

E-COURT MEETING MINUTES

E-COURT

A Subcommittee of the Commission on Technology

Thursday, April 9, 2009

1:30 PM - 3:30 PM

ARIZONA SUPREME COURT
Administrative Office of the Courts
1501 W. Washington
Phoenix, AZ 85007

CONFERENCE ROOM 345

AUDIO PHONE NUMBER: (602) 452-3193

AUDIO ACCESS CODE: 7002

MEMBERS PRESENT

Andrew Hurwitz, *Chair, Appellate Courts*
Robert Brutinel*, *General Jurisdiction*
Diane Drain, *State Bar (Robert Ducomb*, proxy)*
Karl Heckart, *AOC*
Donald Jacobson*, *Court Administrators*
Michael Jeanes, *Clerks*
Dennis Lusk*, *Limited Jurisdiction*
Sheri Newman*, *Clerks*

MEMBERS ABSENT

GUESTS AND SUBTEAM MEMBERS

Kent Batty*, *GJ Subteam*
Norman Davis, *GJ Subteam*
Rich McHattie, *Maricopa COSC*
Rachelle Resnick, *Appellate Subteam*
David Stevens, *GJ + LJ Subteams*
Terry Stewart, *LJ Subteam*
Ann Timmer, *Appellate Subteam*

AOC STAFF

Stewart Bruner, *ITD*
Cari Gerchick, *PIO*
Jennifer Greene, *Legal*
Melinda Hardman, *CSD*
Mark Meltzer, *CSD*
Jim Price, *ITD*
Amy Wood, *CSD*

* indicates appeared by telephone

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WELCOME AND OPENING REMARKS

Justice Hurwitz

Justice Andrew Hurwitz called meeting to order at 1:30 p.m. He described the ways this meeting differs from subsequent subteam meetings but serves as the kickoff for dealing with issues raised by the statewide e-filing project. In addition, governance strategy will also be discussed briefly, including the format for delivering status reports about the project. Justice Hurwitz also announced that he will be the new chair of the Commission on Technology but will remain chair of e-Court. Those present in the room and on the phone introduced themselves for the record.

UPDATE

e-FILING GOVERNANCE CONCEPT AND APPROACH

Justice Hurwitz
Karl Heckart

Justice Hurwitz raised the subject of periodic reporting by the statewide e-filing project. Project manager Jim Price will submit a monthly report to e-Court. His initial report was printed for members. The chair asked members for input regarding the format of the report. The consensus was that bullets describing accomplishments against the plan or a brief journal of significant activities would suffice, rather than submitting the entire project manager's dashboard each month.

REVIEW

ISSUES FOR DIRECTION OR DECISION

Jim Price
Amy Wood

Before delving into the set of specific issues before the group, the chair asked members to submit to staff member Stewart Bruner any comments about the format of the issue briefing sheets being used. In the interest of time, Justice Hurwitz provided an opening opinion about each issue and the group picked up discussion from that point. The following items were discussed and decided.

1. General Direction – Turbo Court needs to be consumer friendly; it is primarily the role of a judicial officer to sort out the ultimate legality of a filing. Moreover, clerk review still takes place in electronically filed cases. In general, warning text should alert the filer when legal limits are being exceeded and offer options. Since the justice court can't award more than \$10,000, no judicial discretion exists and blocking the filing is acceptable as long as the reason is explained and it is clear only the damage amount is included in the \$10,000 limit, not attorney or court fees which can be added on later. In the particular instance of a general civil claim in excess of the amount allowed in justice court, the options presented would be to file instead as a general civil case in superior court or reduce the requested judgment amount.
2. Notation of Signature – The use of /s/ notation to indicate legal signing has been upheld already by the Arizona Supreme Court in *Haywood Securities vs. Ehrlich*, 214 Ariz. 114, 149 P.3d 738 (2007). The ruling applies to signatures on judgments. Rule 124 as written sufficiently covers the scenario raised by the project, but COT could revise it for consistency in the application /s/. Members agreed with Karl Heckart that the presence of a filing fee provides sufficient deterrence to fraudulent submittals. In the initial phase of the project, the fee waiver/deferral form will not be available electronically, though it is expected to be added later in the project. A rule to allow removal of clearly fraudulent case filings could eventually become necessary.

