

Task Force on the Arizona Rules of Criminal Procedure

State Courts Building, Phoenix

Meeting Minutes: February 19, 2016

Members attending: Hon. Joseph Welty (Chair), Paul Ahler, Hon. Kent Cattani, Hon. Sally Duncan, Timothy Eckstein, David Euchner, Hon. Maria Felix, Hon. Richard Fields, Hon. Pamela Gates, Bill Hughes (by telephone), Hon. Eric Jeffery, Kellie Johnson, Amy Kalman, Prof. Jason Kreag, Hon. Mark Moran, Aaron Nash, Hon. Paul Tang, Kenneth Vick

Absent: Jerry Landau, Natman Schaye

Staff: John Rogers, Mark Meltzer, Sabrina Nash, Theresa Barrett

1. **Call to order; remarks by the Chief Justice.** The Chair called the first Task Force meeting to order at 10:04 a.m. and welcomed the members. He then invited remarks from Chief Justice Scott Bales.

The Chief Justice said this Task Force was part of a broader Court project for restyling Arizona's rules of court procedure. The Court has previously adopted restyled rules for civil appellate and protective order procedure, and another Task Force filed a rule petition last month requesting adoption of restyled rules of civil procedure. Restyling simplifies and clarifies the rules, and updates the rules to conform to modern practices. The Chief Justice noted that this Task Force may not reach consensus on every policy issue, and he would like the Task Force to raise those issues for the Court's consideration. He emphasized the importance of this Task Force, and he looked forward to a collaborative and productive effort from its members. The Chair thanked the Chief Justice for his remarks.

2. **Member introductions; Task Force administration; review of Administrative Order.** The Chair asked the members and staff to introduce themselves. He then advised that the Task Force must comply with the Court's open meeting policy, and he explained the policy. He requested that members review proposed rules for conducting Task Force business, which included a proxy form and were contained in the meeting materials.

Motion: To approve the proposed rules for conducting Task Force business. Seconded, and the motion passed unanimously. **CRTF-001**

The Chair noted language in Administrative Order 2015-123, which established the Task Force. The Order directed the Task Force to:

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

The Chair advised that staff would provide members with preliminary drafts of restyled rules, and members would then discuss and further revise those drafts. He encouraged the members to reach out to colleagues and constituencies and to seek input regarding proposed changes as the Task Force progresses through its work. The Task Force will need to request Court and State Bar committees, among others, to review and comment on proposed amendments to the criminal rules before it files a rule petition in January 2017. He reminded the members that this is primarily a restyling project, but the Task Force can recommend substantive changes where there is consensus among the members to do so. However, substantive changes that represent a “sea change” may be better suited for separate rule petitions rather than submitting them to the Court as part of a large restyling effort. As directed by the Chief Justice at the beginning of the meeting, the Task Force’s rule petition should note substantive issues for the Court.

The Chair invited Mr. Rogers to summarize the Rule 28 rule petition process. Mr. Rogers explained that the rule petition process operates on an annual cycle. The filing deadline for petitions is January 10. The Court customarily opens petitions for public comment until May 20. Complex petitions, including the one this Task Force will file, may have a modified timeline that permits two comment periods. The Supreme Court considers rule petitions and comments in August, and for those petitions it grants, it usually enters implementation orders in September. Implementation orders typically make rule changes applicable to cases that are pending on the effective date, but occasionally there are exceptions. The implementation orders usually make the rule amendments effective on January 1, and Thomson Reuters publishes the amendments a month or two before that date.

3. Establishment of workgroups. The Chair then provided a handout that assigned each Task Force member to one of four workgroups. Each workgroup will include at least one judge, a prosecutor, and a defense attorney, and will be composed of members from at least two counties. A designated judge-member of the Task Force will coordinate each workgroup. The Chair will assign each criminal rule to a workgroup, and the members of the workgroup should carefully examine the rule, discuss relevant issues, and propose appropriate revisions. The Chair noted that the first group of rules assigned to the workgroups should be relatively straightforward and not controversial, although the workgroups may find otherwise. The Task Force will set its meetings about six weeks apart, and the workgroups will meet in the intervals between those meetings. The workgroups will report their findings and suggestions to the Task Force. All Task

Force members therefore will have an opportunity to review and comment on every rule. The Chair asked for questions and comments, and a discussion ensued.

