

**ARIZONA JUDICIAL COUNCIL'S
LIMITED JURISDICTION COURTS COMMITTEE
Arizona State Courts Building
Conference Room 345A & B
Phoenix, AZ 85007
February 19, 2003**

Members Attending:

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

Mr. Theodore Jarvi
Ms. Pam Jones
Honorable John Kennedy, Vice Chair
Honorable John Lamb
Honorable Michael Lester
Mr. Frank Maiocco, Jr.
Honorable Antonio Riojas, Jr.
Mr. Paul Thomas

Absent Members (excused):

Honorable Ronald O. McDaniel
Honorable G.M. Osterfeld

Mr. Dale Poage

Guests:

Mr. Tom Brady
Ms. Janet Cornell

Mr. Bob James

Staff:

Mr. Tom Adams
Ms. Agnes Felton
Ms. Debby Finkel
Ms. Jennifer Greene
Ms. Patience Huntwork
Ms. Lori Johnson

Mr. David Sands
Mr. Bob Schaller
Ms. Janet Scheiderer
Ms. Diane Sweeney

REGULAR BUSINESS

1. Call to Order

Judge R. Michael Traynor called the meeting to order at 10:15 a.m.

Judge Traynor noted visitors at the meeting and asked everyone to introduce themselves, by name and court.

2. **Approval of Minutes from the December 4, 2002 Meeting.**

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

MOTION: Motion was made by Judge Lamb and seconded by Ms. Joan Harphant **to approve the minutes from the December 4, 2002 LJC meeting. Motion passed unanimously. LJC-03 - 01**

INFORMATION/POTENTIAL ACTION ITEMS

3. **Pending and Proposed Rules Updates**

Ms. Patience Huntwork announced that the Supreme Court Staff Attorney's office took action to implement a new procedure for notifying all judges, administrators and court clerks (in the Outlook e-mail network) of rules actions taken by the court. Ms. Huntwork remarked on the following January 14, 2003 rule calendar actions:

- A petition regarding Criminal Rule 39 which imposes new obligations on courts to personally give out victim rights notifications has been referred to the Superior Court Committee and LJC for comment. Comments are due by April 15, 2003. The court wants to hear from both committees on this petition as it had no opposition yet it imposes additional notification burdens on judges .
- The SCRAP -Criminal Rules were adopted effective June 1, 2003.
- A proposal to allow video taping of depositions as a matter of right was not adopted, it has been referred to the State Bar Civil Practice Committee. This rule may have implications towards court reporters.
- A rule was adopted regarding the unauthorized practice of law. It provides definitions of the practice of law within a new regulatory scheme.
- A rule was adopted to conform with Supreme Court Rule 29 which exempts limited jurisdiction courts from the requirement of notifying the State Director of the Arizona Department of Library and Archives of cases scheduled for destruction.
- A rule was adopted which changes the requirements for the filing of criminal complaints. The rule allows prosecutors to file complaints directly and complaints no longer need to be sworn under oath to the judge. The effective date is March 1, 2003.
- A change in the rule regarding a judge's freedom to express opinions on issues that might come before him has been referred to the Judicial Ethics Advisory Committee.
- There was an emergency adoption (in October, 2002) of a rule which required pro

tem JP's to be members of the bar and allows for the use IA Masters who may be non lawyers. This rule is now in effect in final form

- A petition which makes change of judge inapplicable to judicial review of administrative decisions.
- A petition to allow electronic participation in Commission on Trial and Appellate Court Appointment meetings (not at interviews and not when they are voting) has been circulated for comment.
- A proposal by Judge Anagnost to allow limited jurisdiction courts to amend conditions of release pending appeal of a guilty verdict for which a sentence of incarceration may be imposed. The current rule provides that the defendant shall remain under the same release conditions and this rule would allow a judge to amend those conditions. This rule is out for comment.
- A petition to allow exemption from practice of law provisions for CPA's.
- A proposal changing lawyer disciplinary proceedings is out for comment.
- A proposal requiring CLE programs to be certified by the Arizona State Bar.

Judge Traynor thanked Ms. Huntwork for her role in improving access to the rules information and the advance notice the courts are now receiving. The next Rules Agenda is June 3, 2003.

4. Priority of Offender Payments in Limited Jurisdiction Courts

Ms. Debby Finkel reported that a work group has been formed, comprised of court staff and administrators from around the state, to tackle the issue of prioritizing offender payments in limited jurisdiction courts. Ms. Finkel stated that during the workgroup's first meeting they reviewed the Superior Court code and looked at a compilation of a survey that was done a year ago.

The workgroup subsequently learned the Phoenix Municipal court recently went through a similar exercise and the workgroup postponed doing anything else until they get information from Phoenix. The workgroup's next meeting is scheduled for March 25, 2003. A call in number will be available for any who wish to participate from remote locations.

Ms. Joan Harphant supplied that the workgroup is divided on the issue of priority for civil (first) or criminal. Ms. Harphant asked if LJC would like to offer direction for the workgroup on this issue. Group discussion included pros and cons for each as well as AZTEC capabilities. The need for each court's flexibility was stressed.

5. Waiver of Counsel in Criminal Matters

Mr. David Withey apologized for not distributing the handouts in advance of the meeting. Mr. Withey explained his handout includes a waiver form used by the City of Scottsdale

which he believes is also distributed during new judge orientation. Mr. Withey stated the issue of appointing or waiving counsel came to his attention following a recent court operational review in which staff noted the judges were not using waiver of counsel forms. Since they had routinely seen them used in other courts around the state, the issue became when is a waiver of counsel necessary? Follow up discussions with others revealed that judges (around the state) are also not consistently informing defendants of the right to counsel and appointing counsel under Criminal Rule 4.

Mr. Withey explained the importance of recognizing the difference between Criminal Rules 6.1(a) and Rule 6.1(b) where the rules refer to someone bringing in their own attorney and the right to be represented by an attorney. It appears from the rules a person doesn't have to be informed of their right to bring in their own attorney in petty offenses where there is no prospect of imprisonment after a judgment of guilty. This may be the difference in what is happening. If this is read very narrowly, in petty offenses if a person does not have the right to be represented by counsel, then perhaps there needs to be a waiver of counsel in any other case.

The right to appointed counsel is somewhat different. Counsel needs to be appointed in a court proceeding which may result in a loss of liberty. The Campos case clarified that when the prosecutor avowed in advance of the proceeding that no jail would be sought, counsel did not need to be appointed. The distinction (in practice) between Rule 6.1(a) and (b) needs to be recognized.

Mr. Withey solicited Committee input on how these counsel issues are handled. Judge Antonio Riojas, Jr. explained the Tucson Municipal Court process in that if jail is not an option, a waiver of counsel is not executed. Group discussion followed. Disagreement was expressed regarding whether judges should selectively advise defendants of the right to counsel based upon the judge's assessment as to whether incarceration is warranted in a particular case. Some courts have advance prosecutor involvement and others do not. Judge Traynor stated Rule 4.2 is clear regarding waiver of counsel. Judge George Anagnost referenced *Alabama vs. Boykin*, a 1965 case. Mr. Withey clarified the other issue is not so much the appointment of counsel, rather it is the advising of the right to counsel.

Judge Traynor asked Mr. Withey to clarify the action he is asking the Committee to take. Mr. Withey suggested the Committee look at recommending amendments to Rules 4, 6 and 14 or to recommend circulation of materials regarding appointment of counsel. Mr. Withey emphasized the goal should be to provide for consistency throughout the state as the issue involves a fundamental due process right. Judge John Kennedy remarked the present waiver of counsel form can be misleading.

Mr. Theodore Jarvi suggested that hand out materials need to be distributed ahead of the meeting in order for formal action requests to be acted upon. Mr. Jarvi moved to table the discussion to a later date. The motion died for the lack of a second.

Judge Michael Lester interjected that a prosecutor cannot allege priors if a waiver of counsel was not been signed in the previous case. Judge Lester explained it is clear under the rules the court must advise defendants of the right to counsel if there is any chance of jail and that he would rather error on the side of appointing counsel, but he

agrees with Mr. Withey there is a need for statewide consistency. Judge Lester concurred with Judge Kennedy in that the present waiver of counsel form could be misleading and suggested it may need to be revised. Judge Traynor suggested action (on this issue) by this committee may include action by the Rules Subcommittee.

Mr. Jarvi reintroduced his motion to table this discussion. It was clarified the purpose of tabling this item is to give Mr. Withey an opportunity to return with a more complete proposal, which may involve interaction with committee members.

MOTION: Motion was made by Mr. Theodore Jarvi and seconded by Judge Sherry Geisler **to table this issue to the next LJC meeting on May 21, 2003. Motion passed unanimously. LJC-03 - 02.**

6. New Judge Orientation

Ms. Agnes Felton summarized revisions in the New Judge Orientation (NJO) program.. NJO has been expanded to from one week to two weeks in January and an assessment (testing) process has been added. Ms. Felton stated the 40 judges in attendance in January formed small study groups, worked very hard and were given a study guide to go along with their other classroom materials. 90% was the overall grade in the assessment with 70% considered a passing score. The judges did very well overall. The judges evaluated the program and gave it a 4 (on a scale of 1-5, 5 being excellent) overall on all questions asked.

Ms. Felton distributed an agenda for the March 2003 NJO and encouraged members to review and make suggestions as it is still open to change and acknowledged Committee members and staff from Education Services who are participating in NJO.

Ms. Felton mentioned other changes that will be taking place with NJO as they continue to refine the program and advised that Education Services is looking at computer based training (CBT) as a possible delivery method for additional judicial refresher courses. Legal terminology and legal research will be the first refresher courses offered. They are also planning to do specialized training (similar to the civil traffic hearing officer training) for judicial officers who handle forcible detainers, which will be followed by criminal and other topics. New judge orientation is evolving into a two year process with all of these additional trainings.

Ms. Felton concluded by reminding the Committee the new bench books and judicial reference manuals are available on CD rom or can be downloaded from Wendell. Education Services no longer mail hard copies due to the expense, unless specifically requested.

7. Legislative Subcommittee Update - 2003 Legislation

Mr. David Sands introduced Legislative Aide Page Gonzales and gave the following 2003 legislation update:

- A. HB 2333 authorizes unarmed police aides to serve process in limited circumstances within the jurisdiction. If this bill passes, rules will need to be developed to determine the circumstances under which these police aides will be able to serve. Private process servers has expressed displeasure with this bill. Further amendments may be done on this bill which is moving along well.
- B. SB 1341 could have a serious affect on courts as it would divert a portion of courts fines, fees and sanctions from the local jurisdiction to DPS. The money once deposited in a special fund for DPS, would be used for overtime and equipment costs. It is expected the cities will be exempted out, which may be logical since DPS doesn't usually cite into City courts. Counties are opposing this bill which is still in it's first committee.
- C. SB 1007 which started out as a speeding bill, has changed substantially to deal with DUI breath testing devices. It alleviates the burden of additional certification by the custodian of records. This bill has not gone forward into committee yet.
- D. HB 2508 is awaiting a hearing before committee. It affects title 9 regulating zoning and requires municipal zoning ordinance violations that carry fines or assessments to be filed in the justice court precinct. Judicial productivity credits may be come into question.
- E. HB 2472 is a comprehensive domestic violence bill dealing with a variety of issues that contain some controversial provisions. One provision would deny a victims rights advocate from being examined about comments that were made by a victim in a shelter. Also, (under ARS 13-3601) before releasing an arrested person, the judge must determine the person does not pose a danger to someone else. The judge must state on the record the reasons why he or she is making that determination. The judge must provide conditions of release that will ensure the safety of the victim, unfortunately, courts don't always have the information necessary to make these determinations.
- F. HB 2471 also dealing with domestic violence issues, adds a chapter to the criminal code with provision for enforcement in Arizona of a valid protection order from another state.
- G. HB 2520 regarding jury service, allows exemption (of jury duty) for extreme physical or financial hardship. The bill also adds a \$20.00 surcharge to most court filing, appearance and clerk fees. The revenues from this surcharge would go into a fund to supplement wages of jurors who participate in trials which last more than 10 days.
- H. HB 2124 exempts certified peace officers from jury service upon timely application of the peace officer.
- I. SB1024 (now in committee) adds new education and age requirements for justices of the peace. The bill raises the minimum age to 25 and adds a post secondary education and Azpost certification requirement. It also establishes a one day pre-orientation requirement to candidates for justice of the peace. This bill changes calculations to judicial productivity credits (JPC). Small claims cases

heard by a hearing officer would now be counted in the justice court JPCs. The bill changes the JPC threshold for the maximum JP salary to 700. The bill also requires that if a judge's JPC total is 700 or more, the judge may not sit as a city magistrate or draw salary from another position. This bill stands to be heard by the Senate Appropriations Committee.

- J. SB1031 and SCR 1002 both deal with the issue of a pro tem justice of the peace being a member of the bar. SB 1031 (in response to the Chief Justice's administrative changes that disallowed the use of non attorney justices of the peace pro tem) allows that a non attorney may serve as a pro tem if the person previously served as a justice of the peace. SCR 1002 would amend the state constitution that pro tem justices of the peace need not be lawyers. SCR 1002 will go to the voters to amend the Arizona Constitution.but SB 1031 would fly in the face of the constitutional amendment. Both have headed for the House.

Mr. Sands reminded members of the legislative conference calls every Friday at noon.

8. TSS Traffic Bond Card Language

Mr. Bob Schaller related the information being presented comes as a result of a citizen complaint to the Governor's Ombudsman Office regarding a red light violation. Red light violations, or any moving violation committed by a minor, now result in a MVD assignment to traffic survival school (TSS). These violations are also still eligible for defensive driving diversion. If the defendant chooses not to attend defensive driving and is later found responsible, the court reports the conviction to MVD and MVD automatically assigns the person to traffic survival school. The complainant said the court had not provided this information and had she known up front (of the automatic assignment to TSS) she would have opted to go to defensive driving school. The AOC recommendation is that each court should add language to it's traffic bond card informing defendants that education is a requirement upon a finding of responsible. Mr. Schaller's handout gives the following sample suggested advisement:

"NOTE: IF YOU HAVE BEEN CITED FOR 28-645A3A, OR ARE UNDER AGE 18 AND HAVE BEEN CHARGED WITH A FIRST OFFENSE, AND ARE FOUND RESPONSIBLE FOR THE VIOLATION BY THE COURT, YOU WILL BE REQUIRED TO ATTEND A TRAFFIC SURVIVAL SCHOOL (TSS) CLASS BY THE MOTOR VEHICLE DEPARTMENT PURSUANT TO THE REQUIREMENTS OF THE ARIZONA REVISED STATUTES. HOWEVER, IF YOU ARE ELIGIBLE FOR DEFENSIVE DRIVING SCHOOL AND COMPLETE A CLASS BEFORE YOUR COURT DATE, THE VIOLATION WILL BE DISMISSED AND YOU WILL NOT BE SUBJECT TO THE REQUIREMENT TO ATTEND A TSS CLASS BY THE MOTOR VEHICLE DEPARTMENT."

