

**COCLJ AUTOMATION ADVISORY COMMITTEE**

MEETING – November 13<sup>th</sup>, 2009

Helena, Montana

**MEMBERS PRESENT:**

Karen Nelson, Supreme Court Administrator's Office  
Chairperson Judge Larry Carver  
Judge Johnny Seiffert  
Sheri Bishop, Gallatin County Justice Court  
Sharon Skaggs, Yellowstone County Justice Court  
Barbara Pepos, Richland County Justice/Sidney City Court  
Marty, Court Administrator's Office IT Staff  
Lisa Mader, Court Administrator's Office

**MEMBERS PRESENT BY VISION NET:**

Thelma Keys-Nicol, Kalispell Municipal Court  
Judge Gregory P. Mohr, Sidney

Meeting was called to Order by Judge Carver at 9:00 A.M.

**APPROVAL OF OCTOBER 23<sup>RD</sup>, 2009 MINUTES:**

Judge Seiffert made a motion to accept the minutes, seconded by Sharon Skaggs, no discussion, with approval by vote of the members.

**PUBLIC COMMENT:**

No one present for Public Comment

**JUDGE LARRY CARVER UPDATE:**

Judge Carver talked to Greg Noose, Director of the Motor Vehicle records department, regarding problems with the transferring of information as well as the new Intoxilyzer bill – HB 536. Greg Noose reported 3 specific problems:

1. A number of Ltd. Jurisdiction court judges have reported convictions for 2<sup>nd</sup> or subsequent DUI/BAC violations and have NOT recommended that the person be eligible for a restricted probationary DL. HB 536 says that at the time you submit the form to Driver Improvement, the Judge needs to make a recommendation on a 2<sup>nd</sup> or subsequent offense that the Defendant is eligible for a Probationary License after 45 days. If that happens, then the Judge orders the Interlock Device. Greg Noose further said there is no recommendation for a probationary DL, but there is a recommendation for an Interlock Device, which is confusing to Driver Improvement. This would basically give the offender the Interlock Device on a vehicle that he cannot drive for 1 year.
2. If a Judge does not recommend a probationary license, nor an interlock device and orders the forfeiture of the vehicles, does the Driver Improvement Bureau issue the offender a Probationary license? The statute says that the Judge can do one or the other. Greg said he discussed the problem with Brenda Nordlund from the

Attorney General's office and she said that a probationary DL cannot be issued without the interlock device, as they go hand in hand. Her office, however, is not involved in the vehicle forfeiture process.

3. Driver Improvement has received records of convictions with offense date prior to October 1<sup>st</sup>, 2009, but a conviction date after October 1<sup>st</sup>, 2009 and the Judge has assigned the interlock for the second 12-month period, after completion of the one year suspension. The judges are basically going by the old law. What is the statutory basis for the assignment of the second 12-month restriction after a conviction date of October 1<sup>st</sup>? Currently when receiving this restriction, the Driver Improvement Bureau adds the restriction to the record.

Judge Carver asked if these 3 problems could be addressed by a new form. Judge Mohr commented that at the Fall School, a committee was formed to write a "white paper", as some of the judges were apprehensive about giving someone the DL after 45 days. If this Defendant did not enroll in ACT or was not in compliance with ACT, judges did not want to allow the DL. Judge Carver said there was some discussion about Judge Harkin addressing "Best Practices" and proper procedure on the Web. Judge Harkin actually wanted Judge Carver to write the "white paper", to which he declined. The second issue was could a Judge rescind a Probationary DL, after having recommended one at the time of sentencing. Judge MaryJane Knisely was appointed chairperson of a committee to look into this issue and Judge Seiffert agreed with Judge Mohr that the committee was going to make a Best Practices recommendation on these issues. Judge Mohr said the committee consisted of Judge Knisely, Judge Seiffert, Judge Carver, Judge Ortle and himself.

Judge Seiffert understands where in the 1<sup>st</sup> issue could happen, in which a Judge does not feel the defendant should have a probationary DL at the time of sentencing, but does recommend the interlock device on vehicles, once he/she is eligible for a probationary DL. Judge Carver said that the decision for the probationary DL goes with the decision for an interlock device on the DL form. He also believed that part of the problem is the form that is currently used in sentencing and sent to Driver Improvement. Greg Noose said he would get back to Karen Nelson regarding the changes needed to the form.

Judge Carver stated he would talk to Judge Larry Herman about the Public Defender cost issue and he also noted that a Bond Book committee meeting was still scheduled for Thursday, November 19<sup>th</sup>. Justice Nelson is the chairperson of the State Automation Committee and they recently met. During that meeting Justice Nelson was very clear that as we proceed with CitePay and the import of citations the statutes be followed.

