17)

State Bar of Arizona

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

R-17-0016 – Computing Time in Eviction Actions (Filed on 1/9/17)

R-17-0011 – In-House Counsel Clean Up of Supreme Court Rule 38(e) (Filed on 1/5/17)

FAIR Justice for All

R-16-0041 – Criminal Rules of Procedure 6, 7, 41 and Forms

R-17-0015 – Criminal Rules of Procedure 4.2, 5.1, 5.4, 7.2, 7.4, 26.12, 27.8

REFERENCE TITLE: poverty; data tracking; commission

State of Arizona
Senate
Fifty-third Legislature
First Regular Session
2017

SB 1274

Introduced by
Senators Worsley: Bowie, Brophy McGee

AN ACT

AMENDING TITLE 46, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 9; RELATING TO LONG-TERM POVERTY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 46, Arizona Revised Statutes, is amended by adding
3 chapter 9, to read:

4 CHAPTER 9

5 INTERGENERATIONAL POVERTY MITIGATION ACT

6 ARTICLE 1. GENERAL PROVISIONS

7 46-1001. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "CYCLE OF POVERTY" MEANS THE SET OF FACTORS OR EVENTS BY WHICH
10 THE LONG-TERM POVERTY OF A PERSON IS LIKELY TO CONTINUE AND BE EXPERIENCED
11 BY EACH CHILD OF THE PERSON WHEN THE CHILD BECOMES AN ADULT UNLESS THERE
12 IS OUTSIDE INTERVENTION.

13 2. "DEPARTMENT" MEANS THE DEPARTMENT OF ECONOMIC SECURITY.

14 3. "INTERGENERATIONAL POVERTY":

15 (a) MEANS POVERTY IN WHICH TWO OR MORE SUCCESSIVE GENERATIONS OF A
16 FAMILY CONTINUE IN THE CYCLE OF POVERTY AND GOVERNMENT DEPENDENCE.

17 (b) DOES NOT INCLUDE SITUATIONAL POVERTY.

18 4. "POVERTY" MEANS THE STATE OF A PERSON WHO LACKS A USUAL OR
19 SOCIALLY ACCEPTABLE AMOUNT OF MONEY OR MATERIAL POSSESSIONS AS
20 DEMONSTRATED BY THE PERSON'S INCOME LEVEL BEING AT OR BELOW THE UNITED
21 STATES POVERTY LEVEL AS DEFINED BY THE MOST RECENTLY REVISED POVERTY
22 INCOME GUIDELINES PUBLISHED BY THE UNITED STATES DEPARTMENT OF HEALTH AND
23 HUMAN SERVICES IN THE FEDERAL REGISTER.

24 5. "SITUATIONAL POVERTY" MEANS TEMPORARY POVERTY THAT IS GENERALLY
25 TRACEABLE TO A SPECIFIC INCIDENT OR TIME PERIOD WITHIN THE LIFETIME OF A
26 PERSON AND THAT IS NOT CONTINUED TO THE NEXT GENERATION.

27 46-1002. Intergenerational poverty tracking system; data;
28 analysis; annual report

29 A. THE DEPARTMENT SHALL ESTABLISH AND MAINTAIN A SYSTEM TO TRACK
30 INTERGENERATIONAL POVERTY. THE TRACKING SYSTEM SHALL:

31 1. IDENTIFY GROUPS THAT HAVE A HIGH RISK OF EXPERIENCING
32 INTERGENERATIONAL POVERTY.

33 2. IDENTIFY INCIDENTS, PATTERNS AND TRENDS THAT EXPLAIN OR
34 CONTRIBUTE TO INTERGENERATIONAL POVERTY.

35 3. ASSIST CASE WORKERS, SOCIAL SCIENTISTS AND GOVERNMENT OFFICIALS
36 IN THE STUDY AND DEVELOPMENT OF EFFECTIVE AND EFFICIENT PLANS AND PROGRAMS
37 TO HELP INDIVIDUALS AND FAMILIES IN THIS STATE TO BREAK THE CYCLE OF
38 POVERTY.

39 4. GATHER AND TRACK AVAILABLE LOCAL, STATE AND NATIONAL DATA ON ALL
40 OF THE FOLLOWING:

41 (a) OFFICIAL POVERTY RATES.

42 (b) CHILD POVERTY RATES.

43 (c) YEARS SPENT BY INDIVIDUALS IN CHILDHOOD POVERTY.

44 (d) YEARS SPENT BY INDIVIDUALS IN ADULT POVERTY.

45 (e) RELATED POVERTY INFORMATION.

1 B. THE DEPARTMENT SHALL:
2 1. USE AVAILABLE DATA IN THE TRACKING SYSTEM, INCLUDING PUBLIC
3 ASSISTANCE DATA, CENSUS DATA AND OTHER DATA MADE AVAILABLE TO THE
4 DEPARTMENT.
5 2. DEVELOP AND IMPLEMENT METHODS TO INTEGRATE, COMPARE, ANALYZE AND
6 VALIDATE THE DATA FOR THE PURPOSES DESCRIBED IN SUBSECTION A OF THIS
7 SECTION.
8 3. PROTECT THE PRIVACY OF INDIVIDUALS LIVING IN POVERTY BY USING
9 AND DISTRIBUTING DATA WITHIN THE TRACKING SYSTEM IN COMPLIANCE WITH BOTH
10 FEDERAL AND STATE PRIVACY LAWS.
11 4. PUBLISH AN ANNUAL REPORT THAT INCLUDES THE DATA COLLECTED
12 PURSUANT TO THIS SECTION, THE FINDINGS AND THE POTENTIAL USES OF THE
13 TRACKING SYSTEM.
14 ARTICLE 2. ARIZONA INTERGENERATIONAL WELFARE REFORM COMMISSION
15 46-1011. Arizona intergenerational welfare reform commission
16 A. THE ARIZONA INTERGENERATIONAL WELFARE REFORM COMMISSION IS
17 ESTABLISHED CONSISTING OF THE FOLLOWING MEMBERS:
18 1. THE GOVERNOR OR THE GOVERNOR'S DESIGNEE.
19 2. THE DIRECTOR OF THE DEPARTMENT OF ECONOMIC SECURITY OR THE
20 DIRECTOR'S DESIGNEE.
21 3. THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES OR THE
22 DIRECTOR'S DESIGNEE.
23 4. THE DIRECTOR OF THE DEPARTMENT OF CHILD SAFETY OR THE DIRECTOR'S
24 DESIGNEE.
25 5. THE SUPERINTENDENT OF PUBLIC INSTRUCTION OR THE SUPERINTENDENT'S
26 DESIGNEE.
27 6. THE CHAIRPERSON OF THE INTERGENERATIONAL POVERTY ADVISORY
28 COMMITTEE ESTABLISHED BY SECTION 46-1013.
29 7. THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE COURTS OR THE
30 DIRECTOR'S DESIGNEE.
31 B. THE GOVERNOR OR THE GOVERNOR'S DESIGNEE SHALL SERVE AS
32 CHAIRPERSON OF THE COMMISSION. THE DIRECTOR OF THE DEPARTMENT OF ECONOMIC
33 SECURITY OR THE DIRECTOR'S DESIGNEE SHALL SERVE AS VICE CHAIRPERSON OF THE
34 COMMISSION.
35 C. THE CHAIRPERSON IS RESPONSIBLE FOR THE CALL AND CONDUCT OF
36 MEETINGS. THE CHAIRPERSON MAY DELEGATE DUTIES TO THE VICE
37 CHAIRPERSON. THE COMMISSION SHALL MEET AT LEAST QUARTERLY, AND ADDITIONAL
38 MEETINGS SHALL BE HELD ON REQUEST BY A MAJORITY OF THE COMMISSION MEMBERS.
39 D. A MAJORITY OF THE COMMISSION MEMBERS CONSTITUTES A QUORUM, AND
40 THE ACTION OF THE MAJORITY OF THE MEMBERS PRESENT IS THE ACTION OF THE
41 COMMISSION.
42 E. MEMBERS OF THE COMMISSION ARE NOT ELIGIBLE TO RECEIVE
43 COMPENSATION BUT ARE ELIGIBLE FOR REIMBURSEMENT OF EXPENSES PURSUANT TO
44 TITLE 38, CHAPTER 4, ARTICLE 2.

1 F. THE DEPARTMENT OF ECONOMIC SECURITY SHALL PROVIDE STAFF SUPPORT
2 TO THE COMMISSION.

3 46-1012. Purpose; powers and duties

4 A. THE COMMISSION'S PURPOSE IS TO:

5 1. COLLABORATE IN SHARING AND ANALYZING DATA AND INFORMATION
6 REGARDING INTERGENERATIONAL POVERTY IN THIS STATE WITH A PRIMARY FOCUS ON
7 DATA AND INFORMATION REGARDING CHILDREN WHO ARE AT RISK OF CONTINUING THE
8 CYCLE OF POVERTY AND WELFARE DEPENDENCY UNLESS OUTSIDE INTERVENTION IS
9 MADE.

10 2. EXAMINE AND ANALYZE SHARED DATA AND INFORMATION REGARDING
11 INTERGENERATIONAL POVERTY, INCLUDING THE DATA THAT IS REPORTED PURSUANT TO
12 SECTION 46-1014, TO IDENTIFY AND DEVELOP EFFECTIVE AND EFFICIENT PLANS,
13 PROGRAMS AND RECOMMENDATIONS TO HELP AT-RISK CHILDREN IN THIS STATE ESCAPE
14 THE CYCLE OF POVERTY AND WELFARE DEPENDENCY.

15 3. IMPLEMENT DATA-DRIVEN POLICIES AND PROGRAMS ADDRESSING POVERTY,
16 PUBLIC ASSISTANCE, EDUCATION AND OTHER AREAS AS NEEDED TO MEASURABLY
17 REDUCE THE INCIDENCE OF CHILDREN IN THIS STATE WHO REMAIN IN THE CYCLE OF
18 POVERTY AND WELFARE DEPENDENCY AS THEY BECOME ADULTS.

19 4. ESTABLISH AND FACILITATE IMPROVED COOPERATION BETWEEN STATE
20 AGENCIES DOWN TO THE CASE WORKER LEVEL IN RESCUING CHILDREN FROM
21 INTERGENERATIONAL POVERTY AND WELFARE DEPENDENCY.

22 5. ENCOURAGE PARTICIPATION AND INPUT FROM THE INTERGENERATIONAL
23 POVERTY ADVISORY COMMITTEE ESTABLISHED BY SECTION 46-1013 AND OTHER
24 COMMUNITY RESOURCES, INCLUDING ACADEMIC EXPERTS, ADVOCACY GROUPS,
25 NONPROFIT CORPORATIONS, LOCAL GOVERNMENTS AND RELIGIOUS INSTITUTIONS IN
26 EXPLORING STRATEGIES AND SOLUTIONS TO HELP CHILDREN IN THIS STATE WHO ARE
27 VICTIMS OF INTERGENERATIONAL POVERTY ESCAPE THE CYCLE OF POVERTY AND
28 WELFARE DEPENDENCY.

29 B. THE COMMISSION SHALL DO ALL OF THE FOLLOWING:

30 1. FULFILL THE COMMISSION'S PURPOSES AS LISTED IN SUBSECTION A OF
31 THIS SECTION.

32 2. STUDY, EVALUATE AND REPORT ON THE STATUS AND EFFECTIVENESS OF
33 POLICIES, PROCEDURES AND PROGRAMS THAT PROVIDE SERVICES TO CHILDREN IN
34 THIS STATE AFFECTED BY INTERGENERATIONAL POVERTY AND WELFARE DEPENDENCY.

35 3. STUDY AND EVALUATE THE POLICIES, PROCEDURES AND PROGRAMS
36 IMPLEMENTED BY OTHER STATES AND NONGOVERNMENTAL ENTITIES THAT ADDRESS THE
37 NEEDS OF CHILDREN AFFECTED BY INTERGENERATIONAL POVERTY AND WELFARE
38 DEPENDENCY.

39 4. IDENTIFY POLICIES, PROCEDURES AND PROGRAMS, INCLUDING ANY LACK
40 OF INTERAGENCY DATA SHARING, LACK OF POLICY COORDINATION OR CURRENT
41 FEDERAL REQUIREMENTS THAT ARE IMPEDING EFFORTS TO HELP CHILDREN IN THIS
42 STATE WHO ARE AFFECTED BY INTERGENERATIONAL POVERTY TO ESCAPE THE CYCLE OF
43 POVERTY AND WELFARE DEPENDENCY. THE COMMISSION SHALL IMPLEMENT AND
44 RECOMMEND CHANGES TO THOSE POLICIES AND PROCEDURES.

1 5. CREATE AN ONGOING FIVE-YEAR AND TEN-YEAR PLAN THAT IS UPDATED
2 ANNUALLY AND THAT CONTAINS ALL OF THE FOLLOWING:

3 (a) MEASURABLE GOALS AND BENCHMARKS, INCLUDING FUTURE ACTION NEEDED
4 TO ATTAIN THOSE GOALS AND BENCHMARKS, FOR DECREASING THE INCIDENCE OF
5 INTERGENERATIONAL POVERTY AMONG THIS STATE'S CHILDREN AND INCREASING THE
6 NUMBER OF THIS STATE'S CHILDREN WHO ESCAPE THE CYCLE OF POVERTY AND
7 WELFARE DEPENDENCY.

8 (b) IMPLEMENT POLICY, PROCEDURE AND PROGRAM CHANGES TO ADDRESS THE
9 NEEDS OF CHILDREN AFFECTED BY INTERGENERATIONAL POVERTY AND TO HELP THOSE
10 CHILDREN ESCAPE THE CYCLE OF POVERTY AND WELFARE DEPENDENCY, INCLUDING, AS
11 AVAILABLE OVER TIME, DATA TO TRACK THE EFFECTIVENESS OF EACH CHANGE.

12 (c) RECOMMEND POLICY, PROCEDURE AND PROGRAM CHANGES TO ADDRESS THE
13 NEEDS OF CHILDREN AFFECTED BY INTERGENERATION POVERTY AND TO HELP THOSE
14 CHILDREN ESCAPE THE CYCLE OF POVERTY AND WELFARE DEPENDENCY, INCLUDING THE
15 STEPS THAT WILL BE REQUIRED TO MAKE THE RECOMMENDED CHANGES AND WHETHER
16 FURTHER ACTION IS REQUIRED BY THE LEGISLATURE OR THE FEDERAL GOVERNMENT.

17 6. ENSURE THAT EACH CHANGE AND RECOMMENDED CHANGE TO A POLICY,
18 PROCEDURE OR PROGRAM THAT IS MADE BY THE COMMISSION IS SUPPORTED BY
19 VERIFIABLE DATA.

20 7. PROTECT THE PRIVACY OF INDIVIDUALS LIVING IN POVERTY BY USING
21 AND DISTRIBUTING THE DATA THE COMMISSION COLLECTS OR EXAMINES IN
22 COMPLIANCE WITH ALL STATE AND FEDERAL PRIVACY LAWS.

23 8. PROVIDE A FORUM FOR PUBLIC COMMENT AND PARTICIPATION IN EFFORTS
24 TO HELP CHILDREN IN THIS STATE ESCAPE THE CYCLE OF POVERTY AND WELFARE
25 DEPENDENCY.

26 C. TO ACCOMPLISH ITS DUTIES, THE COMMISSION MAY:

27 1. REQUEST AND RECEIVE FROM ANY STATE OR LOCAL GOVERNMENTAL AGENCY
28 OR INSTITUTION INFORMATION RELATING TO POVERTY IN THIS STATE, INCLUDING
29 ALL OF THE FOLLOWING:

- 30 (a) REPORTS.
- 31 (b) AUDITS.
- 32 (c) DATA.
- 33 (d) PROJECTIONS.
- 34 (e) STATISTICS.

35 2. APPOINT SPECIAL COMMITTEES, IN ADDITION TO THE INTERGENERATIONAL
36 POVERTY ADVISORY COMMITTEE ESTABLISHED BY SECTION 46-1013, TO ADVISE AND
37 ASSIST THE COMMISSION. ANY SPECIAL COMMITTEE APPOINTED PURSUANT TO THIS
38 PARAGRAPH SHALL REPORT TO THE COMMISSION ON THE PROGRESS OF THAT
39 COMMITTEE'S WORK.

40 D. MEMBERS OF A SPECIAL COMMITTEE DESCRIBED IN SUBSECTION C,
41 PARAGRAPH 2 OF THIS SECTION:

- 42 1. SHALL BE APPOINTED BY THE COMMISSION.
- 43 2. MAY BE MEMBERS OF THE COMMISSION OR INDIVIDUALS FROM THE PRIVATE
44 OR PUBLIC SECTOR.

1 3. NOTWITHSTANDING SECTION 46-1011, MAY NOT RECEIVE REIMBURSEMENT
2 OR PAY FOR WORK DONE IN RELATION TO THE SPECIAL COMMITTEE.

3 46-1013. Intergenerational poverty advisory committee;
4 membership; duties

5 A. THE INTERGENERATIONAL POVERTY ADVISORY COMMITTEE IS ESTABLISHED
6 TO ASSIST THE COMMISSION AND CONSISTS OF NOT MORE THAN ELEVEN MEMBERS.
7 MEMBERS OF THE ADVISORY COMMITTEE SHALL BE APPOINTED BY THE CHAIRPERSON OF
8 THE COMMISSION, WITH THE APPROVAL OF THE COMMISSION, AND SHALL INCLUDE AT
9 LEAST ONE MEMBER FROM EACH OF THE FOLLOWING GROUPS:

- 10 1. ADVOCACY GROUPS THAT FOCUS ON CHILDHOOD POVERTY ISSUES.
11 2. ADVOCACY GROUPS THAT FOCUS ON EDUCATION ISSUES.
12 3. ACADEMIC EXPERTS IN CHILDHOOD POVERTY OR EDUCATION ISSUES.
13 4. FAITH-BASED ORGANIZATIONS THAT ADDRESS CHILDHOOD POVERTY OR
14 EDUCATION ISSUES.
15 5. LOCAL GOVERNMENT REPRESENTATIVES THAT ADDRESS CHILDHOOD POVERTY
16 OR EDUCATION ISSUES.

17 B. SUBJECT TO SUBSECTION C OF THIS SECTION, EACH MEMBER OF THE
18 ADVISORY COMMITTEE SHALL BE APPOINTED FOR A FOUR-YEAR TERM UNLESS A MEMBER
19 IS APPOINTED TO COMPLETE AN UNEXPIRED TERM.

20 C. THE COMMISSION CHAIRPERSON MAY ADJUST THE LENGTH OF A TERM AT
21 THE TIME OF APPOINTMENT OR REAPPOINTMENT SO THAT APPROXIMATELY HALF OF THE
22 ADVISORY COMMITTEE IS APPOINTED EVERY TWO YEARS.

23 D. THE COMMISSION CHAIRPERSON MAY REMOVE AN ADVISORY COMMITTEE
24 MEMBER FOR EITHER OF THE FOLLOWING:

- 25 1. IF THE MEMBER IS UNABLE OR UNWILLING TO CARRY OUT THE MEMBER'S
26 ASSIGNED RESPONSIBILITIES.
27 2. FOR GOOD CAUSE.

28 E. IF A VACANCY OCCURS ON THE ADVISORY COMMITTEE FOR ANY REASON, A
29 REPLACEMENT MAY BE APPOINTED FOR THE UNEXPIRED TERM.

30 F. THE COMMISSION CHAIRPERSON SHALL SELECT A CHAIRPERSON OF THE
31 ADVISORY COMMITTEE ON AN ANNUAL BASIS. A MAJORITY OF THE ADVISORY
32 COMMITTEE CONSTITUTES A QUORUM, AND THE ACTION OF THE MAJORITY OF MEMBERS
33 PRESENT IS THE ACTION OF THE ADVISORY COMMITTEE.

34 G. THE ADVISORY COMMITTEE SHALL:

35 1. MEET AT LEAST TWICE A YEAR AT THE REQUEST OF THE COMMISSION
36 CHAIRPERSON OR THE CHAIRPERSON OF THE ADVISORY COMMITTEE.

37 2. MAKE RECOMMENDATIONS TO THE COMMISSION ON HOW THE COMMISSION AND
38 THIS STATE CAN EFFECTIVELY ADDRESS THE NEEDS OF CHILDREN AFFECTED BY
39 INTERGENERATIONAL POVERTY AND ACHIEVE THE PURPOSES AND DUTIES OF THE
40 COMMISSION AS DESCRIBED IN SECTION 46-1012.

41 3. ENSURE THAT THE ADVISORY COMMITTEE'S RECOMMENDATIONS TO THE
42 COMMISSION ARE SUPPORTED BY VERIFIABLE DATA.

43 H. THE DEPARTMENT SHALL PROVIDE STAFF SUPPORT TO THE ADVISORY
44 COMMITTEE.

1 46-1014. Annual report

2 ON OR BEFORE FEBRUARY 1 OF EACH YEAR, THE COMMISSION SHALL ANNUALLY
3 SUBMIT A REPORT TO THE GOVERNOR, THE PRESIDENT OF THE SENATE, THE SPEAKER
4 OF THE HOUSE OF REPRESENTATIVES AND PROVIDE A COPY OF THIS REPORT TO THE
5 SECRETARY OF STATE. THE REPORT SHALL:

6 1. INCLUDE THE FIVE-YEAR AND TEN-YEAR PLANS DESCRIBED IN SECTION
7 46-1012, SUBSECTION B, PARAGRAPH 5.

8 2. DESCRIBE HOW THE COMMISSION FULFILLED ITS STATUTORY PURPOSES AND
9 DUTIES DURING THE PRECEDING YEAR.

10 3. DESCRIBE POLICIES, PROCEDURES AND PROGRAMS THAT HAVE BEEN
11 IMPLEMENTED OR MODIFIED TO HELP BREAK THE CYCLE OF POVERTY AND END WELFARE
12 DEPENDENCY FOR CHILDREN IN THIS STATE AFFECTED BY INTERGENERATIONAL
13 POVERTY.

14 4. CONTAIN RECOMMENDATIONS ON HOW THIS STATE CAN ADDRESS ISSUES
15 RELATING TO BREAKING THE CYCLE OF POVERTY AND ENDING WELFARE DEPENDENCY
16 FOR CHILDREN IN THIS STATE AFFECTED BY INTERGENERATIONAL POVERTY.

17 46-1015. Program termination

18 THE PROGRAM ESTABLISHED BY THIS CHAPTER ENDS ON JULY 1, 2027
19 PURSUANT TO SECTION 41-3102.

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-16-0040
RULES 5(a), 5(b)(6), 5(b)(7))
and ADD RULES 13(h) and 20,)
ARIZONA RULES OF PROCEDURE FOR)
EVICTION ACTIONS) **FILED 12/14/2016**
)
)
)
_____)

**ORDER
CONTINUING THIS MATTER AND REOPENING THE PETITION FOR COMMENT**

A petition having been filed proposing to amend Rules 5(a), 5(b)(6) and 5(b)(7), and to add Rules 13(h) and 20, Arizona Rules of Procedure for Eviction Actions, and comments and a reply having been received, upon consideration,

IT IS ORDERED that this matter be continued and that the attached version of the proposed rules, which includes the revisions made in Petitioner's Reply, be reopened for comment, with comments due February 17, 2017, in accordance with Rule 28(D), Rules of the Supreme Court of Arizona.

DATED this 14th day of December, 2016.

/s/
SCOTT BALES
Chief Justice

Page 2 of 14

TO:

Rule 28 Distribution
Hon Lawrence F Winthrop
Susan Pickard
Hon Gerald A Williams
Paul A Henderson
Denise M Holliday
Scott M Clark
Michael A Parham
Ellen S Katz
Scott M Drucker
Mark B Zinman
Pamela M Bridge
Cynthia Zwick
Melissa Parham

Gerald A. Williams
Arizona Bar No. 018947
North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, AZ 85301

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	Supreme Court
	)	No. R-16-0040
PETITION TO AMEND)	
RULES 5(a), 5(b)(6), 5(b)(7) and	)	Additional Objections to
Add Rules 13(h) and 20 of the	)	Proposed Rule Changes,
RULES OF PROCEDURE FOR	)	to Proposed Mandatory
EVICTION ACTIONS	)	Court Forms and to
	)	Proposed Mandatory Notice
	)	Forms

BACKGROUND

The author of this pleading is a justice of the peace in Maricopa County. Joining him in these comments, in their individual capacities, are the following justices of the peace: Judge Cecil Ash, North Mesa JP (Maricopa County), Judge Frank Conti, Dreamy Draw JP (Maricopa County), Judge Maria Felix, JP in Pima County Consolidated Justice Court, Judge Keith Frankel, San Marcos JP (Maricopa County), Judge Andy Gastelum, Maryvale JP (Maricopa County), Judge Joe Getzwiller, Ironwood JP (Maricopa County), Judge Sam Goodman, San Tan JP (Maricopa County), Judge Gary Griffith, Justice of the Peace 1 (Graham County), Judge Joe “Pep” Guzman, Agua Fria JP (Maricopa County), Judge Dorothy Little, Payson Regional JP (Gila County), Judge Miles Keegan, Hassayampa

JP (Maricopa County), Judge John McComish, Kyrene JP (Maricopa County), Judge C. Steven McMurry, Encanto JP (Maricopa County), Judge David Osterfeld, White Tank JP (Maricopa County), Judge Wyatt Palmer, Justice of the Peace 2 (Graham County), Judge Michael Reagan, McDowell Mountain JP (Maricopa County), Judge Vincent Roberts, JP in Pima County Consolidated Justice Court, Judge Keith Russell East Mesa JP (Maricopa County), Judge Steve Urie, Highland JP (Maricopa County), Judge Donald Watts, Manistee JP (Maricopa County), and Judge Dean Wolcott, former Arcadia Biltmore JP (Maricopa County).

The comments contained within this response are offered in the spirit of candor. We recognize and commend the work that has been done thus far and believe that these efforts have been valuable. Even so, several concerns remain, including those raised in the objections and suggested alternative language that were filed on August 5, 2016.

The desire to produce something should not overpower the desire to produce something worthwhile. There is a concern that just because everyone has a sincere desire to improve access to justice, and just because significant resources have been expended, that some type of mandatory change must occur. A type of bureaucratic inertia may have taken hold based in part on a belief that establishing even more court rules is the

preferred mechanism to accomplish that goal. On top of this possible dynamic is the very real problem that the stakeholders in this process do not trust each other.¹ In Maricopa County, the relationship between the landlord bar and the legal aid community appears to be the worst it has been in several years.

We recommend that everyone take a step back and define what problem we are attempting to solve. For example, does anyone actually believe that tenants, who are either unable or unwilling to pay their rent, do not understand that they will be most likely evicted? Probably not. So what access to justice roadblock are we attempting to abolish?

A major obstacle is that legal advice, like medical advice, is often preventive. It is often as simple as “don’t do that.” For self-represented tenants with limited means, access to justice means getting answers to the real problems they have when their landlord fails to fulfill his or her obligations under the law. For example, it may be an answer to a repair and maintenance issue, such as, “What do I do when my landlord won’t respond to my text messages to fix my air conditioning?”

¹ The Petitioner unfortunately cites as authority a document that pre-dates the Rules of Procedure for Eviction Actions (RPEA). Although this document, the William E. Morris Institute for Justice, “Injustice in No Time – The Experience of Tenants in Maricopa County Justice Courts” (June 2005), is often presented as an objective or even scholarly study; it is, in reality, an advocacy piece. Former Chief Justice Charles E. Jones, in his comments to the original set of proposed eviction rules, noted that this 2005 commentary “displayed a severe bias in favor of tenants and against landlords in eviction litigation.” Even so, the advocacy piece did raise some issues that were addressed with the adoption of the REPA.

Access to justice is real when a tenant can get hot or cool air, or get running water, or get something promptly repaired that poses a health or safety risk. No amount of mandatory court forms and mandatory notice forms will fix those problems or give real access to justice, and their absence will not prevent or occlude a judge's perception of the real problem or prevent a judge from ensuring that a landlord has perfected his or her filing before judgment is entered.

I.

SETTING UP EVICTION CASES TO BE DISMISSED ON NEWLY CREATED TECHNICALITIES, ONLY FOR THEM TO BE REFILED WITHIN A FEW DAYS, DOES NOT ADVANCE CONCEPTS ASSOCIATED WITH PROVIDING ACCESS TO JUSTICE FOR ANYONE

Although issues associated with making new law have been explored in previously filed comments, it is worth stating again that if these mandatory forms are adopted, then a landlord could comply with every statutory requirement in the applicable landlord and tenant act, could also comply with every current requirement of the RPEA, and still have his or her case dismissed merely because he or she used the wrong form. The mandatory notice forms will create a new set of procedural due process rights and judges will be required to dismiss eviction actions merely because

a mandated form was not used. Such dismissals would be required even in default cases where the tenant failed to appear. If this Court, as a matter of public policy, desires to create such hyper-technical defenses, then it is obviously free to do so. However, we urge caution in going down such a path.²

II.

WHILE SUGGESTED FORMS APPROPRIATELY SEEK STANDARDIZATION, MANDATING EVICTION FORMS WOULD MAKE EVICTION CASES DIFFERENT THAN NEARLY EVERY OTHER AREA OF THE LAW.

At least one of the proposed forms would be optional for Superior Court; but all of the proposed forms would be mandatory for Justice Courts.³ If the proposed forms are mandatory, they would essentially be the only mandatory forms required in either civil or criminal practice in Arizona. The suggested forms in this and in other types of cases are listed in the following table.

² See generally Ariz. H.B. 2237, 53rd Leg., 1st Reg. Sess. (2017)(Prohibits a court from adopting or enforcing a rule or policy that requires a mandatory or technical form for providing notice or for pleadings in an action for forcible or special detainers).

³ No reason is given for this distinction. However, this proposed distinction apparently only applies to the proposed summons. All of the other proposed mandatory notice and court forms would apply to eviction actions filed in Superior Court as well.

Language from Rule	Form
The Complaint shall “Be in the approved form referenced in Rule 20 of these rules.” Proposed RPEA 5(b)(6).	Two page eviction complaint form ⁴
A copy of the notice shall be “in the approved form as referenced in Rule 20 of these rules ...” Proposed RPEA 5(b)(7).	Complex one page eviction notice form with confusing language and alternating formats (e.g. bold, italics, bold in shaded box).
“The judgment must be in the approved form referenced in Rule 20 of these rules.” Proposed RPEA 13(h).	Two page eviction judgment form with 44 check box options
“The forms in the Appendix suffice under these rules and illustrate the simplicity and brevity these rules contemplate.” Ariz.R.Civ.P. 84	Every sample form provided at the end of the Arizona Rules of Civil Procedure
EXAMPLE: “Every subpoena must “be substantially in the form set forth in Rule 84, Form 9.” Ariz.R.Civ.P. 45(a)(1)(D).	Civil Subpoena
“Form 2 (Arrest Warrant) in the following Appendix is mandatory for use in courts throughout the State of Arizona. The other forms are recommended for use in Arizona courts and are sufficient to meet the requirements of these rules.” Ariz.R.Crim.P. 41.	Every criminal form, other than an arrest warrant, is recommended; but is not mandatory.
“Parties may use forms for civil cases in justice court that are maintained and made available on the website of the Administrative Office of Courts ...” JCRCP 148.	Justice Court Summons Justice Court Civil Subpoena

⁴ The proposed mandatory complaint form contains an additional 76 word notice that is substantially similar to what is already contained within the REIS form, which the landlord is already required to be serve on the tenant.

III.

THE PROPOSED LANGUAGE IN THE MANDATORY NOTICE FORMS REMAINS UNNECESSARILY WORDY AND REMAINS CONFUSING.

The Petitioner did make some changes to the proposed forms in response to feedback;⁵ but unfortunately dismissed other recommendations “regarding usability and formatting issues” as being merely “a user-preference” that do not “speak to the legal sufficiency of the forms.” Such an analysis misses the point. A legally sufficient notice form is of no value if it is a format that no tenant will bother to read. Prior to the adoption of any new notice forms, whether they are mandatory or suggested, feedback should be obtained from people who regularly work with tenants in distress, including but not limited to social workers and employees at municipal government housing offices.

Currently, nearly all of the previously referenced defects in the notice forms remain,⁶ including the one that sets trial judges up to fail by falsely informing tenants that the judge will “decide if [the tenant has] to move or can remain in the” residence. If the tenant admits that he or she has not paid

⁵ There is now a reference that deposits cannot be used to pay rent.

⁶ It still contains random parenthetical commentary (e.g. “Must be listed in rental agreement” or “if allowed in rental agreement”) and tells tenants not once, but twice, to get any agreement in writing. In addition, the proposed notices still do not refer a tenant to the RPEA.

rent (and does not have a legal defense to nonpayment), then the judge has no legal authority to extend the lease beyond the writ of restitution date. Inferring otherwise is cruel.

IV.

A MANDATORY TWO-PAGE JUDGMENT FORM WILL NOT DO ANYTHING CONSTRUCTIVE; BUT WILL LITERALLY DOUBLE THE AMOUNT OF PAPER COURTS ARE REQUIRED TO PROCESS FOR NO APPARENT REASON.

The Petitioner made no changes in response to feedback to the proposed mandatory two-page judgment form. There are 44 check off boxes on this mandatory judgment form, some of which are for things that happen in perhaps one out-of-every five-hundred cases (e.g. counterclaims, non-waiver agreements).

Especially problematic is that the proposed form divides the monetary and the possession aspects of the judgment on different pages. The page documenting what happened in the case and the amount of any monetary damages would be on a page with no judge's signature. In contrast, the writ of restitution date, if any, would be on a second page that would have the judge's signature; but would not have either the names of the parties or the address of the rental property. This counterproductive set up would be especially challenging in Maricopa County.

Justice courts in Maricopa County hear approximately 5,000 eviction cases per month. We no longer have individual physical case files and instead have stacks of papers that are clipped together. After the cases are heard, they are scanned in to a computer storage system and those images are maintained. With a two-page judgment form it is only a matter of time before the second page of one case becomes attached to the first page of another. (Given the volume in some courts, this could be a weekly problem.) If a nonpayment of rent case (with a five day writ date) is attached to an immediate (with a one day writ date), the results could be disastrous. However, the bottom line is that our current eviction judgment forms are not broken. There is no need to attempt to fix them.

CONCLUSIONS

Having a set of recommended eviction notice forms and eviction court forms is a good idea. However, having a set of mandatory forms is not, especially if those forms are the ones proposed. There is clearly no agreement among the stakeholders that have participated in this process and proposed RPEA Rule 20 should be modified to read simply, “When applicable, landlords should use forms that are substantially similar to the notice forms in the appendix to these rules.”

RESPECTFULLY SUBMITTED, this 27th day of January 2017.

/s/ Gerald A. Williams
GERALD A. WILLIAMS
Justice of the Peace
North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, AZ 85374

Copy Mailed To:
Hon. Lawrence Winthrop
Arizona Court of Appeals
1501 West Washington, Suite 401
Phoenix, AZ 85007



ARIZONA HOUSE OF REPRESENTATIVES

HB 2237: forcible entry; detainer; prohibited rules

PRIME SPONSOR: Representative Farnsworth E, LD 12

BILL STATUS: [House Engrossed](#)

JPS: DP 7-2-0-0

Legend:

AOC – Administrative Office of the Courts

FED – forcible entry and detainer

Amendments – **BOLD** and ~~Stricken~~ (Committee)

Abstract

Relating to forcible entry and detainer forms.

Provisions

- 1) Prohibits any state agency or individual court from adopting or enforcing a rule or policy requiring a mandatory or technical form for either the notice or any pleadings related to a:
 - a) Forcible entry;
 - b) Forcible detainer; or
 - c) Special detainer. (Sec. 1, 2, 3, 4, 5)
- 2) States that if the form of the notice or pleading meets statutory requirements, the notice or form is sufficient. (Sec. 1, 2, 3, 4, 5)
- 3) Applies this change to several sections in the Arizona Revised Statutes (Sec. 1, 2, 3, 4, 5):
 - a) [A.R.S. § 12-1175](#) (general court process for FED);
 - b) [A.R.S. § 33-361](#) (violation of lease by tenant);
 - c) [A.R.S. § 33-1305](#) (remedies under the Residential Landlord & Tenant Act);
 - d) [A.R.S. § 33-1404](#) (remedies under the Mobile Home Park Residential Landlord & Tenant Act);
 - e) [A.R.S. § 33-2101](#) (applicability for the Recreational Vehicle Long-Term Rental Space Act).
- 4) Makes technical and conforming changes. (Sec. 1, 2, 3, 4, 5)

Current Law

FED is a process outlined in statute to permit a landlord to take possession of property if there has been a breach of the lease. Under [A.R.S. § 33-1368](#), a landlord can notice a tenant of material noncompliance with the rental agreement (10-day notice required) or failure to pay rent (5-day notice required). If the situation is not corrected within the prescribed time period, the landlord can proceed with a FED action. The procedure for a FED is governed by [Title 12, Chapter 8, Article 4, Arizona Revised Statutes](#). If after a hearing the court finds in favor of the plaintiff (landlord), the court enters a writ of restitution for the amount of the judgment which may include unpaid rent, late fees, court costs, attorney fees and damages. If the defendant is not found guilty, the plaintiff is assessed costs [\(A.R.S. § 33-1377\)](#).

Current Law

The [Arizona Rules of Civil Procedure for Eviction Actions](#) outlines the FED process. In 2014, the Arizona Supreme Court created the Arizona Commission on Access to Justice. At the Commission's [May, 18, 2016 meeting](#), the members voted to require the use of standardized forms in the eviction process and to support a rule change to direct the use of landlord notice forms [\(June 20, 2016 Report\)](#).

Prop 105 (45 votes) Prop 108 (40 votes) Emergency (40 votes) Fiscal Note

A [petition](#) to amend the rules was filed in July 2016 to require litigants statewide to use court-approved eviction forms and to authorize the AOC Director to approve, modify or delete eviction action forms as appropriate. The rules petition was recently continued, public comment closes on February 17, 2017. There were 83,918 FED cases filed in Arizona in 2015 ([AOC 2015 Data Report](#)).

State of Arizona
House of Representatives
Fifty-third Legislature
First Regular Session
2017

HOUSE BILL 2237

AN ACT

AMENDING SECTIONS 12-1175, 33-361, 33-1305, 33-1404 AND 33-2101, ARIZONA
REVISED STATUTES; RELATING TO FORCIBLE ENTRY AND DETAINER ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-1175, Arizona Revised Statutes, is amended to
3 read:

4 12-1175. Complaint and answer; service and return; prohibited
5 notice and pleading requirements

6 A. When a party aggrieved files a complaint of forcible entry or
7 forcible detainer, in writing and under oath, with the clerk of the
8 superior court or a justice of the peace, summons shall issue no later
9 than the next judicial day.

10 B. The complaint shall contain a description of the premises of
11 which possession is claimed in sufficient detail to identify them and
12 shall also state the facts ~~which~~ THAT entitle the plaintiff to possession
13 and authorize the action.

14 C. The summons shall be served at least two days before the return
15 day, and return made thereof on the day assigned for trial.

16 D. NOTWITHSTANDING ANY OTHER LAW, AN AGENCY OF THIS STATE AND AN
17 INDIVIDUAL COURT MAY NOT ADOPT OR ENFORCE A RULE OR POLICY THAT REQUIRES A
18 MANDATORY OR TECHNICAL FORM FOR PROVIDING NOTICE OR FOR PLEADINGS IN AN
19 ACTION FOR FORCIBLE ENTRY OR FORCIBLE OR SPECIAL DETAINER. THE FORM OF
20 ANY NOTICE OR PLEADING THAT MEETS STATUTORY REQUIREMENTS FOR CONTENT AND
21 FORMATTING OF A NOTICE OR PLEADING IS SUFFICIENT TO PROVIDE NOTICE AND TO
22 PURSUE AN ACTION FOR FORCIBLE ENTRY OR FORCIBLE OR SPECIAL DETAINER.

23 Sec. 2. Section 33-361, Arizona Revised Statutes, is amended to
24 read:

25 33-361. Violation of lease by tenant; right of landlord to
26 reenter; summary action for recovery of premises;
27 appeal; lien for unpaid rent; enforcement;
28 prohibited notice and pleading requirements

29 A. When a tenant neglects or refuses to pay rent when due and in
30 arrears for five days, or when a tenant violates any provision of the
31 lease, the landlord or person to whom the rent is due, or the agent of the
32 landlord or person to whom the rent is due, may reenter and take
33 possession, ~~or~~ or, without formal demand or reentry, commence an action for
34 recovery of possession of the premises.

35 B. The action shall be commenced, conducted and governed as
36 provided for actions for forcible entry or detainer and shall be tried not
37 less than five nor more than thirty days after its commencement. In
38 addition to determining the right to actual possession, the court may
39 assess damages, attorney fees and costs pursuant to section 12-1178.

40 C. If judgment is given for the plaintiff, the defendant, in order
41 to perfect an appeal, shall file a bond with the court in an amount fixed
42 and approved by the court and payable to the clerk of the superior court,
43 conditioned that the appellant will prosecute the appeal to effect and
44 will pay the rental value of the premises pending the appeal and all
45 damages, attorney fees, costs and rent adjudged against the appellant.

1 D. If the tenant refuses or fails to pay rent owing and due, the
2 landlord shall have a lien ~~अपण~~ ON and may seize as much personal property
3 of the tenant located on the premises and not exempted by law as is
4 necessary to secure payment of the rent. If the rent is not paid and
5 satisfied within sixty days after seizure as provided for in this section,
6 the landlord may sell the seized personal property in the manner provided
7 by section 33-1023.

8 E. When premises are sublet or the lease is assigned, the landlord
9 shall have a like lien against the sublessee or assignee as the landlord
10 has against the tenant and may enforce it in the same manner.

11 F. NOTWITHSTANDING ANY OTHER LAW, AN AGENCY OF THIS STATE AND AN
12 INDIVIDUAL COURT MAY NOT ADOPT OR ENFORCE A RULE OR POLICY THAT REQUIRES A
13 MANDATORY OR TECHNICAL FORM FOR PROVIDING NOTICE OR FOR PLEADINGS IN AN
14 ACTION FOR FORCIBLE ENTRY OR FORCIBLE OR SPECIAL DETAINER. THE FORM OF
15 ANY NOTICE OR PLEADING THAT MEETS STATUTORY REQUIREMENTS FOR CONTENT AND
16 FORMATTING OF A NOTICE OR PLEADING IS SUFFICIENT TO PROVIDE NOTICE AND TO
17 PURSUE AN ACTION FOR FORCIBLE ENTRY OR FORCIBLE OR SPECIAL DETAINER.

18 Sec. 3. Section 33-1305, Arizona Revised Statutes, is amended to
19 read:

20 33-1305. Administration of remedies; enforcement; prohibited
21 notice and pleading requirements

22 A. The remedies provided by this chapter shall be so administered
23 that the aggrieved party may recover appropriate damages. The aggrieved
24 party has a duty to mitigate damages.

25 B. Any right or obligation declared by this chapter is enforceable
26 by action unless the provision declaring it specifies a different and
27 limited effect.

28 C. NOTWITHSTANDING ANY OTHER LAW, AN AGENCY OF THIS STATE AND AN
29 INDIVIDUAL COURT MAY NOT ADOPT OR ENFORCE A RULE OR POLICY THAT REQUIRES A
30 MANDATORY OR TECHNICAL FORM FOR PROVIDING NOTICE OR FOR PLEADINGS IN AN
31 ACTION FOR FORCIBLE ENTRY OR FORCIBLE OR SPECIAL DETAINER. THE FORM OF
32 ANY NOTICE OR PLEADING THAT MEETS STATUTORY REQUIREMENTS FOR CONTENT AND
33 FORMATTING OF A NOTICE OR PLEADING IS SUFFICIENT TO PROVIDE NOTICE AND TO
34 PURSUE AN ACTION FOR FORCIBLE ENTRY OR FORCIBLE OR SPECIAL DETAINER.

35 Sec. 4. Section 33-1404, Arizona Revised Statutes, is amended to
36 read:

37 33-1404. Administration of remedies; enforcement; prohibited
38 notice and pleading requirements

39 A. The remedies provided by this chapter shall be so administered
40 that the aggrieved party may recover appropriate damages. The aggrieved
41 party has a duty to mitigate damages.

42 B. Any right or obligation declared by this chapter is enforceable
43 by action unless the provision declaring it specifies a different and
44 limited effect.

1 C. ~~Nothing in~~ This chapter ~~affects~~ DOES NOT AFFECT any rights under
2 ~~title 33,~~ chapter 8, article 1 OF THIS TITLE.

3 D. NOTWITHSTANDING ANY OTHER LAW, AN AGENCY OF THIS STATE AND AN
4 INDIVIDUAL COURT MAY NOT ADOPT OR ENFORCE A RULE OR POLICY THAT REQUIRES A
5 MANDATORY OR TECHNICAL FORM FOR PROVIDING NOTICE OR FOR PLEADINGS IN AN
6 ACTION FOR FORCIBLE ENTRY OR FORCIBLE OR SPECIAL DETAINER. THE FORM OF
7 ANY NOTICE OR PLEADING THAT MEETS STATUTORY REQUIREMENTS FOR CONTENT AND
8 FORMATTING OF A NOTICE OR PLEADING IS SUFFICIENT TO PROVIDE NOTICE AND TO
9 PURSUE AN ACTION FOR FORCIBLE ENTRY OR FORCIBLE OR SPECIAL DETAINER.

10 Sec. 5. Section 33-2101, Arizona Revised Statutes, is amended to
11 read:

12 33-2101. Application; duration of stay; exclusions; prohibited
13 notice and pleading requirements

14 A. This chapter applies to, regulates and determines rights,
15 obligations and remedies for a recreational vehicle space rented in a
16 recreational vehicle park or mobile home park by the same tenant under a
17 rental agreement for more than one hundred eighty consecutive days.

18 B. This chapter does not apply to mobile homes, manufactured homes
19 and factory-built buildings or to a property with one or two recreational
20 vehicle rental spaces.

21 C. NOTWITHSTANDING ANY OTHER LAW, AN AGENCY OF THIS STATE AND AN
22 INDIVIDUAL COURT MAY NOT ADOPT OR ENFORCE A RULE OR POLICY THAT REQUIRES A
23 MANDATORY OR TECHNICAL FORM FOR PROVIDING NOTICE OR FOR PLEADINGS IN AN
24 ACTION FOR FORCIBLE ENTRY OR FORCIBLE OR SPECIAL DETAINER. THE FORM OF
25 ANY NOTICE OR PLEADING THAT MEETS STATUTORY REQUIREMENTS FOR CONTENT AND
26 FORMATTING OF A NOTICE OR PLEADING IS SUFFICIENT TO PROVIDE NOTICE AND TO
27 PURSUE AN ACTION FOR FORCIBLE ENTRY OR FORCIBLE OR SPECIAL DETAINER.

Arizona Commission on Access to Justice

Meeting Date: February 15, 2017	Type of Action Requested: <input checked="" type="checkbox"/> Formal action or request <input type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Update on Access to Justice related rule change 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
- R-17-0016 – Computing Time in Eviction Actions
- R-17-0011 – In-House Counsel clean up
- R-16-0041 – Criminal Rules of Procedure 6, 7, 41 and Forms
- R-17-0015 – Criminal Rules of Procedure 4.2, 5.1, 5.4, 7.2, 7.4, 26.12, 27.8

Recommended motion: To file a comment in support or in opposition to rule change petitions, as discussed.

IN THE SUPREME COURT STATE OF ARIZONA

PETITION TO AMEND RULE)
13(b)(4) of the Rules of Procedure)
for Eviction Actions)
_____)

Supreme Court No. R- 17-0020

Pursuant to Arizona Supreme Court Rule 28, Petitioner, the Arizona Commission on Access to Justice (hereinafter “ACAJ”) through its Chair, respectfully requests this Court amend Rule 13(b)(4) to the Rules of Procedure for Eviction Actions (RPEA), as shown in Appendix A. The new Rule 13(b)(4) would permit courts to accept stipulated judgments only when the court finds the following: both parties or their attorneys personally appear before the court; the court determines that the conditions of Rule 13(a)(1)-(2) have been satisfied; the form to which the defendant stipulated contains the specific warning in RPEA 13(b)(4); the court determines that the parties understand the terms contained in the document they signed; and all parties have initialed the warning language in (b).

I. Background of the Proposed Rule Amendment. The ACAJ was established by Administrative Order 2014-83 pursuant to the Court’s strategic agenda of “Advancing Justice Together: Courts and Communities.” The order directs the ACAJ to make recommendations on assisting self-represented litigants and revising court rules and practices to facilitate access to justice and the efficient processing of eviction cases. The Commission’s Limited Jurisdiction Workgroup drafted the proposed rule change concerning stipulated judgments and then reached out to judges throughout the state concerning the proposal.

In November 2016, the ACAJ unanimously agreed to propose the Petition for the rule change for stipulated judgments in evictions and to continue to receive feedback from stakeholders. The ACAJ is informed and believes that the 26 Justice Courts in Maricopa County will in January 2017 voluntarily implement the procedure outlined in this rule petition, and the petition may be revised in response to ongoing feedback from those courts and other stakeholders.

II. Purpose of the Proposed Rule Amendment. More than 99 percent of tenants in eviction hearings are self-represented litigants, while approximately 87 percent of landlords are represented by an attorney according to the June 2005 Justice Court Study by the William E. Morris Institute found at http://www.morrisinstituteforjustice.org/docs/Final_eviction_report.pdf.

According to the Joint Center for Housing Studies, Harvard University, December

9, 2015, found at <http://www.jchs.harvard.edu/research/publications/americas-rental-housing-expanding-options-diverse-and-growing-demand>, 36.2 percent of low-income renters (those whose rent is at least half of their income) do not have a high school degree.

Currently, before the eviction cases are called at eviction hearings, landlord attorneys typically ask to speak privately to tenants who are present in the courtroom. These conversations generally last a few minutes and sometimes result in the tenant signing a stipulated judgment and then leaving the court house without appearing before the court. The attorney for the landlord then submits the stipulated judgment to the judge when the case is called. Stipulated judgments are typically drafted by the landlord's attorney in advance of the hearing and printed in small font in English. The proposed judgment usually states the defendant appeared in person even though the defendant leaves before appearing before the judge. The stipulated judgments usually include the following provisions: judgment should be awarded to plaintiff, possession of the premises should be given to the plaintiff and that a writ of restitution will be issued on a certain day. Additionally, the stipulated judgments award the plaintiff monetary damages including rent, court costs, attorney fees and other damages. Frequently, stipulated judgments include a clause that provides that the defendant waives any rights to reconsideration or appeal. In contrast, if the tenant has failed to answer or otherwise defend and has been

defaulted, he or she may still file a motion to reconsider the default judgment. Accordingly, tenants who sign a stipulated judgment are frequently in a worse position than tenants who default.

The potential consequences of stipulated judgments are enormous for tenants. Besides immediately being required to leave their housing, the judgment may now appear on their credit report preventing them from acquiring other housing. Additionally, many subsidized and voucher housing programs terminate assistance if a tenant has an eviction on his or her record. For low-income persons, an eviction action may threaten their only means of shelter. *See, e.g.,* Chester Hartman and David Robinson, *Evictions: The Hidden Housing Problem*, Housing Policy Debate, Vol. 14, Issue 4 (2003) found at <http://content.knowledgeplex.org/kp2/cache/kp/10950.pdf>. The inability to find other housing on short notice can lead to the disruption of children's education, interruption of employment, dislocation from health care providers, loss of personal belongings and homelessness. Thus, the consequences of eviction cases make them very important to tenants and especially low-income tenants, who often lack back-up resources. The result of an eviction may be that a family is living in a car or shelter. Because the consequences of evictions are so critical, the amendments would not only ensure procedural due process, but also assist self-represented tenants by ensuring they understand the important ramifications of stipulated

judgments.

III. Request for a Modified Comment Period. Petitioner acknowledges that stakeholders raised concerns about the impact of the rule change and unintended consequences. Public comments may address items that this petition overlooks, or may suggest other changes that improve the proposed rule. As noted, Maricopa County Justice Courts have volunteered to conduct a pilot project starting on January 1, 2017, to implement these procedures on a trial basis, and to gather more information to evaluate the impact of the proposed rule change. Petitioner therefore requests that the Court allow a modified comment period to accommodate the filing of an amended petition after an initial round of public comments. Petitioner suggests the following dates:

April 30, 2017: First round of comments due

May 28, 2017: Amended petition due

June 18, 2017: Second round of comments due

July 16, 2017: Reply due

IV. Conclusion. For the reasons stated above, the Petitioner respectfully requests that the Court open this petition for comments during the modified periods described above.

RESPECTFULLY SUBMITTED this 9th day of January, 2017.

By /s/ Judge Lawrence F. Winthrop
The Honorable Lawrence F. Winthrop, Chair
Arizona Commission on Access to Justice
1501 W. Washington St., Ste. 410
Phoenix, AZ 85007
(602) 452-3250
jgraber@courts.az.gov

APPENDIX A

RULES OF PROCEDURE FOR EVICTION ACTIONS

Rule 13. Entry of Judgment and Relief Granted

b. Forms of Judgment.

(4) Stipulated Judgments. The court may accept a stipulated judgment, ~~but~~ only if when the court finds all the following:

- A. Both parties or their attorneys personally appear before the court, unless the court determines that, because of distance or other circumstances, the defendant cannot personally appear, that good cause exists and it is in the interest of justice to proceed; and
- B. The court determines that the conditions of Rule 13(a)(1)-(2) have been satisfied and the form to which the defendant stipulated contains the following warning:

Read carefully! WARNING! The plaintiff's representative is not a court employee. By signing below, you are consenting to the terms of a judgment against you and the landlord will now be able to evict you. You may be evicted as a result of this judgment have your wages garnished, the judgment may appear on your credit report, you may lose your right to subsidized housing, and you may NOT stay at the rental property, even if the amount of the judgment is paid in full, without your landlord's express consent unless you get the agreement in writing or get a new written rental agreement with your landlord.

- C. The court determines that the parties understand the terms in the document they signed and parties have initialed the warning language in (b).

SUPREME COURT OF ARIZONA

In the Matter of	)	Arizona Supreme Court
	)	No. R-16-0022
ARIZONA RULES OF PROCEDURE)	
FOR EVICTION ACTIONS)	
)	
)	
	)	FILED 9/2/2016
_____)	

ORDER
AMENDING ARIZONA RULE OF PROCEDURE FOR EVICTION ACTIONS 9
ON AN EXPERIMENTAL BASIS

A petition having been filed proposing to amend the Arizona Rules of Procedure for Eviction Actions by adding subsection c to Rule 9, and comments having been received, upon consideration,

IT IS ORDERED that Rule 9, Arizona Rules of Procedure for Eviction Actions, be amended by adding subsection c, in accordance with the attachment hereto, on a one-year experimental basis, effective January 1, 2017. The amendment will be reconsidered by the Court at its August 2017 Rules Agenda.

IT IS FURTHER ORDERED that the amendment be reopened for comment, with comments due July 14, 2017, in accordance with Rule 28(D), Rules of the Supreme Court, on the issue of whether or not the experiment should be extended or made permanent.

DATED this 2nd day of September, 2016.

_____/s/_____
SCOTT BALES
Chief Justice

TO:

Rule 28 Distribution

John A Furlong

Susan Pickard

Michael A Parham

Kathy Sekardi

Ellen S Katz

Scott M Clark

ATTACHMENT¹

Arizona Rules of Procedure for Eviction Actions

Rule 9. Motions

a. – b. [No change in text.]

c. Motion for Change of Judge. For purposes of this subsection, a lawsuit has only two sides. A party or a side, if there is more than one plaintiff or one defendant in a lawsuit, may request a change of judge as a matter of right orally or in writing. The party or side must request a change of judge as a matter of right in the precinct where the lawsuit is pending. The request must state that the party or side has not previously requested a change of judge in this lawsuit, that the party or side has not waived the party's right to change of judge, and that the request is timely. A request is timely if it is made prior to or at the time of the first court appearance or upon reassignment of the matter to a new judge for trial. A party waives a right to a change of judge if the judge has ruled on any contested motion or issue, or if the trial has started. When a proper and timely request for a change of judge as a matter of right is orally requested or filed, the court must transfer the lawsuit to a new judge within the county for further proceedings.

If a party believes that the party will not have a fair and impartial trial before a justice of the peace, then the party must proceed as provided in Arizona Revised Statutes § 22-204, except that any request must be made by the date of the first court appearance and five days' notice is not required.

The provisions of this subsection are deemed experimental and will expire December 31, 2017, unless otherwise extended by the Supreme Court of Arizona.

[Re-letter current subsections c. – i. as d. – j.]

¹ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by strikeouts.

COMMENT TO R-16-0022

03 Feb 2017 02:57 PM

Hon. K. Slaughter
Salome Justice Court
PO Box 661
Salome, Az. 85348
928-859-3871 phone
928-859-3709 fax
kslaughter@courts.az.gov

I would like to incorporate Michael Parham's and the Hon. C. Steven McMurray's comments plus the already mentioned statutes regarding the time limitations courts have in dealing with eviction actions into my comments instead of repeating them here. Using this court as an example: The other courts in La Paz County are an hour's drive each way. Thus for a judge to cover an eviction case in another La Paz County court, their calendar would, at a minimum, have to have a 3 hour block of free time to be able to go to the other court, hear the case and return to finish their duties at their own court. Many of our cases are set a month or more in advance and having to reset cases is influenced by a number of factors. For example resetting is not always an option. Such changes are not fair to the participants of the other cases and logistically may not be able to be done in the time period allotted by law. In other civil cases, we do not have these time constraints and often are setting the next procedure out for a month thus having the ability to work it into our calendars. The one year trial basis makes no sense to me. It would not matter if a court has one case a year or ten cases a year, if a court cannot comply with the statutes- one case is too many.

There should be no right to a change of Judge for evictions actions. There is an argument that this is the only area where there is no right to a change of judge. There is not a right to a change of judge in civil traffic either Personally, I do not feel there should be a change of judge as a matter of right for any civil matter. As Justices of the Peace, we are voted in to hear these cases -not appointed. The voters have said they want us to hear their cases. Keep the matter of right at the poles. Special interest should not be able to pick a judge that they feel will be more favorable to their cause. Judges are supposed to be impartial. I read comments in the replies saying a judge is pro tenant or pro landlord. A judge is not to be pro either side, and a change of judge for cause should be available but what must be shown to prove the prejudice needs to be greater than what is required at this time.

I have been both a tenant for good and bad landlords and I have been a landlord for both good and bad tenants. I have adjudicated eviction actions. If a Rule for change of judge as a matter of right is passed, and it causes the case to be delayed longer than the current statutory limits, I can see tenants using it as a tool for no other reason than to get to stay in the premises longer.

