

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

Arizona State Courts Building
Conference Room 119A & B
Phoenix, AZ 85007
November 17, 2004

Members Attending:

Honorable R. Michael Traynor, Chair
Honorable James P. Angiulo
Honorable Ted W. Armbruster
Mr. Daniel Carrion
Ms. Faye Coakley
Honorable Thomas L. Chotena
Mr. Richard Fincher
Ms. Debra Hall
Ms. Joan Harphant

Ms. Charlotte Holmes
Mr. Don Jacobson
Honorable R. Wayne Johnson
Honorable John Kennedy
Honorable Nicole Laurin
Honorable Marie Lorona
Honorable Kathy McCoy
Honorable Antonio Riojas, Jr.
Mr. James Scorza
Honorable Jose Tafoya

Absent Members: (excused)
Honorable Linda Hale

Staff:

Ms. Susan Pickard

Ms. Valerie Tillman

Presenters/Guests:

Ms. Amy Bain
Ms. Janet Cornell
Mr. Mike DiMarco
Mr. Greg Eades
Ms. Karen Kretschman

Ms. Melinda Hardman
Ms. Konnie Neal
Ms. Janet Scheiderer
Ms. Jamie Sears
Mr. Patrick Scott

REGULAR BUSINESS

1. CALL TO ORDER

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

2. APPROVAL OF SEPTEMBER 29, 2004, MEETING MINUTES

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

Motion: Motion was made by Joan Harphant and seconded by Judge R. Wayne Johnson **to approve the minutes for the September 29, 2004 LJC meeting as presented.** Motion passed unanimously.

INFORMATION/POTENTIAL ACTION ITEMS

3. FORMS/RULES SUBCOMMITTEE UPDATE

Judge Traynor presented the Forms/Rules Subcommittee report. Updates were provided regarding the status of proposed Rule 28 Petition R-03-0028 (Rules 3.1, 3.2 and 3.4 regarding warrants and summonses and Rule 26.12 regarding warrants).

Rule 3.1 Issuances of Warrants or Summons – The subcommittee proposes changing the word “immediately” in 3.1.a. where it states that “the court shall immediately issue a summons. . .” to “promptly.” No opposition was noted to this change.

Rule 3.4 Service of Summons – The rule currently reads “. . . a summons may be served by certified or registered mail, return receipt requested. Return of the receipt shall be prima facie evidence of service.” The subcommittee proposes adding “by first class mail” to the list of ways a summons may be served and removing “Return of the receipt shall be prima facie evidence of service.”

The purpose for the change is to improve the process, increase the likelihood of compliance and save the time and expense related to sending the summons via certified mail. Anecdotal evidence was presented by a number of the judges on the committee that indicated non-certified mail is responded to at a higher rate than certified mail is and that when a summons is sent certified, people have a tendency not to sign for it.

The county attorney’s office and the public defender’s office have commented in opposition to both of the changes. Mr. Dan Carrion, LJC Member and public defender, highlighted the concern that without the return receipt there is no proof that the person was served. Is there a basis for issuing a warrant? Is that basis the fact that the summons was mailed?

Judge Kennedy noted that the courts are trying to comply with the intent of the rule which is a preference for summonses. The courts need an affective summons in order to avoid the issuance of a warrant.

Judge Traynor noted that this is the only issue still pending in the petition and suggested that the sentence regarding prima facie evidence could remain as written since certified mail is still one of the methods of service.

The committee looks to continue with the rule petition even with the opposition to the proposal.

This issue is on this agenda for informational purposes only. Last May this issue was on the agenda for action, the direction given the subcommittee by the full committee to move forward with this petition. Judge Traynor noted that this petition would give courts an opportunity to effectively deliver summonses, eliminate a significant expense and, most likely, increase appearance rates.

4. AJB STRATEGIC AGENDA

Mr. Jim Scorza presented an update regarding the AJB Strategic agenda as developed by the Strategic Planning Subcommittee.

