

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

Arizona State Courts Building
Conference Room 119A & B
Phoenix, AZ 85007
February 25, 2004

Members Attending:

Honorable R. Michael Traynor, Chair
Honorable John Kennedy, Vice Chair
Honorable George Anagnost
Ms. Faye Coakley
Honorable Judy Ferguson
Honorable Linda Hale
Mr. Don Jacobson
Mr. Theodore Jarvi
Honorable R. Wayne Johnson

Ms. Pamela Jones
Honorable John Lamb
Honorable Michael Lester
Honorable Kathy McCoy
Mr. Dale Poage
Honorable Antonio Riojas, Jr.
Mr. James Scorza
Mr. Paul Thomas

Absent Members: (excused)

Ms. Kathy Barrett
Honorable Sherry Geisler

Ms. Joan Harphant
Honorable R.O. McDaniel

Staff:

Ms. Susan Pickard

Ms. Valerie Tillman

Presenter/Guests:

Ms. Theresa Barrett
Mr. David Benton
Ms. Evelyn Buckner
Mr. C. Daniel Carson
Ms. Janet Cornell
Mr. Mike DiMarco
Mr. Greg Eades
Ms. Debby Finkel

Ms. Page Gonzales
Mr. Karl Heckart
Ms. Karen Kretschman
Ms. Lynn Marcus (via phone)
Honorable Mark Moran
Mr. Rick Rager
Mr. Robert Roll
Mr. Ted Wilson

REGULAR BUSINESS

1. CALL TO ORDER

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

Mr. Frank Maiocco has resigned his position on the committee. Mr. Don Jacobson has been appointed to fulfill the remainder of Mr. Maiocco's term. This is the second term for Mr. Jacobson.

The terms for the following committee members will expire in June 2004: Judge Anagnost, Judge Lester, Judge Lamb, Judge Geisler, Judge Ferguson, Judge McDaniel, Mr. Thomas, Mr. Poage, Ms. Jones, Ms. Coakley and Mr. Jarvi. Ms. Pickard has sent an email to each of these members requesting their interest in being considered for re-appointment to the committee. Judge Traynor requested that members respond to Ms. Pickard as soon as possible.

2. APPROVAL OF NOVEMBER 19, 2003 MEETING MINUTES

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

Motion: Motion was made by Judge Lester and seconded by Judge Kennedy **to approve the minutes for the November 19, 2003 LJC meeting** as presented. Motion passed unanimously.
LJC-04-01.

INFORMATION/POTENTIAL ACTION ITEMS

3. PENDING AND PROPOSED RULES UPDATE

Ms. Patience Huntwork was unable to attend the meeting. This agenda item was not presented/discussed.

4. EXECUTIVE SUBCOMMITTEE REPORT

Issues covered:

- HB 2019 DUI/OUI Fines; Department of Corrections Overcrowding Fund - This bill was passed in special session and becomes effective March 13, 2004. Judge Traynor urged members to pay close attention to the fees and be aware that surcharges, fines and assessments for these violations cannot be waived.
- ADR Grant Update - Ms. Karen Kretschman updated the subcommittee on the progress of various recommendations.

5. FARE PROGRAM UPDATE - STANDING REPORT

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

- Over \$910,000 (9% of the dollar amount submitted) has been collected from the 27,000 cases in the Interim FARE process.
- Of the 27,000 cases submitted, 20,000 have sufficient data for notification.
- Pay by Web is now available. Collection to date is \$22,000, 25% of which are payments from out-of-state.
- No more courts will be brought into Interim FARE. The first court to come online with full FARE will be the City of Phoenix, which will come online toward the end of April.

Mr. DiMarco discussed an anonymous letter which has been distributed to leaders in city, county and state government offices and courts. He addressed the issues regarding FARE and ACS raised in the letter.

6. ADR GRANT UPDATE

Ms. Karen Kretschman (AOC) gave a brief history on the fund and update on the recommendations and findings regarding the suggested usage of the justice court portion of the ADR fund. The new focus of the grant is to expand educational efforts for justice courts and justices of the peace to establish or expand ADR programs. The AOC is not interested in training judges to be mediators, but to provide them with expertise in designing and implementing ADR programs in the justice court system.

- Scholarships to the National Judicial College in Reno - Declined due to the mediator focus and expense of the training.
- In-State training provided by the National Judicial College - Declined due to expense and 100 participant minimum.
- ADR session at New Judge Orientation and the Annual Judicial Conference. The AOC is currently in discussion with the Office of the Attorney General.
- Justice of the Peace ADR Training Survey - Sent a survey to assist the AOC in determining the type of ADR training the justices of the peace would be interested in. Five responses have been received as of yesterday. All five are very interested in the training described.
- Utilizing Existing Superior Court Programs in Justice Court - The idea is to expand superior court programs so that a justice of the peace can call the superior court ADR coordinator or individual in charge to schedule a mediator if they have a case that could benefit from mediation. For counties that do not have a program at the superior court level, it may be possible to create intergovernmental agreements with counties that have mediator pools. To followup, an ADR Coordinators meeting has been scheduled for Monday. In addition to the ADR Coordinators, justice court administrators and individuals who might be interested in attending have also been invited.
- American Bar Association Seminar - AOC's Education Services Division is working on the arrangements for a week-long ABA ADR training seminar in November. The ABA will supply most of the faculty and the AOC would be assisting and identifying facilitators. There is a \$700 registration fee for this

training. The AOC is considering scholarships for justices of the peace to attend.

Ms. Kretschman asked that any further ideas for the use of the ADR grant funds be forwarded to her.

A suggestion was made to have persons from the five counties who have successful programs (Maricopa, Yavapai, Cochise, Mohave and Coconino) to participate in the session at the Judicial Conference.

7. COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS (CIDVC) PROJECT STATUS

Domestic Violence Forms - Ms. Karen Kretschman (AOC) reported that the General Petition and Order of Protection and Injunction Guide Sheet were approved by Dave Byers on November 19, 2003. These forms were mandated for implementation by courts by February 1, 2004. Only the petition and the guide sheet are new, no other domestic violence forms were changed due to the impact on AZTEC. The forms, as well as a list of frequently asked questions have been posted to the AJB and AJIN web sites. Additionally, four fee waiver and deferral forms were updated to remove language that implied a filing fee domestic violence petitions. These forms are located on the AJB web site, for court personnel use. The web sites are as follows:

Domestic Violence Forms

<http://www.supreme.state.az.us/nav2/selfserv.htm>

<http://ajin/selfserv/formprotord.htm>

Frequently Asked Questions

<http://ajin/selfserv/GenPetFAQs.htm>

Fee Waiver/Deferral Forms

<http://www.supreme.state.az.us/fees/>

A concern regarding having enough space on the petition for the necessary information was raised. As long as a court is not adding, deleting or modifying the language or changing the sequence of the text of the General Petition, it is permissible for a local court to make cosmetic formatting changes (for example the font, margins, paragraph indentation, court address information). If you are uncertain whether or not the changes you want to make are merely cosmetic, please contact the AOC. Please note that the margins on the General Petition conform to A.R.C.P. Rule 10(d). Although no major changes can be made to the General Petition, it is permissible for courts to include additional information on the Guide Sheet, such as case number, Plaintiff's date of birth, Defendant's phone number and relationship to the Plaintiff. This question is also addressed in the Frequently Asked Questions.

Domestic Violence Criminal Benchbook - Judge Mark Moran, Coconino County

Superior Court and DV Criminal Benchbook Workgroup Chair, introduced the new Domestic Violence Criminal Benchbook approved by CIDVC. This project encompasses over two years of work by the workgroup as well the full committee of CIDVC and provides an important resource for judges regarding criminal domestic violence cases. This benchbook provides judges with a practical guideline/outline in a variety of areas from release conditions through trial including types of problems to anticipate at trial, probation, treatment requirements and compliance and a background for rules of evidence for domestic violence cases. It is important that judges give these cases the attention they deserve and feel confident in the decisions that they make. Judge Moran invited all comments and suggestions regarding the benchbook.

Domestic Violence Benchbook - Ms. Evelyn Buckner, Governor's Office for Children, Youth and Families and DV Benchbook Workgroup Chair, presented the updated Domestic Violence Benchbook. As with the DV Criminal Benchbook, the law in this area is continually changing. Annual updates of both benchbooks should be anticipated. Ms. Buckner invited all comments and suggestions regarding the benchbook.

Along with being distributed to all general and limited jurisdiction court judicial officers via CD, the benchbooks can be found on the AJB web site and through Wendell at:

<http://www.supreme.state.az.us/cidvc/dvbenchbook.htm>
<http://www.supreme.state.az.us/cidvc/PDF/CrimDVBB.pdf>

CPOR/LPOR - Mr. Robert Roll presented an update regarding CPOR/LPOR. The enhancements recommended for approval previously by this committee and AJC have been implemented. DPS conducted training for the Holders of Record. On January 22nd the program was moved into production in limited format (Holders of Record being able to bring up the electronic orders). DPS has stated that full functionality could be attained within 60-90 days. In addition to the query capabilities they now have, full functionality means the capability to update the LPOR record and acceptance of the record for submission to NCIC. Over 1 million queries (including protective order, license plate or wanted person queries) have been made since January 22. Of those, 2000 were direct queries against protective orders.

8. PRIORITY OF OFFENDER PAYMENTS IN LIMITED JURISDICTION COURTS

Ms. Debby Finkel (AOC) withdrew this item from the agenda.

9. COT UPDATE -STANDING REPORT

Mr. Karl Heckart provided the members of the committee with updated information regarding:

- The future of AZTEC
 - technological issues
- COT Plans

- identified packages that may suit limited jurisdiction courts' needs.
- no packages identified for general jurisdiction court.
- the Court Automation Coordinating Committee of COT will be seeking experts (20 teams) to set out the specific business requirements for systems analysis beginning with the limited jurisdiction courts and then moving on to general jurisdiction.
- a decision will be based upon three approaches
 - build custom
 - buy a system via RFP
 - borrow a system, specifically iCIS - good option for general jurisdiction - project plan and budget being developed - lacking a financial system
- Limited jurisdiction courts are in the process of working out their functional requirements it is anticipated that the specifications will be ready to base a decision on in late summer.
- iCIS in Pima County will come up in the fall and will then be reassessed.
- COT adopted technology standards to assist in technology sharing across the courts.
- New JOLTS will be constructed and implemented a piece at a time over the next 30 months.
- Adult Probation System designed for statewide use and currently only being used in Maricopa County due to funding issues. Should be rolled out over the next two years contingent upon the funding model.

10. FORMS/RULES SUBCOMMITTEE

Judge Anagnost provided the report for the Forms/Rules Subcommittee which included the following:

- Rule 1 - Boating While Intoxicated, Test Refusal - Included in the meeting materials was a draft petition to amend Rule 1 of Civil Rules of Traffic Procedure. Statutes have been amended to change the classification of the penalty for failure to submit to alcohol or drug testing after being cited for boating while intoxicated from a petty offense to a civil fine. The change in statute, effective September 18, 2003, will require that courts modify how they process a refusal under this section. Prior to this amendment, the Rules of Procedure in Traffic Cases and Boating Cases applied to such cases. In the absence of a criminal penalty, these rules no longer provide appropriate procedures for adjudicating these types of cases. Administrative Order (AO) 2003-99 was adopted as a temporary solution until suitable amendments to procedural rules can be prepared. The AO provides that the Rules of Procedure in Civil Traffic Violation Cases apply to these violations except that dispositions are not be reported to the Department of Transportation nor result in suspension of driving privileges, and cases shall be commenced within 60 days of the alleged violation or within 180 days if the alleged violation is under investigation in conjunction with an accident.

While a rule change has been drafted, the AOC has requested that the draft also include flying under the influence.

Criminal Rule 14 - In Rule 14.1(a) there is reference to a time line of 10 days for arraignment after a charging document is filed. Unless the defendant is in custody, this is an unrealistic expectation for limited jurisdiction courts, (especially in cite and release cases). Judge Anagnost asked if the rule should be revised to make the time line more realistic and consistent with actual practice, especially in regards to defendants who are not in custody. He then deferred to Mr. Greg Eades (AOC).

Mr. Eades, after researching federal and other state rules could find no reference to deadlines for arraignments; however, he did find federal and California rules that required the state's attorney to provide a report for a defendant held more than 10 days before arraignment. Mr. Eades also consulted with the City of Phoenix Prosecutor's Office and Maricopa County Public Defenders Office. The prosecutors did not have a problem extending the 10-day period. The public defender's only objection was the possibility of the rule change impacting the speedy trial requirement. With the 180-day speedy trial deadline being counted from the date of arraignment, it was agreed that the rule change would not impact speedy trials. Courts with local fast track rules that start from the date of arrest or the date the case is filed, will be impacted; by adding two weeks to the time frame. This may cause a problem for the prosecutors and defenders. As it stands now neither the Maricopa Public Defender or City of Phoenix Prosecutors office has any objections to this.

