

**COMMITTEE ON LIMITED JURISDICTION COURTS
MINUTES**

Wednesday, March 5, 2008
10:00 am to 12:20 pm
State Courts Building
Conference Room 119 A/B
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable R. Michael Traynor	Honorable Jeffrey A. Klotz
Honorable Phillip Bain	Honorable Nicole Laurin - telephonic
Mr. Daniel Carrion	Honorable Dorothy Little - telephonic
Honorable Thomas L. Chotena	Honorable Kathy McCoy
Ms. Faye Coakley	Mr. James R. Scorza
Honorable Timothy Dickerson	Mr. Mark Stodola
Ms. Joy Dillehay	Honorable J. Matias Tafoya
Honorable Sam Goodman	Ms. Marla Randall - telephonic
Ms. Joan Harphant	

MEMBERS ABSENT:

Honorable Ted W. Armbruster
Honorable James P. Angiulo

PRESENTERS/GUESTS:

Justice W. Scott Bales	Mr. David Withey
Ms. Patience Huntwork	Ms. Susan Pickard
Mr. Jerry Landau	

STAFF:

Ms. Melinda Hardman	Ms. Tama Reily
---------------------	----------------

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the March 5, 2008 meeting of the Committee on Limited Jurisdiction Courts (LJC) was called to order by Judge R. Michael Traynor, Chair, at 10:10 am.

B. Approval of Minutes from November 14, 2007

The minutes of the November 14, 2007 meeting of the Committee on Limited Jurisdiction Courts were presented for approval.

MOTION: To approve the minutes of the November 14, 2007 meeting of the Committee on Limited Jurisdiction Courts. Motion seconded. Approved

unanimously. LJC-08-001

C. 2008 Meeting Dates, Revisited

The LJC 2008 meeting dates were previously approved by the Committee, however, the AOC has requested that meetings of this committee take place a minimum of two weeks prior to the meeting of the Arizona Judicial Council (AJC). For this reason, some new meeting dates are being proposed for LJC. The meeting schedule for 2008 would be as follows:

Wednesday, May 21, 2008	State Courts Building, Conference Rm 119 A/B; 10:00 a.m.
<u>Legislative Subcommittee</u> Tuesday, September 30, 2008	State Courts Building, Conference Rm 119 A/B; 10:00 a.m.
Wednesday, October 1, 2008	State Courts Building, Conference Rm 119 A/B; 10:00 a.m.
Wednesday, October 29, 2008	State Courts Building, Conference Rm 119 A/B; 10:00 a.m.

MOTION: To approve the proposed new 2008 Committee on Limited Jurisdiction Courts meeting dates. Motion seconded. Approved unanimously. LJC-08-002

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Self-Represented Litigant Guides for Appeals to the Superior Court

Over the last year, an informal committee has been working, at the direction of Chief Justice McGregor, to put together guides for self-represented parties in appeals. The committee has completed a guide for civil appeals from the superior court, and has in the works, guides for appeals to the superior court from the limited jurisdiction courts (one for civil non-traffic cases, another for criminal and traffic cases). The committee that put together the guides would like to receive comments from the LJC.

Justice Bales briefed the committee on the history and progress of this project and added that they hope to obtain feedback from this Committee. The current drafts of the guides are included in today's meeting material. He welcomed any questions that members might have today.

Committee Comments/Concerns:

- Is there a timeframe within which this is expected to be finalized?
 - We hope to have it finalized by the end of this month
- If a person is in custody, how do they fill out the forms?
 - This is something that has not yet been considered. The forms will be made available to the various courts, and effort would be made to prevent this type of situation. However, as it has not been specifically addressed at this point, this will be brought to the committee's attention for further discussion.
- How are the courts going to be expected to use these packets? What will the recommendations be?
 - The recommendation will be that they be made available on the different court websites, and for those courts who wish to, they will also be provided at the Clerk's counters. They will also be available on the Supreme Court's website.
- If a person is in custody, it is currently required that the courts give them a notice of Right to Appeal at the time of trial. Maybe it should be recommended that the guide be provided to them at that time as well.

- It is a good idea, so this is a topic that will need to be discussed in committee. Our public information offices coordinated the announcement of the guide for appeals from the Superior Court. It may be necessary to come back to this Committee to talk about how to most effectively make the guides available for Limited Jurisdiction Courts.

Justice Bales requested that members provide any comments they have via email to Paul Julien at PJulien@courts.az.gov, or Justice Bales at SBales@courts.az.gov.

B. Arizona Judicial Branch Legislative Package Update

Mr. Jerry Landau reviewed the status of the 2008 AZ judicial branch legislative package and provided an update on additional bills that impact Limited Jurisdiction Courts.

HB2090: Extreme DUI: Violation

This bill will be merged into SB1004, which will remedy the conflict in DUI sentencing, with a BAC of 0.20 or above.