1 Lisa M. Panahi, Bar No. 023421
2 Acting 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-17-0016

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

PETITION

13 Pursuant to Rule 28 of the Arizona Rules of Supreme Court, the State Bar of
14 Arizona ("State Bar") respectfully petitions this Court to adopt an amendment to the
15 Rules of Procedure for Eviction Actions by adding a rule on how to compute time
16 periods as Rule 3(c) and (d) and by deleting Rule 5(e) on the computation of time
17 for service of the summons and complaint, as that section would be subsumed under
18 the proposed rule. The proposed rule would follow in general, the state statutes,
19 A.R.S. §§ 1-243(a) and 1-303(A), on computation of time. The proposed rule differs
20 from Rule 115 of the Justice Court Rules of Civil Procedure concerning computation
21 of time that specifies how time is computed for other civil cases heard by the Justice
22 Courts, in that it does not differentiate for time periods less than 11 days or have a
23
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1 provision on e-mail and mail. *See* Rule 115(a) (2) and (3). In support of this Petition,
2 the State Bar states the following:

3
4 **I. Statement of Interest**

5 The Legal Services Committee of the State Bar, the initial proponent of this
6 Petition, is a standing committee of the State Bar comprising a broad cross-section
7 of attorneys, including staff from the legal services programs. The Committee's
8 mission is to work on access to justice issues for low-income Arizonans. The
9 Committee historically has had an interest in the rights of tenants in eviction cases.
10
11

12 **II. Background and Purpose of the Proposed Rule Amendment**

13 In 2008, the Arizona Supreme Court approved the Rules of Procedure for
14 Eviction Actions. The rules have limited information on how to compute time. Rule
15 3 pertains to computation of time in general, but there is nothing in that rule about
16 how to compute time periods. Rule 3(a) states that unless otherwise stated, the days
17 are calendar days. In subsection (b), the rule explains how to extend the time for
18 doing an act. Rule 5(e) pertains to service of the summons and complaint, and
19 provides that the date of service is not counted for the computation of time for service
20 of the complaint and summons. There are no other references to computing time in
21 the eviction rules.
22
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24

25 In 2012, the Arizona Supreme Court approved the Justice Court Rules of Civil

1 Procedure. Because the rules for eviction actions were already in place, the Justice
2 Court Rules of Civil Procedure do not apply to evictions. Rule 101(b). Rule 115 of
3 the Justice Court Rules includes the “basic rules” on how to count time periods in
4 subsection a and provides for additional time for mail or e-mail in subsection (b).
5

6 Similarly, the Federal Rules of Civil Procedure, Rule 6(a)(1)(A), and the
7 Arizona Rules of Civil Procedure, Rule 6(a), provide detail on how to compute time.
8 Each of these rules provides that in calculating the time period allowed by rule, order
9 of court, or statute, the day of the act or default from which the designated time
10 period begins to run is not included. Justice Court Rule 115(a)(1); Federal Court
11 Rule 6(a)(1)(A); Arizona Rules of Civil Procedure 6(a). The proposed rule
12 amendment would add this clarification to the eviction court rules as Rule 3(c).
13
14

15 Similarly, each rule provides that if the last day of the time period is a
16 Saturday, Sunday or legal holiday, that the time period runs until the next day that is
17 not a Saturday, Sunday or legal holiday. Justice Court Rule 115(a) (3); Federal Court
18 Rule 6(a)(1)(C); Arizona Rules of Civil Procedure 6(a). The proposed rule would
19 add this clarification to the eviction rules as Rule 3(d).
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1 Eviction actions, one of the most common civil cases heard in Justice Court,
2 are the only type of case that does not specify how to compute time.¹ Petitioner
3 submits the proposed rule for consideration by the Court so that litigants in eviction
4 cases, like all other litigants in civil cases heard in Justice Court and Superior Court,
5 will have clarification on how to compute time.
6

7 **III. Proposed Rule Amendment**

8 **Proposed Eviction Rule 3(c) and (d) – How to Calculate Time**

9 **New:** Rule 3(c) and (d)

10
11 (c) *Day of the act or default.* In calculating any period of time specified or
12 allowed by these rules, by any local rules, by order of a court, or by any
13 applicable statute, the day of the act or default from which the designated
14 period of time begins to run is not included.
15
16

17
18 ¹ In addition to eviction cases, the Justice Court Rules of Civil Procedure do not
19 apply to civil traffic, civil boating, protective orders and injunctions against
20 harassment. Rule 101(b). These other cases have a rule on computing time.
21 Computation of time is addressed in orders of protection and injunctions against
22 harassment cases because pursuant to Rule 1(A)(2) of the Arizona Rules of
23 Protective Order Procedure, the Arizona Rules of Civil Procedure apply to those
24 cases, unless specifically inconsistent with the rules. Thus, as relevant here, Rule
25 6(a) applies to those cases, as well. For civil traffic and boating cases, Rule 2 (h) of
the Rules of Procedure in Civil Traffic and Civil Boating Violation Cases defines
how to compute the time limits and specifically excludes the day of the act or event
from which the designated time period begins to run and does not include the last
day if the day is a Saturday, Sunday or a day when the court is closed.

1 (d) *Last day*. The last day of the period is included, unless the last day is
2 a Saturday, Sunday or a legal holiday, in which event the period runs until
3 the end of the next day that is not a Saturday, Sunday or a legal holiday.

4
5 **Delete:** Rule 5(e). Computation of Time.

6 The date of service shall not be counted when computing time for service
7 of the summons and complaint. The date of the initial appearance shall be
8 counted for that purpose.

9
10 New Rule 3(c) and (d) are taken from A.R.S. § 1-243(a). Section 243(a)
11 provides that the last day is not counted if the day is a “holiday.” A.R.S. § 1-301(A)
12 defines the days that are holidays. Every Sunday is included in the definition of
13 holiday. We propose adding that if the last day falls on a Saturday, Sunday, or a
14 “legal” holiday, the day is not included. This is an expansion beyond the defined
15 holidays that include Sunday, but it is more in line with all other rules that do not
16 count the last day if it falls on a Saturday, Sunday or a “legal” holiday. Moreover,
17 the excluded weekends are not days when the justice courts are open to receive court
18 filings. We also propose deleting Rule 5(e) because it appears to exclude only the
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1 date of service from the day on which the time period for act or default begins to
2 run, which is incorrect.²

3 **IV. Explanation of Need for Proposed Rule**

4
5 Tenants have a property interest in their residences. *Greene v. Lindsey*, 456
6 U. S. 444, 451-52 (1982); *see also Foundation Development Corporation v.*
7 *Loehmann's*, 163 Ariz. 438, 442, 788 P.2d 1189, 1193 (Ariz. 1990) (recognizing
8 common law right of tenant's property interest in rental). Eviction proceedings that
9 deprive tenants of that property must comply with the due process requirements of
10 the Fourteenth Amendment to the United States Constitution. *Greene*, 456 U.S. at
11 455.
12

13
14 For low-income persons, an eviction action may threaten their only means of
15 shelter. *See, e.g.*, Chester Hartman and David Robinson, *Evictions: The Hidden*
16 *Housing Problem*, Housing Policy Debate, Vol. 14, Issue 4 (2003), <http://content.knowledgeplex.org/kp2/cache/kp/10950.pdf>. The inability to find other housing on
17 short notice can lead to the disruption of children's education, interruption of
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19
20
21

22 ² The State Bar does not propose adding a provision similar to that of Rule 6(a),
23 Ariz. R. Civ. P., or Rule 115(a)(2), Justice Ct. R. Civ. P., stating that if the time
24 period is fewer than 11 days, then intermediate Saturdays, Sundays, and legal
25 holidays are not counted. The Arizona Residential Landlord and Tenant Act and the
Forcible Entry and Detainer Act already refer to calendar days. *See, e.g.*, A.R.S. §
33-1368(H); A.R.S. § 12-1178(C).

1 employment, dislocation from health care providers, loss of personal belongings and
2 homelessness. In addition, the eviction process may lead to monetary judgments.
3 These monetary judgments make it difficult for tenants to secure new rental housing.
4 Thus, the consequences of eviction cases make them very important to tenants and
5 especially low-income tenants, who often lack back-up resources. The result of an
6 eviction may be that a family is living in a car. The importance of these cases and
7 the property interest at stake certainly is undercut by not having a specific rule on
8 how to compute time.
9
10

11 The need for this rule is shown by the following example. Recently, a Justice
12 of the Peace in Maricopa County published some comments on another rule petition.
13 In those comments, the Justice explained a scenario on the service of a 5 day notice
14 by the landlord that rent was owed. The Justice stated that if the 5 day notice was
15 served on day one, and no rent was paid by the fifth day, then the eviction complaint
16 could be filed on day six. Pursuant to A.R.S. § 1-243(a), if a 5 day notice is served
17 on day one, the time period in which the tenant must act (pay the rent) begins on day
18 two and ends on day six. If the tenant did not pay the rent by day six, the landlord
19 could file an eviction on day seven. Given the short time period involved, this means
20 that a tenant has another full day to pay the rent. In this situation, the difference in
21 time is 20%. This additional day can mean all the difference between a tenant being
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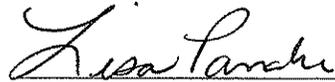
1 evicted and being able to stay in his or rental.

2 For all the above reasons, this clarification should be made.

3
4 **CONCLUSION**

5 The proposed rule provides clarity for eviction actions in Justice and Superior
6 Court. Eviction court litigants should have the same information on how to compute
7 time period as other civil litigants in Justice Court and Superior Court. The State
8 Bar respectfully requests that the Court approve this Petition.
9

10
11 RESPECTFULLY SUBMITTED this 9th day of January, 2017.

12
13
14 

15 Lisa M. Panahi
16 Acting General Counsel

17
18 Electronic copy filed with the
19 Clerk of the Arizona Supreme Court
20 this 9th day of January, 2017.

21 by: 
22
23
24
25

Gerald A. Williams
Arizona Bar No. 018947
North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, AZ 85301

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	Supreme Court
	)	No. R-17-0016
PETITION TO AMEND)	
THE RULES OF PROCEDURE	)	Response
FOR EVICTION ACTIONS)	

There is apparently a concern that a miscalculation of days is causing tenants to have less time to cure an allegation of nonpayment of rent. The Petitioner states that “a Justice of the Peace in Maricopa County ... stated that if the 5 day notice was served on day one, and no rent was paid by the fifth day, then the eviction complaint could be filed on day six.” The Petitioner also states that this proposed rule changed is needed due to this example. My actual quote was as follows:

Prior to filing an eviction action for nonpayment of rent, the landlord must give the tenant a five-day cure notice. This notice must: (1) state the amount of any unpaid rent and any other amount due; (2) notify the tenant of the landlord’s intent to terminate the lease if the amount due is not received within five days after the notice is given to the tenant, and (3) inform the tenant that if the amount due is not paid, that the tenant must then surrender possession of the residence. On day six, the landlord can file suit.

It appears that an assertive statement has been added into my comment that was never there. My comment did not concern counting days. It did not concern when day six would occur. Had I known that my eight word sentence could generate an eight page rule change petition, I would have added a footnote explaining how the days are calculated.

I have no objection to examining whether there is a better way to explain how days are counted; but an unintended interpretation of a single sentence should not be a basis to change a court rule.¹

RESPECTFULLY SUBMITTED, this 26th day of January 2017.

/s/ Gerald A. Williams
GERALD A. WILLIAMS
Justice of the Peace
North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, AZ 85374

Copy Mailed To:

Lisa M. Panahi
Acting General Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, AZ 85016-7236

¹ Apparently landlords are not rushing to file eviction complaints immediately after the time for a five-day notice has run. Although it is only a snapshot, of the 46 eviction cases that were set to be heard in the North Valley Justice Court on January 25, 2017, the average calendar day time, from the day after the five-day notice expired until the day an eviction complaint was filed, was 13.7 days. (Seven of the cases were filed on the 13th day, 17 were filed on the 14th day, and 8 were filed on the 15th day.) In all but one of those cases, the landlord was represented by an attorney.

1 Lisa M. Panahi, Bar No. 023421
2 Acting 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-17- 0011

10 **PETITION TO AMEND RULE 38,**
11 **ARIZONA RULES OF SUPREME**
12 **COURT**

PETITION

13 Pursuant to Rule 28, Ariz. R. Sup. Ct., the State Bar of Arizona (“State Bar”)
14 petitions the Court to amend Rule 38, Ariz. R. Sup. Ct. The proposed amendments
15 are necessary to correct minor errors in the current version of the Rule, and to clarify
16 ambiguities in the Rule pertaining to in-house counsel registration with the State
17 Bar.

18
19 **DISCUSSION**

20 **1. Rule 38(e)**

21 The State Bar has observed minor errors in the current draft of Rule 38(e) and
22 takes this opportunity to bring these oversights to the Court’s attention for
23 correction. The errors are noted in Rule 38(e)(1) and Rule 38(e)(3)(A). The proposed
24 corrections to these errors are reflected in the attached Appendix and consist of
25

1 simply adding the word “States” following “United” in Rule 38(e)(1), and changing
2 “Rule 38(h)” to “Rule 38(a)” in Rule 38(e)(3)(A) for correct citation.

3
4 **2. Rule 38(h)**

5 The State Bar also seeks to amend Rule 38(h), Practice Pending Admission
6 on Motion, to clarify the annual assessment amount owed to the Client Protection
7 Fund (the “Fund”) by an applicant who intends to practice pending admission. In
8 January 2016, this Court adopted practice pending admission conditioned on the
9 terms set forth in Rule 38(h). One of these terms requires an applicant to “[pay] the
10 annual assessment to the Client Protection Fund.” Rule 38(h)(1)(H). Following the
11 adoption of this Rule, applicants seeking to pay the Fund assessment have inquired
12 to the State Bar about the amount assessed to applicants under Rule 38(h).
13
14

15 Rule 32(c)(8) clearly sets forth the amount owed by State Bar active and
16 inactive members who are not exempt, and mandates these members pay the annual
17 assessment to the Fund as set by the Court. However, neither Rule 32(c) nor Rule
18 38(h) is instructive on the amount that applicants intending to practice pending
19 admission must pay to the Fund.
20

21 Because of this ambiguity, the State Bar seeks to amend Rule 38(h) by adding
22 the language set forth in the Appendix to clarify that applicants intending to practice
23 under this Rule must pay to the Fund an assessment in the amount owed by active
24 and inactive members for the applicable year.
25

1 **3. Rule 38(a) and Rule 38 Comment**

2 The State Bar has also received several inquiries regarding the interpretation
3 of Arizona’s in-house counsel registration rule, Rule 38(a), and the Comment to Rule
4 38. These inquiries have resulted in the State Bar taking notice of obscure provisions
5 in this Rule and the Comment. This Petition seeks to clarify the obscurities by
6 delineating the application of this Rule and clarifying the language in the Comment.
7

8 The State Bar respectfully requests that Rule 38(a) include the word “single”
9 in reference to the employment upon which the in-house counsel registration is
10 premised. After reading Rule 38(a) in totality, one may infer that an Arizona
11 registered in-house counsel may only be employed by one entity, which can include
12 its parent subsidiaries and/or affiliates; however, because the black letter of the Rule
13 does not explicitly limit the number of employers, there is an element of ambiguity.
14 The State Bar seeks to clarify that in-house counsel registration is intended to apply
15 to lawyers who otherwise meet the requirements and are employed by one
16 employing entity. Therefore, we respectfully petition the Court to amend Rule 38(a)
17 to include the word “single,” as reflected in the Appendix.
18
19
20

21 The State Bar also petitions to replace the current Comment to Rule 38 with
22 the proposed Comment in the Appendix. Rule 38’s only Comment provides further
23 guidance on the application of the in-house counsel rule. A portion of the Comment
24 reads:
25

1 The rule's registration requirement is only intended to apply to those
2 lawyers who are employed in that capacity by an entity conducting
3 activities within the State, *and whose principal office is located within*
4 *the physical boundaries of the State.* It is not intended to apply to those
5 employed in such a capacity whose physical presence in the State is
6 temporary or sporadic. (Emphasis added.)

7 This particular provision has been construed to mean two different things: 1. that the
8 pronoun “whose” refers to the lawyer, who must have a principal office located
9 within the physical boundaries of the State; or 2. that the pronoun “whose” refers to
10 the entity, who must have a principal office located within the physical boundaries
11 of the State. It is not clear if “whose” applies to the antecedent lawyer or antecedent
12 entity. The State Bar has taken the position that this clause applies to the lawyer’s
13 principal office, and not that of the entity, but this interpretation is not readily
14 discernible. The State Bar believes that the guidance set forth in this Comment
15 should be unambiguous and not subject to multiple interpretations.
16

17 The Comment, in its current form and as interpreted by the State Bar, means
18 that in order to qualify for in-house counsel registration, the applicant must have a
19 principal office in Arizona. The Comment is clear that the Rule is not intended to
20 apply to lawyers who appear on a temporary or sporadic basis. Due to the
21 proliferation of virtual offices and cross-state residences, the State Bar believes that
22 the Comment can be simplified by clarifying that the Rule applies to lawyers who
23 will have a systematic and continuous presence in Arizona on behalf of their
24
25

1 employer. This simplified approach to a lawyer's presence comports with the ABA
2 Model Rule for Registration of In-House Counsel, which reads:

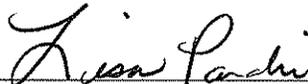
3
4 A lawyer who is admitted to the practice of law in another United States
5 jurisdiction or is a foreign lawyer, who is employed as a lawyer by an
6 organization, the business of which is lawful and consists of activities
7 other than the practice of law or the provision of legal services, and who
8 has a systematic and continuous presence in this jurisdiction.

9 The State Bar believes that the proposed amended Comment will provide
10 better clarity to the interpretation of the in-house counsel rule and bring the language
11 up to date with the modern-day practice of law.

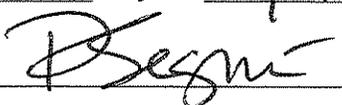
12 **CONCLUSION**

13 The State Bar of Arizona respectfully requests amendment of Rule 38, Ariz.
14 R. Sup. Ct., as stated herein.

15
16 RESPECTFULLY SUBMITTED this 4th day of January, 2017.

17
18
19 
20 Lisa M. Panahi
21 Acting General Counsel

22 Electronic copy filed with the
23 Clerk of the Arizona Supreme Court
24 this 5th day of January, 2017.

25 by: 

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-16-0041
RULES 6, 7, AND 41, RULES)
OF CRIMINAL PROCEDURE)
)
)
) **FILED 12/14/2016**
)
)
_____)

ORDER

**AMENDING RULES 3, 6, AND 7, AND ABROGATING FORMS 6 AND 7, RULE 41,
RULES OF CRIMINAL PROCEDURE, AND SUBSTITUTING NEW FORMS 6 AND 7 IN
THEIR PLACE**

A petition having been filed proposing to amend Rules 6, 7, and 41, Forms 6 and 7, Rules of Criminal Procedure, and comments and a reply having been received, upon consideration,

IT IS ORDERED that Rules 3, 6, and 7, Arizona Rules of Criminal Procedure, be amended in accordance with the attachment hereto, effective April 3, 2017.

IT IS FURTHER ORDERED that Rule 41, Forms, Arizona Rules of Criminal Procedure, be amended by abrogating existing Forms 6 and 7, and substituting new Forms 6 and 7 in their place, in accordance with the attachment hereto, effective April 3, 2017.

DATED this 14th day of December, 2016.

/s/
SCOTT BALES
Chief Justice

TO:
Rule 28 Distribution
David K Byers
Barbara Broderick
Mark C Faull
Elizabeth B Ortiz
David J Euchner
Michael A Breeze

ATTACHMENT*

Rule 3.2. Content of warrant or summons

a. Warrant. The warrant shall be signed by the issuing magistrate and shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. It shall state the offense with which the defendant is charged and whether the offense is one to which victims' rights provisions apply. It shall command that the defendant be arrested and brought before the issuing magistrate or, if the issuing magistrate is absent or unable to act, the nearest or most accessible magistrate in the same county. If the defendant is bailable as a matter of right, it shall may state the amount of a an secured appearance bond.

b. and c. [no changes]

Rule 6.1. Rights to counsel; waiver of rights to counsel

a. [no changes]

b. *Right to Appointed Counsel.* An indigent defendant shall be is entitled to have an attorney appointed; ~~to represent him or her in~~

(1) For the limited purpose of determining release conditions, if detained pretrial after misdemeanor criminal charges are filed;

(2) [i]In any criminal proceeding which ~~that~~ may result in loss of liberty; and

(3) In any other criminal proceeding in which the court concludes that the interests of justice so require.

c. through e. [no changes]

Rule 7.1. Definitions and applicability of rule

a. *Own recognizance.* "Own recognizance" means release ~~without any condition of an undertaking relating to, or deposit of, security~~ of a person without imposing any bond as a condition of release.

* Additions to text are shown by underscoring; deletions by ~~strikeouts~~.

b. Unsecured Appearance bond. An "unsecured appearance bond" is an undertaking, on a form approved by the Supreme Court, to pay to the clerk of the court a specified sum of money upon failure of a person released to comply with its the conditions of the bond.

c. Cash bond. A "cash bond" is a secured appearance bond consisting of actual cash deposited by the person released or someone on behalf of that person other than a professional bondsman.

d. Deposit bond. A "deposit bond" is a partially-secured appearance bond in which the person, or someone on behalf of that person other than a professional bondsman, deposits a percentage of the full bond amount in cash.

ee. Secured Appearance bond. A "secured appearance bond" is an appearance bond secured by deposit with the clerk of security equal to the full amount thereof.

ef. Security. "Security" is cash, a surety's undertaking, or any property of value, deposited with the clerk to secure an appearance bond. The value of such property shall be determined by the clerk, or at the clerk's or a party's request, by the court.

eg. Surety. A "surety" is one, other than the person released, who executes an appearance bond and binds ~~himself or herself~~ the surety to pay its amount if the person released fails to comply with its conditions. A surety shall file with an appearance bond an affidavit that he or she is not an attorney or person authorized to take bail, and that ~~he or she~~ the surety owns property in this state (or is resident of this state owning property) worth the amount of the appearance bond, exclusive of property exempt from execution and above and over all liabilities, including the amount of all outstanding appearance bonds entered into by ~~him or her~~ the surety, specifying such property, the exemptions and liabilities thereon, and the number and amount of such appearance bonds.

fh. Professional Bondsman. Any person who is surety simultaneously on more than four appearance bonds is a "professional bondsman." No person may be a professional bondsman unless the person annually certifies in writing under oath to the clerk of the Superior Court that ~~he or she~~ the person

(1) Is a resident of this state;

(2) Has sufficient financial net worth to satisfy reasonable obligations as a surety;

(3) Agrees to assume an affirmative duty to the court to remain in regular contact with any defendant released pursuant to an appearance bond on which the person is a surety;

(4) Has not been convicted of a felony, except as otherwise provided by A.R.S. § 20-340.03;

(5) Has no judgments arising out of surety undertakings outstanding against ~~him or her~~ the person;

(6) Has not, within a period of two years, violated any provisions of these rules or any court order.

Capacity to act as a professional bondsman may be revoked or withheld by the clerk, or by the court, for violation of any provision of this rule.

gj. *Applicability.* This rule shall not apply to minor traffic offenses.

COMMENT [AMENDED 2007]

Rule 7.1 contains the definitions of the terms used in the rule and the requirements for “sureties” and “professional bondsmen” currently specified in the rules of criminal procedure.

Rule 7.1(a). See Form 6 for an order of release.

Rule 7.1(b). The rule substitutes for “bail bond” and “bail” the term “unsecured appearance bond” which emphasizes the role of unsecured bonds. See Ariz. Rev. Stat. Ann. § 13-1577(E) (Supp.1972) [now § 13-3967] (noting propriety of conditions other than money bail). See Form 7.

Rule 7.1(ce). “Secured appearance bond” is used instead of “bail”. See Form 7 for a secured appearance bond.

Rule 7.1(df). “Security” is defined broadly enough to encompass anything of value.

Rule 7.1(eg). This definition includes the requirements of the 1956 Ariz. Rules of Criminal Procedure, as amended, Rules 46, 47, 48(A) and 49. Wherever standards are unclear under present rules, this definition chooses their most onerous interpretation. See Form 7 and Attachment A thereto for the form of the surety's undertaking and affidavit.

Rule 7.1(fh). The definition of “professional bondsman” is more limited than the 1956 Ariz. Rules of Criminal Procedure, as amended, Rules 50 and 51. The clerk is required to review a professional bondsman's qualifications annually.

Rule 7.2. Right to release

a. Before Conviction; Persons Charged With an Offense Bailable as a Matter of Right. All persons charged with a crime but not yet convicted are presumed to be innocent. Except as otherwise provided in these rules. Any person charged with an offense bailable as a matter of right shall must be released pending or during trial on the person's own recognizance with only the conditions of release required by Rule 7.3(a), unless the court determines, in its discretion, that such a release will not reasonably assure

the person's appearance as required or protect other persons or the community from risk posed by the person. If such a determination is made, the court may impose the least onerous condition or conditions contained in rule 7.3(b) which will reasonably assure the person's appearance that are reasonable and necessary to protect other persons or the community from risk posed by the person or to secure the appearance of the person in court.

b. through d. [no changes]

COMMENT TO 2014 AMENDMENT TO RULE 7.2(B)

Rule 7(b) was amended in 2014 to comply with *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772 (9th Cir. 2014), *cert. denied*, 135 S.Ct. 2046 (2015), which held unconstitutional A.R.S. Const. Art. 2, § 22(A)(4) and A.R.S. § 13-3961(A)(5) mandating that bail be denied to undocumented immigrants charged with a serious crime.

COMMENT

Rule 7.2(a). This section establishes a presumption for release on recognizance in most cases. Offenses “bailable as a matter of right” are defined in *Ariz. Const. Art. 2, § 22* and *Ariz. Rev. Stat. Ann. § 13-1571* (1956) [now § 13-3961] as all cases except “capital offenses when the proof is evident or the presumption great” and felonies committed while on bail (using the same “proof is evident or the presumption great” standard).

The presumption of an “own recognizance release” follows closely the ABA, Standards Relating to Pretrial Release, § 5.1 (Approved Draft, 1968), and the Federal Bail Reform Act, 18 U.S.C.A. § 3146 (1966). This section of the rule differs only in emphasis from *Ariz. Rev. Stat. Ann. § 13-1577(B)*.

Rule 7.2(b). See *Rule 17, Rules of the Supreme Court*, 17 Ariz. Rev. Stat. Ann.

COMMITTEE COMMENT TO 1993 AMENDMENT

The 1993 amendment renumbered as Rule 7.2(b)(1) former Rule 7.2(b), which provides for the custody of a person convicted of an offense for which that person in all probability will suffer a sentence of incarceration, and made it applicable only in superior court. It added Rule 7.2(b)(2), applicable in limited jurisdiction courts, which represents a significant diversion from the parallel provision of Rule 7.2(b)(1). Rule 7.2(b)(2) provides that the person *shall* remain released on bail or own recognizance if these were conditions that existed prior to the person's conviction. A bond may still be required under Rule 6. Superior Court Rules of Appellate Procedure, in order to stay the execution of the remaining portion of the person's sentence.

Rule 7.3. Conditions of release

a. Mandatory Conditions. [no changes]

~~**b. Additional Conditions.** An order of release may include the first one or more of the following conditions reasonably necessary to secure a person's appearance:~~

~~(1) Execution of an unsecured appearance bond in an amount specified by the court;~~

~~(2) Placing the person in the custody of a designated person or organization agreeing to supervise him or her;~~

~~(3) Restrictions on the person's travel, associations, or place of abode during the period of release;~~

~~(4) Any other condition not included in (5) or (6) which the court deems reasonably necessary;~~

~~(5) Execution of a secured appearance bond; or~~

~~(6) Return to custody after specified hours.~~

b. Discretionary Conditions in General. The court may impose as a condition of release one or more of the following conditions, if the court finds the condition is reasonable and necessary to protect other persons or the community from risk posed by the person or secure the person's appearance. In making this determination, the court must consider the results of a risk assessment approved by the supreme court or a lethality assessment provided by law enforcement, if provided.

(1) Non-monetary conditions:

(i) Place the person in the custody of a designated person or organization agreeing to provide supervision;

(ii) Restrict the person's travel, associations, or residence;

(iii) Prohibit the person from possessing any dangerous weapon or engaging in certain described activities or consuming intoxicating liquors or any controlled substance not validly prescribed;

(iv) Prohibit the person from contacting the victim;

(v) Require the person to report regularly to and remain under the supervision of an officer of the court;

(vi) Return the person to custody after specified hours; or

(vii) Any other non-monetary condition that has a reasonable relationship to assuring the safety of other persons or the community from risk posed by the person or securing the person's appearance.

(2) Monetary conditions. In deciding whether to impose a monetary condition of release and what amount to impose, the court must make an individualized determination of the person's risk of non-appearance, risk to the community, and financial circumstances rather than rely on a schedule of charge-based bond amounts. The court must not impose a monetary condition that results in unnecessary pretrial incarceration solely because the person is unable to pay the bond. If the court determines a

monetary condition is necessary, the court must impose the least onerous of the types of bonds listed below in the lowest amount necessary to protect other persons or the community from risk posed by the person or to secure the person's appearance. Monetary conditions include:

- (i) Unsecured appearance bond;
- (ii) Deposit bond;
- (iii) Other type of secured appearance bond; or
- (iv) Cash bond

COMMENT [AMENDED 2007]

Rule 7.3(a). This section replaces the 1956 Ariz. Rules of Criminal Procedure, as amended, Rules 48 and 68 (forms of undertaking), specifying the matters which must be included in every order of release.

The rule adds the requirement of good behavior from [Ariz. Rev. Stat. Ann. § 13-1578\(B\)](#) [now § 13-3968]. Also, following [Ill. Ann. Stat. Ch. 38, § 110-10\(a\)\(3\) and \(b\)\(3\)](#) (Smith-Hurd 1970), the prohibition against out-of-state travel without leave of the court is mandated for every case. The diligent prosecution of an appeal is also taken from the Illinois statute. (See the provision in Rule 7.2(b) for mandatory revocation upon violation of this requirement.) The surety's undertaking to surrender the person in the event of a supervening felony charge is deleted. See generally Form 6.

~~**Rule 7.3(b).** This section sets forth the additional conditions which a court may impose under the standard of Rules 7.2(a) or (b), and the order of priority in their imposition—e.g., the court may not properly impose (b)(6) unless it finds (b)(5) inadequate. See Form 6, which lists these conditions in the same order.~~

~~Subsection (1) calls for an unsecured appearance bond as defined in Rule 7.1. This condition is closely related to Release on Own Recognizance and is used interchangeably with it in the Federal Bail Reform Act, [18 U.S.C.A. § 3146 \(1966\)](#).~~

~~Subsection (2) is taken from the statute. If a person willfully fails to produce a defendant released in his custody, the court may hold him in contempt. Subsection (3) and (4) are taken verbatim from § 13-1577(E)(2) and (6) [now § 13-3967]. Subsection (4) would also encompass the additional possibilities mentioned in the statute: prohibition against possessing weapons, engaging in certain activities or indulging in drugs or intoxicating liquors [§ 13-1577(E)(4)] and requiring the defendant to report to and remain under the supervision of an officer of the court [§ 13-1577(E)(5)].~~

~~Subsection (5), a fully secured bond, is included within the language of § 13-1577(E)(3), and is listed as the second least desirable condition. Part-time incarceration, authorized by § 13-1577(E)(6), is the harshest permissible condition.~~

Rule 7.4. Procedure

a. through d. [no changes]

e. Appointment of Counsel. The court must appoint counsel in any case in which the defendant is eligible for appointment of counsel under Rule 6.1(b).

Rule 7.6. Transfer and disposition of bond

a. through c. [no changes]

d. Exoneration

(1) At any time before violation that the court finds that there is no further need for an appearance bond, ~~it shall~~ the court must exonerate the appearance bond and order the return of any security deposited.

(2) When a deposit bond or cash bond is exonerated, the court must order the return of the entire amount deposited unless forfeited pursuant to rule 7.6(c)(2).

(~~23~~) If the surety, in compliance with the requirements of A.R.S. § 13-3974, surrenders the defendant to the sheriff of the county in which the prosecution is pending, or delivers an affidavit to the sheriff stating that the defendant is incarcerated in this or another jurisdiction, and the sheriff reports the surrender or status to the court, the court may exonerate the bond.

(~~34~~) In all other instances, the decision whether or not to exonerate a bond shall be within the sound discretion of the court.

e. [no changes]

COURT _____

County, Arizona

STATE OF ARIZONA Plaintiff -VS- Defendant (FIRST, MI, LAST) _____										RELEASE ORDER			
Booking Number _____										Date of Birth _____			
LINE #	COMPLAINT NO.	VIOLATION CODE	NF	ORR	PSR	3P	BOND	BA	UB	DB	SB	CB	NB
1							\$						
2							\$						
3							\$						
4							\$						
5							\$						

(NF=Charge not filed; ORR=Own recognizance release; PSR=Pretrial supervision release; 3P=Third party custody; Bond=Amount of bond; BA=Bond applies; UB=Unsecured bond; DB=Deposit bond; SB=Secured bond; CB=Cash bond; NB=Non-bailable)

If you are released from jail, you must follow all release conditions and appear at court as indicated below:

MANDATORY AND STANDARD CONDITIONS OF YOUR RELEASE:

- 1. Appear at _____ court on: _____ at _____ a.m. / p.m., Courtroom: _____
(Court name and address) (Date) (Time)
 for _____ and attend all future court hearings.
- 2. Violate no federal, state or local criminal laws.
- 3. Not leave the state of Arizona without written permission from the court.
 Defendant may leave the state of Arizona provided defendant returns for court dates.
- 4. Diligently pursue any appeal if released from custody after judgment and sentence have been imposed.
- 5. Maintain contact with your attorney.
- 6. Provide a current address and phone number to the court and to your attorney and immediately notify both of any changes.
- 7. Not threaten or initiate any type of contact with the alleged victim(s).
- 8. Not drive a motor vehicle without a valid driver's license in your possession.
- 9. Not threaten or initiate any type of contact with any person as specified here: _____.
- 10. Not possess weapons as specified here: _____.
- 11. Not consume any alcoholic beverages.
- 12. Not go to scene of the alleged crime.
- 13. Not go to locations as specified here: _____.
- 14. Comply with 3rd party custody release conditions as specified here: _____.
- 15. Contact probation or parole officer. (See 3rd party obligations in this document.)
- 16. Electronic monitoring, if available, (mandatory if charged with a felony offense under Chapters 14 or 35.1 of Title 13)
- 17. Other: _____.

ADDITIONAL CONDITIONS FOR YOUR PRETRIAL SUPERVISION RELEASE (PSR):

- 18. Comply with the assigned pretrial supervision program as specified here: _____.
- 19. Provide a current address and phone number to Pretrial Services immediately and notify of any changes.

FINANCIAL CONDITIONS OF RELEASE: If you cannot post an appearance bond of \$ _____ you will remain in custody until your next court hearing on _____.

IF YOU VIOLATE THIS ORDER: You have the right to be present at your trial and at all other proceedings in your case. IF YOU FAIL TO APPEAR THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST AND/OR HOLD THE TRIAL OR PROCEEDING IN YOUR ABSENCE. IF CONVICTED, YOU WILL BE REQUIRED TO APPEAR FOR SENTENCING. IF YOU FAIL TO APPEAR, YOU MAY LOSE YOUR RIGHT TO A DIRECT APPEAL.

If you violate any condition of a bond, the court may order the bond and any related security deposit forfeited to the State of Arizona. In addition, the court may issue a warrant for your arrest upon learning of any violation of the conditions of release. After a hearing, if the court finds that you have not complied with the release conditions, the court may modify the conditions or revoke the release altogether.

If you are released on a felony charge, and the court finds the proof evident or the presumption great that you committed a felony during the period of release, the court must revoke your release. You may also be subject to an additional criminal charge, and upon conviction you could be punished by imprisonment in addition to the punishment which would otherwise be imposable for the crime committed during the period of release. Upon finding that you violated conditions of release, the court may also find you in contempt of court and sentence you to a term of imprisonment, a fine, or both.

ACKNOWLEDGEMENT: I fully understand and will comply with all release conditions indicated above and further understand the consequences should I violate any part of this order.

Current Address where you live

Apt. No.

Address where you receive mail if different from current address

()
Phone No.

()
Phone No.

X
Defendant Signature

Date

X
Judicial Officer

Date

COURT

County, Arizona

STATE OF ARIZONA Plaintiff

-VS-

**APPEARANCE
BOND**

Defendant (FIRST, MI, LAST)

Booking Number

Date of Birth

WARNING TO DEFENDANT AND DEFENDANT'S SURETY (if any)

If defendant fails to appear at _____ at _____ a.m./p.m. on _____, 20_____ and at any other hearing, or fails to follow any other court-ordered condition of release during the pendency of the case, THIS BOND MAY BE FORFEITED and the proceedings begun without defendant. If convicted, defendant will be required to appear for sentencing. If defendant fails to appear at sentencing, defendant may lose the right to a direct appeal.

Amount of appearance bond ordered: \$ _____

TYPE OF APPEARANCE BOND ORDERED:

UNSECURED APPEARANCE BOND: Defendant and defendant's surety, _____ (if none, so state) hereby promise to pay the State of Arizona the amount of the bond ordered if defendant fails to comply with any condition of release.

DEPOSIT BOND: Defendant hereby deposits with the Clerk of the Court _____% of the total amount of the bond, with the remainder of \$ _____ as an unsecured appearance bond. Defendant and defendant's surety, _____ (if none, so state) hereby promise to pay the State of Arizona the full amount of the bond ordered if defendant fails to comply with any condition of release. The deposited amount of the bond will be returned to the defendant, if defendant complies with all conditions of release.

SECURED APPEARANCE BOND: Defendant hereby deposits with the Clerk of the Court cash or property having a value equal to or greater than the full amount of the bond.

Depositor or Professional Bondsman: _____

Email address: _____

Address: _____

Phone number: _____

Avowal of non-professional surety (if applicable): _____, surety for the defendant, hereby swears (or affirms) that the surety is not an attorney or person authorized to take bail, and that the surety owns property in this state (or is a resident of this state owning property) worth the amount of this bond, exclusive of property exempt from execution and above and over all liabilities, as detailed in Attachment A.

CASH BOND: Defendant hereby deposits cash equal to the full amount of the bond with the Clerk of the Court. The cash deposited will be returned to defendant, if defendant complies with all conditions of release.

ACKNOWLEDGEMENTS

Date

Defendant

State of Arizona)
)
County of _____) ss.

Subscribed and sworn to before me on

My Commission Expires _____

Notary Public

Approved:

Date

Surety or Authorized Agent

FORM 7 ATTACHMENT A

**SPECIFICATION BY SURETY OF PROPERTY
CERTIFIED IN APPEARANCE BOND**

_____, surety on the attached appearance bond certifies that the surety owns the following properties, subject to the stated exemptions and liabilities, and to the stated outstanding appearance bonds entered into by the defendant.

<u>I. Properties, less Exemptions and Liabilities.</u>	<u>Value or Amount</u>	
Items of Property		
(1) _____	_____	
Less _____	_____	
Net _____	_____	_____
(2) _____	_____	
Less _____	_____	
Net _____	_____	_____
(3) _____	_____	
Less _____	_____	
Net _____	_____	_____
(4) _____	_____	
Less _____	_____	
Net _____	_____	_____
 Total	_____	\$ _____

<u>II. Other Outstanding Liabilities or Exemptions.</u>		
(1) _____	_____	_____
(2) _____	_____	_____
(3) _____	_____	_____
(4) _____	_____	_____
 Total		\$ _____

<u>III. Other Outstanding Appearance Bonds.</u>		
(1) _____	_____	_____
(2) _____	_____	_____
(3) _____	_____	_____
(4) _____	_____	_____
 Total		\$ _____

<u>IV. Total Property in Excess of Liabilities, Exemptions, and Outstanding Appearance Bonds (I less II and III).</u>		\$ _____
---	--	----------

David K. Byers
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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of)
)
PETITION TO AMEND RULES 4.2)
5.1, 5.4, 7.2, 7.4, 26.12 AND 27.8 OF) Supreme Court No. R-17 -0015
THE ARIZONA RULES OF)
CRIMINAL PROCEDURE)
_____)

Pursuant to Rule 28 of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, and Chair of the Supreme Court Task Force on Fair Justice for All: Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies (“the Task Force”) respectfully petitions this Court to amend Rules 4.2, 5.1, 5.4, 7.2, 7.4, 26.12 and 27.8 of the Rules of Criminal Procedure. These changes are proposed to implement several of the Task Force’s [recommendations](#) dated August 12, 2016.

I. Background and Purpose of the Proposed Rule Amendments. The proposed rule changes address two distinct issues: (1) how courts handle convicted defendants who have failed to pay their monetary sanctions in a timely fashion

(hereinafter “the § 13-810 rule proposal”); and (2) procedures for finding a person to be not eligible for bail under the Arizona Constitution (hereinafter “the bail eligibility rule proposal”). The rules addressed in the § 13-810 rule proposal are set forth in Appendix A. The bail eligibility rules are set forth in Appendix B.

The two proposals have been organized into two separate appendices because the bail eligibility rule proposal will likely be impacted by the success of the Task Force’s pending legislative proposals and by this Court’s resolution of the issues in *Simpson v. Miller*, Supreme Court No. CR-16-0227-PR (argued Nov. 8, 2016). Accordingly, the Court may prefer to resolve the bail eligibility rules on a different time frame.

II. Resolving Failure to Pay Criminal Fines and Fees – the § 13-810 Rule Proposal

The proposed changes to Rules 26.12 and 27.8 in Appendix A are intended to follow through on the Task Force’s mission to recommend court rules for collecting court imposed payments and develop options for allowing citizens unable to pay the full amount of a sanction at the time of sentencing,¹ and to implement Task Force recommendations nos. 30 and 32,² promoting defendants’ voluntary

¹ Supreme Court Administrative Order No. 2016-16.

² Recommendation 30. *Prior to or in lieu of issuing a warrant to bring a person to court for failure to pay, courts should employ proactive practices that promote voluntary compliance and appearance such as: notifying defendants of non-payment, consequences and resolution options; scheduling of an Order to Show Cause hearing, or sentence review.*
Recommendation 32. *Promote the use of restitution courts, status conferences, and probation*

appearance in court, and non-jail enforcement alternatives (Task Force [report](#) at pp. 20 and 23-24).

The proposed amendments to Rule 26.12(c)(4) add language to encourage courts to promote voluntary compliance and appearance by defendants before taking more formal steps, in keeping with Task Force Recommendation No. 30. This subsection also contains new language that adds a preference for issuing a summons over a warrant when serving a defendant with an Order to Show Cause for failure to pay monetary obligations, pursuant to A.R.S. § 13-810. If the court finds the defendant to be in contempt for willful failure to pay, the proposal adds the requirement that the court give the defendant time to purge the contempt prior to being incarcerated. The Task Force heard from a superior court judge who employs this practice that the vast majority of defendants do find a way to make the required payment when facing incarceration.

The proposal also adds a new subsection 26.12(c)(5) requiring the court find that no reasonable measures other than incarceration will meet the state's interest before incarcerating a defendant for failure to pay. This language was inspired by the U.S. Supreme Court's decision in *Bearden v. Georgia*, 461 U.S. 660, 672, 103 S. Ct. 2064, 2073, 76 L. Ed. 2d 221 (1983), in which the court overturned a decision

review hearings that ensure due process and consider the wishes of the victim. Provide judicial training on the appropriate use of Orders to Show Cause in lieu of warrants and appointment of counsel at hearings involving a defendant's loss of liberty.

to revoke the probation of an indigent defendant and send him to jail for failure to pay a fine without first inquiring into why he failed to pay. The opinion states:

Only if the sentencing court determines that alternatives to imprisonment are not adequate in a particular situation to meet the State's interest in punishment and deterrence may the State imprison a probationer who has made sufficient bona fide efforts to pay.

Under the statutory scheme in A.R.S. § 13-810, the court has discretion to incarcerate *only* those defendants who willfully fail or refuse to pay, which is an important distinction from the fact scenario presented by *Bearden*. Nevertheless, the Task Force felt that incarceration should be a last resort even in the case of a willful contemnor, and that a statewide standard to that effect should be established by rule.

The proposed revision to Rule 27.8(b)(4) is intended to promote candor by the defendant at the § 13-810 contempt proceeding, by ensuring that statements made at the hearing by a defendant on active probation cannot be used in a subsequent probation revocation hearing, if the defendant appears without an attorney. Additionally, the Task Force agreed that, even though a proceeding under A.R.S. § 13-810 is considered a civil contempt proceeding, the court needs to ensure any active probationer hauled into court for one of these hearings is afforded due process as specified by Rule 27, including representation by counsel, if the court wants to revoke a defendant's probation for willful failure to pay a fine.

III. The Bail Eligibility Rule Proposal

The proposed changes to Rules 4.2, 5.1, 5.4, 7.2 and 7.4 in Appendix B are designed to implement the Task Force's pretrial detention recommendations.

Principle 9 calls for reform in bail determination for dangerous felony defendants as follows:

Principle Nine: Only defendants who present a high risk to the community or individuals who repeatedly fail to appear in court should be held in custody.

Although most defendants pose risks that are manageable at reasonable levels outside of the jail, some defendants pose such risks that no bond or conditions of release can reasonably assure public safety or court appearance. There is no question that people should not remain in jail solely because they cannot afford bail. But there are those for whom pretrial detention is appropriate: those whose release would jeopardize the public and those with a very high likelihood of not appearing for future court hearings. Arizona statutes list several circumstances in which bail may or must be denied. *See* A.R.S. § 13-3961 (*Offenses not bailable; purpose; preconviction; exceptions*).

In Arizona, a court must detain a defendant after a hearing when there is "clear and convincing evidence that the person charged poses a substantial danger to another person or the community or engaged in conduct constituting a violent offense" if no condition or combination of conditions of release will reasonably assure the safety of the other person or the community. *See* A.R.S. § 13-3961 (*Offenses not bailable; purpose; preconviction; exceptions*). Currently, the referenced hearing may be initiated only by the state, and in many initial appearance courts throughout the state, a prosecutor is not present. Therefore, the court should be able to order this hearing based on the circumstances of the offense, the information contained in a pretrial risk assessment, and other information available to the court at the time a bail determination is being made. Revisions to A.R.S. § 13-3961(D) and (E) are recommended to allow for the hearing to be set by the court and not only on the state's motion.

The proposed amendments to Rule 4.2 and 7.2 of the Arizona Rules of Criminal Procedure track Article 2, Section 22(A)(3) of the Arizona Constitution and the substantive provisions of A.R.S. § 13-3961. These amendments contain procedural differences from the current statutory language in that determination of whether the defendant is not bailable is required to be initiated by the magistrate rather than solely by the prosecutor, and a bail hearing is required to be set within seven days rather than 24 hours after the Initial Appearance. The Arizona Judicial Council approved the introduction of legislation to conform the statutes to these proposals. The proposed amendments also provide factors for the judge to consider in determining whether a defendant is dangerous. These changes are designed to replace the current practice of setting high bond amounts for defendants determined dangerous with a requirement that the court determine whether these offenders are not bailable. Because imposition of high bond amounts still allows for those dangerous defendant with access to money to be released, the Task Force report indicates this change will result in more effective detention of dangerous offenders. This change is not expected to result in a significant increase in defendants detained.

In formulating its proposal, the Task Force considered the Preventive Detention section (pp 24-29) of a recent report entitled “[Moving Beyond Money: A Primer on Bail Reform](#)” from the Harvard Law School Criminal Justice Policy Program, particularly the discussion of the importance of limited points of entry to

preventive pretrial detention and the regard expressed by the U.S. Supreme Court in *U.S. v. Salerno*, 481 U.S. 739, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987), for the federal Bail Reform Act of 1984 (18 U.S.C. § 3142) limitation of pretrial detention to the most serious federal offenses. These offenses are described in subsection 3142(f) of the Act.³

However, temporary detention at the federal equivalent of the Initial Appearance may be imposed under subsection (d) of the Act, “If the judicial officer determines that . . . (2) such person may flee or pose a danger to any other person or the community,” without limitation as to the offense charged. Additionally, a “crime of violence” is defined at 18 U.S.C.A. § 16 as:

- (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (b) any other offense that is a felony and that, by its nature, involves a

³ **(f) Detention hearing.**--The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of such person as required and the safety of any other person and the community--

(1) upon motion of the attorney for the Government, in a case that involves--

- (A) a crime of violence, a violation of [section 1591](#) (*Sex trafficking of children or by force, fraud, or coercion*), or an offense listed in [section 2332b\(g\)\(5\)\(B\)](#) (*Acts of terrorism transcending national boundaries*) for which a maximum term of imprisonment of 10 years or more is prescribed;
- (B) an offense for which the maximum sentence is life imprisonment or death;
- (C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act ([21 U.S.C. 801 et seq.](#)), the Controlled Substances Import and Export Act ([21 U.S.C. 951 et seq.](#)), or chapter 705 of title 46;
- (D) any felony if such person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; or
- (E) any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device (as those terms are defined in [section 921](#)), or any other dangerous weapon, or involves a failure to register (*as a sex offender*) under [section 2250 of title 18, United States Code](#);... (Italics added).

substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

While the Bail Reform Act limits the use of pretrial detention to particular offenses, it does not limit pretrial detention to offenses ordinarily considered the most serious, violent, or dangerous offenses. Similarly, the offenses described in 18 U.S.C. § 3142(f)(1)(C) and (D)⁴ do not necessarily include any violence as an element of the offense. This may be explained by the federal law’s authorization of pretrial detention to prevent flight risk in addition to danger to persons and the community.⁵

By contrast, the Arizona Constitution (Article 2, Section 22), A.R.S. § 13-3961, and the proposed rules focus on the dangerousness of the defendant and permit denial of bail solely for protection of persons and the community. Nevertheless, the offense charged is relevant to the decision as to whether a defendant is not bailable under Arizona law, because the defendant “poses a substantial danger to any other person or the community.” In considering this factor, Arizona judges can look to the definition of “dangerous offense” in A.R.S. § 13-105:

13. “Dangerous offense” means an offense involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another person.

39. “Serious physical injury” includes physical injury that creates a reasonable risk of death, or that causes serious and permanent disfigurement,

⁴ See footnote 3.

⁵ 18 U.S.C. § 3142(f)(2)(A).

serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

Arizona judges could also look to A.R.S. § 13-706, which identifies specific offenses considered violent and serious. This requirement of Arizona law - that only defendants who pose a substantial danger be detained pretrial appears to impose pretrial detention “only on individuals who have been arrested for a specific category of extremely serious offenses⁶” more narrowly and effectively than the federal law.

Due to the valid concerns about the need to limit points of entry to pretrial detention expressed in the Harvard report, the proposed rules include factors to be considered in determining a defendant nonbailable due to dangerousness. The language provided in the proposed subsection 7.2(b)(3) is modeled after 18 U.S.C. 3142(g) of the Bail Reform Act, and refers judges to the definition of “dangerous offense” in A.R.S. § 13-105. The Task Force workgroup that drafted the bail eligibility rules debated whether Rule 7.2 should refer to A.R.S. § 13-706 or § 13-105, and ultimately decided on § 13-105. The option of not including any statutory reference was also considered. The lists of offenses in § 13-706 provided for sentencing of repetitive offenders were recognized as overinclusive and underinclusive for use to identify dangerous defendants who are not bailable. The definition of “dangerous offense” in § 13-105 was considered descriptive of the kind of alleged conduct that judges consider currently when they set high bond intended

⁶ *U.S. v. Salerno, supra*, 481 U.S. 739, 750.

to prevent the release of the defendant on bail. The research performed for the Task Force has not revealed the laws or rules of any other state that provide a better model for identifying felony defendants who pose a danger to the community.

Finally, amendments to Rule 5.1, 5.4, 7.2 and 7.4 are proposed to address a procedural redundancy with the preliminary hearing provided under Rule 5.1 when a bail eligibility hearing is held under proposed Rule 7.2(b)(4). If a bail eligibility hearing is held within seven days at which the state has the burden of showing proof evident or presumption great that the defendant committed the offense, it is unnecessary for the state to prove probable cause that the defendant committed the offense at a separate preliminary hearing under Rule 5. Instead, a finding of proof evident or presumption great or of probable cause will be made at the bail eligibility hearing.

The *Simpson*⁷ case requires the bail hearing to be a full evidentiary hearing. Consequently, this hearing should be procedurally comparable to the preliminary hearing. In order to make this clear, procedural provisions drawn from Rule 5 are incorporated into Rule 7.4. The last sentence of Rule 7.4(b) is narrowed to permit only the state to seek reexamination of eligibility and conditions of release without new material facts where the defendant is determined bailable at the initial appearance. If the defendant is determined not bailable at the initial appearance the

⁷ *Simpson v. Miller*, 2016 WL 3264151 (Az Ct. App. Div. 1, June 14, 2016).

bail eligibility (*Simpson*) hearing will be held under Rule 7.2 (b)(4) without the need for a defense motion. Once a bail eligibility hearing is held either party may move for reexamination of bail eligibility or conditions of release based upon new material facts.

This petition is the best effort of the Task Force composed of criminal justice system professionals from multiple perspectives (See Appendix C) to address the need for preventive detention by denial of bail rather than by setting a high bond as explained above. This petition is the product of their input and received the support of the large majority but not all participants.

Wherefore, petitioner respectfully requests that the Court amend the Rules of Criminal Procedure as proposed in the Appendices attached to this Petition.

RESPECTFULLY SUBMITTED this 9th day of January, 2017.

By /S/
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APPENDIX A

(language to be removed is shown in ~~striketrough~~, new language is underlined)

RULES OF CRIMINAL PROCEDURE

Rule 26.12. Compliance with sentence

a. and b. [no changes]

c. Action upon Failure to Pay a Fine, Restitution, Other Monetary Obligation, or to Comply with Court Orders.

(1) *For Defendants Not on Supervised Probation.* If a defendant fails to pay a fine, restitution, or other monetary obligation, or is known by the court to have failed to comply with a term or condition of sentence within the prescribed time, the court shall, within 5 days, notify the prosecutor.

(2) *For Defendants on Supervised Probation.* If a defendant on supervised probation fails to pay a fine, restitution, or other monetary obligation, or is known by the court to have failed to comply with any other term or condition of probation within the prescribed time, the court shall give notice of such failure to the defendant's probation officer within the time limits set under sections (c)(1) and (3).

(3) *Time limits--Restitution and Non-Monetary Obligations.* If the payment or performance of an obligation does not involve the court, delinquency times shall run from the date on which the court or the probation officer becomes aware of failure to pay or comply.

(4) *Court Action upon Failure of Defendant to Pay Fine, Restitution, or Other Monetary Obligation or to Comply with Court Orders.* Upon the defendant's failure to pay a fine, restitution, or other monetary obligation, or failure to comply with court orders, and failure to respond to a court notice of the consequences and resolution options, the court may require the defendant to show cause why said defendant should not be held in contempt of court ~~and may issue a summons or warrant for the defendant's arrest.~~ The court must issue a summons unless there is reason to believe a warrant is required to secure the defendant's appearance. A prosecutor who requests a warrant or a judge who orders a warrant shall state the reasons for the issuance of the warrant rather than a summons.

(5) Purge Review Hearing and Incarceration. If the court finds the defendant in contempt for failure to pay a monetary obligation, the court may not order the defendant incarcerated unless no reasonable measures other than incarceration are adequate to meet the state's interests. Before taking the defendant into custody, the court must first set a purge review hearing and give the defendant a reasonable period of time prior to the hearing to pay the obligation in full or make other payment arrangements.

Rule 27.8. Revocation of probation

a. [no changes]

b. Violation Hearing.

(1) A hearing to determine whether a probationer has violated a written condition or regulation of probation shall be held before the court no less than 7 and no more than 20 days after the revocation arraignment, unless the court, upon the request of the probationer made in writing or in open court on the record, sets the hearing for another date.

(2) The probationer shall be present at the hearing.

(3) A violation must be established by a preponderance of the evidence. Each party may present evidence and shall have the right to cross examine witnesses who testify. The court may receive any reliable evidence not legally privileged, including hearsay.

(4) An admission made by the probationer at any hearing in the same cause of action relating to the probationer's failure to pay a monetary obligation imposed in the case is inadmissible in the probation violation hearing, unless the probationer was represented by counsel at the hearing on defendant's failure to pay.

~~(4)~~(5) If the court finds that a violation of a condition or regulation of probation occurred, it shall make specific findings of the facts which establish the violation and shall set a disposition hearing.

c. through f. [no changes]

APPENDIX B

(language to be removed is shown in ~~strike through~~, new language is underlined)

RULES OF CRIMINAL PROCEDURE

Rule 4.2. Initial appearance

a. In General. At the suspect's initial appearance, the magistrate ~~shall~~ must:

- (1) Ascertain the suspect's true name and address and, if necessary, amend the formal charges to reflect it, and instruct the suspect to notify the court promptly of any change of address;
- (2) Inform the defendant of the charges;
- (3) Inform the defendant of the right to counsel and the right to remain silent;
- (4) Determine whether probable cause exists for the purpose of release from custody. If no probable cause is found, the defendant shall immediately be released from custody;
- (5) Appoint counsel if the suspect is eligible for and requests appointed counsel under Rule 6;
- (6) Consider comments offered by the victim concerning the conditions of release. The magistrate shall permit the victim to comment orally or in writing on the issue of the suspect's release;
- (7) ~~Determine the conditions of release in accordance with Rule 7.2 including whether the defendant is non-bailable pursuant to A.R.S. Const. Art. 2 § 22 and A.R.S. 13-3964~~ whether probable cause exists to believe:
 - (A) The defendant committed an offense for which release on bail is prohibited by Ariz. Const. Art. 2, Sec. 22(A)(1) or (2);
 - (B) The defendant committed a felony for which release on bail is prohibited by Ariz. Const. Art. 2, Sec. 22(A)(3) because the defendant poses a substantial danger and no conditions of release will reasonably assure the safety of another person or the community; or
 - (C) The defendant must be released on bail pursuant to Rule 7.2(a).
- (8) Schedule a bail eligibility hearing in superior court as required by Rule 7.2(b)(4) for a defendant held not bailable as required by (a)(7)(A) or (B).

~~(8)~~(9) For summoned defendants charged with a felony offense, a violation of Title 13, Chapter 14, or Title 28, Chapter 4¹, or a domestic violence offense as defined in § 13-3601, if the defendant does not present a completed mandatory fingerprint compliance form to the court, or if the court has not received the process control number, the court shall order that within twenty calendar days, the defendant be ten-print fingerprinted at a designated time and place by the appropriate law enforcement agency; and

~~(9)~~(10) For an in-custody defendant who was arrested for an offense listed in A.R.S. Section 13-610(O)(3), if the court has not received proof of compliance with A.R.S. Section 13-610(K), ~~the court shall~~ order the arresting agency to secure a sample of buccal cells or other bodily substances for DNA testing.

b. and c. [no changes]

Rule 5.1. Right to preliminary hearing; waiver; postponement

a. Right to Preliminary Hearing. When a complaint is filed charging the defendant with the commission of a felony, a preliminary hearing shall commence before a magistrate not later than 10 days following defendant's initial appearance if the defendant is in custody and not later than 20 days following defendant's initial appearance if the defendant is not in custody unless:

- (1) The complaint has been dismissed;
- (2) The hearing is waived; or
- (3) The defendant has been transferred from the juvenile court for criminal prosecution on specified charges;
- (4) The defendant received a bail eligibility hearing pursuant to Rule 7.2(b); or
- ~~(4)~~(5) The magistrate orders the hearing postponed as provided in Section (c).

b. through d. [no changes]

Rule 5.4. Determination of probable cause

a. Holding a Defendant to Answer. If it appears from the evidence that there is probable cause to believe that an offense has been committed and that the defendant

committed it, the magistrate shall enter a written order holding the defendant to answer before the Superior Court and, upon request, reconsider the conditions of release. A probable cause finding made at a bail eligibility hearing held pursuant to Rule 7.2(b)(4) satisfies the requirements of this rule.

b. through d. [no changes]

Rule 7.2. Right to release

a. [no change]

b. Before Conviction; Persons Charged With an Offense Not Bailable as a Matter of Right.

(1) *Specific Felonies Not Bailable.* A person shall ~~must~~ not be released on bail if the court finds the proof is evident or the presumption great that the person is not bailable pursuant to law committed an offense described in Ariz. Const. Art. 2, Sec. 22(A)(1) or (2).

(2) *Other Felonies Not Bailable.* A person charged with any other felony offense must not be released on bail if the court finds all of the following:

(A) Proof is evident or the presumption great that the person committed a felony offense with which the person is charged;

(B) Clear and convincing evidence that the person poses a substantial danger to another person or the community; and

(C) Clear and convincing evidence that no condition or combination of conditions of release will reasonably assure the safety of any person or the community.

