

**COMMITTEE ON LIMITED JURISDICTION COURTS
MINUTES**

Wednesday, February 7, 2007

10:00 am to 3:00 pm

ASU Mercado

502 East Monroe, Conference Room C-230

Phoenix, AZ 85004

MEMBERS PRESENT:

Honorable R. Michael Traynor
Honorable James P. Angiulo
Honorable Ted W. Armbruster
Mr. C. Daniel Carrion
Honorable Thomas L. Chotena
Ms. Faye Coakley
Honorable Timothy Dickerson
Honorable Sam Goodman

Ms. Joan Harphant
Honorable Jeffrey A. Klotz
Honorable Nicole Laurin
Honorable Dorothy Little
Honorable Kathy McCoy
Ms. Marla Randall
Mr. James R. Scorza
Honorable J. Matias Tafoya

MEMBERS ABSENT:

Mr. Richard D. Fincher
Ms. Debra Hall

Honorable Marie A. Lorona

PRESENTERS / GUESTS:

Mr. Brett Watson
Ms. J.L. Doyle
Ms. Leila Gholam
Mr. Paul Julien
Ms. Cathy Clarich

Ms. Janet Cornell
Ms. Julie Dybas
Mr. David Withey
Honorable Kevin Kane
Ms. Fran Johansen

STAFF:

Ms. Susan Pickard

Ms. Kim Ruiz

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the February 7, 2007, meeting of the Committee on Limited Jurisdiction Courts was called to order by Judge R. Michael Traynor, Chair, at 10:03 am.

Judge Traynor made the following announcements:

- Updates from Karl Heckart (COT) and Mike DiMarco (FARE) are provided in the meeting materials.
- Welcome, new member Joy Dillehay, Flagstaff Justice Court Depute Administrator.

B. Approval of November 29, 2006 Minutes

Minutes for the November 29, 2006, Committee on Limited Jurisdiction Courts meeting were presented for approval. No discussion.

MOTION: Approve the November 29, 2006 meeting minutes as presented. Passed unanimously LJC-07-001

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. ACJA § 6-114: Committee on Probation

Brett Watson and JL Doyle presented the proposed changes to ACJA § 6-114 specifying who should be standing members of the Committee on Probation (COP). Proposed standing members include:

- Director or designee of Federal Probation, Arizona District
- Director or designee of the Arizona Department of Corrections
- Director or designee of the Arizona Department of Juvenile Corrections
- Two line officers, one juvenile, one adult

COP approved the amendments to the code with the exception of Page 2, Number 8; they would like to strike the requirement of two line officers, because the departments are already represented.

MOTION: Approve ACJA § 6-114 as presented to the Committee with the mentioned amendment to Page two, Number eight. Passed unanimously LJC-007-002

B. Legislative Update

Leila Gholam reminded the Committee members of the importance of their participation in the Limited Jurisdiction Court Friday Legislative Teleconferences at 11:45 a.m. All the bills that impact limited jurisdiction courts are reviewed and discussed on the phone calls. If members are not receiving the email reminders they should contact Susan Pickard. Since there is a full update of all bills on Friday, the update today addresses only a few.

The following two bills have changed since Friday:

- The concerns that were raised regarding the Failure to pay Civil Penalty legislation were addressed in an amendment that passed Monday, February 6.
- The Extreme DUI Sentencing bill sponsored by Senator Waring that requires mandatory sentencing for extreme DUIs, was amended on the floor and Senator Waring brought it back in its original form as a striker bill to SB1252.

Leila informed the members that the general rule is that a bill that does not get a hearing in the originating house is considered dead; although there are many ways they can be brought back. A “striker” bill is one way to bring a bill back to life. If a bill dies or is amended in a way the sponsor doesn’t agree, they can strike the language of an active bill and replace it with their bill. The bills do not need to be associated in any way. The new bill maintains the name and number of the struck language until it passes to the other legislative body.

Committee comments:

- Does the Underage Drinking bill specify the type of program that must be completed?
Leila advised that it was purposefully left general.
- What is the objective for the changes proposed in HB2361; Landlord tenant; forcible detainer actions? The changes seem to be counterproductive to the intent of the landlord tenant act.
The AOC is currently arranging a meeting with the sponsor and proponents of the bill to address concerns with the procedural aspects of the bill. Leila noted that if anyone has recommendations for changes regarding the procedural aspect to contact her or Jerry.
- What is the status of the language “reasonable evidence to the court” in subsection F in HB2326? “Reasonable” is not a legal term the judges are comfortable with.
- A member commented that the allowance in HB2442 Photo enforcement, to attend traffic school three times in a 24 month period is very excessive. It seems that it was designed to achieve something other than driver education.

It is anticipated there will be a striker to another bill that is worse because it allows attending traffic school three times in a 24 month period for any traffic ticket. The League of Cities is opposing the bill.

- In SB1247, does DNA testing pertain to all people charged with misdemeanors?
Yes, it does apply to anyone charged with a misdemeanor. Due to the huge fiscal impact on the courts, it will most likely not move forward.
- Judge Traynor added that there is an additional burden to the courts, because it becomes the courts' responsibility to the test and track defendants to ensure that the testing was completed.

C. Judicial Education Programs for LJC Judges

Paul Julien reported on the Judicial Education Programs that have been developed by the COJET Committee. The 2007 catalogue of scheduled trainings, orientations, broadcasts and academies were distributed to the members.

Paul introduced Kirk Smith who is a Specialist with Judicial Education section of the Education Services Division.

Paul described the following Judicial Education Programs:

- New Judge Training - pairs each new judge with a mentor. The mentors teach the new judges how to find information.
- Judicial Training Academies are offered twice per year for limited jurisdiction judges. The format is generally an open discussion about the current issues that concludes with Best Practices.
- The General Jurisdiction training is being amended to be structured similar to the Limited Jurisdiction training.

Committee comments:

- All judges should attend or participate in these programs for refresher training.
- Members are encouraged to attend the Academies which go more in depth into Rules and provide hands-on lessons.

D. Retention of Hard Copy Documents

Cathy Clarich and Janet Cornell presented the policy challenges that have arisen in Scottsdale City Court since implementing their document management system, Hummingbird, in October 2006.

The primary policies and procedures they are seeking advice and guidance on are:

- Records access
- Hardcopy records retention

Cathy Clarich summarized the following areas of question for LJC to consider:

- The Clerk of Superior Court in Maricopa County sought an AO granting the authority to destroy original documents if they are electronically imaged for their pilot program. Doesn't the authority already exist to destroy the original documents, pursuant to *Supreme Court Rules* 94.G and 29.D and the retention schedules? Scottsdale has moved from taking the document into possession, creating the electronic image and storing, to imaging upon receipt and returning the original document to the filer.
- Purge policies with regard to the information retained in case management systems.
- Retention issues related to the data that remains within the Data Warehouse that the courts no longer retain.
- E-signature: Do any rules require that documents be signed pen to paper?

Committee comments:

- Electronic signatures have not been an issue with the Maricopa e-filing program. They retain the minute entry with the actual sentencing and the defendant's thumb print. Maricopa has defined "signature" as follows in their local A.O. 2005-066:

6. Signature

The user name when used in conjunction with the personally selected password shall constitute a signature of the registered participant on documents submitted to the Court or by the Court. In order to ensure the intent of the filing participant, the signature line on an electronically filed document will bear the printed name of the filing participant preceded by the symbol "/s/". Electronic documents may be signed by Judicial Officers via the use of a printed signature preceded by the /s/ symbol or via the use of the e-filing application judicial signature stamp. The e-filing application judicial signature stamp will be merged with the electronic document and shall be visible when the document is printed and viewed electronically. Documents requiring the signature of the defendant or other identifying indicators, such as thumbprints on sentencing orders, shall be filed with the court in paper format, scanned, and maintained consistent with applicable record retention schedules and archival rules.

- The goal is to move toward paperless courts by imaging the document upon receipt then returning the original to the filer or immediately shredding it so we only retain the electronic image.
- The general consensus was that it would most likely involve rule changes and possibly judicial codes. Any changes need to have terminology that allows flexibility in light of the various courts that are looking into the electronic filing and the different ways they may approach it.
- Greg Eades informed the Committee that there are current inconsistencies within the rules. The group that studied this issue in the 90's thought they settled the issue of electronic copies, but they didn't go far enough to make changes throughout the rules clear. It is going to require more discussion and possibly the creation of a subcommittee from this Committee to fully develop it.
- Since the limited jurisdiction courts are not courts of record and have shorter retention schedules there is more flexibility in this area and LJC needs to be the motivating force.
- A subcommittee should be developed from this Committee to study the issue and collaborate with the e-court subcommittee of COT with regard to e-signature so work is not duplicated.
- The new LJC subcommittee should also collaborate with the COT e-Court Subcommittee, Limited Jurisdiction Sub team that is working on forms and electronic filing.
- Jennifer Greene should also be informed of the focus of the subcommittee with regard to her work with Rule 123.

Some opposition and challenges to electronic imaging are:

- Opposition to change.
- When an electronic image is created it creates a whole new record which is no longer the original.
- There are also access issues when the software that is used to create the electronic image becomes obsolete you can no longer access the document. Also updates to software can change the original image.

