

COCLJ AUTOMATION ADVISORY COMMITTEE
MEETING – August 20th, 2009
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
Sharon Skaggs, Yellowstone County Justice Court
Barb Pepos, Richland Co. Justice/Sidney City Court
Jennifer Boschee, President, MJC&MCCA, City Court, Miles City

MEMBERS PRESENT BY VISION NET:

Judge David Ortley
Thelma Keys-Nicol, Kalispell Municipal Court

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

APPROVAL OF MAY 14TH-15TH, 2009

Judge Seiffert made a motion to approve the minutes as submitted, Judge Mohr seconded. Committee voted to approve the motion to accept the minutes.

PUBLIC COMMENT:

None.

COMMENTS FROM JUDGE CARVER:

Judge Carver explained why the last meeting was cancelled, as there were some projects that just needed to be worked out, before another meeting took place. He said he had been to Helena 4-5 times in that time and he and Sharon met with Greg Noose recently regarding the Central Repository. He also met with Fish, Wildlife & Parks and the Montana Highway Patrol. Karen Nelson met with Col. Tooley, Lt. Butch Huseby, and Major Butler with the Highway Patrol regarding "virtual cashier" and what account # they could use to get this money into the general fund. At the meeting the Highway Patrol realized this would not work and they will be meeting with the committee today. Yellowstone County Justice Court is already importing Sheriff Dept. tickets into their Full Court, and they may become the test site for the Montana Highway Patrol to start importing those citations directly into Full Court.

Also, Karen Nelson got the proper # courts should use when collecting the \$150.00 public defender fee/cost which came out of the last legislature. Judge Herman did a good job of explaining his position on how this money should be distributed and Judge Carver says he will meet with this committee to discuss this. He also sent an easily understood breakdown of his proposal.

Judge Carver went on to state that in his tele-conference with Mike Korn from FW&P, along with his Deputy Director and others with his department, they stated **that hunting privileges will NOT be reinstated until they hear from the courts.** Judge Carver brought up the point that he still has an older suspension of privileges form that was last updated in 2002. However, Mike Korn advised that that form has been updated many times and he did not know why his court had not received the latest version. Judge Carver advised Mike Korn of other issues, such as the Sheriff Dept. not willing to enter those warrants in their system, as well as the fact that Judge Carver has never seen a defendant violation history. Those officials met with Karen Nelson and the automation people to try and work through those issues. Fish, Wildlife & Parks is on the agenda for the fall conference and it is hoped many issues will be resolved by then.

HB536 – Judge Carver met with Greg Noose regarding the new interlock device bill which allows for a probationary license on a 2nd offense in 45 days, at the recommendation of the Judge. Judge Carver believes that this is an administrative process and not a court process. Brenda Nordlund agreed with him on this issue, however, some courts have been withdrawing their recommendation for the probationary license and this has been confusing the issue. The committee will discuss this today.

UPDATE – KAREN NELSON:

Karen Nelson updated the committee on trainer Kelly Pierce and her husband's terminal pancreatic cancer. This of course has shorted the help desk, but other staff has stepped up to fill in, so she believes the help desk is working well, considering Kelly will remain out of the office for some time.

Karen Nelson advised that there will soon be a release of the final major upgrade to the current Full Court program. Changes will be made to the race field, charge modifications, general ledger modifications to fix bugs and other changes to be in compliance with the new laws. She believed there would be Web Ex training available with the latest upgrade.

Lisa Mader added that the plan was to deploy the new version to the Missoula District Court and the Yellowstone County Justice Court for testing. However, immediately there were problems in the Missoula District Court, so they did not implement the revision in the Yellowstone County Justice Court. There were 8 issues recently submitted to JSI staff and they are currently in quality assurance testing, however, just last week a 9th issue arose, which Mary from JSI was able to duplicate and now they need to fix it.

Judge Seiffert inquired of the fixes that needed to be done and Lisa stated they were calendar type, ROA problems, general ledger and hearing management. Unfortunately, JSI has not given her a time frame when they will repair these issues and return the update for retesting in the Missoula District Court.

Judge Carver asked if the District Courts will receive their upgrade before the Ltd. Jurisdiction courts and Lisa stated no. The plan is to implement all courts at the same time and they may break those down by districts. Judge Carver asked if there was any

training involved on the latest update, and Lisa stated training for Ltd. Jurisdiction courts would be done by phone or Web Ex, but it would not be major. Sharon believed the hearing management issue had been resolved as her program defaults to NO now when you are asked to delete a hearing.