Other reasons to extend the 10-day rule:

1. FARE project notification process effectiveness (citation, project processing, notification mailing, payment receipt) in cases where the citation includes criminal and civil traffic offenses.
2. Cases are pushing the 10-day rule and as a result when the tenth day falls on a Saturday, Sunday or holiday case volumes increase on Fridays, Mondays, and the days before or the days after the holiday. If the time frame were longer the court would have greater flexibility.
3. Blood test results time frame.

Concerns:

1. The in-custody defendant's waiting period if the rule is extended.
2. Affect on Title 13 and superior court.

The split rule for in-custody and out-of-custody could resolve the issues of defendant's rights, city and county custody funding and Title 13.

Criminal Rule 26, Defendants Appearance at Sentencing

General analysis from Mr. Eades - Criminal Rule 26.9 requires a defendant's presence at sentencing. Criminal Appeals Rule 9(b) states if an appeal is denied a hearing can held to complete the sentencing but that can be done in absentia. Rule 9(b) is not consistent with the cases in Rule 26.9. It is clear that the court expects the defendant to be present at sentencing. The sentencing cannot occur until the defendant can be found and brought before the court. The Rule 26.9 mentions options in extenuating circumstances, but does not give examples. Mr. Eades came up with the following options:

- Deal with sentencing at time of conviction, so you do not have issues with the defendant not appearing for sentencing.
- Exempt out traffic cases if we can make an argument that might be extenuating circumstances where the defendant resides out of state and they are pleading by mail, it will be similar to arraignment and there is no requirement for personal appearance in traffic cases.
- Provide for some sort of waiver of the appearance requirement. Get that up front and allow the defendant to make a request for a personal appearance, and if they don't show up you have a waiver in hand that says you can proceed without them.

Fact scenarios that may not fit those analyzed:

- The defendant (lives in another state) is cited for DUI, tried, convicted, sentenced and appeals the conviction. While awaiting the decision on the appeal, the defendant is cited for a second DUI, tried, convicted, sentence and appeals. Both appeals are affirmed and the defendant refuses to return for post appeal re-imposition of sentence. Hence no record on either conviction.
- Person who enters into a plea agreement and asks for time for re-sentencing, defendant does not reappear for sentencing.
- Person driving on suspended license, takes a plea with judge setting sentencing out 30 days to give defendant time to have their license re-instated. Defendant chooses not to return for sentencing. The court has a conviction, but cannot impose a sentence.

The members asked Dan Carrion, representative from the public defenders office attending as a member of the public, to join them at the table for the discussion.

Rule 17 - Ms. Lynn Marcus, Professor -University of Arizona Law School, joined the meeting via telephone. Ms. Marcus discussed immigration consequences of criminal convictions and provided a handout to the members containing a sampling of state cases from California, Wisconsin, the District of Columbia and Florida. There are many cases interpreting the various immigration consequences

advisement rules. California, with a high number of immigrants and many years (over 25) with such a rule, has a rich body of relevant cases. Some common themes among the cases include: 1) how broadly the statute is interpreted; 2) under what circumstances the remedy is used; 3) the effect of the statute on the responsibilities of defense counsel; 4) the elements required for compliance with the state; 5) prejudice; and 6) time limits for application of the remedy.

In immigration law, the definition of aggravated felony, as implemented in 1988, included murder and drug and weapons trafficking. Over time it has been expanded to include sexual abuse of a minor, and a second possession of drugs. Other deportable offenses include misdemeanor possession of drugs, domestic violence, misdemeanor paraphernalia possession. Depending on the person's background, a misdemeanor conviction could mean automatic deportation. This affects not only persons who are undocumented, married to a U.S. citizen or have U.S. citizen children, but those who have been in the country with lawful status since they were one or two days old or those who came as refugees.

These consequences are so grave that there is a trend among states to require courts to advise the defendant of the impact of conviction on immigration status. The advisement should extend to misdemeanor convictions since they, too, have immigration consequences. ABA standards suggest that judges should advise defendants of potential immigration consequences.

Ms Marcus suggested:

- A state hotline be developed to advise attorneys and parties on a case by case basis
- Amend Rule 14.3 for a general advisement for defendants who may immigration consequences.
- Amend Rule 17.2 to advise people of three possible consequences that they could face by entering a plea.
 1. Not be admissible to the United States
 2. Refused US citizenship
 3. Risk being deported.

This provision would require that judges give this advisement to all people without asking the individual's immigration status.

Concerns:

LJC Records Retention Schedule limits the time a file is kept by a court. What is meant by "absent a record"? Ms Marcus explained that the presumption is rebuttable and if there isn't a record of the conviction, in general the person may have a difficulty showing they have immigration consequences from a conviction that can't be established. Under immigration law to establish a conviction the Department of Homeland Security has to present a certified conviction document

certified by the issuing court. Generally, whatever computerized document that was saved that could be used to establish a conviction, could be saved in a format that shows the three-pronged advisement was given.

Reciting the entire advisement exactly as stated in the quotation in the petition. Ms. Marcus replied the judge should make sure that the three consequences are conveyed, but that it would not be necessary to use the exact wording.

Advisement during legal status process. Ms. Marcus noted that most people having been in permanent residence since they were very young, presume they are citizens. Many people immigrate when they are young, so they will not know this information when they are 35. An advisement at this time would not be effective.

Judge Lester suggested that the defendant be provided with a written advisement which could be read and signed.

Judge Kennedy agreed with Judge Lester and continued that the blanket advisement may offend the population who has no immigration consequences that appear before the court and dilutes the basic essential constitutional issues that are being conveyed at that time. He also noted the possible affect on the victim to have a case set-aside because the record of the advisement has been destroyed in accordance with records retention requirement.

Judge Anagnost added many of the citations provided in the Sampling of State Cases refer to statute which is a very important point. The California statue includes legislative findings. Legislative intent is explicitly put in the California code about this advisement. This is a substantive right, that should be addressed by the legislature and not the courts.

Motion: Motion made by Judge Lester and seconded by Judge Kennedy **to file a comment as discussed.** Motion was passed unanimously. **LJC-04-02**

Judge Anagnost was asked to draft the comment.

