

**COMMITTEE ON LIMITED JURISDICTION COURTS
MINUTES**

Wednesday, February 25, 2015

1:30 p.m. to 4:00 p.m.

Conference Room 119A/B

1501 West Washington Street

Phoenix, Arizona 85007

Present: C. Daniel Carrion, Dan Doyle, Julie Dybas, Jeffrey Fine, Judge MaryAnne Majestic, Judge Steven McMurry, Judge J. Matias “Matt” Tafoya, and Sharon S. Yates

Telephonic: Judge Antonio Riojas (chair), Judge Timothy Dickerson, Judge Maria Felix, Christopher Hale, Judge Eric Jeffery, and Judge Dorothy Little

Absent/Excused: Pete Bromley, Judge James William Hazel, Jr., Judge Arthur Markham, and Marla Randall

Presenters/Guests: John Belatti (City of Mesa), Paul Thomas (Mesa Municipal Court), Judge Rachel Torres Carrillo (West McDowell Justice Court), and Judge Lawrence Winthrop (Arizona Court of Appeals, Division I); and Theresa Barrett, Jennifer Greene, Paul Julien, Jerry Landau, Mark Meltzer, Nick Olm, Marcus Reinkensmeyer, and Patrick Scott, Administrative Office of the Courts (AOC)

Staff: Susan Pickard and Julie Graber, AOC

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The February 25, 2015, meeting of the Committee on Limited Jurisdiction Courts (LJC) was called to order at 1:31 p.m. by Judge Antonio Riojas, Chair.

B. Approval of Minutes

The draft minutes from the October 29, 2014, meeting of the LJC were presented for approval.

Motion: To approve the October 29, 2014, meeting minutes, as presented. **Action:** Approve, **Moved by** Judge MaryAnne Majestic, **Seconded by** Judge Steven McMurry. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Rules Update

Mark Meltzer, AOC staff, discussed rule petitions of interest to LJC that were filed for consideration during the 2015 rules cycle. The deadline for comments is May 20, 2015.

Criminal Procedure

R-14-0030: Was adopted on an expedited basis to comply with *Lopez-Valenzuela v. Arpaio* (9th Circuit Court), which declared A.R.S. § 13-3961(A)(5) unconstitutional.

Although the amendments were effective December 16, 2014, the rule petition is still open for public comment until May 20, 2015.

R-15-0011: Would address problems with the redaction of discovery in criminal proceedings.

R-15-0028: Would address the Arizona Supreme Court's opinion in *Coleman v. Johnsen, et al.*, which requires defendants to give notice of their intent to exercise the right of self-representation on appeal within 30 days after the filing of the notice of appeal.

Member comments:

- Who is responsible to inform the defendant about the right to self-representation on appeal – the attorney or trial court?

R-15-0017: Would provide additional notifications to defendants that they could lose their right to directly appeal a guilty verdict if they voluntarily fail to appear for sentencing.

Member comments:

- A member suggested including crossover language regarding the waiver of appellate counsel in the new proposed form.
- Several members raised issues with providing additional notifications about when defendants *might* lose the right to appeal rather than when they will.

Motion: To draft and file a comment opposing R-15-0017, as discussed. Judge Eric Jeffery will present the proposed comment at the next LJC meeting. **Action:** Approve, **Moved by** C. Daniel Carrion, **Seconded by** Judge Steven McMurry. Motion passed unanimously.

R-15-0026: Would amend current Forms 4(a) and 4(b) to include inquiries about the defendant's military service, homeless status, English proficiency or desire for an interpreter to assist the court with determining eligibility to specialty courts and scheduling interpreter services.

Member comments:

- Members raised concerns that if the defendant said no to an interpreter on the release questionnaire and later changed his/her mind, the judge could deny the appointment of an interpreter later in the case. As such, the information should be used as an aid only.

R-15-0009 (Filed by LJC): Would align criminal and civil traffic procedures. No comments filed.

R-15-0029: Would add new Rule 32.13 that provides a procedure for post-conviction relief in limited jurisdiction courts, and includes an explanatory comment.

Member comments:

- Members agreed that before filing a comment, Judge Anagnost should be invited to discuss his proposal and answer some questions at the next LJC meeting. **ACTION:** Staff will arrange to have Judge Anagnost present at the next meeting.

Other rule petitions

R-15-0015: Proposes two alternatives to provide for a change of judge for eviction cases in limited jurisdiction courts, including Judge McMurry’s previous proposal for a change of judge as a matter of right if it would not cause a day’s delay.

Member comments:

- Judge McMurry expressed serious second thoughts about his proposal due to tenant and landlord issues. He has learned that Community Legal Services and attorneys representing landlords are excited to use this option.
- Would it make a difference if a request was made at 9:00 a.m. or 4:00 p.m.? Might a judge be available earlier in the morning, but not later in the afternoon?
- Members agreed that the rule petition could result in unforeseen consequences with regard to judge shopping and timing of requests, and that a comment should be filed.
- While Judge McMurry did participate in the development of this petition, he is not the petitioner; therefore, he has the ability to file a comment. Judge McMurry stated that he may be presenting a comment regarding this petition at the next meeting.

R-15-0018: Would prohibit non-lawyers from preparing mediation agreements, unless certified as a legal document preparer, but would define serving as a mediator as not being the practice of law.

Member comments:

- Members raised concerns that the rule petition would impact a multitude of mediation and conciliation programs in the courts.

B. Legislative Update

Jerry Landau, AOC Government Affairs Officer, presented the following legislative proposals of interest to limited jurisdiction courts:

HB2088: Mental health; veteran; homeless courts

The language regarding the establishment of mental health, veteran and homeless courts was deleted in a strike everything bill, which updated the use of archaic terminology (e.g., “police courts” was replaced with “municipal courts”).

HB2089: Aggravated assault; judicial officers

A strike everything bill replaced “elected officials” with “judicial officers” in the list of aggravated assaults, and defined “judicial officer.”

HB2204: Criminal restitution order; courts

Would allow a limited jurisdiction court to enter a criminal restitution order at the time the defendant is ordered to pay restitution.

