

**ARIZONA JUDICIAL COUNCIL'S
LIMITED JURISDICTION COURTS COMMITTEE**

Arizona State Courts Building
Conference Room 119A & B
Phoenix, AZ 85007
May 19, 2004

Members Attending:

Honorable R. Michael Traynor, Chair
Honorable George Anagnost
Ms. Kathy Barrett
Ms. Faye Coakley
Honorable Judy Ferguson
Honorable Linda Hale
Ms. Joan Harphant

Absent Members: (excused)

Honorable John Kennedy, Vice Chair
Honorable Sherry Geisler
Honorable John Lamb

Staff:

Ms. Susan Pickard

Presenters/Guests:

Ms. Diane Barker
Mr. David Benton
Ms. Janet Cornell
Mr. Mike DiMarco
Mr. Greg Eades
Ms. Debby Finkel
Ms. Patience Huntwork

Mr. Don Jacobson
Mr. Theodore Jarvi
Honorable R. Wayne Johnson
Honorable Michael Lester
Honorable Antonio Riojas, Jr.
Mr. James Scorza
Mr. Paul Thomas

Ms. Pamela Jones
Honorable R.O. McDaniel
Honorable Kathy McCoy
Mr. Dale Poage

Ms. Valerie Tillman

Ms. Lori Johnson
Ms. Page Gonzales
Mr. Karl Heckart
Ms. Karen Kretschman
Ms. Ester Reeves
Mr. Bob Schaller

REGULAR BUSINESS

1. CALL TO ORDER

With a quorum present, Judge Traynor called the meeting to order at 10:05 a.m.

2. APPROVAL OF FEBRUARY 25, 2004 MEETING MINUTES

Judge Traynor asked if there were any changes or corrections to the February LJC meeting minutes. No corrections were made.

Motion: Motion was made by Judge Anagnost and seconded by Mr. Jarvi to **approve the minutes for the February 25, 2004 LJC meeting** as presented. Motion passed unanimously. **LJC-04-004**

INFORMATION/POTENTIAL ACTION ITEMS

3. PENDING AND PROPOSED RULES UPDATE

Ms. Patience Huntwork presented information on Pending and Proposed Rules. The following are on the Court's Rules Agenda for June 1:

- R-00-0025: Change of Judge in Criminal Matters - This experimental rule has been continued until July 1, 2004. Amendments to the experimental rule making a change of judge inapplicable to Rule 32 petitions, remands for re-sentencing and to any non death penalty criminal cases to which a new judge is assigned less than two days before trial, unless the right is exercised within eight hours after actual notice to the requesting parties of the assignment of the case to a new judge. Judge Carroll filed a comment in which he proposed that Rule 10.2 be abolished and that Rule 10.1 be made user friendly.
- R-03-0039: Petition to Amend Rule 81, Arizona Rules of the Supreme Court - This rule change petition was filed in the wake of *The Republican Party of Minnesota vs. White* and is on the agenda for possible final adoption. The petition proposes speech restrictions for judicial candidates and sitting judges, including those who are elected.
- R-03-0012: Petition to Amend Rule 123, Rules of the Supreme Court - This amendment proposes new civil and criminal rules on the filing of sensitive data and public access to electronic court records. A working group is being established to study public access to electronic court records (sensitive court data).
- R-03-0019: Minute Entry Reform - This petition was filed by the Committee on Superior Court to propose a total solution distinguishing between a "minute entry" and an order, ruling or notice of administrative action by the court. An objection was filed by Judge Campbell. His concerns were addressed through an amended petition which is on the agenda for final adoption.
- R-03-0025: Immigration Consequences - This petition to amend Rules 14.3 and 17.2 would require the court to advise defendants of immigration consequences. This petition is on the agenda for final adoption.