- The bill recognizes the BAC of 0.15 and .20 as two separate offenses?
 - Yes, the bill provides separate violation codes for a) BAC of 0.15 or more but less than 0.20, and b) 0.20 or more
- Would jury instructions then list two separate Extreme DUI offenses?
 - This will not be in addition to ARS 28-1382, it will be written as a section or subsection. The 0.15 to 0.20 is going to be a lesser included offense of the 0.20 and above.
- Is it recommended as an additional charge, or a sentence enhancement?
 - A lot of courts have raised concerns about this point, and a lot of litigation is in process currently for this reason. The consensus at this point seems to be that these should be separate charges

HB2603: Photo Enforcement; Driving Record; Insurance

There are problems with this bill due to the inability of MVD to distinguish between photo enforcement and non-photo enforcement. Five amendments, which are not consistent, were put on the bill, so it continues to need work.

HB2749: Defensive Driving School Repeal

This bill failed and will not be coming back.

HB2753: Traffic Citations; Payments; Reinstatement Fees

Permits a person to pay a license reinstatement fee upon full satisfaction of any civil penalty for which revocation of a driver's license is mandatory. Requires the court to transmit the fee to the MVD and authorizes the court to collect a fee of up to \$5 per transmission to cover associated costs.

Comments already received on the bill are:

- The courts do not routinely send checks to MVD
- If there are suspensions on the different case numbers, it may be difficult to satisfy all of them, resulting in payment of multiple fees
- If there are suspensions in different courts, it will necessitate payment of multiple fees

- The courts only forward once a month to MVD, which could leave a person without a driver's license for long periods
- The courts don't know what MVD has on file, and MVD will not know what all the courts are doing

Rep. Miranda has requested help in correcting issues with this bill, and Mr. Landau will be sharing these issues of concern with him. Mr. Landau welcomed any other comments that Committee members might have, and asked that they be emailed to him at Jlandau@courts.az.gov.

SB1004: Extreme DUI; Jail

Removes the ability of a judge to suspend all but the minimum of the jail sentence imposed on an individual for a first or subsequent Extreme DUI. As previously mentioned, this bill will merge with HB2090 in order to alleviate the conflict in DUI sentencing.

SB1033: DUI, Community Restitution; Driver License

Prohibits the MVD from issuing a new driver's license to a person whose license was suspended for a second DUI offense, until proof has been provided to MVD that community restitution has been completed. Amended to authorize the court to order alternative sanctions if deemed more appropriate.

SB1080: Operating Under the Influence; Watercraft

Adds Hit and Run and Unlawful OUI provisions to boating law. Mirrors the OUI statutes to current DUI laws with regard to sentencing, including the look back period, fines, community restitution and requirements.

SB1184: DUI; Treatment; Education; Ignition Interlock

Establishes an alcohol or other drug screening, education, or treatment protocol tied to implied consent and administrative per se in the MVD. A person whose driver's license is suspended pursuant to the implied consent law may not be reinstated unless violator completes alcohol or other drug screening education or treatment ordered by MVD.

There was concern voiced by a committee member about conflict between this bill and SB1004 on the ability of judges to suspend the jail sentence. Mr. Landau stated he would be checking into this. As the bill moves from the Senate to the House, it will funnel through House Transportation, where this conflict can be sorted through.

SB1262: Racing on Highways

Requires a judge to order the surrender of a license and suspend driving privileges for 90 days upon conviction of racing. Increases the look back period to determine prior convictions from 24 to 48 months.

SB1231: Reimbursement Costs; DUI; Drug Offenses

Requires the court to order a person convicted of enumerated drug charges to reimburse the political subdivision responsible for that person's conviction.

Mr. Landau explained that there is no longer a DUI element in the bill. But because some courts do handle possession of drug paraphernalia and possession of marijuana, he will be meeting with Senator Linda Gray about this bill.

SB1474: Justice Court Fees; Court Facilities

Authorizes the presiding justice of the peace in each county in concurrence with the board of supervisors to approve an increase of \$15 for each warrant or civil default fee and allow the use of the collected monies to build or maintain adequate justice court facilities, judicial technology, or related equipment.

SB1006: Jury Trial; Eligibility

A Constitutional amendment providing criminal defendants with the right to a jury trial in any criminal prosecution, regardless of the seriousness of the offense or penalty.

Mr. Landau states that this bill will not go through this year as there is no plan as to who would pay the costs due to the magnitude of misdemeanor cases.

C. FARE Fiscal Fast Facts

A FARE facts update sheet was provided in today's meeting materials by Mike DiMarco.

D. Subcommittee Updates

Electronic Documents: Proposed ACJA section for Limited Jurisdiction Electronic Document Management

Daniel Carrion and Susan Pickard reported on the status of the subcommittee's work on the proposed ACJA § 1-507. Limited Jurisdiction courts wish to be able to rely on an electronic court record and dispose of paper records. Currently, limited jurisdiction courts are unable to meet the stringent requirements of ACJA § § 1-504 AND 1-506 for providing an electronic document management system. The proposed new ACJA section will offer reduced electronic document management standards for limited jurisdiction courts.