Regarding the time line for the install of Enterprise, although her staff is working on conversion of data they received from Flathead County (scrambled for security reasons), it will be months before Enterprise will make it out to all the courts and in the meantime the latest fixed version of Full Court is necessary for the courts to have.

Lisa and Karen advised that an install was completed on some smaller courts and they were Harlem, City of Broadus and the City of Manhattan. Teton County Justice Court and Ft. Benton City Court are the only courts in the State of Montana to reject the installation of the Full Court case management system.

The entire package of new TOP and OOP forms are available on the Dept. of Justice Website. In regard to the automated A2J forms, links were sent to all automation committee members; Just Response Group; the group to stop Violence Against Women; Jennifer Vietz at Dept. of Justice and Joan Eliel. There were some comments from those groups and those items are being addressed. Karen said that she and Judge Carver will make a presentation of these forms at the Fall Conference in Big Sky. Also, Karen will meet with the CJIN task group on September 24th, to go over the forms.

Karen stated that the problems that cropped up in the beginning from the CJIN people have since settled down. She wondered if all courts were using the forms. Jennifer Boschee asked if the forms could be downloaded and put in a PDF file, so she could type on them, due to poor handwriting issues. Judge Carver asked if they were going to be incorporated into Full Court. Karen said the forms are being developed with “merge codes” and “need prompts” and she found out there are many “need prompts”. Lisa said her staff will work on these issues as well and Karen wanted the forms available by October 1st.

Karen stated everyone should try the Hotdoc version of the OOP, which should allow users to fill in the blanks. Judge Mohr stated the Bar Association needs to know about these forms, if we want them uniform throughout the State. The problem is when a victim goes to an attorney to get the forms filled out and the attorney is using the statute as a guideline.

Judge Carver stated that some of the victim advocate groups are not using these forms as well and some state they will not until they hear from the state. Karen Nelson said that in July of this year all available documents were put on the Dept. of Justice website. Karen said in September they have meetings with CJIN people, COCLJ, and she will call Chris Manos with the State Bar Association. She said Joan Eliel has been involved in this process since the beginning and she is with the victim advocate groups, as well as Montana Legal Services. She believes the problems will be resolved, but this is a large State and it does take some time.

In addition, 8 more counties will have Vision Net equipment installed and this should be completed by October 1st, 2009. Karen mentioned the following sites: McCone county; Garfield county; Prairie county; Wheatland county; Big Horn; Ekalaka and Ft. Benton, as well as an upgrade to Judith Basin County. Sharon advised that after talking to Shellee Abel in Whitefish, she learned that they were just receiving Vision Net, although, Karen stated her division did not set up Whitefish.

The e-filing committees met and all information was sent to Ed Smith, and that group has not met over the summer. Karen did see some major differences in what the task force was recommending. **One example is that the e-filed record “must” be the official record.** However, one of the working groups came back and said NO, this cannot be the official record. Karen stated that the **technology rules must reflect that the electronic record is the official record.** According to the new privacy rules, e-filing would not be public information until all cases were filed electronically.

Karen further commented on the interim study on DUI's, which came out of the last legislative session. Her office has been contacted to provide much statistical data for this study. She stated it might work if her department created a Web site and put this statistical data on there, to take some of the work out of providing this information on each individual phone call. When last meeting with Greg Noose, there is \$35,000 in grant money available to her Department to make changes to the entry screen in regards to the CMV, CDL and HAZ issues. This information is actually going to be included in the new updated release of Version V. The committee wanted to know if some of that money could be used to pay the \$25.00 subscription fee to the DMV on record checks that the courts want. Jennifer from Miles City stated that they have never been charged the \$25.00 and that may be because they hooked up to the DMV when it was offered free to the courts.

Karen then addressed the Public Defender reimbursement cost and the prosecution costs which were implemented by the last legislature and if they are indeed costs, which would mean they are paid after the fine? There was discussion that a request should be made for an Attorney General's opinion on the distribution issues.

JUDGE LARRY HERMAN PRESENTATION:

Judge Larry Herman produced charges/costs of Courts of Ltd. Jurisdiction breakdown of the surcharges and in what order they are to be paid. Judge Herman said it is real clear that 50% of those collections go to Victim restitution, crime victim compensation, other government agency and insurance company, however, where the other 50% goes is not clear.

