

Current Issues in the Courts

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Civil Justice Reform



Remember when?



A Joint Project: IAALS¹ and ACTL²

- ▶ 2008 survey:
 - ▶ Delay and cost
 - ▶ Rules don't lead to early ID of contested issues
 - ▶ *“The discovery rules in particular are impractical in that they promote full discovery as a value above almost everything else.”*
 - ▶ Judges should have more active role at the beginning
 - ▶ *“Judges need to actively manage each case from the outset to contain cost; nothing else will work.”*

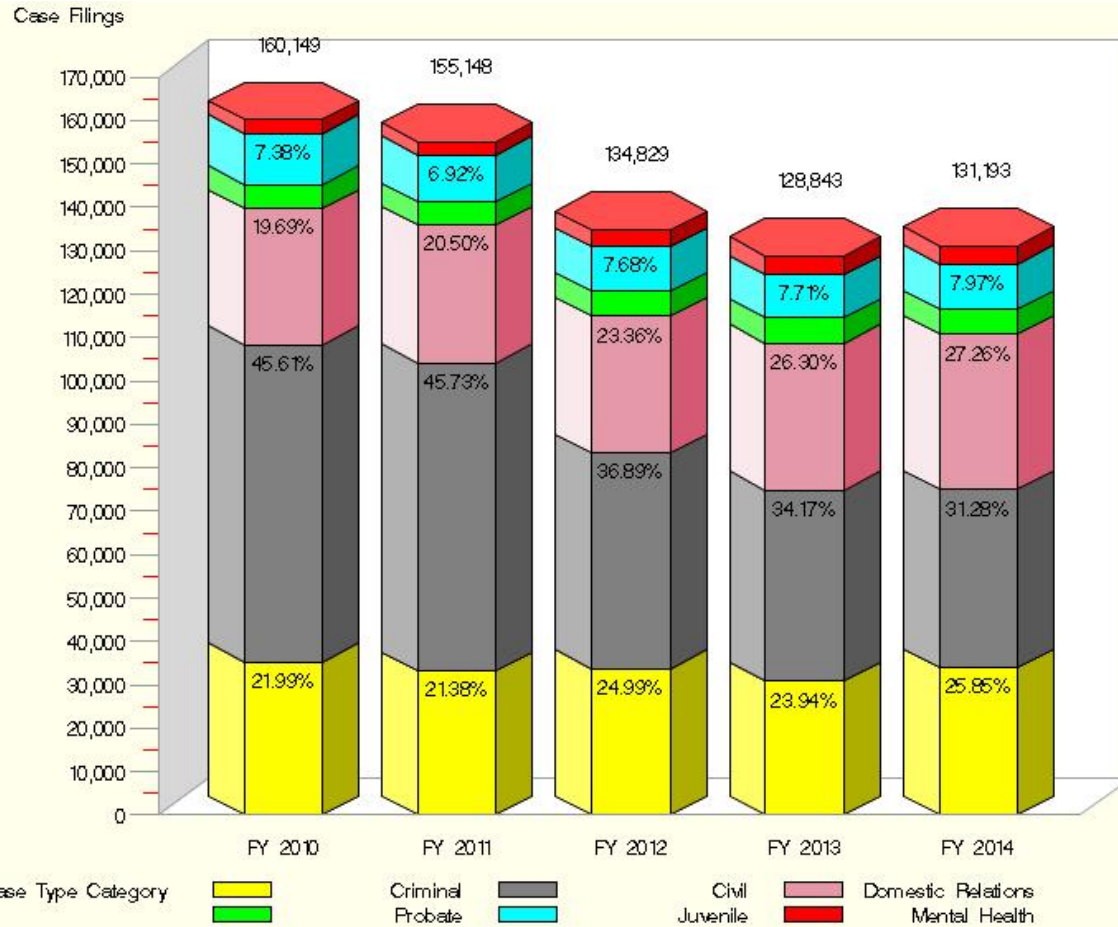
1. Institute for the Advancement of the American Legal System
2. American College of Trial Lawyers Discovery Task Force

A just, speedy, and inexpensive process in AZ?

