

COCLJ AUTOMATION ADVISORY COMMITTEE
MEETING – November 21st, 2008
Helena, Montana

MEMBERS PRESENT:

Karen Nelson, Supreme Court Administrator's Office
Chairperson, Judge Larry Carver
Judge David Ortley
Judge Gregory P. Mohr
Judge Johnny Seiffert

MEMBERS PRESENT BY PHONE CONFERENCE:

Barbara Pepos, Richland County Justice Court/Sidney City Court

MEMBERS PRESENT BY VISION NET:

Sheri Bishop, Gallatin County Justice Court
Thelma Keys-Nicol, Kalispell Municipal Court

GUESTS PRESENT:

Chris Kiser, President of the MJC&MCCA
Attorney General's Office representatives

Meeting was called to Order by Chairperson Larry Carver at 1:30 P.M.

APPROVAL OF SEPTEMBER 4TH, 2008 MINUTES:

Minutes were approved as written.

PUBLIC COMMENT:

None.

COMMENTS FROM JUDGE CARVER

Judge Carver attended the JSI User Conference in Albuquerque, NM in September and spent some time speaking with Ernie Segó, who is the developer of the Full Court systems. Judge Carver spent some time looking at their latest product, which is called Enterprise. Upon coming back, Judge Carver made a recommendation that the State should not install "overdue processing" into any new courts in Montana. Ernie stated at the Conference that having to teach "overdue processing" to the new courts now would not be productive, as the State of Montana will be getting the Enterprise program within a year. On Enterprise, the "overdue processing" part has been simplified and improved greatly.

Karen Nelson added that she hoped they could start testing Enterprise in Helena early in 2009. She reported that 39 counties in the State are now up and running with Full Court in their District Courts. Karen stated that the wrap up for the District Court installations will be in February 2009. The last county to be installed will be the Cascade County District Courts.

Judge Carver added that after talking to Ernie in Albuquerque he learned that conversion does not work well in the “overdue processing” module. Karen Nelson stated that Rick has been developing a manual for “overdue processing”, according to the rules that were adopted by this Committee. Karen stated that as Rick is working on the manual, they are checking with JSI personnel to make sure that it is consistent with both Version V which is being used right now and Enterprise. Rick will also be looking at the grandfathered “overdue processing” courts, who have problems, so that they can be addressed right now.

DEPARTMENT OF TRANSPORTATION

John Kimball and Jack Dartman were present from the Department of Transportation. Inside the Department of Transportation are several programs including Traffic Safety, Motor Carriers, and the Impaired Driving Programs.

John Kimball stated that the goal of the Department of Transportation is to obtain court data relative to case disposition. The Highway Safety Division is always looking for information that would assist them in the design and construction of safe highways. John stated that they have never been able to obtain court records which would augment this data. With this Committee’s approval, they would like to track from incident through case disposition. Receiving this data, including the previously discussed DUI data, assists them in rating program effectiveness.

John further said that their Division receives a number of requests from Legislatures, who are looking at data, to see if the dollars spent are having the desired results. John went on further to describe how the data could be collected from our Central Repository. Thelma Keys-Nicol asked the question if the Department of Transportation would then access each court’s system. John stated that no, they would not have access to the court’s computer. They would be working with the Court Administrator and their vendor to provide their Department with an extract of information.

Karen Nelson said that the information would be extracted from the Central Repository and this would be pre-defined data. John described how the Broker works in getting this information and disseminating it. John spoke further about the security which would be built into the systems. Karen is a member of the Traffic Records Coordinating Committee as well. John is the Program Manager and Jack is the Enterprise level architect of the program.

Karen Nelson stated that at the next meeting they would provide the list of the data they are looking for. Judge Seiffert inquired if we would need to enter any new data to meet their requirements and Karen Nelson said, no, this would be from data that the courts already enter. Karen Nelson said that the Department of Transportation also understands that the crash data should come from the Montana Highway Patrol, instead of the courts.

All member of the Committee received a copy of the MDT Access to, Security For and Management of Court Data sheet provided by the Department of Transportation.

ORDER OF PROTECTION FORMS

It was noted by Judge Carver that the Commission on Courts of Ltd. Jurisdiction gave this committee authority to approve the documents when they were finalized by the Department of Justice. Discussion began with Judge Carver pointing out on the forms it says “If listing minor children, list initials only and years of birth.” Judge Carver stated statute 40-15-204 requires that they be named.