HB2221: Driver license suspension; photo radar

Would require the court to suspend a person's driver license for failure to appear unless the violation is a result of a photo enforcement system. The bill is still moving forward.

HB2294: Courts; approved screening; treatment facilities

Would expand the list of approved treatment facilities to those approved by the U.S. Department of Veterans' Affairs. The bill is still moving forward.

HB2311: Judgment liens; recordation; real property

Would permit judgments to be filed in the county recorder's office instead of the justice courts. The bill would have a significant impact on the courts, which would see a reduction in the filing fees collected.

HB2320: Firearms; permit holders; public places

Would permit a person to carry a deadly weapon at certain public establishments unless security personnel and screening devices are present.

HB2379: Home detention; initial jail term

Would define the initial term of incarceration for certain DUI offenses as the initial sentencing period prior to the suspension of jail time. Glendale is the only city to respond regarding the cost for a city jail.

HB2662: Speed restrictions; penalties

Would designate certain offenses as waste of finite resources when the speed driven is 10 miles or less over the maximum speed limit. The bill could result in loss of revenue for courts and will be reworded to address some confusion.

HB2663: Small claims divisions; permissible motions

Would add a motion for relief from judgment to the list of permissible motions in a small claims action.

SB1035: Domestic violence treatment programs; providers

Would allow the court to approve domestic violence treatment programs pursuant to Supreme Court rules.

SB1064: Service of process; regulation

Would provide alternative service of process by sending a notice by certified mail and posting a notice on the front door or garage door. The bill has been scaled back and is moving forward.

SB1116: Fines; fees; costs; community restitution

Would permit the court to order the defendant to perform community restitution in lieu of the payment for all or part of the fine, fee, or incarceration costs at a rate of \$10 per hour. The bill is moving forward.

SB1295: Fingerprinting; judgment of guilt; records

Would allow the court to obtain a defendant's two fingerprint biometric-based identifier in the case file and require a booking agency to take an arrestee's ten-print fingerprints if the agency cannot determine whether legible fingerprints were taken by the arresting authority to ensure that accurate criminal history records are maintained. The bill is moving forward. There are still issues to address with training, reeducation, and availability in remote areas.

C. Expedited Rule 11 Hearings and Limited Jurisdiction Courts

Paul Thomas, Court Administrator from Mesa Municipal Court, and John Belatti, Prosecutor with the City of Mesa, reviewed current issues in Rule 11 hearings, including resources and speed of case dispositions, and how mental health determinations involving misdemeanor offenses could be facilitated in limited jurisdiction courts in a more expedited manner. Mr. Thomas noted that Superior Court has exclusive jurisdiction in this area; however, limited jurisdiction courts are qualified given the routine nature of these hearings and precedent with juvenile court matters. Additionally, the rulings are based on the doctor's report, which are consistent with the movement toward specialty courts with medical or clinical dispositions. Mr. Belatti discussed how consolidating Rule 11 hearings at the local level and appointing a single magistrate and city prosecutor to a case could enhance access to justice with quicker case dispositions and alleviate problems with resources, case management, and customer service.

Member comments:

- Members agreed that Rule 11 hearings could be facilitated and expedited in limited jurisdiction courts but current rules and statutes would need to be modified. Several questions were raised regarding concurrent and exclusive jurisdiction, restoration to competency program, financial implications, and benefit to smaller counties.
- The presenters will present LJC's comments to the Committee on Superior Court at the May meeting.

Motion: To support further exploration of this proposal, and review possible methods of "extending" Superior Court jurisdiction to qualified limited jurisdiction judges to expedite Rule 11 matters for misdemeanor cases, as discussed. **Action:** Approve, **Moved by** Judge Steven McMurry, **Seconded by** Christopher Hale. Motion passed unanimously.

D. After Hours Warrant Requests

Marcus Reinkensmeyer, AOC Court Services Division Director, reported that Maricopa County Initial Appearance (IA) Court commissioners make determinations and issue warrants for blood draws in real time in an electronic warrant system, 24 hours per day, 7 days a week. Mr. Reinkensmeyer discussed the possibility of expanding this system to other warrant types and beyond Maricopa County by assigning after-hours warrant requests to IA Court commissioners. He sought feedback from members regarding the need for this type of initiative, which would require additional resources and funding, and whether it should be pursued.

Member comments:

- Several members representing rural counties supported such an initiative, which would also result in efficiencies for law enforcement.
- Concern was also voiced about the cost associated with opting in.

E. Supreme Court Rule 123 Proposed Amendments

Jennifer Greene, AOC Assistant Counsel, presented proposed amendments to Supreme Court Rule 123 that would clarify public access to personnel and applicant records by limiting access to job applicant records and by defining records maintained for human resources purposes and high-level administrative positions; mandate the removal of case information on courts' websites in accordance with record retention schedules; and update references to the judicial branch procurement code. The deadline for comment is April 27, 2015.

F. Arizona Commission on Access to Justice (ACAJ) – Self-Represented Litigants in Limited Jurisdiction Courts Workgroup

Judge Rachel Torres Carrillo, West McDowell Justice Court and chair of the Self-Represented Litigants in Limited Jurisdiction Courts (SRL-LJC) workgroup, provided background information regarding the Arizona Commission on Access to Justice and described its purpose, membership, and structure. Judge Carrillo explained that the SRL-LJC workgroup was created to examine and make recommendations on assisting self-represented litigants and revise court rules and practices to facilitate access and the efficient processing of eviction cases. The workgroup's main areas of focus include:

- Simplify and make eviction, and fee waiver and deferral forms more understandable and accessible
- Gather and create informational videos specific to eviction actions
- Provide computers in the court's lobby for use by SRLs with access to smart forms, informational videos, and information in several languages
- Encourage comprehensive training for judges and update the legal information v. legal advice training of court staff with useful scenarios
- Expand assistance of SRLs outside the court setting and explore law school based clinics and VLP clinics in the landlord/tenant area
- Explore the recognition of judges who are role models in dealing with SRLs

Judge Lawrence Winthrop, Court of Appeals, Division I, and chair of the ACAJ, noted that the commission's three workgroups were created to focus on initiatives from Chief Justice Bales' Strategic Agenda, which include improving services for self-represented litigants, encouraging pro bono services, and promoting the tax credit information campaign. The commission will be making its initial recommendations to the Arizona Judicial Council at the March meeting.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

Paul Julien, AOC Education Services, announced that an hour-long video presentation on the disposition of civil offenses by court clerks is now available on the AOC's Learning Management System.