Lisa Mader reported to the committee that the last of the courts are to be scheduled for the new FullCourt update. Judge Carver was contacted by the new Golden Valley County judge to get updated.

**KAREN NELSON UPDATE:**

Karen and Marty from the IT staff met with the Montana Highway Patrol after the last meeting and they have an update of Smart Cop being deployed to all officers. In that

update is the ability to accept payments in their roadside payment project. Regarding the importing of citations, one of the problems discussed was the reporting of the B.A.C. at that time. Some jurisdictions want this information filed with the Citation and some jurisdictions do not. Karen wanted some direction from the committee as to how this should be handled when importing the citations. Some MHP officers put REF in the BAC location on the citations, which stands for Refused; however, the numeric field could not read these letters.

Judge Carver said he received some calls from judges after the Montana Highway Patrol advised that B.A.C. would be on the tickets. Judge Neece's prosecutor objected to the B.A.C., as he felt this was evidence. Sharon Skaggs commented that most of their DUI's appear and plead guilty, so the B.A.C. is important to have at the time of sentencing. Judge Carver said some time ago at the training seminars he was told that the B.A.C. should not be on the citations. Karen Nelson said that adding more logic as a choice when importing the citations from Highway Patrol is going to create more problems.

Judge Mohr said that the B.A.C. was considered evidence; however, the ticket does not go in front of the jury, so it would not create a problem. However, Judge Mohr said the majority of the judges want the B.A.C. One reason for this is in the setting of bond. Judge Carver agreed that there will be a minority in the group of judges who do not want this information on citations filed in their courts. Judge Seiffert wants the B.A.C. on his citations and during sentencing he needs this information. He did not see any difference between those tickets and the speed violations, where the speed someone is cited for is on the citation. Judge Seiffert said without the B.A.C. violation on the ticket when someone is charged with B.A.C. of .08 or greater, how would he establish probable cause. Further in a situation where he cannot establish probable cause he will dismiss the case. Sheri Bishop said that her judges want the B.A.C. information on their citations. Judge Mohr said that the B.A.C. on the ticket during a Bench trial would not create a problem, as the prosecutor would have to establish the foundation for the evidence to be submitted. Judge Carver said the question for the committee is should they require the B.A.C. on tickets or leave it off the tickets. Right now, when Judge Neece fills in for the Miles City City Court, the clerks cover up the B.A.C. on the ticket at his request.

Marty said that he can fully understand how an Officer could make a mistake in one jurisdiction when he files citations in many jurisdictions and tries to remember each of those jurisdiction's preferences regarding the B.A.C. Marty feels that the judges need to know why the B.A.C. is on there and they can disregard it if that is their choice. Judge Carver wondered if the Montana Highway Patrol has a program that will allow them not enter the B.A.C., if they know the judge does not want to see it. Judge Seiffert says that each court could redact that information. Judge Carver then said that there should be a field for the B.A.C. on the citations and if a Judge does not want to see that information on the tickets filed in his court, he can advise the Officers.

Judge Seiffert made the Motion that a field for B.A.C. be added when citations become imported into the court and if a court does not want to see the B.A.C., it is that court's responsibility to redact that field. Sheri Bishop seconded that motion. Judge Carver

asked just to clarify the “court is to redact it”, does that also mean the judge asking the officer not to put that information on the ticket? Judge Seiffert said absolutely, it is up to the court to not have that information if they do not want it. **Motion was passed.**

Marty discussed the timeline regarding the importing of citations. Right now, the process of receiving bond has been very slow to develop, meaning it may be March or even June of 2010 before the MHP starts their roadside payment program. Sharon Skaggs asked if they could begin with the importing of citations, even if that means without the roadside payment side of the program. Karen said they are two separate processes, noting that Marty is ready to do the end user testing on the importing of citations, however, there is concern at the MHP level that if the Officers were turning in their citations electronically, and they did not provide the paper copy to the Court, they would not be as likely to accept any bond on the roadside stop. Judge Seiffert also said that due to the difference between some of the courts regarding bond, he can understand why some do not want to accept bond. Sheri Bishop said that in Gallatin County they are seeing less bond turned in by the MHP officers.

Judge Carver said that the citation is also the receipt of bond, and if they electronically file the citation, but the court does not see the actual bond for 10 days or so, problems could be created. It is believed that the citation and the money need to be filed in the court at the same time. Sharon Skaggs reported that they are now importing citations from their Sheriff’s Office, however, those officers never collect bond.