9. Electronic DDS Reporting

Mr. Bob Schaller stated that each month the Defensive Driving Unit mails a packet containing a defensive driving report (which is used to reconcile the student reports received from the defensive driving schools) and related reports to each court. Due to the resources in staff time, materials and postage, the Defensive Driving Unit wishes to automate the monthly reports. These materials can be e-mailed to courts as text files that can be printed and used for reconciliation in the same manner as the reports courts presently receive. The reports can also be sent as MS Excell files that courts could

import and manipulate electronically.

Ms. Kathy Barrett asked if this electronic data transmission would be secure. Mr. Schaller responded in the affirmative. Judge Sherry Geisler expressed a concern about her limited e-mail space and limited speed.

Mr. Schaller replied the Defensive Driving Unit would continue to hard copy mail courts with such problems. Ms. Joan Harphant asked if an exception report would also be generated. Mr. Schaller responded although such a report is not planned at this time, it may be considered later. Mr. Schaller suggested in the alternative, courts will be able to utilize the Excell report to create exception reports.

MOTION: Motion was made by Ms. Kathy Barrett and seconded by Mr. Frank Maiocco **to support. the conversion of mailed hard copy defensive driving reports to e-mailed electronic format. Motion passed unanimously. LJC-03 - 03.**

Judge Traynor reminded members this may be the last hard copy mailing of the LJC agenda and materials. As the LJC mailings are going to electronic format, members are urged to contact Lori Johnson if there are any problems with access.

10. Defensive Driving Subcommittee

Ms. Kathy Barrett reported on an issue that has come to the subcommittee's attention. Apparently some courts are allowing driving school for ineligible ARS violation codes. Ms. Barrett cited as examples; equipment violations or old (incorrect) statute numbers where the complaint has not been amended to reflect the correct statute.

Mr. Bob Schaller interjected that some old codes remained in the defensive driving system because of records in the system using those numbers. The number table was left in place to alleviate the possibility of crashing the system. Last summer the Defensive Driving Unit conformed the table to the acceptable violation code list. Now, what is happening is courts are not amending incorrect or incomplete codes to the exact correct statute number. Once the code is correct, the defendant can go to driving school. Mr. Schaller clarified this issue is isolated and intermittent.

11. Strategic Planning Subcommittee

Mr. Paul Thomas reported he has been drafting a white paper which summarizes the survey results regarding what court administrators and judges have identified as the priority issues that currently face Arizona courts. These responses resulted from the 2002 Limited Court Judicial Conference that took place last June in Goodyear, Arizona.

Mr. Thomas believes the final white paper may provide a good base line start for the strategic plan in that it will outline courts priority issues and ideas.

12. Forms/Rules Subcommittee Update

Judge George Anagnost began with R02- 0029, a petition regarding Rule 31 (Rules of

Supreme Court) as submitted by Judge Castillo of Tucson Justice Court. This petition involves two components, one deals with limited liability companies and has already been adopted, the other section of this rule change is a provision to allow one spouse to represent the other spouse (as the plaintiff) in landlord tenant actions.

ARS 25-214 and 25-215 regarding community property are not addressed in this petition. Judge Anagnost remarked this petition addresses the marital community on only one side of the case. The defense side is not addressed. Judge Anagnost also noted this rule petition may have hearsay issues associated with it and that this petition may not solve the problem it was intended to remedy.

It is perceived the problem may be that (at present) some courts are not allowing cases to proceed unless both spouses are present, even though community property allows that only one spouse appear to represent the marital community. Judge Anagnost suggested the Supreme Court may wish to allow Judge Castillo to conduct a pilot project on this issue or maybe LJC should take no action. Mr. Theodore Jarvi stated that although this petition doesn't change the evidentiary requirements, it may present the illusion that it does. Mr. Jarvi emphasized the rule petition merely restates the community property law and is therefore unnecessary.

MOTION: Motion was made by Mr. Theodore Jarvi and seconded by Judge John Lamb **not to support 31.D (spouse representing other spouse) of the rule change as it is current law. Motion passed unanimously. LJC-03- 04.**

Judge Anagnost and the Rules Subcommittee will draft the Committee response.

Judge Anagnost reported on R 02-0035, (Rule 39) a petition submitted by the Attorney General's office to add advisories to be done through the course of criminal prosecution. It also requires the posting of notices regarding victims rights

Judge Anagnost solicited members reaction to the petition. Judge John Kennedy expressed concerns of neutrality issues which may conflict with the Judicial ethics Canons. Mr. Paul Thomas concurred with Judge Kennedy. Mr. Jarvi stated the advisement of rights to a victim should be comparable to the advisement of rights to the defendant. Judge Anagnost suggested the Rules Subcommittee could prepare a response to the petition on behalf of LJC.

MOTION: Motion was made by Judge George Anagnost and seconded by Judge Antonio Riojas, Jr. **for the LJC Rules Subcommittee to prepare a response on behalf of this committee not to support this rule petition as written. Motion passed unanimously. LJC-03 - 05.**

Judge Anagnost introduced Mr. David Berg (ITD) and Mr. Bob James (Maricopa County Superior Court). Judge Anagnost provided background regarding the CIDVC workgroup tasked with revision of the domestic violence petition and order forms.

Mr. James announced that the Maricopa County Superior Court has developed a computer prompting system which is currently in Beta testing and is expected to be in production by the end of the month. This system is designed to address two needs and two specific audiences. The first audience are the petitioners for protection orders, injunctions prohibiting harassment and workplace harassment, the second, judicial officers. Mr. James described the Maricopa process in that a prompt screen walks the user step by step through completing the petition.

The data also transfers over to the module designed for the judicial officer issuing the order. The judicial officer is not required to do additional data entry other than for orders which go beyond what has been requested by the petitioner.

Mr. James avowed this module decreases the work for the judge, decreases the number of persons involved in the data entry and greatly increases the quality control of that data going through the court system and being loaded into the Court Protective Order Repository (CPOR). Judge Anagnost provided that the workgroup's goal is to simplify the paper process. Mr. James stated there will be significant structural changes in the documents. The forms will be easier to read and understand and the forms will be designed to be efficient for court use. Mr. James also reported the workgroup has been successful in formatting each of the domestic violence and injunction forms into only one page and neither manual creation nor automated generation will adversely affect the final product.

Mr. James will be circulating the documents to the Committee for comment and asks to be allowed to come back to the next LJC meeting (May 21, 2003) for action/approval of said documents. Ms. Kathy Barrett suggested the workgroup ensure enough lead in time be given for an effective date to allow stand alone court systems time to program any changes.

Judge Anagnost reported that R02-0034 (Criminal Rules 2.3, 2.4 and 3.1) allows a criminal complaint to be signed by a prosecutor. Judge John Kennedy expressed concern whether the prosecutor's signature equates to a significant determination of probable cause. Mr. Jarvi provided it also appears the prosecutor would have authority to order a warrant for arrest. Judge Traynor reminded members this rule has already been adopted and is effective March 1, 2003. This information needs to get out to the court community.

Judge Anagnost finally reported that the civil traffic rules update satellite broadcast was aired last month. The new civil traffic forms and procedures are available on the internet. The SCRAP criminal rules were recently adopted and take effect June 1, 2003. Judge Anagnost is developing proposed forms and procedures for same. A satellite broadcast will air on the SCRAP criminal rules in May, 2003. Judge Traynor interjected a reminder the SCRAP civil rules have not changed.

Judge Traynor touched on an issue which arose recently. A municipal court civil traffic default judgment was appealed to the Superior Court, challenging the sufficiency of the default judgment. The Superior Court Judge handed down a finding that since there was no judgment form signed by the judge, the default judgment was invalid. Judge Ellie Finn prepared a proposal on this issue which she brought to the Presiding Judges meeting and Mr. Tom Adams (AOC) addressed this same issue recently in a memo to all Maricopa County judges. This Committee may need to look at doing some changes to the civil traffic rules which specify the requirements for a default judgment. The Committee may also need to work on clarifying some related issues such as civil ordinances being treated as civil traffic in appeals.

13. Centralized Compliance Bureau

Judge Traynor provided a brief background regarding the group that was formed as result of the last LJC meeting, to work with the AOC in drafting the RFP for the Centralized Compliance Bureau. Ms. Janet Scheiderer expressed gratitude to the participating members for their time and efforts. Ms. Scheiderer then gave the following update. The RFP was issued on February 10th and is presently available on the Supreme Court website. A vendors conference is scheduled for February 24th at the AOC. The deadline for vendor questions is February 26th and the responses to any questions will be recorded and posted. March 4th is the deadline for responses. Proposals are due to the AOC by March 19th at 3:00 PM and the bid opening is at 3:30 PM in conference room 410. There will be an evaluation panel who will receive the proposals on March 20th. The first evaluation panel meeting is scheduled for March 26th. A ratification panel that will consist of members of AJC, may be formed to give the final approval

Ms. Scheiderer related that the Debt Setoff Program is way ahead of where it was (in collections) at this point last year and last year it brought in over 2.3 million dollars. Also, the Phoenix Municipal Court has engaged in a project with MVD to obtain social security numbers from driver records. Other courts may soon be able to participate in such a project which will enable more courts to participate in the Debt Setoff Program.

Judge Anagnost inquired into the status of the TTEAP project. Ms. Scheiderer responded the TTEAP program is a component proposed in the RFP and the AOC will be working with MVD to get that program running. Judge Traynor asked if there have been any developments with regards to Federal tax intercept. Ms. Scheiderer reported the AOC has not received any further information on this project.

Ms. Scheiderer addressed the Committee on one additional issue. State Rep. Gray recently expressed concerns that courts are not sending DUI convictions to MVD. The Motor Vehicle Department provided Rep. Gray with a 1200 page report which spans September 2001 to September 2002. In an effort to try to prove to Representative Gray that the courts are reporting, Ms. Scheiderer went through the MVD report and pulled out the monthly reporting for a sample of four AZTEC courts.

Representative Gray's concern is they are not seeing the same number of ignition interlock devices installed as the number of DUI convictions. She is looking at 10, 804 convictions (submitted by the courts last year) and thinking that number should match the number of ignition interlocks, when in fact it should not due to various factors, such as the one year revocation period for those convictions. Ms. Scheiderer will continue to work with MVD to address any concerns.

OTHER BUSINESS

14. Mr. Tom Adams stated the Domestic Violence Report and the DUI Report are now available on the AOC website. These reports are available in PDF or in Excell spreadsheet. Mr. Theodore Jarvi asked if these records are available to the public. Mr. Adams responded they are not and explained that these are error reports so the courts

- will know where corrections need to be made.
- 15. Call to the Public**

Judge Traynor called to the public.

- 16. Adjournment**

Meeting was adjourned at 2:36 p.m.

Respectfully submitted,

Ms. Lori Johnson
Staff to the Limited Jurisdiction Courts Committee

**ARIZONA JUDICIAL COUNCIL'S
LIMITED JURISDICTION COURTS COMMITTEE
Arizona State Courts Building, Room 119 A & B, Phoenix, AZ 85007
May 21, 2003**

Members Attending:

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

Mr. Theodore Jarvi
Ms. Pam Jones
Honorable John Kennedy
Honorable John Lamb
Honorable Michael Lester
Mr. Frank Maiocco, Jr.
Honorable Antonio Riojas, Jr.

Absent Members:

Honorable Judy Ferguson
Honorable Ronald O. McDaniel

Mr. Dale Poage
Mr. Paul Thomas

Guests:

Ms. Lorraine Brown
Mr. Tom Brady
Mr. C. Daniel Carrion
Ms. Janet Cornell

Mr. Bob James
Ms. Suzanne Rivera
Ms. Rose Slusser

Staff:

Ms. Theresa Barrett
Mr. Michael Baumstark
Mr. Michael DiMarco
Ms. Julie Dybas
Ms. Jennifer Greene
Ms. Patience Huntwork

Ms. Lori Johnson
Ms. Karen Kretschman
Mr. David Sands
Ms. Janet Scheiderer
Ms. Amy Wood

REGULAR BUSINESS

1. Call to Order

Judge R. Michael Traynor called the meeting to order at 10:15 a.m.

2. Approval of Minutes from the February 19, 2003 Meeting.

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

MOTION: Motion was made by Judge Anagnost and seconded by Kathy Barrett to **approve the February 19, 2003 LJC meeting minutes. Motion passed unanimously. LJC-03 - 06**

INFORMATION/POTENTIAL ACTION ITEMS

3. Executive Committee

Judge Michael Traynor reported that at the recent LJC Executive Subcommittee meeting, four topics were on the agenda, however two had to be postponed due to time constraints. The Subcommittee was unable to entertain discussion on citation logs which is on today's LJC agenda and was also unable to discuss waiver of counsel issues with David Withey. The Executive Subcommittee will meet during the summer and include Mr. Withey so this topic can be included on the September LJC meeting agenda. The committee did discuss and recommends the modifications to the proposed wage assignment legislation and the proposed changes to the domestic violence and injunction forms.