B. Next Committee Meeting Date
Wednesday, April 29, 2015
10:00 a.m. to 3:00 p.m.
State Courts Building, Room 119
1501 W. Washington St., Phoenix, Arizona 85007

The meeting adjourned at 3:43 p.m.

**COMMITTEE ON LIMITED JURISDICTION COURTS
MINUTES**

Wednesday, April 29, 2015

10:00 a.m. to 3:00 p.m.

Conference Room 119A/B

1501 West Washington Street

Phoenix, Arizona 85007

Present: Judge Antonio Riojas (Chair), Pete Bromley, Judge Timothy Dickerson, Dan Doyle, Julie Dybas, Judge Maria Felix, Jeffrey Fine, David Fuller (proxy for C. Daniel Carrion), Christopher Hale, Judge James William Hazel, Jr., Judge Eric Jeffery, Judge Dorothy Little, Judge Steven McMurry, and Sharon S. Yates

Telephonic: Judge J. Matias “Matt” Tafoya

Absent/Excused: Judge MaryAnne Majestic, Judge Arthur Markham, and Marla Randall

Presenters/Guests: Nicole Abarca (Maricopa County Public Defender), Judge George Anagnost (Peoria Municipal Court), C. Daniel Carrion, Tom Manos (Maricopa County Manager), and Mary Ellen Sheppard (Maricopa County Assistant Manager); and Eric Ciminski, Elizabeth Evans, Paul Julien, Jerry Landau, Denise Lundin, Amy Love, Mark Meltzer, Nick Olm, Patrick Scott, and David Withey, Administrative Office of the Courts (AOC)

Staff: Susan Pickard (AOC), Julie Graber (AOC)

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The April 29, 2015, meeting of the Committee on Limited Jurisdiction Courts (LJC) was called to order at 10:01 a.m. by Judge Antonio Riojas, Chair.

B. Approval of Minutes

The draft minutes from the February 25, 2015, meeting of the LJC were presented for approval.

Motion: To approve the February 25, 2015, meeting minutes, as presented.

Action: Approve, **Moved by** Sharon Yates, **Seconded by** Judge Timothy Dickerson. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. The Hidden Cost of Pre-Trial Detention (*item out of order*)

Tom Manos, Maricopa County Manager, and Mary Ellen Sheppard, Maricopa County Assistant Manager, discussed findings from “The Hidden Cost of Pre-Trial Detention,” study that was presented at last October’s Court Leadership Conference. To achieve long-term public safety outcomes, Mr. Manos reported that Maricopa County is rethinking the way it handles pre-trial detention. “Smart Justice” practices are helping the County to identify opportunities for improvements through evidence-based decision-making. To this end, Maricopa has focused on reviewing and re-evaluating the current and projected

jail costs, and identifying less costly options to achieve the same or better outcomes. One example is creating a county fund that could post a \$50 bond, instead of the county absorbing the \$260 for the first incarceration day.

Member comments:

- Maricopa judges reported that low bonds are usually set because the Sheriff's Office requires a bond to transport an inmate. Is the inmate being held in custody for another offense? If so, is the highest bond used or are the bonds totaled? Ms. Sheppard will bring the concerns back to the stakeholders.

Ms. Sheppard discussed the importance of gaining a thorough understanding of who is in our jails, how long they stay, and how often they come back in order to determine the best treatment programs, where to focus services and how to reduce costs. She reviewed the "Smart Justice" principles of allowing low-risk offenders to remain connected to the supports that make them low risk (e.g., home, family, job, and church); and of providing moderate to high-risk offenders with interventions to address the issues that increase recidivism rates like substance abuse, poor self-control, anti-social personality, attitudes and values. Ms. Sheppard explained how these principles are being applied in Maricopa County, what has been learned, and the next steps.

Member comments:

- Why hasn't the county adopted a home detention program when the cities have? Ms. Sheppard noted that the issue has not been raised in a few years and should be brought back to the stakeholders.
- There should be consistency between the cities and the counties so it does not matter where a person was driving; the experience should be the same.

B. Experience of AJACS Rollout at Apache Junction Municipal Court (*item out of order*)

Judge James Hazel shared Apache Junction Municipal Court's experience with the AJACS rollout. The new process emphasizes updating systems immediately rather than waiting until later. AOC staff has been at the court working to identify and resolve any bugs. He reported that the transition has been stressful, yet worthwhile, and recommended cleaning up data before conversion. It is important for judicial leadership to be present during the rollout to work through issues from a judge's standpoint and provide encouragement to staff.

C. Comment Regarding R-15-0017, Petition to Amend Rules 9.1, 14.3, 26.11 and 41, ARCrP (*item out of order*)

On behalf of LJC, Judge Eric Jeffery presented a draft comment in opposition to R-15-0017. The draft comment supports alternative ways of notifying criminal defendants that they may lose the right to appeal under A.R.S. § 13-4033. The draft suggests giving the advisement at the time of arraignment to all persons charged, rather than by including several warnings on multiple forms.

Additionally, Judge Jeffery's draft comment addresses the inclusion of a finding by the court should the defendant cause a "voluntary" 90-day delay at the time of sentencing. This action by the defendant should cause the defendant to lose or waive his or her appellate rights.

Motion: To fix spelling mistakes and approve and file LJC's comment in opposition to R-15-0007. **Action:** Approve, **Moved by** David Fuller, **Seconded by** Judge Maria Felix. Motion passed unanimously.