*4) An order of protection may include **restraining the respondent from any other named family member who is a minor**. If this restriction is included, the respondent must be restrained from having contact with the minor for an appropriate time period as directed by the court or permanently if the court finds that the minor was a victim of abuse, a witness to abuse, or endangered by the environment of abuse.*

Judge Carver also wanted the Committee to look at Page 3 of the Protection Order, under #11 is Parenting of Children. This is a confusing issue for Law Enforcement as well.

40-15-301. Jurisdiction and venue. (1) District courts, justices' courts, municipal courts, and city courts have concurrent jurisdiction to hear and issue orders under 40-15-201.

(2) When a dissolution of marriage or parenting action involving the parties is pending in district court, a person may file a petition for an order of protection in a justice's, municipal, or city court only if the district court judge assigned to that case is unavailable or if the petitioner, to escape further abuse, left the county where the abuse occurred. The petitioner shall provide a copy of relevant district court documents to the justice's, municipal, or city court, along with the petition. The justice of the peace, municipal court judge, or city court judge shall immediately certify the pleadings to the original district court after signing an order of protection under this subsection. The district court shall conduct the hearing unless both parties and both courts agree that the hearing may be conducted in the court of limited jurisdiction. If the district court is unable to conduct a hearing within 20 days of receipt of the certified pleadings, it shall conduct a hearing within 45 days of the receipt of the pleadings, unless the hearing is continued at the request of either party for good cause or by the court. If the hearing is continued, the order of protection must remain in effect until the court conducts the hearing.

(3) If one of the parties to an order of protection files for dissolution of marriage or files a parenting action after the order of protection is filed but before the hearing is conducted, the hearing must be conducted in the court in which the order of protection was filed. Either party may appeal or remove the matter to the district court prior to or after the hearing. If the district court is unable to conduct a hearing within 20 days of receipt of the certified pleadings, the district court shall conduct a hearing within 45 days of receipt of the pleadings. The hearing may be continued at the request of either party for good cause or by the court. If the hearing is continued, the order of protection must remain in effect until the court conducts the hearing.

(4) An action brought under this chapter may be filed in the county where the petitioner currently or temporarily resides, the county where the respondent resides, or the county where the abuse occurred. There is no minimum length of residency required to file a petition under this chapter.

(5) The right to petition for relief may not be denied because the petitioner has vacated the residence or household to avoid abuse.

(6) An order of protection issued under this section is effective throughout the state. Courts and law enforcement officials shall give full faith and credit to all orders of protection issued within the state.

(7) A certified copy of an order of protection from another state, along with proof of service, may be filed in a Montana court with jurisdiction over orders of protection in the county where the petitioner resides. If properly filed in Montana, an order of protection issued in another state must be enforced in the same manner as an order of protection issued in Montana.

Judge Carver believes the Parenting Order is an entirely different filing in the District Courts. Also, the statute deals with the transferring of orders to the District Court. This can be done before the Hearing or after the Hearing in the Limited Jurisdiction Courts.

Judge Carver explained that if the case is transferred before the Order of Protection Hearing, these boxes are not relevant. If a motion is made to transfer the Order to the District Court, then the Limited Jurisdiction Court judges have lost jurisdiction and cannot go back to change the Order. Section (3) was brought up and is noted in **bold text**.

Attorney Stuart Secrest was introduced with the Attorney General's office. He was taking the place of Alli, who normally represents the Department at these meetings. Attorney Secrest explained the change regarding minor's initials only, and noted the Supreme Court approved the "*Privacy Rules*" which were effective July 2008. Those rules state, "**full names of minor children in a court record shall not be public.**" (Rule 4.0(c) from that document) It is his opinion that 40-15-204 MCA references minors that are identified. The section does not specifically say full name.

Judge Mohr asked what would happen if all the children in the family had the same initials? Joan Eliel said that Law Enforcement would have their confidential sheet, which would give them all the information they needed. The Law Enforcement Service Information sheet would need to be expanded, so that the children's full names would be added.

Karen Nelson advised that she was co-chair of the Public Access Rules task force. The access rules say the names of minor children must be protected, unless required by law. In the discussion regarding these rules, the goal was not to interfere with the administration of Justice, but was to provide some protection to records accessible electronically. The Rules were specific to records that were available through an electronic mode.

