



Charles Adornetto
September 17, 2021

East Valley Bar Association: Limited Jurisdiction Updates

1

1

Outline

- Rules and Legislation
- Traffic
- Marijuana
- Criminal
- Evictions
- Protective Orders
- Juveniles
- Others



2

2

Pandemic Response: Admin Orders

- No change of judge: Until further order: AO 2021-109 (I)(4)
- Jury peremptory strikes: Until further order: Superior civil: 2 per side; Justice civil: 1 per side: AO 2021-109 (V3)
- AO for eviction matters while a moratorium in effect or seeking rent during the moratorium: AO 2021-129
- Time excluded for eviction matters in Maricopa County through September 30: MC Admin Order: AO 2021-133

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Supreme AO 2020-160: Certified Mail

- Suspends any requirement that a certified or registered mail return receipt for service of any court process be personally signed by the addressee
- A postal employee's written indication on the return receipt that signifies delivery to the address is sufficient to document effectuated service of process
- May retroactively be applied to return receipts filed before the signing of this order, unless a court issued a ruling to the contrary regarding this issue prior to the effective date of this order.

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Rules and Legislation



Statutory General Effective Date: September 29, 2021

Most Rules Effective: January 1, 2022

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Community Restitution Rate

- HB 2110, amends §§ 8-341, 13-824, 28-1603, adds § 28-1604
- Community service rate for criminal, civil and juvenile matters shall be the state minimum wage, rounded up
- At least through the rest of this year, the state minimum wage is \$12.15. Thus, community service must be credited at \$13/hour starting on Sept 29:
- <https://www.azica.gov/labor-minimum-wage-main-page>
- For civil traffic, def must agree and court shall determine “location” BP: “Non-profit in Arizona”

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Jury Peremptory Challenges

- R-21-0020 Adopted
- Eliminates peremptory challenges in jury selection
- **For Criminal and Superior Court Civil cases only!**
- Effective January 1, 2022
- **Remember:** AO 2021-109 (V3)): justice court: 1 per side until further order

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7

Service by Publication

- R-21-0021, effective January 1, 2022
- Rewrites ARCP 4.1(l)(1) and 4.2(f)(1):
- If a party shows that the service provided by Rule 4.1(c) through 4.1(k)—including an alternative means of service—is impracticable, the court may, on motion and without notice to the person to be served, order that service be accomplished by publication. A serving party may initiate the service by publication procedure described in Rule 4.1(l)(2) prior to moving for such an order or while the motion is pending. The court may permit service by publication, in such manner and form as the court may direct, if:
 - (A) the serving party, despite reasonably diligent efforts, has been unable to determine the person's current address; or the person to be served has intentionally avoided service of process; ...

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Traffic

Civil and Criminal

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License Suspension: SB 1551 (and HB 2143)

- SB 1551 amends §§ 13-825, 28-1601, 28-1603, 28-3480, 28-3482
- Prohibits suspension of license for nonpayment of civil fines **including** for CDL holders
- A judge may mitigate a mandatory fine if the defendant meets the requirements of § 13-825 (hardship), except for a DUI fine.

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Rule Petition R-21-0033

- Effective September 29, 2021, for Civil Traffic Rules
- Rule 24.1 Amended to allow mitigation **or waiver** for a monetary obligation imposed by Title 28, Chapters 3 (28-601>1228), 5 (28-1501>1654), 7 (28-2001>2533) and 9 (28-4001>4153), **and in accordance with law**
- **Amends** Rule 10 and Forms 1, 7, 8, and 11 in accordance with the amendments to Rule 10 and to Forms 1, 7, 8, and 11 as shown in the attachment to the Court's order regarding Rule Petition R-21-0005
- Rule 10: removes reference to suspending license for FTP

11

11

Rule Petition R-21-0005--Big One!