MOTION: Establish a subcommittee of Committee on Limited Jurisdiction Courts to discuss electronic filing issues and the role of limited jurisdiction courts. Passed unanimously LJC-07-003

Judge Traynor asked members to bring forth names of people from their courts that should be on the subcommittee. Cathy Clarich requested to be on the subcommittee. Courts including Scottsdale, Mesa, Tucson and Chandler that have implemented or plan to implement e-Citation, photo enforcement or e-filing programs should have representatives on the subcommittee.

E. Limited Jurisdiction Criminal Procedure Manual (Julie Dybas)

Julie Dybas presented the plans for developing the Limited Jurisdiction Criminal Procedure Manual. The intent is to cover general business processes and procedures. The AOC is looking for volunteers from the court community, with the time and support from their court to be involved in the entire process. It will involve a lot of time and work for those involved, so it is important for volunteers to have the support of their court administrator and judge. There is a new website developed to:

- explain the objective of the Manual;
- enlist volunteers through an "Interest Form"
- capture ideas on the topics that should be included through the use of a Survey:

<http://www.supreme.state.az.us/courtserv/LJCrimProcMan/default.htm> or
<http://supreme22/ctserv/LJCrimProcMan/default.htm>

The concept for development is to create two teams as follows:

- Team 1: assigned sections to draft (non judicial staff)
- Team 2: review process (judicial and non judicial staff)

Sharleen Decker is the AOC court specialist overseeing the project. The anticipated timeline is:

- 1 month from now-first meeting with all the participants.
- End of April-Assignments going out to participants
- May 2008-Manual completed.
- 2 retreats that will be ½ to full days and one or two other meetings.

Committee comments:

- There is currently a project underway to standardize court processes. Will the standardized processes from that project be incorporated into this manual?
Julie advised that the teams will determine if that is the direction for the manual.

F. ACJA § 1-801: State, Tribal and Federal Court Forum

David Withey presented the proposed ACJA § 1-801. There are no substantive changes. The establishing Administrative Order is simply being codified. This action does not require formal action from this Committee. The Code Section explains and clarifies the following:

- The purpose of the Forum,
- Forum membership, and
- Responsibilities of the Forum.

Comments:

- Paul Julien contributed that tribal court judges have always asked which judicial training orientation they should attend, the judicial conference with continuing education or the new judge orientation although their scope is different from limited jurisdiction training. David Withey will present the issue to the members of the forum for input.
- The process is that if there is no tribal or federal case law, they turn to state law. For this reason it is important for tribal court judges to attend the state judicial trainings.
- It is also beneficial to have them participate in the trainings to provide a time for the tribal court and state judges to work together and communicate.

G. Task Force Report on Legal Advice-Legal Information Guidelines

ACJA § 1-303: Code of Conduct for Judicial Employees

David Withey presented the proposed changes and codification of the existing Administrative Order outlining conduct of judicial employees. Everything in the Canon remains the same except for Canon 3E. The Task Force is asking the committee for a recommendation for approval. The new language primarily changes the commentary to code.

Judge Kevin Kane, Task Force Chair, added that feedback from the November and December LJC, COSC, PJs and AJC meetings were incorporated.

- LJC had requested additional information be provided regarding options for litigants that cannot afford representation. The Task Force incorporated a new section to the training that covers Legal Aid and other agencies.
- The Task Force also developed a resource sheet that each court can customize and distribute to litigants that can't afford representation.
- The Task Force made the recommendation in the Final Report to AJC to have the signage and handout information translated and provided in both English and Spanish. The final decision and authority will be with AJC and the Arizona Supreme Court.

Fran Johansen, Task Force Staff, reviewed the language drafted for 3.E of the Canon.

- The nine points of Canon 3.E correspond with the nine points of the court staff training.
- It was agreed to use "shall" because "may was too permissive and the "shall" was qualified by the resources and policy of each court.
- Similar language was added to the signage.
- The information and training is scheduled to rollout March 27 in a 3-hour broadcast where the manual, glossary and Question & Response Handbook will be provided and reviewed. A disk of the broadcast materials will also be available.
- The training and materials will be incorporated into judicial staff conferences.
- Some courts have requested direct training for their courts, so we are developing a "Train the Trainer" program.
- The Task Force is not requesting that AJC establish this program as a separate core requirement of COJET. Instead, this material will become a part of the Communication core requirement.

Committee Questions and Comments:

- The members recommended that the use of "shall" be re-evaluated possible changing it to "should" which is legally acceptable language.
- The qualifier added to the bottom of the signage seems more like a disclaimer. The language should be changed to say, "...to the best of our ability." If someone doesn't know something they should at least be able to direct them somewhere or to someone who does know.
- The qualifier also seems to open the door to customers complaining that the courts need more knowledgeable and experienced staff.
- The language of the qualifier should be consistent with the canon language, "...employee responsibilities and knowledge..."

MOTION: Recommend AJC approval of the Final Report and Code of Conduct for Judicial Employees 3E in concept. Passed unanimously LJC-07-004

H. Strategic Planning

James Scorza presented the proposed Strategic Agenda developed by the Strategic Planning Subcommittee. Changes have been made since it was presented in June 2006 to coordinate with the goals of "Good to Great" (G2G).

The following charges of the Committee on Limited Jurisdiction Courts were the guiding principles:

- To identify the needs and study the internal operation of limited jurisdiction courts,
- To analyze a plan for future developments, and
- To recommend uniform administrative policies and procedures.

James reviewed the restructured goals and asked the committee to consider the following questions when going through the goals:

- Are the identified objectives too specific or not specific enough?
- Did we identify the right areas that fall within this goal?
- Is this what we are about?

G2G Goal 1: Providing Access to Swift, Fair Justice

LJC Objectives

- Assist courts to improve business processes and/or case processing.
- Assist courts to improve technology initiatives and programs.

LJC Agenda Items

- Identify common business processes among limited jurisdiction courts and recommend standards, goals or best practices (e.g., to include such areas as data entry, scheduling, collections, automation, use of forms, notices, etc.).
- Identify successful models for limited jurisdiction court organization and operation which can serve as a guideline to limited jurisdiction courts.
- Review and evaluate existing case processing time standards and recommend improvements where appropriate.

Committee Comment:

- The initiatives in G2G Goal 1 encompass the entire spectrum of our charge and vision.
- The end of the opening paragraph should be changed to:
“...technology to efficiently process and resolve cases in a fair and timely manner.”

G2G Goal 2: Protection Children, Families and Communities

LJC Objectives

- Focus on procedures, processes and forms as they apply to domestic violence and the court’s responsibility.

LJC Agenda Items

- Assist in the review and distribution of information concerning recent changes in the court’s responsibility for processing protective orders.
- Review and evaluate results from the DUI Pilot Program and promote those new processes or standards deemed to be both successful and applicable to other limited jurisdiction courts. (Subsequently moved to Goal 1)

Committee Comment:

- Need to consider providing updated and accurate resource information to victims of domestic violence.
- There are other crimes that affect families like DUI, so we should generalize this objective more to capture all aspects of protecting families.
- Another bullet should be added to review the progress of the pilot DUI court.
- It was agreed to:
 - change the last part of the sentence under the goal to:
“...effectively respond to domestic violence and other criminal issues brought before the courts:”

- and change bullet to the goal to:
“Assist in the review and distribution of information concerning the court’s responsibility for processing protective orders and other criminal offenses of concern to the community.”

G2G Goal 3: Being Accountable

LJC Objective

- Assist limited jurisdiction courts establish performance and operational standards and measures.

LJC Agenda Items

- Identify recommended standards for measuring and reporting caseflow management data (benchmarks for what should be reported and how it should be measured).
 - To ensure consistency in reporting data among courts
 - To improve the accuracy of statistical information
 - To support refinement of CourTools
 - To allow for more timely (real time) management statistics
- Identify recommended standards for measuring and reporting financial/collection information.
- Identify recommended standards for measuring and reporting performance of other common functions and business processes, allowing information to be compared among limited jurisdiction courts.

Committee comment

- Justices of the Peace should have some level of review process similar to other judges.
- Justices of the Peace (JP) are elected officials which is why the current judicial review process does not apply. The same is true for superior court judges that are elected.
- This issue might be better served under goal five.
- This committee does not have the authority to set-up a statewide performance process, so maybe this objective should go to The Statewide Association that can better implement it. Our recommendation on this issue would be for a subcommittee to simply research the issue. AJC can decide if a statewide performance process should be developed and who should develop it.
- What would we accomplish by putting an elected official through a performance review? It would let us know what type of training is needed.
- This is not just a JP issue. It should also include magistrates, because they are only reviewed by the city council. It should be a requirement of all limited jurisdiction courts.
- The Committee should develop a subcommittee to study and review methods to improve judicial performance and best business practices.

The following are JP peer reviews currently in place:

- Maricopa professional standards committee
- Tucson City Court review process (every 2 years)
- Phoenix Municipal Court review process (every 4 years)
- Scottsdale Municipal Court review process (upon reappointment)

MOTION: Add another bullet to Goal 3 of the Strategic Agenda to study and review methods to improve judicial improvement for limited jurisdiction courts. Motion passed unanimously. LJC-07-005

G2G Goal 4: Improving Communication and Cooperation With the community, Other Branches of Government, and Within the Judicial Branch

LJC Objective

- Improve communication and cooperation with the community.