Marty recommended that even though the tickets will be imported in electronically he felt the Officer still needs to file the paper copy. Sharon Skaggs recommended that bond not be collected by MHP officers when filing citations with Yellowstone County, to alleviate the problem with the payment not coming to the court as quickly as the citation is. Judge Seiffert recommended that if an Officer collects bond, then a paper copy of the citation and the bond must be filed with the court as soon as possible. If there is no bond, then the citation could be filed electronically. Judge Carver asked if the decision was made regarding the electronic copy is the “official document”. Karen Nelson had some samples from other states where the electronic copy issue was addressed. Judge Seiffert wanted to know if the electronic signature is the legal signature.

Marty said that technically the MHP is ready to allow importing of citations; however, their leadership is not ready to go forward at this time. Karen Nelson said a third option for the committee to consider is that we are discussing CitePay and we should implement the import of citations to the court in Yellowstone County as soon as possible, while letting the MHP work on their roadside payment option. Karen said she feels they need the import of citations and payments to exist at the same time. Sharon Skaggs said they do have an electronic payment option right now in Yellowstone County, in that the officers fill out a form with the credit card info on it and the court runs that information through when they receive the citation. If the credit card is denied, then they issue a Summons for the defendant to appear. Sharon felt that the import of citations should be dealt with now, to work out any problems that may come forward. Judge Carver said the downside is that the Officers are encouraged to **not** accept bond. Sharon Skaggs said

their court has overdue processing as well, so tickets not being paid will be followed up on. Marty inquired about an out of state driver being stopped and if the officers require bail. Judge Seiffert said there is no bail or jail.

Judge Carver asked if the committee wanted to make a recommendation to import citations. Marty reminded the committee that this will depend on the Dept. of Justice sending that information. Sharon Skaggs made a Motion that the committee move forward with the electronic filing of Montana Highway Patrol tickets, without the component of the payment on site and that the committee review this over the next 2 or 3 months. Also, that the MHP roadside payment option and CitePay option be reviewed as well, when they become available. This Motion was seconded by Sheri Bishop. Motion was passed.

Marty said that Major Butler may have some objection to this, due to the problem with Out of State Warrants. However, the recommendation will be taken to them as soon as possible.

#### **CITEPAY:**

Ernie from JSI introduced his staff who was with him today, Mary and Bill. His #1 objective is to walk away from this meeting and be 90% sure of how CitePay will work for Montana. Ernie wanted to show the committee how a person could be in the courtroom and make a payment with a credit/debt card right there. A CitePay terminal was shown to the committee. This terminal could be used if a defendant called with his credit card #, or mailed the information to the court. There is again no charge to the court for this option. Sharon inquired if CitePay works for filing fees on civil cases and Ernie said yes it will work. This functionality is exclusive to the Ltd. Jurisdiction courts right now. Next, the committee needed to walk through the set-up.

Mary gave a demonstration of the enhanced payment window offered in CitePay. The card reader was then used to enter the credit card data. Ernie said the card reader may need some language on it specific to Montana. Judge Seiffert said there would be some language that says: this is bond forfeiture and I understand that I authorize this for payment of the fine and/or this is a payment as per my court pay agreement. Ernie said that either the defendant or the court could make the credit card transaction through the terminal. Bill said that the receipt will print with a balance owing shown. Bill said the CitePay fee will be reflected on the receipt as well. Thelma said that the receipt should reflect the fee paid to CitePay, and the amount paid towards the fine or bond. Ernie said that the receipt would print out the automated processing fee. The Committee recommended that the defendant check "I agree" to the fact that I am paying an automated processing fee. Sharon said her court shows it as a "transaction fee". Ernie felt it had to say automated processing fee. Judge Carver said for auditing purposes, the receipt must be very clear as to the fee. Ernie said Enterprise will know the next payment due date, from the time payment agreement. Mary said that her system is configured to move the next payment 30 days ahead. Thelma inquired about what Full Court Version V reads as the next payment date, and Bill explained that what was entered in FullCourt is what will print out, such as a case where someone has received an extension. As long

as the date was changed in FullCourt, you won't have any problems on CitePay. Sharon inquired what happens when a defendant comes in and makes 2 payments for the month, will the due date advance 2 months? Bill said you would need to manually advance the next due date. Judge Seiffert said that even if a Defendant makes a double payment one month, his agreement states they must come in the next month as scheduled. Ernie said that would work with the CitePay setup now.

Mary then gave a demonstration of how a civil filing fee would be done on CitePay. Sharon Skaggs said she has pro se defendants come in who want to pay their filing fee by credit card. Sharon asked about her court having 2 bank accounts and Ernie said they would work on that issue. There are no problems with bank accounts when they are set up as separate FullCourt programs, such as a separate City Court and separate Justice Court.

