

**COMMITTEE ON LIMITED JURISDICTION COURTS
MINUTES**

Wednesday, February 22, 2017

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

Conference Room 119A/B

1501 West Washington Street

Phoenix, Arizona 85007

Present: Judge Antonio Riojas, Chair, Judge Timothy Dickerson, Chief Dan Doyle, Julie Dybas, Judge Maria Felix, Jeffrey Fine, Judge Elizabeth R. Finn, Christopher Hale, Judge Eric Jeffery, Judge Russ Jones, Judge Lewis Levin, Judge Steven McMurry, Judge Laine P. Sklar, Judge J. Matias “Matt” Tafoya, Mr. Adam R. Walterson, Sharon S. Yates

Telephonic: Judge James William Hazel, Jr., Marla Randall

Presenters/Guests: Cathy Clarich, Jennifer Green, Donald Jacobson, Jerry Landau, Mark Meltzer, David Withey, Administrative Office of the Courts (AOC)

Staff: Susan Pickard, Karla Williams (AOC)

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The February 22, 2017, meeting of the Committee on Limited Jurisdiction Courts (LJC) was called to order at 10:00 a.m. by Judge Antonio Riojas, Chair.

Judge Riojas noted that Arizona Code of Judicial Administration (ACJA) §§ 1-501: Court Automation Standards, and 1-506: Filing and Management of Electronic Court Documents, copies of which were included in the member’s meeting packet, had been revised and could be found on the Code Section Forum. The comment period on each runs through March 10, 2017.

B. Approval of Minutes

The draft minutes from the August 31, 2016, meeting of the LJC were presented for approval.

Motion: To approve the August 31, 2016, meeting minutes, as presented.

Action: Approve. **Moved:** Julie Dybas. **Seconded:** Judge Jeffery. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Suggested Additions to Garnishment Hearing Request Form

Judge C. Steven McMurry discussed the necessity of adding the following language to the Request for Hearing on Garnishment Form 11 (Earnings):

“I WILL NOT BE ABLE TO CHALLENGE THE JUDGMENT AT THE GARNISHMENT HEARING. For example, if you believe the evidence was insufficient, then you should file a Motion for Reconsideration. If you believe that the service was not done correctly, then you should file a Motion to Set Aside the judgment. However, these motions will most likely not be discussed in detail in the garnishment hearing.”

“[] The amount being withheld from my pay is causing an extreme financial hardship for me or for my family.”

Motion: To support Judge McMurry’s proposal with the amended motion to remove “[] The judgment creditor does not have a valid judgment against me because:” since this line could be covered under “Other:” **Action:** Approve.
Moved: Judge Dickerson. **Seconded:** Judge Felix. Motion passed unanimously.

B. Legislative Update Jerry Landau (taken out of order)

Jerry Landau, AOC Government Affairs Officer, started by addressing concerns regarding proposed amendments to Arizona Rules of Criminal Procedure (ARCrP) Rule 6 (R-16-0041) that stem from the recommendations of the Task Force on Fair Justice for All. The amendments are being interpreted to not require a defendant to have an attorney during the initial appearance, but to require the court to appoint an attorney at the initial appearance for the limited purpose of determining the release conditions subsequent to the initial appearance. The appointment is not for defense of the charges. Clarifying language is being considered.

Mr. Landau reviewed legislative bills of interest to the Committee indicating that more than fifty percent of the bills that have been introduced have died.

HB2179: Municipalities; Counties; Intergov Agreements; Reqs.
HB2237: Forcible Entry; Detainer; Prohibited Rules
HB2269: Victims' Rights; Requirements; Monetary Judgments
HB2295: Attorney Regulation; Assessments; Membership Dues
HB2300: Supreme Court; Regulation of Attorneys
HB2402: Prohibited Possessors; Driving Record; Notation
SB1035: Tech Correction; Building Codes
SB1054: Traffic Accidents; Fatality; Implied Consent

C. Task Force on Fair Justice for All: Status and Recommendations (taken out of order)

Donald Jacobson updated members on the recommendations from the Fair Justice for all Task Force that are in the development stage. The focus of these

recommendations is to provide additional sentencing options to judges in lieu of imposing fines and fees that a defendant may be unable to pay. Mr. Jacobson reviewed the on-going projects that correspond to the eleven Task Force guiding principles. Those project included:

1. Ability to Pay tools
2. Compliance Assistance Programs
3. Arizona Traffic Ticket and Complaint (ATTC) amendments
4. Diversion options
5. Statewide Text Notification system
6. Order to Show Cause and Status Hearing training
7. Expansion of Specialty Courts
8. Modification of ARCrP Forms 6 and 7
9. Bonds: Imposing and Enforcing
10. Release conditions training
11. Risk assessment bench card

Mr. Jacobson concluded his presentation by informing the members that the Task Force is developing an education plan for judicial officers and staff to assist with the implementation of the proposed recommendations and the tools being developed.

D. Rules Update

Jennifer Greene, AOC Assistant Counsel, presented recently adopted rule changes that will be effective April 3rd. Changes highlighted include:

- Rule 6.1 was amended to read: An indigent defendant is entitled to have an attorney appointed for the limited purpose of determining release conditions, if detained pretrial after misdemeanor criminal charges are filed.
- R-16-0041 – Proposed amendments to Forms 6 & 7 (Release Order and Appearance Bond). These amendments were adopted December 12, 2016.