(3) *Not Bailable Considerations.* In making the determinations required by subsections (2)(B) and (2)(C), the court must consider:

(A) the nature and circumstances of the offense charged, including whether the offense is a “dangerous offense” as defined in A.R.S. § 13-105;

(B) the weight of the evidence against the person;

(C) the history and characteristics of the person, including the person’s character, physical and mental condition, past conduct, history relating to drug or alcohol abuse, and criminal history;

(D) the nature and seriousness of the danger to any person or the community that

- would be posed by releasing the person on bail, including any threat to a victim or other participants in the judicial process;
- (E) the recommendation of the pretrial services program based upon an appropriate risk assessment instrument;
- (F) any victim statement about the offense and release conditions; and
- (G) any other factor relevant to the determinations required by subsections (2)(B) and (2)(C).

(4) *Bail Eligibility Hearing.* For a person held not bailable pursuant to (b)(2), the superior court must hold a hearing to determine whether the person is not bailable under subsection (b)(1) or (b)(2). The person may waive this hearing. The hearing must be held as soon as practicable but not later than seven days after the initial appearance unless the person detained moves for a continuance. If the court does not find the proof evident or the presumption great under (b)(2)(A), the court must determine probable cause on each charge as provided in Rule 5.4(a) unless the defendant has been indicted for the offenses charged. The court's findings must be made on the record.

c. and d. [no changes]

Rule 7.4. Procedure

a. Initial Decision. At the initial appearance before a magistrate, a determination of the conditions of release shall be made. The court shall issue an order containing the conditions of release and shall inform the accused of the conditions, the possible consequences of their violation, and that a warrant for his or her arrest may be issued immediately upon report of a violation.

b. Bail Eligibility Hearing. All parties shall have the right to cross-examine the witnesses testifying personally against them, and to review their previous written statements prior to such cross-examination. At the bail eligibility hearing, only evidence material to whether probable cause exists to hold the defendant for trial on each charge and whether and under what conditions to release the defendant on bail is admissible. Rules or objections calling for the exclusion of evidence on the ground that it was obtained unlawfully are inapplicable. Determinations under this rule may be based on

evidence not admissible under the rules of evidence, including hearsay in whole or in part in the following forms:

(1) Written reports of expert witnesses;

(2) Documentary evidence without foundation, provided there is a substantial basis for believing such foundation will be available at trial and the document is otherwise admissible;

(3) The testimony of a witness concerning the declarations of another or others where such evidence is cumulative or there is reasonable ground to believe that the declarants will be personally available for trial.

~~**c. Evidence.** Release determinations under this rule may be based on evidence not admissible under the rules of evidence.~~

c. Amendment of complaint. The complaint may be amended at any time to conform to the evidence, but the defendant must not be held to answer for a crime different from that charged in the original complaint.

d. Discharge of the defendant. Unless the defendant has been indicted for the offenses charged, if it appears that that the proof is not evident or the presumption is not great under 7.2(b)(2)(A) or there is not substantial evidence of probable cause to believe that an offense has been committed and that the defendant committed it, the court shall dismiss the complaint and discharge the defendant.

be. Subsequent review of conditions. Any party may move for reexamination of bail eligibility or the conditions of release whenever the case is transferred to a different court or the motion alleges the existence of material facts not previously presented to the court. The court may, on motion of any party, or on its own initiative, modify the conditions of release after giving the parties an opportunity to respond to the proposed modification. The motion shall comply with the requirements of this rule, Rule 35 and Rule 39. ~~If the a-motion by the state involves whether the a person previously held~~ bailable at the initial appearance, ~~shall be held without bail,~~ the motion need not allege new material facts and a hearing on the motion shall be held on the record as soon as practicable but not later than seven days after filing of the motion.

df. Review of bond. The court before which a misdemeanor is pending shall, no more than 10 days after arraignment, review the case file concerning the conditions of release

of any defendant held in custody on bond for the purpose of determining the propriety of amending the conditions of release.

Arizona Commission on Access to Justice

Meeting Agenda

May 10, 2017 - 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	<i>Judge Lawrence F. Winthrop, Chair</i>
	Approval of minutes from February 15, 2017 <input type="checkbox"/> <i>Formal Action/Request</i>	
10:05 a.m.	Chairperson's report	<i>Judge Winthrop</i>
10:35 a.m.	Presentation on the new Arizona State Bar Public Service Center	<i>John Phelps</i>
11:15 a.m.	Update on Access to Justice related rule change petitions <ul style="list-style-type: none"> • R-16-0022 - Change of Judge in Eviction Actions • R-17-0016 - Computing Time in Eviction Actions • R-17-0011 - In-House Counsel clean-up • R-16-0047 - Secondary Registration Requirement for In-House Counsel <input type="checkbox"/> <i>Formal Action/Request</i>	<i>Julie Graber, AOC</i>
11:20 a.m.	Update on Automated Phone Interview system	<i>Dr. Kevin Ruegg</i>
11:25 a.m.	Update on the AZCourtHelp.org website	<i>Dr. Kevin Ruegg Theresa Barrett</i>
11:40 a.m.	Report from the Self-Represented Litigants in Limited Jurisdiction Courts Workgroup <ul style="list-style-type: none"> • R-16-0040 - Mandatory Eviction Action Forms • R-17-0020 - Stipulated Judgments in Eviction Actions 	<i>Mike Baumstark</i>

12:00 p.m.

☞☞ **Lunch Break** ☞☞

- | | | |
|-----------|---|---|
| 1:00 p.m. | <i>Pro Bono</i> programs in federal courts | <i>Milagros Cisneros</i> |
| 1:10 p.m. | Update on Legal Needs Study
☐ Formal Action/Request | <i>Judge Joseph Kreamer</i>
<i>Anthony Young</i> |
| 1:35 p.m. | Report from the Judicial and Attorney Engagement Workgroup | <i>Judge Joseph Kreamer</i>
<i>Dr. Kevin Ruegg</i> |
| 1:45 p.m. | Update on the Public Information and Messaging Workgroup | <i>Rick DeBruhl</i>
<i>Heather Murphy</i> |
| 1:55 p.m. | Good of the Order / Call to the Public | <i>Judge Winthrop</i> |

Future meeting dates:
August 16, 2017
November 8, 2017

Adjournment

2017 Meeting
August 16, 2017
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, February 15, 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, Judge Janet Barton, Mike Baumstark, Judge Thomas Berning, Judge Sean Brearcliffe (*telephonic*), Pamela Bridge, Judge Maria Elena Cruz, Judge Anna Huberman, Michael Jeanes, Judge Joseph C. Creamer, Maria Morlacci, John Phelps, Helen Purcell, Janet K. Regner (*telephonic*), Dr. Kevin Ruegg

Absent/Excused: Millie Cisneros, Michael T. Liburdi, Anthony Young

Presenters/Guests: Chris Groninger, Cindy Moore, Marcus Reinkensmeyer, Lara Slifko, Caitlyn Watters

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

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the February 15, 2017, meeting of the Arizona Commission on Access to Justice (ACAJ) was called to order by Chairperson Judge Lawrence Winthrop, at 10:04 a.m.

B. Approval of Minutes

The draft minutes from the November 9, 2016, meeting of the ACAJ were presented for approval.

Motion: Michael Jeanes moved to approve the November 9, 2016, meeting minutes, as presented. **Action:** Approved. **Seconded:** John Phelps. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Chairperson's Report

Judge Winthrop reported on current national trends impacting access to justice.

- The status of access to justice projects sponsored by the White House could be jeopardized as it is unknown how the new federal government will handle civil justice, legal aid, and the Legal Services Corporation (LSC) funding.
- The American Bar Association (ABA) is sponsoring a national conference call on February 28, 2017, to discuss the steps that access to justice commissions can take to advocate for LSC.

- The ABA is holding a national meeting May 4-6, 2017, in Pittsburgh, for all access to justice commission chairs and staff as part of its annual Equal Justice Conference.

Judge Winthrop announced the reorganization of the workgroups and asked members to consider which workgroup to join:

- Public Information and Messaging Workgroup: Will create and manage a media plan; establish a speaker's bureau on access to justice issues and opportunities; update website information through the AOC; promote the state tax credit; and draft the annual report.
- Judicial and Attorney Engagement Workgroup: Will coordinate Continuing Legal Education (CLE) programs on access to justice issues (e.g., limited scope representation and other *pro bono* opportunities); evaluate statewide legal service triage programs; engage retired lawyers and judges in *pro bono* clinics and projects; and coordinate COJET programs for judges (e.g., ethical parameters and dealing with self-represented litigants).
- Limited Jurisdiction Courts Workgroup: Will continue to focus on self-represented litigant issues and eviction-related issues; and consider a "navigator" project in the Maricopa County Justice Courts regarding housing and debt collection cases.
- Inter-Governmental Collaboration Workgroup: Will facilitate communication and collaboration between agencies, particularly as it relates to the impact that civil legal aid can provide in the delivery of services and meeting collective goals; explore applying for available grants; evaluate existing state programs to encourage the creation of an Arizona model for a legal aid interagency roundtable; and develop a strategy for engaging legislative leaders on access to justice issues.

Judge Winthrop discussed collaborative efforts in Arizona that should be encouraged and publicized to provide needed resources and increase community and political awareness. For instance, [SB1274](#) proposes the creation of an Arizona Intergenerational Welfare Reform Commission. He reminded members to look for opportunities to participate in community events where they could advance the commission's goals. Examples of events included:

- The [Arizona Veterans Stand Down Alliance](#) held a multi-day series of events for veterans needing assistance.
- The opening of the [Armory](#), a non-profit organization helping veterans who want to start businesses.
- The opening of the Maricopa County Law Library Resource Center, which incorporates the Law Library with the Self-Service Center. A [YouTube video](#) is available for more information.

Since the last meeting, Judge Winthrop met with Glen Hamer, president and CEO of the Arizona Chamber of Commerce, about the role of the business community in advancing the commission's goals. Mr. Hamer agreed to include the

commission in the Chamber's educational programs, and will recommend Chamber members who would be suited to volunteer for a Commission workgroup.

Judge Winthrop noted that there is still time to make presentations to groups about the state tax credit. There has been positive response from letters that were sent to Arizona's 100 largest employers. Two additional non-profits have qualified as eligible donees.

News from Commission members:

- Judge Cruz reported the launch of a fine reduction pilot program in Yuma County. The main components include: 1) 50 percent reduction in fines for non-criminal offenses that are outstanding for at least two years; 2) if the individual is eligible for the program, has a valid address, and accepts a payment plan, the driver's license can be reinstated immediately; and 3) the program lasts 60 days from the time the notice is issued. Data should be available by the June Judicial Conference. She noted that law clinics are being held on a recurring basis in the areas of family law, guardianships, landlord/tenant, restoration of rights, and probate. Judge Cruz is interested in developing a Court Navigator program in conjunction with Arizona Western College.
- Judge Berning reported the rollout of a customer assistance program in Tucson where an individual can have their driver's license and registration reinstated with a ten-percent down payment, elimination of collection fees, and monthly payments.
- Community Legal Services began a law assistance project in Mohave County where volunteer attorneys work with the court to provide free legal aid assistance in family law and probate matters.

B. Update from the LJC-Resources Sub-Workgroup

Judge Huberman advised that the first workgroup meeting is scheduled for February 23, 2017, and will focus on responding to the rule petitions filed.

C. Update on Access to Justice related rule change petitions

Julie Graber, AOC staff, provided an update on rule petitions filed that are related to access to justice issues.

- **R-16-0022** – Would permit a change of judge as a matter of right and for cause in eviction actions in Justice Court. An order was filed adopting the rule with an amendment for a one-year experimental basis, effective January 1, 2017. The amendment has been reopened for comment on the issue of whether or not the experiment should be extended or made permanent. Comments are due July 14, 2017.

Member comments:

- A member inquired about the impact of the rule change and statistics reported. Judge Barton noted that courts have not been reporting any change of judge requests.
 - How would a self-represented litigant know that he or she could request a change of judge?
-
- **R-17-0016** – Would provide the same information on computing time periods to eviction court litigants as other civil litigants in Justice Court and Superior Court. Comments are due May 22, 2017. ACAJ will draft a comment in support.
 - **R-17-0011** – Would clean up ambiguities in Supreme Court Rule 38(e).
 - **R-16-0047** (*item out of order*) – Would address the secondary registration requirement in Rule 38(B) for in-house counsel who want to provide *pro bono* service. Comments are due May 22, 2017. ACAJ will draft a comment in support.
 - **R-16-0041** – Implements recommendations of the FAIR Justice for All Task Force by amending Criminal Rules of Procedure 3, 6, 7, and 41, effective April 3, 2017.
 - **R-17-0015** – Would amend several criminal rules in order to provide options to courts when convicted defendants have failed to pay their monetary sanctions in a timely fashion and make changes in bail determination proceedings for dangerous felony defendants. Comments are due May 22, 2017.

D. Update on the AZCourtHelp.org website

Dr. Kevin Ruegg updated members on the progress of the AZCourtHelp.org website, which was officially launched on January 11, 2017. She clarified that the purpose of the virtual resource center is to increase access to justice through building awareness of court processes and enhancing support resources across Arizona. Partners include Arizona courts, the Department of Economic Security, the Attorney General's Office, and AmeriCorps.

Dr. Ruegg noted that there have been 35 Legal Talks at a growing number of locations on topics such as child safety, estate and probate planning, family court 101, guardianship, immigration, and landlord/tenant. Legal Talks are being recorded and broadcasted live with the goal to allow live interaction in the future. Some Legal Talks are also provided in Spanish. A Vista volunteer is working on developing shorter videos that can be translated in Spanish and posted at a later time.

Dr. Ruegg described AZCourtHelp.org as a web service and “one-stop shop” for self-represented litigants, including limited English speakers, with content that is continuously being updated through the feedback and ongoing collaborative effort of courts and other agencies. She reviewed the website’s features:

- Statewide form access
- Court locator
- Virtual tours
- Legal Talk calendar
- Live chat
- Legal term glossaries
- Frequently asked questions
- ADA compliant

Dr. Ruegg discussed marketing challenges and how to get the information to self-represented litigants. She reported on the website’s traffic since the launch:

- 1,520 sessions
- 1,100 users
- Users browse five pages for at least four minutes
- Bounce rate is an impressive 41%
- Platforms: 77% desktop, 18% mobile, and 3% tablets

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

Mike Baumstark reported on rule petitions filed by the commission.

- **R-16-0040 – Mandatory Eviction Action Forms:** The Supreme Court ordered to continue and reopen the rule petition for comment with comments due February 17, 2017, and a reply due March 15, 2017. Mr. Baumstark reported meeting with landlord attorneys and shared with them the commission’s goals and the importance of meaningful due process for those who appear in court. Landlord attorneys offered to assist in the process and their assistance is encouraged.

Even though the rule change petition process is ongoing, Representative Farnsworth sponsored HB2237, which would prohibit an agency from enforcing a rule that requires a mandatory form for providing notice or for pleadings in an eviction action.

- **R-17-0020 – Stipulated Judgments in Eviction Action:** A rule petition was filed on January 9, 2017, following a sub-workgroup meeting in December. Maricopa County Justice Courts volunteered to gather statistics and conduct a pilot project from January 1, 2017, to June 18, 2017, that requires the judge to ask a series of questions to make sure the parties, usually the tenant, understand what the person is signing. It appears that housing industry attorneys are not participating and have stopped using stipulated judgments

resulting in virtually no data in which to advise the court. Public comments are due April 30, 2017, and an amended petition is due May 28, 2017.

F. On-line dispute resolution software update

Marcus Reinkensmeyer, AOC's Court Services Division Director, provided background information and an update for on-line dispute resolution (ODR) software since the Matterhorn platform solution was presented to the commission at the August 2016 meeting. Mr. Reinkensmeyer reviewed current on-line litigant services provided by Arizona courts (e.g., docket and case management system information, forms and instructions, eFiling, noticing, and video), and possible services (e.g., on-line citation payment, proof of insurance and registration, on-line payment agreement, and on-line dispute resolution). He described the components and process of ODR from intake to integration with case management systems, the court's document repository, neutrals, and other service providers. Mr. Reinkensmeyer identified several ODR planning challenges for courts, including case types, privacy and security, platform, resolution process, and funding. He discussed local and emerging efforts, such as the expanded OASIS standards to help move data for on-line litigant services, IAAL's Compass White Papers, and Michigan's Family Law ODR pilot.

Member comments:

- The on-line mechanism increased self-represented litigants' access and participation by 41 percent.
- Is there a charge for mediation services in a post-decree family case? Yes. The Michigan court absorbs the cost.
- Instituting statewide change is complicated because of the different types of case management systems in Arizona; however, it does not preclude a platform, such as Matterhorn.
- The key is to set standards to exchange information to solve part of the problem. The Supreme Court's Commission on Technology has done a lot of work to move data in a standardized manner.
- Service industries, like courts, must adapt and create more flexibility for the end-user.

G. Report from the *Pro Bono* Service and Funding Workgroup

Judge Kreamer reminded members that the Attorney General's Office (AG) is co-sponsoring the Public Lawyer *Pro Bono* Conference on February 24, 2017, at 9:00 a.m., that will be streamed statewide. He noted that the AG is focusing on providing a menu of *pro bono* opportunities available for public attorneys instead of emphasizing the model *pro bono* policy.

Judge Kreamer noted the difficulty in promoting the law firm *pro bono* network. Kevin Groman will be coordinating a *pro bono* summit dinner in April or May to get the conversation going with several law firms' managing partners.

To further explore opportunities, Judge Kreamer and Kevin Groman met with Judge Randall Warner, to discuss allowing in-house counsel to provide mediation services on a *pro bono* basis.

Finally, Judge Kreamer reported that a new statewide legal needs study will be launched as a follow up to the 2007 study to identify needs, what industry practices are beneficial, and what processes or practices are not working well. Dr. Kevin Ruegg added that several survey methods will be used in different languages to reach as many people as possible and obtain responses from the judiciary, law firms, community organizations, and legal aid organizations. The needs assessment will include data on poverty that is collected from other agencies, accomplishments since 2007, and suggested priorities and solutions. Judge Winthrop remarked that needs change over time and obtaining this type of data is critical and timely.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

None present.

B. Next Meeting Date

Wednesday, May 10, 2017

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

State Courts Building, Room 119

1501 W. Washington Street

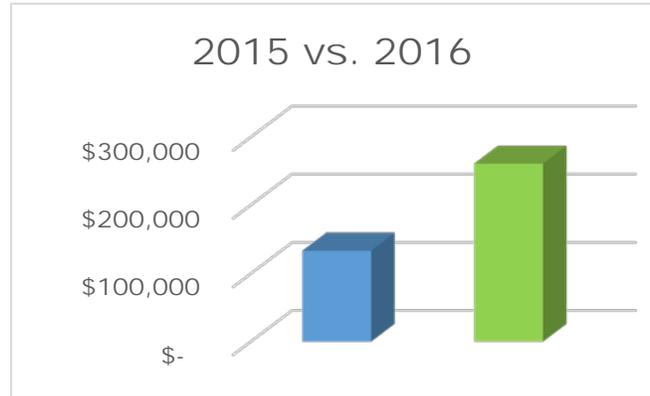
Phoenix, AZ 85007

Adjourned at 1:53 p.m.

Charitable Tax Credit Report

1/1/2016-4/16/2017

Looking only at agencies, promoted through the Access to Justice Commission and the Bar Foundation’s Charitable Tax Credit website, the initiative almost doubled the amount raised in 2015, rising from \$133,545 to \$263,018!



Since the campaign began in 2014, it has seen an over 400% increase. The campaign has increased the tax credit pool by over a 1000% since before there was a consolidated campaign!

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
\$	23,140	\$ 55,504	\$133,545	\$263,018

Participating Agencies

Arizona Women’s Education & Employment Inc.

Arizona Justice Project**

Christian Legal Aid of Arizona

Community Legal Services, Inc.

Defenders of Children

DNA People’s Legal Services

Florence Immigrant and Refugee Rights Project**

Southern Arizona Legal Aid, Inc.

Step Up For Justice**

Tucson Family Advocacy Program (SALA)

William E. Morris Institute for Justice

**indicates agency that joined in 2016/2017

Arizona Commission on Access to Justice

Meeting Date: May 10, 2017	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Presentation on the new Arizona State Bar Public Service Center
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From: John Phelps, State Bar of Arizona

Presenters: (Same)

Discussion: Mr. Phelps will introduce Cheryl Kulas, Public Service Center Manager, and present on the new Public Service Center.

Recommended motion: Informational only.

Arizona Commission on Access to Justice

Meeting Date: May 10, 2017	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Update on Access to Justice related rule change 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
- R-17-0016 – Computing Time in Eviction Actions
- R-17-0011 – In-House Counsel clean up
- R-16-0047 – Secondary Registration Requirement for In-House Counsel

Recommended motion: None.

Lawrence F. Winthrop
Arizona Commission on Access to Justice
1501 W. Washington St., Suite 410
Phoenix, AZ 85007

IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:

Supreme Court
No. R-17-0016

PETITION TO AMEND THE RULES
OF PROCEDURE FOR EVICTION
ACTIONS

Comment on behalf of Arizona
Commission on Access to Justice

The Arizona Commission on Access to Justice (ACAJ) was established by Administrative Order 2014-83, pursuant to the Court’s 5-year strategic agenda of “Advancing Justice Together: Courts and Communities.” The order specifically directs the ACAJ to make recommendations on assisting self-represented litigants and revising court rules and practices to facilitate access to justice and the efficient processing of eviction cases.

In Rule Petition R-17-0016, the Legal Services Committee of the State Bar of Arizona proposes amending the Rules of Procedure for Eviction Actions to clarify how to compute time periods identified in the eviction rules. Currently, eviction matters are the only type of case in justice court that does not have specific

direction on how to compute time. These proposed changes address that issue in a fair and objective fashion, and for the reasons expressed in the Petition, the ACAJ supports the Court's adoption of the proposed rule changes.

RESPECTFULLY SUBMITTED, this ____ day of _____, 2017.

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

Copy Mailed To:

Lisa M. Panahi
Acting General Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, AZ 85016-7236

Lawrence F. Winthrop
Arizona Commission on Access to Justice
1501 W. Washington St., Suite 410
Phoenix, AZ 85007

IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:

Supreme Court
No. R-16-0047

PETITION TO AMEND RULE 38 OF
THE ARIZONA RULES OF THE
SUPREME COURT

Comment on behalf of Arizona
Commission on Access to Justice

The Arizona Commission on Access to Justice (ACAJ) was established by Administrative Order 2014-83, pursuant to the Court’s 5-year strategic agenda of “Advancing Justice Together: Courts and Communities.” The order specifically directs the ACAJ, among other things, to make recommendations on increasing and encouraging *pro bono* services by attorneys practicing law in Arizona.

On behalf of Arizona’s civil legal aid providers in Arizona, the William E. Morris Institute for Justice has submitted Rule Petition R-16-0047 to clarify and facilitate the process by which registered in-house counsel in Arizona can provide volunteer legal services through an approved legal services program. Through

previous, and likely unintended, changes to Rule 38, the process by which registered in-house counsel could qualify to volunteer such services was unnecessarily made more complicated, and is duplicative of other registration requirements. This has had the undesired effect of discouraging registered in-house counsel in their desire to perform *pro bono* services.

The ACAJ is currently collaborating with the Arizona Chapter of the Association of Corporate Counsel, an organization made up of in-house counsel for a large number of Arizona companies, to promote the delivery of volunteer legal services to underserved and at-risk populations in Arizona. The lawyers who belong to this Association have both transactional and litigation skills and experience, and range from solo practitioners, who may be part of a small corporate/business entity, to members of an in-house corporate legal team, with expertise in local, state, national and international legal issues. The Association has an active *Pro Bono* Committee, chaired by Mr. Kevin Groman, and has publicly announced its commitment to providing volunteer legal services in Arizona. In that regard, the Association has already launched discrete projects, such as serving as volunteer mediators in Maricopa County's Commercial Court, helping staff (in conjunction with law students from the University of Arizona and

Arizona State University) an Entrepreneurship Clinic to assist at-risk individuals in their efforts to start a business, and to provide volunteer legal services for the Armory, a new non-profit entity that assists veterans who want to start a business here in Arizona.

Other corporate counsel *pro bono* projects are equally valuable: Intel, through the leadership of Dan Christensen, runs a monthly debt counseling clinic under the direction and supervision of Community Legal Services. The in-house legal departments of Arizona Public Service and Salt River Project likewise have important on-going *pro bono* projects that provide much-needed legal services to veterans and other at-risk populations.

Keeping the enthusiasm and momentum associated with the efforts of the Association and other corporate partners to recruit their attorneys to donate legal services is a challenge when these lawyers realize that, in addition to the initial registration they completed to obtain approval to practice law in Arizona, they have to complete another, essentially duplicative registration process in order to qualify to volunteer their legal services under the direction and supervision of one of Arizona's recognized civil legal aid providers.

Rule Petition R-16-0047 identifies the confusion created by prior rule changes, and suggests a solution so that registered in-house counsel can more easily provide volunteer legal assistance to those in desperate need of their services. The current rule contains an unnecessary barrier to encouraging and facilitating the delivery of these services, and the ACAJ strongly supports and urges the Court's approval of the amendments to Rule 38 proposed in this rule petition.

RESPECTFULLY SUBMITTED, this ___ day of _____, 2017.

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

Copy Mailed To:

Ellen Sue Katz
William E. Morris Institute for Justice
3707 N. Seventh Street, Suite 220
Phoenix, AZ 85014

Arizona Commission on Access to Justice

Meeting Date: May 10, 2017	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Update on Automated Phone Interview system
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From: Dr. Kevin Ruegg, Arizona Bar Foundation

Presenters: (Same)

Discussion: Dr. Ruegg will provide an update on the new automated phone interview system and will share statistics on both the phone interview and the online interview systems.

<http://azlawhelp.org/accesstojustice.cfm>

Recommended motion: Informational only.

Arizona Commission on Access to Justice

Meeting Date: May 10, 2017	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, AOC manager

Presenters: (Same)

Discussion: Dr. Ruegg will demonstrate the website's new features. Ms. Barrett will present on the marketing efforts to date.

Recommended motion: Informational only.

Arizona Commission on Access to Justice

Meeting Date: May 10, 2017	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: Mike Baumstark, AOC Deputy Director

Presenters: (Same)

Discussion: The presenter will discuss strategic planning focus and update the commission on the following rule petitions:

- R-16-0040 – Mandatory Eviction Action Forms
- R-17-0020 – Stipulated Judgments in Eviction Actions

The workgroup met on April 13, 2017.

Workgroup Members:

Judge Anna Huberman, chair
Judge Thomas Berning
Mike Baumstark
Pamela Bridge
Judge Janet Barton
Anthony Young
Jeff Fine
Paul Julien
Judge Bill Rummer
Millie Cisneros

Recommended motion: None.

Hon. Lawrence F. Winthrop
1501 W. Washington, Suite 410
Phoenix, Arizona 85007

IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO AMEND RULES
5(a), 5(b)(6), 5(b)(7) AND ADD RULES
13(h) AND 20, OF THE RULES OF
PROCEDURE FOR EVICTION
ACTIONS

Supreme Court No. R-16-0040

**Reply to Comments to Petition to
Amend Rules 5(a), 5(b)(6), 5(b)(7)
and add Rules 13(h) and 20 of the
Rules of Procedure for Eviction
Actions**

Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, the Arizona Commission on Access to Justice (Commission), submits this second reply to comments filed in response to the petition to amend Rules 5(a), 5(b)(6), 5(b)(7), and to add Rules 13(h) and 20, of the Arizona Rules of Procedure for Eviction Actions. If adopted, these rules would require landlords and litigants to use court-approved eviction action forms and notices, and authorize the Administrative Director of the Administrative Office of the Courts (AOC) to approve and modify eviction action forms in response to changes in state laws or procedures, to make other necessary amendments or technical corrections, and to add or delete eviction action forms as may be appropriate. For ease of reference, comments received in the first comment period are reiterated and also addressed here.

The first comment period ended on September 23, 2016. The Commission filed its reply on November 10, 2016. A motion for leave to file additional comments was filed by Commenter Michael Parham on November 14, 2016. The Supreme Court ordered the rule petition be continued with any additional comments due February 17, 2017. The Commission continued to meet informally with interested stakeholders to discuss the proposed rule changes, the objections and the potential for resolution; accordingly, the Commission requested and received a brief extension to March 22, 2017 to submit this second reply.

First Round of Comments

There were a total of nine comments submitted, three in full support and six objections. The commenters that fully support R-16-0040 were the Arizona Community

Action Association (ACAA), Community Legal Services (CLS), and the William E. Morris Institute for Justice (Institute). Objections to the petition came from professional trade organizations, Realtor/investor associations, a landlord/tenant attorney association, law firms specializing in representing landlords and residential owners, and a justice of the peace.¹

Second Round of Comments

There were a total of five new (but substantially the same) comments submitted in objection. Objections to the Commission's first reply again came from law firms specializing in representing landlords and residential owners, private tenant attorneys, and a justice of the peace.²

The objections to the Commission's proposed rules and notice/form changes focus on several areas, and erroneously assert that:

1. The proposed rule exceeds the authority of the Supreme Court under the Arizona Constitution and applicable statutes.
2. Mandating the use of notices and forms deprives Arizona Realtors and their clients of the right to use established and proven forms.
3. Landlords using legally sufficient and substantially similar forms would face dismissal of cases if mandatory forms were not used.
4. The Commission's statements in its petition and reply that all parties to the working group fully participated in the drafting of the notices and other forms is a falsehood, and the now-complaining landlord representative participants of the working group contend they were disadvantaged by what they now characterize as an unfair process.
5. The Commission's reply and changes made to the forms were inconsistent with the Rule 28 process.
6. The proposed notices and forms are legally deficient, confusing, and misleading.

In support of the petition, the Commission replies as follows:

¹ Judge Gerald Williams; Law Offices of Scott M. Clark, P.C.; Hull, Holliday & Holliday, PLC; Arizona Association of REALTORS®; Arizona Multihousing Association; Manufactured Housing Communities of Arizona and Michael A. Parham; and Arizona Real Estate Investors Association.

² Judge Gerald Williams; Williams, Zinman & Parham P.C.; Law Offices of Mark Hyatt Tynan, Law Offices of Mark A. Tucker, and Cook & Price PLC; Hull, Holliday & Holliday; Law Offices of Scott M. Clark, P.C.

I. The proposed rule does not exceed the authority of the Supreme Court under the Arizona Constitution and applicable statutes.

A. Arizona Revised Statutes § 33-1301 *et seq.* (Arizona Residential Landlord and Tenant Act) have not been abridged, enlarged or modified in whole or in part.

First Round of Comments

Commenter Michael A. Parham, page 3, claims “Nothing in ARS § 12-109(A) can even remotely be interpreted to authorize (1) the Supreme Court to dictate to landlords the forms of default notices given to their customers—their tenants; and (2) to require inclusion of information in Court mandated forms not required by relevant statutes.”

Second Round of Comments

Commenter Parham, page 5, notes “There may be those who believe that meeting the minimum requirements of the statute does not give the tenant enough information and that fairness and justice requires that more information be given. Many landlords agree and use forms that include some of this information. They do so willingly, not because the law mandates it. But when a Court rule adds requirements going beyond what the controlling statute requires, it is legislating from the bench.”

Commission Reply

Ensuring due process concerning the quality and content of notice to a tenant facing eviction is squarely within the authority of the judicial branch. The Supreme Court is authorized to “...regulate the pleadings, practice and procedures in judicial proceedings in all courts of the state for the purposes of simplifying...and promoting speedy determinations of litigation...” See ARS § 12-109 (A). In that regard, direction to a potential or actual litigant in an eviction action is procedural in nature and falls within Article 6 Section 5(5) of the Arizona Constitution, which gives the Supreme Court the “power to make rules relative to all procedural matters in any court.” The procedural law prescribes the method by which a substantive law is enforced or made effective. Here, substantive rights created by statute, specifically, ARS § 33-1301 *et seq.* (Arizona Residential Landlord and Tenant Act) have not been abridged, enlarged or modified in whole or in part. A litigant-landlord, in this instance, is instructed to use and provided a form of default notice that discloses to the tenant, in plain language, the basis for the

eviction action, the tenant's available options, and that decisions need to be made in a timely manner to preserve or exercise their rights.

II. Mandating the use of default notices and forms advances litigants' rights and enhances due process by delivering critical information in an easy to understand format.

A. The court has not engaged and does not intend to engage in the business of manufacturing, processing, publishing, distributing, and selling proprietary-type forms.

First Round of Comments

Commenter Parham, page 8, asserts the proposal violates ARS § 41-2752 (A) and (B) by pre-empting to the government (the courts) the publication of landlord tenant notice forms now published and sold by trade associations, private publishers and law firms.

Second Round of Comments

Commenter Parham, page 3, notes that the RPEA does not prescribe any specific forms for litigants to use in these cases and cited RPEA 2: "All eviction actions are statutory summary proceedings and the statutes establishing them govern their scope and procedure."

Commenters Denise Holliday and Paul Henderson, page 3, claim that making the forms available on self-help centers does not change the fact that by creating **mandatory** forms, the Court is engaged in the business of manufacturing, processing, publishing and distributing proprietary-type forms."

Commission Reply

Through self-help centers and, most recently, virtual (on-line) resource centers and webpages, see, e.g., <http://azcourthelp.org/> courts have for decades provided a wide range of legal forms, instructions, and entire form packages to assist self-represented litigants navigate through family law cases, probate matters, civil matters, small claims, and even eviction actions.

Courts now provide these services to make accessible to every litigant accurate, complete, and informative notices and forms. Nothing in the rule prohibits for-profit businesses from continuing to market and sell their own notices and forms, provided the

forms use the language approved by the Supreme Court. See Appendix B.

Requiring the use of specific forms, worksheets, associated schedules, and instructions is not without precedence. In 2012, the Supreme Court issued Administrative Order No. 2012-62, which implemented amendments to Rule 38, Arizona Rules of Probate Procedure. The administrative order approved amendments to existing forms and adoption of new forms to be used by conservators. As noted in the preamble of the Arizona Rules of Probate Procedure:

“These rules apply to probate proceedings brought under Arizona Revised Statutes (“A.R.S.”) Title 14 and to proceedings to challenge or enforce the decision of one authorized to make health care decisions for a patient. *They are designed to establish uniform practice and statewide standards for such proceedings in the superior court, to promote the prompt, efficient, and fair administration of such proceedings, and to supplement the statutes and rules of civil procedure, not to replace them.* (Emphasis in italics and bold added.) Thus, practitioners and unrepresented persons should be able to participate in probate proceedings in any part of the state by referencing these rules, the applicable statutes, and the rules of civil procedure, without having to tailor procedures and forms to comply with differing local probate practices or rules.”

B. The ACAJ was directed by Administrative Order No. 2014-83 to make recommendations on assisting self-represented litigants and revising court rules and practices to facilitate access and the efficient processing of eviction cases.

Approximately 7,000 eviction actions are filed *monthly* in Arizona, and most, if not all tenants, are self-represented. Some landlords are also self-represented; however, the vast majority are represented by legal counsel. Currently, prospective tenant-litigants may receive conflicting legal notices that are replete with legalese and often confusing terminology. Many tenants do not understand that landlords have the right to make unilateral demands based on the tenant’s non-compliance. Further, the currently-used notices and forms are generally not in a plain and readable format, so tenants often fail to realize that they are required by law to respond or to comply in a timely manner. All members of the Commission workgroup, including some of those who filed objections, agreed at the outset that these notices and forms could be substantially improved to the collective benefit of all litigants.

The Commission’s work is in furtherance of the Supreme Court’s Strategic Agenda, “*Advancing Justice Together*,” Goal 1, which states: “Arizonans look to our courts to protect their rights and to resolve disputes fairly and efficiently. To serve these

ends, Arizona’s judicial branch must work to ensure that all individuals have effective access to justice. This goal is advanced not only by examining legal representation for moderate and low-income persons, but also **by helping self-represented litigants and others navigate the judicial process.**” (Emphasis added.)

Some commenters, however, appear more concerned that mandating these notices and forms will decrease the need for and use of attorneys. Commenter Scott Drucker, Arizona Association of Realtors® (AAR), page 3, states “AAR is concerned that the formation and required use of a standard eviction action complaint and summons will decrease the use of attorneys.” This hypothetical result is certainly not our specific intent, nor is it a legitimate concern.

Ensuring equal and meaningful access to justice supports mandating uniformity in these specific legal notices and forms not only assists litigants in understanding and have the opportunity to participate in the judicial process, and also promotes greater judicial efficiencies. Evictions can be a life-changing event — the loss of housing for the litigant’s family, which may in turn affect employment, accessing educational opportunities and even the availability of health care — and could also possibly lead to transient or even chronic homelessness. Requiring the use of notices and forms that are readable, understandable, and provide meaningful access to information about the legal process far outweighs the illusory potential that fewer attorneys will be needed or used.

III. Commenters claim that landlords using legally sufficient and substantially similar forms would face dismissal of cases if mandatory forms were not used. This is not true.

First Round of Comments

Some of the first comments raised this concern. In response to such concerns, and as set forth in the Commission’s initial reply and suggested revisions, the proposed Rule 20 was changed so that a court, “upon a showing of good cause and in the interest of justice in a particular case,” may permit use of a form other than the approved form if the court finds the alternative form to be consistent with the law and procedural requirements as outlined in the ultimately-approved form.

Second Round of Comments

In response to the proposed revised language, Justice of the Peace Gerald Williams, page 4, suggests that “if these mandatory forms are adopted, then a landlord could comply with every statutory requirement in the applicable landlord and tenant act, could also comply with every current requirement of the RPEA, and still have his or her case dismissed merely because he or she used the wrong form. The mandatory notice forms will create a new set of procedural due process rights and judges will be required to dismiss eviction actions merely because a mandated form was not used.”

Commenter Parham, page 1, commented that “Landlords using forms consistent with the statutes would face dismissal of cases if court forms containing extra information were not used.”

Commission Reply

Because these comments suggest some apparent continued confusion over the Commission’s revised language of Rule 20, and as to the Commission’s willingness to allow for flexibility and eliminate the concern of the use of notices or other forms that are otherwise consistent with existing law, the language in Rule was further revised to address the comments.

New Rule 20 Language: “Attorneys representing landlords, landlords filing *pro per*, and judges and court staff must use, as appropriate, the eviction forms approved by the Administrative Director of the Administrative Office of the Courts, listed in subsection (b) and made available at www.azcourts.gov. Additional notice or pleading language may be included on the form if required by federal or state law, local ordinance, or contractually. The Administrative Director of the Administrative Office of the Courts is authorized to modify these forms in response to changes in state laws or procedures, to make other necessary administrative amendments or technical corrections, or to add or delete forms as may be appropriate. Upon a showing of good cause and in the interest of justice in a particular case, the court may permit use of another form if the court finds the form meets the notice or pleading provisions required by law or rules of this court.”

- IV. Commenters claim that “full participation” by all parties to the working group is a falsehood and the participants of the working group were disadvantaged by an unfair process. This claim is unfounded.**

The petition (R-16-0040 Pages 2-3) outlines the background and purpose of the proposed rule amendment, and identifies the workgroup members, which included both tenant and landlord attorneys, as well as judges and court administrators. These participants all have extensive expertise in landlord-tenant matters, and were an entirely appropriate group to create forms for use on a statewide basis. This was, without question, an inclusive process, seeking input and suggestions from both legal aid providers and from the housing industry. Those representatives had equal numbers in the work group. As previously noted, all sides agreed the existing notices and forms could be improved, and the final result was fairly negotiated, drafted and voted on.

The issue of whether to make the use of these notices and forms mandatory was not specifically voted on during the work group meetings. However, recognizing that during the next year another 84,000 eviction actions would likely be filed, at the May 18, 2016 full Commission meeting, a motion was made and unanimously passed by the entire Commission to approve the filing of a rule change petition asking the Supreme Court to require the use of Supreme Court approved forms and notices for eviction actions.³

The Commission believes that in order to insure the delivery of correct and meaningful information to both the landlord and the tenant, and to fully implement procedural due process and effective access to our judicial system, the use of these notices and forms, as jointly drafted and negotiated by both sides, should be mandatory.

V. The Commission’s reply and changes made to the forms were consistent with the Rule 28 process.

Commenter Parham in his motion for leave to file additional comments and additional comments, page 4, claims that “The ACAJ Reply is not really a reply but is a new proposed rule change that does not comply with Rule 28. The Reply includes revisions to the forms originally submitted with the initial proposed rule change. The forms now being championed by the ACAJ are effectively new forms.”

Commission Reply

The changes made to the forms after the first round of comments were not

³ During the vetting process, the Committee on Limited Jurisdiction Courts (LJC) discussed this issue. The LJC committee unanimously approved the forms, and suggested that the Court consider adopting these as “model” forms, to be used for a year before deciding to mandate their use.

substantive in nature, but instead reflect the Commission’s continued efforts to improve the work product based on the feedback received, which is part of and a goal of the standard rule process.

VI. Commenters claim the proposed notices and forms are legally deficient, confusing, and misleading. During both comment periods, the ACAJ continued to solicit input from the industry and individuals to further improve the notices and forms and ensure they provide accurate and useful information.

The Commission carefully reviewed and considered all comments received in response to the petition. Based on that feedback, the Commission is recommending further changes to the forms and rules. The additional changes are recommended to provide clarification and more information as recommended or requested in the comments. Below is a summary of additional changes resulting from the second comment period that were recommended by the Self-Represented Litigants in Limited Jurisdiction Workgroup to the Commission Chair. (See Appendix A and B for amendments to the proposed rules and forms.)

A. Summons Form

1. No changes.

B. Complaint Form

1. Included “Fax/Email” in the top caption. Law firms can use their own letterhead and add the contact information.
2. Included “Case Number: _____” on the second page header.
3. Section 5 was modified to include “if applicable” because subsequent individual violations do not need to be documented with non-compliance notices.
4. Section 6 was clarified in the accounting breakdown to include “accrued since filing” in the “Rent (current and prior months) totaling.”
5. Section 6 was modified in the accounting breakdown by removing the first “damages” to differentiate between “Other fees and charges” and “Other allegations of damages.”
6. Section 6 was modified to give the option to “add more lines for specific fees and charges” like notice fees and utilities.
7. Included “Attorney for Plaintiff” on the signature line.

C. Judgment Form

1. Moved “Defendant has filed a counterclaim” to the next line because a counterclaim is not a plea option.
2. Added “[] Parties have stipulated” and the stipulated judgment warning language from Rule 13 as mandated by the RPEA.
3. Included “Case Number: _____” on the second page header.
4. Removed “8. Other _____” and replaced “Damages” with “Other damages” in the accounting breakdown to differentiate between categories.

D. 5-Day Notice to Pay Rent

1. Replaced “Prior month” with “Prior balance” because there could be more than one month.
2. Section A.3. was modified by adding “Add additional lines if needed for other charges listed in the rental agreement.”
3. Added the following notice language to make it clearer that the lease will be reinstated if the tenant pays all damages, attorney fees, and court costs before the judgment is signed: “**Notice:** The lease must be reinstated if you offer to pay all the rent due, plus late fees, court costs and attorney’s fees before the judgment is signed.”
4. Replaced the “lease” with “rental agreement” because many tenants do not have a lease but are under month-to-month renewals.
5. In the gray box, “legally” was added to clarify that the judge does not have the authority to extend the lease beyond the writ of restitution date.

E. 5-Day Notice to Comply (Fix or Correct Problem)

1. The gray box was modified by removing the sentence “After an eviction [...] court costs.” to provide clarification based on comments.
2. In the gray box, “legally” was added to clarify that the judge does not have the authority to extend the lease beyond the writ of restitution date.
3. The gray box was modified to conform to statutory requirements by adding “you may be required to pay damages, attorney fees, and court costs.” after “If a judgment is entered against you,”.

F. Immediate Notice to Move

1. The gray box was modified by removing the sentence “After an eviction [...] court costs.” to address internal contradictions about rights of tenants to reinstate rental agreements for violations where law does not provide for reinstatement.
2. In the gray box, “legally” was added to clarify that the judge does not have the authority to extend the lease beyond the writ of restitution date.
3. The gray box was modified to conform to statutory requirements by adding “you may be required to pay damages, attorney fees, and court costs.” after “If a judgment is entered against you [...] from the date a judgment is signed,”.

G. 10-Day Notice to Comply (Fix or Correct Problem)/ 10-Day Notice to Move

1. The gray box was modified by removing the sentence “After an eviction [...] court costs.” to address internal contradictions about rights of tenants to reinstate rental agreements for violations where law does not provide for reinstatement.
2. In the gray box, “legally” was added to clarify that the judge does not have the authority to extend the lease beyond the writ of restitution date.
3. The gray box was modified by adding “you may be required to pay damages, attorney fees, and court costs.” after “If a judgment is entered against you,”.

H. Rule Changes

1. Rule 20: Included is language that allows additional notice or pleading language on the form if required by federal or state law, local ordinance, or contractually, for example, debt collection language.
2. Rule 20: Language added that allows, upon a showing of good cause and in the interest of justice in a particular case, the court may permit use of another form if the court finds the form meets the notice or pleading provisions required by law or rules of the court.

Conclusion

For all the above reasons, as well as those stated in the initial petition, the Arizona Commission on Access to Justice respectfully requests that the Court amend Rules 5(a), 5(b)(6), 5(b)(7) and add Rules 13(h) and 20, and revise of the Rules of Procedure for Eviction Actions to require litigants to use court-approved eviction notices and related forms, and to authorize the

Administrative Office of the Courts to approve and modify eviction action forms in response to changes in state laws or procedures, or to make other necessary amendments or technical corrections, and to add or delete eviction action forms as needed.

RESPECTFULLY SUBMITTED this 21st day of March, 2017.

Arizona Commission on Access to Justice

By /s/Lawrence F. Winthrop
Lawrence F. Winthrop
Chair of the Arizona Commission on Access to Justice

Electronic copy filed with the Clerk
of the Supreme Court of Arizona this
21st day of March 2017
By: /s/Kathy Sekardi

APPENDIX A

[Changes since Reply filed on 11/10/2016 are highlighted]

APPENDIX A

[Changes since Reply filed on 11/10/2016 are highlighted]

Rules of Procedure for Eviction Actions

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

a. Summons. The summons in an eviction action shall be a document separate from the complaint, shall be issued in accordance with applicable statutory provisions, ~~and shall identify the defendants to the action, and shall be in the approved form referenced in Rule 20 of these rules.~~ If the name of a defendant is unknown, the summons and complaint may name a fictitious defendant and any occupants of the property. The court shall liberally grant leave to amend the complaint and summons to reflect the true names of defendants if they become known to the plaintiff. The summons shall also include the following:

- (1) Name of the court and its street address, city, and telephone number;
- (2) Date and time set for the trial of the matter;
- (3) Notice that if the tenant fails to appear, a default judgment will likely be entered against the tenant, granting the relief specifically requested in the complaint, including removing the tenant from the property; and
- (4) A disclosure in substantially the following form: “Requests for reasonable accommodation for persons with disabilities should be made to the court as soon as possible.”
- (5) In residential property actions only, on a separate page served upon the tenant, the information contained in the Residential Eviction Procedures Information Sheet substantially in the form included as Appendix A to these Rules.

b. Complaint. The complaint shall:

- (1) Be brought in the legal name of the party claiming entitlement to possession of the property.
- (2) Include the business name, if any, and address of the property;
- (3) If an attorney represents the plaintiff, state the name, address, telephone number, and Bar number of the attorney in the upper left hand corner;
- (4) If the plaintiff is unrepresented, state the plaintiff's address, name and telephone number in the upper left hand corner;
- (5) State that the property in question is located within the judicial precinct where the complaint is filed;
- (6) ~~State in bold print, capitalized, and underlined at the top center of the first page, below the case caption, “YOUR LANDLORD IS SUING TO HAVE YOU EVICTED. PLEASE READ CAREFULLY”;~~ Be in the approved form referenced in Rule 20 of these rules;
- (7) State the specific reason for the eviction; that the defendant was served a proper notice to vacate, if applicable; the date the notice was served; and what manner of service was used. A copy of the notice shall be ~~attached as an exhibit to the complaint.~~ in the approved form as referenced in Rule 20 of these rules shall be attached as an exhibit to the complaint.
- (8) Be verified. This means that the attorney signing the complaint shall verify that the attorney believes the assertions in the complaint to be true on the basis of a reasonably diligent inquiry.

c. – g. [no change]

Rule 13. Entry of Judgment and Relief Granted

a. – g. [no change]

h. The judgment must be in the approved form referenced in Rule 20 of these rules.

Rule 20. Forms.

- a. **Mandated Forms.** Attorneys representing landlords, landlords filing *pro per*, and judges and court staff must use, as appropriate, the eviction forms approved by the Administrative Director of the Administrative Office of the Courts, listed in subsection (b) and made available at www.azcourts.gov. Additional notice or pleading language may be included on the form if required by federal or state law, local ordinance, or contractually. The Administrative Director of the Administrative Office of the Courts is authorized to modify these forms in response to changes in state laws or procedures, to make other necessary administrative amendments or technical corrections, or to add or delete forms as may be appropriate. Upon a showing of good cause and in the interest of justice in a particular case, the court may permit use of a another form ~~other than the approved form~~ if the court finds the form meets the notice or pleading provisions required by law or rules of this court to be consistent with law as the approved form.
- b. **Types of Forms.**
- (1) Eviction Action Complaint;
 - (2) Eviction Action Summons;
 - (3) Eviction Action Judgment;
 - (4) Notice for Failure to Pay Rent / 5 Day Notice to Pay Rent;
 - (5) Notice of Health and Safety Violations / 5 Day Notice to Comply (Fix or Correct Problem);
 - (6) Notice of Material Breach / 10 Day Notice to Comply (Fix or Correct Problem);
 - (7) Notice of Repeat Material or Health and Safety Breach / 10 Day Notice to Move; and
 - (8) Notice of Material and Irreparable Breach / Immediate Notice to Move
 - (9) Other notices that are approved by the Administrative Director of the AOC.
- c. **No Charge for Forms.** Courts must provide all eviction action forms without charge.

APPENDIX B

[Changes since Reply filed on 11/10/2016 are highlighted]

()

Attorney for Plaintiff / Address / Phone / **Email / Fax/** Bar Number

Justice Courts, Arizona

CASE NUMBER: _____

()

Plaintiff(s) Name / Address / Phone

()

Defendant(s) Name / Address / Phone

COMPLAINT (*Eviction Action*)

Immediate Residential

YOUR LANDLORD IS SUING TO HAVE YOU EVICTED, PLEASE READ CAREFULLY THE ALLEGATIONS AGAINST YOU LISTED BELOW.

1. This court has jurisdiction to hear this case. The rental is within this court's judicial precinct and is located at: _____. The business name of the property, if any, is _____.
2. The Plaintiff wants you evicted and wants possession of the rental because of the reasons in section 5.
3. Any required written notice was served on the Defendant on _____ and was served: by hand, or by certified mail.
4. A copy of the notice that was served is attached.
5. The Plaintiff is the owner or is authorized by law to file this case on behalf of the owner.

The Plaintiff claims (check and complete all that apply):

SUBSIDIZED HOUSING: Total rent per month is \$_____.
Tenant's portion of rent per month is \$_____.

RENT OWED: The Defendant has failed to pay the rent owed. The rent is unpaid since _____. There is a prior unpaid balance of \$_____. The rental agreement requires rent of \$_____ to be paid on the _____ day of each month week. The rental agreement provides for late fees calculated in the following manner: _____.

Notice: If you are a residential tenant and the only claim your landlord makes is that you have not paid your rent, you may contact your landlord or your landlord's attorney and offer to pay all of the rent due, plus any reasonable late fees, court costs and attorney's fees. If you pay these amounts before a judgment is entered, then this case will be dismissed and your rental agreement will be reinstated and will continue.

NON-COMPLIANCE: After getting a notice, the Defendant failed to do the following:

_____ on this date: _____, at the following location _____.

IRREPARABLE BREACH: The Defendant has committed a material and irreparable breach.

Specifically, on this date _____, at the following location _____
the Defendant did the following: _____

[] **OTHER ALLEGATIONS OF NON-COMPLIANCE ON WHICH EVICTION ACTION IS BASED:** State the date or dates notice of non-compliance was given and attach a copy of each notice, if applicable, to this Complaint:

6. As of the filing date the Defendant owes the following:

Rent (current and prior months accrued since filing) totaling.	\$ _____	
Late fees: (if any in written agreement).	\$ _____	
Other fees, or charges or damages (as authorized by law).	\$ _____	(Add more lines for specific fees and charges)
Concessions (if any in written agreement)	\$ _____	
Reimbursable court costs	\$ _____	
Attorney's fees (if allowed)	\$ _____	
Other allegations of damages (as authorized by law).	\$ _____	
Total Amount Requested	\$ _____	

- 7. The Plaintiff requests a Judgment for the amounts owed above and for possession of the rental.
- 8. WRIT OF RESTITUTION: The Plaintiff requests the court issue a Writ of Restitution returning the rental to the Plaintiff's possession 5 calendar days after the date the Judgment. If the eviction is for the material and irreparable breach explained above, return of possession is requested 12 to 24 hours from the time of the Judgment.
- 9. By signing this complaint, I am agreeing that the allegations written are true and correct to the best of my knowledge.

Date: _____
Plaintiff / Attorney for Plaintiff

Justice Courts, Arizona

CASE NUMBER: _____

()
Plaintiff(s) Name / Address / Phone

()
Defendant(s) Name / Address / Phone

SUMMONS (*Eviction Action*) [] Amended

THE STATE OF ARIZONA TO THE DEFENDANT(S) NAMED ABOVE. YOU ARE HEREBY SUMMONED TO APPEAR.

An **Eviction Case** has been filed against you. A court hearing has been scheduled.

Date: _____ Time: _____ At the (<i>court name</i>): _____ Courtroom: _____ Floor: _____ Please arrive early.

REQUESTS FOR REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES SHOULD BE MADE TO THE COURT AS SOON AS POSSIBLE.

If an interpreter is needed, please contact the court listed above as soon as possible.

1. You have a right to come to court.
2. If you do not agree with the claims against you on the attached complaint, you must come to court at the date, time, and location listed above and explain your reasons to the judge.
3. If you do not agree with the claims in the complaint, you also may file a written answer admitting or denying some or all the claims and pay the answer fee. (See number 5.)
4. If you have a statutory basis to file a counterclaim, which is limited to damages resulting from the landlord's breach of the lease or violation of the Residential Landlord Tenant Act, it must be in writing and served upon the opposing party. ARS section 33-1365.
5. If you cannot afford the filing fee, you may apply for a deferral or waiver of the filing fee at the court.
6. **IF YOU FAIL TO APPEAR**, a judgment will likely be entered against you, granting the relief specifically requested in the complaint, including removing you from the rental.
7. To learn more see the attached Residential Eviction Information Sheet or contact the court.

Date: _____ Justice of the Peace _____

Justice Courts, Arizona

CASE NUMBER: _____

() _____ () _____

Plaintiff(s)/Attorney Name / Address / Phone Defendant(s)/ Attorney Name / Address / Phone

JUDGMENT (Eviction Action) [] Amended

This matter was heard by the Court on this date: _____
Plaintiff appeared [] in person [] by counsel [] failed to appear
Defendant appeared [] in person [] by counsel [] failed to appear

If required by law, Defendant [] was [] was not given proper notice and the opportunity to cure.

Defendant [] was [] was not properly served with the Summons and a copy of the complaint at least two (2) days prior to Court date.

If a partial rent payment was accepted, [] a non-waiver was produced [] a non-waiver was NOT produced.

Defendant pleads [] NOT GUILTY/NOT RESPONSIBLE
[] GUILTY/RESPONSIBLE

[] Defendant has filed a counterclaim.

[] Parties have stipulated.

Read carefully! By signing below, you are consenting to the terms of a judgment against you. You may be evicted as a result of this judgment, the judgment may appear on your credit report, and you may NOT stay at the rental property, even if the amount of the judgment is paid in full, without your landlord's express consent.

Defendant's signature

Defendant was found [] GUILTY/RESPONSIBLE [] NOT GUILTY/NOT RESPONSIBLE of:
[] RENT OWED [] NON-COMPLIANCE [] IRREPARABLE BREACH
[] OTHER

[] IT IS HEREBY ORDERED granting judgment on the complaint to [] Plaintiff [] Defendant
[] IT IS FURTHER ORDERED granting judgment on the counterclaim to [] Plaintiff [] Defendant
[] IT IS FURTHER ORDERED granting possession of the rental (dwelling unit or premises) to
[] Plaintiff [] Defendant

[] IT IS FURTHER ORDERED granting monetary judgment to:

[] Plaintiff(s)

- 1. \$ _____ Rent
- 2. \$ _____ Late fees
- 3. \$ _____ Other fees, ~~or~~ charges, ~~or~~ damages

(Add more lines for specific fees and charges)

- 4. \$ _____ Rental concessions
- 5. \$ _____ Court cost
- 6. \$ _____ Other damages
- 7. \$ _____ Attorney fees
- 8. \$ _____ Other

\$ _____ **TOTAL**

[] Plaintiff awarded nothing

With interest at the rate of _____% per annum from the date of judgment until paid in full.

[] Defendant(s)

- 1. \$ _____ Court cost
- 2. \$ _____ Damages
- 3. \$ _____ Attorney fees
- 4. \$ _____ Other: _____

\$ _____ **TOTAL**

[] Defendant awarded nothing

[] A Writ of Restitution (order to vacate rental) shall be granted upon request of the Plaintiff on:

Date: _____ Time: _____
(No sooner than five (5) calendar days after date of judgment)

[] The court finds that the defendant has committed a material and irreparable breach, in violation of A.R.S. §33-1368A, and a Writ of Restitution (order to vacate rental) shall be granted on:

Date: _____ Time: _____
(No sooner than 12 - 24 hours from the time of judgment)

WARNING: After service of the Writ of Restitution (order to vacate rental), if you remain on or return unlawfully to the rental, you will have committed criminal trespass in the third degree.

IT IS ORDERED dismissing this case [] with prejudice [] without prejudice

Date: _____ Signature: _____
Justice of the Peace

I CERTIFY that I delivered/mailed a copy of this document to:

[] Plaintiff at the above address [] Plaintiff's attorney [] Defendant at the above address

[] Defendant's attorney

Date: _____ By: _____
Clerk

Notice for Failure to Pay Rent

5 Day Notice to Pay Rent

()
Tenant(s) Name / Address / Phone

()
Landlord(s) or Agent's Name / Address / Phone

Notice Date: _____

You have not paid your rent. You owe the following rent:

Total owed \$ _____ as of this date: _____. *If late fees are allowed in the rental agreement, this amount will increase by \$ _____ each day the rent is not paid.* (Your deposit may not be used for rent.)

The total includes:

- A. Rent**
- 1. Current month/week \$ _____
 - 2. Prior **month balance** \$ _____
 - 3. Other \$ _____ why _____.
- (Must be listed in rental agreement. Add additional lines if needed for other charges listed in the rental agreement.)

B. Late fees (if **late fees** are allowed in the rental agreement)

\$ _____ per day for _____ days

Total \$ _____ (The amount will continue to increase each day the rent is not paid)

Your landlord may file an eviction action asking the judge to order you to move unless you do one of the following:

1. Pay the total owed within 5 calendar days of receiving* this notice.
2. Move out of the rental and **return the keys** to the landlord within 5 calendar days of receiving* this notice. (You may still be responsible for the total owed.)
3. Contact the landlord and settle this matter. It is best to get this agreement in writing signed by both you and the landlord.

Notice: The lease must be reinstated if you offer to pay all the rent due, plus late fees, court costs and attorney's fees before the judgment is signed.

