

Committee on Superior Court

Friday, September 9, 2016 - 10 a.m.

Conference Room 119 A/B

State Courts Building, 1501 W. Washington, Phoenix, AZ 85007

[Committee on Superior Court Home Page](#)

Conference Number: 602-452-3288 or 520-388-4330

Access Code: 2100#

[Web Ex](#)

Time*	Agenda Items	Presenter
10:00 a.m.	Welcome and Opening Remarks Approval of Minutes from May 6, 2016 <input type="checkbox"/> <i>Formal Action/Request</i>	<i>Judge David Mackey, Chair</i>
10:05 a.m.	Legislative Update <input type="checkbox"/> <i>Formal Action/Request</i>	<i>Jerry Landau AOC Government Affairs Director</i>
10:20 a.m.	Fair Justice for All Task Force: Final Report and Recommendations <input type="checkbox"/> <i>Formal Action/Request</i>	<i>Judge Don Taylor Chief Presiding Judge Phoenix Municipal Court</i>
11:20 a.m.	Arizona Commission on Access to Justice— Report on Rule Change Petition R-16-0040 Statewide Mandatory Eviction Forms <input type="checkbox"/> <i>Formal Action/Request</i>	<i>Judge Larry Winthrop Court of Appeals, Div. 1</i>
11:35 a.m.	Court Security Standards Committee <input type="checkbox"/> <i>Formal Action/Request</i>	<i>Marcus Reinkensmeyer, Director AOC Court Services Division</i>
11:50 a.m.	Proposed Amendments to ACJA § 7-206: Certified Reporter <input type="checkbox"/> <i>Formal Action/Request</i>	<i>Mark Wilson, Director AOC Certification and Licensing Division</i>
Noon	LUNCH	
12:30 p.m.	Proposed Revisions to ACJA § 1-507: Protection of Case Records in Paperless Court Operations <input type="checkbox"/> <i>Formal Action/Request</i>	<i>Stewart Bruner AOC IT Division</i>
12:45 p.m.	Task Force on the Arizona Rules of Criminal Procedure	<i>Judge Joseph Welty Superior Court in Maricopa County</i>

12:55 p.m. Update on the Annual Rules Agenda

Mark Meltzer
AOC Court Services Division

1:15 p.m. Good of the Order/Call to the Public
Adjournment

Judge Mackey

Next Meeting

Friday, November 4, 2016; 10 a.m.
Arizona State Courts Building
Conference Room 119 A/B

2017 Meeting Dates

February 3
May 5
September 8
November 3

Committee on Superior Court

DRAFT MINUTES

Friday, May 6, 2016

Conference Room 119 A/B, Arizona State Courts Building

1501 West Washington Street

Phoenix, AZ 85007

Present (in person): Judge Sally Duncan, Judge Thomas Fink

Present (telephonic): Judge David Mackey, Judge David Cunanan, Judge Richard Gordon, Judge Charles Gurtler, Judge Charles Harrington, Judge Celé Hancock, Toni Hellon, William Klain, Scott Mabery, Judge Paul McMurdie, Judge Samuel Myers, Judge Cathleen Brown Nichols, Ron Overholt, Judge Michala Ruechel, Eric Silverberg, Megan Spielman, Judge Samuel Vederman, Judge Randall Warner

Absent/Excused: William Gibbs, Judge Kenneth Lee, Judge Joseph Welty

Guest: Judge Maria Elena Cruz (telephonically)

Administrative Office of the Courts (AOC): Theresa Barrett, Jerry Landau (telephonic), Kathy Waters (telephonic)

AOC Staff: Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

A. Welcome and Opening Remarks. The May 6, 2016, meeting of Committee on Superior Court (COSC) was called to order at 10:01 a.m. by Judge David Mackey, chair.

B. Approval of Minutes from February 5, 2016

The draft minutes from the February 5, 2016, meeting of the COSC were presented for approval.

Motion: William Klain moved to approve the February 5, 2016, minutes as presented.

Seconded: Judge David Cunanan. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Proposed ACJA § 6-115

Kathy Waters, director of the AOC Adult Probation Services Division, presented the proposed adult and juvenile probation services retention and disposition schedules. In 2015,

court records retention schedules in the Arizona Code of Judicial Administration (ACJA) were revised. It had been determined, however, that adult and juvenile probation records retention schedules should be separate because of automated reporting systems and functions. A proposed code section was presented to the Adult and Juvenile Management meetings for discussion and comment and was approved by the Committee on Probation. Ms. Waters asked COSC to recommend approval of the proposal by the Arizona Judicial Council.

Motion: Judge Charles Gurtler moved to recommend adoption of the proposed adult and juvenile probation services retention and disposition schedule for probation records.

Seconded: Eric Silverberg. **Vote:** Unanimous.

B. Update on Mandatory Warrant Forms

Theresa Barrett, AOC Court Services Division, provided COSC members with an update on the Mandatory Warrant Forms Workgroup. In early 2016, the workgroup met twice to discuss further revisions to the new warrant forms that were approved by the Supreme Court in December 2015. The workgroup incorporated changes recommended by stakeholders and provided a two-week period for further review and final comments or recommendations. In March 2016, Patrick Scott, AOC, presented the amended warrant forms to the Arizona Judicial Council and the presiding judges for recommended adoption. The revised warrant forms will take effect July 1, 2016. Mr. Scott is the point of contact for any questions about the warrant forms.

C. Legislative Update

Jerry Landau, AOC Government Affairs Director, informed the committee that the legislature had passed a state budget bill for 2016-17 and had sent it to the governor for his consideration.

Budget appropriations for the Judiciary include \$2.4 million for Adult Probation; \$947,000 to IT for new WAD System software, which is interconnection software that connects the courts with the Supreme Court; and \$3 million for dependency case processing and pass-through money for Maricopa County to use for diversion programs. The legislature swept \$5 million from the Judiciary, including \$3.6 million from juvenile treatment and \$500,000 from CASA.

The budget legislation includes a 3 percent salary adjustment, split over two years at 1.5 percent per year, for all judges. The legislature also has passed HB2537, a bill that will add two more justices to the Supreme Court. The bill has been sent to the governor for his consideration.

Other bills of interest include:

- **HB2154 Failure to Appear; Arrest; Fingerprinting** – This bill requires the booking agency (defined as the county sheriff or municipal law enforcement agency), instead of the arresting authority, to take legible ten-print fingerprints of all persons arrested for specified offenses, including domestic violence. Signed by the governor.
- **HB2260 Foster Care Review Board; Continuation** – Continues the Foster Care Review Board until July 1, 2024, retroactive to July 1, 2016. A few amendments were added to this bill. Ready for the governor.
- **HB2375 Crime Victim’s Rights; Facility Dog** – The court is required to allow a victim who is under age 18 the opportunity to have a “facility dog” accompany the victim while testifying in court. The court may allow victims and witnesses who are 18 years of age or older to use facility dogs. A person seeking the use of a facility dog is required to file a notice with the court that includes specified information. This bill is expected to move out of the House of Representatives today to the Governor’s Office.
- **HB2376 Victim Restitution; Stipulated Amount; Hearings** – Under the authority of the Victims’ Bill of Rights in the Arizona Constitution, the victim or the victim’s attorney has the right to present evidence or information in court proceedings to determine restitution. Signed by the governor.
- **SB1039 Jury Service; Grand Jury** – Upon timely application to the court, a person who has served on a grand jury in Arizona is required to be excused temporarily from service as a juror for four years following the last day of that person’s service on the grand jury. This exception does not apply to a person selected as an alternate grand juror. Ready for the governor.
- **SB1257 Misconduct Involving Weapons; Public Places** – This bill would have allowed a person who possesses a valid concealed weapons permit to carry a concealed weapon in a public establishment or at a public event. The bill died, and its sponsor did not ask for reconsideration.
- **SB1293 Mediation; Confidential Communications; Exception** – The list of communications made during the mediation process that are exempt from confidentiality requirements is expanded to include a disclosure made in a report to a law enforcement officer, the Department of Child Safety or Adult Protective Services by a court-appointed mediator who reasonably believes that a minor or vulnerable adult is or has been a victim of abuse, child abuse, neglect, exploitation, physical injury or other reportable offense. Ready for the governor.
- **SB1296 Guardianship; Proceedings; Ward’s Relationships** – A guardian is required to encourage and allow contact between the ward and other persons who have a significant relationship with the ward. A guardian is authorized to limit, restrict or prohibit contact if the guardian reasonably believes the contact will be detrimental to

the ward's health, safety or welfare. A person who has a significant relationship to the ward or the ward may petition the court for an order compelling the guardian to allow the person to have contact with the ward. A guardian is required to notify specified family members of an adult ward, including anyone who has filed a demand for notice, if the ward is admitted to a hospital for more than three days or if the ward has died. Ready for the governor.

- **SB1297 Paternity; Preliminary Injunction** – In an action to establish legal decision-making and parenting time for a child who is born out of wedlock, the clerk of the court is required to issue a preliminary injunction that is directed to each party to the action if the petitioner has filed one of a list of specified documents. The preliminary injunction must contain specified orders, including that both parties are enjoined from harassing the other party, from removing a child of the parties then residing in the state from the court's jurisdiction, or from removing any child of the parties from existing insurance coverage. The preliminary injunction has the force and effect of an order of the superior court signed by a judge and is enforceable by all remedies made available under the law, including contempt of court. This bill is awaiting a third reading in the House.