- R-03-0027: Misdemeanor, Appointment of Counsel - The petition to amend Rules 4.2 and 14.3 proposes amending the time for appointing counsel in misdemeanor cases from the initial appearance, to the arraignment or pre-trial conference. This proposal may be circulated for public comment.
- R-03-0028: Warrants and Summons - This petition to amend Rules 3.1, 3.4 and 26.12 was filed to improve procedural rules regarding warrants and summons in limited jurisdiction courts. This proposal is ready to be circulated for comment.
- R-03-0029: Criminal Rules Forms - This Rule petition proposes to delete the forms appended to the Arizona Rules of Criminal Procedure. A committee may be established to study which forms can be omitted and which have to stay.
- Political Contribution - This proposed amendment would increase the level of permissible political contribution from \$250 - \$1,000. The court continued the matter in January and did not circulate it for comment.
- R-03-0033: Local Rule 10, Justice Court Case Management Plan - Judge Campbell filed this petition on behalf of and supported by all 23 Maricopa county justice courts. This amendment to local rules would ensure uniformity in case processing in justice courts and address case management in misdemeanor cases. This petition was out for comment, and could be adopted.
- R-03-0034: This petition would make housekeeping changes to the Rules of the Commission of Judicial Conduct.
- R-03-0035: Amendment of ER 5.5, ER 8.5 and Rule 31(c) - The State Bar of Arizona asks the Court to amend Arizona Rules of Professional Conduct and Arizona Rules of the Supreme Court adopting procedures addressing multi jurisdictional practice and reciprocal discipline.
- R-04-0004: A Petition to allow attorneys, as officers of the Court, to issue and sign subpoenas.
- A rule change petition was filed by the Presiding Juvenile Judge in Maricopa County amending the Rules to make them consist with statutes. The rule change petition was adopted on an emergency basis, the sent out for comment.
- A petition filed by Judge Colin Campbell on behalf of the Maricopa County justices of the peace proposing amendment to Criminal Rule 7.6c. is being circulated for comment.
- A rule change petition was filed proposing amendment to Rule 58e, would allow for the electronic delivery of Minute Entries.
- A rule change petition proposed by the Arizona Voice for Crime Victims would deny a defendant in a child pornography case to obtain copies of materials pursuant to Rule of Discovery.

4. FARE PROGRAM UPDATE

Mr. Mike DiMarco (AOC) reported on the FARE Project.

- Life cycle testing began on full FARE in April with the City of Phoenix. Upon completion of life cycle testing (this summer), the seven pioneer courts will transition into full FARE with the release of AZTEC 1.242.
- Web-based payment is operating in English and Spanish and has collected more than \$56,000. Out-of-state defendants continue to make up 25% of the web collections.
- Pay-by-Phone (IVR) is available in English and Spanish.
- TTEAP (Traffic Ticket and Enforcement Assistant Program) is targeted to be available the first week in June. Flagstaff Municipal Court will be the first court participating.
- Eight months of backlog cases from Show Low and Tucson have generated \$1.3 million in additional revenue. Most of the cases are three or four years old with prior collection activity.
- From all backlog cases accepted, payment has been received on 29% of the cases placed in collection. Some cases have not been assigned to backlog collections due to invalid addresses or lack of addresses. Approximately 13% of the monies owed have been paid.
- Many courts have been contacted about participating in the traditional collections model offered by ACS. Wickenburg Municipal Court placed \$750,000 in collections. All the Maricopa county justice court's backlog along with cases from the Clerk of Court and Juvenile Probation have been placed into traditional collection. In three months \$450,000 has been collected.

5. COMMISSION ON TECHNOLOGY (COT) UPDATE

Mr. Karl Heckart provided the committee with a COT update:

- The COT met for their strategic planning session, where they reviewed and voted on 12 strategic plans from the courts. Those that arrived late will be addressed in June or July at abbreviated COT meetings over the summer.
- Due to changes during this legislation session, COT will be moving out of the fund management business transferring that responsibility to the Arizona Judicial Council (AJC). This will leave COT free to focus on technology projects.
- Last year the legislature appropriated \$2 million from the JCEF fund to support basic court operations. The \$2 million could grow to \$2.5 million to support a number of expenses, such as rent on buildings, etc. In addition, a proposal came from the House to take \$1 million from TCPF funds to fund the Court of Appeals.
- A proposal has been made to establish a new process for authorizing the expenditure of Local JCEF funds for small expenditures without bureaucratic process. The COT suggests that small expenditure be defined as those less than \$1,500.00.
- The COT is proceeding with the commitment to install iCIS in the Superior Court in Pima County. In addition to the funds contributed by Pima County, COT will reserve about a half million dollars for the project pending AJC approval.
- The Court Automation Coordinating Committee (CACC) will be meeting to discuss long term directions for the general and limited jurisdictions systems

- (financial package for iCIS and a possible rewrite of the Tempe system).
- Wizard Project: COT met with the Maricopa west valley courts and Scottsdale to discuss the wizard project, a new interface with AZTEC for high volume case processing as an interim solution until there is a replacement for AZTEC.

6. ADR GRANT UPDATE

Ms. Karen Kretschman (AOC) gave an update on the ADR fund.