Judge Herman pointed out that when everything is paid in full at once, there is obviously no problem, however, most of the time only a portion is paid at one time. Therefore, the other 50% is explained as follows: see PART II of form below.

Charges/costs courts of limited jurisdiction

3-1-317. User surcharge for court information technology	civil/criminal	\$10.00^{1,4}
3-1-318. Surcharges upon certain criminal convictions	criminal conduct	\$10.00^{1,4}
46-18-236. Imposition of charge upon conviction	misdemeanor charge	\$15.00^{2,4}
	Total surcharges	<u>\$35.00</u>
	Title 45/ 61-8-401/61-8-406	<u>\$50.00^{2,4}</u>
	Total surcharges Title 45+	<u>\$85.00</u>
46-8-113. Payment by defendant for assigned counsel (PDO)	costs of counsel (Misd)	
		\$150.00^{1,4}
46-18-232 Costs of prosecution, pretrial supervision, community service (Min. \$50/Misd)		\$50.00^{2,3}

¹**Paid after fines collected**

²Priority charges to be paid before fines under 46-18-251

³Permissive

⁴Mandatory

Allocation of money collected -- criminal actions

46-18-251. Allocation of fines, costs, restitution, and other charges.

- I. 50% of all money collected from the defendant must be applied to payment of restitution as follows:
 1. Victim unreimbursed
 2. Crime victims compensation and assistance program
 3. Other government agency
 4. Insurance company

- II. Balance of money collected must be applied to other payments in the following order:
 1. Charges imposed pursuant to 46-18-236^{2,4}.
 2. Supervisory fees imposed pursuant to 46-23-1031² (Committed to department of corrections)
 3. Costs imposed pursuant to 46-18-232 or 46-18-233^{2,3}
 - a. Costs as defined under 25-10-201
 - i. 25-10-101/plaintiff and 25-10-102/prevaling defendant
 - ii. Award to prevailing party
 1. "practice of the court"
 2. "provision of law"
 - b. In addition to the prosecutions 25-10-201 costs SB 341 defines further costs under 46-18-232 as those "specifically incurred by the prosecution or other agency " for:
 - i. Costs of prosecution
 - ii. Costs of pretrial supervision
 - iii. Costs of community service
 - iv. Minimum \$100 felony/\$50 Misdemeanor

4. FINES IMPOSED PURSUANT TO 46-18-231 OR 46-18-233
5. Other payments/charges ordered by the court¹
 - a. User surcharge⁴ 3-1-317.
 - b. Criminal surcharges⁴ 3-1-318.
 - c. Public defender costs of counsel⁴ 46-8-113
 - d. Not a cost as defined under 25-10-201 as it is not a cost to the prevailing party See 25-10-101 and 25-10-102
 - i. SB 263 makes a mandatory charge of \$150 for misdemeanors/\$500 for felony

If any fines, costs, charges, or other payments remain unpaid after all of the restitution has been paid, any additional money collected must be applied to payment of those fines, costs, charges, or other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments have been paid, any additional money collected must be applied toward payment of the restitution.

¹Paid after fines collected

²Priority charges to be paid before fines under 46-18-251

³Permissive

⁴Mandatory

The court could order the defendant to pay prosecution costs, restitution, pretrial supervision costs or community service costs directly to the victim, agency, or provider. However if these costs are not paid and the court receives any money from the defendant the statutes are clear the money has to be distributed as provided under 46-18-251.

In civil actions the user surcharge 3-1-317 is collected upon the commencement of action or appearance. It is not a court fee under 3-1-317(3) and uncertain if waived in forma pauperism under 25-10-404.

Judge Herman said his county attorney had written an opinion regarding the surcharges and he just received it. He said that basically it went through the same thing Judge Herman came up with. Judge Herman said it needed to be read section by section and compared with his analysis. Judge Herman gave the example of a \$1000.00 payment, where \$500 goes to restitution immediately. Then the remaining 50% gets broken down as costs, prosecution costs, fines, and then surcharges and then public defender costs.

Therefore, Judge Herman believes the public defender costs of counsel come after the fines, not before the fines. That way at least on the Justice Court side, there is money going to the State and the County. Judge Carver noted that currently on the Justice Court side of Full Court all the restitution is taken out first, but clearly it needs to be changed to 50% to restitution and the remaining according to the distribution laws. Currently, after restitution, all surcharges are deducted. This committee had a meeting previously in which Judge Mary Jane Knisely brought up these issues and the committee decided to distribute the money as it is now setup.

