

# **MINUTES**

## **Commission on Courts of Limited Jurisdiction (COCOLJ)**

**Helena, MT**

**January 20, 2023**

**Members Participating:** Hon. Perry Miller, Hon. Kelly Mantooth, Hon. Steve Fagenstrom, Hon. Steve Bolstad, Hon. David Grubich, Peggy Tonon, Hon. Jim Rice, and Melissa Rosaaen

**Members Absent:** Hon. Jessie Connolly, Brian Smith, and Scott Twito.

**Staff Present:** Shauna Ryan

**Guests:** None

Judge Miller called the meeting to order at 8:30 a.m. He started by introducing and welcoming new member Judge David Grubich. Judge Grubich was appointed on December 20, 2022, and he replaces Judge Ulbricht on the Commission.

### **OLD BUSINESS:**

#### **Minutes**

The minutes from the meeting on November 13, 2022, were reviewed. Judge Fagenstrom moved that the minutes be approved. Peggy Tonon seconded the motion and it carried unanimously.

#### **COCOLJ City Representative Member Seat Vacancy**

After the November meeting, Greg Sullivan, from the Bozeman City Attorney's office, followed up and confirmed that he is interested and available to serve on the Commission. Peggy Tonon moved that the Commission recommend to the Court that Mr. Sullivan be appointed to the Commission. Judge Mantooth seconded the motion and it carried unanimously. Shauna Ryan will notify the Supreme Court of the Commission's recommendation.

#### **Certification Conference – Results**

Shauna Ryan reported that the Certification Conference went well. There were only a couple of judges who did not pass the test in November, but they retested prior to the end of the year and were successful. The average score was 89% which was exceptional. Out of 240 questions, only 8 questions ended up being thrown out. Interestingly, there were some comments from judges about various presenters either not knowing their audience or not covering their material adequately. The test scores did not reflect any issues, however. Shauna will gather the results from Survey Monkey and have them available for the Commission to review at the next meeting.

### **NEW BUSINESS:**

## **COCOLJ District Court Judge Member Seat**

Judge Heidi Ulbricht's term expired on December 31, 2022, and she opted not to seek another term on the Commission. On December 20, 2022, the Supreme Court appointed Judge David Grubich to fill the district court judge seat. Judge Grubich's term will run January 1, 2023, through December 31, 2026.

## **Scott Twito Resigned from the Commission**

Scott Twito, county representative on the Commission, resigned on January 13, 2023. The Montana County Attorney's Association will be making a recommendation for his replacement.

## **Election of Officers**

Judge Miller moved that Judge Mantooth be nominated for the chairman seat on the Commission. Peggy Tonon seconded the motion and it carried unanimously. Judge Fagenstrom moved that Judge Bolstad be nominated to serve as vice-chairman. Judge Mantooth seconded the motion and it carried unanimously. Judge Mantooth will serve as chairman and Judge Bolstad serve as vice-chairman through January 2024.

## **Waiver Committee**

Judge Bolstad moved that Judge Grubich be appointed to the waiver committee, along with Peggy Tonon and Melissa Rosaaen. Judge Fagenstrom seconded the motion and it carried unanimously.

## **Request for Waiver of Training for Fall 2022 Conference and Spring 2023 Conference**

Hon. Tasha Morehouse-Mix – On behalf of the waiver committee, Peggy Tonon recommended that both waivers be approved. The Commission concurred with the recommendations.

## **Request for Temporary Certificate and Waiver of Training for New Judge**

Hon. Carl Mohler (Three Forks City) and Hon. Alison E. Howard (Kalispell Municipal): On behalf of the waiver committee Peggy Tonon recommended the temporary waivers be approved. The Commission concurred.

## **COCOLJ Member Seat Vacancy**

At the conference in November, Judge Miller requested that anyone interested in serving on the Commission submit a letter for consideration. The Commission received four letters of interest from judges for the vacancy on the Commission. Judge Grubich moved that Judge Kerry Burman's name be forwarded to the Court for consideration and appointment. Judge Fagenstrom seconded the motion and it carried unanimously. Judge Miller will prepare a letter to the other applicants thanking them for their interest and encouraging them to apply again should future openings become available on the Commission.

Peggy Tonon moved that Judge Mantooth be moved from the at-large position to the small JP position. Judge Grubich seconded the motion and it carried unanimously. Judge Kerry Burman will fill the at-large position on the Commission. Judge Kelly Mantooth will fill the small JP position on the Commission.

## **Concerns regarding Requests for Waiver of Training for Substitute Judge**

Peggy Tonon wanted to bring three items to the attention of the Commission. First, in looking at the waiver of training form Peggy has taken the position that according to 3-10-231(2)(a)(i), MCA, judges need to specifically state that the substitute judge is “of good moral character and have a community support, a sense of community standards, and a basic knowledge of court procedure.” If a judge does not specify the language in the statute the form will be returned to the judge with a request that the judge comply with the requirements. She would like the support of the Commission of her position. Judge Miller reported that there are a couple of judges who have helped draft legislation to help clarify who can serve as a substitute judge for a justice court of record (3-10-116, MCA.) They have also proposed adding a section to the MCA for courts of limited jurisdiction defining both the qualifications and attributes of a substitute judge. Peggy suggested revamping the form, but it would likely become a two-page document. She would work with the waiver committee and Shauna to make those changes. Until the form is revised, judges must list the verbiage in the statute when filling out the waivers for substitute judges.

The Commission then discussed the requirements in 3-10-116, MCA, for substitute judges for justice courts of record. Peggy clarified the consensus of the Commission and that is that they are JP’s first and foremost, and if they are a JP court of record, they must meet the criteria in 3-10-231, MCA, in addition to the criteria in 3-10-116, MCA. All justices of the peace – record or not – need to comply with 3-10-231, MCA.

Peggy, along with the other waiver committee members, will look at revising the current form to reflect the discussion today.

Lastly, Peggy raised a concern that in some jurisdictions clerks were being required to conduct initial appearances without the appropriate waiver of training forms in place. The other issue is that the initial appearances were being conducted over the telephone which is not allowable. Judge Mantooth and Judge Miller will draft and send a letter out to all judges clarifying what is required in statute.

### **Spring Conference Agenda – Update**

Shauna Ryan reported that she had been in touch with most of the presenters. Judge Mantooth and Judge Miller, instead of Judge Fagenstrom, will cover Jury Selection 101. For breakouts: Judge Mantooth and Judge Miller will cover Justice Court issues, Judge Connolly and Judge Burman will cover City court issues, and Judge Bolstad will cover Municipal court issues. Shauna talked to Judge Holly Frederickson who agreed to help with any training surrounding orders of protection. The Commission thought a mock hearing on OOP would be helpful. Judge Miller asked that time be made available for Sgt. Lacie Wickum with the MHP so she can provide a DUI – drivers’ license suspension update. The Commission opted to postpone the break-out for new and experienced judges until the fall 2023 conference to allow time for Sgt. Wickum.

**Adjourned:** The meeting adjourned at 11:50 a.m.

**Next Meeting Date:** The next meeting will be Friday, February 17, 2023, at 8:30 a.m. in Helena.