LJC Agenda Items

- Review and provide input into the recommended topics of interest for New Judge Orientation as well as upcoming Judicial Conferences and other continuing judicial education programs.
- Implement more effective ways to disseminate information to the courts that the Committee represents and to regularly receive input/feedback from the limited jurisdiction court community.
- Increase awareness of available AOC information and services to limited jurisdiction courts.
- Utilize the LJC (Supreme Court) website to keep limited jurisdiction courts informed of recommended “best practices” for business processes.
- Distribute summary information about implementation of technology that has improved business operations in limited jurisdiction courts, along with any contact information.

No discussion

G2G Goal 5: Serving the Public by Improving the Legal Profession

LJC Objective

- Improve the legal profession by examination of existing rules governing legal practices and procedures.

LJC Agenda Item

- Continue the role of the Rules Subcommittee to identify needed changes to rules.
- Identify amendments and/or statutes needed to improve the timeliness of case resolution or reduce the cost of litigation.

No discussion

Subcommittee Structure

The members discussed and restructured the LJC subcommittees to align more closely with approved Motions and the Strategic Agenda. Additionally, members selected the subcommittee on which they would like to participate.

Standing

Legislative

Meets at the beginning of the legislative session - all LJC members are invited to participate

Judge R. Michael Traynor (Chair)

Executive

Will assume the responsibility for carrying out the adopted Strategic Agenda

Judge R. Michael Traynor (Chair)

Chairs of subcommittees

Rules/Forms

Hon. J. Matias Tafoya (Chair)
C. Daniel Carrion
Hon. Timothy Dickerson
Hon. Jeffrey A. Klotz

Implementation

Collect and assess new processes and procedures and recommend best practices for distribution to all limited jurisdiction courts.

James R. Scorza (Co-chair)
Joan Harphant (Co-chair)
Hon. Thomas L. Chotena
Hon. Kathy McCoy
Faye Coakley
Hon. Jeffrey A. Klotz

Ad hoc

Electronic Documents

Chair not yet selected
Daniel Carrion
Cathy Clarich

Judicial Performance

Hon. James Angiulo (Chair)
Hon. Sam Goodman
Hon. Dorothy Little
Hon. J. Matias Tafoya
Marla Randall
Hon. Ted Armbruster

Defensive Driving

Will be reconstituted as needed

Strategic Planning

Will be reconstituted as needed

MOTION: Adopt the amended Strategic Agenda. Passed unanimously LJC-06-038

III. OTHER BUSINESS

Judge Tafoya provided a Rule/Forms Subcommittee update. At the November meeting, Staff provided the members a 2007 Rule Change Petition Summary developed by the Staff Attorney's Office. At that time the committee asked the subcommittee to review the Rule Change Petitions, indicate which Petitions may impact limited jurisdiction courts, and recommend whether LJC should submit comment.

- Judge Dickerson recommended that LJC submit comment in support of **R-06-0016**, stating that it conforms to the existing practice and makes it more efficient.

Committee comment:

- This rule change is fine when it is a pro se litigant, but it is a real problem when they have an attorney and the defendant is in one location and the attorney in another location.
- The attorney can object if they feel they haven't had enough confidential communication with their client.

- The forms in **R-03-0029** were all updated and will be substantively required, with allowance for variation in formatting. There will be a financial impact to courts to update their forms.

Committee comment:

- This impacts Tucson because the forms have always been suggested forms before and now they are mandated (in language).

Because the Rule Change Petitions were not listed on the agenda for this meeting, discussion/vote will be tabled until a future meeting. Members agreed that a teleconference meeting should be scheduled to discuss these issues and vote.

The meeting will be in schedule for early March to allow time to draft committee comment by the May deadline.

Judge Traynor updated the committee that the Warrant Rules Subcommittee has finalized everything except looking at a draft model.

A. Next Meeting:

Teleconference:

Early March

Wednesday, May 23, 2007

Location: State Courts Building

Conference Room 119 A/B

10:00 a.m. – 4:00 p.m.

B. Good of the Order / Call to the Public

No response.

IV. ADJOURNMENT

The meeting adjourned at 2:22 pm.

Respectfully submitted,

Susan Pickard

LJC Staff

**COMMITTEE ON LIMITED JURISDICTION COURTS
MINUTES**

Thursday, March 8, 2007
9:00 to 11:00 am

TELECONFERENCE MEETING

State Courts Building
1501 W. Washington St., Conference Room 345B
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable R. Michael Traynor

Honorable J. Matias Tafoya

MEMBERS ON PHONE:

Honorable James P. Angiulo

Honorable Timothy Dickerson

Honorable Ted W. Armbruster

Honorable Jeffrey A. Klotz

Mr. C. Daniel Carrion

Honorable Dorothy Little

Honorable Thomas L. Chotena

Honorable Kathy McCoy

MEMBERS ABSENT:

Ms. Faye Coakley

Honorable Nicole Laurin

Ms. Joy Dillehay

Honorable Marie A. Lorona

Honorable Sam Goodman

Ms. Marla Randall

Ms. Debra Hall

Mr. James Scorza

Ms. Joan Harphant

PRESENTERS / GUESTS:

Honorable Elizabeth Finn

Ms. Patience Huntwork

STAFF:

Ms. Susan Pickard

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the March 8, 2007, meeting of the Committee on Limited Jurisdiction Courts was called to order by Judge R. Michael Traynor, Chair, at 9:20 am.

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

R-03-0029: Arizona Rules of Criminal Procedure - Revision of all Criminal Forms

Judge Elizabeth Finn and Patience Huntwork joined the discussion. Ms. Huntwork is the Supreme Court Chief Staff Attorney and a member of the Supreme Court Criminal Forms Review Committee established 3-years ago to revise the criminal forms. Not only do these forms include changes brought about by the "Ring" opinion and legislation, but also best practices.

Committee Concerns:

1. Language of the concluding paragraph.
 - a. Definitions for "non-substantive", "local variations" and "adaptations"
 - b. Mandating the use of the forms
 - c. Possible prosecutor policy changes regarding establishing priors if the forms are mandated
 - d. Rule of law versus best practices in mandated forms
 - e. Culture versus rule of law
2. Usability of the forms in limited jurisdiction courts
 - a. Current rule change timeline and form revisions
 - b. Inclusion of developments from SCRAP and Rule Warrants
 - c. Use in misdemeanor versus felony cases
 - d. Form errors, ability to roll 3 forms into 1 and elimination of verbiage that does not apply
 - e. Prosecutor and defender buy in

Motion: Establish a forms work/study group to review the petition and forms, work with the Supreme Court Criminal Forms Review Committee to resolve issues and draft recommended language for the LJC formal comment. Motion passed unanimously. LJC-07-006

The Rules/Forms Subcommittee will take on this task.

R-06-0016: Rule 1.6, Rules of Criminal Procedure (appearances by defendants via videoconferencing)

The members present and on the phone agreed that this petition presents a beneficial rule change and formal comment supporting the change should be submitted. Here again, misdemeanor and felony issues should be separated.

Motion: Draft and submit comment recommending the adoption of the proposed rule in so far as the proposed rule will allow limited jurisdiction courts to conduct misdemeanor initial appearance, arraignment, guilty plea and sentencing; and felony initial appearance hearings by video conferencing at the discretion of the judge. Motion passed unanimously. LJC-07-007

Judges Dickerson and Klotz will draft the comment which will be circulated to the membership.

Motion: Grant the LJC Chair authority to approve and submit drafted comment on behalf of the Committee. Motion passed unanimously. LJC-07-008

III. OTHER BUSINESS

A. Next Meeting:

Wednesday, May 23, 2007

Location: State Courts Building

Conference Room 119 A/B

10:00 a.m. – 4:00 p.m.

B. Good of the Order / Call to the Public

No response.

IV. ADJOURNMENT

The meeting adjourned at 11:00 a.m.

Respectfully submitted,
Susan Pickard
LJC Staff

**COMMITTEE ON LIMITED JURISDICTION COURTS
MINUTES**

Wednesday, May 23, 2007
10:00 am to 1:30 pm
State Courts Building
1501 W. Washington Street
Phoenix, AZ 85007
Conference Room 345 A/B

MEMBERS PRESENT:

Hon. R. Michael Traynor
Mr. C. Daniel Carrion
Hon. Thomas L. Chotena
Ms. Faye Coakley
Hon. Timothy Dickerson
Ms. Joy Dillehay
Hon. Sam Goodman
Ms. Joan Harphant
Hon. Jeffrey A. Klotz

Hon. Nicole Laurin
Hon. Marie A. Toni Lorona
Hon. Dorothy Little
Ms. Marla Randall
Mr. James R. Scorza
Hon. J. Matias Tafoya

MEMBERS ABSENT:

Hon. Anna Baca
Jim Belanger
Richard Fincher

Debra Hall
Dan Levey
Hon. Kathy McCoy

PRESENTERS/GUESTS:

Paul Julien
Stewart R. Brown
Greg Eades
Jerry Landau

Jennifer Greene
David Withey
William J. O'Neil

STAFF:

Ms. Susan Pickard

Ms. Tama Reily

I. REGULAR BUSINESS

With a quorum present, the May 23, 2007 meeting of the Committee on Limited Jurisdiction Courts was called to order by Judge R. Michael Traynor, Chair, at 10:15 am.

A. Welcome and Opening Remarks

Judge Traynor made the following announcements:

- An update on FARE facts by Mike DiMarco is provided in today's meeting materials
- ACJA § 1-105: Committee on Superior Court is now available online for review

B. Approval of February 7, 2007 and March 8, 2007

Minutes for both the February 7, 2007 and March 8, 2007, Committee on Limited Jurisdiction Courts meeting were presented for approval.