The subcommittee raised the following questions and concerns:

Goal 1-A: Abused and Neglected Children

First Initiative, Second Bullet - "Pilot test model dependency case management procedures." Mr. Scorza, responding on behalf of the subcommittee, noted that the members did not know what the test model dependency case management procedures were, therefore they were unable to make comment.

The next two bullets list encouraging public and private agencies to increase efforts to recruit foster homes for children in need and efforts to recruit adoptive families. While the subcommittee agrees with the concept of increasing the involvement of public and private agencies in these efforts, they questioned whether "encouragement" is the proper role for the court.

Goal 1-B: Victims of Domestic Violence

First Initiative, First Bullet - "Expand probation services to the limited jurisdiction courts for domestic violence cases, including the creation of specialized caseloads where appropriate, to ensure offender compliance with court orders." The subcommittee noted that this has already been done to some extent. The concern with "expand" and "creation" is funding.

Throughout the AJB Strategic Plan there are a number of programs recommended for expansion or improvement and in only one instance does the plan mention seeking a funding source. This report should be clarified relative to funding sources.

In that same bullet the subcommittee was not certain what was meant by "specialized caseloads" and whether it was appropriate for all courts. If "specialized" means focusing the cases on one division, one court or one judge then rather than where appropriate, limit the creation of the specialized caseloads to larger jurisdiction courts.

The third bullet states "implement the changes to the domestic violence protection order petition approved by the Arizona Judicial Council. . ." The subcommittee was not clear, if the latest version of the petition had been approved and if so, had it already been implemented rendering this bullet moot. If not, then this bullet should remain. Judge Traynor confirmed the petition had not been approved by AJC.

Goal 2: Providing Access to Swift, Fair Justice

The subcommittee disagrees with the statement "addressing bias in the judicial system" in the introductory paragraph of this goal. The statement assumes bias currently is systemic in the Arizona justice system. The statement also does not specifically identifying the type of bias nor does it identify whether the bias is perceived or actual. This statement should follow the logic set forth in the initiative under Goal 2-A which reads "Continue to strive for a justice system in Arizona that is free from actual or perceived racial, ethnic, gender, or economic bias."

Goal 2-A: Fairness in the Judicial System

First Initiative, Fourth Bullet - "Continue efforts to address the over-representation of minority youth in the justice system through the "Building Blocks" initiative." The subcommittee is unaware of the "Building Block" initiative and without that understanding,

questions the court's role in reducing an over-representation by any particular group. If, in fact, a member of the over-represented group has been charged with committing a crime, the court's hands are somewhat tied in how they are to effectively process the case.

Goal 2-D: User Friendly Courts

First Initiative, First Bullet - "Develop funding sources to implement programs to ensure the availability of qualified language interpreters for non-English speaking litigants." The subcommittee questions the role of the court in developing funding sources and requests clarification on this statement.

Goal 2-E: Continuance Improvement

Third Initiative, Bullet - "Dispose of 90% of felony cases within 100 days and 99% within 180 days. . ." The subcommittee wonders who came up with this standard and if it is realistic.

The subcommittee also questions whether the third bullet under this Initiative refers to case management or the processing of DUI cases.

Fourth Initiative - The subcommittee proposed deleting "effectively utilize valuable court reporter resources" because the trend is to toward digital recording.

Goal 3: Improve Communication and Cooperation with the Community, Other Branches of Government, and within the Judicial Branch

Sixth Initiative, Second Bullet - "Develop juror appreciation programs." The subcommittee recommends deleting this statement as written unless it is further clarified.

Sixth Initiative, Fourth Bullet - "Increase juror compensation." The subcommittee again wonders, funded by whom?

Goal 4: Being Accountable

First Initiative - "Recruit and retain a professional, well-trained, customer service oriented workforce to better serve the public." The subcommittee recommends deleting the word "better."

