

COCLJ AUTOMATION ADVISORY COMMITTEE
MEETING – July 25th, 2008
Helena, Montana

MEMBERS PRESENT:

Karen Nelson, Supreme Court Administrator's Office
Chairperson, Judge Larry Carver
Judge Johnny Seiffert
Judge Gregory P. Mohr
Sheri Bishop, Gallatin County Justice Court
Barbara Pepos, Richland County Justice Court & Sidney City Court

MEMBERS PRESENT BY PHONE CONFERENCE:

None

MEMBERS PRESENT BY VISION NET:

Thelma Keys-Nicol, Kalispell Municipal Court

GUESTS PRESENT:

Christina Mandiloff, Attorney At Law

Meeting was called to Order by Chairperson Larry Carver at 10:00 A.M.

APPROVAL OF MARCH 27TH & 28TH, 2008 MINUTES:

Minutes were approved as written.

PUBLIC COMMENT:

None.

ADOPTION OF NEW COMMITTEE:

Ed Smith, Clerk of the Supreme Court, is chairman of the E-Filing Committee. 26 states have adopted e-filings in all their courts. In these courts the official record is on their computers. There needs to be 5 sub-committees formed to deal with this enormous project of e-filing in the State of Montana.

Judge Carver was asking for volunteers from this committee to be on the new e-filing sub-committee. Sharon Skaggs of the Yellowstone County Justice Court volunteered to represent the clerks.

Karen Nelson from the Supreme Court Administrator's office stated that the 2007 Legislative session appropriated about \$540,000 for an electronic filing pilot project. The Commission on Technology created this E-Filing sub-committee to start looking at electronic filing in the courts. The committee has only met twice so far, and talked mainly about what kind of models are available in electronic filing. Judge Carver is on the committee, as well as Shorty Stewart from Judge Orzech's Court in Missoula.

Karen went on to demonstrate that primary e-filers would be the State Bar members, government to government filings, as well as self represented litigants. The Supreme Court is currently on a C Track computer program and the Limited Jurisdiction Courts and the District Courts are using FullCourt. Karen further explained that the State needs an electronic filing management system that can accept filings from all the different groups and make it look somewhat similar when it comes into the Case Management System. In the Limited Jurisdiction Courts 85% of the filers are government agencies. The remaining 15% of cases are filed by self-represented litigants. Different jurisdictions are going to have different interests in what is happening in the e-filing area. All the groups mentioned are working on their own e-filing systems. The State Bar is particularly interested in specialized legal filing programs that are available.

The most active government to government filing project right now is the DOJ technology project. Karen and her staff are involved as they are using the Broker to do the motor vehicle convictions. The self represented litigants are currently involved in using HotDocs and "A2J". The e-filing sub-committee is looking at all the different issues that are involved in doing a comprehensive electronic filing system and putting together an RFP. Hopefully, the RFP would be issued by next spring.

Judge Carver stated there are 5 working groups in this e-filing project. The working groups are: privacy rules; rules for operation of e-filing; Limited Jurisdiction Courts; pro-se litigants; and archive document management. Judge Carver suggested to the Clerk of the Supreme Court, Mr. Ed Smith, to put a member from this committee on each of the working groups as all those issues affect our courts.

Thelma Keys-Nicol, Judge Greg Mohr, Sharon Skaggs, Shari Bishop and Judge Seiffert volunteered to be put on each of the sub-committees working on the project. Karen believed that the sub-committees would be asked to resolve issues and make recommendations to the main committee. Each sub-committee will be given a list of issues that need to be addressed. Judge Carver stated that the E-filing committee has adopted general principles, which he would get out to the volunteers.

ORDERS OF PROTECTION

Karen Nelson stated that she has hired a half-time developer, Sue Jamison, who is a Master Level Tech. She has been working with the State of Idaho on how they developed their templates. She needs the committee to modify the State of Idaho templates for the State of Montana. The server that Idaho uses is primarily managed by Pro Bono Net. The problem with using the Montana Legal Services network was the claim that you are low income. Karen Nelson has been negotiating a contract directly with Pro Bono Net for the Judicial Branch. This way the system would not be limited to low income individuals. Access to this server gives them the option to develop up to 100 templates, and they can do 5,000 document assemblies per month. In looking at the stats, no state is coming close to those totals right now. They provide training to the staff in Helena and also support services. The subscription comes in at \$30,000 per year. A grant adjustment was made to spend that \$30,000 for the NAPO Service. Karen Nelson

stated that Lonnie Browning, the self-help program administrator, will be asked to get the word out to the self-help centers in the state.