Mr. Landau indicated that there will be new leadership in the legislature next year as both the current Speaker of the House and the Senate President are running for Congress. He also noted that the Arizona Supreme Court has issued two new decisions on DUI implied consent. He has met with Arizona Department of Transportation officials, who will review their implied consent affidavit and instructions to law enforcement.

III. OTHER BUSINESS

Good of the Order/Call to the Public. No members of the public were present.

Adjournment: The meeting adjourned at 10:33 a.m.

Next Meeting: Friday, September 9, 2016; 10 a.m.

Arizona State Courts Building, Conference Room 119 A/B

COMMITTEE ON SUPERIOR COURT

Meeting Date: September 9, 2016	Type of Action Requested: <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: AJC LEGISLATIVE PROPOSALS - 2017 SESSION
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From: Kay Radwanski

Presenter: Jerry Landau, AOC Government Affairs Director

Description of Presentation: Discussion and possible vote on potential legislation for the upcoming 2017 session

Recommended Motion: Recommend support, opposition, or neutrality/no action

COMMITTEE ON SUPERIOR COURT

Meeting Date: September 9, 2016	Type of Action Requested: <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: FAIR JUSTICE FOR ALL TASK FORCE FINAL REPORT AND RECOMMENDATIONS
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From: Hon. Don Taylor, Chief Presiding Judge, Phoenix Municipal Court, and Fair Justice for All Task Force member

Presenter: Judge Don Taylor

Description of Presentation: Judge Taylor will update the Committee on Superior Court on the efforts of the Fair Justice Task Force and present the final report and recommendations for the committee's consideration.

Recommended Motion: Recommend that the members of the Committee on Superior Court support the recommendations of the Fair Justice for All Task Force and approve the filing of a rule petition to implement the recommendations and approve the inclusion of the legislative proposals in the Arizona Judicial Council package for next session.

Justice for All
 Summary of
 Task Force Recommendations




Demographics
 21% or 1.2M Arizona residents live below federal poverty line

Arizona
 Constitution
 Article 2,
 Section 18

There shall be no imprisonment for debt, except in cases of fraud.

Core Values for Fair Courts

- Release decisions/conditions should protect public safety & ensure appearance at proceedings.
- People should not be jailed for failing to pay fines or court-assessed financial sanctions for reasons beyond their control.
- Court practices should help people comply with court-imposed obligations.
- Sanctions such as fees and fines should promote compliance with the law, economic opportunity, and family stability.

Two-Component Solution

Reasonable Sanctions + Pretrial Bail Reform

Report Summary

The Task Force report:
Eleven Principles
Sixty-five Recommendations

You'll want to read this report!

There Should Be Consequences

Everyone should face consequences for violating the law.

BUT

Criminal fines & civil penalties should not promote a cycle of poverty by imposing excessive amounts or unduly restricting people's ability to be gainfully employed.

Small Ticket, Big Problem Later



For some, a small ticket can become a big problem. Pete the Pizza Guy is 23, earns slightly more than \$12,000/year and gets a ticket for a seat belt violation and no proof of financial responsibility (insurance).

- Seat Belt Violation \$ 139
- No Proof of Insurance \$ 1040

Because Pete doesn't have \$1,179, he doesn't go to court.

Pete is Stopped Again

Because Pete never showed up in court:

- Court notifies MVD & Pete's license is suspended
- With out-of-date address, doesn't get suspension notification
- Pete's charged with driving on a suspended license (a criminal charge)
- Pete's arrested for driving on a suspended license, car impounded (fees!), and Pete is hauled off to jail & has to pay booking fees.



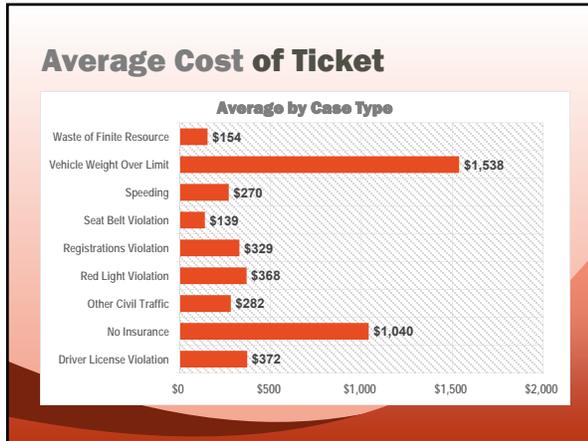
If Only Pete Had Gone to Court



Pete could have:

- Borrowed money, obtained insurance and shown intent to comply with law
- Might have gotten fine waived or community service
- Could have agreed to a time payment plan

Pete might still be delivering pizzas, but because his car was impounded & he was in jail, he lost his job.



Principle One:
Judges Need Discretion to Set Reasonable Penalties

Judges should be allowed to mitigate the amount due based upon a person's inability to pay or financial hardship.

- Request legislative changes to authorize judges to mitigate minimum fines, fees, surcharges, and penalties for those defendants for whom imposing a mandatory fine would cause undue economic hardship.
- Promote fairness by providing courts with automated tools to assist in determining a defendant's ability to pay.
- Use a person's participation in a means-tested assistance program as evidence of limited ability to pay.

Recommendations
1, 2 & 4

Principle Two:
Provide Convenient Payment Options and Reasonable Time Payment Plans

Unrealistic time payment plans are a set-up for failure.

- Implement a program like Phoenix's Compliance Assistance Program statewide
- Conduct a pilot that blends the Compliance Assistance concept with a fine reduction program and driver's license reinstatement.
- Test techniques that make it easier for defendants to make payments, including the use of online or web-portal payment systems.

Recommendations
6, 7 & 8

Principle Three:
Provide Alternatives to Paying a Fine

ARS §13-824 became law in 2015 & enables a judge to convert a fine into community restitution (service) at \$10/hour. This does not currently allow for surcharges (often higher than base fine) to be converted. Statute also only applies to muni or justice court fines.

- Allow judges additional discretion to sentence to community restitution or treatment programs. Court could convert fine into restitution hours.
- Revise community restitution statute to also apply to sentences imposed by Superior Courts.

Recommendations
13 & 14

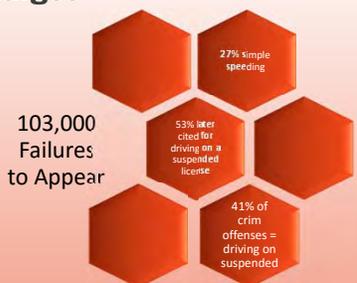
Principle Four:
Employ Practices that Promote Voluntary Appearance



11% or 103,000 people failed to appear in court or attend defensive driving school in FY2014.

This leads to more serious consequences such as suspension of driver's licenses or arrest warrants.

Civil Tickets Can Lead to Criminal Charges



103,000 Failures to Appear

- 27% simple speeding
- 53% later cited for driving on a suspended license
- 41% of crim offenses = driving on suspended

Remember Pete the Pizza Guy?

By going to court, the defendant preserves an opportunity to:

- Possibly have the ticket dismissed
- Mitigate the fine
- Ask to do community service if the fine is too great in proportion to income
- Enter into a time payment plan



Avoids: **Warrant for arrest** or **license suspension**.

Implement an Interactive Messaging System

Using email, text messaging, or phone messages to remind defendants of court dates, missed payments, and other actions like failures to appear can promote compliance with court orders.



➔ *Using a phone reminder system, courts in Arizona achieved up to a 24% reduction in failures to appear.*

Recommendation
15

Principle Five:
Suspension of a Driver's License Should be a Last Resort

It is difficult to work or manage a family without driving. If a payment is missed or a civil penalty isn't paid, courts must issue a complaint and suspend the driver's license.

- Because license suspension can so greatly affect ones ability to maintain a family or remain employed, it should be a sanction of last resort.
- Request amendment of ARS § 28-3316 to make a first offense of driving on a suspended license a civil violation rather than a criminal offense.
- Authorize courts to impose driving restrictions as an alternative to license suspension

Recommendations
26, 27 & 29

Principle Six:
Non-Jail Enforcement Alternatives Should be Available

Alternatives to jail such as restitution court and FARE provide non-jail, less costly compliance alternatives.

- Before issuing a warrant, courts should use court-issued or FARE notices, or orders to show cause.
- Seek congressional action to allow federal income tax interception for victim restitution.

Recommendations
30 & 31

Principle Seven:
Special Needs Offenders Should Be Addressed Appropriately

People suffering mental illness and/or drug addiction frequently wind up in court. These defendants present unique challenges.

- Bring together behavioral health and criminal justice stakeholders to adopt protocols for addressing people with mental health issues.
- Revise mental health competency statutes for processing misdemeanor cases.
- Consider using specialty courts or other community resources to address treatment and service needs of the defendant, as well as risk to the community.