First Initiative, First Bullet - The subcommittee recommends changing the word "improved" to "effective." While this bullet may not apply to all courts, the concern about funding was raised and the court's responsibility to fund or obtain funding questioned.

First Initiative, Third Bullet - The subcommittee suggested changing the bullet to read "Ensure judicial education programs provide comprehensive, meaningful training of judges, court managers, judicial staff and probation officers."

Goal 4-A: Probation Supervision and Probation Employee Safety

Fourth Initiative - "Assist the Chief Justice in the development, review and implementation of the Strategic Agenda of the Judiciary." The subcommittee proposes that this initiative and the fifth initiative be placed under a new **Goal 4-B: Court Management**.

The subcommittee further suggested adding a third initiative under Goal 4-B Court Management entitled "Develop Performance and Operational Standards."

Judge Traynor asked Mr. Scorza to develop written comment based upon the committee's discussion for submission.

5. FINES/FEES & RESTITUTION ENFORCEMENT (FARE) PROGRAM

Mr. Mike DiMarco (AOC) presented an update on the FARE Program.

In the first four months of Fiscal Year 2005 FARE collected \$1.7 million. This amount is attributed to collections from Tucson, Show Low, Flagstaff and Winslow Municipal Courts and Winslow Justice Court. Of the total amount, \$1.1 million was collected from Tucson, Show Low and Flagstaff Municipal, with \$600,000 from the Maricopa Justice Courts and Wickenburg Municipal Court.

Approximately 5,200 payments have been made either in full or partial on cases. FARE is averaging about \$375,000 per month in collection activity for the courts presently in the program. Most all backlogged cases in the program had prior collection activity, with the oldest case dating from 1988. Ms. Harphant noted that the cases in FARE from Tucson Municipal Court are cases the court defaulted.

Payments received via the Internet and Pay-by-Phone (IVR) total \$145,000 so far this year. Seventy-five percent of the approximately 8,850 payments were paid through the Internet and the other 25% were paid through Pay-by-Phone (IVR). FARE continues to receive 20% of its payments from out-of-state defendants.

The TTEAP (Traffic Ticket and Enforcement Assistant Program) does work. There have been 10,200 registration holds initiated with MVD (Motor Vehicle Division). Of those, 275 holds have been released; 30 releases occurred on the day before the registrations were due to expire. These numbers must be viewed with an understanding that some of the registrations may not expire for a year or two years depending upon the date and length of the last renewal.

Additionally courts are being brought into the New Interim FARE. The Data Integrity Unit (DIU) is working with the courts and is following behind the deployment AZTEC 1.241 (AZTEC courts only).

After installation of AZTEC1.241 in participating courts and following training, the Date Integrity Unit (DIU) assists with training of the FARE functionality included in AZTEC 1.241. To date Winslow Justice and Municipal Courts have been brought on-line and are now receiving payments. Kayenta Justice Court data has been sent and the first notice letters will be mailed. Holbrook Justice and Municipal Courts have been trained, their data has been received and the first notice letters will be mailed in a week. Snowflake courts will come on-line next. This will complete all the courts in Navajo County with the exception of the Superior Court. In January, AZTEC 1.241 will be deployed in the larger courts in Maricopa County and consideration will be given to bringing additional courts into the backlog process.

Life cycle testing which began in July 2004 continues for Full FARE with the City of Phoenix; scheduled completion is the first quarter of 2005 (March 18). Chandler Municipal Court has

also entered into life cycle testing. Their data was transmitted to bring backlogs into delinquency processing which has the Full FARE functionality of post disposition processing. The City of Phoenix backlog will come into FARE two months after Full FARE is implemented, allowing Full FARE to stabilize before interjecting backlogs into the system. The City of Phoenix, the AOC, and ACS continue to devote the resources necessary to accomplish this task.