MOTION: Approve the February 7, 2007 and March 8, 2007 minutes as presented. Motion passed unanimously. **LJC-07-009**

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Legislative Update

Jerry Landau apprised the members of the following bills of interest:

HB2150 Municipal and Justice Courts; Jurisdiction

- Expands municipal and justice courts concurrent jurisdiction over all misdemeanor traffic violations with the exception of aircraft DUI's
- Floor amendment included Class 2 and 3 misdemeanor aircraft violations. (Title 28)
- Vetoed by the governor due to the potential for the unintended consequences of ADOT being sued in limited jurisdiction courts
- Currently working with Senator Verschoor and representative Biggs to add it to SB1640, which is a MVD or ADOT omnibus bill

SB1029 Extreme DUI; .20 Concentration Enhancements

- Requires a person convicted of Extreme DUI with a BAC of 0.20 or more to be sentenced to serve not less than forty-five days in jail and be ineligible for probation or suspension of execution of sentence unless the entire sentence is served
- Requires the person convicted of an Extreme DUI with a BAC of 0.20 or more and any prior DUI conviction to be sentenced to 180 days in jail, 90 of which must be served consecutively. The person is not eligible for probation for suspension or execution of sentence unless the entire sentence has been served and shall pay a fine of not less than \$1,000 and use an ignition interlock device for eighteen months
- This bill was signed by the governor; will be effective at the end of the session

Comments/concerns:

- SB1029 is inconsistent with the sentencing options of A.R.S. § 28-1382 would the legislature consider making the statutes consistent? Mr. Landau plans to bring this question to the legislature.

Mr. Landau also informed the members that the issue of state control over photo enforcement is included in a budget bill that should come in today along with all floor amendments. This is a bill members/courts should review.

NOTE: After taking the concern about SB1029 to the legislature, Mr. Landau sent an e-mail response to all members. An excerpt of that e-mail follows:

“As a follow up to today's meeting, I spoke with a staff member from the House of Representatives regarding amending A.R.S. § 28-1382 to provide for a separate charging section for .20 or above. He said he would check with Legislative Council, but felt there could be too many internal reference changes to make it

feasible to do this session. He did discuss amending the statute to contain language somewhat similar to A.R.S. § 13-604(P) to state that the question of .20 or above would be decided by the court as a sentence enhancement. This would be somewhat similar to a prior conviction. I would like to get your thoughts on this concept.”

B. Interpretation and Enforcement of A.R.S. § 28-1387 (H)

A.R.S. § 28-1387 (H) states that except for another violation of this article, the state shall not dismiss a charge violating any provision of this article unless there is an insufficient legal or factual basis to pursue that charge.

Mr. Landau informed the members that an issue regarding this statute has been raised by the legislature. It involves the courts allowing plea agreements, where a legal or factual basis has not been shown. An example would be, when a DUI charge is reduced to a reckless driving charge.

He posed the following questions for discussion:

- Is this happening? If so, does the court have any responsibility in determining whether there is a legal or factual issue with a case before accepting a plea?
- Is the issue of insufficient legal or factual basis strictly an issue for the prosecutor?
- Can the court reject the plea? What is the role of the court in this situation?

Comments/concerns

- Is this complaint against the court or is the complaint against the prosecution for asking the court to dismiss the charge?
The complaint is against the system as a whole.
- Does the court have a responsibility to inquire if a prosecutor says he does not have a factual basis for going to trial?
The judge can inquire, but ultimately, if a prosecutor says he does not have a factual case, a judge cannot make a prosecutor take the case to trial.
- But is the court responsible to go further, if the judge disagrees with the prosecution?
The statute is directed at the prosecution, not the court. It is the court's duty to look at the facts in every case and decide if the plea presented meets the factual basis. Outside of this, the courts have Rule 16, and the requirement of finding a factual basis.

Judge Traynor requested that this issue be addressed further on another agenda.

C. IRS Public Employer's Outreach and Pro Tem Selection

David Withey introduced the issue of whether judges who serve pro tempore should be treated as employees or as independent contractors for tax purposes. He provided excerpts from the IRS Public Employer Tax Guide. Mr. Withey made the following points:

- Federal law makes it clear that public officials, even in an elected office, are considered employees for the purposes of income tax withholding.
- Under state law, judges shouldn't be regarded as independent contractors. They're performing a state function, acting on behalf of the state, and the notion of contracting out the state's sovereignty is inconsistent with this duty.

- Independently contracted employees use their own resources and direct their own work, whereas pro tems use the resources provided by the court, follow the procedures that are in place for the court, and undergo training, in order to, essentially, act as employees of the court .

Mr. Withey strongly urged limited jurisdiction courts to review Chapter 4 of the IRS Public Employer Tax Guide entitled "Determining Worker Status." This document is available online at: <http://www.irs.gov/pub/irs-pdf/p963.pdf/>

D. Sensitive Data Workgroup Project Update

Jennifer Greene brought the members up-to-date on the Sensitive Data Workgroup's efforts to reform data-gathering practices. Their aim is to be able to offer images of case records online, that will not facilitate identity theft. The project has moved into the area of trying to identify which records routinely contain the following sensitive data elements:

- Social security numbers (SSN's)
- Financial account numbers
- Names of juvenile crime victims
- Victim contact information

Jennifer provided the members with a matrix listing the limited jurisdiction court records that have been identified. The workgroup's strategy is:

- If it's sensitive data that the party is filing, and the court doesn't really need the information to decide the issues in the case, the party would be expected to redact or omit the data from the record before filing.
- To institute changes in the types of information that parties are asked to provide, as well as to reform business practices to exclude sensitive information on what is drafted internally.

Currently, responses are pending from law enforcement and prosecutors on whether they would be impaired in their duties if social security numbers were left off of warrants.

This project is receiving a lot of notice and is anticipated to be concluded by the end of this year.

Comments/concerns:

- If a motion is filed to appoint a minor victim representative; the victim is named in this process. Also, an order is created to show who the minor victim representative is and the minor victim is again named. This puts the victim's name out there twice. How can this be avoided and managed?
- Another question concerns release orders, in which the defendant is told to stay away from the victim's address, thus that address is contained in the order. Also, if the defendant and the victim had lived together, the judge may order a civil assist to allow the defendant to return to the address once, to get personal effects. The victim's address is again given.
- What about situations where a subject has a similar name that sounds like another individual's name? A social security number is generally used to identify the person. How would these situations be handled?

The Workgroup will be providing its recommendations to the Supreme Court. If a Rule Change Petition is filed to address the recommendations, it will be brought to this committee for comment.

E. Proposition 100/Rule Change Petition R-03-0029/Pending (at the time of the meeting) **Rule Change Petition R-07-0003**

1. LJC/COSC Proposition 100 Subcommittee

Judge Traynor provided the members with an update regarding Proposition 100 and the efforts of the joint LJC/COSC Subcommittee.

Chief Justice Ruth McGregor directed the Committee on Limited Jurisdiction Courts (LJC) and the Committee on Superior Court (COSC) to conduct a thorough review of forms, rules, statutes and published documents for impact and implementation of Proposition 100, in order to identify adjustments to the procedures described in A.O. 2007-30, if any. The committees established the LJC/COSC Proposition 100 Subcommittee that includes members from both committees as well as the Commission on Minorities in the Judiciary, Commission on Victims in the Courts and representatives of the initial appearance benches Coconino, Maricopa and Pima Counties. Judge Traynor agreed to chair this committee with the assistance of Melinda Hardman, AOC, as staff.

This subcommittee met on May 17, 2007. The first issue dealt with was Form 4: (a) to be completed by law enforcement and (b) for completion by the defendant.

Suggested changes include:

- Change language in paragraph B.2. from “admission of the defendant,” to “admission by the defendant.”
- In Paragraph H.2. change “drug test completed,” to “drug test was positive.”

The suggested changes were included in the LJC comment filed on May 20, 2007, regarding R-03-0029.

Additionally, during the subcommittee’s meeting, the group was informed of pending legislation and a soon to be filed rule change petition. If passed, the legislation would direct law enforcement information gathering and sharing. Filing of the Rule Change Petition (R-07-0003) by the Administrative Office of the Courts is anticipated on May 25 with a 3-week comment period. If adopted, the proposed rule changes would address many, if not all, of the concerns already raised by various courts.

Action Item: Members are urged to review R-07-0003 and comment before June 14, 2007.

2. LJC Rules Implementation Subcommittee Update:

Judge Traynor presented an update on the efforts of the Rules Implementation Subcommittee. Having completed their work to implement changes to Rule 3.1 and Rule 26.12 and producing two rule-based arrest warrants that include DPS data entry flow, this group entertained a suggestion from the Supreme Court

Criminal Rules Review Committee and the Rules/Forms Subcommittee. This combined group suggested that rather than modifying the one arrest warrant (Form 2) in the Criminal Rules of Procedure, that perhaps separate arrest warrants for A.R.S. §§ 13-810, 13-901(C), 13-3904, and 13-2506 be developed using the format and DPS data entry flow devised for the 3-1 and 26-12 warrants.

All of the arrest warrants (rule-based and statute-based) were included in the LJC comment filed on May 20, 2007, regarding R-03-0029.