- Name changed to: Rules of Court Procedure for Civil Traffic, Boating, **Marijuana, and Parking and Standing Violations**
- Numerous changes made to add marijuana and parking and standing
- Removes references to suspending license for FTP
- Adds "penalty" to sanction in many places and changes many "must" to "shall"
- Conforming changes to many forms

12

12

Dismissal of Registration Violation; Impoundment

- SB 1829, amends §§ 28-2532, 28-3511
- Requires dismissal of registration violation if defendant obtains registration
- Changes regarding impoundment of vehicles
- **Retroactive to July 1, 2021**

13

13

DUI Jail Time Credit

- SB 1407, adds § 28-1446:
- **A PERSON WHO RECEIVES TIME SERVED CREDIT TOWARDS A MANDATORY TERM OF INCARCERATION FOR A VIOLATION OF THIS CHAPTER MUST SERVE AT LEAST EIGHT CONSECUTIVE HOURS FOR EACH DAY OF CREDIT.**



14

14

Criminal Traffic Offenses Qualify for Set Asides

- SB 1249 has amended § 13-905(K) so that all criminal traffic offenses can qualify for set asides
- Can still be used as priors
- Still subject to ADOT penalties (point and other suspensions)

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Restricted Licenses; Reckless Driving

- HB 2296, amends §§ 28-144, 28-693, 28-694, 28-708, 28-1385, 28-1397, 28-1401, 28-3304, 28-3315, 28-3412, 28-3413
- A prior conviction for aggressive driving can be alleged to enhance the sentence for reckless driving.
- Penalty for reckless driving, aggressive driving, or racing on highways when the person has a previous violation of any of these or DUI within the previous 24 months is modified to require ADOT to suspend instead of revoke the person's driving privilege for 1 year.

16

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Civil Traffic

- HB 2073: Civil Traffic HOs now qualify for redaction status
- HB 2395: Parking violation includes blocking sidewalk from private driveway
- HB 2425: More equipment violations become civil violations
- HB 2294: raises penalties for repeated failures to yield to emergency vehicles
- HB 2006: Amends slow speed and roadway turnoff statute (§ 28-704) to include bicycles and scooters
- SB 1832: TSS cannot be completed online

17

17

Even More Civil Traffic

- SB 1345 adds "neighborhood electric shuttle" to definition of motor vehicle and 28-966 (neighborhood electric vehicles) and limits speed and roadways
- SB 1829: requires the court to dismiss a civil registration violation if the person registers the vehicle after violating the section (amends 28-2532)
- SB 1843: Waste of finite resources would apply to violations over 30 mph zone in non-urban and 40 mph zone in urban areas and w/i 10 mph of limit

18

18

Motor Carrier Violations

- HB 2425, amends §§ 28-5240, 28-5241
- Repeals § 28-5245
- A commercial vehicle equipment violation is classified as a civil traffic violation unless the violation results in an out-of-service order.
- The driver of a commercial motor vehicle who violates or fails to comply with statutes or rules regulating motor carriers is responsible for a civil traffic violation and is subject to a civil penalty of up to \$500, unless the violation requires issuance of an out-of-service order.

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Jury Trial Eligibility

- Causing death by a moving violation qualifies under common law for jury trial, § 28-672
- Not necessarily for serious physical injury
- Bridgeman v. Certa, No. 1 CA-CV 19-0083 (Az. App. 2021)
- <https://www.azcourts.gov/Portals/0/OpinionFiles/Div1/2021/1%20CA-CV%2019-0083.pdf>

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20

Marijuana

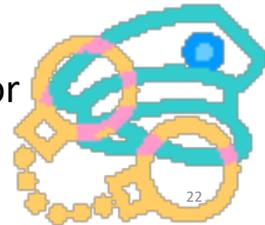


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Marijuana (HB 2171)

- New Chapter 7 in Title 22 which applies to Civil Marijuana Violations
- § 22-701(A) gives jurisdiction to LJ courts for civil marijuana
- § 22-701(B) allows civil traffic HOs ability to hear civil violations
- § 22-702 Allows for charging civil violation with ATTC filed with court within 10 days
- § 22-702(E) gives LEO authority to stop and detain for marijuana violations