4. Pending and Proposed Rules Updates

Ms. Patience Huntwork commented on the following matters scheduled for the June 3, 2003 Rules agenda:

- A petition regarding total overhaul of the criminal discovery rule (15) a rule which has not been changed since 1974. A committee has worked for one year to iron out problems with this rule as prosecutors and law enforcement had serious concerns. All of the issues except one have been agreed upon. The issue regarding plea bargain deadlines will need to be resolved by the Justices without any agreement by the committee. This rule is likely to be adopted effective 12/1/03. It could be adopted immediately or sent out for a short comment period and then go back on the court agenda for October 7th.
- Experimental rule 10.2 (change of judge) will be extended through the end of the year since it is presently due to expire October 1, 2003 and the court will not meet again until October 7th.
- A petition has been filed by a civil practitioner to amend civil rule 30 to allow video taping of depositions as a matter of right. There are two versions; one allows video taping of depositions without a court reporter simply through technology that both parties can agree on; the other requires a court reporter.
- A proposal was submitted to extend experimental Maricopa County local rule 6 regarding conference officers in family court.
- A motion for reconsideration was filed on the rule adopted regarding unauthorized practice of law with reference to ADR. It is argued the rule was adopted without sufficient consultation and it is claimed the rule mis defined the word mediator.
- Tucson justice of the peace, Jose Luis Castillo filed a petition to amend rule 31 (UPL) to allow Limited Liability Corporations and spouses to be represented in landlord tenant cases. Judge Anagnost has submitted comments on behalf of the LJC, as the wording regarding spousal representation caused some concern.

- A rule petition was filed regarding judicial appointment commissions which would allow members to attend administrative and screening meetings electronically. So far there has been no opposition and it is assumed this petition will be adopted.
- Judge Anagnost's petition which would allow limited jurisdiction courts to amend conditions of release pending appeal of a guilty verdict has been out for comment and comments have been received. There were some objections and some proposed changes. Ms. Huntwork has no prediction whether the rule petition would be adopted as is, adopted with amendments or continued.
- A petition has been submitted by the State Bar regarding amendments to the ethical rules for attorneys. This is a matter in the works for the past three years representing a significant change in lawyers' ethical duties.
- A controversial proposal has been filed which would require any CLE (attorney education) programs to be pre-certified.
- Another controversial petition is one filed by a representative of Phoenix Newspapers regarding rule 17.4 related to settlement conferences. It proposes that any settlement conferences or pre trial conferences be docketed as court proceedings and a court reporter would be required. The rule petition would also allow news media to attend such proceedings.
- A proposal has been submitted which would affect the rules of attorney discipline.
- Two new rule petitions have been submitted by Judge Castillo from Pima County. One would repeal Pima County local rule 6. The other to include all consolidated Pima County justice courts in the local rules.
- A petition has been filed to establish the appellate settlement program in Division two of the Court of Appeals as a permanent rule.
- A proposal has been filed to amend evidence rule 8.03 and add new rule 9.02 regarding business records in other states, adopting the federal rule in Arizona.
- A rule petition has been filed by a practitioner asking the rule be abrogated that allows civil juries to discuss the evidence and abrogate the rule that allows jurors to ask questions.
- A petition regarding public electronic access to court records has been filed.
- Technical changes to the criminal rules resulting from the Ring decision.
- A petition has been filed to abrogate the Pima County juvenile rules.

5. Electronic Defensive Driving Reports (DDS) Demonstration

James Poe (AOC) demonstrated DDS report options that will soon be available electronically to all AJIN courts. Options for viewing and/or printing include a courts directory, school directory and the driving school completion reports. Courts will also have the capability to update their diversion fees from this site.

Mr. Poe supplied that each user will be assigned a user name when they first log in and that the user can view records for any 31 day period within the past two years. Courts who cannot access this site will continue to receive hard copy reports until access can be obtained.

Joan Harphant asked if comparison and exception reports will also be available. Mr. Poe responded these reports may be a possibility for future enhancement. Judge Michael Traynor suggested the Spanish providers also be listed at this site. Pamela Jones asked how often the reports would be available. Mr. Poe responded the reports will always be listed on the site with no delay.

Kathy Barrett commented that her court has been using the system for some time and supplied that it would be helpful if the court had an option to select more than one provider. Also, the contact person (listed on the site) receives a large number of public phone inquiries. Ms. Barrett further suggested that two court contacts be listed, one for administrative questions and another to take public calls. Mr. Poe responded this may be an option that can be worked out.

6. Proposed Wage Assignment Legislation

Bob James presented a legislative proposal from Maricopa County Superior Court to impose wage assignments for unpaid court fines and fees. Mr. James explained that Judge Colin Campbell believes that the use of an order of assignment to collect outstanding monies owed to the court is an extremely successful effective collection technique (as it has been used for many years in child support cases) and this is why this legislation is being proposed.

Mr. James clarified that the version presented to LJC today is a streamlined version which reflects some of the changes as recently suggested by the LJC Executive Subcommittee. Mr. James pointed out that this proposal affects several statutes, with references in Title 13 and Title 28 and in the creation of a new sections in Title 12, ARS 12-306 and 12-307.

Ted Jarvi expressed concern that the employer would in effect be collecting fines, rather than the courts and asked if any city Chambers of Commerce have been consulted regarding what this would mean to their industrial community. Mr. James responded that under Judge Campbell's directions he is presenting this proposal only to the judicial community for their input, at this time. Judge Anagnost voiced concerns related to community property law. Judge Traynor thanked Mr. James for bringing this proposal early to the LJC's attention for review rather than waiting for the August submissions.

7. Domestic Violence (DV) and Injunction Forms

Bob James (presenting as the chair and on behalf of the Domestic Violence Forms Workgroup) briefed the committee on the background of the DV and injunction form project. Mr. James explained that the forms before this committee (LJC) now are the result of a lot of time and effort invested by members of the workgroup and reflect the most recent revisions of the forms as they are subject to change based upon input received from LJC and other such committees.

Mr. James gave an overview of the changes being proposed to the current forms as follows:

- The language on the forms has been synthesized and compacted to make it easier for the parties and law enforcement to understand and enforce.
- A guide sheet (in easy to understand language) has been created to answer questions and issues commonly raised by litigants in these type of cases and it is designed to capture the initial information the court needs to begin processing the case. It will also be used to record confidential information (such as the victim's address) that will not be processed into the actual petition or order.
- One generic petition would replace three separate petitions. (Order of Protection, Injunction Against Harassment and Workplace Harassment Injunction)
- Each of the three order forms may be only one page documents form rather than two pages.
- There will be a change in logic to the "no contact" provision on each order, the judicial officer must specifically state under which conditions exception will be allowed. Under the "no contact" provision it will be presumed the defendant will have no contact with the plaintiff unless specific exceptions are noted.
- The documents are designed to be dynamically generated through the computer so that the only information that appears on the document is actually what the judge has specifically ordered. The formatting also takes into account courts that cannot generate these forms via computer so they can also be handled efficiently through manual processes.

When asked if these forms will be made available in Spanish, Mr. James replied the workgroup has made no determination on this issue at this time. Judge Ellie Finn pointed out that last year (2002) Arizona courts issued over 47,000 DV and injunction orders and this new process will save at least seven data field entries and at least eight sheets of paper in every order. Finally, Mr. James clarified the DV forms workgroup is asking for LJC's approval "in concept" of the proposed DV forms. The workgroup will be making revisions based upon committee input and then bringing the "final" forms back to LJC for final approval at a later meeting.

Robert Roll (AOC) explained the switch in logic for the “do not contact” as it effects automation. Mr. Roll described other effects (of changing the DV forms) as follows:

- AZTEC forms will print differently and there will be a reduction of fields.
- CPOR and Data Warehouse functionality will be affected.
- Courts will need to program their automation systems to handle both the old forms and the new forms.

Mr. Roll pointed out that the new DV forms would necessitate several hundred hours of testing and training that will need to be conducted for law enforcement and the courts. Mr. Roll also estimated it will take approximately \$220,000.00 to program the non AZTEC courts and will cost another \$13,000.00 to program AZTEC courts for the new DV forms.

Amy Wood (AOC) indicated the new DV forms may be a problem for courts who do not use automated forms and that concerns have been raised regarding reprinting costs, particularly for courts who have recently reprinted their current forms. Ms. Wood explained that other automation projects may have higher priority for implementation, so if these forms were approved tomorrow that does not mean the automation will be able to become functional right away. When asked if any implementation in this project could be accomplished relatively quickly Ms. Wood and Mr. James responded that the orders are what bring the implementation issues into play and processing the petition would actually be of no impact to AZTEC, although even that would require some ramp up time for AZTEC and non AZTEC courts.

The next steps will include review and comment by other committees such as CACC and COSC and an implementation schedule will be suggested to AJC in the fall of 2003.

Joan Harphant volunteered that the Tucson court has offered to pilot the project and will partner to help finance \$13,000.00 as such investment would be cost effective in the clerical processes which will be saved. Judge Traynor noted that the Tempe Municipal Court has indicated it will cost them approximately \$22,000.00 to make the changes.

MOTION: Motion was made by Judge Lamb and seconded by Judge Kennedy **to approve the changes presented “in concept.” Motion passed unanimously. LJC-03 - 07**

8. Budget Update

Mike DiMarco and Mike Baumstark gave the following budget updates as they presently stand at the legislature, noting nothing is concrete or finalized as of yet:

- A. The Defensive Driving Program will be staying with the judiciary and will not be transferring to Motor Vehicle, but they still are intent on sweeping one million dollars of the defensive driving balance to the state general fund.
- B. It is proposed the Supreme Court utilize two million dollars in JCEF revenue to cover costs. This funding shift will impact other court programs such as case processing and the data network, but that is still being worked on.

- C. There may be reduction in the Supreme Court budget of 24.5 million dollars (in adult probation) and shifted to Maricopa County. Associated with this shift may be some unintended consequences. Other counties may be impacted by 2.9 million dollars and probation caseload ratios may be increased or suspended altogether.
- D. They want to give the Supreme Court and the Court of Appeals a line item budget. The Court of Appeals may be short \$366,000.00 in their operating budget for next year.
- E. Some issues that were previously being proposed that have not remained in the present JLBC budget proposal include:
- A general fund shift to other funds
 - Elimination of the state appropriation for Fill the Gap funding
 - Reduction by one million dollars what the State currently pays for their half of Superior Court judge's salaries and transfer of that obligation to Fill the Gap
 - Taking 7% (Statewide = 1.8 million dollars) in collections and redirecting one million dollars of that money to pay the judge's salaries.

Mr. Baumstark stated that at this time no one knows what the final budget will look like or even when it will be finalized. Some have expressed concern over what will happen if the budget is not approved before the beginning of the next fiscal year. Mr. DiMarco supplied that even if we get through all this and win the majority of the battles we still have 1.8 million dollars worth of cuts that we will have to make.

Judge Traynor inquired about the Governor's budget proposal as it applies to limited jurisdiction courts fine money. Mr. Baumstark responded the Governor's budget includes 50 million dollar anticipated new revenue from the court's Penalty Enforcement Program (PEP) which the Governor expects to capture in incremental amounts from towns, cities and counties from the amounts over and above the amount they (the courts) normally would have collected.

Mr. Baumstark described the four phases of the PEP as:

1. Doubling the number of courts participating in the State tax intercept program (DSO). This phase is already proving to be largely successful and so far this year has collected over five million dollars.
2. Federal tax intercepts, the problem with this being the Federal legislation which is needed to enable same has not occurred as of yet. The Governor supports this phase however, and the AOC will pursue it.
3. Traffic Ticket Enforcement Assistance Program (TTEAP) - we have MVD's full cooperation on this project. MVD has been given extra money to make this happen and the vehicle registration suspension program may be up and running by this fall.

4. Centralized Collection Bureau (CCB) - An RFP was issued to which three vendors submitted proposals. One vendor was disqualified on a technicality. An evaluation committee (Jim Scorza, Joan Harphant, Judge Reinhold, Debra Hall and AOC staff) was formed and one vendor was recommended by the evaluation committee. A subcommittee from AJC (Judge Traynor, David Byers, Judge Campbell, Susan Edwards, and Vice Chief Justice) ratified the selection of the evaluation committee to go with the one vendor. AOC staff are in the process of negotiating the contract at present. The AOC hopes to have everything ready to make an official announcement and launch a publicity campaign during the Judicial Conference week. The project will commence with approximately six pilot courts and the following courts have expressed interest in piloting: Phoenix Municipal, Chandler Municipal, Tucson Municipal, Pinetop/Lakeside.

Judge Traynor briefly discussed some city, county and limited jurisdiction court issues related to the 50 million dollar revenue the Governor needs the courts to generate, such as growth factors and impact on courts who already maintain a high collection rate. Judge Traynor suggested an easier way to raise the 50 million dollars may be to add an amount on to surcharges. Judge Traynor pointed out that if a 20% surcharge was added within a period of two years (based on last years revenue base) that surplus would equate to approximately 48 - 50 million dollars. Frank Maiocco noted the last he heard, that both the Governor's budget and the JLBC budget proposed pushing the cost of 38 1/2% of the Justice of the Peace salaries back onto the counties. Janet Scheiderer volunteered to check on this issue and get back to Mr. Maiocco.

Regarding CCB, Judge Anagnost asked Ms. Scheiderer what time lines are projected for the project at this time. Ms. Scheiderer responded that after contract negotiations which may conclude around the end of May, it is hoped the pilot courts will be brought up to running within 90 days. Ms. Scheiderer reported that the AOC is looking at having the vendor possibly work on the Tax Intercept Program (TIP) backlog if adequate information has been entered in these cases to enable them to be processed effectively. Ms. Scheiderer concluded the AOC hopes to have the whole CCB program up and running statewide within a year.

9. Forms/Rules Subcommittee Update

Judge Anagnost announced the Criminal and Civil SCRAP rules were adopted effective June 1, 2003 and that a satellite broadcast regarding same is scheduled for May 29, 2003.

10. Reporting Civil Judgments to MVD

Lorraine Brown (MVD) addressed the committee on a new MVD policy which has resulted from an issue which arose recently because a financial institution complained recently to Motor Vehicle Division and to the legislature because MVD required an accident report along with a non payment of judgment. Absent an accident report, MVD refused to suspend the judgment debtor's license and registration and that is what instigated the complaint. Because of that, there was a potential floor amendment in the Senate that would have had some unknown consequences to Motor Vehicle Division if it had gone through.

MVD consulted their Attorney General and has since agreed to change its policy to no longer require an accident report before suspending the judgment debtor's license and registration. However, MVD now will suspend only if the underlying (certified) judgment (or transmittal document which accompanies the judgment) specifies it qualifies under ARS 28-4071. If the judgment or form does not specify as such, the judgment will be rejected back to the court.