11. LEGISLATIVE SUBCOMMITTEE UPDATE - 2004 LEGISLATION

Mr. David Benton and Ms. Page Gonzales presented the following 2004 legislative update:

- HB 2215 Small Claims Hearing Officers - provides compensation to small claims hearing officers, only if funded by the county and a compensation schedule is approved by the presiding judge. A part of the AJC Packet. Passed House

Judiciary and Public Institutions and Counties. Held in Rules due concerns with including Maricopa County. The bill will be amended on the floor.

- HB 2223 Forcible Entry and Detainer Appeal - amends statute to conform to court rule, directing cost bonds and supersedeas bonds in forcible entry and detainer appeals to be paid in justice courts during pendency of the appeal of superior court. Passed House, 1st Read in Senate.
- HB 2216 MVD Registration Holds - enhances the ability to collect court-owed debt by strengthening the Traffic Ticket Enforcement Assistance Program (TTEAP) through MVD. The expansion would include delinquencies in paying victim restitution, fines, surcharges, penalties or assessments. A part of the AJC Packet. Assigned to Judiciary and Transportation.
The committee previously voted to include this bill in the AJC Packet, with restriction to Title 28 violations only. AJC, being advised of LJC concerns, voted to include the proposal as written.
- HB2377 Homeowners' Association Penalties; Notice Hearing - justices of the peace to have jurisdiction for persons contesting penalties from homeowners associations. An amendment to cover court concerns (filing fees, burden of proof, etc.) will be proposed on the floor.
- HB2310 Animal Mistreat; Procedures - allows an animal officer to request a justice of the peace hearing to determine whether an animal is being mistreated. The hearing shall be set within 10 days of a request. Floor amendments to be added addressing court concerns.
- HB2128 Courts Fees; Small Claims - increases the statutory fee for small claims service by mail in justice courts from \$3 to \$8. Signed by the Governor February 13, 2004.
- HB2647 Operating Watercraft Under Influence - adds an additional \$500 civil penalty (not subject to surcharge) for person operating a watercraft who refused to take an alcohol or drug test. The failure, refusal or neglect of a judicial officer to comply constitutes misconduct in office and is grounds for removal from office. Assigned to three committees and being held in primary committee based, in part, upon the language in the previous sentence.
- HB2260 Court Clerks, Funds, Report; - Strike everything: For requests under an amount determined by the Supreme Court, if the Supreme Court approves a strategic plan for spending monies from the State Aid to the Courts Fund and from the Local Courts Assistance Fund, the clerk, in agreement with the presiding judge of the superior court, may spend those monies pursuant to the plan without further approval. Directs the Auditor General to conduct a performance audit of the Administrative Office of the Courts. Passed House Judiciary.
- HB2261 - Withdrawn based on an agreement between the Arizona Association of Superior Court Clerks and the court. That agreement is found in HB2260.
- SB1049 Justice of the peace; presiding - in counties with two or more justice courts, the justice of the peace within that county shall periodically chose from among themselves a presiding justice of the peace to assume the duties of the presiding justice of the peace during the absence or inability to act of the presiding

justice of the peace. Passed out of the Senate with a companion bill proposed in the House.

- SCR1009 Justice of the peace pro tempore; qualifications - resolution to add to the 2004 general election ballot of 2004 the question of amending the state constitution to provide justices of the peace pro tempore need not be members of the Bar. Passed out of the Senate with a companion bill proposed in the House.
- SB1076 Justice of the peace pro tem - provides it is not necessary to be admitted to the practice of law to be appointed to serve as a justice of the peace pro tempore with a companion bill proposed in the House.
- SB1196 Reporting Requirements for Domestic Violence. Bill was defeated in Senate Judiciary.

HB2019 - Ted Wilson (AOC) presented information on HB2019 at the request of the Executive Subcommittee. HB2019 passed in special session in December, dealt with Department of Corrections (DOC) funding and appropriations, effective March 13, 2004. The bill created a new assessment DUI/OUI violations (driving, boating and flying). The monies from the assessment will be deposited in the Prison Overcrowding Fund. These monies will be used by DOC for prison construction and operations and to establish a pilot program to treat and rehabilitate drug offenders. These funds are not subject to surcharges but they are eligible for the 5% Fill the Gap set aside, the waiver of these assessments is not allowed. The new Part V of the Surcharge Question and Answer Guide and an additional appendix are being developed and updated effective March 13, 2004. Courts should contact their local treasurer to establish ~~some~~ line items or account codes for this particular fund; the AOC has made updates to the Court Revenue Surveys. The state treasurer will be updating the monthly remittance form, which will be distributed to the affected courts over the internet (April 1st). The benchbook will be updated to reflect these changes. The criminal code sentencing chart has been updated and will be available soon. For AZTEC courts, the AOC will be making modifications to the codes and tables. Non-AZTEC courts are responsible to update their systems. A sample letter will be sent to affected courts in March. Mr. Wilson asked for comments on the letter. The comments are as follows.

- Clarifying the use of the word “fine” versus “assessment”
- Address the difference between 1st and 2nd offense assessments
- Address the question of the courts ability to apply part of the fine to restitution in light of not being able to waive the assessments
- Address the statute’s applicability to complaint issued on or after March 13, 2004.

12. DEFENSIVE DRIVING SUBCOMMITTEE

Nothing to report.

13. STRATEGIC PLANNING SUBCOMMITTEE

Nothing to report.

OTHER BUSINESS

14. CALL TO PUBLIC

Judge Traynor called to the public for comment. No comment was made.

15. ADJOURNMENT

Motion: The motion was made and seconded **to adjourn the meeting at 3:10 p.m.**
Passed unanimously. **LJC-04-03**

The next LJC meeting will be held:

Wednesday, May 19, 2004
State Courts Building
1501 W. Washington St.
Conference Rooms 119 A&B

Respectfully submitted,

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

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

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

Members Attending:

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

Absent Members: (excused)

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

Staff:

Ms. Susan Pickard

Presenters/Guests:

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

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

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

Ms. Valerie Tillman

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

REGULAR BUSINESS

1. CALL TO ORDER

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

2. APPROVAL OF FEBRUARY 25, 2004 MEETING MINUTES

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

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

INFORMATION/POTENTIAL ACTION ITEMS

3. PENDING AND PROPOSED RULES UPDATE

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

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

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

4. FARE PROGRAM UPDATE

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

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

5. COMMISSION ON TECHNOLOGY (COT) UPDATE

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

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

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

6. ADR GRANT UPDATE

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

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

7. LEGISLATIVE SUBCOMMITTEE UPDATE - 2004 LEGISLATION

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

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

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

8. FORMS/RULES SUBCOMMITTEE

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

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

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

9. DEFENSIVE DRIVING SUBCOMMITTEE

Bob Schaller presented an overview of the defensive driving schools.

