

E-COURT

A Subcommittee of the Commission on Technology

Tuesday, January 26, 2010

10:00 AM - 11:30 AM

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

CONFERENCE ROOM 106

AUDIO PHONE NUMBER: (602) 452-3192

AUDIO ACCESS CODE: 1112

MEMBERS PRESENT

Andrew Hurwitz, *Chair, Appellate Courts*
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

Robert Brutinel, *General Jurisdiction*

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*
Mark Jensen, *Maricopa COSC*

AOC STAFF

Stewart Bruner, *ITD*
Melinda Hardman, *CSD*
Mark Meltzer, *CSD*
Jim Price, *ITD*
Amy Wood, *CSD*

* indicates appeared by telephone

WELCOME AND OPENING REMARKS

Justice Hurwitz

Justice Andrew Hurwitz, Chair, called the e-Court and subteam meeting to order promptly at 10:00 a.m. and took roll of those in the room and on the phone. He framed the discussion of issues with three points: 1) the focus needs to be on policy decisions rather than technical solutions; 2) if administrative orders (AOs) are required to enact the policy decisions, they can be obtained; and 3) the overarching objective is to get a statewide e-filing solution constructed and not have progress impeded by lack of a policy decision in a particular area.

REVIEW

ISSUES FOR DIRECTION OR DECISION

Justice Hurwitz

In the interest of time, Justice Hurwitz provided an opening statement about each issue and the group picked up discussion from that point. The following items were discussed and decided.

1. Date and Time of Filing (Issue 10) – AZTurboCourt needs to be the definitive source of filing time and filers must not be penalized for the time taken by clerk review. Karl Heckart assured members that the software will be installed at AOC and operating on local time. Justice Hurwitz is willing to pursue an administrative order making TurboCourt an agent of the court and specifying date of filing as being the time the filing was originally submitted in AZTurboCourt. Members discussed the situation in which a filer sends at 11:58 p.m. but receives a receipt indicating the court received the filing at 12:01 a.m., making it a next-business-day filing. Michael Jeanes stated that, when his office comes live with AZTurboCourt, they can examine the TurboCourt date and time for any filing received shortly after midnight. AOC representatives assured members the TurboCourt application can deal with multiple concurrent filings. The issue relating to a “same day summons” statutory requirement for eviction actions was raised as a concern.
2. “Official” Record (Issue 11) – The official copy is the record stored the clerk’s EDMS, regardless of whether paper exists, who holds the paper, or who originally scanned it. The concept of an official record is separate from the concept of proving a fact from a source document in a case. Any court desiring to substitute electronic “official” records for paper must first obtain Supreme Court approval. Nuances of the terms “official” versus “original” were discussed, based on language in the AO authorizing destruction of paper in the Maricopa Clerk’s Office. Representatives of the Clerk’s Office asked to revise the language used in the issue sheet. Mark Jensen, Amy Wood, and Melinda Hardman will meet separately to discuss.
3. Service of Subsequent Documents (Issue 12)- Electronic service may be employed for subsequent documents and AZTurboCourt has the means to accomplish it that is covered by the filing fee since it requires an e-mail address at registration. The issue revolves around mandating various populations to use e-service. Members felt attorneys using AZTurboCourt to file should be required to use e-service through AZTurboCourt in the wake of AOs 2009-01 and -43, provided sufficient training and ramp up time takes place. *Pro se* filers using TurboCourt have made use of Internet access to do so and also provided an e-mail address at registration, so some members felt it fair to consider them as consenting to electronic service. *Pro se* filers not using AZTurboCourt or filing forms completed on AZTurboCourt at a public access PC bring many more difficult issues, but it is in the court’s best interest to encourage their use of AZTurboCourt to provide more complete and legible filings. The initial focus needs to be on attorneys and TurboCourt

filers, leaving the *pro se* exceptions for later. A clarification was made that courts do not distribute documents for service unless party addresses are restricted from one another. A suggestion was made to have AZTurboCourt indicate when a filer cannot receive e-mail service and to investigate the federal bankruptcy court's solution to e-service for *pro se* filers.

4. Sealed after Filing (Issue 13) – Michael Jeanes shared the recommendation of a study committee to display case number, party names, and the words “record is sealed” on screen for public access. The approach of somehow noting “sealed” or “confidential” on the screen gained consensus. Various case types and situations warranting sealed party names were mentioned. The fact was considered that other parties in a case sometimes need to see certain sealed documents to which public access is not authorized, but members felt that requiring inquiry of the court in those instances was not onerous, at least in the short term. In the longer term, the automation system must make distinctions in access level by role of the viewer, in accordance with Rule 123 revisions, but the general guideline holds for the vast majority of sealed cases/items. Judge Davis warned that no rule exists to specify criteria for sealing a case or document and that, in response to increasing public access to cases, motions to seal may proliferate over time. A clarification was made about initial access to case records in the statewide repository being for filers but eventually being expanded to support public access.
5. Fee for Proposed Order (Issue 14) – In the case where the proposed order accompanies a filing, it is covered by the fee associated with the filing. Where the proposed order is filed alone, the chair felt a nominal fee was warranted, but concluded this is a business issue for AJC. AJC will have to approve any fee since the current schedule does not include it. The point was also made that the proposed order is not filestamped by the clerk and does not become part of the court record.
6. Format for Outgoing Court Documents (Issue 17) – Justice Hurwitz asked members whether clarifying what constitutes an official versus unofficial record would address the root issue about the potential editability of electronic documents presented by the court. There was general agreement that it would. When presenting documents from the court, then, a disclaimer must be presented that the official record resides at the clerk's office and the document presented at the public access website is only a convenience copy to be used for reference purposes. No clerk's office in Arizona certifies an electronic record today, so those desiring a certified copy must use the paper-based process and receive paper. Work is underway to enable certified electronic records in the future.
7. Waiving Fees for Certain Filers (Issue 15) – Amy Wood noted that the fee in question is only the user fee charged by AZTurboCourt. No fees should be charged; agents of the court should be exempted by policy. A technical issue exists, though, since the current system does not distinguish between filings that require a fee and filings that are exempt from a fee for the same filer. Members agreed it is acceptable to initially preclude “no-fee” filers from using AZTurboCourt with the understanding that the system will eventually give them a way to note their “no-fee” status on a particular filing.
8. Party Matching (Issue 16) – Considering privacy rights above all else, a distinction was made between consolidating public information that exists today to promote efficiency and collecting additional information purely for the purpose of better identifying a litigant. Justice Hurwitz summarized the decision by stating that since this is a broader

policy issue beyond e-filing, AJC should drive any interest in collecting additional person-related data, not e-Court.

DISCUSSION | UPCOMING MEETINGS

Justice Hurwitz

Justice Hurwitz briefly summarized the dates and subject matter of upcoming Commission on Technology and subcommittee meetings

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.

Upcoming Meeting:

TBD, by subteam

AOC – Conference Room TBD

MEETING ADJOURNED

11:30 AM