3. LJC Rules/Forms Subcommittee Update

Judge Traynor noted that in meetings with members of the Supreme Court Criminal Rules Review Committee to review the forms appended to those rules, the indication was that the committee was basically in agreement with the proposed changes included in the LJC comment filed on May 20, 2007. It is anticipated that the supreme court committee will file a reply saying that they agree with what was filed.

The comments to the Court also include the proposed language for the concluding paragraph of the Petition:

“The committee respectfully requests that the court adopt the attached forms for use in all Arizona courts with allowances for jurisdictional and non-substantive local variations and adaptations.”

This language removes the request to mandate use of forms as printed, and further clarifies the ability for courts to modify the forms to conform to jurisdictional issues and local policies and procedures.

4. Rule Change Proposal

Daniel Carrion clarified the genesis of Rule Change Petition R-07-0003 adding that a meeting of the Administrative Office of the Court, the Offices of the Maricopa County Attorney, Public Defender and Legal Defender was held regarding issues surrounding conducting “Simpson Hearings” (*Simpson v. Owens*, 207 Ariz. 261, 85 P.3d 478), that seem to be most prevalent in Maricopa County. Through a series of meetings, this group determined that the following rules should be reviewed for possible changes:

- Rule 4, Initial Appearance and Arraignment
- Rule 7, Release

Mr. Carrion noted that a rule change will probably make the initial appearance a critical proceeding. He advised the committee to review the forthcoming Rule Change Petition for court impact.

Judge Traynor advised the members that there may be 3-week comment period regarding this Petition and it is likely to have an emergency rule order. He advises members that if they have comments, now would be the appropriate time directed the comments by submitted to Greg Eades at GEades@courts.az.gov

Comments/Concerns:

- Judge Traynor raises a question which had been discussed with the LJC/COSC Proposition 100 Committee, which concerns situations where the defendant is arrested in Santa Cruz County, on a warrant out of Maricopa County. The initial appearance is conducted in Santa Cruz. That individual, under this process would be the one who would address the Initial Appearance and therefore make the initial determination. The question is tied to the Administrative Order dealing with “Simpson Hearings”, and it asks who does the later hearing, depending upon how quickly that person is then transported to Maricopa County.

One suggested remedy to this situation is to always set a bond, high bonds if it is a serious case. And if there is no probable cause, the person should be released.

- Another issue, which was raised at that same meeting, was regarding the fact that Maricopa County does IA’s every 3 hours. The issues arise when the “Simpson Hearing” is conducted within the 24 hours. Under this process, that hearing could take place in 5 hours, or as early as 3 hours. This does not allow enough time to gather information, or at times, to even get the arresting officer before the court. The question is, when a warrant is issued, how soon should a person be brought before a magistrate?

It depends on what the order is executed on. If you have a Mesa warrants for a defendant who is currently being held for cases in Chandler, Maricopa County and Phoenix, there is a process called “kick-out” , which says as soon as Chandler, Phoenix, and the County are done with the defendant, he/she is “kicked out”, and the Mesa warrant is executed, then the defendant must be seen within 24 hours.

F. Arizona Rules of Protective Order Procedure

Judge William O’Neil presented the Rules of Protective Order Procedure. In this version only modest changes to protect children have been made.

- Page 5, paragraph 2 – Clarified language to assist judges in avoiding inadvertent protective order/custody or parenting plan conflicts, but also allows a judge to issue a protective order in the presence of a custody or parenting time order if needed. The protective order controls custody or access to the child until further court order.
- Page 13, paragraph 4, changed the sentence from “the child *will* be harmed” to “the child *may* be harmed.”

Comments/concerns:

- If simultaneous orders are in place, a protection order, and the custody order, but the victim has no third party to assist them in exchanging the child, what do you do?

Even if the custody order is in place, and there is no third party, the protective order could still be issued. It is not an inadvertent conflicting order; the decision to have a conflicting order is deliberate. Issues relating to the custody/visitation

arrangements would need to be taken by the individuals back to the Superior Court where the domestic relations action once was pending, or still is pending.

- If that happened, and the case was then transferred, potentially before the defendant is ever served, we're going to transfer, or we're going to wait until we get service. So that any hearing the defendant might ask for, would occur in the Superior Court?

It is transferred, and when you receive service, a later rule provides that you forward that proof of service to the Superior Court. The defendant may request the hearing within 5 days.

MOTION: Approve the Arizona Rules of Protective Order Procedure (ARPOP) as presented. Motion passed unanimously. **LJC-07-010**

G. Subcommittee Updates

ACJA § 1-202: Public Meetings

Susan Pickard reported on a new interpretation of Arizona Code of Judicial Administration § 1-202 that applies to public meetings. Paragraph D.1.f. indicates that standing subcommittees of public councils shall also keep minutes of their meetings. The AOC Legal Office interprets this paragraph to mean LJC (public council) subcommittees shall keep minutes.

Ms. Pickard distributed a sample of minutes taken by Paul Thomas for the Rules/Forms Subcommittee meeting. The sample was provided to demonstrate the content and brevity suggested for minutes of standing subcommittee meetings. Ad-hoc subcommittees such as the LJC Electronic Documents Subcommittee are not required to keep minutes.

Electronic Documents Subcommittee

The goal of the subcommittee was to figure out how to facilitate the use of electronic documents within limited jurisdiction courts. It is still in the preliminary phase, with some of the following issues being considered:

- Which rules need to be changed so that limited jurisdiction courts can use electronic documents
- Drafting a rule change petition to go fully electronic statewide, eliminating paper documents completely
- Records retention; should the electronic document replace the paper document as the original

The subcommittee will be meeting again on June 6th for further discussion.

Judicial Performance Subcommittee

The sub committee had no updates to report.

H. ACJA § 1-106: Committee on Limited Jurisdiction Courts

- Judge Traynor presented current LJC business rules and policies, ACJA § 1-106 and ACJA § 1-105: Committee on Superior Court (COSC). He noted that COSC recently submitted revisions to ACJA § 1-105 (copies provided in handouts) for adoption. The COSC provisions include their proxy policy and telephonic

appearance policy. Judge Traynor asked the members to review the COSC policies and consider adopting like policies for LJC. This topic will be addressed on September's agenda.

Comments/concerns:

- The potential for quorum issues if members are restricted to one telephonic appearance per year. Suggested language could be added such as "*unless approved by the Chair*" to provide for unexpected circumstances.

III. OTHER BUSINESS

- A.** Paul Julien announced that the State Bar appointed a task force to create Rules of Procedure for Eviction Actions. There are nineteen rules that are going to be submitted to their Board of Governors. If you would like to review the rules and/or submit comment, please contact Mr. Julien at PJulien@courts.az.gov.

B. NEXT MEETING:

Legislative Subcommittee (all members welcome)

Thursday, September 25, 2007

State Courts Building

Conference Room 119 A&B

10:00 a.m. – 3:00 pm.

Friday, September 26, 2007

State Courts Building

Conference Room 119 A&B

10:00 a.m. – 3:00 p.m.

C. Call to the Public

No response.

The meeting was adjourned.

**COMMITTEE ON LIMITED JURISDICTION COURTS
MINUTES**

Wednesday, September 26, 2007
10:00 am to 3:15 pm
State Courts Building
1501 W. Washington Street
Phoenix, AZ 85007
Conference Room 345 A/B

MEMBERS PRESENT:

Honorable R. Michael Traynor
Honorable Ted W. Armbruster
Honorable Phillip W. Bain
Mr. C. Daniel Carrion
Honorable Thomas L. Chotena
Ms. Faye Coakley
Honorable Timothy Dickerson
Ms. Joy Dillehay

Honorable Sam Goodman
Ms. Joan Harphant
Honorable Jeffrey A. Klotz
Honorable Kathy McCoy
Ms. Marla Randall
Mr. James R. Scorza
Mr. Mark Stodola
Honorable J. Matias Tafoya

MEMBERS ABSENT:

Honorable James P. Angiulo
Honorable Nicole Laurin

Honorable Dorothy Little

PRESENTERS/GUESTS:

Ms. Amy Love
Mr. Jerry Landau
Ms. Katy Proctor
Ms. Julie Dybas
Ms. Sharleen Decker

Ms. Kay Radwanski
Ms. Janet Cornell
Ms. Amy Wood
Mr. David Withey

STAFF:

Ms. Susan Pickard
Ms. Melinda Hardman

Ms. Tama Reily

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the September 26, 2007 meeting of the Committee on Limited Jurisdiction Courts (LJC) was called to order by Judge R. Michael Traynor, Chair, at 10:15 am.

Judge Traynor made the following announcements:

- Mike DiMarco is unable to attend today's meeting, however a FARE Fast Facts hand out was provided in the meeting materials.
- New members Judge Phillip Bain, Casa Grande Justice Court, and Mark Stodola, Tempe Municipal Court Administrator, were welcomed and introduced.

- Re-appointed members Judge Ted Armbruster, Judge Tom Chotena, Judge Nicole Laurin, Judge Matt Tafoya, Judge James Angiulo, Judge Dorothy Little, Faye Coakley, and C. Daniel Carrion were welcomed back.
- Debra Hall, former member of this committee, was the LJC representative to the Committee on Probation, Judge Traynor asked for a volunteer to assume that responsibility on behalf of the committee. C. Daniel Carrion volunteered.
- Melinda Hardman was introduced as the new AOC staff for the committee. Judge Traynor welcomed Ms. Hardman and thanked Susan Pickard for all of her hard work on this committee.

