

MINUTES

Commission on Courts of Limited Jurisdiction (COCOLJ)

Helena, MT

January 19, 2024

Members Participating: Hon. Kelly Mantooth, Hon. Steve Fagenstrom, Hon. Steve Bolstad, Hon. David Grubich, Peggy Tonon, Hon. Kerry Burman, Brian Smith, Hon. Jessie Connolly, Greg Sullivan, and Jeanne Torske.

Members Absent: Melissa Rosaaen

Staff Present: Shauna Ryan

Guests: None

Judge Mantooth called the meeting to order at 8:30 a.m.

Public Comment:

Judge Connolly said that she had recently received an email request from some public defenders to have access to FullCourt Enterprise (FCE). Judge Mantooth indicated that Judge Menager had sent an email because he had received a public defender request for FC access. There is a form that is required to be completed and approved by the judge before someone can have access to FC. They aren't given access to change anything in FullCourt, they can only view it. Judge Mantooth had sent the inquiry to Judge Barger. Judge Barger responded that it's fine to approve but it's discretionary for each judge. Her county attorney has had access to her Full Court Enterprise database for several years under the "criminal agency" role. Be sure by the signature you designate the role you are allowing as "public defender". We must know what access we're granting when signing those forms. When they developed FCE, the automation committee developed specific roles for access – not just for the staff working in the courts, but for other criminal justice partners. With access allowed/restricted pursuant to their role, this allows them to access your FullCourt Enterprise to check on cases and saves the court time in answering their phone calls to get case numbers for their filings, answer questions about cases, etc. They can't mess with the cases at all – only view the cases they are allowed to pursuant to their assigned role. Judge Barger also provided a copy of the different roles and their allowed access to the data in FCE for review. The committee is in the process of adopting policies and taking care of that currently. Judge Barger will add this issue to the nuts and bolts session at the spring conference now that more courts are using FCE. Brian Smith said that he has had FC access in Missoula since they began. He has requested that his regional directors get FC access to all the courts in their region so they can assign cases or need to get into cases to find out what is happening – this is the reason for all the recent requests. Brian encouraged judges to approve these requests for access for the public defender's office – there is a lot of efficiency that is gained by having access. Judge Mantooth asked if there were any policies or procedures established. Brian responded that it is discretionary, but if judges approve county attorney access, then they should approve public defender access. Judge Connolly hears there is a need because public defenders don't get documents or see orders – and she doesn't understand that because her courts send documents to the attorney of record. What has her the most concerned is that these requests just randomly showed up. If this is to be received well and to be understood the public defender's office should be reaching out to the judges before shoving the form in front of them. Judge Connolly does not think relying on FC access completely is good either – it's simply a tool. Judge Mantooth

agreed to visit with Judge Barger more. It may be a training issue and should be discussed during the nuts and bolts session in the spring. Technology does move fast; IT folks want to push this stuff out, but we also need some instruction in advance. Greg Sullivan commented that having agency access to FullCourt has been incredibly helpful. He agrees completely that it is a tool – it is not the only tool – that we need to use to ensure we show up in court and know where our cases are – but it is a critical tool to doing that for the efficiency of the entire system. It benefits the court if we know where we're supposed to be and when cases are docketed, especially if the court changes them within a short amount of time prior to a hearing. We check FullCourt every single morning and review the docket for the day. He felt rescinding access is also important when there is turnover. Jeanne Torske said one of the big issues they have had in Big Horn County is that every time they upgrade the FullCourt system at the state level, they've ended up with strange things happening. On one occasion, every sealed case was unsealed. She said that as far as district court access, her office is the only one with access and there is only one person in her office that has access to it – simply because she's very protective of the records and who can access what because the program on the back end does have some glitches. Brian Smith added that if a full-time public defender is granted access, they are using their state credentials to get into Full Court. Once they leave the agency, that access is turned off automatically. Judge Fagenstrom couldn't think of any reason why the public defender shouldn't have the same access to Full Court as the prosecutor's office. Judge Connolly stressed again that the judges need to know the type of access they are granting to folks in different roles. Judge Mantooth will reach out to Judge Barger and try to gather some additional information for the judges.