Rules/Forms

Judge Tafoya reported there is no update on the subcommittee at this time.

Judicial Performance

Judge Goodman reported acting as Chair at the last meeting of the subcommittee. Judge Angiulo is unable to go forward as Chair due to health issues. The subcommittee is awaiting direction from him at this point to resume work on the judicial accountability issue he had initiated.

Records Retention

Judge Traynor reported that this subcommittee may start working on records retention issues again later in the year. He recommended Committee members review the retention schedule and get feedback from other courts between now and the May meeting, in order to assess what particular issues might need to be re-addressed.

Implementation

Joan Harphant reported that the subcommittee will be meeting today, after this meeting. They will be looking at research fees and how the fee is applied across the board.

Covic Liaisons

Two of this Committee's members, Judge Sam Goodman and Judge Timothy Dickerson, are serving as liaisons with the COVIC workgroup assigned to work on changes to the Victims'

Rights Code Section. The workgroup has met twice and will meet again to continue working toward amending the Code.

E. Rule Petition Filings Update

Ms. Patience Huntwork updated the Committee on the Rule Petitions filed and open for comment that would impact Limited Jurisdiction Courts. The comment deadline is May 20, 2008.

Arizona Rules of Civil Procedure:

R-07-0007 (Rule 65.2)
R-08-0002 (Rules 39(d), 47(b), and 51(a))

Arizona Rules of Criminal:

R-07-0003 (Rules 4.2, 7.2, 7.4, 27.7, and 31.6)
R-07-0005 (Rule 8.2(a))

Rules of the Supreme Court:

R-07-0015 (Rule 29)
R-07-0016 (Rule 122)
R-07-0017 (Rule 39)
R-07-0018 (Rule 38(b)(7)(A)(v))
R-07-0020 (Rule 45)
R-07-0021 (Rule 111)
R-07-0028 (ER 1.5, Arizona Rules of Professional Conduct)
R-07-0029 (Rule 38(a))
R-07-0030 (Rules 32, 45, and 64)
R08-0003 (Rule 45)
R-08-0004 (Rule 38(g))

Superior Court Rules of Appellate Procedure – Civil

R-08-0001 (Rule 12)

Rules of Procedure in Traffic and Boating Cases

R-07-0013 (Rule 8)

Rules of Procedure in Civil Traffic Violation Cases

R-08-0009 (Rule 9)

Rules of Procedure for Eviction Rules

R-07-0023

Note: Judge Traynor asked the Committee to think about whether they want to take any action or file comments on any of the Rule petitions because the comment deadline is May 20th, and LJC does not meet again until after that date. After considerable discussion, the Committee

determined that it was unnecessary for the Committee as a whole to file a comment on any Rule petition.

F. New ACJA § 1-303; Code of Conduct for Judicial Employees Amendments

Mr. David Withey presented a proposal to convert the Code of Conduct for Judicial Employees into a section of the Arizona Code of Judicial Administration for adoption and publication in that code. Amendments are being proposed, in primarily two areas:

Canon 3E, pertaining to court staff assistance to court users, was previously presented to COSC in February 2007. The proposed amendment addresses the concerns voiced by COSC by eliminating the term “customer” and providing a qualifying statement as to existing limitations of court employees to always provide the requested assistance.

Canon 5C, pertains to employees seeking judicial department elective office and would authorize any judicial employee to run for an elected judicial department office without resignation or leave of absence regardless of whether the employee is running for elective office within or outside the judicial department.

Committee concerns were voiced regarding the proposed changes to Canon 5C and 5D:

- What if a staff member seeks to run for the Clerk of the Court, but is denied permission by the Clerk of the Court?
 - This is a possible scenario in the way the Code is written, and there is no provision for appeal. So, it needs to be considered in any action that takes place on the proposal today.
- What if an item within this proposal conflicts with a County policy?
 - This is covered under the Purpose and Intent section, which says the “minimum standards contained in this Code do not preclude the adoption of more rigorous standards by law, court order, or local rule.”
- The language is not clear regarding from whom the staff member seeks permission; the JP, Presiding Judge, or Presiding Justice of the Peace, or their manager? This should be clarified.

MOTION: To approve ACJA § 1-303; Code of Conduct for Judicial Employees with the exception of sections 5C and 5D. Motion seconded. Approved unanimously. LJC-08-003

MOTION: To recommend approval to AJC of ACJA § 1-303; Code of Conduct for Judicial Employees as amended in the preceding Motion. Seconded. Approved unanimously. LJC-08-004

Mr. Withey also asked for feedback on the following:

- Currently, the personal staff, courtroom clerk and court manager group are held to the same standards as judges who may run for judicial office without resigning or taking a leave of absence. Should this be changed to require court managers and personal staff to take a leave of absence in order to run for any judicial department office?
- Under the current code, regular judicial employees must take a leave of absence to run for any office. Should the code be changed to allow any employee of the judicial department elected office, which is vacant, to run for that office?

Mr. Withey asked members to call him should they have thoughts to offer on these two items.