Christina Mandiloff, Attorney At Law, was in attendance at the meeting representing the Montana Legal Services Association. Her address and phone number follows:

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Karen Nelson discussed the original white paper that dealt with the goals early on regarding Restraining Orders. One of the issues was what electronic format was needed so that Orders could be entered into the Law Enforcement CJIN and NCIC agencies. She requested a grant for this to be done and just received notice that the grant was awarded in the amount of \$180,000. Therefore, the project is funded at this time.

The Idaho Order of Protection forms were distributed to everyone and were being sent by e-mail to Thelma Keys-Nicol in Kalispell at court@kalispell.com

The forms reviewed by the committee were all Domestic Violence related. It was discussed that an Order would be entered into the FullCourt system. Judge Mohr stated that on the 1st page of the Petition in #2, we needed to add a box relating to: Assault, Stalking or Sexual Assault. Other than changing the heading so any court in the State of Montana could use it, that page looked good.

Karen inquired of the committee that they have strictly a domestic violence link on the web-site. She wondered if they could have 2 versions of the same form. Judge Mohr stated that they talked about 2 different Orders, one an Order of Protection and the other one a Restraining Order. The Order of Protection under Montana law strictly applies to Domestic Violence. The Restraining Order would be used for assaults, stalking and sexual assault.

Judge Carver and Judge Seiffert stated that right now there is no language in the Montana Codes to separate out those orders. Judge Mohr stated that the next legislature would have to address that issue. Judge Carver wanted the forms ready to go by the fall school in Helena in September. Therefore, the forms needed to be Montana Law specific right now.

Attorney Mandiloff advised the committee that she would review the forms to make sure they comply with Montana Law. Judge Carver wanted to leave most of the form as it is presented, except for the changes to make it Montana specific. Should some part of the form not work after it is implemented, then they could address the problem.

Judge Mohr inquired about the top of page 3, which states: I have been involved in crimes involving violence, child abuse, weapons, drugs or alcohol and if so, describe the charges. Page 2 had a box pertaining to whether the Respondent had been involved in crimes involving violence, child abuse, weapons, drugs or alcohol. Judge Mohr stated that this is important information to know and he wondered if the only reason they put the same question for the Petitioner was to make sure that it was fair going both ways. Judge Carver agreed that if they did not check the box, it was fair. Judge Seiffert stated that it made no difference to the Order whether the Petitioner checked that box or not. Sheri suggested those questions be left alone, until the committee receives some feedback.

Page 4 was discussed and left as is. It was noted that the rule of staying away 1500 ft. is not on this form. The committee suggested no changes to page 4. Page 5 was discussed as far as Montana forms allowing an oath in front of a Notary. At the bottom a change from Clerk of the District Court to Clerk and blank for which Court, plus Judge needed to be added. Judge Carver wanted to know if the Notary could be left out of the Montana forms. Attorney Mandiloff was going to research this aspect of the form regarding a Notary taking the oath. Judge Seiffert preferred this document be sworn to in front of the Court, whether it is the Clerk or the Judge.

Discussion was held regarding the paper marked Temp #2 in the Idaho documents. Again, the box needed to be added which applied to: Assault, Stalking, or Sexual Assault. Karen inquired about the need for a Driver's License Box on the cover sheet. Thelma stated that she did not believe there should be a driver's license number put on a public document. Judge Carver suggested that they just put driver's license State. The language regarding the penalty would need to be changed to Montana Law. Violation of an Order of Protection is under statute 45-5-626 MCA. The language on the current Montana OOP is going to be added to this form.

Judge Mohr commented on Page 2 of 4, where the form states: The Court finds that the original Petitioner is the abuser and the original Respondent is the victim of domestic violence. Karen Nelson noted that this language is not in the Temporary Order. It was agreed that a check box be added in front of the language on Page 3 of 4, which states: shall NOT have the child/ren until further Order of the Court, or shall have the child/ren as follows. Judge Carver suggested the form be left as set up, except check boxes be added. #5 on the form Law Enforcement Assistance was a great addition to the Montana forms.

Also, in regards to the language regarding "If the Petitioner does not appear the Petition **shall** be Dismissed, not "may" be dismissed.