**If this notice was hand-delivered, you have 5 calendar days to act from the date you or members of your household received the notice. If this notice was sent by certified mail, you have 5 calendar days to act from the date you signed the postal service green card or 10 calendar days from the date the envelope was post-marked, whichever comes first.*

If you do not pay the amount owed, move out of the rental and return the keys, or settle this matter (it is best to get this agreement in writing), the landlord may file an eviction action. If an eviction is filed, you have the right to appear in court and dispute the eviction action. After an eviction action is filed, and in order to reinstate the rental agreement, you may be required to pay damages, attorney fees, and court costs. The judge will decide if you have to move or can legally remain in the rental. If a judgment is entered against you, you may remain in the rental property only if the landlord agrees in writing to let you stay.

Date: _____ Signature: _____
[] Landlord [] Agent

This notice is served by:
[] Hand delivery to (name): _____ who is the [] tenant [] occupant
[] By certified mail (mail receipt #): _____

**Notice of Health and Safety Violation(s)
5 Day Notice to Comply (Fix or Correct Problem)**

() _____
Tenant(s) Name / Address / Phone

() _____
Landlord(s) or Agent's Name / Address / Phone

Notice Date: _____

You have violated your rental agreement. The following is what happened, where it happened and when.
Attach additional sheet(s) if needed. _____

Your landlord may file an eviction action asking the judge to order you to move unless you do one of the following:

1. Fix the violation(s) within 5 calendar days of receiving* of this notice.
2. Move out of the rental and **return the keys** to the landlord within 5 calendar days of receiving* this notice.
3. Contact the landlord and settle this matter. It is best to get this agreement in writing signed by both you and the landlord.

**If this notice was hand-delivered, you have 5 calendar days to act from the date you or members of your household received the notice. If this notice was sent by certified mail, you have 5 calendar days to act from the date you signed the postal service green card or 10 calendar days from the date the envelope was post-marked, whichever comes first.*

If you do not fix the violation(s), move out of the rental and return the keys, or settle this matter (it is best to get this agreement in writing), the landlord may file an eviction action. If an eviction is filed, you have the right to appear in court and dispute the eviction action. ~~After an eviction action is filed, and in order to reinstate the lease, you may be required to pay damages, attorney fees, and court costs.~~ After a hearing, the judge will decide if you have to move or can legally remain in the rental. If a judgment is entered against you, you may be required to pay damages, attorney fees, and court costs. You may remain in the rental property only if the landlord agrees in writing to let you stay.

WARNING: If there is **another or similar violation** during the rest of the rental agreement, your landlord may give you a notice requiring you to move within 10 calendar days. If you do not move, the landlord may file an eviction action.

Date: _____ Signature: _____
[] Landlord [] Agent

This notice is served by:
[] Hand delivery to (name): _____ who is the [] tenant [] occupant
[] By certified mail (mail receipt #): _____

() _____
Tenant(s) Name / Address / Phone

() _____
Landlord(s) or Agent Name / Address / Phone

Notice Date: _____

You have violated your rental agreement. The following is what happened, where it happened and when.
Attach additional sheet(s) if needed.

Your landlord may file an eviction action asking the judge to order you to move unless you do one of the following:

1. Fix the violation(s) within 10 calendar days of receiving* this notice.
2. Move out of the rental and **return the keys** to the landlord within 10 calendar days of receiving this notice.
3. Contact the landlord and settle this matter. It is best to get this agreement in writing signed by both you and the landlord.

**If this notice was hand-delivered, you have 10 calendar days to act from the date you or members of your household received the notice. If this notice was sent by certified mail, you have 10 calendar days to act from the date you signed the postal service green card or 15 calendar days from the date the envelope was post-marked, whichever comes first.*

If you do not fix the violation(s), move out of the rental and return the keys, or settle this matter (it is best to get this agreement in writing), the landlord may file an eviction action. If an eviction is filed, you have the right to appear in court and dispute the eviction action. After an eviction action is filed, and in order to reinstate the lease, you may be required to pay damages, attorney fees, and court costs. After a hearing, the judge will decide if you have to move or can legally remain in the rental. If a judgment is entered against you, you may be required to pay damages, rent, late fees, attorney fees, and court costs. You may remain in the rental property only if the landlord agrees in writing to let you stay.

WARNING: If there is **another or similar violation** during the rest of the rental agreement, your landlord may give you a notice requiring you to move within 10 calendar days. If you do not move, the landlord may file an eviction action.

Date: _____ Signature: _____

Landlord Agent

This notice is served by:
 Hand delivery to (name): _____ who is the tenant occupant
 By certified mail (mail receipt#): _____

() _____ () _____
Tenant(s) Name / Address / Phone Landlord(s) or Agent's Name / Address / Phone

Notice Date: _____

You have violated your rental agreement again. **This violation cannot be fixed. Your landlord wants you to move out now and return the keys within 10 calendar days.**

The first violation was on this date _____. Attached is a copy of the first notice. The second same or similar violation was on this date _____.

This is what happened, when it happened and where it happened (Attach additional sheet(s) if needed):

Your landlord is ending your rental agreement and your right to live in the property.

If you do not move out of the rental and return the keys within 10 calendar days of receiving* this notice, your landlord may file an eviction action against you. If an eviction is filed, you have the right to appear in court and dispute the eviction action. After an eviction action is filed, and in order to reinstate the lease, you may be required to pay damages, attorney fees, and court costs. After a hearing, the judge will decide if you have to move or if you can legally remain in the rental. If a judgment is entered against you, you may be required to pay damages, rent, late fees, attorney fees, and court costs. You may remain in the rental property only if the landlord agrees in writing to let you stay.

**If this notice was hand-delivered, you have 10 calendar days to act from the date you or members of your household received the notice. If this notice was sent by certified mail, you have 10 calendar days to act from the date you signed the postal service green card or 15 calendar days from the date the envelope was post-marked, whichever comes first.*

Date: _____ Signature: _____
[] Landlord [] Agent

This notice is served by:
[] Hand delivery to (name): _____ who is the [] tenant [] occupant
[] By certified mail (mail receipt #): _____

()

Tenant(s) Name / Address / Phone

()

Landlord(s) or Agent's Name / Address / Phone

Notice Date: _____

You have violated your rental agreement. **The violation(s) cannot be fixed. Your landlord wants you to move out now and return the keys immediately.** The following is what happened, where it happened and when. Attach additional sheet(s) if needed.

An eviction action may be or has been filed against you. If an eviction action has been filed, you have the right to appear in court to dispute the eviction action. **After an eviction action is filed, and in order to reinstate the lease, you may be required to pay damages, attorney fees, and court costs.** After a hearing, the judge will decide if you have to move or if you can **legally** stay in the rental. If a judgment is entered against you, a Writ of Restitution (a court order to have you removed from the rental) may be issued between 12-24 hours from the date a judgment is signed **and you may be required to pay damages, attorney fees, and court costs.**

Date: _____ Signature: _____

This notice is served by:
[] Hand delivery to (name): _____ who is the [] tenant [] occupant
[] By certified mail (mail receipt #): _____



SCOTT BALES
CHIEF JUSTICE

JANET JOHNSON
CLERK OF THE COURT

Supreme Court

STATE OF ARIZONA
ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET, SUITE 402
PHOENIX, ARIZONA 85007-3231

TELEPHONE: (602) 452-3396

April 28, 2017

RE: RULES 5(a),5(b)(6),5(b)(7) et al, EVICTION ACTIONS
Arizona Supreme Court No. R-16-0040

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on April 25, 2017, in regard to the above-referenced cause:

WOULD REQUIRE LITIGANTS STATEWIDE TO USE COURT-APPROVED EVICTION ACTION FORMS AND AUTHORIZES THE ADMINISTRATIVE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE COURTS (AOC) TO APPROVE, MODIFY, OR DELETE EVICTION ACTION FORMS AS MAY BE APPROPRIATE

ORDERED: Request to Strike March 21, 2017 "Reply" or ACAJ or in the Alternative, for Leave to File Additional Comments on Proposed Rule Revisions = DENIED.

FURTHER ORDERED: Request to Dismiss Petition = DENIED.

FURTHER ORDERED: Petition to Amend Rules 5(a), 5(b)(6), 5(b)(7) and Add Rules 13(h) and 20, of the Rules of Procedure for Eviction Actions = CONTINUED.

To find a copy of the minutes and orders click [here](#).

Janet Johnson, Clerk

TO:

Hon. Lawrence F Winthrop

Gerald A Williams

Paul A Henderson

Denise M Holliday

Scott M Clark

Michael A Parham

Ellen S Katz

Scott M Drucker

Melissa Parham

Mark B Zinman

Pamela M Bridge

Cynthia Zwick

Mark Hyatt Tynan

Jesse Cook

Mark A Tucker

kd

Hon. Lawrence F. Winthrop
1501 W. Washington, Suite 410
Phoenix, Arizona 85007

IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO AMEND RULE 13(b)(4)
OF THE RULES OF PROCEDURE FOR
EVICTION ACTIONS

Supreme Court No. R-17-0020

**Supplement to Petition to Amend
Rule 13(b)(4) of the Rules of
Procedure for Eviction Actions**

Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, the Arizona Commission on Access to Justice (Commission), submits this supplement to the petition to amend Rule 13(b)(4) of the Arizona Rules of Procedure for Eviction Actions in response to comments filed by stakeholders and as a result of the Maricopa County Justice Courts' pilot program implementing the proposed rule change on a trial basis. If adopted, the new rule would permit courts to accept stipulated judgments when the court finds the following:

- both parties or their attorneys personally appear before the court; or
- the attorney asserts to the court that the tenant was informed of the right to appear and declined; or
- the court determines that, because of distance or other circumstances, the defendant cannot personally appear, that good cause exists and it is in the interest of justice to proceed; and
- the court determines that the conditions of Rule 13(a)(1)-(2) have been satisfied;
- the form to which the defendant stipulated contains the specific warning in RPEA 13(b)(4);
- the court determines that the parties understand the terms contained in the document; and
- the defendant has signed the warning language in (b).

The first comment period ended on March 14, 2017. There were a total of six comments submitted in objection. Objections to the petition came from a realtor/investor association, law

firms specializing in representing landlords and residential owners, law firms specializing in representing private tenants, and two justices of the peace.¹

The objections to the Commission’s proposed rule focus on several areas, and assert that:

1. The proposal implies distrust and disdain for attorneys representing landlords.
2. The proposal seeks to amend a functioning rule for emotional reasons.
3. The proposal will not regulate stipulated judgments but rather will end them.
4. The proposal will result in longer court eviction dockets.
5. Tenants will lose opportunity to strike beneficial deals.

In support of the petition, the Commission replies as follows:

I. Commenters claim that the proposal implies distrust and disdain for attorneys representing landlords. That is incorrect.

Michael A. Parham, Page 2, notes that the proposal implies “that attorneys representing landlords misrepresent themselves as court employees”, and that “the landlord’s attorney might have forged the tenant’s signature” to obtain a stipulated judgment.

In addition, Mr. Parham, Page 8, indicates “the ACAJ implies (with no factual basis) that landlord attorneys are browbeating tenants into stipulating to judgments against their best interests.”

The intent of the proposal is not to allege misconduct on the part of landlord attorneys but rather to ensure that tenants understand what they are signing and agreeing to. According to the Joint Center for Housing Studies, Harvard University, December 9, 2015, found at <http://www.jchs.harvard.edu/research/publications/americas-rental-housing-expanding-options-diverse-and-growing-demand>, 36.2 percent of low-income renters (those whose rent is at least half of their income) do not have a high school degree.

¹ Manufactured Housing Communities of Arizona and Michael A. Parham; Law Offices of Mark Hyatt Tynan, Law Offices of Mark A. Tucker, and Cook & Price PLC; Holliday & Holliday PC; Judge Frank J. Conti; Law Offices of Scott M. Clark, P.C.; and Judge Cecil Ash

In response to the notion that there is an implication of distrust and disdain for landlord attorneys, the Commission revised the language in Rule 13. The Commission continues to believe that both landlord attorneys and tenants would benefit from these changes. An option was added for the landlord attorney to assert to the court that the tenant was informed of the right to appear but did not stay for the hearing. Additionally, the language was revised so only the defendant, not the landlord attorney, is required to sign the warning language in (b). Based on the comments, the Commission also proposes to break down Rule 13(b)(4) and the warning language into subsections to provide clarification and improve readability for self-represented litigants.

- A. Both parties or their attorneys must personally appear before the court, or
- B. The attorney can assert to the court that the tenant was informed of the right to appear and declined. [...]
- E. The court determines that the parties understand the terms in the document and defendant has signed the warning language in (b).

II. Commenters claim that the proposal seeks to amend a functioning rule for emotional reasons. That is incorrect.

Mr. Parham, Page 1, comments that “the Proposal seeks to amend a functioning rule for emotional reasons. It seeks to amend a court rule with no factual or legal justification to solve a problem where there is not one. Realistically, the purpose of this needless Proposal is to delay eviction actions and buy tenants time to live in their landlords’ property rent-free while they seek new housing.”

The Commission based the rule change petition on the real needs of tenants and the enormous potential consequences of stipulated judgments, not on emotional reasons. Evictions are disproportionately experienced by minority and poor tenants. For low-income persons who often lack back-up resources, an eviction action may result in homelessness and trigger additional negative changes in the lives of the displaced. Besides immediately being required to leave their housing, the judgment may now appear on their credit report preventing them from acquiring other housing. Additionally, many subsidized and voucher housing programs terminate assistance if a tenant has an eviction on his or her record. See, e.g., Chester Hartman and David Robinson, *Evictions: The*

Hidden Housing Problem, Housing Policy Debate, Vol. 14, Issue 4 (2003) found at <https://www.innovations.harvard.edu/evictions-hidden-housing-problem>. The inability to find other housing on short notice can lead to the disruption of children's education, interruption of employment, dislocation from health care providers, loss of personal belongings and homelessness. It was never the goal of the Commission to delay eviction actions, but rather to provide critical and useful information upfront so self-represented litigants are informed and understand the ramifications of what they are signing.

III. Commenters claim that the proposal will not regulate stipulated judgments but rather end them.

Ms. Denise M. Holliday, Page 1, comments that “the attorneys in this field have reached a consensus based upon the pilot program in Maricopa County Justice Courts in January 2017. Because of this program, they will not meet with any defendants and discuss reaching a stipulation. This is based upon the pilot questions by the trial court that led the listener to believe the attorney was under suspicion and must have misled the litigant. The program also required the attorney to provide legal advice to the opposing party.”

Mr. Parham, Page 7, notes that “the stipulation practice will no longer expedite eviction calendars. It makes no sense for landlord attorneys to continue seeking stipulations since under this Proposal the benefits will disappear.” Additionally, Mr. Parham, Page 8, comments that “this Proposal will not regulate stipulated judgments; as a practical matter, it will end them. As a result of the pilot program in Maricopa County the practice has already ended there. It is also important to understand that the losers in this proposal are not landlords and their tenants, but tenants, their attorneys, and the court system.”

Judge Cecil Ash, Page 1, notes that “from January 1, 2017 until March 1, 2017, [he] voluntarily complied with the pilot program requiring all parties to appear to an

eviction to appear in person and explain the stipulation to the judge. During this time, [he] did not have even one stipulation to consider at the initial hearing of the parties. [...] This is not surprising because without the ability to have a stipulation there is no incentive for a landlord's attorney to take the time to explain a stipulation to a tenant.”

The voluntary pilot program implementing the procedure outlined in this rule petition began on a trial basis on January 1, 2017, in the 26 Justice Courts in Maricopa County to evaluate the proposed rule change's impact and whether the rule was necessary. By several landlord attorneys' own admission, they have stopped the practice of obtaining stipulated judgments. Consequently, the Commission is unable to gather adequate data and determine the proposed rule's administrative impact upon the courts' processing of eviction cases.

IV. The proposal will result in longer court eviction dockets.

Mr. Parham, Page 10, indicates that “without stipulations, court dockets will slow down, requiring attorneys to spend more time in court. If this practice continues, it will likely result in more attorneys being needed to cover the same number of courts. As a result, attorneys' fees in eviction actions will increase.”

Mr. Parham, Page 10, also notes that “the courts originally encouraged stipulations to reduce calendar congestion. Ending stipulations [...] will cause all tenants showing up at court to sit through long calendars.”

Judge Ash, Page 1, reports seeing “that numerous tenants were required to miss additional time from work to wait through a congested court calendar for their brief appearance before the judge, wherein they acknowledge their non-payment of rent or their failure to otherwise uphold the provisions of the lease. This was not only a waste of time for them, but it also delayed the proceedings for those who had legitimate issues to bring to the court's attention.”

The purpose of the pilot program was in part to explore alternative court dockets and calendaring options to ensure that court appearances by plaintiffs and defendants proceeded in an efficient manner. However, the Commission never had the opportunity to test the alternatives when stipulated judgments were unilaterally stopped. Without adequate data, the Commission, much like the commenters, is unable to verify and analyze the impact of the pilot program on the length of court eviction dockets. Therefore, the Commission is unable to make an informed recommendation to the court, except to note the continuing goal that tenants understand their rights and the potential consequences of the court proceeding.

V. Tenants will lose opportunity to strike beneficial deals.

Mr. Mark Hyatt Tynan, Mr. Jesse Cook, and Mr. Mark Tucker, Pages 1-3, comment “that the proposed rule will create a significant impediment for countless tenants who use stipulated judgments as a means of securing a more favorable outcome.” [...] “Through the stipulation process, we are able to get our tenant clients: additional time to vacate; time to pay and stay; the right to have the judgment vacated if they pay in full; or a mutual release from the lease if the rent is paid in full, thus relieving our clients of future liability.”

Mr. Hyatt Tynan, Mr. Cook, and Mr. Tucker, Page 4, note that “the ability to reach such stipulations prior to court is vital to our clients because: (1) it avoids unnecessary attorneys’ fees being spent on traveling to court, waiting around and then making perfunctory court appearances; and (2) it prevents tenants from missing work, medical or other important appointments to attend court. The proposed rule would eliminate these benefits and the cost would prevent tenants from hiring private attorneys.”

The Commission’s goal is to ensure that self-represented tenants who take the time to appear in court are sufficiently informed and understand what they are signing. Moreover, by making an appearance, tenants should not be in a worse position than someone who just stayed home, resulting in a default judgment. According to a report

from the Maricopa County Justice Courts Administration, there were at least 200 stipulated judgments per month in 2016. Even if there was only one person who did not understand what they were signing, it is one too many.

Conclusion

For all the above reasons, as well as those stated in the initial petition, the Arizona Commission on Access to Justice respectfully requests that the Court amend Rule 13(b)(4) of the Arizona Rules of Procedure for Eviction Actions (RPEA) and permit courts to accept stipulated judgments under certain circumstances.

RESPECTFULLY SUBMITTED this 26th day of April, 2017.

Arizona Commission on Access to Justice

By /s/Lawrence F. Winthrop
Lawrence F. Winthrop
Chair of the Arizona Commission on Access to Justice

Electronic copy filed with the Clerk
of the Supreme Court of Arizona this
26th day of April 2017
By: /s/Julie Graber

APPENDIX A

RULES OF PROCEDURE FOR EVICTION ACTIONS

Rule 13. Entry of Judgment and Relief Granted

b. Forms of Judgment.

(4) Stipulated Judgments. The court may accept a stipulated judgment, ~~but~~ only if when the court finds all the following:

- A. Both parties or their attorneys personally appear before the court, or
- B. The attorney asserts to the court that the tenant was informed of the right to appear and declined, or
- C. The court determines that, because of distance or other circumstances, the defendant cannot personally appear, that good cause exists and it is in the interest of justice to proceed; and
- D. The court determines that the conditions of Rule 13(a)(1)-(2) have been satisfied and the form to which the defendant stipulated contains the following warning:

Read carefully! WARNING!

- 1. The plaintiff's representative is not a court employee.**
- 2. By signing below, you are consenting to the terms of a judgment against you and the landlord will now be able to evict you.**
- 3. You may be evicted as a result of this judgment have your wages garnished and, the judgment may appear on your credit report.,**
- 4. You may lose your right to subsidized housing, and**
- 5. You may NOT stay at the rental property, even if the amount of the judgment is paid in full, without your landlord's express consent unless you get the agreement in writing or get a new written rental agreement with your landlord.**

- E. The court determines that the parties understand the terms in the document and defendant has signed the warning language in (b).

Arizona Commission on Access to Justice

Meeting Date: May 10, 2017	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: <i>Pro Bono</i> programs in federal courts
-------------------------------	--	--

From: Milagros Cisneros, Federal Public Defender's Office

Presenters: (Same)

Discussion: Ms. Cisneros will discuss *pro bono* programs in federal courts.

Recommended motion: Informational only.

Arizona Commission on Access to Justice

Meeting Date: May 10, 2017	Type of Action Requested: <input checked="" type="checkbox"/> Formal action or request <input type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Update on Legal Needs Study
-------------------------------	--	---

From: Judge Joseph Kreamer, Maricopa County Superior Court, and Anthony Young, Southern Arizona Legal Aid

Presenters: (Same)

Discussion: Judge Kreamer reported at the February 15, 2017 meeting that a new statewide legal needs study would be launched as a follow up to the 2007 study to identify needs, what industry practices are beneficial, and what processes or practices are not working well. The needs assessment will include data on poverty that is collected from other agencies, accomplishments since 2007, and suggested priorities and solutions.

Recommended motion: To support the Arizona Steering committee's launch of a statewide legal needs study to identify needs, what industry practices are beneficial, and what processes or practices are not working well.



A Decade Ago
Where Are We Now?
Where Do We Go From Here

Voicing a Need for Justice II

A DECADE AGO

In 2007, “Voicing a Need for Justice, Survey Results on Legal Aid Access in Arizona” was published through the work of the Arizona Steering Committee and the Arizona Bar Foundation. Approaching the ten year mark, now is the time to look back at where we have come and forward to where we should go in closing the gap between those seeking access to justice and the goal for equal access to justice for all Arizonans.

The first step is to look at where we have come since the last comprehensive study was completed. Arizona has clearly made progress. Ten years ago, Arizona did not have:

- An 800-number statewide service call center for legal aid referral
- There was no Modest Means program
- There was not an online pre-qualifier application for legal services
- The librarians were not trained and equipped to assist with legal information for the public
- There was no rule allowing an attorney to provide brief and/or unbundled services
- There was no rule allowing CLE credit for pro bono work
- There was no rule allowing retired Arizona attorneys to offer pro bono services without re-establishing
- There was no portion of the pro hac vice fees going toward the provision of legal aid
- There was not an online court filing system
- There was no Arizona Access to Justice Commission
- There was no In-House Counsel Access to Justice Commission
- Maricopa Court did not have a Justice Corp Court Navigator program

Today, through the hard work and commitment of many people, Arizona now has all of the above bulleted items. While we can state this with pride, we also need to acknowledge where we are today includes a great need.

The following outline proposes a path to complete an assessment of the needs of the public for accessing justice through the legal system, and an analysis of our current system including a review the roles of the multiple entities involved.

WHERE ARE WE NOW?

People in Need - The steps to be taken in assessing the legal needs of Arizonans will include multiple factors. An online survey in both Spanish and English will be available for a four to six month time frame. The same survey was utilized ten years ago which will also allow for a comparison of needs between the decade. In addition to the surveys, each of the three legal aid entities (Community Legal Services, DNA People's Legal Aid, and Southern Arizona Legal Aid) will conduct community forums discussing the legal needs for their communities. Other entities will be identified and requested to also host forums (e.g., the Access to Justice Commission will be asked to host a forum for court personnel) to help gain more awareness by discussing the following questions: 1) What are the highest legal needs for the people in your community? 2) What challenges do you see people face in obtaining access to justice? 3) What ideas or solutions could you propose to assist with increasing equal access to justice?

There will also be three other separate surveys of perceived public legal needs that we will ask court staff, attorneys, and community organizations working with people in poverty to complete. In addition, statistics will be taken from users of the legal help websites and phone/online prequalifying intakes to gather data on areas of law most searched and areas identified by those seeking legal assistance.

Additional research components, not included in the 2007 study, will be a review of other documents that will further define the areas of need for those that may be struggling for access to our justice system. The documents reviewed will include the topics of the poverty population, self-represented litigant figures, and geographic limitations for Arizonans. Links to examples of the documents to be reviewed are listed below:

Poverty population

<https://talkpoverty.org/state-year-report/arizona-2015-report/>

<http://www.census.gov/quickfacts/table/PST045215/04>

<http://spotlightonpoverty.org/states/arizona/>

<http://www.azdhs.gov/documents/operations/managing-excellence/az-state-health-assessment.pdf>

<http://www.azdhs.gov/plan/report/aging/aia-report-2012.pdf>

https://morrisoninstitute.asu.edu/sites/default/files/content/products/AZ_VulnerablePopulations_April2014_AZTownHall.pdf

Self-represented figures

<http://www.halverson-law.com/prose.htm> (commentary primarily)

<http://www.srln.org/node/548> (national)

<https://www.superiorcourt.maricopa.gov/MediaRelationsDepartment/docs/annual-report-2015.pdf>

http://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2383&context=faculty_publications

(commentary primarily)

<http://aja.ncsc.dni.us/publications/courtrv/cr51-2/CR51-2.pdf>

Geographic limitations

<http://education.azgovernor.gov/edu/blog/2016/03/governors-office-arizona-department-education-partner-increase-internet-access> (internet/tech gap with geographic limitation)

<http://www.hcn.org/issues/46.2/rural-americans-have-inferior-internet-access> (internet gap with geographic limitation)

<http://www.forbes.com/sites/corinnejourney/2015/06/09/maps-show-which-americans-have-broadband-access-and-which-dont/#20efe0884e8e> (internet/tech gap with geographic limitation)
<https://cronkitenews.azpbs.org/2016/01/20/after-bus-strike-thorny-questions-remain-for-phoenix-low-income-riders/> (urban bus challenges)
<https://www.census.gov/hhes/commuting/> (limited stats showing commuting ways and population)

The Roles, Status, and Current Limitations of Stakeholders - A new survey will be developed to obtain information from individuals/entities across Arizona. The survey will include requests for: Contact information; Definition of purpose/mission in relation to access to justice; specific role; How technology is used to meet responsibilities; List of Partners; Identify limitations to meeting needs; and, If/How legal aid agencies or the AZ Bar Foundation could assist.

Groups identified as needing to be included in this section of the study are listed below:

Courts	SBA	Pro bono programs
Specialized legal service entities	Specialized bars	Document Preparers
Lay Advocates	Paralegals,	Non-lawyer legal professionals
Local/State government programs	Public Libraries	In-House Counsel
Law Libraries & Self Help Centers	Law Schools	Social Service entities
Community Groups		

Technology Resources – Current Status and Limitations – Technology use is increasing in the ability for people to access legal information. A review of the technology currently available and the limitations that are being experience is vital to planning for tomorrow. The current proposed areas will include the bolded topics and below each of the topics are potential means of gathering the information.

Legal Help Websites

Utilize Google search to identify both for-profit and non-profit legal help sites; Survey of stakeholders;

Online forms

Query courts and self service centers

Mobile technology

App store searches; ABA queries

Language Access Connection

Query courts and self service centers; Assessment of our own websites

Video Conferencing

Query courts and self service centers; Query law schools; Assessment of ourselves

Funding Support – Current Status and Limitations – The current status of funding for legal aid and access to justice initiatives must be addressed as well. The review will include a look at funding from multiple sources including: Federal funding, Pro hac vice. Equal Access to Justice Campaign. AZ Bar Foundation, IOLTA, State/Local Government funding. Private Foundations, BAR(s) support, and Individual Donor/Contributors.

WHERE DO WE GO FROM HERE

With the above data collected, the Steering Committee will then analyze the results of each separate part of the study before compiling the data. In addition we will offer a comparison of Arizona to other states as available. The final two stages of the proposed study will be to send out a priority choice survey to all the stakeholders participating in the study based upon the needs identified. The final report will include the priority choice results along with identified measurements of success.

Analyze results

- Analyze the results of the surveys on people's legal need
- Review and summarize forum information gathered
- Analyze the research on the technology status
- Summarize the information gathered from stakeholders
- Summarize the information gathered on the funding

National Standing consideration

- Compare information gathered from above to other states

Choosing priorities

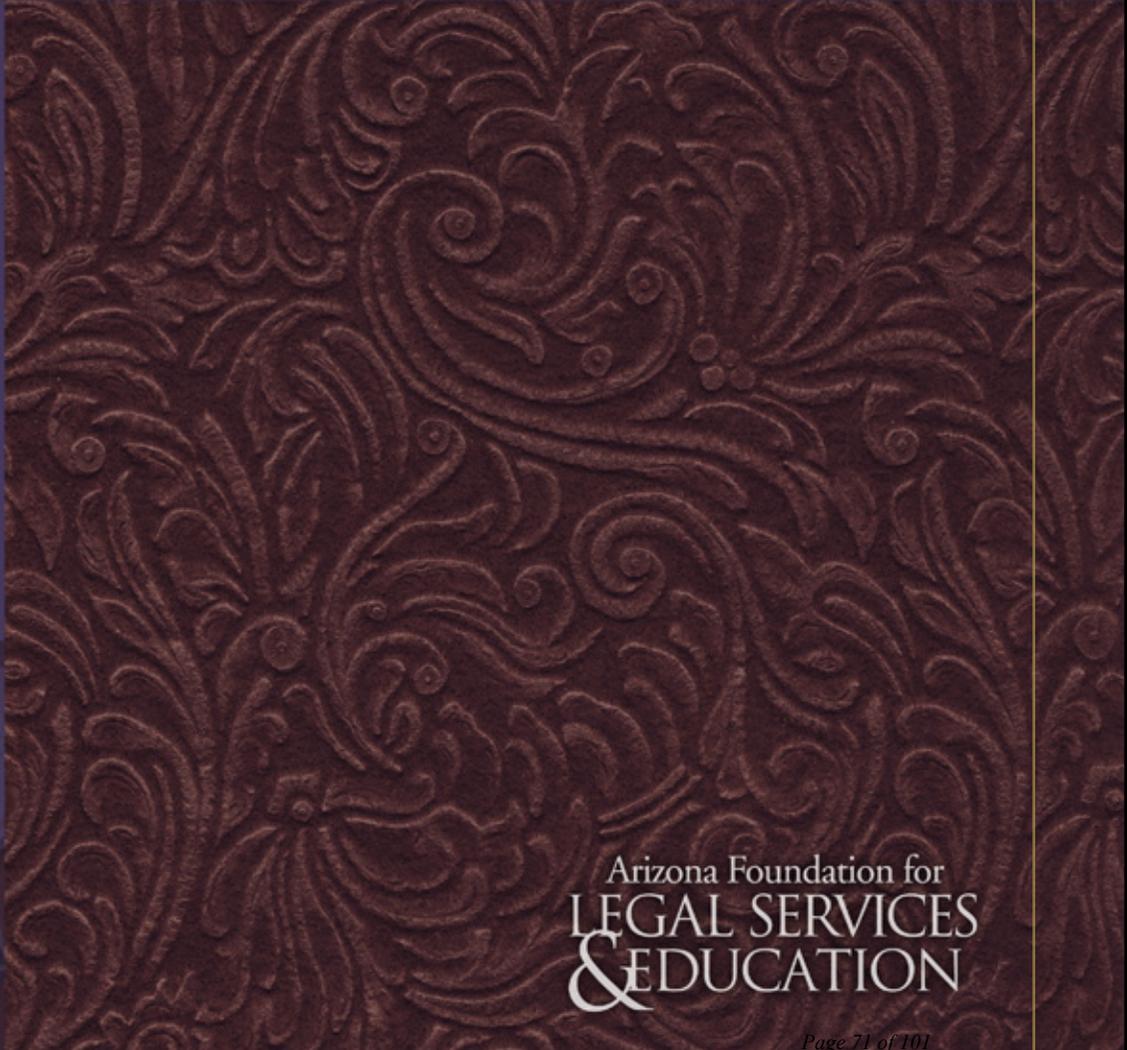
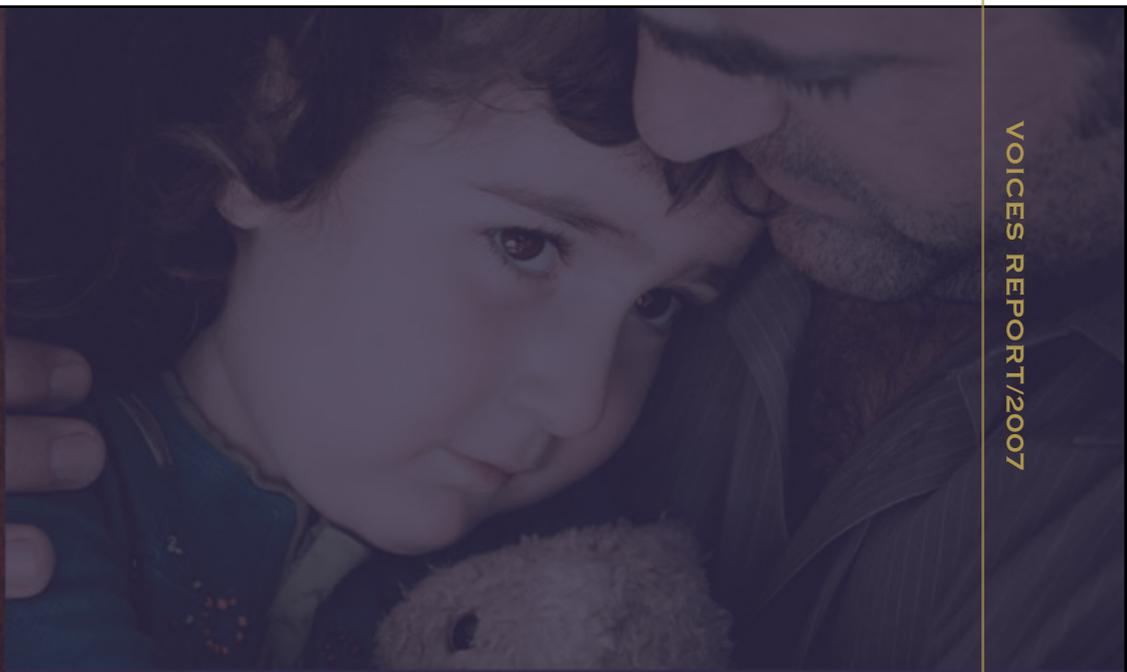
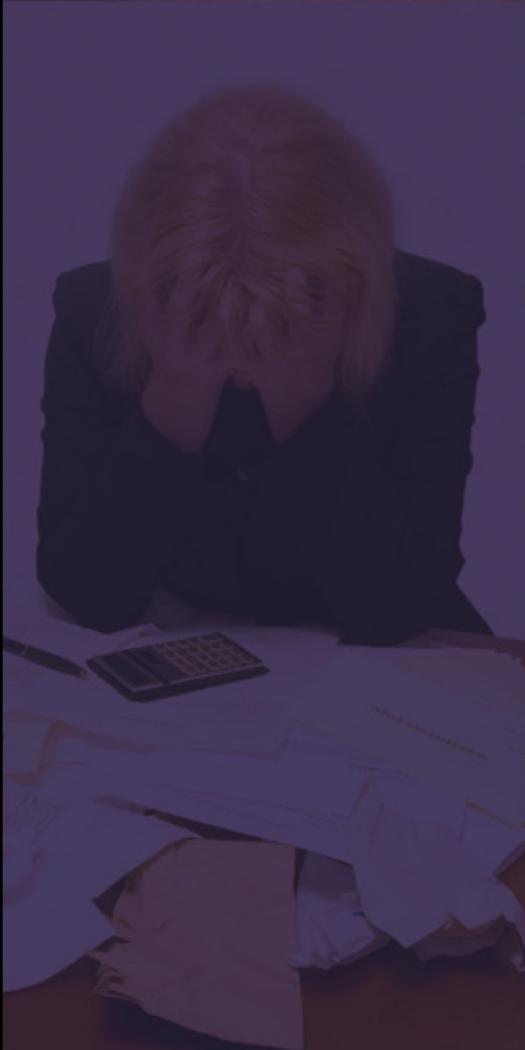
- Send out priority choice survey to all stakeholders based on the identified needs and analysis outlined above

Identify measurements of success

- Research other state examples
- Consult with outcome measurement experts/resources

VOICING A NEED FOR JUSTICE

Survey Results on Legal Aid Access in Arizona



Arizona Foundation for
**LEGAL SERVICES
& EDUCATION**



2007 BOARD OF DIRECTORS.....	1
STAFF.....	1
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EXECUTIVE SUMMARY

National studies have found that three out of four people requesting legal services cannot be helped because of a lack of resources in legal aid agencies. Arizona legal aid agencies have also reported offering limited services or turning away 75% of persons seeking direct legal aid representation, both because of a lack of resources and because those requesting assistance fall outside the service criteria for those agencies. However, the information in Arizona has to date been largely anecdotal. Concerned about the reports of large gaps in civil legal services, and mindful of Arizona's unique demographics and culture, the Arizona Foundation for Legal Services and Education requested an independent, statewide study to identify the civil legal needs of Arizonans, how those needs are being met, and whether there is a gap between the needs and the services that are available.

The Foundation retained Fieldwork Quant Group in Chicago, Illinois to conduct the study. Fieldwork Quant Group conducted a telephone survey of 1,067 persons during the summer of 2006. The study has a 95% confidence level and a 3% margin of error. The survey addressed only civil legal needs and did not address criminal law needs and services.

The study found that approximately 32 % of the persons interviewed reported that they had a civil legal problem. Unfortunately, large numbers of Arizonans do not believe that they could afford a private attorney to assist with their legal needs:

- Over 71% of households with a total income of \$25,000 or less believed that they could not afford an attorney;
- Even in those households with an income of as much as \$47,000, more than half (over 56%) believed that they could not afford an attorney.

The study further found that the problems caused by the inability to afford a lawyer are made worse by a lack of knowledge regarding the available legal services:

- 81% of the persons interviewed did not know where to go for legal services when they had a civil legal problem.
- Of those 32 % reporting a civil legal problem, only 25% got help from a person or agency. 41% attempted to take care of the problem themselves, and 21% took no action at all (13% chose not to answer this question).

Participants also identified the following major areas of legal need:

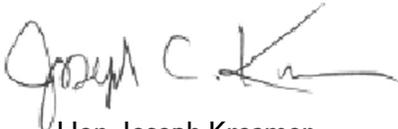
- Consumer issues
- Housing issues
- Family and juvenile civil legal issues
- Government benefits
- Discrimination issues
- Employment issues

The results set forth above and rest of the study clearly reflect that:

(1) Many Arizonans have civil legal needs; (2) the majority of Arizona households do not believe they can afford a private attorney to assist them with these needs; (3) even those who do seek help do not know how to easily find it; and (4) as a result, a large number of Arizonans do not get the civil legal assistance they need.

There is thus a significant "gap" between the civil legal needs of Arizonans and their ability to access the tools necessary to address these needs. Identifying the existence of this gap and the reasons for it provides an opportunity to take concrete steps to close the gap by providing Arizonans with the knowledge, tools and resources to access the justice system. Preceding the study is an Action Plan developed under the guidance of the Foundation utilizing the expertise and experience shared by multiple stakeholders within the Arizona Justice System.

For the Foundation:



Hon. Joseph Kremer
Board President 2007

ACTION PLAN PROPOSAL¹

The American Bar Association passed the Standards for the Principles of a State Delivery System for the Delivery of Civil Legal Aid in 2006. With these principles as goals, and utilizing them with the findings of the 2006 Arizona legal needs study, the following action plan is proposed:

A. Principle: A state's system for the delivery of civil legal aid provides services to the low-income and vulnerable populations in the state.

Problem: 81% of the study respondents do not know who to call when needing legal aid assistance.

Action Plan:

1. Establish 800-number statewide service call center where referrals can be appropriately made and initial information can be coordinated.
2. Enhance current coordination, outside the legal realm, with entities to increase delivery of legal assistance to populations in need (e.g., DV shelters, medical clinics).
3. Explore additional partnerships with others outside the legal realm to provide and promote further outreach (e.g., housing nonprofits, homeless shelters, centers assisting farm workers).
4. Increase use of mass media and computer technology to inform members of the public of their basic rights, answer legal questions, inform about the services provided through legal aid, and provide informational resources in a consistent and unified approach.
5. Support the creation and continuation of state cadres focusing on specific areas of the law (e.g., steering committee, immigration law committee, DV, Housing, etc.).

B. Principle: A state's system for the delivery of civil legal aid provides a full range of services in all forums.

Problem: 41% of the population attempts to take care of their legal problems by themselves. 21% do nothing to represent themselves or defend their side in a legal situation.

Action Plan:

1. Ensure self-help centers and web-sites are available in every county and on tribal reservations.
2. Pursue stable and adequate funding for self-help services.
3. Pursue strategies to remove any unnecessary barriers to access for self-represented litigants.
4. Support the creation and/or continuance of legal-aid offices in each county and on each tribal reservation.
5. Support the creation and/or continuance of support from volunteer lawyers and/or Tribal Advocates in each county and tribal court.

C. Principle: A state's system for the delivery of civil legal aid provides services of high quality in an effective and cost efficient manner.

Problem: In the 2006 Arizona legal needs study, there were over 100,000 legal issues reported by those respondents earning less than \$15,000 annually. The number of legal issues reported by all those stating they could not afford private representation totaled nearly a half million. With this great stated need, effective and cost efficient delivery is a basic necessity.

¹The Action Plan proposed is to be a statewide effort requiring all the expertise and commitment of the many stakeholders. While the plan is detailed with ideas and programs which will assist in the promotion of equal access to justice there are two priorities which must be kept in the forefront: 1) the number one priority must be to increase funding for support of legal aid so that those who are currently unable to have professional representation will have the voice they need; and, 2) the legal aid agencies, and their staff, must be recognized as an integral component to success toward the state having an equal justice system.

Furthermore, while this Action Plan focuses on civil legal needs, that focus should not ignore the need for criminal defendants to properly understand the collateral civil consequences of a criminal conviction. Where possible, the Action Plan should encourage collaboration among legal aid providers and the public defenders, prosecutors and other advocates in the criminal justice system.



Action Plan:

1. Ensure the provision of continuing legal education for legal aid attorneys and volunteer lawyers so that they will best be able to serve the clients in the areas of law needed.
2. Place as a priority, funding projects that facilitate collaboration between agencies and reduce administrative costs.
3. Support the development and maintenance of a legal advocate assistance web-site where forms are available, case law can be accessed, and a list-serve is available for direct questions/answers for legal advocates relating to assisting his/her clients.
4. Strengthen the statewide technology infrastructure to facilitate broader and more effective development of new delivery mechanisms.
5. Ensure that azlawhelp.org, lawforseniors.org and other websites are used in assisting with the state’s legal aid delivery system. The websites, by answering basic legal questions, will assist with freeing intake lines for those who need direct legal assistance.
6. Support the expansion of the use of hotlines as an effective way to answer direct client questions in specific areas (e.g., Elder hotline, NELL – Native Education Legal Line).
7. Consider legislation to regulate the use of the term “Legal Aid” to avoid confusion among consumers.
8. Evaluate and develop best practices for innovative and affordable delivery methods of legal aid.
9. Develop and support programs and services designed to encourage and assist private lawyers to serve modest means clients.

D. Principle: A state’s system for the delivery of civil legal aid provides services in sufficient quantity to meet the need by seeking and making the most effective use of financial, volunteer, and in-kind resources dedicated to those services.

Problem: The top legal issues identified include a wide area of public issues: consumer, housing, family and juvenile, and discrimination. These top legal issues demonstrate that the scope of those who are impacted and may be willing to assist with financial, volunteer, and in-kind resources are beyond the legal arena and, they have yet to be approached.

Consumer issues	14.7%	323,991 households;
Housing/Utility	14.4%	317,377 households;
Family and Juveniles	9.2%	202,769 households;
Employment concerns	8.8%	193,952 households; and,
Discrimination	5.3%	116,813 households.

Action Plan:

1. Explore partnerships with funders interested in addressing the social needs surrounding the legal issues identified to increase support for legal aid addressing those specific needs.
2. Promote training social service providers to enhance their ability to identify legal issues and determine when/where referrals should be made.
3. Establish benchmarks for community health relating to access to legal aid (e.g., community health for homeownership is normally identified when 65% - 70% of residents own homes.)
4. Increase and support volunteer lawyer programs to assure availability across the state.

5. Explore development of corporate access to justice funding initiatives to support legal aid.
6. Pursue local and state government general funding for legal service provision.
7. Work with groups to establish cost comparisons for communities when legal aid is not available (e.g., \$60,000 could shelter 100 homeless people in Phoenix for one month or keep 300 people from being wrongfully evicted by funding one legal-aid attorney position). These statistics will be used in communicating the value and impact of legal aid.

E. Principle: A state's system for the delivery of civil legal aid fully engages all entities and individuals involved in the provision of those services.

Problem: When asked who assisted you with your legal need 28.9% stated they relied on friends and relatives and 3.9% went to their doctor or the hospital for legal help. The resolution satisfaction for those not receiving assistance was 39% to 75% lower than those who received help (varying with the legal need identified.)

Action Plan:

1. Develop programs and partnerships in communities with attorneys and local support agencies to identify needs, establish appropriate referral systems, and work toward cost effective means of providing legal aid and education.
2. Support the creation and continuation of state legal-aid cadres focusing on specific areas of the law (e.g., steering committee, immigration law committee, DV, housing, etc.). Encourage outreach to community partners to increase public awareness of resources.
3. Pursue strategies to increase funding and support for the provision of legal aid from a broad base of resources including the general public, state appropriations, and private foundations.
4. Promote awareness of self-help centers, legal information websites, and hotlines.

F. Principle: A state's system for the delivery of civil legal aid makes services fully accessible and uniformly available throughout the state.

Problem: In all areas of the state 50% or more people responded they could not afford private representation. In 5 counties (Pinal, Greenlee, Apache, Graham, and Coconino) the percentage was 70% and higher.

Action Plan:

1. Make it a priority to support the availability of legal aid and volunteer attorneys in rural areas of the state.
2. Ensure that the legal aid offices meet Americans with Disabilities Act requirements.

3. Encourage use of an 800 number and hotline services to access information and legal aid services.
4. Assure each county and tribal reservation has a self-help center.
5. Support the development of fellowship programs and special incentives for legal aid attorneys working in remote areas of the state.

G. Principle: A state's system for the delivery of civil legal aid engages with clients and populations eligible for civil legal aid services in planning and in obtaining meaningful information about their legal needs, and treats clients, applicants and those receiving services with dignity and respect.

Problem: Addendum-I of the study reports results of legal aid clients in special needs categories: domestic violence victims; individuals who only speak Spanish; farm workers; and those living on tribal reservations. This addendum indicates that the needs of these groups can be varied; thus, their input is necessary to provide quality legal aid. For example, tribal residents, DV victims and Spanish speaking clients all state the highest legal need as family matters, but for farm workers the greatest need is employment issues. Also, computer and email access varies greatly among these targeted populations.

Action Plan:

1. Support efforts that enhance legal aid through availability of multi-lingual and culturally competent-service providers.
2. Utilize the websites and call center to assist in identifying client needs through questions submitted and issues reported.
3. Promote and support client feedback evaluation tools to be used by legal aid providers.
4. Promote and support client feedback evaluation tools to be used by self-help centers.

H. Principle: A state's system for the delivery of civil legal aid engages and involves the judiciary and court personnel in reforming their rules, procedures and services to expand and facilitate access to justice.

Problem: The survey results indicated that many Arizonans are dealing with their legal crisis without the needed legal help. 83% of the minimum wage earners stated they could not afford private legal assistance. For the households whose economic means fell below \$47,000 annually, the gap of need was still higher than 50%.



Action Plan:

1. Explore amending the rule for licensed Arizona attorneys living outside of the state to contribute toward legal aid if it is not possible to provide the recommended number of pro bono hours due to their out of state residency.
2. Develop a partnership with the courts to develop and provide access to justice training (including the use of cy pres awards) to judges and justices of the peace.
3. Explore strengthening the wording in the Rule recommendation and the reporting requirements of pro bono work for Arizona attorneys.

1. Principle: A state’s system for the delivery of civil legal aid is supported by an organized bar and judiciary that is providing leadership and participating with legal aid providers, law schools, the executive and legislative branches of government, the private sector and other appropriate stakeholders in ongoing and coordinated efforts to support and facilitate access to justice for all.

Problem: Again, the survey results indicated that many Arizonans are dealing with their legal issues without the needed legal help. 83% of the minimum wage earners stated they could not afford private legal assistance. For the households whose economic means fell below \$47,000 annually, the gap of need was still higher than 50%.

Action Plan:

1. Explore increased revenue through changes of court rules/procedures (e.g., admission on motion, cy pres, pro hac vice, etc) as a source of support for legal services.)
2. Further develop the partnership with state law schools and the Foundation to increase support for the recruitment and retention of legal aid attorneys.
3. Increase communications between the Foundation, organized bar, judiciary, legal aid providers, law schools, executive and legislative branches of government, private sector, and other stakeholders to assure, at a minimum, quarterly correspondence or communication pertaining to legal access to justice issues of Arizona.
4. Implement use of American Bar Association ‘Standard of Civil Legal Aid’ evaluation tool and/or the LSC’s Performance Criterion, annually with representatives of each entity listed above and publish results of survey.
5. The Foundation and State Bar leaders will collaboratively explore avenues to expand and create bar member programs that will increase funding for legal aid services.
6. Explore the possibility of quarterly meetings of representatives from each entity listed above to share information, report on action plan progress, and promote increased support of legal aid.

METHODOLOGY

Independent Professional Research Organization Conducted Survey

The research survey was conducted by Fieldwork Quant Group in Chicago, Illinois. With eleven research offices based around the country they offer an advanced resource for high quality data collection and project management. Specializing in all aspects of quantitative research, the Quant Group offers projects a direct line to respondents, day or night via phone, internet or mail. The supervisors direct a team of over 150 interviewers, employing strict quality control procedures to ensure that each project is completed according to specifications. Bilingual and bicultural Hispanic supervisors and interviewers specialize in reaching the fastest growing ethnic segment in the country.

Confidence Level and Margin of Error

Sample size of 1,067 survey participants was verified as valid by using calculators found at the Marketing Research Association (MRA) website: this study is completed with a 95% confidence level and a 3% margin of error.

Study Design

The survey was modeled primarily after the Washington and Oregon legal needs survey instrument. There were additional questions added to the original survey in order to address specific concerns of Arizona. Those additions included a question regarding the impact of AIMS testing and questions relating to consumer issues. There were 49 questions asked in regard to the individual's situations in the last year with additional follow up questions for clarification if the individual responded that there was a situation that could present a legal need in a specific area. Included in these questions were a few which researched the issues relating directly to tribal courts. Other than the tribal court questions, the questions presented did not ask the respondent to determine if there was legal content in the situation reported or if their household had a 'legal need', rather the questions asked if they had particular prior situations. The survey was conducted in this matter to follow the wisdom of the other states' surveys across the nation over the last ten years and avoid 'leading' any of the participants into a directed response. In addition to the situational questions, there were six (6) demographic questions and two (2) questions designed to ascertain technology resources and one which asked directly if they would be able to hire an attorney if their household was in need.

The societal issues where someone was questioned and identified as needing legal assistance included: housing and utility services; family or juvenile issues; employment; education; immigration; discrimination; government assistance; military; and consumer issues. The demographic questions included: gender; race; age; family size; family type; income; zip code; and education level.

Targeted Service Appendix

Recognizing that a broad survey of the generalized population (limited also to those who have listed phone numbers) will understate the needs of the lower income, a second survey was completed that targets specialized populations where past experience has shown that legal needs are most often not being met. These targeted populations include legal service clients who fit into the following categories: domestic violence victims; English as a second language speaking households; farm workers; and residents of tribal reservations. The survey respondents for the targeted service Appendix was 5% of the total number of the general survey.

Respondents Personal Demographics

As the chart on page 8 indicates, the respondents of the survey vary in differing areas from the general demographics of Arizona's population. The variations indicate that the results of the survey could be lower than the actual need due to the following: 1) There was a 17.1% higher respondent rate for Caucasians than general population and the study results indicate there is a higher rate of need with minority populations; 2) There was higher respondent rate for the population obtaining education with some college or graduate levels and the study results indicate there is a higher rate of need for the lower-educated population. The income level variances are not factored because 23% of survey respondents did not report income.

TABLE I - DEMOGRAPHICS: STATE GENERAL POPULATION VS SURVEY RESPONDENTS

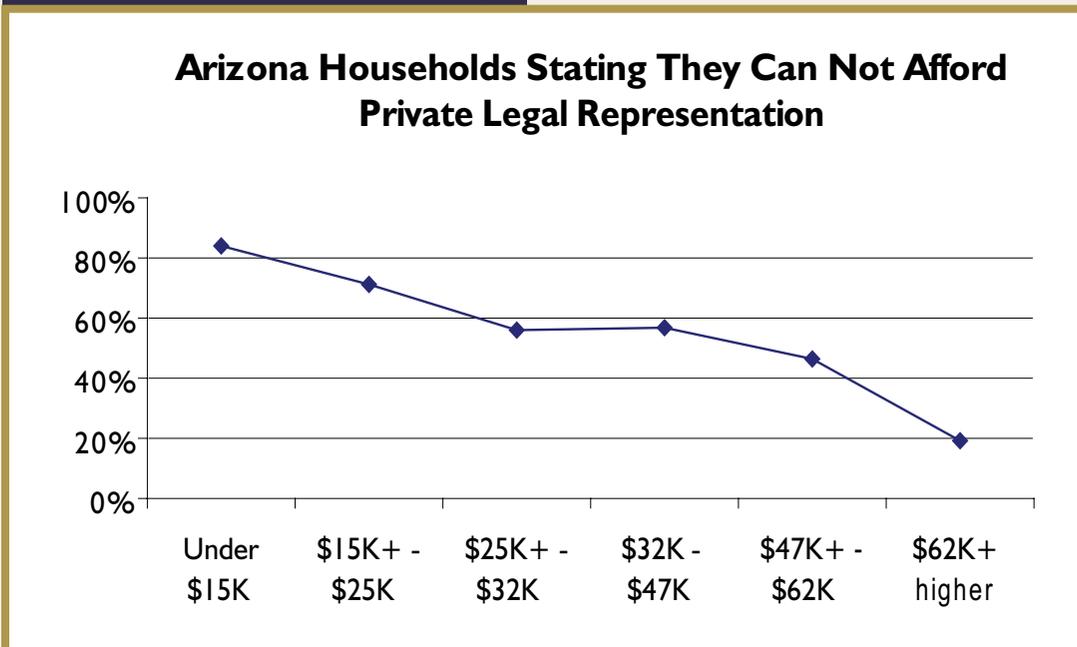
Race/Ethnicity	State	Survey	Var.	Marital Status	State	Survey	Var.				
White	59%	76.3%	17.1%	Never married (single)	31.1%	18.1%	-13%				
Black or African American	2%	3.1%	0.7%	Married	55.2%	59.8%	4.6%				
American Indian and Alaska Native	4%	3.0%	-0.7%	Separated	1.5%	1.3%	-0.2%				
Asian	2%	1.2%	-0.5%	Widowed	2.4%	9.9%	7.5%				
Native Hawaiian and Other Pacific Islander	0%		-0.1%	Divorced	9.9%	8.4%	-1.5%				
Some Other Race	9%		-8.8%	Unknown		3%	2.5%				
Two or More Races	2%	1.4%	-0.4%	<p>Note: The survey's higher percentages of Caucasians and higher rate of college graduates than the general Arizona population, and the overall population growth since 2006 are reasons to consider that the need presented is actually higher than the survey results indicate.</p>							
Hispanic or Latino (of any race)	22%	10.7%	-11.6%								
Gender											
Female	50%	61%	11%								
Male	50%	39%	-11%								
Income Level								Education	State	Survey	Var.
< \$15,000	13.5%	8.6%	-4.9%					> 9th Grade (study 8th)	6.9%	2%	-4.9%
\$15,000 to \$25,000	25.5%	7.8%	-17.7%					9th to 12th Grade	9.3%		-9.3%
\$26,000 to \$50,000	29.2%	27.8%	-1.4%	High School GED	25.6%	25.9%	0.3%				
> \$50,000	44.5%	32.5%	-12.0%	Some College	32.7%	20.1%	-12.6%				
Unknown		23%	23.3%	Bachelor's	16.2%	32.9%	16.7%				
				Graduate or Professional	9.3%	14.8%	5.5%				
				Trade School		1.7%	1.7%				
				Unknown		3%	3%				

LEGAL NEED OF HOUSEHOLDS IN ARIZONA

The survey results indicated that many Arizonans are dealing with their legal crisis without the needed legal help. 83% of minimum wage earners stated they could not afford private legal assistance. For the households whose economic means fell below \$47,000 annually, the gap of need was still higher than 50%. The 46.3% of those with incomes of \$47K - \$62K reflect there are other factors considered in forming the opinion as to whether one is able to afford private legal representation even when annual earnings are above average. **Chart I** – Legal Service Need Gap indicates the Arizona households who can not access legal services when they are needed.

2007 Federal Poverty Guideline	
Persons in Family or Household	48 contiguous States and D.C.
1	\$10,210
2	13,690
3	17,170
4	20,650
5	24,130
6	27,610
7	31,090
8	34,570
For each additional person add ___	3,480

Chart I – Legal Service Need Gap

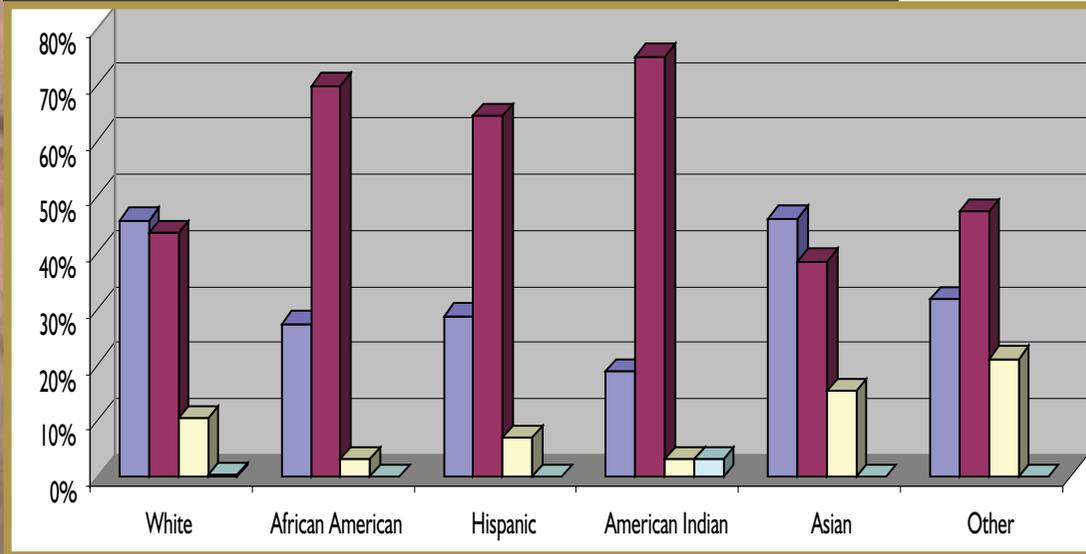


Under \$15K.....	83.7%
\$15K+ - \$25K.....	71.4%
\$25K+ - \$32K.....	56.1%
\$32K - \$47K.....	56.7%
\$47K+ - \$62K.....	46.3%
\$62K+ higher.....	19.6%

SOURCE: Federal Register, Vol. 72, No. 15, January 24, 2007, pp. 3147-3148

The following charts show the differing results between demographic populations when asked if they could afford a private attorney to meet their legal needs.