- A member inquired if Rules 30, 31, and 32 concerning appeals and petitions for post-conviction relief could be treated as a separate set of procedural rules, similar to the manner in which the civil appellate rules are separate from civil trial rules. A couple other members voiced support for this approach. The Chair did not take immediate action on this suggestion because the assignments do not yet include those rules.
- The Chair confirmed that a workgroup could recommend reorganizing a rule.
- Unlike prior Court committees that restyled the Arizona Rules of Evidence and the Arizona Rules of Civil Procedure, this Task Force will not need to model its recommendations to conform to federal criminal rules.
- Redline versions may assist the members in reviewing proposed changes. Mr. Rogers added that on the civil rules project, short memos from workgroup chairs were helpful in flagging substantive issues for discussion by the full Task Force.
- Workgroups can conduct their meetings telephonically. Some members believe it is better to meet personally at the onset to develop working relationships. Others believe that it is just as effective to have telephonic meetings at the beginning, and more in-person dialogue as the workgroups progress. These are decisions each workgroup can make. The Chair noted that the manner in which workgroups conduct their discussions might depend on its pending tasks, deadlines, and geographic and other considerations.
- The Chair advised that members should let him know if they are interested in working on particular rules. Members can attend meetings of any workgroups, and not just the one to which they are assigned. He added that staff would like to attend workgroup meetings.

4. General principles of restyling. The Chair then invited Mr. Rogers, who has worked on previous rule restyling projects, to comment generally on restyling. Mr. Rogers reminded the members that the meeting materials included “style conventions” that he prepared in the course of those other projects, as well as Bryan Garner’s “Guidelines for Drafting and Editing Court Rules.” Mr. Rogers also circulated examples of restyled criminal rules, which he used to illustrate his conventions.

Mr. Rogers explained that restyling offers an opportunity to make the rules clearer, more concise, and internally consistent. Court rules have proliferated over the past few decades. The last comprehensive revision of Arizona's criminal rules was in 1973. At that time there were 36 rules covering 152 pages. Arizona now has 41 criminal rules that occupy 246 pages. Text in the softcover volume of the 1973 rules was a single column of large font. Now the rules are in a double column of considerably smaller font. Mr. Rogers briefly reviewed previous federal and Arizona restyling projects. He then summarized several restyling principles, including the following.

- Improved formatting and organization helps users more easily find what they want. A number of the current rules lack continuity in their themes and ideas. Reorganized provisions should connect them.
- Run-on sentences are exhausting to read. Avoid archaic terms such as "thereto" or "hereinafter." Good restyling uses simpler words and proper word choice.
- Avoid redundant terms, such as the often-found phrase, "the court in its discretion may...." "May" means the court has discretion. Use the phrase "court clerk," which is more direct than "clerk of the court."
- Eliminate ambiguous terms. "Shall" has various meanings, but "must," "may," "will" or "should" are usually more specific.
- Use the active voice. It is more vivid and comprehensible.
- Many comments may have outlived their usefulness and become barnacles on the rules. The Civil Rules Task Force eliminated a majority of existing comments to the civil rules. Relocate substantive requirements contained in a comment to the body of a rule. If a comment is necessary to understand a rule, there may be a need to rewrite the rule more clearly.
- The Civil Rules Task Force proposed, and the Arizona Rules of Civil Appellate Procedure include, a prefatory comment that generally explains the purpose of restyling and provides general guidance concerning use of those new rules.

The Chair said Mr. Rogers' restyling conventions should assist the workgroups in making uniform revisions. The Chair noted that the meeting materials also contain a summary of pending criminal rule petitions, which the workgroups should review.

5. Roadmap; call to the public; adjourn. The Chair proposed Friday as the best day of the week for future meetings, and 10:00 a.m. until 2:00 p.m. as the best time,

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and the members agreed to this schedule. The Chair encouraged members to send a proxy if they are unable to attend a Task Force meeting.

The next Task Force meeting will be on **Friday, April 8, 2016**, beginning at 10:00 a.m., at the State Courts Building.

There was no response to a call to the public. The meeting adjourned at 11:57 a.m.