D. HB 2308 Defensive Driving School (*item out of order*)

David Withey, AOC Chief Counsel, and Jerry Landau, AOC Government Affairs Officer, discussed HB 2308, Defensive Driving School (DDS). This new law changes the period of eligibility to attend defensive driving school for drivers cited for eligible traffic offenses from two years to one year, effective July 3, 2015. Defensive Driving Schools and the AOC will post notice of the change to DDS eligibility on their web sites; however, there may be drivers who come to court not knowing they are eligible to attend DDS or request a continuance in order to attend DDS. Mr. Landau asked that judges keep in mind the legislative intent to expand drivers' attendance to DDS when deciding whether to grant continuances.

E. HB 2553 Sex Trafficking Victims (*item out of order*)

David Withey, AOC Chief Counsel, and Jerry Landau, AOC Government Affairs Officer, presented a draft emergency rule petition to implement HB 2553, effective July 3, 2015. This new law authorizes a person convicted of prostitution to apply to the court to have the conviction vacated, if the person can show that the offense was a direct result of having been a victim of sex trafficking; allows the court to proceed without a hearing if the prosecutor does not oppose the application; and implements procedures for vacating the conviction, including an order sealing the case file. Mr. Withey noted that HB 2553 only applies to violations of A.R.S. § 13-3214 committed prior to July 24, 2014, and does not apply to convictions related to a municipal ordinance.

Eric Ciminski, AOC eCourt Services Project Director, discussed two options for restricting access to the case records by either 1) sealing the records by court order; or 2) keeping the records confidential by rule. Mr. Ciminski explained that if a case record included a prostitution conviction among other offenses, it could only be sealed in its entirety in the case management system, in this instance the prostitution conviction alone could not. The presenters sought comments from LJC regarding the draft rule, proposed application and order and the identified options for restricting records access.

Member comments:

- How will this legislative change impact the records retention schedule? Although there will be a minute entry vacating the conviction in the court record, the conviction will remain in the law enforcement record.
- Members considered both the options offered for sealing records and preferred option 2 with added language clarifying that the case record consists of the electronic and paper records. Additionally, members recommended including language in both

options that would allow the victim to obtain copies of the record; and would require notations be made in the law enforcement and prosecution records indicating that the conviction was vacated and the applicant was a victim of crime.

- Members expressed concerns that the law only applied to violations of the state statute and suggested adding language that would apply the law to the equivalent municipal ordinances. Mr. Landau advised that unilateral language could not be added to the rule and further legislation would be required to apply to municipal ordinances.

F. Proactive Enforcement / Warrant Mitigation (*item out of order*)

Jeff Fine shared Maricopa County Justice Courts' efforts to develop best practices and innovative strategies that align with Chief Justice Bales' "Advancing Justice Together" and will ensure public resources are used effectively, efficiently, and accountably. Mr. Fine illustrated the benefits of shifting from reactive to proactive strategies. Each year, for example, Maricopa County issues over nine thousand warrants and spends approximately \$7,199,263 based on the estimated cost of each executed warrant (\$794.27). By implementing the practice of telephoning defendants and leaving messages for them to voluntarily appear at court, they improved appearance rates and, if the court had a valid telephone number, warrant issuance figures could be reduced and save over \$5 million annually. Mr. Fine discussed exploring additional strategies such as finding cheaper and more reliable methods of communication (instead of the preferred U.S. Postal Service), and working with other stakeholders and leveraging technological solutions like corporations to design systems that capture email addresses on a statewide basis.

Member comments:

- Pima County uses robo-calls to communicate with parties, and if there is attorney involvement, the person is automatically deleted from the list.
- The costs can vary greatly between the types of interactive voice response (IVR) systems.

G. R-15-0029 regarding ARCrP 32.13 (*item out of order*)

Judge George Anagnost from Peoria Municipal Court presented amended petition R-15-0029. This proposal would add a new subsection, Rule 32.13, providing a post-conviction relief (PCR) procedure in limited jurisdiction (LJ) courts by eliminating the notice of PCR and consolidating into one petition. The petition requires filing within 60 days and cannot be pursued while the case is on direct appeal; and failing to move to withdraw from a plea pursuant to Rule 17.5 would preclude all PCR. The proposed PCR procedure is intended to be less burdensome, and reduce delays and inefficient uses of judicial resources.

Member comments:

- David Fuller expressed serious concerns that the subsection could result in constitutional deficiencies and eliminate protections that help ensure due process and the right to a fair trial if counsel is ineffective and does not file a motion to withdraw from a plea agreement under Rule 17.5. PCR is the last form of appellate review for

some defendants and barring PCR could deprive defendants from equal protection under the law in LJ courts. Although a misdemeanor is not as serious as a felony, the consequences of a misdemeanor conviction could be as bad as a felony conviction for some.

Motion: To support Judge Anagost's amended petition R-15-0029, as discussed.

Action: Approve, **Moved by** Judge Eric Jeffery, **Seconded by** Judge Dorothy Little. Motion passed with one vote in opposition from David Fuller. The City of Phoenix Public Defender's Office will be filing its own comment in opposition to the amended rule petition.

H. Legislative Update (*item out of order*)

Amy Love, AOC Legislative Liaison, reviewed bills of interest to limited jurisdiction courts that were passed during the 52nd Legislature, First Regular Session and signed by the Governor. The general effective date is July 3, 2015.

HB 2013 – courts; days; transaction of business: Permits a municipal court to transact business on Columbus Day.

SB 1179 – criminal damage; gangs; criminal syndicates: Reclassifies criminal damage as a Class 5 Felony if the damage is inflicted to promote any criminal street gang.

SB 1048 – vexatious litigants; fees; costs; designation: Prohibits the court from waiving fees for vexatious litigants unless it is a family law action. The bill is effective January 1, 2016.

HB 2294 – courts; approved screening; treatment facilities: Adds the Department of Veterans Affairs to the list of authorized providers for treatment programs.

HB 2089 – aggravated assault; judicial officers: Defines “judicial officer” and classifies an assault on a judicial officer as an aggravated assault if committed while engaged in official duties.