Judge Carver said now the confusing part of this is “costs”, which is what is stated in the new Public Defender reimbursement bill. Judge Herman said that 3-1-317, 3-1-318 are paid after the fines and 46-18-236 is paid before the fines. Judge Herman said the public defender cost is a cost of defense, not prosecution. Judge Carver mentioned under sub (b) the costs of prosecution or other agencies are shown. Judge Herman said the cost of prosecution is not the cost of the defense. Judge Mohr said costs of prosecution may be for copies or transcripts, which we won’t see much of. The problem is some courts will say Public Defender restitution, which it is not.

Judge Mohr agreed with the allocation as set out from Judge Herman’s charges/costs Courts of Ltd. Jurisdiction paperwork. Judge Mohr and Judge Herman differed on the Prosecution costs and Public Defender costs. Judge Herman said by looking at 25-10-201 and then 46-18-232, before the fines the costs of prosecution would need to come next. Judge Herman said this is permissive as to the \$50.00 Minimum on a Misd. Judge Seiffert clarified that what Judge Herman said is the cost of prosecution would come out before the Tech surcharge and the MLEA surcharge. Judge Mohr said costs are only ordered after a hearing. Judge Herman said if it is a prosecution cost, it would come out before any fine.

Judge Carver asked if Judge Herman’s county attorney was going to ask for an Attorney General’s opinion, to which Judge Herman agreed. Judge Herman would fax the final request from his County Attorney to committee members. Judge Carver felt that the committee needed to make some determination today on this issue of distribution.

Judge Herman’s concern is that if the Public Defender costs take priority over the fines, this is a serious issue facing local governments. It could take a considerable amount of time before the County or State receives any fine money. Judge Herman said currently the 3-1-317 surcharge and the 3-1-318 surcharge are taken off the top, instead of after the fines, as that is what the statute says. Judge Herman said the fines are divided 50-50, so the State will get some money, however, the surcharges will come later on, instead of first as they have been now. Unfortunately when defendants are on time pay, which is 80% of the time, this is where the problem lies. Judge Herman says he believes his court is owed approximately \$2Million on time pay agreements. Sharon Skaggs advised that on the prosecution of NSF checks, they have always collected a prosecution cost.

Judge Ortley believed the issue is very confusing and he could certainly go with asking the Attorney General for an opinion. He feels that the intent of the IT surcharge was to make sure that the courts operated efficiently and, therefore, he wanted to see those as priority payments. He said the new Public Defender’s bill does not do a good job of defining what they are requesting, other than saying it is not a fine or a fee. He would like to see the surcharges paid even before the restitution.

Judge Ortley said they quit assessing the county attorney fees on bad checks, but he listened in on the testimony on the current costs of prosecution bill, which was pushed by Missoula County, and it dealt with pre-trial supervision, community service supervision,

and post conviction supervision. There was no testimony on the mileage involved when having to give testimony, or witness costs. The amount specifically was suggested by the Missoula County Attorney.

Judge Herman added that the cost of prosecution is permissive, not mandatory. Judge Ortley said his county attorney expects to have these costs added on bad check cases, and he feels this is an issue which may make it to the District Court. Judge Herman said the Yellowstone County Attorney has been working on his request to the Attorney General for the past two weeks and he believed it will be submitted soon.

Judge Seiffert said that if they follow the statute table which Judge Herman presented, the state surcharge will be collected below the fines. However, Judge Herman noted that half of the fines collected go to the State general fund.

Claudia Anderson said the way Full Court is set up now, the prosecution fees are collected before the fine. All surcharges and fees are collected first, after restitution. And, they are working on setting up the Public Defender fee to be collected before the fine. Therefore, the fines are the last things collected.

Judge Herman said if you take the plain language of the statutes, you should set it up so the fines come before the Public Defender costs. It will be hard to collect monies from defendants who have been declared indigent enough to qualify for a public defender. Judge Herman said 3-1-317 and 3-1-318 surcharges are also to be paid after the fines are collected.

Judge Mohr said that regarding costs, there must be a hearing to determine the defendant's ability to pay it. Judge Herman believed that if the court declares a defendant as indigent, they cannot be ordered to pay anything.