Some committee members have received a packet of material from Mr. Sobel, Labyrinth Investigations, regarding a complaint he filed with the State Banking Department alleging that ACS (a private vendor) is operating improperly and misrepresented facts to the State Banking Department when they obtained a collection vendor license in this state. The State Banking Department found no indication any Arizona laws being broken, nor is any of the material supplied indicative of Arizona law having been broken. Mr. Sobel has been asked to supply additional specifics. It is unknown at this time if he has complied with the request.

Mr. DiMarco will continue to be in close contact with ACS in the event action is needed. ACS is a \$4.5 billion company that has been in business in Arizona for a number of years with over 1,000 employees providing services for Department of Economic Security, ADOT, and numerous local jurisdictions and private companies.

6. LEGISLATIVE UPDATE

Ms. Jamie Sears (AOC Legislative Specialist) presented an update on the finalized AJC Legislative Package.

Drug Court Funding – Appropriate funds for drug court to provide treatment, staff and drug-testing services. AOC legislative staff are working to garner community-based treatment provider support through the Regional Detox Center Committee. They are also working to get support from the Department of Corrections and Juvenile Corrections. They have met with a representative of the Governor's Office who is interested in the proposal. A bill folder has been opened with legislative council by Representative Konopnicki. Currently legislative staff is working with legislative council on the wording of the bill. One of the major issues is the dollar amount.

Fiduciary Program Funding – This proposal is a funding packet designed to support the additional needs of the Fiduciary Program. The packet includes possible funding sources of increased surcharges on birth and death certificates. Technical statutory changes are also addressed. The AARP is going to be supporting this proposal. There have also been calls place to the Governor's Council on Aging, the Area Agency on Aging, the Veteran's Administration and the Attorney General's Office for support. A meeting has been scheduled to ask Representative Nelson to sponsor this bill and open a bill folder.

Jury Service Reform – This proposal would make various revisions, both substantive and technical, to recently passed jury reform legislation addressing jury duty excuses and documentation. A final meeting is scheduled with Representative Lopez to discuss this bill and the issues involving another bill which has been proposed (Representative Nelson's bill). AARP likes the idea of the bill; however, they are hesitant about setting any age requirement, as it goes against their philosophy.

Judge Traynor invited another Legislative Update at the March 2, 2005 meeting.

7. DOMESTIC VIOLENCE FORMS UPDATE

Ms. Konnie Neal (AOC, Court Services Division) presented an update on the progress of the domestic violence forms.

On September 29, 2004, this committee voted to approve the protective order forms. The Committee on Superior Courts and the Arizona Judicial Council tabled the discussion on the forms so the Domestic Violence Forms Workgroup could reconsider the language in the checkbox before "Commit no crimes." The Workgroup had developed new language and were well on the way back to the approval process when Judge O'Neil, CIDVC Chair, Ellen Buchner, Office of the Governor STOP Grant Administrator, and Konnie Neal attended a domestic violence conference in Florida, where they learned about 'Project Passport'.

Project Passport is a national effort to create regionally recognized protective order forms (to enhance protective order enforcement by law enforcement by encapsulating all of the necessary legal language on the first page of the form – 'Model Template'). This project was implemented to expand the success of the original Project Passport which began with Kentucky and its border states.

The 'Model Template':

- Contains commonly agreed upon data elements.
- Is recognized across jurisdictions.
- Identifies Federal gun law prohibitions.
- Facilitates enforcement in the field.
- Is the product of multi-disciplinary consensus.
- Is flexible for varied state statutory requirements.

The Model Template effort will come to the Central Southwestern Region in February 2005. The Central Southwestern Region includes Arizona, Colorado, Utah, New Mexico, Texas, Montana, Wyoming, Idaho, North Dakota, South Dakota and Tribal Courts. The February conference is an effort to create the regionally recognized Model Template (first page). Each state will be represented by a team which will include at a minimum a judge, a court administrator, a law enforcement representative and a tribal court representative.