III. OTHER BUSINESS

A. Next Meeting

Wednesday, May 21, 2008

10:00 a.m. – 3:00 p.m.

State Courts Building

Conference Rooms 119 A/B

B. Good of the Order/Call to the Public

No Public Present

The meeting was adjourned at 1:05 p.m.

**COMMITTEE ON LIMITED JURISDICTION COURTS
MINUTES**

Wednesday, May 21, 2008
10:00 am to 2:30 pm
State Courts Building
Conference Room 119 A/B
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable R. Michael Traynor	Honorable Jeffrey A. Klotz
Honorable Ted W. Armbruster (telephonic)	Honorable Dorothy Little
Mr. Daniel Carrion	Honorable Kathy McCoy
Honorable Thomas L. Chotena	Mr. James R. Scorza
Ms. Faye Coakley	Mr. Mark Stodola
Honorable Timothy Dickerson	Honorable J. Matias Tafoya
Ms. Joy Dillehay	Ms. Marla Randall -
Honorable Sam Goodman	
Ms. Joan Harphant	

MEMBERS ABSENT:

Honorable Phillip Bain	Honorable Nicole Laurin
Honorable James P. Angiulo	

PRESENTERS/GUESTS:

Chief Justice Ruth V. McGregor	Julie Dybas
Mr. Jerry Landau	Sharleen Decker
Kathy Waters	Nancy Swetnam
Sarah Schmoll	David Withey
J.L. Doyle	

STAFF:

Ms. Susan Pickard	Ms. Tama Reily
-------------------	----------------

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the May 21, 2008 meeting of the Committee on Limited Jurisdiction Courts (LJC) was called to order by Judge R. Michael Traynor, Chair, at 10:10 am.

Judge Traynor made the following announcement:

- Mr. Mark Meltzer was introduced as the new AOC staff to the LJC, and welcomed to the committee.

Mr. Paul Julien, introduced Mr. Chad Campbell, new Program Manager for the Judicial College at the AOC's Education Services Division.

B. Approval of March 5, 2008 Minutes

The minutes for the March 5, 2008 meeting of the LJC were presented for approval.

MOTION: To approve the minutes from the March 5, 2008 meeting a presented. Seconded. Passed unanimously. LJC-08-005

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Legislative Update

Mr. Jerry Landau, Director of Government Affairs for the AOC, apprised members of the status on legislation filed during the 2008 session that impact limited jurisdiction courts. The following items were highlighted:

HB2395: DUI Omnibus

This bill, vetoed by the governor in April, is being added onto **HB2643**, commonly known as "the Restaurant Grill Bill," which makes technical changes to license fees for restaurants that sell alcohol. This version will remove the reduction on the 6 month interlock. The interlock for first offense will remain at one year. It also splits the extreme DUI into A1 and A2, and sets the penalty for the jail sentence for each. As well, it resolves the sentencing conflict in extreme DUI by repealing the provision that allows the judge to suspend part of the minimum sentence for a first offender, .15 to .20. It will be heard next week, and will probably pass. Effective date would be January 1, 2009.

HB2751: Driver licenses requirement; Violation

Classifies driving a motor vehicle without a valid driver license as a class 1 misdemeanor and requires the court to dismiss the citation if specified conditions are met. Currently stalled in senate caucus.

SB1160: Juror Summons; Questionnaire; Return postage

Prohibits the returning of juror questionnaires from generating any cost upon the prospective juror. This one is stalled; has not had a hearing in House Rules.

B. Recognition of Service

Chief Justice Ruth V. McGregor presented Judge R. Michael Traynor with a Certificate of Appreciation and thanked him for 16 years of faithful commitment

and service to the LJC.

C. Arizona Code of Judicial Administration (ACJA) §§ 6-105; 6-201; 6-202

Ms. Kathy Waters, Director of AOC Adult Probation Services Division, presented proposed modifications to several code sections. All have previously been heard and approved by the Committee on Probation (COP).

ACJA § 6-105: Powers and Duties of Officers

Changes to the code are as a result of the initiative to roll out Evidence-based Practices to probation in the State of Arizona.

MOTION: Approve ACJA § 6-105: Powers and Duties of Officers as presented. Seconded. Passed unanimously. LJC-08-006

ACJA § 6-201: Standard Probation

Points of discussion at the COP:

- Removal of minimum contact standards. Contacts will be driven by the risk/needs assessment and offender behavior.
- Case plans for low risk offenders are not required, unless there is an identified criminogenic need requiring a strategy for intervention.
- Revised criteria for what is included as a direct (active) case, specifically, the exclusion of jail cases.

MOTION: Approve ACJA § 6-201: Standard Probation with modifications presented. Seconded. Passed unanimously. LJC-08-007

ACJA § 6-202: Adult Intensive Probation

Points of discussion at the COP:

- Impact on the IPS Program if restricted only to high-risk offenders

MOTION: Approve ACJA § 6-202: Adult Intensive Probation as presented. Seconded. Passed unanimously. LJC-08-008

D. MAS Reporting Requirements

Ms. Julie Dybas, manager for the AOC Court Operations Unit, briefed the members on changes in MAS procedures for “co-located” courts.