David Withey, AOC Chief Counsel, discussed pending rule change R-17-0015. This rule change addresses Order to Show Cause hearings for failure to pay, and determination of bail eligibility for those defendants who are charged with offenses for which no bail is permitted and those defendants who pose a danger to the community. This proposed rule does not address flight risk, therefore, a constitutional amendment will be needed to address it. Until that time, courts will still need to set a high bail if the defendant represents a flight risk. Comments are due May 22nd.

E. 2017 Rules Petitions

Mark Meltzer, AOC Senior Policy Analyst, discussed the rules that were adopted in the fall of 2016. Highlights included:

R-16-0010: filed by the Civil Rules Task Force. It was noted that some of the numbering and lettering on the rules was changed when the rules were restyled. Consequently, Justice Court rules that make reference to Superior Court rules do not line up. Mr. Meltzer indicated that this issue will be addressed and corrected.

Mr. Meltzer then reviewed rule petitions of possible interest to the Committee that were filed for the Court's consideration during the 2017 rule cycle and encouraged members to file comments. Unless otherwise noted, the deadline for comments is May 22, 2017.

Rules reviewed were:

R-17-0007: Procedures for sealing and unsealing documents

R-16-0046: Addendum to the release questionnaire entitled, *intimate partner risk assessment*

R-17-0002: Criminal rules stylistic and substantive amendments. Comment deadline is March 14, 2017

R-17-0014: Jury foreperson may sign a verdict form with a juror number and initials

R-17-0015: Failure to pay monetary sanctions in a timely fashion; and procedures for finding a person to be not eligible for bail under the Arizona Constitution

R-17-0024: Judicial economy and efficiency in the post-conviction relief process

R-17-0027: Use of body-worn camera video

R-17-0028: Pre-verdict directed verdicts of acquittal

R-17-0003: Hearsay exception for "ancient documents"

R-17-0004: Hearsay definition and certain exemptions

R-16-0040: Mandated court-approved eviction action forms

R-17-0016: Computation of time for service of the summons and complaint

R-17-0020: Eviction Action stipulated judgment

R-17-0023: Protective order hearing and allegations of the petition

E. Rule Petition to Modify Rule 17.1(A)(4) of the Rules of Criminal Procedure

Judge Eric Jeffery presented a proposed modification to ARCrP Rule 17.1 to remove the notarization requirements of plea by mail and to streamline the process for minor traffic violations. It was noted, the proposed plea by mail document is smaller and complies with the rule. The proposed document includes: one instruction page, one plea by mail form, one sentencing order

form, and a written advisement of the defendant's rights and the possible consequences.

Motion: To endorse the streamlined process proposed in the rule change as presented for Plea by Mail, to include removing the notarization requirement.

Action: Approve. **Move by:** Judge McMurry. **Seconded by:** Judge Tafoya. **Vote:** Motion passed unanimously.

F. Court Interpreter Scheduling Tools

Cathy Clarich, AOC Caseflow Unit Manager, discussed costs and scheduling regarding interpreters; and reviewed a compilation of tools and resources currently available to courts when searching for interpreters entitled, "Tools for Court Interpreter Coordinators;" and reminded members of the approaching deadlines for the Interpreter Credentialing Program.

G. Committee on Improving Small Claims Case Processing-Proposed Rules

Judge Steven McMurry presented draft proposed rules developed by the Committee on Improving Small Claims Case Processing. The cited need for the rules was that time standards for small claims cases are not being met. The committee identified the reason for delay as being; self-represented litigants are not completing all of the steps in a small claims case. A set rules, with completion targeted for June, are being proposed to help clarify the steps self-represented litigants need to complete in order to speed up the process. Judge McMurry requested feedback from the members. He directed that comments be forwarded to committee staff, Marretta Mathes, mmathes@courts.az.gov.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

None present.

B. Next Committee Meeting Date

Wednesday, **April 26, 2017**
10:00 a.m. to 3:00 p.m.
State Courts Building, Room 119
1501 West Washington Street
Phoenix, Arizona 85007

The meeting adjourned at 1:13 p.m.

**COMMITTEE ON LIMITED JURISDICTION COURTS
MINUTES**

Wednesday, April 26, 2017

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

Conference Room 119A/B

1501 West Washington Street

Phoenix, Arizona 85007

Present: Judge Antonio Riojas, Chair, Judge Timothy Dickerson, Julie Dybas, Judge Maria Felix, Judge Elizabeth R. Finn, Judge Eric Jeffery, Judge Steven McMurry, Marla Randall, Judge J. Matias “Matt” Tafoya, Adam R. Walterson, Sharon S. Yates

Telephonic: Chief Dan Doyle, Judge James William Hazel, Jr., Judge Russ Jones

Absent: Jeffrey Fine, Christopher Hale, Judge Lewis Levin, Judge Laine Sklar

Presenters/Guests: Candace Atkinson, Theresa Barrett, Cathy Clarich, Cathleen Cole, Jon Eliason, Donald Jacobson, Jerry Landau, Marretta Mathes, Denise Lundin, Brittany Pelly, David Svoboda

Staff: Susan Pickard, Karla Williams, Administrative Office of the Courts (AOC)

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the April 26, 2017, 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 February 22, 2017, meeting of the LJC were presented for approval.

Motion: To approve the February 22, 2017, meeting minutes, as presented.