HB 2311 – judgment liens; recordation; real property: Allows a judgment from a justice or municipal court to be filed in the Recorder's office.

SB 1064 – service of process; regulation: Provides alternative service of process for a photo enforcement violation by sending by certified mail and regular mail and posting a notice on the front door or garage door.

SB 1035 – domestic violence treatment programs; providers: Authorizes the Supreme Court to approve, pursuant to court rule, additional domestic violence offender treatment providers. The bill is effective January 1, 2016.

HB 2204 – criminal restitution order; courts: Allows a limited jurisdiction court to enter a restitution order for a victim of a traffic accident involving failure to remain on the scene and resulting in vehicle damage only.

HB 2663 – satisfaction of judgment: Allows a satisfaction of judgment to be filed in a small claims action.

SB 1116 – fines; fees; costs; community restitution: Authorizes a municipal or justice court to order the defendant to perform community restitution credited at a rate of \$10 per hour when the defendant is unable to pay the fines, fees, and costs.

I. Rule Change Petition Reconsideration (*item out of order*)

Judge Riojas discussed pending rule petitions and whether LJC wanted to file formal comments.

- R-15-0015 – After some discussion, members agreed that the opportunity to move for a change of judge will cause serious scheduling issues and delays, especially in non-urban courts.

Motion: To approve the submission of a brief comment to the Rules Forum.

Action: Approve, **Moved by** Judge Steven McMurry, **Seconded by** Judge Timothy Dickerson. Motion passed unanimously.

- R-15-0018 – Judge McMurry drafted a comment in opposition to the proposed amendment to Rule 31(d)(25) of the Rules of the Supreme Court that would require mediators to either be a member of the bar or a certified document preparer because it would prohibit the current and beneficial practice of justice court mediator programs. Volunteer mediators must complete a mediation training program but few, if any, are bar members or certified document preparers.

Motion: To support Judge McMurry's opposition to the proposed amendment to

Rule 31(d)(25), as discussed. **Action:** Approve, **Moved by** Judge Timothy Dickerson, **Seconded by** Judge Maria Felix. Motion passed unanimously.

- R-15-0028: The committee declined to make a comment.
- R-15-0024: In response to questions regarding mobile warrants, Patrick Scott, AOC Court Specialist, noted that the rule petition is being amended and a revised version will be filed by July 13, 2105, addressing the comments received. The committee declined to make a comment until the rule petition was revised.

J. Amendments to ACJA § 5-206 Fee Deferrals and Waivers (*item out of order*)

Patrick Scott, AOC specialist, presented proposed amendments to ACJA § 5-206, Fee Deferrals and Waivers, which incorporate statutory changes to A.R.S. § 13-302. The changes to this code section included:

- definitions for “vexatious conduct” and “vexation litigant”; and
- adds a new section that prohibits vexatious litigants from receiving fee waivers in certain circumstances, and requires the payment of deferred or waived fees if the litigant is declared a vexatious litigant during the course of a case.

The forms for deferral and waiver will be updated as necessary prior to the January 1, 2016 effective date.

Motion: To approve the proposed code change, as presented. **Action:** Approve, **Moved by** Judge Maria Felix, **Seconded by** Judge Dorothy Little. Motion passed unanimously.

K. Personal Information Redaction Affidavit and Instructions (*item out of order*)
Nick Olm, AOC specialist, provided a brief update regarding the Personal Information Redaction Affidavit and Instructions, which adds former judges to the list of approved officials.

L. Justice of the Peace Conference (*item out of order*)
Judge Dorothy Little announced that the Justice of the Peace Conference will be held September 2–4, 2015, in Prescott, AZ.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public
None present.

B. Next Committee Meeting Date
Wednesday, August 26, 2015
10:00 a.m. to 3:00 p.m.
State Courts Building, Room 119, 1501 W. Washington St., Phoenix, AZ 85007

Meeting adjourned at 1:23 p.m.

COMMITTEE ON LIMITED JURISDICTION COURTS MINUTES

Wednesday, August 26, 2015

10:00 a.m. to 12:00 p.m.

Conference Room 119B

1501 West Washington Street

Phoenix, Arizona 85007

Present: Judge Steven McMurry, and Paul Thomas (proxy for Judge J. Matias “Matt” Tafoya from 11:00 a.m. to 12:00 p.m.)

Telephonic: Judge Antonio Riojas (chair), Judge Timothy Dickerson, Chief Dan Doyle, Julie Dybas, Judge Maria Felix, Judge Elizabeth R. Finn, Judge Eric Jeffery, Judge Dorothy Little, Marla Randall, Judge J. Matias “Matt” Tafoya (from 10:00 a.m. to 11:00 a.m.), and Sharon S. Yates

Absent/Excused: Pete Bromley, Jeffrey Fine, Christopher Hale, Judge James William Hazel, Jr., Judge Arthur Markham, and Laine P. Sklar

Presenters/Guests: Jennifer Greene, Marretta Mathes, Patrick Scott, David Svoboda, Kathy Waters, David Withey, and Amy Wood, Administrative Office of the Courts (AOC)

Staff: Susan Pickard (AOC), Julie Graber (AOC)

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The August 26, 2015, meeting of the Committee on Limited Jurisdiction Courts (LJC) was called to order at 10:04 a.m. by Judge Antonio Riojas, Chair. Judge Riojas announced the appointment of new members, Judge Elizabeth Finn and Laine Sklar, and welcomed them to the committee.

B. Approval of Minutes

The draft minutes from the April 29, 2015, meeting of the LJC were presented for approval.

Motion: To approve the April 29, 2015, meeting minutes, as presented. **Action:** Approve. **Moved by:** Judge Maria Felix. **Seconded by:** Judge Dorothy Little. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Language Access Update

Amy Wood, Court Services Division, Case Flow Management, introduced the new language access coordinator, David Svoboda, and reviewed changes to the language access plans. Highlights of Ms. Wood’s presentation included:

- New template for language access plans (LAP) were sent out
- A new language access complaint form and process was created

- Access to court-ordered services was included in the LAP for persons with limited English proficiency (LEP)
- The number of resources was expanded on the Interpreter Information webpage

Next, Ms. Wood discussed the proposed language interpreter credentialing program that is in keeping with Goal 1 from the Strategic Agenda “to develop strategies for increasing the availability and quality of interpreters.” The proposed program would establish tiered credentialing for all individuals providing interpretation services within the courtroom. She described the program’s recommended elements, structure, expectations, development timeline and budgetary impact.

