

COCLJ AUTOMATION ADVISORY COMMITTEE
MEETING – March 19th, 2009
Helena, Montana

MEMBERS PRESENT:

Chairperson, Judge Larry Carver
Karen Nelson, Supreme Court Administrator's Office
Judge Gregory P. Mohr
Judge Johnny Seiffert
Sharon Skaggs, Yellowstone County Justice Court
Sheri Bishop, Gallatin County Justice Court
Lisa Mader, Supreme Court Administrator's Office

MEMBERS PRESENT BY VISION NET:

Thelma Keys-Nicol, Kalispell Municipal Court

MEMBERS NOT PRESENT:

Judge David Ortley
Barb Pepos, Richland County Justice Court

Meeting was called to Order by Chairperson Larry Carver

A new recording device was being tried today. At some point, Judge Carver said the committee may offer this to the Judges for use on Small Claims. Karen Nelson said that it replaces the old tape system. This recording can be put on a little chip and distributed on e-mail. Karen Nelson said the new recording machine was about \$630.00.

APPROVAL OF FEBRUARY 19TH, 2009 MINUTES:

Minutes were approved with the following addition:

Judge Carver wanted to register the vote completed on January 12th, 2009 on the Order of Protection forms. The vote was performed by e-mail and Judge Carver wanted that vote officially added to the minutes of February 19th. Committee voted to adopt the forms submitted by the Attorney General's office, with the exception that the committee wanted full names of minors if they were listed as protected persons on the cover sheet and the Order. A motion to accept the minutes of February 19th, with that addition, was made by Sheri Bishop and seconded by Judge Seiffert. Motion passed and minutes were accepted.

PUBLIC COMMENT:

No one was in attendance for public comment.

ORDER OF PROTECTION FORMS UPDATE:

The Committee agreed to adopt the OOP packet, with the exception that the committee wanted the full name of protected minors. Since that time, Judge Carver took the OOP forms to the Commission on Courts of Ltd. Jurisdiction. It was there that the commission

wanted the issue on the full name of minors clarified. Elaine Dahl from the Montana Legal Services Division prepared a brief in support of the full name of minors. The Attorney General's office then agreed to accept her recommendation to allow the full name of minors, if they were listed as protected persons.

Judge Carver went on to state that since that time the Attorney General's office has finalized the forms. This notification came from Joan Eliel that they had taken them to the AG's office and that office agreed that the forms were great. A very minor change was made in language, to be exactly what the statute said. This took place on March 13th.

After that date, Joan Eliel received e-mail from Judge Ortley, addressed to Judge Carver, even though, Judge Carver had not received it. The e-mail from Joan was requesting some insight and direction on Judge Ortley's e-mail. Judge Ortley had said, (I do not have time to look these over for content before the weekend, can I have more time before someone starts work on them that we are bound by? I understand that these have to be approved before the full COCLJ.)

Judge Carver e-mailed Joan back saying he was not sure what happened as after drafting the forms, when Judge Ortley was in attendance, his only concern was to add more lines and they were added. I went on to explain that the Automation Committee is a sub-committee of the Commission on Courts of Limited Jurisdiction and that Commission had given authority to the Automation Committee to approve the final OOP forms. I also advised that Karen Nelson and I believed the forms were the same as the ones that the committee had approved.

Since then, Judge Ortley wrote a letter to the Commission on Courts of Ltd. Jurisdiction about his concerns on the OOP forms. Judge Ortley had valid concerns and, therefore, Judge Carver asked him to write them down, so the committee could go over them. The saving clause may be that most of these go to the original format that came out of Idaho. Joan said that barring any changes, the forms were ready to put out on the Website. A handout of Judge Ortley's comments was passed out to the committee.

One of the issues is that the Clerk does not have the authority to sign an Order, and the form has Clerk of Court/Judge on it. He is right on this issue. Judge Carver asked if the committee wanted to go through these issues and then submit them to the AG's office. Some of Judge Ortley's suggestions are easy fixes, such as where it would say Protection Order, instead of the proper language of Order of Protection. Another suggestion is to make one of the boxes bigger, because it is not big enough to write in with a pen.

Thelma inquired if a Judge received the forms as approved and tweaked it, would that not be acceptable? Judge Carver said, yes, Judge Ortley could tweak the Temporary Order and the Order of Protection. Judge Carver said, however, the Petition would be automatically generated from the forms approved. However, the point of coming up with the forms, is to make them as uniform as possible throughout the State. It was decided by the committee members to go through these suggestions one by one and decide on them.

Judge Mohr suggested looking at the points that were not discussed previously and ruling on them only. Judge Carver said he could easily submit any changes to Joan Eliel. He said they asked for comments and the committee is allowed to make comments. Therefore, the committee agreed to go through each of the items submitted by Judge Ortley.