Bill explained that when someone calls the Court and wants to pay by credit card, the credit card #, security code and other information will be entered on FullCourt. Judge Mohr asked if these payments will affect "overdue processing". In other words, will FullCourt know that the defendant has made his payment and not generate paperwork in "overdue processing"? Ernie and Mary both agreed that FullCourt would be updated and, therefore the "overdue processing" program is updated.

Thelma inquired about a defendant getting on-line and making a \$25.00 payment, when his payment plan said he must make a \$50.00 payment. Bill explained that is a court setup issue, as some courts want to accept any amount paid, even if it is not the agreed upon amount. Thelma inquired if "overdue" will be updated. Judge Carver explained that right now you see a "que" which asks if you want to reset "overdue". Bill said right now CitePay is not setup to change overdue, however, this could be added to the program. Ernie said the court can look at a report which shows all the payments that were made on-line. Some courts have made a decision in their setup to only accept the pre-determined payment amount, or more, but never less than that amount.

Right now, there are only 12 courts using "overdue processing". Bill said that Enterprise works differently when it comes to time payments. Bill believes that "overdue" gets reset when an on-line payment is made, just the same as it resets when a payment is made over the counter, because the codes are the same. Bill said they will look at a setting for the on-line payments where "overdue" can be reset. Karen Nelson suggested a specific "que" where you are looking at the payments that have come in on-line and whether to reset "overdue" or not. This would be a work "que" that showed the case, defendant, amount due, amount paid and whether to reset "overdue" or not. Ernie made a suggestion regarding on-line payments; the only time a partial payment is allowed is if it is a minimum amount due or more, not less. Bill said that they could add a flag to on-line payments where the "overdue" needs to be changed. Mary says there is new functionality available right now in Version V when CitePay is activated, which shows someone has a time pay agreement and payments can be made on-line. It allows the court to enter the minimum amount due on-line, and this also has the next due date option. The other way for courts to set this up is to put in the amount they will accept as an on-line

payment in any situation. Sharon asked if they could add another box which said “reset overdue”. Judge Carver pointed out that Defendants get wise to the court’s procedure and they wait until they receive their “warning letter” before they make a payment, therefore, the court needs to have a way to override the due date and give a final payment date or warrant. Ernie and Bill agreed that they will add a flag to the on-line payment report that will alert the court that “overdue” needs to be addressed. The court will need to be able to make the decision whether a payment will be accepted on-line or not.

Ernie asked how they solve the problem of the defendant seeing a due date different from the date that will be changed in “overdue processing”. Sharon said that the due date on the receipt and the due date in FullCourt must be the same. Bill said that a defendant will get a receipt on-line with a next payment date and after that if the court changes it to a different pay date, then the court would have to contact the Defendant. Judge Seiffert said if a court wants to accept less than what is due, that would be an individual court setup issue. Bill pointed out the option to check the box on a case by case basis that the court will or won’t accept an on-line payment on a case.

It was decided that Judge Carver will be the contact person available to the JSI people when and if questions arise regarding this project.

Ernie spoke about the credit card terminal available to the court with CitePay and it is included in the agreement, with no cost to the court. Some large courts will need more than one credit card terminal. Ernie said if a terminal fails, JSI will replace them at no cost. Karen Nelson had a question about the functionality that allows the clerk to type in the credit card information and if it was stored somewhere. Ernie said no, their system does not store credit card information. Bill added that all credit card numbers are encrypted and are not stored in any database.

Ernie wanted to review the first part and stated the following:

JSI is going to make the updates that they talked about.

Bond functionality is in CitePay.

There is no plea and pay in Montana.

Judge Carver wanted to discuss the language that needs to be in CitePay. There are 2 types of bonds, bond posted and forfeited and then there will be a bail with a mandatory appearance which will be given to someone at the Jail. Mary wanted to clarify the forfeitable bond, asking if they can take that payment and apply it directly to a fine and fee, or does it have to go into a bond trust account first. Judge Carver says the language needs to say: I am posting an appearance bond and I need to forfeit that bond. Bill said there is room on CitePay to add 4,000 characters of text and he was not sure about a “box”, but he would test that out. Judge Seiffert wants to make sure that the Defendant understands they are posting bond and if they do not appear they are forfeiting that bond.

Judge Mohr suggested the wording as: I hereby authorize the forfeiture of the bond that I have posted as a final disposition of this case. If the defendant wants to take care of the matter on the spot, having that language would meet Montana’s requirements.

Judge Carver wanted to see the language that is currently in CitePay. Mary demonstrated a forfeitable offense on CitePay. Judge Carver said the defendant needs to check a box that says he is agreeing to the fact that bond forfeiture is the final disposition of the case. Judge Seiffert suggested: I understand by posting this bond and if I don't show up by my appearance date, the bond will be forfeited as the final disposition of this case. Sharon said that if a defendant changes their mind, the receipt can be moved from fines and fees back to bond. Judge Seiffert also brought up the point that the violation is not reported until 15 days after the appearance date shown in FullCourt.