Action: Approve. The motion was seconded. **Vote:** Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Legislative Update (taken out of order). Jerry Landau, AOC Government Affairs Director, expressed his disappointment about the Fair Justice for All bills not being heard in the House Judiciary Committee, despite overwhelming member support. Next steps are being discussed. Mr. Landau distributed a legislative summary and highlighted the following bills:

As Signed by Governor

S1157: Competency Hearing; Jurisdiction; Referral

Ready to go to the Governor

H2254: Judicial Productivity Credits: Salary Calculation

H2269: Victim's Rights; Requirements; Monetary Judgments - of importance to the members was that the following requirement was removed from the bill, "A Justice or Municipal court must enter a criminal order within one year after the date of the original restitution order."

Mr. Landau announced that the Arizona Department of Transportation (ADOT) will no longer require that a person suspended pay a reinstatement fee in order to get the license back. If ADOT has the hard copy license, the person will need to go to ADOT for the license.

Comments: Has the refund process regarding EORP been determined? Mr. Landau indicated that he had not heard anything.

- B. Arizona Prosecuting Attorney's Advisory Council (APAAC) Rule 28 Petition Regarding Lethality Assessment.** (taken out of order) Jon Eliason, Maricopa County Attorney's Office, Special Victim Division, reported on the APAAC Lethality Assessment Working Group. Along with APAAC members, the Working Group included members of the Commission on Victims in the Courts (COVIC) and the Committee on the Impact of Domestic Violence and the Courts (CIDVC). Mr. Eliason stated that the goal of the Working Group was to develop a uniform risk assessment to more easily get the lethality information in front of the judge for consideration when determining release conditions. The group created an assessment that includes two tiers of questions. The answers to both tiers of questions can indicate potential for dangerousness to victims; however, the Tier one questions are more tightly connected to validated research. The Lethality Assessment Working Group has petitioned (R-16-0046) to amend Form 4 to include the lethality questions.

Comments

- The form will be mandatory except in Pima County because a similar risk assessment is already in use.
- It was suggested to add "pets" to question 12.
- Pre-trial services and probation should also receive training on the assessment.

Motion: to support the APAAC Lethality Assessment Working Group's proposed amendment to Form 4 (R-16-0046). **Action:** Approve. **Moved by:** Judge Elizabeth Finn. **Seconded by:** Judge Steven McCurry. **Vote:** Motion passed unanimously.

Action Item: Staff will submit and informal comment on behalf of the LJC.

C. Task Force on Fair Justice for All Recommendations Update

Mr. Donald E. Jacobson, AOC Senior Special Projects Consultant, provided an update regarding the progress of the Fair Justice for All recommendations and requested feedback.

Sentencing Reforms:

- An administrative order on facilitating the processing of financial obligations has been submitted to Chief Justice Bales for consideration.
- Proposed amendments to Rule 37, Rules of Procedure in Civil Traffic and Civil Boating Violation Cases, have been adopted (R-17-0034). The Arizona Traffic Ticket and Complaint (ATTC) has been amended to include:
 - data fields for a defendant’s email address, cell phone number, and preferred language, if an interpreter is needed,
 - a notice regarding the availability of financial hardship relief, and
 - a notice that provision of a cell phone number grants permission for the court to send text notifications. (Statewide system being readied for procurement.)
- Statewide ticket processing website is under consideration
- The Court Assistance Program (CAP) is active in: Glendale, Phoenix, Tucson, and Scottsdale.
- The Fines Reduction Program (FRP) rolled out in Yuma County
- While access to the data resources of the Department of Economic Security and the Department of Revenue are being investigated, guidelines and bench cards have been created to assist judges in determining ability to pay and willfulness of non-payment.
- *State v. Rogers* says that the 10% Clean Elections Fund portion, a voter initiative, cannot be reduced once the fine has been imposed. Guidance is anticipated.
- The development of a matrix that indicates what can be mitigated dependent upon the charge, whether the sentence is mandatory or non-mandatory, and whether community restitution can be applied is being considered.
- R-16-0026 regarding “Plea by Mail” or “Plea without Appearance” is under consideration.
- Timing for notification to MVD about driver license suspension is not delineated in statute or rule.

Bail Reforms:

- Development of on-line payment and submission of proof site – research on-going.

- Appointment of Counsel at Initial Appearance – A petition has been filed to amend ARCrP Rule 6.1(b)(1). (R-16-0041) Resource solutions for smaller jurisdictions are being considered.
- Criminal bond schedules are being eliminated.
- Guidance regarding the use of public safety assessment results and presumptive release conditions is being discussed.
- Payment schedules are being developed for those wishing to plea without appearance.
- Expand use of lesser used bond types.
- Expand use of public safety assessment, researching automation for courts that do not have the resources to conduct these assessments.

Comments:

- Detailed unsecured bond procedures are needed.
- Break the Federal Poverty Guidelines down by monthly income rather than annual.
- Investigate sentence mitigation when a negotiated plea agreement has been submitted. Can willfulness of non-payment and ability to pay be considered at a later date?
- Details are needed regarding the process of delegating verification of ability to pay to staff and submission of findings to the judge for the purposes of sentence mitigation.
- Program the mitigation matrix into AZTEC and AJACS.
- How does this impact FARE fees?
- Time standards, as they exist, are impacted by the timing of MVD notification of suspension of license.

Mr. Jacobson noted that educational and training sessions will be offered at the Judicial Conference and to the Presiding Limited Jurisdiction Court Judges. Additionally, targeted training will be conducted with *judges pro tempore*, and on call and part time judges who conduct Initial Appearance hearings.