Further, Karen Nelson said there were provisions with VAWA, which prohibits any court from publishing on the internet Orders of Protection information. The purpose of the rules was to establish some reasonable manner in which to manage court records in the electronic age. Judge Carver stated this is the same situation with a Traffic citation. If a minor receives a citation, the officer could not file that in court without the full minor's name. He also believes that the Rules on Privacy were never intended to overrule statutes.

Attorney Secrest agreed that the Privacy Rules were enacted because we are entering an electronic age. The rules as written and interpreted at the office of the Attorney General apply to all court records, not just court records which may be filed on-line. Therefore, they believe initials should be used in this case.

Judge Mohr said that when he showed these forms to his local District Judge, they were not well received. The District Judge also did not like the inclusion of the Parenting Plan in the forms. Judge Mohr also brought up the fact that court records are not released now unless they are redacted.

Attorney Secrest went on to address the Parenting Plan, #11 on the Order forms. The Attorney General's office agreed that they were very confusing. Attorney Secrest advised that they would be willing to address the Parenting of Children in #11. Judge Carver believed that Section #11 is not needed. The 2nd block states that Parenting arrangements are needed in this case, therefore, if a Judge checks this box, it basically says that the Judge issuing the order does not have jurisdiction in this case. The instructions regarding parenting plans are in the Petition and they are not needed in the actual Orders.

Judge Mohr said that a District Judge would not enter into a Parenting Plan with this order. The Parenting Plan is a separate issue. Judge Mohr stated that when they issue a Temporary Order of Protection, common sense dictates that the children must be somewhere. No Judge is limiting a parent access to the children, unless one of the children was a victim. The Limited Jurisdiction judges often get into situations where they set up "visitation agreements". Judge Mohr said that he cannot force a Petitioner or Respondent to go to the District Court to get a "Parenting" order.

Judge Mohr did not have a problem with Page 4 of 5 of the Protection Order, where a children's visitation arrangement was made. He also noted that in Richland County, he sees most of the Petitioners requesting Orders of Protection. Attorney Secrest commented that he did not see where in the statutes authority was given to make these visitation arrangements.

Judge Carver stated that the reason this committee took on this project was due to the fact that 50% of the Judges in the State were not using the forms provided by the Department of Justice. Judge Carver believes there is a difference between visitation and a Parenting Plan.

Judge Ortley believes authority comes from the part of the Statute which says, “*such other relief considered necessary to provide for the safety and welfare of the Petitioner or other designated family members*”. This can certainly include the requirements of how the parents will be allowed to visit the children. Attorney Secret said that the problem with that is it seems to contemplate that the children are part of the Order. Attorney Secret is looking at a situation where the children are not part of the Order and what gives the Limited Jurisdiction judges authority to make those arrangements.

Judge Mohr and Judge Ortley suggested to make more lines under #10 on the Orders and eliminate the Parenting of Children section under #11. Judge Carver also noted on the Petition for the Order of Protection, under #11: **Parenting of Children**, it states, “They cannot make parenting arrangements (such as visitation). Judge Carver said this statement is not true, because Limited Jurisdiction judges can and do make visitation arrangements. The statement under #11 goes on to state, “District Courts and some Tribal Courts can protect children on the order of protection, and they can also make parenting arrangements.”

Judge Carver recommended that the change on the Petition should read: Under #11, they cannot make a parenting plan and leave **out entirely (such as visitation)**.

Judge Ortley wanted to know if this Order is only for Domestic situations, or does it include the victims of sexual assault/stalking/assault/other. On page 1 of the Order of Protection, under the Paragraph that starts – The court has jurisdiction over the parties and subject matter, it ends by saying, “**There is an immediate and present danger of domestic violence to the Protected Persons.**” Judge Carver believed that line had been eliminated earlier.

Attorney Secret agreed that they would take out #11 on the Orders which refer to Parenting of Children. The language will stay in the Petition, but they will remove the part about “**such as visitation**”.

Judge Ortley said the Petition needs to be user friendly to someone filling it out by pen. The spaces are too small for them to answer the questions. Judge Ortley addressed the Petition, page 3, #5 “Information about Violence.” He felt that the form is more geared to Domestic Violence, as opposed to a victim who has not had any relationship with the perpetrator. Judge Ortley stated he is seeing more applications from Petitioners who are victims of assault. Joan wondered if they could add: Recent Abuse – Stalking – Assault?