Judge Carver puts money received from a defendant into bond, until after the appearance date and then he posts the bond forfeited disposition and moves the bond money to the fines and fees. Barb commented that their court was trained to follow that procedure. Judge Seiffert felt that courts learned it is easier to enter the money right away into the fines and fees, instead of go through the 2 step process. Judge Carver felt that Judge Mohr's language would solve the bond trust issue.

Karen Nelson wondered if CitePay could show the appearance date and the defendant could check the box authorizing the forfeiture of that bond if they did not appear on that date. Judge Mohr believes the language should say that the bond is authorized to be forfeited.

Judge Carver added: I understand I am posting bond, but committee members believed this language would just create more confusion. Judge Mohr recommended: In lieu of an appearance, I hereby authorize the forfeiture of the bond I have posted as a final disposition of this case. Barb suggested the language, In lieu of my court appearance; I hereby authorize the forfeiture of the bond I have posted as a final disposition of this case. Judge Mohr made a Motion to the following language: **In lieu of my court appearance, I hereby authorize the forfeiture of the bond I have posted as a final disposition of this case.** Karen Nelson wanted to know if it should say by checking this box. Ernie suggested that the box says – I AGREE and if the box is not checked, they cannot move forward. Judge Seiffert seconded that motion. **Motion was passed.**

Judge Carver now wanted to discuss the option of having a bond posted as in a situation where someone wants to go on line and post bond for someone incarcerated. Mary gave a demonstration of how CitePay would handle that. The bond poster would need to fill in mandatory fields, such as name and address. Sharon suggested also a mandatory field for a phone number. Court appearance is shown as mandatory. Bill said that right now, there is functionality that if e-mail is tied to the jail, once bond is posted, e-mail is automatically sent to the holding facility. Mary demonstrated how the on-line payment goes to an unapplied receipt. When looking at the unapplied receipts, you see all the information about the on-line payment, who the poster was and who the defendant is. Once the clerk gets the case entered the unapplied gets merged with the case. Bill said right now all on-line payments of this type go to unapplied. Bill said the reason for this is to make sure that the bond is not posted on the wrong party or wrong case. Judge Mohr wants language on this screen: if the defendant fails to appear, the poster may have their



bond forfeited, a warrant may be issued for the defendant and his DL may be suspended. Judge Carver wanted to know if all that language needed to be on the screen. Judge Mohr felt that the language needs to be on there for proper notice. Judge Carver agreed that it should say that I agree to appear in court and my failure to do so may result in the forfeiture of this bond, a Warrant of arrest and suspension of a DL.

Judge Seiffert wanted to know if there is a safeguard here that the bond is being posted to the proper court. As an example, they may be arrested and held in Yellowstone County, but the bond should go to the court in Red Lodge. Bill said they have no way of providing this safeguard. Judge Seiffert said the notice of appearance in court may have to be general, so as not to mislead the defendant to the wrong court. Bill said that they could add a field where the poster would need to pick a court or county. Judge Mohr said the citation would advise the proper court. Judge Seiffert said that if it was mandatory to enter a citation number and the court, the poster would need to contact the jail to get that information in order to post the bond on-line. Judge Carver said they would want the citation number or case number and the proper court name to be mandatory fields. Barb suggested that cards could be made up for the jail advising how bond can be posted on-line.

Judge Mohr suggested the following language here: I understand that my personal appearance is required and if I fail to appear within 10 days of posting bond, it may result in the forfeiture of this bond, a warrant for my arrest, and the suspension of my DL. Judge Seiffert said that the bond poster may not be the one who would be responsible to show up in Court. Judge Seiffert suggested: I understand that the money I am posting could be forfeited if the defendant fails to appear.

Judge Mohr made a Motion for the language to state: I understand by posting bond, the Defendant must appear in Court within 10 days of the posting of that bond and the failure of the Defendant to appear may result in the following:

1. The forfeiture of the bond I posted
2. Issuance of a Warrant for the Defendant's arrest
3. And/or suspension of the Defendant's driver's license

A box would be below that said I AGREE for the poster to check.

Sharon wondered if another field could be added that: I authorize the bond to be used for the fine. Judge Mohr felt this would be a good idea as well. Judge Mohr made a Motion that the next statement could be: Upon final disposition of the defendant's case, I authorize the use of this bond to be applied to the defendant's fines, fees or restitution. At the bottom of this statement would be 2 boxes to be checked, either Yes or No. Sheri Bishop seconded that Motion. Motion was passed by the committee.