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

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

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

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

10. STRATEGIC PLANNING SUBCOMMITTEE

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

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

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

11. CIVIL TRAFFIC PROCEDURE MANUAL

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

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

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

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

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

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

12. PRIORITY OF OFFENDER PAYMENTS IN LIMITED JURISDICTION COURTS

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

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

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

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

OTHER BUSINESS

13. CALL TO PUBLIC

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

14. ADJOURNMENT

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

The next LJC meeting will be held:

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

Respectfully submitted,

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

ARIZONA JUDICIAL COUNCIL=S
COMMITTEE ON LIMITED JURISDICTION COURTS

Arizona State Courts Building
Conference Room 119A & B
Phoenix, AZ 85007
September 29, 2004

Members Attending:

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

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

Absent Members: (excused)

Honorable John Kennedy
Mr. Richard Fincher

Honorable Linda Hale
Ms. Charlotte Holmes

Staff:

Ms. Susan Pickard

Ms. Valerie Tillman

Presenters/Guests:

Mr. Mohyeddin Abdulaziz
Mr. Tom Augherton
Ms. Kathy Barrett
Mr. David Benton
Ms. Janet Cornell
Mr. Mike DiMarco
Ms. Julie Dybas
Mr. Greg Eades
Honorable Elizabeth Finn

Ms. Page Gonzales
Ms. Jennifer Greene
Mr. Karl Heckart
Ms. Patience Huntwork
Mr. Bob James
Ms. Karen Kretschman
Ms. Debbie Olsen
Ms. Janet Scheiderer
Ms. Jamie Sears
Mr. Ted Wilson

REGULAR BUSINESS

1. CALL TO ORDER

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

Judge Traynor welcomed the new and returning members and added a special thank you to former members for their dedication and service noting their expertise will be missed.

Judge Traynor indicated the subcommittee sign-up list on the rear table asking for volunteers.

Members were asked to review the Membership List and forward their updates/changes to Ms. Pickard.

2. APPROVAL OF MAY 19, 2004, MEETING MINUTES

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

Motion: Motion was made by Ms. Harphant and seconded by Judge Riojas **to approve the minutes for the May 19, 2004 LJC meeting** as presented. Motion passed unanimously.

INFORMATION/POTENTIAL ACTION ITEMS

3. RULE PETITION

Ms. Patience Huntwork presented information on Pending and Proposed Rules.

The court=s rule agenda for September 28, is as follows:

- X R-00-0011- Rule 42, Arizona Rules of the Supreme Court - denied.
- \$ R-02-0012- Rule 53, Arizona Rules of Civil Procedure - Experimental Rule continued in effect until June 30, 2005.
- \$ R-02-0026 - Rule 6, Maricopa County Superior Court Local Rules -Experimental Rule continued in effect until June 30, 2005.
- \$ R-03-0027 - Rules 4.2 & 14.3, Rules of Criminal Procedure - A petition filed by Judge Anagnost proposes amending the time for appointing counsel for misdemeanor cases from the initial appearance, to the arraignment or to the pretrial conference - continued.
Second amendment - continued.
- \$ R-03-0028 - Rules 3.1, 3.2, 3.4, 26.12, 27.5 Arizona Rules of Criminal Procedure regarding warrants and summonses - continued.
Second amendment continued.
- \$ R-03-0032 - Judicial Canon 5A(1)(c), Rule 81, Rules of Supreme Court - denied.
- \$ R-04-0004 - Rules 45(a)(3) & 45(b), Rules of Civil Procedure - To allow attorneys to issue and sign subpoenas - continued.
- \$ R-04-0006 - Rule ER 1.13, Arizona Rules of Professional Conduct, Rule 42, Rules of The Supreme Court - adopted, effective December 1, 2004.
- \$ R-04-0010 - Rule 58(e), Arizona Rules of Civil Procedure - adopted, effective December 1, 2004.
- \$ R-04-0012 - Promulgating Rule 7.2, Rules of Civil Procedure - adding Rule 7.2 providing for pre-trial resolution of evidentiary issues through Motions in Limine - adopted, effective December 1, 2004.
- \$ R-04-0013 - Rules 32, 34, 45, & 64, Rules of The Supreme Court -adopted, effective December 1, 2004.
- \$ R-04-0015 - Rule 15.1, Rules of Criminal Procedure -adopted as modified, effective as of the date of signing, with a comment period to follow. Those who wish to comment should address whether implementation of the amendment in actual practice is furthering the amendment=s goals. Comments due April 30, 2005.
- \$ R-04-0017 - Rule 88(B), Arizona Rules of Juvenile Procedure - adopted, effective December 1, 2004.
- \$ R-04-0019 - Rule 10, Maricopa County Superior Court Local Rules - approved, effective November 1, 2004.
- \$ R-04-0020 - New Rule 29, Pima County Superior Court Local Rules -approved, effective November 1, 2004.
- \$ R-04-0022 - Rule 44, Arizona Rules of The Supreme Court - circulated for comment. Comments due November 24, 2004.
- \$ R-04-0023 - Rules 9 & 16, Judicial Conduct Rules - A petition to amend terminology and Rules 9 & 16 - circulated for comment. Comments are due November 24, 2004.
- \$ R-04-0024 - Rules 16 & 64.1, Arizona Rules of Civil Procedure - circulated for comment.

Comments are due November 24, 2004.

The next Rules Agenda will be January 18, 2005.

4. FINES, FEES, RESTITUTION ENFORCEMENT (FARE) PROGRAM

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

- \$ Completed the first year of the FARE Program with 3.1 million dollars collected.
 - \$ \$2.1 million from FARE Interim courts (Tucson and Show Low Municipal) and Flagstaff Municipal Court for the last seven months.
 - \$ \$1M primarily from the Maricopa Justice Courts and Wickenburg Municipal Court and their participation in the backlog collection process of FARE.
- \$ Pay-by-phone (IVR) has come on-line and is available in English and Spanish. Web-based payments are also now available in Spanish.