SWORN PETITION

Petitioner: To add a second line – committee felt that each Petitioner would need an Order and therefore, rejected this change.

Paragraph 2: Use same phraseology, Order of Protection throughout all the forms – This was a good housekeeping issue and would be submitted for a change

Paragraph 2 – Not enough room to write the name of children involved – The committee believed this was in relation to the size of the box for Child/ren under Protected Persons not being big enough to write in their name. Sheri Bishop suggested narrowing down the box for Who does the child live with? which would give more room for name of Child/ren. This was just a matter of enlarging the box for the minor children.

Page 3: Box for victims who are not family members – Committee agreed this was previously discussed and that is why “other” was added.

Paragraph 5: Regarding the use of “Violence” and “Abuse” – the committee agreed that this had been discussed and the language would be left as is.

The committee agreed that on the page PAST ABUSE, the bottom was added at the suggestion of Judge Ortley to allow more room for the Petitioner to write. The bottom page refers to see the next page, if one is attached.

Page 4 Item B: Again dealing with the use of word “abuse”. – The committee agreed that this had been discussed and written as agreed with the Attorney General’s office.

Page 5 Item 7: Changing word of happening to “pending” – committee agreed with this change

Paragraph 2 on the Bottom of Page 5: include other digital forums (text messaging, Face Book, My Space, You Tube) – committee agreed to leave as is on the form since it did state “or otherwise communicate, directly or indirectly”

Page 7 Last Paragraph: The box referring to - I request that the Court issue an Order of Protection, after the hearing, that – Judge Ortley points out that respondent must be given at least 72 hours notice. – Judge Mohr discussed if the paragraph should include language that the Petition must be served upon the Respondent 72 hours before the Hearing. A Motion was made to remove the box inserted after Hearing by Judge Mohr, which was seconded by Sheri Bishop. This motion was passed by the committee.

Temporary Order of Protection Issues:

Title: Judge Ortley recommended that Temporary Protection Order should be changed to Temporary Order of Protection – The committee agreed with this change.

Findings: Finding the Petitioner is in imminent danger – Judge Mohr suggested that this is statutory language, but it should read, The Court finds from the Petition that the Petitioner **and/or other protected persons** is in danger of harm. The committee agreed to add the new language of “and/or other protected persons”.

Paragraph 2: list the other digital forums. The committee felt they had addressed this earlier.

Page 3 Paragraph 9: Respondent shall complete violence counseling – Judge Mohr agreed that this could probably not be done on a Temporary Order of Protection. The committee agreed to remove this option from the Temporary Order of Protection. Judge Carver stated, however, that this Paragraph needs to remain in the Order of Protection.

Paragraph 13: waiver of personal service – The committee agreed to remove Future Notices from the Temporary Order of Protection form. Judge Carver said how could a party waive this when the Respondent has not been served with it yet?

Other Relief: Change language from Shall NOT have the children to “contact with the children” – The committee agreed with the change to “shall NOT have contact with the children”.

Signature: Clerk cannot sign a Temporary Order of Protection – Committee agreed that the clerk cannot sign the Temporary Order of Protection. It was agreed to remove Clerk from the signature line.

Hearing Section: Notice of Hearing in place of Hearing – The committee decided to leave the Hearing as is.

Page 5: How to obtain signatures on this portion of the Temporary Order of Protection – the committee decided to leave this portion as is for now. Judge Carver discussed how this may work at some time in the future. Therefore, it was decided to leave these on the forms.

Protection Order

Title: Again title should be consistent throughout – Order of Protection. The committee agreed with this recommended change by Judge Ortley

Relationship Section: recommended box to reflect the court found the person to be a victim of an enumerated crime irrespective of any relationship – The committee decided this was discussed previously and “other” takes care of this issue.

Findings: Judge Ortley suggested the finding of being in danger should be optional finding – Judge Carver noted that the Findings are from the statute and the Order of Protection added the wording Petitioner and/or the Protected people, which was a recommendation on the Temporary Order of Protection. The committee decided to leave the wording as is.

Paragraph 2: expand digital realm – The committee had addressed this earlier and decided to leave language as is.

Signature: It was agreed that the Clerk should be taken off the signature line.

Page 5: Regarding service by mail – the committee has already discussed this issue and decided to leave on the forms.

Judge Carver mentioned 2 concerns that Judge Nielson, a new member of the Commission on Courts of Ltd. Jurisdiction, had about the Orders of Protection. One dealt with custody of the children issue and the other involved the 1500 ft. issue. This committee discussed these extensively in prior meetings and those decisions were to remain as is. Judge Mohr reiterated the custody issue of children is only temporary and needs to be done in most cases to make sure the children are in the safest environment.