Recommendations
34, 35 & 36

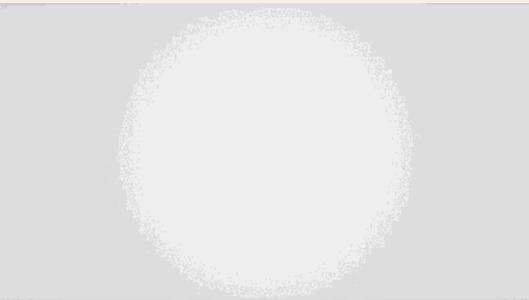
Part Two: Eliminate Money for Freedom

To the greatest extent possible, shift from money for freedom – bail and bonding – to risk-based release criteria.

High-risk individuals should not be set free because they have easy access to money or a friendly bail bondsman.

Low-risk individuals should not remain in jail because they don't.

John Oliver on Bail



Shifting from Money for Freedom to Risk-Based Criteria

Thousands of people are arrested and sit in jail awaiting trial simply because they cannot afford to post bail.

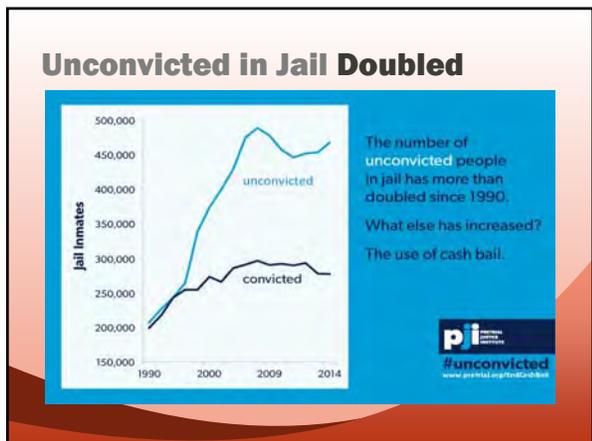
Defendants should not have to remain in custody solely because they are poor.

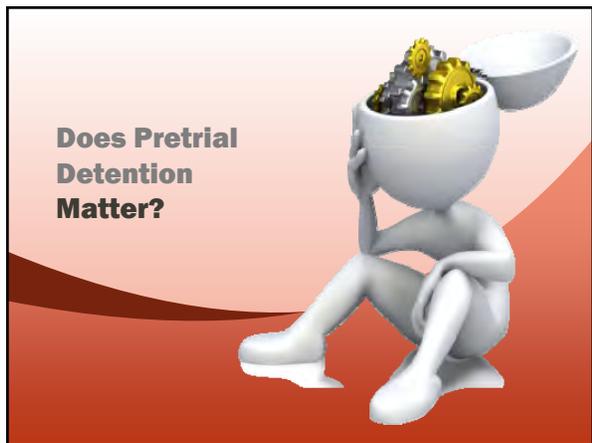


Risk-Based Detention



High-risk defendants should not be released if they are likely to commit new crimes or otherwise pose a risk to their community.





Even Short Periods of Pretrial Incarceration Cause Harm

Collateral damage from pretrial incarceration:

- Loss of employment
- Economic hardship from loss of income
- Interruption of education or training
- Inability to care for children or family
- Loss of place of residence
- Increased exposure to negative influences

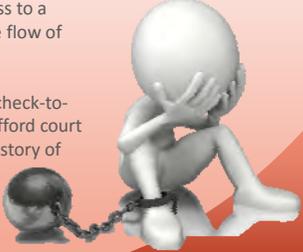


Consider the Risk

Who poses the biggest risk?

Drug dealer with ready access to a network of 'friends' and free flow of money?

Low-wage worker living paycheck-to-paycheck who is unable to afford court fines/penalties but has no history of dangerous activity?



Principle Eight:

Detaining Low- and Moderate-Risk Defendants Increases Rates of Criminal Activity

Research shows that pretrial detention should be avoided to the extent possible.

Bond schedules based on charges are unconstitutional and need to be eliminated.

- Eliminate the use of non-traffic criminal bond schedules.
- Require appointment of counsel if a person remains in jail after the initial appearance.

Recommendations
38 & 39

Principle Nine:
Only Detain Individuals Who Present a High Risk

Defendants who should be detained are those who present a high risk to the community or an individual or repeatedly fail to appear.

- Amend the Constitution to expand the use of detention without the requirement for money bail.

Recommendation
45

Principle Ten:
Money Bond is Not Required to Secure Appearance of Defendants

Research shows that a large percentage of defendants released without cash bond do, in fact, return to court.

- Eliminate requirement for cash surety and instead pose reasonable conditions based on the individual's risk. When it must be used, preference should be for bond to be actual cash deposited with clerk of the court and returned to defendant if charges are not filed, the person is found innocent, or if no violations of the release conditions occur.

Recommendation
46

Principle Eleven:
Release Decisions Must Be Individualized and Based on Risk

Release decisions should be based on risk. The Public Safety Assessment (PSA) is used currently in all of Arizona's Superior Courts, but not in limited jurisdiction courts.

- Expand the use of the PSA risk assessment tool to be used in the municipal and justice courts for use in felony and high-level or select misdemeanor cases.
- Eliminate the use of cash bond to secure a defendant's appearance.

Recommendations
47 & 48

Working Toward an Ideal System

Fully implementing a risk-based system will require changes to the Arizona Constitution, modified court rules, and a cultural shift.

In the meantime, Arizona should implement a risk-based release system and eliminate money for freedom to the greatest extent possible.

Two-Component Solution





Questions? More Information?

www.AZCourts.gov
<http://www.azcourts.gov/Justice-for-All>

Arizona Supreme Court
1501 West Washington Street
Phoenix, AZ 85007

Supplemental Materials

Innovations Underway Now

Phoenix Municipal Court – Compliance Assistance Program
For people with suspended licenses due to nonpayment of fines or fees. Possible to set up time payment plan, submit down payment and have driver's license reinstated.

➤ *In first four months, 5,200 people participated, resulting in \$2.3M in revenue from outstanding fines*

Pima County Consolidated Justice Courts, Glendale & Mesa Municipal – Interactive Voice Response System
Notifies defendants of upcoming court dates, missed payments or the issuance of a warrant.

➤ *Up to 24% reduction in failures to appear*

Innovations Underway Now

Maricopa County Superior Court, Glendale & Mesa Municipal Courts – Mental Competency Proceedings Pilot
Two municipal courts given authorization to conduct Rule 11 mental health competency proceedings on behalf of Superior Court.

➤ *Reduced processing time from 6 months to 60 days*

Maricopa County Justice Court – Video Appearance Center
Uses video technology to reduce the need to transport prisoners to/from 26 justice courts across county.

➤ *First phase of this new program aims to reduce pre-trial confinement by 50%.*

Innovations Underway Now

Pima County – MacArthur Safety & Justice Challenge
 In May 2015, Pima County selected as one of 11 jurisdictions for first phase of an initiative to reduce over-incarceration by changing the way America uses jails. Pima County was later awarded an additional \$1.5 million to create a Phase 2 implementation plan for broad systemic change.

➔ *Results to follow.*

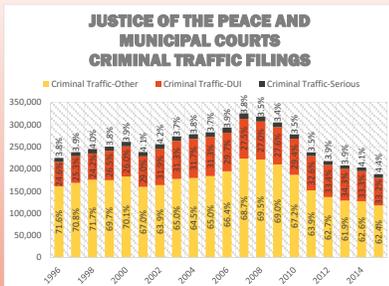
Civil Traffic Filings in Limited Jurisdiction Courts

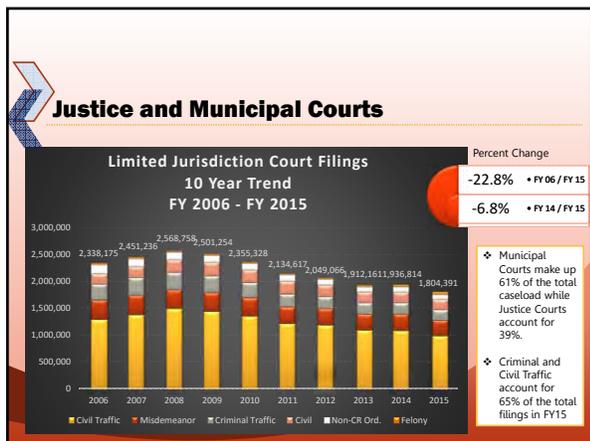
- Civil traffic is down 25.5% from 1.6m in FY2006 to 1.2m in FY2015.
- Filings peaked at 1.8m in FY2008

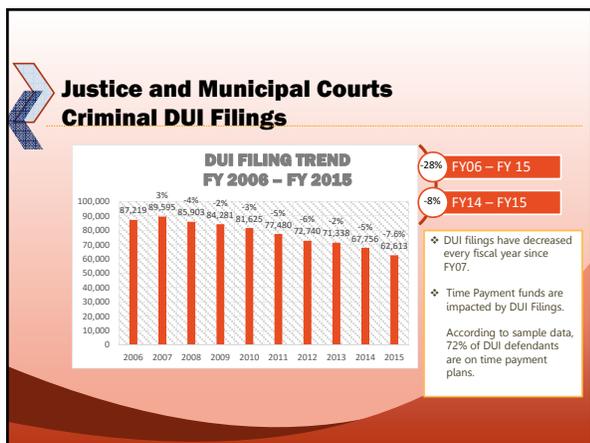


LIMITED JURISDICTION COURTS- CRIMINAL TRAFFIC

Total Criminal Traffic decreased 16.2% from FY 1996 to FY 2015. Filings peaked at 325,488 in 2007.
DUI
 Up 13.3% from 1996 to 2015
SERIOUS VIOLATIONS
 Down 4.2% from 1996 to 2015
All Other Criminal Traffic
 Down 27.0% from 1996 to 2015