There have been more than 15,000 payments made in the past year, a majority of those being full payments. Most all cases had prior collection activity, and most date back to the mid 90s (1994 to 1999) with the oldest case from 1988.
- \$ FARE is averaging \$250,000/month or \$2.4 - 2.7M with the three courts in Interim FARE.
- \$ Pay-by-phone (IVR) collected about \$171,000 in the first eight months of operations. Almost \$88,000 or 51% of that has been collected in the last two and one half months.
- \$ FARE is maintaining the same 22% rate collected from out-of-state defendants.
- \$ On August 6, the TTEAP (Traffic Ticket and Enforcement Assistant Program) was brought on-line for Flagstaff cases. Seven hundred fifty registrations were put on hold. On the August 10, MVD (Motor Vehicle Division) sent out letters, and on August 13, FARE had the first registration release.
- \$ To date, 32 registration holds have been released. On October 8, Tucson will be adding 26,000 cases which are eligible for TTEAP.
- \$ Implementation is underway to bring more courts into the new Interim FARE backlog collection process. FARE has a tentative schedule for AZTEC courts by the end of the year.
- \$ The first phase of that will be the rollout with AZTEC 1.241 (AZTEC courts only). Training in 1.241 and FARE is a part of the deployment process. Two data integrity analysts will work with the courts to assist with data cleanup by identifying cases that may not be eligible for FARE under the current qualification criteria. Courts will receive two reports Aqualified and Adisqualified. The cases that qualify will immediately be eligible for FARE. Those cases that have problems will be eligible for corrections, when corrected then will go to FARE. Courts will be responsible for making corrections to the actual data. The third team member to come on board will be a programmer to develop scripts to help where possible make cases eligible for the FARE program.
- ⚡ Life cycle testing began in July for Full FARE; scheduled completion is anticipated in the first quarter of 2005. Phoenix Municipal Court is proving ground for the Full FARE model.

5. 2004 LEGISLATIVE COURT IMPACT REPORT

Ms. Karen Kretschman (AOC) gave an update on the Legislative Court Impact Report produced by

the Court Services Division.

§ The Legislative Court Impact Report is located on the web at:

<http://www.supreme.sp.state.az.us/courtserv/2004Legislation.htm>

§ The first part of the report is a general index of all the bills that are included in the report by topic and number. (Chapter and bill number). The second part of the report is the actual page-by-page summary of each bill that was chaptered in the last legislative session. This report is different from the report issued by AOC Legislative Officers which is submitted to courts in hard copy and contains a general synopsis of each bill that was passed. The Legislative Court Impact Report compares the analysis of the bill with how the bill will impact the courts and what is needed to implement it.

Ms. Kretschman also added an update on the Alternative Dispute Resolution Fund (ADR).

§ The ABA is sponsoring a conference from November 29 through December 3 at the Judicial Education Center, with speakers and well-know mediators from all over the country presenting a 40-hour basic mediation training. Judges will learn techniques, necessary steps and how to conduct meditations. In addition, judges will receive instructions on the appropriate ways and ideas to use mediation skills in the court.

§ The Education Services Division sent a scholarship notice to all judges regarding this conference with a registration form on the back. To apply for the scholarship, the registration form must be submitted to Karen Kretschman. Upon the award, the AOC will register the awardee and make payment to the American Bar Association (ABA)

§ Three \$800 registration scholarships have been awarded to justices of the peace for the week-long Mediation for Judges Conference (Judges Kennedy, Lundy and Roberts). Awardees are responsible for travel, hotel and meals, etc.

16. 2005-2010 ARIZONA JUDICIAL BRANCH STRATEGIC AGENDA

Mr. Tom Augherton, AOC Public Information Officer gave a brief presentation on Arizona Judicial Branch Strategic Agenda.

§ The first Judicial Branch Strategic Agenda was instituted by Chief Justice Thomas Zlaket. The five-year program known as "Justice 2002" was continued by Chief Justice Jones and became known as the "Justice for a Better Arizona" (2002 -2005). The third strategic agenda will cover the period of 2005-2010 period.

§ The purpose of the strategic agenda is to assist with budget preparation, and allocation of FTEs and court resources. The strategic agenda provides for a disciplined transition and continuity in planning between administrations, along with opportunities for input from throughout Judiciary.

§ On October 14, a request will be submitted to the Arizona Judicial Council (AJC) to adopt an executive summary review committee. This committee will be chaired by the Vice Chief Justice Ruth McGregor.

§ On December 10, all the comments submitted via e-mail to info@supreme.sp.state.az.us will be presented to the AJC.

§ From January through February 2005, the Executive Summary Review Committee will meet to review the input.

§ The strategic agenda will be submitted for adoption to the AJC on March 30. Upon adoption, the strategic agenda will become the operating document for the next five years.

- § Strategic agenda goals:
1. Protection Children, Families and Communities
 2. Providing Access to Swift and Fair Justice
 3. Connection with the Community
 4. Being Accountable
 5. Serving the Public by Improving the Legal Profession
- § Suggestions/comments may be submitted to info@supreme.sp.state.az.us concerning the 2005-2010 Judicial Branch Strategic Agenda.

7. ARIZONA JUDICIAL COUNCIL PROPOSED LEGISLATIVE PACKAGE

Mr. David Benton and Ms. Page Gonzales presented the proposed Arizona Judicial Council Legislative Package.

- § The new session of the state legislature will begin on the second Monday as prescribed in the state constitution, January 10, 2005. Election results have provided many new members of the legislature, new officers and leadership in the senate and the house of representatives and new Judiciary Committee chairs and members in both houses.
- § In the 2004 session, there were 37 bills proposing changes to the state judiciary, ranging from the minor to the substantial. The policy proposal, which if passed that could have had the most significant effect on the courts, was a bill that transferred the rule-making authority from the state judiciary and to the legislature.
- § The process in the Judiciary is very similar to the process at the state legislature. Legislative proposals are solicited by the AOC staff over the course of the summer and received in the early fall. As staff collects the proposals, they research and portion out the proposals to committees based on jurisdiction and areas of interests. Staff has received 26 proposals so far this year.

Votes indicated below are in the following order, Include, Do Not Include, Include as Option A and Include as Option B.

Consequences of Nonpayment of Fines, Fees, Restitution or Incarceration Costs

- § Would amend A.R.S. ' 13-810 to allow the court to require the defendant to show cause or the clerk of the magistrate or justice court may swear out a criminal complaint for a violation before the presiding judge of the court.
- § Additionally, this amendment would allow a judge to authorize the issuance of a summons or warrant for arrest for the defendant=s appearance. A criminal violation of this section is proposed to be a Class 2 Misdemeanor.