Judge Carver agreed to draft a response to Judge Ortley on his suggestions, as well as send the committee’s suggestions to Joan Eliel, so the changes can be made to the forms. Judge Carver went on to state that he was submitting these to Joan as the committee’s last comments. Judge Mohr made a motion that these changes be noted as the Final Comments, this was seconded by Sheri Bishop. This motion was passed by the committee.

TRAINING – DISTRIBUTION OF NEW ORDER OF PROTECTION FORMS:

Christine Mandaloff and Elaine Dahl of the Montana Legal Services agreed that they would be willing to train and distribute the new forms. Kevin of the Supreme Court has put the forms on the web, to allow for the testing of them first.

KAREN NELSON UPDATE

Karen Nelson advised the committee of the status of the latest version of Full Court. Although, JSI has fixed some of the issues that were found, another issue came up and currently there is no “patch” to fix it, so they are waiting on JSI.

Karen went on to state that the Supreme Court Administrator's Office was working on the Jury Module and asked Lisa to summarize the big changes they are waiting on. Lisa said

there is now the ability to have a single juror show up on 2 group lists. The program also added “status enhancements” to the jury module. Other changes were clean up items for the names to be in alphabetical order, last name and then first name. They have made it easier to add new names to a selected group of jurors, so that summons may be mailed out to everyone. Karen Nelson said because they have developers on staff, they may be able to create a program whereby a court could export the jury questionnaires. Scanning documents and keeping them in a directory outside of the program is much easier on the budget.

Currently, Karen said there are some courts that do have programs that allow potential jurors to sign on and fill out the questionnaire on line, as well as check on the status of the upcoming trials. Karen advised the committee that jury questionnaires are not public documents, so to permanently store them on a program in Full Court would not be the best way to go.

Lisa inquired if the courts notify the Courthouse when they find out a juror has deceased, or is no longer eligible to serve. Judge Seiffert said that his court notifies the Clerk & Recorder’s Office, so they can take them off the voter registration list. Karen Nelson said the master list for jurors now comes from the Secretary of State and goes to the Clerk of District Court. The Secretary of State merges Driver’s License holders and voters to make up the master list. Karen said HB 490 had some interesting discussion on this issue. She said they need more criteria to match, ex. Last 4 digits of social security #, DOB, or other data to match the records and not duplicate on the list.

Thelma Keys-Nicol advised the committee that she sent 2000 jury questionnaires out and out of that amount only 500 and some are qualified jurors. Other committee members agreed that they had also experienced those numbers. Thelma wondered how those records get cleaned up when the Secretary of State does not want to receive back all the envelopes returned “undeliverable”. Karen Nelson suggested those issues be brought to the attention of the Clerks of District Court.

Lisa Mader said letting the Clerk of District Court know who is ineligible will prevent that same person being poled on the next jury list. Judge Seiffert felt this was important information and e-mail should be sent to all judges and clerks. Judge Seiffert said, however, the Clerks of District Court need to be contacted before this happens. Karen Nelson said she would take this information to the task force on this issue.

Judge Carver asked Karen Nelson if she wanted to comment about the possibility of having an “Enterprise” school after the fall conference. Lisa commented that with the current schedule at the Court Administrator’s Office, they have been unable to attend training on Enterprise with JSI. JSI will have their National Conference the week of September 14th. The Montana Fall Conference is scheduled for the last week of September.

Judge Carver noted that once the District Court project is completed, it is hoped that there can be a periodic training schedule established for the Limited Jurisdiction clerks. Judge

Seiffert said it is important to know what training may be scheduled in the future, so that the courts can start budgeting for it. Lisa said that there will be a demonstration of the jury module at the Western District clerk's meeting in May. She is coordinating with Claudia Bagley of the Helena City Court on this. Sharon Skaggs asked if an Enterprise demonstration could be held at her Spring Conference in Billings. Karen Nelson said she would like to host a possible 1 day session on Enterprise in July. She suggested having 2 sessions – 1 in Helena and possibly another in Billings. Karen suggested having a small group look at Enterprise first, before they tackle training everyone.

Karen Nelson after further discussion believed they could have some in-state training and demonstration on Enterprise sometime in mid-August. Lisa said the JSI Conference will be different this year, in that they will have computers available for workshops.

LEGISLATION:

Judge Carver gave the committee the status of the bill dealing with the suspension of someone's DL. Although, the original bill was amended, it will allow for suspension under title 61 codes, 45 codes, 81 codes and most Department of Fish, Wildlife & Parks violations. Judge Carver has discussed this issue with Brenda Nordlund and Greg Noose of the Motor Vehicle Department in order to have the forms reflect this change. Judge Ortley was thanked for his great job in testifying on this issue.