D. Court Security Standards Update

Mr. Donald E. Jacobson, reported the adoption of the Court Security Standards which will take effect July 1, 2017.

A survey was conducted regarding court security. Every county provided sufficient responses for the data to be representative. The resultant Administrative Order (AO-2017-15) adopted 30 security standards grouped in the following categories:

- Government and Administration
- Entry Screening

- In-custody Defendants
- Facilities, Alarms, and Equipment (state funding will be available)
- Training – The training provided to probation officers will be provided to court security officers.

The roll out will be gradual. Mr. Jacobson acknowledged that some courts will have financial challenges, but noted that exceptions may be requested. Courts should, however, relay the Court Security Standards to their funding authorities for budgetary discussion.

E. Criminal Rules Task Force Update

Judge Eric Jeffery, spoke about the Task Force on the Arizona Rules of Criminal Procedure which was established by Administrative Order 2015-123 (A.O.). The A.O. directed the Task Force to review the rules 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.

Comments have been filed by victim’s rights groups, the Attorney General, APAAC, the Federal Public Defender Association, and the Arizona Bail Bonds Association. The goal of the Criminal Rules Task Force was not to change the substance of the rules, but to make them easier to read by restyling them. The comment period is opened until May 31st.

Motion: to support the work of the Task Force on the Arizona Rules of Criminal Procedure. **Action:** Approved, **Moved by** Julie Dybas, **Seconded by** Judge Steven McMurry. **Vote:** Motion passed unanimously

F. Implementation of HB2269: Entry of Criminal Restitution (This item was address earlier in the agenda during the legislative update)

G. Time Standards Update

Marretta Mathes, AOC Court Specialist, provided an update on the status of programming AZTEC and AJACS to produce Time Standards reports. Good progress has been made on the Limited Jurisdiction AJACS reports and several AZTEC reports are in production. The reports regarding protective orders in AZTEC are in work.

Reports for FY2016 are due July 31, 2017. If the protective order reports are ready in time, quarterly information will be requested. The Time Standards Committee will meet in October to evaluate whether the adopted time standards for the reported case types are appropriate and whether adjustments are required.

The Time Standards Resources web page has been updated. Training will be offered in two sessions (1- LJ and 1-GJ) at the ACA Conference. Additionally, a session will be offered at the Judicial Conference dealing with case types that have complex case processing.

H. Electronic Records Retention and Destruction (ERRD) Project

Cathy Clarich and Denise Lundin, AOC Case Flow Management Manager and Business Analyst respectively, provided an update on the status of the ERRD Project.

The scope includes:

- Ensuring that non-ACAP courts have implemented their destruction plans and destruction of qualified electronic records is proceeding.
- Deleting data related to the qualified electronic records from the data warehouse and public access databases.
- Assisting courts with establishing policies and procedures and custom processes.

The project will be conducted in phases:

- Phase One – AJACS-converted courts that have old data in their AZTEC database (April-May 2017)
- Phase Two – AJACS-converted courts that have scanned documents or have utilized electronic disconnected scanning. (June-July 2017)
- Phase Three – AJACS-converted courts that have not used any electronic or scanned documents (late summer)
- Phase Four – remaining limited jurisdiction AZTEC courts
- Phase Five – general jurisdiction courts
- Maricopa County courts will be fully converted and comfortable in AJACS database before destruction of qualified electronic documents will begin.

While the first destruction process will be conducted with the aid of a spreadsheet, identification of AJACS electronic records qualified for destruction will be handled via the ERRD Work Queue. The Queue tags cases automatically based on criteria established in ACJA §§ 3-402 and 4-302 and produces a report for review.

I. Court Interpreter Credentials Deadline Reminder

David Svoboda, Language Access Specialist, reminded the members about the court interpreter credentialing deadlines.

- July 1, 2017
 - Courts must begin showing appointment preference for credentialed freelance interpreters begins.

- Courts must hire credentialed interpreters, if a viable candidate is available. Interpreters without credentialing hired after that date should become credentialed within 24 months.
- June 2019 - Court staff must be credentialed at a Tier 3 level. Four full cycles of testing will be available before that deadline. Testing locations for credentialing are in Tucson and Phoenix.

Mr. Svoboda encouraged court staff to engage in the credentialing process early so that additional time is available should multiple attempts to pass the examination are needed. He polled the members to see if a third location for testing were needed for flexibility. No one indicated a need for a third testing location.

Mr. Svoboda reminded members that each court's updated Language Access Plan should have been submitted by March 1, 2017. Assistance with the plan template was offered.

Comments: Members suggested that training on Title 6 as it applies to courts would be beneficial.

J. AZCourtHelp.org

Ms. Cathleen Cole, Web Content Management Specialist, Arizona Bar Foundation, and Ms. Theresa Barrett, AOC Court Programs Unit Manager, provided a presentation and a demonstration of the new AZCourtHelp.org website. The site was launched on January 11, 2017.

Ms. Barrett gave a brief background on the creation of the project, a partnership among the Arizona Courts, Department of Economic Security, the Attorney General, and AmeriCorps mainly funded by a Vista grant. The purpose of the project is to increase access to justice through building awareness of court processes and enhancing support resources across Arizona. The Project has two parts; a Virtual Resource Center and AZCourtHelp. The Virtual Resource Center currently broadcasts live legal talks to Kingman, Prescott, Sedona, and Tuba City from Flagstaff. AZCourtHelp is a one-stop information shop.