B. Approval of May 23, 2007 Minutes

Minutes for the May 23, 2007 Committee on Limited Jurisdiction Courts meeting were presented for approval.

MOTION: To approve the May 23, 2007 Committee on Limited Jurisdiction Courts minutes as presented. Motion was seconded. Motion passed unanimously. **LJC-07-011**

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. The Legislative Process

Amy Love, AOC Legal Analyst, presented *The Legislative Process* and provided information on how a bill becomes law in Arizona as well as a list of answers to common questions.

B. Proposed Arizona Judicial Branch Legislative Package

While there are 11 legislative proposals, Jerry Landau, AOC Director of Government Affairs and Katy Proctor, Legislative Liaison, presented the three legislative proposals that could impact limited jurisdiction courts to the committee.

2008-01: Criminal Code Sentencing Reorganization - Reorganizes Title 13, Chapters 6 and 7 to simplify the structure of the sentencing code - Does not make structural or philosophical changes to the code. Major provisions include:

- Moves the definition of “dangerous offense” to §13-105, definitions.
- Splits the various provisions of §13-604 into separate statutes dealing individually with dangerous offenses, repetitive offenses, serious offenses and special sentencing provisions. All transferred to Chapter 7.
- Reorganizes §13-604.01, Dangerous Crimes against Children, makes a clarifying change and transfers the statute to Chapter 7.
- Places both “three strikes and your out” provisions in the same statute in Chapter 7.
- Renumbers sections dealing with death penalty placing the statutes in a separate article.
- Transfers the statute dealing with Class 6 Felonies from Chapter 7 to Chapter 6.
- Consolidates all misdemeanor sentencing provisions.
- Within the reorganization, repeals and renumbers some sections.
- Makes conforming changes to internal references

MOTION: To take no position on 2008-01 at this time. Motion seconded. Motion passed unanimously. **LJC-07-012**

2008-02: Time payment fee - Repeals the statute authorizing the Time Payment Fee to revert to \$12 on January 1, 2010. The proposal will either maintain the current Fee at \$20 indefinitely or

create a \$5 surcharge on all fines, penalties and forfeitures to be split evenly between the state Judicial Collection Enhancement Fund (JCEF) and the local courts collecting the surcharge. All monies are expressly dedicated to funding court automation projects. To avoid duplicative funding, the existing Time Payment Fee extension would be repealed, returning the Fee to \$12. The \$5 surcharge is expected to raise approximately \$3 million, which will fully offset the loss of monies when the Time Payment Fee reverts to \$12.

Committee Questions and Comments:

- If the \$20 reverts to \$12, half of that money goes to local JCEF and half goes to the state. Is the \$5 split, and if so, how is it split?
Yes, the \$5 is split in the same ratio.
- If it's like most court technology enhancement fees, surcharges would apply to that \$5, making it also a little more cumbersome for courts to impose and collect.
The intent is not to include a surcharge on it. It is called a surcharge; surcharges are not surcharged.
- The record should reflect that the decision to have the case management system rolled out to limited jurisdiction courts has not been formally made. The AOC is still working with Tempe as a potential solution as well.
- The court really is in need of in excess of \$6 million to pursue its current plans for automation, and that doesn't anticipate changes and modifications and enhancements to the AOC's plans down the road. This committee should support the proposal.

MOTION: To recommend that AJC include proposal 2008-02 in the Legislative Package. Motion seconded. Motion passed unanimously. **LJC-07-013**

2008-04: Court reporter; transcript fees - Increases the dollar amount a court reporter may receive for an appeals transcript from \$2.50 to \$3.25 per page for an original and from \$0.30 to \$0.50 per page. Increases the dollar amount a court reporter may receive for a note transcription of a preliminary hearing from \$2.50 to \$3.25 per page.

Committee Questions and Comments:

- Does not exempt public defenders.

MOTION: To recommend that AJC NOT include proposal 2008-04 in the Legislative Package. Motion seconded. Motion passed unanimously. **LJC-07-014**

Mr. Landau reminded the committee that the limited jurisdiction courts legislation conference calls will resume beginning on January 18, 2008, on Fridays, at 11:45. Judge Traynor stressed the importance of members' participation in the weekly calls, as changes in legislation can occur day to day, and the courts need to be heard from.

C. Subcommittee Updates

Rules/Forms

Judge Tafoya provided a Rules/Forms Subcommittee update.

R-06-0029: Petition to amend Rules 2, 22(a) and 32(c), Rules of Procedure in Civil Traffic Violation Cases – adding civil boating violation cases was adopted by the Court as modified by this subcommittee with an effective date of January 1, 2008.

R-03-0029: Petition to Amend the Forms Appended to the Rules of Criminal Procedure - this

subcommittee working with the Supreme Court Criminal Rules Review Committee modified the forms for easier use by limited jurisdiction courts. Included were the rule warrant forms. The Court adopted the forms as modified with an effective date of January 1, 2008. Of special importance to this committee was the adoption of the language in Rule 41 that states:

“. . . the forms in the following appendix are recommended for use in Arizona and are sufficient to meet the requirements of these rules. All forms shall comply with the formatting requirements of Rule 10, rules of civil procedure.”

Electronic Documents

C. Daniel Carrion presented an Electronic Documents Subcommittee update.

Draft Rule Change Petition: Daniel Carrion presented a draft Rule Change Petition to amend Rules 1, 4, and 6 of the Arizona Rules of Procedure in Civil Traffic Cases and Boating Cases and Rule 29 of the Rules of the Supreme Court of Arizona. The intent of the proposed amendments is to enable limited jurisdiction courts confirming compliance with Arizona Code of Judicial Administrative § 1-504 to recognize electronically-filed documents and the scanned images of documents as the original document of record. This petition, if adopted, would also allow the destruction of the correspondence paper documents.

MOTION: To support and submit the Rule Change Petition to amend Rules 1, 4, and 6 of the Arizona Rules of Procedure in Civil Traffic Cases and Boating Cases and Rule 29 of the Rules of the Supreme Court of Arizona to the AJC for authority to file. Motion seconded. Motion pass unanimously. **LJC-07-15**

Electronic Arizona Traffic Ticket and Citation (ATTC) Template: In an attempt to simplify the approval process, eliminate delay, and ensure consistency within the court community, the AOC requested and received assistance from the LJC Electronic Documents Ad Hoc Subcommittee in developing the template for electronic citations (handheld devices). Mr. Carrion noted that the template only addresses the language/advisements that currently appear on the back of the ATTC. Once the “template” is approved, courts stating that they used the “template” for their electronic citation (handheld devices) would receive automatic approval.

MOTION: To approve the Electronic Arizona Traffic Ticket and Citation Template as presented. Motion seconded. Motion passed unanimously. **LJC-07-16**

Judicial Performance

Judge Traynor reported that he was informed by Judge Angiulo that there have been no meetings of the Judicial Performance Subcommittee. Judge Angiulo will be scheduling a meeting shortly and will keep this committee apprised.

D. ACJA § 1-702 Operational Reviews

Julie Dybas presented proposed code, ACJA § 1-702, regarding operational reviews for limited jurisdiction courts. The proposal would put into code the court’s authority, to examine records and order corrective actions. The proposed code has been recommended for approval by AJC by the Committee on Probation. AJC presentation is scheduled for October.

Committee Comments/Questions:

- Will there be timetables placed on the operational review team. We’ve experienced several audits in our county in the last 18 months to 24 months, and we’re just now starting to get those drafts back. Is this issue going to be addressed?

No, there are no timeframes addressed in the code. This is, due to several factors like the scope of the review, difference in cases handled by the court; limited jurisdiction versus superior court, and findings. At the same time, there are no time requirements set for the courts to complete their corrective action plans.

Ms. Dybas clarified that operational reviews are code; statute; administrative order and directive; and financial management practice compliance audits that can vary from year to year. For example, one year reviewers may focus on DUI cases, and the next year they may focus on civil cases. The scope is influenced by statute changes, the Chief Justice's strategic agenda, presiding judge request to look as a specific area, or indications that there may be problem areas.

MOTION: Recommend that AJC approve/adopt ACJA § 1-702: Operational Reviews as written. Motion seconded. Motion passed unanimously. **LJC-07-017**

E. ACJA § 3-401: Priority of Offender Payments

Ms. Dybas presented ACJA § 3-401: Priority of Offender Payments for Superior Courts to the members. At the request of the AJC, the Committee on Superior Court (COSC) formed a workgroup to address issues identified in the code section. The workgroup's efforts have been addressed in the revised code. The code is expected to be considered by AJC in October. Ms. Dybas added that courts will not have to come into compliance with this code until their new case management system is in place.

Ms. Dybas stated that this code is significantly different from the LJC code and suggested that LJC consider convening a subcommittee to review and compare the superior court code section with the corresponding limited jurisdiction code for possible revision.

Judge Traynor described some of the differences between the COSC and LJC codes. The limited jurisdiction code addresses any monies received, with exceptions like fees for copies, while the superior court code applies to monies in criminal cases only. Additionally, when the code was being formulated for limited jurisdiction courts, FARE was formed; therefore those processes were addressed in the limited jurisdiction code.