On Page 4 of 4, substitute the law referred to as the one that is currently used in Montana OOP forms. It was discussed that #9 said served by certified mail. It was agreed that certified should be deleted and just leave may be served by mail. Discussion regarding the last Notice on page 4 of 4, which states: I have received a copy of this order and agree to receive copies of future notices by mail. Judge Seiffert suggested it read: I have received a copy of this Order. I understand that I am required to notify the Court of my

current mailing address and telephone number. Judge Carver said the same language should go above the Petitioner as well.

#3, noted as Order Setting or Resetting Hearing on Petition for Protection Order followed the Temporary Order. Judge Carver stated again that it should read: If the Petitioner does not appear, the Petition “**shall**” be dismissed. At the check box, it should be changed to read: The Protection Order issued on _____ is still in Full Force and Effect. Judge Mohr recommended getting rid of the part regarding Receipt and Service of a copy of this Order, as both parties have been notified about service by mail. Judge Seiffert recommended adding the Certification of Service by mail instead.

#4 was noted as a Notice of Hearing for: Modification, Termination, or Objection to Renewal. Judge Carver stated that the word **Objection** should be taken out, as this form is used for a Renewal of a Protection Order. The Respondent would not need to object to the Renewal, as he has not even been notified of the Notice of this Hearing. Judge Seiffert noted that this form also required personal service. Judge Mohr stated that in particular to the Brady ruling, it specifically states that the respondent was given notice of the hearing.

#5 Reissuance of TOP and Notice of Hearing – It was discussed that this was a duplication of the previous form which was Order Setting or Resetting Hearing on Petition for a Protection Order.

The committee then discussed the actual Protection Order, long form and short form versions. The same changes needed to be done on this Order that were done on the Temporary Order. The additional change would be no DOB, but should say Year of Birth instead. The #8 Treatment/Counseling, on page 3 of 4 was discussed and it was decided to leave this part in, as it is in the Montana statutes. Page 4 of 4 needed to be changed as on the Temporary Order.

In regards to the statement, “Therefore, it may be a crime for any person to encourage or invite contact between the respondent and the petitioner, except such contact as is expressly permitted by the above order.” this would fall under the violation of the accountability or solicitation statutes in Montana which are 45-2-301 and 45-2-302. The penalty is the same as for the crime. It was decided that they could delete the bottom of the form regarding, “I have received a copy of this order and advisory notice and warning.” and the signatures.

Back to the front page of the long form OOP, it was decided to add the date where you checked Amended Order or Renewed Order. Thelma stated that they use the federal form in their court and on the first page of the Protection Order; there are 5 separate boxes for the Judge to check. Judge Carver said that it was a goal to eliminate some of those boxes, as judges were checking the box, rather than redoing the Order of Protection.

Karen noted that on the Temporary Order of Protection the Brady rule does not apply. She suggested leaving that separate from the actual Order of Protection, where Brady does apply. There are no Brady indicators on the form. Judge Carver wanted to get the Judges away from the decision of checking Brady or not.

Karen Nelson believed that Brady applied in any of the relationships listed on the Order of Protection. Judge Mohr stated that Brady applies only to intimate relationship or child in common. Brady is a federal rule and Judge Mohr did not like the idea of the dispatchers having to make that decision. Judge Carver still wanted to get away from the Judge having to make the determination of whether Brady applies or not.

Karen Nelson believed that on the Idaho forms if any of the boxes are checked for relationship to protected person, then the Brady federal firearms prohibition applies. Judge Mohr, however, stated that it is the federal rule that they must meet the requirement of "intimate partner" or "child in common". Further, the Montana legislature has added the additional victims of assault, sexual assault or stalking as qualified to obtain a Protection Order, but they are not Brady qualified.

Judge Carver said that we could just follow the Idaho format, which has already been looked over by our Attorney General. This issue was already discussed with the Department of Justice and they looked at these forms as well. Judge Mohr recommended listing the top two of intimate partner or child in common, which are automatic Brady qualifiers. He wanted the other relationships to be listed further down.

Judge Carver wanted the list of Relationship to Protected Persons left as is and see how it works. Judge Mohr still reiterated that you only lose your weapons if it is current intimate partner or child in common. Judge Carver then said that the top 3 check boxes could be spouse, intimate partner or child in common. Then the rest of the relationship check boxes could be left as is. The last check box would actually be shown as victim of assault, sexual assault or stalking.

Discussion then went back to the top of the form regarding Amended Order or Renewed Order check boxes, the date that these were either Amended or Renewed needed to be added.