- Tier 1, would establish ethical standards and ensure interpreters have a basic understanding of courts, and a command of English and the target language. The National Center for State Courts’ (NCSC) written examination would have to be passed.
- Tiers 2-4, would require interpreters to successfully complete all steps in Tier 1, and test interpreting skills using NCSC’s oral examination, which evaluates sight, consecutive and simultaneous interpretation. The different tiers would be associated with a pass rate on the oral examination.

It is anticipated that courts may likely receive requests to pay for credentialing and test fees. Ms. Wood’s proposal envisions that courts would use their preferred qualified interpreters and handle complaints locally, while the AOC would manage the program’s registration, training, and testing. She sought feedback from the committee and requested approval to move forward with the credentialing program in concept.

Member comments included:

- Several members raised concerns about the costs for courts and the implementation timeline. The program would hopefully begin in early 2016 and apply to part-time and full-time interpreters.
- Members recommended phasing in the program and starting with only court staff interpreters, followed by registry interpreters and contract interpreters, then IRC and Language Line, and finally rare language interpreters.
- Members suggested waiving the overview of courts, if a staff interpreter has worked in the court for a certain number of years.
- How can we encourage contract interpreters to obtain the credentials? How would courts communicate that they will be using credentialed over non-credentialed interpreters?
- Would the program influence the use of IRC and Language Line interpreters?
- Members inquired whether the tiered program could result in an appellate issue regarding equal protection when multiple parties require an interpreter for the same rare language and each is provided with an interpreter with a different level of credentialing.

Motion: To support moving forward in general subject to the committee's concerns.
Action: Approve. **Moved by:** Julie Dybas. **Seconded by:** Judge Timothy Dickerson.
Motion passed unanimously.

B. Motor Vehicle Department (MVD) Code 45

Judge Dorothy Little discussed the use of MVD Code 45, which may allow law enforcement to withdraw, cancel or dismiss civil traffic citations in the absence of a prosecutor at the hearing. She inquired whether the code should be eliminated as an acceptable disposition code.

Members agreed that if a law enforcement officer can issue the citation, the officer should also be able to withdraw the citation without needing to be a party to the case.

C. Evidence Based Pretrial in Arizona Courts (*item out of order*)

Kathy Waters, AOC Adult Probation Division Director, provided an overview of Arizona pretrial services describing pretrial foundational concepts intended to balance individual rights with the need to protect the public, and assist judges.

Ms. Waters discussed how the AOC has been working on establishing structure for pretrial services, and expanding the use of evidence-based pretrial practices by:

- applying new research;
- implementing validated pretrial risk assessments; and
- establishing pretrial services in adult probation departments as well as a model for limited jurisdiction courts.

Ms. Waters reported that the Arizona Judicial Council recently authorized statewide implementation of the Arnold Foundation's Public Safety Assessment (PSA), which is a pretrial risk assessment tool that has been test-piloted in Arizona since last year. The PSA is intended to help judges determine release conditions during the pretrial stage by providing additional information that uses non-interview factors and predicts failure to appear, new criminal activity, and the risk of new violent criminal activity. The AOC is currently working on statewide training and education, and preparing the remaining counties to use the PSA.

Member comments included:

- How are previous failures to appear determined when rule warrants are not currently captured in NCIC? According to Patrick Scott, the AOC has been working with the Department of Public Safety to implement a new repository that would capture and retain historical information about the entered warrants.
- Paul Thomas described some challenges when implementing the model in limited jurisdiction courts, including the significant staff resources required to scan criminal history reports before hearings and concerns about the staff's level of education. However, the tool provides extensive reporting capabilities and is useful for pretrial services and officer safety.

D. Determining Eligibility for Appointment of Counsel under Rule 6, Arizona Rules of Criminal Procedure (*item out of order*)

David Withey, AOC Chief Counsel, discussed how a defendant might be determined to be indigent for the purpose of representation after a limited jurisdiction court's determination of non-indigence was overturned by the superior court. Mr. Withey noted that indigence under Criminal Rule 6.4 refers to the financial inability to employ counsel and requires the defendant to be examined under oath by the judge regarding the defendant's financial resources; however, the examination may often be expedited and limited to the financial questionnaire. He inquired whether additional guidance should be provided in the LJC bench book, and if the current financial questionnaire should be amended.

Members did not feel amendments were necessary because the practice is not to deny the appointment of counsel.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

Judge Finn and Paul Thomas announced that Mesa Municipal Court and Glendale Municipal Court have been working as Superior Court sites to facilitate Rule 11 hearings for misdemeanor cases. They asked to be added to next agenda.

B. Next Committee Meeting Date

Wednesday, October 28, 2015
10:00 a.m. to 3:00 p.m.
State Courts Building, Room 119
1501 West Washington Street
Phoenix, Arizona 85007

Meeting adjourned at 12:02 p.m.