Judge Connolly had another concern about forms required from the MVD. Judge Connolly was advised by MVD that the judges have a form that they must complete and submit to MVD for Court Recommendation for Probationary Drivers License Second and Subsequent DUI BAC conviction. Judge Connolly had not seen that form until she inquired of MVD. Judge Connolly talked to another judge who they shared a joint defendant with lots of confusion about his driving privileges. The other judge provided her with the form. We apparently all have this form in Full Court, however justice and city courts in Big Timber do not have this form, nor has Judge Connolly ever seen it before. MVD insisted that it was created by the judges and the judges need to use it. MVD cannot grant restricted probationary licenses on second or subsequent until the judges complete that form. Judge Connolly asked if we'd ever had any training on this form or if anyone else was familiar with it. Judge Mantooth said they haven't received any formal training but somehow when they push the FC updates through there are systems that don't get them. He suggested she contact Lisa Mader in IT. Judge Connolly still felt it was a training issue as to how courts recommend probationary licenses and how we communicate with MVD. The other issue she had with this case is the defendant was ordered to do 24/7 testing after he was sentenced, and Judge Connolly's understanding was that if a person was doing 24/7 testing through a program that reported appropriately that on a second or subsequent then they could qualify for a probationary license and not have to serve the full 45 days. MVD did not consider him compliant with 24/7 because they didn't see that he was actually compliant. Judge Connolly had proof he was compliant, however MVD had not heard from Lacey Wickum that he was compliant – she tells them if the person is compliant. MVD would not say that he should've been valid back to the date that he was compliant; they were only going to start showing he was eligible for the probationary license once Lacey called them. Judges really need more training about forms and what we're sending to MVD.

OLD BUSINESS:

Minutes

The minutes from the meeting on November 17, 2023, were reviewed. Brian Smith moved that the minutes be approved. Peggy Tonon seconded the motion and it carried unanimously.

Brian Smith asked if the Commission went into executive session during the last meeting. He wondered if the Judge Larson email should be in the minutes. Judge Mantooth asked if there was anything in the minutes that would be protected information. Brian Smith commented that the Commission kicked Judge Coolidge out of the meeting due to something that might be confidential. Judge Mantooth agreed that they told Judge Coolidge the commission was going to go into executive session due to the nature of the email. The Commission really did not know what was going on in that court and the issue with the city manager. Shauna clarified that the Commission didn't really go into the merits of the email but rather concluded that it was a separation of powers issue and not a training issue. She advised there is going to be some training at the spring conference regarding judges and interactions with local government based on previous concerns like Judge Larson's. Judge Grubich wondered if because we indicated we were going into executive session that perhaps the minutes should reflect the same and that portion of the minutes should be redacted in some form. Greg Sullivan commented on how they handle similar situations in the city of Bozeman. With the elected city commission, they are fully cognizant that every time they have a quorum of commissioners - then it is a meeting. They look at the definition of meeting and under Montana law, his understanding is that there are only two ways to close a meeting - first, is this a matter of individual privacy? To close the meeting, the presiding officer of the meeting must make a finding that the individual right of privacy exceeds the public's right to know. There is quite a bit of Supreme Court case law that helps us understand how to balance that with different types of positions of government employees or elected officials. Certain types of positions are positions of public trust - this is language the Supreme Court has used - therefore the public's right to know when weighed against the person's privacy interests and that person is in position of public trust - the public's right to know generally exceeds the individual right of privacy if it's directly related to the performance of their duties. If it's a matter of personal health or medical issues - that is a different type of analysis. The lower within an organization of government you get then the balance starts to shift a bit. If you are going to discuss something and someone is asserting that right to privacy interest, then the balancing test comes in for the presiding officer. That is how it's handled within the city commission. Based on Greg's analysis, Peggy Tonon did not think what the Commission discussed would fall into executive session. Brian Smith asked if the minutes should somehow reflect that although we were in executive session, it was determined that it was not a closed matter. Judge Mantooth commented that Judge Larson emailed the Commission seeking some help and without really understanding what was going on they went into the executive session not knowing completely what was going on. Judge Larson was requesting legal assistance which the Commission does not provide. The commission had to determine if it was a training issue or a personnel issue - the Commission did not view it as a training issue. Justice Rice added that in his time serving on the Commission he couldn't think of anything that would properly fall within the privacy realm that would allow the Commission to close a meeting - it would be a very rare occurrence. Maybe the minutes could be amended to reflect that this matter was brought to the Commission as a new matter and as a possible personnel matter and for that reason the Commission went into executive session.