Ms. Brown explained that MVD's interpretation of the applicable statutes (ARS 28-4001, 4071, 4072) had been that they (the statutes) would apply only when a civil judgment is for damage to a vehicle as a consequence of an accident and this is why MVD had required the accident report previously. Proponents argued the definition of "judgment" in ARS 28-4001 is broader than interpreted by MVD under ARS 28-4072.

Judge Traynor clarified there is no responsibility on the part of the court to follow up in reporting to MVD after the judgment has been reported to MVD, unless the litigant requests action be taken. Judge Anagnost inquired into the MVD process if a judgment debtor declares bankruptcy to which, Rose Slusser (MVD) responded that MVD will void the suspension action once the bankruptcy is discharged.

Ms. Brown asked the committee members to review the sample forms and make recommendations for improvement as the form will be distributed along with the revised MVD policy to all courts. One suggestion was made to add "judgment debtor" to the sample form as two scenarios named within apply to the debtor rather than the creditor. One committee member also suggested this issue may need to be added to judge's training as some judges may not even be aware of this provision. Ms. Brown mentioned that MVD will be taking this same discussion topic to the Limited Jurisdiction Court Administrator's Association meeting tomorrow and asked if MVD needs action on this issue from this committee. (LJC)

David Sands (AOC) interjected the complainant is now expecting action on this issue by the courts and perhaps the only action the courts need to take (since MVD has changed their policy) is to educate judges and court staff on the MVD policy, form and requirements. This issue will be posted on the AOC website along with the 2003 legislative update and Lori Johnson will advise MVD when this information is available.

11. Legislative Subcommittee Update - 2003 Legislation

David Sands (AOC) reported that due to all the budget issues only 240 bills have made it through the legislative process thus far this year and gave the following legislative updates:

- A. HB 2401 (Deferred Retirement Option Plan) died.
- B. HB2108 - Chapter 106 (Judges Personal Information) provides some measure of protection to judges including municipal judges and justices of the peace in Maricopa and Pima counties. Judges will be able to request confidentiality of personal information contained in records maintained by the county recorder, assessor and treasurer.

- C. HB2110 - Chapter 15 (Administrative Assessment in Criminal Proceedings) expands the time to impose the \$25.00 administrative assessment to any time during the case.
- D. HB2333 - Chapter 134 (Municipal Court Service of Process) was developed to take some of the burden from the courts. It allows an unarmed police aide or traffic investigator employed by a municipality to serve any process originating from the municipal court, during court hours, on the court premises, except in photo enforcement cases.
- E. HB2299 - Chapter 218 (Motor Vehicle Impoundment) amends the 2001 legislation which allows impoundment of a vehicle by an officer when the operator's driving privileges are suspended or revoked. Responsibility for conducting post storage hearing is transferred from MVD to the impounding law enforcement agency. If the law enforcement agency does not provide the opportunity for such hearing the post storage hearing must be conducted by the justice court either in impounding agency's jurisdiction or the in the jurisdiction in which the vehicle owner or agent resides. A person seeking a post storage hearing must file a request with the court and pay a fee equal to a small claims answer fee (\$9.00). The hearing must be conducted within five days of the request. These cases are considered civil filings for JPC's under ARS 22-125.
- F. HB 2124 - Chapter 150 (Peace Officer Jury Service) became law without signature from the Governor, pursuant to the Arizona Constitution, Article V, Section 7. This bill requires courts to excuse any AZPOST certified peace officer from jury service upon their timely application for same.
- G. HB2520 - Chapter 200 (Jury Service) narrows exemptions from jury service, restricts postponement of service, limits to once in two years the frequency for service and raises the maximum penalty for failure to obey a jury summons from \$100.00 to \$500.00. This bill also establishes an Arizona Lengthy Trial Fund consisting of additional fees on civil filings, appearances and answers in the Superior Court. The Fund will be used to supplement or replace the earnings of jurors who must serve more than 10 days in a trial and who receive less than full compensation from their employer. A juror may receive supplemental earnings of at least \$40.00 but not more than \$300.00 per day depending upon their normal earnings and the amount the employer pays during their jury service. The Lengthy Trial Fund will start in January 2004 and will then ramp up so that jurors can begin using the funds in July, 2004.
- H. SB 1261 - Chapter 84 (Landlord Tenant Booklet) removes the requirement that the Secretary of State publish the Mobile Home Parks Residential Landlord and Tenant Act booklet. Tenants will be able to access a concise summary of the Act (approved by the Director of the Dept. of Building and Fire Safety) on the department's and/or Secretary of State's web sites.
- I. SB 1206 - Chapter 228 (Disability Parking) makes discretionary (rather than mandatory) the fine for illegally parking in a handicapped space.
- J. SB 1118 - Chapter 236 (Traffic Survival School Notification) requires a law

enforcement officer to provide written notice to a person being issued a citation for a red light violation (ARS 28-645 and 647) that if eligible, the person may attend defensive driving school or, if not eligible, or upon a responsible plea or conviction, the person will be required to attend traffic survival school. Mr. Sands noted that some courts are already including this advisement on their traffic bond envelopes as result of discussions last year.

- K. SB 1283 - Chapter 207 (Water Craft DUI Testing) increases the civil penalty assessed by MVD for refusing to submit to DUI testing when accused of a BUI violation from \$300.00 to \$750.00.

Judge Lester gave the following Legislative Subcommittee report:

- a. To reduce cuts to the court system the chief justice offered up \$50 million in revenues increased due to TTEAP and CCB.
- b. In the current budget proposal, \$250,000.00 will be given to MVD to help them implement TTEAP.
- c. When asked if a surcharge increase would be considered, Mr. Cunningham (the Governor's Aide) stated this issue was not on the table right now.
- d. Mr. Cunningham assured court representatives that the courts will be held harmless with regards to the 50 million dollar revenues.
- d. Talk to raise the DUI base fine from \$250.00 to \$750.00 was shot down.

Kathy Barrett supplied concerns regarding the 50 million dollars that have been expressed by larger courts. It is feared these courts will take a harder hit by the revenues taken and some feel it will take them (the larger courts) longer to pay off their portion of the revenues.

12. ADR Fund and Programs

Karen Kretschman (AOC, Court Programs Unit Manager) provided historical background on the ADR fund which was established in 1991 pursuant to ARS 12-135. Ms. Kretschman supplied that so far the fiscal year 2003 ADR revenues from justice of the peace courts has hit over \$100,000.00. It is predicted the revenues may reach \$120,000.00 by June 30, 2003.

Ms. Kretschman reported that during this fiscal year the AOC is spending \$20,000.00 ADR funds for mediator training with the remaining \$80,000.00 being spent on grants for ADR programs for six counties. A \$60,000.00 balance is expected to remain in the coffer at the end of fiscal year, June 30, 2003.

Ms. Kretschman asserted that as not all counties have benefitted from the ADR funds nor has there been a uniform statewide approach up to this point, the AOC is seeking

LJC's suggestions on how to fund (statewide) issues before the fiscal year 2004 funds are expended. The suggestions the AOC has come up with so far include: training for justices of the peace and mediators, (regional) training for staff, volunteer and attorney training and ADR bench books. Judge Kennedy suggested that since the National Judicial College (NJC) has some ADR classes already available, perhaps ADR funds could be used for some judicial scholarships to attend the NJC. Faye Coakley explained that Cochise County currently has a good ADR training program which has been in effect for several years.

13. Traffic Citation Logs

Julie Dybas (AOC, Court Operations Unit Manager) addressed the committee at the request of Judge Kennedy regarding the necessity of courts requiring traffic citation logs (with new citations) from law enforcement. Ms. Dybas explained that the Court Operations Unit has researched applicable statutes (ARS 28-1559, 1560) and concur in the belief that law enforcement agencies are responsible for providing a citation log, Ms. Dybas clarified however that when the Unit goes out to do court reviews they don't necessarily see that happening and this is why the court's failure to maintain a citation log is a fairly consistent finding in operational reviews.

Ms. Dybas stated the Court Operations Unit also believes, based on best practices, that not having some type of receipting or audit process or a quality control measure to account for every citation that is filed with the court, can lead to problems within the court such as ticket fixing. This is why the team looks for some type of process to account for all citations and have found that one of the best ways to do that is with citation logs. Ms. Dybas related that most courts will agree that having a citation log is a good idea but some of the issues the Unit hears are that it is a resource issue, or the local law enforcement agency refuses to provide such log.

Judge Kennedy voiced a significant concern and questioned what the court should do if the law enforcement agency will not cooperate in supplying the log. Judge Kennedy reported that in rural counties the officers have no interest in providing a log and he believes the accounting made by AZTEC should be good enough to satisfy the minimum accounting standards (MAS). Ms. Dybas replied that in such situation as the officer refuses to submit a log, court staff should prepare it. Ms. Dybas offered that AOC management is considering initiating communication with the larger statewide agencies (such as DPS) on this issue on behalf of the courts to work out agreement on a statewide basis. On the issue of local law enforcement however, Ms. Dybas suggested courts work with their local county criminal justice committees.

Kathy Barrett agreed that she can see the need for controls, but expressed hope that the AOC wouldn't be too rigid and apply the same standard equally across the board due to the diversity and various resource issues in the courts. Ms. Barrett also asserted that high volume courts may have a problem with officers not wanting to hang around while waiting for court staff to reconcile the citation log to the citations being filed. Judge Traynor stated that one way of accounting may not work for every court, in that courts receive citations in different fashions such as electronically.

Joan Harphant explained the process in Tucson where they bar code and scan in the citations. Her staff then prints a report after scanning in the new citations and compares the report to the AZTEC accounting.

Ms. Dybas described a court that does not employ a citation log per se, and stressed that this particular court does however have a suitable automated quality assurance alternative practice in place. Judge Kennedy suggested that when AOC staff come across alternative processes they share them with other courts. Ms. Dybas clarified that the Court Operations Unit holds the position that all courts should have a log or audit process for all citations received in the court, and for courts who process in new citations manually, the citation log seems a logical choice.

Ms. Dybas distributed a handout (which describes the AOC rationale related to citation logs including statutory authorities) explaining that she prepared the document just as a starting point for discussion with the LJC Executive Subcommittee, however, since that subcommittee was not able to get to this topic at the last meeting, she brings it to this committee with the same intention.

Judge Kennedy requested the authority on which the AOC policy is based. Ms. Dybas responded that ARS 28-1559 and 28-1560 require the court and law enforcement to account for all traffic citation records. Ms. Dybas further explained that absent the statutes, it is a matter of sound business practice to have a quality inventory control process in place that meets the standards that the public expects of the courts. Judge Kennedy asserted his belief that requiring a citation log is a redundant activity which serves no purpose and eats up valuable court resources such as staff time.

Ms. Dybas avowed that if while conducting a review AOC staff find there are no checks and balances in place to account for all citations filed, there will be a finding as such in the court's report. Ms. Dybas reiterated there are other ways to account for citations and the court does not have to use a citation log as long as the court can demonstrate a viable quality assurance plan. Ms. Dybas offered that the court operational review unit is looking for feedback and is open to input and in working with courts who put forth reasonable effort to ensure a quality assurance process which meets a high standard is in place.

Judge Traynor suggested the Executive Subcommittee meet on this issue during the summer to try and work out solutions that will benefit all.

14. Garnishment Forms Revisions

Jennifer Greene (AOC) reported that the Court Services Division has been working with a statewide forms committee to assist in re-formatting the existing garnishment forms packet for posting to the internet. Ms. Greene stated the major adjustment being made to the existing forms, apart from re-formatting, is the addition of an instruction sheet for each form.

Judge Traynor asked if the earnings forms would also be affected, to which Ms. Greene responded yes. Judge Traynor expressed concerns these forms may be too difficult for most pro per litigants. Mr. Jarvi supplied that lawyers will be very happy if all this can be provided on the internet as the current garnishment process is complicated and involves a lot of forms.

Ms. Greene responded that the Superior Court's input was that "if you are going to put these forms on the internet, you are going to have to ramp up the instructions." Ms. Greene also mentioned the goal is not to get away from the current packet, rather as an

alternative access via internet. Mr. Jarvi expressed his opinion this process will be a detriment to the legal process.

Ms. Greene stated the forms committee will welcome LJC input into these forms and invited members to attend the future committee meetings which are held on the second Wednesday of each month from 10:00 AM to approximately 3:00 PM at the State Courts Building. Judge Tony Riojas suggested Ms. Green contact Legal Aide for their review.

When asked where this project goes from here, Ms. Greene concluded the forms committee will eventually be seeking approval of these forms so a complete packet will be brought back to LJC later in the year.

15. Trial Jury Management

Jennifer Greene referred members to the attached memo highlighting the provisions of the new section (ACJA code 5-203) of the Arizona Code of Judicial Administration. Section 5-203 codifies an updated version of Administrative Order 92-23 which adopted the 1992 ABA Standards Relating to Jury Use and Management. The new code provision makes several substantive changes to the 1992 standards and HB2520 regarding jury service will impact these standards to some extent.

Ms. Greene asserted the most significant change for some courts will be the one-day, one-trial limit on jury service. Other provisions which will affect courts include; not calling people back for jury duty if jury duty was served within 24 months; courts must make every effort to pay jurors within two weeks of service; presiding judges must adopt guidelines for processing excusal or postponement requests and a requirement that juror's names not be used when polled at the verdict.

Judge Kennedy raised concerns (particularly related to small rural courts) regarding protecting juror's anonymity especially since many people involved (including the judge) will already have been referred to by name throughout the trial or may even already know each other on a personal basis.

Ms. Greene explained that while the House Bill mirrors the one-day, one-trial provision of the ACJA code section, the new law (HB 2520) moves up the deadline for implementing the system from July 1, 2005 to January 1, 2005. Ms. Greene volunteered that she will be addressing this discrepancy and any others in the code to bring it in line with the new statute(s).

16. Defensive Driving Subcommittee

Kathy Barrett stated the subcommittee has no report at this time.

17. Strategic Planning Subcommittee

Paul Thomas was not present to give a report.

18. Priority of Offender Payments

Faye Coakley presented the beginning of the ACJA for Priority of Offender Payments in Limited Jurisdiction Courts. Ms. Coakley supplied that the committee working on this

project has met three times to come up with the definitions included within the ACJA however they need some guidance from LJC before they discuss these issues with automation staff.

Some issues the committee needs help with are: What limit should be in place for over-riding the system and do we want to require civil be paid first, or criminal and what do we want to do with combination cases? Ms. Coakley argued that the limited jurisdiction courts payment priority issues are much more complex than the Superior Courts and it took them 18 months to complete their analysis.