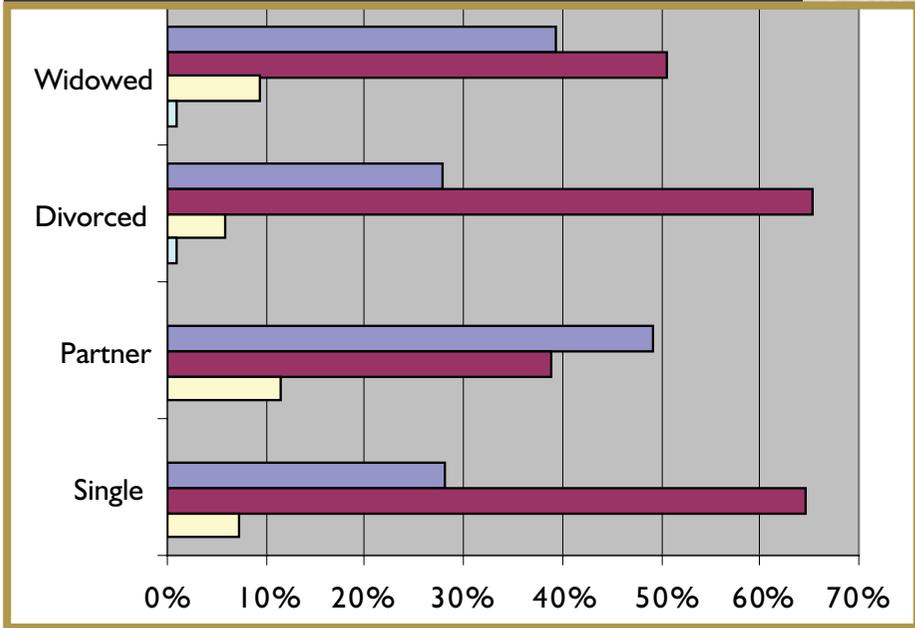
Chart II – Comparison of Legal Need Gap by Race/Ethnicity



...would you be able to afford a private attorney?

Yes No Not Sure Refused

Chart III – Comparison of Legal Need Gap by Family



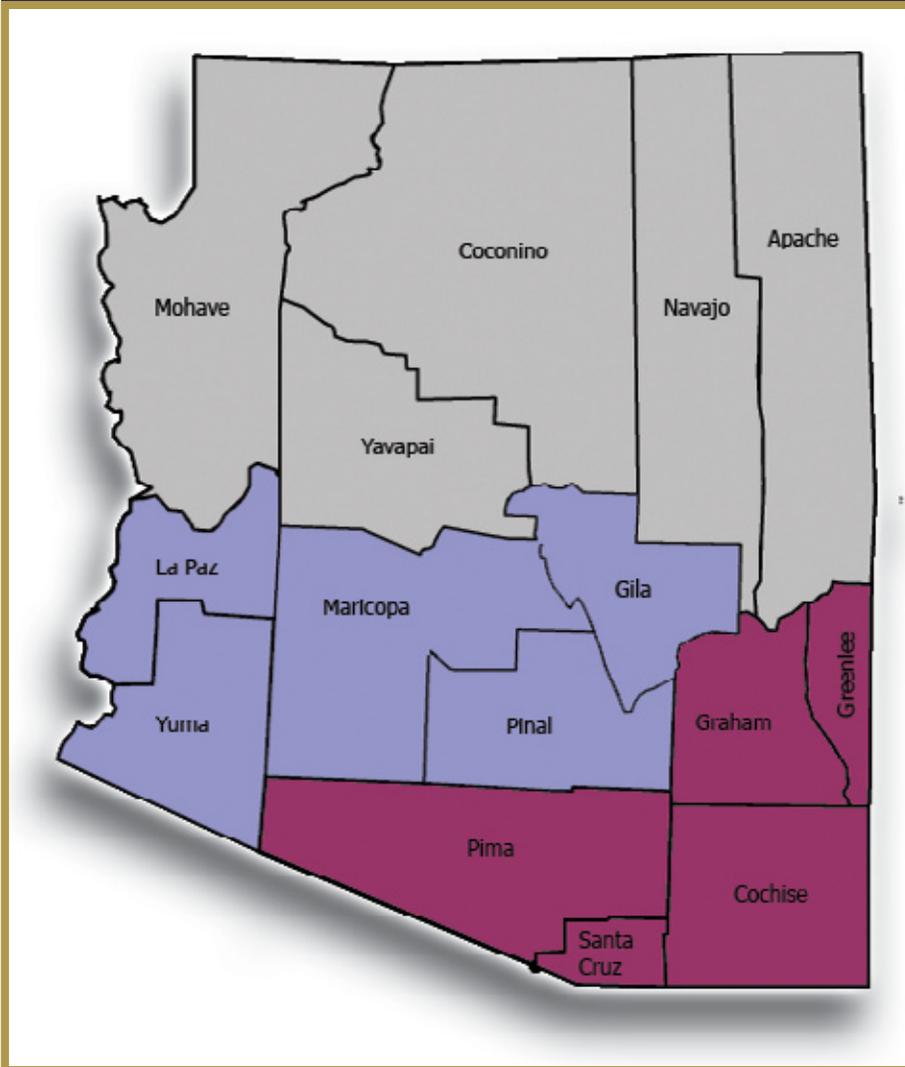
...would you be able to afford a private attorney?

Yes No Not Sure Refused

Counties w/70% and greater stating they can not afford a private attorney

Pinal.....	70%
Greenlee.....	75%
Apache.....	78%
Graham.....	80%
Coconino.....	81%

Chart IV – Comparison of Legal Need Across Arizona²



Percentage stating they can not afford private attorney

Northern Arizona	63%	Southern – East.....	54%
Central - West.....	50%		

²The original map, before color coding by region, was provided through work of US Department of Census 1990



LEGAL ISSUES IDENTIFIED

The survey results demonstrate the encompassing need for legal assistance across a wide spectrum of societal issues. As Table II – Detailed Legal Need Issues identifies, when trying to ‘face the challenges of daily life’ Arizona households hit a brick wall when they need professional legal services in moving through the barriers that are blocking their path to family stability.

See Table II on page 13.

The table lists the Issue/problem separately outside of the Legal Category to better understand the specific issues within each category. When placing the Legal Issues back into the Legal Category, the total percentages of Arizona households dealing with problems, generalized to the Arizona population are as follows:

Consumer issues	14.7%	323,991 households;
Housing/Utility	14.4%	317,377 households;
Family and Juveniles	9.2%	202,769 households;
Employment concerns	8.8%	193,952 households; and,
Discrimination	5.3%	116,813 households.

The survey went into further detail with specific Legal Issues where responses could be specified into areas of exact problem faced within the Legal Issue. These detailed areas are shown in the charts below and will assist in providing understanding of the specific problems of Arizona households.

As each of the previous charts illustrates the problems Arizona households reported are varied and complex. There were households who reported multiple problems as one issue can spiral to other complications. For example a ‘lemon’ car purchase can lead to problems at work, which can affect your pay, which can impact your housing, which then can lead to family relationship problems.

There were many detailed issues offered and many responses when asked ‘what action was taken.’ The following section addresses the responses of what action they took to resolve the issues, where did Arizonans go for help if they sought assistance, and if they didn’t take action why they didn’t.

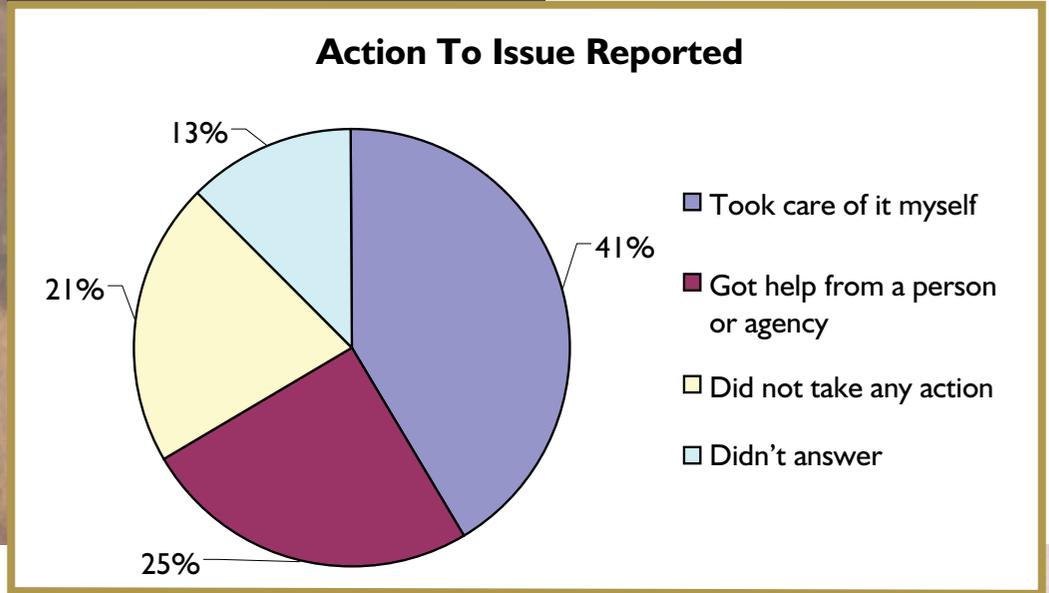
TABLE II - CATEGORY & DETAIL ISSUES			
Legal Category	Issue - Problem	Percent	Generalized to Arizona Population Households
Consumer	Bill Collectors	7%	145,465
Housing	Utilities	6%	138,853
Family/Juvenile	Civil Legal Family Matter	6%	121,221
Discrimination	Discrimination	5%	116,813
Consumer	Purchases or Services	4%	90,365
Consumer	Bankruptcy	4%	88,161
Family/Juvenile	Juvenile Justice System	4%	81,548
Education	School issues: Discipline or Special Needs	4%	80,006
Housing	Housing: Rental	4%	79,344
Housing	Mortgage Loan	3%	74,936
Government Benefits	Government Assistance	3%	72,732
Other Legal	Other Legal Matters	3%	72,732
Employment	Employer - Pay or Withholding	3%	61,712
Employment	Other on Job	3%	57,304
Employment	Unemployment Comp	2%	41,876
Employment	Pension/Retirement	2%	33,060
Housing	Housing: Mobile Home	1%	24,244
Immigration	Immigration	1%	22,040
Veterans	Veteran issues	0.03%	661
Education	AIMS: Resulted in Delay/Prevented Graduation	0.01%	220

ARIZONANS' RESPONSE TO PROBLEMS REPORTED

Who took action:

Responses to Problem, Chart V, documents that many Arizonans are being left to their own devices or the fate of their inaction when trying to cope with major problems of housing, consumer finances, discrimination, etc. while still managing the responsibilities of daily living and work.

Chart V – Responses to Problem



Rate of Satisfaction Comparison:

The survey followed the question of 'did you receive help', with a question regarding if the respondent was satisfied with the outcome. The following table compares the satisfaction rate of those who stated they received assistance to those who did not indicate that they received help. The table is separated by the legal issue that the respondent was dealing with to demonstrate the gap in available assistance for varying legal needs and the resulting outcomes for the individuals and families due to that gap.

TABLE III - SATISFACTION COMPARISON

Comparing satisfaction of results with those who received assistance and those who did not receive assistance	Group 1 Stating They Received Help	Group 2 NOT Stating They Received Help
Legal Issues:	Percent who were SATISFIED w/results	Percent who were SATISFIED w/results
Housing	93%	28%
Civil Family, & Juvenile	100%	25%
Employment	80%	25%
Gov. Benefits	67%	43%
Consumer Issues	88%	23%
Other Legal Issues	100%	41%

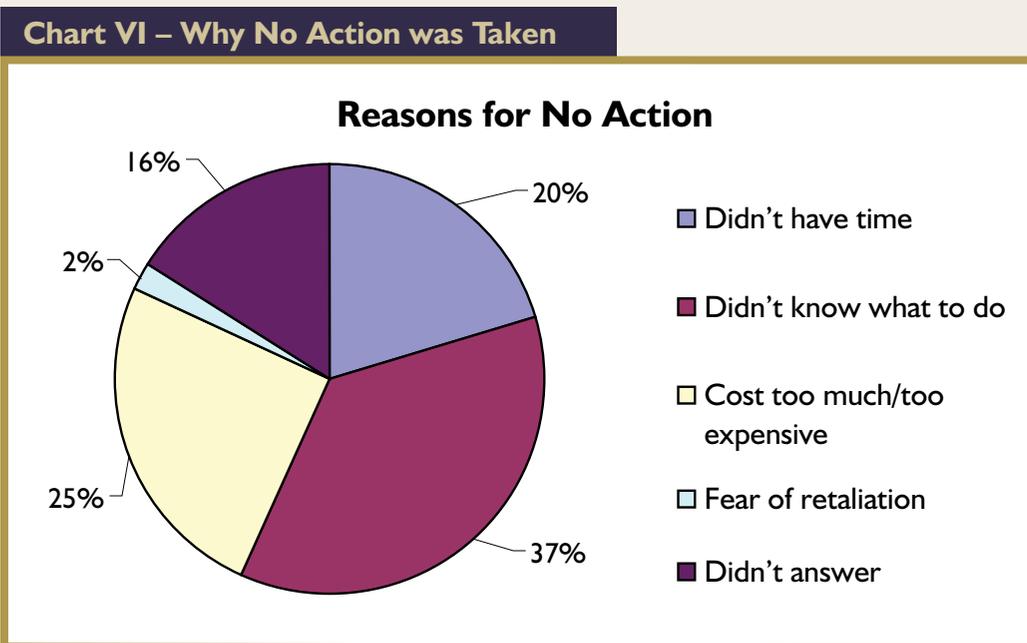
Where they Sought Help:

The 25% of those with problems who did seek help from a person or agency were asked where they got the help they needed. The following chart details those replies.

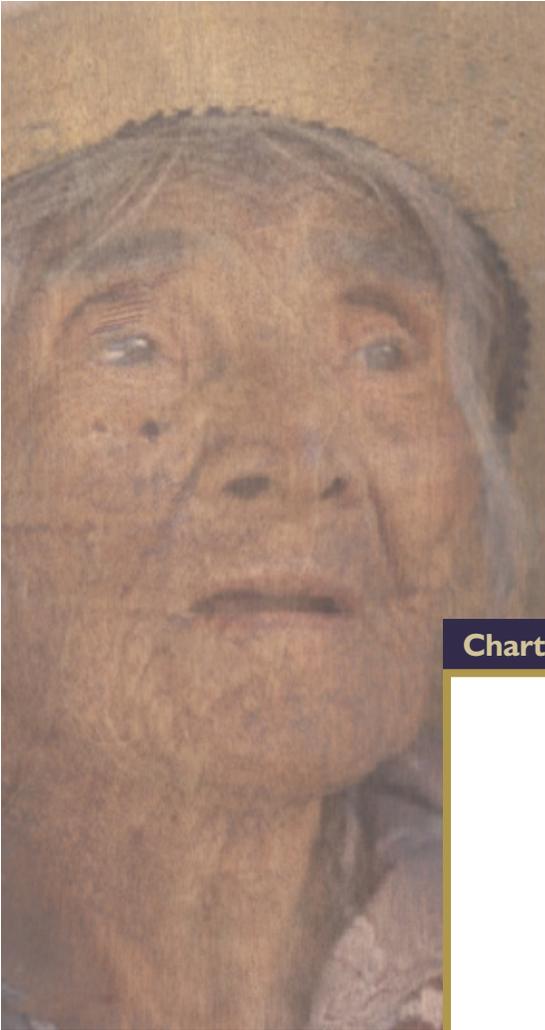
TABLE IV - WHO ASSISTED WITH PROBLEMS	
Who Assisted	Percent
Tribal Court Advocate	1.3%
Courts	3.9%
Doctor or Hospital	3.9%
Arizona Bar Association	5.3%
Government Office (e.g., Attorney Gen.)	5.3%
Legal Service Agency	5.9%
Don't know- couldn't remember name	11.8%
Other mentions (e.g. friends, relatives)	28.9%
Private attorney	33.6%

Why they did not take action:

After the participants were asked if they took action to resolve the issue they had reported, those who responded they had not taken action were asked to explain why they did not. Over 38% of those not taking action had reasons so varied they could not be categorized. For example, lack of transportation; they moved instead; their spouse wouldn't let them; job schedules, etc. **Chart VI – Why No Action was Taken** only outlines the answers that could be grouped into broader categories.



Legal service providers will need to consider different actions according to the various responses given for 'no action taken.' As stated in the introduction, 81% of all survey participants, including those who did not have a legal problem, didn't even know who helped people with civil legal problems.



TRIBAL COURT IMPACT

Two percent (2%) of the respondents to this survey said they had dealings with Tribal Court. When generalized to the state's population (over age 16) this would be representative of over 88,000 individuals. The two follow up questions included in the survey were:

- What issue was dealt with in Tribal Court?
- Did jurisdiction issues impact the case?

The two charts below will outline the responses to these questions.

Chart VII – Issues Dealt with in Tribal Court

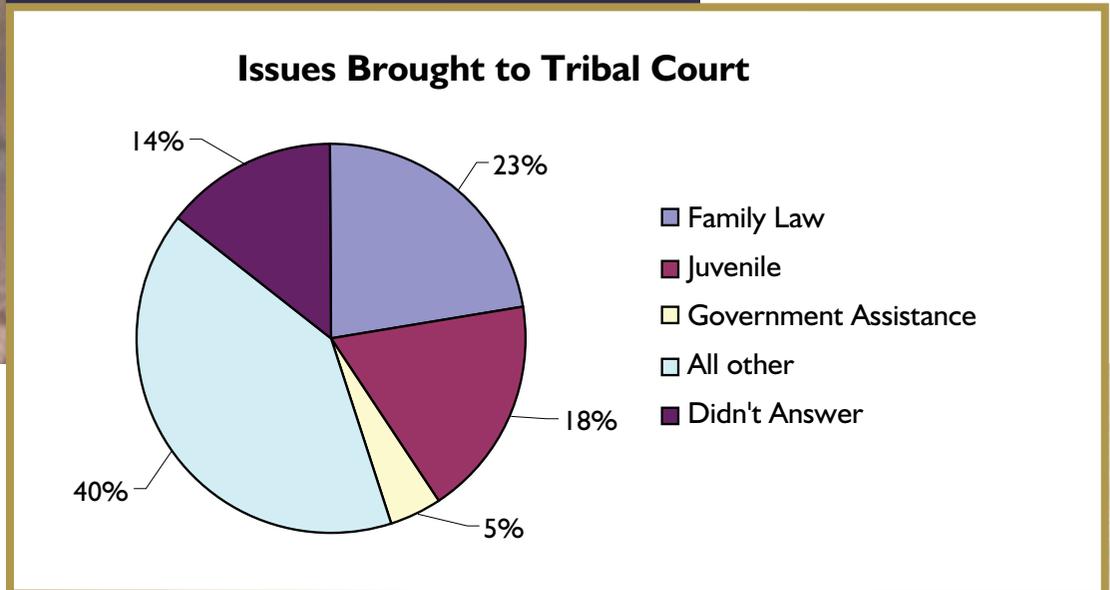
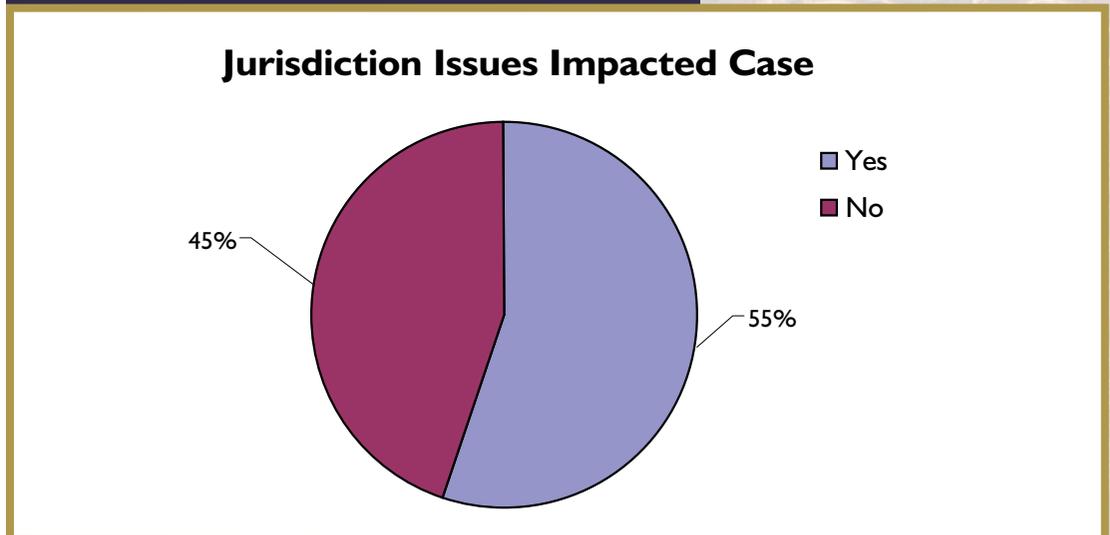


Chart VIII – Jurisdiction Impact Cases



COMPUTER ACCESS

Two questions of the survey were designed to ascertain the ability for outreach through computer technology. The first question asked whether the family/person had access to a computer at their home, the library, community center; or some other venue. The second question, of whether they had an email address, was asked to measure use of technology as a communication tool.

Chart IX – Computer Access

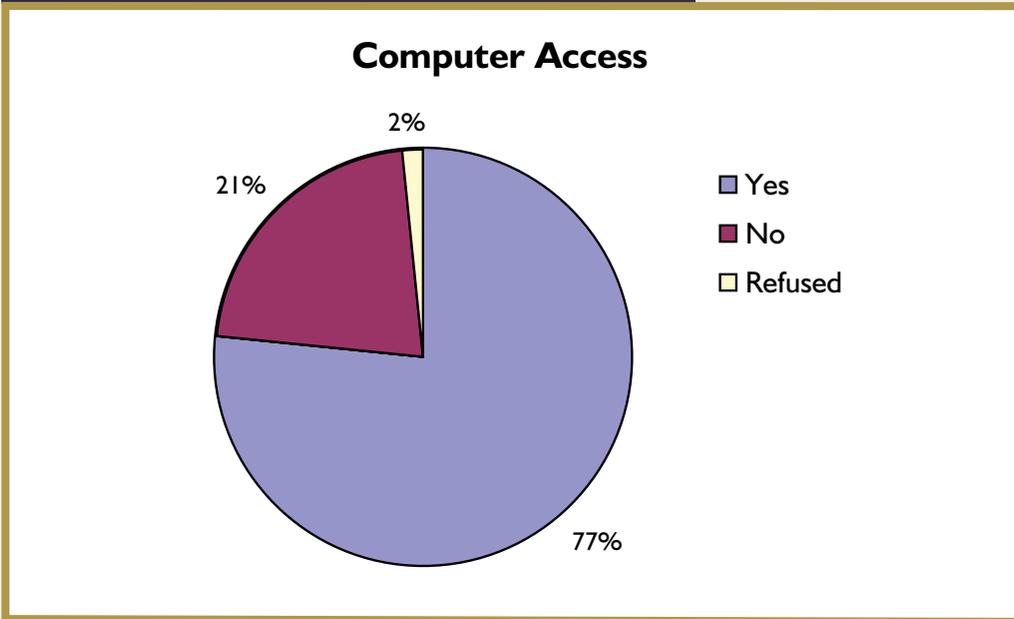
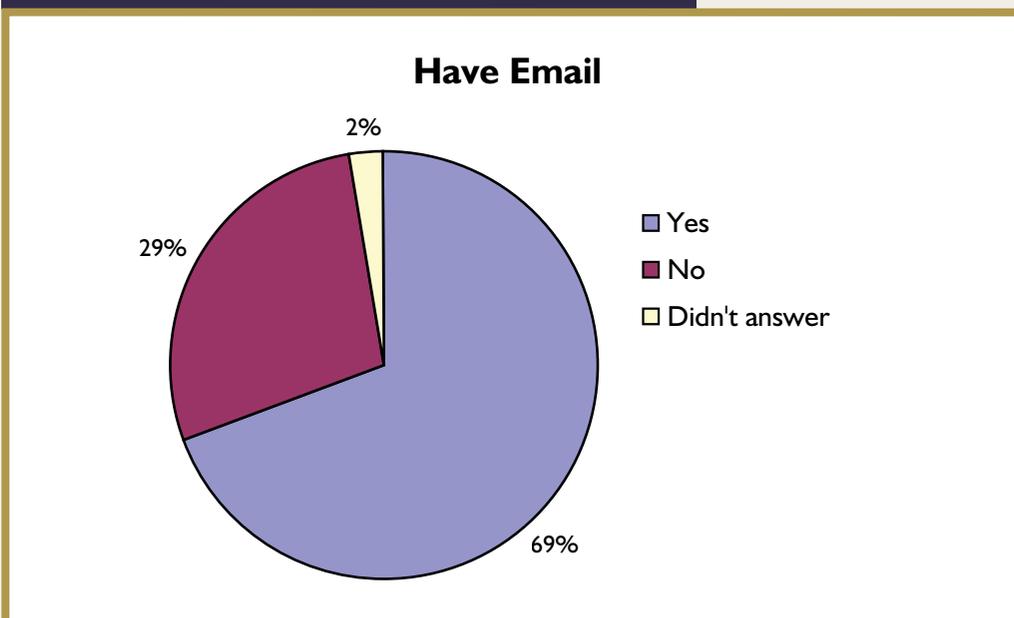


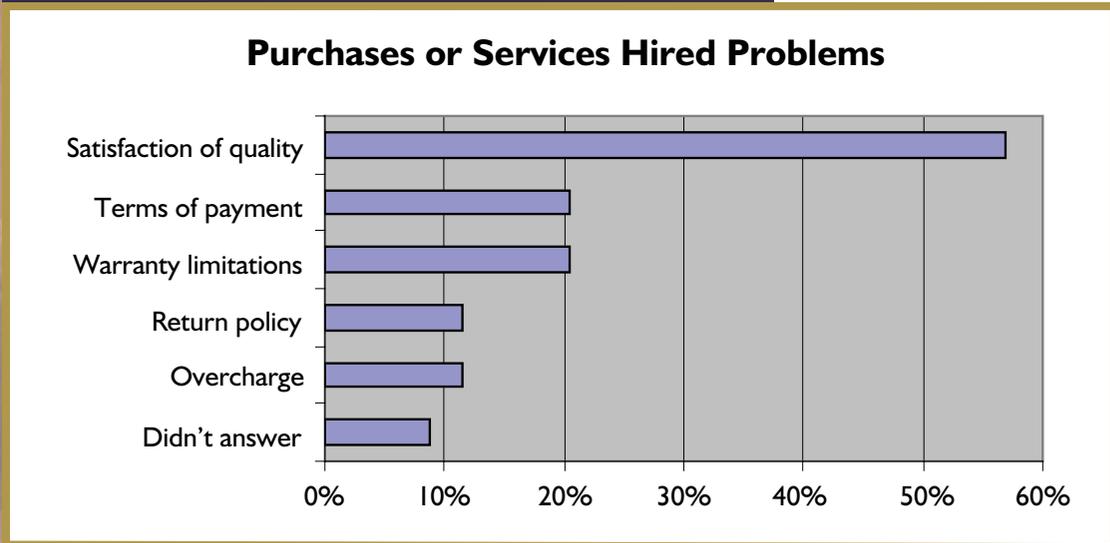
Chart X – Have Email



APPENDIX - 1: LEGAL ISSUE DETAIL OF NEED

Legal Issue Detail in Each Category

Chart XI – Consumer Category - 4.1% had legal issues regarding Purchases or Services



Satisfaction of quality 56.85%
 Terms of payment..... 20.5%
 Warranty limitations 20.5%
 Return policy 11.4%
 Overcharge..... 11.45%
 Didn't answer 8.8%

Eviction..... 20.55%
 Electrical or plumbing problems..... 17.9%
 Being locked out or
 harassed by landlord..... 12.8%
 No heat or hot water 7.7%
 Security Deposit 2.6%
 All other..... 59%

Chart XII – Housing Category - 3.6% had legal issues regarding rent

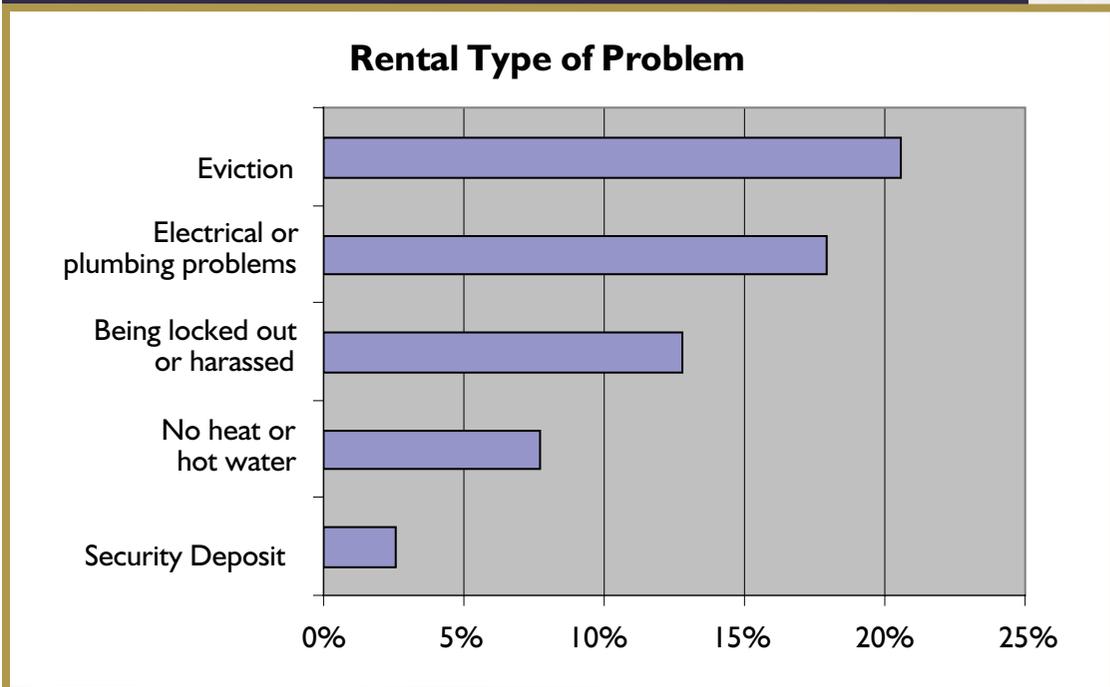
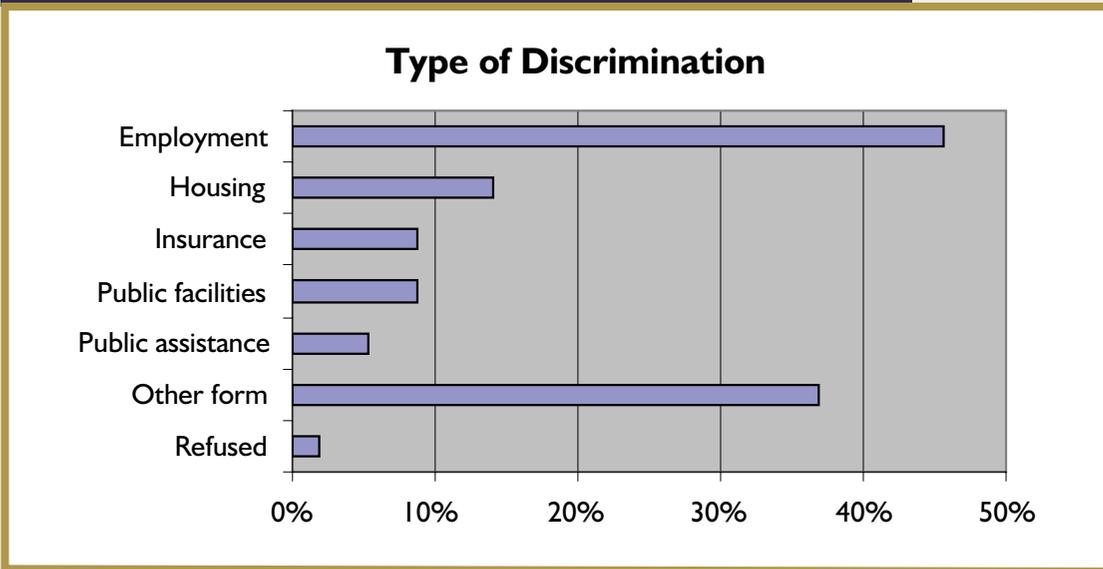
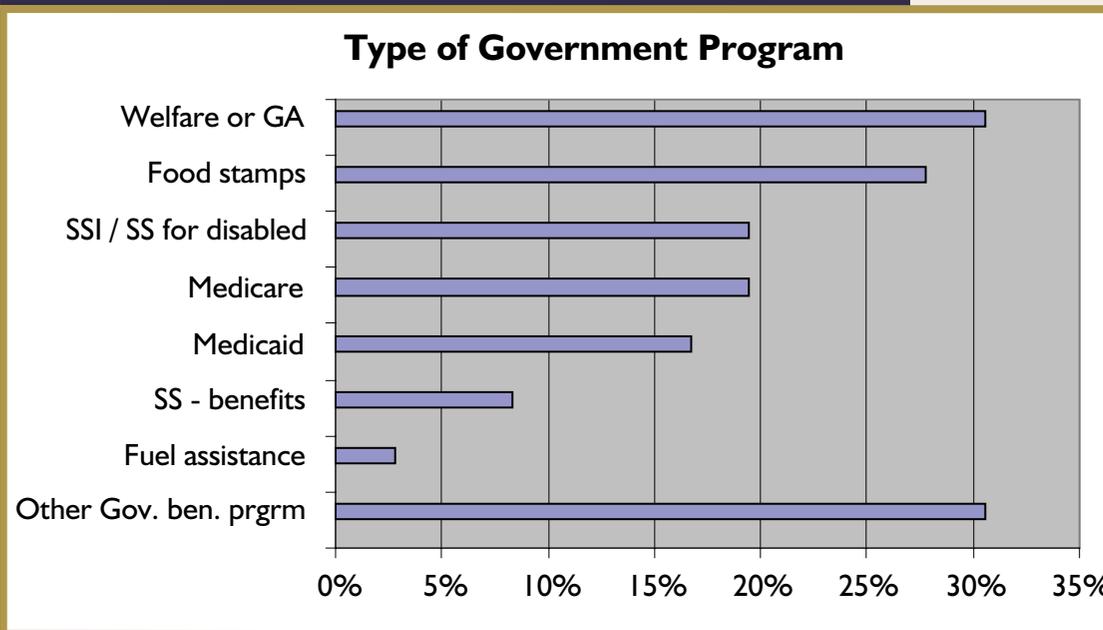


Chart XIII – Discrimination Category - 5.3% had legal issues regarding discrimination



Employment	45.6%	Public assistance	5.3%
Housing	14%	Other form	36.8%
Insurance	8.8%	Refused	1.8%
Public facilities	8.8%		

Chart XIV – Government Benefit Category – 3.3% had legal issues regarding government programs

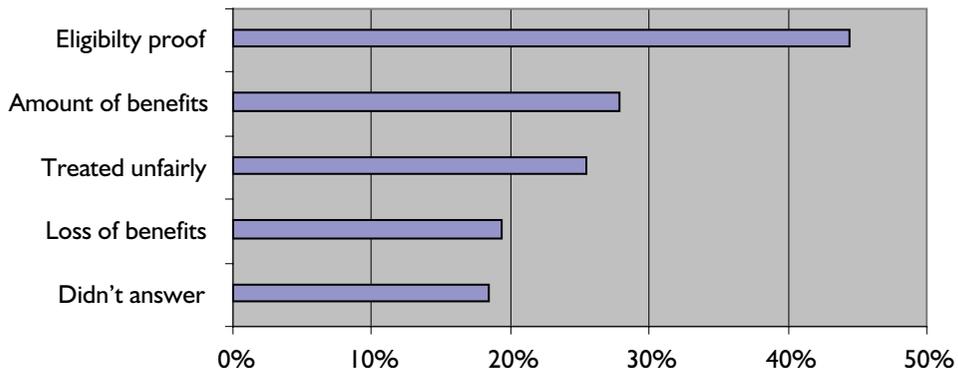


Welfare or GA	30.6%	Medicaid	16.7%
Food stamps	27.8%	SS - benefits	8.3%
SSI / SS for disabled	19.4%	Fuel assistance	2.8%
Medicare.....	19.4%	Other Gov. ben. prgrm	30.6%

The “Other government benefit programs” of 30.6% includes answers such as other state’s programs as the respondent had moved to Arizona during the last year, veterans hospitals, retirement programs, and other health benefit programs the respondents stated.

Chart XV– Government Benefit Category - Difficulty with Government Program

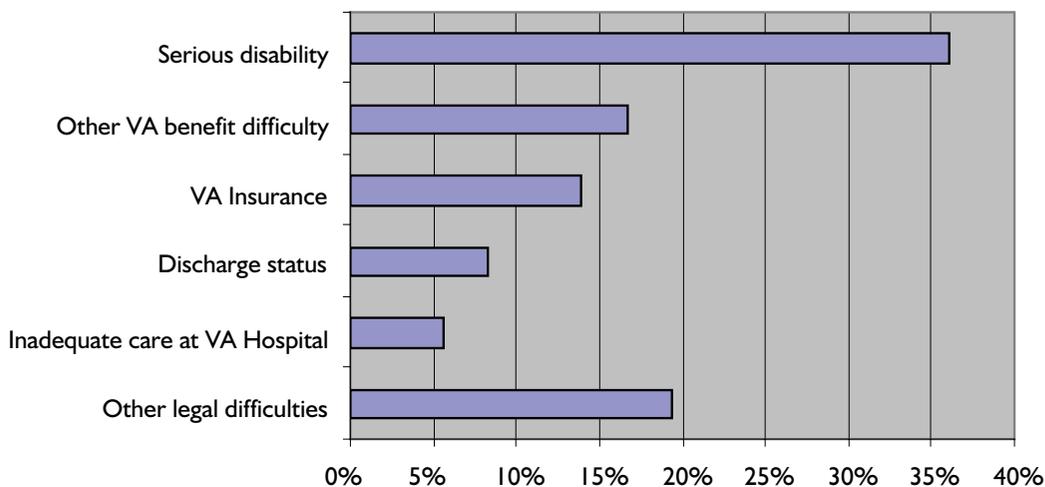
Kind of Problem with Gov. Program



Eligibility proof.....	44.4%	Loss of benefits.....	19.4%
Amount of benefits.....	27.8%	Didn't answer	18.5%
Treated unfairly.....	25.5%		

Chart XVI – Veteran Issues - .03% Veterans Had Legal Issues Presented

Issues for Veterans

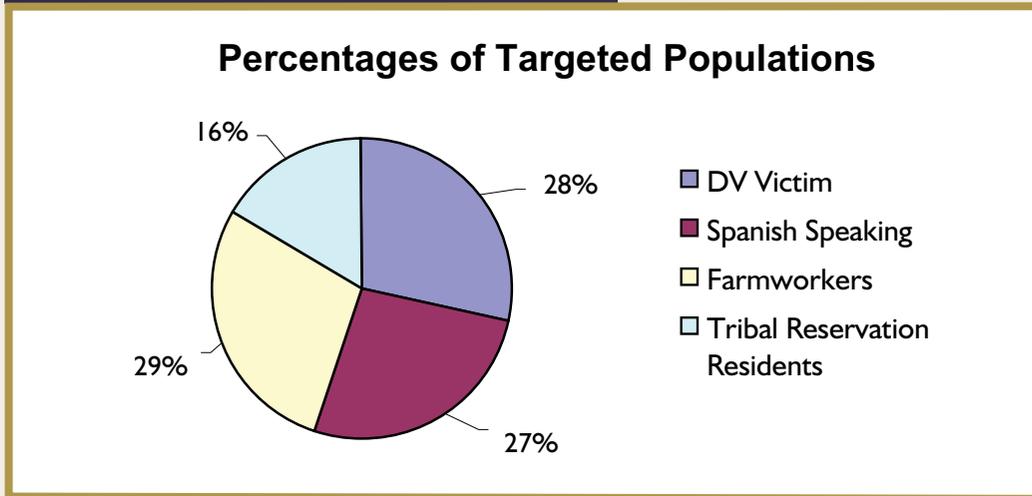


Serious disability	36.1%	Discharge status	8.3%
Other VA benefit difficulty.....	16.7%	Inadequate care at VA Hosp.....	5.6%
VA Insurance.....	13.9%	Other legal difficulties.....	19.4%

Targeted Surveys for Specific Need Populations

This targeted survey was conducted with individuals seeking assistance or referral from legal aid agencies, Hispanic social service agencies, or domestic violence shelters. The groups being targeted were in one of the following categories: domestic violence victim, Spanish speaking household, farm workers, and tribal reservation residents. The number of respondents in the targeted survey represents a total of 5% of the total general survey respondents.

Chart XVII – Targeted Populations



This portion of the study results are only to measure differences of the targeted groups compared to the overall population and to discover if there are specific legal issues which may have been overlooked in surveying the generalized populations via phone interviews.

The first variation from the generalized population survey was the increased stated inability to afford private representation. The statistics for those who could not afford private representation:

93% of Domestic Violence Victims

93% of Spanish-speaking household clients

89% of Farm workers

89% of Tribal reservation residents

The legal needs of these targeted groups did vary from the general population survey and from each other. The following table delineates the needs identified by the targeted groups compared to the percentage of people stating the needs from the general survey.

**TABLE V - LEGAL ISSUES COMPARISON-
GENERAL SURVEY TO TARGETED POPULATIONS**

Issue - Problem	General Survey	DV	Spanish-Speaking	Farm workers	Tribal Res.
Bill Collectors	6.6%	0%	0%	0%	22%
Civil Family Matter	5.5%	43%	93%	0%	56%
Discrimination	5.3%	14%	8%	10%	22%
Purchases or Services	4.10%	0%	0%	0%	11%
Bankruptcy	4%	0%	8%	0%	0%
Juvenile Justice System	3.70%	14%	0%	0%	22%
School issues – Discipline & Special Needs	3.63%	22%	0%	0%	0%
Housing Rental	3.6%	36%	25%	9%	44%
Government Assistance	3.3%	14%	15%	0%	22%
Employer - Pay or Withholding	2.8%	7%	0%	22%	22%
Other on Job	2.6%	0%	7%	11%	0%
Unemployment Comp	1.9%	7%	0%	11%	0%

As the table shows, discrimination is an issue identified as a legal need in the general survey as well as in each of the targeted groups. Other common areas of priority need are family matters and housing for the general population survey and each sub-category except the Farm workers. A major variation from the general population is the high need in areas of employment for the targeted groups over the lower statistics of the general population survey.

The other point of large variation for the targeted group versus the general populations was in computer access and email use.

**TABLE VI - COMPUTER & EMAIL COMPARISON FROM
GENERAL SURVEY & TARGET POPULATIONS**

	General Survey	DV	Spanish-Speaking	Farm workers	Tribal Res.
Computer Use	77%	79%	57%	17%	63%
Email Access	69%	36%	8%	6%	50%

APPENDIX - 3: SURVEY QUESTIONS

Survey Questions

(Only base questions listed here – for entire dialogue sheet visit <http://www.azflse.org>)

LEGAL NEEDS ASSESSMENT STUDY

If you were faced with a serious legal problem like loss of housing and needed a lawyer would you be able to afford hiring a private attorney?

LEGAL SERVICES AWARENESS

We are interested in any civil legal problems that you or someone in your household had over the past 12 months. A civil legal problem is a legal problem that is not criminal. Please tell me the people or organizations in Arizona that you know help people with civil legal problems.

LABEL: TRIBAL COURTS

- 1. Have you had any dealings with a Tribal Court?
Was the issue with one of the following...
- 2. Did Jurisdiction issues impact the case?

LABEL: HOUSING UTILITY

- 3. Did any of you have problems with a house, room, or apartment you were renting?
Was that problem with..
- 4. Did (any of) you own or live in a mobile home or trailer in the past year?
- 5. Did you have any serious problems related to the mobile home or mobile home park?
- 6. Have you had problems with your utilities?
- 7. Was there ever a time in the past 12 months when you (or anyone else in your household) were homeless or staying in a shelter for the homeless?

LABEL: FAMILY LAW OR JUVENILE

Now, I'd like to ask you about family legal problems.

- 8. Did (any of) you have a civil legal problem about family matters?
- 9. Did you get information you could understand about how the family court system works?

LABEL: JUVENILE

The juvenile justice system decides cases of juvenile delinquency, neglect, children in need of care, and termination of parental rights.

- 10. In the past year, has your family had contact with the juvenile justice system?

LABEL: EMPLOYMENT

Now, I'd like to ask about legal problems in work and retirement. In the past year, did you have a problem getting Unemployment Compensation?

- 11. In the past year did you have a problem getting Worker's Compensation?

- 12. Did (any of) you have a serious problem related to a pension plan or retirement benefits – either while working or after retirement?
- 13. Did (you/anyone) have any serious problems with an employer regarding pay or withholding?
- 14. Did (any of) you experience any other major legal problems on the job? [Prompt if necessary, like sexual harassment, unhealthy or unsafe working conditions, serious union problems, or the employer trying to get back at you for organizing other workers or reporting violations?]
- 15. Did (any of) you work as a farm worker at any time in the past year?
- 16. Did (you/the farm worker) have any serious problems with housing, health care, or other problems because of your farm work?

LABEL: EDUCATION/IMMIGRATION DISCRIMINATION

- 17. At any time during the past year, did your household include any children of school age?
- 18. Did anyone have a serious problem getting any special classes or services the child/children might have needed?
- 19. Was there ever a time in the past year when a child in the household was suspended or had disciplinary problems that you thought were handled unfairly or improperly by school officials or the police?
- 20. Were any of the children of school age required to take the AIMS test?
- 21. Did or will the results of the AIMS testing prevent or delay your child's ability to graduate?

LABEL: IMMIGRATION/DISCRIMINATION

- 22. In the past year, did you have an immigration problem?

It is illegal to discriminate against someone because of their race, sex, disability, sexual orientation, or source of income.

23. In the past year, do you believe that someone in your family was discriminated against in this way?
24. Was the discrimination in housing, employment, public assistance, insurance, or some other form?

**LABEL: GOVERNMENT ASSISTANCE/
HEALTH CARE/MILITARY**

Many people use government programs to help themselves and their families.

25. At any time during the past year, did anyone living in this household have a problem with a government assistance program?
26. What was the government program you had the problem with?
27. Was the problem with eligibility, loss of benefits, the amount of benefits, the way you were treated by the agency or department, or something else?
28. Are you or anyone in your household a veteran?
29. In the past year, did (you/the veteran) experience any serious problems with any of the following ..

**LABEL: CONSUMER = Small Claims,
Bankruptcy, or Bill**

30. Have any of you been sued in small claims court in the past year?
31. Did (any of) you have a major problem with a bill collector, like harassing phone calls repossession threats, or threats to take your wages?
32. Did (any of) you file for bankruptcy, or need information about filing for bankruptcy,

LABEL: OTHER

33. Are there any other legal problems you experienced that we did not discuss?
Would you please describe it for me?

DEMOGRAPHICS

Finally, I have just a few questions about you and your family to conclude the study. This information will be used to give us an idea of which Arizonans have these kinds of legal problems, no information can be traced to you individually.

34. [Record gender of respondent]
35. What town in Arizona do you live in?
36. How old were you on your last birthday?
37. What is your current marital status?
38. Do you have access to a computer?
39. Do you have E-mail?
40. Which of the following best describes you: (ethnic/race)
41. What was the highest grade in school that you have completed?

INCOME CHECK

43. At the present time, how many people including yourself now live in your immediate household, whether they are related to you or not?

ANNUAL HOUSEHOLD INCOME

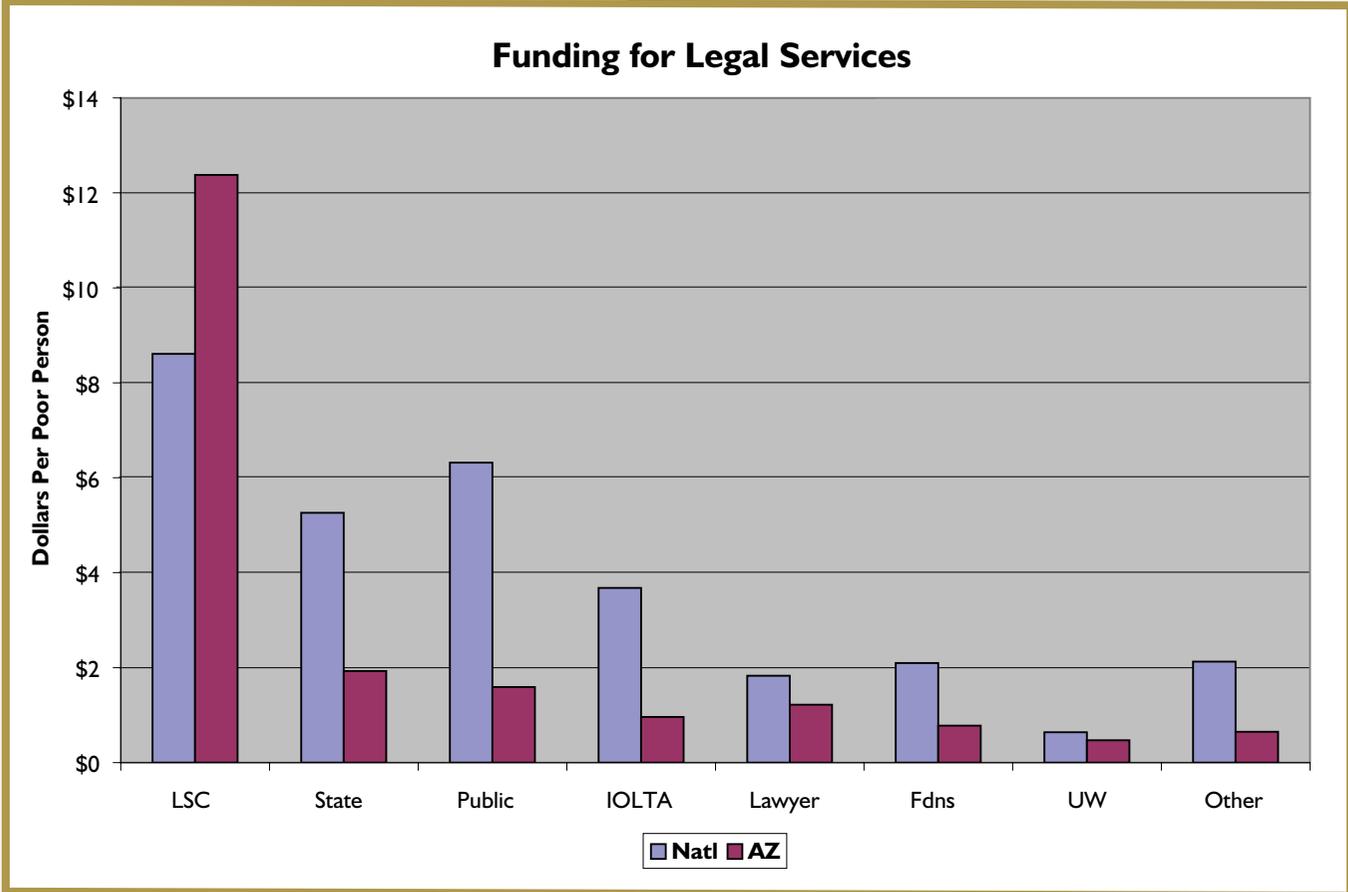
FOR ANY YES RESPONSES FROM ABOVE –
THE FOLLOWING QUESTIONS WERE ASKED
FOR CLARIFICATION

ACTION SHEET

44. What did you do to deal with the problem(s) you just told me about?
45. Who did you seek help from?
46. Did you receive...
47. Was the information or advice you received helpful/not helpful?
48. How was the information or service helpful? Would you say the information or advice helped you to understand the problem, helped you handle the problem yourself, resolved the problem for you?
49. How satisfied are you with the outcome?
Would you say you are...
50. [ask if no ACTION]
If you did not do anything to take care of the problem, why not?
51. Overall, do you feel that your problem was resolved fairly?
52. Go back to next question on survey sheet.



Chart XVIII – Funding for Legal Services



Prepared by the ABA Resource Center for Access to Justice Initiatives Data gathered in 2006, reflecting totals generated in the 2005FY. **Copyright American Bar Association; may not be reprinted without permission.** Contact: Meredith McBurney, 303-329-8091 or meredithmcburney@msn.com

Court Fees and Fines Used For Legal Aid Provision

States	Income Generated for Legal Aid
20 (including AZ)	\$00.00
11	<=\$1,000,000
8	\$1,000,000+ to \$3,000,000
11	> \$3,000,000

This information was prepared from data gathered by the ABA Resource Center for Access to Justice Initiatives Data. Contact : Meredith McBurney 303-329-8091 or meredithmcburney@msn.com



Arizona Foundation for
**LEGAL SERVICES
& EDUCATION**

For more information, please visit www.azflse.org

Arizona Commission on Access to Justice

Meeting Date: May 10, 2017	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
-------------------------------	--	--

From: Judge Joseph Kreamer, Maricopa County Superior Court, and Anthony Young, Southern Arizona Legal Aid

Presenters: (Same)

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

The workgroup met on April 26, 2017.

Workgroup Members:

Judge Joseph C. Kreamer, chair
Judge Thomas Berning
John Phelps
Dr. Kevin Ruegg
Judge Maria Elena Cruz
Pamela Bridge
Millie Cisneros
Lara Slifko
Pat Gerrich
Dan Christensen
Jennifer Perkins
Cheryl Kulas

Recommended motion: None.

Arizona Commission on Access to Justice

Meeting Date: May 10, 2017	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, and Heather Murphy, AOC Director of Communications

Presenters: (Same)

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

The workgroup met on April 19, 2017.

Workgroup Members:

Rick DeBruhl, co-chair

Heather Murphy, co-chair

Kip Anderson

Michael Jeanes

Helen Purcell

Judge Sean Earl Brearcliffe

Tara Jackson

Cari M. Gerchick

Recommended motion: None.

Arizona Commission on Access to Justice

Meeting Agenda (Telephonic)

September 20, 2017 - 12:00 p.m. to 2:00 p.m.

State Courts Building ♦ 1501 West Washington ♦ Conference Room 230 ♦ Phoenix, Arizona

[ACAJ WEBPAGE](#)  

TIME	AGENDA ITEM	PRESENTER
12:00 p.m.	Welcome and Opening Remarks	<i>Judge Lawrence F. Winthrop, Chair</i>
	Approval of minutes from May 10, 2017 <input type="checkbox"/> Formal Action/Request	
12:05 p.m.	Chairperson's report	<i>Judge Winthrop</i>
12:20 p.m.	Report from the Self-Represented Litigants in Limited Jurisdiction Courts Workgroup <ul style="list-style-type: none"> • R-16-0022 Change of Judge in Eviction Actions • R-16-0040 Mandatory Eviction Action Forms • R-17-0020 Stipulated Judgments in Eviction Actions • Strategic planning focus 	<i>Judge Anna Huberman</i>
12:35 p.m.	Report from Inter-Governmental Collaboration Workgroup	<i>Judge Winthrop</i>
12:50 p.m.	Report from the Judicial and Attorney Engagement Workgroup	<i>Judge Joseph Kreamer Dr. Kevin Ruegg</i>
1:05 p.m.	Update on the Public Information and Messaging Workgroup	<i>Rick DeBruhl Heather Murphy</i>
1:20 p.m.	Update on the AZCourtHelp.org website	<i>Dr. Kevin Ruegg Theresa Barrett</i>

1:55 p.m. Good of the Order / Call to the Public
Adjournment

Judge Winthrop

**2017 Meeting
November 8, 2017**

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

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

Wednesday, May 10, 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, Judge Janet Barton, Mike Baumstark, Judge Thomas Berning, Pamela Bridge, Millie Cisneros, Michael Jeanes, Judge Joseph C. Kreamer, Maria Morlacci, John Phelps, Helen Purcell, Dr. Kevin Ruegg, Anthony Young

Absent/Excused: Judge Sean Brearcliffe, Judge Maria Elena Cruz, Judge Anna Huberman, Michael T. Liburdi, Janet K. Regner

Presenters/Guests: Rick DeBruhl, Shawn Friend, Kevin Groman, Chris Groninger, Jake Hinman, Cheryl Kulas, Alberto Rodriguez, Lara Slifko

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 May 10, 2017, meeting of the Arizona Commission on Access to Justice (ACAJ) was called to order by Chairperson Judge Lawrence Winthrop, at 10:06 a.m.

B. Approval of Minutes

The draft minutes from the February 15, 2017, meeting of the ACAJ were presented for approval.

Motion: Anthony Young moved to approve the February 15, 2017, meeting minutes, as presented. **Action:** Approved. **Seconded:** Michael Jeanes. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Chairperson's Report

Judge Winthrop reported on the status of legal aid funding, American Bar Association (ABA) initiatives, project updates, and continued partnership building.

Legal aid funding

- The future of federal access to justice support is unclear. Several Commission members and SBA representatives met with our

Congressional leaders concerning Legal Services Corporation (LSC) funding of civil legal aid. Congress later voted to keep existing funding in place for LSC through September.

- There has been a national campaign to restore legal funding by delivering twenty thousand personalized cards to lawmakers, and by submitting letters of support from state executive, legislative and judicial leaders. This campaign will continue until the budget issue is resolved.

Action Item: The ABA is a strong supporter of LSC and Linda Klein, ABA President, recently testified before Congress regarding LSC. Her compelling remarks will be posted on the website.

ABA initiatives

- The ABA's access to justice national work groups will resume meeting on May 18, 2017. The conference calls are helpful to exchange information, discuss barriers and problem solve.
- The ABA held its annual access to justice chairs meeting in Pittsburgh on May 4-5, 2017, in connection with the Equal Justice Conference. Two new commissions (Kansas and Nebraska) were established. This annual meeting provided a chance to exchange information regarding structure, staffing, program ideas, successes, and strategic planning.

Tax credit initiative

- Lara Slifko reported on the Arizona Tax Credit. As of May, the tax credit generated \$263,018, which represents a 197 percent increase over 2015.

Project updates

- Judge Barton updated members on the Maricopa AmeriCorps Court Navigator Project. It might be the last year to get funding through the State. Additionally, the future of federal funding for AmeriCorps projects is uncertain. She highlighted statistics since the Law Library Resource Center (LLRC) moved to its new space.
 - Work hours two months before and after the move increased from 2,439.41 to 2,820.18
 - The Clerk now has a filing window in the LLRC space. Average filings increased from 30 per day during the first month to 50 per day.
- Judge Winthrop reported on the launch of a collaborative two-year pilot project, "Justice in Government," with consultant Karen Lash. State participants include California, Wisconsin, Mississippi, and Arizona. He summarized the initial meeting, in which Ms. Lash outlined expectations of state participants and anticipated next steps. Initial discussions centered on identifying funding opportunities for states to assist veterans, victims of crime, health care, housing and employment. This project will be part of the new Inter-Governmental Collaboration Workgroup responsibilities.

- Update: SB1274 regarding creating an intergenerational welfare commission died in the Senate, but it is expected that Senator Worsley will refile it next session.
- The Commission anticipates filing its annual report and making a presentation to the Arizona Judicial Council in October.

Partnership building

- Judge Winthrop encouraged members to work on fostering existing relationships. In that regard, he met with the Arizona Chamber of Commerce, the Greater Phoenix Economic Council, the O'Connor Institute, the Governor's Office, and the Legislature.
- Judge Winthrop was interviewed on April 4, 2017, on the public television show "Horizon," and was also interviewed on NPR radio (KJZZ) concerning the LSC funding crisis.

Announcements

- Judge Cruz was appointed to the Court of Appeals. Nancy Gray Eade, the Yuma County Conciliation Court Manager and responsible for enhancing self-help services and clinic projects with CLS, was recognized as the Yuma County Employee of the Year.