Ms. Cathleen Cole, demonstrated the AZCourtHelp website and its navigation. She noted that new features are constantly being added to the site. The website can be easily translated using Google Translate which is conspicuously placed on each page. Ms. Cole requested that courts assist in educating the public on the availability of this resource.

Some of the Website features include:

- Legal Talks broadcasts
- Court locator

- Statewide forms access
- Video tutorials which are being prepared for the public
- Live Chat staffed by volunteer law librarians

K. Proposed Amendments to Arizona Code of Judicial Administration (ACJA) §§

Candace Atkinson, AOC Consolidated Collections Unit Manager, began her presentation with the proposed changes to ACJA § 5-205: Collections.

The main intent of the changes to this section is to reflect the way the Fines, Fees and Restitution Enforcement Program (FARE) currently operates, and give courts more tools for collecting delinquent court obligations based on recent local programs that have proven to be effective.

Significant changes discussed:

- Establishes guidelines and an approval process for courts to develop and implement Compliance Assistance Programs (CAP).
- Expands definition of Fine Reduction Program (FRP) to include criminal traffic charges and fines (excluding violations of A.R.S. §§ 28-1381, §§ 28-1382, §§ 28-8282 and §§5-395).
- Removes references to the FARE Advisory Committee, which is no longer in existence.
- Clarifies requirements for contracting with other private vendors.
- Clarifies the assessment of: \$7 General Service Fee, 19% Special Collections Fee and \$10 installment payment plan fee.
- Removes language pertaining to priority of payments for FARE fees. This policy is being clarified in the amendments to the Priority of Offender Payments code sections (ACJA §§ 3-401 and 4-301), which is part of this package.

Discussion regarding the Compliance Assistant Program in relation to cases that have been entered to the FARE program took place. Members raised a concern regarding the language “Cases must remain in FARE and no FARE fees shall be waived or suspended.”

Motion: To create an LJC subcommittee that includes members of the Task Force on Fair Justice for All to evaluate before moving forward to supporting these code changes. **Moved by,** Judge Elizabeth R. Finn, **Seconded by,** Judge Steven McMurry, **Vote:** Judge Elizabeth R. Finn withdrew her motion. Issue was tabled.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

None present.

B. Next Committee Meeting Date

Wednesday, **August 30, 2017**
10:00 a.m. to 3:00 p.m.
State Courts Building, Room 119
1501 West Washington Street
Phoenix, Arizona 85007

The meeting adjourned at 1:13 p.m.

**COMMITTEE ON LIMITED JURISDICTION COURTS
MINUTES**

Wednesday, August 30, 2017

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), Julie Dybas, Judge Maria Felix, Jeffrey Fine, Judge Elizabeth R. Finn, Christopher Hale, Judge Eric Jeffery, Judge Kevin Kane, Judge Keith Russell (proxy for Judge Steven McMurry), Adam R. Walterson, Christian Whitney, Sharon S. Yates

Telephonic: Chief Dan Doyle, Judge Russ Jones, Marla Randall, Judge Laine Sklar, Judge J. Matias "Matt" Tafoya, Judge James William Hazel, Jr.

Absent: Judge Timothy Dickerson

Presenters/Guests: Mirisue Galindo, Jerry Landau, Marc Peoples (telephonic), Judge Sam Thumma, Mark Wilson, Jake Hinman, Stewart Bruner, Jennifer Greene, Cathy Clarich, Paul Julien, Gerald Williams, Debbie Gerado, Andrea Tazioli, Heather Murphy

Staff: Theresa Barrett, Susan Pickard, Administrative Office of the Courts (AOC)

I. REGULAR BUSINESS

- A. Welcome and Opening Remarks** - With a quorum present, the August 31, 2017, meeting of the Committee on Limited Jurisdiction Courts (LJC) was called to order at 10:00 a.m. by Judge Antonio Riojas, Chair.

Judge Riojas welcomed new members, Judge Kevin Kane, Presiding Judge Tempe Municipal Court, and Christian Whitney, Maricopa County Public Defender, Justice Court Supervisor. He also acknowledged the resignation of Judge Lewis Levin, Sedona Municipal Court and thanked him for his service to the LJC.

Judge Riojas noted that Judge Keith Russell, Maricopa County Presiding Justice of the Peace, is attending as a proxy for Judge McMurry.

- B. Approval of Minutes** - The draft minutes from the April 26, 2017, meeting of the LJC were presented for approval.

Motion: To approve the April 26, 2017, meeting minutes, as presented.

Moved: Judge Maria Felix. **Second:** Sharon Yates

Vote: Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

- A. Task Force on Court Management of Digital Evidence** – Judge Sam Thumma, Task Force Chair, presented the draft recommendations of the task force. He noted the recommendations range from standardizing formats and technical protocols, to findings that would allow non-standard formats to storage, courtroom presentation, public access and education and training.

The Task Force’s final report is due October 1, 2017 and is expected to be presented to the Arizona Judicial Council at its October meeting.

Comment:

The recommendations should be reviewed with self-represented litigants in mind.

Action Items:

- Because the report is a work in progress, staff will forward a copy of the next version to the members when available.
- Members were asked to provide feedback after reading the forwarded report to Jennifer Albright, AOC Staff to the Task Force.