The Protection Order noted as #7, short form was then brought up, but it was unsure how Idaho was using this form. This form was not going to be used right now, but would be kept as an option for the future.

The next document, page #8, marked Application to Modify needed to be amended to say "moves the court", not asks that the Court. Then #10 was accepted as the Order following the Application noted as page #8. The certified part at the bottom in regards to certified would be deleted. #11, Protection Order, Temporary Ex Parte Extension of Protection Order and Notice of Hearing was not needed at this time, so the committee moved on to #12, the Order Dismissing Protection Order. Judge Seiffert wondered if there should be a place for the Petitioner to sign, as that is what he is currently doing.

Judge Carver stated this page looks like a judge determination of the facts and possibly a stipulation could be added on the Web site where the Petitioner could state why she wants the Protection Order dismissed. Judge Mohr liked #12 as the official Order Dismissing Protection Order. At the bottom, the last part, “if there is a Protection Order outstanding” should be deleted.

The agenda for the Fall school has been set, but if possible it was felt that a presentation should be held at the Conference. Judge Carver would be at the next Commission of Courts of Limited Jurisdiction meeting on August 15th and recommend there be time set aside at the Fall training for a presentation. Karen Nelson suggested putting together a packet with the new Protection Order forms, to hand out at the Fall school. Judge Carver also wanted to demonstrate the automated forms.

SMART COP-Presentation

A presentation on Smart Cop, which is the computer program where the patrolman issues the citations and they are filed with the court, had to be postponed as Lt. Colonel Mike Tooley was attending training.

STATUS OF PREVIOUS COMMITTEE WORK

Karen Nelson was then called on to discuss the Time Pay warning letter-agreement and Overdue Processing Rules, distribution and installation. She went on to explain how overdue processing works.

There are 3 areas – Failure to Appear; Failure to Pay; and Failure to Comply. On a Failure to Appear, the program looks for a Hearing or an appearance date in the past and then it goes into overdue processing. On Failure to Pay, it looks at the money due date and if that date is in the past and there is no hold or no extension, then that case is eligible for overdue processing. If there is a Failure to Comply situation, the program looks to see if there is a complete date in the past in other sentencing and no complete by date.

Overdue processing leaves the user the option to do nothing, print a list, or print other forms which are tied in to the process. The process can be kept simple, or more complicated, depending on the needs of the specific court. All the courts using overdue processing report back that the program is saving them time. However, those grandfathered in courts have had their program tweaked.

Karen Nelson hoped that in regards to the auditing firm, Olness & Associates, perhaps the list generated in overdue processing on Failure to Pay would meet their requirements. Thelma gives her auditors a report which shows who is 30-60 days behind and who has been turned over to the Collection Agency.

Karen went on to provide the complex side of overdue processing. The tables used in overdue are statutes, warrants table, and overdue setup. The overdue type is where the language of type 1 thru type 4 came from. Each statute must be configured for overdue processing. There is also a checkbox which is used in the overdue processing table, whether or not an appearance is even required. In overdue setup, you have to define the

rules for every type of statute, including the default that you have. This committee defined the rules from the various type designations. Currently, it would require 90 setups in order to define the rules to handle the failure to appear, failure to pay and failure to comply.

Karen is recommending there be two separate statute tables. One would be a default, which represents the rules that this committee established and then have one called the local rule, this would be a rule where you do not suspend driver's licenses on Fish, Wildlife & Parks and so forth. Court personnel would have to know beforehand how they want to handle local ordinances, or the Fish, Wildlife & Parks citations. This would require the 2 Rules, instead of the 6 that are now in place.

The committee then looked at an overdue setup in the FullCourt program. There would be two rules again, default and the local rule. Once setup is done, the program knows which forms to print out. If you pick List only, no forms would be printed. This is an area of the program that is very court specific. Karen Nelson proposes to hire a competent temporary worker, to start working with courts individually on overdue processing. They would not be experts on all of FullCourt, but they would be technically competent to setup overdue processing. She recommends that the committee allow for List only option, on Failure to Appear, Failure to Pay and Failure to Comply. Sheri Bishop stated that the List is so important, especially in a larger court setting where several clerks work and not everyone is changing the due date, or updating dates on court appearances as they should be. Judge Carver stated that he believes overdue processing should start with the courts that are represented on this committee.