- On February 27, ADR funds were used to sponsor a three-hour segment of the Domestic Relations Conference. Two panels discussed ADR methods and techniques for judges and pro tempore judges with approximately 100 participants.
- On June 25, at the Judicial Conference in Tucson, there will be a three-hour ADR segment containing information on developing ADR programs and getting participants interested in developing programs in justice courts. A number of representatives from the various counties will be presenting information on their ADR programs. Additionally, ethical issues involved in using ADR programs in the courts will be discussed.
- A new ADR specialist will be hired to develop and provide training sessions to the pools of volunteer mediators in the courts, judges and court staff. The specialist will assist courts with establishing ADR programs and develop a grant package refined to meet the new focus for the fund.

7. LEGISLATIVE SUBCOMMITTEE UPDATE - 2004 LEGISLATION

Mr. David Benton and Ms. Page Gonzales presented the legislative status update:

- **AJC Bills**
 HB2223 FORCIBLE ENTRY/DETAINER APPEALS - Laws 2004, Ch. 28
 HB2225 PROBATION ABSCONDER TAX INTERCEPT - Laws 2004, Ch. 161
 HB2215 SMALL CLAIMS HEARING OFFICERS - Failed Senate 3rd Read 13-14
 HB2216 MVD REGISTRATION HOLDS - Held in House Judiciary Committee
- **Bills Passed or Still Moving**
 HB2128 COURT FEES; SMALL CLAIMS - Laws 2004, Ch. 3
 HB 2260 COURT CLERKS, FUNDS, REPORT - Laws 2004, Ch. 69
 SB 1049 JUSTICE OF THE PEACE; PRESIDING - Laws 2004, Ch. 98
 SB 1076 JP PRO TEM - Laws 2004, Ch. 80
 SCR 1009 JP PRO TEMPORE; QUALIFICATIONS - Transmitted to Secretary of State to place on 2004 general election ballot.
 HB 2184 OUI PENALTY - Transmitted to the Governor 5-14-04
 HB2310 ANIMAL MISTREATMENT; PROCEDURES - Passed House Final Read
 SB 1231 TRAFFIC CONTROL DEVICES; VIOLATIONS - Transmitted to the Governor 5-19-04

- Bills that Failed to Pass
HB2377 HOMEOWNERS' ASSOCIATION PENALTIES; NOTICE; HEARING - Failed in Senate Government Committee

8. FORMS/RULES SUBCOMMITTEE

Judge Anagnost reported on R-03-0027 and R-03-0028 to amend Rules 3.1, 3.4, 4.2, 14.1 and 14.3. The core concepts in the rule change petitions regarding, Warrants, Summons and Initial Appearances as discussed are as follows:

1. "Wordsmithing"
 - Rule 3.1.a - Delete "immediately. Replace "magistrate" with "court"
 - Rule 3.1.b - Clarify that the "prosecutor" not the "court" states reason for warrant.
 - Rule 3.1.d - Clarifies pre-adjudication warrant issuance where, before disposition of a case, it appears that the defendant has failed to appear for a court appearance.
- Summons by First Class Mail - Rule 3.4 - The proposed amendment would add the option of serving a summons by first class mail.
- Warrant - Rule 3.1.d - Warrants issued under this rule would not require the filing a separate complaint or new "FTA offense" and FDR.
- Initial Appearance, Appointment of Counsel - Rule 14.1.a - provides that defendants in custody be arraigned within 10 days while defendants not in custody be arraigned with 30 days of filing of an indictment, information or complaint.

MOTION: Mr. Jarvi moved and Ms. Barrett seconded a motion **to approve a resolution to endorse the concepts presented in R-03-0027 and R-02-0028 to the extent that discussion continues to achieve the goals stated.** Motion passed unanimously.
LJC-04-005

9. DEFENSIVE DRIVING SUBCOMMITTEE

Bob Schaller presented an overview of the defensive driving schools.

- Five defensive driving Internet schools have been certified. Two of the five schools are processing students, while the other three schools have not started processing students at this time.
- The Internet Defensive Driving School Statistics are based on the two schools that are processing students.
 - School B has had nearly 5,000 students complete/pass their program. School A had a high percentage (99% of those students not completing the program) of students failing the environmental component of the test. The environmental component was created to prove the person being tested actually viewed the program.
 - Mr. Schaller reported the issues and needed changes to ACJA § 7-205. They are as follows:
 - The Two Session Policy requires a participant complete an Internet

course in no more than two sessions. Due to lost connections on the Internet, this policy may not be effective or realistic. It is proposed that the two-session limit be eliminated.

- The Completion Policy requires the student to complete the Internet course within seven days of starting. It is proposed that this limitation be replaced with a requirement to complete the training by the court hearing date.
- The Retest Policy does not allow for retesting. It is proposed that one retest be permitted after review of the missed material for content questions only.
- Instructor Training - This ACJA section requires instructors to complete training offered by the Defensive Driving Unit. It is proposed that schools be allowed to offer their own training to satisfy update and currency requirements with program staff oversight.