- B. *U.S. v Sanchez-Gomez*, Legislative Update, DPS – Criminal History Records and Disposition Reporting**

U.S. v Sanchez-Gomez

- Jerry Landau, AOC Government Affairs Director, and David Withey, AOC Chief Counsel, facilitated a discussion on *United States v. Sanchez-Gomez*, 859 F.3d 649 (9th Cir. 2017) regarding routine shackling of pretrial detainees. It was reported that AOC staff are conducting research into whether this decision is applicable to Arizona and if it is, its impact on Arizona courts. At the time of this discussion the certification status was unknown.

Comments:

- Each courthouse and courtroom has unique characteristics that impact detainee restraints.
- If detainees are in various states of restraint, the number of officers needed for transport, or the number of detainees transported at one time, will be reduced or both will occur.
- Consideration needs to be given to limited jurisdiction court mass dockets.
- Generally, defendants appear by video in Glendale Municipal Court. When a defendant does appear in person, it is only when necessary, and in handcuffs. There is no routine shackling.
- In Tucson City Court, defendant transportation is minimized.

- In Navajo County defendants are shackled during mass dockets.

Action Item: Staff will forward to members the memorandum from Presiding Criminal Judge Liwski, Pima County Superior Court, that was referenced during this discussion.

Legislative Update

- Mr. Landau presented the AJC legislative package proposals of interest to the LIC which were a repackaging of last year's proposals resulting from the recommendations of the Task Force on Fair Justice for All.
 - **2018-01 driver license; sanctions; civil traffic violations**
Motion: To support the proposed legislation.
Moved: Christian Whitney **Second:** Judge Maria Felix
Vote: Passed unanimously
 - **2018-02: Criminal offenses; monetary obligations**
Motion: To support the proposed legislation.
Moved: Judge Elizabeth Finn **Second:** Sharon Yates
Vote: Passed unanimously
 - **2018-03 probation; community restitution**
Motion: To support the proposed legislation.
Moved: Christopher Hale **Second:** Judge Maria Felix
Vote: Passed unanimously
 - **2018-04 Release procedures; bail**
Motion: To support the proposed legislation.
Moved: Judge Maria Felix **Second:** Christopher Hale
Vote: Passed unanimously

DPS Criminal History Records and Disposition Reporting:

- Mr. Landau introduced the Disposition Reporting topic and handed the floor to Mirisue Galindo, Department of Public Safety, Criminal History Unit. Ms. Galindo gave an overview of the Criminal History Unit and stressed the importance of and need for collaboration in ensuring the accuracy and completeness of the 5.5 million records in the Arizona Computer Criminal History (ACCH) database. As with any process, circumstances arise where clarification is needed. Ms. Galindo provided contact information, should questions arise about a Disposition Report.

C. Order of Protection Statewide Assessment Project – Marc Peoples, Criminal Justice Systems Improvement, Arizona Criminal Justice Commission, presented the recommendations resulting from the Order of Protection Statewide Assessment. The goal of this project was to reinvent the Order of Protection and Injunction Against Harassment process: by improving protection, safety, and efficiency by streamlining the issuance, service and NCIC entry process; increasing the number of orders in NCIC by increasing service; and reducing domestic violence injury and death.

D. Rule 109(a) Justice Court Rules of Civil Procedure – Due to a death in the presenter’s family, this item was rescheduled for presentation at the November 15 meeting. Judge Riojas expressed his condolences.

E. Garnishment Forms – Judge Gerald Williams presented proposed amendments to the Request for Hearing on Garnishment, Form 11 (Earnings) to address the following:

- a defendant wanting to re-litigate the judgment using Form 11;
- a defendant’s extreme economic hardship; and
- procedures to allow the judgment creditor to agree a reduction in the continuing lien and the court to vacate the hearing.

Motion: Motion to approve the amendments to the Request for Hearing on Garnishment, Form 11 (Earnings)

Moved: Judge Maria Felix **Second:** Jeffery Fine

Vote: Passed unanimously.

F. Proposed Revision to ACJA §7-205: Defensive Driving – Mark Wilson, Director, Certification and Licensing Division (CLD), informed the members about CLD’s recent review of defensive driving classes. He reported on the issues surrounding the increasing number of defensive driving schools, the decreasing number of citations being issued, and the decreasing number of participants completing the course. In response to the review findings, CLD has taken the following actions:

- conducted a student survey;
- reviewed Florida, California, Michigan, and other defensive driving programs;
- conducted a telephone answering survey of schools;
- reviewed interested party proposals;
- held two meetings with school owners;
- presented to the Defensive Driving Board; and
- presented issues and received preliminary guidance from the Arizona Judicial Council.

As a result, the CLD is proposing the following:

- improvements to AOC’s website to allow a student to sort by language, location, and time;
- amendments to school certification requirements to require online schools have a curriculum that is substantially different from other online schools owned by the same owner;
- amendments to school operational requirements to:
 - prohibit two or more classes from being taught at the same time, in the same location, by the same instructor, and
 - improve service to students by setting standards regarding receiving and responding to student’s communication efforts; and
- Improvements to course curriculum.

Comments:

- Consider the use of automated reminders regarding the scheduled class and requiring that the class evaluations be submitted to the Division.