Judge Carver wondered if they could do away with the word “abuse”. The rest of the sentences under #5 were good. Judge Seiffert also noted in the Petition, page 2, #4, Relationship, the boxes needed to be added referring to: victim of sexual abuse, stalking or assault. Judge Carver summarized that everyone agreed to the following changes:

- a. #11 – Parenting Action was to be removed on the Order forms – whether the Temporary or Permanent Order.

- b. The members all agreed to remove the sentence on the first page of the Order forms – whether Temporary or Permanent Order – which states: There is an immediate and present danger of domestic violence to the Protected Person.
- c. On the Petition form, all agreed that on Page 4, Relationship, the additional box needed to be added – victim of sexual assault, stalking or assault.

Attorney Secrest stated that the problem with full names of minors, or just initials is not resolved at this time. Discussion was held regarding how to ask the Supreme Court to clarify that point – taking into consideration the Privacy Rules. Attorney Secrest agreed that he would look into it and get back to the committee.

Joan said that two other changes on the final orders would be to put some NCIC codes after fields that are entered into the system. This would be helpful to CJIN personnel.

Thelma Keys-Nicol inquired if the Attorney General's office was aware that the courts redact all confidential information before releasing any documents to the public. Therefore, full names of minors on a protection order would not be released, nor would their dates of birth. Judge Carver agreed and said that if he went before the general body of Limited Jurisdiction judges and advised them they could only put initials on the Orders of Protection for minors, they would certainly question him as to full names and DOBs on traffic citations issued to minors.

Stuart, Alli and Joan would try to get a quick turnaround on the changes requested and they should also have information on the disagreement between their office and the committee regarding the use of initials for minors. Karen Nelson said that the forms previously reviewed by the committee were completed in hotdocs and A2J, therefore, as soon as the forms are approved, they can be released for use.

Judge Ortley inquired if on the Temporary Order, the date and time for the hearing could be placed in a more prominent spot. Joan commented that perhaps on page 1 of the Temporary Ex Parte Order and Notice of Hearing, they could put the date and time for the Hearing on Page 1 as well.

NEXT MEETING DATE AND TIME

Meeting is tentatively scheduled for January 15th, 2009 at 1:00 P.M.

CHANGE REQUESTS

Thelma Keys-Nicol referred to the change requests she had made in July. On the Civil Orders there is a drop down menu in Full Court which allowed for the # of days before the order expired. Thelma's request was for a free field where they could enter the date that the order expired. After talking with Lisa from the Supreme Court, all that would be allowed would be the actual # of days that the order would remain in effect before

expiring. Thelma wants to be able to enter the exact date and time when the order expires.

Judge Carver explained that all approved change requests were submitted to JSI staff. However, after talking with Ernie from JSI, he learned that no further changes would be made to the current version of Full Court. Instead those change requests would be incorporated into the new program called Enterprise.

Thelma went on to request that when a driver's license suspension has taken place, she would like to be able to see exactly which case had the DL suspension entered. Currently, if a Defendant has numerous cases, the clerks must look at each case before they find the exact case that had the DL suspension. Thelma said this change isn't necessarily to have the red flag on the case, but when you go into a defendant's Party History, there are 3 tabs at the top which allow you to pull this person's party history by: Case, Citation, or tab on over to Warrant. Thelma would like to see a 4th option to pull the Driver's License Suspension. That would identify the particular case where it was suspended.

Judge Carver said the request could be put on the agenda for the next meeting. Therefore, Thelma said she would make a formal change request. Sheri said that they should check out the Enterprise program first to make sure this is not already taking place.

KAREN NELSON – UPDATE ON OVERDUE PROCESSING

Karen said they are still looking at the overdue processing programs in the grandfathered in courts. A manual for overdue processing is almost completed and may be ready for the next meeting. Judge Carver also stated that he had received a question on overdue processing from Kim in Flathead County Justice Court. Judge Ortleby said that he understands the problem is that bond amounts do not print on the Warrant form. Chris Kiser of Great Falls Municipal Court said they have the same problem in their court and now they just manually enter the bond amount on the warrants. The Supreme Court administrator's staff would contact Kim in this regard.

Meeting was adjourned at 3:30 P.M.