Ms. Coakley asked if the LJC wishes the committee to go ahead with standardizing the payment priority knowing they (the committee) cannot possibly standardize everything. Judge Michael Traynor praised the committee for their efforts and asked that they "carry on." Ms. Coakley distributed a survey and urged members to complete same and return as the surveys will aid the committee in their efforts.

Theresa Barrett (AOC) offered that she believes the AOC has an RFQ out for a response at this time which involves hiring an outside consultant to work on these issues. Joan Harphant suggested that Amy Wood return to the next LJC meeting to report on the status of such RFQ.

19. New Judge Orientation

Judge Kennedy explains that he has no report at this time as he was unable to attend a recent debriefing seminar in which the results of the March 2003 NJO session was to be discussed.

Judge Anagnost supplied that NJO went very well this year. One of the summer objectives is to clean up the evaluation process, but all in all NJO was a good experience for everyone. The consultant will be developing a white paper which will be made available.

OTHER BUSINESS

Judge Traynor asked for committee volunteers to assist Lori Johnson's procedure manual committee with review of the first manual (civil traffic) in the next few months. Mr. Frank Maiocco volunteered to assist in reviewing the manuals.

Call to the Public

Judge Traynor called to the public.

Judge Lester distributed a document that was handed out at a meeting with George Cunningham regarding courts expected collection amounts under the Governor's proposal. Jeff Fine also remarked briefly on the same meeting.

Adjournment

Meeting was adjourned at 4:15 PM.

Respectfully submitted,

Ms. Lori Johnson
Staff to the Limited Jurisdiction Courts Committee

LIMITED JURISDICTION COURTS COMMITTEE
September 24, 2003, Arizona State Courts Building

Members Present:

Honorable Michael Traynor, Chair
Honorable George Anagnost
Ms. Kathy Barrett
Ms. Faye Coakley
Mr. Frank Maiocco
Honorable Sherry Geisler
Honorable Linda Hale
Ms. Joan Harphant
Mr. Paul Thomas

Ms. Pamela Jones
Honorable John Kennedy
Honorable John Lamb
Honorable Michael Lester
Honorable R. Wayne Johnson
Honorable Kathy McCoy
Honorable Antonio Riojas, Jr.
Mr. James Scorza

Absent Members:

Honorable R.O. McDaniel
Honorable Judy Ferguson

Mr. Dale Poage
Mr. Theodore Jarvi, Esq.

Staff:

Ms. Lori Johnson, LJC staff
Mr. Todd Adkins
Ms. Carol Ashton
Mr. Michael Baumstark
Mr. David Benton
Mr. Doug Brooks
Mr. Eric Carlson
Ms. Ellen Crowley
Mr. Greg Eades
Ms. Agnes Felton
Ms. Page Gonzales

Ms. Jennifer Greene
Ms. Patience Huntwork
Mr. Paul Julien
Ms. Karen Kretschman
Mr. Robert Roll
Mr. Bob Schaller
Ms. Janet Scheiderer
Ms. Nancy Swetnam
Mr. David Withey
Ms. Amy Wood

Guests:

Ms. Kathleen Carey
Mr. C. Daniel Carrion
Ms. Janet Cornell
Mr. Christopher Hale
Mr. Eric Hunn

Mr. Bob James
Mr. Don Jacobson
Honorable Michael Jones
Ms. Esther Reeves

REGULAR BUSINESS:

1. CALL TO ORDER

The meeting was called to order at 10:07 AM by Judge Michael Traynor.

Introductions were made all around the table. The new committee members (Judge R. Wayne Johnson, Judge Kathy McCoy, and Mr. James Scorza) were introduced. Ms. Agnes Felton (Director, AOC Education Services Division) introduced Mr. Paul Julien.

2. APPROVAL OF PRIOR MEETING MINUTES

Motion: Motion was made and seconded to approve the 5/21/03 meeting minutes as presented. **Motion passed** unanimously, the 5/21/03 minutes will stand as presented. **LJC-03-08.**

3. EXECUTIVE SUBCOMMITTEE REPORT

Judge Traynor reported that the executive committee met once since the last LJC meeting. In this meeting they followed up on an item that was presented at a previous LJC meeting, the traffic citation log issue. Various formats for the citation log were discussed such as electronic and manual processes. The AOC understands there are a number of different ways to account for citations filed with the court and recognizes one way doesn't fit all, but it is agreed that all courts should have such a quality control process.

The Chief Justice visited the committee to address issues related to the FARE program and regarding the proposed Administrative Order that was being looked at, at that time. Copies of the Administrative Order have gone out to all courts and although it addresses some of the issues raised, it does not address all. Other issues discussed at the meeting are on today's agenda.

4. PENDING AND PROPOSED RULES UPDATE

Ms. Patience Huntwork gave the following update regarding the Court's next Rules Agenda on October 7th :

- The total global rewrite of the criminal rules of discovery is back on the agenda, probably for final adoption. After a year of consensus building on several controversial points among prosecutors, defense attorneys and crime labs.
- The Ring decision changed the capital sentencing rules dealing with death penalty cases. The rules were adopted on an emergency basis last year after the issuance of the Ring decision. They were adopted with a comment period to follow. Comments came in and are now on the agenda.
- The rule on victim's rights (that requires the judge to advise the victim of his or her rights and post certain information regarding victims rights in every courthouse) is on the agenda for final action.
- The court continued the matter of post conviction conditions of release, to allow Judge Anagnost time to work out some differences between prosecutors and defense counsel. Some differences have been worked out and are on the agenda for final adoption.
- The comments on the SCRAP Civil are on the agenda for final adoption. That body of rules was adopted on an emergency basis, so a comment period followed. Comments have been received and are on the agenda for consideration, so there may be changes to the SCRAP Civil rules.

- There is a new rule petition from Judge Colin Campbell that is intended to conform Maricopa County local rules to the Civil Traffic Rules, the SCRAP Criminal rules and the SCRAP Civil rules. There is no need for circulation, since this is a local rule and it could be adopted immediately on October 7th.
- The ACLU has filed a new petition (regarding the lack of warning to a criminal defendant that their admission of guilt may have adverse immigration consequences) which is a reprise of an earlier submitted rule, that was too controversial at the time. There will be a comment period on this petition and Ms. Huntwork suggested an extended comment period be required. Judge Traynor informed Ms. Huntwork that Ms. Eisenberg agreed that she would provide this committee an advance copy of the petition and did not. Further, AOC staff reminded Ms. Eisenberg of this promise on a few occasions.
- A provision of the discovery rules for limited jurisdiction courts provides that the prosecutor must provide disclosure to the defendant at the pre trial conference. (handout distributed) There are certain disclosure requirements that are key at the time of pretrial. Prosecutor, Sally Wells has expressed concerns that prosecutors often are not aware of the existence of cases initiated by traffic citation forms until the first pretrial conference. The Criminal Practice Committee of the State Bar discussed having a rule amended to direct limited jurisdiction courts to inform the prosecution of impending cases by a date certain. Since the committee realized they cannot write a rule directing courts to act in a certain way, a motion was made to approve the proposed rule as written. This was done with an understanding that a comment will be submitted by the committee requesting that the Supreme Court issue an Administrative Order (AO) directing courts to inform the appropriate prosecutorial agency of the existence of citation cases with sufficient time for the prosecutor to assemble the required discovery. It was further moved, that if the Supreme Court did not resolve the problem by AO by the time the amended rule was scheduled to be active, the recommendation will be that any amendment to current rule 1.5(c) be delayed. Ms. Huntwork asked Judge Traynor if she could work with LJC on this issue prior to October 7th. Judge Anagnost volunteered that the Rules Subcommittee will handle this issue.
- The survey results regarding the progress of experimental rule 10.2 (change of judge) were distributed. Jennifer Greene was present and added that the Court would be considering whether to continue the current version or to adopt the original AJC version (or another version) at the January rules agenda. Comments should be filed by December 1st.

5. FARE PROGRAM UPDATE

Nancy Swetnam gave a brief overview of the progress of the FARE program and reminded the committee that FARE is all about the enforcement of court orders, through TIP, TTEAP and other collection techniques. Ms. Swetnam reported that seven pioneer courts are working with AOC and Affiliated Computer Services (ACS) staff to improve the FARE processes and the notices.

It was emphasized that although the initial plan was to implement full FARE in the pioneer courts first and then make collection services available to other courts, the direction has changed so that while moving forward with implementing FARE in the pioneer courts (Tucson Municipal Court already has money starting to come in and the Showlow Municipal Court is being brought up) they are ready to provide special collection services (through ACS) to other courts. The special collection service options may include credit bureau reporting, skip tracing, wage garnishment, etc. Mr. Eric Hunn (ACS) described the various notices that will be used in the process. They are trying to develop a notice that is consistent statewide and it will be available in Spanish. Each court will have their variable business parameters personalized on the notices.

The \$7.00 general service fee will be applied to every citation that has a financial sanction, even if the defendant pays the same day they receive the ticket. Judge Lester asked how courts could go about contracting with ACS to provide some of the special collection services. Ms. Swetnam responded that the AOC is modifying the contract so that ACS can provide collection services to all Arizona courts.

Considerable discussion ensued over the various FARE and collection fees. Judge Anagnost asked when courts are expected to raise fines to include the FARE fee. Ms. Swetnam replied that the \$7.00 general service fee applies to all cases that carry a financial sanction effective the date the court comes into the FARE program. Judge Anagnost also inquired as to the authority for the FARE fees. Judge Traynor responded the Arizona Constitution gives authority to the Chief Justice to administer courts and the Chief Justice is doing so by establishing Administrative Orders (AO). Judge Kennedy asked if the \$7.00 fee is the only FARE fee that will be tacked onto cases. Ms. Swetnam responded that if it becomes necessary to refer a case to TTEAP, TIP or special collection services additional fees will be imposed and they are still being worked out as to whether they will be flat fees or percentage fees. Right now, they are suggesting a \$15.00 fee for referral to TIP and a \$25.00 fee for referral to TTEAP, but that is not final. The FARE fees will be included in an upcoming AO.

6. UPCOMING BUDGET ISSUES

Mr. Michael Baumstark briefed the committee on future court budgetary projections. He reported that this fiscal year may have at least a 425 million dollar deficit and 04 may have a deficit over one billion dollars. Contributing factors include statewide population growth and sluggish economic improvement. Mr. Baumstark reported on one time sweeps over 100 million dollars, the depletion of the rainy day fund, \$300 million in bonding and education spending borrowed to pay over time to help balance the budget. The Federal government gave Arizona \$307 million in state aid and this will help with the billion dollar deficit in fiscal year 04.

Mr. Baumstark mentioned some court cases that may impact the budget. He reported that as legislators filed a lawsuit against the Governor challenging her line item vetoes, if the Supreme Court rules against the Governor there is a potential for \$75 million, to the good. In another case, \$150 -200 million was withdrawn from dedicated education funds by the legislature to help balance the books. This matter is now before the Supreme Court and depending on the outcome, this money may need

to be reimbursed later. Last, there is an ACCHS case regarding payment for emergency costs for undocumented illegal aliens that may involve millions of dollars. Legislature leadership does not believe that raising taxes will be feasible. Paul Thomas asked about the status of HB 2533. Mr. Baumstark replied there is talk about revising or repealing it, possibly in special session.

7. PRIORITY OF OFFENDER PAYMENTS

Esther Reeves (Phoenix Municipal Court) reported that only a few items have been changed since the last review by this committee, such as addition of and definition of the FARE fees. Ms Reeves informed the committee that these items are still open to discussion. Kathy Barrett questioned (related to paragraph D.3) if the intent has changed on time payment fees on cases contracted at different times. Ms. Reeves replied that it was not the workgroups intention to make that change and the workgroup will reexamine that issue.

Janet Scheiderer (AOC) supplied that the Commission on Technology (COT) will be bringing recommendations to AJC regarding code standardization, business practice standardization and simplification of financial rules. COT has asked that LJC review this issue. They will ask to remove this item from the October AJC agenda to allow for LJC review.

Jim Scorza suggested the workgroup survey the courts in terms of what priority they are currently using. Judge Traynor suggested removing the new paragraph that was added regarding the FARE fees and rather, indicate that the FARE fees are going to be established by administrative order. Judge Traynor also clarified that not all FARE fees fit into the same category, so they don't all come next after Time Payment Fee. Some come proportionately with the fines.

Motion: Motion was made and seconded **to table this topic until the November LJC meeting.** Motion passed unanimously, this topic tabled to the 11/19/03 LJC agenda for action. **LJC-03-09.**

8. RFQ FOR CODE STANDARDIZATION

Karen Kretschman (AOC) gave a brief overview of RFQ 03-04 that was drafted with the goal to develop a wide pool of qualified vendors for consultations, recommendations, systems review etc. Ms. Kretschman explained that the RFQ was broadly drafted to alleviate the need for numerous individual contracts and to cover manual as well as automated processes. She reported that the package was sent to 52 known interested firms in March, 13 vendors responded and 12 of the 13 have been pre qualified to bid on future court projects in various different areas such as court systems, case management, criminal, civil, family and juvenile. These vendors have been notified of their prequalification and the AOC expects to send the consulting services contracts out next week.

The contracts are for two years and can be renewed for another two years if the user is satisfied with the vendor's performance. The RFQ was designed to allow any Arizona court to utilize the vendors services under this contract. This issue is important because one recommendation that will be made to AJC is that the limited jurisdiction court codes be standardized within a 12 month period of time. The AOC

hopes to get a qualified pool of consultants to choose from regarding this project.

Amy Wood (AOC) explained the various types of codes to be standardized such as event codes, calendar codes, financial codes, sentencing codes etc. Faye Coakley asked if courts will still have authority to maintain personalized codes. Ms. Wood suggested a system for sub-tiered codes may allow for some customization.

9. LEGISLATIVE SUBCOMMITTEE REPORT

Judge Lester gave a brief overview on the Legislative Subcommittee's meeting. David Benton (AOC) explained the legislative proposal process and defined the AOC staff involvement to this point. Mr. Benton emphasized that the proposals before the committee are still in draft format.