▶ Cost and Delay

- ▶ One-size-fits-all disclosure rules
- ▶ Discovery abuses
- ▶ Electronic discovery
- ▶ Mandatory arbitration
- ▶ Statutory priorities (criminal, juvenile, workers' compensation, mental health, UAB)
- ▶ Resource issues

Five Year Trend - FY 2010-2014 Maricopa County Superior Court



Each bar displays total number of case filings and case type percentages. Smaller percentages may not display.

Consequences

- ▶ Arbitration clauses
- ▶ Voluntary ADR
- ▶ Threat of dwindling case law in some areas
- ▶ Niche for retired judges
- ▶ Civil litigants shut out of court system

Solutions

- ▶ **IAALS and ACTL 2009 report**

- ▶ **29 principles**

- ▶ **Fundamental principles**
 - ▶ **Case management**
 - ▶ **Pleadings**
 - ▶ **Discovery**
 - ▶ **Experts**

- ▶ **State reforms and pilot projects**

- ▶ **Minnesota, Iowa, New Hampshire, Massachusetts, Colorado, Utah, New York, and 7th Circuit**
 - ▶ **Utah: mandates proportionality through tiers of discovery based on amount in controversy**

AZ Solutions

- ▶ **Committee on Civil Justice Reform (estb. 2015)**
 - ▶ Report to AJC by October 1, 2016
- ▶ **Business Court Advisory Committee (2014)**
 - ▶ MCSC commercial court
 - ▶ 3 year pilot
 - ▶ Experimental Rule 8.1 and a joint report/scheduling order

The Bar



New rules

- ▶ Accommodating modern law practice
- ▶ ER 1.5 (fee sharing)
 - ▶ Division proportionate *or* joint responsibility
 - ▶ Client consent
- ▶ ER 5.5 (unauthorized practice of law)
 - ▶ No AZ admission needed if practice only non-AZ law
 - ▶ Still subject to AZ discipline

New rules

- ▶ **ER 1.10(d) (imputation of conflicts)**
 - ▶ No imputed conflict if: (1) lawyer didn't have "primary responsibility for a matter," (2) lawyer is screened and gets no fee, (3) notice to client about screening measures and ability to inquire/object, and (4) lawyer and new firm believe screening effective
 - ▶ No litigation exception
 - ▶ Conflict imputed if lawyer had "primary responsibility"
- ▶ **Rule 38(a) (Registered in-house counsel)**
 - ▶ Can appear pro hac vice for employer
 - ▶ Can appear pro hac vice for pro bono services for legal services org.

New rules

▶ Rule 41 (succession planning)

- ▶ “The duties and obligations of members shall be...[t]o protect current and former client interests by planning for the lawyer’s termination of or inability to continue a law practice, either temporarily or permanently.”
- ▶ Comment: “. . . As part of their succession plan, solo practitioners should arrange for one or more responsible transition counsel agreeable to assuming these responsibilities. Lawyers in multi-lawyer firms and lawyers who are not in private practice, such as those employed by government or corporate entities, should have a similar plan reasonable for their practice setting.”
- ▶ Succession planning handbook

Bar BOG reorganization?

- ▶ ASC task force
- ▶ Upcoming rule petitions



Current hot issue: Marijuana



AMMA (ARS §§ 36-2801 to -2819)

- ▶ A registered qualifying patient cannot be “ arrest[ed], prosecut [ed] or penal[ized] in any manner” or denied “any right or privilege” for authorized medical marijuana possession and use
- ▶ Three ASC OPs so far:
- ▶ *State ex rel. Sheila Sullivan Polk v. Hancock*, 237 Ariz. 125 (2015)
- ▶ *Reed-Kaliher v. Hoggatt*, 237 Ariz. 119 (2015)
 - ▶ t/c can’t prohibit AMMA-use as condition of probation
- ▶ *Dobson v. McClennen*, 238 Ariz. 389 (2015)
 - ▶ AMMA affords affirmative defense rather than immunization to 28-1381(A)(3) charge

AMMA (ARS §§ 36-2801 to -2819)

- ▶ Issues on the horizon:

- ▶ *State v. Gear (2016) (physician immunity from prosecution for misrepresenting info on certification)*
- ▶ Aroma of marijuana enough for probable cause?
- ▶ Caregiver immunity?

QUESTIONS



The End!