Judge Carver wanted to know if the above screens can be printed out. Bill said they could develop PDF files that cannot be edited and they could be shipped back to the court. Ernie said that by virtue of the fact that the transaction was completed, it is impossible for a defendant to move forward if they declined to accept the agreement.

These could be mandatory fields. The Yes/No regarding the authorizing of the bond to be applied to fines, fees and restitution would print out on the comment field of the receipt. Ernie said it is more accurate that by virtue of the completed transaction, they had to agree to it. **It will be mandatory that both of the statements are addressed on the screen and boxes checked before a transaction can move forward.** The committee agreed this would work for Montana.

D. The committee discussed the age of majority for paying on-line. Ernie believed that most credit card companies are requiring 18 YOA or older. CitePay is looking at the defendant's birth date, so if a court does not allow any on-line payments until they are 18 YOA, that means no one can go on-line and make the payment for them. Therefore, **the committee decided to leave that field open.**

E. To determine if a violation can be paid on-line without a court appearance, Judge Carver believed the statute tables will address this issue.

F. Show all unresolved was explained as a defendant who received 2 citations, such as a seat belt violation and a DUI. Would CitePay show both of those violations? The committee agreed to show both violations. Mary then asked if there are multiple violations, would we allow the payment of the eligible non-appear violations? The committee agreed to allow on-line payment of the eligible non-appear violations. This happens in Court right now, so there was no reason to restrict the payment because it was on-line.

G. Show sealed cases? Judge Carver and Judge Seiffert explained that deferred imposition of sentence violations are open record, until the disposition is dismissed and then they are closed. Sharon said their table setup is to seal cases when deferred imposition is entered as the finding. Karen said this should probably be changed, as the dismissal of the case is what should trigger FullCourt to seal the case. Montana Code 46-18-204 was cited. After the charge is dismissed, all records pertaining to the charge are sealed as they become confidential criminal justice information. Therefore, CitePay will not show sealed cases.

H. Ineligible message. When the violation is ineligible for payment on-line, current message displayed is fine right now and the **court's phone number should be added.**

I. Partial payments were covered earlier by the committee. Mary said a message could be displayed pertaining to partial payments. Sheri said their 1<sup>st</sup> time pay agreement is paid in full in one month and if they don't complete this, then they come back for a new agreement. Therefore, their court has a minimum amount that will be accepted on the case. Bill explained that each case can be addressed on a case by case basis as to the minimum amount allowed. Also, Mary wanted to point out that set-up can vary from court to court based on their needs. **Judge Carver said individual courts could make their decision on this issue.**

J. Hearing Results. Mary said the hearing result is done with an ROA code which is located in table setup. This is J & K (close the case). Mary has her set-up where a hearing is scheduled, therefore, when payment is made, the hearing is resulted and under K the case is closed. The committee agreed to automatically close the case when a payment was made on CitePay if there were no other pending matters on the case. The ROA would show the user as e-payments.

L. Allow restitution to be paid on-line. Victim names should not be shown on the on-line payment screen. Bill said CitePay right now is set up showing restitution separate from the amount of the fine and, therefore, it allows the payer to pick one or the other. If, however, a priority is established, that would force those to be paid first through CitePay. Right now, CitePay does not split payments 50% to this or 50% to that. They are working on the functionality to change the program to show the case only with a total amount due. That way the payment gets divided up later on as per the statutory requirements. Bill suggested Montana may want to wait until that is figured out. Lisa said her staff needs to change some of the court payments to the 50% to fines and fees and 50% of the payments to restitution. Bill said one of the setups in FullCourt is the division of the restitution payment to multiple victims. Therefore, the committee decided to hold off on on-line payments of restitution, until the functionality is in CitePay.

M. Allow unapplied receipts. The message right now says: “We need additional information to process the payment.” It may take up to 10 days before the citation is filed with the court. The committee decided to not accept unapplied receipts right now. Ernie said the rate of the unapplied receipt being applied to the wrong court is higher than he thought.

N. Bond Payments. This was discussed.

O. Require all undisposed charges to be paid? This was discussed and the courts would accept payments on one of the violations if by statute it was eligible to be paid on-line.

P. No payment for undisposed charge if any ineligible undisposed charges on the case and this was answered by the committee earlier. Bill said the reason for making that requirement regarding all charges would have to be paid is that some courts have once per case fees. The committee said No to this.

Q. Warrants. Mary said that if there is a Warrant at all for the defendant, no on-line payments are allowed. The committee agreed if there is a Warrant, no on-line payments. It would say you are ineligible and you must contact the court.

R. Collections. No payments can be made if the money due has been turned over to Collections. The committee liked the message that the defendant must contact the collections agency.