The following proposals were presented by Mr. Benton and Ms. Page Gonzales:

Proposal 04-01 - Small Claims Hearing Officers. This proposal impacts justice of the peace courts, would be handled as a county by county issue and would allow for compensation for small claims hearing officers. The compensation would be permissive and would be approved by the Presiding Judge. The local Board of Supervisors would provide the funding. It is intended this proposal would help courts to manage limited resources and to relieve heavy court dockets. Further this proposal would allow courts to establish standards/qualifications for hearing officers.

The issue of judicial productivity credits was brought up. Paul Thomas stated that he had previously researched the applicable statute and does not feel credits will be an issue. The question was also raised if a hearing officer could waive compensation. David Withey will research these issues. **Vote - 17 votes to include in judicial package. 1 vote not to include. RANKED 1st IN PRIORITY**

ARS 22 -126 - Justice Court Hearing Officers (Unofficial proposal). This item is currently being discussed by legislators who wish to hear the views of this committee. It would apply to rural counties and would establish the office of justice court hearing officers to address the issue of the shortage of pro tem justices of the peace. The language included within the proposal uses last year's (SB1031) language as a placeholder. The hearing officer would have same judicial powers/duties as the justice of the peace, with exceptions of jury trials, withdrawals of pleas, contested civil matters over \$5,000.00 and may not perform weddings. Upon request of a party (in a criminal case) the case would be reassigned to a justice of the peace. Appointments would be for 12 months and new judge orientation or testing would apply. Discussion was generated on why the hearing officers could not perform weddings. Ms. Gonzales asked if the committee wishes to support the proposal in concept. The committee supported the concept, but would like to be involved in drafting the language and would like to extend this concept to include Municipal Courts.

Proposal 04-04 - Orders of Assignment. This proposal gives the authority for courts to issue orders of assignment against a persons wages for court ordered payments (fines, fees, costs, sanctions, restitution etc.) This item came before the LJC earlier this year and has been pared down from 30+ pages to 12. The proposal originally stated the court "SHALL" issue an order of assignment and now says the court "MAY."

The intent was to make it permissive, not mandatory, although the statutes may not necessarily do that, as written. ARS 12-306 B & C require a court to enter an ex-parte assignment if a motion is filed.

Concerns were voiced that this process would be too cumbersome for court staff and for employers. Some felt it will be difficult for courts to schedule hearings and judges will not know what the person's (true) disposable earnings are. Ted Jarvi suggested the Chamber of Commerce be consulted as employers may be hit with several wage assignments at once. It was noted that the FARE program is already being implemented to improve court collections and compliance with court orders and that this proposal may need to be addressed after FARE is implemented. **Vote - 17 votes not to include** in the judicial package, 0 votes to include this proposal.

Proposal 04-05 - Mental Health Experts. This proposal changes from mandatory to permissive, the requirement that one of two mental health experts appointed by the court for a competency exam be a psychiatrist. Maricopa County frequently experiences a shortage in the availability of psychiatrists in Rule 11 cases, as they only have eight psychiatrists on their list at present. It is intended this proposal will allow for a reduction in jail time for defendants awaiting evaluation and facilitate more expeditious case processing. Ted Jarvi suggested that one psychologist must at least be a PhD level, otherwise the quality of the evaluation may be diminished to offset cost savings. Mr. Peter Kiefer (Maricopa County Superior Court) explained that cost is not so much the issue, as, at current they contract the same amount (\$300.00) for an evaluation whether it be by psychiatrist or psychologist. Mr. Benton reminded the committee that the judge still has discretion to order a psychiatrist. Ms. Kathleen Carey stated the public defenders office opposes this proposal. **Vote - 8 votes to include** in the judicial package. **9 votes - other** (include, but provide that if either side moved for the appointment of a psychiatrist, one would be appointed) 1 vote not to include. **RANKED 4th IN PRIORITY**

Proposal 04-08 - Forcible Entry and Detainers. The idea behind this proposal is to make the FD statute consistent with the recent civil appellate rule change and allow the justice court rather than the Superior Court to accept bonds and periodic rent payments in a forcible detainer appeal. Some members were not comfortable with monthly rental payments staying with the trial court while the matter was pending in Superior Court, particularly as there was question of lifting the stay in the event the monthly rental payments were not made. Judge Michael Jones (Maricopa County Superior Court) clarified that the monthly rental amount is actually part of the supersedeas bond and that someone stops paying rent, the case is instantly fatal and the trial court would lift the stay for a writ of restitution. **Vote - 13 votes to include** in the package. 1 vote not to include. **RANKED 2nd IN PRIORITY**

Proposal 04-11 - MVD Registration Holds. This proposal would expand the (TTEAP) authority to refuse vehicle registrations for delinquencies in paying restitution, fines, surcharges etc. The proposal as written, would be a tool for the FARE program, eliminates the \$200.00 minimum amount (owed to the court) threshold and includes criminal non Title 28 violations and parking violations as applicable for vehicle registration suspension. Ms. Gonzales stated the statute was broadened to include felonies upon request of the Probation Department. Concerns were addressed regarding the removal of "political subdivision" from paragraph A.1 and it's expansion in paragraph A.2. Some members expressed concern over using a traffic ticket enforcement program to collect (non Title 28) criminal fines. Many

members agreed however, the statute needs to be expanded to include local civil and criminal traffic ordinance violations. Judge Lamb moved to eliminate paragraph two. Motion seconded and passed.

Vote - 5 votes to include (with elimination of paragraph two) , **7 votes - other** (include, but limit it not to include criminal non-traffic, keep the removal of the \$200.00 threshold, keep the addition of parking tickets and clarify political subdivision). 5 votes not to include in the judicial package. **RANKED 3rd IN PRIORITY**

Proposal 04-12 - TIP On Location of Probation Absconder. This item proposes the utilization of the Tax Intercept Program (TIP) to assist probation departments in locating absconders. Under this proposal the Arizona Department of Revenue (DOR) will notify the court of current addresses, whether or not a tax refund is due. This is an issue of import to the FARE program and expands authority to include all tax filers. It is expected TIP inquiries will increase. It was explained there may be programming expenses for the DOR and for the courts. Committee members expressed concerns that “absconder” is not clearly defined, also in that the cost analysis and input from the DOR are pending. Some members expressed concerns about the intrusion of government. Judge Lester supplied that the Legislative Subcommittee’s suggestion was to expand the proposal to include not only probation absconders, but also to make the TIP location applicable to any criminal case if the court needs to locate a defendant for any reason.

Vote - 0 votes to include. 14 votes not to include in the package.

Proposal 04-13 - Deferred Retirement Option Plan (DROP). This proposal creates a DROP for Arizona State Retirement System (ASRS) members. The intent is to retain seasoned employees and it gives elected officials incentive to continue on after retirement. This item was proposed last year, but failed due to fiscal implications. Ms. Gonzales explained that Arizona currently has a (different) DROP statute in effect, however the ASRS is awaiting an authorization letter from the Internal Revenue Service before implementation. Ms. Gonzales explained that this plan is employee driven and makes the employee retire first whereas the other DROP does not. The current plan, however, does not cover elected officials. The current retirement contribution rate includes the cost for the current DROP. With this plan the contribution rate would go up. Ms Gonzales further supplied the ASRS opposes plan and the Committee on Probation passed it with a vote of 92%. Committee members discussed that this proposal may be seen as a policy issue, rather than a court issue. **Vote - 1 vote to include this proposal 9 votes not to include** in the judicial package. 7 votes - other (allow another group to champion this proposal as it is a policy issue)

10. UPDATING DATA IN CPOR BY HOLDER OF RECORD

Robert Roll (AOC) explained that court data entry errors or omissions regarding orders of protection and injunctions against harassment are causing problems for the holder of record and law enforcement. Currently, a large amount of CPOR electronic data does not match corresponding hard copy orders. The holder of record (sheriff’s office etc.) will not accept records if they do not match their hard copies. Only accepted records are available to law enforcement. Some of the data quality issues are: orders issued without parties associated, parties date of birth is blank or clearly in error, data shows orders served but not issued, etc.

The recommendation is to allow the holder of records to update fields in CPOR that they can currently update in NCIC. The original record in the court will not change, only the information at the holder of record (once it has left the court) will change. There will still be key fields that the holder will not be able to update and exception reports will be generated.

When asked if the holder of record will have the ability to delete a party, Mr. Roll replied that they will be able to delete parties. Paul Thomas volunteered that some courts may be uncomfortable with the holder changing the record without the hard copy. Mr. Roll explained that electronically generated DV forms should match exactly what is in CPOR, it is the handwritten orders that create a problem. Kathy Barrett remarked that she has concerns with allowing the integrity of the court order to be compromised by allowing another to change court information. Ted Jarvi suggested the holder of record should check with the court before correcting data.

Judge Traynor inquired about the time line for an answer to which Mr. Roll responded that if approved they would go into production January 1, 2004. Kathy Barrett and Pamela Jones will work with the AOC on a committee regarding this issue, other members interested in participating are urged to contact them.

Motion: Motion made and seconded **to table this topic** to the next LJC meeting. Motion passed unanimously, tabled to the 11/19/03 agenda for action. **LJC-03-10.**

11. ELECTRONIC DDS REPORTS

Bob Schaller (AOC) reported that the Defensive Driving Program (DDP) has completed the work required to provide automated delivery of the monthly defensive driving reports, the school and court directories and a monthly newsletter (when available). Courts will be able to access these reports via the DDP intranet page. The reports will be available as text files and as Excel files. Several court user suggestions and requests have been implemented to improve this process. Mr. Schaller clarified that courts may continue to request paper reports, if needed.

Motion: Motion was made and seconded **to approve implementation of the automated defensive driving monthly reports.** Motion passed unanimously. **LJC-03-11.**

12. CERTIFICATION AND DISCIPLINE CODE

Doug Brooks and J.R. Rittenhouse (AOC) distributed a revised handout and explained the proposed changes to ACJA code, 7-201 regarding certification procedures and the disciplinary process for the Confidential Intermediary Program, the Defensive Driving Program and the Fiduciary Program. Some of the changes include: a rewrite of Rule 1, added definitions, added compliance review provisions, certification process time limits, records retention provision etc. The proposed change is currently out for public comment and is available on the judicial department website. Ms. Rittenhouse advised that this matter will be going to the AJC.

Motion was made and seconded **to approve recommending that ACJA 7-201 be adopted as proposed.** Motion passed unanimously. **LJC-03-12.**

13. JURY MANAGEMENT CODE

Jennifer Greene (AOC) reported that the new trial jury management code section was recently approved, however, because of conflicts with recent legislation, the code must now be updated in order to conform. The legislation included major revisions to a number of statutes dealing with juror: service, excusal, term of service, exemption and pay.

Ms. Greene also stated that a criminal rule which requires courts that offer jury handbooks to have those books approved by the Supreme Court should be incorporated into the code, rather than being addressed by court rule. This code revision will be presented to the Committee on Superior Courts (COSC) and the AJC later this fall.

Motion: Motion was made and seconded to approve ACJA code 5-203 revision as presented. Motion passed unanimously. LJC-03-13.

14. LENGTHY TRIAL FUND UPDATE

Jennifer Greene reported that she has been working with two Lengthy Trial Fund workgroups to establish recommendations regarding the amount of the new lengthy trial fund fee and to which types of filings the fee should apply. This is being done because of recent legislation establishing the lengthy trial fund which is designed to pay extra compensation to jurors who serve on trials lasting more than ten days and who lose wages because of their jury service.

One workgroup is recommending an \$8.00 fee in Superior Court civil filings and the other workgroup has developed a set of guidelines, a claim form and a reimbursement request form to help jurors and jury commissioners. Ms. Greene stated that this issue is mainly a Superior Court issue and explained that this issue will be addressed by administrative order approving this fee which needs to be in place by January 1, 2004. The fund will be monitored to determine if the amount of the fee is adequate.

15. FORM IV ISSUES

Judge Traynor explained that Judge Ellie Finn raised issues regarding the form IV presented to the court at the initial appearance, particularly dealing with DV issues. Judge Traynor reported that although Judge Finn planned to

chair a committee to address the form's issues, she is not able to do so because of other judicial commitments. Judge Traynor announced that he will chair the committee and urges members to contact him if interested in helping with this project.

16. DOMESTIC VIOLENCE (DV) AND INJUNCTION FORMS

Bob James (Maricopa County Superior Court) briefed the committee on the history of the DV forms project and requested approval of two documents, the petition and the guide sheet. Mr. James explained that the two forms submitted do not require changes to current automation systems. Committee members suggested several wording changes, such as:

- Substitute a different term for “live-in” on both forms.
- Correct “order of protect” to “order of protection” in item # 1 on the guide sheet and perform spell check in both documents.
- Substitute “I need this order because” for “I need the court’s help because” on item number 4 of the petition.
- Add a “not sure” check box as a choice in item number 3 of the petition.
- Allow more space for the NCIC # on the petition.
- Correct item 5 of the petition to read, “...as stated in number 4 (not 3) the defendant....”

- Add instruction in the guide sheet to persons who already have a matter pending in Superior Court, to stop and check with the court before completing the paper.

Motion: Motion was made and seconded to approve the petition and guide sheet

with the amendments as suggested by the committee. Motion passed unanimously. **LJC-03-14.**

17. BOATING WHILE INTOXICATED TEST REFUSAL, ADMIN. ORDER

Judge Anagnost explained that recent legislation has made refusal to take a breath test for boating while intoxicated a civil offense, rather than a criminal offense and this creates a problem for courts, in that this offense now does not fall under any set of rules. Judge Anagnost has been working with staff at the AOC to draft an administrative order to give guidance on how this offense should be handled.

Karen Kretschman (AOC) supplied that the proposed administrative order was submitted to the Legal Department and they feel that since this order is not designed to be a permanent fix, this committee may want to follow up by reviewing the rule and the statute to see if revisions need to be made. Paul Thomas stated that no specific procedures regarding this issue have as yet been adopted in Mohave County and volunteered to help Judge Anagnost with this project.

Motion: Motion was made and seconded **to approve the draft Administrative Order with the caveat the committee will work on a possible rule or legislative resolution.** Motion passed unanimously. **LJC-03-15.**

18. FORMS/RULES SUBCOMMITTEE

RIGHT TO COUNSEL, RULES 4, 14

Judge Anagnost briefed the committee on the proposed Rule 28 petition regarding defendant right to counsel issues. Judge Anagnost explained that as crucial information is not always provided at the initial appearance (such as; whether the prosecutor will be recommending jail or probation or whether the defendant is eligible for court appointed counsel based on their financial statement) courts have been left to make the decision whether to appoint counsel, in the dark. Judge Anagnost remarked that often obsolete, non relevant jail court paperwork further confuses the issue.