G. Goldwater Institute Report – Paul Julien, AOC Education Officer, led a discussion regarding the Institute’s recent report entitled, “City courts levy fines at taxpayer expense.” It was noted that the League of Cities and Towns and Tempe Municipal Court published responses. Mr. Julien read from Presiding Judge Kevin Kane’s response on behalf of Tempe Municipal Court, and stated it was right on target. Mike Baumstark, AOC Deputy Director, expressed appreciation for the League’s response and thanked the judges who either were quoted in the report or responded. Mr. Baumstark advised the AOC would be keeping a watchful eye for a report-based legislative proposal.

H. 2018 Meeting Schedule – Judge Riojas presented the proposed LJC meeting schedule for 2018: February 28; May 23; August 29; and November 28.

Motion: To approved the 2018 LJC meeting schedule as presented.

Move: Judge Maria Felix **Second:** Sharon Yates

Vote: Pass unanimously

I. OTHER BUSINESS

A. Good of the Order/Call to the Public

None present.

B. Next Committee Meeting Date

Wednesday, **November 15, 2017**

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

State Courts Building, Room 119

1501 West Washington Street

Phoenix, Arizona 85007

The meeting adjourned at 1:13 p.m.

COMMITTEE ON LIMITED JURISDICTION COURTS MINUTES

Wednesday, November 15, 2017

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, Chief Dan Doyle, Judge Maria Felix, Jeffrey Fine, Judge Elizabeth Finn, Christopher Hale, Judge Eric Jeffery, Judge Steven McMurry, Marla Randall, Judge Laine Sklar, Adam R. Walterson, Christian Whitney, Sharon S. Yates

Telephonic: Julie Dybas, Judge Russ Jones, Judge J. Matias “Matt” Tafoya,

Absent: Judge James William Hazel, Jr., Judge Kevin Kane, Judge Lewis Levin

Presenters/Guests: Mark Meltzer, Amy Love, Marc Peoples, Don Jacobson, Geoff Morris, Marretta Mathes, David Withey

Staff: Susan Pickard, Theresa Barrett, Administrative Office of the Courts (AOC)

I. REGULAR BUSINESS

A. Welcome and Opening Remarks - With a quorum present, the November 15, 2017, meeting of the Committee on Limited Jurisdiction Courts (LJC) was called to order at 10:04 a.m. by Judge Antonio Riojas, Chair.

B. Approval of Minutes - The draft minutes from the August 30, 2017, meeting of the LJC were presented for approval.

<p>Motion: To approve the August 30, 2017, meeting minutes, as presented. Moved: Judge Maria Felix. Second: Sharon Yates. Vote: Motion passed unanimously.</p>
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II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Rules Update

Mark Meltzer, AOC Policy Analyst, summarized the August 2017 Rules Agenda and indicated that the effective date of the new rules is January 1, 2018, except as otherwise noted. Mr. Meltzer detailed the Court’s Order in R-17-0002 which abrogated the current version of the criminal rules (except for most of the forms), and adopted the revised version, effective January 1, 2018. The revised criminal rules will apply in all actions filed on or after January 1, 2018. They also will apply

to all cases that are pending on January 1, 2018, except to the extent the court determines that applying a new rule “would be infeasible or work an injustice,” in which event the former rule or procedure applies.

B. Legislative Update

No update available.

C. Task Force on Fair Justice for All (Task Force) Recommendation Implementation Status (Taken out-of-order) Don Jacobson, AOC consultant, provided a brief history of the Task Force and highlighted several recommendations coming from new subcommittees established by Dave Byers, the Task Force chair: The Mental Health and Criminal Justice Subcommittee, and The Post-Conviction Actions Subcommittee.

The Post-Conviction Actions Subcommittee is working on proposed amendments to rules and statutes regarding the set aside of a conviction.

The Mental Health and Criminal Justice Subcommittee has created:

- an order template for limited jurisdiction court use during the implementation of mental competency proceedings in criminal matters,
- a Rule 11 policy and procedure document for limited jurisdiction court use when considering their policy for hearing mental competency cases.

The Fair Justice for All Task Force Report and Recommendations focused on the two major areas; setting release conditions, and financial sanctions. In response to the Report and Recommendations, mandatory, specialized training for all judges who conduct initial appearances and make release decisions has been developed and two training sessions have been held. The next training is scheduled for December 15th in Phoenix. All trainings are being recorded and will be available online.

Public Safety Assessments (PSAs) have been implemented statewide in the Superior Court, and are being used, in a limited capacity, in the limited jurisdiction courts. Options for automating the PSA are being researched. Mr. Jacobson also spoke briefly about the appointment of counsel, setting bonds and release conditions, unsecured bonds, financial sanctions, and presiding judge authority on fine and deposit schedules. Finally, he noted that there may be significant changes to surcharge guide and the Clean Election Fund in 2018.

Discussion: In response to member questions about the status of the FARE contract, Mr. Jacobson noted that the FARE contract was being negotiated to increase the program’s usefulness to courts. For instance, the online payment portal was being revamped to allow for partial payments. Additionally, an online dispute resolution feature for family and small claim cases is currently being considered for development and piloting.

C. Order of Protection Statewide Assessment Project (Taken out-of-order)

Amy Love introduced Jamie Watson and Marc Peoples from the Arizona Criminal Justice Commission and provided a brief overview of the pending legislation regarding Orders of Protection and Injunctions Against Harassment. Mr. Peoples, discussed the background of the proposed legislation based on the recommendations resulting from the Order of Protection Statewide Assessment.