3. Multiple Filers on a Single Case- - Clerks do not now reject pleadings because every individual pro se plaintiff has not signed them. E-filing practice should be the same and not reject documents at the outset for having only a single signature. A judicial officer can ascertain whether additional signatures are needed after filing. From a practical standpoint, a judicial officer can order the others to formally join the case within a period of time or throw it out. There was discussion of creating a separate “join form” (for use outside marital community) or “party joinder form” where people use TurboCourt to formally identify themselves as the additional parties to an existing case. Though formal “Joinder” may necessitate a filing fee in other situations, it should not in this instance since it is brought about exclusively by e-filing. The possibility of limiting the maximum number of additional filers on a case to five was also discussed.
4. Notice to Vacate – Justice Hurwitz felt that changing the eviction rules was not an option due to the time and effort required to arrive at the present set. The Notice to Vacate must be filed with the complaint; however, the consensus was that no reason exists to require the notice to be filed in paper format. The system must allow an attachment of the notice, whether a scanned image or an electronic version of the word processing document that was actually posted. No specific form of the notice is required, however the notice must advise the tenant of the action necessary to cure, e.g., amount owed. Members discussed using the warning ability of the electronic form to indicate the any legal notice requirement but not rejecting the filing, since review by a judicial officer is required to determine whether time periods have been met for non-emergency evictions.
5. Certified Mail Return Receipt – This is only an issue in a default judgment and is based on statute, making it very difficult to change. AOC Legislative Services should be advised of the outdated “postal oriented” language in the statute, but will likely not expend capital on changing it while budget issues prevail. The TurboCourt instructions could indicate that the card must be brought to the hearing, since that is the only time the card becomes important in a case. The consensus was to allow the filing but indicate that the receipt should be scanned and filed before the judgment. Terry Stewart mentioned that some clerks’ offices may have scanners available to the public to facilitate the process. Alternatively, the card must be brought to the court in person before a judgment can be rendered.
6. Sworn Verifications – Since no definition exists in statute for “verification,” the court considers anything affirmed under penalty of perjury to be sworn verification. TurboCourt forms can include “verification language” followed by /s/ to indicate formal affirmation. That said, in certain pleadings the swearings have such serious consequences to the parties that statutes require an additional protection of a notary prior to the filing. For only these forms used in family law (elaborated on the issue sheet), the notary’s original seal must be scanned and attached, or mailed (or even presented in person at the hearing).
7. Statute of Limitations Enforcement – No issue exists since it is an affirmative defense and can be waived if not timely raised by a defendant. The system must allow filings regardless of the date of filing as it relates to the statute of limitations or use of statute of limitations defense.
8. Judge’s or Clerk’s Seal on Summons – After review of the authorities involved, consensus on this standardization issue was that form should be hard coded for the judge to sign but procedurally the clerk is allowed to sign on behalf of the judge. The summons

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form should be designed so that either signature works. The text of the summons should say: "...by Justice of the Peace." The signature line at the bottom would say: "Justice of the Peace," but the clerk could sign on behalf of the JP, if that's his preference. Amy Wood noted that being specifically instructed that they are allowed to sign "on behalf of the judge" would make the clerks more comfortable. Justice Hurwitz felt, in practice, a court seal rather than individual judge or clerk seal would be beneficial on the summons, but the focus needs to be on what the form looks like to enable a complaint to be filed and summons generated online.

9. Orders of Protection – Members agreed that the issue relates to the requirement for a hearing and the requirement in court rule that the hearing be held expeditiously rather than the e-filing of the petition itself. It was noted that orders of protection can be obtained from any court and from local law enforcement when the court is closed and the situation is an emergency, so restricting e-filing does not trigger an access-to-justice issue. It seems to be a better application for completing on the system and printing rather than full e-filing. If an e-filing process is pursued, at the beginning, the system must force the filer to select a court (only courts currently set up to receive e-filed petitions will appear in the list) and require acknowledgement that no order will be granted until after a hearing by the selected court. The system should also state that an emergency order of protection is available after court hours in person from any police station. The completed petition would have to be paired with the petitioner at the court appearance, possibly via a system-generated document number. Concern was raised that allowing e-filed petitions without limitations on their age would result in a large number of abandoned filings perpetually populating the hold queue at each court. Petitioners could be warned that their petition would be dismissed for lack of action within a certain number of days if they did not appear at the court, but that they could refile if they so desired.

DISCUSSION

CHAIR'S PRESENTATION AT COT ANNUAL MEETING

Justice Hurwitz

In the interest of time, Justice Hurwitz directed members to mail staff member Stewart Bruner a list of items they felt COT should consider to facilitate e-filing, including changes to court rules and statutes. Mention was also made of taking the policy issues directly to affected groups, as warranted.

CALL TO THE PUBLIC

Justice Hurwitz

Justice Hurwitz issued a call to the public as well as to members for any final input before wrapping up the meeting. He reminded those present that items can be revisited as more knowledge and experience are gained and that future issues will be dealt with more rapidly at the subteam level.

Upcoming Meeting:

TBD, by subteam

AOC – Conference Room TBD

MEETING ADJOURNED

3:15 PM