Mr. Schaller will draft an amended code section with a copy of the test for review at the next LJC meeting.

10. STRATEGIC PLANNING SUBCOMMITTEE

Mr. Paul Thomas noted three items being considered by the Strategic Planning Subcommittee.

- A need for a liaison between the courts and the Department of Motor Vehicles; Amy Wood (AOC) acts on automation issues only.
- A limited jurisdiction court representative on the Commission on Technology (COT).
- LJC consideration of a standing subcommittee on automation.

Mr. Thomas requested these items be placed on the next Executive Subcommittee agenda.

11. CIVIL TRAFFIC PROCEDURE MANUAL

Ms. Lori Johnson (AOC) gave a brief presentation on the Civil Traffic Procedure Manual, the purpose of which was to develop a set of standardized procedures manuals for the limited jurisdiction courts, to cover civil, criminal, civil traffic and financial case processing. While still in draft form, the procedure manuals will include, where applicable, statutes, rules, case law, and administrative orders. The procedure manuals will also contain best practice suggestions. In addition, the resources and authorities cited will be linked to the Internet and Intranet for easy access to references.

The target for CD distribution is June 2004. The deadline for comments and suggestions is the end of July 2004. The manual will be updated after legislative session for this year, to incorporate any changes affecting civil traffic processes. A revised CD may be

distributed in September/October 2004. Comments and suggestions from judges, clerks and court administrators should be forwarded to Lori Johnson.

Every year after the legislative session, in the fall (September) AOC will send out an updated version of the manual.

Development of the criminal procedure manual will begin in July/August 2004. The committee will consist of new and continuing members. Additional volunteers are welcome.

At this point in the meeting Judge Traynor allowed Ms Diane Barker (a member of the public) to make comment regarding the rule change petition she filed with the Clerk of the Supreme Court on May 19, 2004. The proposed amendments to Civil Traffic Rules 4(d), 10(c), 19(f), 24(a) and 26 (b) would require a judge to provide certification before electronic disposition information could be forwarded to the Department of Transportation, Motor Vehicle Division or the Department of Public Safety. This process would replace the staff-driven process which, Ms Barker stated, can be processed without meeting the 30-day limit in ARS 28-1601 to make payment or payment arrangements. This petition also proposes making it possible for the defendant to request fee waiver/deferral at Entry of Plea and adding an explanation of the civil sanction to the ruling. Additionally, Ms Barker hopes that the petition would bring the civil traffic case appeals process more inline with criminal cases allowing the defendant to have an attorney and suspension of penalties until the appeal is decided.

12. PRIORITY OF OFFENDER PAYMENTS IN LIMITED JURISDICTION COURTS

Ms. Debby Finkel (AOC) and Ester Reeves presented the most recent draft of the ACJA § 4-301, Priority of Offender Payments. This process was established to standardize the way limited jurisdiction courts collect and allocate monies in criminal and civil traffic cases. The workgroup reviewing and revising priority of payments is composed of judges, court and AOC staff from across the state.

- Subsection D details how the application of payments related to cases and payment plans.
- Subsection E details how the application relates to financial obligations through the priority order of payments, taking FARE fees, the new prison construction and operation fund and collection fees into account.
- Subsection F details terminated payment plans and how to apply payments that have been made toward obligation on those plans.
- Subsection G details the exception to the priority of payments including proportionally applying delinquent payments between the obligation and the collection fee.
- Subsection H details compliance to the ACJA and documentation of noncompliance.
- In section D6, if a payer pays an obligation by mail, the court shall apply the payment as directed by the payer, unless the court notifies the payer of the

alternative payment application and the reason the payment was not applied as specified by the payer.

- If a defendant owes multiple courts, a defendant can designate the case number through the website or IVR.

OTHER BUSINESS

13. CALL TO PUBLIC

Ms. Diane Barker stated that she found out about the LJC committee via the Internet and suggested the committee post meeting notices on other bulletins for more public involvement.

14. ADJOURNMENT

Motion: Motion was made by Judge Lester and seconded by Ms. Barrett **to adjourn the meeting at 3:10 p.m.** Motion passed unanimously. **LJC-04-006**

The next LJC meeting will be held:

Wednesday, September 29, 2004
State Courts Building
1501 W. Washington St.
Conference Rooms 119 A & B

Respectfully submitted,

Ms. Susan Pickard
Staff to the Committee on Limited Jurisdiction Courts