22

Maricopa County Juvenile Marijuana Violations

- Superior Court AO 2021-080
- Marijuana violations for juveniles go to Maricopa County Superior Court
- Distinguish from 18-20 year olds! (Civil violations)
- Expungements for juveniles should also be sent to Superior Court

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23

Marijuana Expungement

- R-21-0023
- New Rule 36, which was adopted as emergency, now adopted on permanent basis
- Adopts procedure and forms



24

24



CRIMINAL

Criminal

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Fingerprints/Signatures

- HB 2075, amends § 13-607
- Provides flexibility as to when a person convicted of an enumerated offense be fingerprinted, removing the specific requirement that the person be fingerprinted at sentencing and in open court
- SB 1265, amends § 12-109
- Authorizes the Supreme Court to allow electronic signatures for documents requiring sworn written declarations, verifications, certificates, statements, oaths or affidavits.

26

26

Criminal Rules and Statutory Changes

- R-21-0029: effective September 29:
- Various changes to several rules to conform to legislative changes
- Rule 26.10 amended re: requiring fingerprints within 30 days rather than at time of sentencing
- Rule 29.3 reduces response time to Application to Set Aside to 30 days
- Adds Rule 29.7 re: Certificate of Second Chance
- Rule 7.6(c)(2) added re: notice on FTAs for bond forfeiture hearings; effective with statute on January 1, 2022

27

27

Certificate of Second Chance

- HB 2067, amends § 13-905
- 2nd Chance Certificates must be distributed for granted Set Asides for misdemeanors or felonies if Petitioner qualifies
- If Pet does not qualify, can reapply when does
- Releases the person from all barriers to obtain an occupational license if the person is otherwise qualified, with some exceptions, and releases an employer from liability for negligently hiring the person and a person or entity from liability for providing housing to the person if the liability is based on the existence of the person's prior criminal offense.

28

28

Application (Draft)

_____ **COURT OF ARIZONA**
IN _____ **COUNTY**

STATE OF ARIZONA

Case Number: _____

-vs-

**APPLICATION FOR CERTIFICATE
OF SECOND CHANCE**

Defendant (FIRST, MI, LAST)

A.R.S. § 13-905(L)

Date of Birth: _____

Applicant is:

Defendant

Attorney for Defendant

The Defendant in the case identified above hereby requests a Certificate of Second Chance pursuant to A.R.S. § 13-905(L). Defendant is eligible for a Certificate of Second Chance because Defendant previously received a set aside order in this case that did not include a Certificate of Second Chance.

***Please note:** To qualify for a Certificate of Second Chance, those applicants who were convicted of a class 4, 5, or 6 felony must wait to submit an application until two years after fulfilling the conditions of probation or sentence. Those applicants who were convicted of a class 2 or 3 felony must wait five years after fulfilling the conditions of probation or sentence.*

CONVICTION(S) IN THIS CASE

A Judgment of Guilt was entered in this Court against the defendant on the _____ day of _____, _____, on the conviction of:

29

29

Order (Granting)

Case Number: _____

GRANTING the application for a Certificate of Second Chance.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 13-905(K):

1. Unless specifically excluded by A.R.S. § 13-905(K), the defendant is released from all barriers and disabilities in obtaining an occupational license issued under title 32 that resulted from the conviction if the defendant is otherwise qualified;
2. An employer of the defendant is provided with all of the protections that are provided pursuant to section A.R.S. § 12-558.03;
3. Another person or an entity that provides housing to the defendant is provided with all of the protections limiting the introduction of evidence that are provided to an employer pursuant to A.R.S. § 12-558.03, subsection b; and
4. This certificate of second chance is not a recommendation or sponsorship for or a promotion of the defendant when applying for an occupational license, employment or housing.

DATED this _____ day of _____, _____.

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Arrest Procedures

- HB 2066; amends §§ 13-3898, 13-3900, 13-3963, 13-3964
- If the offense a person is arrested for was committed in another county, the arrested person may be taken before either the nearest or most accessible magistrate in the county in which the arrest occurs or a magistrate in the county where the offense was committed.
- If the person being arrested is bailable the officer making the arrest, upon request, shall take the person to the most accessible magistrate or other official who has the authority to admit to bail for the offense and who shall admit the person arrested to bail. The magistrate or other official who admits the person arrested to bail shall order the person arrested to appear in the court that issued the warrant.