COMMITTEE ON SUPERIOR COURT

Meeting Date: September 9, 2016	Type of Action Requested: <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: ARIZONA COMMISSION ON ACCESS TO JUSTICE - REPORT ON RULE CHANGE PETITION R-16-0040 STATEWIDE MANDATORY EVICTION FORMS
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From: Arizona Commission on Access to Justice (ACAJ)

Presenter: Judge Lawrence Winthrop, Chair—ACAJ

Description of Presentation: 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 and the efficient processing of eviction cases. The Supreme Court’s access to justice initiative also sought to ensure that court forms and information, whether in electronic or paper form, are easily understandable. In March 2015, the Arizona Judicial Council approved in concept an ACAJ revision to eviction action forms to make them easier to read and understand. Thereafter, the Self-Represented Litigant in Limited Jurisdiction Courts Workgroup (SRL-LJC WG) of the ACAJ worked with justice court managers, judicial staff, and tenant and landlord attorneys, all with subject-matter expertise in landlord-tenant matters, to create forms for use statewide. On July 6, 2016 a rule change petition (R-16-0044) was filed on behalf of the ACAJ that would require litigants statewide to use court-approved eviction action forms and authorizes the Administrative Director of the Administrative of the AOC to approve, modify, or delete eviction action forms as may be appropriate. The proposed rule is in the process of being circulated to the appropriate groups for review and comment. The deadline for reply to comments is November 4, 2016. The Supreme Court is anticipated to consider this petition in December.

Recommended Motion: Move to request that COSC members support the R-16-0040 rule change petition.

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

IN THE SUPREME COURT STATE OF ARIZONA

PETITION TO AMEND RULES	)	Supreme Court No. R-_____
5(a), 5(b)(6), 5(b)(7) AND ADD	)	(Expedited Adoption
RULES 13(h) AND 20, OF THE	)	Requested)
RULES OF PROCEDURE FOR)	
EVICITION ACTIONS)	

Petitioner is the Arizona Commission on Access to Justice (hereinafter “ACAJ”) through its Chair undersigned. Petitioner requests this Court amend Rules 5(a), 5(b)(6), and 5(b)(7), and add new Rules 13(h) and 20 to the Rules of Procedure for Eviction Actions. Most significantly, the new Rule 20 would require litigants to use court-approved eviction action forms and authorizes 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. The new Rule 20 will apply to the following forms in eviction actions:

- Eviction Action Complaint;
- Eviction Action Summons;

- Eviction Action Judgment;
- 5-Day Notice to Move - Health and Safety Violation;
- 5-Day Notice to Move - Failure to Pay Rent;
- 10-Day Notice to Move - Material Breach;
- 10-Day Notice to Move - Repeat Material or Health and Safety Breach;
and
- Immediate Notice to Move - Material and Irreparable Breach
- Other notices that are later approved by the Administrative Director

Petitioner also proposes changes and additions to Rules 5(a) and (b), and 13 addressing the summons, complaint, and form of judgment to reference the new Rule 20 requirements for mandatory forms.

I. Background and Purpose 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 and the efficient processing of eviction cases. The Supreme Court’s access to justice initiative also sought to ensure that court forms and information, whether in electronic or paper form, are easily understandable. In March 2015, the Arizona Judicial Council

approved in concept an ACAJ revision to eviction action forms to make them easier to read and understand. Thereafter, the Self-Represented Litigant in Limited Jurisdiction Courts Workgroup (SRL-LJC WG) of the ACAJ worked with justice court managers, judicial staff, and tenant and landlord attorneys, all with subject-matter expertise in landlord-tenant matters, to create forms for use statewide.

The proposed forms are based on the most frequently used forms available in Maricopa County Justice Courts. The workgroup vetted them for feedback and suggestions through, among others, the Arizona Justice of the Peace Association and other Maricopa County Justices of the Peace.

At its May 18, 2016 meeting, ACAJ concluded the forms should be mandated rather than optional to better promote improved readability of and consistency in forms used by attorneys, landlords and judges; and to allow for standardized and timely updating. These benefits are all in keeping with the Supreme Court's access to justice initiative.

The ACAJ unanimously approved the filing of this petition and authorized AOC staff to circulate the petition and forms among the appropriate AJC and State Bar standing committees for further comment. Petitioner is attaching the draft forms proposed for adoption by the Administrative Director as Appendix B to aid in the court's deliberations and allow public comment on the forms as well as the rule amendments. Public comments on the forms will be provided to the

Administrative Director for his consideration.

II. Request for Expedited Adoption

In fiscal year 2015, almost 84,000 eviction actions were filed in Justice Courts in Arizona; almost 64,000 were filed in Maricopa County alone. The overwhelming majority of these actions concern residential leases with most tenants and many landlords appearing without legal representation. This means that every month that passes, approximately 7,000 eviction actions are being filed in Arizona. In light of the Supreme Court's emphasis on increasing fairness and justice in eviction actions, the ACAJ believes use of the proposed mandatory forms is an urgent need that warrants expedited consideration and adoption of the proposed new rules and amendments outside of the annual rule processing cycle, as permitted by Supreme Court Rule 28(G).

Accordingly, Petitioner respectfully requests the Court modify the usual comment schedule as follows:

September 23: Comments to the petition due

November 4: Petitioner's reply to comments due

This proposed schedule will then allow the Court to address the petition, comments, and replies in December 2016. Additionally, Petitioner recognizes the need for and requests a delayed effective date of July 1, 2017 in order to allow courts,

lawyers, and the public sufficient time to transition to using the newly adopted forms.

III. Conclusion

For the reasons stated above, the ACAJ respectfully requests the Supreme Court to adopt the amendments contained in Appendix A as proposed on an expedited basis.

RESPECTFULLY SUBMITTED this ____ day of _____, 20__.

By: _____
Judge Lawrence Winthrop
Chair, Arizona Commission on
Access to Justice

APPENDIX A

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. 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 form other than the approved form the court finds 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) 5-Day Notice to Move - Health and Safety Violation;
 - (5) 5-Day Notice to Move - Failure to Pay Rent;
 - (6) 10-Day Notice to Move - Material Breach;
 - (7) 10-Day Notice to Move - Repeat Material or Health and Safety Breach; and
 - (8) Immediate Notice to Move - Material and Irreparable Breach
 - (9) Other notices that are approve by the Administrative Director of the AOC.
- c. **No Charge for Forms.** Courts must provide all eviction action forms without charge.

Appendix B

() - _____
Attorney for Plaintiff / Address / Phone / Bar Number

Justice Courts, Arizona

CASE NUMBER: _____

() - _____
Plaintiff(s) Name / Address / Phone

() - _____
Defendant(s) Name / Address / Phone

COMPLAINT (Eviction Action)

Immediate Residential Mobile Home Commercial

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: State the date, place and reason for eviction:

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

Rent (Current and Prior Months) Totaling....	\$ _____
Late Fees: (if any in written agreement).....	\$ _____
Concessions (if any in written agreement)....	\$ _____
Reimbursable Court Costs.....	\$ _____
Attorney's Fees (if allowed).....	\$ _____
Other (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

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 (*court name*): _____
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 want to file a counterclaim, it must be in writing.
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.

The laws about this case are found in the Arizona Residential Landlord and Tenant Act. For more information on the Act, eviction actions, and your rights, please visit the Arizona Department of Housing website at <https://Housing.AZ.Gov>, the Maricopa County Justice Courts website at www.JusticeCourts.Maricopa.Gov, or AZLawHelp.org

Date: _____ Justice of the Peace _____

Justice Courts, Arizona

CASE NUMBER: _____

() -
Plaintiff(s) Name / Address / Phone

() -
Defendant(s) 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 Defendant has filed a counterclaim.
 GUILTY/RESPONSIBLE

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 to Plaintiff Defendant

IT IS FURTHER ORDERED granting monetary judgment to:

Plaintiff(s)

1. \$ _____ Rent
 2. \$ _____ Late charges
 3. \$ _____ Court cost
 4. \$ _____ Rental Concessions
 5. \$ _____ Damages
 6. \$ _____ Attorney fees
 7. \$ _____ Other _____
- \$ _____ **TOTAL**

Plaintiff awarded nothing

Defendant(s)

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

Defendant awarded nothing

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

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

Date: _____ By: _____
Clerk

**Notice of Health and Safety Violation(s)
5 Day Notice to Move**

() _____ - _____
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 a hearing, the judge will decide if you have to move or can 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.

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 #): _____

**Notice for Failure to Pay Rent
5 Day Notice to Move**

() _____ - _____
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.*

The total includes:

A. Rent \$ _____

1. Current month/week \$ _____

2. Prior month \$ _____

3. Other \$ _____ why _____. (Must be listed in rental agreement.)

B. Late Fees (if allowed in rental agreement) are \$ _____ per day for _____ days, which is a total of \$ _____ as of the date of this notice.

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.

**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. The judge will decide if you have to move or can 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 #): _____

() - _____
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 a hearing, the judge will decide if you have to move or can 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.