The proposed legislation calls for the following to improve the OP/IAH process within the state of Arizona:

- changes in protocol for the service of protective orders;
- automated processes (use of the “cloud”) among justice partners; and
- proposes changing all references in ARS §§ 13-3602; 13-3624; 12-1809 and 12-1810 from Plaintiff/Defendant to Petitioner/Respondent.

Discussion: The members’ main concerns focused on:

- the possible detrimental impact of the proposed service of process on a person who is seeking an order of protection without a safety plan in place;
- short form service
 - the lack of statutes, case law, or an attorney general opinion supporting short form service, and the possibility that a violation of the short form order may not be prosecuted,
 - the possible unintended consequences of the use of the word “may” versus “will absent extraordinary circumstances” regarding law enforcement serving the defendant,
 - the lack of the defendant receiving the full information contained on the long form, and
 - the possibility that law enforcement may default to serving the short form;
- remote areas and the lack of internet connectivity;
- availability of law enforcement resources for service;
- court resource issues in relation to the registry;
- the use of plaintiff/defendant eliminates the confusion that may occur when there is also a family law case in which the petitioner and respondent have been established and are opposite of the petitioner and respondent in the domestic violence case. The purpose of the proposal is to conform with other states;

Motion: To support the basic concept subject to two reservations: 1) the change of plaintiff/defendant to petitioner/respondent, and 2) opposition to the short form service proposal. **Moved:** Judge Elizabeth Finn. **Second:** Judge Matt Tafoya

Motion: To amend the motion to add “court initiates service at the option of the plaintiff.” **Moved:** Judge Maria Felix **Second:** Adam Walterson **Vote:** Passed. 16-1-0

Amended Motion: To support the basic concept subject to three reservations: 1) the change of plaintiff/defendant to petitioner/respondent, 2) opposition to the short form service proposal, and 3) the addition of “court initiates service at the option of the plaintiff.” **Vote:** Motion passed unanimously.

E. Rule 109(a) Justice Court Rules of Civil Procedure

Geoff Morris, Gillespie, Shields, Durrant & Goldfarb, discussed an unintended consequence of a 2011 change to Rule 109(a) of the Justice Court Rules of Civil Procedure that requires two or more parties, who are jointly filing a document, to individually sign. The proposed change would allow the attorney of a filing party to sign on the behalf of one or more parties with their, or their attorney’s permission.

Motion: To support having Mr. Jeffrey Fine or his designee draft the rule change and bring it back to the committee for comment and approval.

Moved: Judge Timothy Dickerson. **Second:** Judge Maria Felix

Vote: Motion passed unanimously.

F. Recommendation from the Committee on Improving Small Claims Case Processing

Marretta Mathes, Committee Staff, presented the committee’s charge to make recommendations to reduce the time required to resolve small claims cases in Justice Courts. Ms. Mathes noted that after reviewing 700 small claims cases in AZTEC, it was found that forty-two percent of the cases were not disposed in a timely manner due to lack of service. The average age of these cases before being dismissed was 755 days. She then introduced Judge Steven McMurry, Encanto Justice Court and the committee’s chair.

Judge McMurry stated that the committee came up with the proposed solution to schedule small claims cases for a hearing as soon as a complaint is filed. This action would process the case in a short timeframe with a judgment or case dismissal after 180 days. Judge McMurry noted that Community Legal Services, the Morrison Institute, and Southern Legal Aid were all in support of eliminating the requirement to file an answer and setting the hearing as soon as a complaint is filed. A petition to amend the rule was filed in July, but was pulled back by the Committee to allow for a pilot program to be conducted in two courts using the proposed rules. The proposed pilot program is modeled after a successful program used in Utah and will be used to determine the impact on Arizona courts.

Motion: To support a twelve-month pilot program. **Moved:** Judge Timothy Dickerson. **Second:** Christopher Hale. **Vote:** 15-1-0

G. 9th Circuit Case RE: Shackles/Restraints in the Courtroom

David Withey, AOC Chief Counsel, discussed *U.S. v. Sanchez-Gomez, 859 F.3d 649 (9th Cir. 2017)*. He reported to the members that the Court held that detainees brought before federal district court for criminal proceedings have liberty and other interests that must be counterbalanced by an individual

determination whether shackling is required for a defendant. The government filed a petition for a writ of certiorari with the U.S. Supreme Court. The Sanchez-Gomez decision is currently case law applying to circuit and district courts. Those courts have been ordered to change their shackling practices to comply with the decision. Until further direction is given by the U.S. Supreme Court or an Arizona appellate court, a best practice would be to address shackling in each case in which it is raised.

H. Phoenix City Prosecutor's Office v. Nyquist

Mr. Withey shared that *Phoenix City Prosecutor's Office v. Nyquist* involved an auto accident in which significant injuries were involved. The case presented two questions: Does the offense require proof of a culpable mind?, and Is the person entitled to a jury trial? The appellate court ruled that the offense does not require proof of a culpable mind nor is the defendant entitled to a jury trial.

III. Good of the Order/Call to the Public

Call to the Public

None present.

New business: Judge Finn asked that the reconstitution of the DUI Time Standards Committee be discussed at the next LJC meeting. Judge Riojas indicated that as a member of the Steering Committee on Arizona Case Processing Standards he would raise the need for a review of the impact of the DUI time standards in practice.

Adjournment: Meeting adjourned at 1:28 p.m.

Next Meeting: Wednesday, February 28, 2018

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