As it is understood at this time due to conforming just the first page of our forms to the Model Template and the use of XML as an interface between the states and NCIC, the transition should not be difficult. Robert Roll, AOC – Information Technology Division, has already begun addressing the technical issues. The CPOR/LPOR databases are compatible with XML which acts as an interpreter between the varying systems and NCIC. Because the data interpretation will be done at the CPOR/LPOR stage in our process AZTEC should not be affected.

Judge Kennedy commented that the courts objective is to provide the best service for the parties that received the orders. The simpler the orders are the more understandable they are to the persons receiving, serving and enforcing them. Ms. Neal noted that CIDVIC's goal is to produce forms that are understandable by non-represented parties and keep it simple.

The protective order forms have been placed on hold. CIDVIC will present another protective order forms update after the conference.

8. ARIZONA CODE OF JUDICIAL ADMINISTRATION (A.C.J.A): EQUAL EMPLOYMENT OPPORTUNITY

Mr. Greg Eades (AOC, Legal Services) presented A.C.J.A. § 1-301 for approval.

A.C.J.A. § 1-301 pertains to Equal Employment Opportunity and is a new code section that will replace Administrative Order (A.O.) 93-11. The code section contains the same language as the A.O. except that it extends its application from the appellate courts to the entire Arizona Judiciary.

Motion: A motion was made by Ms. Harphant to **approve the code section and recommend adoption by the Arizona Judicial Council.** Motion was seconded by Debra Hall. Motion passed unanimously.

9. COURT ACCESS TO POLICE RECORDS/UNIFORM BOND SCHEDULES

Mr. Greg Eades (AOC, Legal Services) presented two issues referred to this committee by the Limited Jurisdiction Legal Issues Workgroup regarding court access to police records and uniform bond schedules. These issues were brought to this committee for comments before proceeding with legal memos.

Court Access to Police and MVD Information It has come to Legal Services' attention that some courts are able to access on-line information from police departments, law enforcement agencies and MVD. The court makes use of the information in various ways. The information maybe used by the courts alone, court staff, or the judge without any participation from the prosecutor, or without any comment from the defendant. The concern is the information can be viewed as ex parte information without the participation of the prosecutor. There are ethics opinions that deal with this and may restrict the use of this information.

In the synopsis of paragraph one, it reads the reports are used primarily to determine a factual basis if the defendant pleads guilty.

Judge Kennedy stated that the process in his court is to ask law enforcement to provide reports in sealed envelopes which are kept for the prosecutor, who only appears once a week. This way the information is available to the prosecutor to provide to the defendant. If a defendant pleads, a factual basis is found and a conviction entered, then the court would open the report and provide it to the defendant for review. The reports are never used prior to disposition or pre-conviction.

Some courts are using MVD databases to access priors and aggravating circumstances with or without the participation of the prosecutor. The concern is if this is happening without the participation of the prosecutor, is this ex parte?

Judge Traynor stated that courts may use the MVD database to access current addresses for the defendants (administrative issues on how to locate a current address for a summons) because updates are more frequently done with MVD than the courts. This process is not utilized on the bench, but through court administration.

Judge Laurin opined two separate issues; an appearance issue and the ex parte issue. Ex parte is not an issue if all persons know the MVD database is being used and the court

discloses it as the basis for the information. A court can go online, review the MVD record and report to both parties that they are considering the information obtained there. This allows both parties to comment. The Canon and ex parte issues are resolved.

The appearance issue stems from the parties coming to court and watching the court meander through various public databases, seeking additional information. This is not the role of the court, but that of the prosecutor. If the prosecution wants the court to have this information, they should be responsible for ferreting it out and present it appropriately. An argument was made that in the case of civil traffic offenses, the courts should be more relaxed about these rules, and maybe the rules of evidence should be changed. Judge Traynor explained that if a court is looking to enhance penalties for a mandatory penalty, the state needs to alleged and prove the prior conviction, whether it is a traffic or any other charge. This is not something the court should be involved in especially at an arraignment.