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 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 a hearing, the judge will decide if you have to move or if you can 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.

**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 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 a hearing, the judge will decide if you have to move or if you can 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.

Date: _____ Signature: _____

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

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	)	Objection to Proposed Rule
Add Rules 13(h) and 20 of the	)	Changes, to Proposed Mandatory
RULES OF PROCEDURE FOR	)	Summons and Complaint, to
EVICITION ACTIONS	)	Proposed Mandatory Notice
	)	Forms, and Suggested
	)	Alternative Language for Forms

BACKGROUND

The author of this pleading is a justice of the peace in Maricopa County. He has served on three rule writing committees, the State Bar’s Civil Jury Instruction Committee, and knows the level of effort and compromise that goes into producing the type of work product that has been completed; but he has significant and serious concerns about what has been proposed in the petition, especially the proposed mandatory eviction forms. They were not recently circulated among the justices of the peace and he did not see the proposed forms in final form until the week before this petition was filed. Concerns with the proposed forms were muted somewhat based on a belief that they were going to be optional rather than mandatory.

Some of the numerous problems with the forms will be detailed in this pleading. At a minimum, please do not force justice courts to use a two page judgment form, with check off boxes for items that appear in perhaps one out of every five-hundred cases (e.g. counterclaims, non-waiver agreements). In addition, the notice forms should be in the form of a cure notice from a landlord to a tenant. Instead, the proposed forms contain both cure notice language and also third person language, almost as if it was coming from a court order. The proposed notice forms are significantly more wordy than the forms currently on the Maricopa County Justice Courts' web page and the proposed notice forms are also truly confusing. In contrast, some of the proposals in the petition, especially a requirement that the complaint identify whether the case involves government subsidized housing, are genuinely good ideas.

I.

MANDATING SPECIFIC FORMS FOR NOTICES, BUT ESPECIALLY FOR COMPLAINTS, IS UNNECESSARILY RESTRICTIVE AND WILL GENERATE TENUOUS PROCEDURAL DUE PROCESS ARGUMENTS

While a mandatory form for a summons is often appropriate,¹ requiring landlord attorneys to file their complaints only on a court approved

¹ JCRCP 112(b); JCRCP, Appendix I.

form is unnecessarily restrictive and arguably insulting. There is certainly no proposal that attorneys representing tenants be restricted either to a court approved answer form or to a court approved counterclaim form. If the complaint complies with the numerous requirements of the applicable statutes and rules,² then it should be legally sufficient.

It is also somewhat ridiculous to require landlords and attorneys representing landlords to use a complaint form containing language for causes of action that they are not even alleging, only to leave those portions of the complaint form blank. Even so, a larger problem concerns potential remedies if a landlord used a notice form that contains substantially similar but not identical language.

If the required forms, especially in their current form, are made mandatory, then it will provide a basis for tenants to claim that their case should be dismissed simply because the form used in their case does not exactly match the form required by the Administrative Office of the Courts. Doing so is contrary to modern notice pleading requirements and to generally established principles of law. Procedural due process requires simply that a party have a meaningful opportunity to be heard, at a

² RPEA 5(b), 5(c) & 5(d).

meaningful time in the process, and in a meaningful manner.³ If the proposed mandatory notice forms are adopted without any opportunity for flexibility, then it would be possible for a tenant to argue that their case should be dismissed even though the landlord complied with the requirements of the statutes, any case law, and the Rules of Procedure for Eviction Actions (RPEA), and even though the tenant clearly understood what he or she needed to do to cure the alleged breach of the lease.⁴

American courts once followed a code pleading format that drew distinctions between merely alleging that someone is “entitled to possession of specific property” (which was inadequate) and alleging that someone is the owner and is entitled to possession (which was sufficient).⁵ We do not need to return to a system that values format over substance, especially since it is already clear that only a proper plaintiff can prevail in an eviction action⁶ and since it is already clear that only the property owner or his or her attorney can appear in court on behalf of the plaintiff.⁷ In short, proposed

³ *Comeau v. Ariz. St. Bd. of Dental Examiners*, 196 Ariz. 102, 107-108, 993 P.2d 1066, 1071-1072 (Ct. App. 1999)(Investigative interview was adequate).

⁴ Judges may hear similar arguments to the following: “But your honor, clearly the notice was defective because it only advised my client once that he should get any settlement agreement with his landlord in writing and the rules now require that a notice form be used that tells him that twice.”

⁵ Clark, *The Complaint in Code Pleading*, 35 Yale L.J. 259, 262 (1926).

⁶ RPEA 5(b)(1).

⁷ RPEA 11(a)(1).

Rule 20 should be modified to read simply, “When applicable,⁸ landlords should use forms that are substantially similar to the notice forms in the appendix to these rules.”

III.

PROPOSED LANGUAGE IN THE NOTICE FORMS MISLEADS TENANTS AS TO WHAT WILL HAPPEN IN COURT AND AS TO WHETHER THEY CAN REQUEST A COURT ORDER FOR MORE TIME TO CURE ANY ALLEGED BREACH OF THE LEASE

The proposed forms share some of the same common problems. For example, nearly every proposed form instructs the tenant to get any settlement in writing, not just once, but twice. This unnecessary duplication adds little, if any, value. However, there is a problem that goes well beyond elements of style.

Nearly every proposed form contains this problematic sentence: “After a hearing, the judge will decide if you have to move or can remain in the rental.” There are two major errors in that sentence.

Hearing is a term of art that involves some type of litigated procedure where a judicial officer makes either a factual or legal determination (or both) after hearing evidence (usually in the form of witness testimony). In

⁸ The “when applicable” language is designed to avoid a need to create an additional set of official forms for the Arizona Mobile Home Parks Residential Landlord and Tenant Act. A.R.S. §§ 33-1401 - 33-1501. It also avoids needing to create either a set of forms or additional language for month-to-month leases concerning a landlord’s duty to mitigate damages.

contrast, eviction actions are summary proceedings. If the tenant cannot articulate a legal defense to the landlord's allegations, then a judgment will be entered in favor of the landlord.⁹ If the tenant is able to do so, then the case is immediately set for a trial, but no hearing will occur.¹⁰ In addition to misrepresenting the law, the proposed sentence inaccurately describes the judge's role.

If a tenant is in a courtroom because of an eviction action, the judge will not "decide if [the tenant has] to move or can remain in the" residence. In reality, the judge will decide whether the landlord has met his or her burden of proof.

At least weekly if not daily, tenants appear in justice courts in Maricopa County for eviction actions with a false hope that the judge will give them additional time to pay their rent based on a sudden financial hardship. There is no legal authority to do so; but the proposed language at least infers that there is and sets judges up to fail. Tenants who appear with that false hope will leave thinking that the judge, and perhaps the judicial branch as a whole, did not care about them. A judge politely explaining that

⁹ RPEA 11(b)(1).

¹⁰ The only time a hearing is held in connection with eviction actions is if there is an issue concerning the writ of restitution. RPEA 14(b)(2). The North Valley Justice Court has set perhaps two since the rules were adopted in 2009.

the law is different than what is suggested on the mandatory form will appear nonsensical. Any explanation at that point will also be largely irrelevant to the emotions tenants feel as they leave the courtroom.

IV.

THE PROPOSED FIVE-DAY NOTICE FOR NONPAYMENT OF RENT IS IN A CONFUSING FORMAT AND CONTAINS CONFUSING LANGUAGE

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.¹¹ On day six, the landlord can file suit.

The five day notice for nonpayment of rent and the ten day non-compliance notice are by far the most frequent types of notice forms used in residential landlord tenant actions. Suggested alternative forms for both of these documents are attached to this pleading.

¹¹ A.R.S. § 33-1368(B). The sufficiency of the notice is a question of law. If the allegation alleges non-payment of rent for a space in a mobile home park, then the landlord must give the tenant a seven-day notice. *See generally*, Williams, *Representing Residential Tenants in Eviction Actions*, 28 Ariz. Attorney 12 (Nov. 2011).

There are numerous problems with the proposed five day notice. The entire format of the document invites the reader to set it aside and to read it later. It contains random parenthetical commentary (e.g. “Must be listed in rental agreement” or “if allowed in rental agreement”). There is also no information presented stating that the security deposit cannot be used to pay the rent, which is one of the more common misunderstandings frequently expressed by tenants. In addition, the proposed form refers the tenant to five sources of reference material, none of which is the RPEA.

CONCLUSION

Access to justice issues for tenants often have little to do with tenants not understanding why they are facing eviction. Instead, they are more likely to concern either repair and maintenance issues or how to get their security deposit back. (Sample letters and forms for those issues are also on our justice court web page.)¹² For example, they know that they have not paid their rent, but incorrectly believe that they can “rent strike” by withholding rent until their landlord makes the repair.