Note: The committee voted to recommend that the AJC NOT include this proposal in the Legislative Package. 0-15-0-0

Drug Court

- § Appropriates funds for drug court to provide treatment, staff and drug-testing services.
 - § The concern over where the funds would be appropriated from was noted.
 - § The committee provided an Option A to include language in the proposal to specify general funds and not an increase to or a new fee/fine/surcharge.
- Vote:** The committee voted to recommend that the AJC include Option A of this proposal in the Legislative Package. 2-0-13-0

Jury Service Reform

- § This proposal would make various revisions, both substantive and technical, to recently passed jury reform legislation addressing excuses and documentation.
 - § This proposal would allow the jury commissioner more discretion.
 - § The issues are age, transportation, jurisdiction, documentation, good cause.
- Vote:** The committee unanimously recommended the AJC include this proposal in the Legislative Package. 15-0-0-0

Extreme DUI Offender Monitoring

- § This proposal is a request for \$120,000 for Maricopa County=s adult probation department for monitoring bracelets for extreme DUI offenders.
 - § The committee supports the concept, but did not believe a budget issue for one county would be appropriate for the AJC Legislative Package.
- Vote:** The committee unanimously recommended the AJC NOT include this proposal in the Legislative Package. 0-15-0-0

Mental Health Examinations; Payment

- § This proposal would make defendants responsible for paying for mental health examination to determine competency unless the court finds the defendant indigent.
 - § The concerns raised about the proposal ranged from possible proceeding delays caused by nonpayment, the inadvertent exclusion of limited jurisdiction courts, defendant versus court payment arrangements and legislative history of the original mandate.
- Vote:** The committee recommended that the AJC include this proposal in the Legislative Package. 10-5-0-0

Judge Traynor informed the committee that during the legislative session, teleconferences are held every Friday at noon. The legislative officers present bills of interest to limited jurisdiction courts. Members are encouraged to attend the teleconferences to give input because of the limited time frame to respond to legislators.

Ms. Debra Hall added information about a legislative proposal regarding ASeizure and Forfeiture of Property.@ Currently, probation officers have the authority to search and seize a defendant=s property if they are on probation. If an item is found that violates the terms and conditions of probation it may be seized. A mechanism for the disposition of the seized

property that is legal nor used as evidence does not exist.

8. BUILDING A PAPERLESS COURT: E-FILING PLUS

Mr. Mohyeddin Abdulaziz, Director of Information Technology at the University of Arizona, discussed the advantages of e-filing and how it works. He is a member of the team that designed and developed the paperless filing and docketing system currently used in the Arizona Court of Appeals, Division Two.

9. ARIZONA CODE OF JUDICIAL ADMINISTRATION (ACJA): VICTIMS= RIGHTS/ RESTITUTION

Mr. Ted Wilson and Ms. Debbie Olsen (AOC) presented the proposed ACJA Victims= Rights Requirements for Probation Personnel and Administration of Victims= Rights.

§ The old Administrative Order is separated into two code sections; '6-103: Victims= Right Requirements for Probation Personnel and '5-204: Administration of Victims= Rights.

§ The two proposed sections of the Arizona Code of Judicial Administration are presented to more clearly outline requirements for victim services.

1. '6-103 focuses on the responsibilities of adult and juvenile probation personnel in preserving and protecting the rights of victims.
2. '5-204 focuses on the role and responsibilities of courts in preserving and protecting victims= rights in the justice process and processing of victims restitution.

§ Judge Traynor noted that '5-204(E) specifically applies to the superior court and suggested the addition of "in Superior Court" after "At the commencement of the criminal docket. . ." He continued that the statute specifies "superior court."

§ In both code sections, "victim" is defined using the definitions found in the Arizona Constitution and Arizona Revised Statutes. By including both definitions (A.R.S. '13-4210 regarding the Crime Victim Account which applies to felonies only), misdemeanor offenses are excluded from the definition. It was suggested that this be corrected by adding the definition for criminal offense from A.R.S. '13-4401.

Motion: Mr. Carrion moved and Ms. Harphant seconded the motion that the committee recommend approval of both code sections with suggested amendments. Passed unanimously.

10. COMMITTEE ON TECHNOLOGY

Mr. Karl Heckart provided members with an update on the Committee on Technology (COT).

§ At the last COT the members discussed a plan for next year. COT declared it was time for a new case management system and a need to reinvest in a system(s) for the courts. COT established a technology workgroup and last spring proposed technology standards, which were later adopted by AJC. The technology standards lead toward the rebuilding of the case management systems.

§ The iCIS system was taken to Pima County, and began the rewrite process into .net. The new general jurisdiction system is expected next summer. Pima County will

implement the system in criminal cases first.

§ Attention has been focused on the case management system currently being used by Tempe Municipal Courts as the new limited jurisdiction court system because of its functionality and highly productivity. The Tempe system was in desperate need of a replacement and they were going to invest more than a million dollars to rebuild their system. COT allocated about \$250,000 as state investment toward this effort. The system will be built on a concept called Acomponent technology@ which means rebuilding fairly standard parts that can be reused across systems.

§ Attention is also being given to the juvenile system (JOLTS) that has been around for more than 20 years with the same component parts.

§ Mr. Heckart explained that FARE tool kits are being prepared to assist courts with data analysis.

11. CIDVC FORMS WORKGROUP

Mr. Bob James and Judge Finn presented new protective order and ancillary forms for approval.

§ These forms were designed to address concerns raised by law enforcement officials, victim advocates and prosecutors regarding the enforceability of court orders.

§ The forms provided for the committee=s review were consistent with Rule 10(d), Rules of Civil Procedure, yet some remained as one-page forms.

§ On the Order of Protection specifically, one paragraph was split into two due to the interpretation of Brady stating Ait is possible to fashion an order that would not automatically invoke Brady after a hearing@ and Emerson which gives judicial discretion to invoke Brady.

§ The CIDVC Domestic Forms Workgroup reviewed the form to allow a judicial officer to make a lesser finding that would not invoke Brady.

§ Concerns of note: using lived together now or before rather than past or present live-in, ACommit No Crimes. [] If checked, . . .@ and notarization of the Acceptance of Service.

Motion: Ms. Harphant moved to recommend approval of the protective order and ancillary form to AJC. The motion was seconded by Ms. Coakley. Motion passed unanimously.

12. CODE STANDARDIZATION

Ms. Janet Scheiderer provided the members with an update on the Code Standardization Project.