31

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Competency Evaluation

- SB 1266, amends §§ 13-4503, 13-4505
- Repeals the provision requiring the parties in a criminal case in which a motion for a competency exam is filed to provide all available medical and criminal records to the court.
- Criminal Rule 11.2 controls, records are provided to the examining mental health expert within three days of appointment.
- The court may appoint one instead of two or more experts for a competency exam in a misdemeanor case

32

32

Animal Ownership and Hearings

- HB 2483, adds § 13-2910.10
- Forbids animal ownership for certain offenses
- Defendant may apply after 1 year to court
- where convicted
- Court must hold hearing within 60 days
- Defendant has BOP
- Court shall order a psych exam if necessary
- If other in house owns pet, Def may request renewable 1 year exemption

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Animal Paraphernalia

- HB 2484, **also** adds § 13-2910.10
- Adds new misdemeanor of possession of animal fighting paraphernalia
- Class 1



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Terminating Probation

- SB 1412, amends §§ 12-1809, 13-901, 31-411.01
- On petition of the victim and before the court terminates the period of probation or intensive probation early, the court is required to determine whether to prohibit the defendant from contacting the victim, and if necessary, issue an injunction against harassment against the defendant. The injunction must be served on the defendant before probation is terminated.
- (See also Crime Victims and Injunctions)

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Representation and Bond and Release Conditions

- R-21-0022; effective January 1, 2022
- Adds Rule 6.1(f), allowing representation by Legal Paraprofessionals in LJ courts
- Rule 7.3(a)(2) amended to say defendant must be released on own recognizance “unless the court determines that additional conditions are reasonably necessary” to assure the defendant’s appearance or protect the victim

36

36

Expert Witnesses

- R-21-0004, effective January 1, 2022
- Rule 11.4(b) amended regarding qualifications and disclosure of expert witness reports regarding defendant's mental status



37

37

Telephonic Arraignments

- R-21-0024, effective January 1, 2022
- Adds Rule 14(c):
- **(c) Exception for Limited Jurisdiction Courts.** A limited jurisdiction court may conduct a telephonic arraignment for misdemeanor offenses and for civil traffic offenses that are charged on the same complaint as misdemeanor offenses. For purposes of this rule, “telephonic” includes voice-only communications between the court and the parties.

38

38

Sealing Records

- SB 1294, amends § 13-4033, adds § 13-911
- (Not effective until 1-1-23)
- Defs can apply to have records sealed.
- Judges will be required to mention this on the record when sentencing.

39

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Undesignated Offenses

- HB 2162, amends § 13-604, effective July 1, 2022
- A class 6 undesignated felony is treated as a misdemeanor for certain purposes until the court designates the offense as a felony.
- Still treated as a felony for purposes of DNA; right to possess a firearm; impeachment purposes; used as a prior felony conviction or to enhance a sentence
- Can be redesignated a misdemeanor upon successful completion of probation unless owes restitution or has willfully failed to pay a monetary obligation

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Detention Officer Arrests

- HB 2460, amends § 13-3907
- A detention officer who is acting in the officer's official capacity pursuant to a warrant is authorized to arrest a person who is at a hospital facility or a superior, justice or municipal court facility, or a person who is within a jail facility as a visitor and who is found to have an outstanding warrant.
- A detention officer who is acting in the officer's official capacity is authorized to take custody of a person whom a judicial officer remands into custody during a court proceeding.

41

41

Leaving the Scene

- HB 2027, amends §§ 28-661, 28-662, 28-663, 28-664, 28-665
- Now includes private property
- Two violations are upgraded to class 1 misdemeanors

42

42

Unlawful Food or Drink Contamination

- SB 1167 adds § 13-3731, a new misdemeanor
- Class 1 if human consumes contaminated food or water or the damage is \$1000 or greater
- Class 2 if no human consumption and damage is less than \$1000

43

43

Evictions



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Eviction Action Virtual Appearance

- SB 1322, adds § 22-206
- Notwithstanding any other law, in a special detainer or forcible detainer proceeding before the court, any party, including an attorney or witness upon written notice to the court, shall be permitted to participate at the initial appearance remotely by using a telephone or video conference connection. If the court continues a contested matter to a later date, at the discretion of the court, the court may require all parties, attorneys and witnesses to participate in person.