**COMMITTEE ON LIMITED JURISDICTION COURTS
MINUTES**

Wednesday, October 28, 2015

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

Conference Room 119A/B

1501 West Washington Street

Phoenix, Arizona 85007

Present: Judge Antonio Riojas, Chair, Judge Timothy Dickerson, Julie Dybas, Jeffrey Fine, Judge Elizabeth R. Finn, Christopher Hale, Judge Eric Jeffery, Doug Kooi (proxy for Judge Maria Felix), Judge Dorothy Little, Marla Randall, Judge Laine P. Sklar, Paul Thomas (proxy for Judge J. Matias “Matt” Tafoya), Sharon S. Yates

Telephonic: Judge James William Hazel, Jr., Judge Arthur Markham

Absent/Excused: Chief Dan Doyle, Judge Steven McMurry

Presenters/Guests: Judge Mark Armstrong (Supreme Court Staff Attorney), Pamela Bridge (Community Legal Services), Ellen Katz (William E. Morris Institute for Justice), Judge Wendy Million (Tucson City Court), Janis Villalpando (Community Legal Services), and Judge Gerald Williams (North Valley Justice Court); Theresa Barrett, Stewart Bruner, Eric Ciminski, Brian Granillo, Jennifer Greene, Francelle Kounouho, Jerry Landau, Marretta Mathes, Mark Meltzer, Nick Olm, Kathy Sekardi, David Svoboda, Kathy Waters, David Withey, and Amy Wood, Administrative Office of the Courts (AOC)

Staff: Susan Pickard (AOC), Julie Graber (AOC)

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The October 28, 2015, meeting of the Committee on Limited Jurisdiction Courts (LJC) was called to order at 10:00 a.m. by Judge Antonio Riojas, Chair.

B. Approval of Minutes

The draft minutes from the August 26, 2015, meeting of the LJC were presented for approval.

Motion: To approve the August 26, 2015, meeting minutes, as presented. **Action:** Approve, **Moved by** Judge Dorothy Little, **Seconded by** Judge Timothy Dickerson. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Domestic Violence Offender Treatment Workgroup

Judge Wendy Million, Tucson City Court and Chair of the Domestic Violence Offender Treatment Workgroup, presented a new code section, ACJA § 5-209, which was drafted to implement provisions of SB1035 and establish minimum standards for courts when approving domestic violence offender treatment programs not otherwise approved by the Department of Health Services (DHS), a probation department, or the Department of Veterans Affairs (VA) for persons convicted of a misdemeanor domestic violence offense. The law authorizes courts to approve these programs, subject to rules created by the Arizona Supreme Court, and takes effect on January 1, 2016.

Judge Million discussed the purpose, goals and requirements of the new standards, which are modeled after the DHS regulations and would differentiate between intimate and non-intimate relationships. The standards are intended to address the high failure rate, cost disparity and lack of approved providers in rural counties by: allowing for non-DHS certified treatment providers; making the standards available for judges to use at their discretion to approve an alternative provider if a finding of good cause exists; and requiring judges to conduct compliance reviews of the approved treatment providers annually. She sought feedback from LJC and other stakeholders, as well as recommendation for approval before presenting the proposal to the Arizona Judicial Council (AJC) at the December meeting

Member comments:

- Several members commented that the proposed code section did not resolve logistical issues and suggested providing alternative delivery methods, such as Skype and FaceTime. Judge Million noted that the workgroup explored the issue but there is no research available on the topic and she stressed the importance of having a group dynamic and personal responsibility.
- Some members commented that educating offenders more quickly would reduce recidivism. Judge Million noted that the offenders need the minimum time for pre-contemplation and contemplation to facilitate changes in their behaviors.
- The timeframe for the review of treatment providers should be every two years rather than annually.

Motion: To approve the court approval of domestic violence offender treatment programs in concept, subject to the committee's concerns; and to review the final product before it is presented to AJC. **Action:** Approve, **Moved by** Judge Arthur Markham, **Seconded by** Jeff Fine. Motion passed unanimously.

B. R-14-0027: Rule 11, Rules of Procedure for Eviction Actions

Judge Mark Armstrong (Ret.), Supreme Court Staff Attorney, provided background information and an update on the status of rule petition, R-14-0027, to amend Rule 11, Rules of Procedure for Eviction Actions. The petition proposed telephonic or video conference appearances in eviction actions, subject to due process concerns. Judge Armstrong noted that the language is modeled after Rule 1(R) of the Arizona Rules of Protective Order because of the accelerated nature of both types of proceedings. For additional comment, he yielded the floor to Douglas C. Fitzpatrick, the petitioner; Judge Gerald Williams on behalf of the Maricopa County Justice Court bench; and Ellen Katz on behalf of the William E. Morris Institute for Justice. Judge Armstrong presented proposed language that addressed issues with statutory time standards, alignment of filing deadlines, equal protection for both parties, and practicality of a written request. Judge Armstrong sought feedback from LJC on the proposed language and inquired whether a middle-ground could be found that allowed the amended language to move forward.

Member comments:

- Concerns were raised about timing issues with the 24-hour rule because clerks cannot answer every call or return all voicemail messages when there is not enough information provided.

- Members felt that a written request should be required to appear telephonically. Judge Armstrong pointed out that the protective order rule does not require a written request and a judge will retain discretion with the proposed standards. Judge Finn reported not having a problem with telephonic appearances in protective order proceedings.
- Members believed a middle-ground could be reached regarding telephonic appearances in eviction actions; however, they agreed that more time was needed to resolve the matter of oral versus written motions, the 24-hour rule, and prior court approval for telephonic appearances.

Motion: To table until the next LJC meeting on February 28, 2016. **Action:** Approve, **Moved by** Judge Eric Jeffery, **Seconded by** Julie Dybas. Motion passed unanimously.

C. Mesa and Glendale Rule 11 Pilot Project

Judge Elizabeth Finn, Glendale City Court, and Paul Thomas, Mesa Municipal Court, presented information on the Glendale City Court and Mesa Municipal Court pilot project to facilitate Rule 11 competency evaluation and subsequent ruling at the local court level. Judge Finn explained how this proposal would (1) allow a process for city court judges to act as Superior Court *judge pro tem* and preside over Rule 11 proceedings at their courthouses; (2) use doctors on the approved Superior Court list; and (3) keep the case's Superior Court jurisdiction.

The presenters summarized the processes developed to date, those in progress, and the benefits of facilitating these proceedings at the local level for city courts, city court judges, and clerks' offices. The highlighted benefits included:

- By allowing defendants to have their evaluations conducted at the courthouse instead of another off-site location, the "no show" rate was drastically reduced from 40% to 0%;
- Case processing times can be shortened by monitoring timelines on doctors' reports;
- Significant cost savings can be achieved by negotiating flat rates with doctors; and
- Fulfills access to justice goals.