Judge Fagenstrom moved that the minutes be amended to reflect that the Commission went into executive session to investigate the email and subsequently found out it was not a training issue for the Commission and there was nothing there that would require an executive session by the Commission. Judge Connolly seconded the motion and it passed unanimously. Jeanne Torske moved to approve the amended minutes. Judge Grubich seconded the motion and it carried unanimously.

COCOLJ Vacancy – Small City Judge Representative Vacancy – Letters of Interest

The Commission reviewed the letters of those interested in serving as the small city judge representative on the Commission. Peggy Tonon wanted to emphasize that the Commission needs to fill the seat with someone from the western part of the state, as the Commission was lacking in representation from western Montana. Based on that need, Judge Menager, Judge Straub, Judge McPherson, and Judge Kraft would not meet that criterion. Judge Langston and Judge O'Connor were the only two applicants from the west.

After discussion, the Commission moved to recommend that Judge O'Connor be appointed to the vacancy on the Commission. Shauna Ryan will send the recommendation to the Court.

COCOLJ Response to Polson City Court Email – Status

Shauna Ryan indicated that after the last meeting the commission was going to prepare a letter to Judge Larson advising him that the Commission did not feel it was a training issue. On December 8, 2023, Judge Larson submitted some additional information and left a voicemail with Shauna advising that he needed some legal advice. Shauna called and left Judge Larson a message advising him that the Commission does not provide legal advice or representation and suggested that he contact the MMIA for some assistance. Shauna has not received any additional correspondence from Judge Larson since then. Shauna asked if there was an additional response needed. Peggy Tonon suggested just a simple email to Judge Larson stating that based on our recent phone conversation and materials submitted to the Commission, the Commission has determined that this is not an educational issue and encourage him to seek legal advice or other assistance. Judge Bolstad suggested approaching this from an educational perspective in the future with Justice Rice's training on separation of powers and how to manage your branch of the government. Key issues are independence of the judiciary, the separation of powers – that is rock solid, and we need to remind the new judges of the importance.

NEW BUSINESS:

Request for Temporary Certificate and Waiver of Training for New Judge

Hon. Mark Dunn (Great Falls Municipal), Hon. Bill Knox (Dillon City), Hon. Katie Heller (Billings Municipal), Hon. Karolina Tierney (Bozeman Municipal), and Jim Doyle (Blaine Co. JP/Chinook City) – On behalf of the waiver committee, Peggy Tonon recommended the temporary waivers be approved. The Commission concurred.

Spring Conference Agenda – Update

Justice Rice asked for a bit more direction on the separation of powers topic. The last time he discussed this he talked about the historical background of our system of government and why independence of the judiciary generically is a critical concept during the first hour; the second hour was spent talking about staying in your lane and not being co-opted by other branches of government. Is this the direction the Commission would like him to go again or are there other suggestions? Peggy Tonon responded that there were so many new judges in the last three years that she thinks it would be great for the judges to hear it for the first time and then a great refresher for older judges. There have been so many efforts to undermine the judiciary and attack the rule of law. It's important for them to know the historical background and that they have the authority to stay in their lane and run the court the way they deem appropriate. She did not think it would be repetitious in any way because of the number of new judges. Judge Bolstad agreed with Peggy and remembered the last presentation and thought it was awesome. Judge Rice may want to begin with a disclaimer that he is not there to address specific instances in order to keep on track. Greg Sullivan added that spending all of his time with the local government and not in the courtroom he thinks the staying in your lane is an interesting thing. They make sure the prosecutors know what their lane is and it's not to rule and say what the law is but it's to advocate for positions as officers of the court. Everyone has a lane and when anybody crosses out of that lane, that's where the tension rises. The other thing he thinks would be helpful based on his experience in Bozeman is to emphasize that partnerships and the relationship with local government is incredibly important. The court should have a productive relationship with city management, elected officials and human resources, finance during budget season – all of that – the more we know each other the better off we're going to be and the more effective we're all going to be as a whole.

The remainder of the agenda is fairly solid, and presenters have been contacted.

Email from Judge Coolidge re: SC Order Mandating Municipal Judge Attendance at the COLJ Conference

This matter is tabled until the February meeting to allow Commission members time to review the email and attachments.

Public Notice of the COCOLJ Agenda and Minutes

Further discussion on this issue is tabled until the February meeting.

Adjourned: The meeting adjourned at 11:15 a.m.

Next Meeting Date: The next meeting will be Friday, February 23, 2024, at 8:30 a.m. in Helena.