The other legislation before the Governor for his signature deals with deferred on non-commercial vehicle violations. There is a law requesting reimbursement through the Courts to the Public Defender's office. Judge Carver said the bill does say that in every judgment, the court shall assess the fee for the public defender's office. If the bill passes, the fees would be considered restitution and, therefore, collected by the court first.

Judge Seiffert advised the committee that he took part in a survey regarding the public defender system and there was a lot of focus on the cost of the system. He explained that is why this bill was introduced in the first place.

Karen Nelson added that the court automation part of her program is fully funded. So everything is going OK at this point. Karen Nelson did request funding to expand the Interactive Video Program to all counties in Montana. Karen said they are requesting this funding from the stimulus package money coming to the State. Sharon Skaggs inquired of the funding for the Self-Help Programs. Karen commented that request was made out of the stimulus package funds. Judge Carver stated that the Montana Magistrates Assoc. believes the Self-Help Program is very important and they are actively involved in trying to keep them going.

BULK DATA REQUESTS:

Discussion continued on the request for bulk data which some of the courts have been receiving. Thelma advised that she sent the fee schedule for searches to the company. Judge Mohr advised that our court is authorized by the County commissioners to charge

\$25.00 per record search as well. Karen Nelson said the latest request has come from First Advantage. They are requesting the docket number, defendant name, DOB, address, date of arrest, charges, SSN and court dispositions. On the Civil data, the request is for docket/case number, defendant name and plaintiff name. Request further is for Plaintiff phone number and any claim or judgment. They want Defendant address as well. Karen Nelson said that this company is an information collecting company. Karen Nelson said the Public Access Rules which were approved by the Supreme Court deal with bulk data requests. The personal identifiers which they are requesting are not allowed by our Supreme Court. Sheri Bishop discussed the fact that her court is not set up to send this type of information out. Sharon Skaggs said that their court has a public access terminal and they would be free to use it.

Karen Nelson said the Public Access Rules have addressed the release of this information by saying that access is tied to the resources available to the court. Further it explains what information cannot be released and how to handle such requests. The rules further put a prohibition on the data collected, in that it cannot be sold, published or otherwise disseminated.

Karen Nelson suggested drafting a form letter in which the courts could use to answer these requests. The letter would advise that information can only be released for journalism or statistical purposes. Judge Carver suggested he and Karen draft the letter and get it out to all judges and clerks at the next Conference. It was then suggested to put this matter on the agenda when the COCLJ meets.

ELECTRONIC SIGNATURES:

Judge Carver said he has had many Judges call him about getting their signature in the Full Court documents. It was noted that when e-mailing notices out of the Court, an electronic signature is needed. Karen Nelson said the Secretary of State's office may want to address the group, because there are electronic signatures and then there are digital signatures. Karen said under 30-18-101, which many states have adopted as the definition of an electronic signature, there is a symbol or other mark attached to a record, with the intent to sign the record. Karen gave another example of sending e-mail and signing it "Karen". If the receiver accepts that as the signature then it is an electronic signature.

Karen said there is nothing technical going on with an electronic signature, as the Act describes it as an agreed upon signature. Digital signatures have a security notice attached to it, in order to authenticate that signature. To do digital signatures you need an authenticated document program, with a private and public key. This is a very secure way to sign a document. The question is what is the security necessary in this situation.

Judge Carver said this was his agenda item and he now believed it should be discussed by the E-Filing committee. A rule needs to be adopted to deal with this issue. Sharon Skaggs felt that more questions would come out, as Version V allows the clerk to issue electronic summons.

INTERACTIVE FORMS – SMALL CLAIMS:

Because of time constraints, Judge Carver asked the committee if they wanted to defer this subject to the next meeting. Karen Nelson said her staff would be willing to work on developing this interactive form, if the committee had one set of forms they could work from. Judge Carver suggested setting a full day meeting to adopt a form. Flathead County and Yellowstone County presented their forms for Small Claims. Sheri Bishop commented that the Idaho interactive forms were very clear and precise. Karen Nelson said she could let the committee look at all of the forms that have been developed, as they have the access. Judge Mohr suggested the committee spend a day looking at the forms and pick the best one out. Judge Carver wondered if a 2 day meeting should be scheduled, so they could work on both Small Claims and Civil.

NEXT MEETING DATE:

Next meeting date is tentatively scheduled for:

9:00 A.M. on May 14th

9:00 A.M. on May 15th

MEETING WAS ADJOURNED.

MINUTES SUBMITTED BY BARB PEPOS, MEMBER