Karen Nelson wants to move forward on hiring the temporary overdue processing worker and also to finish the technical guide. She does believe they can start on the courts that do not have overdue processing and are represented on this committee. There will be a lot of discussion between the new person hired and the court staff, as to how overdue processing should work in their court. Also, she is requesting the List option only. Karen also wants to look at all the grandfathered in overdue processing setups as well. Thelma stated that some of the overdue processing steps are just overwhelming at first. Karen advised that her IT Department is now fully staffed, the 2 vacant positions were filled, with the last one hired starting on Monday. They are on target to get the District Courts rolled out by January. Sanders County will have FullCourt installed in their Justice and City Court. The only county that will not be using FullCourt in the Limited Jurisdiction Courts is Teton County.

GENERAL DISCUSSION

Thelma brought up a question which has to do with reporting to Driver Improvement. Thelma wondered what was the time frame used by Driver Improvement when they pull over the dispositions from her court. In talking with Vicki at Driver Improvement she understands it is 20 days. Judge Seiffert said it should be 15 days. Karen said that for certain offenses, the disposition is pulled immediately. Thelma stated her court entered the disposition on a guilty plea on a DUI. However, the defendant was not getting his probation license, so they came to the court and advised that Driver Improvement stated

they had not received the paperwork. Thelma said this had happened after about a 2-3 week lapse of time. The Court advised Helena that they do not send paperwork in, as it is pulled over electronically. Vicki advised Thelma that her court did need to send paperwork in on DUIs, because they could appeal the decision. However, Thelma said you cannot appeal a guilty plea.

The committee agreed that Thelma was doing it correctly, but apparently, Driver Improvement had their own rules. Karen Nelson has not heard this problem before and she would contact Greg Noose and try to get an answer for her. As far as Karen knew, DUIs and Reckless violations get reported immediately to Driver Improvement. All the rest are reported in 15 days.

On the other side of the problem is if they are taking the disposition immediately on a DUI that has gone to trial and the defendant was found guilty, and an appeal is filed within 10 days, you have to call back the disposition. Judge Carver stated that possibly they could figure out a way for the program to automatically retract the disposition once the appeal is filed.

The Time Pay warning letter-agreement will be part of the overdue processing procedure. Judge Carver inquired if the committee should distribute the Time Pay warning letter to all the judges. Right now there are many courts not using overdue processing, so to have the letter available would be helpful to them. It was suggested that when Karen Nelson and Judge Carver present their Order of Protection forms, they could include the Time Pay warning letter as well.

Karen Nelson received a call from the Public Defenders office in regards to their receiving checks from defendants. Apparently, the checks are for reimbursement to the Public Defender system and they do not know how to track the money received back to the original court case. Judge Carver suggested that if there is court ordered restitution to the Public Defender's office, we would need to obtain a bars code, so the money could be distributed to the Treasurer, for her disbursement to the appropriate fund.

Regarding the earlier requests from the Department of Transportation for information from the Central Repository, Karen Nelson has met with them several times. Karen Nelson discussed the C Vision project and that there may be funding available for IT projects.

Sheri Bishop inquired about the licenses for the County Attorney in Bozeman to get on line, so they can get access to the FullCourt program. Karen stated that Court Services in Bozeman was already licensed. The central repository is not internet accessible right now.

Thelma advised the committee that their City Attorney's office just purchased FullCase from JSI. One of the drawbacks of that program is that they cannot see the dispositions which are entered by court clerks into FullCourt.

Karen Nelson showed the committee that the Central Repository in the State of Idaho is available on the internet. All courts in Idaho use the FullCourt program. FullCase is a prosecutor case management system that JSI offers. In Gallatin County, the prosecutor is using a different type of program, and they can't access the central repository at this time. In addition, they may not find that the central repository has all the information that they want. Karen further stated that Gallatin County requested approximately 80 connections to the Central Repository.

Karen Nelson stated that the Public Defender's Office is also interested in a connection to the Central Repository. She thought this item needed to be added to the agenda at the next meeting.

A number of the courts have access to driving records through Montana Interactive. That was a free service, but within the last 6 or 7 months, they decided to charge courts \$25.00 per year for access. Karen Nelson is not in agreement with them charging that fee and has talked to Greg Noose about this.

NEXT MEETING DATE AND TIME

The next meeting is tentatively scheduled for Thursday, September 4th, 2008 at 9:00 A.M.

Meeting was adjourned at 3:30 P.M.

Minutes completed by Barb Pepos