F. ACJA § 4-302: Records Retention and Disposition

Melinda Hardman presented a proposed amendment to ACJA § 4-302: Records Retention and Disposition. SB1424, which passed during the recent legislative session, increased the look-back period from 60 months to 84 months for a third or subsequent domestic violence offense to become an aggravated domestic violence offense. This change to A.R.S § 13-3601.02 became effective September 19, 2007, and has been addressed by the amendments to the code section.

MOTION: Recommend that AJC approve and adopt the amendment to ACJA § 4-302: Records Retention. Motion seconded. Motion passed unanimously. **LJC-07-018**

G. ACJA § 5-203: Trial and Grand Jury Management

Ms. Hardman presented select proposed amendments to ACJA § 5-203: Trial and Grand Jury Management. The changes are necessary because of the passage of SB1424, which takes effect January of 2008. The new provisions include:

- Time requirements for:
 - producing the master jury list – at least twice each year,
 - giving a juror notice to appear to complete a questionnaire or testify about the juror's qualifications or grounds for excuse – seven days, and

- summoning jurors to appear at court – ten days
- The procedure for approval of an alternative summoning plan by either the Supreme Court or the presiding judge. The code sets forth the following:
 - required contents of the plan,
 - calls for circulation of the plan to the court community within the county,
 - defines the alternative approval procedures for the presiding judge or the chief justice, and
 - provides that a plan must either be renewed or terminated in five years.

Revisions to the code section are still in process; however, the first six sections of the revisions are provided in today's meeting materials, for informational purposes and committee comments.

H. Civil Traffic Procedure Manual Update

Sharleen Decker announced that the Civil Traffic Procedure Manual is being opened up for comment regarding needed updates. The comment period expires November 30, 2007. Comments can be e-mailed to Ms. Decker at sdecker@courts.az.gov. The current Civil Traffic Procedure Manual can be viewed at <http://supreme22/ctserv/caunit/cau.htm> and/or <http://ajin/wendell/areas.htm>.

I. Protective Order Update

Kay Radwanski discussed Administrative Directive 2007-03 regarding revisions to warning language that must appear on protective orders effective January 1, 2008. The revisions are necessary because of the passage of SB1286, Victims' Rights Omnibus, which amended A.R.S. § 13-3602 (J). Ms Radwanski also discussed the Arizona Rules of Protective Order Procedure (ARPOP), which were adopted by the Arizona Supreme Court with an effective date of January 1, 2008.

J. Photo Enforcement

Janet Cornell, Scottsdale City Court, gave a report on the "Scottsdale Experience" with photo enforcement and offered suggestions for steps other courts to take in preparing for photo enforcement. Prints of her PowerPoint presentation were provided in the meeting materials.

K. ACJA § 5-204: Administration of Victim's Rights

Amy Wood spoke on behalf of the Commission on Victim's in the Courts (COVIC), presenting amendments to ACJA § 5-204: Administration of Victim's Rights. The purpose of the amendments is to:

- incorporate legislative changes, SB1286;
- incorporate case law, *State v. Klein* and *State v. Hansen*; and
- complement the priority of payment code sections.

This code section has been presented to the Committee for the Impact on Domestic Violence and the Committee on Probation. At this time, there are plans to make changes in sections G & J, to create more uniformity in their language.

Committee Comments/Questions:

- In SB1296, which has to do with non-payment of restitution, it states that the court has a responsibility if a defendant misses a payment of restitution to notify the prosecutor's office. It seems like a significant burden to monitor each case concerning restitution and/or fines. The responsibility of notifying the prosecutor and the court falls on the Clerks of the Court.

- Subsection K, paragraph 2; states that disbursement to victims will take place within 21 calendar days of receipt of restitution payments. This timeline doesn't allow time for the processing and verification of the check.
Ms. Wood advised the members that this is something that is currently in place, it is not among the changes COVIC has made.
- Is subsection L, regarding nonpayment of restitution, stating that the Order to Show Cause (OSC) hearing must take place each time a defendant defaults on restitution.
Judge Traynor commented that the court can make its own determination as to whether a summons or warrant should be issued for the OSC hearing. Either way, the OSC hearing is held.
- The clerk of the court is specifically referred to in this code section; but there are no clerks of limited jurisdiction courts. Does this apply to superior court only?
In a number of municipal courts, the superior court presiding judge has named a court administrator. The court administrator acts as the clerk of the municipal court for records management, money handling and those types of responsibilities. In some cases this designation is implied, in others, it is in writing.
- Several members had concerns regarding the statement in paragraph (D) Reading of Victim Rights, which says a judge shall read the victims bill of rights out loud in court. The members believe that the statute referring to this requirement applies only to superior court. Members also had questions about the logistics, if this does indeed apply to limited jurisdiction courts, due to the caseload of many of the courts. The consensus was that this point should be clarified.

MOTION: To table this issue until the November meeting allowing for further research. Motion seconded. Motion passed unanimously. **LJC-07-19**

L. ACJA § 1-202: Public Meetings

David Withey reported on a proposal to amend ACJA § 1-202 Public Meetings. The intent is to delete subsection D.1.f. which reads:

“f. Standing subcommittees of public councils shall also keep minutes of their meetings.”

Generally, it has not been the case that subcommittee minutes are necessary to the work of the committees, the general practice of note-taking having proved sufficient. Thus, the change is being recommended to reflect current practices.

MOTION: Recommend AJC approval and adoption of the amendment to ACJA § 1-202. Motion seconded. Motion passed unanimously. **LJC-07-20**

M. COJET Credit Carry Forward

Judge Traynor gave an update on an issue that was before COJET for reconsideration on September 25. A previous vote by COJET would have allowed a judge or judicial employee to carry forward 4 hours of COJET credit. This would have meant that if you accumulated 20 hours of credit one year, you would only have to accumulate 12 hours the next to fulfill the 16 hour requirement. The vote yesterday reversed the earlier decision. The COJET requirement remains at a minimum of 16 hours for each employee every year.

N. ACJA § 1-106: Committee on Limited Jurisdiction Courts

Judge Traynor discussed amendments to ACJA § 1-106: Committee on Limited Jurisdiction Courts. The two main amendments address:

- Virtual Appearance – the proposed amendments are intended to allow for conference calls, video conferencing and future technological methods for attending a meeting.
- Proxy policy – codifies the LJC proxy policy.

MOTION: To recommend AJC approval and adoption of the amendments to ACJA § 1-106. Motion seconded. Motion passed unanimously. **LJC-07-21**

III. OTHER BUSINESS

A. Next Meeting:

Wednesday, November 14, 2007
State Courts Building
Conference Rooms 119 A & B

B. Call to the public

No response.

The meeting was adjourned.

Respectfully submitted,
Susan Pickard
LJC Staff

**COMMITTEE ON LIMITED JURISDICTION COURTS
MINUTES**

Wednesday, November 14, 2007

10:00 am to 1:15 pm

State Courts Building

1501 W. Washington Street

Phoenix, AZ 85007

Conference Room 230

MEMBERS PRESENT:

Honorable Ted W. Armbruster (phone)
Honorable Dorothy Little
Honorable Phillip W. Bain
Mr. C. Daniel Carrion
Honorable Thomas L. Chotena
Ms. Faye Coakley
Honorable Timothy Dickerson
Ms. Joy Dillehay

Honorable Sam Goodman
Ms. Joan Harphant
Honorable Jeffrey A. Klotz
Honorable Kathy McCoy
Ms. Marla Randall
Mr. James R. Scorza
Mr. Mark Stodola
Honorable J. Matias Tafoya

MEMBERS ABSENT:

Honorable R. Michael Traynor
Honorable James P. Angiulo

Honorable Nicole Laurin

PRESENTERS/GUESTS:

Ms. Susan Pickard
Mr. Jerry Landau
Ms. Carol Mitchell
Ms. JL Doyle

Ms. Julie Dybas
Mr. Steve Twist
Mr. John Sousa

STAFF:

Ms. Melinda Hardman

Ms. Tama Reily

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the November 14, 2007 meeting of the Committee on Limited Jurisdiction Courts (LJC) was called to order by sitting Chair, Judge J. Matias Tafoya, at 10:05 am.

The following announcement was made.

Ms. Joan Harphant has agreed to co-chair today's meeting, as Judge Tafoya will need to leave at 11:40.

B. Approval of September 26, 2007 Minutes

Minutes for the September 26, 2007 Committee on Limited Jurisdiction Courts meeting were presented for approval.

MOTION: To approve the September 26, 2007 Committee on Limited Jurisdiction Courts minutes as presented. Motion seconded. Passed unanimously. LJC-07-022

C. FARE Fiscal Fast Facts

An update on FARE Facts by Mike DiMarco is provided in today's meeting materials.

Committee Comments

A member asked if any of the courts that have received funds back from FARE are having difficulty being able to apply those funds for their own use, versus applying to the general fund.

Another member notes that her court had a discussion at the county level about the way the justice courts had been depositing theirs, and the way the clerk of the superior court needed to deposit theirs. It seems to have been worked out so that the funds stay within the court system instead of the general fund.

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Proposed Meeting Dates for 2008

The proposed 2008 meeting dates for the LJC Committee were presented for approval. The meeting dates fall on Wednesdays, and are as follows:

March 5, 2008
May 28, 2008
October 1, 2008
November 5, 2008

In addition, the Legislative Subcommittee Meeting is proposed to take place on Tuesday, September 30th.