B. Presentation on the new Arizona State Bar Public Service Center

John Phelps discussed the Arizona State Bar's current efforts and future plans regarding access to justice in light of its new mission statement centered on serving and protecting the public. Per Ethical Rule 6.1, attorneys should volunteer 50 *pro bono* hours per year but the average number voluntarily reported on the dues statement is 21 hours. With 24,000 registered attorneys in Arizona, there could be 1.2 million *pro bono* hours possible. The State Bar is looking to further engage attorneys and meet consumers' needs.

Alberto Rodriguez reviewed recent successful State Bar access to justice programs:

- Law Day Legal Aid Clinics: Last year the State Bar collaborated with ABC15 and Univision, and 28 volunteer attorneys provided 1-on-1 consultations to almost 300 consumers. Translators were also available for consumers.
- Arizona StandDown: This event has grown to a full-service legal aid clinic in areas of estate planning, family law, bankruptcy, veterans' issues, and landlord/tenant issues.
- Glendale's Stand Up for Veterans: The State Bar recruits volunteers in their practice areas to provide free legal service.
- Glendale Community College: The State Bar works with the college's administration of justice program to encourage students to engage with consumers.
- Deferred Action for Childhood Arrivals: In this four-hour program, the State Bar connects immigrant and undocumented consumers to attorneys to assist with navigating the immigration process.

- Lawyers On Call: The phone bank is a two-hour program that provides 1-on-1 consultations in partnership with Channel 12 News.
- Abogados a Su Lado: The State Bar cooperates with Univision on the Spanish spin-off of Lawyers On Call.

Mr. Rodriguez compared program statistics between 2015 and 2016. In 2015, 96 volunteer attorneys assisted 1,205 consumers whereas in 2016, 103 volunteer attorneys assisted 1,366 consumers.

Member comments:

- How are the events advertised? The State Bar relies on media partnerships and grassroots efforts (i.e., churches and community organizations).

Rick DeBruhl explained that access to justice should not be limited to those who qualify below the poverty level but should also include those who can pay some money, but not a lot. The Public Service Center was established as a technological and physical solution for Arizona moving forward. Mr. DeBruhl introduced **Cheryl Kulas**, Public Service Center Manager, who noted that annually, 706,000 searches are conducted on the State Bar’s “Find a Lawyer” webpage and 21,000 calls are received by the call center. In order to provide clients and attorneys with an automated and mobile referral match service on a 24/7 basis, the State Bar has partnered with Legal Services Link, LLC, to create a portal to find, compare, and connect with attorneys at the click of a button. Ms. Kulas explained how the platform works from 1) the client posting a summary of the civil legal needs, 2) selecting how the client would prefer to pay, 3) answering questions to verify income, 4) attorneys in the area of practice receive an email, 5) attorney provides a quote for services to the client, and 6) the client chooses an attorney. The *pro bono* network would be free to Arizona attorneys in their area of practice while the full service lead generator would cost \$300 per year. Attorneys can also post expanded member profiles for a \$40 fee. She anticipates that the premiums paid by attorneys would cover the costs for *pro bono* and *low bono* clients.

C. Update on Access to Justice related rule change petitions

Julie Graber updated members on the status of rule change petitions.

- **R-16-0022** - Change of Judge in Eviction Actions. No new comments have been filed. Comments are due July 14, 2017. Data has been collected regarding the impact of the experimental rule; however, there is not enough data yet to draw any conclusions.
- **R-17-0016** - Computing Time in Eviction Actions. Comments are due May 22, 2017. Judge Winthrop drafted a comment in support of this rule petition.
 - The Commission supported the filing of this comment.
- **R-17-0011** - In-House Counsel clean-up. No new comments have been filed. Comments are due May 22, 2017.

- **R-16-0047** - Secondary Registration Requirement for In-House Counsel. Kevin Groman filed a comment in support of the rule petition. Judge Winthrop drafted a comment in support of this rule petition.
 - The Commission supported the filing of this comment.

D. Update on Automated Phone Interview system

Dr. Kevin Ruegg updated members on the automated phone interview system, which is available in English and in Spanish, and highlighted statistics for civil cases since the system has been operating from March 14, 2017, to May 10, 2017:

- 3,129 people were helped (1418 online/1711 phone)
- 1,287 qualified for and were referred to legal aid (954 online/333 phone)
- 346 were *low bono*/modest means (99 online/247 phone)
- Over 152 people were transferred to bar associations (If a person is above the income requirement, the person is directed to either the Pima County Bar Association, Maricopa County Bar Association, or the State Bar of Arizona)
- 293 domestic violence victims were assisted
- 155 veterans were helped
- 107 Spanish speakers were provided assistance.

E. Update on the AZCourtHelp.org website

Theresa Barrett, AOC Court Programs Unit Manager, updated members on the marketing plan and presentations to stakeholders. Dr. Kevin Ruegg demonstrated new enhancements to the website that assist those with learning disabilities and those who are not proficient in English.

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

Mike Baumstark reported on rule petitions filed by the Commission.

- **R-16-0040 – Mandatory Eviction Action Forms:** The Commission filed a reply on March 21, 2017. Mr. Baumstark reported that HB2237 was passed and signed by the Governor, which prohibits an agency from enforcing a rule that requires a mandatory form for providing notice or for pleadings in an eviction action. At the April Rules Agenda, the Supreme Court continued this rule petition and denied the motions filed by a commenter to strike the Commission’s reply and to dismiss the rule petition. The workgroup will be reexamining the rule petition and considering an alternative approach, such as the Court denominating and encouraging the use of the proposed forms as “model” forms, and providing additional judicial education and more instructions in the complaint and judgment pleadings.
- **R-17-0020 – Stipulated Judgments in Eviction Action:** The Commission filed a supplement to the petition on April 26, 2017. The deadline for the second round of comments is May 31, 2017. A reply is

due July 7, 2017. Mr. Baumstark anticipates that the Supreme Court will consider the rule petition at the August Rules Agenda.

Member comments:

- According to legal aid services, stipulated judgments are the biggest issue for legal aid services attorneys, especially for the elderly, people with disabilities, and those with language barriers. The changes incorporated in the Commission’s proposed supplement do not adequately protect the tenant.
- Housing industry attorneys stopped using stipulated judgments when the pilot project began in Maricopa County Justice Courts on January 1, 2017. The workgroup tried to balance the comments received from private tenant attorneys and landlord attorneys, and included an option for the attorney to avow that the tenant was informed of the right to appear and declined. The workgroup believes the best practice is to trust officers of the court during an avowal to the judge.
- Some members called for consistency throughout Arizona courts because in Pima County, attendance by both parties is required for a stipulated judgment. However, other members pointed out that sheer volume of cases in Maricopa County affect the way cases are processed. Additionally, tenants who do understand and do not want to stay should not be “held hostage” in the courtroom until their case is called.
- Members discussed further simplifying the warning language, clarifying that the tenant will not be able to appeal if the stipulated judgment is signed, and including the warning language in multiple languages. The Commission recommended that any stakeholders with concerns or suggestions file comments with suggested language to give the court additional perspective and proposed revised language.
- Some members suggested withdrawing the rule petition to get more data and to reconsider and reoffer the rule change at a later time, but, on balance, agreed that they did not want to lose the momentum and the rule petition does improve the process.

Mr. Baumstark discussed the workgroup’s strategic planning, including developing short eviction videos to post on AZCourtHelp.org; exploring a navigator program for eviction actions; and revisiting forms. The workgroup’s next meeting is scheduled for June 29, 2017.

G. *Pro Bono* programs in federal courts

Millie Cisneros reported on four efforts to expand *pro bono* programs in federal courts by focusing on partnerships with other organizations.

1. Bankruptcy Court. At Self-Help Centers in Phoenix and Tucson, the State Bar of Arizona provides volunteer attorneys to consult with individuals about bankruptcy for 20 to 30 minutes without charge.
2. Tucson Self-Service Clinic. The federal court works in collaboration with Step Up to Justice, a civil *pro bono* law center in Tucson. Volunteer lawyers meet self-represented litigants who either wish to file a civil case in federal court or who have already filed and need help navigating the system. Issues include jurisdiction, civil rights, social security appeals, federal tort claims, disability rights, employment discrimination, wrongful termination, and contract disputes. There is no income level required.
3. Phoenix Self-Service Clinic. As of May 25, 2017, the federal court will start collaborating with the Maricopa County Volunteer Lawyers Program based on the Tucson model. Areas of focus include claims under § 1983 and *Bivens* claims, employment discrimination, and social security matters.
4. Mediation Program for Prisoner Litigation. Ms. Cisneros noted that prisoner litigation is a big share of the court's civil caseload. From June 2013 to June 2014, 41 percent of civil cases were filed by prisoners (excludes 3,477 frequent single filer prisoners). The court can compel mediation with a volunteer mediator for medical care, religion, conditions of confinement, and failure to protect issues. In 2014, there were 25 mediations and 10 cases settled.

H. Update on Legal Needs Study

Judge Joseph Kreamer and Anthony Young of SALA updated members on the need for and progress of the proposed legal needs study. Mr. Young explained that needs assessments are conducted by legal aid programs to inform how services should be provided and set case priorities. He reviewed the purpose, methodology, and impact of surveys conducted in 2007 and 2013 (limited). According to the 2007 study, there is a significant gap between the civil legal needs of Arizonans and their ability to access the tools necessary to address these needs.

- 71 percent of households with a total income of \$25,000 or less believed that they could not afford an attorney.
- 81 percent did not know where to go for legal services when they had a civil legal problem.
- Of the 32 percent reporting a civil legal problem, only 25 percent got help from a person or agency.

Mr. Young noted that the 2007 study helped change the landscape of legal services and highlighted concrete outcomes and programs today that can be traced back to the 2007 survey:

- There is a Modest Means program.
- Librarians have been trained and equipped to assist with legal information for the public.
- Rule allows CLE credit for *pro bono* work.

He stressed the importance of repeating the study to identify the top unmet needs and most vulnerable applicants to help target resources in the most effective and efficient manner; to compare needs between the decade; and to assess measurements of success and social impact. The Arizona Legal Services Steering Committee is still defining the survey questions based on what was learned from the previous studies. The survey's scope will be broadened to ensure that data is obtained from the entire community by using online and hard copy surveys, and conducting surveys in English and Spanish.

Member comments:

- It is important to obtain state-specific information and engage in conversations that go beyond only decision makers.
- The statistics do not reflect the percentage of people who do not understand they have a legal issue and give up. Mr. Young responded that a soon-to-be issued national legal aid agency justice gap study will be used to capture data for those who were turned away, did not receive any service, or obtained some service but not what was needed.
- What kind of support is the Arizona Legal Services Steering Committee seeking from the Commission? The Committee would like ACAJ to lend its name in the publishing of the study and be a forum participating in the questions and answers.

Motion: Judge Joseph Kreamer moved to support the Arizona Steering Committee's launch of a statewide legal needs study, as presented. **Action:** Approved. **Seconded:** Anthony Young. **Vote:** Unanimous.

I. Report from the Judicial and Attorney Engagement Workgroup

Judge Joseph Kreamer noted that the Public Lawyer *Pro Bono* Conference on February 24, 2017, was well attended and especially useful for public attorneys. The Attorney General's Office committed to work on a model *pro bono* policy through Jennifer Perkins, Solicitor General. Judge Kreamer reported on efforts of the Judicial and Attorney Engagement Workgroup to meet goals by extending its membership and focusing on judicial engagement versus attorney engagement. Judge Berning will take the lead to develop a menu of volunteer options for judges that do not create an ethical issue. Options to engage attorneys include answering questions online and providing training and support after identifying a discrete single issue.

J. Update on the Public Information and Messaging Workgroup

Rick DeBruhl reported on efforts of the Public Information and Messaging Workgroup to limit its scope to accomplish goals by focusing the workgroup's message, particularly in promoting the AZCourtHelp website/resource; by following a proactive approach relative to law-related events throughout the year that lend themselves to access to justice stories/events; and by developing recorded podcasts.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

None present.

B. Next Meeting Date

Wednesday, August 16, 2017

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

State Courts Building, Room 119

1501 W. Washington St.

Phoenix, AZ 85007

Adjourned at 1:52 p.m.

Arizona Commission on Access to Justice

Meeting Date: September 20, 2017	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 June 29, 2017, and August 10, 2017. The presenter will discuss strategic planning focus and update the commission on the following rule petitions:

- **R-16-0022 – Change of Judge in Eviction Actions**
The Reply was filed on July 11, 2017. At the August Rules Agenda, the court continued to the December 2017 Rules Agenda and the experimental Rule 9(c) is continued in effect until further order of the court.
- **R-16-0040 – Mandatory Eviction Action Forms**
The workgroup recommendation is to post the notices and pleadings as recommended forms to the redesigned Judicial Branch’s eviction webpage, and track the number of webpage hits to determine whether they provide added value to users.
- **R-17-0020 – Stipulated Judgments in Eviction Actions**
The Reply was filed on July 7, 2017. At the August Rules Agenda, the court adopted the petition with modifications and is effective January 1, 2018.
- The workgroup enhanced CLS’s informational documents previously presented to the Commission as “Legal Info Sheets.” The Legal Info Sheets use images to improve readability for users and are being translated into Spanish.
- The workgroup will focus on developing eviction-related videos that will be available on azcourts.gov and AZCourtHelp.org.

Recommended motion: None.

SUPREME COURT OF ARIZONA

In the Matter of	)	Arizona Supreme Court
	)	No. R-16-0022
RULE 9(c), ARIZONA RULES OF)	
PROCEDURE FOR EVICTION ACTIONS)	
)	
	)	FILED 08/31/2017
)	
_____)	

ORDER

CONTINUING THIS MATTER AND CONTINUING THE ADOPTION OF RULE 9(c), ARIZONA RULES OF PROCEDURE FOR EVICTION ACTIONS, ON AN EXPERIMENTAL BASIS UNTIL FURTHER ORDER OF THE COURT

A petition having been filed proposing to amend the Arizona Rules of Procedure for Eviction Actions by adding a new subsection c to Rule 9, the Court having previously adopted the amendment on a one-year experimental basis, effective January 1, 2017, and comments having been received, upon consideration,

IT IS ORDERED continuing this matter for further consideration at the Court’s December 2017 Rules Agenda.

IT IS FURTHER ORDERED continuing the adoption of Rule 9(c), Arizona Rules of Procedure for Eviction Actions, as set forth in the attachment hereto, on an experimental basis until further order of the Court.

DATED this 31st day of August, 2017.

_____/s/_____
SCOTT BALES
Chief Justice

TO:

Rule 28 Distribution

Lisa M Panahi

Patricia Seguin

Susan Pickard

Michael A Parham

Kathy Sekardi

Ellen S Katz

Scott M Clark

Hon K Slaughter

ATTACHMENT¹

Arizona Rules of Procedure for Eviction Actions

Rule 9. Motions

a. – b. [No change in text.]

c. Motion for Change of Judge. For purposes of this subsection, a lawsuit has only two sides. A party or a side, if there is more than one plaintiff or one defendant in a lawsuit, may request a change of judge as a matter of right orally or in writing. The party or side must request a change of judge as a matter of right in the precinct where the lawsuit is pending. The request must state that the party or side has not previously requested a change of judge in this lawsuit, that the party or side has not waived the party’s right to change of judge, and that the request is timely. A request is timely if it is made prior to or at the time of the first court appearance or upon reassignment of the matter to a new judge for trial. A party waives a right to a change of judge if the judge has ruled on any contested motion or issue, or if the trial has started. When a proper and timely request for a change of judge as a matter of right is orally requested or filed, the court must transfer the lawsuit to a new judge within the county for further proceedings.

If a party believes that the party will not have a fair and impartial trial before a justice of the peace, then the party must proceed as provided in Arizona Revised Statutes § 22-204, except that any request must be made by the date of the first court appearance and five days’ notice is not required.

[Re-letter current subsections c. – i. as d. – j.]

¹ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by strikeouts.

SUPREME COURT OF ARIZONA

In the Matter of	)	Arizona Supreme Court
	)	No. R-17-0020
RULE 13(b)(4), RULES OF)	
PROCEDURE FOR EVICTION ACTIONS)	
)	
	)	FILED 08/31/2017
)	
_____)	

ORDER

AMENDING RULE 13(b)(4), RULES OF PROCEDURE FOR EVICTION ACTIONS

A petition having been filed proposing to amend Rule 13(b)(4), Rules of Procedure for Eviction Actions, and comments having been received, upon consideration,

IT IS ORDERED that Rule 13(b)(4), Rules of Procedure for Eviction Actions, be amended in accordance with the attachment hereto, effective January 1, 2018.

DATED this 31st day of August, 2017.

_____/s/_____
 SCOTT BALES
 Chief Justice

TO:

Rule 28 Distribution

Hon Lawrence F Winthrop

Michael A Parham

Melissa Parham

Denise M Holliday

Jay Young

Pamela M Bridge

Ellen S Katz

Christian B Carlsen

ATTACHMENT¹

RULES OF PROCEDURE FOR EVICTION ACTIONS

Rule 13. Entry of Judgment and Relief Granted

* * *

b. Forms of Judgment.

* * *

~~(4) Stipulated Judgments. The court may accept a stipulated judgment, but only if the court determines that the conditions of Rule 13(a)(1)-(2) have been satisfied and the form to which the defendant stipulated contains the following warning:~~

~~**Read carefully! By signing below, you are consenting to the terms of a judgment against you. You may be evicted as a result of this judgment, the judgment may appear on your credit report, and you may NOT stay at the rental property, even if the amount of the judgment is paid in full, without your landlord's express consent.**~~

~~The amounts awarded in the judgment must be consistent with the amounts sought in the complaint, although the judgment may also include additional rent, late charges, fees and other amounts that have accrued since the filing of the complaint, if appropriate. Notwithstanding Rule 13(c)(2), if all parties or their attorneys personally appear before the court and the addition is reasonable, the court may award an amount for damages or categories of relief not specifically stated in the complaint.~~

(4) Stipulated Judgments. The court may accept a stipulated judgment only when the court finds one of the following:

- A. Both parties or their attorneys personally appear before the court;
- B. The plaintiff's attorney asserts to the court that the defendant was informed of the right to appear and declined;
- C. The court determines that, because of distance or other circumstances, the defendant cannot personally appear, that good cause exists and it is in the interest of justice to proceed; or
- D. An attorney for the defendant has signed the stipulation.

¹ Because the changes to this rule are so substantial, the current rule is shown as stricken in its entirety, and the newly revised rule is shown as underlined.

Prior to accepting the stipulated judgment, the court must determine that the conditions of Rule 13(a)(1)-(2) and (b)(4) have been satisfied, and that defendant has signed the warning language on the judgment form to which the defendant stipulated that reads as follows:

WARNING!

- 1. The plaintiff's representative is not a court employee.**
- 2. By signing below, you are consenting to the terms of a judgment against you and the plaintiff will now be able to evict you.**
- 3. You may have your wages garnished and the judgment may appear on your credit report.**
- 4. You may lose your right to subsidized housing.**
- 5. You may NOT stay at the property, even if the amount of the judgment is paid in full, unless you get the agreement in writing or get a new written rental agreement.**

Legal Info Sheets: Eviction Actions





Non-Payment of Rent

[A.R.S. § 33-1368\(B\)](#)

The following does not apply to mobile home park evictions, recreational vehicle park evictions, and certain subsidized housing. Below is information that may be helpful to you but is **not a substitute for legal advice**. There are other rules and laws that may be applicable to your situation, but these are common rules and laws that apply in eviction actions.

A.R.S. means Arizona Revised Statutes and RPEA means Rules of Procedure for Eviction Actions.

Non-Payment of Rent

5-day Notice Health & Safety

10-day Notice

Immediate & Irreparable

Mobile Home Park

Section 8

Claims Against Landlord

After Eviction Judgment

1 NOTICE

- Your landlord must give you written notice that your rent is unpaid and that your rental agreement will terminate if rent is not paid in 5 days. [A.R.S. § 33-1368\(B\)](#).
- In an action for non-payment of rent, landlord cannot file the eviction action until after the final day of the notice.
- If you did not receive a termination notice and a chance to pay the rent and late fees, or the notice does not comply with the law or was not properly served, the court must dismiss the eviction action. [RPEA 13\(a\)\(2\)](#).



2 SERVICE

- Generally, an eviction action summons and complaint must be served in one of two ways:
 - personally served on you, or
 - posted in an obvious place and mailed to you by certified mail. [RPEA 5\(f\)](#).



3 ANSWER

- You may file a written answer or answer orally in open court on the record. If the court sets a trial date, you may be ordered to file a written answer. [RPEA 7](#).
- If you cannot afford the filing fee, ask the clerk for a fee waiver/deferral application in order to not pay the fee when you file. <http://www.azcourts.gov/courtfilingsfees>



4 REINSTATING THE RENTAL AGREEMENT

- If the eviction is only for non-payment of rent, the rental agreement will be reinstated if you pay all past due rent, late fees that appear in a written rental agreement, attorney fees, and court costs before judgment is entered. [A.R.S. § 33-1368\(B\)](#).



5 DEFENSES



- You paid your rent in full and on time (provide proof of payment to the court).
- Your landlord accepted rent, or a portion of rent with knowledge of a default by you and did not obtain a writing signed by you at the time of accepting rent informing you of the terms and conditions of accepting the rent. [A.R.S. § 33-1371](#), [RPEA 13\(a\)\(4\)](#).
- You made repairs to the unit after notifying the landlord that you would do so at his expense, gave your landlord an opportunity to make repairs, you hired a licensed contractor to perform the work, you provided a lien waiver signed by the contractor and list of work performed to your landlord, and subtracted the actual and reasonable costs of the work from the rent due (up to \$300.00 or half your monthly rent, whichever is greater). [A.R.S. § 33-1363](#).
- You do not pay rent or pay less than what your landlord is claiming because you are in subsidized housing – see [Legal Info Sheet: Eviction Actions: Section 8](#) (Section 8, tax credit, etc.).

6 TRIAL



- You have a right to a trial if the court determines that you MAY have a defense or proper counterclaim. [RPEA 11\(b\)\(1\)](#).
- You have a right to a jury trial, but you must ask for it the first time you see the judge. The judge will then decide if there are factual matters to be determined by a jury. If there are no factual matters appropriate for a jury, the case will be heard by the judge. [RPEA 11\(d\)](#).

7 EVIDENCE AND TESTIMONY



- Evidence and testimony must be relevant to the proceeding.
- A witness must testify from personal knowledge – the witness telling the court what somebody else told the witness is generally not allowed.
- You have a duty to make timely objections. If a witness testifies to a fact he or she does not have personal knowledge of or the testimony is not relevant to the proceeding, immediately tell the judge you object to the testimony or evidence.

8 JUDGMENT



- Default judgment will be entered against you if you are not present in the court when your case is called by the judge. [RPEA 13](#).
- Stipulated judgment – you are agreeing that the allegations in the complaint are true and judgment will be entered against you. You will not have an opportunity to offer a defense and cannot appeal from this type of judgment.
- The judge may award your landlord possession of the property plus rent, late fees (if there is a written rental agreement), attorney fees, court costs, and other damages if there is a legal and factual basis to award these damages.
- See [Legal Info Sheet: Eviction Actions: After an Eviction Judgment](#) for important information if the judge rules against you.



Material Breach of the Rental Agreement (5-day Notice for Health and Safety)

[A.R.S. § 33-1368\(A\)](#)

The following does not apply to mobile home park evictions, recreational vehicle park evictions, and certain subsidized housing. Below is information that may be helpful to you but is **not a substitute for legal advice**. There are other rules and laws that may be applicable to your situation, but these are common rules and laws that apply in eviction actions.

A.R.S. means Arizona Revised Statutes and RPEA means Rules of Procedure for Eviction Actions.

1 NOTICE

- Your landlord must give you a written notice stating what the problem is and that the rental agreement will terminate after 5 days if the problem is not fixed in 5 days. [A.R.S. § 33-1368\(A\)](#).
- In an action for material breach of the rental agreement materially affecting health and safety, your landlord cannot file the eviction with the court action until after the 5 days specified in the notice is up (at least 6 days after you receive the notice).
- If you did not receive a termination notice and an opportunity to fix the problems, or the notice does not comply with the law or was not properly served, the court must dismiss the eviction action. [RPEA 13\(a\)\(2\)](#).
- If you fixed the problems identified in a 5-day notice, and there is a second 5-day notice claiming problems of the same or similar nature in the same rental agreement period, your landlord may give you a second 5-day notice and then file an eviction action if you remain in the rental unit after the 5th day. Even if you fix the problems specified in the second notice, your landlord can still file the eviction action.



2 SERVICE

- Generally, an eviction action summons and complaint must be served in one of two ways:
 - 1) personally served on you, or
 - 2) posted in an obvious place and mailed to you by certified mail. [RPEA 5\(f\)](#).



3 ANSWER

- You may file a written answer or answer orally in open court on the record. If the court sets a trial date, you may be ordered to file a written answer. [RPEA 7](#).
- If you cannot afford the filing fee, ask the clerk for a fee waiver/deferral application in order to not pay the fee when you file. <http://www.azcourts.gov/courtfilinfees>



4 DEFENSES



- Problems claimed in the notice and complaint did not occur.
- If there was a time period for you to fix the problems specified in the notice, you fixed the problems before the final day of the 5-day notice.
- Your landlord accepted rent, or a portion of rent with knowledge of an alleged violation by you and did not obtain a writing signed by you at the time of accepting rent informing you of the terms and conditions of accepting the rent. [A.R.S. § 33-1371, RPEA 13\(a\)\(4\)](#).
- Retaliation – If you complained to your landlord or a government agency charged with code enforcement about habitability issues materially affecting health and safety within 6 months prior to the eviction being filed, there is a presumption that the eviction is retaliatory. You may be entitled to damages if this happened. See [Legal Info Sheet: Eviction Actions: Claims Against your Landlord](#). [A.R.S. § 33-1381](#).

5 TRIAL



- You have a right to a trial if the court determines that you MAY have a defense or proper counterclaim. [RPEA 11\(b\)\(1\)](#).
- You have a right to a jury trial, but you must ask for it the first time you see the judge. The judge will then decide if there are factual matters to be determined by a jury. If there are no factual matters appropriate for a jury, the case will be heard by the judge. [RPEA 11\(d\)](#).

6 EVIDENCE AND TESTIMONY



- Evidence and testimony (documents and statements) must be relevant to the proceeding.
- A witness must testify from personal knowledge – the witness telling the court what somebody else told the witness is generally not allowed.
- You have a duty to make timely objections. If a witness testifies to a fact he or she does not have personal knowledge of or if the testimony is not relevant to the proceeding, immediately tell the judge you object to the testimony or evidence.

7 JUDGMENT



- A default judgment will be entered against you if you are not present in the court when your case is called by the judge. [RPEA 13](#).
- Stipulated judgment – you are agreeing that the allegations in the complaint are true and judgment will be entered against you. You will not have an opportunity to offer a defense and cannot appeal from this type of judgment.
- The judge may award your landlord possession of the property plus rent, late fees (if there is a written rental agreement), attorney fees, court costs, and other damages if there is a legal and factual basis to award these damages.
- See [Legal Info Sheet: Eviction Actions: After an Eviction Judgment](#) for important information if the judge rules against you.



Material Breach of the Rental Agreement (10-day Notice)

[A.R.S. § 33-1368\(A\)](#)

The following does not apply to mobile home park evictions, recreational vehicle park evictions, and certain subsidized housing. Below is information that may be helpful to you but is **not a substitute for legal advice**. There are other rules and laws that may be applicable to your situation, but these are common rules and laws that apply in eviction actions.

A.R.S. means Arizona Revised Statutes and RPEA means Rules of Procedure for Eviction Actions.

1 NOTICE

- Your landlord must give you a written notice stating what the problems are and that your rental agreement will terminate after 10 days if the problems are not remedied in 10 days. [A.R.S. § 33-1368\(A\)](#).
- In an action for material breach of the rental agreement, your landlord cannot file the eviction action until after the 10 days stated in the notice (at least 11 days after you receive the notice).
- If you did not receive a termination notice and an opportunity to fix the problems, or the notice does not comply with the law or was not properly served, the court must dismiss the eviction action. [RPEA 13\(a\)\(2\)](#).
- If you fixed the problems identified in a 10-day notice, and there is a second 10-day notice claiming problems of the same or similar nature in the same rental agreement period, your landlord may give you a second 10-day notice and then file an eviction action if you remain in the rental unit after the 10th day. Even if you fix the problems specified in the second notice, your landlord can still file the eviction action.



2 SERVICE

- Generally, an eviction action summons and complaint must be served in one of two ways:
 - 1) personally served on you, or
 - 2) posted in an obvious place and mailed to you by certified mail. [RPEA 5\(f\)](#).



3 ANSWER

- You may file a written answer or answer orally in open court on the record. If the court sets a trial date, you may be ordered to file a written answer. [RPEA 7](#).
- If you cannot afford the filing fee, ask the clerk for a fee waiver/deferral application in order to not pay the fee when you file. <http://www.azcourts.gov/court filingfees>



4 DEFENSES



- Problems stated in the notice and complaint did not occur.
- If there was a time period for you to fix the problems specified in the notice, you fixed the problems on or before the final day of the 10-day notice.
- Your landlord accepted rent, or a portion of rent with knowledge of an alleged violation by you and did not obtain a writing signed by you at the time of accepting rent informing you of the terms and conditions of accepting the rent. [A.R.S. § 33-1371, RPEA 13\(a\)\(4\)](#).
- Retaliation – If you complained to the landlord or a government agency charged with code enforcement about habitability issues materially affecting health and safety within 6 months prior to the eviction being filed, there is a presumption that the eviction is retaliatory. You may be entitled to damages if this happened. See [Legal Info Sheet: Eviction Actions: Claims Against your Landlord](#). [A.R.S. § 33-1381](#).

5 TRIAL



- You have a right to a trial if the court determines that you MAY have a defense or proper counterclaim. [RPEA 11\(b\)\(1\)](#).
- You have a right to a jury trial, but you must ask for it the first time you see the judge. The judge will then decide if there are factual matters to be determined by a jury. If there are no factual matters appropriate for a jury, the case will be heard by the judge. [RPEA 11\(d\)](#).

6 EVIDENCE AND TESTIMONY



- Evidence and testimony must be relevant to the proceeding.
- A witness must testify from personal knowledge – the witness telling the court what somebody else told the witness is generally not allowed.
- You have a duty to make timely objections. If a witness testifies to a fact he or she does not have personal knowledge of or the testimony is not relevant to the proceeding, immediately tell the judge you object to the testimony or evidence.

7 JUDGMENT



- Default judgment will be entered against you if you are not present in the court when your case is called by the judge. [RPEA 13](#).
- Stipulated judgment – you are agreeing that the allegations in the complaint are true and judgment will be entered against you. You will not have an opportunity to offer a defense and cannot appeal from this type of judgment.
- The judge may award your landlord possession of the property plus rent, late fees (if there is a written rental agreement), attorney fees, court costs, and other damages if there is a legal and factual basis to award these damages.
- See [Legal Info Sheet: Eviction Actions: After an Eviction Judgment](#) for important information if the judge rules against you.



Material Breach of the Rental Agreement (Immediate and Irreparable)

[A.R.S. § 33-1368\(A\)](#)

The following does not apply to mobile home park evictions, recreational vehicle park evictions, and certain subsidized housing. Below is information that may be helpful to you but is **not a substitute for legal advice**. There are other rules and laws that may be applicable to your situation, but these are common rules and laws that apply in eviction actions.

A.R.S. means Arizona Revised Statutes and RPEA means Rules of Procedure for Eviction Actions.

1 NOTICE

- Your landlord must give you written notice of his intent to immediately terminate your rental agreement.
- Your landlord can file the eviction action the same day you receive the notice of immediate termination.
- If you did not receive a termination notice, the notice does not comply with the law, or was not properly served, the court must dismiss the eviction action. [RPEA 13\(a\)\(2\)](#).
- *If the acts alleged in the eviction action concern criminal activity, anything you say or present at the eviction hearing may be used against you in a criminal case.*



2 SERVICE

- Generally, an eviction action summons and complaint must be served in one of two ways:
 - 1) personally served on you, or
 - 2) posted in an obvious place and mailed to you by certified mail. [RPEA 5\(f\)](#).



3 ANSWER

- You may file a written answer or answer orally in open court on the record. If the court sets a trial date, you may be ordered to file a written answer. [RPEA 7](#).
- If you cannot afford the filing fee, ask the clerk for a fee waiver/deferral application in order to not pay the fee when you file. <http://www.azcourts.gov/courtfilingsfees>



4 DEFENSES



- The landlord claims that your conduct or the conduct of one of your guests violated the rental agreement; however, this conduct never happened or happened off the property.
- Your landlord accepted rent, or a portion of rent with knowledge of a default by you and did not obtain a writing signed by you at the time of accepting rent informing you of the terms and conditions of accepting the rent. [A.R.S. § 33-1371](#), [RPEA 13\(a\)\(4\)](#).
- Retaliation – If you complained to the landlord or a government agency charged with code enforcement about habitability issues materially affecting health and safety within 6 months prior to the eviction being filed, there is a presumption that the eviction is retaliatory. You may be entitled to damages if this happened. See [Legal Info Sheet: Eviction Actions: Claims Against your Landlord](#). [A.R.S. § 33-1381](#).
- You are generally responsible for the conduct of your guests that violates the rental agreement, but only if you could reasonably be expected to be aware that such actions might occur and you did not attempt to prevent those actions to the best of your ability. [A.R.S. § 33-1368\(G\)](#).

5 TRIAL



- You have a right to a trial if the court determines that you MAY have a defense or proper counterclaim. [RPEA 11\(b\)\(1\)](#).
- You have a right to a jury trial, but you must ask for it the first time you see the judge. The judge will then decide if there are factual matters to be determined by a jury. If there are no factual matters appropriate for a jury, the case will be heard by the judge. [RPEA 11\(d\)](#).

6 EVIDENCE AND TESTIMONY



- Evidence and testimony must be relevant to the proceeding.
- A witness must testify from personal knowledge – the witness telling the court what somebody else told the witness is generally not allowed.
- You have a duty to make timely objections. If a witness testifies to a fact he or she does not have personal knowledge of or the testimony is not relevant to the proceeding, immediately tell the judge you object to the testimony or evidence.

7 JUDGMENT



- Default judgment will be entered against you if you are not present in the court when your case is called by the judge. [RPEA 13](#).
- Stipulated judgment – you are agreeing that the allegations in the complaint are true and judgment will be entered against you. You will not have an opportunity to offer a defense and cannot appeal from this type of judgment.
- The judge may award your landlord possession of the property plus rent, late fees (if there is a written rental agreement), attorney fees, court costs, and other damages if there is a legal and factual basis to award these damages.
- See [Legal Info Sheet: Eviction Actions: After an Eviction Judgment](#) for important information if the judge rules against you.



Mobile Home Park Evictions

The following applies to mobile home park evictions where you own the mobile home and rent the lot your home sits on. The information below may be helpful to you but is **not a substitute for legal advice**. There are other rules and laws that may be applicable to your situation, but these are common rules and laws that apply in eviction actions.

A.R.S. means Arizona Revised Statutes and RPEA means Rules of Procedure for Eviction Actions.

1 NOTICE

- Your landlord may not terminate or refuse to renew your space rental agreement without good cause—"good cause" means:
 - Noncompliance with the rental agreement
 - Non-payment of rent
 - Change in use of land
 - Clear and convincing evidence that you have repeatedly violated the Mobile Home Parks Residential Landlord and Tenant Act. [A.R.S. § 33-1476\(B\)](#).
- Material noncompliance with the rental agreement** – If your landlord thinks you have broken the rental agreement, he must give you a written notice identifying the problems and inform you that the rental agreement will terminate in 30 or more days if you have not fixed the problems in 14 days.
- Material noncompliance with the rental agreement affecting health and safety** – If your landlord thinks you have broken the rental agreement and the problems materially affect health and safety, he must give you a written notice identifying the problems and inform you that the rental agreement will terminate in 20 or more days if you have not fixed the problems in 10 days.
- Immediate termination** – If your landlord thinks you have broken the rental agreement and that the problem is both material and irreparable, and happened on the premises, your landlord can give you a notice for immediate termination of the rental agreement and file the eviction action the same day.
- Non-payment of rent** – Your landlord must give you written notice that your rent is unpaid and that your rental agreement will terminate if rent is not paid in 7 days.
- If you did not receive a termination notice and a chance to pay the rent and late fees, or the notice does not comply with the law or was not properly served, the court must dismiss the eviction action. [RPEA 13\(a\)\(2\)](#).



2 SERVICE

- Generally, an eviction action summons and complaint must be served in one of two ways:
 - personally served on you, or
 - posted in an obvious place and mailed to you by certified mail. [RPEA 5\(f\)](#).



Non-Payment of Rent

5-day Notice Health & Safety

10-day Notice

Immediate & Irreparable

Mobile Home Park

Section 8

Claims Against Landlord

After Eviction Judgment

3 ANSWER



- You may file a written answer or answer orally in open court on the record. If the court sets a trial date, you may be ordered to file a written answer. [RPEA 7](#).
- If you cannot afford the filing fee, ask the clerk for a fee waiver/deferral application in order to not pay the fee when you file. <http://www.azcourts.gov/courtfilingsfees>

4 REINSTATING THE RENTAL AGREEMENT



- If the eviction is only for non-payment of rent, the rental agreement will be reinstated if you pay all past due rent, attorney fees, and court costs before judgment is entered. [A.R.S. § 33-1476\(E\)](#).

5 DEFENSES



- You paid your rent in full and on time (provide proof of payment to the court).
- The problems claimed in the notice and complaint never happened or happened off the property.
- Retaliation – If you complained to the landlord or a government agency charged with code enforcement about habitability issues materially affecting health and safety within 6 months prior to the eviction being filed, there is a presumption that the eviction is retaliatory. You may be entitled to damages if this happened. See [Legal Info Sheet: Eviction Actions: Claims Against your Landlord](#). [A.R.S. § 33-1491](#).

6 TRIAL



- You have a right to a trial if the court determines that you MAY have a defense or proper counterclaim. [RPEA 11\(b\)\(1\)](#).
- You have a right to a jury trial, but you must ask for it the first time you see the judge. The judge will then decide if there are factual matters to be determined by a jury. If there are no factual matters appropriate for a jury, the case will be heard by the judge. [RPEA 11\(d\)](#).

7 EVIDENCE AND TESTIMONY



- Evidence and testimony must be relevant to the proceeding.
- A witness must testify from personal knowledge – the witness telling the court what somebody else told the witness is generally not allowed.
- You have a duty to make timely objections. If a witness testifies to a fact he or she does not have personal knowledge of or the testimony is not relevant to the proceeding, immediately tell the judge you object to the testimony or evidence.

8 JUDGMENT



- Default judgment will be entered against you if you are not present in the court when your case is called by the judge. [RPEA 13](#).
- Stipulated judgment – you are agreeing that the allegations in the complaint are true and judgment will be entered against you. You will not be able to offer a defense and cannot appeal from this type of judgment.

9 AFTER JUDGMENT



- See [Legal Info Sheet: Eviction Actions: After an Eviction Judgment](#) for discussion on writs of restitution.
- A sheriff or constable can execute a writ of restitution by removing all occupants and their possessions from the mobile home. [A.R.S. § 33-1481\(B\)](#).
- After removing the occupants and their possessions from the mobile home, the mobile home is deemed abandoned.
- You cannot move your mobile home from the mobile home space until you get a signed agreement from the mobile home park. This agreement must show clearance (the mobile home park's permission) for removal and that all monies due and owing have been paid. You can also reach some other agreement with the landlord. [A.R.S. § 33-1478\(A\)](#).



Section 8 Housing

[A.R.S. § 33-1368\(A\)](#)

The following applies to Housing Choice Vouchers (“Section 8 Vouchers”). Below is information that may be helpful to you but is **not a substitute for legal advice**. There are other rules and laws that may be applicable to your situation, but these are common rules and laws that apply in regarding Section 8 Vouchers. *C.F.R. means Code of Federal Regulations.*

Non-Payment of Rent

5-day Notice Health & Safety

10-day Notice

Immediate & Irreparable

Mobile Home Park

Section 8

Claims Against Your Landlord

After Eviction Judgment

1 TENANT’S PORTION OF THE RENT



- An individual or family with a Section 8 voucher is only responsible for their portion of the rent. [24 C.F.R. 982.310\(b\)\(1\)](#).
- A landlord may not demand from the tenant more than the tenant’s portion of the rent as determined by Section 8. [24 C.F.R. 982.451\(b\)\(4\)\(iii\)](#).

2 SECTION 8’S PORTION OF THE RENT



- As long as the tenant remains in the Section 8 program, a landlord cannot evict a tenant if Section 8 has not paid its portion of the rent. [24 C.F.R. 982.310\(b\)\(2\)](#).
- If a landlord is seeking Section 8’s portion of the rent, you can report your landlord to your Section 8 program or HUD’s Fraud Hotline at (800) 347-3745. This will not stop the eviction case against you.
- If Section 8 fails to pay rent or pays their portion of rent late, the tenant is not responsible for the late fees on the Section 8 portion of the rent. In other words, if a tenant pays his portion of rent on time and Section 8 pays late, the tenant is not responsible for late fees. [24 C.F.R. 982.451](#).

3 HOUSING QUALITY STANDARDS (HQS)



- HQS inspections are inspections conducted by Section 8 to ensure the unit meets housing quality standards set by HUD. [24 C.F.R. 982.401](#).
- Periodically, Section 8 is required to conduct an HQS inspection of the subsidized unit to make sure it is up to HUD’s Standards. [24 C.F.R. 982.401](#).
- If the unit does not pass the HQS inspection and it is the landlord’s fault, Section 8, by law, cannot pay the landlord for the month the unit failed the HQS inspection. [24 C.F.R. 982.404\(a\)\(3\)](#).
- If the unit has failed due to the landlord and Section 8 has not paid its portion of the rent, a landlord does not have the right to evict the tenant as long as the tenant has paid his portion of the rent. [24 C.F.R. 982.310\(b\)\(2\)](#).

4 LANDLORD’S ACCEPTANCE OF RENT



- If your landlord accepted rent, either the tenant’s portion or Section 8’s portion of rent with knowledge of a default by you and did not obtain a writing signed by you at the time of accepting rent informing you of the terms and conditions of accepting the rent, the landlord has waived the right to evict. [A.R.S. § 33-1371](#), [RPEA 13\(a\)\(4\)](#).



Claims Against Your Landlord

[A.R.S. § 33-1368\(B\)](#)

The following does not apply to mobile home park evictions, recreational vehicle park evictions, and certain subsidized housing. Below is information that may be helpful to you **but is not a substitute for legal advice**. There are other rules and laws that may be applicable to your situation, but these are common rules and laws that apply in eviction actions.

A.R.S. means Arizona Revised Statutes and RPEA means Rules of Procedure for Eviction Actions.

These claims may be brought against your landlord in a separate action or as counterclaims in the eviction action.

Non-Payment of Rent

5-day Notice Health & Safety

10-day Notice

Immediate & Irreparable

Mobile Home Park

Section 8

Claims Against Your Landlord

After Eviction Judgment

1 COUNTERCLAIMS



- Counterclaims in an eviction action must be filed in writing and served upon the opposing party. [RPEA 8\(a\)](#). You can hand it to your landlord or his attorney before your case is called by the judge.
- Counterclaims must state specific facts claiming that your landlord violated the rental agreement or statute.
- Counterclaims must state when and how any required notices were sent to your landlord and what the notices were about.

2 RETALIATION



- If, in the past 6 months, you complained to your landlord or a government agency charged with code enforcement about habitability issues materially affecting health and safety, and then your landlord did any of the following, you may be entitled to damages. [A.R.S. § 33-1381](#).
 1. Landlord increased rent
 2. Landlord decreased services
 3. Your landlord filed an action for possession (eviction action)
 4. Your landlord threatened to bring an action for possession
- Damages are the same as those found in [A.R.S. § 33-1367](#). See [Ouster](#) below.

3 OUSTER



- If your landlord unlawfully locks you out of your rental unit or intentionally stops providing electric, gas, water, or other essential services, you can do the following: [A.R.S. § 33-1367](#)
 1. Recover possession of the rental unit
 2. Terminate the rental agreement (landlord must return your security deposit as required by the law)
 3. Sue or counterclaim for an amount not more than 2 month's rent or twice the actual financial harm you suffered, whichever is greater.

4 ABUSE OF ACCESS

- If your landlord does one of the following: [A.R.S. § 33-1376\(B\)](#)
 1. Enters your rental unit unlawfully (usually this means not providing proper notice of his intent to enter the rental unit);
 2. Enters lawfully in an unreasonable manner; or
 3. Makes repeated demands for entry that unreasonably harass you.



You can do one of the following:

1. Obtain injunctive relief (get the court to order your landlord to stop); or
 2. Terminate the rental agreement.
- In addition to the above, you can also sue for actual damages not less than an amount equal to one month's rent.

5 DIMINUTION OF FAIR RENTAL VALUE

- If your landlord deliberately or negligently fails to provide running water, gas or electrical service, reasonable amount of hot water, heat, air conditioning or cooling (where units are installed), or essential services, you can ask the court for a return of part of the rent you have paid. In other words, because your landlord failed to supply one or more of the above, your rental unit was not worth what you were paying for. [A.R.S. § 33-1364\(A\)\(2\)](#).
- This statute requires that you first give your landlord reasonable notice about the problem.



6 NONCOMPLIANCE WITH RENTAL AGREEMENT BY LANDLORD

- This statute allows for damages against your landlord, but requires previous written notice (either a 10-day notice for material noncompliance with the rental agreement or a 5-day notice for noncompliance materially affecting health and safety) to your landlord and an opportunity for your landlord to fix the problems stated in your notice. [A.R.S. § 33-1361](#).





After an Eviction Judgment

The information below may be helpful to you but is **not a substitute for legal advice**.

A.R.S. means Arizona Revised Statutes and RPEA means Rules of Procedure for Eviction Actions.

1 JUDGMENT

- Once your landlord has been awarded a judgment, the only way you can stay in the rental unit is by working out an agreement with your landlord or filing an appeal of the judgment and paying a supersedeas bond (see [Bonds](#) below). Any post-judgment agreements should be in writing and signed by your landlord. Keep a copy of any agreement.
- Judgments accrue interest from the time of the judgment until paid.
- Once a judgment is paid off, the judgment creditor (landlord) must file a satisfaction with the court. A satisfaction lets anybody who looks at the court records know that the judgment has been paid off.
- A judgment does not allow your landlord to take possession of the rental unit. See [Writ of Restitution](#) below.



2 WRIT OF RESTITUTION

- In most cases, your landlord can go back to the court after 5 days to get a writ of restitution. [A.R.S. § 12-1178](#). If the eviction action was filed based on an immediate and irreparable breach, your landlord can obtain the writ of restitution the next court day.
- Writs of restitution are executed (served on a tenant or the rental unit) by a constable.
- Your landlord may not change the locks or enter the rental unit until the writ of restitution has been issued by the court and served by the constable. You can call the police if your landlord changes the locks or enters the rental unit too early.
- Once the writ of restitution has been lawfully executed, you may not remain at or return to the rental unit without the express permission of your landlord. If you remain or return to the rental unit without permission, you can be charged with criminal trespass.



3 MOTION TO SET ASIDE JUDGMENT



- There are 10 specific reasons to file a motion to set aside the judgment (e.g., the court did not have jurisdiction to hear the case, you tendered all amounts due prior to judgment being entered, the judgment is contrary to law, etc.). See [RPEA 15](#) for the full list.
- For certain reasons, a motion to set aside the judgment must be filed with the trial court not more than 60 days after the judgment. For other grounds, the motion must be filed within a reasonable time.
- Filing a motion to set aside the judgment does not prevent the execution of a writ of restitution or allow you to stay in the rental unit.

4 APPEAL



- A notice of appeal must be filed within 5 days after the judge has signed the judgment. Filing the notice of appeal will not allow you to remain in the rental unit.
- There is a fee to file an appeal, but if you cannot afford the fee, you may request a deferral or waiver. Ask the clerk for a fee deferral/waiver application. <http://www.azcourts.gov/courtfilingsfees>.

5 BONDS



- There is a cost bond of \$250.00 associated with filing an appeal that can be waived or deferred.
- A supersedeas bond can be filed with the trial court to stay the writ of restitution, which will allow you to remain in the rental unit while the appeal is being heard. This bond cannot be waived or deferred. In the case of an immediate termination, the supersedeas bond must be paid to the trial court before the writ of restitution is issued. The amount of the bond varies depending on the amount of rent due (from the date of judgment until the next periodic rental date), costs, and attorney fees. Additionally, you must pay your monthly rent to the court on or before the monthly due date during the appeal to remain in the property while the appeal is being heard.

6 PERSONAL PROPERTY



- This does not apply to mobile homes.
- Your landlord must hold your personal property for 21 days after the constable serves the writ of restitution, but you must pay the landlord for the cost of removal and storage (NOT the judgment amount) to recover your personal property. Certain personal items are excluded from this requirement. See [A.R.S. § 33-1368\(E\)-\(F\)](#) for additional information related to personal property left in a rental unit after an eviction.

7 SECURITY DEPOSIT



- This does not apply to mobile homes.
- Your landlord can apply your refundable security deposit to unpaid rent and other lawful charges after an eviction. See [A.R.S. § 33-1321\(D\)](#) for more information on obtaining a refund of your security deposit from your landlord.

Arizona Commission on Access to Justice

Meeting Date: September 20, 2017	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 Inter-Governmental Workgroup
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From: Judge Lawrence Winthrop, Chair

Presenters: (Same)

Discussion: The workgroup met on September 12, 2017. Judge Winthrop will discuss the strategic planning focus.

Recommended motion: None.

Arizona Commission on Access to Justice

Meeting Date: September 20, 2017	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
Presenters: (Same)

Discussion: The workgroup met on July 19, 2017, and will meet on October 4, 2017. The presenters will discuss the workgroup's strategic planning focus, including engaging public lawyers, engaging law firms, and judicial engagement.

- The workgroup discussed obtaining top attorney listings and sending a letter/survey to firms asking about their *pro bono* policies and areas of interest. This could springboard into an offer to present to those firms on *pro bono* opportunities.
- Cheryl Kulas shared a list of the top 72 firms in Phoenix.

Recommended motion: None.

Arizona Commission on Access to Justice

Meeting Date: September 20, 2017	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 workgroup met on July 20, 2017, and September 6, 2017.

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

- The workgroup is working on building a repository of podcasts. Judge Winthrop to report results of conversation with the Chief Justice. Each podcast would be facilitated by a Supreme Court Justice. The topics of the podcast would be based on the Event Calendar.
- The workgroup is also working on the Commission's Annual Report.

Recommended motion: None.

Arizona Commission on Access to Justice

Meeting Date: September 20, 2017	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, AOC manager

Presenters: (Same)

Discussion: Dr. Ruegg will inform the members about the Google Analytics and demonstrate the website's new features. She will also report on awards received.

- AZCourtHelp.org was the winner of the National Association for Court Management (NACM)'s Top 10 Court Technology Solutions Awards.
- National Association of Counties (NACo) also honored Coconino County with its 2017 Achievement Award for its role in launching AzCourtHelp.org.

Ms. Barrett will present on the marketing efforts to date:

- A mass mailing took place on July 21, 2017, to distribute postcards and posters all Arizona courts:
 - 50,000 English postcards
 - 10,000 Spanish postcards
 - 300 English posters
 - 300 Spanish posters

Recommended motion: Informational only.

Arizona Commission on Access to Justice

Meeting Agenda

November 8, 2017 - 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	<i>Judge Lawrence F. Winthrop, Chair</i>
	Approval of minutes from September 20, 2017 <input type="checkbox"/> Formal Action/Request	
10:05 a.m.	Chairperson's report	<i>Judge Winthrop</i>
10:15 a.m.	Update from the Committee for an Interim Review of the Child Support Guidelines <input type="checkbox"/> Formal Action/Request	<i>Judge Paul McMurdie, Court of Appeals, Div. 1</i>
10:35 a.m.	Report from the Committee on the Impact of Domestic Violence and the Courts	<i>Judge Carol Scott Berry, Phoenix Municipal Court</i>
11:05 a.m.	In-House Counsel <i>Pro Bono</i> Commission	<i>Kevin Groman, In-House Counsel Pro Bono Commission</i>
11:10 a.m.	Update on Online Dispute Resolution Software	<i>Summer Dalton, AOC</i>
11:15 a.m.	Report from the Self-Represented Litigants in Limited Jurisdiction Courts Workgroup	<i>Judge Anna 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.

- 11:25 a.m. Update on Rule Petitions *Julie Graber, AOC Staff*
- R-16-0022 – Change of Judge
 - R-17-0016 – Computing Time Periods
 - R-16-0047 – In-House Counsel Registration
 - R-17-0011 – In-House Counsel Registration
- 11:30 a.m. Update on the Public Information and Messaging Workgroup *Rick DeBruhl
Heather Murphy*
- 11:35 a.m. Update on the AZCourtHelp.org website *Dr. Kevin Ruegg*
- 11:50 a.m. Report from Inter-Governmental Collaboration Workgroup *Judge Winthrop*
- 11:55 a.m. Report from the Judicial and Attorney Engagement Workgroup *Judge Joseph Kreamer
Dr. Kevin Ruegg*

☞ Lunch Break ☞

- 1:00 p.m. Report from County Bar Associations *Dr. Susan Trentham, Pima
County Bar Association,
Allister Adel, Maricopa
County Bar Association*
- 1:30 p.m. *Pro Bono* Survey from the American Bar Association *John Phelps*
- 1:55 p.m. Good of the Order / Call to the Public *Judge Winthrop*

Save the Dates!
Future meeting dates:
February 7, 2018
May 16, 2018
September 19, 2018
November 14, 2018

Adjournment

**2018 Meeting
February 7, 2018**

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

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.

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

Wednesday, September 20, 2017

12:00 p.m. to 2:00 p.m.

State Courts Building, 1501 W. Washington Street, Conf. Rm. 230, Phoenix, AZ 85007

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

Absent/Excused: Mike Baumstark, Judge Sean Brearcliffe, Millie Cisneros, Michael T. Liburdi

Presenters/Guests: Dan Christensen (*telephonic*), Pat Gerrich (*telephonic*), Kevin Groman (*telephonic*), Cheryl Kulas (*telephonic*), Lara Slifko (*telephonic*)

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

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the September 20, 2017, meeting of the Arizona Commission on Access to Justice (ACAJ) was called to order by Chairperson Judge Lawrence Winthrop, at 12:04 p.m.

B. Approval of Minutes

The draft minutes from the May 10, 2017, meeting of the ACAJ were presented for approval.

Motion: Judge Janet Barton moved to approve the May 10, 2017, meeting minutes, as presented. **Action:** Approved. **Seconded:** Michael Jeanes. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Chairperson's Report

Judge Winthrop updated members on access to justice topics.

- Judge Sean Brearcliffe was appointed to the Court of Appeals, Division Two.
- The Commission's Annual Report has been completed and was posted to the website. The redesigned report is engaging visually and will be formally presented to the Arizona Judicial Council in three weeks.
- 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 with speaking notes are available for member use.

- A presentation was made to the Faith Lutheran Church about access to civil justice to start a conversation and build a connection with Arizona's faith-based communities.

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

Judge Anna Huberman reported on rule petitions filed by the commission that were considered at the August Rules Agenda.

- **R-16-0022 – Change of Judge in Eviction Actions:** The rule petition was continued to the December Rules Agenda.
- **R-17-0020 – Stipulated Judgments in Eviction Action:** The rule petition was adopted and is effective January 1, 2018.
- **R-16-0040 – Mandatory Eviction Action Forms:** The forms and pleadings were posted as recommended forms to the Judicial Branch's eviction page.

The workgroup developed Legal Info Sheets on eviction actions that use images to improve readability. They have been posted on the eviction webpage. Judge Huberman raised an issue with the Section 8 Housing Legal Info Sheet. The workgroup is also working on developing eviction videos to post on azcourts.gov and AZCourtHelp.org.

C. Report from the Judicial and Attorney Engagement Workgroup

Judge Kreamer reported three main initiatives, including engaging public lawyers with a model *pro bono* policy applicable to the individual agency; conducting a survey to encourage law firm engagement; and seeking a published/unpublished opinion to promote judicial engagement. The next meeting is scheduled for November 16, 2017.

D. Report from the Inter-Governmental Collaboration Workgroup

Judge Winthrop reported that the workgroup met for the first time on September 12, 2017. He discussed the workgroup's goals, which include determining whether the LAIR (legal aid interagency roundtable) concept can work at the state level; having civil legal aid assistance in the funding scope of the state agency's work; and increasing fairness in administrative hearings involving self-represented litigants. He reminded members that Arizona has agreed to be part of a four-state pilot project to work with Karen Lash. The workgroup discussed available federal funding sources as well as several state agencies and their mandated plans that already include legal assistance. In addition, the workgroup identified possible areas of focus: 1) Veterans and Service Members in housing, consumer protection and benefit access; 2) senior population in financial exploitation, elder abuse, guardianship/conservatorship issues; 3) victims of crime; and 4) post-conviction relief and reentry services.

E. Report from the Public Information and Messaging Workgroup

Heather Murphy discussed the idea of podcasts hosted by a Justice regarding basic court information, which would be housed on azcourts.gov and AZCourHelp.org. The next step is to identify topics based on the editorial calendar and give assignments to Justices.

A digital marketing proposal was obtained for AZCourHelp.org but funds are needed to advertise. A mass mailing took place on July 21, 2017, and 50,000 English postcards, 10,000 Spanish postcards, and English and Spanish posters were sent to each court.

F. Update on the AZCourHelp.org website

Dr. Kevin Ruegg updated members on the progress of the AZCourHelp.org website. The chat function is being evaluated for usage and eviction forms are being populated.

Dr. Ruegg reported on the website's traffic since the launch:

- 22,301 unique views and 28,000 sessions
- 109,000 page views
- Platforms: 59% desktop, 36% local devices

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

None present.

B. Next Meeting Date

Wednesday, November 8, 2017
10:00 a.m. to 2:00 p.m.
State Courts Building, Room 119
1501 W. Washington Street
Phoenix, AZ 85007

Adjourned at 1:18 p.m.

Arizona Commission on Access to Justice

Meeting Date: November 8, 2017	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Update from the Committee for an Interim Review of the Child Support Guidelines
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From: Judge Paul McMurdie, Chair

Presenters: (Same)

Discussion: The presenter will update the commission on the work of the Committee for an Interim Review of the Child Support Guidelines.

Recommended motion: To adopt the recommendations as outlined in the Preliminary Report and Recommendations.

1 **ARIZONA CHILD SUPPORT GUIDELINES**

2 **ADOPTED BY THE ARIZONA SUPREME COURT**

3 **EFFECTIVE ~~JULY 1, 2015~~ APRIL 1, 2018**

4
5
6 BACKGROUND: The Arizona Child Support Guidelines follow the Income Shares Model. The
7 model was developed by the Child Support Guidelines Project of the National Center for State
8 Courts. The total child support amount approximates the amount that would have been spent on
9 the children if the parents and children were living together. Each parent contributes his or her
10 proportionate share of the total child support amount.

11
12 Information regarding development of the guidelines, including economic data and assumptions
13 upon which the Schedule of Basic Support Obligations is based, is contained in the June 27,
14 2014 report of Center for Policy Research, entitled Economic Review of the Arizona Child
15 Support Schedule.