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Virtual Appearances

- R-21-0039, effective September 29, 2021
- Rule 5(a)(1) amended for summons to include court fax number, email and website
- Rule 5(a)(2) amended to require the summons to include that a landlord, tenant, attorney, or witness may participate in the initial hearing through telephone or video conference by contacting the court for directions at least **two hours** before the hearing.

46

46

Virtual Appearances, continued

- Rule 6(a)(4) added so that each court shall permit any party, attorney, or witness to submit notice via email, facsimile, telephone, or other electronic process, that they will attend the initial appearance remotely. Such notice shall not require an original signature. Failure to provide notice shall not be a basis for denying a remote appearance that can be provided or challenging the validity of a remote appearance that occurred.

47

47

Virtual Appearances, continued

- Rule 11(a) amended to require that each court shall provide the option for landlords, tenants, attorneys, and witnesses to participate in an initial appearance by video or telephone conference; court may require notice of up to two hours before the hearing as is necessary to avoid delaying hearings; and if one participant appears remotely, all other participants must also be permitted to appear remotely. Each court may provide this option routinely to all participants in all initial appearances.

48

48

Virtual Appearances, continued

- Rule 11(a) also broken down to add (b) on Preliminary Proceedings.
- REIS amended to remove the “Procedures” from the title and to include info and advise to contact the court two hours in advance

49

49

Protective Orders

ALL COURTS IN ARIZONA	ADDRESS	CITY,	AZ	ZIP CODE	TELEPHONE NUMBER
ORDER OF PROTECTION			Case No. <input type="text"/>		
[] Amended Order			Court ORI No. <input type="text"/>		
			County <input type="text"/>		State <input type="text"/>
			Former Case No. <input type="text"/>		
PLAINTIFF			PLAINTIFF IDENTIFIERS		
<input type="text"/>			<input type="text"/>		
First	Middle	Last	Date of Birth of Plaintiff		
And/or on behalf of minor family member(s) and other Protected Person(s): (List name and DOB.)					
<hr/>			<hr/>		

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Crime Victims and Injunctions

- SB 1412, amends §§ 12-1809, 13-901, 31-411.01
- “Harassment” is expanded to include any contact if the person is the victim of a specified list of crimes committed by defendant, includes a conviction for an offense, whether completed or preparatory, that is: a dangerous offense, a serious offense or violent or aggravated felony, or any offense in listed in Title 13 Chapter 14 or 35.1 (sex offenses).
- (See also Terminating Probation)

51

51

Protective Orders Rules Re: Statutory Changes

- R-21-0031, effective September 29, 2021
- Adds Rule 3(c)(3), an additional definition of harassment:
- (3) any contact if the person is the victim of a crime that was committed by the defendant. For purposes of this rule, “crime” means a conviction for an offense, whether completed or preparatory, that is a dangerous offense as defined in A.R.S. § 13-105, a serious offense or violent or aggravated felony as defined in A.R.S. § 13-706, or any offense in A.R.S. title 13, chapter 14 or 35.1.
- Other conforming changes

52

52

Injunctions

IAH		<p>With pre-issuance hearing: 25e1A</p> <p>To grant w/o pre-issuance hearing: 25e1A and 25e1B</p>	<p>Rules of Evid do NOT apply</p>	<p>25(e)(1)(A): reasonable evidence that Def committed a series of acts of harassment or at least one act of sexual violence against Plain during previous year or (eff 9-29-21) Def was convicted of a dangerous offense, a serious offense or violent or aggravated felony, or any offense in Title 13, Chapters 14 or 35.1 (sex offenses) and Plain was victim.</p> <p>25(e)(1)(B): good cause exists to believe that great or irreparable harm would result to Plain if injunction is not granted before Def can be heard in opposition and specific facts attesting to Plain's efforts to give notice to Def or reasons supporting Plain's claim that notice should not be given.</p>
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Amended Petitions