As a matter of public policy, it is a mistake to use a set of mandatory forms to change the law in an effort to make it more difficult for landlords to

¹² In addition, our bench Best Practices Committee recently requested input on draft sample complaint forms that can be given to tenants who wish to file a cause of action against their landlord under A.R.S. § 33-1367, either for an unlawful ouster or for a failure to supply essential services.

evict tenants. It also harms the target population because if you make it more difficult to evict tenants who are not complying with the terms of their lease, then landlords will be forced to raise the rent on the tenants who are. Phoenix and Tucson currently have reasonably affordable housing when compared to similar cities around the United States.¹³ Perhaps one of the reasons for that is that Arizona has a set of statutes and rules governing residential landlord and tenant matters that provide clear and quick remedies for an obvious breach of a lease. If that system is going to be significantly changed, then those changes should come either in the form of statutory changes or in the form of deliberate substantive changes to the RPEA. The RPEA uses clear and simple language that is understandable to a self represented litigant and its' provisions are unambiguous. There is no need for some type of implied repeal of them or implied amendment to them.

While the objectives behind the proposed forms are noble, the actual language of the forms must be, and can easily be, improved.

¹³ One survey of apartment rent found rent in Phoenix to be less expensive than several major cities (e.g. Austin, Baltimore, Charlotte, Dallas, Denver, Indianapolis, Nashville, Portland, Seattle) and found rent in Tucson to be equally less expensive than other arguably comparable locations (e.g. Albuquerque, Columbus, El Paso, Las Vegas, Louisville, Memphis, Milwaukee, San Antonio). DePietro, *Here's What the Typical One-Bedroom Apartment Costs in 50 U.S. Cities*, Business Insider (Jun. 17, 2016).

I respectfully request that this Court either reject this petition or remand it to a committee where all stakeholders have equal representation and where consensus language will be achieved.

RESPECTFULLY SUBMITTED, this 5th day of August 2016.

/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

**NOTICE OF INTENT TO END LEASE
FOR FAILURE TO PAY RENT
(Five Day Notice)**

[Date]

To: [Tenant's Name and Address]
And Any and All Occupants

You have not paid your rent on time. You owe the following amount:

This Month's Rent: _____
Late Fees: _____
Additional Amount: _____

Total as of the date of this notice: \$ _____

The additional amount is for _____. The late fees are increasing at a rate of \$_____ per day.

Your landlord is seriously considering filing an eviction action against you but would like to give you a chance to solve this problem without the need for anyone to go to court. Please contact us immediately. You will need to make arrangements to pay the money you owe. If you cannot do so, then we demand that you move out, and that you return the keys to the residence, five calendar days from the day you received this notice.

After you move out (either now or at the end of your lease), your landlord may apply some or all of your security deposit toward any unpaid rent, but your security deposit will not be used to pay your rent now.

Even if you move out, you are still responsible for all of the rent that is due until the property can be rented again to a new tenant. You may also be required to refund any discount you received (called a rental concession) and may be required to pay other charges stated in the lease.

If your landlord files an eviction action in court against you, then you may also be required to pay court costs and attorney's fees. If your landlord files an eviction case against you, as part of that case, you will receive a handout that explains your rights and obligations.

[Landlord or Property Manager's Name]
[Address and Telephone Number]

Additional Information: The law for these kind of cases can be found in Arizona Revised Statutes sections 33-1368(B) and 12-1171 and in the in the Arizona Rules of Procedure for Eviction Actions. Additional help may be available at *[insert local or state bar web pages or lawyer referral services]*.

This notice was served by: <input type="checkbox"/> Hand delivery to by giving it to (name): _____ who is a <input type="checkbox"/> tenant <input type="checkbox"/> occupant <input type="checkbox"/> By certified mail
--

**NOTICE OF INTENT TO END LEASE
(Ten Day Notice)**

[Date]

To: [Tenant's Name and Address]
And Any and All Occupants

You are not following the terms in your lease. If you do not fix the following problems within ten days, then your lease will end. The problems are [*unauthorized pet, unauthorized occupant, too much clutter on balcony*] _____

Your landlord is seriously considering filing an eviction action against you but would like to give you a chance to solve this problem without the need for anyone to go to court. Please contact us immediately.

If this problem, or something similar, happens again, then you will receive a second notice and, at that point, your landlord can legally file an eviction action against you.

If your landlord files an eviction action in court against you, then you may also be required to pay court costs and attorney's fees. If your landlord files an eviction case against you, as part of that case, you will receive a handout that explains your rights and obligations.

*[Landlord or Property Manager's Name]
[Address and Telephone Number]*

Additional Information: The law for these kind of cases can be found in Arizona Revised Statutes sections 33-1368(A) and 12-1171 and in the in the Arizona Rules of Procedure for Eviction Actions. Additional help may be available at [*insert local or state bar web pages or lawyer referral services*].

This notice was served by: <input type="checkbox"/> Hand delivery to by giving it to (<i>name</i>): _____ who is a <input type="checkbox"/> tenant <input type="checkbox"/> occupant <input type="checkbox"/> By certified mail

COMMITTEE ON SUPERIOR COURT

Meeting Date: September 9, 2016	Type of Action Requested: <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: COURT SECURITY STANDARDS COMMITTEE
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From: Court Security Standards Committee, Jennifer Albright, Staff

Presenter: CSSC Chair, Marcus Reinkensmeyer; CSSC AOC Staff Jennifer Albright

Description of Presentation: Discussion of proposed court security standards and other recommendations of the Court Security Standards Committee which will be presented to the AJC upon completion of the final report of the CSSC.

Recommended Motion: A motion to support the concept of court security standards and the additional recommendations that support implementation of those standards and aid in the continuous improvement of court security

COURT SECURITY STANDARDS COMMITTEE

Ensuring Secure, Open, Publicly Accessible Courts

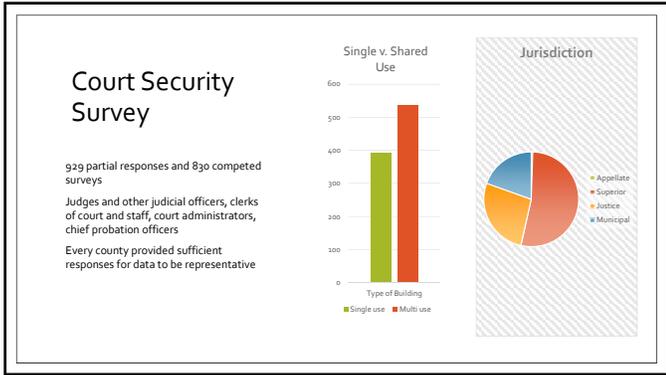
Committee Charge: AO 2015-104

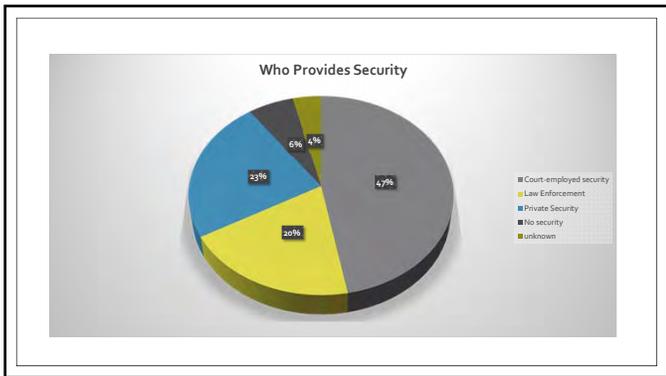
- (a) develop and conduct a survey of court security measures in Arizona,
- (b) develop recommendations on standards for courthouse and courtroom security,
- (c) develop recommendations on security officer training, and
- (d) submit a final report summarizing the Committee's work and recommendations by September 30, 2016

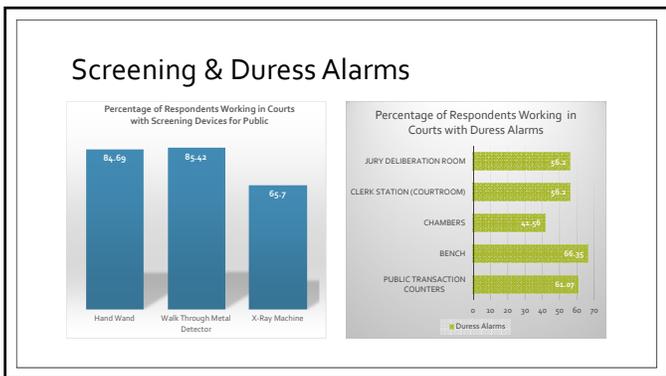
Committee Membership & NCSC Services

Membership:

Judges, court administrators, and deputy clerks from
 metropolitan and rural courts
 limited jurisdiction, superior, and juvenile courts
 Sheriffs, court security officers, and security directors and managers
 Representative of the State Bar of Arizona
 NCSC consultants Timothy Fautsko, Steven Berson, & Kent Kelley
 Regular guest from AOC Education Services Division



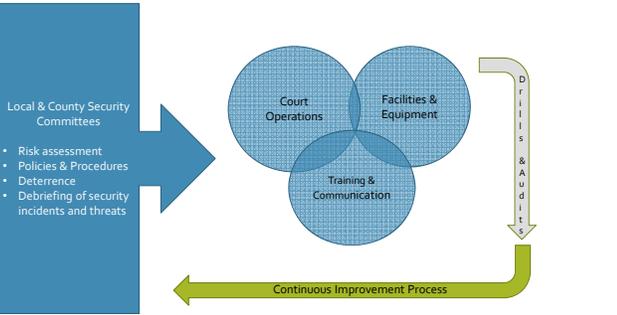




The Proposed Security Standards

There are 30 proposed security standards that are grouped into the following categories:

- Governance and Administration
- Entry Screening
- In-custody Defendants
- Facilities, Alarms, and Equipment
- Training



Governance & Administration

- Court Security and Emergency preparedness Committees
 - County-wide security committee
 - Court building or court complex committee
- Court Security Manuals
- Court Security Self-Assessments
- Responding to Negative Events
- Incident & Threat Reporting
 - Real-time secure sharing of information about major security incidents
 - Annual reporting of incident and threat data



Entry Screening

- One main entrance for public, unless others are fully staff with full screening for prohibited items
- Prohibited item policy, training on what prohibited items are; how to identify
- All visitors screened with at least a metal detector device
- All court buildings post signage that firearms are prohibited
- Random court employee screening
- Written policies on armed personnel for security purposes
 - Also policies on who can be armed for personal security pursuant to statute and Supreme Court and local court administrative orders



In-custody defendants

- Separate entrance for in-custody defendants
 - 80.60% of survey respondents work in courts that already meet this standard
- In-custody persons transported and escorted at all times by trained personnel
- Protocols for taking individuals into custody



Facilities, Alarms, & Equipment

- Duress alarms: public counters, bench, chambers, courtroom clerk station
 - Training on use; regular testing
- Locking protocols: courtrooms; jury deliberation rooms; data centers
- Courtroom sweeps: regularly conducted; training
- Public counter barriers
- Bullet resistant material in courtrooms
- Secured access to non-public areas
- Security cameras
- Exterior lighting
- Bollards or landscape to protect critical areas
- Window coverings



Training

- ✓New Hire and Annual Training on Court Security
 - Judges and judicial officers, all other employees
 - Statewide and Location Specific
- ✓In-Service Court Security Officer Training and Annual Training
 - Robust training program covering basic security principals, incident & threat reporting, use of force, firearms training, equipment training, screening, critical incidents
- ✓Private Security meet same standards as court-employed security officers
- ✓Task specific training:
 - duress alarm testing and responses; courtroom sweeps; identification of and managing prohibited items

Related Recommendations

- 3 year implementation period
- Establish statewide court security fund for one-time outlays for security equipment and security system improvements
- State level AOC staff support for coordination of court security standard implementation, assessments, oversight , and compliance
- Standing Committee on Court Security
- Creation of systems for assessing implementation and compliance
- Creation of court security training programs

Proposed Funding Model



Questions & Comments

Please contact
Jennifer R. Albright at jalbright@courts.az.gov
602-452-3453
or
Marcus Reinkensmeyer at mreinkensmeyer@courts.az.gov
602-452-3359

COMMITTEE ON SUPERIOR COURT

Meeting Date: Septmeber 9, 2016	Type of Action Requested: <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: AMENDMENTS TO ACJA § 7-206
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From: Mark D. Wilson, Director
Certification and Licensing Division

Presenter: Mark D. Wilson, Director
Certificated and Licensing Division

Description of Presentation: It has come to staff's attention that many of the superior courts are having difficulty recruiting certified reporters. One of the reasons articulated for this difficulty is the amount of time it currently takes to perform background investigations. Each applicant must be fingerprinted and have a criminal background investigation. Presently, it is taking four to six weeks for those fingerprint requests to be processed.

Staff proposes that ACJA § 7-206 be amended to allow individuals, not yet certified but currently employed or to be employed by a superior court, to receive Conditional Initial Certification. Such certification would allow employment by a superior court while the criminal background investigation is being completed.

Recommended Motion: Recommend that the Arizona Judicial Council adopt amendments to ACJA § 7-206 as proposed.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 7: Administrative Office of the Courts
Chapter 2: Certification and Licensing Programs
Section 7-206: Certified Reporter

A. Definitions. In addition to the definitions in ACJA § 7-201(A), the following definitions apply:

“Affiliate” means an individual or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the individual or entity specified.

“Board” means “the board of certified reporters” as provided in A.R.S. § 32-4002(1).

“Certify” means “board authorization to engage in activities regulated by the board” as provided in A.R.S. § 32-4002(4).

“Certification” means certification ~~“a standard certificate that is issued by the board to a person who meets the requirements of §§ 32-4021 and 32-4022 and does not include a temporary certificate” as provided in A.R.S. § 32-4002(2) that authorizes the individual to perform reporting as a certified reporter within Arizona.~~

“Certified reporter” means “a person who is certified by the board and who records and transcribes a verbatim record in any sworn proceeding by means of written symbols or abbreviations in shorthand, machine writing or voice writing” as provided in A.R.S. § 32-4002(3).

“Chapter” means Title 32, Chapter 40, Board of Certified Reporters, Arizona Revised Statutes.

“Conditional initial certification” means certification granted by the board prior to receipt of state and federal record check results that authorizes the individual certified to perform reporting services only as an official reporter employed by a superior court located in Arizona.

“Registered reporting firm” means an individual or entity that is registered pursuant to this section and for compensation offers to provide or provides reporting services or related services but does not personally provide the service as a certified reporter.

“Report” means “to stenographically or by voice writing record and transcribe sworn proceedings” as provided in A.R.S. § 32-4002(5).

~~“Temporary certificate” means a certificate that has been extended pursuant to Laws 1999, Ch. 335, § 3; Laws 2000, Ch. 41, § 13 and subsection G(4)(a).~~

“Voice writing” means “the making of a verbatim record of the spoken word by means of repeating words of the speaker into a device that is capable of digital translation into text” as

provided in A.R.S. § 32-4002(6).

B. through D. [no changes]

E. Initial Certification.

1. Eligibility for Application.

a. A.R.S. § 32-4021(A) provides:

A. An applicant for standard certification as a certified reporter . . . at a minimum shall:

1. Be at least eighteen years of age.
2. Be a citizen or legal resident of the United States.
3. Satisfy the requirements of § 32-4022.
4. Be of good moral character.
5. Possess a high school diploma or a general equivalency diploma or a similar document or certificate.
6. Pursuant to rules adopted by the supreme court demonstrate reasonable proficiency in making verbatim records of trial or judicial or related proceedings.
7. Comply with the laws and rules and orders adopted by the supreme court governing certified reporters in this state.
8. Pay the fees established pursuant to § 32-4008.

b. An applicant shall provide proof of passing the registered professional reporter's examination (RPR) or the certified verbatim reporter's examination (CVR) and shall also pass the Arizona Written Examination pursuant to ACJA § 7-201(E) and subsections (E)(3)(b) and (c).

2. Application for Initial ~~Standard~~ Certification. The procedures for application for initial certification are provided in A.R.S. § 32-4021 and ACJA § 7-201. Applicants for certification shall also meet the examination requirements specified in subsection (E)(3) and pursuant to A.R.S. § 32-4021(A)(9) an applicant shall "~~Submit~~submit a full set of fingerprints with the fee prescribed in § 41-1750 to the supreme court for the purpose of obtaining a state and federal criminal records check pursuant to § 41-1750 and Public Law 92-544."

3. Examination. In addition to the requirements of ACJA § 7-201(E) the following requirements apply:

a. Purpose. Pursuant to A.R.S. § 32-4005(B) and ACJA § 7-201(E), the examination for initial certification is to “[d]etermine through testing . . . an applicant’s ability to make a verbatim record of proceedings that may be used in any court by means of written symbols or abbreviations in shorthand, or machine writing or voice writing.”

b. Admission to the Arizona Written Examination.

(1) A.R.S. § 32-4022(A) provides:

A. A person shall not be admitted to an examination without presenting satisfactory evidence to the board that before the date on which the application for examination was filed the person has done at least one of the following:

1. Obtained one year of experience in making verbatim records of meetings, conferences, hearings or judicial or related proceedings by means of written symbols or abbreviations in shorthand, machine writing or voice writing and in transcribing these records.
2. Obtained a verified certificate of the satisfactory completion of a prescribed course of study from a court reporting school or a certificate from a school that evidences the equivalent proficiency and the ability to make a verbatim record of material that is dictated pursuant to rules adopted by the supreme court.
3. Obtained a national court reporters association’s registered professional reporter or registered merit reporter certificate.
4. Obtained a valid certificate to practice court reporting that is issued by a state other than this state if the other state’s requirements and certifying examination are substantially similar to or more stringent than those in this state.
5. Demonstrated reasonable proficiency in making verbatim records of trial or judicial or other related proceedings by passing an approved examination for certification pursuant to rules adopted by the supreme court.

c. Examination Procedures. In addition to the requirements of ACJA § 7-201(E), the procedures for examination are prescribed in A.R.S. § 32-4022:

(1) A.R.S. § 32-4022(B) provides:

A. The examination for certification consists of the following two parts:

1. A national court reporters association's registered professional reporter examination, a national verbatim reporters association's certified verbatim reporters association examination or an alternative demonstration of proficiency approved by the supreme court.
2. A written knowledge test of rules of the supreme court of Arizona and statutes of this state relating to court reporters.

- (2) The National Court Reporters Association (NCRA) RPR written knowledge test (WKT) and skills knowledge test (SKT) and the National Verbatim Reporters Association (NVRA) CVR, are the approved proficiency examinations to meet the minimum proficiency examination requirements of A.R.S. § 32-4022(B)(1).
- (3) An applicant satisfies the proficiency examination requirements by passing either the RPR or CVR examination as specified in A.R.S. § 32-4022(B)(1) and subsection (E)(3)(c)(2).
- (4) An applicant shall perform the duties of the profession using only the method of reporting the applicant used to obtain certification.
- (5) A.R.S. § 32-4022(F) provides: "An applicant who fails to pass the written examination . . . may apply for reexamination at any time."