Judge Seiffert also advised that this problem will affect City Courts as well, however, not as badly due to the fact they keep all their fines collected. Judge Carver wondered how long it would take the Attorney General's office to give their opinion on this matter. Judge Seiffert said it could take quite some time and it would be up to the Attorney General to decide how important this issue is. Judge Ortley made a Motion that this matter be referred from the Automation committee to the Commission on Courts of Ltd. Jurisdiction for direction. He believed everything should be left as it is set up right now and there is a possibility that the COCLJ will decide on this issue, or decide to ask for an Attorney General's opinion. Judge Carver asked the committee to make a decision on the Public Defender funds now. Judge Ortley suggested they be set up as costs and paid before fines, as he sat in on the hearings for this bill and it was clear to him that the Public Defender's system was in need of these funds, whether he agreed with the bill or not. Judge Herman wanted the committee to keep in mind to get appointed a Public Defender, the defendant must be 133% of the poverty level and the court cannot even assess a fine in that case. Judge Ortley agreed with what Judge Herman said.

Judge Carver restated the fact that Judge Ortley had made a motion to the committee and he asked for a second. Judge Seiffert got some clarification from Claudia and Lisa as to what needs to be done to change the status of the Public Defender costs and learned that 150 databases would have to be redone. To leave as is does not require nearly as many man-hours. Therefore, Judge Seiffert seconded the motion made by Judge Ortley. A vote took place by this committee with 2 no votes, however, the majority agreed to pass this motion as presented.

MONTANA HIGHWAY PATROL-Electronic Filing-Smart Cop

A demonstration of the e-filing of citations was completed by the Montana Highway Patrol. Karen Nelson prefaced their demonstration by advising that the MHP and DOJ had contacted her about their wanting to accept bond in the field and the contact with Sandy Miller from MII was began. Sharon Skaggs of the Yellowstone Co. Justice Court agreed to be a pilot for that program; however, she wanted to import their citations as well, as her court is already doing this in the New World System.

In attendance was: Marty Wangen, Chief systems developer for the Courts; Sandy Miller with On-Line Government Services; James Thomas with the Department of Justice; Bill Griffenberg with the Department of Justice; Scott Tenny, Sgt with the Yellowstone County Highway Patrol and Major Tom Butler with the Montana Highway Patrol. The committee discussed if the court needed to print a copy of the citation when it was received electronically and it was decided that this would probably happen, as most judges would want a printed copy of the citation in front of them.

Major Tom Butler said for the MHP to issue around 125,000 citations each year and then a clerk in one of the courts to re-enter that information into the Full Court program does not make good sense. He is very much behind importing citations directly, as well as figuring out the transfer of bond to each court. Bill Griffenberg explained that the security on the MHP program meets the FBI CJIS standard and in fact an officer can use his fingerprint to log on, if he wishes. All information entered on their system is available statewide to authorized personnel and the information does not have to be printed. Some out of state DL's are not readable at this time, but once all the states meet the DL requirements, everything will be readable. Their reader will read Canadian DLs as well.

Judge Seiffert inquired if the individual officer can change the address, if it is an old address on the DL. Jeff Griffenberg stated that the officers are able to overwrite that on their computers. Judge Seiffert advised the committee that he felt 50% of the addresses on the DL are incorrect. Major Tom Butler stated due to Merlin which is the vehicle registration program, addresses will be updated every year on the DL's. Judge Seiffert said he has a hard time getting the officers in his jurisdiction to ask if the address is current. Judge Carver mentioned the new program "Enterprise", which has the capability of not only showing the DL, but also the photo. Jeff Griffenberg stated that they do not gather the photo at this time, but if the MHP needs a photo, they obtain that from the Motor Vehicle Division and they are currently in the process of obtaining that

information from other states as well. The MHP system, however, is capable of recording the photo.

Jeff Griffenberg also advised the committee that the public can go on the Montana Highway Patrol web site, which is located on the DOJ web site and see a map where current incidents are noted. This map is fed by the computers out in the field, so the information is real time. Also on the web is the “race” information in regards to the profiling bill which was passed a couple of years ago. The “race” information does not print out on the citation.

Sharon Skaggs asked if the VIN # field could be populated, due to the “No liability insurance citations”, where the person’s vehicle license becomes suspended. The MHP system can populate that field as well. Request was also made to populate the BAC field in the case of a DUI citation. It would then be up to each individual court whether the citation printed out this information or not. Also, discussion led to knowing if the violation was a 1st, 2nd, or subsequent offense. Mr. Griffenberg stated that as more and more systems become available to them and interface with their system, the troopers will be able to see this information more readily. In Yellowstone County Justice Court there are 2 clerks trained in CJIN, so they do not miss the multiple offenses.