E. Criminal Procedure Manual Update/DPS Photo Enforcement Update

Ms. Sharleen Decker updated the Committee on the limited jurisdiction courts criminal procedure manual. It is currently 74% complete, with the original chapters having been submitted. Target date for distribution to the court community is October 31, 2008.

All eight DPS photo enforcement pilot courts are online and ready to receive citations. Reports are currently being developed for courts to track cases, payments, and other issues. Ms. Decker welcomed any comments and/or suggestions from photo enforcement courts for developing reports that could aid in the processing of cases.

F. Judicial Vacancy Notification

Ms. Susan Pickard reported on planned changes to the Arizona Judicial Branch website to provide an effective and standard location for attorneys statewide to view judicial opportunities. The Committee is asked to provide any recommendations they may have to gather vacancy information for judges, pro tems, and commissioners.

Committee Comments:

- It would be a more proactive process if the AOC were to send out a list of the vacancy information to all the various bar associations, rather than having the need for individuals to go to the website
- It might be useful to look at the city clerk's offices because they handle the entire recruitment process
- In order to give the website credibility, it seems like it should be mandated that openings be reported to the AOC
- Mandating it seems reasonable, because for example, if a judge takes a leave of absence, it is required that the PJ and the Chief Justice be notified in writing

Susan will pass on the members' comments and suggestions to the AOC staff involved with this project, and will provide updates to LJC as it progresses.

G. Legislative Impact and Implementation for the Defensive Driving Program

Ms. Joan Harphant, Tucson City Court Administrator, and Nancy Swetnam, Certification & Licensing Division Director, AOC, reported on the status of the implementation plan and discussed its impact on ACJA 7-205, and various other related issues. In addition, some of the questions and concerns raised at the Maricopa County LJC's Presiding Judges Meeting on May 9, 2008 were brought forward for feedback from the committee today. These included:

- Defendants should be required to complete defensive driving school 7 days prior to their court date.
- The schools must provide the information to the AOC within 3 days. The AOC will forward the information to the court by the night of the 3rd day. This would ensure that the court would have the information on the fourth day, and allow time for resolving any problems that might exist with that file.
- The issue of continuances needs further discussion in order to develop a workable solution that is within the confines of the law.

Committee Comments/Concerns:

- Schools in rural areas only offer defensive driving classes once per month, this should be taken into consideration.
- If schools are allowed to apply and/or become certified any time during the year, versus having limitations or set deadlines, it will be very difficult from an Information Technology standpoint.
- Several members expressed concern about schools sending electronic information without the payment, as this would place a great hardship on the courts.
 - *Judge Traynor noted that his understanding is the “information” being received electronically includes the payment, otherwise it seems they would not be in compliance with the statute.*

The subcommittee meets again at 1:30 on May 29, 2008, conference room 109, and will be reporting back to the LJC in September.

NOTE: A document summarizing the many issues raised at the May 9, 2008 meeting noted above, was produced by Jim Scorza, and this will be sent to committee members following today’s meeting.

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

Mr. David Withey presented the modified version of Section 1-303: Code of Conduct for Judicial Employees, which was previously presented at the last LJC meeting. In response to the Committee’s concerns, the following amendments have been made:

“Courtroom Clerk,” has been amended to apply to employees performing these duties in all courts (not strictly superior courts).

“Incumbent” is defined to clarify that a person may be an incumbent by appointment to an elected office.

Canon 2F concerning “Former Employees” is amended to avoid undue restriction on use of former employees.

Canon 3E provides a list of circumstances in which court employees are required to provide assistance to court users. This is qualified with a statement stipulating that such duties will be consistent with each court’s resources and policies, and the respective employee’s assigned responsibilities and knowledge.

Canon 5C, 5B, and 5D are revised to authorize any judicial employee to run for an elected judicial department office without resigning or taking an unpaid leave of absence if the office is in a court other than the court in which the employee is employed.

MOTION: Recommend adoption, with proposed amendments, of ACJA §

1-303: Employee Code of Conduct for Judicial Employees. Seconded. Passed unanimously. LJC-08-009

I. Subcommittee Updates

Electronic Documents

Mr. Daniel Carrion reported on the status of the subcommittee's work and presented Version 2 of the proposed ACJA code section for LJC Electronic Document Management. On April 4, the subcommittee presented the proposal to the Technical Advisory Committee (TAC) and gained a commitment from TAC to define technical requirements for a paperless court, with a goal date of September 2008. Collaborative efforts are planned going forward, with TAC member Randy Kennedy joining this subcommittee, and Dan Carrion joining the TAC subcommittee.

Version 2 of the code section is reduced in scope to apply to closed records; it acknowledges the difference between general jurisdiction and limited jurisdiction courts; and allows acknowledgement that electronic documents that come in are original documents. It is presented for approval today.