S. Enforce the FTA Date. The committee decided that payments will be accepted after the date to appear or pay by date. Payments would be accepted until a Warrant, or a DL

**suspension.** Some courts are not issuing Warrants for failure to appear or pay, they are just using DL suspensions.

T. Send overpayments to unapplied receipts. Mary wanted the committee to know that a refund can be done from unapplied. The **committee decided the extra payment should be sent to “overage”**, so the extra money could be refunded to the defendant.

2. Accept over the counter and phone payments. This was covered already.
3. Accounting and Reports: This was demonstrated at the last meeting.

**MARKETING:** If no one knows about this technology, the process will not work. Every government web site should have a link to CitePay. Time pay agreements and citations would need some information about CitePay on them. Lewis & Clark County had a press release about the availability of CitePay. Brochures could be made up and distributed as well. Ernie said the most active sight is Bozeman Municipal Court and he asked the reason for this. It was felt that because of the college town base, the internet was being used more often.

Ernie said that by promoting the credit card use on-line, over the phone, or at the counter, the court would definitely see less people in their court. Judge Carver said that a survey recently completed by the courts listed the need for the availability of accepting on-line payments. Ernie again asked the committee about weigh stations and having the availability of CitePay there. Enterprise is web based which will solve many of these problems. Ernie asked if code should be written at CitePay to make it available now. Karen Nelson said that right now DOT is working with the MHP and Smart Cop. Sheri Bishop said her DOT officers are handing out a CitePay brochure. The Judge prepared this brochure that is handed out to the DOT officers.

Ernie said that what he understood right now is to hold off on this option. This is due to the fact that the committee did not want unapplied receipts right now. Judge Mohr said that the brochures should still be available at the Truck Stops.

**TIME FRAME:** JSI will begin work on this project and when that is completed, it will need to be tested. JSI could set up a site that we could play with and see how it works. JSI will need several months to get this all worked out and then Lisa said the Supreme Court will need at least one month for testing. JSI hopes to have their part done by February. Lisa would like the committee to see the program first, before it goes to a test site. April 1<sup>st</sup> would be the target date to go live on the test sites.

Karen Nelson would like to see a model process brought up. Each court will need to be adjusted, so as to meet their specific needs for the CitePay program. Karen also noted they will need to obtain bank account numbers, routing and transit numbers for each separate court bank account. Karen said during their internal testing they can work out many court set-up issues. Lisa said they would use the month of March for their testing. Judge Carver felt that the courts on the committee could be test sites. The issue of 2 bank accounts in the Yellowstone County Justice Court would be cleared up by then.

### **PUBLIC DEFENDER ISSUE:**

Lisa commented that what JSI demonstrated to them today on Enterprise is not in anyway ready for the State of Montana. They saw the core piece of Enterprise only. Thelma inquired how long does it take a payment to show up on FullCourt. Lisa said it is a real time transaction, so FullCourt will see the payment immediately after it was processed at CitePay. In the reverse, anything changed in FullCourt will immediately be changed on the CitePay site.

Judge Carver said that Karen Nelson would send the e-filing traffic rules out to committee members from the State of Ohio. David Nielson's rules have already been sent out regarding e-filing rules and electronic records. Judge Carver wanted everyone to review that information and be able to comment on it at the next meeting.

The COCLJ will be discussing the Public Defender bill next Friday, November 20<sup>th</sup>. Judge Carver said an account will be set up on FullCourt for the acceptance of that Public Defender fee. Statute 46-8-113 states:

## **Montana Code Annotated 2009**

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**46-8-113. Payment by defendant for assigned counsel -- costs to be filed with court.** (1) As part of or as a condition under a sentence imposed under the provisions of this title, the court shall require a convicted defendant to pay the costs of counsel assigned to represent the defendant as follows, except as provided in subsections (2) and (3):

- (a) in every misdemeanor case, \$150; and
- (b) in every felony case, \$500.

(2) Costs must be limited to costs incurred by the office of state public defender, provided for in [47-1-201](#), for providing the defendant with counsel in the criminal proceeding. If the criminal proceeding includes a jury trial, counsel assigned by the office of state public defender shall file with the court a statement of the hours spent on the case and the costs and expenses incurred and, except as provided in subsection (3), the court shall require the defendant to pay the costs of counsel and other costs and expenses as reflected in the statement.

(3) The court may not sentence a defendant to pay the costs for assigned counsel unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the

amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

**History:** En. Sec. 4, Ch. 415, L. 1981; amd. Sec. 67, Ch. 800, L. 1991; amd. Sec. 7, Ch. 262, L. 1993; amd. Sec. 42, Ch. 449, L. 2005; amd. Sec. 1, Ch. 467, L. 2009.