MOTION: To approve the 2008 LJC Committee meeting dates as presented. Motion seconded. Passed unanimously. LJC-07-23

B. Arizona Judicial Branch Legislative Package Update

Mr. Jerry Landau, Director of Government Affairs for the AOC, reported that there were five items the AJC voted to include in its package this year, one of which is significant to the purposes of this Committee:

2008-02: Time payment fee

This one is of the most significance to this Committee, as it would repeal the statute authorizing the Time Payment Fee to revert to \$12 on January 1, 2010. The proposal seeks to either maintain the current Fee at \$20 indefinitely or create a \$5 surcharge on all fines, penalties and forfeitures to be split evenly between the state Judicial Collection Enhancement Fund (JCEF) and the local courts. Jerry states the money is needed, but the preference would be for the time payment fee of \$20.00 to remain.

2008-10: Interstate Compact

This one doesn't really impact the Committee's purposes. It amends A.R.S. § 12-267 and 31-467 increasing the cap on Arizona's annual assessment to the interstate commission.

2008-11: Deputy probation officers; appointment

Allows the Chief Justice to appoint deputy probation officers in the AOC to provide services to county juvenile and adult probation departments.

2008-01: Criminal Code Sentencing Reorganization

Reorganizes Title 13, Chapters 6 and 7 to simplify the structure of the sentencing code. Death Penalty Proposal. This bill does not impact this Committee.

C. Subcommittee Updates

Rules/Forms – Judge Tafoya reported there were no updates for the subcommittee to share at this time.

Electronic Documents – Susan Pickard, speaking on behalf of Daniel Carrion, reported that the LJC had been authorized by AJC to file the Rule Change Petition which would allow limited jurisdiction courts to use electronic case documents as official records. At their next meeting the subcommittee will be reviewing ACJA §§ 1-504, 1-505, and 1-506 with a focus on electronic archives.

Records Retention – Judge Tafoya reported that the committee will not convene until March 2008 so that they can see what is going to happen with legislation, and it will be more productive to do it at that time.

Judicial Performance – In Judge Angiulo's absence, Melinda reported that the committee has scheduled a meeting for Monday, November 26th at 10:00am in the Chandler City Court. A call-in number will be announced at a later date.

D. ACJA § 6-114 Committee on Probation

Ms. JL Doyle, of the Adult Probation Services Division, AOC, presented the revised version of proposal ACJA § 6-114, which establishes who would be standing members on the Committee on Probation; specifically, calling for a director or designee of Federal Probation, Arizona District, and one juvenile and one criminal judge.

MOTION: To approve ACJA § 6-114: Committee on Probation as presented. Seconded. Motion passed unanimously. LJC-07-024

E. ACJA § 6-103 Victims' Rights Requirements for Probation Personnel

Ms. Doyle presented a second issue for consideration by the committee; revised version of ACJA § 6-103: Victims' Rights for Probation Personnel. Changes were made to the code as a result of Senate Bill 1286 and State v. Klein, and State v. Hansen. The changes:

- Increase the length of time probation may be extended for purposes of restitution payments.
- Expand the definition of victim to include those who have had misdemeanor offenses committed against them whether or not serious bodily injury occurred.

MOTION: To approve ACJA § 6-103; Victims' Rights Requirements for Probation personnel as presented. Seconded. Motion passed unanimously. LJC-07-025

F. ACJA § 5-204 Administration of Victims' Rights

Ms. Carol Mitchell, Court Services Division, AOC, gave a report on revisions made to ACJA § 5-204: Administration of Victims' Rights, which incorporate changes since its original presentation on September 26, 2007. Commission on Victims in the Courts (COVIC) member, Steve Twist, was also in attendance to answer questions regarding the proposed changes. The reasons for the revisions include changes in legislation (SB1286), and caselaw (State v. Klein and State v. Hansen), and the goal of making the code section complement priority of payment code sections. Extensive discussion ensued.

Committee Concerns:

The proposal is onerous for a Limited Jurisdiction Court when considering caseload. Maybe we could ask if there are any victims present in the courtroom, then read the statement only if there are victims present.

COVIC – The recommendation is that the reading be done once at the beginning of the docket. Legislation may be introduced in the coming session to extend A.R.S. § 13-4438 to Limited Jurisdiction Courts. Even if Klein does not require that the statement of victim's rights be read in a LJC, this is the right thing to do. We could add to "D": at the commencement of the "regular" criminal docket.

That word [regular] means different things to different LJC's. You cannot use the same words for a LJC as for the superior court.

The court must appear to be unbiased/impartial. Why should we read the statement of victim's rights to everyone in open court? We don't read the defendant's rights to everyone in court – only to each individual defendant who enters a plea.

COVIC – A false image/improper perception is similarly given to victims if the court does not read anything to victims – and only to defendants.

Reading the statement of victim's rights needs to be meaningful. Judges should have the discretion as to when it is appropriate to read the statement, such as when a victim is actually in the room. It does no good to read the statement at 8:00 AM when only a clerk, a defendant, and I are in the courtroom.

COVIC – Even the defendant needs to hear the reading of the statement of victim's rights to realize that victims have rights from the court also.

I handled 450 arraignments yesterday, and 60 of those cases involved victims. I had to empty my courtroom multiple times to accommodate all of the people. Each time I emptied the courtroom, I read the defendants' their rights again. I certainly cannot read the statement of victim's rights in each case. Furthermore, in my court, the victims are kept separate. They do not even come into the courtroom. It wouldn't do any good for me to read the statement of victim's rights.

Since A.R.S. § 13-4435 only requires the superior court to weigh the extraordinary circumstances for granting a continuance against the victim's right to a speedy trial, section "C" of 5-204 must be limited to superior court.

COVIC – Agreed. [A motion was eventually made to this effect – which passed.]

A.R.S. § 13-4438 excludes trials from the required reading of the statement of victim's rights, but the proposed code section does not.

[Offered the following amendment to "D"] – "In courts of limited jurisdiction, the requirement to read the statement of victim's rights shall be limited to those criminal dockets which, in the discretion of the court, include cases involving victims who may be present." [The motion failed, 7 to 6, because the Committee felt the language was confusing – to use the term "requirement" and "discretion" in the same sentence. The Committee also felt they were being pressed to generate alternative language too quickly – without having sufficient time to think it through.]

[The Committee eventually passed a motion to recommend approval of ACJA 5-204, as amended in section "C" (above) and with the following amendments to section "D": "At the daily commencement of the regular criminal or delinquent docket in superior any court, judges shall read the statement of victim rights out loud in court," thereby limiting that section to superior court only. The vote was 8 yes/4 no. HOWEVER, the committee made it clear to the presenters that the Committee is not opposed to victim rights, but the Committee needs more time to work on the appropriate language, due to the practical concerns of LJC's. The Committee asked COVIC to bring back alternative language and further offered that the Committee would help draft the language if COVIC is interested in having help.

MOTION: To recommend approval of ACJA § 5-204 as amended in Section C, with changes to language in Section D as discussed in today's meeting. Motion seconded. 8-7-0
Motion passed. LJC-07-026

G. ACJA § 5-103 FTG 5% Set Aside

Mr. John Sousa, Court Services Division, AOC, presented proposed ACJA § 5-103: Enhanced Collections, which addresses the inconsistency in the five percent "set aside" of funds by the courts, and seeks to provide guidelines to ensure uniform application of the statute statewide. The code would clarify the funds that are subject to the 5% set aside and remove the "reimbursables" category, and instead, identify the specific funds that are exempt from the 5% set aside.

MOTION: Recommend approval of proposed ACJA § 5-103: Enhanced Collections, as presented. Motion seconded. Passed unanimously. LJC-07-027

H. ACJA § 5-203 Trial Jury Management

Ms. Melinda Hardman, Court Services Division, AOC, presented the updated proposed revisions to ACJA § 5-203: Trial Jury Management. This proposal was initially presented at the LJC meeting of September 26, 2007. As per the concerns/requests of members at that time, changes to section D, regarding summoning procedures, and section F, referring to "jury manager," have been incorporated into the code.

MOTION: To recommend that AJC approve and adopt amended ACJA § 5-203: Trial Jury Management. Motion seconded. Passed unanimously. LJC-07-028

I. Update of Statewide Implementation of Photo Enforcement

Ms. Julie Dybas, Manager of the Court Operations Unit, AOC, gave an update of the statewide implementation of photo enforcement and the partnership of the Court Services Division and the Department of Public Safety (DPS). The program is kicking off and courts are currently being contacted. One member reported having already been contacted by DPS. Ms. Dybas informed the committee of additional information and guidelines on photo enforcement that is available on the Court Operations webpage at <http://supreme22/ctserv/caunit/cau.htm>.

Committee comments:

The AOC should work with the state JP Association president on this matter.

The new calendaring module in AZTEC will require working through many issues.

Courts will need a separate bond card for photo enforcement cases.

J. Clerk Research Fees

Ms. Dybas also reported on issues concerning application of A.R.S. 22-404 and 22-281 (research fees) across the judiciary. They are requesting that an LJC workgroup be convened to review the issues, and that a recommendation be made to develop a policy recommendation for AOC.

MOTION: To refer the matter of research fees to the Implementation Subcommittee for review. Motion seconded. Passed unanimously. LJC-07-029

III. OTHER BUSINESS

A. Next Meeting:

Wednesday, March 5, 2008
State Courts Building
Conference Rooms 119 A/B

B. Call to the Public

No public was present.

The meeting was adjourned at 1:10pm.