MOTION: To continue going forward with presenting the version proposed today of the ACJA Section for Electronic Archives for Limited Jurisdiction Courts to the TAC and other committees. Seconded. Passed unanimously. LJC-08-010

Implementation

Ms. Joan Harphant reported that the subcommittee has found significant differences existing in the research fees and procedures among superior courts and limited jurisdiction courts. Due to the findings thus far, the subcommittee is asking direction from the LJC as to whether the scope of its review should include clerk fees.

MOTION: To expand the inquiry currently underway by the Implementation Subcommittee to include clerk fees. Seconded. Passed unanimously. LJC-08-011

Judicial Performance

Judge Traynor informed the members that due to Judge Angiulo's retirement, a new chair will be sought for this subcommittee. It has been inactive for some time.

Rules/Forms

Judge Tafoya stated they have no new items to report.

III. OTHER BUSINESS

Judge Traynor reported that there have been comments received on the pending R-07-0015 filed by the committee in October, 2007. He reminded the

members that the rule petition addressed rules 1, 4, and 6 of the Arizona Rules of Procedure in Traffic and Boating Cases, and was essentially responsible for beginning the electronic document discussion.

The first comment, received from Karl Heckart, Chief Information Officer of AOC's Information Technology department, primarily addressed the intent of the rule petition to make changes to Rule 29D of the Rules of the Supreme Court of Arizona, which is the rule from which the scan and shred issue actually arose. His underlying concern is the destruction of documents, even with the use of a scanning process, such as Onbase.

The second comment, received from the Maricopa County Attorney's Office, concerns the quality of scanning necessary to preserve identifying characteristics, specifically fingerprints. Judge Traynor notes that the court does not typically keep fingerprints as this falls to law enforcement.

A lengthy discussion ensued regarding the comments received, with a consensus reached that the comments are directly relevant to the issues the Electronic Documents Subcommittee is currently addressing. It was agreed that the subcommittee, with the assistance of Judge Traynor, should file a response.

MOTION: Recommend that Judge Traynor, Chair, and the Electronic Documents Subcommittee draft and submit a reply to comments received on R-07-0015. Seconded. Passed unanimously. LJC-08-012

A. NEXT MEETINGS:

Legislative Subcommittee
Tuesday, September 30, 2008
State Courts Building
Conference Room 230
10:00 a.m. – 2:00 p.m.

Committee
Wednesday, October 1, 2008
State Courts Building
Conference Rooms 119 A/B
10:00 a.m. – 2:00 p.m.

B. Good of the Order/Call to the Public
No public response.

The meeting was adjourned at 2:15 p.m.

**COMMITTEE ON LIMITED JURISDICTION COURTS
MINUTES**

Wednesday, October 1, 2008
10:00 am to 2:30 pm
State Courts Building
Conference Room 119 A/B
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

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

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

MEMBERS ABSENT:

Ms. Lisa Royal

PRESENTERS/GUESTS:

Justice Scott Bales
Ms. Joan Harphant
Paul Julien, Esq.
Susan Pickard
Mark McDermott
J.L. Doyle
Stewart Bruner

James Westmiller
Sharleen Decker
Nancy Swetnam
Amy Love
Patience Huntwork, Esq.
Kathy Waters

STAFF:

Mr. Mark Meltzer

Ms. Lorraine Nevarez

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the October 1, 2008 meeting of the Committee on Limited Jurisdiction Courts (LJC) was called to order by Judge Antonio Riojas, Chair, at 10:00 am. Judge Riojas welcomed all the members, and thanked Judge Traynor for his years of service as chair of the Committee.

B. Approval of May 21, 2008 Minutes

The minutes for the May 21, 2008 meeting of the LJC were presented for approval.

MOTION: To approve the minutes from the May 21, 2008 meeting a presented. Seconded. Passed unanimously. LJC-08-013

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Appeals Guides for Self Represented Litigants

Justice Scott Bales, AOC, and Paul Julien, AOC presented new appeal guides for self-represented litigants that are now available on the Arizona Judicial Branch website, at <http://www.supreme.state.az.us/appellateguide.htm>. This has been an 18 month effort to assist self-represented litigants in the appeals process. The guides cover five separate areas in appeals including civil, criminal and traffic cases.

B. Judicial Vacancies Website

Ms. Susan Pickard, AOC, and James Westmiller, AOC, presented the new website for Limited Jurisdiction and General Jurisdiction vacancies. The website provides links to various open vacancies within the state for Judges, Commissioners and Pro tems. The website provides an effective and standard location for judicial opportunities to be viewed.

C. Creation of Two New Justice Court Precincts

Mr. Mark McDermott, AOC, presented on the two new justice court precincts in Maricopa County. The AOC notifies the County Board of Supervisors when a county has reached its peak to create new courts/precincts.