Judge Seiffert explained the issue with Driver Improvement and their need to have CDL blanks checked. He further stated that it does not matter whether a CDL holder is driving his personal vehicle or a commercial vehicle, either way the court cannot defer the sentence on those violations. This took place in House Bill 298 from the last legislature. Mr. Griffenberg stated they have never had a request for the box to be automatically checked, which would be easy for their system to do. Judge Seiffert explained that the law came down from the federal level in 2007, which basically is an anti-masking law on CDL holders. Judge Seiffert said that a CDL holder is held to the anti-masking standards whether they are on a Motorcycle or in a commercial vehicle.

The acceptance of bond out in the field was then discussed. There is a flat fee of \$5.00 for a defendant to post bond with a credit card. This \$5.00 charge is per transaction, not per citation. The \$5.00 processing fee does not go to the Court. The dollars transfer in 72 hours to the court’s bank account. The trooper is able to swipe the credit card the same as he now does with the defendant’s DL. A receipt is generated immediately, so the Defendant has a receipt. Sandy Miller went on to state that debit and credit cards are better than checks, as you are guaranteed those funds. Because Yellowstone County Justice Court is the test site, all the problems will be worked out before they work with other courts.

Judge Mohr and Judge Seiffert explained the reason for the Notice that if Defendant is posting bond and he is not going to appear, that bond will be used to take care of his fine. This information appears on the bottom of the citation now, however, during an electronic import, it would be helpful if that information was on the body of the citation. Mr. Griffenberg asked if someone could send that verbiage to them and they would make sure it is on the electronic version of the citation. A copy of what the defendant receives

was then shown to the committee and it appeared that the information regarding forfeiture was already on it. Marty advised that perhaps the citation would be attached to an ROA and the court would have it available, should they need to actually print the citation.

Thelma Keys-Nicol inquired if Driver Improvement will have the capability of accepting payment for DL suspension fees over the phone by credit card. Jeff Griffenberg stated they would open this discussion with Greg Noose; however, it would be Greg Noose that would have to want this service. Judge Ortley felt the issue of bond forfeiture is very important and he has developed a form that the defendant must sign, to make sure they understand the bond will go towards the fine and further issues such as points on their record may occur from that action.

Karen Nelson advised that they are working with the Highway Patrol to get these citations imported into the Full Court system. She also stated that it was time to move forward with the electronic filing of records and adopting a rule that an electronic record is the “*record*”. Yellowstone County Justice Court has already done this and only keeps the original copies while the case is pending. Allowing for time to expire on an appeal, those original paper documents are shredded. There are rules in place which already exist, including the rules Judge Ortley found on the American Bar Association web site. The committee looked at 3-1-115(b)

Montana Code Annotated - 2007

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3-1-115. Electronic filing and storage of documents -- rules. (1) The Supreme Court may make rules establishing procedures for electronic filing of documents and electronic storage of documents.

(2) Courts may, but are not required to, institute procedures for electronic filing of documents and electronic storage of documents to further the efficient administration and operation of the courts. Electronically filed or stored documents may be kept in lieu of any paper documents. Electronic filing of documents and electronic storage of documents must be in conformity with rules adopted by the Supreme Court.

(3) The provisions of [3-1-114](#) and this section may not be construed to repeal any other provision of existing law that requires or provides for the maintenance of official written documents, records, dockets, books, ledgers, or proceedings by a court or clerk of the court in those courts that do not institute electronic filing of documents and electronic storage of documents.

(4) The procedures for electronic storage of documents may require but are not limited to the following:

(a) all original documents to be recorded and released into the court's electronic filing and storage system within a specified minimum time period after presentation to the court;

- (b) the use of original paper records during the pendency of any legal proceeding;
- (c) standards for organizing, identifying, coding, indexing, and reproducing an original document so that an image produced from electronically stored information can be certified as a true and correct copy of the original and can be retrieved rapidly; and
- (d) retention of the original documents consistent with other law and security provisions to guard against physical loss, alterations, and deterioration.

History: En. Sec. 2, Ch. 174, L. 1995.

Provided by Montana Legislative Services

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Judge Mohr made a Motion that; Put on the agenda for the next meeting to adopt the ABA standards for e-filing the official document in electronic form. This is the document that starts “due process”. Other rules are already in place which addresses the filing and storage of electronic records. Judge Ortleby seconded that motion. This motion was passed by the committee.