16
17 **1. PURPOSES**

- 18
19 A. To establish a standard of support for children consistent with the reasonable
20 needs of children and the ability of parents to pay.
21
22 B. To make child support orders consistent for persons in similar circumstances.
23
24 C. To give parents and courts guidance in establishing child support orders and to
25 promote settlements.
26
27 D. To comply with state law (Arizona Revised Statutes, Section 25-320) and federal
28 law (42 United States Code, Section 651 et seq., 45 Code of Federal Regulations,
29 Section 302.56) and any amendments thereto.
30

31 **2. PREMISES**

- 32
33 A. These guidelines apply to all natural children, whether born in or out of wedlock,
34 and to all adopted children.
35
36 B. The child support obligation has priority over all other financial obligations; the
37 existence of non-support-related financial obligations is generally not a reason for
38 deviating from the guidelines.
39
40 C. The fact that a ~~custodial~~ parent receives child support does not mean that he or
41 she may not also be entitled to spousal maintenance.

42
43 If the court is establishing both child support and spousal maintenance, the court
44 shall determine the appropriate amount of spousal maintenance first.
45

1 The receipt or payment of spousal maintenance shall be treated in accordance
2 with sections 5.A and 6.A. The addition to or adjustment from gross income under
3 these sections shall apply for the duration of the spousal maintenance award.
4

5 D. A parent's legal duty is to support his or her natural or adopted children. The
6 "support" of other persons such as stepchildren or parents is deemed voluntary
7 and is not a reason for an adjustment in the amount of child support determined
8 under the guidelines.
9

10 E. In appropriate cases, a ~~custodial~~ parent HAVING MORE OF THE PARENTING
11 TIME may be ordered to pay child support.
12

13 F. Monthly figures are used to calculate the child support obligation. Any
14 adjustments to the child support amount shall be annualized so that each month's
15 child support obligation is increased or decreased in an equal amount, instead of
16 the obligation for particular months being abated, increased or decreased.
17

18 EXAMPLE: At a child support hearing, ~~in a paternity action~~ a ~~custodial~~ parent
19 requests an adjustment for childcare costs (Section 9.B.1.). The parent incurs
20 childcare costs of \$150 per month but only for nine months of the year. The
21 adjustment for childcare costs must be annualized as follows: Multiply the \$150
22 monthly cost times the nine months that the cost is actually paid each year, for an
23 annual total of \$1,350. Divide this total by 12 months to arrive at an annualized
24 monthly adjustment of \$113 that may be added to the Basic Child Support
25 Obligation when determining the child support order.
26

27 G. When determining the Basic Child Support Obligation under Section 8, the
28 amount derived from the Schedule of Basic Child Support Obligations shall not
29 be less than the amount indicated on the Schedule:
30

31 1. For six children where there are more than six children.
32

33 2. For the Combined Adjusted Gross Income of \$20,000 where the actual
34 Combined Adjusted Gross Income of the parents is greater than \$20,000.
35

36 H. The "primary residential parent" is the parent who has physical custody of the
37 child for the greater part of the year.
38

39 **PRESUMPTION** 40

41 In any action to establish or modify ~~child custody~~ PARENTING TIME, and in any action
42 to establish child support or past support or to modify child support, whether temporary
43 or permanent, local or interstate, the amount resulting from application of these
44 guidelines shall be the amount of child support ordered. These include, without
45 limitation, all actions or proceedings brought under Title 25 of the Arizona Revised
46 Statutes (including maternity and paternity) and juvenile court actions in which a child

1 support order is established or modified. However, if application of the guidelines would
2 be inappropriate or unjust in a particular case, the court shall deviate from the guidelines
3 in accordance with Section 20.

4
5
6 **4. DURATION OF CHILD SUPPORT**
7

8 Duration of child support is governed by Arizona Revised Statutes, Sections 25-320 and
9 25-501, except as provided in Arizona Revised Statutes, Section 25-1304.

10
11 Upon entry of an initial or modified child support order, the court shall, or in any
12 subsequent action relating to the child support order, the court may, establish a
13 presumptive date for the termination of the current child support obligation. The
14 presumptive termination date shall be the last day of the month of the 18th birthday of the
15 youngest child included in the order unless the court finds that it is projected that the
16 youngest child will not complete high school by age 18. In that event, the presumptive
17 termination date shall be the last day of the month of the anticipated graduation date or
18 age 19, whichever occurs first. The administrative income withholding order issued by
19 the department or its agent in Title IV-D cases and an Order of Assignment issued by the
20 court shall include the presumptive termination date. The presumptive date may be
21 modified upon changed circumstances.
22

23 An employer or other payor of funds honoring an Order of Assignment or an
24 administrative income withholding order that includes the presumptive termination date
25 and is for current child support only, shall discontinue withholding monies after the last
26 pay period of the month of the presumptive termination date. If the Order of Assignment
27 or administrative income withholding order includes current child support and arrearage
28 payment, the employer or other payor of funds shall continue withholding the entire
29 amount listed on the Order of Assignment or administrative income withholding order
30 until further order.
31

32 For purposes of determining the presumptive termination date, it is further presumed:
33

- 34 A. That a child not yet in school will enter 1st grade if the child reaches age 6 on or
35 before September 1 of the year in which the child reaches age 6; otherwise, it is
36 presumed that the child will enter 1st grade the following year; and,
37
38 B. That a child will graduate in the month of May after completing the 12th grade.
39

40 **5. DETERMINATION OF THE GROSS INCOME OF THE PARENTS**
41

42 NOTE: Terms such as "Gross Income" and "Adjusted Gross Income" as used in these
43 guidelines do not have the same meaning as when they are used for tax purposes.
44

- 45 A. Gross income includes income from any source, and may include, but is not
46 limited to, income from salaries, wages, commissions, bonuses, dividends,

1 severance pay, pensions, interest, trust income, annuities, capital gains, social
2 security benefits (subject to Section 26), worker's compensation benefits,
3 unemployment insurance benefits, disability insurance benefits, recurring gifts,
4 prizes, and spousal maintenance. Cash value shall be assigned to in-kind or other
5 non-cash benefits. Seasonal or fluctuating income shall be annualized. Income
6 from any source which is not continuing or recurring in nature need not
7 necessarily be deemed gross income for child support purposes. Generally, the
8 court should not attribute income greater than what would have been earned from
9 full-time employment. Each parent should have the choice of working additional
10 hours through overtime or at a second job without increasing the child support
11 award. The court may, however, consider income actually earned that is greater
12 than would have been earned by full-time employment if that income was
13 historically earned from a regular schedule and is anticipated to continue into the
14 future.

15
16 The court should generally not attribute additional income to a parent if that
17 would require an extraordinary work regimen. Determination of what constitutes
18 a reasonable work regimen depends upon all relevant circumstances including the
19 choice of jobs available within a particular occupation, working hours and
20 working conditions.

- 21
22 B. Gross income does not include sums received as child support or benefits received
23 from means-tested public assistance programs including, but not limited to,
24 Temporary Assistance to Needy Families (TANF), Supplemental Security Income
25 (SSI), Nutrition Assistance and General Assistance.
- 26
27 C. For income from self-employment, rent, royalties, proprietorship of a business, or
28 joint ownership of a partnership or closely held corporation, gross income means
29 gross receipts minus ordinary and necessary expenses required to produce
30 income. Ordinary and necessary expenses do not include amounts determined by
31 the court to be inappropriate for determining gross income for purposes of child
32 support. Ordinary and necessary expenses include one-half of the
33 self-employment tax actually paid.
- 34
35 D. Expense reimbursements or benefits received by a parent in the course of
36 employment or self-employment or operation of a business shall be counted as
37 income if they are significant and reduce personal living expenses.
- 38
39 E. If a parent is unemployed or working below full earning capacity, the court may
40 consider the reasons. If earnings are reduced as a matter of choice and not for
41 reasonable cause, the court may attribute income to a parent up to his or her
42 earning capacity. If the reduction in income is voluntary but reasonable, the court
43 shall balance that parent's decision and benefits therefrom against the impact the
44 reduction in that parent's share of child support has on the children's best interest.
45 THE COURT MAY NOT ATTRIBUTE INCOME TO A PERSON WHO IS
46 INCARCERATED, BUT MAY ESTABLISH OR MODIFY SUPPORT BASED

1 ON ACTUAL ABILITY TO PAY. In accordance with Arizona Revised Statutes
2 Section 25-320, income of at least minimum wage ~~shall~~ SHOULD GENERALLY
3 be attributed to a parent ~~ordered to pay child support.~~ AFTER CONSIDERING
4 THE SPECIFIC CIRCUMSTANCES OF THE PARENTS TO THE EXTENT
5 KNOWN. THIS INCLUDES SUCH FACTORS AS THE PARENTS' ASSETS,
6 RESIDENCE, EMPLOYMENT AND EARNINGS HISTORY, JOB SKILLS,
7 EDUCATIONAL ATTAINMENT, LITERACY, AGE, HEALTH, CRIMINAL
8 RECORD AND OTHER EMPLOYMENT BARRIERS, AND RECORD OF
9 SEEKING WORK, AS WELL AS THE LOCAL JOB MARKET, THE
10 AVAILABILITY OF EMPLOYERS WILLING TO HIRE THE PARENTS,
11 PREVAILING EARNINGS LEVEL IN THE LOCAL COMMUNITY, AND
12 OTHER RELEVANT BACKGROUND FACTORS IN THE CASE. If income is
13 attributed to the parent receiving child support, appropriate childcare expenses
14 may also be attributed.

15
16 The court may decline to attribute income to either parent. Examples of cases in
17 which it may be inappropriate to attribute income include, but are not limited to,
18 the following circumstances:

- 19
- 20 1. A parent is physically or mentally disabled,
- 21
- 22 2. A parent is engaged in reasonable career or occupational training to
23 establish basic skills or reasonably calculated to enhance earning capacity,
24
- 25 3. Unusual emotional or physical needs of a natural or adopted child require
26 that parent's presence in the home, ~~or~~
- 27
- 28 4. The parent is a current recipient of Temporary Assistance to Needy
29 Families, OR-
- 30
- 31 5. A PARENT IS THE CARETAKER OF A YOUNG CHILD AND THE
32 COST OF CHILDCARE IS PROHIBITIVE.
- 33

- 34 F. Only income of persons having a legal duty of support shall be treated as income
35 under the guidelines. For example, income of a parent's new spouse is not treated
36 as income of that parent.
- 37
- 38 G. The court shall not take into account the impact of the disposition of marital
39 property except as provided in Arizona Revised Statutes Section 25-320.A.6.
40 ("...excessive or abnormal expenditures, destruction, concealment or fraudulent
41 disposition of community, joint tenancy and other property held in common.") or
42 to the extent that such property generates income to a parent.
- 43
- 44 H. The Schedule of Basic Child Support Obligations is based on net income and
45 converted to gross income for ease of application. The impact of income taxes has

1 been considered in the Schedule (Federal Tax including Earned Income Tax
2 Credit, Arizona State Tax, and FICA).

3
4
5 **6. ADJUSTMENTS TO GROSS INCOME**

6
7 For purposes of this section, “children of other relationships” means natural or adopted
8 children who are not the subject of this particular child support determination.

9
10 Adjustments to gross income for other support obligations are made as follows:

11
12 A. The court-ordered amount of spousal maintenance resulting from this or any other
13 marriage, if actually being paid, shall be deducted from the gross income of the
14 parent paying spousal maintenance. Court-ordered arrearage payments shall not
15 be included as an adjustment to gross income.

16
17 B. The court-ordered amount of child support for children of other relationships, if
18 actually being paid, shall be deducted from the gross income of the parent paying
19 that child support. Court-ordered arrearage payments shall not be included as an
20 adjustment to gross income.

21
22 C. An amount shall be deducted from the gross income of a parent for children of
23 other relationships covered by a court order for whom they are the ~~eustodial~~
24 PRIMARY RESIDENTIAL parent. The amount of the adjustment shall be
25 determined by a simplified application of the guidelines (defined in example
26 below).

27
28 D. An amount may be deducted from the gross income of a parent for support of
29 natural or adopted children of other relationships not covered by a court order.
30 The amount of any adjustment shall not exceed the amount arrived at by a
31 simplified application of the guidelines (defined in example below).

32
33 EXAMPLE: A parent having gross monthly income of \$2,000 supports a natural
34 or adopted minor child who is not the subject of the child support case before the
35 court and for whom no child support order exists. To use the Simplified
36 Application of the Guidelines, locate \$2,000 in the Combined Adjusted Gross
37 Income column of the Schedule. Select the amount in the column for one child,
38 \$415. The parent's income may be reduced up to \$415, resulting in an Adjusted
39 Gross Income of \$1,585.

40
41 **7. DETERMINING THE ADJUSTED GROSS INCOME OF THE PARENTS**

42
43 Adjusted Gross Income is gross income minus the adjustments provided in Section 6 of
44 these guidelines. The Adjusted Gross Income for each parent shall be established. These
45 amounts shall be added together. The sum is the Combined Adjusted Gross Income.

1 **8. DETERMINING THE BASIC CHILD SUPPORT OBLIGATION**

2
3 Locate the income closest to the parents' Combined Adjusted Income figure on the
4 Schedule of Basic Child Support Obligations and select the column for the number of
5 children involved. This number is the Basic Child Support Obligation. If the parents'
6 income falls exactly in between two combined adjusted gross income amounts, round up
7 to the nearest combined adjusted income entry on the schedule of basic child support
8 obligations.

9
10 EXAMPLE: The combined adjusted gross income of the parents' is \$8,125 which is
11 exactly between \$8,100 and \$8,150. Round up to the nearest combined adjusted income
12 entry of \$8,150 and use this amount as the basic child support obligation.

13
14 If there are more than six children, the amount derived from the schedule of basic support
15 obligations for six children shall be the presumptive amount. The party seeking a greater
16 sum shall bear the burden of proof that the needs of the children require a greater sum.

17
18 If the combined adjusted gross income of the parties is greater than \$20,000 per month,
19 the amount set forth for combined adjusted gross income of \$20,000 shall be the
20 presumptive Basic Child Support Obligation. The party seeking a sum greater than this
21 presumptive amount shall bear the burden of proof to establish that a higher amount is in
22 the best interests of the children, taking into account such factors as the standard of living
23 the children would have enjoyed if the parents and children were living together, the
24 needs of the children in excess of the presumptive amount, consideration of any
25 significant disparity in the respective percentages of gross income for each party and any
26 other factors which, on a case by case basis, demonstrate that the increased amount is
27 appropriate.

28
29 **9. DETERMINING THE TOTAL CHILD SUPPORT OBLIGATION**

30
31 To determine the Total Child Support Obligation, the court:

- 32
33 A. Shall add to the Basic Child Support Obligation the cost of the children's medical
34 dental or vision insurance coverage, if any (this provision does not imply any
35 obligation of either parent to provide dental or vision insurance). In determining
36 the amount to be added, only the amount of the insurance cost attributable to the
37 children subject of the child support order shall be included. If coverage is
38 applicable to other persons, the total cost shall be prorated by the number of
39 persons covered. The court may decline to credit a parent for medical, dental or
40 vision insurance coverage obtained for the children if the coverage is not valid in
41 the geographic region where the children reside.

42
43 EXAMPLE: Through an employment-related insurance plan, a parent provides
44 medical insurance that covers the parent, one child subject of the child support
45 case and two other children. Under the plan, the cost of an employee's individual
46 insurance coverage would be \$120. This parent instead pays a total of \$270 for

1 the "family option" that provides coverage for the employee and any number of
2 dependents. Calculate the adjustment for medical insurance as follows: Subtract
3 the \$120 cost of individual coverage from the \$270 paid for the "family option" to
4 find the cost of dependent coverage. The \$150 remainder then is divided by three
5 - the number of covered dependents. The resulting \$50 is added to the Basic Child
6 Support Obligation as the cost of medical insurance coverage for the one child.
7

8 An order for child support shall assign responsibility for providing medical
9 insurance for the children who are the subject of the child support order. If
10 medical insurance of comparable benefits and cost is available to both parents, the
11 court should assign the responsibility to the ~~parent having primary physical~~
12 ~~custody~~ RESIDENTIAL PARENT.
13

14 The court shall also specify the percentage that each parent shall pay for any
15 medical, dental or vision costs of the children which are not covered by insurance.
16 For purposes of this paragraph, non-covered "medical" means medically
17 necessary medical, dental or vision care as defined by Internal Revenue Service
18 Publication 502.
19

20 Except for good cause shown, any request for payment or reimbursement of
21 uninsured medical, dental or vision costs must be provided to the other parent
22 within 180 days after the date the services occur. The parent responsible for
23 payment or reimbursement must pay his or her share, as ordered by the court, or
24 make acceptable payment arrangements with the provider or person entitled to
25 reimbursement within 45 days after receipt of the request.
26

27 Both parents should use their best efforts to obtain services that are covered by the
28 insurance. A parent who is entitled to receive reimbursement from the other
29 parent for medical costs not covered by insurance shall, upon request of the other
30 parent, provide receipts or other evidence of payments actually made.
31

32 B. May add to the Basic Child Support Obligation amounts for any of the following:
33

34 1. Childcare Costs
35

36 Childcare expenses that would be appropriate to the parents' financial
37 abilities.
38

39 Expenses for childcare shall be annualized in accordance with Section 2.F.
40

41 A PARENT PAYING FOR CHILDCARE MAY BE ELIGIBLE FOR A
42 CREDIT FROM FEDERAL TAX LIABILITY FOR CHILDCARE
43 COSTS ONLY IF THE PARENT HAS PARENTING TIME FOR THE
44 GREATER PART OF THE YEAR. IN AN EQUAL PARENTING TIME
45 SITUATION, NEITHER PARTY SHALL BE ENTITLED TO THE

1 CREDIT FOR THE PURPOSES OF CALCULATING CHILD
2 SUPPORT.
3

4 ~~A custodial parent paying for childcare may be eligible for a credit from~~
5 ~~federal tax liability for childcare costs for dependent children. The~~
6 ~~custodial parent is the parent who has physical custody of the children for~~
7 ~~the greater part of the year. In an equal physical custody situation, neither~~
8 ~~parent shall be entitled to the credit for purposes of calculating child~~
9 ~~support.~~ Before adding childcare costs to the Basic Child Support
10 Obligation, the court may adjust this cost in order to apportion the benefit
11 that the dependent tax credit will have to the parent incurring the childcare
12 costs.
13

14 At lower income levels, the head of household does not incur sufficient
15 tax liability to benefit from the federal childcare tax credit. No adjustment
16 should be made where the income of the ~~custodial~~ ELIGIBLE parent is
17 less than indicated on the following chart:
18
19

MONTHLY GROSS INCOME OF THE <u>CUSTODIAL ELIGIBLE PARENT</u>	
ONE CHILD	\$2,600
TWO CHILDREN	\$3,100
THREE CHILDREN	\$3,400
FOUR CHILDREN	\$3,550
FIVE CHILDREN	\$3,650
SIX CHILDREN	\$3,800

20
21 If the ~~custodial~~ ELIGIBLE parent's income is greater than indicated on the
22 above chart, the court may adjust this cost for the federal childcare tax
23 credit if the credit is actually claimed or will be claimed.
24

25 For one child with monthly childcare costs exceeding \$200, deduct \$50
26 from the monthly childcare amount. For two or more children with total
27 monthly childcare costs exceeding \$400, deduct \$100 from the monthly
28 childcare amount. See Example One.
29

30 For one child with monthly childcare costs of \$200 or less, deduct 25%
31 from the monthly childcare amount. For two or more children with total
32 monthly childcare costs of \$400 or less, deduct 25% from the monthly
33 childcare amount. See Example Two.
34

1 EXAMPLE ONE: For two children, a parent pays monthly childcare costs
2 of \$550 for nine months of the year. To adjust for the expected tax credit
3 benefit, first determine whether the average costs of childcare exceeds
4 \$400 per month. In this example, because the average cost of \$413 (\$550
5 multiplied by 9 months, divided by 12 months) exceeds the \$400
6 maximum for two or more children, \$100 per month may be subtracted
7 from the average monthly cost. \$313 (\$413 - \$100) may be added to the
8 Basic Child Support Obligation for adjusted childcare costs.
9

10 EXAMPLE TWO: A parent pays monthly childcare costs of \$175 for one
11 child. Because this amount is less than the \$200 maximum for one child,
12 multiply \$175 by 25% (\$175 multiplied by 25% = \$44). Subtract the
13 adjustment from the monthly average (\$175 - \$44 = \$131). The adjusted
14 amount of \$131 may be added to the Basic Child Support Obligation.
15

16 Any adjustment for the payment of childcare costs with pre-tax dollars
17 shall be calculated in a similar manner. A percentage adjustment other
18 than twenty-five percent may be utilized if proven by the parent paying the
19 childcare costs.
20

21 2. Education Expenses

22
23 Any reasonable and necessary expenses for attending private or special
24 schools or necessary expenses to meet particular educational needs of a
25 child, when such expenses are incurred by agreement of both parents or
26 ordered by the court.
27

28 3. Extraordinary Child

29
30 These guidelines are designed to fit the needs of most children. The court
31 may increase the Basic Child Support Obligation to provide for the special
32 needs of gifted or handicapped children.
33

34 4. Older Child Adjustment

35
36 The average expenditures for children age 12 or older exceed the average
37 expenditures for all children by approximately 10%. Therefore, the court
38 may increase child support for a child who has reached the age of 12 years
39 by an amount up to 10% of the child support shown on the Schedule. If the
40 court chooses to make an adjustment, the following method of calculation
41 shall be used.
42

43 EXAMPLE: The Basic Child Support Obligation for one child, age 12, is
44 \$459. As much as \$46 may be added to the basic child support obligation,
45 for a total of \$505. If not all children subject to the order are age 12 or
46 over, the increase will be prorated as follows: assume the Basic Child

1 Support Obligation for three children is \$786. If one of the three children
2 is age 12 or over, assign 1/3 of the Basic Child Support Obligation to the
3 older child (\$262). Up to 10% (\$26) of that portion of the Basic Child
4 Support Obligation may be added as an older child adjustment, increasing
5 the obligation to \$812. NOTE: This prorating method is limited to this
6 section and should not be followed in Section 25.
7

8 **10. DETERMINING EACH PARENT'S PROPORTIONATE SHARE OF THE**
9 **TOTAL CHILD SUPPORT OBLIGATION**

10
11 The Total Child Support Obligation shall be divided between the parents in proportion to
12 their Adjusted Gross Incomes. The obligation of each parent is computed by multiplying
13 each parent's share of the Combined Adjusted Gross Income by the Total Child Support
14 Obligation.
15

16 EXAMPLE: Combined Adjusted Gross Income is \$1,000. The father's Adjusted Gross
17 Income is \$600. Divide the father's Adjusted Gross Income by the Combined Adjusted
18 Income. The result is the father's share of the Combined Adjusted Gross Income. (\$600
19 divided by \$1,000 = 60%). The father's share is 60%; the mother's share is 40%.
20

21 **11. ADJUSTMENT FOR COSTS ASSOCIATED WITH PARENTING TIME**

22
23 Because the Schedule of Basic Child Support Obligations is based on expenditures for
24 children in intact households, there is no consideration for costs associated with parenting
25 time. When parenting time is exercised by the ~~noneustodial~~-parent WITH LESS TIME, a
26 portion of the costs for children normally expended by the ~~eustodial-PRIMARY~~
27 RESIDENTIAL parent shifts to the ~~noneustodial-OTHER~~ parent. Accordingly, unless it
28 is apparent from the circumstances that the ~~noneustodial~~-parent WITH LESS TIME will
29 not incur costs for the children during parenting time, when proof establishes that
30 parenting time is or is expected to be exercised by ~~the noneustodial-THAT~~ parent, an
31 adjustment shall be made to that parent's proportionate share of the Total Child Support
32 Obligation. To calculate child support in equal ~~eustody-PARENTING TIME~~ cases, see
33 Section 12.
34

35 For purposes of calculating parenting time days, only the time spent by a child with the
36 ~~noneustodial~~-parent WITH LESS TIME is considered. Time that the child is in school or
37 childcare is not considered.
38

39 To adjust for the costs of parenting time, first determine the total annual amount of
40 parenting time indicated in a court order or parenting plan or by the expectation or
41 historical practice of the parents. Using the following definitions, add together each block
42 of parenting time to arrive at the total number of parenting time days per year. Calculate
43 the number of parenting time days arising from any block of time the child spends with
44 the ~~noneustodial~~-parent WITH LESS TIME in the following manner:
45

- 1 A. Each block of time begins and ends when ~~the noneustodial~~ THAT parent receives
2 or returns the child from the ~~eustodial~~ PRIMARY RESIDENTIAL parent or from
3 a third party with whom the ~~eustodial~~ PRIMARY RESIDENTIAL parent left the
4 child. Third party includes, for example, a school or childcare provider.
5
6 B. Count one day of parenting time for each 24 hours within any block of time.
7
8 C. ~~to~~ To the extent there is a period of less than 24 hours remaining in the block of
9 time, after all 24-hour days are counted or for any block of time which is in total
10 less than 24 hours in duration:
11
12 1. A period of 12 hours or more counts as one day.
13
14 2. A period of 6 to 11 hours counts as a half-day.
15
16 ~~2.3.~~ 3. A period of 3 to 5 hours counts as a quarter-day.
17
18 ~~3.4.~~ 4. Periods of less than 3 hours may count as a quarter-day if, during those
19 hours, the ~~noneustodial~~ parent WITH LESS TIME pays for routine
20 expenses of the child, such as meals.
21

22 EXAMPLES: FOR THE PURPOSES OF THESE EXAMPLES, MOTHER HAS
23 PARENTING TIME 130 DAYS PER YEAR AND FATHER IS THE PRIMARY
24 RESIDENTIAL PARENT.
25

- 26 1. ~~Noneustodial parent~~ MOTHER receives the child at 9:00 p.m. on
27 Thursday evening and brings the child to school at 8:00 a.m. on Monday
28 morning, from which ~~eustodial parent~~ FATHER picks up the child at 3:00
29 p.m. on Monday.
30
31 a. 9:00 p.m. Thursday to 9:00 p.m. Sunday is three days.
32 b. 9:00 p.m. Sunday to 8:00 a.m. Monday is 11 hours, which equals a
33 half day.
34 c. Total is 3 ½ days.
35
36 2. ~~Noneustodial parent~~ MOTHER picks the child up from school at 3:00 p.m.
37 Friday and returns the child to school at 8:00 a.m. on Monday.
38
39 a. 3:00 p.m. Friday to 3:00 p.m. Sunday is two days.
40 b. 3:00 p.m. Sunday to 8:00 a.m. Monday is 17 hours, which equals
41 one day.
42 c. Total is 3 days.
43
44 3. ~~Noneustodial parent~~ MOTHER picks up child from soccer at noon on
45 Saturday, and returns the child to ~~eustodial parent~~ FATHER at 9:00 p.m.
46 on Sunday.

- a. Noon Saturday to noon Sunday is one day.
- b. Noon Sunday to 9:00 p.m. Sunday is 9 hours, which equals ½ day.
- c. Total is 1 ½ days.

IF THE CHILDREN HAVE DIFFERENT PARENTING TIME SCHEDULES, THEN SEE SECTION 16 TO DETERMINE THE PARENTING TIME ADJUSTMENT OR TO DETERMINE IF SEPARATE WORKSHEETS ARE REQUIRED. After determining the total number of parenting time days, refer to “Parenting Time Table A” below. The left column of the table sets forth numbers of parenting time days in increasingly higher ranges. Adjacent to each range is an adjustment percentage. The parenting time adjustment is calculated as follows: locate the total number of parenting time days per year in the left column of “Parenting Time Table A” and select the adjustment percentage from the adjacent column. Multiply the Basic Child Support Obligation determined under Section 8 by the appropriate adjustment percentage. The number resulting from this multiplication then is subtracted from the proportionate share of the Total Child Support Obligation of the parent who exercises parenting time.

PARENTING TIME TABLE A	
Number of Parenting Time Days	Adjustment Percentage
0 - 3	0
4 - 20	.012
21 - 38	.031
39 - 57	.050
58 - 72	.085
73 - 87	.105
88 - 115	.161
116 - 129	.195
130 - 142	.253
143 - 152	.307
153 - 162	.362
163 - 172	.422
173 - 182	.486

EXAMPLE: The Basic Child Support Obligation from the Schedule is \$667 for two children. After making all applicable adjustments under Section 9, such as an adjustment

1 for one older child, the Total Child Support Obligation is \$700 and ~~the nonecustodial~~
2 ~~parent's~~ FATHER'S proportionate share is 60%, or \$421. ~~The nonecustodial parent~~
3 FATHER has parenting time with the children a total of 100 days. On Parenting Time
4 Table A, the range of days for this amount of parenting time is from 88 to 115 days. The
5 corresponding adjustment percentage is .161. Multiply the \$667 Basic Child Support
6 Obligation by .161 or 16.1%. The resulting \$107 is subtracted from \$421 (~~the~~
7 ~~nonecustodial parent's~~ FATHER'S proportionate share of the Total Child Support
8 Obligation), adjusting the child support obligation to \$313.
9

10 As the number of parenting time days approaches equal time sharing (143 days and
11 above), certain costs usually incurred only in the ~~eustodial~~ PRIMARY RESIDENTIAL
12 PARENT'S household are assumed to be substantially or equally shared by both parents.
13 These costs are for items such as the child's clothing and personal care items,
14 entertainment and reading materials. If this assumption is rebutted by proof, for example,
15 that such costs are not substantially or equally shared in each household, only Parenting
16 Time Table B must be used to calculate the parenting time adjustment for this range of
17 days. Locate the total number of parenting time days per year in the left columns of
18 "Parenting Time Table B" and select the adjustment percentage from the adjacent
19 column. Multiply the Basic Child Support Obligation determined under Section 8 by the
20 appropriate adjustment percentage. The number resulting from this multiplication then is
21 subtracted from the proportionate share of the Total Child Support Obligation of the
22 parent who exercises parenting time.
23

PARENTING TIME TABLE B	
Number of Parenting Time Days	Adjustment Percentage
143 – 152	.275
153 – 162	.293
163 – 172	.312
173 – 182	.331

24
25
26 **12. EQUAL-CUSTODY PARENTING TIME**
27

28 If the time spent with each parent is essentially equal, the expenses for the children are
29 equally shared and adjusted gross incomes of the parents also are essentially equal, no
30 child support shall be paid. If the parents' incomes are not equal, the total child support
31 amount shall be divided equally between the two households and the parent owing the
32 greater amount shall be ordered to pay what is necessary to achieve that equal share in the
33 other parent's household.
34

35 EXAMPLE: After making all applicable adjustments under Sections 9 and 13, the
36 remaining child support obligation is \$1,500. The parents' proportionate shares of the

1 obligation are \$1,000 and \$500. To equalize the child support available in both
2 households, deduct the lower amount from the higher amount (\$1,000 - \$500 = \$500),
3 then divide the balance in half ($\$500 \div 2 = \250). The resulting amount, \$250, is paid to
4 the parent with the lower obligation.

5
6
7
8 **13. ADJUSTMENTS FOR OTHER COSTS**

9
10 If a parent pays a cost under Section 9.A. or 9.B. (except 9.B.4), deduct the cost from that
11 parent's Proportionate Share of income to arrive at the Preliminary Child Support
12 Amount.

13
14 EXAMPLE: ~~A noncustodial parent FATHER~~ pays for medical insurance through his ~~or~~
15 ~~her~~ employer. This cost is added to the Basic Child Support Obligation pursuant to
16 Section 9.A, then prorated between the parents to arrive at each parent's proportionate
17 child support obligation. Because the cost has already been paid to a third party (the
18 insurance company), the cost must be deducted from ~~the noncustodial parent's~~
19 ~~FATHER'S~~ child support obligation because this portion of the child support obligation
20 has already been paid.

21
22 **14. DETERMINING THE CHILD SUPPORT ORDER**

23
24 ~~UNLESS THE CALCULATION RESULTS IN A NEGATIVE NUMBER, The~~ THE
25 court shall order the ~~noncustodial~~ parent WITH LESS PARENTING TIME to pay child
26 support in an amount equal to his or her proportionate share of the Total Child Support
27 Obligation. The ~~custodial~~ parent RECEIVING CHILD SUPPORT shall be presumed to
28 spend his or her share directly on the children.

29
30 EXAMPLE: On the Schedule, the Basic Child Support Obligation for a Combined
31 Adjusted Gross Income of ~~\$1,5003,120~~ for one child is ~~\$323610~~. To this the court adds
32 ~~\$32-61~~ because the child is over 12 years of age (10% in this example). The Total Child
33 Support Obligation is ~~\$355671~~.

34
35 The father's share is ~~6056%~~ of ~~\$355671~~, or ~~\$213373~~. The mother's share is ~~440%~~ of
36 ~~\$355671~~, or ~~\$142298~~. ~~Custody is granted to the mother and SHE HAS MORE~~
37 ~~PARENTING TIME THAN FATHER. Under~~ the court-approved parenting plan,
38 parenting time will be exercised by ~~the~~ father FOR a total of 100 days per year, resulting
39 in an adjustment of ~~\$52-98~~ (~~\$323-610~~ X 16.1%). After adjusting for parenting time, ~~the~~
40 father's share is ~~\$161-275~~ (~~\$213-373~~ less ~~\$5298~~). ~~The f~~Father shall pay the child support
41 amount of ~~\$161-275~~ per month. The value of ~~the~~ mother's contribution is ~~\$142298~~, and
42 she spends it directly on the child.

43
44 FOR ALL AWARDS, THE CHILD SUPPORT AMOUNT SHALL BE ROUNDED TO
45 THE NEAREST WHOLE DOLLAR. A ROUNDED AMOUNT IS NOT A
46 DEVIATION UNDER SECTION 20.

1
2 IF THE AMOUNT OF CHILD SUPPORT IS LESS THAN THE CURRENT
3 CLEARINGHOUSE FEE, THE COURT SHALL NOT IMPOSE A CHILD SUPPORT
4 AWARD UNLESS A DEVIATED AWARD IS WARRANTED UNDER SECTION 20.
5 IT IS NOT A DEVIATION UNDER SECTION 20 IF AN AWARD IS NOT IMPOSED
6 BECAUSE IT IS LESS THAN THE CLEARINGHOUSE FEE.
7

8
9
10 **15. SELF-SUPPORT RESERVE TEST**

11
12 In each case, after determining the child support order, the court shall perform a ~~SS~~Self-
13 support ~~RR~~Reserve ~~TT~~Test to verify that the ~~noneustodial-PAYING~~ parent is financially
14 able ~~both~~ to pay the child support order and to maintain at least a minimum standard of
15 living, as follows:

16
17 THE SELF-SUPPORT RESERVE SHALL BE AN AMOUNT EQUAL TO ~~Deduct~~ 80%
18 OF THE MONTHLY FULL-TIME EARNINGS AT THE CURRENT STATE
19 MINIMUM WAGE AT THE TIME OF THE ORDER ~~\$1,115-~~ (the ~~SS~~Self-support
20 ~~Reserve-Reserve~~ amount). DEDUCT THE SELF-SUPPORT RESERVE AMOUNT from
21 the ~~noneustodial-PAYING~~ parent's Adjusted Gross Income, except that the court may
22 deduct from such parent's Adjusted Gross Income for purposes of the ~~Self~~Self-support
23 ~~Reserve-Reserve Test-Test~~ only, court-ordered arrears on child support for children of
24 other relationships or spousal maintenance, if actually paid. If the resulting amount is less
25 than the child support order, the court may reduce the current child support order to the
26 resulting amount after first considering the financial impact the reduction would have on
27 the ~~eustodial-RECEIVING~~ parent's household. The test applies only to the current child
28 support obligation, but does not prohibit an additional amount to be ordered to reduce an
29 obligor's arrears.
30

31 EXAMPLE ONE: Before applying the ~~Self~~Self-support ~~Reserve-Reserve Test~~Test, the
32 child support order is calculated under the guidelines to be ~~\$253492~~. The adjusted gross
33 income of the ~~noneustodial-PAYING~~ parent is ~~\$1,2501,820 AT A MINIMUM WAGE~~
34 OF \$10.50 PER HOUR THE SELF SUPPORT RESERVE AMOUNT IS \$1,456 (\$10.50
35 x 40 HOURS x 52 WEEKS = \$21,840 ÷ 12 months = \$1,820 x 80% = \$1,456).
36 Subtracting the self-support reserve amount of ~~\$1,115-1,456~~ from the ~~noneustodial~~
37 PAYING parent's adjusted gross income of ~~\$1,250-1,820~~ leaves ~~\$135364~~. Because this
38 resulting amount is less than the ~~\$253492~~ child support order, the court may reduce the
39 child support order to the resulting amount. However, before making any reduction, the
40 court shall examine the self-support capability of the ~~non-paying~~RECEIVING parent,
41 using the same ~~SS~~Self-sSupport ~~RR~~Reserve ~~TT~~Test applied to the ~~noneustodial-PAYING~~
42 parent.
43

44 ~~In this example,~~EXAMPLE TWO: The ~~non-paying~~RECEIVING parent's proportionate
45 share of the total child support obligation is calculated under the guidelines to be
46 ~~\$233404~~. This parent's Adjusted Gross Income is ~~\$1,1501,487~~. Subtracting the self-

1 support reserve of ~~\$1,115-1,456~~ from the ~~non-paying~~RECEIVING parent's Adjusted
2 Gross Income of ~~\$1,1501,487~~ leaves \$3531. Because this resulting amount is less than
3 the parent's proportionate share of the Total Child Support Obligation, it is evident that
4 both parents have insufficient income to be self-supporting. In this situation, the court has
5 discretion to determine whether and in what amount the child support order (the amount
6 the ~~noneustodial~~PAYING parent is ordered to pay) may be reduced.
7
8
9

10 **16. MULTIPLE CHILDREN, ~~DIVIDED-DIFFERENT CUSTODY PARENTING~~**
11 **PLANS**

12
13 When each parent ~~is granted~~EXERCISES physical custody~~MORE THAN HALF OF~~
14 THE PARENTING TIME WITH~~of~~ at least one of the parties' children, each parent is
15 obligated to contribute to the support of all the children. However, the amount of current
16 child support to be paid by the parent having the greater child support obligation shall be
17 reduced by the amount of child support owed to that parent by the other parent.
18

19 EXAMPLE: (For simplicity, this example does not consider parenting time.) Combined
20 Adjusted Gross Income is \$3,000 per month. Father's gross income is \$1,000 per month
21 (33.3%) and he has ~~custody~~MORE THAN HALF OF THE TIME WITH ~~of~~ one child.
22 Mother's gross income is \$2,000 per month (66.6%) and she has ~~custody~~MORE THAN
23 HALF OF THE TIME WITH THE OTHER ~~of~~ two children.
24

25 Prepare a Parent's Worksheet to determine child support for children in the mother's
26 household. Locate the Combined Adjusted Gross Income figure of \$3,000 on the
27 Schedule. Select the child support figure in the column for the two children in this
28 household, \$857. ~~The F~~father's share is 33.3% of \$857, or \$285.
29

30 Prepare a Parent's Worksheet to determine child support for the child in the father's
31 household. Locate the Combined Adjusted Gross Income figure of \$3,000. Select the
32 child support figure in the column for the one child in this household, \$592. ~~The~~
33 mother's share is 66.6% of \$592, or \$394.
34

35 ~~The m~~Mother is obligated to pay ~~the~~ father \$394 for child support. This amount is
36 reduced by the \$285 obligation owed by the father to the mother. Thus, ~~the~~ mother must
37 pay \$109 per month.
38

39 WHEN THE PARTIES HAVE CHILDREN WITH DIFFERENT PARENTING PLANS
40 AND ONE PARENT DOES NOT HAVE MORE THAN HALF OF THE PARENTING
41 TIME WITH ANY OF THE CHILDREN, PREPARE ONLY ONE WORKSHEET. TO
42 DETERMINE THE PARENTING TIME COST ADJUSTMENT FOR THE PARENT
43 WHO DOES NOT HAVE MORE THAN HALF OF THE PARENTING TIME, USE
44 AN AVERAGE OF THE TOTAL NUMBER OF PARENTING DAYS. ADD THE
45 TOTAL AMOUNT OF PARENTING DAYS FOR EACH CHILD. DIVIDE THAT
46 NUMBER BY THE TOTAL NUMBER OF CHILDREN.

1
2 EXAMPLE: THE PARTIES HAVE TWO MINOR CHILDREN, ONE WHO LIVES
3 WITH MOTHER FULL-TIME AND ONE WHO SPLITS TIME EQUALLY
4 BETWEEN PARENTS. PREPARE ONE WORKSHEET. WHEN ENTERING THE
5 PARENTING TIME COST ADJUSTMENT FOR FATHER, DIVIDE FATHER'S
6 TOTAL NUMBER OF PARENTING DAYS FOR BOTH CHILDREN, 182, BY THE
7 TOTAL NUMBER OF CHILDREN, TWO (2). THUS, FATHER'S PARENTING TIME
8 COST ADJUSTMENT WOULD BE CALCULATED FOR 91 DAYS.
9

10
11
12
13 **17. CHILD SUPPORT ASSIGNED TO THE STATE**

14
15 If child support has been assigned to the state under Arizona Revised Statutes Section
16 46-407, the obligation of a parent to pay child support shall not be offset by child support
17 arrearages that may be owed to that parent.
18

19 **18. TRAVEL EXPENSES ASSOCIATED WITH PARENTING TIME**

20
21 The court may allocate travel expenses of the child associated with parenting time in
22 cases where one-way travel exceeds 100 miles. In doing so, the court shall consider the
23 means of the parents and may consider how their conduct (such as a change of residence)
24 has affected the costs of parenting time. To the extent possible, any allocation shall
25 ensure that the child has continued contact with each parent. A parent who is entitled to
26 receive reimbursement from the other parent for allocated parenting time expenses shall,
27 upon request of the other parent, provide receipts or other evidence of payments actually
28 made. The allocation of expenses does not change the amount of the child support
29 ordered.
30

31 **19. GIFTS IN LIEU OF MONEY**

32
33 Once child support has been ordered by the court, the child support is to be paid in
34 money. Gifts of clothing, etc. in lieu of money are not to be offset against the child
35 support order except by court order.
36

37 **20. DEVIATIONS**

38
39 A. The court shall deviate from the guidelines, i.e., order child support in an amount
40 different from that which is provided pursuant to these guidelines, after
41 considering all relevant factors, including those set forth in Arizona Revised
42 Statutes Section 25-320, and applicable case law, only if all of the following
43 criteria are met:

- 44
45 1. Application of the guidelines is inappropriate or unjust in the particular
46 case,

2. The court has considered the best interests of the child in determining the amount of a deviation. A deviation that reduces the amount of child support paid is not, by itself, contrary to the best interests of the child,
3. The court makes written findings regarding 1. and 2. above in the Child Support Order, Minute Entry or Child Support Worksheet,
4. The court shows what the order would have been without the deviation, and
5. The court shows what the order is after deviating.

B. The court may deviate from the guidelines based upon an agreement of the parties only if all of the following criteria are met:

1. The agreement is in writing or stated on the record pursuant to Rule 69, Arizona Rules of Family Law Procedure (*ARFLP*).
2. All parties have entered into the agreement with knowledge of the amount of child support that would have been ordered under the guidelines but for the agreement,
3. All parties have entered into the agreement free of duress and coercion, and
4. The court complies with the requirements of Section 20.A.

In cases with significant disparity of income between the ~~custodial and noncustodial~~ parent~~s~~, a deviation may be appropriate.

21. THIRD-PARTY CARE-GIVERS

When a child lives with a third-party caregiver by virtue of a court order, administrative placement by a state agency or under color of authority, the third-party caregiver is entitled to receive child support payments from each parent on behalf of the child. WHEN CALCULATING THE AMOUNT OF CHILD SUPPORT TO BE AWARDED TO A THIRD-PARTY CAREGIVER, CONSIDER THE THIRD-PARTY CAREGIVER'S EXPENSES UNDER SECTION 9, BUT NOT THE THIRD-PARTY CAREGIVER'S INCOME.

EXAMPLE: THE PARTIES HAVE ONE CHILD TOGETHER WHO IS LIVING WITH A THIRD-PARTY CAREGIVER. MOTHER HAS AN ADJUSTED GROSS INCOME OF \$2,500 PER MONTH AND FATHER HAS AN ADJUSTED GROSS INCOME OF \$2,000 PER MONTH. ADD BOTH PARENTS' INCOME TOGETHER FOR A TOTAL ADJUSTED GROSS INCOME OF \$4,500 PER MONTH. THE

1 TOTAL BASIC SUPPORT OBLIGATION FOR ONE CHILD WOULD BE \$817. THE
2 THIRD-PARTY CAREGIVER PAYS \$500 PER MONTH FOR MEDICAL
3 INSURANCE. PLACE THE \$500 AMOUNT AS AN ADDITIONAL CHILD
4 SUPPORT OBLIGATION UNDER THE THIRD-PARTY COLUMN. THE PARENTS
5 HAVE NO RECOGNIZED EXPENSES UNDER SECTION 9. FATHER SHOULD BE
6 ORDERED TO PAY THE CAREGIVER \$585 PER MONTH AND MOTHER
7 SHOULD BE ORDERED TO PAY THE CAREGIVER \$732 PER MONTH.
8
9
10
11
12
13

14 **22. COURT'S FINDINGS**

15
16 The court shall make findings in the record as to: Gross Income, Adjusted Gross Income,
17 Basic Child Support Obligation, Total Child Support Obligation, each parent's
18 proportionate share of the child support obligation, and the child support order.
19

20 The findings may be made by incorporating a worksheet containing this information into
21 the file.
22

23 If the court attributes income above minimum wage income, the court shall explain the
24 reason for its decision.
25

26 The child support order shall be set forth in a sum certain and start on a date certain. A
27 new child support order shall be filed upon any change in the amount or due date of the
28 child support obligation.
29

30
31 **23. EXCHANGE OF INFORMATION**

32
33 The court shall order that every twenty-four months, financial information such as tax
34 returns, financial affidavits, and earning statements be exchanged between the parties.
35

36 Unless the court has ordered otherwise, at the time the parties exchange financial
37 information, they shall also exchange residential addresses and the names and addresses
38 of their employers.
39

40 **24. MODIFICATION**

41
42 A. Standard Procedure

43
44 Pursuant to Arizona Revised Statutes Sections 25-327 and 25-503, either parent or
45 the state Title IV-D agency may ask the court to modify a child support order
46 upon a showing of a substantial and continuing change of circumstances.

1
2 B. Simplified Procedure
3

4 Either parent or the state Title IV-D agency may request the court to modify a
5 child support order if application of the guidelines results in an order that varies
6 15% or more from the existing amount. A fifteen percent variation in the amount
7 of the order will be considered evidence of substantial and continuing change of
8 circumstances. A request for modification of the child support amount must be
9 accompanied by a completed and sworn "Parent's Worksheet for Child Support
10 Amount," and documentation supporting the incomes if different from the court's
11 most recent findings regarding income of the parents. If the party requesting the
12 modification is unable to provide documentation supporting the other party's
13 income, the requesting party shall indicate that the income amount is
14 attributed/estimated and state the basis for the amount listed. The state Title IV-D
15 agency may submit a parent's worksheet.

16
17 The simplified procedure also may be used by either parent or the state Title IV-D
18 agency to modify a child support order to assign or alter the responsibility to
19 provide medical insurance for a child who is subject of a child support order. A
20 modification of the medical assignment or responsibility does not need to vary by
21 15% or more from the existing amount to use the simplified procedure.
22

23 A copy of the request for modification of child support and the "Parent's
24 Worksheet for Child Support Amount," including supporting documentation,
25 showing that the proposed child support amount would vary 15% or more from
26 the existing child support order shall be served on the other parent, or on both
27 parents if filed by the state Title IV-D agency, pursuant to Rule 27, Arizona Rules
28 of Family Law Procedure (*ARFLP*).
29

30 If the requested modification is disputed, the parent receiving service must request
31 a hearing within 20 days of service. If service is made outside the state, as
32 provided in Rule 42, *ARFLP*, the parent receiving service must request a hearing
33 within 30 days of service.
34

35 A party requesting a hearing shall file a written request for hearing accompanied
36 by a completed and sworn "Parent's Worksheet for Child Support Amount."
37 Copies of the documents filed, together with the notice of hearing, shall be served
38 on the other party and, if appropriate, the state Title IV-D agency by first class
39 mail not less than ten judicial days prior to the hearing.
40

41 Upon proof of service and if no hearing is requested within the time allowed, the
42 court will review the request and enter an appropriate order or set the matter for
43 hearing.
44

45 If any party requests a hearing within the time allowed, the court shall conduct
46 such hearing. No order shall be modified without a hearing if one is requested.

1
2 The notice provision of Rule 44, *ARFLP*, does not apply to this simplified
3 modification procedure.

4
5 A request to modify child support, request for a hearing and notice of hearing,
6 "Parent's Worksheet for Child Support Amount" and child support order filed or
7 served pursuant to this subsection must be made using forms approved by the
8 Arizona Supreme Court or substantially similar forms.

9
10 Approved forms are available from the Clerk of the Superior Court.

11
12
13
14 **25. EFFECT OF CESSATION OF CHILD SUPPORT FOR ONE CHILD**

15
16 If child support for more than one child was ordered under these guidelines and thereafter
17 the duty to support one of the children stops, the order is not automatically reduced by
18 that child's share. To obtain a modification to the child support order, a request must be
19 made in writing to the court to recalculate the child support obligation pursuant to these
20 guidelines. The procedure specified in Section 24 may be used for this purpose.

21
22 **EXAMPLE:** The child support order for Combined Adjusted Gross Income of \$1,500,
23 with four children is \$621. One child graduates from high school and turns 18. In
24 determining the new child support amount, do not deduct one-fourth of the order for a
25 new order of \$466. Instead, determine a new child support order by applying the
26 guidelines. (NOTE: This method varies from the one used in Section 9.B.4).

27
28 **26. INCOME AND BENEFITS RECEIVED BY OR ON BEHALF OF CHILD**

29
30 A. Income earned or money received by a child from any source other than court-
31 ordered child support shall not be counted toward either parent's child support
32 obligation except as stated herein. However, income earned or money received by
33 or on behalf of a person for whom child support is ordered to continue past the
34 age of majority pursuant to Arizona Revised Statute Sections 25-320.B and
35 25-809.F may be credited against any child support obligation.

36
37 B. Benefits, such as Social Security Disability or Insurance, received by a **eustodial**
38 parent on behalf of a child, as a result of contributions made by the **OTHER**
39 parent **WHO IS ORDERED TO PAY** **paying** child support shall be credited as
40 follows:

41
42 1. If the amount of the child's benefit for a given month is equal to or greater
43 than the paying parent's child support obligation, then that parent's
44 obligation is satisfied.

- 2. Any benefit received by the child for a given month in excess of the child support obligation shall not be treated as an arrearage payment nor as a credit toward future child support payments.
- 3. If the amount of the child's benefit for a given month is less than the parent's child support obligation, the parent shall pay the difference unless the court, in its discretion, modifies the child support order to equal the benefits being received at that time.

C. Except as otherwise provided in section 5.bB, any benefits received directly, and not on behalf of a child, by either the ~~custodial~~-parent RECEIVING CHILD SUPPORT or the parent paying child support as a result of his or her own contributions, shall be included as part of that parent's gross income.

27. FEDERAL TAX EXEMPTION FOR DEPENDENT CHILDREN

All the federal and state tax exemptions applicable to the minor children shall be allocated between the parents as they agree, or, in the absence of their agreement, in a manner that allows each parent to claim allowable federal dependency exemptions proportionate to adjusted gross income in a reasonable pattern that can be repeated in no more than 5 years. This may be done by allocating claiming of the children or claiming of specific years. To implement this provision, the proportionate share of the combined adjusted gross income of both parents is rounded to the nearest fraction with a denominator no larger than 5 (i.e. 1/2, 1/3, 2/3, 1/4, 3/4, 1/5, 2/5, 3/5, 4/5). For illustrative purposes, assume father earns \$60,000 and mother earns \$40,000 of the combined adjusted gross income of \$100,000. Father's share of the combined income is 3/5. If father earned \$30,000 and mother earned \$20,000, then 3/5 would still be the fraction with a denominator of 5 or less that comes closest to father's share of the parents' combined adjusted gross income. The dependency exemption shall therefore be allocated utilizing this fraction. If a parent otherwise entitled to the dependency exemption would derive no tax benefit from claiming it in any given tax year, then the entire exemption for that tax year, and not just the share indicated by the preceding sentence, may be allocated to the parent who would derive a tax benefit for that tax year. An Internal Revenue Service Form 8332 may need to be signed and filed with a parent's income tax return.

The court may deny the right to present or future tax exemption when a history of non-payment of child support exists. The allocation of the exemption may be conditioned upon payment by December 31 of the total court-ordered monthly child support obligation for the current calendar year and any court-ordered arrearage payments due during that calendar year for which the exemption is to be claimed. If these conditions have been met, the ~~custodial~~-parent RECEIVING CHILD SUPPORT will need to execute the necessary Internal Revenue Service form (Form 8332) to transfer the exemption. If the ~~noncustodial~~-PAYING parent has paid the current child support, but has not paid the court-ordered arrearage payments, the ~~noncustodial~~-PAYING parent shall not be entitled to claim the exemption.

1 EXAMPLE: ~~Noneustodial—THE PAYING~~ parent's percentage of gross income is
2 approximately 67% (2/3) and ~~eustodial—THE RECEIVING~~ parent's percentage is
3 approximately 33% (1/3). All payments are current. If there are three children, the
4 ~~noneustodial—PAYING~~ parent would be entitled to claim the exemption for two children
5 and the ~~eustodial—RECEIVING~~ parent would be entitled to claim the exemption for one
6 child. If there is only one child, the ~~noneustodial—PAYING~~ parent would be entitled to
7 claim the child two out of every three years, and the ~~eustodial—RECEIVING~~ parent would
8 claim the child one out of every three years.
9

10 For purposes of this section only, a ~~noneustodial—PAYING~~ parent shall be credited as
11 having paid child support that has been deducted on or before December 31 pursuant to
12 an order of assignment if the amount has been received by the court or clearinghouse by
13 January 15 of the following year.
14

15 **28. CHILD SUPPORT ARREARS**

16
17 A. When setting an amount for a payment on arrears, the court should take into
18 consideration that interest accrues on the principal balance. If the court sets a
19 payment on arrears less than the amount of the accruing monthly interest, the
20 court shall make a finding why the amount is less than the accruing monthly
21 interest. Upon a showing of substantial and continuing changed circumstances,
22 the court may adjust the amount of payment on arrears.
23

24 B. When a current child support obligation terminates, before adjusting the order of
25 assignment to an amount less than the current child support amount and the
26 payment on arrears, the court shall consider the total amount of arrears and the
27 accruing interest, and the time that it will take the obligor to pay these amounts.
28

29 **29. EFFECTIVE DATE AND GROUNDS FOR MODIFICATION**

30
31 A. Except for defaults or as otherwise agreed upon by the parties, all child support
32 orders entered after ~~June 30, 2015~~ MARCH 31, 2018 shall be made pursuant to
33 these guidelines, whether they be original orders or modifications of pre-existing
34 orders, unless the court determines otherwise based on good cause shown. In
35 cases of default, the guidelines in effect at the time of filing the action will be
36 used. The parties may agree to use either the guidelines in effect at the time of
37 filing the action or those in effect at the time the order is entered.
38

39 B. A substantial variance between an existing child support order and an amount
40 resulting from application of the new guidelines may be considered evidence of a
41 substantial and continuing change of circumstances for purposes of a
42 modification. A variance of at least 15% would be evidence of a substantial and
43 continuing change of circumstances.
44

Arizona Commission on Access to Justice

Meeting Date: November 8, 2017	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: CIDVC Project on Remote Ex Parte Protective Order Hearings
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From: Kay Radwanski, AOC staff to CIDVC

Presenters: Judge Carol Scott Berry, chair of the CIDVC Orders, Enforcement and Access Workgroup.

Discussion: The Arizona Commission on Access to Justice had referred this project to the Committee on the Impact of Domestic Violence and the Courts (CIDVC) in 2015. CIDVC is a standing committee of the Arizona Judicial Council. The goal was to provide greater access to justice for victims of domestic violence to seek Orders of Protection from the safety of a hospital or a domestic violence shelter.

Judge Million delegated the project to CIDVC's Orders, Enforcement and Access Workgroup. Workgroup members were asked to develop procedures for using remote access technology to allow domestic violence victims to participate by video in ex parte protective order hearings. During the course of this project, Judge Wyatt Palmer, Graham County, demonstrated this procedure by establishing a remote process between his justice court and the Graham County Safe House.

Judge Berry will present a draft guide for conducting remote ex parte hearings and a guide for safe Internet communications and transfer of documents that recently went before CIDVC for approval. CIDVC will be taking steps to develop a plan to inform courts, advocates, and law enforcement agencies about the guides and to promote use of these procedures.

Recommended motion: Information only.

Remote Petition Process for Order of Protection *Ex Parte* Hearing



1 Advocate

- Plaintiff fills out petition and Plaintiff's Guide Sheet.
- Contact court to request *ex parte* hearing; notify if interpreter needed; **securely*** transmit petition and guide sheet to court.



2 Court

- Judicial Officer reviews the petition; sends it back to Advocate if more information is needed.
- Court schedules time for hearing and, if requested, interpreter.



3 Advocate

- At hearing time, activate video link, with Plaintiff in front of camera and with copy of petition.



4 Court

- Judicial Officer or Clerk swears in Plaintiff.



5 Advocate

- Plaintiff signs petition after being sworn; Advocate transmits copy of signed petition to Court.



6 Court

- Judicial Officer conducts *ex parte* hearing; makes ruling.



7 Advocate

- Terminate video link when the hearing ends.



Remote Petition Process...



8 Court

- If order is granted, transmit to the Advocate copies of the order and packet of documents for service on Defendant.
 - If possible and with Plaintiff's consent, electronically transmit the order to Law Enforcement for prompt service on Defendant.
 - If Defendant is in the sheriff's custody, transmit the order to the Sheriff's Office for service.
- If the order is denied, transmit hearing order to Advocate.
- If set for pre-issuance hearing, transmit hearing order and hearing notice to Advocate.



9 Advocate

- Provide copies to Plaintiff.
- If order has been granted, assist Plaintiff with service.
 - If possible, contact local law enforcement protective order coordinator electronically to notify of court-issued order.
 - If possible, personally contact or visit the local law enforcement agency OP coordinator to ensure service.



10 Law Enforcement

- Receive Order of Protection and other documents for service on Defendant.
- Within seven business days, transmit proof of service to the Court that issued the order.
- Establish a protective order coordinator or contact person to assist advocates and courts in service of orders.
- Establish electronic communication with advocates and courts to ensure expedited service of court-issued orders.



11 Court

- Send protective order and proof of service to the county sheriff (holder of record).

*See "Safe Communications for Remote *Ex Parte* Protective Order Hearings" for information about Internet and document security.

Safe Communications for Remote *Ex Parte* Protective Order Hearings

Courts, law enforcement agencies, and domestic violence service providers that are partnering to offer remote *ex parte* protective order hearings or to expedite service of protective orders all need to be aware of Internet security and the protection of documents that travel back and forth among them.

Protective Order Confidentiality

Rule 7, ARPOP—Public access to case information

For as long as a plaintiff has the ability by law to have a protective order served or unless otherwise ordered by the court, the court must not make publicly available any information regarding the filing for, contents of a petition for, or issuance of a protective order until proof of service of the protective order has been filed with the court. The court may share information about the protective order with the plaintiff, prosecutors, or law enforcement.

Rule 123(d)(3), Rules of the Supreme Court—Protective Orders.

For as long as a plaintiff has the ability by law to have a protective order served or unless otherwise ordered by the court, the custodian shall not make publicly available any information regarding the filing of or contents of a petition for or issuance of a protective order until proof of service of the protective order has been filed with the court. The custodian may permit law enforcement agencies to access these records when necessary to carry out their official responsibilities.