D. Statewide Photo Radar

Ms. Sharleen Decker updated the Committee on HB 2210, which passed during the Second Regular Session of the 48th Legislature (2008). HB 2210 enacted a program of statewide photo enforcement of Title 28 violations. The details of this program, which went into effect on September 26, 2008, are as follows:

- New legislation covered by Article 3 and 6
- New legislation there is no abstracts of record of responsibility to MVD
- Notice of Violation (NOV) fee \$181.50

Committee Comments/Concerns

What happens at the court level? Is there a timeframe for violators to respond?

Response: Rule 45-Complaint: Service, Appearance Date, Notice, Response-Affects the complaint at the court level. We are working with all courts on calendaring this after 30 days. Courts will assess cost of service.

Regarding the AG's advice—why isn't the new legislation eligible for DDS?

Response: It's not part of the new legislation. There will be another assessment and possible emergency session to discuss clarifying the legislation. Ms. Decker encouraged members to send their input to assist with the challenges of the new legislation.

Ms. Decker indicated a memo would be going out from Janet Scheiderer, Director of Court Services, AOC, which would address the local fees.

E. Legislative Package

Ms. Amy Love, AOC, apprised members of proposed legislation that could impact limited jurisdiction courts. The following items were highlighted:

2009-01 Domestic violence; designation

Replaces all statutory references to "Domestic Violence" in Arizona Revised Statutes (of which there are approximately 233) with the designation "Domestic Victim."

The Committee did not support this proposal.

2009-02. Decriminalization of petty offenses

Decriminalizes petty offenses, treating the offenses similar to that of civil traffic. Currently, a petty offense is an unclassified criminal offense. A.R.S. § 13-601. Persons may be arrested on petty offenses and incarcerated for failure to appear or on violating a court order to pay a fine. The maximum penalty is a \$300 fine. Incarceration and probation are not options.

The majority of the Committee recommends taking no position.

2009-03: Restitution; orders

Juvenile restitution orders:

Requires the juvenile court to enter a juvenile restitution order in favor of each person entitled to restitution at the time it announces an order of restitution, whether at the disposition hearing or any subsequent restitution hearing. Current law requires this order to be entered after the juvenile turns 18 if there is an unpaid balance on restitution owed to a victim. Restitution would accrue interest at the statutory rate (10%) from the date of entry of the order. The court-signed restitution order is immediately recordable as a lien against the assets of the juvenile or the juvenile's parents to the maximum amount allowed by law. If a victim with a court-signed

restitution order employs and attorney or collection agency to recover restitution, the victim is entitled to collect a reasonable fee for the attorney or collection services. Current law specifies that the court may require the custodial parent of a juvenile to make restitution; the proposal removes the word “custodial” so that any parent of the juvenile could be required to make restitution.

The Committee did not support this portion of the proposal.

Adult restitution orders:

Requires the trial court to retain jurisdiction in any case where restitution is ordered for the purpose of modifying the manner in which restitution is paid to determine whether a defendant is in compliance with probation terms and conditions or the defendant’s sentence until all restitution is paid. The court must issue a signed order in the amount of restitution awarded upon entry of any amount of restitution due a victim at sentencing or any subsequent restitution hearing. Restitution accrues interest at the statutory rate from the date the order was made and eth court-signed restitution order is immediately recorderable as a lien against the assets of the defendant. If a victim with a court-signed restitution order employs and attorney or collection agency to recover restitution, the victim is entitled to collect a reasonable fee for the attorney or collection services.

The Committee did not support this portion of the proposal.

F. Rules Change Update

Ms. Patience Huntwork, AOC, presented on the new and newly amended Arizona Rules of Court. Ms. Huntwork also requested volunteers from the Committee to join a workgroup concerning R-06-0016. This rule petition is seeking to amend Rule 1.6, Ariz. R. Crim. P., which would provide for appearances by defendants via videoconferencing for initial appearances, arraignments, and some other hearings. Committee members Judge Riojas, Judge Goodman, and Judge Dickerson volunteered. Pending Rule change petitions can be viewed and comments can be submitted at the following website:

<http://azdnn.dnnmax.com/AZSupremeCourtMain/AZCourtRulesMain/CourtRulesForumMain/tabid/89/Default.aspx>

G. Task Force on the Code of Judicial Conduct

Paul Julien, AOC, discussed the proposed new code of judicial conduct. This new code adopts the structure of the 2007 ABA Model Code of Judicial Code. Mr. Julien also invited the Committee to a public hearing to be held regarding the new code in Phoenix or Tucson.

H. Subcommittee Updates

Electronic Documents

Mr. Karl Heckart, AOC ITD Director, and Steward Bruner, COT Staff, discussed the needs to reduce physical storage space; courts are requesting formal guidance regarding their ability to eliminate paper records prior to conclusion of the required retention period, when equivalent electronic records exist. Language in court rules was recently revised to allow clerks to substitute electronic records for paper, "Provided adequate safeguards are employed for the preservation and integrity of such documents..." Technical requirements associated with Rule 124, provided in ACJA §§1-504 and 1-506, were considered barriers to progress. e-Records subcommittees of both the Limited Jurisdiction Courts Committee (LJCC) and Commission on Technology's Technical Advisory Council (TAC) have defined various minimum requirements in the context of providing those adequate safeguards. Their work has been codified in a proposed code section applicable to all levels of courts, with reduced requirements for closed records in limited jurisdiction courts. Specific requirements are based on the value of each case-related record rather than the length of time it is required to be retained. Commission on Technology has recommended the section for inclusion in the Arizona Code of Judicial Administration. In preparation for presentation to the Arizona Judicial Council (AJC), affected committees are being requested to review the draft document and consider its potential impact.