4. Conditional Initial Certification. Conditional initial certification may be granted prior to receipt of state and federal record check results only for employment by the superior court as an official court reporter and authorizes the individual to provide reporting services only while acting in the course and scope of that employment. The board, upon a request from the Division, shall promptly meet to consider the request for conditional initial certification.

a. Except as otherwise set forth in this section, an individual granted conditional initial certification is subject to the professional and ethical responsibilities required by this code section.

b. Conditional initial certification terminates upon the occurrence of any of the following:

(1) Final action by the board granting or denying certification;

(2) Identification by division staff of any arrests or convictions that were not disclosed on the initial application; or

(3) Termination of superior court employment.\

c. Conditional initial certification can be granted only if the applicant has submitted:

(1) A complete application for initial certification that contains no information that would preclude certification, with the initial certification fees required by ACJA §

7-206(K);

- (2) Satisfactory evidence that the applicant is or will be employed by a superior court;
- (3) Satisfactory proof of compliance with ACJA § 7-206(E)(1)(a)&(b), and (E)(3);
- (4) A full set of fingerprints as required by A.R.S. § 32-4021(A)(9);
- (5) Written acknowledgement that the issuance of conditional initial certification has no precedential or evidential value in the Board's determination to grant or to deny the person's application for certification; and
- (6) Written acknowledgement that the conditional initial certification immediately becomes null and void if the continuing background investigation identifies any arrests or convictions that were not disclosed on the initial application.

d. Applications for initial certification for individuals who have been granted conditional initial certification shall be considered at the next board meeting following receipt of the state and federal record check results and completion of the background check.

45. Decision Regarding Certification. In addition to the requirements contained in ACJA § 7-201(E), the procedures for the decision regarding certification are pursuant to A.R.S. §§ 32-4021(B), -4024(A) and -4024(B).

- a. Approval of Initial ~~Standard~~ Certification. These requirements are contained in ACJA § 7-201(E).
- b. Denial of Initial ~~Standard~~ Certification. The requirements are contained in ACJA § 7-201(E).

F. [no changes]

G. **Renewal of Certificate.** In addition to the requirements contained in ACJA § 7-201(G) the following requirements apply:

- 1. Expiration Date. A.R.S. § 32-4023(A) provides: "A certificate issued pursuant to this article is subject to renewal and expiration as prescribed by rules adopted pursuant to section 32-4005." All ~~standard~~ certifications expire at midnight, on February 28th of each even numbered year.
- 2. Application. A.R.S. § 32-4023(B) provides: "The certificate holder is responsible for applying for a renewal certificate." A certified reporter shall submit a completed renewal application, applicable fees pursuant to subsection (K) and documentation by the renewal application deadline established by the board to remain eligible to serve as a certified reporter in Arizona.
- 3. Continuing Education. A.R.S. § 32-4023(D) provides: "A certificate holder shall include with the application for renewal documentation satisfactory to the board that the certificate holder has successfully completed at least ten hours of approved continuing education each year." The certificate holder shall comply with the provisions regarding

continuing education contained in subsection (L).

~~4. Types of Certificates.~~

~~a. Temporary Certificate. Pursuant to Laws 1999, Ch. 335, § 3, and Laws 2000, Ch. 41, § 13, "All temporary certificates shall be renewed annually and may not be renewed beyond December 31, 2002, except that the board may renew temporary certificates after December 31, 2002 due to extenuating circumstances." An applicant may request and the board may grant renewal of a temporary certificate if the applicant meets all of the following conditions:~~

- ~~(1) Holds a valid temporary certificate; and~~
- ~~(2) Complies with the policies on requests for extensions of temporary certification based on extenuating circumstances as adopted by the board.~~

~~b. Standard Certificate. An applicant may apply for and the board may renew a standard certificate of an applicant who:~~

- ~~(1) Holds a valid standard certificate; and~~
- ~~(2) Meets all other requirements for renewal.~~

~~54. Decision Regarding Renewal. In addition to the requirements contained in ACJA § 7-201(E) and (G) the following requirements apply:~~

- ~~a. A.R.S. § 32-4023(B) provides: "On receipt of the renewal application and the renewal fee, the board shall issue the applicant a new certificate unless the board finds that the applicant does not meet the requirements for renewal or that section 32-4024 applies."~~
- ~~b. The board may deny renewal of a certificate for any of the reasons specified in § 32-4024.~~

H. through J. [no changes]

K. Fee Schedule. Pursuant to A.R.S. § 32-4008, the supreme court shall set and collect fees necessary to carry out the provisions of Title 32, Chapter 40, Arizona Revised Statutes pertaining to the certification of certified reporters.

1. ~~Initial Certification Fees.~~

- a. Initial Certification for Two Year Certification Period \$450.00
 - (1) For certification expiring more than one year after application date \$450.00
 - (2) For certification expiring less than one year after application date \$225.00
- b. Fingerprint Processing

(Rate as set by Arizona law and subject to change)

2. Examination Fee for the Arizona Written Test
 - a. Applicants for Initial Certification \$ 50.00
 - b. Reexaminations \$ 50.00

(For any applicant who did not pass the examination on the first attempt. The \$50.00 fee applies to each reexamination.)
 - c. Reregistration for Examination \$ 50.00

(For any applicant who registers for an examination date and fails to appear at the designated site on the scheduled date and time.)
3. Renewal Certification Fees.
 - a. Certification Renewal \$400.00
 - b. Inactive Status \$100.00
 - c. Late Renewal \$ 50.00
 - d. Delinquent Continuing Education \$100.00
4. Miscellaneous Fees
 - a. Replacement of Certificate or Name Change \$ 25.00
 - b. Public Record Request per Page Copy \$.50
 - c. Certificate of Correctness of Copy of Record \$ 18.00
 - d. Reinstatement Application \$100.00

(Application for reinstatement to certification after suspension or revocation of certification.)
5. Registered Reporting Firm Registration Fees
 - a. Initial Registration \$100.00
 - b. Renewal Registration \$ 50.00

L. through N. [no changes]

COMMITTEE ON SUPERIOR COURT

Meeting Date: September 9, 2016	Type of Action Requested: <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: PROPOSED CHANGES TO ACJA SECTION 1-507
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From: Commission on Technology

Presenter: Stewart R. Bruner, COT Staff

Description of Presentation: The Technical Advisory Council (TAC), a standing subcommittee of Commission on Technology (COT), recommends specific standards and technologies to carry out statewide policies and priorities for automation and technology. In that role, TAC members updated language in the code section covering protection of electronic records in paperless court operations to allow storage arrays, virtual servers having failover implemented, and virtual tape technology rather than actual tapes for tertiary copies. While those changes were being discussed, several members recommended that certification requirements for technical resources operating the server and database environments that store the electronic records be made optional and that formal education, in-house skills assessments, or both, be authorized in lieu of certifications for Windows Server and SQL. Wording changes in both subject areas have been reviewed by COT and recommended to AJC for approval. The revision appears on the code section web forum where comments are being solicited.

Recommended Motion: The courts' CIO is aware that certification has shortcomings but believes it to still be a valid and vital requirement. He is working to make certified, third-party resources available to local courts via statewide contract, as is done for OnBase support. The alternative to certification proposed places the responsibility for determining the technical abilities of information technology specialists on the shoulders of the judge or court administrator. Removing certification is not in keeping with the high value of the court case records that will be lost when an uninformed or incorrect technical decision is made. He asks that the wording changes for storage arrays, virtual servers, and virtual tape technology be approved while the wording changes for removal of mandatory certification be rejected.

COMMITTEE ON SUPERIOR COURT

Meeting Date: September 9, 2016	Type of Action Requested: <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: TASK FORCE ON THE ARIZONA RULES OF CRIMINAL PROCEDURE
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From: Task Force on the Arizona Rules of Criminal Procedure

Presenter: Judge Joseph Welty, Chair of the Task Force

Description of Presentation: In December 2015, the Supreme Court entered Administrative Order 2015-123 and established the Task Force on the Arizona Rules of Criminal Procedure. The order directed the task force to

...review the Arizona Rules of Criminal Procedure to identify possible changes to conform to modern usage and to clarify and simplify language. These changes should promote the just resolution of cases without unnecessary delay or complexity. The Task Force shall seek input from various interested persons and entities with the goal of submitting a rule petition by January 2017 with respect to any proposed rule changes.

Judges Welty will provide a brief overview of the task force and its work to date. There will be a more in-depth presentation at the November COSC meeting.

Recommended Motion: Information only

COMMITTEE ON SUPERIOR COURT

Meeting Date: September 9, 2016	Type of Action Requested: <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: UPDATE ON THE ANNUAL RULES AGENDA
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From: Court Services Division

Presenter: Mark Meltzer

Description of Presentation: The Supreme Court held its annual rules agenda on August 29, 2016. This presentation will review the August 29 minutes and the Court's decisions on pending 2016 rule petitions.

Recommended Motion: None