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Judge Carver said when a Defendant is sentenced to pay for court appointed counsel; the court may order the payment due by a specified period of time, or on time payments. Payments must be made to the Office of the State Public Defender as provided for under 47-1-201 MCA and deposited into the account established in 47-1-110. Before that it says that the court must sentence the defendant to pay these costs, whether \$150 or a bill presented to the court by the Public Defender. Judge Carver says if they put those fees into the fines and fees table, this will always show as outstanding. The court would have a judgment ordering the defendant to pay the fee, but how is the court going to account for this money when it is to be sent directly to the Public Defender's account.

Thelma wondered if it could be used as a victim and Judge Carver said when entered as a victim, 50% goes to fines and fees and 50% to restitution. Karen Nelson said last summer they never did answer the question: if the dollars are tracked were they fees or costs and what priority do they get paid in. Judge Carver said if a court does not accept the payment for the Public Defender office, but receives a payment from a defendant, how do they account for it. Judge Seiffert said the commission discussed this and the Public Defender fee was to be paid through the Court.

The statute does not put the collection on the Public Defender office, but says if the defendant defaults, the court – on motion of prosecutor or on its own motion – must issue an order to show cause. Therefore, the issue was again put on the agenda for the COCLJ meeting. Judge Mohr said this bill is not restitution, it is cost and the legislature did not deal with this properly. Judge Mohr said that once it is in the court, it becomes a civil issue. Judge Mohr said a policy needs to be established, such as Best Practice. Lisa said that FullCourt could be set up to accept a payment for that Public Defender cost or fee, if the court makes the request.

Judge Seiffert believes the legislature mandated this cost, as there is a need to pay for this Public Defender system. He feels there may be political ramifications if the courts do not collect the fee. Judge Mohr said since it is a civil issue, the Public Defender's office should notify the court that the payments are being made. Judge Mohr said if it was stated as restitution in the law, then the court would have to collect the dollars. Judge Mohr believes it is up to the PD office to report those payments. Judge Seiffert said this is a legislative issue to pay for the Public Defender office. Judge Mohr believes the legislature did not make it clear in their bill as to how the dollars would be collected. Also, a determination must be made that the Defendant is able to pay the cost or fee.

Karen Nelson said that Judge Herman is not going to assess the fee in Full Court. At the District Court level, the Public Defender's office is getting a copy of the judgment from the court. Karen said there has never been an answer to the question of how Full Court would prioritize this cost or fee. Yellowstone County Justice Court was going to submit this question for an Attorney General's opinion.

Judge Mohr pointed out that he has seen where a Defendant did not qualify for the Public Defender, but the Public Defender office agreed to do the work for that Defendant at a cost of \$60 per hour. Karen Nelson wondered if the judgment should be filed as a transcript of judgment in the District Court. She wondered if the Public Defender's office should be notified that the fee was assessed. Judge Mohr believed that since the Public Defender's office agreed to take the case, they can collect the money owed to them and must report back if they are not receiving payments.

Sharon said that their court is doing a separate order; therefore, the amount due the Public Defender's office is not entered in Full Court. Judge Carver said that the statute says: the court **shall** order the defendant to pay the Public Defender costs. Judge Seiffert pointed out that the statute did not say: **may** order the defendant to pay. Sharon asked what is the priority on the payment of this cost if entered in Full Court, 46-18-251 MCA was cited. Judge Herman believes that the payment of costs means prosecution costs and public defender costs and is collected after the fines.

Judge Carver received a question from a clerk:

On a civil case, the retention schedule says, on civil cases after the case is closed, it can be destroyed after 10 years. So a judgment is good for 10 years, can a clerk close that case and then must they wait another 10 years to destroy the paperwork. The statute says the judgment is good for 10 years. Judge Mohr said if there is inactivity on a case for 90 days, something in writing must be sent to each party advising them that the case will be dismissed, if no further action. Judge Seiffert believes a judgment is only good for 10 years. Judge Carver said you send notice to the parties that the judgment is over 10 years old and the case will be closed. The committee was asked to consider these issues.

The committee suggested coming up with a uniform card that the jail could keep and hand out to defendants, showing the CitePay option. The card would have to show the defendant name, citation name, and the court where the defendant must appear. Jennifer said Judge Neece has this type of card and she would bring one to the meeting. Sheri will bring her pamphlet regarding CitePay to the next meeting.

**NEXT MEETING DATE:**

The next commission meeting in Helena is Friday, January 15<sup>th</sup>, 2010.

The next IT meeting is scheduled for: **THURSDAY, January 14<sup>th</sup>, 2010 and will begin at 9:00 A.M. in Helena, Montana.**

**MEETING WAS ADJOURNED:**

Minutes submitted by member, Barb Pepos