Uniform Bond Schedule – There are statutes that require the local judge to establish bond schedules. There is also Administrative Order 96-32, which requires coordination with the presiding judge of the county in establishing bond schedules. Mr. Eades asked about the practice in the various courts and counties represented by the LJC members. Are the bond schedules countywide and how is it working?

In Coconino County, countywide bond schedules are reviewed on a yearly basis, and are updated in accordance with new requirements. The county has a committee of judges and court personnel that review the bond schedules on an ongoing basis. Once the schedule is distributed to each of the courts, the courts have to establish their own fine and bond schedule which are also distributed to local law enforcement as well as to the county jail. The individual court's bond schedule can vary from the countywide uniform bond schedule that has been established. This can happen in various ways, one the presiding judge has to take into consideration local preferences or issues regarding certain types of violations that may require modification from the countywide bond schedule based. There are also local ordinances which must be considered.

In Yavapai County there is a uniform bond schedule, the courts all use same bond schedule and address it yearly.

In Cochise County there is a uniform bond schedule that is distributed to all courts; the majority of the courts follow the schedule.

Ms. Coakley asked if there a way to be notified of a change in a in a surcharge to publish to the courts in a timely manner. She manages the bond schedule and is not aware of the change until after the fact. Mr. Patrick Scott, AOC, Court Services Division and member of the audience discussed the annual Legislative Court Impact Report and its location on the Internet.

Greg Eades asked if the members had encountered the argument that the statutes provide for exclusive authority to the local judge to establish a bond schedule that contradicts the Administrative Order requiring county coordination. Judge Traynor explained there is an administrative order in Maricopa County signed by the presiding judge where the presiding municipal court judges and justices of the peace agree to a schedule in which there is a set variance amount of plus or minus ten percent. The variance addresses differentiations due to ordinance issues or specific issues in the court's community that may treat an offense more seriously than it is treated in other jurisdictions.

Judge Anguilo asked which takes precedence, the Administrative Order or the statute if a presiding judge of a municipal court chooses to establish a bond schedule that is significantly different from the county uniform bond schedule. In Pima County, there are presiding magistrates that would believe the statute authorizes the magistrate to establish a bond schedule; they believe the statute trumps the administrative order.

10. 2005 MEETING DATES

Motion: Motion was made by Judge Lorona and seconded by Ms. Harphant **to approve the proposed meeting dates.** Motion passed unanimously.

OTHER BUSINESS

11. GOOD OF THE ORDER/CALL TO THE PUBLIC

Judge Riojas requested that the issue of set asides (A.R.S. § 13-907) versus expungement be added to the agenda for the next LJC meeting. The statute regarding set asides dismisses the charge and uses the language dismissal. The dismissal code in AZTEC has consequences including fine refunds. There is a difference between a set aside and an expungement; however, those terms are used interchangeably by defendants. According to the statute, municipal courts can not expunge records; this can only be done through the Superior Courts. Does the Superior Court want the limited jurisdiction courts to refer defendants to them to expunge municipal court records? Judge Traynor states that to get a more uniform understanding of what a set aside is and what it does and does not do is something the court can effectively communicate to its community. Defendants ask to have something expunged from their records because that is a word they are familiar with. If the defendant was booked and the judge did a final disposition report, you may change the final disposition report. If you run a history it show the date of violation, the date of the conviction and date the conviction was set aside so the charge or conviction is removed (typically this what defendants want the courts to do).

A call for public comment was made. No comments were made.

12. NEXT MEETING

The next LJC meeting will be held:

Wednesday, March 2, 2005

State Courts Building

1501 W. Washington St.

Conference Rooms 119 A&B

13. ADJOURNMENT

Motion: Motion was made and seconded **to adjourn the meeting at 12:05 p.m.** Passed unanimously.

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