- R-21-0010, effective January 1, 2022
- Adds Rule 38(d):
- **(d) Amended Petition.** At a contested hearing, if a plaintiff seeks to testify or present evidence about relevant allegations that were not included in the petition, the court must:
- (1) allow the plaintiff to amend the petition in writing on a form provided by the court, a copy of which the court must immediately provide to the defendant; and

54

54

Amended Petitions, continued

- (2) offer the defendant each of the following options:
- (A) a continuance of the hearing, within the timeframes specified by Rule 38(b), to allow the defendant the opportunity to prepare for the additional allegations; or
- (B) a brief recess to allow the defendant the opportunity to review the amended petition and prepare for the additional allegations; or
- (C) an explanation of the options above and an opportunity to waive them. If the defendant waives both the opportunity for a continuance or a brief recess, then the court must proceed with the contested hearing on the amended petition that includes the additional allegations.

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Children on Petitions

- R-21-0003, effective January 1, 2022
- Adds Rule 35(f):
- **(f) Defendant Is a Non-Parent of Child.** When a harassment injunction involves a child who is not the defendant's legal or biological child, the limited jurisdiction court may issue an ex parte protective order and conduct any contested hearings. To the extent the order affects the parenting rights of the person who is not a party to the harassment injunction action, the remedy for such a person is under Rule 91.6 of the Rules of Family Law Procedure.

56

56

Children on Petitions, continued

- Also creates a new Family Court Rule 91.6, which requires the affected party to file in Family Court and allows that judge several options, including transferring the order to the Family Court or modify the order.

57

57

Juveniles



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Note—Juvenile Representation

- SB 1391, effective September 29, 2021
- Amends 8-221 A to **require** the court to appoint an attorney for all juvenile delinquencies **before the first hearing**. The fact sheet shows it intentionally removes the detention requirement. This would include criminal speed (but not incorrigible offenses).
- But paragraph B says that the juvenile can waive the attorney (removing the requirement of consent of the parent).

59

59

Note—Juvenile Representation

- However, this is **NOT** applied to LJ Courts
- R-21-0038, effective September 29, 2021
- Juvenile Rule 10(B) amended to clarify that appointment of attorney for indigent juveniles before first appearance “upon the filing of a petition”

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Others



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Garnishment Attorney Fees

- HB 2170, amends §§ 12-1572, 12-1598.10
- Allows for awards of attorney fees in garnishments if allowed by the contract or judgment
- Does not say “reasonable”
- Suggested best practice: require China Doll affidavit if requesting anything more than a nominal amount

62

62

Small Claims Judgment Assignment

- HB 2579, amends § 22-512
- The prevailing party in a small claims action is authorized to assign a monetary judgment to another person that is licensed in Arizona to collect debts
- That person may appear in the small claims court as the prevailing party only for the purpose of enforcing the judgment.
- A person that is assigned a judgment for collection does not represent the prevailing party but is treated by the justice court as the prevailing party for all actions that relate to enforcing the judgment.

63

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Others

- SB 1115: Various changes to Notary provisions
- HB 2365: Candidate addresses may be confidential
- HB 2617: Changes to homestead provisions
- HB 2893: Amends 12-109 re: Administrative Orders

64

64

Links

- Statutes and Bills: <https://www.azleg.gov/arstitle/>
- Rules: [https://govt.westlaw.com/azrules/Index?_lrTS=20190308215843944&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/azrules/Index?_lrTS=20190308215843944&transitionType=Default&contextData=(sc.Default))
- Rules Petitions: <https://www.azcourts.gov/Rules-Forum>
- Supreme Court Admin Orders: <https://www.azcourts.gov/orders/Administrative-Orders-Index/2021-Administrative-Orders>
- Maricopa County Superior AOs: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/AdministrativeOrders/Index.aspx>

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Questions?



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