MONTANA FISH, WILDLIFE & PARKS – HB 222

Mike Korn, Assistant Chief with the Dept. of Fish, Wildlife & Parks, plus his technical advisor, Tina Marie Wilson with the department’s IT staff and Jeri Payne, who is on the Administrative staff with the Law Enforcement division, met with the committee. It was noted that they had just received a disposition on a FW&P citation, which was issued 11 years ago. The court did not send the disposition in until the fine had been paid in full.

House Bill 222 is:

An act requiring that a person who is convicted of a hunting, fishing, or trapping criminal violation and whose privileges to hunt, fish, or trap have been revoked is NOT eligible to purchase a license to hunt, fish, or trap until all sentencing terms are met.

Mike Korn advised that 31 states honor the loss of privileges, so it is important to get the dispositions and the suspension of privileges. They are hoping to work with the State IT Division and get the dispositions from the Central Repository. It was noted that all title 87 codes are to be recodified and cleaned up. Judge Ortleby felt that part of the problem is that the title 87 codes are somewhat hard to understand. Judge Carver advised there will be at least 3 bills introduced: 1. a bill to reorganize the statutes, but basically keep the intent of the law 2. a bill to repeal some of the laws and 3. a bill to make some changes to the current laws. Mr. Korn went on to explain that they are getting their officers “Tough Books”, so they will have some databases available to them while they are out in the field.

A FW&P notification of non-appearance or non-pay of fines or costs was presented to the committee. It did follow along the lines of a Driver’s License suspension form and, therefore, was recommended that a “logo” be put on the form, to distinguish it from the DL suspension forms. Karen Nelson said this form deals with “contempt” type issues and is used to notify FW&P of the defendant’s non compliance. With some minor change recommendations; room for the ALS#, change wording of driver to defendant and

possible logo, Judge Mohr made a motion to adopt usage of the form, with a 2nd from Judge Seiffert and the committee passed that motion. Judge Mohr suggested that the logo should be a grizzly bear, because that is the symbol already being used by FW&P. Judge Carver advised that the clerks would receive training on the new form at the court school in Big Sky. The Courts will be provided with an address to FW&P, an e-mail address and a FAX #, so they can report the non-appears and non-compliance defendants. It is important to note that FW&P use DOB and ALS#'s to match up to the defendant.

Mike Korn also advised that they are working on a new form to replace the old form that the courts have that notify defendants of loss of privileges based on the conviction. There is no fee to the defendants once their loss of privileges has run its course. However, there is a \$50 fee to complete the Remedial Hunter Ed program.

Judge Mohr stated that the back of the defendant copy of the citation does a good job of explaining the loss of privileges, even in a forfeiture of bond situation. If the Judge suspends the privileges, then the Court must notify the defendant of that. He further explained there is a difference between notifying the defendant of what the statutes say and Ordering suspension from the bench.

It was discussed that in the “*other sentencing*” box in Full Court, the requirement to attend Hunter’s Ed could be added. Mike Korn explained that if statutorily required to attend Hunter’s Ed, means they can have everything else completed, but if they did not complete the Hunter’s Ed course, they still have a loss of privileges. All game wardens are advised to put the ALS # (automated licensing system number) on their citations, as this is a unique # given to applicants. This number is on a person’s hunting license. Mike Korn further explained that if a game warden marked 18 months down for suspension of the hunting, fishing and trapping privileges and a Judge sent his disposition with a 12 month suspension, they will use the judge’s sentence. Judge Carver stated that there will be more training on this at the Fall Training session.

Judge Carver stated that the current loss of privilege form is not working for the courts. He believed there should be a form that just states: Judge _____ orders the privileges of hunting, fishing and trapping to be suspended for (amount of time). Most of the other information on the current form are administrative loss of privileges and handled by the Department of Fish, Wildlife & Parks. Judge Mohr advised that the Judge should only sign a loss of privilege form if it was ordered in a sentence and is in addition to the mandatory minimum loss of privilege already allowed by law. Judge Carver also suggested that the Judges do nothing with the Remedial Hunter Ed Program, as that is handled administratively by the Dept. of Fish, Wildlife & Parks. In Judge Mohr’s sentencing, he **will advise** of the loss of privilege per the statutes and **advise** of the Remedial Hunter Ed Program. Judge Mohr said the current form is misleading, as it has a place to be signed by Judge or Warden. Obviously, if the Judge signs it, then it becomes his order, but if the Game Warden signs it, it becomes the administrative notification.