Rule 7, Arizona Rules of Protective Order Procedure, and Rule 123, Rules of the Supreme Court, each require that protective orders be kept confidential and out of public view until the order has been served on the defendant. When courts, law enforcement agencies, and domestic violence service providers team up to make remote *ex parte* hearings or expedited service possible, both Internet and document security need to be considered so that the court rules are followed.

This is **basic** information about Internet and document protection. Each partner should confer with its own IT professionals regarding available methods for ensuring security of its communications on the Internet or encrypting or password protecting documents that move back and forth during the process.

- Use a proprietary network. Ideally, video hearings should be conducted through a network controlled by government agencies (for example, a court and a police department).
- Use a virtual private network (VPN) to conduct a video hearing. If one of the partners is not a government agency, the non-government partner should consult with the court about installation of VPN software on a specific computer at the non-government partner’s location. The computer on which the VPN software installed should be used only for the purpose of conducting video *ex parte*



hearings with the court. VPN is a locked connection that encrypts and decrypts the information that is traveling between the partners.

- An unprotected wireless network within the non-government partner’s facility also poses risk. A wireless network can be protected by MAC (media access control) authentication. This restricts the wireless access point to accept traffic only from devices having their unique identifier registered before use. Consult an IT professional for advice on protecting a wireless network. (Connecting the computer directly to the router using a cable eliminates the wireless risk, provided that the computer’s wireless facility is turned off.)
- Encrypt or password protect documents. Software or ZIP utilities are available that can encrypt files. The recipient of the encrypted file must have a program that can decrypt the protected document. The password or encryption key that is needed to open the document must be sent separately (in another email, by text message, or instant message, for example). Never send the password or key to a password-protected or encrypted document in the email to which the document is attached.
- Provide a link to the files from within Microsoft OneDrive. The “government cloud” OneDrive storage area used by courts and some local governments is encrypted and requires an ID and password for outside access. Providing a user with read-only access keeps the document under your control and prevents downloading or re-sharing.
- Use a file-synchronization service only as a last resort and only when all partners agree that this method is adequately secure. Dropbox is an example of a file-sync service that works with a shareable link. Password protect the files before placing them in the shared location. Never send the password in the same mail as the link to the documents. Confirm with your IT professional that the file-sync service is actually encrypting shared files.



Arizona Commission on Access to Justice

Meeting Date: November 8, 2017	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: In-House Counsel <i>Pro Bono</i> Commission
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From: Kevin Groman, In-House Counsel *Pro Bono* Commission

Presenters: (Same)

Discussion: Mr. Groman will report on the November 6, 2017 meeting of the In-House Counsel *Pro Bono* Commission.

Recommended motion: None.



In-house Counsel Pro Bono Commission

Meeting

November 6, 2017

11:00 AM to 1:30 PM

Hosted by ACC & Lovitt-Touche at 1050 West Washington Street, Suite 201, Tempe, AZ 85281

Goal of Meeting

A year in review, working group report outs, and future impact the IHCPBC can have.

AGENDA

<i>Agenda Item</i>	<i>Presenter</i>	<i>Est. Time</i>
1. Welcome and General Overview	Kevin Groman	[11:00-11:15]
2. Access to Justice Commission Update	Judge Winthrop	[11:15-11:30]
3. Working Group Report Outs:	(10 min each)	[11:35-1:00]
a. Library	Mona Stone	
b. Clinics	Dan Christensen	
c. Mediation	Rob Itkin/Dana Corbo	
d. Wills For Heroes	Debra Sirower	
e. Startups – The Armory	Mary Beth Orson/Phil Potter	
f. Education	Kevin Groman/Kevin Ruegg	
g. Diversity	Kevin Groman/Ray English	
h. Refugee – AZ Refugee Coalition	Kevin Groman	
4. General Discussion about Gaining More Traction	All	[1:00-1:15]
a. Working Group Members/Meeting		
b. General Awareness		
c. Next Steps		
5. New Opportunities	(5 min each)	[1:15-1:30]
a. Dream Center	Maggie Osborn	
b. Pitch for a future CLE on: Representing Children in Asylum and more	Larry Levi Sandigo	
c. Arizona Voice for Crime Victims	Steve Twist	
6. Next Meetings		
7. Adjournment		[1:30]

Arizona Commission on Access to Justice

Meeting Date: November 8, 2017	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: Summer Dalton, Manager of the eCourt Services Unit

Presenters: (Same)

Discussion: Ms. Dalton will update the Commission on the progress of online dispute resolution software.

Recommended motion: None.

Arizona Commission on Access to Justice

Meeting Date: November 8, 2017	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 October 26, 2017. The presenter will discuss strategic planning focus:

- **R-16-0040 – Mandatory Eviction Action Forms:** The workgroup posted the notices and pleadings as recommended forms to the redesigned Judicial Branch’s eviction webpage, and are tracking the number of webpage hits to determine whether they provide added value to users.
- The workgroup corrected the Legal Info Sheet on Section 8 Housing. The Legal Info Sheets are being translated into Spanish.
- 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: November 8, 2017	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
- R-17-0016 – Computing Time in Eviction Actions
- R-17-0011 – In-House Counsel clean up
- R-16-0047 – Secondary Registration Requirement for In-House Counsel

Recommended motion: None.

Arizona Commission on Access to Justice

Meeting Date: November 8, 2017	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.
- The workgroup completed the Commission's Annual Report.

Recommended motion: None.

"The American ideal is not for some justice, it is as the Pledge of Allegiance says, 'Liberty and justice for all,' or as the Supreme Court pediment has it, 'equal justice.' I've always thought that's somewhat redundant. Can there be justice if it is not equal? Can there be a just society when some do not have justice? Equality, equal treatment is perhaps the most fundamental element of justice."

--Justice Antonin Scalia, LSC 40th Anniversary Conference, 2014

Our economy has improved, but equal access to meaningful civil justice remains a challenge for many Arizonans.

Any of us may face a legal issue involving employment, housing, health care, family law, elder abuse and domestic violence, consumer protection or access to government benefits. But, for more than one million Arizonans living at or below the federal poverty level, having access to a lawyer -- or at least useful legal information -- can make the critical difference in keeping a job, having access to food, shelter and medical care, or being protected from financial fraud or domestic violence. Members of vulnerable populations such as veterans, the disabled and the elderly face similar challenges.

The Arizona Commission on Access to Justice's third annual report details the steps taken over the last three years to increase access to meaningful civil justice in Arizona, particularly for those who choose or must try to represent themselves without a lawyer. Here's a link to that report:

<http://www.azflse.org/A2JCommission2017>

Using technology tools to access legal information and the court system is critical. A new Arizona-specific virtual legal information resource center, AzCourtHelp, <http://www.azcourthelp.org/> provides critical self-help resources. It features access to court calendars, video tutorials and webinars, links to court forms and simplified instructions for use, links to legal aid organizations, and extensive FAQs organized by case type/legal issue. Useful information about every court in this state is provided, including virtual video tours and driving directions. The site is ADA compliant, and provides language translation as well. There is even a “live chat” feature that allows free interaction with a law librarian.

In 2018, an exciting new pilot project will launch in multiple Arizona courts, allowing litigants to manage and resolve their civil disputes via an on-line platform, accessible through a PC, a tablet or a mobile phone. If successful, people could resolve legal matters anytime, day or night, outside of “regular” business hours, and without having to leave work, find transportation or arrange child care. States currently offering this option report a 40% increase in the number of individuals who are able to participate in their civil court case. This option may soon be coming to a limited jurisdiction or superior court near you.

Even with these great web resources, having access to a lawyer remains the critical difference in successfully resolving a civil legal issue. Our 70 or so legal aid lawyers in Arizona cannot begin to assist all of those eligible for legal aid. Many volunteer lawyer opportunities exist. The Arizona Bar Foundation’s website is a great place to find them: <http://probono.azbf.org> Additionally, check out the volunteer lawyer programs affiliated with Community Legal Services, <http://www.clsaz.org/vlp.html>; Southern Arizona Legal Aid, <http://www.vlparizona.org/>; and DNA-Peoples Legal Services, <https://www.dnalegalservices.org/> and volunteer for an opportunity in your community.

Not able to volunteer right now? You can donate to any of several non-profits that provide legal services to the poor in Arizona. You'll not only be helping others, you'll be helping yourself! Arizona provides a state income tax credit for these donations, up to \$400 for a single filer and \$800 for those filing jointly. You have until April 15 to make your donation, and you can choose which taxable year you want to use. This tax credit is separate, and in addition to, tax credits available for donations made to benefit schools and foster care organizations. Why wait? Go to <http://www.azflse.org/legalaid> to get a list of the qualifying organizations and to easily complete your tax credit online.

Our justice system belongs to all of us. Let's continue to do what we can to make sure that meaningful access to the courts remains a reality.

ACCESS TO JUSTICE EDITORIAL CALENDAR

<p align="center"><u>January</u></p> <p>Mental Health Awareness Month Human Trafficking Awareness Month</p>	<p align="center"><u>February</u></p> <p>Teen Dating Violence Awareness Gang Prevention Awareness Month</p>	<p align="center"><u>March</u></p> <p>Nat'l Youth Violence Prevention Week Women's History Month National Disabilities Month</p>	<p align="center"><u>April</u></p> <p>Sexual Assault Awareness Month Child Abuse Prevention Month Volunteer Week Nat'l Crime Victims Week Access to Justice Month</p>
<p align="center"><u>May</u></p> <p>Law Day Public Service Awareness Week National Mental Health Month Foster Care Month Drug Court Month</p>	<p align="center"><u>June</u></p> <p>(Judicial Conference) LGBT Pride Month</p>	<p align="center"><u>July</u></p> <p>Fourth of July (freedom, liberty) Probation week</p>	<p align="center"><u>Aug</u></p> <p>Caregivers Month</p>
<p align="center"><u>September</u></p> <p>Start Charitable Tax Credit Campaign Runaway Homeless Youth Act Constitution Day (9/17) National Alcohol & Drug Addiction Recovery Month</p>	<p align="center"><u>October</u></p> <p>Disability Employment Awareness Month Domestic Violence Awareness Month Crime Prevention Awareness Month Conflict Resolution Day (3rd Thurs)</p>	<p align="center"><u>November</u></p> <p>Veterans Day Adoption Awareness Month</p>	<p align="center"><u>December</u></p> <p>Bill of Rights Day (12/15)</p>

ACCESS TO JUSTICE EDITORIAL CALENDAR

This document is used as a planning tool to source ideas and pitch stories to state and local news media about relevant topics.

For example: In advance of Veterans' Day, we would pitch a story about restorative justice through Veterans' Courts. An effective pitch would include a date and time to observe court, a Veteran who is willing to be interviewed, a judge who is willing to be interviewed and (ideally) a community service provider willing to be interviewed.

Arizona Commission on Access to Justice

Meeting Date: November 8, 2017	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

Presenters: (Same)

Discussion: Dr. Ruegg will inform the members about the Google Analytics and demonstrate the website's new features.

Recommended motion: Informational only.

AZCourtHelp Website Updates

Current Projects

- Developing a system for courthouses, with little to no website presence, to be able to upload their forms and information to the site
 - Sample Page – <http://www.azcourthelp.org/somerton-justice>
- Expansion of eviction information and resources – <http://www.azcourthelp.org/forms/eviction>
 - AOC's eviction worksheets - <http://azcourthelp.org/browse-by-topic/eviction/tenant-information/tenant-eviction-resources>
- Striving for more user feedback; installing a component into each article that allows the user to comment on what improvements to the content they would like to see - <http://azcourthelp.org/faq/criminal-appeals-in-limited-jurisdiction-courts/460-pretrial>
- 2 Powtoons, *Cans & Cannots of Court Help* and *Going to Court* are complete in Spanish, finalizing English versions

Completed Projects

- 2 new chat operators – Danae Figueroa from Yuma Law Library and Craig Robinson from Yavapai Law Library
- Chat hours have been altered to accommodate the busiest hours of website 9:00am – 2:00pm
- 39 Courthouses visited
 - Still populating the virtual tours online
- Spanish FAQ fully populated
- Fillable Fee Waiver & Deferral forms - <http://azcourthelp.org/forms/fwd-forms/fwd-county>
- Parenting Plans are populated - <http://azcourthelp.org/browse-by-topic/custody-information/parenting-plans>



Google Analytic Results
Jan. 11, 2017 to Oct 24, 2017

<i>Sessions</i>	<i>Users</i>	<i>Page views</i>	<i>Hits</i>
36,600	28,835	134,385	2,015,775

Devices Used
<i>Desktop – 57%</i>
<i>Mobile - 38%</i>
<i>Tablet – 5%</i>
Acquisition
<i>Referral – 38%</i>
<i>Organic Search – 37%</i>
<i>Direct – 24%</i>
<i>Social Media – 1%</i>

Top Website Referrals
1 – <i>AZLawHelp.org</i>
2 – <i>AZCourts.gov</i>
3 – <i>Superiorcourt.maricopa</i>
4 – <i>Co.greenlee.az.us</i>
5 – <i>Mohavecourts.com</i>
Most Popular Times/Days
10:00am – 2,739
11:00am – 2,705
1:00pm – 2,742
Tuesday – 6,926
Wednesday – 6,704

Top 10 Cities	
City	Sessions
Phoenix	10,613
Tucson	2,145
Los Angeles	1,142
Mesa	1,139
Kingman	815
Scottsdale	702
Tempe	698
Glendale	542
Chandler	540
Flagstaff	540

Top Four Pages Viewed
6,486 views



1) Form Finder

3,615 views



2) FAQ: PreTrial Info

3,075 views



3) Browse By Topic

2,998 views



4) Court Records

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



Google Analytic Results
 Sept. 25, 2017 to Oct 24, 2017

<i>Sessions</i>	<i>Users</i>	<i>Page views</i>	<i>Hits</i>
7,020	5,898	21,415	321,225

<p>Devices Used <i>Desktop – 50%</i> <i>Mobile - 45%</i> <i>Tablet – 5%</i></p> <p>Acquisition <i>Organic Search – 46%</i> <i>Referral – 35%</i> <i>Direct – 18%</i> <i>Social Media – 1%</i></p>
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<p>Top Website Referrals 1 – <i>AZLawHelp.org</i> 2 – <i>AZCourts.gov</i> 3 – <i>Courts.yavapai.us</i> 4 – <i>Co.apache.az.us</i> 5 <i>Superiorcourt.maricopa.gov</i></p> <p>Most Popular Times/Days 9:00am – 540 11:00am – 533 1:00pm – 528 Tuesday – 1,463 Monday – 1,428</p>

Top 10 Cities	
City	Sessions
Phoenix	1,871
Tucson	396
Mesa	267
Los Angeles	157
Tempe	144
Scottsdale	123
Chandler	114
Gilbert	95
Glendale	92
Yuma	78

Top Four Pages Viewed
 1,120 views



1)FAQ: PreTrial Info

951 views



2) Form Finder

613 views



3) Court Records

612 views



4) Maricopa Court Records

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

Website Referrals

June 1, 2017 to June 30, 2017 vs. September 25, 2017 to October 24, 2017

Changes that took place in this time frame:

- Mailing campaign of posters and postcards to the courthouses
- A link was placed prominently on the homepage of AZLawHelp
- Further outreach done to each Superior Court and several lower jurisdictions



	146.47% ▲ 2,445 vs 992
1. azlawhelp.org	
Sep 25, 2017 - Oct 24, 2017	1,243 (50.84%)
Jun 1, 2017 - Jun 30, 2017	146 (14.72%)
% Change	751.37%
2. azcourts.gov	
Sep 25, 2017 - Oct 24, 2017	550 (22.49%)
Jun 1, 2017 - Jun 30, 2017	484 (48.79%)
% Change	13.64%

Arizona Commission on Access to Justice

Meeting Date: November 8, 2017	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 Inter-Governmental Workgroup
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From: Judge Lawrence Winthrop, Chair

Presenters: (Same)

Discussion: Judge Winthrop will discuss the strategic planning focus.

Recommended motion: None.

Arizona Commission on Access to Justice

Meeting Date: November 8, 2017	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 Dr. Kevin Ruegg, Arizona Bar Foundation

Presenters: (Same)

Discussion: The workgroup will meet on November 16, 2017.

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 legal needs study.

Recommended motion: None.

Arizona Commission on Access to Justice

Meeting Date: November 8, 2017	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: Report from County Bar Associations
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From: Dr. Susan Trentham, Pima County Bar Association, Allister Adel, Maricopa County Bar Association

Presenters: (Same)

Discussion: Dr. Trentham and Ms. Adel will discuss the work of their respective Bar Foundations.

Recommended motion: None.

About The Pima County Bar Foundation



MISSION

The Pima County Bar Foundation (PCBF), a 501(c)(3) charitable, nonprofit organization, seeks to enhance access to justice, reward innovation in legal services and educational outreach, promote the highest ideals of professionalism and public service, and support the community endeavors of the Pima County Bar Association.

CASE STATEMENT

The PCBF's main premise is that legal services should be available to everyone, and that we can help make that happen by supporting the community endeavors of the PCBA, as well as our own program initiatives. We engage the public in our work through educational outreach, opportunities to give, and celebrations of our mutual success. We welcome the participation of all who care about our community.

PURPOSE

The purpose for which this non-profit organization is organized is to serve the Southern Arizona community by:

1. Promoting access to justice and legal assistance through the funding and provision of legal services to the indigent, lower income and other underserved members of society
2. Supporting and providing educational outreach to the public
3. Promoting the highest ideals of professionalism, public service, and access to the legal system
4. Providing support to charitable community endeavors identified by the Foundation in collaboration with the Pima County Bar Association

The PCBF's programs, services, and activities can be classified within four categories that each correspond with the purposes above.

A. Pro Bono Legal Assistance and Services

The PCBF's main purpose is to promote access to justice and legal assistance through the funding and provision of legal services in Southern Arizona.

- The free, annual **LAW DAY** "Meet-a-Lawyer" Legal Clinic
- Free, monthly, Saturday afternoon, public presentations on **Adult Guardianship and Conservatorship** for self-litigants
- Yearly **funding opportunities** to other charitable, tax-exempt nonprofit organizations with pro bono legal services projects (once fundraising goals enable this future foundation activity)

B. Legal Informational/Educational Outreach

Providing information about the legal processes and raising public awareness of the legal resources and services available in Southern Arizona is an important role in making legal services more accessible to more individuals. We participate in existing, "information distribution" events and seek out new public forums to distribute information and raise public awareness of local, legal services.

- The twice-a-year "**Community Court Night**" event in collaboration with the Arizona Superior Court in Pima County
- **Miscellaneous public events, fairs, & legal clinics** in the community that enable the distribution of information about local, legal resources, such as the annual **legal clinics for veterans and their families**, hosted by the Arizona Disabled American Veterans and the Arizona Disabled Veterans Foundation.

C. Promotion of Attorney Professionalism, Public Service & Contributions

A third category of Foundation activities includes efforts to promote volunteerism, service, and contributions via time, expertise, and financial donations that ultimately help Southern Arizonans in need of legal help and services. After all, assistance and services cannot be offered without the professional involvement, expertise, support and contributions of local, legal professionals in our area. In addition to promoting volunteer involvement, there is the presentation of three, annual related awards:

- **John Hawkins Professionalism Award** (3L UA law student)
- **Robert Hooker Criminal Justice Award** (criminal law atty)
- **NEW! "Excellence in Public Service" Award** (to be presented at the 2017 Skyline Affair)

D. Collaborative, Charitable Endeavors with PCBA

The final category includes activities that reflect the PCBF's role as "the charitable arm of the bar association," with two, existing community-oriented projects that fall within this category:

- **Lawyers for Literacy (LFL)** program
- **Legal Community Against Hunger (LCAH)** project

Any and all donations to the Foundation and its activities are greatly appreciated!

Donations can be made to: PCBF,
177 N. Church Avenue, #101, Tucson, AZ 85701

Questions? Call us at (520) 623-8258.

Arizona Commission on Access to Justice

Meeting Date: November 8, 2017	Type of Action Requested: <input type="checkbox"/> Formal action or request <input checked="" type="checkbox"/> Information only <input type="checkbox"/> Other	Subject: <i>Pro Bono</i> Survey from the American Bar Association
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From: John Phelps
Presenters: (Same)

Discussion: Mr. Phelps will discuss the American Bar Association’s *pro bono* survey. Some significant points:

- 38.5% of Arizona attorneys report doing zero *pro bono* in the previous year.
- 72.8% of Arizona attorneys report doing less than 50 hours in the previous year.
- Attorneys 29 and younger do the least amount of *pro bono*.
- Attorneys over 65 do the most amount of *pro bono*.
- Women do more *pro bono* than men earlier in their career. Men take the lead as they age.
- The larger the firm, the more *pro bono* done by attorneys.
- These 3 practice areas had the most *pro bono* done:
 1. Civil Rights
 2. Debt Collection
 3. Immigration
- Of those reporting *pro bono* in 2016, nearly half (48%) did limited scope.
- The most common *pro bono* recipients were (ranked): 1. Single parents, 2. Ethnic minority, 3. Non- or limited English speaker, and 4. Elderly
- 73% of responding attorneys said the *pro bono* case took the expected amount of time.
- Nearly 50% of attorneys said *pro bono* was “very important”. 6.6% said it was “very unimportant”.
- When asked what motivated attorneys to do *pro bono*, the overwhelming top answer was “helping people in need”.
- Top three reasons attorneys would become more engaged in *pro bono*: 1. CLE Credit, 2. Judge solicits participation, and 3. Limited scope representation opportunities
- Top three reasons attorneys felt limited their *pro bono* engagement: 1. Lack of time, 2. Family or personal obligations, and 3. Lack of skills in areas needed by *pro bono* clients

Recommended motion: None.

SUPPORTING JUSTICE IN ARIZONA: A Report on the Pro Bono Work of Arizona's Lawyers

June 2017

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE
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The American Bar Association’s Standing Committee on Pro Bono and Public Service (referred to as “the Committee”) is charged with the responsibility to review, evaluate and foster development of pro bono publico programs and activity by law firms, bar associations, corporate law departments and other legal practitioners. The Committee works to analyze and define the appropriate scope, function and objectives of pro bono publico programs; to establish an interest in such programs; and to review and propose policy that has an impact on the ability of lawyers to provide pro bono service. Toward that end, the Committee has conducted three national pro bono empirical studies. In 2014 the Committee piloted the survey at the state level in Nebraska. Based on the success of this model, the Committee conducted this survey in 24 states in 2017. Presenting and analyzing the results of this state-level data collection, this report contains the results for Arizona. A national report on the aggregate findings from the 24 participating states is forthcoming.

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Section 1: Amount and Type of Pro Bono in 2016

When did attorneys most recently provide pro bono?

All respondents were asked to indicate when they most recently provided pro bono service. Response options were as provided below. Most (66.9 %) had indicated that they provided pro bono in 2016, while 14.8% indicated they had never provided pro bono service.

Year of most recent pro bono	Number	Percent	Valid Percent
2016	914	66.9	66.9
2015	67	4.9	4.9
2014	38	2.8	2.8
2013	20	1.4	1.4
2012	21	1.5	1.5
2011	14	1	1
2010	12	0.9	0.9
2009	6	0.4	0.4
2008	9	0.7	0.7
2007	6	0.5	0.5
2006	4	0.3	0.3
2005 or earlier	54	4	4
I have not yet provided pro bono service	202	14.8	14.8
Total	1366	100	100

Notable trends for year of recent pro bono:

- **GENDER:** Female attorneys were slightly more likely to indicate they had never provided pro bono: 18.1% compared to 12.8% of the male attorneys. Meanwhile, male attorneys were more likely to indicate that their most recent pro bono experience was in 2016: 70.8% compared to 60.2% of the female attorneys.
- **AGE:** There were notable age trends, with older attorneys being more likely to have indicated that their most recent pro bono experience was in 2016 and less likely to have indicated that they had never done pro bono. For example, among the 29 or younger group, 44.6% had done pro bono most recently in 2016, compared to 82% in the 70-74 age category.
- **PRACTICE SETTING:** Attorneys in private practice were significantly more likely to indicate that their most recent pro bono experience was in 2016 (77.4%) compared to attorneys in other practice setting (46.9% in the corporate setting, 23.2% in the government setting, 50% in the non-profit setting)

How many hours of pro bono were provided in 2016?

The respondents were asked to complete a grid regarding their pro bono hours and matters for the year. The grid provided a breakdown of hours and matters by whether the service was to individuals or organizations, as well as whether the pro bono was full representation, limited scope representation, or mediation.

In 2016, the surveyed attorneys provided an average of 45.1 hours of pro bono service. The average hours provided to individuals, specifically was 33.6. Meanwhile, the average number of *matters* for which the attorneys provided pro bono service in 2016 was 8.6 (6.4 to individuals specifically and 2.1 to organizations). See the chart below for more information.

		Hours for 2016	Hours to individuals for 2016	Hours to organizations for 2016	Hours of limited scope representation	Hours of full representation
N	Valid	1366	1366	354	914	913
	Missing	0	0	1012	452	453
Mean		45.0882	33.6408	43.5338	31.2095	34.7961
Median		12.0000	5.0000	20.0000	10.0963	.0000
Mode		.00	.00	.00	.00	.00

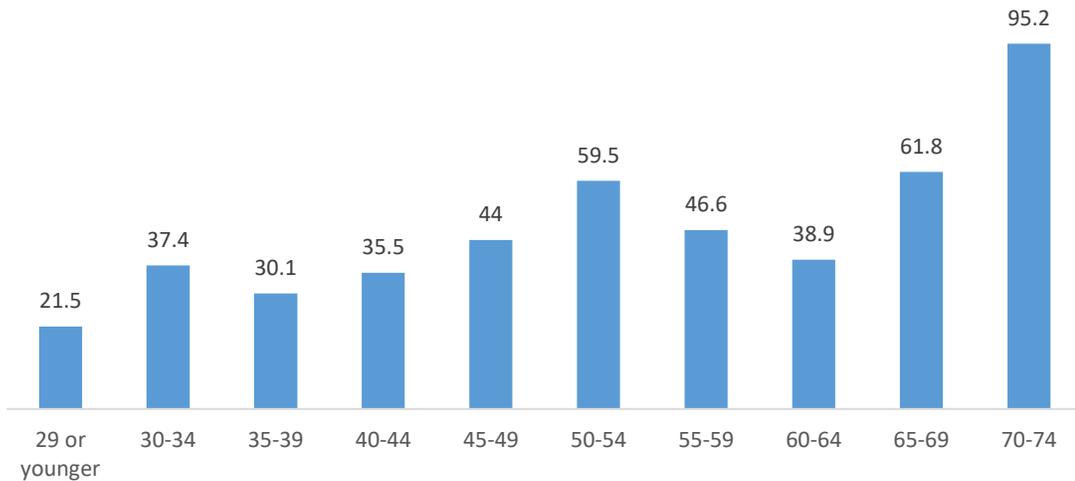
The below chart shows the percentage breakdown for various ranges of pro bono hours. Approximately 38.5% had not provided any pro bono in 2016. Just over 16% provided 1-19 hours; 18.2% provided 20-49 hours, 11.3% provided 50-79 hours and 15.9% provided 80 or more hours.

		Number	Percent
Pro Bono Hours	1-19	220	16.1
	20-49	249	18.2
	50-79	154	11.3
	80+	217	15.9
	None	526	38.5
	Total	1366	100.0

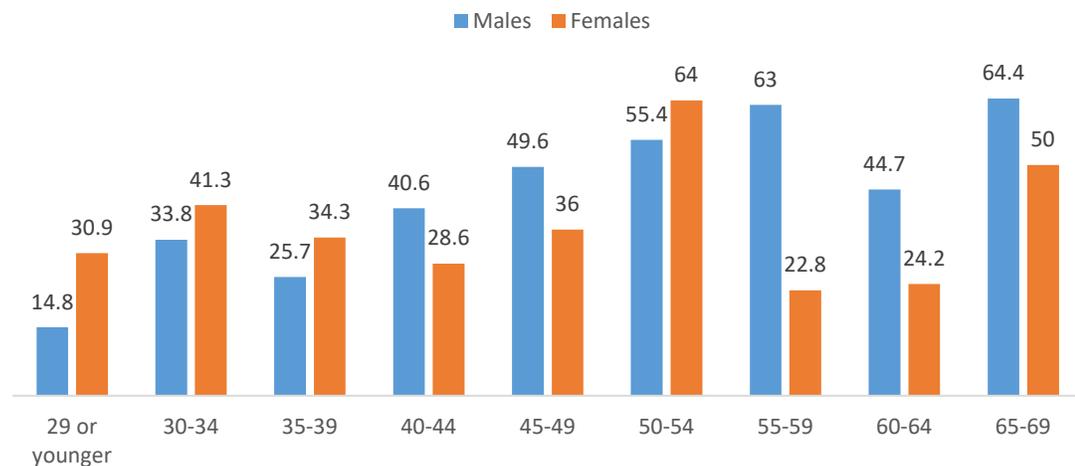
Notable trends for hours provided in 2016:

- AGE: There were significant age differences, with older attorneys providing, on average more pro bono than younger attorneys. Attorneys in the 29 and younger group provided an average of 21.5 hours of pro bono in 2016, compared to 95.2 hours among the 70-74 age group. See graph below and the subsequent chart demonstrating differences by gender.

Average Pro Bono Hours in 2016



Average Pro Bono Hours in 2016



- PRACTICE SETTING:** There were notable differences by practice setting as well. Private practice attorneys reported doing significantly more pro bono than did attorneys in other practice settings. On average, private practice attorneys provided 52.8 hours of pro bono service in 2016, compared to corporate attorneys who provided 22.1 hours and government attorneys who provided 10.2 hours. Within private practice, solo practitioners provided significant hours of pro bono with an average of 66 hours of pro bono in 2016. Otherwise, in the firm setting, attorneys from large firms provided the highest number of pro bono hours. Attorneys in firms with more than 300 attorneys reported providing an average of 74.1 hours of pro bono in 2016, compared to attorneys in 101-300 attorneys (30.3 hours) and 51-100 attorneys (43.5 hours).
- PRACTICE AREA:** Attorneys who focused in their practice on the following areas of law reported doing more pro bono in 2016: civil rights (71.7 average hours), debt collection (80.3), immigration (78.1) and criminal law (61).

The below chart shows the average hours only among those who had provided pro bono in 2016 (as opposed to including the “zeroes” for those who had not provided pro bono in 2016). Among the attorneys who had provided pro bono in 2016, the average was 67.4 hours. Meanwhile, the average number of matters was 12.8 (9.6 to individuals and 3.1 to organizations).

Hours for 2016		Hours to individuals for 2016	Hours to organizations for 2016	Hours of limited scope representation	Hours of full representation
N	Valid	914	914	354	914
	Missing	0	0	560	0
Mean		67.3813	50.2740	43.5338	31.2095
Median		35.0000	20.0000	20.0000	10.0963
Mode		.00	.00	.00	.00

What type of pro bono services were provided?

Among the types of pro bono service provided, limited scope representation was the most prevalent. Among those who provided pro bono in 2016, 48.8% provided *only* limited scope representation and 22.3% provided *only* full representation. Almost 26.9% had provided *both* full and limited scope representation in 2016.

	Number	Percent of All Respondents	Percent of Pro Bono Providers
Full And Limited Scope Representation	226	17.5	26.9
Full Representation Only	187	14.5	22.3
Limited Scope Representation Only	410	31.7	48.8
Mediation Only	17	1.3	2.0
No Pro Bono	453	35.0	N/A
Total	1366	100.0	100

Who were the pro bono clients in 2016?

Among the attorneys who had provided pro bono in 2016, 37.5% indicated they had represented a single parent, 37.4% had represented a minority, 31.3% represented a non or limited English speaker. There were some notable differences based on attorney demographics, which are noted in the chart below.

Type of Client	Percent Indicating Having Represented this Pro Bono Client Type in 2016	The below types of attorneys were more likely to represent the corresponding type of client
Single Parent	37.5%	
An Ethnic Minority	37.4%	
Elderly Person	24.5%	
Non or Limited English Speaker	31.3%	
Disabled person	23.5%	
Victim of Domestic Violence	16.3%	Hispanic, in private practice or a government job
Student	17.5%	Male
Veteran	20.8%	
Child/Juvenile	13.3%	Under age 55
Undocumented Immigrant	13.7%	Hispanic
Rural Resident	11.3%	In private practice or a government position, in a rural area or town
Incarcerated Person	10.6%	Hispanic
Documented Immigrant	12.2%	Hispanic
Homeless	9.8%	
Victim of Consumer Fraud	10.5%	In an urban area or town
LGBT	7.4%	Female
Migrant Worker	2.6%	Hispanic

Section II: Most Recent Pro Bono Case/Experience

The attorneys who indicated that they had provided pro bono in 2016 were asked a series of questions about their most recent pro bono experience. Consequently, this section represents responses from the 923 attorneys who had done pro bono in 2016.

Which type of pro bono service is most typical?

The vast majority of the most recent pro bono service fell into the category of free legal services to persons of limited means (80%) as opposed to a class of persons (1.8%) or an organization (17.6%). And, most of these services were limited scope representation (58.6%) as opposed to full representation (37.3%) or mediation (4.1%).

How do attorneys find their clients?

Of the attorneys who provided pro bono, 25.7% indicated that their most recent client came directly to them. The remaining 74.3% were referred from some specific source. The most common referral sources were legal aid pro bono programs, followed by a present/former client or a family member/friend. See the chart below.

How did this client come to you?	Number	Percent
The client came directly to me	220	25.7
A referral from a family member or friend	94	11.0
A referral from your employer	14	1.6
A referral from a co-worker within your organization	16	1.9
A referral from an attorney outside of your organization	27	3.1
A referral from a present or former client	91	10.6
A referral from legal aid pro bono program	130	15.1
A referral from an independent pro bono program	14	1.6
A referral from a public or law library	1	.2
A referral from a law school clinic	11	1.3
A referral from a mediation center	10	1.1
A referral from a religious organization	31	3.6
A referral from a non-profit organization	66	7.7
A referral from a judge or court administrator	32	3.7
Other	53	6.1
A referral from a bar association pro bono program	19	2.2
A referral from a lawyer referral service	1	.1

A referral from a professional acquaintance	25	3.0
From a posting on a pro bono listserv to which I subscribe	2	.3
Total	856	100.0

Among those whose clients came directly to them, 37.3% reported that they had no personal relationship with the person. Otherwise, 17.9% said the client was an acquaintance, 10.1% said the client was an organization with whom the attorney was involved, and 9.8% said the client had been a former client.

How would you describe your relationship with the client before the legal engagement began?	Frequency	Percent
A personal friend	22	11.1
A relative	9	4.7
A co-worker	1	.6
An acquaintance	36	17.9
A former client	20	9.8
An organization with which I was personally involved	20	10.1
An organization with which my employer was involved	2	.9
An organization with which a friend or family member was personally involved	2	1.0
Another relationship	13	6.6
None of the above- no prior relationship	74	37.3
Total	199	100.0

How was the client determined to be low-income?

Among attorneys who accepted a client because the client was low income or of limited means, most relied on the referral source to make the income determination. Otherwise, mostly impressionistic methods were used: 28.3% relied on the word of the client and 47% relied on personal knowledge about the client’s situation. Only 8% relied on financial data.

Low Income Determination (Multiple Choice)	Percent
An indication from the referral source	15.8%
The referral source qualified the client	21.4%
Financial data, such as a W2 or paycheck information	7.0%
The word of the client	28.3%
Some other factor	8.0%
My knowledge of the client’s situation	47.0%

What tasks were performed and what was the scope of the work?

The most frequently reported pro bono legal tasks consisted of providing advice (74%), interviewing/meeting with the client (63.5%), and reviewing and drafting legal documents (66.2%).

Legal Task (Multiple Choice)	Percent of Respondents
Limited scope representation in court (trial or appellate)	9.4%
Reviewed/drafted documents	66.2%
Wrote letter	36.2%
Spoke with other attorneys	35.2%
Interviewed/met with the client	63.5%
Provided advice	74%
Referred to other organization(s)	15.3%
Provided full representation in court (trial or appellate)	23.1%
Negotiated a settlement with other parties	17.2%
Represented the client in administrative proceedings	7.8%
Represented the client before a legislative body	1.2%
Other	7.3%

In what area of law?

The respondents were asked to indicate what area of the law their most recent case was and how many hours they spent on their case. The below chart presents this information broken down by whether the case was a full representation case or a limited scope case. Note that many of the cases involved multiple areas of law and so these numbers cannot separate out how much time was spent specifically on the areas of law presented below. Rather, the chart below shows numbers and averages for when a case involved the particular area of law.

Area of Law	Full Representation		Limited Scope Representation	
	Number of Cases	Average Hours	Number of Cases	Average Hours
Banking	3	81.2	2	7
Bankruptcy	16	24.4	12	5.2
Business/Corporate	9	39.1	30	21.5
Civil Rights	10	72.2	15	60.7
Consumer	14	46.3	39	22.8
Contract	18	54.4	40	20.9
Criminal	48	66.5	41	11.9
Debt Collection	4	13.6	30	21.2
Disability Rights	9	35.6	12	21.4
Domestic Violence	11	32.1	20	31.9

Education	1	100	8	54.8
Elder	5	51.3	14	4.6
Estate Planning/Probate	31	27.5	59	17.5
Family	58	43.1	82	14.1
Health Care	3	52.4	15	73.6
Housing	9	39.7	29	45.1
Immigration	19	44.6	21	49
Intellectual Property	2	7.5	12	16.5
Juvenile	20	33.2	5	80.4
Labor and Employment	6	54.1	20	27.1
Litigation	29	73.1	22	19.3
Medical Malpractice	0	N/A	5	4.3
Military	1	100	5	3.8
Non-Profit Organization	7	51.4	35	29.7
Personal Injury	9	35.4	23	28.5
Public Benefits	5	50.8	14	71
Real Estate	14	52.1	30	18.9
Securities	0	N/A	0	N/A
Tax	0	N/A	6	76.2
Technology	1	20	2	35.1
Tribal/Native American	5	45.1	5	32.6
Other	12	31.1	30	41.6
All - Total	268	44.5	427	16.5

Within the scope of the attorneys' expertise?

The tasks performed were generally within the attorneys' area of expertise. Specifically, 70.2% indicated that their recent pro bono experience was within their area of expertise. Attorneys in private practice were more likely to report that their recent case was within their area of expertise.

Consistent with the attorneys' expectations?

Most (73.1%) of the attorneys indicated that their most recent pro bono experience was consistent with their expectations. Approximately 22%, however, indicated that the case took more time than they had expected and 6.1% said the case was more complex than they had expected.

Response (Multiple Choice)	Percent
Yes – it was consistent in terms of time and complexity	73.1%
No – it took more time than I expected	21.8%
No – it took less time than I expected	1.5%
No – it was more complex than I expected	6.1%
No – it was less complex than I expected	0.7%
No – it was not what I expected in some other way	1.1%

Hours of service provided?

On average, attorneys spent 26.6 hours on their most recent pro bono case. The areas of law for which attorneys spent the most hours were health care (60.9 hours), civil rights (59.8 hours), criminal law (41.3) and litigation (47.3).

Section III: Motivations and Attitudes

This section regarding motivators and barriers to pro bono was shown to all respondents, resulting in 1276 responses to this section. .

The importance of pro bono services?

Overall, among all attorneys responding, the majority (78.5%) believe pro bono services are either somewhat or very important. Very few attorneys did not believe that pro bono services are important.

Thinking about the legal needs of the low-income population in your state, how important is it for local attorneys to offer pro bono services?	Number	Percent
Don't know	56	4.5
Very unimportant	82	6.6
Somewhat unimportant	53	4.3
Neither important nor unimportant	76	6.1
Somewhat important	362	29.0
Very important	618	49.5
Total	1247	100.0

What motivates attorneys to do pro bono?

The top three motivators among the surveyed attorneys were:

1. Helping people in need (4.28/5)
2. It would make me feel like a good person (3.49/5)
3. Participating in reducing social inequalities (3.43/5)

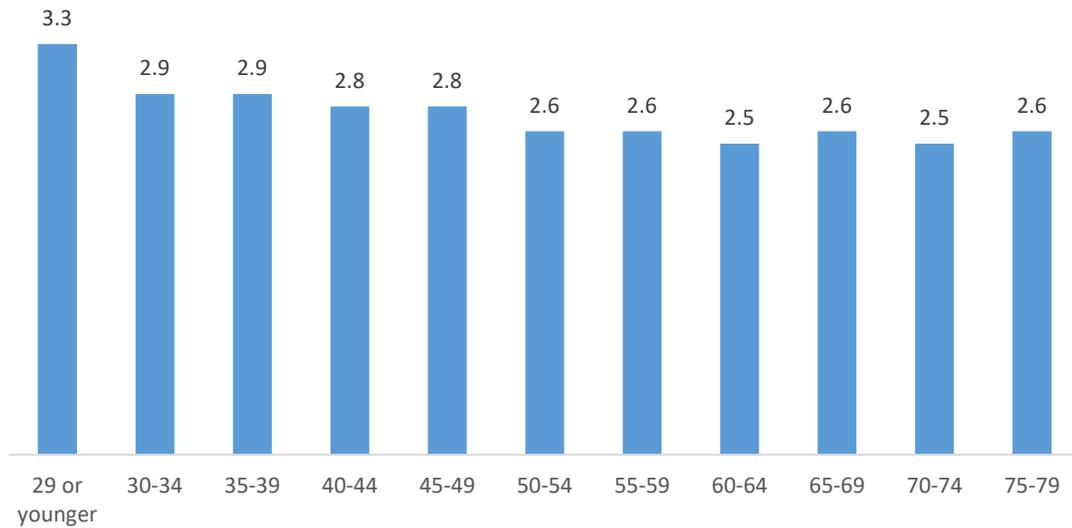
Motivator	Average (on a scale from 1-5, where 1 is the least motivating and 5 is the most motivating)
Helping people in need	4.28
Ethical obligation	3.42
Professional duty	3.40
Participating in reducing social inequalities	3.43
It would make me feel like a good person	3.49
Helping the profession's public image	3.03
A firm culture that encourages pro bono	2.76

Opportunities to interact with low-income populations	2.40
Opportunities to work directly with clients	2.41
Gaining experience in an area outside of my expertise	2.28
Opportunities to work with other attorneys	2.19
Strengthening relationships with my private practice clients who value pro bono engagement	1.90
Opportunities to go to court	1.84
Recognition from colleagues and friends	1.91
Recognition from employer	1.87
Average across all motivating factors	2.73

Notable trends for motivating factors:

- GENDER: Overall, female attorneys provided higher ratings for motivating factors than did male attorneys (2.9 average rating, compared to 2.6). Specifically, for females, the top three motivating factors were: 1) helping people in need, 2) reducing social inequalities, 3) feeling like a good person. And, for males, the top three were: 1) helping people in need, 2) feeling like a good person, 3) professional duty
- RACE/ETHNICITY: White attorneys provided lower ratings (2.7) across all motivating factors compared to other races/ethnicities. Specifically, Hispanic attorneys provided higher ratings (2.9) as did Asians (3.1). The top three motivating factors for Hispanic attorneys were: 1) helping people in need, 2) feeling like a good person, and 3) professional duty. And, for Asian attorneys, the top three were: 1) helping people in need, 2) reducing social inequalities, 3) professional duty.
- AGE: Younger attorneys provided higher ratings for the motivating factors than older attorneys. The 29 and younger age group, for example provided an average rating of 3.3 across motivating factors, while the 70-74 age group provided an average rating of 2.5. See the chart below. The youngest group was most motivated by 1) helping people in need, 2) feeling like a good person, and 3) reducing social inequalities. Meanwhile, the older age groups (55+) were most motivated by 1) helping people in need, 2) one’s ethical obligations and 3) one’s professional obligations.

Average Rating Across Motivating Factors



- BY PRO BONO HOURS PROVIDED: As expected, attorneys who provided 50 or more hours of pro bono in 2016 also provided higher ratings for the motivating factors (2.9 compared to 2.7).

Are Attorneys Reactive or Proactive Concerning Pro Bono Opportunities?

Just under half of the attorneys (47%) had reached out to some organization in order to identify a pro bono opportunity. Specifically, 37.9% indicated they had reached out to a legal aid or pro bono program.

To identify pro bono opportunities, have you ever contacted...

Organization	Percent
state bar association	16.3%
your local bar association	14.4%
a legal aid or pro bono organization	37.9%
some other organization	16.3%

Meanwhile, around 64% had been contacted by an organization regarding a pro bono opportunity. Just under half had been contacted by a legal aid or pro bono organization, and 34% had been contacted by their local bar association.

To identify pro bono opportunities, have you ever been contacted by...

Organization	Percent of Respondents
state bar association	39.9%
your local bar association	33.7%
a legal aid or pro bono organization	51.2%
some other organization	25.9%

What can pro bono programs do to engage more attorneys?

The top three actions a pro bono program can take to engage more attorneys are:

1. CLE credit for doing pro bono (3.38 out of 5)
2. If a judge solicited my participation (3.32 out of 5)
3. Limited scope representation opportunities (3.28 out of 5)

Action	Average (on a scale from 1-5, where 1 is the least encouraging and 5 is the most encouraging)
If a judge solicited my participation	3.32
Limited scope representation opportunities	3.28
CLE credit for doing pro bono	3.38
If a colleague asked me to take a case	3.13
Malpractice insurance provided by referral org	3.05
Free or reduced cost CLE	3.06
Online description of case opportunities from which to select	2.88
The option of selecting a client based on demographics/descriptors	2.98
Opportunities to act as a mentor to young attorneys or law students	2.88
Mentorship/supervision by an attorney specializing in the legal matter	2.73
Administrative or research support	2.69
Opportunities to do pro bono remotely	2.71
If I were matched with another attorney to share the work	2.53
Periodic contact by a referral organization (I'll take a case when I can)	2.51
Alternative dispute resolution opportunities	2.69
Reduced fee opportunities as opposed to free service opportunities	2.36
Availability of networking opportunities with other attorneys providing pro bono in my community	2.37
More support from my firm	2.27
Self-reporting and state bar tracking of voluntary pro bono contributions	2.14
Formal recognition of my past volunteer efforts	1.91
Average Across all Factors	2.8

Notable trends for the list of action items:

- GENDER: Female attorneys provided higher ratings for the list of actions (3.0 compared to 2.6 for male attorneys). And specifically, the top three for the female attorneys were 1) limited scope representation opportunities, 2) CLE credit, 3) malpractice insurance. For male attorneys,

the top three were: 1) if a judge solicited participation, 2) CLE credit, 3) if a colleague asked me to take a case

- RACE/ETHNICITY: Hispanic attorneys provided higher ratings for the list of actions as compared to other attorneys (3.0). The top three factors for Hispanic attorneys was: 1) if a judge solicited my participation, 2) CLE credit, 3) free or reduced CLE.
- AGE: Younger attorneys provided higher ratings than did older attorneys. For example, attorneys in the 29 and younger age group provided an average rating of 3.3, compared to the 70-74 age group which provided an average rating of 2.4. Specifically:
 - o The top three for the 29 or younger attorneys: 1) CLE credit, 2) limited scope representation opportunities, 3) an online description of cases from which to select
 - o The top three for the 30-59 year old age group: 1) CLE credit, 2) limited scope representation opportunities, 3) judge solicitation
 - o The top three for the 60-74 year old age group: 1) judge solicitation, 2) colleague solicitation, 3) limited scope representation opportunities/ CLE credit
- BY PRO BONO HOURS PROVIDED: Attorneys who provided 50 or more hours of pro bono in 2016 provided slightly lower ratings for the list of actions (2.7 compared to 2.8), but the difference was very slight. Specifically:
 - o The top three for the attorneys who had provided 50+ hours were 1) judge solicitation, 2) CLE credit, and 3) colleague solicitation.
 - o The top three for those who had never provided pro bono were 1) CLE credit, 2) malpractice insurance, and 3) limited scope representation opportunities.

What discourages attorneys from doing pro bono?

The top three discouraging factors were:

1. Lack of time (4.23 out of 5)
2. Commitment to family or other personal obligations (4.04 out of 5)
3. Lack of skills or experience in the practice areas needed by pro bono clients (3.66 out of 5)

Factor	Average (on a scale from 1-5, where 1 is the least discouraging and 5 is the most discouraging)
Lack of time	4.23
Commitment to family or other personal obligations	4.04
Lack of skills or experience in the practice areas needed by pro bono clients	3.66
The unrealistic expectations of clients	3.32
Competing billable hour expectations and policies	3.18
Lack of clarity on how much time I would end up having to commit	3.18
Scheduling conflicts making it difficult to be available for court appearances	3.07
Too costly; financially burdensome to my practice	3.16
Lack of interest in the types of cases	3.13

Lack of malpractice insurance	3.13
Lack of administrative support or resources	2.90
Lack of information about opportunities	2.72
A preference for spending volunteer time on non-legal matters	2.76
Discouragement from employer/firm	2.46
Concerns that doing pro bono work would compromise the interests of my other clients	2.42
A preference for providing reduced fee assistance rather than no fee assistance	2.06
I feel that a lot of pro bono clients really can afford legal assistance	1.88
Personal or philosophical objections	1.70
Average Across Factors	2.96

Notable trends for the discouraging factors:

- GENDER: female attorneys were generally more discouraged than were male attorneys, with an average rating of 3.1 for the list of discouraging factors, compared to 2.9 for the male attorneys.
- AGE: Younger attorneys were more discouraged than were older attorneys. The 29 and younger age group, for example, provided an average rating of 3.1, while the 70-74 age group provided an average rating of 2.8.
- PRO BONO HOURS PROVIDED: As expected, attorneys who provided 50 or more hours of pro bono in 2016 provided slightly lower ratings for the list of discouraging factors (2.8 compared to 3.0). Those who had never provided pro bono were very slightly more discouraged, with average ratings of 3.1 for the list of discouraging factors.

Firm/Employer attitude toward pro bono?

Private practice attorneys were asked to indicate what their employer’s attitude is towards pro bono. Just over half (51.8%) indicated that their employer neither encourages nor discourages pro bono activities, while 44.6% indicated that their employer encourages pro bono.

Which of the following best describes your firm's or employer's attitude toward pro bono?	Number	Percent
Employer encourages pro bono activities	215	44.6
Employer neither encourages nor discourages pro bono activities	250	51.8
Employer discourages pro bono activities	17	3.6
Total	483	100.0

According to the surveyed attorneys, the most common ways their employers encouraged pro bono involved allowing the use of internal resources for pro bono activities (24.4% indicated this) and allowing pro bono during regular business hours (22.4%). Only a small percentage reported that their employers did things that discouraged pro bono.

Employer Activity (Multiple Choice)	Percent
Employer allows pro bono during regular business hours	22.4%
Employer has procedures in place for identifying and referring pro bono cases internally	8%
Employer has a pro bono manager	4.7%
Employer allows use of internal resources for pro bono activities	24.4%
Employer provides mentoring for pro bono activities/matters	7.6%
Employer requires a specific number of pro bono hours or matters per year	1.5%
Employer allows billable hour credit for pro bono work	7.7%
Employer has a pro bono policy that supports employee pro bono activities	13.1%
Employer places restriction on number of pro bono clients or matters in a fiscal year	1.4%
Employer does NOT allow pro bono during regular business hours	1.1%
Employer disallows use of internal resources for pro bono activities	1.8%

Pro Bono as a law student and its impact on future pro bono?

Although 33.2% of the respondents indicated that they had not provided pro bono legal services as a law student, of the remaining 66.8% who had, over half (53.9%) said that doing so made them either more or far more likely to provide pro bono after law school. Around 42% said it had no impact on their likelihood of providing pro bono after law school. Only 3.8% said it made them less likely to provide pro bono after law school.

If you provided pro bono legal services while you were a law student, to what degree did that experience affect your decision to provide pro bono services as a practicing attorney?

	Number	Percent of respondents	Percent of those who had done pro bono in law school
Far more likely to provide pro bono services	186	17.4	26.1
More likely to provide pro bono services	198	18.6	27.8
It had no impact on my provision of pro bono services	301	28.2	42.3
Less likely to provide pro bono services	27	2.6	3.8
I did not provide pro bono legal services while I was a law student	354	33.2	N/A
Total	1066	100.0	100

Likelihood of providing pro bono in 2017?

Overall, 52.8% of the respondents indicated that they were either likely or very likely to offer pro bono services in 2017, while 18.8% indicated they were unlikely or very unlikely to offer such services.

How likely are you to offer pro bono services in 2017?	Number	Percent
Very Unlikely	141	12.7
Unlikely	67	6.1
Somewhat Unlikely	52	4.7
Undecided	124	11.2
Somewhat likely	138	12.5
Likely	183	16.5
Very Likely	403	36.3
Total	1107	100.0

Section IV: Other Public Service Activities

The surveyed attorneys provided a range of public service activities that do not necessarily fall under the traditional definition of pro bono. About 22% attorneys had provided legal services for a reduced fee, and the average hours for such activities in 2016 was 98.2. Approximately 21% of attorneys had acted as a teacher or trainer on legal issues, 19% had been a speaker at a legal education event for non-lawyers and 9.7% had engaged in grassroots community advocacy and/or policy advocacy.

Activity (Multiple Choice)	Percent	Average Hours in 2016
Legal services for a reduced fee	22.3%	98.2
Trainer or teacher on legal issues	21.4%	22.7
Speaker at legal education event for non-lawyers	19.1%	10.9
Grassroots community advocacy	9.7%	52.2
Policy advocacy	9.7%	46.1
Supervising or mentorship to another attorney providing pro bono representation	8.5%	19.4
Member of board of legal services or pro bono organization	8.2%	34.3
Member of bar committee related to pro bono or access to justice	4.0%	21.9
Lobbying on behalf of a pro bono organization	2.9%	28.6
Member of firm committee related to pro bono or access to justice	2.1%	19.9
Other	7.0%	
None of the above	28.9%	

Notable trends for other public service activities:

- GENDER: Female attorneys were more likely to have done grassroots community advocacy (12.7% compared to 7.9% of male attorneys).
- RACE/ETHNICITY: Hispanic and Asian attorneys were less likely to have provided reduced fee services (13.5% and 8.8% respectively). Black attorneys were more likely to have been a speaker at a legal education event for non-lawyers (37.9%)

For the legal services provided for a reduced fee, most had reduced their fee by 46-75%.

Reduced Fee - Average Reduction Percent		Number	Percent
Amount reduced	5% or less	2	.7
	6-10%	7	2.2
	11-15%	2	.6
	16-20%	10	3.2
	21-25%	29	9.0
	26-30%	22	6.9
	31-35%	10	3.3
	36-40%	13	4.1
	41-45%	10	3.1
	46-50%	80	25.4
	51-55%	23	7.4
	56-60%	14	4.6
	61-65%	9	3.0
	66-70%	12	3.7
	71-75%	30	9.4
	76-80%	8	2.6
	81-85%	4	1.3
	86-90%	5	1.6
	91-95%	9	2.7
	96-99%	17	5.2
Total		317	100.0

And, based on this reduction, the below chart shows the resulting reduced hourly fee.

And, based on this reduction, approximately what was your average reduced hourly fee?		Number	Percent
	\$1-50	55	17.8
	\$51-100	78	25.3
	\$101-150	82	26.7
	\$151-200	50	16.0
	\$200-300	28	9.0
	More than \$300	16	5.3
Total		309	100.0

How much unbundling are attorneys doing?

The private practice attorneys were asked a series of questions about their use of limited scope representation/unbundling as part of the practice in 2016. The majority (63.2%) of attorneys indicated that none of their cases involve unbundled legal services *for a fee*. However 26.2% indicated that 1-20% of their caseload involves unbundling.

In 2016, approximately what percentage of your overall caseload involved unbundled legal services for a fee?		Number	Percent
Percent of Caseload Involving Unbundling	0%	499	63.2
	1-20%	207	26.2
	21-40%	30	3.8
	41-60%	23	2.9
	61-80%	6	.8
	81-100%	26	3.2
	Total	790	100.0

What encourages or discourages attorneys from providing unbundling?

Attorneys were provided with a list of things that might encourage unbundling and asked to rank them. The top three actions that attorneys said would encourage them to do more unbundling were:

- 1) More guidance or clarity concerning ethical obligations
- 2) More guidance or clarity concerning malpractice exposure for unbundled matters
- 3) More guidance or clarity concerning court procedures for unbundled matters

Activity and Ranking	Percent Ranking Activity #1	Ave Ranking (1 being the most encouraging)
(1) More guidance/clarity concerning ethical obligations for unbundling	29.6%	2.45
(2) More guidance clarity concerning malpractice exposure for unbundled matters	8.8%	3.27
(3) More guidance/clarity concerning court procedures for unbundled matters	6.0%	3.83
(4) Programs to connect you with prospective clients interested in unbundled legal services	12.3%	4.29
(5) Sample limited-scope agreements	5.7%	4.62
(6) Information to better understand fee structures for unbundled legal services	5.0%	5.78
(7) Opportunities to network with lawyers who unbundle	1.9%	6.14
Nothing. Unbundling is just not in my future	30.8%	5.63

For those who had not provided any unbundling, most (76.7%) indicated that agreed or strongly agreed with the statement “I don’t think unbundling would work for much of my practice” and many (67.3%) indicated that they agreed or strongly agreed with the statement “I worry that unbundling would expose them to more malpractice claims.”

Statement	Average (1= strongly disagree and 4=strongly agree)
I don’t think unbundling would work for much of my practice	3.11
I worry that unbundling would expose me to more malpractice claims	2.81
I am concerned that unbundling may be unethical	2.31
Prospective clients are not interested in unbundled legal services	2.59
Unbundled cases do not produce enough revenue	2.48
It is difficult to get enough clients to make unbundling worthwhile	2.64
My law firm does not permit me to unbundle	1.99

For those who had provided unbundling, 79.2% agreed or strongly agreed with the statement “unbundling lowers the cost of cases so that more people can afford my services” and 72.1% also agreed or strongly agreed with the statement “unbundling allows them to offer legal services at a more competitive price”. And, 63.5% agreed or strongly agreed with the statement “unbundling lowers receivables and results in fewer uncollected fees.”

Statement	Average (1= strongly disagree and 4=strongly agree)
Unbundling lowers the cost of cases so that more people can afford my services	2.98
Unbundling allows me to offer legal services at a more competitive price	2.86
Unbundling lowers receivables and results in fewer uncollectable fees	2.68
I am less worried about disciplinary complaints for unbundled cases	2.13
Unbundling clients are more satisfied with their service than full-service clients	2.23
Unbundling clients are likely to become full-service clients	2.45
Unbundling clients are more engaged in the process and invested in the outcome than full service clients	2.24

Appendix

Methodology: the web-based survey was distributed to all attorneys for whom contact information was available in the 24 participating states. The survey for Arizona were distributed by email on January 19, 2017. The final sample of surveys amounted to 1452, with 1383 of these responses being from attorneys with active licenses.

The sample fairly closely matched the known demographics of the attorney population, with slight deviations with respect to gender. Consequently, weights were applied to adjust the sample to represent the state attorney population. Weighting is a standard practice that addresses inconsistencies in distributions between survey responses collected compared with the actual distributions of the population being studied. The weight does not change a respondent's answer; rather, it gives appropriate relative importance to the answer. The below chart provides the final weighted sample distributions by race/ethnicity, gender, age, and practice setting. All significant results noted throughout this report are at the 95 percent confidence level.

Category	Percent
Race/Ethnicity	
White, Not Hispanic	83.5%
Black, Not Hispanic	2%
Hispanic	6.1%
Asian, Pacific American, Not Hispanic	2.3%
Gender	
Male	63.1%
Female	36.7%
Gender Non-Conforming	.2%
Age	
29 or younger	6%
30-34	9%
35-39	13.1%
40-44	9.3%
45-49	10.7%
50-54	10.5%
55-59	11.6%
60-64	11.4%
65-69	11.5%
70-74	4.8%
75+	2.1%
Practice Setting	
Private Practice	74.9%
Corporate Counsel	6.9%
Government	11.3%
Non-profit	2.6%
Other	4.3%