§ Through the Commission on Technology, a general statewide agreement has been reached that the success of major initiatives in Arizona=s court for a range of automation projects, such as statistical reporting, case management reporting, public

- access, and sharing information with other government agencies is dependent on the consistency and quality of codes used for entry of data into the automated system.
- § Arizona has 183 courts, some courts that are recently forming in small municipalities, 145 courts are on AZTEC statewide case management system.
- § Not having standardized codes taxes Court Services Division staff with the responsibility of entering new charges and fines into the system at the end of each legislative session which can take days. If standardized codes were in place updates could be automated and take only a few hours.
- § The Commission on Technology has directed the Court Services Division to standardize the codes and business practices within Arizona=s courts. To that end a consultant, Greacen and Associates, was hired to work with a committee and users, general and limited jurisdictions. The committee consists of court administrators, caseflow managers, and clerks who on a regular basis work with the consultant to develop standardized codes.
- § The committee will be working with limited jurisdiction courts on financial codes for the next three months.
- § Letters were sent to members of the Limited Jurisdiction Courts Committee to recruit members to work on the Code Standardization Committee. The first is a meeting on Monday (October 4 with a follow-up meeting on October 26).
- § The new codes set will be used, not in the current system, but with the new case management systems.
- § A governance structure is being established and will determine when new codes can be developed.

13. LIMITED JURISDICTION LEGAL WORKGROUP

Ms. Julie Dybas (AOC) reported on the limited jurisdiction legal workgroup.

- § The purpose of the Limited Jurisdiction Legal Workgroup is to provide legal, procedural or administrative analysis and advice to the Court Services Division (CSD) when operational and legal issues arise.
- § Types of issues that are referred to the legal workgroup are those which cannot be resolved through legal analysis because the law is unclear, involve conflicting practices throughout the state, cannot be resolved through legal analysis because a rule or statute change is needed, or involve significant inconsistencies between the law and practice in many courts.
- § Issues may also be referred to the workgroup through the Court Answer Line (CAL) questions and the Judicial Hotline.
- § The legal workgroup meets monthly and consists of staff attorneys, CSD managers and court specialists. This workgroup has representation from municipal and justice courts, primarily through judges and administrators.
- § Additionally, the CSD - Court Operations Unit conducts court operational reviews throughout the state.
- § The 2004 ACommon Operational Review Findings@ can be found on the AJIN web

site. The purpose is to make courts aware of issues that are being found in other courts so that they may take the findings into consideration for a self-review. The AJIN link to the findings is:

<http://AJIN/ctserv/counit/2004CommonFind.htm>

14. COMMITTEE ON KEEPING THE RECORD

Judge Antonio Riojas provided the members with an update on the Committee on Keeping the Record.

§ The Committee was established by the supreme court to establish standards for the implementing digital recording equipment and any future technology in the courtroom.

§ The standards which the committee is identifying are equipment, transcripts, formatting and training.

OTHER BUSINESS

15. GOOD OF THE ORDER/CALL TO THE PUBLIC

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

16. ADJOURNMENT

Motion: The motion was made and seconded **to adjourn the meeting at 3:05 p.m.** Passed unanimously.

17. NEXT MEETING

The next LJC meeting will be held:

Wednesday, November 17, 2004

State Courts Building

1501 W. Washington St.

Conference Rooms 119 A&B

Respectfully submitted,

Ms. Susan Pickard

Staff to the Committee on Limited Jurisdiction Courts

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

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

Members Attending:

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

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

Absent Members: (excused)

Honorable Linda Hale

Staff:

Ms. Susan Pickard

Ms. Valerie Tillman

Presenters/Guests:

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

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

REGULAR BUSINESS

1. CALL TO ORDER

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

2. APPROVAL OF SEPTEMBER 29, 2004, MEETING MINUTES

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

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

INFORMATION/POTENTIAL ACTION ITEMS

3. FORMS/RULES SUBCOMMITTEE UPDATE

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

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

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

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

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

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

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

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

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

4. AJB STRATEGIC AGENDA

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

The subcommittee raised the following questions and concerns:

Goal 1-A: Abused and Neglected Children

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

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

Goal 1-B: Victims of Domestic Violence

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

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

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

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

Goal 2: Providing Access to Swift, Fair Justice

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

Goal 2-A: Fairness in the Judicial System

First Initiative, Fourth Bullet - “Continue efforts to address the over-representation of minority youth in the justice system through the “Building Blocks” initiative.” The subcommittee is unaware of the “Building Block” initiative and without that understanding, questions the court’s role in reducing an over-representation by any particular group. If, in fact, a member of the over-represented group has been charged with committing a crime,

the court's hands are somewhat tied in how they are to effectively process the case.

Goal 2-D: User Friendly Courts

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

Goal 2-E: Continuance Improvement

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

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

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

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

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

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

Goal 4: Being Accountable

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

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

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

Goal 4-A: Probation Supervision and Probation Employee Safety

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

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

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

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

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

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

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

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

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

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

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

Life cycle testing which began in July 2004 continues for Full FARE with the City of Phoenix; scheduled completion is the first quarter of 2005 (March 18). Chandler Municipal Court has also entered into life cycle testing. Their data was transmitted to bring backlogs into delinquency processing which has the Full FARE functionality of post disposition

processing. The City of Phoenix backlog will come into FARE two months after Full FARE is implemented, allowing Full FARE to stabilize before interjecting backlogs into the system. The City of Phoenix, the AOC, and ACS continue to devote the resources necessary to accomplish this task.

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

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

6. LEGISLATIVE UPDATE

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

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

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

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

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

7. DOMESTIC VIOLENCE FORMS UPDATE

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

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

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

The 'Model Template':

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

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

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

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

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

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

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

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

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

9. COURT ACCESS TO POLICE RECORDS/UNIFORM BOND SCHEDULES

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

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

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

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

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

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

Judge Laurin opined two separate issues; an appearance issue and the ex parte issue. Ex parte is not an issue if all persons know the MVD database is being used and the court discloses it as the basis for the information. A court can go online, review the MVD record and report to both parties that they are considering the information obtained there. This

allows both parties to comment. The Canon and ex parte issues are resolved.

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

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

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

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

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

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

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

Judge Anguilo asked which takes precedence, the Administrative Order or the statute if a presiding judge of a municipal court chooses to establish a bond schedule that is

significantly different from the county uniform bond schedule. In Pima County, there are presiding magistrates that would believe the statute authorizes the magistrate to establish a bond schedule; they believe the statute trumps the administrative order.

10. 2005 MEETING DATES

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

OTHER BUSINESS

11. GOOD OF THE ORDER/CALL TO THE PUBLIC

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

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

12. NEXT MEETING

The next LJC meeting will be held:

Wednesday, March 2, 2005

State Courts Building

1501 W. Washington St.

Conference Rooms 119 A&B

13. ADJOURNMENT

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

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