Karen Nelson explained that electronic reporting is one of their goals, however, in working with Tina from FW&P, their NTA system is completely different from Full Court and there will be some work to get these 2 systems to work together. Right now, all courts must do the disposition on each individual case.

HB-536, NEW INTERLOCK DEVICE

At the last meeting Greg Noose, director of the Motor Vehicle Division, addressed the new law regarding the use of an interlock device on a 2nd or subsequent offense DUI. Greg Noose wanted the Judges to make the recommendation for that device on their sentencing order. Judge Carver said that some of the Judges want to suspend that privilege if the defendant misses a fine payment. He went on to say that the Interlock Device is an administrative procedure, to which Brenda Nordlund agreed. Judge Seiffert believes the issuance of probationary DL's is an administrative procedure. Judge Mohr made a motion that the interlock device should be considered an administrative function and the only item the Judge does at sentencing is sign yes or no, this was 2nd by Judge Ortley, and the full committee agreed with that Motion. Therefore, it was felt that there would not be a problem with HB-536.

Judge Carver discussed page 3 of the bill, 61-8-733(a), which states the Judge shall: *if recommending that a probationary license be issued to the person, restrict the person to driving only a MV equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing and maintaining the device.* This was recommended as a training issue at the Fall Conference. Judge Ortley believes that the court either recommends yes or no and the rest is administrative. As part of the training issue, if the Judge orders no bars and no alcohol as part of the defendant's sentence, then the court can go back on a defendant who violates that condition.

Judge Carver and Sharon met with Greg Noose of Driver Improvement and learned that they had some problems with the Central Repository and the electronic transfer of DL suspensions will probably start again in March, 2010. In addition, there will be a new DL suspension form given out to the Judges at the Fall Conference. The new computer program Merlin caused some problems for the Driver Improvement Bureau.

CHANGE REQUEST – Sharon Skaggs

Karen stated that the electronic transfer of the DL suspension forms would resume soon. Sharon Skaggs inquired of the Change Request recommendation that would make it easier to find the particular case in Full Court where the DL was suspended, such as the Warrant button does now. Lisa Mader advised that when JSI was asked about this and came back with a quote on the cost it was \$9900.00.

Judge Carver said that the Driver Improvement Bureau has some grant funds available for changes. Lisa said Driver Improvement wants a change to the DL suspension form to show all the charges involved with the suspension, rather than printing out a DL suspension form on each charge. Karen Nelson said she would argue the point with Ernie at JSI that the \$9900.00 is not accurate for what needs to be done.

Judge Mohr made a motion that the DL suspension change be made to Full Court to include the tab which will take the clerk directly to the case and charge where the DL was suspended, this was 2nd by Sharon Skaggs and the motion was passed by the committee.

GENERAL DISCUSSION

Discussion continued on the distribution of surcharges, fines, and the Public Defender costs and the Prosecution costs. Judge Mohr felt that the Public Defender's office should not be at the top of the list. Judge Ortley stated he had sat in on some of those hearings and it was clear that the intent was to pay the Public Defender's office first, as that department was having budgetary problems.

Judge Mohr discussed the fact that regarding prosecution costs, they are mainly coming at the District Court level, i.e. deposition costs, probation officer costs and copy costs. Missoula County, however, came in and wanted prosecution costs added on NSF check charges. He believed most of the prosecutors who handle bad checks will agree to have their costs added on.

Judge Mohr was recommending 50% of the money taken in from the defendant goes to surcharges first and then to the costs of prosecution and public defender costs. The next 50% would go towards fines. Lisa Mader was not sure if this could be set up in Full Court. Right now, restitution is coming out first, then surcharges and then the fines. Judge Mohr presented this idea of disbursement as "food for thought" to the COCLJ.

The committee inquired as to how the District Courts scheduled their payments and Karen Nelson advised that they work on such a different level when it comes to the collection of money. There are times when the Probation Officers collect the money and she did not know exactly how their allocation of payments was set up. Judge Carver asked if the COCLJ should make the decision and the committee members were split 50-50 on that issue.

It was discussed by the Judges if a hearing would need to take place each time Public Defender costs came up, due to the fact the defendants qualified for a public defender based on their financial situation.

The next meeting is tentatively scheduled for:

Friday, October 23rd, 2009 at 9:00 A.M. in Helena, Montana.

Judge Carver closed the meeting after members made a motion. Meeting was closed at 4:00 P.M. Minutes submitted by member, Barbara Pepos