The proposed pilot project was approved by the AJC last week and will start in January 2016.

Member comments:

- Would limited jurisdiction courts handle restoration at the local level? No. It would remain a Superior Court matter.
- Will judges have the ability to send a case to the superior court? Yes. The jurisdiction of a Rule 11 case would not change.

D. 2016 Meeting Schedule

Susan Pickard, AOC, reviewed the 2016 proposed meeting schedule:

- Wednesday, February 24
- Wednesday, May 25
- Wednesday, August 31
- Wednesday, November 16

Motion: To approve the 2016 meeting schedule, as presented. **Action:** Approve, **Moved** by Judge Timothy Dickerson, **Seconded** by Sharon Yates. Motion passed unanimously.

E. SB1116 and Community Restitution

Marretta Mathes, AOC Senior Court Operations Specialist, discussed the impact of SB1116, which authorizes a municipal or justice court to order a defendant to complete community restitution in criminal cases to be credited at a rate of \$10.00 per hour in lieu of payment for all or part of the amount owed if the court finds the defendant is unable to pay, or if the defendant is in contempt for failure to pay, a fine, fee, assessment or incarceration costs. Ms. Mathes noted that a draft Q&A form was developed to address potential implementation issues for courts when the bill becomes effective on January 1, 2016. She reviewed the document and sought feedback from members on whether additional questions should be included before it is distributed in December as part of a statewide memorandum. Members should forward additional questions to her and David Withey.

Member comments:

- Mr. Withey noted that reimbursable costs are not addressed in A.R.S. § 13-824 and cannot be satisfied by community restitution.
- What is the impact of the bill on a court that already has a community restitution program in place? The provisions of A.R.S. § 13-824 will be effective and take precedence over current programs. This question will be added to the Q&A.
- Do fees provided by local ordinances take priority over statutory fees? Yes.

F. Interpreter Credentialing Program

Amy Wood, Court Services Division, Case Flow Management, updated members on the proposed interpreter credentialing program since presenting at the August LJC meeting and following AJC's approval to move forward with interpreter credentialing, the proposed fee structure and the model code of ethics. Ms. Wood highlighted changes to the program and addressed concerns raised by stakeholders.

- Background checks for staff and freelance interpreters will remain with the court and will not be part of the credentialing program.
- Interpreting skills for lesser used languages that are not covered by the National Center for State Courts' (NCSC) oral examination will be tested with the oral proficiency interview. The AOC has reached out to NCSC about available resources for the language, Dinka.
- Courts are to show a preference for using credentialed freelance interpreters and will be required to have staff interpreters credentialed within 36 months.
- Fees will be based on residency.

- The credentialing program will provide for reciprocity.
- The AOC will communicate with interpreter agencies and associations about the credentialing program to bring more awareness.
- At the last meeting, members inquired whether the tiered program could result in an appellate issue when multiple parties require an interpreter for the same rare language and each is provided with an interpreter with a different level of credentialing. Ms. Wood reported that it would not really be an issue from Arizona law's perspective because the error in interpreting would have to be substantial and be shown to impact on the outcome of the event.
- The AOC is asking court administrators to share audio files to build a body of cases that can be used as resources for interpreters to gain skills.
- There will be two cycles of testing per year.

Member comments:

- A member inquired about how to evaluate the skills of court staff who converse with limited English proficiency court customers at the front counter. Ms. Wood noted that the credentialing program does not apply to bilingual non-interpreter staff who carry out their duties in a language other than English.

G. 2015 Rules Agenda

Mark Meltzer, AOC Senior Policy Analyst, reviewed the 2015 rule petitions of interest to limited jurisdiction courts that were adopted. The general effective date is January 1, 2016.

Criminal Procedure

R-15-0009: The rule petition repeals the Rules of Procedure in Traffic and Boating Cases; moves the Arizona Traffic Ticket and Complaint (ATTC) form from the repealed rules to the Civil Traffic Rules; and applies to cases filed on or after January 1, 2016.

R-15-0005: The rule petition allows the court having jurisdiction over the defendant to either issue a notice to schedule a hearing, or issue a summons or warrant to compel the defendant's presence, upon receipt of a petition or a written report.

R-15-0011: The rule petition clarifies that redactions must be identified and the legal basis stated in discovery documents.

R-15-0017: The rule petition requires additional notifications to defendants on certain forms that they will lose their right to directly appeal a guilty verdict if they fail to appear for sentencing within 90 days after conviction.

R-15-0024: The rule petition establishes a new standard warrant form that merges eight forms into Form 2; and is mandatory as of January 1, 2016.

R-15-0026: New questions are included regarding military service, homeless status, and language skills in Rule 41, Form 4(a) and Form 4(b).

Rules of the Supreme Court

R-15-0020: The rule petition requesting that gender identity be recognized was denied because Rule 2.3 already prohibits judges from manifesting improper bias.

R-15-0027: The rule petition clarifies access to personnel records and includes a new definition for high-level administrative positions.

Other Rule Petitions

R-15-0015: The rule petition requesting a preemptory change of judge in eviction actions was denied.

R-15-0010: The rule petition reorganizes the Arizona Rules of Protective Order Procedure.

R-15-0018: The rule petition amends the definition of a mediator by adding that serving as a mediator is not the practice of law.

H. Legislative Update

Jerry Landau, AOC Government Affairs Director, noted that there is not any legislation being proposed that would directly affect limited jurisdiction courts but a few issues are being considered:

- The Arizona Criminal Justice Commission (ACJC) will examine changes to the fingerprinting protocol in the State so all fingerprinting would be reported to the booking agency, except in misdemeanor cases, which would go to the arresting agency.
- Arizona Prosecuting Attorneys Advisory Council (APAAC) has formed a working group regarding the criminal sentencing code in the 2017 legislation session.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

None present.

B. Next Committee Meeting Date

Wednesday, February 24, 2016

10:00 a.m. to 3:00 p.m.

State Courts Building, Room 119

1501 West Washington Street

Phoenix, Arizona 85007

Meeting adjourned at 1:34 p.m.