This petition also makes changes related to proceedings at arraignment, regarding informing the defendant of their right to counsel and of preserving that right. Judge Anagnost asks the committee to support the rule 28 petition in concept.

Motion: Motion was made and seconded **to approve the petition concept in format, with continued work on the wording.** Motion passed unanimously. **LJC-03-16.**

CRIMINAL FORMS RULE PETITION

Judge Anagnost presented a rule 28 petition recommending deleting the forms from the Rules of Criminal Procedure. Judge Anagnost explained the petition was drafted as the forms are not mandated, since they were originally adopted to be guidelines courts have adopted their own versions and realistically the forms are not widely used.

Motion: Motion was made and seconded **to support the petition to delete the**

forms from the Rules of Criminal Procedure. Motion passed unanimously. **LJC-03-17.**

Rule 7.2 RELEASE PENDING APPEAL

Judge Anagnost summarized the rule 28 petition regarding right to release (Criminal Rule 7.2) as a rule that would allow the court (in appealed convictions that carry a sentence of incarceration) to possibly be subject to a hearing that would reconsider the conditions of release and put someone into custody while the appeal is pending. This contemplates; a specific hearing to evaluate why conditions occurred and why factual matters at trial arose and warranted this secondary evaluation, the need to take a record on that, the court to render a findings, and to allow for Superior Court review of the trial court determination.

Dan Lowrance (Maricopa County Public Defender's Office) stated that he sees problems in safeguarding the defendant's rights, particularly in misdemeanor cases, as not all of the automatic safeguards are in place as they are in felonies. Judge Anagnost summarized the views he has heard from various prosecutors and reported that the comments received on this issue have been incorporated into this petition. This matter was on an earlier Supreme Court agenda and was furthered for this discussion.

Ted Jarvi expressed that he is uncomfortable with this rule (as written) as it appears to open the door for punishment if filing an appeal and suggested it apply upon the finding of guilt. Judge Anagnost clarified this petition is in response to the concerns in the community regarding a defendant who is own recognizance, who becomes a threat at trial and yet the court is powerless to act.

Motion: Motion was made and seconded **to approve the rule 28 petition regarding Criminal Rule 7.2.** Motion passed with one dissenting vote. **LJC-03-18.**

WARRANTS/SUMMONS, RULE 3.2

Judge Anagnost explained that the draft rule 28 petition (to amend Criminal Rule 3.1 regarding warrants and Rule 3.4 regarding summons) is meant to clean up present wording and creates new text regarding a post arraignment warrant. This rule will allow a court to be able to issue a warrant when someone fails to appear or comply, without a prosecutor's complaint. Also, the rule clarifies that a summons can be mailed by first class mail rather than certified mail. If the mail is returned as undeliverable the court will be authorized to issue the probable cause warrant. Judge Anagnost concluded by asking members to review the materials and contact him before the next meeting with any comments or questions.

19. DEFENSIVE DRIVING SUBCOMMITTEE

Kathy Barrett stated there is no report at this time, however she has asked Bob Schaller to provide the courts with a current copy of the DDS eligible violation table. Mr. Schaller agreed to e-mail the chart to all courts.

20. STRATEGIC PLANNING SUBCOMMITTEE

Paul Thomas reported that strategic issues have been preempted by other topics at recent Executive Subcommittee meetings. He hopes to discuss strategic items at the next meeting however, and then will report to the committee.

21. OTHER BUSINESS:

CALL TO THE PUBLIC

Eric Carlson (AOC) announced that a draft court emergency response report will be soon be distributed. He urged members to review the document carefully and reply with any comments or suggestions.

Dori Littler (AOC) distributed a draft of the Intercounty Courtesy Transfer Code (ACJA section 6-211) which is scheduled to go before AJC in December. Although LJC does not need to officially act on this code section, Ms. Littler welcomes any comments members may wish to make, since a small population of domestic violence cases may be affected (if they request to transfer their probation supervision from one county to another) by this section. Comments should be sent to Ms. Littler by October 17, 2003.

Meeting adjourned at 4:20 by Judge Michael Traynor

Respectfully submitted,

Lori Johnson
Staff to the LJC

LIMITED JURISDICTION COURTS COMMITTEE
November 19, 2003, Arizona State Courts Building

Members Present:

Honorable Michael Traynor, Chair	
Honorable George Anagnost	Honorable John Kennedy
Ms. Kathy Barrett	Honorable John Lamb
Ms. Faye Coakley	Honorable Michael Lester
Honorable Sherry Geisler	Mr. Frank Maiocco
Honorable Linda Hale	Honorable Kathy McCoy
Ms. Joan Harphant	Honorable Antonio Riojas, Jr.
Honorable R. Wayne Johnson	Mr. James Scorza
Ms. Pamela Jones	Mr. Paul Thomas

Absent Members:

Honorable Judy Ferguson. excused	Honorable R.O. McDaniel
Mr. Theodore Jarvi, Esq.	Mr. Dale Poage, excused

Staff:

Ms. Lori Johnson, LJC staff	Ms. Page Gonzales
Ms. Carol Ashton	Ms. Patience Huntwork
Mr. David Benton	Mr. Robert Roll
Mr. Mike DiMarco	Ms. Paula Taylor
Mr. Greg Eades	Ms. Valerie Tillman
Ms. Agnes Felton	Ms. Kathy Waters
Ms. Karen Kretschman	Ms. Konnie Young
Ms. Sue Latzko	

Guests:

Mr. C. Daniel Carrion	Mr. Rick Rager
Ms. Janet Cornell	Ms. Joan Tobin

REGULAR BUSINESS:

1. CALL TO ORDER

The meeting was called to order at 10:05 AM by Judge Michael Traynor.

2. APPROVAL OF PRIOR MEETING MINUTES

Motion: Motion was made by Joan Harphant and seconded by Judge Geisler to **approve the 9/24/03 meeting minutes** as presented. **Motion passed** unanimously, the 9/24/03 minutes will stand as presented. **LJC-03-19.**

3. PENDING AND PROPOSED RULES UPDATE

Patience Huntwork (AOC) gave the following update regarding the following items which will be on the Court's Rules Agenda on January 10, 2004 :

- The experimental Rule 10.2 regarding peremptory change of judge is effective until the end of January, 2004. It is contemplated the Court will take action to: 1) abolish change of judge in most criminal cases, or 2) make the experimental rule permanent or 3) an intermediate step. The opportunity to comment is still viable up to the first week in December, 2003.
- A few years ago the Court adopted a change in jury procedures that allows jurors to discuss evidence from the beginning of the case, so long as they are all together in one room and this is unique to Arizona. A petition was filed to abrogate this rule back to the original state where jurors can only discuss evidence after all of the evidence has been introduced. The comment period expired November 4, 2003 and no one commented on it. The Court rejected this issue regarding criminal cases last year. So, now this issue is split into two systems, one for civil and one for criminal.

4. FARE PROGRAM UPDATE

Mike DiMarco (AOC) gave a brief overview of the progress of the FARE program. Mr. DiMarco reported that the full FARE program is being rolled out in the seven pioneer courts over the next six to nine months. The Tucson and Showlow courts have submitted backlog cases and are already generating revenue which probably would not have been collected. Additional courts, identified as pilot courts are now working with FARE program staff on implementing components of FARE in their courts. The Flagstaff Justice and Municipal courts will begin receiving FARE services regarding their backlog cases in December, 2003. Scottsdale and Glendale have also expressed interest.

Web payments will be available on December 15, 2003. The Administrative Order revisions regarding earlier expressed concerns should be completed soon.

5. TRAFFIC CITATION FILING ISSUES

Mike DiMarco related that Judge Ryan Reinhold (one of the FARE pioneer court members) has suggested a road show type of program be initiated to educate law enforcement regarding the importance of timely citation filing with the court, particularly to help expedite the collection of fines and fees. Delayed citation filings significantly impact the FARE program. Judge Reinhold also proposed that ARS 28-1593 be changed from allowing law enforcement 10 days to file citations with courts to three days, although it is anticipated that law enforcement agencies may have a problem with this.

Judge Kennedy voiced concern over possible ethical ramifications of judges meeting with law enforcement to raise revenues. Mr. Rick Rager (guest) commented that if the courts were going to hold law enforcement to a higher standard the courts should be held to the same standard and ensure their citations are entered into their automated system within three days of receiving them.

Several members commented this issue may realistically be a local issue. Kathy Barrett suggested it may be that some courts set their arraignment dates to soon following the violation and if these same courts were to move the dates out a little farther into the future, it may help resolve the FARE issue.

6. UNIFORM CONDITIONS OF PROBATION; CODE SECTION 6-207

Kathy Waters (AOC) and Paula Taylor (AOC) briefed the committee on the Uniform Conditions workgroup that was originally formed five years ago and has been a work in progress, since. The workgroup was comprised of judicial, clerical, prosecutor, public defender and probation representatives and their goal was to eliminate confusion about the conditions of probation form and reduce the bench's need to write in specifics or clarifications. The group is proposing amendments to the Conditions of Probation form and to ACJA Code 6-207.

The proposed amendments have been globally distributed (to judges, court administrators, clerks of court, prosecutors, defense attorneys etc.) for review and comment. Recent modifications to the proposals have been made pursuant to comments received. Additional comments are still welcome at this time.

Ms. Waters clarified the Superior Court would use the proposed form for supervised probation cases only. Limited Jurisdiction courts may use a similar form, designed to fit their specific needs, (for supervised probation cases) as long as conditions 1 -15 are included. These forms would not be applicable with unsupervised probation, another form would need to be used for same. Some key changes in the form that were noted are:

- Changes condition # 3, requires the defendant to report after sentencing or after law enforcement contact (#8).
- Allows for the court directive regarding drug testing or treatment (#9, 10).
- Changes state to county.
- Form designed to be more user friendly for everyone, while not taking away from judicial discretion.
- Requires a release consent for information (HIPPA rule).
- Minor changes to other conditions.

Judge Lester noted that a probation service fees box was not included on the sample form. Ms. Taylor responded such provision can be added by courts. Judge Traynor advised that limited jurisdiction courts will want a one page document. Kathy Barrett noted the amended code appears to require limited jurisdiction courts to use this same form. Ms. Taylor explained that section D3b clarifies that a limited jurisdiction court, when it develops it's form, will include conditions 1 - 15. Judge Anagnost supplied the wording changing state to county should actually be state/county to make it clear the court may choose which applies.

Ms. Waters reported the Committee on Probation (COP) approved the amendments understanding that changes were still being made based on feedback. This issue is also going to COSC, the Presiding Judges and to AJC, in December.

Motion: Motion made by Judge McCoy and seconded by Frank Maiocco **to approve the amended code and form presented.** Motion passed unanimously . **LJC-03-20.**

7. LEGISLATIVE SUBCOMMITTEE REPORT

David Benton (AOC) and Page Gonzales (AOC) described the updated status of the following bills in the 2004 legislative package as adopted by the AJC:

PROPERTY TAX APPEAL TIME LIMIT - Allows tax courts to follow the Rules of Civil Procedure when hearing appeals regarding valuation or classification of property.

MENTAL HEALTH EXPERTS - Changes from mandatory to permissive the requirement that one of two mental health experts appointed by the court to conduct a competency examination be a psychiatrist.

PREPARATORY RELEASE FOR INMATES SENTENCED TO PROBATION - Allows inmates sentenced to a consecutive term of prison, followed by probation to be equally eligible for early preparatory release as inmates sentenced to prison only. A defendant may waive community supervision after time served and go directly into probation, but simultaneously waives early release credits. Defendants sentenced to prison only remain eligible for early release credits.

FORCIBLE ENTRY AND DETAINER - Amends statute to conform with Court Rule, directing cost bonds and supersedeas bonds (periodic rent payments) in forcible detainer appeals to be paid in the justice court during the appeal process in Superior Court.

SMALL CLAIMS HEARING OFFICERS - Provides compensation to small claims hearing officers if funded by the county and approved by the Presiding Judge. Currently, only civil traffic hearing officers are allowed compensation.

DRUG COURT FUNDING - Efforts to find a dedicated funding source for adult and juvenile drug courts. Funding will be used for treatment, staff and equipment for drug court programs.

MVD REGISTRATION HOLDS - Expands the current Traffic Ticket enforcement Assistance Program (TTEAP) through MVD to include delinquent restitution, fines, surcharges, penalties or assessments.

TIP ON PROBATION ABSCONDER LOCATION - Utilizes the Tax Intercept Program (TIP) to assist probation departments in locating probationers who abscond. Through this proposal the Arizona Department of Revenue will notify the court of an absconder's current home address whether or not a tax refund is due.

Frank Maiocco asked about the status of the hearing officer concept that was discussed at the last LJC meeting. Page Gonzales responded that Judge Peterson moved (at AJC) to table the issue to see what happens with this item at the Justice of the Peace Association meeting. Several LJC members expressed concerns to Ms. Gonzales that this issue is critical and needs to be addressed. Ms. Gonzales agreed to follow up on this issue.

Ms. Gonzales reported that in special session, House Bill 2533 was repealed.

Ms. Gonzales summarized the Department of Corrections (DOC) bill that is currently moving through the process (as proposed amendments to SB1003) regarding boating and driving under the influence violations. This strike all bill would require persons convicted under these title 28 and title 5 violations to pay an additional \$1,000.00 assessment which would go to the Prison Overcrowding Fund established by ARS 41-1651. Judge Traynor asked if the \$1,000.00 penalty would be assessed after fines and surcharges, similar to the DUI abatement fee. Ms. Gonzales responded this has not been addressed in the bill.

Ms. Gonzales reported that AOC staff predicted the revenue increase (because of this bill) to be between 18.8 and 23 million dollars (depending on the increased assessment amount) while the newspapers reported it to be between 26 and 36million. When asked by members how AOC staff arrived at their figure, Ms. Gonzales agreed to supply a copy of the report prepared by AOC staff.