Committee Comments:

How much would it cost to setup a safeguard system?

Response: The cost to setup a safeguard system varies.

MOTION: Recommend that AJC approve the proposed code section regarding protection of electronic records treated as original case file records, with any changes noted or issues addressed, as documented by staff. Seconded. Passed unanimously. LJC-08-014

Defensive Driving

Ms. Joan Harphant, Tucson City Court Administrator, and Nancy Swetnam, Certification & Licensing Division Director, AOC, reported on significant legislation affecting the Defensive Driving Program and the use of the defensive driving schools by the courts, which was enacted by the Arizona State Legislature in 2007 and 2008. The LJC Defensive Driving Subcommittee held a number of meetings with judicial officers, court administrators, AOC staff, technical staff, and defensive driving school owners/operators to discuss this legislation. Joan Harphant provided an update on the efforts of the subcommittee to identify critical issues, reach consensus and implement the legislation.

Implementation requires amendments to the Arizona Code of Judicial Administration § 7-205: Defensive Driving. Many of the proposed changes represent the consensus reached among the stakeholders at the subcommittee meetings. In addition there are proposed changes that are not linked to new laws. The Arizona Judicial Council will consider these proposed changes to § 7-205 at its October 22, 2008 meeting and will make a recommendation to the Supreme Court on adoption.

Committee Comments/Recommended Modifications::

- Driving Schools should include with the check the attendee's names, citation number, violation, date of completion
- Fees should be transmitted at least every two weeks if not weekly.

MOTION: To recommend the Arizona Judicial Council support the proposed Amendments to section 7-205, subject to the recommended changes. Seconded and Passed unanimously. LJC-08-015

Adult Probation

JL Doyle presented on ACJA code section 6-105.01: Powers and Duties of Officers; 6-201.01: Standard Probation; and 6-202.01: Adult Intensive Probation.

The adoption of these new code sections is a result of the initiative to roll out Evidence-Based Practices to probation in the State of Arizona. Highlights include:

1. Departments will be governed by the existing Powers and Duties code until they have achieved the minimum requirements, which will be outlined in an Administrative Order and/or Administrative Directive, and approved by the Administrative Director.
2. All departments must achieve the minimum requirements and apply for governance under 6-105.01 by December 31, 2010.

MOTION: To recommend approval of sections 6-105.01, 6-201.01, and 6-202.01 as written. Seconded. Passed unanimously. LJC-08-016.

III. OTHER BUSINESS

Rules and Forms: Amendment to the ACJA-Retention Schedule for OUI

Honorable Matt, Tafoya presented on ACJA § 4-302: Limited Jurisdiction Courts and Records Retention and Disposition. HB2643; liquor; restaurant licenses; continued operation; enacted during the 2008 legislative session, increased the look-back period, from 60 to 84 months, for determining a second time or aggravated Operating Under the Influence (OUI) offense. The bill will become effective January 1, 2009.

Currently, the Limited Jurisdiction Court Records Retention and Disposition Schedule do not cover OUI case records. To correct this oversight, and to improve the completeness of the LJC Records Retention and Disposition Schedule, it is recommended that the schedule be modified to include OUI case records, applying the same retention period as DUI case records, being 7 years after final adjudication and completion of sentence.

MOTION: To recommend that AJC approve and adopt the amendment to ACJA § 4-302: Limited Records Retention & Disposition, to require OUI case records be retained for 7 years, effective Jan. 1, 2009. Seconded. Passed unanimously. LJC-08-17

Implementation: Research and Clerk Fees

Jim Scorza and Joan Harphant updated the Committee on its project concerning research fees and clerk fees in the various courts. They discussed instances which may require an imposition of a research fee. The goal was to establish uniformity among the courts. The Committee recommended the workgroup discuss further situations where a fee would be imposed.

Schedule of 2009 Committee Meetings

The committee approved the following meeting dates:

- Wednesday, February 18, 2009
- Wednesday, May 20, 2009
- Wednesday, September 16, 2009
- Wednesday, October 28, 2009

The meeting times are 10:00 a.m. to 2:30 p.m. The February, September, and October meetings would be held in Conference Room 119. The May meeting would be in conference room 345.

The Chair announced that if there are no requested agenda items for the scheduled October 29, 2008, Committee meeting prior to October 10, 2008, that a notice will be sent out cancelling the October 29, 2008, meeting.

Call to the Public

No public response.

Adjourn

The meeting was adjourned at 2:15 p.m.