Ms. Gonzales stated that she and Mr. Benton have been talking with legislators about possibly having a portion of the increased revenues go into other funds, such as drug courts. The bill also establishes a base fine for a boating under the influence conviction of \$250.00 and establishes a mandatory \$750.00 fine for aggravated DUI. Ms. Gonzales explained how the bill started out that all surcharges are not waivable and now allows that the not waivable clause applies only to a DUI conviction. Ms. Gonzales related that the Senate heard the bill yesterday and it is expected it may pass out of the Senate, but there are rumors circulating that the Governor will veto it because of the private prison issue.

Judge Anagnost asked if community service in lieu of the additional assessment would be an option and commented that many defendants cannot afford to pay this amount on top of what they already have to pay and if extended over time for payments, may take years to collect.

David Benton summarized versions of the same Child Protective Services (CPS) bill. Mr, Benton stated the Governor introduced a bill that defines CPS and asks for a 27 million dollar appropriation for additional CPS workers and operations. Another version of the bill introduced by Rick Romley proposes to split out CPS, creating it's own agency and contains more comprehensive definitions of abuse. This version does not appear to be supported by the Governor and is viewed by many legislators as being much more punitive than the Governor's version. Additionally, Rick Romley's version contains no appropriation requests. There is a rumor circulating that Senator Bennett has also drafted a version of the same bill which lies somewhere between the Governor's and Rich Romley's.

Judge Traynor stated there was a class 6 felony bill (which appears to be dropped, for now) that takes several class 6 felonies and designates them as class 1 misdemeanors. It is anticipated that this bill may resurface in the future.

Paul Thomas inquired about the status of a bill that would raise the Justice of the Peace civil jurisdiction to \$20,000.00. Ms. Gonzales responded the bill surfaced after the last LJC meeting but prior to the AJC meeting, therefore it was presented to the AJC and although they discussed it briefly, they tabled the issue. Ms. Gonzales concluded that another proposal to appoint Presiding Justices of the Peace was not

discussed at AJC.

8. JUDGES CONNECTING WITH CLASSROOMS PROGRAM

Agnes Felton (AOC) and Sue Latzko (AOC) demonstrated materials that judges may use regarding the Arizona Judicial System, when making presentations to schools and other agencies. Teachers from all levels were consulted to help set up the curriculum. The materials are divided into elementary, middle and high school packets. They include content information, speaking outlines, lesson plans, activities, resources, videos and overheads. These materials are available to all courts from their local county training coordinators and from the AOC.

Kathy Barrett asked if it is possible to also obtain the materials on CD. Ms. Latzko responded this medium may be available in the future.

9. EXECUTIVE SUBCOMMITTEE REPORT

Judge Traynor reported that the Executive subcommittee met once since the last LJC meeting. In this meeting they covered some of the issues on today's agenda. The warrant and summons issue was discussed and the subcommittee made suggestions for changes which Judge Anagnost will cover in his presentation. The subcommittee reviewed Judge Anagnost's previous response and Judges Finn's comments on behalf of the limited jurisdiction presiding judges regarding Eleanor Eisenburg's Rule 17.2 petition. Comments are due on this issue by March 1, 2004 so the committee does not need to take action at this time. The Form IV issues and the strategic plan were also discussed and there will be more on these issues later in this meeting.

10. FORM IV WORKGROUP UPDATE

Judge Traynor stated that the workgroup determined that as each county seems to have different versions of the Form IV, (release questionnaire) this item may actually be a Maricopa County only issue. Judge Traynor referred members to a form samples handout which contains the form Maricopa is currently using along with a draft proposed form in which the domestic violence and other violence issues have been addressed. The reason it is important these items be added is that often in Maricopa County the arresting officer is not present at the initial appearance, therefore such critical information is not always available to judge to use in determining release conditions. Judge Traynor suggested to the members that he would appreciate receiving sample Form IV's used in other counties.

11. ADR - CREDENTIALING OF MEDIATORS

Joan Tobin briefed the committee on the Supreme Court ADR Advisory Committee recommendations for minimum credentialing guidelines for mediators receiving referral cases from Arizona courts. These recommendations will be also be provided to the AJC next month. The ADR Advisory Committee recommends the following requirements in credentialing mediators for Superior Court:

- A high school diploma (or equivalent)
- A minimum of one 40-hour general mediation skills training (or equivalent)
- Must have completed 20 mediation cases. In family law at least five cases

must include parenting plan mediation, five must include child support or spousal maintenance mediation and five must include mediation of asset division.

- Must agree to abide by an Ethical Code of Conduct.
- Must agree to honor specific grievance procedures.
- Must be at least 21 years of age.
- Must complete at least 10 hours of mediation practice related continuing education every two years.

Kathy Barrett asked how volunteer mediators will get their prior experience to mediate in civil cases. Ms. Tobin responded for the most part, people get their training in the Superior Court and then they volunteer in the Justice Court and they handle a number of cases there. The committee feels that for them to move on to mediate in Superior Court they should have some prior mediation experience. Ms. Tobin stated that mentoring works well with new mediators.

Kathy McCoy supplied that Mohave County has a community college course for certifying mediators and they also do some college related mediation cases to gain some experience. Ms. Tobin responded that Mohave County is a leader in this area and mentioned that Coconino and Yavapai counties also have programs where they work with a co-mediator model.

Ms. Tobin stated the committee is continuing this work and asked LJC members to provide any feedback to Judge Raymond Weaver, who is the committee Chair.

12. DISCLOSURE PRIOR TO SUMMONS SERVICE

Greg Eades (AOC) addressed the committee regarding ARS 13-2813 and the issue of prohibiting disclosure of indictments prior to service on the defendant. This issue has generated much discussion in past meetings due to differing interpretation of the statute and it's applicability in misdemeanor cases.

Mr. Eades supplied that he and Jennifer Greene (AOC) had planned to offer a Supreme Court Rule (123) amendment regarding this issue at today's meeting that would provide an innovative interpretation of the statute, so that it only applied to felony cases. However, representatives of the Maricopa County Attorney's Office hold a strong belief the statute does apply to misdemeanor cases, they believe it was intended to apply to misdemeanor cases.

Mr. Eades stated that instead of offering a rule change at this time, he is asking the committee for more time to work with prosecutors in resolving, possibly, a statute change and asked for volunteers to assist in this effort. Judge Anagnost and Judge Kennedy volunteered to work with Mr. Eades in this issue.

13. DOMESTIC VIOLENCE AND INJUNCTION FORMS WORKGROUP

Judge Anagnost reported that CIDVC is meeting tomorrow and it is hoped the Supreme Court will develop an Administrative Order to allow courts to use the modified domestic violence and injunction forms.

Karen Kretschman (AOC) supplied that Dave Byers (AOC) has approved the forms, therefore an additional administrative order is not required. Ms. Kretschman

stated the Fee Deferral and Waiver forms have also been updated and approved and all of these forms will be provided in the updated DV bench book. Ms. Kretschman reported the effective implementation date for all forms is February 1, 2004 to allow courts time to use up present supplies of the forms.

Judge Anagnost concluded that the DV forms workgroup is still working on future improvements and asked that members forward comments or suggestions to him. Ms. Kretschman stated besides being made available via the DV bench books, the new forms will be e-mailed to all courts and they will be accessible on the web soon.

14. FORMS/RULES SUBCOMMITTEE

RIGHT TO COUNSEL, RULES 4.2 and 14.3

Judge Anagnost briefed the committee on the Rule 28 petition regarding defendant right to counsel issues. This amended petition (which is the modification that resulted from discussion at the last LJC meeting) has already been filed with the Supreme Court. It addresses the gap in rules 4 and 14 with regards to right to counsel at initial appearance and at arraignment.

Motion: Motion made by Judge Lamb and seconded by Judge Riojas **to endorse the filing of the amended Rule 28 petition regarding appointment of counsel.** Motion passed unanimously . **LJC-03-21.**

WARRANTS/SUMMONS, RULE 3.1, 3.2

Judge Anagnost explained the amended rule 28 petition (to amend Criminal Rules regarding warrants and summons) presented today is the version that was modified as result of discussion at the Executive Subcommittee regarding his first draft. Judge Anagnost stated this petition creates two categories for warrants; pre adjudication and post adjudication. The changes regarding summons and warrants are not meant to pre empt the Title 13 processes, rather they offer alternatives. This rule petition clarifies that an additional complaint filed by the prosecutor is not necessary. The court may issue warrants without such complaints. Judge Kennedy asked if DPS would enter these warrants in their system without a statute number. Greg Eades responded that he has discussed this issue with DPS and they will come up with a way to make these warrants work in their system.

Judge Anagnost also provided that service of summons by first class mail is also addressed in the petition and his court is presently experiencing success with this type of service. Judge Riojas offered the language in Rule 3.1(d) is not consistent with Rule 26.12. Judge Anagnost responded that will be corrected.

Motion: Motion made by Judge Lester and seconded by Judge Riojas **to endorse the filing of the amended Rule 28 petition with the modification described regarding summons and warrants.** Motion passed unanimously . **LJC-03-22.**

RULE 17.2

Judge Anagnost briefed the committee on the amended rule petition filed by Eleanor Eisenburg of the ACLU. The petition requires the court to make a disclosure to defendants that a conviction may impact immigration status. Judge Anagnost reported the committee has between now and February to comment if they wish.

Judge Anagnost concluded his Rules presentation by mentioning that the boating while intoxicated Administrative Order (meant to reconcile recent legislation which changed a petty offense to a civil offense) has been signed and is now in effect. Karen Kretschman supplied that the Administrative Order offers only a temporary solution to the problem until suitable amendments to procedural rules can be prepared. Judge Anagnost agreed that the Rules Subcommittee will commence work on rules to address this issue.

15. DEFENSIVE DRIVING SUBCOMMITTEE

Kathy Barrett stated there is no report at this time but that Bob Schaller was expected to be present to give an update on the electronic driving school reports topic.

Mr. Schaller was not present, however and a handout regarding eligible violation codes was distributed. Upon review of the document, it was pointed out that it may not be the most recent revision as the document is dated 2001. Kathy Barrett agreed to follow up with Mr. Schaller to determine if the handout is actually the most current version available.

16. STRATEGIC PLANNING SUBCOMMITTEE

Paul Thomas provided a brief history of previous work done at the Goodyear conference last year regarding strategic court issues. Mr. Thomas stated the following priority areas emerged as a result of discussions and they were: automation, improving resources through more clearly identifying standards in the courts and improving interagency cooperation.

Since automation affects everything done in the courts, it was felt this should be the top priority. On the second area, standards, individuals expressed that if there were specific standards similar to the Minimum Accounting Standards (but in areas such as facilities, space, clerk ratios, security etc.) this would help courts in determining the resources they need. The LJC Executive Subcommittee looked at the third issue, improving interagency cooperation in two ways; improving at the local level and at the state level. LJC could be involved in improvements at the state level, such as possibly reactivating the MVD/LJC interagency committee.

One subcommittee suggestion is that the LJC develops a standing technology subcommittee. A second suggestion is that an LJC member sit on the Commission on Technology (COT) to enhance committee communications. Joan Harphant volunteered to attend the COT meetings in order to bring pertinent information back to the LJC, until such time an LJC member is appointed to the COT.

17. PROPOSED 2004 MEETING DATES

Lori Johnson distributed a list of proposed LJC meeting dates (February 25, May 19, September 28, September 29 and November 17, 2004) and locations for 2004.

Motion: Motion made by Judge Anagnost and seconded by Judge Lester **to approve the 2004 LJC meeting dates as proposed.** Motion passed unanimously .
LJC-03-23.

18. UPDATING DATA IN CPOR BY HOLDER OF RECORD

Judge Traynor stated that following the September LJC meeting a workgroup was formed to study the first recommendation in this issue. Jim Scorza added that there was a misconception (from the last LJC meeting) that law enforcement officers would be able to modify or update court records regarding protective orders. Mr. Scorza supplied that he and Pam Jones participated in the workgroup on October 27, 2003 and after discussion they determined this is not really the case.

Robert Roll gave a revised presentation of the CPOR/LPOR process, issues and recommendations. Mr. Roll demonstrated that under the current process there are times when if the information on the order is insufficient, the field office may not be able to get any information regarding the order. The new process will alleviate the problem because if the record does not have all the required fields to go to NCIC and the holder of record accepts it, it will be available locally for queries from law enforcement. Currently only 14 - 48% of all orders are successfully get entered into NCIC.

Mr. Roll clarified that CPOR is where the court record goes and LPOR is where law enforcement can query (not change) the court record. Out of State officers cannot query unaccepted records in LPOR.

Judge Traynor asked if law enforcement would be able to know which version of a protective order (in the case of an amended order) they are viewing. Mr. Roll responded they will always be looking at the latest hard copy order that they have and DPS will be able to see that there are two orders. The second one will be flagged as a modified record. Carol Ashton (AOC) interjected that the AOC trains court staff to enter the modified order information into the case management system. Mr. Roll added that DPS will be conducting training for their officers.

Mr. Roll identified the following data errors as causing some discrepancies;

- There are a large number of cases without parties associated
- Date of birth is invalid or missing
- More than one defendant is listed on the order

Konnie Young supplied that the hard copy of the order is most of the time, correct. The errors often occur when the data from the hard copy is entered into the automated system. The corrections being suggested would be to supplement the electronic record to match the hard copy order

Judge Lester suggested that these data errors may well be best addressed by court staff training and asked if the AOC can produce error reports so that courts will know how they are doing. Mr. Roll responded that data clean up reports are available and a link to such will be forwarded to Lori Johnson to distribute to all members. Mr. Roll also stated the new trainer may be able to distribute these reports in the future.

Pam Jones asked how often training will be offered regarding this issue. Carol Ashton responded training will be offered periodically through Sentra, through regional conferences and at specific request from a court.

Mr. Roll re stated the two recommendations being made at this time:

- Approve that the Holder of Record may supplement electronic LPOR data. This item was approved by CIDVC and COSC.
- Approve that the Holder of Record may access unserved protective orders in LPOR. This item was approved by CIDVC and goes before COSC on November 21, 2003.

Motion: Motion was made by Judge Anagnost and seconded by Judge Riojas to approve both recommendations as stated. Motion passed unanimously . **LJC-03-24.**

OTHER BUSINESS:

CALL TO THE PUBLIC

No response.

Meeting adjourned at 2:35 PM by Judge Michael Traynor

Respectfully submitted,

Lori Johnson
Staff to the LJC